



Morgan Kousser, 2011

J. MORGAN KOUSSER
(b. 1943)

INTERVIEWED BY
HEIDI ASPATURIAN

April 2016 – October 2020

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CALIFORNIA INSTITUTE OF TECHNOLOGY
Pasadena, California



Subject area

History and social science, civil rights

Abstract

Interview in eleven sessions (April 2016–October 2020) with J. Morgan Kousser, professor of history and social science, emeritus, and a pioneer in the field of historical expert witness testimony in voting rights and civil rights legislation. Kousser describes his upbringing and education in Nashville, Tennessee, including his youthful exposure to segregation, local politics, and the civil rights movement, as well as his undergraduate and graduate studies at Princeton (BA 1965) and Yale (PhD 1968), and his work with PhD advisor C.V. Woodward. He recalls his growing interest in quantitative history, and his involvement in antiwar and civil rights activism. He offers his thoughts on the character and evolution of the Caltech humanities and social sciences (HSS) division, particularly its social science program, and on numerous Caltech faculty, staff, and administrators, from his arrival on campus in 1969 to the present day. He recalls his participation on a range of Caltech administrative committees, his experiences teaching Southern politics, the Civil War and Reconstruction, and the history of the U.S. Supreme Court to Caltech students, and his recollections of sabbaticals at Harvard, Oxford,

and the Hong Kong University of Science and Technology.

Kousser's five decades of research, writing, and expert witness testimony on racial injustice and discrimination, as well as voter disfranchisement and voter suppression in the American South, from the Jim Crow era to the present day, form the backbone of this narrative. He discusses a wide range of historical and courtroom work, including cases in Florida, Georgia, North Carolina, Tennessee, and Texas; his testimony before state and federal legislatures; and his longtime involvement in landmark redistricting efforts and voting rights initiatives throughout California.

Administrative information

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CALIFORNIA INSTITUTE OF TECHNOLOGY ARCHIVES

ORAL HISTORY PROJECT

INTERVIEW WITH J. MORGAN KOUSSER

BY HEIDI ASPATURIAN

PASADENA, CALIFORNIA

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Morgan Kousser, 2011

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Per agreement between Professor Kousser and the Caltech Archives dated October 14, 2021, portions of this interview are currently closed. Closed portions are clearly marked in the transcript.

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Oral history interviews are historical documents that provide valuable first-hand testimony of the past. The views and opinions expressed in them are those of the interviewees, who describe events based on their own recollections and from their own perspective. They do not necessarily reflect the views or official history of the Caltech Archives and Special Collections or of the California Institute of Technology.

This oral history contains racial slurs and other expressions of bigotry used in quoting third parties.

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**Interview with J. Morgan Kousser
Pasadena, California**

by Heidi Aspaturian

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SESSION 1

April 21, 2016

ASPATURIAN: This is April 21st, 2016, and this is the first oral history interview session with Professor Morgan Kousser. I usually start by asking about your family background and your roots. So, let's begin with that. Where do the Koussers and your mother's family originate?

KOUSSER: The Koussers originated in Austria, but that's basically all I know about them. My grandfather Kousser was a carpenter and an immigrant. My father was born basically off the boat: My grandmother apparently was pregnant with him when they landed in New York. My grandfather had some sort of illness—not enough to throw him back to Europe but enough to keep him out of New York for a while. So apparently my paternal grandmother—whom I never met or the grandfather either—came into New York City,

found a place to live, and I guess found a job for him, and two weeks later he was let off of Ellis Island. That’s what I was told, at least. So, they moved around.

My father grew up in Little Austria in Chicago, which at that point was entirely German speaking. He did not speak more than one phrase of English by the time he got to school; and the story that my mother told me that he had told her is that he was ridiculed when he got to school—I guess for not speaking real English. And he used the one phrase he had, which was something like “I’m going to cut your guts out” in response to this. [Laughter] My mother’s family had been in Tennessee for a long time, on both sides. I think some relative or another managed to get here before the American Revolution, so my grandmother said.

They were from Wales, I think, more than any place else. The Morgan part of it, which is my mother’s maiden name, comes from Wales.

ASPATURIAN: Of course.

KOUSSER: And they had been sort of educated but poor for a long time. They started a school called the Morgan School—I think as far back as the antebellum period even—in central Tennessee. My grandfather Morgan, who died when I was two and a half, was a Methodist preacher.

My parents met in New York City at the start of the Second World War. My mother, although she’d graduated from college, was a secretary. She was also a singer. She was actually in the first Robert Shaw Chorale [a nationally known choral group that toured frequently and produced numerous popular recordings between 1948 and 1965. –*Ed.*]. In fact, if she had not been good enough to be a paid soloist in church, we would have starved entirely.

It was a wartime love affair—they met in 1942 and married in three weeks, I think. I was born in ’43. My mom went back to Tennessee, and I was born in a little town called Lewisburg, which is about fifty-five miles southeast of Nashville.

ASPATURIAN: What were your parents’ names?

KOUSSER: Joseph and Alice Holt Morgan Kousser.

ASPATURIAN: Do you have Confederate roots on your mother's side?

KOUSSER: It's possible but I don't think they served. They were ministers and teachers. There's nothing I know of that said that they served. My grandmother—my mother's mother—was a segregationist, but she was kind in her patronizing way to Black house servants. I mean, at that time, in 1940, seventy percent of Black women in the workforce were maids. And they were almost all in the workforce, unlike white women. And so, lower-middle-class white people could have a maid one day a week; and that was the case for us in Nashville, although my mother didn't have any money at all.

ASPATURIAN: When Hillary Bhaskaran [staff writer and editor in the Caltech Public Relations Office, 1992–2003] did a very nice story about you about twenty years ago in *Caltech News*, I think you told her that your dad became ill in the service and then your mother moved home.

KOUSSER: Yes. I don't know what his mental state was before the war, but certainly afterward—today he would have been diagnosed with PTSD [post-traumatic stress disorder].

ASPATURIAN: Where did he serve?

KOUSSER: Europe—Italy. So far as I know, they never used the fact that his German was still good. The Italian battles took a long time, and they were relatively brutal. I don't know that he was ever physically wounded. I didn't meet him until 1946, and then there was no obvious physical wound; but he was in and out of VA [Veterans' Administration] mental hospitals for several years. After the war, he first taught school in Tracy City, Tennessee; I'm sure that must have been arranged by my mother's family. A year later we all moved to Indianapolis and shortly thereafter to Chicago, and he got a master's degree in accounting from Northwestern, and I don't know that he ever practiced accounting, but—it was quite tough. There was very little support from the federal government for the wives of people who had been damaged in the Army; and so, we were living on welfare. And then my brother was born in 1948.

ASPATURIAN: This is interesting because you hear so much about the benefits of the GI Bill.

KOUSSER: Well, he did go back to school on the GI Bill, but there wasn't much in the way of support. I remember very well; we lived in a minister's basement. It was possible to live there but not really a living space.

ASPATURIAN: A shelter, essentially.

KOUSSER: Yes, a shelter. And my mother worked in a kindergarten for a while in Chicago.

ASPATURIAN: She was a teacher?

KOUSSER: Yes. I will go into that. I'm doing this chronologically.

ASPATURIAN: That's fine.

KOUSSER: But she was able to take my little brother with her in a wagon, and then either take the wagon on the subway, or maybe she could walk to wherever she was going. I think she had to go on the subway some of the time.

ASPATURIAN: You must have been very young, and yet you remember all this.

KOUSSER: Yes, I particularly remember it because of one sort of incident. I started first grade in a little working-class suburb of Chicago called Maywood—I had tonsillitis, and I actually got paralyzed. There was a big street that I had to go underneath to get to the school—there was a sort of underpass—and one day I had gone home for lunch, and I got down underneath this big street, got paralyzed, and I couldn't walk up. And fortunately, she came along with my little brother in the wagon and took me back home. And then before that Christmas, she tucked her tail between her legs, and went home to mommy.

ASPATURIAN: Had she not wanted to do that?

KOUSSER: No. She didn't want to do that. It meant that the marriage was a failure; it meant that her independence was compromised. She had wanted to break out of the family; that's why she ended up in New York. She'd gone to SMU [Southern Methodist University] in Dallas and did graduate. Going home to Tennessee was a very hard thing for her. And then she went back to school.



The second largest teacher's college in the country then was George Peabody College, which is now part of Vanderbilt [University]. Next to Columbia, it was the biggest school to educate teachers. So she went there and got a master's degree. And interestingly, for me at least, her mentor there was the last secretary of the Progressive Education Association, which was a Deweyite organization [i.e., founded on principles established by American educational reformer John Dewey –*Ed.*]. Nobody remembers progressive education any more in the way that it existed back then, but this had a profound influence on her as a teacher and actually eventually on me [*See Session Eight*]. We lived in Lewisburg with my grandmother, and my mother commuted up to Nashville to go to Peabody.

My grandfather was dead by that point. I do not really have any personal memories of him, but I have memories via pictures and things that were told to me. I would come in with a stack of books and demand that he read to me, which he did, and I couldn't have been more than two-and-a-half, because I was that old when he died. There are photographs of me sitting on his lap with his big old hat on and a bunch of books.

Anyway, after commuting for two-plus years to get a master's degree, my mother moved us up to Nashville. She got a job first in a private kindergarten, and then in the Nashville city schools. College women of this generation don't really have any idea what discrimination was like. When she started—this is how I always explain this—the city of Nashville ran garbage trucks, and there were two guys on each truck. One guy drove the truck, and the other guy got out, grabbed the garbage cans and put them in the garbage truck. The guy who drove was always white. The guy who picked up the garbage cans was sometimes Black. Not very often, but sometimes. It was a good job for Blacks, if you were illiterate, etc. So, with a master's degree, teaching in the Nashville city schools, she got more than the guy who got off the truck and put the garbage in it, but less than the guy who drove. In order to live, she had three jobs. She was a full-time schoolteacher, and all-day Saturday she worked in a bookstore.

ASPATURIAN: She was a clerk in a bookstore?

KOUSSER: She was a clerk in a Methodist bookstore. Nashville is the center of world Methodism. And then on Sunday she was a paid soloist in a Methodist church, two services. Sunday afternoon she slept.

ASPATURIAN: And she's raising two boys single-handedly?

KOUSSER: Yes. We first lived in a place that was about a mile from the school, and then managed to find a house on the same block as the school. Nashville is a very literary place, at that point at least. Vanderbilt was where the Fugitives—a group of poets and literary critics—started. The poet John Crowe Ransom was an influential member, and the school where she taught was the Ransom School, named for him. The street was called Byron Avenue, named for [the 19th-century Romantic poet] Lord Byron who actually had no contact with Vanderbilt but—

ASPATURIAN: Somebody admired him. What grade level was your mother teaching?

KOUSSER: She taught first and second. It was a first through sixth grade school—Nashville did not have a public kindergarten at that point. But the teachers would carry the first grade up to the next year, and then start all over. So, she would have them for two years.

ASPATURIAN: That's actually a very good idea.

KOUSSER: It's a wonderful idea. Sorry to take so much time on this, but it's actually of some importance for me later.

ASPATURIAN: Social history is one of the reasons we do these.

KOUSSER: Anyway, her classrooms made so much noise that finally she was moved into the school's old lunchroom, which was downstairs, away from everything else. She would always get student teachers to help her, from Vanderbilt and from Peabody. They would just be normally sent to her so she would have somebody else in the classroom.

And these classes were on the order of twenty-five students, so it wasn't as bad as the classes now in California, and she would have five groups going on at one time. There would be somebody reading, there'd be somebody doing math. She was always after the parents to do something for her. Somebody built a playhouse for her, just a little skeletal structure, and then they would have things in this structure: pretend cooking, pretend refrigerator, and so on. People would just give her old clothes, and the kids would dress up all the time.

Animals were part of her classroom. Any time I would catch a little snake, that went to her room. A turtle of some sort. We had ducks, we had geese, we had chickens. We would have them at home in summer, and then they would go to her classroom. So these kids, most of them urban kids who really didn't know about farm animals, suddenly had all this. Once we had a lamb. It lived in our front yard, and then she would bring it into class. [Laughter] That experience sort of wrecked the lamb; it wouldn't go back to being a sheep when she brought it back home. [Laughter] She would get sixth graders to come down and help her. So, when *I* did it, I'd lead a reading group or arithmetic.

ASPATURIAN: So, you were at the same school.

KOUSSER: Yes, I was at the same school. There were kids doing everything all the time. She's spinning in her grave now, with all the testing kids go through and all the "You will sit in the chair, even though you're five or six years old, and you will have two hours of homework." This would have driven her absolutely nuts.

ASPATURIAN: How was she regarded in the community, a single working woman raising two boys in the early 1950s?

KOUSSER: It was not a problem. Nashville was a rather cosmopolitan place. Interestingly enough this was because of the country music scene and the fact that there were ten universities in Nashville. There was Vanderbilt, there was Peabody, there was Scarritt College, which taught missionaries. There was Fisk, which was a Black private university, there since the Reconstruction era. There was Tennessee State, the HBCU [historically Black college and university] in Tennessee. There was Meharry Medical

College, which is a Black medical college. Forty percent of Black doctors in the country were trained there.

And, while it may not appear obvious, the musicians who do back up for all the country records made in Nashville are very good musicians, so ever since the Grand Ole Opry got started, there has always been a *huge* music scene in Nashville—not just country and jazz but also classical. So, she sang in a big singing group called the Cathedral Singers. They would put on Handel’s *Messiah* every year and all that sort of stuff. She wasn’t paid for it, but she did this. She loved to sing. So, I’m sure that there were people who disapproved of her, but she was completely accepted at the school. Parents were enthusiastic about her, as you can imagine. She would have dinner at each student’s house once a year. She just said, “That’s one of the things we’re going to do.” So, she got to know the parents, and they would do anything for her.

ASPATURIAN: It sounds like she commanded a lot of respect in her circle.

KOUSSER: She did. She was active in church groups, a legacy from her father, and once she could get out of the real difficulty of two church services a week, and a Thursday night practice session, she did. She had a little more money, and she became a television teacher, eventually. Instructional television was quite different from anything that we know now, but public television had started, and it had a lot of instructional things going on every day. And in these little rural areas of Tennessee, they had great difficulty recruiting teachers. The teachers weren’t very good, and the facilities were awful. And so, a lot of these schools used instructional TV. And she would sing, she would tell stories, she would do all sorts of stuff.

So, she eventually left teaching in the schools and became a television teacher. She had to go to work at a place that was inaccessible by public transportation, and she didn’t know how to drive. We never had a car until I got to college, so I taught her how to drive in a weekend. [Laughter] Oh my; that was taking my life in my hands to do this.

ASPATURIAN: In a weekend, I would think so, yes.

KOUSSER: With a stick-shift car with non-synchromesh transmission in first, and I remember vividly, she's going around a corner trying to downshift into first gear. [Laughter] And I thought we were going to strip the gearbox. She had bought a used 1953 Chevy, and I thought, "We're going to wreck it right there; there goes \$500. [Laughter]

ASPATURIAN: But you both survived it.

KOUSSER: We did. And she learned to drive very well.

ASPATURIAN: What was it like for you, growing up in this environment?

KOUSSER: Well, not to be too self-centered about it, I was bright.

ASPATURIAN: Well, yes.

KOUSSER: As everybody at Caltech is. And that made me different. I was bright; I talked a lot. My grandmother had an old family homestead in Lynchburg, Tennessee, which is where the Jack Daniels distillery is—and that's the *only* thing that you need to know about Lynchburg; there is nothing else important about Lynchburg that has ever happened. Lynchburg, even though it was the county seat, did not have water or sewers, even where she lived, in the middle of what passed for the town. And so there was an outhouse, and there was a well. Sometimes during the summers my brother and I would go down there. He liked it and would stay. I hated it and would leave. But I remember when I was about twelve, somebody who was sort of a playmate there said to me, "Morgan, you would talk to a fencepost."

ASPATURIAN: You were known for being articulate. [Laughter]

KOUSSER: Well, I'm not necessarily articulate, but I talked a lot. [Laughter] And I was always fascinated by politics. There were two newspapers in Nashville—the *Nashville*

Tennessean, which was liberal, and the *Nashville Banner*, which was conservative. By the time I was about eight I was reading both of them.

ASPATURIAN: What sparked that? Do you have any recollection?

KOUSSER: I have no idea. I was just always fascinated by politics. Both papers would report the same event, and their reporting would be entirely different. In fact—particularly the *Banner* did this—they would have cameramen who followed political candidates. Usually there were two, both within factions of the Democratic Party.

ASPATURIAN: I was going to say, yes.

KOUSSER: And these *Banner* cameramen would follow the candidate around, and when he was sleepy and yawning, disheveled or something like that, they would take a picture and that's what they would use. And the *Tennessean's* picture of the same candidate would be this bright-eyed guy with his wife and children. [Laughter]

ASPATURIAN: Were you drawn to one rather than the other from an early age?

KOUSSER: Oh yes. I've always been liberal. To try to figure out who was going to win, who was actually ahead, and what they were actually saying, you had to learn to read critically. And so, I did. It's an important task for historians. And it really led me to do that.

ASPATURIAN: Was your mother interested in politics?

KOUSSER: Somewhat, but not terribly.

ASPATURIAN: How about teachers in school?

KOUSSER: No. I was more interested than any of them. More knowledgeable than any of them. I don't have any explanation of it. I've tried to think of one, but I don't think that there is one.

ASPATURIAN: Well, you know, a lot of the scientists I've talked to—they just came to an interest in science spontaneously. Same sort of thing; and nobody really asks them to account for it.

KOUSSER: I was interested in science. In the ninth grade, I think, I got this fixation—I don't know why—of deciding that I was going to come to Caltech. How in the world I'd heard of Caltech in the middle of Tennessee I'm not even sure. It didn't have as much play as MIT.

It was not any sort of rational decision. I was OK in science—not absolutely wonderful. When I was, I think, a sophomore in high school, Sputnik happened. And the consequences of Sputnik for American education I'm sure you know about, but they were really quite dramatic everywhere, and so between my junior and senior year in high school, all of the bright people in Davidson County, which is where Nashville is, were enrolled in a special summer science program. It was incredibly innovative, and I got to know everybody who was bright.

ASPATURIAN: Were these all-white kids? Was it segregated?

KOUSSER: Oh yes.

ASPATURIAN: OK. Because I'm going to ask you to speak more about that.

KOUSSER: Everything was segregated. I sort of “underspeak” in some sense because Black bright kids were simply not in the universe at that time. But this science program—it was sort of mimeographed. There were no textbooks. The sciences I'd taken in high school were unbelievably boring. You learned formulas in chemistry; there was *no* sense at all that chemistry had anything to do with atoms. There was *no* physics aspect of chemistry *at all*. It was rote and awful. Biology was worse. We dissected

worms and maybe something a little more sophisticated than that, but we didn't do anything. In chemistry, we put a couple of acids or an acid and a base together and made something pop up, explosion, just about *nothing*.

ASPATURIAN: No context for any of this.

KOUSSER: No context. It was *just* memorizing formulas. Math in this summer science school was entirely different. I liked math, but I didn't really understand what I was doing. I'd taken plane geometry in the eleventh grade, which is what was standard at that point in Tennessee at least, but I did not do well in it. I mean, you know, saying I didn't do well, I was second or third in the class, but I didn't *get* anything. But in this summer science program, we did physics experiments that they were designing while we were doing them. It really made things much more graphic and—

ASPATURIAN: Relevant.

KOUSSER: You could see how things worked. And in math we were given little geometries. Here are some axioms and postulates; what figures can you draw in this? Some of this was set up by somebody at the University of Tennessee in Knoxville, and he thought there were two figures that could be drawn from these axioms and postulates, and I figured out a third. It was probably happenstance, but somebody thought I was pretty bright because of that, you know. So, science became suddenly very interesting, but by that point, I was writing a lot. I was very good in English. I was very good in history—although I did *not* win the school's American history prize. I'm still bitter about that.

ASPATURIAN: [Laughter] This was high school?

KOUSSER: Yes, high school. Let's go back a little. After I left Ransom School—this was elementary school—then there was seventh through twelfth grade in West High School, which was about two blocks from my house. So, I went there for three years—seventh through ninth grade. What else did I do at that point? I carried papers; I had a paper route, both morning and afternoon. I'd get up at four in the morning, got on my

bicycle—later a motor scooter—and take the morning paper, the *Tennessean*, around until about six, and then immediately after I got out of school, I would take around the afternoon paper, the *Banner*. Sunday afternoon I had off; the *Banner* didn't have a Sunday section. So, I did that for a year-and-a-half. It was actually extremely cold one year that I was carrying the papers. My memory—and this is probably wrong because it's too extreme to have been true, but I do have a firm memory of it—was that it got down to fifteen degrees below zero four times.

ASPATURIAN: That could be checked.

KOUSSER: Yes, it could be checked, and I've never been quite willing to do that because the story's so nice I'd hate to get in the way of it. But it was *really* cold, riding on a motor scooter and then walking around carrying the papers in a big sack across my shoulder and all that sort of stuff. The people who carried papers were a little rough, so I used to get beat up from time to time. I was small—I was 5 foot 2 in the ninth grade. I didn't grow until the tenth and eleventh grades, when I shot up to five-ten and then eventually to about six feet. But they were pretty rough. My motor scooter got stolen once; the guy crashed it into a Cadillac, and I thought, "Oh my God, I'm going to have to pay damages for this." But I lost my motor scooter because of that and had to go back to riding a bicycle, and it's really hard to ride a bicycle and carry all the papers.

ASPATURIAN: Did you deliver just to white areas of town?

KOUSSER: Right.

ASPATURIAN: OK. We'll talk about this. Segregation is everywhere?

KOUSSER: Yes.

ASPATURIAN: OK. Go on, I'm sorry.

KOUSSER: No, that's right. Well, my most notable thing when I was in seventh, eighth, and ninth grade: I played the trumpet. West High School was still a basketball power, and I played in the marching band and the pep band. I took over the first chair when I was in the eighth grade, so I would get to go to the high-school basketball games free since we would play at them. I was tiny, and I had this big old trumpet, and so people thought that was really quite neat, me doing all this stuff. Anyway, during ninth grade I decided that I wanted to go to an Ivy League school, or at least a very good school, and that I would have a better chance if I went to a particular private school rather than continue at West. We didn't have any money, so I got a full scholarship, which at that point was \$500 tuition. [Laughter] But it was farther away—a mile-and-a-half or two miles—so I would hitchhike to school every day.

ASPATURIAN: What was the name of this school?

KOUSSER: It was Montgomery Bell Academy.

ASPATURIAN: Was it coed?

KOUSSER: No, it was all boys. It's still all boys.

ASPATURIAN: Did it have a religious affiliation?

KOUSSER: None. Montgomery Bell had been an antebellum industrialist, and the school was named for him, so maybe he gave them some money. It's now much more ritzy. They send me publications all the time, thinking that they'll get more money than I give them, but it was basically very upper-class. And most of the people who went there then were not very bright.

ASPATURIAN: They were wealthy.

KOUSSER: They were wealthy.

ASPATURIAN: And had social positions in the community

KOUSSER: Yes. The guy who was the president of my class, Dudley Warner—his grandparents gave two very large parks to the city of Nashville. He was the number one tennis player in the state. A nice kid. At one point he fell so far behind academically that his parents hired me to tutor him. [Laughter] So I did that. But anyway, I went to MBA and did end up managing to get into an Ivy League school. But it was a very different situation. There was not only racial separation; there was also class separation. I was very conscious of being poor, and very conscious that the vast majority of my classmates weren't, but also very conscious of being brighter than most of them. And thinking that, you know, they're going to be real estate agents or they're going to take over their father's contracting business, and I'm going to change the world.

ASPATURIAN: This essay contest you mentioned took place there?

KOUSSER: Yeah. I'll go back to the national history one in a minute, but there was also a *Nashville Tennessean* essay contest between my junior and senior year. I forget what it was exactly, but it was like a five-hundred-word essay. And so, I had done well. MBA gave prizes in each class for the single best student, and I was co-winner of the English prize in my junior year. I thought I was fairly hot stuff and so I entered this contest. [Laughter] You were allowed to get help, and the senior English teacher, Mary Helen Lowry, was the person who had for a long time controlled everything about English in the school. There is now a building named for her at MBA. I took my essay into her in the summer for comments and criticisms and she tore it to *shreds*. It was red mark after red mark after red mark. I was very chagrined. But, I thought, "Well, OK; it's what I have to look forward to next year." [Laughter] She taught the senior English class. So I did enter the contest and got to be a finalist. And then you had to write a hundred-word essay. A hundred-word essay is *very* hard.

ASPATURIAN: What were your topics?

KOUSSER: It was something to do with the United Nations. And so, I did not win. I didn't get a trip to some place. I had won contests selling subscriptions to the *Nashville Banner*. [Laughter]

ASPATURIAN: That was the conservative paper.

KOUSSER: It was the conservative paper [laughter], but there was a trip at the end of it, so I actually got to go to New Orleans as part of a group when I was fourteen years old and walk around the French Quarter. Walking around, seeing all the drunks on Bourbon Street.

ASPATURIAN: What were your major influences when you were growing up as child and an adolescent? What did you read, aside from these two ideologically diverse newspapers?

KOUSSER: I was always trying to better myself, and so I was always getting lists of things that I ought to read and then reading them. At MBA there were summer reading lists, and most kids read one or two books on it, and I would read thirty novels. At some point when I was in high school, I decided I didn't know much about classical music and should learn, so I went down to the Nashville public library and [laughter] walked into the record collection room. It was a small room; there was one guy there, and I said, "I want to learn classical music. I have all summer. I have a record player. [Laughter] I will come in every week; and you will give me six albums every week"—that was the maximum—"and I will listen to them." So, I did. I started with Tchaikovsky.

ASPATURIAN: He's a good one to start with.

KOUSSER: It is. It's much more—

ASPATURIAN: Accessible.

KOUSSER: Much more accessible for kids, you know. So, I did that. I don't think I graduated to Bach then, but I did do just what I was supposed to do. Also, I liked jazz. I liked Miles Davis. I wore out two copies of *Kind of Blue*, sort of the most famous jazz bebop album there is. So, I did that. Then, I think between my senior year in high school and my freshman year in college I decided, "Well, now's the time to read Plato." So, I read seven Platonic dialogues, without much understanding. [Laughter]

ASPATURIAN: Yes, well, but you tried.

KOUSSER: Yes.

ASPATURIAN: When you were reading your novels, at a slightly earlier age, were there any that particularly drew you. Did you read [George] Orwell, for example?

KOUSSER: I did read Orwell. I read a lot of [William] Faulkner. I read almost everything big. I read some poetry. When I was a senior in high school, one of the local television stations started a high school quiz bowl, modeled on a national TV show called the *College Bowl*.

ASPATURIAN: Oh yes; I remember watching that.

KOUSSER: So, we had a team for the local show that I was on. A graduate of MBA who was then at Vanderbilt and later became a graduate student at Yale, had been on the *College Bowl* team for Vanderbilt, and so he coached us, and he expanded my horizons on a lot of things. He played Gregorian chants for us. That was the first time I'd ever heard a Gregorian chant. And he was just *utterly* devoted to the poetry of [T.S.] Eliot and Eliot-like people, so I was introduced to the Fugitives, whom I'd never heard of, even though one of the houses where they had apparently met long ago was on my paper route. That was an expansion. Unfortunately, we lost.

ASPATURIAN: My younger sister also did a local version of the *College Bowl*; this was in State College, Pennsylvania. After a couple of wins, they lost also.

KOUSSER: We came up against the best team, and unfortunately their star was very good at one subject—I think Shakespeare’s plays—and so she somehow got one answer right and was able to choose that as a category and wiped us out in the second half.

ASPATURIAN: That happens. I wanted to ask you what it was like at that time growing up in the segregated south. How you became aware of it, what your reaction was.

KOUSSER: I was always aware of it. I had no Black friends. I was always against segregation. I think it’s my mother’s general influence. She was very egalitarian; she was very, very gregarious—much more gregarious than I—and would make friends, meet people, with *utter* ease. She was unbelievably sort of pushy in a nice way, so she would just introduce herself to people. [Laughter] But I had been reading the *Tennessean*, the very liberal newspaper, and they had a lot of reporters—it was sort of like the minor leagues for the *New York Times* for a while. David Halberstam started there and also this guy named Bill Kovach, who became the *New York Times*’ Albany chief when that was actually an important position. And so, they did very good reporting. They were integrally connected with the liberal faction of the Democratic Party in Tennessee, which was very strong: Estes Kefauver and Albert Gore more than anybody else. Kefauver in ’56 was actually the more liberal of the two Democratic candidates. He was more liberal than [Adlai] Stevenson, and he got in trouble for it.

ASPATURIAN: Yes, I remember reading about this.

KOUSSER: And Albert Gore Senior was quite liberal also. Actually, Frank Clement, who was in the other faction, the more “conservative” faction, was quite liberal too. In the 1956 Democratic Convention, Clement gave the keynote address, Gore was a candidate for vice-president, and Kefauver *won* the vice-presidential nomination.

ASPATURIAN: Yes, I think Stevenson threw it open, didn’t he?

KOUSSER: He threw it open. And Gore dropped out, leaving basically Kefauver and [John F.] Kennedy, and Kennedy lost—it was a good thing for him, but not a good thing for Kefauver’s career. Kefauver and Gore refused to sign the Southern Manifesto in ’56.

ASPATURIAN: What was that?

KOUSSER: The Southern Manifesto was a congressional protest against the Brown decision [i.e., the 1954 U.S. Supreme Court ruling in *Brown v. Board of Education*, which declared public-school segregation unconstitutional –*Ed.*]. And they were two of the four Southern senators who refused to sign—the other two being Lyndon Johnson and Ralph Yarborough from Texas. And they also both voted for the ’56 and ’60 Civil Rights Acts; and so in 1960, Kefauver was thought to be in real trouble getting the Democratic nomination.

In ’58, there had been a four-way contest for governor in Tennessee. The guy who won it was named Buford Ellington. He was a member of the conservative faction, but, again, this is nothing like the conservatives or the Republican Party now. The liberal candidate, Edmund Orgill, who was the mayor of Memphis, finished second. The guy who finished third, Tip Taylor, was much more conservative. The fourth candidate was a state senator from Nashville named Clifford Allen. He took enough votes from Orgill to elect Ellington, and I’ve always thought that Allen was sort of paid to run. Ellington got elected but Taylor was bright, a very good fundraiser, well-spoken, very conservative, and he was trying to run on a segregationist ticket, which had been very successful in the South during that period of time. Orval Faubus—

ASPATURIAN: Arkansas?

KOUSSER: Governor of Arkansas. He was worried about getting outflanked from the right, and that’s why the Little Rock school [integration] crisis happened. And then he had gotten reelected as this racist. So, Taylor ran in the Democratic senatorial primary against Kefauver in 1960. In Nashville at that point there was a square around the State Capitol building, and there were two hotels on the square—the Hermitage Hotel and the Andrew Jackson Hotel. The Hermitage was Andrew Jackson’s former plantation and the

place where the conservative candidate always had his headquarters, and the Andrew Jackson Hotel was where the liberal had his. Note that I’m saying “his.” There were no female candidates for almost anything at that point. Anyway, I walked into the Andrew Jackson Hotel in the early summer of 1960.

ASPATURIAN: You must have been a senior in high school at that point?

KOUSSER: A rising senior in high school. I walked in and asked for a bumper sticker. Which was odd since we didn’t have a car. [Laughter] And so this guy said, “Why don’t



Senior High School picture, 1961

you sit around and talk to us for a while?” And so, I did, and he took me to lunch, and I ended up working there that afternoon, stuffing envelopes as a volunteer. I ended up doing this for the next two months.

So, I worked the Kefauver campaign. And this is probably more than you’d ever want to know about Nashville, but between the Hermitage Hotel and the Andrew Jackson Hotel was an Odd Fellows or Elks, or one of those animals—

ASPATURIAN: One of these Lodges?

KOUSSER: Yes. These places really existed to sell people liquor by the drink. Tennessee was dry, but it was County Local Option, so Nashville was wet, but you couldn’t legally sell liquor by the drink. So, people would, quote, “have their bottles in”—that is, if they were members of the club they could bring a bottle, and the bartender would take their bottle and fix them a drink, and because it was their bottle it was legal. Anyway, just to

give you a sense of the politics of the time, there was a very politically prominent police sergeant whose name I forget right now. I should remember it; my mother dated him for a little while. She dated all sorts of people.

Anyway, he would sit on the porch of this club, which was between the two hotels. And there was one mayoral campaign, which was very, very close. And what happened on election night—this was before television took over—is that all of the returns would be posted in the ballroom of each hotel. And as one candidate seemed to be winning, the ballroom would fill up more and more with enthusiastic supporters, who would drink, carouse, and cheer, as some new precinct came in for their candidate, etc.

So, this policeman would be sitting on the front porch between the hotels and early in the evening it looked like the conservative candidate was going to win the mayoral election. The crowds got larger and larger in his ballroom, and this policeman went over to the ballroom, and there was a picture in the newspaper the next day with the grinning mayoral candidate and the policeman right there with his arm around him. But the later returns were [laughter] rather ambiguous, so he left the ballroom, went back to the club, sat there again, and later in the evening when it became clear that the other candidate was going to win, he went to *that* ballroom and positioned himself appropriately, so that the next day, the newspaper had a picture of the *winning* candidate with him with his arm around him. [Laughter] And I believe it to be the case, though I'm not sure—it would be too wonderful—that both of those pictures were published in the same newspaper.

ASPATURIAN: It would be nice, yes. [Laughter]

KOUSSER: [Laughter] That's probably not true. But anyway, as to Kefauver. A week before the election you could have gotten even money on Kefauver, and people did bet on these sorts of things. But he won 2 to 1, and the election returns would come in on the second floor, I guess. And the ballroom, where everyone was celebrating, was on the first floor. And so *my* job was to run the election returns down to the ballroom, where there was actually this huge display—not electronic at that point—and people would write in chalk the returns from each of the ninety-five counties.

And as the night went on and everything got better and better, the ballroom filled up. And there were drunken, middle-aged women who saw this eighteen-year-old boy—almost any eighteen-year-old boy apparently looks good to a drunken, middle-aged woman [laughter]—and so people would throw their arms around me as I was trying to work my way through the crowd. [Laughter] And people would cheer when we won another county, and all this sort of stuff. And I thought, “Gee, this is the good guy. This is the guy who is against segregation; this is a liberal supported by labor unions.”

During the campaign, the thing that Kefauver was best at was shaking hands. His candidacy in 1952 made the New Hampshire primary what it is today. The New Hampshire primary was *nothing* before Kefauver ran.

ASPATURIAN: He was a natural politician.

KOUSSER: No, he wasn’t a natural politician; he was *not* a good speaker; he was boring as hell; but he was just *great* one-on-one. And he had this handshake. Apparently, his right hand after the campaign was something like two glove sizes larger than his left hand. He would go into a county seat—people still came into their county seats on Saturday to buy things, because there was no Wal-Mart—where there would be speeches during the summer in election campaigns, and he would get up and he would talk about things like whether the United States should grant diplomatic recognition to the People’s Republic of China. What in the world does that mean to somebody in McMinnville, Tennessee? And people would say, “Wow, I don’t understand anything that he said, but he’s one smart man.” [Laughter]

But he was very good at shaking hands. There were all sorts of things that he was bad at. He couldn’t remember anybody’s name, which is a terrible thing for a politician. They practice on this. But he would have somebody at his elbow saying, “This is your campaign manager in this county, Frank Jones, and his wife is Sylvia, and he’s got three kids.” [Laughter] “Oh, how’s Sylvia and the three kids?” You know. So, he was successful in that regard. But it was a wonderful triumph of liberalism, and I really thought that this was going to be how the South would go.

ASPATURIAN: I was going to ask about that, because weren't the Nashville lunch counter sit-ins that same year? If I remember correctly from *Eyes on the Prize*, the city just erupted.

KOUSSER: Yup.

ASPATURIAN: Were they earlier? They must have been, since the election was in November.

KOUSSER: Yes, they were earlier—I think in something like February to April. My mother's student teacher at the time was married to the guy who was student body president of the Vanderbilt divinity school, and the divinity school was *wracked* by the sit-ins. It was wholeheartedly in favor of them and wholeheartedly against segregation. Jim [James] Lawson was there.

ASPATURIAN: Oh yes. OK.

KOUSSER: Jim Lawson was the guy who taught Martin Luther King about non-violence, and he's still in Los Angeles; he's still alive. He was at Holman United [Methodist Church in Los Angeles, as the pastor] for many years.

ASPATURIAN: That's right. He came down to Nashville to organize some of these nonviolent protests.

KOUSSER: Yes, he did. But before he did that, he was at the organizing meeting of SNCC in North Carolina after the Greensboro sit-ins, which were earlier that year, and they hit Nashville later. He actually, sort of, taught SNCC about non-violence. That's why it's called the Student Nonviolent Coordinating Committee. But he was in the Vanderbilt divinity school at the time of the Nashville sit-ins, and he was a real leader of the sit-ins.

ASPATURIAN: So, this divinity school must have been integrated.

KOUSSER: The divinity school was integrated. Vanderbilt had some Black students but not a whole lot. It was not until later when the rest of the southern schools discovered that Blacks could play football and basketball that Vanderbilt got very integrated. And it did. It got very integrated and suddenly won the Southeastern Conference championship because they got this Black center from Nashville who was terrific. Now the English department at Vanderbilt was very conservative. The Fugitives had actually been very conservative with sort of this neo-Confederate romanticism etc., and Vanderbilt itself was very much connected with the old power structure in Nashville. Anybody from MBA could get into Vanderbilt, and half of my class went there.

So basically, the English department said, “We can’t have Lawson at Vanderbilt,” and told the university chancellor that they had to expel him, because he was the leader of this disruption and he’d been arrested.

ASPATURIAN: How could the English department have had such a sway over the divinity school?

KOUSSER: It was a very powerful English department. And so, they basically said to the chancellor, “If you don’t expel Lawson, we’re leaving.” In response, the divinity school said, “If you expel Lawson, *we’re* leaving.” The chancellor sided with his English department, and something like seven people in the divinity school left.

My mother was tied into this in two ways. She had taught the child of the dean of the divinity school, whose name was, I think, Robert Nelson. And her student teacher was the wife of the divinity school student body president, so she was hearing about everything that went on. So, we were very tied into all this stuff. And at one point I told her, “I want to go to a meeting about the sit-ins,” and she said, “OK, sure, I’ll go with you.” And so, we went. I don’t know how in the world we got there. We must have taken a cab. But we showed up as the only white people. [Laughter]

ASPATURIAN: Was this your first encounter with African Americans?

KOUSSER: No. I mean, we'd had a maid, and I had played basketball against Black kids. I wasn't a good basketball player, but we had a sort of church league, so we insisted on playing with some African Americans.

ASPATURIAN: Anyway, you got to this meeting.

KOUSSER: I was very impressed. They were very nice to us. The minister who was running it, Kelly Miller Smith, was actually quite important in SCLC, the Southern Christian Leadership Conference. They didn't need my help, and there wasn't really anything I could do. The only connection—very direct physical connection—I had with this is that I was actually eating at a downtown lunch counter when one of the sit-ins started, and the guy working the lunch counter said, “Everybody stay right where they are”—meaning all of the white people who were sitting at the lunch counter—“and we will defeat this.” And of course, I immediately got up and left. [Laughter] I don't know whether it was that I was afraid of the violence. There was a good deal of violence.

ASPATURIAN: I know; I've seen some of those scenes.

KOUSSER: I certainly wanted them to succeed. I was actually very active in church, which is odd since by the time I was in the ninth grade I decided I was an atheist, but my mother made me go to church. So, I treated church as a discussion group, and I think in the sixth grade, I took over my church Sunday school. [Laughter]

ASPATURIAN: This was a Methodist church?

KOUSSER: Belmont Methodist, the same church that my mother was singing at. It was a very large church. And I decided that the Sunday school teacher wasn't any good, so I ran Sunday school for the rest of the year. I don't know how the kids put up with me. [Laughter] And then, for two years when I was in high school, the Sunday school teacher for the high school kids was, I think, a biologist from Vanderbilt. And basically, he and I had a dialogue every Sunday for those two years, and then the head of the philosophy

department at Vanderbilt became the Sunday school teacher, and he and I had an ongoing dialogue.

ASPATURIAN: Sounds like a very progressive church.

KOUSSER: It wasn't very progressive: I'll go into that in a minute. But interestingly for Caltech concerns, this man, John Compton, was one of the sons of Arthur Compton, the Nobel laureate in physics.

ASPATURIAN: Oh yes.

KOUSSER: So, he was quite caught up in science as well as other stuff. But all the rest of the kids just sat around and listened to us. And these two Vanderbilt faculty were very smart. They had good arguments about why one should believe in God, about the nature of the world, and other theological and philosophical arguments, and it was quite interesting. But it was sort of strange to engage in this since I really was there only because my mother wanted me to be, and because the Sunday school sometimes was a good place to meet girls, and because these discussions were actually *very* interesting intellectually. But the church was segregationist. It did not allow Black members, and it was a rich enough church so that it actually by itself—not the Methodist church in general, but Belmont—sponsored missionaries in Africa. And at one point some people who had been converted by Belmont's missionaries came over from Africa for missionary studies at Scarritt College, and we wouldn't let them join the church. They could sit in the pews, but we wouldn't let them join.

ASPATURIAN: Not a good advertisement for Christianity.

KOUSSER: I was outraged by this, and my senior year in high school I actually managed to organize—I'm not sure what you would call it—a conference or a set of meetings about segregation, with Black spokesmen.

ASPATURIAN: This was at your private school?

KOUSSER: No, this was at Belmont Methodist Church.

ASPATURIAN: At the church when you were a senior; I see.

KOUSSER: It was the times; I don't want to take any great credit for it, but it was just the same kind of thing that was happening elsewhere. The times actually integrated that church within a year.

ASPATURIAN: There was a lot going on in Tennessee at the time, as I understand.

KOUSSER: There was a whole lot, and Nashville was the head of it. A lot of the SNCC people who were in the freedom rides and in SNCC projects in the south came from Nashville. I did not know any of them, and it was a shame. It would have been nice to know John Lewis [a student leader of the civil rights movement and U.S. congressman from Atlanta, Georgia, from 1986 until his death in 2020] when he was young.

ASPATURIAN: Oh, yes. I agree.

KOUSSER: But Nashville was sort of a center of all sorts of agitation. Just to go back to that history prize, long ago. I forgot to mention what happened there. I took the American history course when I was a junior, but most of the people in the class were seniors. And so, there were really two people in competition for winning the American History prize: Me and the other guy, who's a senior. And so, seniors who did well enough overall in their classes got exempted from taking the final examinations. And the two of us had been matching point by point. So, I was faced with the proposition that this guy and I were sort of tied going into the final, but I needed to get almost 100 on the final exam, which was an essay exam, to keep up with him, because he didn't have to take it.

So I really studied as hard as I've ever studied for anything, and I didn't make it. I got 96. [Laughter] He beat me out by decimal points.

ASPATURIAN: So, you decided that you were going to an Ivy League university. Where did that ambition come from?

KOUSSER: I have no idea. I wanted to change the world. I wanted to be a great intellectual. And somehow, I got the idea that this was something that I'd have a better leg up on if I went to an Ivy League school. I wanted to go to Harvard, but I didn't get in. And I was quite aggrieved by that. My debate partner from a year before had gotten into Harvard, and I figured I was smarter than he was, but for some reason I didn't get in. I got into Princeton but was waitlisted for a scholarship. I did not get into Wesleyan, apparently because Wesleyan thought I would surely get into Harvard or Princeton and surely go. So, I was stuck; I didn't have any safety schools.

ASPATURIAN: You hadn't applied to Vanderbilt.

KOUSSER: I didn't apply to Vanderbilt. I was so sure that I was going to get in elsewhere that I didn't apply to a safety school. We didn't have any money at all. My mother provided *no* money. In fact, I lent her money during the time that I was in college. So, the week when everybody was taking final exams when I was a senior, I hitchhiked to Great Smoky Mountains National Park and sat on a rock in the middle of a stream and tried to figure out what I was going to do with my life if I didn't get in somewhere. Fortunately, when I got home, there was the letter.

ASPATURIAN: Were you at all involved in the national election in 1960? Were you a Stevenson supporter? Disappointed when Kennedy got the nomination?

KOUSSER: No. I was a Kennedy supporter at that point. I worked a precinct. Well, there were two things I should mention. MBA was overwhelmingly Republican at the time, which was very unlike the rest of Tennessee.

ASPATURIAN: Very wealthy people.

KOUSSER: Yes, they were Eisenhower Republicans. Securities Republicans. Kennedy and Nixon debated, so MBA also had two people to debate. I was one of maybe six Democrats out of three hundred or so people in the school, and I was the representative for Kennedy. I remember that well because when I went up to the podium, one of the

guys who had been on the debating team was sitting behind me on a sort of an elevated chair and he randomly kicked me in the butt during my speech to try to distract me.

And then when I got back to my desk, I saw that my books had been defaced. “Nigger lover,” etc. etc. So, I had ambivalent feelings about MBA.

ASPATURIAN: Did you win the debate?

KOUSSER: Well, in my view, yes. [Laughter] There was no way to figure out a winner or a loser. I was an OK debater.

ASPATURIAN: Do you know we’ve been talking for nearly an hour and a half? Shall we stop here?

KOUSSER: Why don’t we go on until four. Is there anything else I want to tell you about high school, etc.?

ASPATURIAN: You said earlier that when Kefauver won the 1960 senatorial race, you all thought that this was going to be the start of something hopeful for the South.

KOUSSER: Yes. I thought that segregation was going to break down. It had broken down in Nashville fairly quickly. You have to realize that for somebody who had been brought up in the 1950s, segregation looked like it was forever. It looked like it was natural, and it was the way that things were going to go. As far as most people knew, it had always been forever and even if you didn’t believe that Blacks were inferior, and I never did, you had this impression that this was a social more that was just going to continue. And then it crumbled. I would sometimes take the bus in Nashville, and the buses were segregated. The area that I lived in was on the way to Belle Meade. There were lots of Black maids in Belle Meade, so there were always Black people on the bus. And from time to time—I don’t know how old I was—I would sit down next to one. I was tired, or I wanted to prove something, or something. Nobody ever hassled me. They certainly didn’t try to start a conversation. They didn’t seem thankful for the beneficent act of a stupid white boy, or anything like that. They just looked straight ahead and didn’t say anything about

it. But then once the sit-ins came, and segregation of lunch counters in restaurants broke down, segregation of buses and everything else completely broke down, and the idea I had in mind was, “All of this is going to end.” Nashville was a place where Blacks had been able to vote pretty freely for a long time. The first Black city councilwoman was elected in 1947, and there were two Black members of the city council for most of the time that I was growing up.

ASPATURIAN: This was not the Deep South.

KOUSSER: No, it was not the Deep South. And the liberal candidates always had Black people working for their campaigns, and they always appealed to Blacks. They would appear at Black churches—the major place to try and campaign for Black votes at that point.

To go back to the 1958 gubernatorial campaign, one of the reasons that Orgill, the mayor of Memphis, lost is that he met with a Black group at a church and shook hands with the preacher; and this conservative candidate, Taylor, got a picture of it and sent it all throughout west Tennessee, which is the most segregationist area, and called the preacher the president of the NAACP [National Association for the Advancement of Colored People], which he wasn't. In 1958, that was a kill. By 1960, 1964, in Tennessee, that was not a kill at all. And so, things changed fairly quickly in that regard.

I was always egalitarian. Integration was just a part of that—a particularly important part because it was the most obvious discrimination in the society at the time. And if you were rebelling against the South—if you were an intellectual who didn't like the good ole boys and home cooking and a lot of country music and all that sort of stuff—then rebelling against segregation was natural, simply part of that. So, obviously a good deal of my sense of being against segregation was my sense of alienation from the society in general, partly because of intellectual concerns, partly because of sort of emotional concerns, partly because I was very attuned to national politics. My classmates never were.

ASPATURIAN: None of them?

KOUSSER: No.

ASPATURIAN: Teachers? Anybody?

KOUSSER: No. My American history teacher was the headmaster, Francis Carter. He had been headmaster at a school in Baltimore, which was a feeder school for Princeton. But he was very conservative, and from the way that he taught American history it was rather unclear who won the Civil War. It was much less clear than who *ought* to have won the Civil War; and it wasn't the North. [Laughter] I was vehemently opposed to this position and made my views known to him in class. [Laughter] Generally, I was fairly rebellious at MBA.

ASPATURIAN: Were there other students at the school whom you found congenial to pal around with?

KOUSSER: I didn't. Eventually, during the time that I was there and even more so since, some people sort of said, "Wow, you were really important in giving this example of nonconformity at the school," but they didn't tell me at the time. [Laughter] I wasn't trying to be a symbol of nonconformity, though I was trying nonconformity—it was the late '50s. Even Nashville had sort of a beatnik coffeehouse with strange varieties of coffee and other concoctions, and it was called "The Tulip is Black." [Laughter]

ASPATURIAN: I like that.

KOUSSER: And now I think, "What fake pretension, that was so awful." But at the time I thought, "Wow, this is really cool." So, I would go over there, and the air was full of smoke, so I tried smoking cigarettes—and did take it up for a while, which is very strange now, but, you know, sort of hung out. There were actually folk singers there. Not Joan Baez, she was still in the Village [Greenwich Village, New York City], singing.

ASPATURIAN: But some clones of Joan Baez.

KOUSSER: Yes, that sort of thing. And so I would walk there—it was like a mile-and-a-half walk—and try to be a beatnik. [Laughter]

ASPATURIAN: But you found more intellectual or cultural affinity over there?

KOUSSER: I didn't really, but I thought that I should. I thought that I might be able to find that some place. I didn't really find any of it until I went to Princeton, and then I did find a lot of people who were more interesting and interested, compatible.

ASPATURIAN: Shall we start there next time? You, the Northeast, and the Sixties?

KOUSSER: Sure.

J. MORGAN KOUSSER

SESSION 2

May 13, 2016

ASPATURIAN: When we left off last time, you were headed for Princeton. Had you been out of Tennessee?

KOUSSER: Chicago and New Orleans [*See Session One*]. I'd been to the Florida gulf coast once. I'd never been to the Northeast. I'd never been on a plane. So, when I flew up to New York to start my freshman year, that was the one and only time that I commuted to Princeton by plane. All the rest of the time was by bus—twenty-four to thirty hours by bus. Very unpleasant.

ASPATURIAN: I can imagine.

KOUSSER: Sometimes useful. One time I remember I threw an all-nighter to finish a paper that I had to finish before I went home for Christmas, and I slept at least twelve hours of the way home, which was a pleasant way to spend the time. Another time was much less pleasant. A woman got on in Nashville and proceeded to discuss—she was sitting behind me, I guess—in stentorian tones every operation that she had ever had. Then the operations of her late husband. Then she went to sisters and brothers and cousins and whatever and finished at five in the morning or so.

ASPATURIAN: At least you weren't her seatmate.

KOUSSER: It did not help. [Laughter]

ASPATURIAN: So how did you find Princeton? What were your initial impressions? You must have been what, all of eighteen?

KOUSSER: I was eighteen.

ASPATURIAN: Yes. And this was 1961?

KOUSSER: '61.

ASPATURIAN: The start of the Kennedy administration.

KOUSSER: Yup. Princeton was idyllic. Not my dormitory, which had been built in 1889. But the campus was just incredibly beautiful. The only other college campus I knew anything about was Vanderbilt, and this was much prettier. The gothic architecture in the chapel and many of the classroom buildings was really just incredibly lovely. There was lots of architecture there that I *didn't* like. The story is told about one particular building, Alexander Hall—which is probably told about buildings on every campus in the country, but anyway—that there was a student there who was an architecture student. And for his senior thesis he designed a college building, and he failed, and he had to complete his architecture degree elsewhere. But he became a very successful architect, and later on he decided to make a munificent donation to Princeton on the condition—

ASPATURIAN: I can see it coming . . .

KOUSSER: [Laughter] —that his senior thesis be built. [Laughter] So it's there, and it sticks out quite a lot. It was said, at that time, that if you stood at one spot on the campus you could see seven different architectural styles. It's as different from the University of Virginia, for example, as it could possibly be, but I found the whole thing charming.

My fellow students were rather scary to me. They all seemed to be much better educated than I. My class, the class of '65, was the first entering class where public school students outnumbered private school students. And I felt like I was surrounded by these guys who'd been to Andover or Exeter, Hotchkiss, Choate. And they all knew more than I did and seemed like they were all smarter than I was, and how was I going to survive?

It took about a semester or maybe a year before I found out that was not altogether true. My sophomore year, I had seven roommates. There had been two groups who chose dormitory rooms, and there was this big dormitory room for eight people, so

two groups of people who didn't know each other except for one person got together. Four of those guys had been to Andover. And indeed, they had had a very impressive education. They were exceedingly well prepared. One of them got through three-and-a-half years at Princeton on what he had learned at Andover before it finally caught up with him. So, they were just extremely impressive in that way. On the other hand, they didn't work very hard, except for one guy who was studying Classics and who became a sort of a Mr. Chips master for Latin and Greek at Andover for his whole life. But I could outwork them. The guy who was most impressive, and who still is very impressive, was my roommate for the last three years, and his name is Bill Janeway. His father was a nationally famous economist, and his mother was a nationally famous novelist and literary critic, Elizabeth Janeway.

ASPATURIAN: I know that name, yes.

KOUSSER: They lived in a brownstone on the Upper East Side, and he had been to Trinity School, which is a quite good prep school in New York. He was a University Scholar—twenty people out of eight hundred in my freshman class were university scholars. And they were exempt from all requirements. They didn't have to take math or science.

ASPATURIAN: They didn't have to do the breadth requirements at all?

KOUSSER: Nothing at all. He did a lot, but he didn't have to. And, typical Bill, he decided that it would be nice to learn Greek, to pick up Greek, so that he could read, you know, the great Greek plays.

ASPATURIAN: Aeschylus and Euripides in the original?

KOUSSER: Sophocles in the original, etc. And so he did without any trouble at all. And my Andover roommate who was studying Greek also was *slaving* over it, and he was a Classics major. [Laughter]

ASPATURIAN: Some people just have this rare gift for languages.

KOUSSER: He had a gift for a lot of things. He became an investment banker and venture capitalist and was extremely successful, and retired at sixty-five and went back to Cambridge, where he got his PhD. He was a Marshall scholar later. He got his degree there, and he went back. When Maggie [Margaret] Thatcher [Britain's prime minister, 1979–1990] attacked British universities and basically cut down on national subsidies, suddenly they had to raise money like American universities, and they had no clue how to do that, and he set up the fundraising operation for Cambridge. He proudly told me a few years ago that they beat Oxford to having a billion-pound endowment. He's still around; he's adjunct-teaching economics at Princeton and gave them like six million dollars. I think they'd let him teach anyway, but— [Laughter]

ASPATURIAN: So, you're still in touch?

KOUSSER: Yes. Still quite in touch. He got me to go back to the Princeton reunion for the first time last year, my fiftieth. I don't know why he put up with me, but he did. He was just extremely knowledgeable about everything and as cosmopolitan as I was parochial.

ASPATURIAN: Or at least as you felt at the time. Was there a particular reason why you decided to major in history instead of, say, political science?

KOUSSER: Exactly, that was the choice, and the reason was very clear to me at the time and still very clear. History had a special sophomore seminar that you could take if you declared as a history major halfway through your sophomore year. And political science, or politics as it was called at Princeton, did not have a sophomore seminar. So, I declared history and took that seminar, and it was *great*, absolutely wonderful. It was taught by a guy named John Shy, who was an early U.S. historian, but basically a military historian

He is a very interesting person. He was first in his class at West Point. So, he went on to a military career, and he was in Vietnam in the 1950s, I think. He was a Green Beret. He was the first person I ever knew who was staunchly against the war in Vietnam. He had been there. He had seen what the South Vietnamese regime was, even

when Diem was in power, and he was against the war [Ngo Dinh Diem was president of South Vietnam from 1955 to 1963, when he was assassinated in a coup. –*Ed.*].

ASPATURIAN: So, this would have been about '62, when the U.S. government was trying to decide what to do?

KOUSSER: '62, '63.

ASPATURIAN: Do we back Diem? Do we pull out? And the government's hand was kind of forced by the chaos inside Vietnam.

KOUSSER: Yes. And his seminar was on the causes of war, with the focus on the American Civil War, and I must have read thirty or forty books on it, so I *really* got my feet wet on the American Civil War. There were eight guys in the class. Three of them, I think, graduated *summa* [*cum laude*, highest honors] in history. There were only six altogether who graduated *summa* in history.

ASPATURIAN: Including you.

KOUSSER: So, it was really, *really*, good students. Everybody worked very hard. Shy was wonderful in the way that he guided the seminar, and it was a wonderful entrance into what seemed to me to be pretty serious history.

ASPATURIAN: What did your extensive reading on the Civil War do in terms of your thinking about that conflict? I'm sure as a kid growing up in Tennessee and through your schooling, you'd formed some ideas. How were they shaped by this?

KOUSSER: When I took American history as a junior in high school, we actually had a good college-level American history textbook. So, I could play that off against, essentially, what the headmaster, who was the American history teacher, said. And for him the biggest problem in the Civil War was that the wrong side won, [laughter] and slavery was OK. And I never thought that. I took what is now sort of the standard view,

which is that the war was inevitable, slavery was the cause, and the compromises that Stephen Douglas, for example, was in favor of making were terrible. That the war was the South's fault, and that slavery probably would not have been abolished without it. And that it was, to use the catch phrase, an "inevitable conflict," and the right conflict. The abolitionists were right. But they would not have been able to abolish slavery peacefully. It was not clear that it would have been abolished peacefully *any* time. It deepened my already forming view about the importance of institutions and institutional rules. The South survived in the antebellum period despite the fact that the North was growing much, much faster in population, and the northern economy was growing much faster.

It survived because of the Senate, the rule that the number of senators was equal in every state, and therefore it would have been impossible to pass a constitutional amendment abolishing slavery. Even to pass laws that would have inhibited slavery was extremely difficult, partially because of the filibuster, which was very well developed at that point, and partly because of what were called "doughfaces"—Northern men with Southern principles who would stop antislavery legislation from passing. And of course, there was the Dred Scott decision [the 1857 Supreme Court decision that a slave who had been resident in a free territory or a free state was not entitled to freedom, and that African Americans could not become American citizens. —*Ed.*].

ASPATURIAN: Which was an outrage in much of the North.

KOUSSER: It was. The first history paper I ever wrote, which was in high school, was about whether Nashville voted down reforms in the proposed Nashville/Davidson County Metropolitan government in a referendum for racially discriminatory reasons. That was the first paper I ever did any research on. And the key to understanding that vote was really institutional. It made a difference to the population and to what services were available. So, from the beginning I was thinking in terms of large changes, and I put great emphasis on institutional rules. And so, the Civil War study did the same for me. Deepened that.

ASPATURIAN: So, you had decided history was the—

KOUSSER: Well, I did, and I didn't. In graduate school, I actually took more courses in political science than I did in history and, strangely enough, at Princeton I took more courses in medieval and early modern history than I did in American history.

ASPATURIAN: Was that because of the caliber of the teachers or simply because you wanted to acquaint yourself with different aspects?

KOUSSER: Well, the caliber of the teachers in medieval and early modern was very, very high. I took a medieval course from Joe [Joseph] Strayer, the doyen of medieval history in the country at the time. Strayer's course in medieval history was like a cathedral. Everything was perfect. He had all his lectures canned and planned; he read them. You could see the flying buttresses out there and the stained-glass windows, and the intellectual conflict—Abelard [Peter Abelard, medieval French theologian and philosopher] versus the rest of the guys—all of that stuff. It was very institutional—the institutions of the monarchy and the way that the lords and sub-lords and sub-sub-lords interacted and all that sort of stuff; it was just absolutely gorgeous.

ASPATURIAN: I know what you mean.

KOUSSER: And then when I was a senior, a guy came over from England, Lawrence Stone. He was just out of Oxford and had taught at Oxford for a while. He had been very much involved in some big intellectual controversies in England, and partly he tucked his tail between his legs and came to the United States. But he was wonderful! He was extremely brilliant, and he would seem a bit canting to me now, but he was really wide open about a lot of things; and so, he was a complete contrast to Strayer. I remember one sentence—there was a big controversy at that point in English history about the connection between the rise of the gentry and the English Civil War. It was called the Gentry Controversy, and he said, “A great deal of blood has been shed in the Gentry Controversy. Much of it mine.”

I had the strange habit of auditing courses, so most of the American history courses I audited. I would go to all the lectures and take notes and do as much of the

reading as I possibly could. I don't know how I had the energy to do all that but somehow, I did. I also had two jobs all the way through college.

ASPATURIAN: Which were?

KOUSSER: For the first two years I was a waiter. And I sold souvenirs at football games; and that was a job, fortunately, that I was able to keep for four years. If you were one of the top two salesmen in your sophomore year, you got to be junior manager, and if you got to be junior manager, you got to be senior manager, and that's where the money was. I was a lousy salesman, but I worked hard at it: I would work for eleven hours on football weekends and go from the first tailgaters to the last tailgaters after the game. I never saw any football at Princeton. [Laughter] And then junior and senior years, I was junior manager and senior manager and made fairly substantial amounts of money. By senior year I think I made more than half of the money that was required for tuition plus room and board.

ASPATURIAN: I think you also mentioned that you were sending home some money to your mom at this point.

KOUSSER: I did, eventually, yes. She had no money at all. So I did that, and then I became a research assistant to a guy named Alpheus Thomas Mason, who was in a very distinguished line of McCormick Professors of Jurisprudence. The first one was Woodrow Wilson, and then a guy named Edward S. Corwin, who was wonderful, and then Mason. And so, I was his research assistant for two years. The most important thing I guess I ever did there was an index for a biography of William Howard Taft. It took me a week of doing nothing else but writing on index cards.

ASPATURIAN: Yes, I've done an index; it's very detail oriented.

KOUSSER: This is on index cards. It's long ago.

ASPATURIAN: Yes. The one I did was like that, more than thirty years ago.

KOUSSER: It was the first time that I'd ever done anything like that. [Laughter] Mine was spread on the floor. [Laughter] "This goes here; that goes there." I did the index to my last book, so the experience did me well. But Mason's course was fascinating. Working for him was very interesting, and I read all sorts of other stuff that he had written and that he wanted read. Wrote a sketch of a chapter for him, all that, so that was fun. But I was pretty busy.

ASPATURIAN: Thinking about this interview, it occurred to me that early the 1960s politically and nationally were quite a period of ferment. You had the Bay of Pigs, the Cuban Missile Crisis, the space program, the Kennedy assassination. How did any of this affect you?

KOUSSER: Well, all of it affected me. I had actually apparently written something—I found it some years later—about the war in Vietnam while I was still in high school. It was just beginning to heat up.

ASPATURIAN: I think we just had advisors in there at that point, didn't we?

KOUSSER: Yes. That's what they were called. Kennedy put 16,000 men in by 1962, but they were called advisors. Before that, they had not been advisors. There had been CIA people and some *real* advisors, but not out there fighting. So, I had more opinions on it than I had remembered at the time.

I was very well aware of the war in Vietnam. I was cross-pressured, in a way, because Kennedy and Johnson were prosecuting the war, and I liked them. I was rather antagonistic to the war, basically, but I was coming out of the sort of 1950s anti-Communism era, and that had been a big deal. When I was on the debate team in high school, foreign policy had been one of the important subjects, and so I had talked about it then and been more anti-Communist than I should have been. But the war in Vietnam sort of grew and grated on me. The great crisis for me in some ways was the fall of '65 after I had graduated from college. We'll come back to college, but by the fall of '65 I was so cross-pressured on the war in Vietnam that I just stopped looking at the

newspaper and stopped watching television and just crawled in a hole, as it were, from which I emerged in December '65, January '66, staunchly against the war.

ASPATURIAN: Was the Gulf of Tonkin resolution passed in '65?

KOUSSER: '64.

ASPATURIAN: OK, that might have catalyzed things for you a bit?

KOUSSER: Well, lots of things catalyzed it. There was the first big push that Johnson made with troops. They landed at Pleiku in the spring of '65, and that did it as much as anything else, I suppose. After that I was quite active in antiwar activities.

ASPATURIAN: These are your graduate years at Yale now?

KOUSSER: Yes, that's probably when I was most active. The civil rights movement was the biggest defining characteristic because that very much involved the South. I said something earlier about the 1960 Nashville sit-ins [*Session One*], and how I was quite interested in them and went to a meeting and all that. But mostly that played out for me in the way of supporting politicians who were pro-civil rights. And I've told you about Kefauver. The Kefauver–Gore wing of the Democratic Party ran a not very good candidate for governor in Tennessee in 1962—Rudy [Peter Rudolph] Olgiati, the mayor of Chattanooga—and I worked in his campaign. And then Kefauver died in '63, and he got replaced by a sort of stand-in candidate who wasn't going to run. So, in '64, a liberal Democratic candidate and congressman named Ross Bass ran with the support of and a lot of guidance from the *Nashville Tennessean*, and I worked quite strongly in that campaign. I got to know the guy who was his campaign manager—a fellow named Gil [Gilbert S.] Merritt, who was the brother-in-law of the guy who later ran for governor. Gil is now an appeals court judge in the Sixth Circuit.

Anyway, at that point I was doing a senior thesis in history, and I had managed to get Princeton to agree that because I was doing the senior thesis, they would provide a stipend. And the stipend—this is probably a little chancy—was essentially used to

support me while I worked in Ross Bass's campaign. It was like five hundred bucks, so it supported me for the summer.

ASPATURIAN: Was your thesis related to the campaign?

KOUSSER: The thesis was called "Tennessee Politics and the Negro, 1948 to 1964," so it was very much related to the campaign. Gil got me in on the general strategy meetings, so I knew what was going on at the highest level, and that was interesting. I drove Bass, who had been in Congress for five terms at that point, around from time to time. I stuffed envelopes, I wrote press releases, I talked to people, I hung out. And it was very interesting. I liked Ross. He voted for the '64 Civil Rights Act, which was a gutsy move in the South. He had refused to sign the Southern Manifesto. He had voted for the '57 and '60 Civil Rights Acts, and he didn't have a huge number of Black constituents either, so a congressman from that area would not do that in Tennessee, even now. He voted for the '65 Voting Rights Act. He was in the Senate by that point.

ASPATURIAN: Ah, so he was elected.

KOUSSER: He was elected. He won the Democratic primary and then won against Howard Baker, who ran as a Republican and lost that first time.

ASPATURIAN: Tennessee was still voting Democratic despite the civil rights issues and their divisive impact on the state? That's interesting.

KOUSSER: Yes. Nineteen sixty-four was the last time for a while, at least, that the Democrats carried Tennessee. And they carried it really because there was a *big* Black turnout. Because there was a strong reaction against civil rights there. So, I did that, and I was on the Princeton debate team the first year, and then I had to quit; I had too much to do. There was a political and debating society named Whig-Clio [the Whig-Cliosophic Society, America's oldest collegiate debate and political union], which was the major political sort of campus organization. And I was very active in that.

ASPATURIAN: What were the prevailing sentiments in that society? Was it largely liberal or—?

KOUSSER: No, it took in everybody. I had good friends who were Goldwater Republicans. And I got elected secretary my junior year. Senior year I became president of the university's Democratic Club, which became actually very active. It was called College Young Democrats of America [CYDA]. I actually put on a national convention of College Young Democrats, and somebody told me that if I wanted to I could become president of the national thing. But I was too busy. Anyway, I did that, and then I went to the 1964 Democratic convention in Atlantic City.

ASPATURIAN: Did you? In what capacity?

KOUSSER: I was trying to get people to come to my National College Young Democrat Convention, so I was just meeting people there. I slept on the floor of a lousy hotel in Atlantic City and hitchhiked back to Princeton after it was over. Didn't have the guts to participate in the SNCC demonstration there. They didn't need me, but I should have done something anyway, but I didn't. But going back to the Whig-Clio debates, the one that I remember more than anything else was the debate over the '64 Civil Rights Act. I was the main speaker in favor of it, and I invited some nationally known figures to come to Princeton to speak.

I got into considerable trouble with the Princeton administration. The *beginnings* of my troubles with administration—this will be a theme. I decided that we should have a series of talks related to the civil rights movement, and I invited as a public speaker everyone whose name I knew. I invited Roy Wilkins, who was the NAACP executive secretary. I invited Martin Luther King. I invited George Wallace [segregationist governor of Alabama], who fortunately didn't come. But I also invited Ross Barnett, who was the governor of Mississippi, and he did come and there were 4,000 demonstrators against him. The administration was angry at me because they had to provide policing, and so they had to spend a lot of money. Of course, I hadn't cleared this with anybody. [Laughter] Barnett had very strong ties with the [Ku Klux] Klan; he was an awful, awful person and an incredibly boring speaker, but it was a mob scene.

ASPATURIAN: I guess for his sort of speech you only have to know one word.

KOUSSER: Right. [Laughter] Anyway, he was the only guy who came.

ASPATURIAN: *Really?* [Laughter]

KOUSSER: Not a single other. [Laughter] But George Wallace went to Harvard that year, and much later, when I was doing research in Alabama, I read the speech that he gave at Harvard. It was worse than anything that Barnett ever said. Barnett was just incoherent. Wallace was an active racist. I remember that what he said was, “You Yankees can’t understand the problem that we have with the Negro people because your Negroes are mostly light-skinned and they have a lot of white blood in them, so they’re more intelligent than our Negroes.” And I was so glad that I had avoided George Wallace. [Laughter]

ASPATURIAN: Those particular pearls of wisdom.

KOUSSER: But so, there were demonstrations around Barnett. Princeton was already integrated, so we didn’t have to integrate little things. One of my best friends at Princeton was a guy Bob [Robert F.] Engs, who was the only Black member of our class, and one of the few Blacks who had been admitted to Princeton since Woodrow Wilson banned Blacks from Princeton. He and I got to be great friends [*See also Session Eight*]. I made a fool of myself several times in things that I had said to him inadvertently, which he properly took as insults, but he helped to educate me on these sorts of things. But anyway, in about 1964, some southern whites decided that they would start basically a segregation organization at Princeton.

And so, some of my friends and I got together and decided that the way to kill that organization was to elect Bob its vice president. [Laughter] He was from Virginia—at least he was born there, lived there some of his life. So, we sort of infiltrated this group at its organizational meeting, and the guys looked around and realized that there were these people who they didn’t know [laughter] and they didn’t seem to speak “southern,” etc. We let them choose the president, and then we nominated Bob and had a majority.

And they were so chagrined by this, and so embarrassed by the whole thing, that the organization never did anything at all; it completely flopped.

ASPATURIAN: So, you undermined it from the inside.

KOUSSER: Yes.

ASPATURIAN: Now with all this, you graduated *summa cum laude*?

KOUSSER: I was busy. I want to tell you about one other trip I took by bus; I think I was a sophomore. I had gotten this book and decided that I finally had time to read it on the bus going home. It was called *Southern Politics in State and Nation* by V. O. [Vladimir Orlando] Key, Jr., and it is the classic book on Southern politics. It's about 750 pages long. Key was at Harvard by that point, and he was absolutely brilliant. He interviewed large numbers of people who at that time and for a long time afterward were the state capital correspondents for the major newspapers in each state. There'd be several in Montgomery, some in Nashville, in Raleigh, etc. They were hard-bitten, hard-drinking people, but they knew *everything* about politics. They had deep insights into politics, plus they had an amazing amount of gossip. So Key and the people who worked with him interviewed all these people. And Key was also one of the first quantifiers in political science.

ASPATURIAN: How did that manifest itself in this particular context?

KOUSSER: He used maps, and his book is *full* of maps with different shadings by county for political elections. There was a big split in the Secession Referendum in Tennessee in 1861, and he showed how that continued to play itself out in Southern politics. But it was particularly good because at that time the Democratic primary was tantamount to an election in the southern states. The general elections there were not very important. And one big theme in Key's book was that it wasn't a one-party South; it was a no-party South: Political parties did not structure elections; the elections were structured by other things. And very often there was fragmentation in the electorate, so in many states you

would have not just two but several candidates—five or six who would get appreciable numbers of votes. And they would very often be strongest in specific local areas, and maps were a perfect way to show that because you could show where a given candidate lived, where his campaign manager lived, where somebody who was supporting him lived, etc.

All this was just apparent on the maps. You completely missed it if you used what are standard statistical techniques now, which would just throw everything into a computer and wouldn't differentiate really by the counties. So, it was a marvelous technique, and it was also something that anybody could understand. So lay people also read this book. It was just like a Bible for anybody who was active in politics, as well as for scholars.

The second big theme was that in a fragmentary polity, the poor lose. They lose because they have to have continued organization in order to win. The relatively rich people don't have to have that. All they really want, besides special favors, is to block things. And as long as there's not a continuing organization to increase taxes, to increase local services, improve schools, increase highways, and all that sort of stuff, then the poor lose. And so that became really important in shaping the way that I've always thought about things since then.

A third thing was that Key was basically a New Dealer—he had a sort of quasi-Marxist view of politics. He really didn't think that a lot of institutions were so terribly important. In particular he thought that the votes had been taken away from Blacks because there was a decline in party competition first, and with that decline it was easy to disenfranchise Blacks.

ASPATURIAN: Yes, that makes sense.

KOUSSER: And it would have happened without the disfranchising laws. So, the disfranchising laws merely represented a *fait accompli*, to quote him. The disfranchisement was brought about or would have been brought about by more fundamental forces. These are very close paraphrases. He also thought that when Blacks got re-franchised, Southern politics would become much more liberal because there would

be a natural coalition between relatively poor whites and Blacks, and the New Deal coalition would finally hit the South.

ASPATURIAN: I see.

KOUSSER: That turned out to be sort of at least partially true during the 1970s, but during the 1980s that turned around, and has very much turned around ever since. But I stayed up half the night reading this book and continued to read it, and it had a tremendous effect on me. That's why I did the senior thesis that I did, and why I decided to go to graduate school where I did. One more quick thing on Key to show how important he was: Key at one point got dispirited about the problem of finishing the book, and somebody managed to get a very important person to give him a phone call and tell him how important the project was and that he complete it. That man was Harry Truman. "I'm calling from the White House." [Laughter] So you get an impression of how plugged in he was.

ASPATURIAN: When you were thinking about graduate schools, why did you gravitate toward Yale?

KOUSSER: Two reasons. One, on all the ratings it had the best history department and the best political science department. And two, it had C. Vann Woodward. I wanted to study Southern history and I wanted to study with the best, so I wanted to go there. I had met Woodward when I was a senior at Princeton. His student Jim [James M.] McPherson, now a famous Civil War historian, started at Princeton my senior year. I took his course on late nineteenth, early twentieth century history, and Woodward came down and gave a talk, I guess; and McPherson invited me and several other people to dinner with him. I sat next to him at dinner and chatted him up as best as I could. [Laughter] But I wanted to study Southern history and political science at Yale. Between the time that I graduated from Princeton and when I went to Yale, I had worked the summer of '65 in the first and only regional office of the U.S. Commission on Civil Rights in Memphis. And I got into that because of my political connections—because of Ross Bass and people who had

worked for him. And that was very interesting. I met all the liberals in Memphis that summer; it didn't take long.

ASPATURIAN: There weren't that many? [Laughter]

KOUSSER: Like fifty white liberals and some Black liberals. But I had met the Black liberals, two of them major leaders, beforehand. I had interviewed them for my senior thesis.

ASPATURIAN: Is this Lawson and the—?

KOUSSER: No, these were a couple of people who were political leaders. One of them, A. W. Willis, got elected to the lower house of the Tennessee state legislature in 1964. He was the first Black elected to the state legislature since 1888. And one of his law partners was a guy named Russell Sugarmon.

ASPATURIAN: Where had these young men been educated? Did they go to the historically Black colleges?

KOUSSER: No, they did not. Sugarmon went to Rutgers; Willis may have gone to an HBCU, but he got his law degree at Wisconsin. Sugarmon got his law degree at Harvard. They were two pretty well-qualified guys. So, there was this law firm called Ratner, Sugarmon and Willis: the first major integrated law firm in Memphis. Marvin Ratner was a white tax attorney who was very much involved with the Kefauver faction. He had been senior counsel to, I think, the Senate Finance Committee when Kefauver was head of it. So, he'd learned all that he didn't already know about taxes, and then he came back to Memphis, where he was from, and started this law firm. He did a good deal of tax work, which he was tremendously overqualified to do, and the tax work basically supported civil rights lawyers. So, this law firm did all the civil rights cases in west Tennessee up through southern Illinois, southern Indiana, even into southern Ohio. They did school desegregation in Memphis; they did the sit-ins—I remember Sugarmon's wife got arrested in the sit-ins. And I got to know Marvin Ratner's wife, who was sort of my

mother in Memphis and took care of me and found me a place to live. I went down there—I can't believe I did this—but I went down to work for the Commission on Civil Rights, and I had no place to stay. I figured they would find me something. [Laughter] And they found me a room to live rent-free for the whole summer.

ASPATURIAN: What was the mood of this group you were working with?

KOUSSER: Well, we thought that this was going to be the first of many regional offices of the U.S. Commission on Civil Rights. The commission had been started in '57, under the '57 Civil Rights Act. It had done a series of *wonderful* reports during the period, and it was really authoritative and could get to things that nobody else was getting to. We had never before had such an organization in the United States that was really part of the federal government. The Ford or Rockefeller Foundation would fund something like that, but this was different. The commission was a three-person office: There was a white guy who had been a long-time newspaper reporter for the *Memphis Commercial Appeal*—a major local newspaper. There was a Black guy, Jacques something, who had been something of a government bureaucrat. He had helped set up international programs. Then there was this Black secretary who was just marvelous; she knew everybody. She's the one who first called around and found me a place to live.

She was just incredibly bright and very helpful, and if I needed to go someplace, she would find a car for me. She was just marvelous. So, we didn't know what we were doing because nobody had set up such a thing before.

ASPATURIAN: You must have felt you were part of something big and important.

KOUSSER: Yes! The biggest thing that we did all summer was we had this big conference in Demopolis, Alabama. The Voting Rights Act was passed in August of '65. The Civil Rights Act had passed the year before, but regulations hadn't been entirely written by that point, and a lot of the local officials didn't really know what they were going to be required to do. That was particularly true about the Voting Rights Act: What did a registrar actually have to do? Do you have to register these colored folks that come in? Yes, you do. [Laughter]

So we had this big conference in Demopolis, Alabama. Demopolis is a county seat in the middle of the Black Belt. I've forgotten which county, but it's not that far from Selma; nothing's that far from anything else in Alabama. This was after the Selma march, which took place in March of '65, and our conference was probably in August. And we desegregated the whole town. We desegregated every motel that one would possibly want to stay in, every restaurant, etc. etc., and they didn't say anything. There was local antipathy. But they didn't say anything.

The most interesting thing about it for me in some ways was that I had to go up to Birmingham to pick up a high muckety-muck who was coming in from Washington. He was on the Equal Employment Opportunities Commission [EEOC] and was actually one of the original Topeka lawyers in *Brown v. Board of Education*. And when I went to pick him up, I thought to myself as I drove, "Please, let him be light-skinned." Because the idea that this white boy is driving this Black man through Black Belt Alabama—there was no interstate; I was driving on the two-lane roads. And I just thought this could get us shot.

ASPATURIAN: You didn't want to be a lightning rod.

KOUSSER: Right. In one of the counties that we went through, a couple of civil rights workers had been killed that year, that *summer*. He was not light-skinned; he was very dark. And not only was he very dark, but he was fearless. He'd grown up in Kansas; he didn't know what Black Belt Alabama was like. [Laughter]

So we desegregated a lunch counter on the way down. I said, "Sir, I'll be happy to go ahead and pick up some lunch." "No, no, let's go in, etc." [Laughter] So we did, and we got to our destination fine, but I was not all that wonderful a driver anyway, and the idea of trying to escape the Klan—I did not want to be a headline. [Laughter]

It was very interesting that summer. I went to SNCC and SCLC civil rights projects. One of the projects was to try to figure out what was going on with the local schools. The major way of getting around desegregation while seeming to do something—to try to avoid litigation—was called "freedom of choice plans." And today we're back to "freedom of choice plans." But at that time, instead of desegregating schools by

area, they would essentially allow particularly “pushy” activist Black kids to apply to a white school, and then would try to figure out reasons why some of them couldn’t go so they would keep this population to a minimum. It meant that desegregation was token at best, and it meant that there was trouble for the parents of any activist kid. There was still a lot of sharecropping in the rural south at that point. People would get thrown off of their farms. If they had a local business, the bank would deny them a loan, customers would boycott them, etc.

So, one of the things that I was supposed to do was to try to figure out what was going on in these freedom of choice plans. I went to one county where there were both SNCC and SCLC projects, and I went and talked to both of them. I remember at the SNCC project, the SNCC kids were swaggering and thought they were cool, particularly the white kids who were palling around with these Black kids all the time. I remember sitting in front of the project, leaning against a car and talking to these kids. One of the classic cars at this time was a 1950 Ford. A lot of rednecks used 1950 Fords. So, somebody, some redneck kid, kept circling the block in his 1950 Ford. Every time he would get closer and closer, and I thought, “That guy’s going to hit us; I’m going to leave,” and so, anyway, I got going. [Laughter] But I went to see the local school superintendent. So, you go up to this old county courthouse.

ASPATURIAN: I assume the superintendent was white.

KOUSSER: Of course, he was white. There were no Black school superintendents in Alabama at that point. And the courthouse still had a “colored” drinking fountain. It still had a “colored” entrance in the back. I’m telling this in detail because every part of it I learned from, and I continue to teach things drawn from it. And so, I went to see him, and I used some of the information that I’d gotten from the SNCC kids, which was this: If you went around to schools in the South at that point, you would have found that there were a lot of Black schools that were built in about 1956, 1957. The reason was that the whites who were in control thought, “Maybe if we build them a new school they won’t come to *our* schools.”

ASPATURIAN: “Stay out of our schools,” yes. “Separate but equal.”

KOUSSER: Well, they were separate at least, and they were equal in some sense. Physical plants in general were often better than the white schools'. But inside there were no blackboards, no science labs. And so, in this particular county, the Black kids were forced to try to raise money for these incidental expenditures. They had to sell spaghetti supper tickets and candy bars and all that sort of stuff, and some of them had to take about a third of the days at school off to try to raise money. So, in 1964, the most activist Black kids at this particular school said, "We're not going to do this anymore. We're going to boycott the schools if they force us to do things that the white kids don't have to do." And so, they did, and a lot of them got suspended. The next year, in the freedom of choice plans, which were to go into effect in '65, the school board made a regulation that nobody who had been suspended the year before could apply to the plans. So, you take the most activist Black kids, who are the only ones who can apply to a freedom of choice plan, and you eliminate them. I didn't really "confront" the school superintendent about this, but I did say, "This is what I understand to be the case; is that true?" He threw me out of his office.

ASPATURIAN: I was going to ask what some of your encounters with white segregationists down there were like. Did you succeed in turning anybody's opinions? Were there conversions before your eyes?

KOUSSER: No. People were converting; people were starting to convert at that point, but I didn't have any success in doing that. I was always trying to convert people when I was in high school. And I don't know—I mean, the people that I worked with in politics were already converted.

ASPATURIAN: Of course.

KOUSSER: Another thing that I learned—and again this is something that stays with me and that I use in teaching—was from one of the women who worked for Ross Bass, an older Black woman named Nona Work. Her father [John Wesley Work] had actually been an extremely important musicologist; he was at Fisk University in Nashville, and he was responsible for capturing and writing down, a great many of what we know as Negro

spirituals, so that they became sheet music for the first time ever. These things weren't written down.

ASPATURIAN: I think I saw a documentary about this. Please go on.

KOUSSER: Maybe. Anyway, she had a master's degree; she was very, very smart and had several generations of very educated people in her family, which is really quite unusual.

ASPATURIAN: In those days, yes.

KOUSSER: But we got to be friends and after the campaign was over, she invited me to come over to her house for tea or something like that; and so, I did. There were two big Black ghettos in Nashville, and she lived in one of them. It was close to the garbage dump. And it smelled at her house, even though her house was fairly nice. It wasn't at all run down—lots of books around and all that. I wasn't so incredibly uncool as to say, "Nona, what's that smell?" But she realized that I would have thought that, and she said, "You know, this is because of redlining." Which I had been unaware of. "This is about the best housing that a Black person can buy in Nashville. We can't buy houses elsewhere." I had known that, but I didn't realize what the consequences of this were.

ASPATURIAN: This is 1965?

KOUSSER: Yes. And she said, "Well the real estate agent said that Black people must like the smell of a garbage dump because even the best of them all live around it." So it gave me—I kept learning about discrimination, and people kept teaching me.

ASPATURIAN: In 1965—I actually grew up in central Pennsylvania, but I was out here in California that year. I think I was ten. There was Proposition 14, to overturn the Fair Housing Act, on the ballot.

KOUSSER: '64.

ASPATURIAN: OK, that year. My mother had eggs thrown at her car because she had a bumper sticker supporting integrated housing.

KOUSSER: Yes. The measure passed by two-thirds. [It was subsequently overturned as unconstitutional by the both the California and U.S. Supreme Court. *-Ed.*] Ronald Reagan got his big start in politics in the Prop. 14 campaign.

ASPATURIAN: I remember my mother saying, “Ah, it’s the bumper sticker.” So, I can relate a bit here. Anyway, please go on.

KOUSSER: Yes. Well, that’s my involvement with the civil rights movement. Civil rights movements, antiwar movement. During the 1964 Johnson campaign, the Princeton Young Democrats had Hubert Humphrey come to campus—we sponsored him and ran the whole show. And I met him and all that.



We'd had some contact with New Jersey politics because we had to go down to Trenton, which is about ten miles from Princeton, and go through planning with the Democratic Party's state central committee. I remember walking into this, and all the members of the committee had just been served with subpoenas.

ASPATURIAN: [Laughter] Some things don't change, do they?

KOUSSER: New Jersey politics was just about as corrupt as New York politics is now.
[Laughter]

ASPATURIAN: That is really funny. So, after this summer you went to Yale, is that right?

KOUSSER: Yes.

ASPATURIAN: And had you known you were going to work with Professor Woodward by that time?

KOUSSER: Yes. And the transformation—my transformation at Princeton had been relatively complete—in the sense that when I came to Princeton, I thought I was way behind everybody. When I went to Yale, I thought I was way ahead of everybody.

ASPATURIAN: I see.

KOUSSER: And so, I gained a tremendous amount of confidence, among other things, at Princeton. It was a very fine education.

ASPATURIAN: So how did you find Yale after Princeton? You went from New Jersey to Connecticut, not a big transition there.

KOUSSER: No, but living in an apartment rather than a dormitory, that makes some difference. Yale was for four years the center of the universe, and not just mine. There was so much going on at Yale that it was just astonishing. William Sloane Coffin was

the chaplain, and he was one of the major antiwar people in the country. I will tell you a story about Coffin later, if you will remind me [*Session Three*]. Yale art and architecture was just *absolutely* booming. More than any other place, post-modernist architecture was centered at Yale. The English department was just incredibly blossoming. The law school was by far the most interesting in the country, much more interesting than Harvard, apparently. My year was the first year in which there were more people from Princeton than Yale who got into Yale Law School, and so there were about thirty of my peers from Princeton there at that point.

ASPATURIAN: Had you considered a career in law at all?

KOUSSER: I had. But I couldn't do that because of the war in Vietnam. I would have been drafted. There was still a draft deferment for graduate school but not for law school. And so that absolutely cut that out.

ASPATURIAN: Was your draft number low?

KOUSSER: I was the year before there were draft numbers. The next year there were draft numbers. We were just thrown into a pot. The end of my fourth year in graduate school I got a draft notice and had to show up at the draft board in New Haven. I was twenty-five, and they probably couldn't have drafted me. Anyway, so I had a lot of contact with people in the law school. The history department was the best history department, particularly in American history, of any place in the country. The political science department was also the best in the country. Very quantitative. Pioneers in quantitative history. Great theoreticians. A guy named Bob [Robert A.] Dahl.

ASPATURIAN: Oh yes, I know that name.

KOUSSER: I took two courses from Bob Dahl. There was a guy named Bob [Robert E.] Lane, I took a course from him; he was extremely interesting, very nice guy.

To go back to Princeton, one thing that I didn't tell you—of some interest. Princeton was a small place, and I was lucky in a lot of ways that I went there rather than

to Harvard, because it was easier to get to know people. I'll give you a particular example of that. When I was a sophomore, I took a course in political parties from a guy called Stanley Kelly, and I did very well. That was the second course in which I got an A+. I think he only gave one A+ that year. So even though he didn't interact with me directly, he knew who I was. So when I was working on my senior thesis and I got writer's block at one point, and I don't know how I had the guts or the bad taste to do this or whatever, but I called him up at like ten o'clock one night: "Sir, I have writer's block. Can I come over to your house and talk to you?" [Laughter] And he said, "Sure." And I came over to his house and talked to him for an hour, and the writer's block disappeared, and I finished.

ASPATURIAN: Doubtful that you could have done that at Harvard, for example.

KOUSSER: It would have been much more difficult. It would have been, "Well, talk to my secretary." [Laughter] My senior thesis was pretty long; about 150 pages or so, and I typed it all myself, and finished it with forty-five minutes to spare. I spent four days doing nothing else but typing the thing. And then I was dispirited by the fact that there was an American history prize, and I finished second.

ASPATURIAN: Again.

KOUSSER: Yes. A guy did a 450-page biography of an abolitionist named James Gillespie Birney who ran for president on the Liberty Party ticket in 1840. He never published it, but he was relatively well off and so he had something like eight people working on typing up his dissertation.

ASPATURIAN: Ah, assistants.

KOUSSER: But Yale had—it had theater. My wife, my future wife, and I saw Stacey Keach live.

ASPATURIAN: She was also at Yale?

KOUSSER: He. Stacey.

ASPATURIAN: No, I mean your wife.

KOUSSER: Yes.

ASPATURIAN: At the same time?

KOUSSER: Yes. We'll get to that.

ASPATURIAN: No, I know Stacey Keach is a guy.

KOUSSER: We saw him perform; we saw just *wonderful* productions at the Yale Rep [Yale Repertory Theatre]. Lots of productions would start in New Haven and go to New York. And there was music. It was just *everything*. It was just an absolutely *fascinating* place to be for four years. I had a Woodrow Wilson Fellowship. At that point, strange as it may seem now, there was a desire to get people to go into college teaching, instead of the reverse.

ASPATURIAN: How times change, yes.

KOUSSER: So, the Wilson Fellowship paid for a full ride for three years, and the fourth year I got a full ride also, basically to work on my dissertation. So, for four years, Yale didn't have to provide any money to me at all. Not that we lived terribly well, but I at least could survive, if I managed to eat large amounts of carbohydrates.

ASPATURIAN: What was your relationship like with Dr. Woodward? From what I have been able to find, he was considered kind of the doyen of Southern studies, but it sounds like he became rather—I don't know whether "reactionary" is the word, but certainly he turned against some of his earlier liberal ideals in later life. He must have been an interesting man.

KOUSSER: Well, he's a very interesting man. I don't accept that view of him.

ASPATURIAN: OK.

KOUSSER: Woodward came from an old Southern family. He was born in Vanndale, Arkansas. And Vanndale, his mother's family, had the name of the town. He started school and college at what is now Henderson State in Arkadelphia, Arkansas, and then moved on to Emory, where his uncle was teaching, I think. He was very bright from the beginning and very interested in politics from the beginning, and he was really quite taken by radicals. So, he actually took a tramp steamer one summer and went to the Soviet Union. He was never a Communist Party member, but he was sort of a fellow traveler at various points. He went to Chapel Hill [University of North Carolina at Chapel Hill] for his thesis work, but he came with a thesis topic in mind, and he really didn't want to be bothered with course work. Chapel Hill, even by the time I was considering graduate school—I did apply there, but I didn't go—was course happy. You had to take courses in seven different fields of history or something, and he didn't like that at all.

He was going to write his dissertation on ten Southern radicals, and he ended up writing on one. But he apparently had somehow or other gotten access to, or perhaps brought with him, the papers of Thomas Watson, who was the Populist candidate for vice president in 1896 and later on U.S. senator from Georgia. He was a very fascinating character and still a name to conjure with when Woodward was working on his dissertation, which he must have finished in '36 or '37. The Populists in the South were much more pro-Black than we think of them now, and Watson when he was a Populist did sort of form a coalition with Blacks.

ASPATURIAN: Made common cause. Well, that's interesting.

KOUSSER: And Woodward saw that as a harbinger of things that could happen. Anyway, Woodward almost got thrown out of graduate school because he didn't want to finish all the requirements. And he was saved by a professor named Howard K. Beale from Wisconsin, a really very important historian who was visiting for a year, maybe longer, at

Chapel Hill. He got wind of the fact that people were going to throw Woodward out and said, “You shouldn’t do this; he’s going to be a major historian.”

ASPATURIAN: Saved by the Beale.

KOUSSER: Yes. Very good. You can patent that. [Laughter]

ASPATURIAN: It’s probably been used, don’t you think? Anyway, go on.

KOUSSER: But not in this particular instance; I had never thought of that. The dissertation was extremely well written, and contrary to what Woodward’s thesis advisor would have advised—entirely separately from anything his thesis advisor thought—Woodward sent it to a press immediately, and they took it completely lock, stock, and barrel, published it, I think, without any changes, and it became a huge hit. It established him as a major Southern historian.

ASPATURIAN: What was the title of this?

KOUSSER: *Tom Watson: Agrarian Rebel*. It is still a wonderful book, still in print. It’s just a terrific book. Watson was an interesting character, and it’s characteristic Woodward to have worked on somebody like this. Watson, after his idealistic phase—after he lost and the Populists lost in ’96—was sort of on a Populist ticket with [William Jennings] Bryan, but there was a Democratic nominee for vice president, as well, and Bryan never really accepted Watson, and the Populist Party collapsed after that. So Watson collapsed into alcohol for a while and reemerged in the early twentieth century as an anti-Catholic, anti-Black demagogue.

ASPATURIAN: This happens to Populists some of time. It’s an unfortunate, but not unheard of, evolution.

KOUSSER: Right. And Watson is the template for all of those stories. He was opportunistically anti-Catholic because he sent his daughters to a Catholic girls’ school.

He basically decided that if he couldn't win as pro-Black, he would try to win as anti-Black. He also turned anti-Semitic.

ASPATURIAN: That goes with the territory.

KOUSSER: So, he was actually responsible not only for the agitation that led to a famous race riot in Atlanta in 1906 but also through his newspaper [*The Jeffersonian*] for the agitation that led to the lynching of Leo Frank in 1915.

ASPATURIAN: Oh yes, I know that story. [Leo Frank, a young factory manager, was falsely accused of raping and murdering one of his employees. His subsequent trial and conviction became a national *cause célèbre*, but before his case could be readjudicated, he was lynched in Marietta, Georgia, by an anti-Semitic mob. –*Ed.*]

KOUSSER: So here is a guy who started out as a young idealist who really, completely shocked Southern white sensibilities when he formed a coalition with Blacks. Watson had been a Democratic congressman for a couple of elections before he became a Populist. In the second election, he was counted out in one of the most egregiously fraudulent elections in the history of the United States. But later on, he changed entirely and became the arch-demagogue and arch-bad person, and Woodward's challenge that he set for himself was to explain how that could happen. He concluded that it was defeat, it was recalculation of strategies, it was the sort of devastating effect of racism, even on people who had fought against it; and these conclusions shaped a lot of Woodward's views of the South and of people in general. Woodward could never be unthinkingly optimistic about anything. Maybe before it, but certainly not after it. So, he would have been completely put off by the [Bernie] Sanders' people this year, for example, because he would say, "You don't recognize how difficult it's going to be to change things."

And he was something of the same way about the antiwar movement but not really: he was quite antiwar. He was always somewhat skeptical of things, but people say that he turned very conservative, and I don't really think that that's true. If you look at what he did later on in life, besides continuing to produce first-rate scholarship, the major thing that he's associated with is the "Woodward Report" on, essentially, freedom

of speech at Yale, and that's still the best report that we've got for any college anywhere. When Yale exploded last year, that report is what they pulled out. And it's still good policy.

When LSU [Louisiana State University] Press produced a series called *The History of the South* series, Woodward was chosen to do the volume on the late nineteenth century, the post-Reconstruction era, from 1877 to 1913. He started that while he was at Johns Hopkins [University] and then worked on it during World War II. He was in the navy stationed in Washington, D.C., and he wrote up battle reports. He actually wrote up the battle report of the largest naval engagement in the history of the war, Leyte Gulf [in the Philippines, 1944]. He published it as a book afterwards; it's the only book by Woodward that I haven't read. But he was also working on this book, *The Origins of the New South*, during the war and published it in 1951 finally. It created a field: There had been some previous work on the history of Reconstruction, but it wasn't very good. He created the post-Reconstruction field, and a lot of the stuff still stands. It was based on wonderful research, with beautiful writing, penetrating analysis.

ASPATURIAN: What would you say his major impacts were on you?

KOUSSER: Well, he was an interesting person to work for. He was rather shy and reticent. I'm generally not, but became so in some ways around him, and at one point decided that I had to start writing him letters even though he was right there. [Laughter]

His example as a scholar was profoundly important for me. We had a peculiar relationship in lots of ways. Let me jump to my dissertation now, and we'll come back to other things. I decided to do a dissertation about voter disfranchisement. And unlike most dissertations in Southern history, which are about one state, I decided to make mine about eleven states. And I wanted to do as much work as I would have to do for any one state but do it for all eleven. Woodward said, "Sure, go ahead. You've got a good chance to do it."

Let me go back one more time and talk about the first paper that I ever did for him, which has something to do with why he decided I could manage this sort of thing. The second semester of first year, we had a seminar in which we had to write papers, and

the papers would be distributed to everybody so we could discuss them in class. So, I wrote a paper for Woodward, which was about the South, I guess. But anyway, with everybody previous to me, he had said, “We’ll have one hour on this paper; we’ll do two papers in our two hours.” So, I go to the seminar, and he said, “I think this is a really important paper; we’ll do two hours on it.” And I thought, “Oh my God. I’m going to have two hours of cross-fire on this.” And so, I did. It was the most intense seminar I’ve ever been in where I was giving a paper.

ASPATURIAN: What was the paper?

KOUSSER: I tried to remember which one it was. I think it was about the connection between the Whigs and the Republicans—whether the antebellum Whigs formed the basis of the postbellum Republican Party in the South. I did an extensive statistical analysis to try and deal with this problem. It’s a difficult problem, and it’s never been dealt with very successfully, but I did the best I could. So, he basically thought that I could manage to do this thesis. And even though he did not do quantitative work himself, he encouraged me to do quantitative work. Yale had a requirement where you had to pass some sort of exam in two non-English languages, and I petitioned to allow a computer language to be one of my languages. Woodward supported that, but the department turned me down, so I had to learn enough German to pass an exam. Which I did, barely.

ASPATURIAN: What kind of computer were you working with in those days?

KOUSSER: Well, they were big mainframes. And I was working with the computer language Fortran.

ASPATURIAN: The use of it to explore a problem in history must have been very new.

KOUSSER: There were people who were just starting it. And Woodward actually went to a summer seminar on quantitative history, in ’65 I think, so he was more sympathetic to it than he probably would have been otherwise. But he was open to new things. Anyway,

there were lots of themes of my dissertation. The most important theme was against the fait-accompli thesis, against Key's thesis, and it carried on the institutional rules theme that I said something about today.

The question was, first of all, at whom were the disfranchisement laws directed? Were they directed at whites as well as Blacks? My answer to the question was "Yes." And then there was the major question about whether it would have happened otherwise. But basically, I was looking at whether the laws brought about the disfranchisement of Blacks and poor whites, or whether the decline in party competition separate from the laws brought them about. And my view was that it was the laws, and that Key had it backwards. It was the laws that brought about the decline of party competition because they were also attacks on the Republican Party and the Populist Party in the South, and they succeeded. But there were other themes, one of which was essentially who the disfranchisers were. And Woodward, having started out with Tom Watson and the Populists turning against Blacks, blamed the Populists at least partially for the disfranchisement of Blacks. I took issue with that. In *Origins of the New South* and in his most popular book, *The Strange Career of Jim Crow*, which sold over a million copies—extraordinary for an academic author—he had held that the upper class, what are called the Redeemers in the South, were protectors of Blacks, and that it was really only when the lower-class Populists, etc., came along that Blacks got disenfranchised. And so, I looked at it more systematically and found that that was not so at all.

ASPATURIAN: Paternalism is not protection.

KOUSSER: Right. It wasn't protection at all. In fact, they turned out to be the leaders of disfranchisement, and the Populists and Republicans fought against it. So, in *The Strange Career of Jim Crow* Woodward had cited an important symposium issue of *The North American Review*, which is a major intellectual magazine of the late nineteenth century.

ASPATURIAN: Yes, I'm familiar with it.

KOUSSER: And during the late 1870s, there was a debate on the Senate floor about whether the Senate was going to cut off funds for the Army to try to get it out of the south,

which is what the Democrats wanted to do. And the floor speeches in this debate, along with other articles, ran as a symposium in 1879 in *The North American Review*. It was called something like, “Should the Negro be Disfranchised? Should he have been Enfranchised?” Woodward summarizes this symposium in *The Strange Career of Jim Crow* to support his proposition that upper class people were supportive of Black suffrage.

But in fact when he cites the symposium in *Strange Career* he only cites the first question, not the second—not the full title of it. So, I took him to task—

ASPATURIAN: This is your advisor—

KOUSSER: [Laughter] —in the introduction to my PhD thesis as distorting the evidence to fit his thesis, and I wondered for a long time, since he commented on the thesis plentifully, that he never said anything about that. Flash ahead to 1981, ten years after the thesis was handed in. I arranged for Woodward to testify on the renewal of the Voting Rights Act, as part of a panel I was on before the House of Representatives. He had *never* answered that critique of mine.

But Woodward was extremely subtle. He was very funny, but you really had to know what he was talking about to get any idea that there was some joke involved. But in his testimony, there was an underlying reference to exactly that critique and indeed to exactly what I had said about him at that point. The two members of Congress who I guess were there at the time had no idea about what was going on at all. [Laughter]

ASPATURIAN: That there was a subtextual dialogue going on between the two of you.

KOUSSER: Over ten years later. But a friend of ours, another history professor, Paul Gaston from UVA [University of Virginia], was attending the session, and he practically fell off his chair laughing.

ASPATURIAN: I see. Well, did he sub-textually concede your point?

KOUSSER: He did, and he did it in an essay later. So, he did so in print. He didn't reference that footnote, but he said he was wrong about the general issue.

ASPATURIAN: I'd like to ask you something else about your Yale years, which you spoke about to a staffer from Caltech Public Relations a few years ago. I gather you made a number of successful forays that didn't endear you to the administration?

KOUSSER: I did. Let me begin by talking about what went on in the history department. My second year, there was a history society for graduate students called the Charles Andrews Society. Andrews had been a major historian at Yale. And so, I took it over. I became president of the Charles Andrews Society, made it much more activist. So, one of the things that happened that year involved a professor named Staughton Lynd, whose parents—Robert and Helen Merrell Lynd—were very famous sociologists who wrote a book called *Middletown*, which is a classic sociological study of the 1930s. Anyway, Staughton was an antiwar activist and a civil rights agitator who had worked in the Mississippi Freedom Summer; he was also a very good scholar, I thought. But he took a trip to North Vietnam in 1966—he and [actress] Jane Fonda and Herbert Aptheker, who was the official historian of the Communist Party USA. He didn't have tenure at the time.

When he got back, the chair of the history department called him in and told him, one, that he would not be considered for tenure, and two, that protesting by going to North Vietnam was over the top, probably counteractive, would hurt the antiwar movement, and that he, the department chair, really disapproved of this. He claimed that the two parts of the conversation were not connected; Lynd, not surprisingly, believed that they were, and he went public about it. I didn't know Lynd well, but I knew him. And so, the first thing that I got the Charles Andrews Society to do was to investigate the denial of tenure for Staughton Lynd. You can imagine the history department was not real pleased.

ASPATURIAN: Graduate students stirring things up.

KOUSSER: So, I mean we did lots of things. At that point Yale did not even talk about teaching. It was as if teaching was something learned by osmosis, and nobody needed any training because *obviously* all of our students will know how to teach. And I wanted something that dealt with it—discussions, seminars, even just having people sit around and talk about what they did when they taught so that we students would have some idea about this. The history department was not pleased with this, but I did get some of the professors to sit around and talk with graduate students about teaching. So, a little of that. But again, it was, “Morgan is raising his ugly head.” Being president of the Andrews Society, I got to know people who were heads of other graduate societies in other departments, which was a little different. There was no general graduate student government of any sort at that point. So this was in '66, '67, and universities were exploding.

ASPATURIAN: Yes, of course.

KOUSSER: Columbia.

ASPATURIAN: Berkeley. Everywhere but Caltech.

KOUSSER: Yep. So, the dean of the graduate school in some sort of move to try to find out what the graduate students were thinking actually got a few of us who were heads of the graduate clubs in our departments together. Big mistake on his part, because finally we had names of other people who were involved in the same sorts of things we were. So, I put these all together and started a Graduate Student Senate. I wrote its constitution, I organized it, and I served as first president.

ASPATURIAN: Does it still exist?

KOUSSER: It does. And the current president of Yale was president of the Graduate Student Senate ten years after me, or maybe a little more. So, this got started. And we were very noxious to the administration. We began with what is to this day my major

contribution to feminism. There was no women's restroom in the whole of the graduate studies building for humanities and social sciences. There weren't that many women.

ASPATURIAN: No, I was going to say, Yale had not yet gone coed, so this must have been at the graduate level.

KOUSSER: That's right. So it happened that what was referred to as a faculty restroom—to give you an impression of how gender-integrated the faculty was—was actually right next to Woodward's office, so I knew of its existence. So, we made a non-negotiable demand that there be a restroom for female graduate students. As it was at that point, if women were in a three-hour seminar in winter in New Haven, and there was a break in the middle, to use the facilities they had to sprint over to Payne Whitney Gymnasium, which was about a block away. That was the closest restroom. [Laughter] So we went public with this: We got it in the *Yale Daily News*. Yale was embarrassed; they caved.

So that was the beginning. Then my second contribution to feminism: My then-girlfriend, since wife, Sally, who was a year behind me at Yale—

ASPATURIAN: What was she studying?

KOUSSER: East Asian studies. She liked to swim. There were two swimming pools. One for the campus community on like the third floor of the Payne Whitney Gymnasium, and one on maybe the sixth floor for the swim team, which was very good at Yale at that point. Sixty-four freestyle Olympic gold medalists had been in Yale, so there was this great tradition of the swim team. But the pool—open to the general public if you were a student or faculty of Yale—was only open to women for forty-five minutes *a week*.

ASPATURIAN: *What?*

KOUSSER: It was open from a quarter after nine to ten o'clock on Saturday morning. And Sally was unhappy about that, so because of that and other reasons we formed an all-female committee to go to talk to the athletics administration about this policy. They went in, and the athletic people said, "We are perfectly happy to open this pool to women

on an equal basis. We have one difficulty. There is a great tradition on the Yale swim team that they go up and down to the sixth floor in the elevator naked.”

ASPATURIAN: That’s what I figured. “A great tradition.” What else could it have been?

KOUSSER: And the girls on the committee said that they’d managed *completely* to keep their composure entirely, and they said, “Not for us to overturn Yale traditions; we would be perfectly happy if they continued this tradition.” [Laughter] Yale, again embarrassed, caved and immediately allowed women full access to the swimming pool.

ASPATURIAN: Now the president of Yale at this time was Kingman Brewster—President King for those of us who read *Doonesbury*.

KOUSSER: *Doonesbury* started as a *Yale Daily News* cartoon strip at that point.

ASPATURIAN: I know. But didn’t he have a reputation as a great progressive? This certainly seems to cut against that.

KOUSSER: I’ll get to that. There were other things that we did. Yale decided that it would raise the rents on graduate student housing, and so we invited the provost to come to a meeting of the Graduate Student Senate to justify this, and he didn’t have any figures at all. We asked him if there were comparable figures on rents in New Haven. No. Did you look at any housing inflation figures? Did you compare this to the stipends that you’re offering people? No. And this is like the front-page story on the *Yale Daily News* at that point. And he was very embarrassed. He shortly after resigned, as did the dean of the graduate school in the middle of his five-year term. So, the dean and the provost resigned, apparently largely because of our activities. When the dean resigned, we made another nonnegotiable demand for an equal number of graduate students on the selection committee for the new dean.

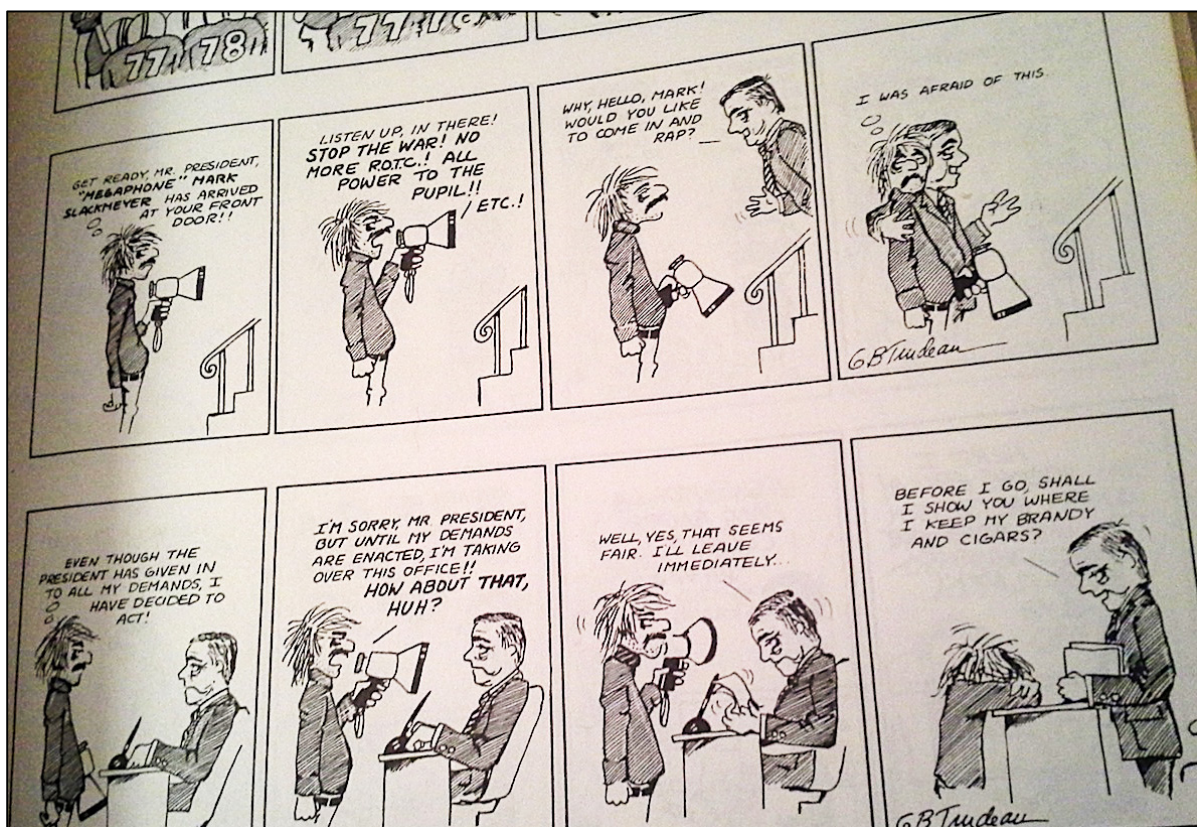
We went in to see Kingman Brewster, all prepped with every sort of argument that we could have. He was there in his London bespoke suit, at his eighteenth century *directoire* desk, pristine office, etc. And he knew who we were, why we had come, and

he welcomed us to the office and said, “Sure.” [Laughter]

And we had forty-five minutes to kill. We didn’t know what in the world—we were not prepared for that contingency whatsoever. So, you’ve seen this in *Doonesbury*. It’s *true*. It was exactly like that.

ASPATURIAN: So that was the basis of the series of strips that said, “Would you like to come in, Mark, would you like my office, shall I show you where I keep the sherry?”

Oh, my goodness. [Laughter]



KOUSSER: Well, I’m not sure that ours was the only one, but that’s how Brewster was.

ASPATURIAN: I vividly remember that particular series because it had me in hysterics. I read them in one of the collected works when I was in college.

KOUSSER: And then, the committee started meeting, and it had like three graduate students and three professors, and the professors started meeting separately. And we said, “Arrrgh, liberal fraud, they’re trying to fool us again by all this,” and so we called Brewster’s office again, and he said, “Oh, they’re not supposed to do that. I’ll call up the head of the physics department”—or whoever it was who was chair of the committee—“and tell them that they have to meet with the graduate students.” The faculty members were so dumb. They hadn’t any faith in themselves. What they didn’t realize was that they had been acculturating us graduate students all this time to be just like professors, so when they ranked the ten candidates for the job, the first six were exactly the same in the same order as our ranking. The graduate students were so acculturated that they had exactly the same standards and the same tastes, and they came to the same conclusion, and everything worked perfectly.

We did other things too. We started another graduate student newspaper, which I’m sure doesn’t exist anymore. But we were just very active and gave students some sense of a voice; and there were lots of things that they got into that they wouldn’t have otherwise. There are things that seem petty now, but they were fairly large at the time. I mean, one of the reasons that I think we so aggravated the administration is that instead of insisting that our university stop the war in Vietnam by itself or cause civil rights problems to disappear, we were asking for things that they actually had the ability to grant.

ASPATURIAN: Do you think your insight into approaching certain issues this way came somewhat out of your 1965 civil rights experience with local incrementalism?

KOUSSER: Yes, exactly so. People elsewhere were demanding that the universities change the world entirely. All I was asking for was an equal right to pee.

ASPATURIAN: Yes. What happened to the grand old tradition of the men riding naked in the elevator?

KOUSSER: I think that it completely—

ASPATURIAN: Somehow, they found it was possible to abandon it? They put on their swimming trunks and pressed the button for the sixth floor.

KOUSSER: [Laughter] But one of the consequences of this, just to finish off this story, was that, as I've said, Yale didn't have to pay a dime for me for four years. And since I had such a grandiose dissertation, I had been promised a fifth year. Toward the end of the fourth year, they came to me and said, "Actually we've changed our mind." I was told they would get me a couple of interviews for jobs, and I was on my own after that. To give you a sense that it did come from some higher space, the first year I was out here—I guess around Christmas—I went back to Yale to see Woodward, and he said, "You know, I saw Kingman Brewster the other day. I was walking across the yard, and he came out of his residence," which was on campus. And Brewster said, "Well, how does your favorite student like California?"

J. MORGAN KOUSSER

SESSION 3

May 19, 2016

ASPATURIAN: I listened to the recording of our last interview, and I was left with a couple of things I wanted to ask you.

KOUSSER: Sure.

ASPATURIAN: Particularly about your time in the South in 195. I was wondering—granted you were young and doing an awful lot—whether you ever had a chance to reflect on the types of people, Black and white—and this would include yourself—who willingly got themselves involved in these integration and anti-segregation efforts. Did you notice certain commonalities among them?

KOUSSER: It's hard to disentangle things that I have since learned by reading from things that I knew at the time.

ASPATURIAN: I understand that, yes.

KOUSSER: There were various characteristics of the people who were politically on the side of integration and anti-discrimination. A lot of them actually tended to be religious.

ASPATURIAN: That was going to be a question also. I imagine Christian, and I noticed this guy Marvin Ratner, whom you described earlier [*Session Two*], belonged to a very progressive temple. I looked him up online.

KOUSSER: Yes, and he was not the only one; I mean Jews had been involved. I think I told you that the Jewish community center in Nashville was blown up.

ASPATURIAN: No, you didn't. Oh my gosh!

KOUSSER: When integration started in Nashville in 1957 with token integration of the first grade, there were various violent incidents, including this attack on the Jewish community center, which was two blocks from my house, because desegregation was allegedly part of the Jewish Communist conspiracy.

ASPATURIAN: Of course.

KOUSSER: The president of the school board actually was Jewish, and that was enough proof for people in general [laughter], but Jews had been discriminated against and felt separate—although, you know, there were a lot of very conservative segregationist Jews. The area that I lived in when I went to public school, which was through the ninth grade, had a very significant Jewish population. And in fact, it was significant enough so that as a kid, I was able to make strong differentiations between Reform, Conservative, and Orthodox Judaism.

About a quarter or a third of my elementary school was Jewish. Most of my teachers were Jewish. The principal was Catholic. So, it wasn't a Protestant haven. And I remember that the first person whom I ever met outside of Princeton who was against the war in Vietnam was a county chairman for Ross Bass, whom I was working for in 1964. He was from a typical German-Jewish family that had immigrated probably around 1850. He had a clothing store in a small town.

ASPATURIAN: Very typical for that time and place.

KOUSSER: Just quintessential. I don't remember his name, but I still remember that he read I. F. Stone's *Weekly* and was antiwar and quite vociferous. I don't know why I spent a few hours with him but I did, and it was all about what's going wrong with the war in Vietnam, in 1964, which is very early for a Democrat.

Some of the Black kids involved in these efforts in Nashville were Northern, because Nashville was a center of Black education, but some were Southern and carried on traditions from the 1930s and '40s that had been not visible to Southern white people, but they were there. In '64, when I was doing my thesis research and in '65 when I lived in Memphis, the leaders of the Black community who were integrationists were

Southerners who had gone to school in the north. So, they were part of the Black elite that had been around for a long time. And whereas the old tradition of the Black elite had been that they serviced the Black community and were able to be somewhat independent because they were barbers, beauticians, funeral directors, lawyers, doctors, and so forth, who worked in the Black community, by the 1960s these people were reaching out and becoming involved in the white community and certainly involved in the integration of schools, etc. I don't have a memory really of exactly what I thought about the white people who were working in the civil rights projects.

ASPATURIAN: Interesting.

KOUSSER: A lot of them were Northern.

ASPATURIAN: Sure. You were a bit of an anomaly in this respect having come back, so to speak?

KOUSSER: Yes, I think that's true. And I felt like—this is too presentist, but some of them were Utopian in the same way that a lot of the Sanders supporters are now, and I was somebody who was grounded in how hard it was going to be to change and therefore treated them with a little more skepticism than I would have otherwise. I was glad they were there; I was glad that they were working, but they tended to talk in grandiose terms that I never did. I was absolutely amazed at how quickly segregation broke down, but I knew how hard it was going to be to sustain some sort of a political movement that was pro-integration. The Northern white kids just tended to think, “Well, once we get Blacks registered to vote, everything's going to change,” and I thought, “Oh, no no no no no. It's going to take a long time.” And it did. It really wasn't until the 1980s that Blacks in a lot of places worked their way into their state legislatures in large numbers, so you could have a Black caucus that didn't meet in a phone booth; and you could actually not just work with white legislators to get, say, a general improvement in education programs but actually target those measures toward schools that were predominantly Black even if supposedly integrated.

ASPATURIAN: When you say quite a few of these people were religious, are you also referring to the Black individuals' roots in the local communities? The Protestant churches, largely, I assume?

KOUSSER: Yes, certainly. Certainly, the SCLC projects.

ASPATURIAN: Yes, of course.

KOUSSER: But even the SNCC projects.

ASPATURIAN: Really?

KOUSSER: If you had dinner, people were saying grace. I mean, you'd see all these Jewish kids from New York [laughter] sitting around saying a Protestant grace and eating collard greens, which I detest. [Laughter]

ASPATURIAN: But they were keeping it real. [Laughter]

KOUSSER: They were keeping it *unreal*. [Laughter] There was an unreality about it just because of this.

ASPATURIAN: But you know what I mean.

The other thing I wanted to ask you about—1965 was, I think, a watershed year in terms of what was happening to the civil rights movement. You had splintering going on between Dr. King's SCLC and the students running SNCC and also an overall generational split. Did you see intimations of this when you were there?

KOUSSER: Oh yes.

ASPATURIAN: Would you like to talk about that?

KOUSSER: Well, they would refer to King as "Massa" and use the expression—excuse this, but the expression was "HNIC, Head Nigger in Charge," which was apparently a

phrase that had been used in the Black community for a very long time, relating to the local minister, the titular head of the Black community, etc. etc. That was true of King. And other people would say things like, “Oh, thank God for SNCC. It makes Martin Luther King look like a moderate.” This was before Stokely Carmichael. And then Stokely Carmichael and Rap Brown took over SNCC at that point. When I was there in the summer of ’65, SNCC had not yet had its crisis and thrown all the white kids out. But that happened not much later.

When the sort of integrationist ethos of SNCC dissolved, I did not see it; I was not there at that point. I was never a member of SNCC, so I was aware of it but not of it.

ASPATURIAN: Based on what you had experienced, were you surprised when this happened?

KOUSSER: Yes. I didn’t expect it. Nonviolence had been so successful. A lot of the troops there, you know—the civil rights workers—were white, and I just didn’t expect that they would be cast away in the same way, because how are they going to be replaced? Now there was always skepticism in the local Black communities about white involvement. In Mississippi in ’64, there were people saying, “Well look, after this summer, these guys will go back to Brooklyn, and we’ll be left here after they’ve made a big deal about some white guy walking down the street hand in hand with a Black girl just to show that they can do it.” They strutted a lot.

But the Black community there also thought, “Well, we’ve got our heads beaten in all the time; we’re happy to have whites around in ’64, because it means that if somebody gets their heads beaten in, it makes the news. As opposed to when we get *our heads* beaten in, not even the *Jackson Clarion Ledger* pays any attention to it, much less national television news.” So, there was worry, and fear. It helped to have the projects there, but there was a feeling of, “Oh my God, what’s going to happen after they leave?”

ASPATURIAN: I see, yes. OK, we jump forward and return to your end time at Yale. You said you wanted to talk about your antiwar activities there, and you also mentioned last time that you had a story about William Sloane Coffin, which I think perhaps fits into this.

KOUSSER: It does.

ASPATURIAN: OK. So what year are we in?

KOUSSER: This would be 1966. I had told you that I had set up this national conference for Young Democrats at Princeton. So, I got to know some of the people who were in the organization's national leadership, and they had a national conference of at least the executive committee in Nashville in 1966. And I also told you that in the fall of '66, I had my sort of crisis about the war in Vietnam and came out of it very antiwar. And so, there was an antiwar resolution proposed at this conference in Nashville in the summer of '66. I don't know who proposed it—maybe me, maybe somebody else.

But I do remember going out to wherever they were having the conference and giving what I thought was an eloquent speech against the war. [Laughter] I don't know if it was really eloquent or not, but it was what I had. It was fervent, at the very least. And so, as a consequence of my activity and the activities of others, the College Young Democrats of America passed a resolution condemning American participation in the war in Vietnam. This was not a terribly important group, but it was the College Young Democrats of America. The Johnson White House was so furious about this that they dissolved the CYDA entirely.

ASPATURIAN: In other words, they cut off the funding?

KOUSSER: They cut off funding, they cut off recognition, and so it was a sort of a *Götterdämmerung* moment for the CYDA. When I got to Yale after I'd become antiwar, there was a lot of antiwar activity there. I was never in SDS, the Students for a Democratic Society, but I participated in some of their events. I didn't want to go to the meetings, which were always very long. They had this view, like the Occupy Wall Street view now, that there were no leaders and so you had to come to a consensus, which meant that everybody had to talk for a long time and, I don't know—I didn't want to stay. Anyway, there was one demonstration where we didn't have a parade permit, so we had to march around and keep two blocks away from each other. We had these crisscrossing patterns that we were given, and we were marching around in downtown New Haven. I

was holding a sign with a picture of a young Vietnamese girl who had been hit by napalm, and it was quite horrific. It's not the famous picture, but—

ASPATURIAN: But it was bad enough.

KOUSSER: There were lots of people hit by napalm and there were lots of pictures. So—there was nobody else around, and some kid, some guy, jumps out of his car, socks me and knocks my sign down, and then jumps back in his car and takes off. I wasn't hurt, but that was not atypical of the response to antiwar activity. In '67, I think, there was a movement to kick ROTC [Reserve Officers' Training Corps] off lots of campuses, and Yale was one of them. And the Student Senate voted to back the resolution kicking the ROTC off campus. There was an *unprecedented* meeting of the Yale community—students, faculty, staff—4,000 people there, which just *never* happened. This took place in the hockey arena—the “Great Whale” it was called because it looked like a whale and had a tail, all this sort of stuff.

The whole Yale Corporation, all thirty-two of them or something, showed up, including John Lindsay the mayor of New York; Bill [William] Bundy, who had been in the Johnson administration. People who had been high up in the Pentagon, etc., came, and they were all sort of up on a dais. And I talked about the resolution—this was an amazing meeting. At the end of it, we voted, and the people who tallied the vote were all professors with named chairs—Woodward was one of them—and they just went around counting who was for and who was against. The chair of the meeting was Bob Dahl, who was then the most prominent political scientist in the country, and when they tallied all the votes, he just couldn't believe it. He said, “It's a tie.”

ASPATURIAN: A tie.

KOUSSER: A tie. This was a time when this was a really hot topic in political science: Why should you vote? Is the only reason if you think something's going to be a tie; otherwise, it's irrelevant; somebody else will do it, etc. etc. etc. So, this was just kicking up. I happened to know it because I'd taken a course from Dahl. And the meeting broke up in laughter. Nobody could believe that this was the case. But during the meeting—

and here's the William Sloane Coffin story—I was standing up at a microphone, far away from the dais, about to read something. Coffin was working the crowd. There were always calls for Coffin to be fired.

ASPATURIAN: From the trustees, from the community, from the administration?

KOUSSER: No, from alumni. [Laughter]

ASPATURIAN: How could I have left them out? Of course.

KOUSSER: And so, at the beginning of the meeting, I watched Coffin work the trustees, and he worked them as you would if you were a very good politician. “Hi Bill, how's the family?” Etc., etc. You know, blah blah blah blah. He must have shaken hands with everybody. So here I am, standing at the microphone ready to talk, and Coffin gets up and walks back towards the microphones, and people saw him, and everybody knew who he was. He got a standing ovation from the whole crowd, and he stopped at my microphone and said—they all thought that he was going to speak— “Actually, I'm not going to speak. I'm just going to the bathroom.” [Laughter]

ASPATURIAN: [Laughter] That sounds like a *Doonisbury* strip, doesn't it?

KOUSSER: It does. But it actually happened. What else about the war? Just to give you an impression of the sort of demonstrations that went on: There was a guy who was going to refuse induction to the draft.

ASPATURIAN: A Yale student?

KOUSSER: He was a graduate student, I think.

ASPATURIAN: They drafted grad students, or had he graduated?

KOUSSER: I don't know. I think what happened was that he burned his draft card and so they were going to draft him. And there was a demonstration in front of the New Haven draft board in solidarity with him. It was at 6:30 in the morning, which is not my best hour, and for three hours we marched around. There must have been several hundred people there. Unfortunately, one of the groups there were Hare Krishnas, and they chanted the whole time, "Hare Hare, Rama Rama, Krishna Krishna, etc." I thought, "I have no religious prejudices, but those people should stop chanting." [Laughter]

ASPATURIAN: I think you've just described the Sixties in microcosm, don't you?

KOUSSER: Yes. It was quite strange. But at Yale you could get seven hundred people at 6:30 in the morning to march in solidarity with somebody they didn't know who was taking this action, which was probably completely inconsequential, but had great symbolic significance and indicated a great deal of courage on his part. There was also a very important primary, actually, in New Haven, after the 1968 New Hampshire primary.

ASPATURIAN: Of course. You were still there?

KOUSSER: I was still there. I think I told you I worked for Eugene McCarthy in 1968.

ASPATURIAN: No, you didn't. You were a McCarthy supporter?

KOUSSER: Yes, I was up there the first weekend that people came, and Sally, my then-girlfriend, since wife, and I went up to stuff envelopes and make phone calls and sleep separately on the floor of the Jewish temple and the Unitarian church. Hard floors they were too. And we would telephone people who couldn't make a distinction between Eugene and Joseph McCarthy.

ASPATURIAN: Small distinction. [Laughter]

KOUSSER: But anyway, there was a primary in New Haven, which happened before Bobby [Robert F.] Kennedy got in, and before Johnson got out, in early March or late

February, and there were 2,000 people at Yale who worked that primary. My two roommates and I were assigned our precinct and we canvassed everybody in it, and we had little 3 by 5 index cards with how everybody was going to vote. And so we got out the vote. This was the home precinct of the political boss of New Haven, Art [Arthur T.] Barbieri. And we carried the precinct against him. One of my roommates, now a historian at Berkeley, was precinct-watching on the day of the election, and the Democratic machine guy went into the voting booth with one of his voters and pulled the lever for the voting booth, and Jan went over to him, grabbed him and said, "That's illegal!" and pulled him back out. [Laughter] But we actually won. Joe [Joseph] Lieberman, in an earlier guise, was actually the McCarthy campaign manager for New Haven.

ASPATURIAN: Oh goodness, well, well. Did you expect to win?

KOUSSER: Yes, we expected to win. Johnson was not on the ballot, but people knew who he was.

ASPATURIAN: It was a symbolic victory, yes.

KOUSSER: It wasn't just symbolic; the voters knew who the other candidates were. So, with that many people, it was the most thorough organization of a town that you could possibly imagine. Old-fashioned ward-heeling; we didn't have anything to give anybody, but that is the way politics really ought to work and sometimes did.

ASPATURIAN: What was your feeling when Bobby Kennedy jumped into the race about half an hour afterward?

KOUSSER: I was unhappy at first. I've since become much more favorable to Bobby Kennedy but, you know, the general feeling was that he didn't have the courage to jump in sooner. And McCarthy did, and McCarthy was an incredibly interesting candidate. He was very, very different from anybody else. Bobby actually was too, in different ways that I didn't really see at that time. But McCarthy was very much the intellectual and

would give these very good speeches. Not as moving as Bobby's eventually became, but still. Anyway, I was very happy that McCarthy did so well, and it was a little different type of politics than I'd ever seen before, because it was very much movement politics.

ASPATURIAN: And it had national ramifications in a different way.

KOUSSER: Yes.

ASPATURIAN: So, when in the midst of all this did you begin your movement toward Caltech? It was that same year, I believe, or was it '69?

KOUSSER: It was '69, because up to January or February of '69 I thought I was going to have another year at Yale.

ASPATURIAN: Right. Until you discovered—

KOUSSER: Until I was informed that they would not support me [*see Session Two*]. So, what happened, I think, was that there were a couple of guys from Yale teaching American history at Caltech. Bob [Robert] Woodbury and Byrd Jones. Neither one of them was very much of a scholar, and then Bob got a job offer for some big job at the University of Maine. I don't know what his connections were with Maine, but he became president of the University of Maine eventually and actually ran for governor and lost. Anyway, Byrd was his friend and went with him, so suddenly there were two openings at Caltech left by people who had been at Yale. So, part of the reason that I was considered for the job was that the old boy network was still alive and well. But there were other candidates. I didn't get the job just by somebody waving his hand.

ASPATURIAN: Had you applied?

KOUSSER: The way that it worked then was Yale said, "You should apply for this job and that job." So, I applied for two jobs.

ASPATURIAN: Were you an ABD [all but dissertation; i.e. a PhD candidate who has completed all the requirements for the doctorate except for submitting the dissertation]?

KOUSSER: I was an ABD. And I applied to the University of Illinois-Chicago and Caltech. I did not get the job at Illinois because they just decided they didn't want an ABD.

I was interviewed for the Caltech job in New York during the American Historical Association convention. In somebody's hotel room—John Benton's [Dreyfus Professor of History, d. 1988] hotel room, I think. I can remember him sort of sitting up on a bed because his arthritis was terrible. Lots of other people—Dan [Daniel] Kevles [Koepfli Professor of the Humanities, emeritus], Robert Rosenstone [professor of history], probably Peter Fay [professor of history, d. 2004], were all around, and they interviewed me, and eventually I got the job. It seemed like a lot of money because I'd been living on a stipend of \$1800 a year plus whatever. Sally and I got married June 1, 1968, and Sally dropped out of school and started working.



She had already learned Chinese but in order to do the scholarship for a project on the transition of Buddhism from India to China, she needed Japanese. And in order to read some of the documents she needed Sanskrit. That was a daunting prospect. [Laughter] So, she went to work for the phone company. So, we had a bit more money than my \$1800 but not a lot. I think my starting salary at Caltech was \$9500.

ASPATURIAN: What were your feelings about suddenly discovering you were going to be leaving Yale and going to Caltech, not through any terribly active agency of your own?

KOUSSER: I was unhappy. I was not finished with my thesis. I knew I wasn't even close. But I had no choice. And so, we dealt with it as best we could. Bought a secondhand Peugeot 403.

ASPATURIAN: Had you ever been to California?

KOUSSER: I had been to California after my freshman year in college. I had a good friend whose father was something like the treasurer of Stanford, and he brought me out here and we both tried to get jobs, and after a month I couldn't get a job, so I went back home. Seventy-two-hour bus ride back to Nashville. So, I had been to California but not to Southern California, and we didn't know what we were getting into. Sally had never been. She spent part of her life in Illinois, but I don't think she'd ever been west of the Mississippi. So, we drove out. The car didn't have air conditioning, so we drove the desert at night. And I remember getting into San Bernardino, stopping at a motel that we thought would not bitch and moan too much about our cat, whom we had with us, and getting up the next morning and peeking out the window to look at palm trees for the first time.

ASPATURIAN: Because you had not seen them driving in at night.

KOUSSER: No. And then driving in on Interstate 10 and turning up Rosemead, because the 210 wasn't built at that point, and looking at all of the apartment houses and thinking we were going to live in something like that, oh my. [Laughter].

ASPATURIAN: What was Caltech like in those days when you arrived? What were your impressions?

KOUSSER: Well, two events to give you a sense of my impressions. The Division of Humanities and Social Sciences was just beginning to transition from a complete service division to a serious scholarly division.

ASPATURIAN: Was [Robert] Huttenback the chair? Or was it still Hallett Smith [professor of literature, d. 1996]?

KOUSSER: No, it was still Hallett Smith. There were some people in it who were good scholars. Hallett was actually a good scholar.

ASPATURIAN: So, I understand.

KOUSSER: Rod [Rodman] Paul [Harkness Professor of History, d. 1987] certainly was a good scholar. And they accepted Rod Paul essentially despite the fact that he was a good scholar, not because of it. He grew up on the Main Line in Philadelphia, went to Harvard as an undergraduate, PhD from Harvard, and so he had the right credentials. Lance Davis [Harkness Professor of Social Science, Emeritus, d. 2014] had just gotten here.

ASPATURIAN: David Elliot [professor of history, d. 2007], I think?

KOUSSER: David Elliot was here. David was not an important scholar; he had published something like one article. There was Ned [Edwin S.] Munger [professor of geography, emeritus, d. 2010] in African Studies—

ASPATURIAN: I remember Ned.

KOUSSER: There was always a question as to whether they were actually CIA. And that was almost certainly the case about Ned. It may well have been with David as well. Even though he was not American-born, I think David was in the OSS [Office of

Strategic Services; an intelligence gathering operation during World War II] during the war.

I remember the first party that we went to. It was in the morning, and people were drinking Bloody Marys. And we were quite taken aback by this. And I remember commenting that I wasn't sure that we were going to have the livers to stay here. It was socially rather different.

ASPATURIAN: Was it kind of light years away from what you had been expecting?

KOUSSER: Absolutely. You know, from a beer in the New Haven working-class bar, singing 1930s union songs to this—San Marino house with a pool and people sitting around the pool in the morning, drinking Bloody Marys. We were just thunderstruck, dizzy.

ASPATURIAN: Were you the youngest member of the division at that point?

KOUSSER: I came in at the same time as Jenijoy La Belle [professor of English, now emeritus]. Jenijoy and I are approximately of an age. Also, Bob [Robert H.] Bates.

ASPATURIAN: I don't know that name.

KOUSSER: He's a political scientist, now at Harvard. Probably retired by now, I think that's right. But suddenly they were hiring good people. Jenijoy's a good scholar. Bob was a very, very good scholar. But it was culture shock. And one other thing that really was sort of quintessential culture shock—not immediately when I got here but not all that long thereafter. The State Alcoholic Beverages Commission decided to crack down on what were then known as topless-bottomless bars. And there were topless-bottomless bars in Pasadena. The ABC had control over them in some sense because they served liquor. So, they decided to shut them down; and the ACLU, I think, sued to try to keep them open on the grounds that there was freedom of expression. So, they had someone to testify as, I guess, a lay witness, but he was an expert in some sense because he actually frequented—

ASPATURIAN: Is this [Richard P.] Feynman [Tolman Professor of Theoretical Physics; 1965 Nobel laureate in physics, d. 1988]?

KOUSSER: This is Feynman. There's a picture that I recall being on the front page of the *Pasadena Star-News* of Feynman walking into the trial with a, shall we say, plastically enhanced babe on each arm. And he testified that he used to eat lunch at one of these places—at the sort of apex of the runway—and he said it inspired him to do theoretical physics.

ASPATURIAN: This must have shown you civil liberties in a whole new light.

KOUSSER: Well, I didn't focus on the civil liberties part of it. I focused on the "this is the world-famous scientist appearing here, doing this," and you sort of thought this would not be quite the thing at Yale. [Laughter]

ASPATURIAN: You're in Southern California now, right?

KOUSSER: Well, we had prepared for Southern California in some sense by reading two books. One was *The Loved One* by Evelyn Waugh. And so one of the first places that we went on a free weekend was Forest Lawn.

ASPATURIAN: Was the other *Day of the Locust*?

KOUSSER: No. It was a Thomas Pynchon book called *The Crying of Lot 49*, which was about crazy right-wingers who had the absurd idea of bringing back private mail services, and they were tied up with all sorts of things in Southern California; it was sort of a phantasmagoric novel. And then when we moved into an apartment on Michigan [Avenue]—

ASPATURIAN: OK, right around the corner from campus—

KOUSSER: Our apartment house manager was a John Birch Society member, with Birch Society stickers on his car and things like this. We did not discuss politics with him.

ASPATURIAN: No, I can imagine not.

KOUSSER: The antiwar activity continued when I got here. There were sessions at Caltech where people gave talks. I managed to insult Lance Davis, who was representing the pro-war side, which was a rather stupid thing to do since he was really the senior person who would be overseeing things. Somehow or other, somebody heard about me at Pasadena High School, so I gave a speech at noontime in Pasadena High School. You'd think nothing like this could happen now, but an antiwar speech and an antiwar rally in 1969 was perfectly acceptable to PHS. I remember meeting Ray [Ramon Curtis] Cortines, who was actually the principal of PHS.

ASPATURIAN: Didn't he become a superintendent of schools?

KOUSSER: He became superintendent of schools in Pasadena, and then he moved on to San Francisco and then he moved on to New York, and then he came back to L.A., and he was superintendent of schools in L.A. three separate times, I think. They kept bringing him back when other people would crash and burn. And I met him, and he was perfectly fine with an antiwar rally. But I mean it was *really very* different.

ASPATURIAN: Yes. We thought things seemed polarized then, but they're nothing compared to what they are now.

KOUSSER: And just to go on with antiwar sort of stuff. Two or three particularly interesting things. One is the Chappie James affair, which you may have found in newspapers.

ASPATURIAN: I don't think so, go on.

KOUSSER: If you had, you would recognize it. After the Cambodian incursion—

ASPATURIAN: Yes, that was 1970 I believe?

KOUSSER: Yes. The Pentagon sent people from the, I don't know, flack office of the Pentagon—its public relations office—around to campuses to represent the Pentagon's side. And one of the people they sent around was the first Black four-star general in the Air Force, who was called [Daniel] "Chappie" James.

ASPATURIAN: You're right, I'm not familiar with this.

KOUSSER: I don't know how these things were done, but they must have contacted somebody at Caltech. Harold Brown was president [1969–1977], so he would most likely have known Chappie James, because he had been Secretary of the Air Force and he'd overseen the war in the north. Chappie James had been a pilot during the war in Vietnam. Anyway, the Caltech Y was told that they should sponsor something for Chappie James. And so, I was on the Y Board, and I said, "He's going to have to be balanced against somebody else." So, the way it was set up was that a young biology professor named Dan [Daniel] McMahan and I were on a panel with James. The panel was outside of Winnett [Student Center], and during his remarks, James said something like, "You know, it would really be nice if our side were as well represented as the Vietnamese side. Their representatives—spokesmen—of North Vietnam are here on this panel today." And I took offense at this, and so afterwards I did not shake his hand. He offered to shake hands afterwards, and I was not happy about being called an agent of Hanoi. So.

ASPATURIAN: Was this difficult for you? You'd spent a good part of your youth fighting for civil rights, and now you were dealing with an African-American general calling you an agent of the North Vietnamese, and you felt you could not shake his hand?

KOUSSER: I was not seeing race by that point. I was seeing the Pentagon. But James immediately charged that this was racism on my part. So the *Star-News* ran the story that James wanted, maybe even on the front page. The *L.A. Times* actually called me up about it immediately afterwards, and I said, "Certainly not. I shook his hand beforehand;

I teach a Black history course, farthest thing from my mind. I just wasn't thinking about that at all." So the *Times* put it on the front page of the "Metro" section—it's now the "California" section—"Caltech History Instructor refuses General's Handshake." So, there were, of course, immediate calls for me to be fired.

ASPATURIAN: From whom?

KOUSSER: Alumni. [Laughter] Not the first or the last calls from alumni to fire me. Harold Brown was not in a position to do this, but it was a big brouhaha, and it's probably one of the reasons that—this is jumping ahead a bit. During the 1970s there were a lot of school integration campaigns in Pasadena. We would have an election for the school board one year, and the next year there would be a recall election. And I walked precincts in almost all of those. And one time, a woman followed me around my neighborhood saying, "There is a Caltech instructor walking around telling lies about integration, and he has an FBI record a mile long." So maybe the FBI record was at least helped by the Chappie James affair. I never looked for my FBI record; I don't care. Anyway, David Grether [Gilloon Professor of Economics, emeritus; HSS division chair, 1982–1992] was here as an economist. And his wife, Susan, lives up the street from me and is one of the funniest people I've ever met. She has the absolute ability to say anything with a totally straight face. Her next-door neighbor was a person with like eight children, and as a consequence she took naps every day. And so, when this woman came along behind me saying these things, Susan said to her, "I know that my next-door neighbor really wants to hear this story but she's a little hard of hearing, so if she doesn't answer first, knock louder." [Laughter]

ASPATURIAN: Well.

KOUSSER: Another Vietnam story about this time. You will remember the Kent State shootings in 1970. They were the result of the Cambodian incursions. But also, there were shootings at Jackson State, which is a historically Black college in Mississippi. And when the Kent State shootings took place, Caltech actually dismissed classes for a day, and we had a teach-in, and about 150 Caltech students dropped out for a quarter and

worked canvassing the Pasadena area for what was called the McGovern–Hatfield Resolution to suspend the bombing and go back to negotiations. But the flag in front of Throop Hall, which was still standing at that point—it was before the [1971 Sylmar] earthquake—was lowered to half-mast. After Jackson State, the then–provost; why am I forgetting his name—

ASPATURIAN: [Robert F.] Christy [Institute Professor of Theoretical Physics, emeritus; Caltech provost, 1970–1980; acting president, 1977–1978].

KOUSSER: Bob Christy. Christy refused to lower it. Harold Brown was in Vienna negotiating the SALT Treaty, so Christy was acting as president. So, Caltech actually had a Black student union, and for some reason or another I was there with the Black student union.

ASPATURIAN: How many members?

KOUSSER: Must have been about a dozen or so. I taught a Black history course, so I knew some Black students who were here at that point. So being good Caltech students, they picked the lock on the flagpole box and lowered the flag to half-mast. [Laughter] And Christy said, “OK, they’ve done this, we’ll keep it.”

ASPATURIAN: As long as it’s a prank, it’s fine?

KOUSSER: Yes. But I mean there was a lot of antiwar activity, and—just to go along with this theme—at two different points in the early to mid-1970s, and also in 1981, I think, I taught a course on American participation in the war in Vietnam. And when I taught it the first time, Harold Brown was here on campus and again, this was a Sixties sort of thing. When Baxter Hall [of the Humanities and Social Sciences] was built in 1971, there was a classroom that had no chairs, just rugs and throw pillows, and you could lean up against sort of a fixed barrier. I taught in that classroom, and I invited Brown to talk to the students since he had been in charge of the Vietnam air war from ’65 to ’69. Brown shows up in a three-piece suit and has no place to sit down in this classroom with

no chairs. [Laughter] It was extremely awkward for him, but there you have it.

It was a three-hour class, at night I think, and he had committed to come to it for about ninety minutes. Toward the end of that hour and a half, the students asked him about the bombing of civilian targets in the north, which was a big topic. And he not only denied that the U.S. had intentionally bombed any civilian targets in the north; he denied that they had *ever* in fact bombed any civilian targets in the north. And the kids were sitting there with books that had pictures of bombed civilian buildings, including a famous one with a red cross above it, just north of the demilitarized zone in North Vietnam, which had been bombed something like thirty times. So, they didn't say anything. They didn't want to go after the president of Caltech. But when he left, they just exploded because they realized that their president had told a bold-faced lie that was easy to check, etc., and the indictment of the American participation in the war in Vietnam was brought home in no uncertain terms.

ASPATURIAN: This raises an interesting question for me. A number of the faculty I've talked to who remember the Harold Brown era are very, very effusive in their praise of Brown—"A great president, the smartest guy I ever met, etc." For you, this was seeing him quite differently. How did you feel you fit overall into the Caltech environment your first few years here?

KOUSSER: I didn't feel that I fit at all the very first few years. And I thought, this is temporary, go back to the Ivy League, etc.

ASPATURIAN: I mean, coming from a place like Yale, which was king of the humanities and the liberal arts at that time.

KOUSSER: Right. And this seemed like a very odd place. I didn't join the Athenaeum for something like forty years or more. I played basketball at noon every day for like twelve years, so I got to know some scientists and other people in that way. But the first two years here, I was working on my dissertation night and day.

ASPATURIAN: What was the title of your dissertation?

KOUSSER: It was called *The Shaping of Southern Politics*, so it's the same as the book.

ASPATURIAN: And you were teaching at the same time?

KOUSSER: I was teaching six courses. We didn't have four classes at that time; we taught six. I taught every quarter. Freshman Humanities went on each quarter, and you carried them through the whole year. So, I was teaching that. I started teaching a Black history course—probably not the first year but pretty soon after that. Never got any time off. I had some secretarial support, certainly more than I have now, but then there were typewriters and not computers, so we needed it more. But I just worked frantically on the dissertation all the time.

ASPATURIAN: Coming from Yale, what was your take on humanities and social sciences here?

KOUSSER: Well, it was changing.

ASPATURIAN: There were no graduate students, which must have been a major change for you.

KOUSSER: There were no graduate students. None. The graduate program didn't get started for several years. But what happened was that some of the people—some of the dead wood that either was very recently tenured or non-tenured—got pushed out. They got pushed out by Huttenback when he became chair. It took a long time for him to become chair, and—I presume you know this story—before I got here, there was a fundraising campaign. Its kick-off must have been '67. The person who was to be the headliner for the kick-off was Ronald Reagan [then governor of California].

ASPATURIAN: I have not heard this story from anybody.

KOUSSER: He was brought in by the person who was chairman of the Board of Trustees at the time.

ASPATURIAN: Arnold Beckman [founder and president of Beckman Instruments; Caltech Board of Trustees chair, 1964–74, d. 2004].

KOUSSER: Indeed.

ASPATURIAN: Yes, he was a famous Republican.

KOUSSER: He was close to Reagan. Huttenback led a petition campaign to disinvite Reagan from this because Reagan had essentially run against the University of California when he ran for governor in '66, and Huttenback thought that it was not exactly kosher for a private university starting a fundraising campaign to have this guy who had demonized the University of California and higher education in general. And, as a consequence, when it was proposed that Huttenback become chair of the division, it was held up by the Board of Trustees for six months or so. So, it took a while before Bob became chair. Bob was unquestionably the best chair of the division since I've been here. He built the division. Along with Lance Davis. Lance was the *eminence grise* who was a much better scholar than Bob was, but Bob had very, very good academic taste and was opportunistic as hell, and that's how he got the division built. Bob was a salesman, an extremely good people person. I will tell you a story about Bob Huttenback, which gives you an impression of how he could build things. Alan Sweezy [professor of economics, emeritus, d. 1994] was an economist here.

ASPATURIAN: I know that name, yes.

KOUSSER: Alan was a wonderful person, I just loved him; just an exceedingly nice person. A good scholar, but completely different from the standard economist. He was interested in demography and population, and he was very active in international population control programs. And that's what he basically did; he was a macroeconomist. His brother Paul was the leading Marxist economist in the country, and in the 1930s, Alan had been a Keynesian at Harvard.

ASPATURIAN: There must have been some interesting discussions at Thanksgiving.

KOUSSER: Alan apparently got purged from Harvard, denied tenure because he was a Keynesian. Paul didn't get fired from Harvard, because he was at least a classical economist—Marx was in the classical economics canon. Anyway, Alan decided to retire from Caltech, and Huttenback went in to, I guess, [Robert F.] Bacher [professor of physics, emeritus; Caltech provost, 1962–1969; d. 2004], who was provost at that point, and said, “Alan Sweezy's going to retire; we need somebody to teach macroeconomics; give us a slot.”

So Bacher said yes, and they had a search, and because the Caltech economists were at that point microeconomists who were very prejudiced against macroeconomics, they said, “We can't find anybody who is good enough to teach macroeconomics; we're going to hire a microeconomist.” So, they hired a microeconomist. And then Huttenback went back to Alan Sweezy and said, “Well, we couldn't find anybody; can you fill in for us next year and teach macroeconomics again?” And so, Alan, being a good-natured person, said, “Yes.” And the next year Huttenback went back to the provost, and he said, “Alan Sweezy's going to retire. [Laughter] We need to have a macroeconomist.” They went out for a search, couldn't find any macroeconomist who was good enough to hire and hired another microeconomist. Bob went back to Alan Sweezy. [Laughter] He did this *four* times. He sold Alan Sweezy's retirement *four* times. He built up the whole economics group at Caltech on Alan Sweezy's retirement.

ASPATURIAN: What do you make of the fracas he got into over the Jenijoy La Belle tenure decision?

KOUSSER: Well, he'd gotten rid of a philosopher and an economist who had been nonproductive. Jenijoy had tied herself to Hallett Smith.

ASPATURIAN: They were close, yes.

KOUSSER: And the way that I interpreted that was that this was a further attempt to end the Hallett regime. I read her first book—I was tenured by that point. I didn't know her at all, despite the fact that we'd been here together for five years. I don't think we'd spoken three words until I had tenure, and then she talked to me a lot more. But, you

know, it certainly seemed good enough to me, from all I could see, to grant her tenure. And so, I voted for her. But it was a big brouhaha.

ASPATURIAN: Yes, I know.

KOUSSER: As for the sexist parts of it, I don't think that that was anywhere near Huttenback's view of things. I don't think he was sexist at all, but there was so much sexism on campus—there still is a tremendous amount—that that can't be discounted. I had not been in the stream of decision-making at the time this came up.

ASPATURIAN: So, you were here as an instructor for a couple of years, and you received your Yale PhD when?

KOUSSER: In '71.

ASPATURIAN: And Caltech decided to keep you on? Is that what happened basically?

KOUSSER: Yes.



**Kousser with daughter, Rachel, shortly after joining the Caltech faculty.
At a Caltech Y meeting in the early 1980s.**

ASPATURIAN: Were you surprised?

KOUSSER: No. One more little story—two stories. One, there wasn't a Henry Kissinger rule at Yale. The Henry Kissinger rule at Harvard is maximum length of a dissertation is 400 pages. Kissinger's was something like 800.

ASPATURIAN: I think I've read that, yes.

KOUSSER: But Yale tried to impose about a 400-page limit. And mine was like eighty pages or so over. So, I actually cut forty or sixty pages from the dissertation, some large amount. And it was in August of '71 when I sent it in. In July I got the flu or something and had a very high fever, so I was actually under all the covers that we had with chills because I was running such a fever.

ASPATURIAN: In the summer, in Southern California.

KOUSSER: In the summer, in Southern California. And Sally was reading what I'd written to me, and I would try to tell her what to cut. It was sort of an amazing denouement. Approximately at that time, as it turned out, my first child was conceived. I don't know how all that went together but— [Laughter]. And then while we were xeroxing, as you had to send in three copies, Rod Paul came in and said, "Ah Morgan, you don't know how happy this makes me. Makes me much happier than it makes you." "Why is that Rod?" "Because all of the people have been telling me for two years that I'd made a horrible mistake in hiring you, and now [laughter] I can say everything was OK." That was quintessential Rod Paul. He meant well, but that was quite overwhelming.

ASPATURIAN: This was how you heard that your contract, so to speak, had been renewed? I guess they made you an assistant professor?

KOUSSER: I was made an assistant professor. I didn't really have any doubt of that.

ASPATURIAN: Did you think of going elsewhere?

KOUSSER: Well, it turned out that my senior thesis advisor from Princeton, Stan [Stanley] Coben, got denied tenure there, I think, and moved to UCLA. So, in '71, about that time, he actually tried to hire me. And I considered very strongly going to UCLA. There was a guy there named Steve [Stephan] Thernstrom, who was a quantitative historian, and there were rumors that he was going to leave. It would have been a much nicer place for me, I thought, if Steve was going to stay there. I asked him directly, and he said, "Don't count on it," and he went back to Harvard quite soon. If UCLA had given me season tickets to basketball—this was the time that Bill Walton and [Keith, now Jamaal] Wilkes were sophomores, I think. [Henry] Bibby was a senior.

ASPATURIAN: I take it these are basketball players?

KOUSSER: Yes. This was in the middle 1970s.

ASPATURIAN: I'm kind of vague on these things.

KOUSSER: Well, this was the best college basketball team ever. They won 88 games in a row, something like that. And it would have been different if I'd been given season tickets.

ASPATURIAN: But it didn't happen, so you stayed at Caltech.

KOUSSER: It didn't happen, so I stayed at Caltech. And Caltech may have felt a little pressure at that point actually to hire me because it was clear that I would consider leaving. It was at the point where I'd finished my dissertation but didn't yet have my degree in hand, because it took several months for that to happen.

ASPATURIAN: What were your early experiences teaching Caltech undergraduates? These were kids who were studying to be scientists.

KOUSSER: I wasn't very good. I don't know why I didn't follow through on ideas that I had thought about by that point, but I really didn't. I was a typical young professor.

ASPATURIAN: Had you taught at Yale before you became a teaching assistant?

KOUSSER: I was a TA in one course. I had been a grader; I'm not sure that I told you that story or not.

ASPATURIAN: I don't think so.

KOUSSER: Well, it's a good story: I was a grader in an English constitutional law course. I didn't know anything at all about English constitutional law, but I could read the textbook faster than the students could, and so I was a grader. So, at midterms, there was some quintessential preppy sort of George Bush type in the class. It wasn't George W. Bush, although he was there at that point, and I could have taught him but didn't, so far as I know. Anyway, this guy thought he could just answer the questions using what he had learned at prep school. He talked about the Dark Ages, and all sorts of things like that. Yale graded on a 100-point scale at that point. Sixty was passing. I gave him a 15. And he immediately went over my head to the professor, without asking me or anything like that. The professor regraded his exam and gave him a 9.

ASPATURIAN: [Laughter]

KOUSSER: He had a couple of other guys who were his graders, and they were both very tough, but he said, "Morgan seemed to enjoy it; he enjoyed this like Robespierre." Which was not exactly true, but anyway. And then I was a Yale TA in a course in Southern history given by a guy called Rollin Osterweis. He had been kept on in the Second World War because he was 4-F and also rich, so he was paid a dollar a year. And became tenured, sort of disastrously. He gave often ten-minute lectures, four of which that I remember were drawn word for word from his book, which he also assigned. So, I was one of three TAs, and we all undercut him all the time.

But that was my only experience teaching. At Caltech I just sort of thought, "Well, I've learned all this wonderful stuff in graduate school, and I will pour it into their little ears." And they were not very interested in that. And I sort of lectured about things, rather than pulling it out from *them*, and that was a mistake, particularly because

the classes were small. I must have comingled with people somewhat, because some of the kids in Blacker House [an undergraduate residence hall] wanted me to be a house RA. Caltech had not had any teaching faculty be RAs. And so, David Smith [Smith, professor of literature, d. 1990], who was MOSH [Master of Student Houses] at the time—

ASPATURIAN: Yes, I did an oral history with his wife, Annette Smith [professor of literature, now emeritus], too.

KOUSSER: He refused to allow me to be an RA. I wanted to be an RA, you know, partly because I liked the kids in Blacker House, but also because we needed to save money if we were going to have enough to make a down payment on a house.

ASPATURIAN: My understanding of David Smith is that he prided himself on being such a bohemian, unconventional fellow, so for him to suddenly tow the party line like this must have come as a surprise.

KOUSSER: It did come as a surprise, and he may have been told to do that, but probably the people who told him didn't know how poor I was. It took us until 1976 to barely scrape together enough money for a down payment to purchase a home.

ASPATURIAN: You taught “The Shaping of Modern America”; “The Supreme Court in U.S. History”; “The History of Black People in America.” Those must have three of the six in your early time?

KOUSSER: Well, the freshman course was a year-long survey course, so I taught everything from Colonial America to Modern America. I also taught Black history and I taught late nineteenth and early twentieth-century history. I didn't start out with teaching the Supreme Court. I don't know how long afterwards it was—'71 or '72 perhaps—that I started teaching that.

ASPATURIAN: Did you find these kids intellectually prepared to grapple with historical complexities? I know they were very bright, but they were thinking differently from you.

KOUSSER: They grappled pretty well. I will tell you one more story about the early times. This is another Bob Christy story. In the World War II era, or postwar era, one of the books that I used in the course was called *Lawrence and Oppenheimer*. Which was about the Manhattan Project.

ASPATURIAN: I've read that book.

KOUSSER: It's a good book.

ASPATURIAN: The author is something-something—it's a triple-barreled name: Nuel Pharr Davis, I think.

KOUSSER: Yes, right. Very very good. Anyway, Christy had been an Oppenheimer student and was very much pro-Oppenheimer and anti-Lawrence. Dan Kevles had told me this. So, when we were discussing the Manhattan Project, I assigned that book and invited Christy to the class. I invited the president and the provost to my class [laughter] when I was still an instructor.

ASPATURIAN: Why not? It's what humanists are for, to do these kinds of things.

KOUSSER: So, I had been told that Christy, who was in charge of the bomb that went off at Alamogordo [New Mexico: the Trinity test]—the first nuclear detonation ever in the history of the world—had had some second thoughts about this. And so, at the end of that class I asked him. I said, “Professor Christy, do you ever have any second thoughts about having participated in the Manhattan Project?” And he said, and I quote, “No. I never have second thoughts about anything. Do you?” And I thought, “Oh, the number of things I have second thoughts about. I have second thoughts about missing an arithmetic problem in the first grade. [Laughter] I still think about that. Third, fourth, and fifth thoughts about it. Many things that I've done in my life I have second thoughts about. How could you not have second thoughts about—?” And thinking back on it, I thought that this was a defensive reaction, an overreaction—that he probably had

profound thoughts about it that he was certainly unwilling to share. But it was the way that he presented himself.

ASPATURIAN: I think that pretty much tallies with other things I've heard about him. Very much so. We've been talking nearly ninety minutes. Is this a good stopping point?

KOUSSER: Why don't we go on for a while?

ASPATURIAN: How much contact did you have with scientists in your early years here?

KOUSSER: Only through basketball.

ASPATURIAN: Did you have any interest in the science that went on at Caltech in the 1970s?

KOUSSER: Well, when I got through my dissertation, I didn't do a whole lot to make it into a book, but once that was done, I decided that I needed to have a firmer grounding in quantitative methods. I had been well-grounded compared to most political scientists of the day.

ASPATURIAN: Yes, I would imagine so.

KOUSSER: But not compared to economists, and not compared to what I was seeing happening in political science. So, I worked through a calculus book—I had dropped out of calculus after one semester at Princeton because it was so boring. But I went through this book; I studied two or three hours every night, and when I had questions, I would go and see David Grether, and he would help me. So, I did that, and I worked through a linear algebra book and some fundamental statistics books. I took at least one term of [Thomas] Apostol's [professor of mathematics, emeritus, d. 2016] Math 1 or Math 2 course; I think it was Math 2.

ASPATURIAN: He just died, as you know; very sad.

KOUSSER: Yes, I know. He was *great*.

ASPATURIAN: He was a sweet man.

KOUSSER: He was *wonderfully* clear on everything.

ASPATURIAN: That's what I hear.

KOUSSER: He just made things that had seemed completely cloudy to me before utterly clear. So, I took that, and then I took a graduate econometrics course from David Grether and worked and worked and worked through all the examples, and all that stuff.

ASPATURIAN: You were doing this as an assistant professor once your dissertation was off the table?

KOUSSER: Right. And so that was the focus. And also trying to get things published. Interestingly enough, my first article, which was really part of *The Shaping of Southern Politics*, got accepted in the *Political Science Quarterly*, which I thought was less likely to reject it than the *American Political Science Review*. It's actually the oldest political science journal in the country. And then there was a coup d'état at the journal. The editor of the journal got stripped of his editorship, the locks were changed on his door, and all of the things that he'd accepted got unaccepted.

So, I got this letter saying, "We understand that your article has been accepted but we withdraw that acceptance; will you submit it again?" And this is my first article: What in the world?! So, I started all over again. Anyway, so I was doing that, and then the division suddenly became much more interesting.

ASPATURIAN: We're talking around '73, '74 now?

KOUSSER: Yes. Huttenback recruited John Ferejohn and Mo [Morris] Fiorina. I didn't know how they were recruited; I was just told they were coming. About that time, or a little before, the social sciences graduate program got started, and John and Mo and Bob

Bates and I team-taught the political science part of the first year of the graduate program. We team-taught the whole thing, and it was absolutely fascinating. There were four of us there the whole time, and sometimes other people would come in: Roger Noll, Charlie [Charles] Plott [Hacker Professor of Economics and Political Science], etc. I think the class had four students who were very outstanding students, but it was a 1:1 ratio, and intellectually it was just fascinating to see. Mo and John were maybe not at the height of their productive powers then, but they were starting.

ASPATURIAN: They were political scientists? Domestic politics?

KOUSSER: Yes. And they were just dazzling, and Bob also. John Ferejohn was also hilarious. I'll give you a typical Ferejohn story. He would play tennis at noon. The class started at 1 p.m., I think. And John would saunter in sometimes around 1:45 or 2 p.m., and say things like, "Well, class has been going on a long time. Has anybody said anything important yet?" And we would have to fill him in. And then he would come up with some typically bright statement, etc. Another story about Ferejohn is that he was and is a foodie and wine snob, and I have seen John send wines back at somebody's house. [Laughter] "This is turned, this is not ready yet," etc. That was quintessential Ferejohn. But the intellectual excitement within the division was dramatic. To give you another example of that, in 1974, Bob [Robert] Fogel and Stan [Stanley] Engerman published *Time on the Cross*.

ASPATURIAN: Oh yes.

KOUSSER: And I remember very well that C. Vann Woodward reviewed it for the *New York Review of Books*, and I took the *New York Review of Books*. And so it came to my mailbox. At that time, people in the division sort of thronged around the mailbox at two in the afternoon when the mail arrived. And so, I got my *New York Review*, and there was a Woodward review. And Lance and I went into Lance's office, and I put it down on his desk, and we both read it simultaneously. Well, Lance knew Bob very well. So, we decided that we would have to teach a graduate course on *Time on the Cross*, so we did eventually offer it.

ASPATURIAN: Do you want to recapitulate very briefly what the main thesis of *Time on the Cross* was?

KOUSSER: *Time on the Cross* was a quantitative view of slavery.

ASPATURIAN: Rather controversial, I believe.

KOUSSER: It was extremely controversial. There were lots of things that were actually settled by the book. There'd been a longtime controversy about whether slavery would have been abolished without the Civil War, and the controversy was connected in a scholarly sense to a 1918 book called *American Negro Slavery* by Ulrich Phillips. Phillips had thought of slavery as an anti-capitalist, feudalist institution—sort of looking at it almost as Marx did. But also, unprofitable. What Bob and Stan demonstrated beyond a peradventure was that slavery was by far, at least for the plantations, the most profitable industry in the country, and that if one had been waiting for it to wither on the capitalist vine, it *never* would have happened.

They also showed, and this is very much in the spirit of things that have continued up to now, that slavery was far from a feudal institution, that the plantation owners were striving capitalists, but since they were striving capitalists, they were not deliberately cruel. It was economically irrational for them to be deliberately cruel. So, the idea of slave owners simply getting rid of slaves, killing slaves on a whim, or exploiting them mercilessly, was crazy because you just didn't do that if you wanted to maximize profits. This is very much a profit-maximization story. So, the slaves were relatively well fed, because they had to be, because they were working so hard, and having them be able to work so hard, and enforcing a sort of systemized type discipline was necessary to maximize profits.

They also looked, at least initially, at how Blacks were treated and how they survived after slavery, and I think in a very exaggerated fashion looked at their situation as declining, because there was nobody with the same stake in their welfare that the slaver owners had. This was probably actually connected with the fact that Bob had been head of the Young Communist League in the United States, and that until 1956 he was an all-fired-up Communist. Even organizing his father's cloth-making factory.

ASPATURIAN: Right up there with David Horowitz and Whittaker Chambers. Hmmm.

KOUSSER: Yes, but Bob didn't go wild right.

ASPATURIAN: Yes, I understand.

KOUSSER: He continued to be a good liberal, etc. He was much more critical of the way that Blacks were treated under capitalism than other people had been, but the contrasts that he made between the way that slaves were treated during slavery and after emancipation were, I think, quite exaggerated. I think that they were much better off in material ways as well as in moral ways after emancipation. Anyway, Lance and I taught a course on that in the late 1970s, I guess.

ASPATURIAN: He must have looked kind of at the economic side, and you looked at the historical and social context?

KOUSSER: Yes, and some of the politics of it.

ASPATURIAN: What was your overall take on that book?

KOUSSER: Well, at first, I was very antipathetic to it in lots of ways. I was not antipathetic to the idea that slavery was capitalistic and rational.

ASPATURIAN: It was a business, yes.

KOUSSER: But I thought that there were also some really off-the-wall things in it because Bob just knew what he wanted to find, so he found some way to do so. The quintessential one was related to the diary of a slave-owner, Bennet Barrow. He records whippings, and so Bob sort of divides this by the number of slaves, by the number of days, and says, "Well it didn't happen very often." But there's no reason to believe that Barrow's diary was representative, no reason to believe that all the whippings were recorded. There's no idea of how hard slaves are whipped, no way to gauge that.

Suppose you whipped one slave quite a good deal, what is the effect on all the rest of the slaves in terms of breaking their spirit? Napoleon killed a couple of deserters, *pour encourager les autres*. Undoubtedly, that happened with regard to slaves too. So, I mean there are things like that that are completely off the wall, and Bob eventually just moved in another direction on those. Also, the politics of that book were not good. He just didn't understand about politics. He'd always been Marxist, and he accepted the general Marxist view that politics is merely superstructure, and that the underlying economics is what drives everything.

ASPATURIAN: In other words, a lot of his thinking was blinkered by his ideology.

KOUSSER: It was. And he changed his mind in a later book, *Without Consent or Contract*, which came out in 1989. This one was without Stan. By that point I was good friends with Bob—Lance had introduced us. And so, Bob, quintessential Fogel story, would send me two- or three-hundred pages of manuscript, and say, “How quickly can you comment on these?” And he got the politics of the antebellum period *just wrong*. And I wrote him extensive comments. By this point I had tenure, etc. etc. So, I was fearless in these sorts of things.

ASPATURIAN: Free to say what you wanted, yes.

KOUSSER: I'd never been very withdrawn about saying what I wanted anyway. So, at the end of this, *Without Consent or Contract* is a much more subtle book, and it is when Bob moved wholeheartedly into demography and particularly into the study of heights. How tall you are depends on a lot of things. But one of the things it depends on is how well fed you are, and particularly how well fed you are with respect to certain minerals and vitamins and protein, etc., and then how much drain and stress there is on this by the physical labor that's required of you. And he started the study of this in economics and it's continued to go on, and it is really for that that he got the Nobel.

And several years before that book was published, Bob came out for the first or one of the first *Time on the Cross* courses to talk to us all. And it was just *great* fun. I mean, this was a graduate course, but large numbers of faculty came in from time to time

for one or both of these courses. And Bob said, “Well, I’ve written a letter of recommendation for you for full professor, and now you’re going to be a full professor. Do you know whether anybody has planned a *festschrift* for Woodward? If not, you ought to do this.” Bob was always telling me what to do. So, I said I didn’t know, and I would check on things; and so, I did, and it turned out there had been a plan for a *festschrift* for Woodward.

But his very favorite student, Willie Lee Rose, who was involved in planning it and was Harmsworth Professor at Oxford, had had a stroke. [Francis] Sheldon Hackney was another person who was involved in it, but he had moved at that point from being the provost at Princeton to president of Tulane (he was later on president at Penn, and later after that chair of the National Endowment for the Humanities). So, they both sort of dropped out of the project and it fell apart. But I started it again and organized it, and got one of my original Princeton teachers, Jim [James] McPherson, to coedit it with me, and so we did that.

ASPATURIAN: At some point in all of this, did you kind of reconcile yourself to being in this rather unusual institution? In the mid to late 1970s, as things were changing, and so on.

KOUSSER: Very much so. It was an incredibly exciting time intellectually in the division, and what went on, essentially, was this: The social scientists were very united within the graduate program because there was the core of overlap between political science and economics and because of what was called the Rational Choice Movement in political science, ohn and Mo were at the forefront of that, along with, eventually, Peter Ordeshook [Harkness Professor of Political Science] and other people. Bill [William H.] Riker at Rochester, sent people here—Mo Fiorina had gotten his PhD with him at Rochester, and Riker came out here for a year. There was Gary Miller, who eventually left us; there were a bunch of young political scientists in this. Rochester and Washington University in St. Louis were the centers of Rational Choice, and it became the dominant school in the field.

So, Caltech was an incredibly exciting place to be for the development of all of

these sorts of things. And Charlie Plott and Mike [Michael] Levine, who was here as law professor, and other people were beginning to develop experimental economics and a lot of game theory. Vernon Smith spent a year here, and between Vernon and Charlie, that was the most fertile year for the beginnings of experimental economics. So, there was this intellectual ferment at Caltech in the mid to late '70s up until about '80 or '81 when Mo and John left, and soon thereafter, I think, Bob Bates left. But the fervor was just absolutely wonderful.

ASPATURIAN: Did you associate with other historians within the division?

KOUSSER: To a degree. I kept trying to build in quantitative history, and I kept getting slapped down.

ASPATURIAN: By whom?

KOUSSER: The humanists who didn't want any more quantitative historians.

ASPATURIAN: Who were these people?

KOUSSER: Almost everybody. The greatest success I had was with Phil [Phillip] Hoffman [Axline Professor of Business Economics and Professor of History].

ASPATURIAN: Who is a medievalist I believe.

KOUSSER: Medieval and early modern. But I recruited him. I was the only person who went to the American Historical Association; I interviewed fifteen people there, by myself, etc. I tried to hire a bunch of other people.

ASPATURIAN: What about John Benton? Where did he stand in all this?

KOUSSER: John Benton was always a good friend, so he was favorable and supported things like that. But he also had people of his own that he wanted to bring in. He

brought in Eleanor Searle [Wasserman Professor of History, d. 1999], for example. There was a feeling that we could and should get rid of this view that we would always have white males being dominant.

ASPATURIAN: I think Searle came in as part of [President Marvin] Goldberger's [Caltech professor, 1978–1987] initiative to bring women onto campus.

KOUSSER: She did, but there was a possibility that we could have gotten an African-American. I had a good friend who had been at Princeton and Yale with me and who was at Penn, and I tried to get him. Brought him out, interviewed him, and wined and dined and all that sort of stuff, and then, in the end, my colleagues said no.

ASPATURIAN: I was going to say, given your history and background, the conspicuous dearth of African-Americans at Caltech must have struck you at some level.

KOUSSER: It struck me, and I was pissed off at it. I always disliked that very much. I'll tell you one more Christy story. There was a Black microeconomist from Stanford, whose name escapes me right now, but we tried to recruit him.

ASPATURIAN: Not Thomas Sowell.

KOUSSER: No, it was a very good scholar, not Sowell.

ASPATURIAN: I think he's at Hoover [Institution].

KOUSSER: He's a hack. Anyway, as part of his recruitment visit, he visited the provost; and I'm sure that Christy didn't mean it like this, but Christy had a way of expression that sometimes people just went crazy over, because he apparently said, "Why should I hire you, because I can never fire you?" That is, he could not refuse tenure to a Black professor. So, the guy turned on his heel, left the office, went back to Baxter, and said, "You're getting me on the next plane out of here."

ASPATURIAN: How did you feel?

KOUSSER: I was mortified; I was angry. Just think, Oh my God, again? We finally find a Black social scientist that everybody thinks is so wonderful, and this jerk—

ASPATURIAN: Now Christy was the provost at this time?

KOUSSER: He was the provost.

ASPATURIAN: Was Huttenback still the division chair? Did anyone go to the president and say, Look. This simply will not do.

KOUSSER: I think Roger Noll was chair at that point. I'm sure that he must have, but I don't have any personal knowledge of that.

ASPATURIAN: Because based on what I've heard about Roger Noll, he probably found this outrageous as well.

KOUSSER: Oh yes, absolutely. But by that point it's too late. We could have offered the guy a house in Beverly Hills, but—

ASPATURIAN: He said, "I'm not setting foot in this place ever again"?

KOUSSER: No, he actually came back later as a visitor.

ASPATURIAN: Well, that's good.

KOUSSER: I don't know what they gave him to get him back. [Laughter] And he's a very nice guy. We tried to recruit other Black economists, without success. Had a guy here for a term, and I thought, "Maybe we're actually going to get him." I liked him very much.

ASPATURIAN: But it didn't happen.

KOUSSER: No. And, you know, we had visits and searches that turned up several very good quantitative historians, and they got shot down every time. One who was here for a while was David Galenson, who was a Bob Fogel student. He also had employment at the University of Chicago in economics, but he spent the winter here with a joint appointment in economics and history. And he was a junior professor, and Lance and other people in the division thought that the only shot that we would have of getting him away from Chicago was to offer him early tenure. And so the economists and social scientists voted to give him tenure. Then Eleanor Searle shot him down on the humanities side. And so, David heard that he was not going to get tenure in the humanities. This meant that if he came, he'd only be a professor of social science, and since one of the only appeals Caltech had for him was that the barriers between social science and humanities were much lower, at that time, than at Chicago, he immediately turned us down. He walked out the door.

ASPATURIAN: Were relations in the division generally tense over this sort of thing? It doesn't sound like it was a terribly collegial place.

KOUSSER: It was fairly collegial, but they were tense in a sense that they're not now, because now it's a done deal. Social science is absolutely dominant. At that point, that was not the case. There were very good scholars who were not social scientists who were sort of contending for intellectual leadership, Dan Kevles being the most important. And also, Brian Barry, who was a philosopher.

ASPATURIAN: I remember that name. What were your relations like with Dan Kevles?

KOUSSER: They were very good. We were exceedingly good friends from the very beginning. First couple of nights we were here, we had dinner at Dan and Bettyann's house. Dan and I got along extremely well all the time he was here.

ASPATURIAN: What did you think of the point of view, which I've often heard and seen voiced, that the humanities suffered from a clean sweep being made of people who may

not have been doing that much research but were superb teachers, and that it was damaging to the undergraduates to lose some of these individuals.

KOUSSER: I don't think they were very good teachers either. [Laughter] You always heard that—that these people were very good teachers when they were not good scholars, but I never thought very much of their intellect. There are certainly people who can be good researchers and not good teachers, but not very much the other way around.

I think that was the case with people who left with Hallett, before Hallett, and after Hallett. There was a conviviality with the scientists that those humanists had, and that the ones who were brought in later didn't, but I think that is not the same thing as being good teachers for the undergraduates.

ASPATURIAN: You said that you didn't think you were a terribly good teacher in the beginning. When do you feel you started hitting your stride?

KOUSSER: I don't know. I learned from repeated failures and continued to develop courses or ways of looking at things and doing things in courses. I don't think I became a really good teacher until probably the 1990s. The way that I do things now in the Supreme Court class particularly—

ASPATURIAN: What is the title of that class?

KOUSSER: “The Supreme Court in U.S. History,” something like that. The students do briefs—we use a casebook with excerpted cases. When I started teaching it, I did it like I'd been taught, and people did briefs or they didn't do briefs, but if they did, they didn't pass them around, and so you had no way of knowing whether they'd actually done a brief or researched a case, and there was nobody in charge to ask. So now they all do briefs, and each brief gets assigned to one student. So, I know that they've read at least one case, and they have to fit them into the other cases. And I have them do oral and written book reports. So, they'll do a biography of a justice, or the story of a case, or some philosophical method of constitutional interpretation, or something like that. Often when there is a big case coming up, we'll spend a week on everything related to it. We'll

look at all the precedents, read the lower-court opinions, sometimes read lawyers' briefs.

In some cases, I gave students the option of doing either a standard take-home exam or an alternative exam. For example, before the Michigan affirmative action cases, I gave them an alternative exam option, which was to prepare a majority opinion and a dissent in the cases. And I let two students collaborate in pairs if they wanted to. And six students took that option, I think. And one memorable pair of two young women just cleared of all their exams to do this. They finished all of their science exams and spent a week doing nothing but reading and writing and thinking about this. They must have read five hundred pages of stuff. And they would email me at night and come in and talk to me in the afternoon.

And they ended up writing twenty-five pages, single spaced, and one of them, who has now got a PhD in astronomy or geophysics, said it was the best intellectual experience of her life at Caltech. They really loved that. And I'll just tell you this story and maybe we should quit. I offered this alternative exam option before the 1978 Bakke case [*Regents of the University of California v. Bakke*]. Only one student took that option, and he wrote this sort of mealy-mouthed "on the one hand this, on the other hand that: let's decide this issue this way, and this other issue the other way" brief. Then he was working in Washington that summer, and he was in the courtroom when the decision was announced. And I don't know whether you know this or not, but what is taken to be the Bakke opinion is Justice [Lewis] Powell's opinion alone. It's a singleton; nobody else signed it.

ASPATURIAN: I did not know that.

KOUSSER: So, the big precedent is not the decision of five people; it's from one guy who decided one issue one way, and the other issue the other way. And it was the compromise in just the same way that this student's exam had been a compromise, and he came in to see me when he got back in September, and he was still just bubbling with excitement of his ability! You know, he'd done this, and he'd seen it; he predicted it, he got it right.

ASPATURIAN: The gift of prophecy.

KOUSSER: And he was just absolutely delighted. So maybe by 1978, I was not so bad a teacher.

ASPATURIAN: Let me ask one more question then.

KOUSSER: Sure.

ASPATURIAN: How did the kids who in the early years took your courses on African American history and the antebellum South react to the material? Could they relate to what you were talking about; did it come as an eye-opener to them? I mean there's a heavy ethics component to what you were teaching there.

KOUSSER: And there continues to be. Yes, I think a lot of things are eye-openers. People continue to get their eyes opened in various ways. I will tell you a story from this week. I was teaching the death penalty in the Supreme Court class, and we were looking at statistics from the Death Penalty Information Center. The imposition of the death penalty is now down about 75 percent from what it was in 1999, which was the height. And the state where there were the most sentences in 1999, was—ta-da!—Texas.

ASPATURIAN: Of course.

KOUSSER: And you will perhaps remember that George W. Bush actually executed a white woman.

ASPATURIAN: Carla Fay Tucker.

KOUSSER: And he had an interview, a radio interview.

ASPATURIAN: “Oh please don't kill me.”

KOUSSER: Yes. And I told that story, using that falsetto voice he used to imitate her; and this young woman in the class was *just so outraged*. She said, “I will never think of

George W. Bush in any other way again; that just fixes my view of him forever. Awful man. Etc., etc.”

So there are many things—race relations—but a lot of other things too that get people’s minds opened up, changed, whatever. One more story. The Supreme Court class used to be a one-quarter course, in the spring. But when I was teaching it maybe about twenty-five years ago or so, there was a very, very bright guy named Francis Chong in the class, from Singapore. All the rest of us took for granted the idea of a constitution and civil liberties. But back then, if you’re from Singapore, that’s really in question. So, I found myself again and again sort of focusing the class on Francis. I know not to do that—you shouldn’t focus on one student, but so it ended up.

So that summer, there was an incident in Singapore where this American kid busted some windshields and got sentenced to be whipped. And it generated more press than Singapore has ever gotten in the United States. Clearly this civil liberties thing was just extremely important to Singapore, but Singapore didn’t know about it. Because I was only teaching the class for one quarter, there were certain things that I didn’t get to, including most of civil liberties and criminal procedure. And so, I thought to myself, “One day Frances is going to be prime minister of Singapore, and he’s not going to know about civil liberties because I taught a one-quarter course instead of a two-quarter course. I am never going to make that mistake again.” So, I made it a two-quarter course ever since.

ASPATURIAN: Where is Francis now?

KOUSSER: Francis, strangely enough—well, first of all, Singapore has one Rhodes Scholarship. Francis got it. His wife got it too, the next year. I continue to email Francis. He actually came by Caltech on the way back from Oxford at one point, where he was doing a doctoral dissertation on Mr. [Kuan Yew] Lee’s foreign policy—Lee being the founder, the creator of Singapore—and he was faced with this great moral dilemma: “Do I tell the truth about this, or do I suck up, because basically all the jobs in Singapore are at the very least government-influenced, and most of them are government jobs.”

And it was a cheap and easy thing for me to say, “Oh stand up for your morals, Francis,” because I didn’t have to live with the consequences whereas he did.

ASPATURIAN: Sure.

KOUSSER: But we had this long, heartfelt discussion for two or three hours in my office, and then he went on to actually do the dissertation taking the moral view, not because of me, but because that’s what he wanted to do. But I did talk it out with him for a long period of time. Anyway, we kept in touch, and when I was in Hong Kong in the fall of 2014 teaching at HKUST [Hong Kong University of Science and Technology], I got in touch with Francis, and he invited me down to Singapore. So, I spent a weekend with him and his family there, and he absolutely could not have been nicer. He took me around to see everything, not only all the tourist spots but a lot of other places too, and we just chatted the whole time. He is now quite high up in the Singapore government.

ASPATURIAN: It had not harmed his career.

KOUSSER: I don’t think it harmed his career. He continues to “harm” his career. He continues to do things that are slightly off and gets stuck with things that nobody else wants to do, and then completes them superbly, and at the last moment this or that minister comes in and takes credit for what Francis actually did that nobody else would do or could do. But he’s a marvelous man. And his wife is now the first female principal of a really high-pressure boy’s school in Singapore. When I was there, she was about to take office, and she clearly is going to dominate all of the— [Laughter] She could have dominated anybody in the whole place except Francis.

ASPATURIAN: Why don’t we end on that note today?

KOUSSER: OK.

J. MORGAN KOUSSER**SESSION 4****May 27, 2016**

ASPATURIAN: I want to ask about something you mentioned last time. You talked about being a young faculty member at Caltech and introducing quantitative approaches to history in your work and teaching, and the resistance you encountered from some of your colleagues. I was wondering what you thought that resistance was based on.

KOUSSER: Well, let me move back: To put this into context, let me start with what my dissertation was a reaction to. When I started out in history as an undergraduate, American history was dominated by political history, and political history was dominated by the study of great men. Politics was the backbone, but we studied what FDR [Franklin Delano Roosevelt] did, Lincoln, Theodore Roosevelt, Woodrow Wilson, and so on.

ASPATURIAN: So political biography was kind of at the center?

KOUSSER: Political biography was at the center, and the studies that were done within states were studies of local governors, and maybe their administrations. To the extent that historians talked about elections, their work was based on qualitative records. The information that was tapped was primarily from newspapers, and it was opinions about why people voted for so and so, and what it meant that such and such got elected; and if programs were put forth and passed in state legislatures or Congress, their purposes and effects were gauged by what qualitative sources said about them rather than quantitative sources.

So, it was individualistic in the nature of its focus and qualitative in the means that it used to talk about what was going on. Shortly before I went to graduate school, and increasingly while I was in graduate school and after, there was a movement toward using quantitative methods to look more directly at what people did and what happened to their policies.

A lot of that was social history; some of it was economic history that was simply

different from social history; and then it moved into political history as well. When I was a sophomore in college, I read a book on Jacksonian democracy that was very influential for me. Not looking at Jackson, and not looking at the newspapers that Arthur Schlesinger had used to write *The Age of Jackson* in the 1940s but looking at quantitative sources of how people voted.

ASPATURIAN: And what was this book?

KOUSSER: It was about New York as a test case for Jacksonian democracy [Lee Benson, *The Concept of Jacksonian Democracy: New York as a Test Case*]. What Lee wanted to do had a good deal of influence on how I wanted to approach history. So, there was a growing move at the time that I went to graduate school to train historians in quantitative methods.

Along with that, let me say something about what the study of the disfranchisement of Blacks and poor whites in the late–nineteenth century south was like. There had been a fairly substantial amount of study over a long period of time, but it had been entirely qualitative and had focused entirely on the disfranchisement of Blacks, not of poor whites. It had not said anything at all about partisanship, and it had not really looked at how institutional rules shaped the way that politics worked.

What I wanted to do in my dissertation was to change the story about disfranchisement—certainly to move it from a story that focused on violence and pure racism to one that was more about the use of institutional rules to restructure power relationships. I wanted to use quantitative methods to look at election returns to try to assess the effect of laws and other causes on the decline in both Black and white turnout, and to try to figure out which whites got disfranchised and whether that was intended. And I wanted to look at the formation of the political system in the early-to mid-twentieth-century south, which was very different from the political system of any other region in the United States. There was no party competition and very low electoral turnout.

ASPATURIAN: Everyone was a Democrat.

KOUSSER: Everyone was a Democrat. And the output of the political system—expenditures on schools, roads, welfare, and things like tax policy—was much more skewed in favor of upper-class people than in any other place at that time or at any time. How did that occur? Why did that occur? To previous historians and to the sort of historians who had grown up in that period and sought to justify that, it was natural. But for someone who was growing up in the 1950s and '60s when the system was breaking down, it didn't seem natural anymore. It seemed extraordinary.

ASPATURIAN: Your thinking was, if it didn't seem natural to you *now*, how could it have happened in the first place?

KOUSSER: Yes.

ASPATURIAN: I understand.

KOUSSER: So, I wanted to explain how the system came about, and to see whether it was plausible to say that it was designed to be that way. V. O. Key, to go back to something we discussed earlier [*see Session Two*], had described a political system that was what he called granulated, and his wonderful insight was that the system was not a one-party system, it was a no-party system. It was a system without political parties to structure competition. And he said that in such a system the people who were not organized and who need government to do something for them inevitably lose.

ASPATURIAN: They have no channels through which to express—

KOUSSER: Right. And they have no channels also to reject the people who do something against them.

ASPATURIAN: That's a subtle point, yes.

KOUSSER: So, you can't vote the political party that messed you up out of office because there's *no* political party. But Key's thesis was that this situation was brought about by

the decline in party competition—for Key that was a first cause, not something caused by something else. For me it was not a first cause. It was caused by mostly upper-class Democrats who wanted to ensure, for as long as they could see into the future, that the political system worked for them and not for Blacks or poor whites. So, they passed laws that killed party competition and that made it harder for political parties to grow up and for a Republican Party or a Populist Party to persist. They designed it so that even though they could sell it as something that was anti-Black, it was also anti-poor white.

So, they would say, “We’re passing a poll tax because it’s an effective way to disfranchise Blacks,” but it was also an effective way to disenfranchise poor whites, and, as it turned out, particularly poor white women. Because if you had a dollar to pay your poll tax, who would you pay the poll tax for? Men, because politics is a man’s business, not a woman’s business, even though after 1921 women could vote in the south. So, if you look at issues that could be thought of as women’s issues, such as schools and the types of welfare programs that had a large impact on women—taking care of abandoned children, taking care of children of single mothers, etc. etc.—there was none of that in the south.

ASPATURIAN: Before I forget, how did you define “the south?”

KOUSSER: I defined it by the states that managed to secede. Those eleven states.

ASPATURIAN: So, the Confederacy.

KOUSSER: So that’s what I wanted to do, and I knew about a method that had been introduced in political science and sociology called ecological regression. It used ordinary least-squares regression to produce estimates that have the form of “70 percent of Blacks voted in such-and-such an election, and 50 percent of them voted for so-and-so.” You could use this method to try to get estimates of turnout in each election and whom people supported, and that was extremely crucial because what it allowed you to do was to say “OK, between 1896 and 1900, an election law was passed that was meant to disfranchise Blacks in such and such a state.” If you can use ecological regression to estimate the proportion of Blacks who voted in 1896 and the proportion of Blacks who

voted in 1900, then you could make a plausible case that it was that election law and not something else that caused the decline in turnout, because they'd been disfranchised.

And you could also look at it and say, Were Blacks voting and were they voting for the Republican Party and having their votes successfully counted for the Republican Party—not always an easy thing—in the previous election, or were they largely disfranchised or largely voting for the Democrats or something like that? So, you could get at Key's question—about whether party competition preceded disfranchisement or the reverse—in that way as well. And you could find out the effect of the election laws on whites who voted, and you could compare it with instances that you particularly knew about that were violent, most of which happened before 1876. And you could say something about how the political system looked before and after that in general.

So, this was an attempt to show how this political system got set up, who did it and why, and exactly what the effect was. But the larger aim was to use that instance, which I hoped would be successful and I hoped would be noticed, to say this is how political history ought to be done.

ASPATURIAN: “This is a model for how we should utilize quantitative approaches.”

KOUSSER: Yes. It should use quantitative methods to look at institutional rules, particularly, and try to figure out how they got there, how they changed, what the effects were. It shouldn't entirely disregard what the newspapers of the period said, but it shouldn't treat those sorts of sources as particularly good ones. So, it was an attempt to reshape the approach to American political history and political history in general. I went to the University of Michigan ICPSR [Inter-university Consortium for Political and Social Research] summer program in 1967 basically to learn more about ecological regression. I learned more about some other things too, but that in particular. One of my two first published articles was an attempt to explain ecological regression to historians, bringing it from sociology and political science to history. And something like sixty tables from *The Shaping of Southern Politics* were drawn from ecological regression.

So that was what I was trying to do. At just about exactly the time that I started here as an assistant professor, the Social Science History Association started, and that

was very quantitative, at least at the beginning. A lot of people interested in politics were involved in that. In economic history, the revolution had already taken place. It had become quantitative and much more theoretical, and there was a use of economic theory that hadn't been there in economic history before. That revolution was successful, so I thought that that was a good sign and that a similar sort of thing would happen in political history. The leaders of that were Bob Fogel and Stan Engerman but also Lance Davis.

ASPATURIAN: Fogel and Engerman being the *Time on the Cross* guys we spoke about last time [*Session Three*].

KOUSSER: Yes. And Lance Davis being here. And in sociology there was a guy named Chuck [Charles] Tilly, who was a leading historical sociologist. I became friends with all of them. That's the basis of things that will help explain lots of other things, here and elsewhere, as I talk about them. After *The Shaping of Southern Politics* was published in 1974, I followed it up by trying to look at the consequences of disenfranchisement for public policy; and in particular to look at the largest states' program in the south, which was education, in the later nineteenth and early twentieth century and to use statistics to try to figure out that impact out.

So, I got a very large data set, which I've only partially exploited, but I did publish an article on this in 1980, and—characteristic of the things that I tried to do—I developed a sort of new index, and a graphical representation of it, which was trying to look at the impact of disfranchisement on educational expenditures across races and across counties. And what it showed was that education helped relatively poor people a great deal before disfranchisement.

ASPATURIAN: Black and white?

KOUSSER: Black and white. And once disfranchisement took place, suddenly these expenditures were not redistributed at all.

ASPATURIAN: Interesting.

KOUSSER: As an historian looking back on it, you sort of say “God bless segregation,” because it gives you wonderful statistics. North Carolina separated taxes as well as expenditures by race, so you can find out what was going on for Blacks and whites separately, and you’ve got this information for every county. So, I input statistics on educational expenditures per child in the population for every county in North Carolina for thirty years, and if you look at the graphical representation you can see that over time there’s a big jump. It passes what my former colleague Mo Fiorina used to call the inter-ocular traumatic test—it hits you between the eyes.

ASPATURIAN: It’s that obvious.

KOUSSER: It’s that obvious. So, I was using quantitative methods. Particularly I was using ecological regression, and I had very large ambitions as to what would take place. In the historical profession in general—I am getting back to your initial question [laughter]—there was a very large reaction against quantitative methods.

ASPATURIAN: Did this cut across lines in terms of the periods that people were studying?

KOUSSER: It cut across everything. There was an American colonial historian named Carl Bridenbaugh, who was president of the American Historical Association in 1962. But anyway, in his presidential address, he attacked quantitative history. He advised historians never to “worship at the shrine of the bitch goddess, quantification.” I’m surprised that back then they even permitted “bitch,” but—

ASPATURIAN: Well, it referred to a bitch goddess, so it was OK.

KOUSSER: Yes, it’s all right. [Laughter] Anyway, there was a big reaction against quantitative history, and the reaction, instead of subsiding, grew. By the mid-1980s, it was just overwhelming.

ASPATURIAN: There was an uproar within the discipline on this? There weren’t people advocating for synthesis?

KOUSSER: No.

ASPATURIAN: Even the quantitative historians?

KOUSSER: The quantitative historians were happy to talk about synthesis, but the anti-quantifiers absolutely not—particularly after this sort of postmodernist urge became important in the mid-1980s when all the graduate students read Foucault.

ASPATURIAN: I have no idea who that is.

KOUSSER: Michel Foucault was a French philosopher.

ASPATURIAN: Oh, wait a minute, now I'm getting the spelling. OK. I'm familiar. Deconstructionism.

KOUSSER: Foucault, Derrida—who was partly in France, partly at UC Irvine—and there were lots of postmodernist theorists in the Yale English department. And they were cultural determinists. Not high culture, but cultural determinists. They would never think of using a number about anything. They were convinced that only they had the truth and that you had to learn to speak this extremely dense jargon, which did not come easily even to people who spoke French, and it didn't translate well into English. It hit big time in history.

ASPATURIAN: Did it really? Postmodernism, as I recall, is literature and philosophy.

KOUSSER: Big time! And they were very anti-quantitative. So, what you got was that the younger people in the mid-1980s to maybe 1995 all became just incredibly enthusiastic about this stuff, so they could join the older people who had been anti-quantitative. So, there were a lot of anti-quantitative people, even here. Not so much in history but certainly in literature, and they did not want to see a real focus in quantitative history here, and so they kept vetoing people whom I would bring in and try to hire.

ASPATURIAN: Who were some of these individuals, if you recall? I know it was a long time ago.

KOUSSER: Well, Eleanor Searle was quite influential in this.

ASPATURIAN: Although she was herself a historian.

KOUSSER: She was a historian. People would defer to Eleanor. But there were lots of people, and partly it was probably simply arguments over resources with—

ASPATURIAN: Oh, that's interesting. It was a matter of money at some level.

KOUSSER: Yes. They would make some other kind of argument, but you didn't really think that was what was behind it.

ASPATURIAN: Yes, I understand.

KOUSSER: That happens from time to time in human society. [Laughter] It's not something that is merely at Caltech. But there were a bunch of people who were just extremely good, whom I tried to hire, and they got knocked down for one thing or another.

ASPATURIAN: With all that going on, though, your academic progression within the division was pretty rapid.

KOUSSER: Yes, it was.

ASPATURIAN: You must have gotten tenure shortly after your book came out? Because you became an associate professor.

KOUSSER: Well, Lance Davis and Bob Huttenback really wanted to keep the sort of core of younger people in social science, and me in history, and so they pushed it. John

Ferejohn, Mo Fiorina, and I were all promoted to associate professor without tenure. I think it was in 1974.

ASPATURIAN: Yes, that's the date I have.

KOUSSER: And that was an attempt to make it harder for us to be hired away, and it was a signal that we were going to get tenure. I guess we all got tenure the next year, in 1975, and then I was kicked up to full professor in '79.

ASPATURIAN: Yes, it didn't take very long.

KOUSSER: And I would have been professor of history and social science except that Roger Noll, who was division chair at that point, messed up in the memo that he wrote to the Board of Trustees. So, I didn't get promoted to full professor of history and social science.

ASPATURIAN: You mean he left out three words?

KOUSSER: Yes.

ASPATURIAN: I see. It was an honest mistake.

KOUSSER: It was, and it was rectified, and it had no particular consequences. But I'll tell you quickly about a tenure letter that was particularly interesting. One of Key's students, who succeeded to essentially Key's position at Harvard, was a guy named H. [Hugh] Douglas Price. He was a wonderful person and basically a Southern political scientist, and his grave problem was that he was a perfectionist and wouldn't let go of things, so he didn't finish them. He actually wrote a book review of my first book that got taken away from him because he didn't finish it in time. But he told Bob Bates at some sort of conference about a sentence from his unpublished book review, and so Bob came back and told everybody about this.

ASPATURIAN: One sentence.

KOUSSER: Well, it was—“If they gave Nobel prizes in economic history, in history . . .”
It’s the sort of sentence you’d like to have attached to you.

ASPATURIAN: Yes, exactly.

KOUSSER: So, Bob Bates told Bob Huttenback all about this, and they got Price to write a letter of recommendation for tenure for me.

ASPATURIAN: That he was able to finish?

KOUSSER: That he was able to finish. And that was the first sentence of that letter, I was told. These words are not supposed to be made public, but Bob Huttenback told me about this the day that the letter arrived. And for promotion to full professor, I heard that there were twenty letters about me, ten in history and ten in social science. I know that Bob Fogel wrote one because he told me, but I don’t know anything else. But I had ten letters in social science, which is a lot more than people have now for tenure or full professor or whatever, and I didn’t get promoted in social science because Roger left out three words. [Laughter]

ASPATURIAN: How did the division change when Noll took over from Huttenback?

KOUSSER: Well, it didn’t grow as fast.

ASPATURIAN: It was more like a consolidation process, would you say?

KOUSSER: It was. That wasn’t Roger’s fault. The Institute fell on hard times financially for a while. The way their planning worked, they had a fixed percentage of the amount of money in the endowment for operating expenses, and they had a rolling three-year average. You probably wouldn’t recall, but there was a big stock market crash in the 1970s. Basically from 1974 to 1980 the stock market didn’t grow at all.

ASPATURIAN: Oh, wait a minute, didn't interest rates skyrocket to 20 percent or something? I do remember that number.

KOUSSER: Right. But the stock market had declined in '73, '74, and it did not recover until 1980 or so, and then only because there was rampant inflation and so people moved from bonds to stocks. So, the three-year moving average meant that for a long time after the very slow stock market, the endowment didn't grow and in fact it had been cut. I remember one thing—this may be a little incorrect, but it's more or less true—that they had to rescind something like a half dozen offers in physics. They had made the offers and the stock market went down, and the treasurer said, "We can't afford this."

ASPATURIAN: Ah, this would have been [David W.] Morrisroe, I guess.

KOUSSER: Yes. One of the many triumphs of David Morrisroe. I can say something about David Morrisroe and me. But the division, which had been able to grow considerably under Huttenback, didn't have much space to grow under Roger. So, Roger made some good appointments; but he did not manage to keep a lot of his young stars. Ferejohn, Fiorina, and Bates all left [*see also Session Five*]. Mo went to Harvard, Bob went to Duke, and John went to Stanford.

ASPATURIAN: Were you tempted to go as well?

KOUSSER: There was a lot more happening with me. But to go back to the reactions in history, there was a big anti-quantitative reaction against *Time on the Cross*.

ASPATURIAN: We talked about that earlier [*Session Three*], but that backlash was partly legitimate, as I recall.

KOUSSER: That's right, but it was more general, and so that impacted me somewhat in that I had thought that there were going to be lots of jobs coming up in the quantitative field, and they didn't.

ASPATURIAN: So, you were kind of a casualty both of this academic disruption and the financial crisis.

KOUSSER: Yes, that's right.

ASPATURIAN: It was kind of a perfect storm.

KOUSSER: But in the late 1970s it still looked to me like quantitative history was the way of the future. There's an International Congress of Historical Sciences every five years, and for the 1980 Congress, the American Historical Association commissioned essays on a whole variety of topics, and I was commissioned to write an essay on quantitative social scientific history. So, I did. And that meant that I had to read a tremendous amount of stuff on demography that I had not read, and which seemed very interesting. I had to master a lot of the economic history literature that I hadn't had to do before, and it looked like the wave was still cresting. So that was certainly happening. There were other things happening in the mid- to late-1970s for me. The most important in the long term was that I was discovered as an expert witness.

ASPATURIAN: The date I have is 1979.

KOUSSER: Right. There was an attorney in Birmingham, Alabama, named Ed [Edward] Still, who was cooperating with the ACLU [American Civil Liberties Union]—ACLU has a lot of cooperating attorneys who are not on staff. And ACLU decided to challenge the felon disfranchisement provision of the 1901 Alabama Constitution, which I'd written about.

ASPATURIAN: So, if you were a felon, you could not vote.

KOUSSER: Well, if you were guilty of certain crimes. Other crimes—even if you were a felon, you could vote. But the crimes that were particularly important were miscegenation—

ASPATURIAN: Mmm hmm, that's a crime, OK.

KOUSSER: —and wife beating. And so, Ed cold-called me up one day. He introduced himself and said he had this case, and did I have an opinion about whether this particular provision, Section 182 of the 1901 Alabama Constitution, had been adopted with a racially discriminatory purpose or not?

ASPATURIAN: How could he have found your name?

KOUSSER: He had read *Shaping of Southern Politics*. And so, I said, “I do have an opinion on this. I believe that it *was* adopted with a racially discriminatory purpose.”

So he said, “Have you ever been an expert witness?” “No.” “Would you like to be an expert witness?” And I said, “Sure.” The center of my scholarly career had been disfranchisement. Most of the provisions of the disfranchising constitutional conventions and the laws that preceded or succeeded them had been ruled unconstitutional or repealed or otherwise gotten rid of. The poll tax and the literacy test in Alabama, for example, were long gone by that time. But this provision still stood. So, it gave me a chance to change history, to reverse the terrible consequences of the things that I'd studied. So, I jumped at that. And he asked what my hourly fee was. I had no clue. [Laughter] I pulled a very low number out of the hat, and he managed to suppress a laugh and said, “Sure.”

I wrote a seven- or eight-page single-spaced report, pulling together what there was to pull together. It was interesting because at the time this provision was passed, there was no committee report, no discussion on the floor, and no debate about it at all, even though for other provisions we had not only the minutes but reports on the debates. There was nothing for this provision at all. There was no discussion of what crimes to recognize and what crimes not to recognize.

ASPATURIAN: This was all back in 1901.

KOUSSER: This was back in 1901. There was a newspaper interview with the particular framer of this particular law. He was from Dallas County, which is where Selma is, and

he had been a local magistrate, so he presided over a local court, and he told this newspaper that the wife-beating provision by itself would disfranchise 80 percent of the Black men in Alabama.

ASPATURIAN: He said this to the newspaper?

KOUSSER: He said this to the newspaper.

ASPATURIAN: How did you ferret this out?

KOUSSER: It was in a monograph. It was something that I'd read when I was doing my dissertation.

ASPATURIAN: I see. So, did it come to your mind as you talked to this lawyer over the phone, or did you have to go back and look at the sources again?

KOUSSER: I probably went back and looked at my notes and found that. So, I wrote this up. But I'd never been deposed before. I didn't know what a deposition was. I'd seen things on television, but I didn't know what a deposition was in a civil case.

Alabama did not believe that historical testimony in this case was going to be very important, and they weren't very interested in this case anyway. The ACLU didn't have enough money to fly me to Birmingham or Montgomery, so they set up a deposition to take place in my office, here in Baxter. A court reporter shows up with this little court-reporting typewriter in my office, and I said, "What do we do now?" I thought perhaps he would bring questions or that maybe somebody would call in questions—but nobody, nothing.

So, I didn't know what to do at all. And he didn't know what to do. And I thought, "Well he's traveled all the way across Los Angeles; he shouldn't do this for nothing." He could swear me in, so he swore me in, set up his typewriter, and *I proceeded to depose myself*. I asked the hardest questions that I could possibly ask, but fortunately, I had answers for all of those questions. [Laughter] And it amounted to reading into the record what I had written in my oral report. And lawyers, when they

hear this story, think this is just absurd; it's crazy—why would somebody do this? This couldn't happen. They think that I'm fibbing about this whole thing. The judge in this case was sort of a country club Republican, and he was clearly—

ASPATURIAN: A Republican in the South at this time.

KOUSSER: He was a Nixon appointment.

ASPATURIAN: OK, yes, things were changing.

KOUSSER: But he was clearly going to decide in favor of the state of Alabama, regardless of whatever evidence was offered. When my deposition was offered as evidence, he disregarded it; he didn't even cite it or pay any attention to it all. However, he was overturned by this three-judge panel of the court of appeals. And the circuit court judge, Bob [Robert] Vance, a liberal Democrat, wrote the opinion of the court.

Later, somebody in the [Ku Klux] Klan put a bomb in a package that was mailed to him. He opened it up and was killed in the explosion. Anyway, Bob Vance cited my deposition twice in his opinion, overturning the previous, local judge.

ASPATURIAN: How long did it take the case to make its way to the court of appeals?

KOUSSER: It was very quick. And then it went up to the U.S. Supreme Court. And I did not get cited in the opinion—written by then Associate Justice [William] Rehnquist—but it was unanimous in overturning the law, on the basis of the idea that the constitutional convention was called to disfranchise Blacks, and there were of lots of statements to that effect; they were very open about this. They were not so open about their desire to disfranchise whites, which I'd written about as well. It's the *only* case of criminal disfranchisement that's gone to the U.S. Supreme Court, and it's the only one that has finally won. There have been a lot of cases trying to overturn similar provisions in other states since that one, and we have all eventually lost. There are maybe five million people in the United States who are disfranchised because of criminal disfranchisement provisions. A million in Florida alone.

ASPATURIAN: That doesn't surprise me.

KOUSSER: And it has been quite disproportionately against Blacks, and it's been continued on to ensure that that's the case. Republicans now will not vote for any law making it easier for felons to vote; and sometimes misdemeanors are made part of that.

ASPATURIAN: How did you feel about all this at the time?

KOUSSER: Well, by that point, I had been discovered, so I was doing other cases.

ASPATURIAN: How quickly did that happen?

KOUSSER: Almost immediately.

ASPATURIAN: Really.

KOUSSER: Because it happened just at the right time. In April of 1980, the U.S. Supreme Court decided a case called *Mobile v. Bolden* [in which the plaintiffs argued that an at-large system adopted in 1911 to elect city commissioners in Mobile, Alabama, had the effect of advantaging white voters –*Ed.*]. In a plurality decision for four people—he didn't have a majority on his opinion—Justice [Potter] Stewart said that it was not enough to show that a law or measure had a racially discriminatory effect. Under Section 2 of the Fifteenth Amendment [which granted African Americans the right to vote], you had to prove a racially discriminatory *intent*.

The idea was that the Voting Rights Act, Section 2 as well as Section 5, had been passed pursuant to the Fifteenth Amendment. The amendment arguably had an intent requirement built in, so even though Congress and the Voting Rights Act had said intent *or* effect, Justice Stewart said, “We're going to interpret this as requiring proof of intent.” So, what's the consequence of that? If the law was passed in 1911 or even earlier, you had to get historians as expert witnesses to try to figure out why the law was passed.

So, this decision was extremely important because of the confluence of time. The Voting Rights Act had been passed in 1965. Section 5 was originally supposed to go for

only five years. It got renewed for seven years in 1975, which meant it ran out again in 1982. So, a decision in April 1980 that seemed to cut off Section 2 at its knees meant that the 1982 renewal of the Voting Rights Act, Section 5, came to be about *Mobile v. Bolden* and getting rid of the intent standard. And so that eventually did happen in 1982: Congress passed an amended law that said, “What we mean is that you can prove effect as well as intent.” So suddenly, and really for the first time, historians become relevant during expert witness testimony.

ASPATURIAN: Were you the first historian to become involved in this?

KOUSSER: I probably wasn’t the first, but close to it.

ASPATURIAN: This fellow, Still, who really got the ball rolling. What happened to him?

KOUSSER: He’s still around. He’s on the U.S. Commission on Civil Rights now. He’s still practicing law in Birmingham. Still working in voting rights cases.

ASPATURIAN: His calling you turned out to be kind of a revolutionary gesture in the history of this.

KOUSSER: Yes, certainly in my history, but it was exactly the right time. Anyway, with the Bolden case, the NAACP legal defense fund became rather concerned about trying to recruit historians to work as expert witnesses in cases. And so, at the time of the Southern Historical Association convention in November of 1980, six months or so after the Bolden case, the NAACP LDF [Legal Defense Fund] organized a little conference the day after the convention. They agreed that if people would stay a day longer, they would pay for their hotels, meals, and I don’t know what else. So, I was one of about thirty historians who stayed, and they tried to recruit us.

One historian was already working with attorneys in Mobile—he was at the University of South Alabama in Mobile. His name is [James] Peyton McCrary, and he is still working in such things. He is now about to retire from the Justice Department, where he’s been their historical consultant since the mid-1980s [he retired from DOJ in

the winter of 2017. –*Ed.*] I worked with him quite closely in lots of cases. He hadn't worked in *Bolden* until that point, but he had talked to the attorneys in Mobile. I guess if you were a white liberal in Mobile, you knew all the other white liberals in Mobile.

ASPATURIAN: A small circle.

KOUSSER: Yes. So, there was this session, and there were these lawyers who were just unbelievably brilliant and who just knew a tremendous amount about the Voting Rights Act. I was just blown away by how wonderful they all were. And so, I said, "Sure." But there were only about three of us out of the thirty who decided to get into this.

ASPATURIAN: Why do you suppose that was?

KOUSSER: Everybody else thought that their careers would be better off if they did not waste time doing this.

ASPATURIAN: Were all of these people tenured?

KOUSSER: No, some of them were not. But almost everybody *got* tenured. But their careers—that was a correct judgment. I did not really think so at the time, but I didn't think one way or the other about it all very much. I was surprised that so few people had sort of signed up. In the 1960s everybody talked this big line about changing the world with what we did.

ASPATURIAN: The rhetoric.

KOUSSER: And they had a chance, and they decided not to do it. But I got into it full blast. So, Peyton and I both did a lot of research, and we found two cases—the *Bolden* case and an attendant school board case. And what we found was that the really important operative laws were not passed in 1911 and 1919, which had been what people had thought and didn't think really proved historical intent, but in 1874 and 1876, which gives them quite a different cast because Reconstruction was going full blast at that time.

The 1874 law, which related to the city commission—although it wasn't a commission then but a city council—changed the voting system from districts to at-large, and it was the first law passed by the Alabama legislature that had overthrown the Reconstruction government. It was the first time since the Civil War that the Democrats had securely taken power in Alabama, and it was the first law that they passed.

There were all sorts of things about those times that made it clear how important race was in Mobile country. One of the things that the Democrats tried to do in the 1872 election was to wheel an old Confederate cannon in front of the courthouse, which is where all the voting took place. The whole county had to come in, sometimes from rural areas and swamps in Mobile. It took you a day or two to get in by boat and horseback, and they said, essentially, “Any Black person who votes will have to go through our cannon.”

ASPATURIAN: Sort of an intimidation tactic.

KOUSSER: It was intimidation. It didn't work. They voted anyway. They were pretty gutsy people at that point. The idea that Blacks were simply going to throw up their hands and run away—

ASPATURIAN: In terror.

KOUSSER: —at a time when white people did these sorts of things was just not true. So, we showed that in fact the laws had been passed with a racially discriminatory intent. And so, the local district judge in Alabama, who was very favorable to us—he what was known as a wire-grass populist—

ASPATURIAN: Did you go down this time?

KOUSSER: Yes, this was in Mobile. I went there twice. To be deposed and for the actual trial. Tell you a short story—there was a lynching in Mobile in 1981.

ASPATURIAN: In 1981.

KOUSSER: In 1981. There were three white young Klansmen who just decided, “What the hell! We’re drunk; let’s go out and lynch a Black boy.” So, they just picked out some sixteen-year-old kid—some age like that—in the street, shot him, and then hung him up on a lamppost in the middle of Mobile. This took place between the time that I went to Mobile to be deposed and the time that I went back to for trial. During the trial, the plaintiffs put on some Black lay witnesses who were describing the climate of racial oppression, and this unrestrained lawyer for Mobile was cross-examining one of the lay witnesses who had mentioned this lynching. And the lawyer said it wasn’t a lynching because he was shot before he was hung up.

ASPATURIAN: Sounds like something out of Mark Twain, doesn’t it?

KOUSSER: And the judge turned to the attorney for the Justice Department, who was a friend of mine, and said, “Do you want to object to this line of questioning?” And he said, “No, your honor, go on.”

ASPATURIAN: When you go down south, do you consciously become a little more “southern” again for your court appearances and so on?

KOUSSER: No. And down south can mean various things.

ASPATURIAN: Of course. But Alabama is Deep South.

KOUSSER: I understand that. At one point I was testifying in Georgia and if you look at this picture—

ASPATURIAN: In fact, we published that in *Caltech News*.

KOUSSER: That’s right. That was during a trial in Atlanta in 1991. And in order to try to make me seem less foreign, the ACLU attorney that I was working with, who was from South Carolina and still has a South Carolina accent, probably not as deep as it was before he went to undergraduate school at Columbia—

ASPATURIAN: Probably not. [Laughter]

KOUSSER: Anyway, he said, “Your Honor,” to the judge. “I want to emphasize that Dr. Kousser is from Tennessee.” And the judge, who was from Georgia, said, “It’s OK, you don’t have to do that; I knew he was a Yankee.”

ASPATURIAN: So that didn’t quite work. [Laughter]



A sketch artist captured this 1991 courtroom scene in Atlanta, Georgia, in which the judge listens to “Yankee” Kousser’s courtroom testimony.

KOUSSER: They were playing games. Anyway, to get back to *Bolden*. I was working with the attorney who had brought *Bolden* in the first place, Jim [James] Blacksher, from Birmingham, and he was later at an LDF conference about the planning for the renewal of the Voting Rights Act. And he became convinced after having worked with Peyton in the remand of the *Bolden* case that the NAACP needed to put on historical expert witness testimony. And so he called me up and said, “Morgan, can you get Professor Woodward to testify?”

ASPATURIAN: This is Vann Woodward from Yale?

Kousser: Yes. I said, “I don’t know. I’ll call him up,” and so I did, and he was in fact anxious to testify. He told me then, which may have been incorrect—he may have forgotten something—that he had not testified before Congress since the 1930s when he testified in favor of an anti-lynching bill, which failed. Congress has never passed an anti-lynching bill. Anyway, so Woodward agreed to testify, and I tell Jim, and then I get a phone call, and a woman I didn’t know said, “I’m Lani Guinier, and I’m assistant counsel for the Subcommittee on Civil and Constitutional Rights, and I would like you to testify along with Mr. Woodward.” And so, as it turned out, Woodward and I and Peyton McCrary testified as a panel—the only historians, I think, who had ever testified on any of the renewals of the Voting Rights Act. I think that’s right. So, I did a fairly long paper that became the basis of another published paper [“The Undermining of the First Reconstruction: Lessons for the Second,” published in Chandler Davidson, ed., *Minority Vote Dilution*, 1984: 27-46].

ASPATURIAN: This was a scholarly paper or one related to your testimony?

KOUSSER: It was both. It was about comparing the first and second Reconstructions, and in particular looking at how Blacks were disfranchised.

ASPATURIAN: Is the second Reconstruction after the federal troops left? What was the demarcation?

KOUSSER: What’s called the Second Reconstruction—this is a coinage of Woodward’s—was the civil rights era, starting with *Brown v. Board of Education*.

ASPATURIAN: Ah, so beginning in the mid-1950s.

KOUSSER: From there through the 1960s, even to the 1970s. Woodward had initiated the study of comparative Reconstruction. Nobody had done this before. And so, he had talked about it, but nobody had ever looked very systematically at election laws in both eras. So, I did, and that became a paper, which grew into another paper and another paper and eventually became the first chapter of *Colorblind Injustice*.

ASPATURIAN: Which was when—?

KOUSSER: It was published in 1999.

ASPATURIAN: OK, so we're jumping ahead quite a bit there.

KOUSSER: But my congressional testimony was very interesting. There were three things: One is that roughly the week before, I had gotten an elbow in a basketball game here that actually broke my eye socket. I played pickup basketball here every noon for twelve years, and people were swinging their elbows around etc., and one hit me. I did not know that I'd broken my eye socket. Kaiser didn't X-ray me.

ASPATURIAN: What year is this again?

KOUSSER: Must have been late May, early June 1981, because that's when I testified. So, after that game, for twenty-four hours, I really could not bear any light at all. I remember going to a party at somebody's house, and because I'd been hurt so badly, they made it by candlelight, but unfortunately, I was in front of a candle and despite the fact that I had on dark glasses my eye hurt so badly that the candle had to be moved someplace else. So, I showed up in Mobile with a black eye. And a lawyer friend who had been with me in Mobile had heard that I had a black eye and so he showed up with a piece of beefsteak. [Laughter]

Second is that I had learned somehow that the thing to do with congressional testimony was to come with questions to give to the members of Congress and their staffs, so I provided about ten questions.

ASPATURIAN: Now why was that? These are all friendly questioners?

KOUSSER: These are friendly questioners. And they weren't experts on history, so I provided friendly questions and told Woodward what the questions were going to be beforehand, and in fact they asked us those questions. We weren't very important witnesses.

ASPATURIAN: Who was on the committee?

KOUSSER: The chair of the subcommittee was Don [William Donlon] Edwards from San Jose. He was a wonderful, wonderful civil rights person who managed to do stuff behind the scenes, which I learned later—and wrote about—that people didn't really appreciate. But he was absolutely crucial to the way that voting rights was treated administratively. Even in the midst of the Reagan administration, he could get things done.

He served for a very long time. He was one of the most liberal members of Congress. He's dead now, but he was just wonderful. In 1965 he was one of seven members of Congress to vote against the war in Vietnam. And there was a freshman representative on the subcommittee who was very interesting, named Harold Washington.

ASPATURIAN: Didn't he later become a mayor?

KOUSSER: In 1983, he was elected mayor of Chicago, but at that point he was just a freshman congressman. So, in fact if you go back and look at the hearing report, Washington asks a very profound historical question to Woodward, who gave a gorgeous, beautiful answer about the historiography of progressivism. [Laughter] But that's how it was set up.

ASPATURIAN: What was the reaction at Caltech to this new career arc of yours?

KOUSSER: Well, I will tell you. I said I was going to say something about David Morrisroe, and I will give you the reaction. In 1983, the Caltech public relations people decided to do a story about me. Phyllis Brewster was the person who was going to do this.

ASPATURIAN: I remember Phyllis. She's dead now.

KOUSSER: So, they did an interview with me and a story about my expert witness work and all that sort of stuff for some story that would go out. Morrisroe killed it.

ASPATURIAN: Why did he even look at it?

KOUSSER: I don't know. But he decided that it would alienate potential Caltech donors, and that it was not something that Caltech wanted to be at all associated with.

ASPATURIAN: They had a very different group of people running the show in public relations in those days. By the time I was there, five years later, such a thing would not have happened.

KOUSSER: But I did not know about this, that he killed it, or what had happened to it until 1992. And that year I gave a talk on Martin Luther King Day, which we actually used to celebrate on campus.

ASPATURIAN: I remember. Sure.

KOUSSER: And that talk got published in a Caltech publication [*On Campus*, the Caltech faculty-staff newspaper, 1985–2000], and Phyllis did it. And she then told me what had happened to the 1983 article and said, "I'm retiring anyway, they can't do anything to me, so we'll publish it."

ASPATURIAN: They wouldn't have done anything anyway at that point. Did you have any other encounters with Morrisroe?

KOUSSER: There is one other thing I know about Morrisroe that has some continuing impact that was important. This will skip ahead. When there was a legal change announced in the retirement law such that you could not force somebody to retire—

ASPATURIAN: Is this with regard to university faculty? I remember that, yes.

KOUSSER: Yes. About two years before the change was due to go into effect, Caltech appointed a committee to see what to do with this. I was on the committee, and we worked very hard. I did a survey of all the faculty members.

ASPATURIAN: Do you remember the year, roughly?

KOUSSER: It must have been '92, '93, something like that. It was a wonderful committee— terrific people from physics and engineering. Lance Davis was on it; Barclay Kamb [Rawn Professor of Geology and Geophysics, emeritus, d. 2011] was chair of it. And so, we came up with a plan that actually made it possible to get people to retire. The idea was you sort of ease into retirement where you can go half-time and get paid full-time for a couple of years.

ASPATURIAN: Generous financial incentives.

KOUSSER: Right.

ASPATURIAN: That's always a winner.

KOUSSER: Morrisroe was morally opposed to that. The idea that someone would get paid for not working full time just bothered him terribly, and so he tried—we were told he tried—to kill the whole thing, provide no incentives whatsoever; and he undoubtedly managed to succeed to make those incentives stop after the age of sixty-eight. So, as I sit here right now at seventy-two, there is no incentive whatsoever for me to retire. I don't get anything by retiring. There's no bonus payment, there's no—

ASPATURIAN: In that time frame, this would have been Tom Everhart's presidency. So the president and the provost undoubtedly had to sign off on this, and I guess they did, yes?

KOUSSER: The focus seemed to be almost entirely to get people to retire at sixty-eight. But, you know, there are a lot of people who will not do things that way. I mean, Jack [John D.] Roberts [Institute Professor of Chemistry, emeritus. He died in 2016, shortly after the completion of these interviews. –*Ed.*] is still here! Most astounding person around here. But apparently Morrisroe wanted to kill the whole thing and managed to kill a little of it but make it absolutely irrational.

ASPATURIAN: How did the faculty on the committee feel about this? They must not have been happy?

KOUSSER: We were not happy, but our job was to produce a report, and we couldn't do anything else.

Anyway, so I testified before Congress on the Voting Rights Act. And by that point people in the Justice Department knew who I was. I had worked on a case in Arkansas that didn't go anywhere, and the Justice Department people were going to use me in other cases. The opinion in the *Mobile v. Bolden* remand came down within two days or so of the passage of the renewed Voting Rights Act, which got rid of the intent requirement. So, we both got rid of the intent requirement *and* we proved intent in the case that brought it all up. But then there was a mushrooming of Section 2 cases after that.

And so in 1982—if I can just tell this story and then we'll get back to some other stuff that you want to talk about. It's a good story. I got hired to do expert witness testimony on a case from Haywood County, which is close to Memphis. It's one of the most highly Black counties in Tennessee. There were in the late nineteenth century only three counties in Tennessee that were majority Black—Haywood, Fayette, and Shelby, which is Memphis. In Haywood County—and this will give you an idea of the sorts of things that were continuing to happen in 1978—there was a road commission. The road commission allocated money for building and maintaining roads. It so happened that many of the roads in Haywood County were still dirt—and Blacks lived down these dirt roads out from the main road, or something that passed for a main road. So, when it rained, and it often did, these roads turned into mud. School buses would not go down those roads because they would get stuck, which meant the kids sometimes had to walk a mile down a muddy road in the rain to get the main road.

So, the road commission mattered, and it mattered on important stuff. There were five districts, and each of them elected two people to the road commission. One Black got elected. A couple of white nuns from Massachusetts, not having realized that the 1960s were over, came down to Haywood County and started a civil rights project called JONAH—Just Our Neighborhood something something—with a whale as a logo. And

they were behind electing this guy, and so they were continuing their involvement. What they decided basically was, “We’ve got to find an issue that really hits people where they live,” and kids walking to school was such an issue.

So, in 1981, when it came time to redistrict, suddenly the county commission, which redistricted the road commission, figured out that they couldn’t redistrict “right,” so they had to change to at-large elections. So as the county was about 40 percent Black, with racially polarized voting, the number of Blacks who could be expected to be elected to the road commission was exactly zero. So, the West Tennessee Legal Services decided to sue on behalf of the JONAH Project in the name of Truly Mae Taylor, a wonderful name for a plaintiff at this point. And so, they hired me. This was all run by a guy fresh out of Harvard Law School, Rob [Robert] McDuff, who was working for a law firm that you’ve heard about before called Ratner, Sugarmon and Willis [*Session Two*].

ASPATURIAN: Oh yes. And they were all in cahoots with the nuns.

KOUSSER: Right.

ASPATURIAN: It’d make a good movie script actually.

KOUSSER: Yes. So I went to Memphis, and the one thing that he did—he didn’t pay me very much, but he did put me up in the then newly refurbished Peabody Hotel.

ASPATURIAN: Homecoming! You can come home again.

KOUSSER: Which was famous for having ducks in its lobby fountain. And one time at night, the ducks actually paraded through the lobby. So, a kid’s book that I read long ago, *Make Way for Ducklings*, I was able to see in action.

The trial was in Jackson, which is about a hundred miles northeast of Memphis. So, we’re driving up that day, and I was talking to Rob about his case, and he was going to start out his whole case with some point that I thought detracted from the main point and would just make trouble for him, and so I pleaded with him just to forget that point entirely. And he agreed, so I sort of shaped the whole case. The attorney for Haywood

County was a big Memphis lawyer who had blocked the desegregation of schools in Memphis, and undoubtedly made more money that day than I made in a year. He didn't bother to depose me. Big mistake.

ASPATURIAN: So, he had no idea what you were going to say.

KOUSSER: He had no idea what I was going to say.

ASPATURIAN: That is kind of stupid.

KOUSSER: And he had no idea that I could do any quantitative work. And so, I testified. There were only two witnesses: me and a lay witness who was a Black sociology professor, I think, at the local college. The Memphis attorney sort of pushed him very hard and was overbearing and he sort of gave in a lot, but two points about this. One is that Rob forgot to ask me a question that we had planned to have me testify about.

ASPATURIAN: He questioned you first.

KOUSSER: He questioned me first, and he just forgot it. And it was a really telling point because in 1960, '61, when Blacks, many of whom were sharecroppers, started registering to vote in Haywood and Fayette counties, they got thrown off their farms, and the AFL-CIO started a tent city to house them. And this is actually big news in 1960, and '61. I knew about it in Nashville, but it was big news nationally. The AFL-CIO and churches were sending money, etc. etc. etc. Anyway, when they first started to register, eight of the activists got their houses burned down, and Rob had forgot to question me about this. So, I couldn't think of anything to do. So, I was being cross-examined and thinking, "How in the world can I get this in?" The attorney had been caught flatfooted with my testimony, and toward the end of my cross-examination, he said, "Dr. Kousser, wouldn't you agree with so and so"—the lay witness—"that race relations have gotten better in Haywood County?"

ASPATURIAN: He opened the door.

KOUSSER: And so, I said, “Mr. So-and-So, when Blacks started registering to vote in Haywood County in 1960 and ’61, about eight of them got their houses burned down. I understand that that doesn’t happen anymore, and I guess that’s progress.” And he said, “Can’t progress come? Can’t there be progress in race relations?” And I said, “In Haywood County, slowly.” [Laughter]

ASPATURIAN: How was that case decided?

KOUSSER: Well, one more story before we get to that. The Black activists in Haywood County were almost all female, and they almost all—about forty of them—came up from Haywood County to Memphis.

ASPATURIAN: Is that because women faced less in terms of repercussions?

KOUSSER: It may have been. It may have been that they were just the people that the nuns could recruit. It may have been that they were particularly concerned with the school issue. But anyway, about forty of them came up, and so there was an audience. I never have an audience in cases. And right in the middle of them, a big, formidable-looking woman—you wouldn’t want to mess with her; she had been a sharecropper; I think she probably handled the plough herself—was Truly Mae Taylor in a bright red dress. And so, after my testimony was over, I came out and introduced myself to them and they just thronged around. They were really happy because they knew that they were going to win. So, we did win. We had a Black judge—he had lost an at-large election in Shelby County because all the whites had voted against him. But he eventually managed to get to be a federal district court judge. About a third of his opinion was just quoting from my testimony. So that was good.

ASPATURIAN: Personally, and professionally, it must have been very gratifying.

KOUSSER: Yes.

ASPATURIAN: I want to jump back to something you said earlier when we were talking about the disputes over quantitative history. You said that many job candidates you had proposed in the division were simply not able to get past the committee. Who did you try to hire, do you recall?

KOUSSER: Well, one of those was Laird Boswell, a European historian who's still at [University of] Wisconsin–Madison. David Galenson, whom I mentioned earlier [*Session Three*]. The most traumatic, eventually, was a guy named David Hacker; that was in 1998.

ASPATURIAN: Much later.

KOUSSER: Yes. David had been a postdoc here because I couldn't convince the search committee to hire him as an assistant professor since he hadn't finished his dissertation at the time we made the decision, although he was going to finish, and did finish, by the time the year started. Usually that's good enough. He had eight letters of recommendation, three from his dissertation committee and another five from other people in three other disciplines.

He eventually got turned down, but not by the division. He got vetoed by John Ledyard [Davis Professor of Economics and Social Sciences, emeritus]; HSS division chair, 1992–2002] on a 14:1 vote in his favor. Ledyard refused to carry that forward.

ASPATURIAN: Can the division chair do that?

KOUSSER: He did.

ASPATURIAN: Because based on what I've heard in other interviews, that's very unusual.

KOUSSER: It is very unusual. It was sufficiently unusual that there was a meeting called to call his decision into question, and Steve [Steven E.] Koonin, then provost [1995–2004], appeared next to him, basically to give everybody the idea that the administration was backing up its division chairman.

ASPATURIAN: What was the “problem” with this guy?

KOUSSER: The stated critiques were so nonsensical as not to be believed. The stated critique was that despite the fact that he clearly has done tremendously important empirical research, he doesn’t have the capacity to be the person who would do the interpretation and so revolutionize the field. What David was working on in his dissertation was a new estimate of Confederate deaths during the Civil War.

When the Yankee troops went into Richmond [Virginia], the Confederates burned all their records when leaving. We don’t have the sort of direct records of Confederate deaths that we’ve always had for Union deaths, and so it’s a very complicated estimation problem. The vast majority of people who died in the Civil War did not die directly from their injuries, but from what happened to them—diseases, infections—after they got injured. How many people died from the sicknesses that went around when you put 100,000 people together in a prison camp with inadequate sanitary facilities, etc.? What could you gather from sources here and there about how many people had died or been injured in a battle, and what was the death rate?

So, the consequence of David’s work was that for the first time *ever*, we had a scientific estimate of the number of Confederate deaths, and it upped that number by about 40,000, from around 600,000 to around 640,000. *Everybody* has relied on David’s estimates.

ASPATURIAN: Where was he a graduate student?

KOUSSER: He was at Minnesota, which was the premier place for studying demographic history in the country, maybe in the world.

ASPATURIAN: I see. Where did he end up going finally?

KOUSSER: He went to SUNY [State University of New York] Binghamton eventually, and now he’s back at Minnesota. He eventually turned down a chance to go to CUNY [City University of New York] graduate center and head their demography program because buying a house or apartment in New York City is so expensive. He’d raised a

family on what it costs to live in Binghamton, which is one of the five least expensive cities in the country, I think.

ASPATURIAN: What was the problem Ledyard had with him?

KOUSSER: I think, frankly, that Ledyard wanted to destroy history at Caltech. He did nothing to keep James Lee here. During the time that David was under consideration, James Lee left. James is a demographic historian, and he wanted David to be hired and to stay here. Ledyard went out of his way to drive Dan Kevles out.

[PORTION TEMPORARILY CLOSED]

Dan might have left anyway. James might have left anyway. But he made no effort to keep them.

After David Hacker was not hired, it was fourteen years until we got an OK to hire another American historian. So, there was a series of people. There may have been somebody else too that I don't remember immediately; but had there been more of a core of quantitative historians here, it would have been easier to hire more and to justify that. But we didn't have it.

ASPATURIAN: I have a couple more questions and then I think we should probably round out the session. Talking about hires, in the late 1970s, Bruce Cain came in. Then there were a rash of hires in the 1980s—James Lee, Rod [D. Roderick] Kiewiet and Doug [Douglas] Flamming. I wonder what role you played in any of these. I know Doug Flamming was a Southern historian as well.

KOUSSER: I hired Doug Flamming. I was chair of the search committee. I was chair of his tenure committee. I drove him to make his dissertation more important. It's sort of a fun story.

ASPATURIAN: Where was he?

KOUSSER: He came from Vanderbilt. One of the things that I did was that I didn't stop at recruiting at just the big-name places, and in fact that was a very good strategy because there were a lot of people who were very good at places that were considered not so hot. I did that particularly with postdocs: Minnesota, Missouri, North Carolina. So that was a good strategy. It meant I had to work very hard in reading lots of material, but I always did.

Doug Flammig did a dissertation at Vanderbilt on, essentially, the carpet mills in Dalton, Georgia. From the 1920s or '30s to almost the present, it's been the chief place in the U.S. for manufacturing carpets. In 1934 there was a big strike in textile mills across the south. And it failed. Doug in his dissertation was trying very hard to figure out why it failed and basically who and what collapsed and in what order. And he couldn't do it. But I kept pressing him on this, and I said, "Look, Doug, go back to this town." The mill that he was working on still had some archives.

ASPATURIAN: He was at Vanderbilt, and you were dealing with him on this?

KOUSSER: No, I was dealing with him after he came here.

ASPATURIAN: He was an ABD who came here?

KOUSSER: No, he had finished his dissertation. He was here as an assistant professor, and the question was, what was going to go into the book resulting from the dissertation. I wanted the book to be absolutely wonderful, and so I pushed him on that.

ASPATURIAN: I see; thanks for clarifying.

KOUSSER: I said, "There's *got* to be wage records about who was working when." And so, he went back—it was in the middle of summer—and what passed for an archive was basically a storage area on the top floor of this very hot, un-air-conditioned building, and he found the records.

And then we went through how to use these records quantitatively. And he found he could tell who came back during the strike—in other words, who the strikebreakers

were. People dribbled back, and they dribbled back in families, and there were some characteristics that held them together, but there was nothing like all the members of one church, or all the people of such and such an age, or all the people who just had a woman leading the family, etc. Anyway, this was all exposed to him.

And the book got a whole lot better because he solved this biggest problem that he'd actually had, and it won the Taft Prize [Phillip Taft Labor History Book Award], which is the big labor history prize. So, I was very, very happy about that.

ASPATURIAN: And very proud, I'm sure.

KOUSSER: Yes. I was very proud of him. He's a wonderful guy, quite a good historian, and he was a wonderful hire.

ASPATURIAN: I remember him from the period when he was here.

KOUSSER: I think his wife didn't like living in L.A., so they went to Georgia Tech, and that's where he still is.

ASPATURIAN: James Lee came in around this time as well, also a quantitative historian, but working in a very different geographical arena.

KOUSSER: James and Nick [Nicholas] Dirks were hired at the same time, so we managed to get two Asian history hires at once. I was very much in favor of James, but I also wanted Nick. I pushed very hard to get him hired, and people thought that was odd since he wasn't quantitatively social scientific at all.

ASPATURIAN: Roger Noll was still chair at this time?

KOUSSER: He was. And so that probably helped. I think people were a little surprised that I was pushing so hard for Nick, but at that point with him and James Lee we really had very good people in Asian history.

James was very interested in quantitative history and was learning more. He went back and studied demography with Ron [Ronald] Lee at Berkeley, and sort of tooled up more than he had been at Chicago. So, it was really intellectually exciting, and having them here somewhat replaced John Ferejohn, Mo Fiorina, and Bob Bates for me. But also, of course, I was moving much more into expert witness testimony and modern voting rights, and—I was thinking about this, in preparation for talking to you—you can see, at least in retrospect, how that was sort of filling the void left by the political scientists who were interested in history.

ASPATURIAN: I wondered, having come from Princeton and Yale, how you felt about the dearth of graduate students here? Particularly in your first decade or so.

KOUSSER: Well, I wanted more graduate students. I mean, there were some in political science, particularly Gary Cox, who came pretty early on. I'm not sure when he got his degree [1982].

ASPATURIAN: This was after Caltech established the graduate program in social science?

KOUSSER: Yes. I had already taught him when he was a Caltech freshman, and then I directed his senior thesis, and we published an article together that is now called the “classic article” on the subject, and it gets a lot of hits. It's called “Turnout and Rural Corruption: New York...Something.”

ASPATURIAN: OK, I'll find it [“Turnout and Rural Corruption: New York as a Test Case,” *American Journal of Political Science* 1981].

KOUSSER: It's actually sort of a neat idea, and it's a good example of one way that I often operate. This was a review of the literature about why electoral turnout declined in the late nineteenth century. It declined in the north as well as the south.

ASPATURIAN: As the same time nationwide?

KOUSSER: Yes. There was a secret-ballot law passed in New York State in 1889, I think. A famous political scientist named Phil [Phillip Ernest] Converse had alleged that the seeming decline in turnout after the passage of registration laws and secret ballot laws in the North was really evanescent because previously people had been paid to vote. His argument was that if you couldn't tell how people were going to vote anymore, you wouldn't want to pay them, so this decline was really due to the absence of people who wouldn't have voted if they'd not been paid. So, I thought about it, and one of the things that I thought was, "Well suppose that you were trying to buy votes and there's no secret ballot, what can you see?" Well, you can see whether people voted or not. And so if you think that they're going to vote against you, you can pay them *not* to vote and you can effectively win a vote that way. And Converse had never considered—

ASPATURIAN: —that it cut both ways.

KOUSSER: And I knew that the voters' canvasses that took place in the late nineteenth century, particularly in New York and Indiana—which were very, very hotly contested states in the north—were almost total, so that people knew how *everybody* was going to vote. So, if you know that Heidi was going to vote Republican, and you could pay Heidi to stay away, that was a vote—not for your guy but also not for the other guy. So, on a hunch I said, "Why don't you do a senior thesis to try to figure out whether there is evidence that such behavior actually might exist?" I managed to get a little money for Gary in the summer before his senior year, and he went to New York and read newspapers, which is what you still had to do.

And lo and behold, what you find are some reports before the passage of the secret ballot law of people being paid not to vote, and *a lot* of reports *after* the secret ballot law of people being paid not to vote. And we quantified it, we counted the number of people, etc. etc.; we talked about this. That was his senior thesis, and that was our article. So, there was an educated guess, followed by an attempt to gather materials and quantify them.

ASPATURIAN: Did you ever reflect on the fact that if you had been at, say, Yale or Harvard with a lot of graduate students to look after, you might not have been able to

pursue this expert witness career so fully? In some respects, it seems like the lack of grad students was almost an advantage for you.

KOUSSER: Yes, I agree; that's probably true. In the fall of '81, I was a visiting professor at Harvard, and I thought that something might come out of that. David Donald, a prominent Civil War historian, was going on leave that year so Harvard brought in two people, Joel Williamson from North Carolina and me, to fill in for David. Joel stayed all year, I guess, and I was just there for a quarter. So, there was some possibility that something would happen. I threatened to leave at the first large snowstorm, but fortunately I didn't fulfill that threat. Caltech was a little worried, and Roger kicked my salary up by about a third. [Laughter]

ASPATURIAN: That's quite an inducement to rethink your options, isn't it?

KOUSSER: Yes. Making it a little more expensive for Harvard if they tried, though not *that* expensive for Harvard, but they didn't bite.

ASPATURIAN: But spending the time there and comparing it to your years at Caltech, what did you conclude?

KOUSSER: Well, the first thing I concluded was that I'd gone in with anti-Harvard prejudices. I'd been at Princeton and Yale so Harvard, heh. But actually, I lived in a dormitory, and I ate lunch and supper there every day; and I just decided that I would meet a lot of Harvard students. So, I would sit down and introduce myself and talk. And I just love Harvard students. I was surprised that that was the case, but they were the most intellectual students that I'd ever met—much, much, more intellectual than the students at Princeton or Yale.

ASPATURIAN: Are we talking grad or undergrad?

KOUSSER: Undergrad. I have no clue why that's so. If you threw all of them into a pot, you would not be able to pick out the Harvard people and yet somehow the atmosphere or

something about people who choose to go to Harvard, meant that they were much more intellectual. There were always these types of people at Princeton and Yale, but not so overwhelming. There was a certain sort of charming intellectual naiveté about Harvard students and a sort of willingness to talk about anything and to try to get rather deeply into it. I would find myself being in discussions and I would think, “I know the answers to this; let’s jump ahead six or eight steps; I can do this, I did this,” but then I would say, “No, no, they’ve got to get to this by themselves,” and they often did. Sometimes they said things that I had not ever conceived of. They were just delightful.

On the other hand, the Harvard faculty was worse than I had imagined. I decided that I would like to have lunch with one of the chief Harvard American historians, Bernard Bailyn. He had an office in the Widener Library, which is the prestigious place to have an office, and so I put a note under his door. I got a call from his secretary.

ASPATURIAN: You couldn’t just pick up the phone and call him?

KOUSSER: No, one did not do that with Bailyn, I was told. So, we set up lunch; he was charming, of course; brilliant—everything that one had imagined about him—but inaccessible. One of the people who was there at the time as an assistant professor was a woman named Patty Limerick, whom I became friends with. Patty has since been president of the Organization of American Historians. She’s one of the two or three most important Western historians; she’s at the University of Colorado, she’s quoted in the newspapers, she’s on C-Span all the time; but she couldn’t get tenured at Harvard, and she told me at the time how hard it was to be a woman at Harvard. She often wore pants. They were willing to accept some women, but God, they should wear skirts; this was what women wore.

ASPATURIAN: 1981!

KOUSSER: 1981. I mean, she was heterosexual, she wasn’t being butch; she just wore pants; it was *cold*, it was *freezing*. In twenty-five inches of snow at one time, why wouldn’t one want to wear pants? She was really quite taken aback.

Then there was a Black historian named Nate [Nathan] Huggins, whose work I

had read before I got to Harvard and who was also incredibly alienated. He had been brought in supposedly to start a leading Afro-American institute, all that sort of stuff. That didn't happen until Skip Gates [Henry Louis Gates] finally came, and then there was an African-American center. But I got to know Nate a good deal just because he was so alienated from everything at Harvard. One more little story about old Harvard. John Hope Franklin—he's dead now—was in the vanguard in of Black historians of his generation.

ASPATURIAN: I know the name.

KOUSSER: He wrote a book on Black history, *From Slavery to Freedom*, in 1947, which really created the field of Black history. Nobody had structured it before. He was a very good friend of Woodward's; together they integrated the Southern Historical Association. He was a great historian and an extremely nice man—I got to know him after I'd published *Shaping of Southern Politics*, and he would tell me what it was like to grow up where he did, when he did, as a Black person.

When he was hired as chair of the history department at Brooklyn College in 1956, it took a year for him to buy an apartment or house in any place in Brooklyn that he was willing to live. He compared that to the fact that when he was working on his dissertation in North Carolina, he wasn't allowed to work in the same room in the North Carolina State Archives as white people worked in. He had to have, like, a separate room. But he said that the coldest that anybody ever was to him was when he was a graduate student at Harvard [1935–1941]. And it wasn't that they were discriminating against him because he was Black, they were discriminating against him because he was human. [Laughter] So there was still much the same view with graduate students at Harvard.

One more story about that particular time. After the House of Representatives voted to renew the Voting Rights Act, in 1981, it then went to the Senate, starting in 1982. The person more than anybody else who brought me to Harvard was Stephan Thernstrom. I had met him when he was at UCLA, and I may have said something about

not going to UCLA because it looked like he was going to go to Harvard [*see Session Three*].

ASPATURIAN: I think you did. I believe his wife is named Abigail?

KOUSSER: She is. So, at this time, I had testified in Mobile, Alabama; I had testified before the House. I had good contacts with the civil rights forces in general, and that was known. So, I was having dinner at Steve's house in Lexington during the time that I was at Harvard, and Abby was then working on her book on voting rights. She had published an article about it, which was very antipathetic, and she was very suspect by the voting rights community. She told me that she could not get access to Black activists in Mobile. She wanted to meet with people there in order to finish her book, and nobody would meet with her. She told me that if I did not get her access using whatever contacts I had, she would be the first expert witness for Orrin Hatch in the Senate Judiciary Committee against the Voting Rights Act.

ASPATURIAN: Am I hearing this right?

KOUSSER: Yes. This is not the first time I have told this story. This story is public; it's in an article in *The American Prospect* [<http://prospect.org/article/thernstroms-black-and-white>]. And so I felt quite pressured but also felt in a terrible position because I thought that probably the voting rights forces would think, "Which side are you on anyway?"

So I called Jim Blacksher, and I told him what was what, and he seemed very skeptical but agreed to talk to people, about meeting with her, and she did get her access and did not serve as an expert witness in that particular renewal, but she did serve in 2006 as an expert witness on that renewal of the Voting Rights Act.

ASPATURIAN: What was her reaction when you went public with this story?

KOUSSER: She did not give me any reaction that I know.

ASPATURIAN: Did your time at Harvard give you a better appreciation of Caltech when you came back?

KOUSSER: It did, in the following way. I taught a Civil War and Reconstruction class at Harvard to history and literature majors.

ASPATURIAN: This was fall of '81?

KOUSSER: Yes. I came back to Caltech in the winter and taught essentially the same course, and on average the dragooned Caltech freshmen—who are required to take a freshman course in humanities—were better students, smarter and more interesting than the Harvard students. At the very top, that was not so. The juniors and seniors at Harvard who were history majors seemed better; they were certainly a whole lot better prepared and overall, they seemed better than the Caltech students. But on average, the Caltech students were better. I had thought that in fact I'd just forgotten what students in the rest of the world were like and that my view of Caltech was rosy-colored glasses and all that sort of stuff, but that experience convinced me that that was not the case. Subsequently I taught at Oxford—the same experience. Caltech students studying American history were a whole lot better than the Oxford students who studied American history at that point. But the people who studied American history were not the best of the Oxford students.

ASPATURIAN: We'll talk about Oxford next time, overall. Anything else you want to add to this particular period, which sort of closes out around 1982?

KOUSSER: One more thing is that in 1980 I also taught in the Michigan summer program.

ASPATURIAN: Ann Arbor?

KOUSSER: Ann Arbor. In the ICPSR summer program. I taught the historical methods course, and that was interesting. I had students from all over the world. I liked it but wasn't asked back. Apparently, I wasn't popular with the historian who was executive

secretary or so, of ICPSR, but I mean, here I am in 1979 through 1981, and my political science friends had left Caltech or were just leaving.

ASPATURIAN: They'd gone to Harvard, they'd gone to Duke, they'd gone to Stanford.

KOUSSER: I had started doing expert witness testimony. I was asked to do a chapter on quantitative history for the American Historical Association. I went to Harvard; I testified before the House committee; I was in the midst of starting to do other cases. The big research project that I'd started on expenditures for schools in the South, was starting to pay off. That was going very well, and people responded to that very well because suddenly I could show the incidence of taxes on people of different races [*see Session Five*]. Nobody had ever thought to do that before, at least in any real systematic way; and I had developed new indices of that and put it together with expenditures so you could tell what's going in by the same people and what's coming out by the same people, roughly. So, it was an extremely inventive and busy time of life. My kids were then eight and six—daughter born in 1972, son born in 1974—and they were coming along. I was doing a lot with them, reading to each of them every night, which I did through the times when they would come back home during graduate school, reading all sorts of things. By the time Rachel was eight we started Shakespeare, I think. So it was busy.

ASPATURIAN: Busy and quite extraordinary in a number of respects.

KOUSSER: Looking back on it, yes.

ASPATURIAN: I think so.

J. MORGAN KOUSSER

SESSION 5

June 9, 2016

ASPATURIAN: I want to drop back just for just one second to a couple of things that occurred, I guess, in the very early 1980s before you went to Oxford. Roger Noll left Caltech, and David Grether became HSS chairman. Did that have any impact on you?

KOUSSER: I liked both Roger and David. I got along fine with both of them. Roger was chair at a somewhat more expansive time than David—he got pulled up short sometimes because of that—so there were less, sort of grandiose plans with David.

ASPATURIAN: I've heard this from other people too.

KOUSSER: That was not because he didn't want to do something. I made an effort around 1988 to try to get some sort of center for quantitative history here, and I wrote up a proposal and gave it to David and he put it on the provost's desk.

ASPATURIAN: Who was—

KOUSSER: It was Linus Pauling's son-in-law.

ASPATURIAN: Barclay Kamb.

KOUSSER: It was Barclay. And Barclay told me that it sat on the corner of his desk for like a year, and he never did anything with it. I don't think he ever read it. I didn't think that Caltech would be able to have a real graduate program in history because it just didn't have enough people. It couldn't be a broad enough education. But one of the things that was possible, and I think would have been desirable, would have been to train people who were doing their dissertations, or who were getting ready to do their dissertations or were post-docs, in some quantitative methods, and I think it would have been a very interesting thing because history departments weren't doing that anymore.

This was just at the time when history departments were sort of dropping the field. For a while a lot of history departments, particularly ones with PhD programs, had been trying to hire a quantitative historian, and at this point they were beginning to be less enthusiastic about that, and so there weren't really a lot of places where you could get that sort of training. Very little at UCLA, none at USC; at lots of places, there was just nothing. So, I thought that it was a good idea and sort of feasible and good for the profession, but it just never went anywhere.

I actually wanted to go back to 1976.

ASPATURIAN: So, did I. I have a question, let's see what—that was exactly where I was going to go next.

KOUSSER: [Laughter] OK. In 1976 in the summer, I was in Washington, D.C., and working at the Library of Congress. And what I essentially wanted to do was to follow up *The Shaping of Southern Politics* [see *Session Three*] by looking at a major potential impact of disfranchisement of Blacks and poor whites. The major service that the government provided in the South at that time was education, so I wanted to show what happened to the educational opportunities for Blacks in particular, but also for poor whites, as you moved from a competitive system in which there was fairly substantial political participation—in some places a *lot* of political participation—to one where Blacks and a great many whites were disfranchised, and there was no organized party competition.

So, what I decided I wanted to do was get statistics from state education reports for all of the Southern states and bring them back here and get them typed to try to see what happened over time to the distribution of public goods. I went to Washington to do that because the Library of Congress had the best collection of state education reports. Now they're probably all online, but at that point, you had to go there.

ASPATURIAN: They were on microfiche or something like that?

KOUSSER: They were all the originals. And so, I would take, you know, my five or six volumes and take them down to the Xerox place and Xerox all the tables. It was a

wonderful thing because you could still work in the stacks. There were carrels in the stacks, and so you could take out a huge number of books and just work on them. So, I did that and toward the end of it, with maybe a month to go, I got a little tired of reading the state education reports and Xeroxing things six, eight hours a day. So I decided I would look up the litigation on the subject. I grabbed a secondary source, and it led me to this 1899 case called *Cumming v. Richmond County*. And I thought, “Why haven’t I ever heard of this case before?” So, I went down to the section where they had Supreme Court books and read it. And it was astounding. The question was essentially, Is the Supreme Court going to enforce the equal part of “separate but equal” as laid down in 1896 by *Plessy v. Ferguson*. The answer was, “No,” nine to nothing, with the opinion of the court written by John Marshall Harlan, the famous dissenter from *Plessy*. So, I thought, “What is this? I don’t understand. Somebody must have written this up.”

So, I do the legal research, which was a lot harder then, than it is now because you had to “Shepardize” citations to locate the information you wanted. If you had a citation for a Supreme Court case, then you could look it up in *Shepard’s Citations* and see where it was cited thereafter in court cases and in legal periodicals. And to the best of my memory, I found one two-page article about this in something like 1933.

ASPATURIAN: Thirty years later.

KOUSSER: Nothing! There was no real finished biography of Harlan at that point either. I learned by looking at various things that three or four people had started biographies of Harlan and didn’t finish. It was like there was a curse on it. The Harlan papers were in the manuscript room of the Library of Congress, and they were quite extensive. I spent three weeks reading them. There was nothing about *Cumming*. There was very little about his civil rights jurisprudence, which is what he’s mostly known for now. I was really at a loss to try to figure out what was going on. There were less extensive Harlan papers at the University of Louisville—he was originally from Kentucky. So, after I came back here in the fall, I managed to get all of those that were of conceivable interest. Nothing. Nothing. So, at one point, I don’t know, I was in Washington for some reason

or another and spent time with the National Archives. I had the names of the *Cumming* plaintiffs.

ASPATURIAN: Is this still '76?

KOUSSER: A little after that—'78 probably. So, I had the names of the plaintiffs, three of them, who were Black, and I just made a guess. And my guess was they were free people of color in the antebellum period—that they had not been slaves. So, I spent a whole day going through the microfilm of Richmond County—Augusta, Georgia—which was where they were from. At about 3:30 or 4:00 o'clock in the afternoon, I finally found them.

ASPATURIAN: What led you to think that they probably had not been slaves?

KOUSSER: Pure guess. I figured that they were leaders of the local African-American community and that somebody must have had the money to take this case up to the U.S. Supreme Court. And it would have been difficult for someone who was a slave to have accumulated that much money by the 1890s. So, I found them. I guess I had read the *Richmond County Historical Society Record*. There wasn't anything directly on this in it, but the guy who was president of the county historical society taught at the local junior college, Augusta College [now Augusta University]. He had a sort of familiar name, Ed [Edward] Cashin, and I looked him up, read everything he'd written, and contacted him and said I was coming to Augusta. He had written his dissertation about Tom Watson—

ASPATURIAN: Oh yes.

KOUSSER: Who Woodward also worked on [*Session Two*]. So, I figured there was a tie there. And so, he said, "Oh yes, sure, come. I will show you around the archives, and also introduce you to some descendants of the plaintiffs." So, I go down to Augusta, and I meet this woman who was sort of the *doyenne* of the family—the granddaughter of one of the plaintiffs. His name had been Harper, and she was Mary Harper Ingram. And she had records. She knew a lot of family traditions and sort of informal history. And she

was able to tell me a *very* great deal. The family had known about this case for nearly eighty years, and nobody else knew about it.

ASPATURIAN: This case had gone all the way to the U.S. Supreme Court and had just basically disappeared down a memory hole?

KOUSSER: Yes, it had. Or at least that's what I thought. They had known that their family had been deeply involved in protesting the establishment of discrimination and the deepening of discrimination, in Augusta, but they had not known a great deal more about that. Let me tell you about the case. In the 1860s, when Blacks could finally get educated, they established a high school or training school in Augusta. It became a high school basically to train Black ministers.

ASPATURIAN: Makes sense, yes.

KOUSSER: Because everybody wanted to go to the church, and the Blacks were seceding from white churches and had Black ministers and so a Freedmen's Bureau representative in Augusta, who had been a free Black before the war, established schools throughout northern and eastern Georgia. In 1879, the school that he established in Augusta moved to Atlanta and became Morehouse College. In 1872, when Augusta and Richmond County consolidated the school system—it was one of the six consolidated city county school systems in Georgia, by the late nineteenth century—they did it by passing a law. The law was sponsored by the state speaker of the house, who was named Joseph Cumming, and this law had provisions that basically said that education would be separate for Blacks, but it would be equal.

ASPATURIAN: What were this man's antecedents, do you know?

KOUSSER: He was the descendant of the first mayor of Augusta.

ASPATURIAN: OK, so he had a political pedigree.

KOUSSER: He had a political pedigree and became a congressman later. He was a white supremacist. So, they had this law in Georgia that said that schools should be equal. They didn't have to rely on the Fourteenth Amendment. So, the guy who had sponsored the school that became part of Morehouse was still interested in Black education, and so he went to the school board and in 1881 the board established a Black high school. They had been subsidizing white high schools, sort of semi-private, semi-public, for a long time, but the law said they had to have equality of schools, so they did.

ASPATURIAN: I assume the school board was all white.

KOUSSER: The school board was all white. This school actually turned out to be very important because it was one of four Black high schools in the South. There were a lot of schools that served as high schools, but they weren't necessarily called high schools. Anyway, what this meant to the local community was that there were fairly well-trained Black schoolteachers who could go out and teach in elementary school in the sticks throughout the area. And they had high school educations, which was a hell of a lot more than a lot of the Black schoolteachers had at the time. So, it was a very important educational institution—sufficiently important that in 1897 the diplomas were handed out at graduation by the white state school superintendent.

That same year, according to the family tradition of Mary Harper Ingram, a Black schoolteacher in a private school named Lucy Laney went to the school board and said, “We don't need the Black high school anymore. We should spend the money that is now spent on the Black high school on elementary schools for Blacks.” She had a self-interest in this. The 1890s were not a good time economically, and her private high school, which was one of three private high schools for Blacks in Augusta, was failing. And so, according to the family tradition at least, she was the one who got the school board to kill the public Black high school. There was a Black protest, led by the sort of leaders of the Black community. They brought suit in the local court, and the local white judge, a Democrat, says, “The law's very clear. You can't do this, school board; you've got to start the high school up again or you've got to end the subsidies to the white schools.” It goes up to the state supreme court, where the presiding judge was a Confederate veteran,

a colonel—that’s who was on the state supreme court—and the court said, “Nah; the school can be closed.”

ASPATURIAN: Very interesting window into race relations at that time.

KOUSSER: It’s absolutely fascinating. There was a senator from Vermont named George Franklin Edmunds, who was chair of the judiciary committee in the Senate, who had turned down appointments to the U.S. Supreme Court twice, partly because he was making too much money. During the 1880s, he had retainers amounting to about \$250,000 a year, which was real money at that time. Anyway, he wintered in Aiken, South Carolina, which is just across the Savannah River from Augusta. I don’t know how the plaintiffs found out that he was there, but he was a staunch radical Republican who had been very active during Reconstruction. He was in the thirty-ninth Congress that passed the Fourteenth Amendment.

So, they found him, and he took the case *pro bono* and argued it before the U.S. Supreme Court. And, interestingly, he’d given the major speech in the Senate on the civil rights bill that passed in 1875, and one of [Supreme Court Justice] John Marshall Harlan’s two most important civil rights decisions cribbed from Edmunds’s speech in his very long dissent on civil rights, so there were more ties between Edmunds and Harlan than you would have thought. Anyway, I spent a long-time doing research on the case and published an article on it in 1980.

ASPATURIAN: It’s quite a detective story.

KOUSSER: Well, there’s a lot more detective work that I’ve done, and I owe a book. Just to get to the sort of the end of the story: In 1999, the hundredth anniversary of the case was coming up, and I decided that I should give lectures in Augusta about it, so I got in touch with Ed Cashin, and he arranged for me to give three lectures. He also arranged for there to be a historical marker commemorating the case, which is there now. It is probably seen by a lot of people because it is just in front of the entrance to the Georgia Golf Hall of Fame, a major tourist attraction, I guess. [Laughter] Anyway, so I got very deeply into that.

ASPATURIAN: Did the Supreme Court overturn the state court's decision?

KOUSSER: No, it went along with the state's decision, and allowed the school to close. They didn't open a Black public high school again in Augusta until 1937.

ASPATURIAN: So, it was the local jurisdiction that said you can't do this; you must uphold "separate but equal," and then the state overturned that ruling?

KOUSSER: Yes. And the Supreme Court upheld that, with a *really* bad decision. They didn't just stop at saying, "We agree with the state supreme court." They said that you had to prove racial animus. You had to prove that the refusal of service was not only unequal but that it was refused with racial animus.

ASPATURIAN: It interests me that you see this kind of accommodation at the local level, but not as things wind their way upward. Do you find this to be true, frequently, in these types of cases? At the local level, the principals all knew each other. Despite racial prejudices there was a certain—

KOUSSER: There is one other thing that's particularly interesting that came out in Augusta about a connection between race relations and things that I learned in the case. Local transit got electrified starting in 1887—all over the country. I think it started in Roanoke [Virginia]. Suddenly you could have interurban rapid transit, and it was apparently very cheap because it was just *widely* adopted. But, typically, in small communities they had only one car, so when they started segregating the trains, there was a great difficulty. What would they do? At first the Jim Crow segregation laws only applied to trains; they didn't apply to local interurban or suburban transit. So, they [i.e. the white power structure in these various communities] didn't know what to do, in essence. If there were trams that went to Black areas, Blacks would ride them, and they would want to ride them into white areas, particularly because a lot of the Black women were maids there. So how did you segregate them? Did you allow Blacks to ride them at all? Did you draw lines? So eventually laws were passed that said they had to be segregated. But at the turn of the nineteenth to twentieth century, there were suburban

boycotts in about twenty-five Southern cities, including Augusta. The first one in Augusta worked. The local authorities said, “All right, we’re just going to disregard the state law and integrate them.” And then there was an incident. During the Spanish-American War, there was an Army base—it’s now Fort Gordon—close to Augusta, and there was a Black regiment there. So, they started riding the cars. And they’re pretty full of themselves, and somebody apparently made some remark to a white woman.

ASPATURIAN: That’s always what sets this sort of thing off.

KOUSSER: Well, it did. The company resegregated the cars. And then there was a Black boycott that lasted something like a year-and-a-half and finally failed. But during this time, there was an editorial in the *Augusta Chronicle*, the local white newspaper, which said, “There’s some Yankees who just don’t understand why we white Southerners have no trouble riding on the local cars with Blacks but a lot of trouble on interstate railroad cars. They just don’t understand.” And when I read this, I thought, “But please, explain it to me, I don’t understand! Finish this!” [Laughter]

ASPATURIAN: There was no explanation?

KOUSSER: No. But it’s an example of the locals, you know, “working things out.” And I learned a tremendous amount researching this. I read all sorts of newspapers, and I learned a tremendous amount about race relations in the Augusta community and about the particular plaintiffs.

ASPATURIAN: When did you publish this article?

KOUSSER: It was in 1980 [“Separate But Not Equal: The First Supreme Court Case on Racial Discrimination in Education,” *Journal of Southern History*, 46 (1980), 17-44].

ASPATURIAN: Did it cause a certain amount of stir?

KOUSSER: It did a little. I mean, it gets cited, and there's now a biography of Justice Harlan, and the biographer and I have battles about this because she wants to defend Harlan, and I've had battles with some other people about this. But a couple of things. One is that Joseph B. Cumming, the white legislator, and Joseph B. Cumming, the Black plaintiff in this case, had names that sound pretty much the same. In fact, it is very likely that they were quite directly related. And it turned out that the guy who was chair of the Richmond County Historical Society when I went down there was the grandson of the legislator, and *he* was named Joseph B. Cumming. He was a Princeton man, so I played old school tie and got to see him, and he believed that the plaintiff Joseph B. Cumming was probably his uncle's or grand-uncle's child. The two other plaintiffs, Ladeveze and Harper, owned an art store. It sold frames, and paintings and all that sort of stuff. It was in a white area of town, a white business district.

ASPATURIAN: Operated by African-American proprietors.

KOUSSER: Yes. It stayed in the white business district through the 1940s. Finally, the part of the family that wanted to keep it up left or died. Mr. Ladeveze had left Augusta in 1898. Guess where he came?

ASPATURIAN: Los Angeles?

KOUSSER: Pasadena! So, Mary Harper Ingram knew that he'd come to California, and that there were relatives still left. So, I looked them up in the phone book, and they were in Arcadia. And I knew also that Ladeveze was extremely light-skinned and that when the family came to California they passed for white.

ASPATURIAN: That's understandable.

KOUSSER: So, I contacted them, and the woman of the family I talked to invited me and my wife, Sally, to their house for dinner. And I did not know whether she knew that when her husband was born, in the late 1890s in Augusta, he was Black, and now they were pretty clearly white. So, I did the stupidest sort of thing I could possibly do; I spent

a good hour, maybe over two hours, sort of sparring with her to figure out who knew what.

ASPATURIAN: The husband was dead?

KOUSSER: No, he was alive, but he was clearly not the one who was in charge of that family. And she finally presented me with census records from 1860, and for race it said “M,” for mulatto. And I figured by that point she knew, so we spilled the beans. It was—

ASPATURIAN: A little surreal.

KOUSSER: Well, Sally has almost never been more uncomfortable in her whole life, I think, and she said, “If you ever do anything like this to me again, that’s the end.” [Laughter] Anyway, when I gave the talks in Augusta, I had let Mary Harper Ingram know, and she came to all three talks, which were over three or four days, and she brought her whole family from Columbia, South Carolina, and from Atlanta, where she lived. She’s dead now, unfortunately. I should have finished the book long before. I felt very bad not doing that because she was so interested and so helpful to me. But we unveiled the historical marker. I have pictures of Mary Harper Ingram unveiling this.

And the whole family was really quite taken by this whole thing. Finally, the family had been justified. And they kept wanting to tell me about what it was like. The family was basically very light-skinned, and they had great difficulties in segregation. Some family members lived in Aiken, South Carolina, and they would go sometimes to Columbia, the capital, which was something like a hundred miles away, to shop. When they got on the Jim Crow [i.e., segregated] train in Aiken, the conductors knew that they went on the Black car. But when they got on the Jim Crow train in Columbia to go back to Aiken, which car did they get on? Because if they then got off the white car in Aiken, they would perhaps have been in some considerable trouble. So, they kept explaining to me about race relations, and it was very interesting, I learned a great deal from them.

ASPATURIAN: I’m sure you did.

KOUSSER: One more little story about whether anybody had ever heard of Cumming. Around this time, just before the article came out, I was giving a talk about this at the University of Chicago law school and had lunch with a guy named Philip Kurland, who was a law professor of considerable import. He had been a clerk to [Supreme Court Justice] Felix Frankfurter during the time that *Brown v. Board* was being heard. And Frankfurter used to taunt his clerks by saying that he was going to dissent in *Brown*. I don't really think that he was ever likely to have dissented, but— And they would come back with something like, “Well, are you going to be more conservative than John Marshall Harlan, the last tobacco-spitting justice on the Supreme Court?” And Kurland told me that Frankfurter's comeback to that was, “But what about *Cumming*?” So, in fact the decision had been noted before—I had no idea about that—but they'd never done anything about it. [Laughter]

One of the reasons that I wanted to tell you about this was because of another little thing that happened in 1981. I was sitting in my office here on a Saturday morning reading the *Augusta Chronicle* on microfilm that I'd been inter-library loaned, and I got a phone call from Bruce Cain, and Bruce said, “What are you doing? And I said, “I'm reading the *Augusta Chronicle* from 1884,” something like that. And he said, “Ah, I'm running the California Assembly redistricting reapportionment.” And I said I knew about that because my wife was working for him, etc. etc.

He said, “We've got this deadline, and I need somebody to be the office manager and crack the whip.” And so, I explained what I was doing. “No, I really need you.” [Sighs] “OK, Bruce. When do you want me?” “Well, have lunch first.” [Laughter]

And so I sort of stepped into this, I don't know, like a hurricane. I went over there, and Bruce and Dan Kevles were drawing districts. And they were doing all the intellectual work, but they needed somebody to crack the whip and be the office manager and tell everybody what to do and coordinate everything. So, in the first afternoon, I think I came up with five different forms. At that point, a lot of that stuff was done on a mainframe and with calculators—it was *much* more messy. By 1991, everything could be done on a PC, and there was software that would throw out all of the most important information. But at that time, we had a whole lot of information to correlate, and so I had

to coordinate all these people, and I sort of cracked the whip. One day I worked fourteen hours. And everybody hated me because I was telling everybody what to do.

ASPATURIAN: Why did you agree to it?

KOUSSER: Bruce said, “Look, Willie Brown, who was the Speaker of the [California] Assembly—”

ASPATURIAN: Oh yes, Willie Brown, from San Francisco.

KOUSSER: He said, “Willie Brown is going to kill me if I don’t have all of the fifty-five Democratic districts drawn, and all of the information that everybody needs to see about their district, and you just have to do this for me.” So, I did. I worked for him for nine days, I think. And at the end, Bruce was much loved by everybody because he didn’t tell everybody what to do. [Laughter]

ASPATURIAN: You were the heavy in the operation.

KOUSSER: Yes. But it was very, very interesting to see all of this take place, and just extremely different from any redistricting that has taken place since.

ASPATURIAN: What I wanted to know about 1976 was that a progressive white Southerner, Jimmy Carter, got elected president that year. Did you have any thoughts about that at the time?

KOUSSER: I was pleased that he won, and one of the things that I thought about him was that he was representative of a class of Southern politicians who made the transition from being segregationist to being quite integrationist. He had probably never been uncomfortable with the presence of Black people but had to learn a completely different way to relate to them. In 1985, ’86, I was at the Woodrow Wilson Center in Washington, and one of the guys on its board who had been Carter’s chief of staff at the White House came to some sort of party there. I think it was Hamilton Jordan. And so I asked him,

“Look, it always seemed to me, watching Carter, that the most comfortable he ever was in public was speaking before a Black church. Have I just completely misunderstood this?” And he said, “No, you’re absolutely right.”

So this was entirely different. I had seen white people in Tennessee who were sort of ahead of their game, and Blacks didn’t require that they have some sort of immediate understanding and empathy. And they didn’t have to speak before Black audiences in the same way that the politicians who rose up in the 1970s did—Carter, Bill Clinton, and similar people. So, I saw that, and I was very, very hopeful. It looked like there was a group that was going to be able to tie Blacks and whites together, be able finally to get Blacks decent public services. This was just when Black legislators were entering the state legislatures. And two Blacks got elected to Congress in 1972—Andy [Andrew] Young and Barbara Jordan. I was very optimistic. Then came [Ronald] Reagan.

ASPATURIAN: And then it all kind of went in the other direction. You went to Oxford in 1984. That was for a year?

KOUSSER: It was for a year. The Harmsworth Professorship [Harold Vyvyan Harmsworth Chair in American History] is the most prestigious visiting professorship in the Anglo-American world for an American historian, and you just get chosen; you don’t apply. So, one day I got this letter. Woodward had been the Harmsworth Professor, and Jack Pole, who was the Rhodes Professor of American History, which is a permanent position in Oxford, had reviewed *Shaping of Southern Politics*. I guess I had met him before; he’s dead now. He was a Brit, with a PhD from Hopkins, and a very, very good American historian. Very nice guy, very smart. He probably made the choice, but just—wow, what is this?

ASPATURIAN: The invitation came out of left field for you? You got a letter inviting you to accept this position for a year?

KOUSSER: Yes. I knew about it because Woodward had been it. I was thirty-nine when I got the letter. I looked up who had been Harmsworth Professor, and it turned out I was

the youngest professor in twenty-five years. And I didn't know what I was in for. I talked to Bob Fogel about it, and he said, "It's going to be very cold." [Laughter]

ASPATURIAN: Did he mean emotionally or temperature-wise?

KOUSSER: Temperature. He had been Pitt Professor at Cambridge, and said, "It's cold." And I thought, "Oh my God." Bob had joint appointments at that point at Chicago and Rochester. And I thought, "Bob says *Oxford's* going to be cold? Oh Lord, what is it going to be?"

ASPATURIAN: He was probably referring to the lack of central heating.

KOUSSER: Well, we did have central heating.

ASPATURIAN: OK, things have changed a bit then.

KOUSSER: Actually, they had double-paned our windows the year before I came, so it was actually quite OK. But it was cold outside. I would go running, and I would come back and there would be icicles in my beard.

ASPATURIAN: Were you associated with a certain college over there?

KOUSSER: The Harmsworth Chair is always with Queen's College, and they have one of these people every year, so they're expecting someone who doesn't know the right fork to use; they're used to that. I *really* didn't know the right fork to use. I was a figure of some fun to them, I think. I got a bicycle, bike shorts, and a helmet; rode my bicycle. Nobody rode with a helmet at that point in Oxford. And so, I would come in with my dripping bike.

ASPATURIAN: You're an eccentric American.

KOUSSER: Eccentric American. I would talk politics sometimes during high tea. This was all very strange to them.

ASPATURIAN: But they had Americans visiting every year, right?

KOUSSER: I know, but I was much less housebroken than most. And I talked about quantitative history, and I actually got the history department to institute an exam paper on quantitative history in the examinations that the undergraduates take at the end of their three years. Everything is dependent upon those examinations; it's a terrible system. I hope it has changed now. At the time they were moving somewhat away from the tutorial system, so they had classes that were not simply lectures. People would write papers and things like that, and I would write comments on the papers because that's what I do, and they would be in red, because that's what I do. And at one point, some young woman wrote a paper, and it was just awful.

ASPATURIAN: At Oxford?

KOUSSER: At Oxford. It was just terrible. She clearly had not read the stuff that she was supposed to have read. And so, I just let her have it during the class, and she got up halfway through to leave because she had to go to some fancy dress ball. And I was outraged that she would do this, and I followed her with the paper and handed her the paper full of red ink, and she just took one look at it and said, "Oh nooo!" So, they didn't expect this. [Laughter]

ASPATURIAN: What were you teaching there?

KOUSSER: Well, I taught in a course with Jack Pole and a younger American historian named John Rowett basically on the Civil War and Reconstruction.

ASPATURIAN: How did British students react to this?

KOUSSER: Well, there were some British students reading American history and doing papers on it, so they reacted pretty well. But the English education at that point was very narrow. They would have done their A-levels [university qualifying exams] in mostly British or English history, and in college they took nothing but history.

ASPATURIAN: I spent a year at LSE [London School of Economics] so, yes, I kind of remember how things worked.

KOUSSER: And they knew a great deal about a very small amount of stuff, but they had *real* blind spots. No more than maybe five people would come to my lectures because the subject probably wasn't going to be on their exam papers. So, they weren't very interested in it. The Oxford students were nice kids, but they were just really very narrow. Even graduate students were very narrow. I got to know some of them, and I just disapproved of the kind of education that they were getting and was vociferous about that. So.

But the social life was amazing. I went to ten fancy-dress events, where you had to wear a tuxedo. I figured out how much it would cost to rent a tuxedo and then how many things I was being invited to, and figured it was better to buy one. These things would last for six hours, the dinner and all the drinking afterwards, and often they were fascinating. The level of conversation at Oxford was higher than anything else at any other place I have ever been.

ASPATURIAN: Really? Even though the education leading up to it was so narrow.

KOUSSER: Yes.

ASPATURIAN: Just the manner of expression?

KOUSSER: The faculty members and their wives—the faculty was almost all—male—were just brilliant. They just knew huge amounts of things. Oxford and Cambridge are much more tied into the government than any place is in the United States. Much more so than Harvard, Yale, Columbia.

The provost—I guess, sort of an honorific; he doesn't really run things—in Oxford at that time was Harold McMillan.

ASPATURIAN: The former prime minister.

KOUSSER: One time I went to a party, and there he was. But you couldn't get close to him. He had this huge cluster of groupies, so you couldn't even get close enough to hear him, but they were obviously sticking on every word. But at one dinner, I sat next to the guy who'd just negotiated the handover of Hong Kong to the Chinese, Chris [Christopher] Patten. He was just full of this, and I was very skeptical of it, but it was absolutely fascinating to talk with him. I met somebody who was in the House of Lords—he was an honorary peer. He'd done good things, and so we had like a three-hour discussion about the validity of keeping the House of Lords. What's the House of Lords good for? And he put up with me, and he defended it extremely well, and I came away thinking the House of Lords is not a bad thing, something I'd never thought before.

They were just absolutely fascinating people. One of the things that happened at the small dinners was that there would be like a dozen people around a table, and at one point everybody would stop talking to the person on their right and start talking to the person on their left, and I thought, "A bell has rung, and I have not heard it. [Laughter] How is this possible that everybody would do this?" But they all did it. The first time this happened I thought that I'd said something really stupid, not just my usual stupidity, but something astoundingly stupid, but no, everybody was doing it. Oxford society was really quite interesting.

ASPATURIAN: Did you talk to them about your expert witness testimony? Were they interested?

KOUSSER: They found it very strange.

ASPATURIAN: Not something that you would ever see in academia in Britain?

KOUSSER: No, they didn't use expert witnesses, and they were quite amazed by this. By going to Oxford when I did, I probably missed being in an important case called *Thornburg v. Gingles*. It was a major Supreme Court case on voting rights, and I knew the lawyer who was bringing it and she probably would have used me, but I wasn't there so couldn't do it.

ASPATURIAN: Speaking of your expert witness testimony, at what point did you start integrating what you were doing there into your teaching?

KOUSSER: Very quickly. Probably from the beginning. I mean by the time I started doing expert witnessing, I had been teaching a Supreme Court class at Caltech for at least six or eight years. So, it was a natural thing. And once the Supreme Court started making its oral arguments available, then I would assign the class oral arguments to listen to. And the more I did that, the easier it was to talk about what it is like to argue before the Supreme Court, what it's like to be an expert witness, what it's like in the lower courts—and I think this was a good thing. It gets students involved in ways that they otherwise might not be.

One of the things that I try to do is to bring some of these cases to life. These are not simply abstract ideas, so I want to talk about who did what, what sort of effect these things have, who argues, how they argue, what difference it makes whether the justices are talking to each other, the relationships between the justices. And it's not just that this is fun and games and takes away from the dryness of the law, but I think it's really an integral part of the law, and I think that if students understand that they'll understand much more about the law and about institutions in general. And as a consequence, it's just easy to bring in stuff that I've talked about as an expert witness.

ASPATURIAN: Have you had students who became so enthusiastic about this material that they wound up transferring because they decided they wanted to go full bore into modern history or political science?

KOUSSER: Yes.

ASPATURIAN: I heard about this in the literature context from Jenijoy La Belle, which is why I'm bringing it up. She said it was rewarding and painful at the same time.

KOUSSER: That has happened to a degree, but one of the other things that has happened is that some of them eventually end up going to law school.

ASPATURIAN: That's another route, yes.

KOUSSER: And they continue to do so. A guy who's graduating tomorrow is going to Columbia Law School.

ASPATURIAN: It was probably not his plan when he came here.

KOUSSER: It was not his plan. He said that taking my course changed his life. So, he's going to law school. And Will [William] Peterson is more typical in some respects. Will took my freshman course; he took the Supreme Court class; and I gave a class in race relations, and he took that too.

ASPATURIAN: What decade are we in now?

KOUSSER: Early 2000s. And he is very libertarian—a libertarian conservative—so we had lots of discussions, and he used to come into my office, and we would talk about whatever he wanted to talk about for an hour or two. He is an extremely nice person; he's very smart, he's very courteous; we never had a cross word, I think.

ASPATURIAN: A libertarian. Was he a CS major?

KOUSSER: He was a CS major.

ASPATURIAN: A CS major. How did I guess? Alright.

KOUSSER: We would talk mostly about law, Supreme Court cases, social and political issues, and we agreed on almost nothing. But it was very interesting. He would try out

arguments, I would try out arguments, go back and forth. I learned a lot; I think he learned a lot.

Anyway, he graduated finally and went off to Microsoft for three years. And we kept emailing back and forth. Finally, he emailed me about three years later and says, “I decided I want to go to law school. Will you write a letter of recommendation for me?” Well, this posed some problems because he had wasted a good deal of the second quarter of his Supreme Court class on CS classes, and not worked terribly hard on my course, and so I think I’d given him a C+. So how do you write a recommendation for that? [Laughter] But there was lots of other stuff, so that I could figure out ways to do that, and he’s from Houston, so he wanted to go to UT law school, and so he did. He emailed me at the end of his first semester and he said, “Morgan, I’ve gotten A’s in all of my courses except con [constitutional] law. In con law I got an A+.”

He made *Law Review*; he was an articles editor for *Texas Law Review*, and actually because he was, I sent them an article that I’d prepared it for a volume where it wasn’t what they wanted, so they didn’t take it. So, I finally submitted it to the *Texas Law Review*, where he was an editor. So here it is—108 pages long with 662 footnotes [“The Strange, Ironic Career of Section Five of the Voting Rights Act, 1965-2007,” *Texas Law Review*, 86 (2008), 667-775].

ASPATURIAN: I like the title. Have his views moderated somewhat as a result of his legal education?

KOUSSER: I don’t think so. He came to visit me after he graduated to introduce his then-new wife, and he told me that he had a clerkship on the Fifth Circuit [U.S. Court of Appeals Fifth Circuit] with a woman named Edith Jones. I’ve met Edith Jones, and I know a good deal about her because she ruled in a redistricting case from Texas in the 1990s. She was on Reagan’s shortlist for the U.S. Supreme Court.

ASPATURIAN: Is this for the slot that went to Sandra Day O’Connor?

KOUSSER: No, it was later. But I knew that Jones was a funnel to send people to clerk for Clarence Thomas, and so I said, “Will, please promise me one thing. Whatever else you

do, you won't clerk for Clarence Thomas." He did not promise, and he did clerk for Clarence Thomas.

ASPATURIAN: Did you find it extremely difficult to understand how someone you regard as so transcendently bright could be so wrong-headed in so many respects?

KOUSSER: Yes. I mean, we agreed on some personal liberty issues, but yes. Last year he argued his first case before the U.S. Supreme Court. He's been out of Caltech for fifteen years. He killed three years with Microsoft and then three years through law school, and another two years spent clerking, so this was after seven years of practice. He got appointed by the U.S. Supreme Court to argue this case because nobody was arguing for it, and they wanted it argued. It was a very difficult and technical case; he worked very hard on it, and he lost, as he expected to. But I said something about this in an interview that I did with a Caltech publication, and so they picked it up and did a story on it. We're going to do a webinar later this month, Will and I.

ASPATURIAN: Do you see him as another [Justice Antonin] Scalia in the making?

KOUSSER: He's not nearly so nasty as Scalia.

ASPATURIAN: Well, that's something.

KOUSSER: I don't know what he will do. By virtue of the fact, that he was chosen to argue a case before the U.S. Supreme Court, he probably makes twice or three times as much money as I do. And, you know, he's on a fast track. But he's intellectually honest. Very often I found that Scalia was not.

ASPATURIAN: Have there been other students who've gone this route?

KOUSSER: A bunch have gone to law school. There was a guy whose name escapes me right now, but he was president of the student body. Got two presidents of the student body who've gone on to law school. One went to Stanford. He also got a Marshall

Scholarship and studied at LSE. He had been doing applied math, I think; decided he didn't want to do it and went to law school. I wrote him a letter of recommendation. He's *really* incredibly bright, and he's now at one of the big L.A. firms, I think. Another guy went to Hastings.

ASPATURIAN: That's where my sister went.

KOUSSER: *Really* nice kids. Very smart. I mean the people who stay with me for two quarters are really *very* interesting.

ASPATURIAN: This is your Supreme Court class?

KOUSSER: Supreme Court class. And very smart and by that point we are, you know, we're friends. They know the sorts of things that I would like to see them write, and they know how hard I am to please, and so they work very hard on these papers, and they very often come up with really clever things, and they're into it by now. The vast majority of them don't go on to law school, but they do keep up an interest in the Supreme Court, and that really is just a wonderful thing, I think.

ASPATURIAN: In 1984 you wrote an article called, "Are Expert Witnesses Whores?" I wondered what prompted you to write that.

KOUSSER: I wanted to write about the question of whether expert witnesses are particularly biased and to compare what you do as an expert witness to what you do in normal scholarship. And to look at what conditions would encourage you to be more objective. Two things about this, before I get into the substance of it. One is, a guy who's been working on expert witness historians has just published a book about the ones who do expert witness testimony in tobacco litigation.

ASPATURIAN: For the companies?

KOUSSER: The vast majority worked for the companies. About four have worked for the other side; about fifty have worked for the tobacco companies. And it's just shameful.

ASPATURIAN: Yes, it is.

KOUSSER: But I saw him up in Stanford recently, and he told me that my *Whores* article is the most cited article on expert witnessing. [Laughter] Another story is that *Public Historian*, where it was published, asked me if I would like to change the title before they published it. Those were more prim and proper days; now people publish all sorts of things. So I asked my then-secretary whether I should change the title, and she said, "Oh no, Morgan, if you change the title, *nobody* would read it." And so, I didn't. But the sort of upshot of the article is that the conditions for objectivity in expert witnessing may in fact be more stringent than the conditions in normal scholarship.

ASPATURIAN: Yes, you say something similar in an *E&S* article that I also found.

KOUSSER: Peer reviewers for journal articles or books don't have such a strong interest in destroying you as lawyers for the other side, who can be quite brutal. So you have to be extremely careful about what you do. And I've been trying to think when exactly I started as an expert witness to produce reports, which were basically scholarly reports—lots of footnotes, everything made as clear as possible, hypotheses proposed and tested. Everything that I would do in normal scholarship, except the topic is perhaps more narrow. The topic is often, "Is/Was this law adopted for a racially discriminatory purpose?" That's exactly the sort of question that I do ask in *Shaping of Southern Politics*, so it became one of the reasons why it was natural for me to go into being an expert witness.

Two things of the main things that I had done there were one—I guess I've told you about this before—using statistical methods to study racially polarized voting, and two, to look at the intentions of laws that were adopted to disfranchise people. And that was basically the complete description of what an expert witness in voting rights cases does. So, this is very natural for me.

But at some point, in the early 1980s, I think, I started producing written reports.

The written reports would be given to the other side, and they would depose me on them, and that would be what was presented to the court. I would also testify, but my testimony would basically be summarizing what had been in the expert witness report. Nowadays everybody does it that way. I don't know whether I was the first to do so in voting rights cases or not; there may have been other people who did, too. But the reports are really quite long and detailed. If you want to figure out whether I'm right or not, the evidence is right there. So, it really is just a continuation of scholarly activity.

ASPATURIAN: I was going to ask did you ever find yourself feeling that expert witness work was taking away from some of your scholarship? How did you assess the relative value of the two?

KOUSSER: Well, because I'd done so much expert witness testimony, there are things that I haven't finished that I would have liked to have finished. But the core of my book *Colorblind Injustice*—

ASPATURIAN: That came out in 1999, I think?

KOUSSER: Yes. The core of it is five chapters, each of which was an expert witness report. So, it's become another part of my scholarship.

ASPATURIAN: Kind of a laboratory in a way for you.

KOUSSER: Yes, it is. I mean, I would have liked to have finished the book on *Cumming*, and I should have done, but every time I get really involved in this, another case comes along, and it's hard to turn them down. And there are articles that come out of these cases. I've done a lot of California voting rights cases [*see sessions Six and Seven*], and I'm going to do an article on the California Voting Rights Act [CVRA], so that's coming along. Basically, I've done more CVRA cases than anybody else has, including the two that have gone to trial, and I have a feeling of ownership of the CVRA by this point.

ASPATURIAN: One of the things I noticed in the *E&S* article is that Lance Davis is also quoted as saying he had occasionally been an expert witness. He apparently did not enjoy it very much, and he felt there were conflicts with scholarship. Did the two of you discuss this sort of thing at all?

KOUSSER: Not very much. I knew he didn't enjoy it.

ASPATURIAN: Yes, he made it quite clear.

KOUSSER: I think he did sports expert witness testimony. I enjoy depositions; I enjoy testimony.

ASPATURIAN: You also felt you were accomplishing something socially valuable, which is important.

KOUSSER: Yes, that's certainly very important. But I am *never* so focused as I am on the witness stand. Sometimes during the depositions, it's just me and the lawyer or lawyers, and the walls could collapse, and I wouldn't notice it, basically.

ASPATURIAN: During the later 1980s, with David Morrisroe perhaps shunted a bit off to the sidelines on some of this [*see Session Four*], what kinds of input did you get around Caltech about the work you were doing, either from the administration or within the division?

KOUSSER: Not very much, one way or another.

ASPATURIAN: Really? I'm surprised.

KOUSSER: I mean, here's a big difference. When I went to Harvard in 1981, the *Harvard Crimson* did a front-page article on me. That didn't happen at Caltech. We will get into affirmative action and attempts to have something to do with the admissions processes, at some point.

ASPATURIAN: We could discuss it now. Would that have been in the 1990s for you?

KOUSSER: I think so. But I had been rather vociferous about affirmative action for a long time. I'll tell you one story that goes back to the mid-1970s. Somehow or other I got put on a Caltech committee on affirmative action. Not just for the division but for the Institute as a whole. And we had virtually no women in science at that point. The only thing that I remember was that the head of the committee, who was probably a provost or vice-provost, called in the chair of the biology division, who at that point was Bob [Robert] Sinsheimer.

ASPATURIAN: I know that name. He went to UC Santa Cruz, I think.

KOUSSER: He became chancellor at Santa Cruz [1977].

ASPATURIAN: Right.

KOUSSER: At that point in science, there were more women in biology than anything else. It may still be true. But we didn't have any women faculty in biology at all. And I remember the meeting at which Sinsheimer was asked why we didn't have some women in the biology faculty, and he said, "We can't find anybody that's good enough for us." And the provost said, "Well, why are 50 percent of your postdocs female? Are they incompetent? And 25 percent"—or something like that; I forget the exact figures, they may be reversed—"of the people who get PhDs in biology are female. Can't you find *anybody*?" And it was very embarrassing. I didn't know what went on in the biology division at that point, but I was embarrassed for Sinsheimer and for Caltech, and somebody got the message because, fairly quickly, there started to be female faculty members in more divisions than HSS.

ASPATURIAN: Goldberger made it a mandate of his when he came in. I think he had dedicated slots within each of the divisions.

KOUSSER: Right. But it was *very* hard. I mean, it was as if women really just couldn't do that, couldn't run a lab, couldn't mentor graduate students.

ASPATURIAN: Did Sinsheimer seem to perceive any contradiction in what he was saying, or was he just totally oblivious?

KOUSSER: He wasn't totally oblivious, but he had not been pressed on it before, and he did not come to this on his own. Women at Caltech. It was very hard to push for more women at Caltech; it was very hard to get female students. You've probably heard about the Cain report on undergraduate admissions.

ASPATURIAN: I remember the Cain report. When was that, was that? Mid-1980s?

KOUSSER: It may have been. Its basic finding was that girls did worse on SATs, but they had better GPAs as entering students.

ASPATURIAN: Worse on their verbal SATs as well as the math?

KOUSSER: I think worse on the SAT combined. But once they got here, women outperformed their SATs and so the argument was that you had to reweight things to put more weight on the GPAs than the SATs, and if you did that *and* you had *very, very* aggressive recruiting then you could get over that. We were stuck at something like 15 percent women undergraduates.

ASPATURIAN: Yes, it was very low. Were you on the committee?

KOUSSER: No, but I heard about it from Bruce and other people. So not only did they reweight the admissions criteria, but they also decided that they would send the girls who were here back to their high schools to try to recruit other women, and they did that very aggressively, just a big bam! push, and in a couple of years the proportion jumped up from like 15 percent to 25 percent.

ASPATURIAN: Caltech also brought in an admissions director from MIT, Daniel Langdale, who was very proactive and kind of a breath of fresh air in all of this, I think [1988–1991]. I remember him. He’s dead now, sadly.

KOUSSER: Yes. I agree with that. And that wasn’t the only person that they brought in from MIT, probably not at exactly the same time. I can tell you a little story about that.

ASPATURIAN: Sure.

KOUSSER: How did I get to know Jim [James] Bower? I think I was on the faculty board for some time with him, and we hit it off. And because of his and Jerry Pine’s Project SEED [Science for Early Educational Development], the admissions people decided that they would hire a minority outreach coordinator. Jim and I were on the committee to choose this person, and we chose—he was from MIT— Eddie Grado.

ASPATURIAN: I remember Eddie Grado.

KOUSSER: And we brought him in, and he had not only admissions responsibilities but also retention and outreach responsibilities, not only to the people that we wanted to recruit, but to the minority students in general. And the major thing he did concerning minority students was to run a summer program [Caltech Secondary School Summer Science Program] that got *completely* changed from what it had been before. Lee Browne had run it previously, and it had started out by attracting a whole lot of underrepresented minorities, but he didn’t get very much support from the administration, and it sort of devolved into another gold star basically for Asian-American students. I remember going to a kind of open house for this, and there were all these basically Chinese women with their sons and daughters in tow, pushing them to do this.

ASPATURIAN: Well, they are a minority.

KOUSSER: Yes, that’s true, but they weren’t the people that we were having trouble recruiting.

ASPATURIAN: I understand.

KOUSSER: All these “tiger moms”—not called that then—were doing great things, but that wasn’t what Caltech particularly needed. So, Lee retired, and Eddie was his replacement. And he developed a sort of coterie of students, not all minority students, but very interesting kids. In the first place, he knew a lot of what was involved, since he’d done minority recruiting for MIT. He had contacts already—contacts with the science teachers in San Antonio and El Paso and Los Angeles—there’s nothing to replace that. He was so married to Caltech he gave his girlfriend headaches. She was happy to take part in all of this—she was a very nice young woman—but he wasn’t home very much. [Laughter] He was always out on the road.

Eddie was here, I think, for two years and increased the number of African-American and Latino students from almost nothing to twenty or thirty per freshman class. The summer program that he ran was just marvelous. We had an advisory committee that had all sorts of faculty members on it and some outside people who were on the Caltech Y board, things like that. There was a former congressman from Riverside who was on it. And we all got together and read letters of application from these kids and, if necessary, we would help recruit them. They were often kids who were not going to go to Caltech.

My son’s lab partner at Muir [High School] from chemistry class or something was in the summer program one year. She was a woman who had gotten pregnant. Muir had a program for pregnant kids that worked very well, so she could get daycare for her child, but she had dead-end written all over her. She was sixteen years old and pregnant; her parents had not gone to college. She was absolutely transformed by this program, and she gave a talk at the end of it that had everybody in tears. I think she went to Cal State L.A., something like that. Maybe she’s a scientist now; she certainly looked like she was a promising, smart kid; but she was not the only one who was transformed by this. And Eddie used the minority kids who were students here as instructors in the summer program.

ASPATURIAN: Role models.

KOUSSER: Yes, they're role models, but also, they're kids who think they're coming into a white-Asian American environment. Have they betrayed their communities? Have they left their roots behind? Are they still Black? And they became role models for themselves.

[PORTION TEMPORARILY CLOSED, pages 195-196.]

ASPATURIAN: Was there a replacement for Eddie? I can't remember. I believe there was, but I'm drawing a blank.

KOUSSER: Yes, there was a replacement; I've forgotten his name. He was much more bureaucratic, and he didn't do as wide a swath of things. He didn't relate to the students particularly; he had a home life himself, unlike Eddie; and we were unable during the time that he was here to recruit very many students, and so the URM recruitment efforts really completely fell off the cliff.

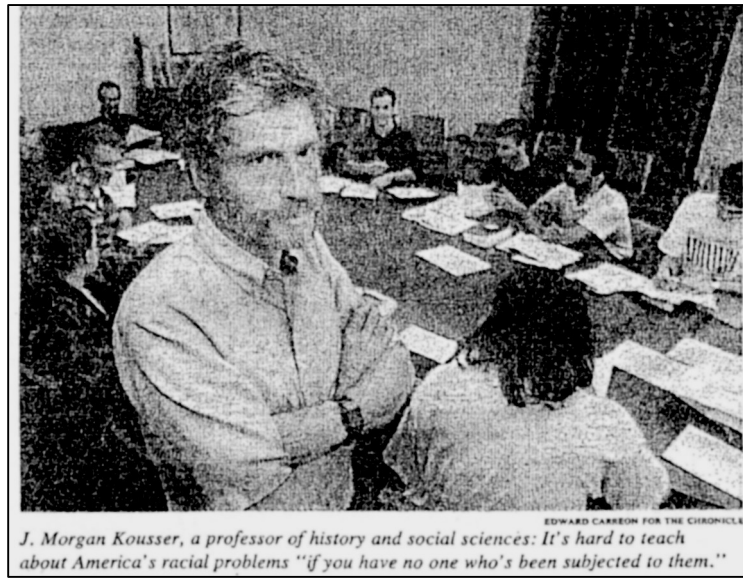
ASPATURIAN: Was your focus primarily on underrepresented minorities, not so much women?

KOUSSER: Yes. By that point, women—

ASPATURIAN: They'd reached a critical mass, of about a third, I think. I wanted to go back to—

KOUSSER: Just one more aspect to this story. During the time that [David] Baltimore was president, the efforts to recruit African-Americans and Latinos had fallen off so much

that we had something like three out of five classes that had no Black students at all. And the *Chronicle of Higher Education* noticed this and decided to do a story on it. They were trying to find some professor here who would say that it made a difference in his classes not to have any Black students. So, they found me, through James Lee. They sent out a photographer, and so this photographer shows up at my Supreme Court class.



Kousser and his Supreme Court class as featured in an April 2000 issue of *The Chronicle of Higher Education*.

I had been told, and I told the students that he was going to come. And there was a female student who was perhaps gay, who often wore to my class a bright pink T-shirt that said “Flaming Dyke” in sequins across it. And I toyed with the idea of emailing her before the class and saying, “Please don’t wear this T-shirt.” [Laughter] There was also a bunch of students who decided to give *me* a T-shirt and make T-shirts for themselves, that said “Heartle\$\$ Con\$ervative,” with the s’s made to look like dollar signs. And one of them wore that shirt on that night, and I kept crossing my arms across my chest, sort of indicating to him that he should do that too. [Laughter] So the photographer came. He was there for an hour-and-a-half, and he must have taken 150 to 300 pictures. I thought it was just astonishing.

And the young woman, who did *not wear* that particular T-shirt, was particularly verbal that night, and he became fascinated by her, because she was so articulate and knowledgeable; and so, I figured that her picture was going to be the one that they would

use. They ended up using a picture of me and a couple of other students—all the students were white—but it was quite funny. And then they got some quotations from me about how it really did make a difference when you're teaching *Brown v. Board of Education*, and you're not teaching it before an integrated class. It's like teaching *Roe v. Wade* with no girls in the class, or one girl in the class—even worse. So, I continued to be interested in affirmative action.

ASPATURIAN: What was the reaction on campus when that story came out?

KOUSSER: I don't know; nobody said anything to me [*see also Session Nine*]. I mean the administration reads the *Chronicle*—every university administration does—so I'm sure that they knew about it, and David probably wasn't very happy with it. I don't know; at least it seemed like there was somebody at Caltech who cared. [Laughter]

ASPATURIAN: I wanted to go back to Bruce Cain for one moment and ask you if you knew exactly why he left, and why Caltech didn't make more of an effort to keep him?

KOUSSER: Well, Bruce had been pretty controversial. He had done his dissertation on the Liberal Party in Great Britain, and he was rather a perfectionist. The fortunes of the Liberal Party kept changing, and he just couldn't get it together to finish the book. And so, after he did the Assembly redistricting project, he did a book about redistricting, and the feeling of a lot of my colleagues was that this was not really terribly serious, that it was too much to do with the real world and not theoretical enough. I mean it was full of statistics, but they were pretty simple numbers. And there was a battle over getting him tenured. At that point, Ferejohn, Fiorina, and Bates had all left. There were some other younger people who were around, but a lot of them left too—a whole series of people who felt less appreciated than they felt they should be. Economics is sort of to social sciences as physics is to science, or at least as physics used to be to science. Biology has the bit now.

ASPATURIAN: Right, I understand you're saying.

KOUSSER: But there's a sense that economists look down on everybody else. And that includes political scientists, even political scientists who do things with economists, in an economist's way. So, there was certainly a lot of feeling that Mo Fiorina, for example, just was not appreciated. So, when Harvard came along, Mo left. When Berkeley came along, Bruce left. Bruce could go up to Berkeley and become a seer quite quickly, which he wasn't here. Caltech does nothing whatsoever to get any social scientists any press. If I want an op-ed published, I have to do it myself; Caltech is not going to help. They don't get people to do radio interviews, television interviews. My son was a Bruce Cain student at Berkeley one year, having babysat for him when Bruce was at Caltech. When Thad [Thaddeus Kousser] joined the faculty at UC San Diego, San Diego put him in touch with all the local media immediately, so that he got picked up and was doing television interviews and radio—NPR—and all that sort of stuff very quickly. Caltech does none of that.

ASPATURIAN: When I was in the Public Relations Office, we did some of that, but from your point of view probably not much.

KOUSSER: Yes. I mean they'll do it for scientists to some degree but not for social scientists.

And so that had a big effect on people in the division. Bruce had had a difficult time; he felt underappreciated. Berkeley offered him an opportunity, and once he was there, he became associated with IGS—the Institute for Governmental Studies—and he was on television and radio all the time in the Bay area. I heard a story that when [Arnold] Schwarzenegger first declared he would run for governor [of California] during the recall campaign, he saw Bruce in an airport and immediately went over to him and said, “Oh, Dr. Cain, I see you on television all the time.” You know, sucked up as much as possible. That's fairly heady stuff.

ASPATURIAN: That brings up an interesting question and will kind of round this out. Did you feel like a second-class citizen at Caltech? Either individually or as part of the division? How did you see yourself here?

KOUSSER: I did, and I didn't. I mean, to some degree I felt like a second-class citizen in the division because economics was running things, and I could keep up with more economics at that point than I can now, but still it was sort of less intellectually sexy than if you're doing microeconomics and proving theorems all the time, or at least applying those theorems to something in economics. So, there is an intellectual sense that the smartest people are the people who do the most mathematics, and that really a connection with the real world is distinctly looked down upon. So, there was that.

About the Institute as a whole, I just didn't feel one way or another. I mean, I would be on committees; I told you about being on the committee that dealt with faculty retirement [*Session Four*]. And on that committee, I was treated like anybody else; people listened to me. There was some faculty meeting, and I made something of a presentation there; that was all fine. I didn't feel inferior to the physicists, but I wasn't dealing with them.

One more little thing in the late '80s related to this. Doug Rivers, a political scientist, got denied tenure in 1987. He was and is basically a polimetrician. He now runs YouGov, one of the big firms that does surveys through the Internet, and it's actually always on the news now. But he was a very smart guy. He came here directly out of graduate school, and I had already gotten to know him when he was still a graduate student at Harvard. I liked him a lot. There was nobody else to talk to around here for me, so I talked to him all the time. We would read the same books and talk about them.

ASPATURIAN: There was a real intellectual affinity.

KOUSSER: Very much of an intellectual affinity. He was and is very arrogant, even for Caltech. He was very pushy. But I didn't mind that at all. He didn't put me down, and there were things that I knew about that he didn't know about, and so he would just defer to me on those sorts of things, and we always had a very nice relationship. But he got denied tenure, and I thought that was outrageous. He didn't have a whole lot published, but everything he had published was very good, and he had a lot of stuff in the pipeline. So, the day after he was denied tenure, my vita was out the door.

I applied for three jobs, and one of them, at Northwestern, I very seriously

considered. So, I visited. If Northwestern had had more of an interdisciplinary program and if one guy who was sort of in transit from Chicago, and who I didn't think was going to come to Northwestern from all I had heard, had actually committed to Northwestern by that point—and who actually ended up there—I probably would have gone. It didn't help Northwestern that it was snowing when I came in late March or early April, and that when I went running one day with the wind whipping off Lake Michigan, I might have frozen to death. [Laughter] That didn't help so much. But I almost went.

ASPATURIAN: What in the end led you to decide to stay here?

KOUSSER: I didn't want to jump out of irrational anger, and although I enjoyed the people that I met and liked a couple of people in the history department, it didn't look like some of the people there were very happy and were going to stay. In fact, the person that I felt most affinity with did leave quite shortly thereafter. And there were more barriers between political science and sociology there than here.

ASPATURIAN: It was more siloed.

KOUSSER: Yes, it was more siloed. It was a hard decision.

ASPATURIAN: I bet, because you were very upset also over the departure of this colleague. Was that a division-wide decision?

KOUSSER: It was the social scientists.

ASPATURIAN: Most of these people were your good friends?

KOUSSER: Yes.

ASPATURIAN: So that must have made it difficult also.

KOUSSER: Yes. It was a nasty battle. And I really thought that it was quite unfair that instead of evaluating Doug on his abilities and promise as well as his achievements, they evaluated him on what they thought of as his personality. He clashed with a lot of people. UCLA hired him immediately with tenure, and then he moved on to Stanford, which has the country's best American history department.

ASPATURIAN: Not Caltech's best call, obviously. Was there jealousy involved in some of these decisions?

KOUSSER: I suspect so. The way that it got expressed was a feeling that he didn't treat his elders and betters with the deference that they thought that they should be treated with. And I think to some degree, it's jealousy. Things came pretty easily to him, and they don't come all that easily to everybody.

Anyway, a whole series of political scientists left. If we had kept all the political scientists that we had recruited, this would have been the best political science department in the world. So many really good people came through here and eventually left, and it was incredibly exciting while they were here.

ASPATURIAN: Did the administration ever try to sway the course of any of this?

KOUSSER: I don't know what the administration was doing. The administration may have made attempts to keep people that I don't anything about, but, you know, there are also more graduate students elsewhere.

ASPATURIAN: Yes, that's an important factor for many of these people.

KOUSSER: You would think that when they left, they would be moving to places where they would be relatively small fish in large ponds, but they were actually very big fish from the beginning wherever they went, even though the pond was very large.

ASPATURIAN: In your decision to stay here, did the fact also that you had established yourself as being able to do your expert-witness testimony without any difficulties play a part?

KOUSSER: I didn't discuss that with Northwestern, and that didn't really play a role. This was at a time that I wasn't doing as much expert witness work as I would be doing.

ASPATURIAN: I see. That revved up again in the 1990s.

KOUSSER: It revved up again with the redistricting case *Garza v. Los Angeles County Board of Supervisors*. And there will be lots to say.

J. MORGAN KOUSSER

SESSION 6

June 16, 2016

ASPATURIAN: When we left off, we were going to start talking today about your involvement in, I believe, it's *People v. Garza*?

KOUSSER: It's *Garza v. Los Angeles County Board of Supervisors*.

ASPATURIAN: Why don't I ask you to briefly give me an overview of what that was, and then we'll talk about how your involvement in it began, and how it evolved.

KOUSSER: OK. The Los Angeles County Board of Supervisors is an extremely powerful body. It's the largest local government body in the country—larger than the City of New York. From 1875 through 1991, it had no Latino members.

ASPATURIAN: That's 120 years.

KOUSSER: It's 116. This was despite the fact that, in 1980, the Latino percentage of the population in L.A. County was about 36 percent, and it was fairly heavily concentrated, so it was possible to draw a district fairly easily that could elect a Latino supervisor—so why didn't that happen? So, in 1988 the ACLU and MALDEF [Mexican American Legal Defense and Educational Fund] got tired of waiting for the Justice Department to sue, and so they sued L.A. County. The Justice Department then chimed in, finally. MALDEF knew that DOJ was considering a lawsuit and just pushed them into filing.

They were looking around for somebody to be an expert witness. They talked to Bruce Cain here, and he said, after talking to them, "You should go down the hall and talk to Morgan." So, they did. I talked to Mark Rosenbaum, who was then the chief ACLU lawyer in Southern California, and there was a MALDEF lawyer there as well. No Justice Department lawyer at that time. They indicated that there was some interest in doing an intent case, so I said, "OK, I've done that sort of thing. And so eventually I got

signed on for working on the face of it, for MALDEF.

And then the Justice Department, during the first [George H. W.] Bush administration, went whole-hog into this case. A bunch of DOJ people moved out here, took a six-month or a year-lease on apartments. It was led by Steve Rosenbaum—no kin to Mark, but my kids referred to them as the Rosenbaum twins. He headed a fairly substantial DOJ office. I’ve never seen the DOJ move to an area before; there must have been half a dozen attorneys out here, all very competent, very competent indeed.

ASPATURIAN: This was all under Bush One?

KOUSSER: This is under Bush One.

ASPATURIAN: That’s interesting.

KOUSSER: I worked closely with Steve and Mark and got along very well with both of them. Mark is probably the best courtroom lawyer I’ve ever seen. I mean civil litigation’s not criminal, so he’s not saying, “This man never, etc. etc., and how his childhood was bad, blah blah blah blah blah.” He’s talking about civil principles, but he is as good as if he was working on a criminal case. I am eternally grateful that I did not have to face him on the other side.

Mark would come to Caltech in his beat-up car. He went through at least three cars during this litigation, which didn’t finish until late 1991. He would come over and bring a couple of banker’s boxes of documents and say, “I don’t know what’s in here.” These were things that had been submitted to the Justice Department or from files in the County’s offices, and they hadn’t been cataloged, so they’d got what are called Bates stamps on them. It’s a stamp that assigns numbers to files, and if you work in legal cases you will learn about Bates stamps. I don’t know how Mr. Bates became so famous, but there are billions of Bates stamps numbers on little legal documents. So, the extent of their previous cataloging was such that they had Bates stamps up to something like six-digit numbers.

The Justice Department as well as eventually the ACLU and MALDEF, did depositions with people. I read sixty-five depositions in this case, one of which—the

longest—was 750 pages long. It was by a guy named Allan Hoffenblum who ran a report that looked at all of the California Assembly and State Senate elections. He was a Republican operative; he had been head of the 1972 L.A. County Committee to Reelect the President.

ASPATURIAN: For the record, that was Richard Nixon.

KOUSSER: That was Richard Nixon. Hoffenblum was from the “USC mafia” that was very much involved in Watergate. There was another guy named Ron Smith, who died last year or the year before, who was a major Republican political consultant of considerable expertise. He could have gone much higher: When Reagan got elected president, he moved to Washington with him—and then they found out he was gay, and the administration dropped him like a hot potato. But he was still an important political consultant in California and actually had an international practice; he helped the Russian president [Boris] Yeltsin in his reelection campaign.

ASPATURIAN: They didn’t care that he was gay.

KOUSSER: Yeltsin didn’t, but maybe some other people did. That campaign was all run by California political operatives. [Laughter] But several of the members of the Board of County Supervisors said absolutely *nothing* in their depositions. They had appointed an advisory committee for the redistricting that included people with Spanish surnames, African Americans, women, whatever. They did absolutely nothing.

ASPATURIAN: They were window dressing?

KOUSSER: Absolutely window dressing. And it was quite comical, after a while, reading what those supervisors said about them. They didn’t know whom they appointed to this committee, etc. etc. There were depositions from political activists—people who had run against Ed [Edmund] Edelman in supervisors’ District 3, etc. Just all sorts of things. The most interesting ones were from Hoffenblum and Smith, who actually *did* the redistricting in 1980 or ’81 for the supervisors. But it was just fascinating to read all this

stuff. So basically, for eighteen months, while teaching full time and all that, I read all of this and put together a case on intent. And Steve Rosenbaum told me, either during the trial or shortly before it, that DOJ actually hadn't been intending to put on an intent case until he read the first two-thirds of my report, and then they decided to do that. In the actual trial, I testified very early.

ASPATURIAN: In person?

KOUSSER: In person.

ASPATURIAN: Where was this trial held, exactly?

KOUSSER: Downtown L.A.—the federal district court. Judge was from San Marino, a moderate Republican, I guess. But very smart, very responsive. We got along *perfectly* well. One small story about this: Yvonne Brathwaite Burke had been appointed to the County Board of Supervisors by [Edmund G.] Jerry Brown during his first term as California governor. The guy who was elected in 1978 to represent District 4 had resigned for reasons that were not clear to me, and after she got appointed in '78 or '79, she had to run for election there in 1980. The Fourth District was then almost entirely a coastal district—South Bay. It was not heavily Black, and she was running as the Black candidate; and if you remember Ms. Burke, she was quite attractive. She had worked her way through USC Law School as a model.

So, you would think normally that a candidate running against her, who was Dean Dana, would not put her picture on his campaign literature, but he did. A heavily darkened picture of her. She was not very dark-skinned. And he put billboards up around the district that said, "Yvonne Burke voted for busing." Well, busing has nothing whatsoever to do with the County Board of Supervisors. She had, when she was in Congress, voted against an anti-busing amendment. And so, I explained that in my testimony, and the judge said, "What? Could you say that again?" He had actually, I think, been a classmate of hers at USC. And so I explained it again, and he managed to, you know, keep his temper under control and just said, "Yes, noted." But you could tell he found this outrageous.

ASPATURIAN: Yes.

KOUSSER: Well, to go back to the trial just a second. Everybody had thought that this would be an effects issue under Section 2 [of the Fifteenth Amendment], because there had never been an intent case outside of the South. And so, the county didn't really believe that what I would say would be very important. They had hired private counsel—a guy named John McDermott, who was an ex-poverty lawyer. He had been a lawyer in California Rural Legal Assistance, and, as my daughter used to say, he had turned to the dark side. [Laughter] He had some guy working on my testimony—I wasn't even important enough, they thought, for John McDermott to pay me any attention.

So Lee Blackman, the attorney working with him, deposed me in Century City. Mark Rosenbaum and I go to this gigantic office building in Century City. It was so spiffy I could hardly believe it: I couldn't believe they were going to let Mark's car park in the parking lot. It was a Saturday morning—nobody else was there—and we were in the sort of foyer of this grand law firm. And Lee Blackman was totally unprepared. He had yellowed out things from my abstract—I'd put in a three-page summary, so if the judge didn't read anything else, he or his clerks would look at that and have some idea of what I was doing. The actual report was like ninety-three pages, a typical Kousser job.

And Blackman—I could see that the yellow was only on the abstract, and that he had done nothing else. There was a paralegal there with him—a young, pretty woman, typical paralegal—and every once in a while, he would sort of raise his eyebrows—no verbal communication whatsoever—and this young woman would sprint out, go to some archive, and bring back a document. And so I understood why this guy was being paid \$400 an hour—because he could communicate telepathically. [Laughter] But he did not do very well, and he did not get anything useful out of the deposition.

So we went into the trial, and they just got *nothing* out of me, and everything that I said was unchallenged, basically, and anything that didn't go right, Mark cleared up on redirect. And then the trial got into about two or two-and-a-half months of back and forth, which was totally crazy. There was a standard in the Ninth Circuit at that point that in order to win a Section 2 case, you had to prove that you could draw a district that was 50 percent Latino citizen voting age population.

ASPATURIAN: Should we just step back for one moment and go over what the main issue was in this case with regard to that dispute?

KOUSSER: Well, there were two issues really. One was a Section 2 issue; and there were two issues under Section 2. First, was there racially polarized voting or not? Second, could you draw a district that was 50 percent-plus-one Latino citizen voting age population—CVAP. I didn't have anything to do with racially polarized voting in this case, but the county got a Berkeley statistician and paid him \$300,000, to come up with a new method that applied regression analysis in exactly the same way that the plaintiffs' expert witnesses had but came up with different results. And what they were trying to do was to say, "You can't be sure that there was racially polarized voting." And since the plaintiffs had to prove that there was racially polarized voting, if the county could simply muddy the waters, that would be satisfactory. So that issue was basically something of a draw.

The other issue was, could you draw a 50 percent CVAP district? The trouble was that the 1980 census did not measure Latino CVAP at the census block level. It only measured Latino voting age population, not citizen voting age population, and so you couldn't tell whether you could draw a 50 percent district. So, they had the great demographic stars of the country come in, clashing against each other over whether you could draw a district that was 48.9 percent Latino CVAP, or 53.1 percent or whatever. But nobody really could tell, because what they were doing was taking the national proportion of CVAP to VAP for Latinos and projecting it down to the block level in Los Angeles, and that was crazy. Everybody knew that they were nuts. So that issue was also sort of nullified. They spent an incredible amount of time on that, boring the judge and everybody else, I think. And it was essentially a nullity.

So those two issues were a draw, more or less. So, what was left? Intent. So, the first third of the judge's opinion was directly drawn from my report, and a third of his findings of fact were more or less taken entirely from the report. And then it went up to a panel of the Ninth Circuit Court. And it got a unanimous opinion on intent, with a concurrence by Judge [Alex] Kozinski, who is a Reagan appointee and a very prominent judge nationally. He wrote a very good concurrence about intent in the case, which quite

soon became the language that was quoted in the DOJ standard Section 5 objection letter. So even though L.A. County was not a covered jurisdiction under Section 5—it later became one, but it wasn't at that point—when the Justice Department sent out an objection letter, it quoted a paragraph or two from Kozinski's opinion about intent. Well, I had put together the intent case. So, that was fun. And this case was appealed to the U.S. Supreme Court, and the court summarily affirmed the Ninth Circuit opinion. So, it stayed. But more people in California knew about me after that.

ASPATURIAN: What was the upshot of it all in terms of what happened, politically?

KOUSSER: Well, the board is “non-partisan,” but it was 3:2 Republican at that point.

ASPATURIAN: I remember that, yes.

KOUSSER: And most of the Latino district was carved out of Pete [Peter] Schabarum's district—the First District—and that's what Gloria Molina eventually won. But the county proposed pulling together parts of two districts that were essentially Black and Latino in south Los Angeles, and Latino in east L.A. and a little out to the San Gabriel Valley. Essentially this was to be the Democratic district, with the Republican districts surrounding it. It just put all the Blacks and Latinos together. But they eventually drew a district in, basically, east L.A. and the San Gabriel Valley—Alhambra, El Monte, that sort of thing. And then it had a very, very, very narrow corridor that went up and grabbed Ed Edelman's house, in Hidden Hills or some place in West L.A. Putting him, with a lot of money, a lot of visibility, a lot of experience, a lot of friends, in a district that was about 80 percent Latino in gross population. Well, nobody wanted that except some of the Republicans, and the judge turned that down.

So the Justice Department drew districts, and MALDEF and the ACLU all drew districts, and they were very self-conscious about what they did. And Schabarum had an aide—a secretary who had a Latino surname—so they tried to run her, and there were three or four other people who ran, and Molina, who was on the L.A. City Council at the time, ran.

ASPATURIAN: This is District 1?

KOUSSER: District 3 was the district that was most Latino, and I had a map I put together. Nobody else had done this. I put together a map that showed all of the proposals for changing District 3, which was the most heavily Latino district from 1959 through 1981. It showed what was then adopted and also contrasted this with the growth of the Latino population. The Latino population was increasing from a base in east L.A. into parts of the San Gabriel Valley, and now it's throughout a good deal, almost all, of the San Gabriel Valley. It wasn't so much in San Fernando Valley as it is now. Anyway, District 3 first jumped over the mountains and moved to the west San Fernando Valley, and if you looked at where the Latino population was growing, the Latino population was growing east, basically, and District 3 was moving west and north.

ASPATURIAN: I'm amazed that with all the assets at their command, all the money, the supervisors weren't better prepared to defend their case. Had they just gotten lazy and complacent?

KOUSSER: After I testified, or at least after I was deposed, John McDermott tried to hire Steve Thernstrom. But it was too late by that point.

ASPATURIAN: He was at UCLA at the time?

KOUSSER: No, he was back at Harvard.

ASPATURIAN: Oh, they wanted him to come out, I see.

KOUSSER: When he was at UCLA, he'd written an important book on Los Angeles, so he was sort of a legitimate witness on those grounds. But it was too late. They just couldn't get Steve in. So, there was *nobody* to refute me at all. All they could do was to try and tear me down on the stand, and they weren't prepared to do that. So, because the other evidence was inconclusive, intent dominated the case.

So that was fun. I eventually worked in several more cases in California,

including three cases in Monterey County. And interestingly enough, in one of those cases I worked *with* John McDermott, who by happenstance was on the right side. [Laughter] And we actually worked together extremely well. Sometimes you find that you and a lawyer work well together; sometimes you don't. I don't know what predicts it. One thing that predicts it is when I'm working with a female lawyer; somehow, I always do better that way. [Laughter] But I just worked extremely well with John.

I remember finishing a report the night that my son graduated from high school and coming back over to my office here after he gave his valedictory address, and we had a dinner. They still used fax machines at that point. And so about three o'clock in the morning, I faxed my report over to John's house and woke him up. Interestingly, the lawyer for the other side was Lee Blackman. [Laughter] Lee was by that point rather gun-shy, but the deposition went extremely well, and so in the redirect examination we wanted to finish by five o'clock, and we finished like ten seconds off. Every time I would anticipate what his questions were, he would anticipate my answers. But we hadn't worked together all that much; it was just perfect. Bang bang bang bang.

One more little story about *Garza*. Lawyers try to be overbearing, and often they succeed. And so, at one point during my deposition in the case, Lee Blackman sort of reared back and said, "Dr. Kousser, do you consider yourself some kind of *intentologist*?"

ASPATURIAN: [Laughter] What did you say to that?

KOUSSER: Mark and Steve Rosenbaum, who had actually not been very active in the deposition, jumped on him, and objected for about five minutes. Then they finally shut up. So, I told him about the first paper that I ever did, which was on whether Nashville had turned down a metropolitan government on the basis of racially discriminatory intent [Session Four] and then brought in a lot of other stuff, and said, "You know, I have been working on racially discriminatory intent and the adoption of electoral mechanisms all of my adult life. So, whatever you want to call that—"

ASPATURIAN: "That's what I do." So, when did the final ruling come down in *Garza*?

KOUSSER: It was '91.

ASPATURIAN: Was your name attached to that in a fairly public way?

KOUSSER: Well, I was cited a lot in the district court of appeals, and *Time* magazine had a sentence or so about me. Bill Boyarsky for the *L.A. Times* actually had a paragraph or two about it, and he later told me at a conference where he heard me talk that he had never really thought that redistricting was a very important thing in local government, but that he had completely changed his mind. I was very happy. He actually said that publicly at a conference in Berkeley. My son, who was a graduate student at Berkeley at that point was there, and I thought, “Oh, OK, maybe something’s finally impressed him.”
[Laughter]

ASPATURIAN: How did you feel? I mean, this was quite an achievement. L.A. was heading for its first Latino supervisor.



In February 1991, the day after Gloria Molina became the first Latina elected to the Los Angeles County Board of Supervisors, Kousser was interviewed by Larry Mantle on NPR affiliate KPCC’s simulcast *AirTalk: The Caltech Edition* about his role in the redistricting effort that led to Molina’s election.

KOUSSER: I was very happy, and I thought that the report was good enough that somehow, I should get it published, and I wanted to submit it to a law review because it

was too long to get published in a history journal. And so, I talked to Matt [Matthew] Spitzer, who'd gotten his PhD here in social science, and who was on the faculty here part-time and at USC Law School part-time—he later became dean of the law school. I went over to his office here and said, “Matt, what would it take to get this thing in a law review?” Well, there lots and lots of legal citations required, so he told me I needed to review what the case law for all this stuff was. So, I ended up expanding the article quite considerably to look at what the courts had said about intent, and it got published in a law journal in Virginia, and it's called, “How To Determine Intent: Lessons From L.A.” And in fact, the intent part of it eventually became a chapter of *Colorblind Injustice*.

That became somewhat important because I eventually came up with ten “intent” factors and ways to organize evidence, with plentiful citations from Supreme Court and lower court cases. I wanted to have published standards that would show, when I did intent cases subsequently, that I wasn't just making up testimony on the spur of the moment depending on what the evidence was. And that's actually been very useful, because when I get into other cases, I can say, “OK, I'm going to analyze this on the basis of the scholarship that I've written and if you want to see how it relates to, say, *Arlington Heights*, which is a major Supreme Court case on this, look in this chapter and that will explain it in considerably more detail than I can do here.” But it's all there.

ASPATURIAN: Is this now fairly widely used?

KOUSSER: It *has* been fairly widely used.

ASPATURIAN: Has it become kind of a rubric for this sort of thing?

KOUSSER: It *has* been something of a rubric. It was used in a case from Charleston County, South Carolina, and other people have talked about it as well. It was talked about in an Alabama redistricting case that was decided by the Supreme Court last year. I read recently that one of the expert reports referred to it and basically pulled from it. So yes, it's been used.

ASPATURIAN: What was the reaction here at Caltech? Were your colleagues interested? Were you asked to, like, give a Watson Lecture?

KOUSSER: No, I've never been asked to give a Watson Lecture.

ASPATURIAN: I think my office did put you on *Air Talk: the Caltech Edition* once or twice in connection with all this. We tended to be a little more on top of this, perhaps.

KOUSSER: Right.

ASPATURIAN: But nothing like a Watson Lecture?

KOUSSER: Nothing like that. Virtually nobody said anything to me.

ASPATURIAN: You had just reconfigured the political map of L.A., and nobody here said anything.

KOUSSER: No. I think the president mentioned it to me in passing, when it happened, but nothing more.

ASPATURIAN: That would have been Everhart. Did this kind of raise your profile in the legal community regarding this sort of thing?

KOUSSER: It did.

ASPATURIAN: In Los Angeles, it's a big deal.

KOUSSER: Yes. *Garza* was a really big deal. It's still a big deal. And it certainly raised my profile in MALDEF. I later worked for MALDEF, and I'm now working for MALDEF again, so it certainly did that. And I think it had a long-term effect in raising my profile around the country. I mean, almost immediately afterward, I worked in a case in Chattanooga [Tennessee] for the ACLU. I went and testified basically on racially polarized voting, but I also talked a little about intent. That was particularly fun. The

litigation had looked very good at that point. The *Gingles* case, which had been decided in 1986, basically said that under Section 2, you have to prove two or three things and if you can check those off, then you won—no matter who the judge was, no matter where you were. And I then held my one and only press conference after I’d testified, and the TV reporters had me walk down the steps of the courthouse out to the microphone.

[Laughter]

ASPATURIAN: Sort of like a *Law and Order* episode.

KOUSSER: Yes. They asked me questions, and there was an African American on the Chattanooga city council already, but only one, so a Black newscaster, playing against type, said, “Doesn’t that prove that there’s no racism in Chattanooga, etc. etc.?” And I said, “Well, you know, I’ve heard some testimony from African-American witnesses, and I’ve talked to a bunch of political activists here, and it seems to me there’s more than one qualified Black candidate who could run in Chattanooga.”

ASPATURIAN: [Laughter] Were you ever tempted to put the academic life behind you and go into full-time consulting, or open a firm to do this in a whole-hearted professional capacity?

KOUSSER: No, it’s really very academic stuff.

ASPATURIAN: Yes. But it could have been spun off, as we say these days.

KOUSSER: It could have been spun off but—no. I mean, the report that I did for the court was nearly a hundred pages long. When it got published as a *Law Review* article, it was 141 pages long, with 679 footnotes. And the sorts of questions that I was asking, and the sorts of materials that I was using, were not any different than you would use in academia, and one of the things that I really wanted to do was to transform the way that expert witnesses worked in voting rights cases—at the very least, to make the whole thing very open and academic. And as we were talking about last time, I did this article called “Are Expert Witnesses Whores?”

ASPATURIAN: That had been about a decade earlier.

KOUSSER: But the whole point was to talk about what the conditions were when you wrote an expert witness report and what they were when you wrote a report on the same sort of thing in academia. And that there are lots of reasons to think that you had to be more careful and objective, in an expert witness report than in normal academia. Because there are more people trying to find out that you're wrong.

ASPATURIAN: That the adversarial nature of the courtroom pushed you in the direction of being more rigorous.

KOUSSER: So, I wanted to bring those two aspects together. And if you leave academia, you can't do that.

I did want to talk about something else that happened in 1991. In 1990 there was a conference at the Brookings Institution on the thirty-fifth anniversary of the Voting Rights Act. I think that my being invited to the meeting had something to do with my work on *Garza*. There were to be five major speakers, with me as the lead-off because as the historian, I could talk about that had happened in the past. Brookings is a big deal, and it was a big deal conference. Lani Guinier was a commentator there, just to give you an idea. She hadn't been turned down for assistant attorney general for civil rights at that point, but she was well known.

Anyway, after I finished writing the paper I planned to present, I sent it to one of the people who was supposed to be a commentator, Don [Donald] Horowitz at Duke Law School, I think, and he was actually a friend of Abby Thernstrom's—more Abby stories today [*see also Session Four*]. The talk I planned to give was entirely about the two Reconstructions. But it had more about the second Reconstruction, which I had added since my 1981 congressional testimony [*Session Four*], and some of the discussion of the Second Reconstruction definitely had a good deal to say about Abby Thernstrom, who had published a book in 1987 that was basically an attack on the Voting Rights Act.

Her basic argument was that the Voting Rights Act was meant to deal only with registration of voters, that it had nothing to do with electoral structures anywhere, and that it had become an affirmative action program for minorities, placing them into packed

districts where they could win but that actually reduced their influence in general. We didn't need Black faces in the legislature; we needed people who were responsive to Black interests in the legislature. And basically, all the litigation since then had been wrong. So, I attacked that strongly in my paper. Horowitz sent a copy of it to Abby. Abby then contacted Brookings.

ASPATURIAN: She was at Harvard with her husband?

KOUSSER: She was at Harvard with her husband, but she never had a permanent position at Harvard.

ASPATURIAN: OK.

KOUSSER: She lit into Brookings and demanded that all comments in my paper about her be withdrawn.

ASPATURIAN: She threatened legal action, I would assume?

KOUSSER: No, she didn't threaten legal action. You couldn't convince a court that an academic—

ASPATURIAN: OK, I just wondered how far—

KOUSSER: I don't know what she said to them, but my friend Chandler Davidson, a sociologist from Rice, who also worked as an expert witness and who was organizing the session, called me up and said, "Here's what we're presented with. What would you be willing to do?" And I said, "I'm not willing to do anything; this is part of the paper; I'm going to present it." And so, I think I talked to Chandler a couple of times. And eventually Tom [Thomas] Mann, who is a very prominent political scientist at Brookings, as well as a commentator, pundit, etc. etc., himself called me up. It was like hearing the voice of God. He also demanded that I cut this out. And so at that point, I said I wasn't going to change this and threatened to withdraw.

So, they actually redid the conference schedule entirely. Instead of a thirty-minute presentation, they limited the presenters to ten minutes, so when I actually spoke, I didn't have time to say anything about Abigail Thernstrom. But I insisted that the original paper be in the published version, and they caved, finally. They had come back to Thernstrom and said, "OK, would you like to give a paper, or would you like to be a commentator?" And she had declined on the grounds that there wasn't enough time. It was something like four months before the session. There wasn't enough time for her to write a paper, and she didn't want to get into the hurly burly of commenting.

So, this whole conference got changed around because of her, because she was going to say, "This is biased against the Republican Party; this is biased against conservatives, etc. etc." So, they substituted as a commentator on my paper a guy named John Dunne, who was Assistant Attorney General for Civil Rights in the Bush administration.

ASPATURIAN: Bush One, again.

KOUSSER: Bush One. And he had been the overseer, really, of the DOJ during *Garza*. So, I had not met him before, but he was a liberal Republican—a Rockefeller Republican from New York. He knew who I was, and he was no doubt getting information from his people, and they were saying, "You know, this is a good paper" or something, so he was very complimentary etc. So, I mean, we had this still liberal part of the Republican Party. And I mean it's wondrous to think how—

ASPATURIAN: How long ago it all seems.

KOUSSER: Yes, but it was different then. And I just could not believe that Brookings Institution— I mean if this had been a Heritage [Foundation] or Cato [Institute—two conservative American think-tanks], something like that, surely they would have cut me out entirely—if they had ever even invited me—but I couldn't believe that she had so much leverage over Brookings.

ASPATURIAN: Well actually while we're in the early 1990s, in '91, you had this explosion in Los Angeles with the Rodney King incident, and then of course the verdict in Simi Valley. Were you called upon to comment or react in any way?

KOUSSER: No. There was nobody out there saying, "What do you think about the state of race relations in L.A.?"

ASPATURIAN: In '92, you and Doug Flamming and, I believe, Elizabeth Gerber, established the Race, Politics and Region Program here. What were the antecedents of that—I have a copy of the press release here.

KOUSSER: We were all interested in race relations in L.A. Doug was sort of moving toward doing research on his book on the history of Blacks in Los Angeles.

ASPATURIAN: I remember that, yes.

KOUSSER: And so, he was interested in that. I'd done *Garza*; Liz was interested in all sorts of things about race relations, and L.A. seemed like a good place. So, we sort of put that together for a while, and then eventually Liz left, and Doug left.

ASPATURIAN: We talked about Doug leaving [*Session Four*]. Why did Liz leave?

KOUSSER: She got married to Skip [Arthur] Lupia, who had been a graduate student here, and Skip's first appointment was at UCSD, and she moved there with him. Actually, when she decided that she was going to leave San Diego, she contacted my son, Thad, who was a graduate student at Berkeley, and not planning to finish up in his fourth year and said "I'm leaving UCSD; you should finish up so you can get the possibility of that job, and so he did, and he did. [Laughter]

ASPATURIAN: And the rest is history. But when you lost both of these colleagues, how did you feel about that? And the program, I guess from what you say, sort of just evaporated as a result.

KOUSSER: Well, I felt very bad. I had recruited Doug.

ASPATURIAN: You talked about that; helping him with his first book [*Session Four*].

KOUSSER: Yes, with the book on Dalton. And Liz was a Bruce Cain student from Berkeley, so I was very happy to have Liz around to talk to. I felt sort of bereft of colleagues at that point. I mean, I talked to Phil Hoffman, I talked to Lance Davis, but it wasn't the same. I wanted to fill Doug's position, but they wouldn't let me.

ASPATURIAN: How come?

KOUSSER: I think really it was a desire to expand philosophy at the expense of history and also, I think John Ledyard didn't want to do anything that would make it more likely that I would stay here.

ASPATURIAN: Yes, he had become the chairman right about then. He's an economist, I believe.

KOUSSER: He's an economist. At first, we got along OK. When he was executive officer [for the social sciences], maybe before he was executive officer, he had started a weekly lunch for both sides of the division, and he got me to continue holding that, which I did for about seven years. Every week we would have a luncheon at which somebody would present his work. Visitors, people who were here, etc. Lots of people came.

ASPATURIAN: Every week?

KOUSSER: Every week. I had to recruit all of these people at the beginning of every quarter, so it was not quite thirty a year but close to that. And there was more interconnection across the division than we have ever had.

ASPATURIAN: Before or since?

KOUSSER: Before or since. John started that and it was very good, but I kept it up for a long time. And then I finally said, “Ah, I’m tired of the recruiting hassle.” But, you know, at the beginning of the term I would talk to people who were visiting, and I would say, “Look, we hope to attract people who are not in your field, so try to make your talk as un-technical as possible. Please start out by telling us why this obscure eighteenth-century English novel is important and why should we care about it, or why you would care about this particular problem in theoretical economics.”

ASPATURIAN: Did it work?

KOUSSER: It did. People were very responsive, and they found out that they could talk about things in nontechnical ways. They never bother to do this anymore because there are seminars in both parts of the division, but they don’t even reach all of either half of the division. And I feel guilty about that, but on the other hand I did this for a very long time, and it was taking a lot of my time and effort and all that.

ASPATURIAN: Did you think that Ledyard, basically, did not want to expand history? He had other interests—

KOUSSER: He didn’t want history to get back to where it had *been*. Not even replaced.

ASPATURIAN: Have you any idea why?

KOUSSER: I think he wanted to build philosophy, and he was perfectly happy to have people who were stars like Dan Kevles and James Lee, and people like me leave. We haven’t filled the position in Chinese history until next year when a new person’s coming.

ASPATURIAN: And this is a campus with what, 35 percent, 40 percent Asian students, many of them Chinese American.

KOUSSER: And considerable demand for Asian history. We haven't even been able to get visitors in Asian history. The historians have pushed for an Asian history position for at least ten or fifteen years, and we've gotten nowhere until last year when we managed to hire somebody.

ASPATURIAN: Do you chalk that up to having a new division chair?

KOUSSER: I think that's a good deal of it. We did do a couple of searches, but the only offer we made at the end of one of them was to a political scientist who went to Duke, and he looked more social science-y and so was more acceptable to some people. We had a couple of good candidates in Asian history who I thought were really terrific, and the chair, whoever it was at that point, Ledyard or Jean Ensminger [Wasserman Professor of Social Science; HSS division chair, 2002–2006], just would not go forward with the appointment. They just killed it, regardless of the fact that the humanities people actually voted for them.

ASPATURIAN: Well, we can either at this point talk more about some of your very interesting committee work at Caltech during this era, or we can move forward to your expert witness testimony and then double back to your committee work. Do you have a preference?

KOUSSER: Let's talk about *Shaw v. Reno* and what happened after that.

ASPATURIAN: All right. I have 1993 as my date here.

KOUSSER: Yes. After the *Gingles* decision in 1986, the 1991 redistricting around the country opened things up for the first time to minorities in a very big way. The way that *Gingles* was interpreted by redistricting people was that if you could draw a majority–minority district, and you didn't, you were likely to face a Section 2 case.

ASPATURIAN: What is meant by a majority–minority district?

KOUSSER: It's a district where a majority of the potential voters are minorities.

ASPATURIAN: OK.

KOUSSER: If I've lapsed into jargon, correct me. And so, what happened in 1991 was an explosion of Black members of Congress from the South. There were five Black members elected to Congress from the South as a result of the 1990 elections. In the 1992 elections there were seventeen.

ASPATURIAN: This was the election that elected Clinton as well.

KOUSSER: Correct. What happened was a confluence of several factors. One was the interpretation of *Gingles* that was very widespread at that point. The second was a shift among white voters in the South toward the Republican Party. One of the things this meant was that it took a smaller number of Blacks in any particular district to win the Democratic primary because as a consequence of whites dropping out, the Democratic primary was blacker. So once Black candidates won the Democratic primary, they could then get a significant number of crossover white votes and get elected on that basis. The third thing is that during the Reagan administration, the Republican Party was growing in the South and it wanted to coordinate—which it did in some states but not in others—with the Democratic Party to draw majority–minority districts, because this meant there would be fewer Democratic districts.

There were some states in which this didn't happen—this coalition between the Republicans and African-American politicians particularly. One of them was North Carolina. The speaker of the Lower House in North Carolina was Black, but he was one of four Black members in the Lower House legislature, which has, I think, one hundred members. So, he had some control and power.

A little history lesson: North Carolina had elected the last Black member of Congress during Reconstruction. His name was George White. He was elected in 1898, and when he left in 1901, he gave a famous sort of valedictory address: We're leaving now but we will come back, etc. But it took seventy-one years before a Black representative from the South came back. Anyway, North Carolina during most of the

twentieth century was about a third Black. By 1991 it was about 22.7 percent Black population. It added a member of Congress in the 1990 reapportionment, and any time you add a member of Congress, there has to be some rearrangement of districts, and so they rearranged districts such that there was a district in eastern North Carolina that they thought that minorities would carry basically. And it doesn't look pretty if you look at it on a map and don't realize that the ocean causes great disparities coming in through lots of places in North Carolina. So, it looks nasty, but you don't have any choice in North Carolina; the ocean has done the boundaries for you. But they did not draw a district sort of centering on Charlotte, so the Bush One Justice Department said, "We've denied pre-clearance."

They said that since North Carolina had thirty-nine counties that were covered [by the Voting Rights Act], the state as a whole was a covered jurisdiction for redistricting purposes, and so any redistricting plan had to be submitted to DOJ or the district court, District of Columbia, for pre-clearance. They said, "You should draw us a second Black majority congressional district, or a second opportunity district for Blacks." So there was some back and forth. The Republicans in the legislature wanted to draw three Black majority districts; they were very ugly on the map, but they would take in virtually all Blacks in the state one way or another.

ASPATURIAN: Thus, guaranteeing white Republican majorities in perpetuity.

KOUSSER: Yes. And then the Republicans proposed a second district, and even came up with a three-district plan. The second district went from Charlotte to Wilmington along the southern border of North Carolina, and basically it eliminated two white Democratic districts. That was its purpose. But the best way to get from one end of that district to the other was actually to go through South Carolina. It was virtually impossible to get from Charlotte to Wilmington; there was no interstate that connected them, and you'd have to go up to Raleigh and then back down. It's a mess. There were no easy, even two-lane, roads through most of that.

So, a Black aide, I think, to one of the members of Congress came up with a plan that basically tracked Interstate 85 from the part of Charlotte that's predominantly

African-American, went up and picked up Greensboro, Winston-Salem—which have substantial Black populations—then went across, turned east and went across to Raleigh and Durham, which also have fairly large Black populations. About 185 miles long.

It’s actually a pretty reasonable district: It picked up urban Blacks, not just rural Blacks; so basically, it’s Charlotte, Greensboro, Winston-Salem, Raleigh, Durham. Thinking of it demographically, it makes sense. It doesn’t look pretty on a map, and the *Wall Street Journal* went *wild* about this.



Kousser in his Caltech office in 1993, the year he worked on the North Carolina redistricting case *Shaw v. Hunt*.

ASPATURIAN: The aesthetics were objectionable?

KOUSSER: They picked up a statement that had been made about a conservative Democratic district actually in 1980 in Texas, which was: If you drove up the interstate in a car with all four doors open, you would kill or seriously maim half the inhabitants of the district.

ASPATURIAN: It was that narrowly drawn?

KOUSSER: At one point it was narrow enough that it was one set of lanes. I kept telling people, “I know that statement came from Texas. This is not something that was originally made about North Carolina.” Anyway, so the Justice Department pre-cleared that district, and the Republicans filed two suits. One was a partisan gerrymandering suit that got turned down at the district court level, and they didn’t appeal. And the other was—

ASPATURIAN: What was it they found to object to? I mean, it wasn’t obviously the way it looked—

KOUSSER: It *was* the way it looked.

ASPATURIAN: That’s what they were objecting to?

KOUSSER: That is, in effect, what attracted all the attention. Their legal grounds were absolutely revolutionary. They said race could not be taken into account in the drawing of a district. That if you drew a district and you took race into account, you were violating the constitutional rights of the—what—five white people who sued. Two were members of one family: Robinson Everett was a Duke law professor; he brought suit, and his son was also a plaintiff. And there were three other plaintiffs including Ruth Shaw, who was a white friend of theirs.

ASPATURIAN: There’s something I’m not understanding here. I thought the Republicans sanctioned the idea of two or three majority–minority districts.

KOUSSER: But they didn’t want the districts to help the Democrats. These districts were drawn by a Democratic legislature, and they were intent on doing two things simultaneously if that was possible: Keeping as many white Democratic districts as they could and drawing another majority–minority district.

ASPATURIAN: Oh, I see.

KOUSSER: There had not been an African-American member of Congress from North Carolina since George White left office in 1901. Ninety-one years of a state that was 20 to 30 percent Black, and they could not elect anybody.

So Robbie Everett, who was a former military lawyer and then on the Duke Law School faculty, sued, and the Republican National Committee basically provided the money for the lawsuit. When I was in the courtroom—I'll come back to this in a minute—in the remand case of *Shaw v. Reno* (called eventually *Shaw v. Hunt*), the chief counsel for the Republican National Committee was at the counsel table with the plaintiffs in that case. So, they were clearly back in.

So, the lawsuit was filed, and the civil rights forces didn't really think that the opponents of these districts were going to win, because there was clear precedent on the other side, in a case from New York in the 1970s. There had been a State Senate district in the 1960s in Brooklyn that was majority Hassidic, I think, and for the 1970 redistricting, the New York State legislature split that district so as to create, eventually, a majority Black district. There was *no* majority Black State Senate district in Brooklyn, which was heavily African-American. The local Hasidic Jews sued, and the Supreme Court decided that if your purpose was to satisfy the obligations of Section 5, Kings County was a covered jurisdiction and had to pass a Section 5 review. And besides, the Hasidic Jewish community was not a recognized minority group; they were just white, and whites were overrepresented in Brooklyn even after these districts were created. So that was the major precedent. It's called *United Jewish Organizations v. Carey*. And if the Supreme Court had followed that precedent, they would have thrown out *Shaw* on the grounds that the plaintiffs had no standing.

ASPATURIAN: That is standing to file a suit on behalf of—

KOUSSER: On behalf of anybody. You have to prove that you were injured, that the injury is real, and that you're not just relitigating a policy issue where you've lost in the legislature.

ASPATURIAN: I remember this of course in connection with Prop. 8 not too long ago. [Proposition 8 was a 2008 California ballot measure to outlaw same-sex marriage. Approved by state voters, it was subsequently declared unconstitutional, first in federal district court and then by the U.S. Supreme Court. –*Ed.*]

KOUSSER: Yes indeed. So, what was the injury that these five white people in North Carolina had suffered? They said that the injury was being forced to take part in an election in which race had been taken into account in the drawing of districts.

ASPATURIAN: That's an injury?

KOUSSER: It seems very tangential to me, and it seemed very tangential to Justice White in his dissent in *Shaw v. Reno*. The kind of injury that's often talked about in voting rights cases relating to legislative or jurisdictional structure is that you're underrepresented. But whites were overrepresented. They were overrepresented even with two Black members of Congress.

ASPATURIAN: And nobody was preventing them from voting or anything else.

KOUSSER: Right. And in fact, as it turned out, the two plaintiffs who were left after the Supreme Court made some rulings about how you couldn't have standing to sue unless you lived in the district—which was a crazy ruling in itself—voted for Mel [Melvin Luther] Watt, who was the Black candidate, who won. So how were they hurt?

ASPATURIAN: Why were they filing the suit, in that case?

KOUSSER: Robbie Everett was against affirmative action and wanted to file this lawsuit.

ASPATURIAN: Even though he had no problem supporting the African-American candidate.

KOUSSER: He had no problem supporting the African-American candidate; he just wanted a “colorblind process.” But the idea that the redistricting process, was “blind” to the issue that had dominated North Carolina politics since at least the 1830s—

ASPATURIAN: Was he just naïve in your opinion, or was this something else?

KOUSSER: No, he was not naïve. I was at a conference with him a good deal later, at Duke, and I just laid into him publicly. I don’t think he was naïve at all; I think he’s ideological. I don’t think he’s even particularly Republican, but I think he’s very ideological and the Republicans used him. Anyway, there was a 5:4 decision as it finally came out. Justice O’Connor wrote the opinion of the court.

ASPATURIAN: This was the Rehnquist court, yes.

KOUSSER: This is the Rehnquist court. And it was the same 5:4 line-up on almost all of the voting rights cases for the rest of the decade, including three more from North Carolina, one of which finally went the other way. O’Connor was the only person on the Rehnquist court who had ever served in a legislature and gone through a redistricting: She was a minority leader of the State Senate in Arizona during the 1981 redistricting. She knew better than to make the decision she did, but she made the decision.

ASPATURIAN: Do you think it was ideologically motivated?

KOUSSER: I think it was ideologically motivated but it’s hard—If you look at all of O’Connor’s jurisprudence on this issue, ten or twelve years later she made a decision that seems very contradictory to this. Basically, she said that the district in *Shaw* was ugly looking, and it provides a cue, because of its shape and demographic composition, to the member that he should only be responsive to that part of his constituency. Well, look—if you really want to see funny-shaped districts, look at Arizona in 1981. In Arizona, everybody lives in Phoenix, OK? The whole rest of the state, there’s nobody there, except Tucson. So, you’ve got all these districts that are coming from all sorts of places in the state, and they all go down to these little areas where they’re sort of wrapped

around Phoenix. So, she knew better than that. So, a funny shaped district “cues the representative to be unresponsive to basically a white constituent”? Well, what does a majority white district do about responsiveness to Black constituents? It’s just—it’s just an unequal way of thinking about this.

ASPATURIAN: After your number of years of relative success in many of these cases, how did you feel? You provided expert witness testimony?

KOUSSER: Not *Shaw v. Reno*, but then in the remand case.

ASPATURIAN: I remember that; we wrote about it, I think, in *Caltech News*.

KOUSSER: Yes. In the remand case, the question was whether there were compelling state interests, and essentially the ruling was that the compelling state interest would have been compliance with Sections 5 and 2 of the Voting Rights Act—a desire to overturn a history of racial discrimination. So, I wrote a long paper called something like, “120 years of racial discrimination,” and I looked at, for example, the North Carolina 1981 redistricting where the legislature was deadlocked for six months because the old, conservative white Democrat representing eastern North Carolina did not want a majority Black district. He didn’t want his district to turn majority Black, and so he and his allies deadlocked the legislature for six months to try to block this. Had race never been a consideration in redistricting North Carolina before? It had been *quite* a consideration.

So, there was that and a lot of other things, and also the argument, which I really pushed very hard and which the Supreme Court sort of disregarded, which was that the basic reason the districts were the shape they were in was partisanship. That the white Democrats wanted to preserve white Democratic districts. Sure, they had an interest in drawing a Black district, that’s true, but the districts could have been much less unwieldy in shape had they not wanted to protect white Democrats, and so the basic reason for the shape of the districts had nothing to do with race; it had to do with partisanship.

The Supreme Court rejected that argument. That’s now been re-litigated and is now very strongly being litigated in the post-2011 redistricting cases that are coming up now. I’m a little dissatisfied with the fact that they eliminated or disregarded that as a

reason when the Democrats ran redistricting in the South. Now that the Republicans have been running redistricting, it's coming back to bite them, but it's not clear how the Supreme Court is finally going to rule on this. It depends on whether we get another Supreme Court justice.

ASPATURIAN: That's right.

KOUSSER: But it was very hard to lose that remand case. It was extremely hard for me because I had to sit in the courtroom for three days, and they did not get to me. Robbie Everett kept a friend of mine on the witness stand for a day-and-a-half, I think, probably filibustering in some sense, because I had a very, very good deposition. It was taken at the law offices of the major integrated law firm in Charlotte. The head of the firm had argued before the U.S. Supreme Court in a Charlotte school integration case in the late 1960s, early '70s, and when he did that, his house got bombed. That firm had litigated all the integrationist cases and voting rights cases just forever, and Mel Watt, who became the congressman from the twelfth congressional district in Charlotte, had been a law partner in that firm. It was just a historic law firm; I was very touched, actually, to work with them.

I was working with the NAACP LDF; I loved the attorney that I was working with, a young Black woman from New York, pregnant as hell, wondering how she was making it during the summer heat in Charlotte.

But the case went very well at the district court level, except I didn't get to testify. The district court did not write about the intent issue, and if I had testified, it would have been more difficult for them not to put that in and more difficult for the Supreme Court to basically ignore that issue or to take the tack that they did in Rehnquist's opinion in *Shaw v. Hunt*. Rehnquist does mention me and basically says, "If the legislature had been aware of the sorts of things that are in this report, they might have had a compelling state interest."

But, of course, the legislature *was* aware. I have never seen a state where the liberals are more aware of the history of racial discrimination than in North Carolina. It's just amazing. There was a Black majority congressional district in the nineteenth century

called the Black Second, which had Black members of Congress all the way to 1901. And during the discussions in the 1980s and the 1990s Black members of the state legislature brought up this district, saying, “We’re doing the same thing that got done to us all that time ago.” So, Rehnquist or his clerks were being disingenuous.

ASPATURIAN: When you saw this happening in the courts, did you have a sense that it indicated that there was going to be a major political shift, or did you think you were just dealing with an anomaly? If you can remember.

KOUSSER: I thought it was a big shift. *Shaw v. Reno* was a big shift, and all the rest of the cases that came after that. I did a Shaw-type case in Texas that became *Bush v. Vera*, and I didn’t get to testify in that either. They just didn’t call me. I should have testified; I testified in a later case in Texas, and after I was coming down from the witness stand, one of the lawyers said, “We should have used you in *Bush v. Vera*”

I also wrote a long paper about Texas redistricting and got into Texas redistricting in a fairly big way. Every decade since 1961, a major redistricting case has come out of Texas. Everything that happens in redistricting gets to the U.S. Supreme Court eventually. In North Carolina they’re not aware in the legislature that everything that they say will eventually be part of a legal case. But in Texas they know that everything that gets said on the legislative floor, or in a committee hearing or whatever, will be used for one side or another, so they’re never going to say, “We don’t want another Black district,” for example. Texas is the most self-conscious state about redistricting I’ve ever seen, much more so than California, where I also did a case and then a long paper in 1990. Just to quickly say something about that: I worked for the California Democratic congressional delegation in 1991 and ’92.

ASPATURIAN: Is that an umbrella organization for the whole delegation? How does that work?

KOUSSER: It was a one-time thing, I think. The delegation does not get together very much, and it was split at this time. Democrats controlled the majority of the state legislature in both houses, but Pete Wilson was governor, so he vetoed the redistricting

plans. There had been three of them. One was meant to appeal to conservative Republicans and was endorsed by Newt Gingrich, who was not then so prominent as he became later. One of them appealed to moderate Republicans, and one of them, which would have elected more Democrats, was sort of a bargaining chip. When Wilson vetoed all three of them, he set up a temporary redistricting commission. The state Supreme Court later appointed a special master, and he redistricted. His plan was not very favorable to the Democrats and so the Democrats sued, and I was their expert witness. It was a partisan-plus-racial gerrymandering case.

So, as in North Carolina and Texas, an article—in fact two articles—came out of that. I did one article on how to tell if a gerrymandering plan is partisan or not and another on sort of the history of redistricting and race in California. So, at that point, by 1996 or so, I had three states where only I had done longitudinal studies of the recent redistrictings, and I was as expert as anybody was, at least on how those redistrictings went, and I even had some quantitative methods that I devised to illustrate these things. It was a redistricting decade for me.

ASPATURIAN: With the composition at that time of the Supreme Court, were there any arguments that you think would have swayed an O'Connor or more recently a [Anthony] Kennedy, or was the fix basically in from the beginning, given the growing ideological schism on the court?

KOUSSER: Well, one interesting thing about that is that in 1994, before the congressional elections, there was a Florida case in which Rehnquist and O'Connor shifted positions and came out essentially on the other side, and Souter wrote the opinion of the court. It was a pretty reasonable opinion. It was basically about some senate or house districts, in South Florida, and it involved something of a trade-off between essentially the Cuban and the Black population. But it was a typical opinion that Souter or Breyer would write. It was very fact oriented. It wasn't full of bumper-sticker slogans, etc. And it said, "Look, you don't have to draw majority-minority districts; the districting process should not relieve politicians of the necessity to 'pull, haul, and trade.'" So, you could draw a district that's 44 percent Hispanic etc. and let the damned candidates go out there and try

to recruit people from other communities.

Then the 1994 congressional elections came along, and it was a Republican sweep. The Republicans took over the House for the first time since the 1946 election, and by the time you get to 1995, Kennedy wrote an opinion that went farther than O'Connor's opinion in *Shaw v. Reno*. And it said essentially, if you put anybody into any district because of race, no matter what its racial composition or shape is, that's a potential violation of the constitution. So, *Miller* opens up, virtually, any redistricting plan to a challenge, and that was very scary. To give you an idea about the sort of boundaries, I was giving a talk somehow to local high school teachers.

ASPATURIAN: Recently?

KOUSSER: No, back in the 1990s. And somebody raised his hand and said, "Well, couldn't we have districts that track natural boundaries, like freeways?" To which my response was, "Only in L.A., is a freeway an Act of God." [Laughter]

ASPATURIAN: Well, maybe throughout a lot of California at this point, but yes, I agree with that.

KOUSSER: There's nothing natural about the process of redistricting.

ASPATURIAN: You grew up in the South. What do you think constitutes the mindset of people who are so resistant to opening the political system in a genuine way to minorities? You know what I'm saying. I think to just say all the time that it's racism may have some truth, but it's not an explanation.

KOUSSER: No, it's not an explanation. Some of it is policy oriented. Some of it is a feeling that certain people are not deserving. That they haven't done enough for themselves. But people have been saying that since slavery, and it washes a little thin when you hear the same sort of explanation eternally. People made the same comment during Reconstruction about the Freedmen's Bureau—that it wasn't deserved. Blacks had been slaves for several hundred years, but this didn't mean that they should get

anything extra. Suddenly they're free, so they should be just like everybody else. There is also a difference *in kind* of racial feeling among whites that changed over the course of the civil rights revolution and since then. In the 1950s and '60s, particularly in rural areas in the south, there was a great deal of contact between Blacks and whites.

There were a lot of Black maids, for example, and there was some connection between the families and sometimes the Blacks were actually wet nurses, so they would nurse white babies, etc. That's the most extreme, and that was pretty much gone by the 1940s, but. The areas were pretty integrated because if you were running a plantation with sharecroppers, you lived on the plantation, and the sharecroppers were right there, so there was interaction between these people. There were old ties, which were openly or sometimes not so openly, acknowledged. In my grandmother's family, there was a light-skinned Black child born out of wedlock, and there was a feeling that one of the uncles had something to do with that, and that family tie kept the relationship going, despite the fact that nobody on either side was openly acknowledging this.

ASPATURIAN: I understand, yes.

KOUSSER: There was an understanding between them, and you didn't have to say anything. My mother didn't learn about this until she was fifty or so years old, when she was finally decided to be "old enough" to keep this sort of secret. That's not true anymore. In Atlanta today, most of the suburbs are really quite segregated. All the big towns. Look at Memphis. Since the time that I first knew Memphis in the 1960s, it has become very much more segregated.

ASPATURIAN: Even among what we might call the upper middle classes, it's very segregated?

KOUSSER: Yes. Schools are still segregated; actually, they've re-segregated. By 1990 or so, the South was more integrated in schools than the North and the West, and that's no longer the case. That sense of disassociation lends a different quality to race relations. On the one hand, token integration is pretty easy under those circumstances, and it is not so threatening to anybody. On the other hand, the sort of genuine feeling that existed

between whites and Blacks, however hierarchical the relationship, is now largely gone. That's sort of an old racism versus a new racism. There are things good to be said about that old paternal relationship.

ASPATURIAN: For some people at some times.

KOUSSER: Yes. I don't mean to romanticize it at all, but there's a feeling of complete divorce now, and so lack of empathy is widespread, and I wouldn't have predicted that because Blacks are now more integrated into the workforce and more integrated into the political structure.

When I went to Augusta to do research in the late 1970s, the school board's records were in bound volumes in the school board's offices, and so I had to sit in those offices at a little desk that they gave me and read those things under their oversight, so they could make sure that I wouldn't rip a page out. But one of the things that I noticed while I was there was the ease of the relationship between Black and white teachers and school authorities and board personnel. At that time Augusta, which was close to majority Black, had gone through school integration in the early '70s, and it had been harsh and there was not a large amount of good feeling. The people who had actually gone through that, though, actually had an ease between them, and it wasn't any longer the patronizing hierarchical—

ASPATURIAN: Is this like the kind of thing we saw with Bill Clinton?

KOUSSER: It was like the kind of thing.

ASPATURIAN: He came out of that milieu to some degree.

KOUSSER: Oh, yes. Bill Clinton is much more at ease, and Jimmy Carter was much more at ease, as I was telling you, with Black audiences.

ASPATURIAN: Than, say, someone like Bernie Sanders [United States senator from Vermont], a white liberal from the North.

KOUSSER: Much more than Bernie Sanders and also more than George H. W. Bush. George H. W. Bush and George W. Bush, I don't think were racist at all. Bush One ran the terrible commercial about Willy Horton, but I think that was purely opportunistic on his part. But you can't picture them in the same way going to a Black church, going through all the little ceremonies, singing hymns and all of that sort of stuff. They're suburban people.

ASPATURIAN: Yes, I understand what you're saying.

KOUSSER: And I don't think Bill Clinton necessarily in his soul had more good feelings toward Blacks.

ASPATURIAN: But he had a higher comfort level.

KOUSSER: He had a much higher comfort level, and he was thrown into that milieu, and he had grown up in that milieu. He came from Hope, Arkansas—small town Arkansas, where Blacks and whites were intermingled all the time, even though it was hierarchical. So, there's been a change, and I don't know how you get there from here. I thought school integration and the integration of the work force, and the integration of public officials would have changed that.

ASPATURIAN: The election of the first African-American president.

KOUSSER: Yes. Instead, if you look at the message boards for the last eight years on any major urban newspaper anywhere in the country, particularly in the Deep South, the sorts of things that they say about Obama are just abominable, and the feeling this most obviously sort of Christian, open, President, who feels very comfortable in religion, maybe not as comfortable as Jimmy Carter, nobody felt as comfortable as Jimmy Carter, but—

ASPATURIAN: Jimmy Carter genuinely believed it all.

KOUSSER: Oh yes, I think Obama probably does.

ASPATURIAN: Oh, he’s probably an agnostic, but you know—

KOUSSER: Anyway, you know, 35 or 40 percent of the Republican electorate thinks he’s a Muslim. And [Donald J.] Trump [inaugurated as 45th president of the United States, five months after the completion of these interviews –*Ed.*] tweeted that again relatively recently. “Our Black Muslim president.” And you think, “Oh my, how can they—?”

ASPATURIAN: You don’t have any insight into that particular mindset?

KOUSSER: No. Not Trump’s.

ASPATURIAN: Well, no, that Republican mindset is all over the country; it’s not just the South anymore.

KOUSSER: Sure. It certainly exists in Southern California. One of the things that is most extraordinary to me is to have lived through an era of change from strict segregation to unquestioning integration of public accommodations, now pretty unquestioning integration of schools—though a withdrawal of a lot of whites—acceptance of Black-white sexual relationships and intermarriage. I think I told you before that once the public accommodation section in the 1964 Civil Rights Act went into effect, integration came to public accommodations *extremely* rapidly, within a year or two. It was just *extraordinary* to see.

ASPATURIAN: Like a hand had wiped everything away.

KOUSSER: And by the 1970s, seeing a Black and white couple walking down the street hand in hand was—maybe a couple of drunk kids would drive by and shout, “Nigger, get your hands off the white woman!” or something like that—but basically, it didn’t attract much attention anymore. And I can think of rationalizations for this. It’s a matter of individual privacy and a matter of individual rights; nobody’s forcing these people

together; they're together because they love each other. There is an acceptance of that from a sort of libertarian standpoint. Still, it's quite extraordinary that that sort of thing has happened. These are the sorts of things that we thought were going to be so resistant to change. And a lot of the things that we thought were going to change once there was integration didn't change.

ASPATURIAN: A couple of examples?

KOUSSER: The major example is the whites withdrawing from public schools, not only in large parts of the South but also, for instance, in Pasadena.

ASPATURIAN: White flight.

KOUSSER: White flight to private schools. White flight to charter schools. It's self-interest there, or at least perceived self-interest. Roger Noll was actually a consultant to Judge [Paul W.] Egly in the Los Angeles City school integration case *Crawford v. Board of Education*, and he said that they looked at San Fernando Valley schools that were overwhelmingly white when there were, what's called permits with transportation. Basically, Black kids with pushy parents in South Los Angeles were able to get bus transportation that would take them out of South L.A. to fairly empty schoolrooms in the San Fernando Valley. And Roger said that the tipping point was about 20 percent.

ASPATURIAN: He quantified it.

KOUSSER: When those schools became about 20 percent Black, whites started leaving. Now that's not an overwhelming number. You're going to have classes that are going to have very few Blacks, and you're going to have classes that are 40 percent Black, but it's still going to be a middle-class—basically, white, classroom and school. Still, white people thought, "Oh, there's going to be a degradation; ignorant people are going to come in." Hell, the people who are making the one-and-a-half-hour bus trip from South L.A. every day—these are pushy, ambitious people. They're going to make the classroom better, not worse.

ASPATURIAN: They're motivated.

KOUSSER: They're motivated; their parents are motivated. You get them there to play basketball or something but they're also going to be in physics classes and math classes, and everything else. And that's taking place in a lot of places in the South. There's a county in Mississippi now that's undergoing a difficult lawsuit, and I don't know for sure what I think about it. There are two high schools. One is almost 50:50 Black/white, the other is almost entirely Black, and the Justice Department and some litigants have come in and said, "This is unfair to the racially isolated Black students, and we need to equalize the schools, and essentially equalize the white population in those schools." And the whites basically are threatening to leave. They say, "We're in an integrated school that we like, but we're going to leave if we get sort of inundated, particularly since the most middle-class, most aggressive, most ambitious Black people are probably going to our school now." There's a lot of leftover racism there.

ASPATURIAN: That sounds more like a class issue to me.

KOUSSER: It *is* partly a class issue. These have always interacted actually.

ASPATURIAN: I've been thinking about this a lot since we started talking—the intersection of race and class is difficult to parse out in some of these cases. Very difficult.

KOUSSER: It is. You know, I don't know how much I would need to know to make a decision on this, but I have mixed feelings about that case going forward.

ASPATURIAN: A well-integrated school that's working; why not just leave well enough alone?

KOUSSER: Yes. But on the other hand, are people stranded in a school that's going to have a lot of remedial classes and have a lot of kids either dropping out altogether or

cutting back to part-time. It's a real dilemma. So, a lot of things aren't as easy as they looked like in 1965.

ASPATURIAN: No. Or as hopeful as they looked in 2008.

KOUSSER: Or as hopeful as they looked in 2008. On the other hand, I still think that this is going to be a landslide election, and that the Democrats are going to take the Senate back, and if things go really poorly for the Republicans, they could at least come close to taking the House back.

ASPATURIAN: You don't think it's possible the Republicans may still dump Trump? I mean there doesn't seem to be a moral fiber among them, but—

KOUSSER: No. I don't think that there is a rules-based way to do it.

ASPATURIAN: Since when have the Republicans really cared about that?

KOUSSER: It's just exceedingly difficult. I had not been aware that there was an effort in July 1964 to dump Goldwater and that Nixon was part of that. Good old Richard Nixon. He could be part of any shady deal. [Laughter]

ASPATURIAN: Yes, but he looks a lot more liberal now.

KOUSSER: Yes, he was. From time to time, when it served his purposes, he could be more liberal. His housing department under George Romney.

ASPATURIAN: Establishing the EPA [Environmental Protection Agency] also.

KOUSSER: EPA. Very peculiar. Anyway, I did a lot of redistricting in the 1990s, and became a sort of redistricting expert and became terribly concerned about all sorts of issues in redistricting. There was case I did in Monterey that was very interesting. To show you another part of redistricting, a couple of little obscure angles: Fort Ord was

still open in Monterey County, and it was a training base where people would do their six months or whatever of basic training. So, there was a huge turnover all the time, but since there were a lot of Black and Latino members of the armed forces, there were two towns on the edge of Fort Ord that had fairly heavily Black and Latino areas.

So, two things about that: It had been a single-member district, but when the Monterey County Board of Supervisors redistricted, there was a question about whether both of those towns should be put in the same area and what else should be put in. Monterey County is a heavily agricultural county—the Salinas Valley is quite heavily Latino, along with a lot of the north county. The city of Salinas is probably majority Latino now, while the city of Monterey and all those coastal areas are affluent white. Big Sur, etc. So how do you do this? And also, how do you slice up Fort Ord? Because the population of Fort Ord gets counted for redistricting purposes, but it turns over every six months, so it has almost no voters.

So, the supervisors would cut Fort Ord up into five slices—every board member got a piece of no voters. I called them “dead souls,” after the [Nikolai] Gogol novel, because they didn’t really exist. But they kept screwing over those towns, and so the towns sued, and John McDermott actually worked for the towns, and I worked with John on this. When he first called me up, I said, “What are you talking to me for?” And he said, “Well, I liked what you did in *Garza*, and if you want to check into whether this side is something you would like to represent, call up the attorney who is carrying the case for the Latinos.” And it was Joaquin Avila, who’s a friend of mine. I called him up, and he said, “It’s OK; John and I are cooperating in this case.” So, I took part in the case.

ASPATURIAN: Were you up there for a while doing research? That must have been nice.

KOUSSER: I was up there for a while. But I was in Salinas, not Monterey—the Steinbeck Public Library in Salinas. It had no typing tables, so I had a very heavy laptop on my lap while I was cranking the microfilm reader and reading the Salinas and Monterey newspapers. This went on for two or three weeks. Monterey County’s a very interesting place. Violent. Huge—John Steinbeck was from Monterey. *The Grapes of Wrath* really took place there. What’s that other book?

ASPATURIAN: *Of Mice and Men*?

KOUSSER: No. There's a much tougher book that's a prequel to—

ASPATURIAN: *East of Eden*?

KOUSSER: He did write *East of Eden*, but that's not it. It's an overtly Communist book about the 1936 lettuce strike [*In Dubious Battle*]. Steinbeck flirted with Communism, and the hero of the book in some ways is a Communist, and he gets killed—assassinated—in the end, and his headless body gets propped up on a chair or a stand, and this Communist organizer points to him and says, in the final words of the book, “This guy never wanted nothing.”

ASPATURIAN: Shall we stop there?

KOUSSER: Sure.

J. MORGAN KOUSSER**SESSION 7****June 23, 2016**

ASPATURIAN: Just before we started today, you mentioned you had an incident from the early 1990s you wanted to put into the record.

KOUSSER: Yes, it really started in the '80s. In 1985 when I was at Oxford, I got invited to an International Congress of Historical Sciences, which meets every five years, I think. And this one was in Germany. It was warm [laughter]; it was the first time that I had been warm in a year, being at Oxford. But I met a Russian guy there, who was a specialist in the United States in American history, and he had read *Shaping of Southern Politics*, I think, so he wanted to meet me. And we got along very, very well from the beginning. His name was Sergei Stankevich. We kept in touch one way or another, and he actually became, toward the end of the Gorbachev era, very important.

You perhaps remember that in 1991 there was an attempted KGB *coup d'état* against Gorbachev while he was on vacation at a Black Sea resort. Stankevich was one of the four people who were sent there to escort Gorbachev back to Moscow. So he was that important. He was in his early forties—something like that—articulate in English, handsome, intellectual. Eventually, a U.S. television network, I think NBC, did a thirty-minute program that focused on him. This was after the fall of the [Berlin] Wall [November 1989], and so lots of people were asking questions about how Russia and the former Communist Bloc were going to develop.

So, he was flown to Los Angeles for the premier of this show, and he called me up. When we met in Germany, we had said, you know, “If you’re ever in the United States...” or “If you ever go to Russia”—which I’ve not—we’d see each other. So, he called me up one night and said, “Morgan, I’m going to be in Los Angeles tomorrow, and I’m going to be at some Beverly Hills hotel where they’re putting me up; could you come over and see me?” And I said, “I’m sorry, Sergei; I would love to, but I can’t; I’m being deposed.” And there was a silence on the other end of the phone—and I realized that even though his English was quite good, there were nuances that he didn’t understand,

and that I had not thought of. [Laughter] Then I sort of stuttered around, trying to figure out what I could say, and I said something like, “Sergei, I’m standing up for justice.”

ASPATURIAN: [Laughter]

KOUSSER: And he said, “Oh, I’m sure that you are,” etc. Then I explained what was happening. But I got the impression then that even though you think you’re communicating clearly, sometimes there are difficulties here. [Laughter]

ASPATURIAN: What has happened to him since?

KOUSSER: He got accused, like all sorts of people in Russia, of doing some corrupt deals.

ASPATURIAN: This was under Putin?

KOUSSER: This was under Yeltsin. Under Yeltsin, there were all sorts of maneuverings by all sorts of people that I had no clue about, and so we lost contact entirely. I know that since then he was vice-mayor of Moscow. I don’t know what has happened to him. I don’t think he’s any longer the fair-haired boy that he was at that point, but it’s not at all clear to me that that was his fault. The toils of Russian politics and their crosscurrents are much too difficult for me to understand. Anyway, I thought that that was something that might be interesting to you.

There are a couple more things. I wanted to say something about the redistricting in California in the 1990s and in the 2000s, and the way in which my scholarly work and my sort of advocacy work came together in both cases. In 1991 and ’92 after the California supreme court had hired a special master to come up with a statewide redistricting plan, and that plan got challenged by the state’s congressional delegation, or most of it, one of the things that I was most concerned with was trying to compare different plans. But the key issue there was both a racial gerrymandering issue and a partisan gerrymandering issue. And so, one of the things that came out of my testimony, which our side lost, was an effort to try to figure out how to measure partisan gerrymandering, and to compare one plan against another.

And so I came up with a method and published an article on it, and then a long, long summary article on California redistricting from the 1970s through the 1990s. In the course of that, I had looked at the famous so-called Burton Gerrymander for the congressional races in 1981. Phil [Phillip] Burton, who was a very powerful Democratic congressman from San Francisco, claimed to have single-handedly kept Democrats in control of the U.S. House of Representatives by what he did in California. I felt that that was a complete exaggeration and compared plans to show that that was indeed the case.

I think that what happened is that he and Michael Berman, who was the one who designed the Southern California congressional districts, took care of their friends. Phil Burton's brother, John Burton, was also in Congress from Northern California, but his seat was in real danger because he had had alcohol and drug problems, and so Phil Burton transferred some of his "safe" areas to his brother. It turned out his brother dropped out of Congress and did not run in 1982, so even Phil Burton couldn't predict what was going to happen with his brother, but meanwhile he and Berman packed Democratic support into the districts of their friends. They managed to carve one safe Democratic district out of the Central Valley. And Burton almost felt an almost religious obligation to rid the Congress of Bob [Robert] Dornan, an Orange County Republican, so they took a lot of Democrats into their redistricting to do that. But after they did that, they didn't have enough Democrats left to spread around to do any good. [Laughter] You could show all of this in a fairly simple graph. So anyway, the point is that I was advocating for a position, but it also led to two big scholarly articles that were an attempt to generalize these methods so that anybody could use them. And then in 2001, I worked again for MALDEF, the Mexican American Legal Defense and Educational Fund.

ASPATURIAN: You'd worked for them in *Garza*.

KOUSSER: I worked for them in *Garza*. And from the beginning I had a scholarly aim, and that was to look at the California districts in the state legislature and in Congress from 1992 on and to try to figure out what it took to elect a Latino Democrat. The vast majority of Latinos in California are Democrats, particularly after 1994. I wanted to assess whether the shift that resulted in more Latinos getting elected was a shift in white

willingness to support Latinos or a shift in the demographic percentages within the districts.

ASPATURIAN: So, in the early 2000s now?

KOUSSER: We're in the early 2000s. And I'm getting all the data, all the ethnic identities of everybody who ran in the primaries and the general elections and trying to figure out which index is the most predictive. Was it population? Voting age population? Citizen voting age population? Latino proportion of the general citizen voting age population? Latino proportion of the Democratic registrants?

ASPATURIAN: So, you were working with a number of variables.

KOUSSER: Yes—to try to figure out what was the best predictor. And it was an attempt to get MALDEF to adopt whatever strategy the numbers came up with. So, this is what the basic story turned out to be: If over 50 percent of the Democratic registrants are Latino, 90 percent of the time, a Latino gets elected. If under 30 percent of the Democratic registrants are Latino, 98 percent of the time, a Latino does not get elected. It's the 30 to 40 and the 40 to 50 Latino percentages that are the most interesting, and in the 40 to 50 percent districts, with the Democratic registrants being Latino, Latinos won about 50 percent of the time. In the 30 to 40 percent districts, they win about 25 percent of the time. So, two things: One, in the primaries it's the demographic percentages, not the white crossover vote that's decisive. Two, once Latinos get the Democratic nomination, then they can expect more white crossover votes in the general election.

So, what you need to do if you're designing the districts to maximize Latino political influence is to design a lot of districts that are between 40 and 50 percent Latino. You don't put all of your marbles into districts that are over 50 percent Latino of the Democratic registration. And that was the strategy that MALDEF adopted in framing its plans. And so, the quintessential congressional district that moved from one where Latinos had a clear opportunity to elect a candidate of choice to a district where they didn't at all, was Howard Berman's district. It was mostly in the eastern San Fernando

Valley and was an area that had become increasingly Latino. It was almost exactly the proportion Latino that I had predicted as the swing proportion— around 45 percent.

ASPATURIAN: In the sweet spot, so to speak.

KOUSSER: And Michael Berman, who was Howard’s brother, with whom I had worked in the 1990s, was drawing all the districts, and when he drew the district, he reduced the Latino percentage of the Democratic registration in his brother’s district to almost exactly 30 percent.

ASPATURIAN: Because he knew.

KOUSSER: Yes! But I didn’t talk to Michael; Michael didn’t have my data. I don’t know whether he had any data at all. He’s a genius. I’m not a genius. I use data; he figures things out. But he—it was just perfect. It was *exactly* what I had predicted.

ASPATURIAN: Had you published on this at all?

KOUSSER: No, not yet.

ASPATURIAN: This was just between you and MALDEF? It was not in the public domain.

KOUSSER: No. Not then.

ASPATURIAN: So, his brother retained his district.

KOUSSER: His brother retained his district.

ASPATURIAN: Did you ever talk to him about it and say, “Hey!”

KOUSSER: No, I didn’t. But that was what I said in my reports during the case.

ASPATURIAN: So, this was challenged?

KOUSSER: Yes, it was challenged. MALDEF went to court.

ASPATURIAN: I see. Over the Berman district.

KOUSSER: I did not get deposed. The outside lawyer for the state was a guy that I had worked with for the Democrats in the 1990s, so I knew him.

ASPATURIAN: I see.

KOUSSER: Something else, to bring in a little internal Caltech story: Michael Alvarez [professor of political science], my colleague here, was very interested in redistricting, very interested in Latino politics. I had talked with him all the time that I was working on this project, told him what I was doing, and sought comments from him and all that sort of stuff. He didn't give me any comments. But once the case was filed, suddenly there is an expert witness report attacking my report. It's *authored* by Michael Alvarez, and it's a brutal attack.

ASPATURIAN: Who was he working for?

KOUSSER: He was working for the Democrats. Not MALDEF.

ASPATURIAN: The Democrats on the Howard Berman side?

KOUSSER: Yes, which was really the State of California. And so, he filed a couple of reports, and I filed rebuttal reports that had approximately the same tone as his original tone too. He had apparently floated the idea to MALDEF of working with them during the redistricting, but they did not take him; they took me. I was not pleased at all with the decision that the court came out with; and I was not happy not to be deposed and not being able to testify.

ASPATURIAN: How was that case decided?

KOUSSER: They decided it “on the papers,” as we say, and not to have the experts deposed. They decided it in a summary judgment hearing.

ASPATURIAN: MALDEF lost?

KOUSSER: MALDEF lost. And they sort of dismissed all the stuff that we’d shown about racially polarized voting and said, “Well, if [Antonio] Villaraigosa can get elected mayor of Los Angeles, there can’t be any racially polarized voting in Los Angeles.” They hadn’t looked at Villaraigosa’s previous campaign when he lost a racially polarized election. The second time he ran, it was racially polarized as well, but he managed to get Black votes as well as more white votes, so he managed to win.

ASPATURIAN: Did you and Alvarez ever talk about this?

KOUSSER: No.

ASPATURIAN: Do you speak at all?

KOUSSER: We do now, but it has taken a long time. And we have studiously avoided that subject. But I was not best pleased. But anyway, I eventually published that article, which I should have published it earlier in the decade than I did. I just didn’t get it together to get the article out, and it didn’t get published until 2008 or so. There was a 2009 U.S. Supreme Court case called *Bartlett v. Strickland*, from North Carolina. The key decision that was made there was on something that had been hanging fire for a long time, and that was what the best index was.

ASPATURIAN: What does that mean?

KOUSSER: What does it take to elect a minority candidate, and how stringently should those conditions be enforced. Let me describe quickly, and then it will be clear what it

means. *Bartlett v. Strickland* basically decided that you could not bring a Section 2, Voting Rights Act suit unless you could show that you could draw a district in which the majority VAP—voting age population—was minority in ethnicity. And probably for Latinos, it was majority CVAP, citizen voting age population.

ASPATURIAN: Yes.

KOUSSER: Now, my work in California was an attempt to figure out what the index ought to be. And what I concluded was that you had to take partisanship into account because minorities overwhelmingly belonged to one party, and there was more white crossover in the general election than in the primaries. So, *Bartlett* argues that what you should do is to draw, somehow, a “natural” district, and that’s a big problem. What’s a “natural” district? I mean you can always say, “Gosh, this doesn’t look natural to me; it looks irregular in some sense.”

ASPATURIAN: The *Shaw v. Reno* case was over that [*see Session Six*].

KOUSSER: The *Shaw v. Reno* case. And other cases. So, you’ve got this problem about what’s a “natural” district, and you’ve got this problem about measuring 50 percent of something. Go back to *Garza*, as I was describing last week, I think [*Session Six*]. The big argument there was whether you can get a 50 percent CVAP Latino district. And it was very difficult to figure that out because you didn’t have it measured at the block level in the 1980 census. And so, nobody could figure out whether you actually had that or not. In the Ninth Circuit, the rule had been since 1992, I think, that you had to have a majority CVAP district. But this had not been a *national* rule until *Bartlett v. Strickland*. And I was frustrated at the time that my paper wasn’t available for people who were arguing the case. I knew the guy who was arguing the case in Washington, and I sent him the paper, but it was too late. If it had been out in print, maybe it could have been cited.

But anyway, the general point is that the conjunction of scholarly interests and advocacy interests in both of those redistrictings as well as in a lot of other work was complete. It was seamless: I wanted to show in some sort of objective fashion how you

can contrast districts for partisan gerrymandering, and I wanted to figure out in an objective fashion how you best draw districts to make it possible for minorities to elect candidates of their choice and for them to have an equal opportunity to participate in elections and vote for candidates of their choice. So scholarly and advocacy interests came out in the same way.

ASPATURIAN: This confluence was also reflected in your book *Colorblind Injustice*, which was published in '99, I believe.

KOUSSER: It was indeed! Yes, exactly so. And so, I just continued to do that. It continues to be quite fascinating to me. And I'm doing it with respect to the California Voting Rights Act now, and also testifying in cases on the California Voting Rights Act.

ASPATURIAN: I would like to very briefly revisit what happened with the Fort Ord case. Because as I said before I turned this on, we ended the last session with this headless guy in the cabbage patch. And you talked about your work in the Salinas library, and we never got to the end of the anecdote.

KOUSSER: There were a series of cases from Monterey County. One of them related to the Board of County Supervisors and the redistricting there. In that case, which we won, I was working with the attorney who had been the attorney for the county of Las Angeles in *Garza*.

ASPATURIAN: This was McDermott?

KOUSSER: This was McDermott, who had previously worked against me. So, we won that case. There was a later case that was more complicated. There's no need to get into all of the details, but it related to the election of judges in Monterey County. Monterey is a majority non-Hispanic white county, or at least it was then, and so if you elect judges at-large in the whole county, Latinos don't have as much of an opportunity to elect them as you do if you elect them in city elections. If you elect a city judge in Salinas, which is majority Latino, or in cities to the south or in some places in North Monterey County,

Latinos have a chance to elect such a judge, but if you elect at large in the county, then Latinos are probably not going to have a chance. So, what was at issue here was a shift away from judges being elected locally to electing them all at-large, which took place over a long period of time.

Monterey County was a covered jurisdiction under Section 5 of the Voting Rights Act, which meant that it couldn't have an electoral change without having it pre-cleared in Washington by the Justice Department or the D.C. court. But the county had not pre-cleared anything when the manner of electing judges got changed. So, Joaquin Avila, who was a former MALDEF lawyer who had gone to work in private practice, and who we will eventually see was the framer of this California Voting Rights Act, brought a case, *U.S. v. Lopez*. And he demanded first that these electoral changes be pre-cleared and went back to the 1980s. And so, I did a long paper for that case: I looked at the role of judges in Monterey County in ethnic problems and showed that they were absolutely crucial, and that they had been crucial in the 1936 lettuce strike, which was what Steinbeck talked about in *Dubious Battle*. But they were also crucial in the lettuce strikes in the 1970s, and it was an injunction from a court in Salinas that broke Cesar Chavez's biggest strike after the grape strike was the turning point for the UFW [United Farm Workers]. The judge put Chavez [cofounder and leader of the United Farm Workers labor union] in jail.

ASPATURIAN: This was a white judge?

KOUSSER: This was a white judge. And Chavez went on a hunger strike.

ASPATURIAN: Yes, I remember that.

KOUSSER: And Bobby [Robert F.] Kennedy's widow [Ethel Kennedy] came out and joined the almost daily marches to the jail. And Chavez was near death, as he often was in these hunger strikes. They let him out on Christmas Eve. Nothing had a bigger effect on race relations in Monterey County than the UFW strikes and the breaking of this strike.

So I documented all that. It wasn't the '36 lettuce strike, but it was a very

boisterous and brutal lettuce strike, and I got into all sorts of things. You just would not believe some of the conditions under which people, mostly undocumented, worked in the lettuce, grape, and strawberry fields. Something like 70 percent of the strawberries in the United States are produced in Monterey County. It's the very best place in the world to grow strawberries because of the climate, and there were people picking them who were living—not just in their automobiles; they were told to dig caves to live in.

ASPATURIAN: Where did you find this in the record?

KOUSSER: A lot of the stuff is in the newspapers, and there were also court cases.

ASPATURIAN: I see. Did you do personal interviews?

KOUSSER: No.

ASPATURIAN: OK. This was all in the public record.

KOUSSER: It was. Living in a cave that they had to dig in a hill. Given empty insecticide containers as tables where they would eat their food. Empty insecticide containers. This is in the 1970s into the 1980s. This wasn't antediluvian. I'd never seen anything like that in the South. Slaves were treated better than these people were. I was just incredulous. This is a case that went up to the Supreme Court twice. Joaquin won twice. And finally, they submitted everything for preclearance, and I submitted part of this report to the Justice Department to try to get them to turn the preclearance down, and they didn't do it.

ASPATURIAN: So, the election of judges remained at-large?

KOUSSER: It did.

ASPATURIAN: After all of that.

KOUSSER: After all of that. After two Supreme Court opinions.

ASPATURIAN: When was this Justice Department decision handed down?

KOUSSER: '98 or '99.

ASPATURIAN: And had conditions in the fields changed by then?

KOUSSER: They had changed to a degree.

ASPATURIAN: Some incremental improvement?

KOUSSER: Yes. I mean, the horrors of —

ASPATURIAN: '98. This was the Clinton Justice Department?

KOUSSER: It was the Clinton Justice Department.

ASPATURIAN: What was their rationale?

KOUSSER: Well, the state said it had a coherent policy of trying to move the election of judges from the local level to the county level, and Monterey County was just being drawn into this more “modern” way of electing judges. I thought we were going to have lawsuits in Los Angeles because did the same thing in L.A. We used to elect city judges in Pasadena. And they took that away and elected them all county-wide. And one of the consequences of that is you're not electing a city judge in Compton, not electing a city judge in San Fernando, or in East L.A., or wherever—you're electing a county judge. And at the county level, predictably in a huge county like Los Angeles, these people were completely unknown, and they get selected by the governor and a couple of people—the chief justice, State Senate president pro tem, and maybe the lieutenant governor or some sort of nominating committee; it doesn't even go to the legislature.

ASPATURIAN: Is that what explains the state's compelling interest in doing it this way?

KOUSSER: That's what they said. It was their interest. They wanted to move to this in all of the counties. The Justice Department may well have looked at this and said, "My goodness, if we overturn this in Monterey County, we're going to have a lot to deal with; we're going have to consider a lot," and that's the only rationale that I can figure. They don't have to state why they agreed to pre-clear things; it's only objections that they have to explain. So, I don't know what it was; I don't understand the politics of it. I was quite disappointed.

ASPATURIAN: Are there Latino judges now being elected in Monterey County?

KOUSSER: The first Latino judge who got elected made some comments about the fact that they were not treating him as they had treated his Anglo predecessors, his fellow judges. And there was a complaint against him in the judicial—I don't think it's called the judicial conference in California but it's something like that—and he actually got suspended. But there was no real possibility of a lawsuit after that. I think he may have filed some sort of lawsuit, but I didn't have to be involved in it, so I lost track of what happened. There are probably Latino judges there now. Salinas has elected a series of Latinos to the city council. This resulted again from a case that Joaquin Avila brought under Section 2 and which moved city council elections in Salinas from at-large to single-member districts. There's been a Latino mayor; there've been Latinos elected to the California State Senate and Assembly from Monterey County. So, people are used to voting for Latinos.

ASPATURIAN: I think things have changed a good deal statewide in the last ten to fifteen years.

KOUSSER: Yes, they have. And I think partly that is because after Prop. 187, there was a huge surge of Latinos into the electorate.

ASPATURIAN: Which we will say for the record was the 1994 anti-immigration measure favored by Governor [Pete] Wilson.

KOUSSER: It would have cut off services for undocumented persons, including schools. One of the consequences of that was a huge Latino registration, and it went predominantly to the Democratic Party. To some degree, Independents but almost no Republicans.

ASPATURIAN: Of course.

KOUSSER: So, the proportion of Democrats who were Latinos rose quite considerably and more districts fell into my 40 to 50 percent sweet spot. So, sure, you elect a lot more Latinos that way. And once you elected a Latino as speaker of the Assembly and the world didn't come to an end, it became very much easier to do it again, and now we've got a Latino speaker of the Assembly and a Latino president pro tem in the State Senate. And they're just like anybody else. They work with everybody; everybody accepts them. I mean, Kevin De León's biggest issues relate to climate change.

ASPATURIAN: Who is he?

KOUSSER: He is the president pro tempore of the Senate. He's associated with Latino issues, but climate change more than anything else that has been his signature issue, and he could be a tree-hugging person from the white side of Los Angeles.

ASPATURIAN: A Caltech professor. [Laughter] There's been remarkable progress, it seems, in that regard.

KOUSSER: Yes, I think that's true. But what you needed to do was elect some people.

ASPATURIAN: Exactly. And also encourage the population to register. That is very important too—to run voter registration drives.

KOUSSER: Oh, yes. They're registering in even more percentages with Trump.

ASPATURIAN: Turning from progress in the state to Caltech in the 1990s, I see that you served on a number of committees during that decade. I have the library, the faculty board, the nominating committee, convocations, affirmative action.

KOUSSER: Let me divide this into two things. One, I want to talk about the library. I'd been on the Institute library committee for a long time, and there was also a divisional library committee, and I'd been on that and chaired it, and all sorts of things. So, I was very, very interested from the beginning in the library. And my wife, until she retired several years ago, was a librarian at Pasadena Public Library, so I have this thing about librarians. I was always very good friends with whoever happened to be humanities librarian and so on. I want to come back to that.

Jim Bower, whom I talked about earlier [*Session Five*] and was head of the nominations committee [the Caltech committee that nominates Caltech faculty to serve on other Caltech committees –*Ed.*], put me on the convocations committee. This kind of came about because there was one year in which they couldn't find some personality from the outside to give the graduation day speech, so they got the chairman of the Board of Trustees.

ASPATURIAN: Who was?

KOUSSER: I don't remember. It was after Arnold Beckman.

ASPATURIAN: Gordon Moore [Intel CEO emeritus; Caltech Board of Trustees chair, 1993–2000]?

KOUSSER: It wasn't Moore. Somebody else. But his speech, shall we say, was not well received. The undergraduates were not pleased. I don't know how anybody gives a graduation speech anyway, but it wasn't a hit with anybody.

ASPATURIAN: Ruben Mettler [TRW chair and CEO emeritus; Caltech Board of Trustees chair, 1985–1993, d. 2006]? He came in between Beckman and Moore.

KOUSSER: Yes, that’s right.

ASPATURIAN: I remember this story, now that you bring it up.

KOUSSER: So, Jim said, “We’ve got to shake up the Convocations Committee; we’ve got to get someone who will not let this happen again.” So, he made me head of the Convocations Committee, and it was strange because I had actually never been to commencement. One thing that was important in this was the fact that my kids were at that point in the way of graduating from college. My daughter graduated in ’94 from Yale; my son graduated in ’96 from Harvard, and so I saw what the Yale and Harvard graduations were like. So, I had some ideas. What I decided to do was, one, to cast the net as widely as possible to try to get somebody from the outside who was more interesting as a speaker. And two, that I would try to add one event to graduation every year.

So, I worked with the staff from all across the Institute, which I’d never done before. There were people from PR, from the registrar’s office, from food services. I’d known people in the registrar’s office well, but I had not known the rest of them. These people were all wonderful. Everybody was talented, hardworking, independent. You give them some authority, and they just do a wonderful job. So, we did all kinds of things. I worked with Jerry [J. Ernest], who was vice-president for development and Institute relations [1996–2003, d. 2018]. I got him to give me some money and we allocated something like \$6,000 to have a video done of the ME72 competition. So, the guy who was running ME72—

ASPATURIAN: Erik Antonsson.

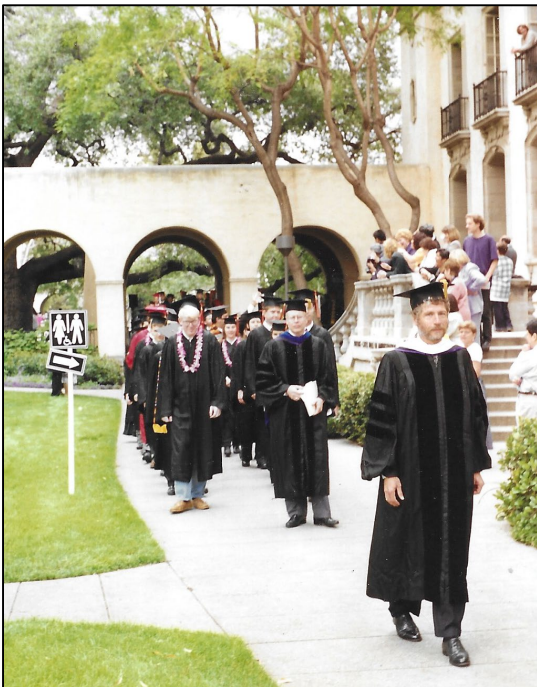
KOUSSER: —Erik Antonsson was enthusiastic about this, and I said, “Look, we’re going to do this; you’ve done some of this in the past, but I hope we’re going to do this every year. I’ll get you a stable source of money, and we’ll videotape the whole thing, and we’ll show it. Because the parents who come here for commencement may have heard of this, but almost certainly, unless they were Caltech undergraduates, didn’t see it. So, it gave them a sense of the sorts of crazy science things that our students do.

ASPATURIAN: Did you screen the video in Beckman or in Ramo [auditoriums]?
Something like that, I imagine.

KOUSSER: It was in Ramo, I think. I also got the three speaking finalists from the [Doris S.] Perpall [science communication] competition, who were all terrifically good. I got the finalists from each year to perform. I think this was also in Ramo, and they performed live. I also set up a concert the night before graduation. After the pre-commencement dinner, which had been a tradition long before me, the parents of kids in the music program could go and hear them. Some parents had not seen their kids perform for three or four years. Maybe never. Maybe their kids were better, maybe they were worse. Who knows? But the kids actually were very good, and the people who ran the orchestra—

ASPATURIAN: Bill and Dolores Bing.

KOUSSER: —were enthusiastic about doing this. So that worked. There was a local guy who did watercolor paintings about Caltech, and so my first year I thought, “Let’s have



one of his Caltech pictures on the commencement program this year. And if we possibly can, let’s try to get him to make postcards and little notecards and maybe frameable things. Because I liked his art very much, and I’d seen similar art done at Oxford. I had brought back some pictures of the Oxford colleges. They’re in my dining room now, where I can look at them nostalgically, thinking, “Oh, that’s Queen’s College, wasn’t that wonderful?” So, I tried to do that, and again, I got a new scene every year. That was my purpose in all this.

As Caltech Convocations Committee head, Kousser serves as chief marshal of a 1990s commencement.

ASPATURIAN: The commencement program always came out of our office. I remember picking it up one year and suddenly it wasn't bound in one of these approved pastels, and we said, "Oh, what happened!"

KOUSSER: So, we did all this, and I also ran David Baltimore's inauguration, which was in 1998. And that was quite fascinating. By that point I had worked with all of these staff members for a while, and so I had great trust in them. They had apparently trusted me, and they were pleased with the fact that we were doing something new all the time. Parenthesis: Last year or the year before I was walking back from the gym and ran into a woman whose name I don't know, although maybe I'd met her. She worked in the president's office during that period of time and said, "Oh, let me tell you how happy we were in the president's office to see all the things that you did, that you instituted in commencement." It was just something new; it was an attempt to make the whole procedure—make everything—more interesting.

Anyway, for David's inauguration, I guess I met with him near the beginning of the academic year—probably in August or September—and he was inaugurated the following March. In between we had meetings about every two weeks, and Jerry Nunnally and I worked together, particularly, but then other people were brought into meetings as we got closer to the date. And Jerry raised a lot of money for this. We really got into this, and we said, "We should have a dinner and dance." [Laughter] We put it in the gym. They changed the gym; they put drapes over everything.

ASPATURIAN: I remember this. It looked great. We went over and took pictures of it.

KOUSSER: Anyway, about halfway through the planning process, I said, "Jerry, this is going to cost us \$400,000."

ASPATURIAN: The whole inauguration!

KOUSSER: The whole inauguration. "It's going to cost us \$400,000. Can you raise that?" And he did. Separately. Just for that. I never asked him where the money came from—whether or not some of it was from Gordon Moore—but he did. And the thing came off

splendidly. It was great fun. Everybody just had a tremendous time, and I will tell you one nice little story that came out of this. There was a young woman who had been ASCIT president, and I knew her, I guess, through ASCIT or just because she was so visible on campus, but she, an Asian-American woman, decided that she would go into what is known in Los Angeles as “the Industry”—that is to say, the film and television industry. So, she was doing Kung Fu movies, but since that’s not a steady job she got in touch with somebody on campus about work. We needed a staffer for the convocations committee for David’s inauguration, so she did it.

And she was absolutely wonderful, just terrific. She came to the inauguration dinner and party: June Fujimoto. Pretty young woman. The person at the party who got more attention than anybody else was Stephen Hawking. You may know that traditionally the inauguration parade in American universities, maybe in British and European universities as well, has an order that’s fixed. The person in the parade who represents the oldest university gets to march first. And so that was Cambridge. Nobody came from Oxford or whatever the place in Italy is, so it was Stephen. Kip Thorne [Feynman Professor of Theoretical Physics] had been the chair of the search committee that had made David president. So, I got Kip to be co-marshal of the parade, and Kip got Stephen to come. So, oh my, what are we going to do? The parade comes down the Beckman Mall, and his motorized wheelchair might get bogged down in the mud. So, we had to put in a special sort of plank so that Stephen could come down the parade route. And so when Kip and I led the procession, nobody paid any attention to us at all. They’ll pay attention to Kip now. I hope Kip gets the Nobel Prize.

ASPATURIAN: I think he will. I think it’s a foregone conclusion. [In October 2017, Kip Thorne, his Caltech colleague Linde Professor of Physics, Emeritus, Barry Barish, and Rainer Weiss, professor of physics, emeritus, at MIT, were jointly awarded the Nobel Prize in Physics “for decisive contributions to the LIGO detector and the observation of gravitational waves” –*Ed.*]

KOUSSER: Let’s hope. Anyway, to go back to June. When the dancing came up that night, Stephen asked June to dance with him. And Hawking could actually make that

motorized wheelchair move around in ways that you just cannot imagine. So, he danced, in his fashion, with June Fujimoto, and she emailed me the next day saying, “Thank you for letting me participate in this. Dancing with Stephen Hawking was the high point of my life.”

ASPATURIAN: Only at Caltech.

KOUSSER: [Laughter] And so my response was, “But June, do you ever think that perhaps dancing with you was the high point of Stephen Hawking’s life?” [Laughter]

Anyway, it was great fun. We let 10,000 helium balloons go up, getting us into fairly considerable trouble with the Pasadena police, because some of them got caught in the wires. [Laughter] But a good time was had by all.

ASPATURIAN: You must have worked with Hall Daily [director of government relations, 1992–2017], to rectify that situation. He’s always so good at that.

KOUSSER: Yes, he’s very good at it.

ASPATURIAN: What kind of luck did you have in getting commencement speakers?

KOUSSER: Well, we had good luck. Before I became convocations committee chair, there had not been rain at graduation for forty-six years, and three out of the five years that I was convocations chair, it rained or threatened to rain. There were three speakers that I remember particularly. One was the science guy, Bill Nye.

ASPATURIAN: That year it definitely rained. We wrote about that in *Caltech News*.

KOUSSER: So, here’s the story about it raining with Bill Nye. The Caltech Glee Club had traditionally sung the “Hallelujah Chorus,” and I didn’t like that because I thought it was sectarian. We had a student body that was growing increasingly international. People were atheists; people were agnostics; people were Hindus, Buddhists; and there was this sense of, “Why are we singing this Protestant hymn?” And so, I decided it should be

eliminated. David Baltimore went along with me that it should be eliminated. But there was a protest against this, and somebody put my office phone number out there, and so I returned from playing basketball, or running, or something, and my inbox was completely clogged with protests. So, they did sing the “Hallelujah Chorus” at this particular convocation.

The rain had been holding off. And they got to the line that goes, “And he shall reign,” and the heavens opened. And everybody got drenched. [Laughter] And I concluded, first, that God was female, because she was angry at the use of the male personal pronoun, and second, that she couldn’t spell very well. [Laughter]

ASPATURIAN: No real understanding of homonyms.

KOUSSER: Another guy that we had was David Ho, who was the first Asian-American speaker for graduation. Somebody had the idea of getting him and got to him—I think it must have been David [Baltimore].

ASPATURIAN: I think it was after he was on the cover of *Time* magazine for the HIV research.

KOUSSER: Right, and David does that sort of thing as well, so David knew him. I sat at the pre-graduation dinner table with him; he’s a fascinating person. He was really just terrifically good, a wonderful speaker. I liked the symbolism of it, and it was just perfect. One of those ceremonies, I think, was celebrated as the hundredth Caltech commencement.

ASPATURIAN: [*Sotto Voce*] It wasn’t really “the hundredth.”

KOUSSER: Yes but, they counted it as the hundredth. So, we did something special that year. The other speaker that I remember particularly well was Tom Brokaw. I don’t know how they got Tom Brokaw, but they were sitting around trying to figure out how they were going to introduce him, and Mary Webster [secretary to the Board of Trustees, 1987–present] asked me to come up with something if I could, so I wrote an introduction

for him. For the first time in a long time, I had actually gone to a movie—I’ve forgotten the name of it, but the main character always stops everything he’s doing when Tom Brokaw’s news program comes on, and so I weaved this into the introduction that the chair of the Board of Trustees gave.

ASPATURIAN: It’s been speculated that one of the reasons Caltech often has trouble getting commencement speakers is because the Institute does not give honorary degrees.

KOUSSER: Which is crazy. I tried to do what I could do to overturn that. I said, “Look, Princeton, Yale, and Harvard give honorary degrees, and I see no signs of their academic foundations crumbling. Why don’t we do that?” I never got anywhere on this.

Anyway, after five years, I quit. I haven’t marched in commencement since. And I’m afraid that the special events that I set up have died. One more thing that I set up: We got every house to set up one of their Ditch Day stacks, and we had a stack tour. Again, that’s something that parents had heard about but had not seen and had no real idea about. And I thought, “This is a way to try to give them a sense of something that their kids had been going through.” So. It was an effort.

ASPATURIAN: It was a good five years.

KOUSSER: I thought so. It was enjoyable, and I liked working with Tom Everhart, and I liked working with David Baltimore. And Jerry Nunnally, particularly. I was very distressed when Jerry got fired.

ASPATURIAN: Is that what happened?

KOUSSER: Yes.

ASPATURIAN: Was there a precipitating incident?

KOUSSER: I do not know. It was particularly bad for two reasons. One, he was the highest ranking African-American who had ever been at Caltech. And two, he had

landed the largest contribution to a university in the history of the United States. The Gordon Moore gift. He was particularly friends with Gordon Moore.

ASPATURIAN: He'd been very friendly with David Baltimore, too, up until that time.

KOUSSER: Yes. I mean, he may have angered somebody. There may have been problems with the administration. I never saw any of that; I never had any idea that that was true. He was devastated.

ASPATURIAN: Did he talk to you about it?

KOUSSER: I called him up the day that it was announced. He was at home. And I thought, "Well, I'm not going to be able to get through." And I got through. And, apparently he hadn't got phone calls from anybody. And I thought, "Oh my God, how could this happen?" He was such a wonderful person.

ASPATURIAN: We worked with him quite a bit over in the PR office

KOUSSER: And, I mean, he was a little sort of straight-laced Harvard; that's where he'd come from. But he was just extremely nice, very easy to work with. I would go into his office sometimes just to chat if I happened to be in Parsons-Gates [Parsons-Gates Hall of Administration] for any particular reason. Lynn Bryant, his secretary, had been my secretary, and so I kept up with her, and I kept up with what Jerry was doing. From time to time there was some discussion about affirmative action or something similar at a faculty meeting that Jerry went to. It would have been nice to be able to defer to the African-American faculty members on these issues, but there weren't any at that point, so and he and I would often talk. Anyway, I don't know why he got fired. I think it was really unfortunate. We've gone through a series of vice presidents for development since then, and I think we're doing better now.

ASPATURIAN: It's been a long haul.

KOUSSER: It has been.

ASPATURIAN: You were on the faculty board for three years. What was that like?

KOUSSER: There wasn't anything so memorable that it's really worthwhile talking about. The library committee much more so.

ASPATURIAN: Your involvement with that goes back a long way, I think.

KOUSSER: It does. When the previous campaign for Caltech [“There’s Only One. Caltech” fundraising campaign, 2001–08] was being set up, there was a question of whether there would be a new central library. Millikan was never a terribly good building for a library. The library at that point had all nine floors in Millikan, or maybe it had just lost the sixth floor to LIGO [Laser Interferometer Gravitational-Wave Observatory]. I remember telling Ann Buck, the library director, when it was rumored that that was going to happen, that that was a terrible mistake. That if the administration ever got its foot into Millikan, the library leadership was going to lose it eventually, and they did. Until Kristin Antelman, the current library director, came along, I think Ann was the best library director who had been at Caltech since I got here.

Anyway, the question about whether there would be a new central library and whether the central library would be part of the campaign came up. So, Steve Koonin, who was provost, appointed a committee, and the effort clearly was to get the committee to say, “No, we don’t need a new central library.”

ASPATURIAN: Were you on the committee?

KOUSSER: No, I was not appointed to that committee. Kevin Gilmartin, who was then chair of the library committee, was on the committee—Kevin is an English professor.

ASPATURIAN: Sure. He’s just been made dean of undergraduates.

KOUSSER: So, Steve appointed his PhD thesis advisor as chair of the committee.

ASPATURIAN: He did his PhD at MIT. Was it his undergrad advisor, Tom [Thomas] Tombrello [Goddard Professor of Physics, d. 2014]?

KOUSSER: No, it wasn't Tombrello. Maybe it wasn't his thesis advisor, but it was somebody else in physics he was very close to. Anyway, the committee decided that we needed a new central library. Then there was a survey, and all the surveyed groups said, "Yes, we need a new central library." Undergraduates, graduate students, faculty, and staff all agreed that we needed a new central library. The committee came out with a long report that talked about all sorts of library problems, developments, etc. They were well-informed; there were library people who worked closely with the committee. There was to be a faculty discussion meeting about the issue, called by the chair of the faculty. Koonin made her withdraw that, and so there was no faculty discussion meeting.

ASPATURIAN: This was in the early 2000s?

KOUSSER: I was going to look it up before I did this. I did not, but I can find out. Anyway—this was reported to me by somebody in the library who has now retired—at one point, Koonin met with the handpicked library committee and said, "You will cease to agitate on this issue. You won't say anything else about it." And some person said, "I don't like that; I don't want to do that." And Koonin is said to have threatened this person that her lab would be cut out of the campaign if she agitated for a central library. I do not know who that was—I may have been told at the time, but I don't remember. There was then in effect a deal done with the humanities faculty. You will recall that much of the development office was actually in Dabney [Dabney Hall of the Humanities] at that point.

ASPATURIAN: Yes.

KOUSSER: Dabney needed to be rehabbed. The offices were quite shabby. And the humanities faculty was the logical faculty to lead the agitation to try to get a central library.

ASPATURIAN: You're saying they were "bought off"?

KOUSSER: They were bought off. And they were bought off with loaned money. There was \$1,000,000 in the bank to rehab Dabney, which cost ten or twelve million dollars when the deal was done. And in fact, they had to borrow the money, I think, to rehab it. But the deal essentially was you get nice, rehabbed offices if you shut up. And the humanities faculty shut up.

ASPATURIAN: You were a member of the humanities faculty.

KOUSSER: I didn't shut up. I wasn't in Dabney. I wasn't part of the deal. And I continued to protest. I got articles in the [student newspaper] *The California Tech*; I told students about this; I would fulminate to anybody who would listen—I'm still fulminating about this. And my fellow faculty members who live in Dabney said, "It's a done deal, it's over, give it up." And I was extremely unhappy about that. I am likewise very unhappy about what has happened since then. For three years I was off of the library committee. I think it was during that time, and then a little after. Koonin didn't want me on the committee. Koonin said to his handpicked committee, "In fifteen years there will be no more books, so we do not need a library." He was wrong.

ASPATURIAN: A little premature in his prognostications.

KOUSSER: Yes. People still like to read books if they're reading something that's long. Maybe if you're reading a physics article, OK. But even if you're reading a math article, mathematicians basically prefer to have journals in print. Anyway, so I was off the committee and eventually got back on the committee. I was not on the search committee that ended up with Kristin, but I was back on the library committee at that point, so when the three finalists were brought in, I met them all, liked Kristin much the best of all of them, had lunch with her, walked her across campus, etc. etc. And so, I sort of welcomed her to campus in lots of ways. Had lunch with her, did all sorts of things. And then I got cut out of the committee again. I have not been happy with what the current provost, Ed Stolper, has done. The major fact that you really need to know—that is all anyone needs

to know to decide on this—is that from 2004 to 2014, the average research university increased its library materials budget by about 45 percent.

ASPATURIAN: These would be Caltech’s peer universities?

KOUSSER: These are Caltech’s peer universities. Princeton increased theirs by 88 *percent*. Caltech’s decreased by 6 percent. Not in real terms, in nominal terms. And because of the stranglehold that a few journal companies—Wiley, Elsevier, etc.—have on the field, journal prices have skyrocketed.

[PORTION TEMPORARILY CLOSED, pages 271.]

KOUSSER: Then there was a list that Kristin put out saying that they were going to cut 600 more journals. The faculty was able to comment on the list, and some people tried to save journals. They were going to cut, for example, the *American Historical Review*, which is the leading journal of American history. And you could think, “Well, in some sense we don’t need that, because so few people take it;” but, on the other hand, you cut the leading journal of American history? There was a comment board, so you could get a sense of what people were saying, and people were saying things like, “This is a major journal in my field; the editor is at Caltech.” Somebody in chemistry or geology or something said, “If we cut all these journals, we will be below the level of a Third World university in our library.” These were digital journals, not print journals.

ASPATURIAN: So, what was the thinking? That the faculty who needed access to these could get them out of their own grants?

KOUSSER: No. Kristin was forced into a box and had to do the best she could under the circumstances. The thinking is, that we can get copies of individual articles by relying on the generosity of strangers—sort of Blanche DuBois [reference is to the Tennessee Williams play *A Streetcar Named Desire*]. So, we can get them from USC, UCLA, etc. But Elsevier is not going to allow this for very long—I said these almost exact words to Ed Stolper a couple of times. I’ve talked to him; I’ve sent him emails. I’ve sent Tom Rosenbaum emails, drafted petitions, agitated. Look, the journal publishers are making about 15 percent a year, and they’re increasing journal prices 6 to 7 percent a year, year after year after year. That doubles in seven years. They’re not going to allow us to continue to do this. This is not a viable long-term situation for digital journals. But that’s all that Kristin can do.

ASPATURIAN: What is the rationale you’re hearing for this?

KOUSSER: They want to save money. That’s it.

ASPATURIAN: And the faculty response overall?

KOUSSER: Some of the humanities faculty's response was left over from the humanities faculty's response to the earlier library fiasco. "It's a done deal, we can't do anything about it. Don't raise your head." Ed more or less directly told me that the people who bitched and moaned the most he was buying off by continuing their journal subscriptions. So, you take the people who are most agitated about it and simply continue their journal subscriptions, and everybody else loses. But as I've said to him, "We're supposedly raising \$750,000,000 for graduate fellowships as part of the current campaign. What happens when a graduate student comes here, and he or she finds out that there aren't any journals in their field? Or at least in their subfield? Suppose you try to recruit a new professor, and so and so brings a lab and you spend \$2.5 million setting up their labs and they have to borrow their journals from UCLA or USC or someplace else?"

ASPATURIAN: Is there a response to that that you've got?

KOUSSER: Well. Their response is, "We'll deal with that when we have to deal with it." Maybe the response is, "I won't be provost anymore." One of the things that I've done at Caltech is that I have developed a really good section of the library on the Supreme Court and on American political participation. I've also tried to order some things on women's history because there's a huge amount that's come out there, and I wanted to try to keep up a bit, but particularly I've ordered on the Supreme Court. I've done that systematically from the beginning. If you go over to the basement of Millikan, which is all of Millikan that the library has left, you will see two or three blocks of shelves on the Supreme Court. That's all going to die. They're going to throw those out when I retire.

Other people have developed particular collections from the beginning of the time that they were here, so that we've got this sort of strange library collection. But I've always ordered with the view that this is something that students could use and something that some faculty members are going to use. There was a postdoc here named Doug Smith, who was doing a book on the Supreme Court's reapportionment cases. He was working at a desk in the Huntington Library, and he told me that he finally said to himself, "I have to use all these secondary sources on the Supreme Court. I know Morgan's ordered all of these things, so I just won't go to the Huntington Library; I'll go

to the Caltech library, and I know that they'll all be there." And they were. His book has already gotten a huge amount of attention. It's quite a wonderful book on *Reynolds v. Sims* and *Baker v. Carr*, and so on. But he was able to do this. And it's all going to be thrown away. I don't know what we're going to do. It's a basic journal collection as well as books. I do want to talk about teaching; I don't know whether we're going to have time today.

ASPATURIAN: I think next time. It's on my list.

KOUSSER: But I did want to talk about one of the things that I do in my courses.

ASPATURIAN: OK, if you wish. I'll save a few other questions for next time. Go ahead.

KOUSSER: I don't know when I decided this, but after some period of time, I moved my teaching more and more away from lecturing and into a sort of teaching that my mother would have liked.

ASPATURIAN: That reminds me of something. Maybe you're about to answer it. You said in our first interview that there were aspects of your mother's life and career that would come into play [*Session One*].

KOUSSER: Here it is. She was interested not so much in instructing people in facts as in creating an environment in which they would direct themselves. And my graduate study at Yale and techniques that I had basically seen at Princeton when I was an undergraduate were not like this. I had not been happy about that for a while at Yale and tried to get Yale to do something in the history department about teaching, and they had said "No." I think I told you that before [*Session Two*].

ASPATURIAN: Yes.

KOUSSER: But after some years at Caltech, I decided I would do things myself, so I continually redesigned my Supreme Court course and later my course in freshman

humanities to do two things, which may seem contradictory, simultaneously. On the one hand I gave many more taught assignments—guided assignments—and on the other I required the students to do much more of their own learning. In the Supreme Court class, I had people do briefs—we work with a textbook that has excerpts from cases. I had required students to do briefs before that, but I hadn't assigned one brief to each person, and I started to do that. In this last quarter, because I only had six students, each person had to do two briefs a week.

The second thing that I did was to assign a list of books from which they were to choose two. In the Supreme Court class, they were usually broken down into two different categories—for example, in the first term biographies and court cases. So, there would be a book on *Reynolds v. Sims*, for example. And eventually what I did was to have them give what I called an extended or expanded brief, and I would give them an example of what a brief is: You look at the facts, the opinion of the court, the dissents, concurrences, etc. I also gave them a sort of paradigm example—a famous 1819 case called *McCulloch v. Maryland*.

So, they're assigned to do these sorts of things. They get interested in the biographies; they get interested in their justices. Almost everybody ends up hating Felix Frankfurter because he was so obnoxious. He would talk for fifty minutes during meetings of the Supreme Court because that's how long a lecture lasted at Harvard Law School. And you can imagine that the other justices didn't like to be lectured to. [Laughter] Hugo Black was apoplectic at this sort of thing. So, the students do these sorts of things and my objective—my design at least—for the way that the course will develop over a two-quarter period is for me to start out lecturing a good deal. The students need to know about things that they're just not going to pick up the first time.

I also try to bring cases together, because when I took a similar course as an undergraduate at Princeton, I mastered what the cases were individually, but I didn't have an idea of how they fitted together. People have a hard time doing that. They're seeing issues for the first time. I'm seeing them for the fortieth year, or something like that. But I learn new things about how cases fit together every year. I continually think, "Gosh I must have been really stupid not to have seen that before now."

I try to withdraw more and more over the course of the two quarters as the

students become much more conversant with terminology and become much more at ease in talking about things. There are two things that are characteristic of every Caltech student. One, they do well on standardized tests. The second is, that they pick up jargon faster than anybody else in the world. So probably the second or third week, we start talking about levels of scrutiny in cases, and by the next week everybody knows what strict scrutiny is, everybody knows what rational basis is, and people talk about this as if they had always been talking about this.

ASPATURIAN: And eating and breathing it all their lives, yes.

KOUSSER: Yes. Absolutely amazing. I didn't do that so much in the freshman humanities course for a long time, and then I finally decided, "Well, you can do something like it."

ASPATURIAN: Does that change from year to year. Do you bring in your own topic, or have you team-taught it?

KOUSSER: I have not team-taught it at all. I taught Civil War and Reconstruction for a long time. That changed a lot every time I would teach it: more Civil War, more Abolition, more Reconstruction—the balance always changed.

ASPATURIAN: What influenced the shifts in perspective?

KOUSSER: New books coming out. When Eric Foner published his book on Reconstruction in 1988, I immediately started using that. And, you know, new things would come on, the Abolitionists—I'd pick that up. Black nationalism—that would ebb and flow.

So that changed a lot. But I finally decided—it was probably six, eight years ago—that the students should know something about the post-Second World War era up to as far as we could get to the present day. For me the post-Second World War era was the time I had been alive, but for them it was ancient history.

So I decided I would change from teaching the Civil War and Reconstruction to

teaching that. And I would shift from always lecturing to a format that was much more like my Supreme Court class. So, I did that, and we'd start out with the Manhattan Project and the decision to drop the bomb. That catches them because it's scientific.

ASPATURIAN: Major ethical questions involved.

KOUSSER: And the decision to drop the bomb is an ethical question. And we get into the Cold War—who's responsible for the Cold War; how did it happen? The civil rights movement, which they had heard about but very often didn't know terribly much about. The students read biographies of [Martin Luther] King, they read biographies of Jack Kennedy, Barry Goldwater, Bobby Kennedy, Lyndon Johnson. They're incredibly interesting to teach, and they've always been incredibly interesting to teach.

To go back to the freshman course, when it was a Civil War and Reconstruction course, there was a kid—this must have been in the early 1980s—who was probably four years out of South Vietnam. His brother had been in the ARVN, the Army of the Republic of Vietnam—the South Vietnamese army—and he'd gotten shot on the day that we “lost” Vietnam. And the family had gotten in some refugee camp, and eventually they'd gotten a boat that took them some place, and he landed at San Francisco speaking French and Vietnamese and very little English; and he was so smart that within three years he was into Caltech. So, he took my freshman class and within six weeks he was writing a paper on whether the Liberty Party in the 1840s should have adopted a broad or narrow antislavery stance. [Laughter] I thought, “Wow! Only at Caltech could that possibly happen.” It was a good paper; he figured out the strategy—should they talk about just slavery, should they talk about other things? It was really amazing.

In the fall of 1981, when I was teaching at Harvard, I taught a Civil War and Reconstruction class, and that winter I taught basically the same class to freshmen at Caltech. The Harvard students were upper-class history and lit majors. The Caltech students were dragooned into a required freshman humanities course that they may have taken because it was at a convenient time in their schedule. The people at the top at Harvard probably did better than the people at Caltech, but the *average* at Caltech was higher than the average at Harvard.

ASPATURIAN: To what do you attribute that? I mean surely in terms of metrics there can't be much difference.

KOUSSER: They're just very, very quick, and they will get deeply into an issue. Particularly in the humanities subjects, they don't think they know a lot.

ASPATURIAN: OK, that's interesting.

KOUSSER: And it's better if they don't think they know a lot. When I was teaching at Oxford, these were all history majors, made up of kids who in fact had done A levels in history, so for the last two years of high school they're only studying history. They think they really know a lot about history, and so they're not really going to work very hard. And they come with preconceptions that are not open to any new ideas. Oxford students are quite good, and, you know, I went to Princeton, I went to Yale. I was a TA at Yale; I taught at Harvard, I taught at Oxford. On average, the Caltech students who take my courses—and it's pretty self-selecting—are better than the average students at any of the rest of those places. And it's markedly true. If I can get kids in my Supreme Court class really to devote themselves to the subject, they're the most wonderful people to teach.

ASPATURIAN: I was wondering, how does that superior ability or response manifest itself? Are they more thorough in analytical thinking? Are they quicker with new ideas?

KOUSSER: They're more thorough with analytical thinking—I think that's a good way to put it. And they're enthusiastic.

ASPATURIAN: Energy; there's a lot of mental energy there.

KOUSSER: Quintessential example of that: In 2006 I was teaching in the second quarter; must have had eight students. And the Supreme Court decided an abortion case called *Gonzalez v. Carhart*, the second of the so-called partial birth abortion cases. The first one had come from Nebraska in 2000—same guy, Carhart. The court had overturned the

Nebraska law, but in 2006 they sustained the congressional law, which was indistinguishable from the Nebraska law.

ASPATURIAN: So, they upheld the partial birth abortion law?

KOUSSER: They upheld the law. The difference was the swap of O'Connor for [Justice Samuel] Alito. In this case, the decision came out two weeks before I was supposed to teach abortion, so I decided that instead of focusing on *Roe v. Wade*, we would look at parts of the partial birth abortion case. They would read some of the other cases, including *Roe*, but we'd concentrate on that.

So, I read the case very hard, took it all apart, came up with six or eight topic questions—however many students there were in the class. Each person could choose one of the topics, and they all threw themselves into this. Particularly two young women. There was a harsh dissent by [Justice Ruth Bader] Ginsberg. You've probably never read the case, but [Justice Anthony] Kennedy wrote the opinion of the court. And his first nine pages are a blood and gore description of a partial birth abortion. Did you have to start with that? Why in the world didn't you start, as Ginsberg did, with the previous litigation on this? That's how the Supreme Court starts everything. And partial birth abortion is bloody, but having your appendix out is bloody. Ever watched a baby being born? I have. If you describe that in great detail, people would be more loath to have babies, I think.

It was outrageous. And some of the things that he said were so patronizing: "If women really knew about this, about how awful the procedure was, they probably would be less likely to engage in this." It's so patronizing to think that women need to be told this. So, one of the student papers was on, essentially, Kennedy's rhetoric. And the other was on essentially Ginsburg's rhetoric and her stance. There was another one on whether if *Roe v. Wade* had been based on equal protection rather than on due process of privacy, it might have been more acceptable to the public eventually. I think she was probably wrong but it's a very interesting argument.

So, they dove into these things. They read these opinions so hard. And they came up with papers that were just gloriously reasonable and clear and thorough. They

brought in other opinions, sometimes when I even didn't ask. But by that point they knew how the Supreme Court reasoned about things, and they were able to reason about what the Supreme Court did, and so they put this all together. There have been a whole series of things like this, but there's this ability that I have at Caltech to just throw over what I'm going to do because there's something else that is really interesting and we're going to follow that instead.

ASPATURIAN: Are your classes generally smaller at Caltech than they were elsewhere?

KOUSSER: Yes.

ASPATURIAN: I wonder if that might have something to do with the quality of the response you're getting.

KOUSSER: Oh yes, sure. But one of the reasons that the Supreme Court class is smaller is that my syllabus starts with the word "Warning." I've got a 50 percent dropout rate. So the kids that stay with me really want to do it. And it's interesting. They have a good time, they learn a lot—it tugs at them, whatever they're doing. My student Will Peterson, who was Clarence Thomas's clerk [*Session Five*]*—*the first paper he ever wrote in my class was on Thomas's confirmation hearings. And the book he based it on was adverse to Thomas; it was by Jane Mayer from the *New Yorker*.

ASPATURIAN: Oh yes, *Strange Justice*. I think she co-wrote it with somebody else.

KOUSSER: With Jill Abramson, who was at the *New York Times*. That was their first big hit, and so that was what he reported on.

ASPATURIAN: Why in the world does a guy like this go off and clerk for Clarence Thomas? Have you ever asked him? Have you come to a conclusion?

KOUSSER: He's very conservative. He was always very conservative. When he got out of law school, he came to see me. He wanted to introduce me to his then new wife. And he was going to clerk for Edith Jones on the Fifth Circuit.

ASPATURIAN: You told me about this, and that you said, "Just as long as you don't go to work for Clarence Thomas." How can someone that bright be simultaneously so close-minded? I guess that's a loaded question reflecting my own prejudices.

KOUSSER: I don't think Will is close-minded. As to why he worked for Thomas—he clearly worships Thomas. And some of the other people who have clerked for Thomas have the same view of him. I don't know; I mean he was clearly unwilling to talk about things that went on when he was clerking for Thomas. I've heard lots of people who have clerked for Supreme Court justices talk about them, and you sort of get the opinion listening to a lot of them that the poor justice probably couldn't go to the bathroom if they didn't take him by the hand. But Will was not at all like that. They'd tell stories out of school, but he was not willing to tell any stories at all. And he was saying, "Thomas knows a tremendous amount, he remembers all the cases that he's been involved in," even despite the fact—and Will didn't say this—that we all know that Thomas almost never says anything during oral arguments and that everybody else does, all the time, and that that's part of the intellectual interplay.

ASPATURIAN: That's right.

KOUSSER: Thomas says that he didn't do that at Yale Law School either. I can't believe that somebody could go through Yale Law School like that. I knew people at Yale Law School. They talked law twenty-five hours a day. Thomas was at Yale when *Roe v. Wade* was decided. He denied in his confirmation hearings that he'd ever discussed it. That's not credible! He couldn't have walked down the halls without hearing about it *all the time*. But some justices love the intellectual hurly burly of the court, and he clearly does not. Scalia did. He may not have ever listened to anybody, but at least he had views. Thomas doesn't articulate his views until they're in opinions, and you sort of wonder how this could be. But anyway, my experiences with Will: He would come in,

and we would talk about all sorts of things. And he played with ideas. We would see where an idea led us, and he had at that point and I think continues to have, as far as I can judge, not only a very sharp mind but an intellectually playful mind. One of the hardest things to get people at Caltech to do, at least in the subjects that I know about, is to be intellectually playful.

ASPATURIAN: Although once they lighten up about things—

KOUSSER: Yes, as I get to know them better, and they get to know me better, they will say, as a person did in my freshman class this year, “I can’t wait to see what you think of this first paper.” And I said “OK, I’m looking forward to it.”

ASPATURIAN: What did you think of it?

KOUSSER: I thought well of it, and I thought, “This is a person who is very, very intellectually engaged and willing to jump out of the regular order of things,” and who did this in both of the papers in the course. And I really enjoyed that very much.

ASPATURIAN: One more question, and then I think we’ll wrap it up for the day. How have Caltech students in your view changed over the decades?

KOUSSER: Well, I think that when I first got here—it’s hard to tell in some sense because I’ve changed as well.

ASPATURIAN: Of course, yes.

KOUSSER: I think that when I first got here, they were more standardized, sort of the quick-draw slide rule and pocket protector era. And then there was a period in the mid ’70s when things were sort of looser. I had a colleague in philosophy or literature—I can’t remember which—who left shortly thereafter—who from time to time apparently would pass around a joint in class. I thought that was beyond the pale, but it was a looser era. And then they sort of stiffened up for a while.

ASPATURIAN: The Reagan era students.

KOUSSER: And since then, again they have become much more flexible. And having more women in the classes has helped dramatically. The women tend to have faced different sorts of problems. They tend to be better students on average. The average female student, I think, is a bit more creative than the average male student, but at the top it's all even. The students now seem finally to be more engaged in politics. They were very engaged in politics in the 1960s and early '70s, then not at all during the Reagan administration.

ASPATURIAN: Do you attribute some of this to the Obama effect?

KOUSSER: It's partially the Obama effect; it's partially the fact that the scientific issues are so much closer to public policy, most obviously. Climate change being the most dramatic.

ASPATURIAN: Sure, but there are others.

KOUSSER: There are lots of biology issues that seem more immediately connected with public policy than, say, physics issues. In the immediate postwar era, probably the physics students or the engineering students who were working on missiles or something to do with aerodynamics would have been much more political—I don't know. I wasn't here, so it's hard to tell. But the shift towards more women, more biology issues, the issues of jobs. If they are outside of computer science, the issues of jobs are a very big deal.

ASPATURIAN: The real world presses in more and more now.

KOUSSER: Yes, it does. But I think that the great *desideratum*, the great project of this generation of scientists, and maybe a couple of generations of scientists to come, is going to be climate change. Whatever field they're in, dealing with climate change is going to be the thing they're going to have to solve, and the connection between that and public

policy is so strong. I mean if Trump were to get in, he would cancel all programs that have anything to do with climate change. And he would kill off scientific research. And so, this is just of tremendous moment to people. And it should be. There aren't that many ways at Caltech to get into anything to do with public policy. The Supreme Court is a way to get into it.

ASPATURIAN: That's true; your courses offer an avenue.

KOUSSER: Yes. Students also—they learn an institution. They see an institution whole, and it's different from other institutions that they could possibly know about. It's more complex. It is based upon some sort of objective standards. You have to give reasons in a case. If you vote for a law, you don't really have to give the reasons for why you voted for it. But with court cases you have to give the reasons fairly extensively.

ASPATURIAN: I would also argue—I don't know, see what you think of this— that it's inherently conservative in some respects, which science is not by its nature.

KOUSSER: Well, I don't know about that.

ASPATURIAN: You don't know about the second part of that?

KOUSSER: No, I don't. I mean, science wants to break through, but it makes it hard to break through.

ASPATURIAN: It can be institutionally difficult.

KOUSSER: Well, it ought to be institutionally difficult, because it ought to be hard to break the wisdom that people have spent so much time developing, and so the 95 percent confidence interval is a negative thing. You don't have a 50 percent confidence interval. You don't say, "Well, if we're a little more likely to believe this than that in the status quo, then we'll adopt the new idea." You have to break through.

ASPATURIAN: I guess what I meant is that scientists at Caltech are always being encouraged at some level to challenge preconceived thinking, even if they ultimately end up embracing it.

KOUSSER: Well, I agree with that, but they usually work within a framework that's not challenged. They have to work within a framework that's not challenged in order to find that one thing that's challengeable. But they also work—LIGO's the premier immediate example—within frameworks that are a hundred years old. General relativity has been around that long, and they have found a way to show that it is true, not that it's false.

ASPATURIAN: That leads me—What do you think that your students, coming in from an admittedly youthful but basically scientific perspective, find most surprising or challenging about the material you're teaching them?

KOUSSER: It's a different kind of rigor. Clarity is extremely important, but it applies to the rhetoric of persuasion, which they're not really aware of doing in science. Let me go back to the freshman course now, to say just a little about this. I spend a lot of time on writing, and for more than twenty years I've used a book by [Joseph] Williams called *Style [Style toward Clarity and Grace]*, and we do exercises, every week. From the second week through the last week of the course, they do maybe three pages of exercises, double-spaced, a week, and I mark them. Red marks all over them, and we spend half an hour discussing them. I take out sentences from these exercises that I think have got problems and type them up and Xerox them and hand them out. And we discuss them. How could this sentence be made better? Why is this not clear? Williams is dead now, but co-authors continue to put the book out. It's a marvelous book. I've gone through from the fourth edition to, I think, the eleventh edition now. Williams does two things. One is clarity. It's not easy to write clearly.

ASPATURIAN: Oh, I know this.

KOUSSER: I'm sure you know it, but the vast majority of students coming to Caltech don't know this. They don't know what's vague. They don't know why their sentences

don't work; they don't know why the sentences that they read are things that they have trouble understanding. So, Williams shows them clarity, and he shows them style. There are some few times, even in science, where you want to have an ability to employ a little rhetoric. Maybe not much. Maybe a sentence. Maybe a phrase. Something memorable that people can take away.

So, we go through this—and I teach it. I don't contract this out to the [Hixon] Writing Center. The students need to know that this is important to *me*. That this is not something that I think is so unimportant that it can be given away to people who don't have PhDs. I spend my life writing, and it's really important to do this. And I want to demonstrate by the fact that I take a lot of time doing it that's it important to them too. I tell them, “Look, writing 4,000 words in ten weeks is sort of required for a freshman course. You're probably going to write about 10,000 words for me. You don't like it, you can find another course.” So, a lot of them do—they drop out. I also taught a writing course for graduate students. I did this about twenty, twenty-five years ago because graduate students have to write a very big paper in their third year, and if they fail the paper, they're not admitted to PhD candidacy.

ASPATURIAN: That must be very hard on kids whose first language is not English.

KOUSSER: It is very hard. I didn't like the way they were presenting the papers, so I volunteered to teach a course in writing for the graduate students in social science. And I thought it was very successful. The papers were markedly better. I used the Williams book there too. There was a woman from Russia and another from China who took the course that year. They were both quite diligent. The one from China actually wrote English extremely well. The woman from Russia also wrote pretty well, but they both got a whole lot better during the course of the quarter. The woman from Russia—she's an economist—came back here maybe five years ago for a quarter. I saw her on the last day she was here, and she said, “One of the things I want to do before I leave is to thank you for that course. I started getting serious about writing when I took it, and serious enough about it that I'm now teaching a writing course for economists at my university. I continue to do that; it made a huge amount of difference to me, etc. etc.”

But my fellow social scientists didn't like the fact that I was telling their students how to write their papers, and so they took the course away from me and cancelled it. I was not taking anybody's students away. I couldn't deeply understand microeconomics, but I could understand it well enough to get somebody to write clearly about it. But I seem to have been a threat.

ASPATURIAN: You taught it for only a year?

KOUSSER: I taught it for a year. Things deteriorated; then some ten or twelve years after that, they asked me to teach it again. So, I taught it for three or four years running. A smaller proportion of the students were non-native English speakers than they are now, but there were some. The course is simultaneous with this major paper they have to write; it's in the last quarter of their third year. And I start out by saying, "Look, two things: One, from now on, nobody *has* to read what you write. When you were an undergraduate or graduate student, somebody was at least morally required to read what you wrote. But people are very busy. They don't want to read something unless it's interesting. You've got to find some way to make what you write interesting. The second thing is, you're not only writing for your thesis advisor. So don't assume that everybody will think that whatever you're writing about is interesting, or that they will know the literature. You've got to present the literature in a way that will convince people that it's worthwhile to take some hours out of their very busy days to read this. You've got a paragraph or two at most—maybe the abstract plus the introduction—to convince people that this is worthwhile. Your readers have got to know why they need to read this paper. And hopefully, why they want to read this paper."

ASPATURIAN: These are all grad students in HSS?

KOUSSER: In the social sciences. So, we start out, and I say, "Take a journal that you read in your subfield, look through a year of that journal, find a good introduction and a bad introduction, photocopy them, come in, pass them out, and tell us why this is a good introduction, and this is a bad one." They'd never done that before. And they find some beauts.

ASPATURIAN: In social science, I can easily imagine.

KOUSSER: We did the same thing with the literature reviews. And we discuss all sorts of things. “You’ve got a theory section? There are a bunch of Greek letters in here, so you’ve got to find some way to remind the reader what gamma stands for in this particular context.” “You want to put it in a little table? How do you set it up, string it out, so that your reader can go back and find the damned thing when they’re three or four pages farther along and deep into some theorem and, oh damn, what’s gamma?”

So, they break everything down into all these sections. I usually have them start out by writing something in the middle, on the grounds that the traditional thing that’s said is completely out of date now—that writing’s easy: you put a blank piece of paper in front of you and you stare at it until blood starts to come through—

ASPATURIAN: —the eyeballs, right.

KOUSSER: I don’t want them to think that they have to start at the beginning of the paper. You can start by writing some other part of the paper. I don’t want to allow them to be pen-paralyzed, so I do all this stuff. We did outlines of everything, too, and talked about exactly what you should do in the presentation: Is this too technical? Is this something that empiricists are going to understand if it’s theoretical, etc. etc.? We had practice talks.

ASPATURIAN: How long ago was this?

KOUSSER: Four or five years. And by the time they got around to giving their papers, they were very used to talking about them. And their papers were simple enough that even I could understand the main ideas. I said, “I’m a good audience. I know a little. But I’m not convinced that this is particularly important; you’ve got to convince me.”

ASPATURIAN: Why did you give it up this time around?

KOUSSER: My colleagues were unwilling to force students for whom English is a second language to take a predecessor course to this one. I didn't want to be in the business of teaching articles and verb tenses to students from Asia who were coming from a language that doesn't have articles and verb tenses. Some of my colleagues thought it was important and really were willing to force people, but not enough. And it took a huge amount of time and effort—I would be teaching the second term of the Supreme Court class at the same time—just to finish off classes.

Anyway, to summarize about teaching: I think that learning by discovering is what my mother wanted students to do, and that's what she did. She created an atmosphere and a structure in which kids could teach themselves. I'm trying to do that.

J. MORGAN KOUSSER**SESSION 8****June 30, 2016**

ASPATURIAN: We've talked a lot about affirmative action at Caltech, the lack of under-represented minorities. Something that has occurred to me throughout the course of these interviews is that, in terms of faculty, HSS has been kind of conspicuous in this regard—it seems to me—compared to other divisions on campus. I wondered if you had any thoughts on that?

KOUSSER: Well, I may have told you—I can't remember whether I did or not—but when Goldberger decided that we should have affirmative action appointments, I got a friend of mine who was a very good historian—he's now dead—out here and pushed his hire [*see also Session Two*].

ASPATURIAN: Is this the one [Provost Robert] Christy antagonized so badly [*see Session Three*]?

KOUSSER: No, he was a historian; he had studied at Princeton and Yale.

ASPATURIAN: African-American?

KOUSSER: Yes. Bob Engs. A very interesting guy. He worked a lot on Hampton Institute [today Hampton University, an HBCU], where Booker T. Washington went to college. It took this sort of self-help philosophy, which was very characteristic of a lot of private colleges during the nineteenth century, and adapted it to education for African Americans, and also for Native Americans, some Native Americans at least. Bob Engs eventually did a book on Hampton's founder, Samuel Chapman Armstrong, who was white and essentially Booker T. Washington's mentor. And it was very interesting. Hampton was an abolitionist; he had been a missionary—I think in Hawaii—and he had often very patronizing attitudes toward non-whites. He's a very complicated and

paradoxical figure, and it was a gutsy move for a Black historian to do his biography in the 1990s, because when Bob had finished it, it subjected him to accusations that he was soft on racism, etc. etc. He had been a good friend of mine for a long time, since Princeton [*see Session Two*], and he went on to study with Woodward at Yale. Anyway, I thought he was a good historian and really wanted to hire him, and my colleagues just said, “No, no; we’ll use this opportunity to hire a woman.” And so, they hired Eleanor Searle.

Eleanor Searle was a great historian, and it was not a bad thing to do, but on the other hand, we lost our opportunity to hire an African American. I’m not sure that we could have gotten him away. His wife was a schoolteacher in Philadelphia, but she could probably have gotten a teaching job here. It’s nicer to live in Pasadena than it is in West Philly, but I don’t know. So, we lost that opportunity. I’ve tried at other times to have candidates who were Black or Latino, and nothing’s come of it.

ASPATURIAN: How about any impetus from your colleagues? Have they shown any— ?

KOUSSER: Not particularly. Chris [Christopher A. Hunter, assistant professor of English] is here now.

ASPATURIAN: He’s African American?

KOUSSER: Yes, he is. But we have not done well about recruiting minority graduate students, which I attempted to do. We’ve had some Black graduate students who must have left before finishing.

ASPATURIAN: How come?

KOUSSER: They didn’t find people that they wanted to work with, and it’s unfortunate. Although we’ve done a great deal to take in people who’ve had very good math GREs, we don’t pay any attention whatsoever to verbal GREs in graduate recruiting. Zero attention. You could get 300 and get in here.

ASPATURIAN: Why?

KOUSSER: Because of the feeling that math is what gets you through the program, that not having it is what stops you from doing well, and they don't really care whether the verbal facility is there at all. When people have to go on the market and they have to give job talks, then there's some worry about this, but—

ASPATURIAN: Gee. There's writing articles and books, too.

KOUSSER: Well, I've talked about that [*Session Seven*], and there's less concern than I would like about that. In general, Caltech has been very bad about writing for graduate students and postdocs, and so far, as I know, mine was the only writing course for graduate students in the whole division, in the whole Institute. I'm told that back when I was teaching it, some graduate students had told other graduate students about what they had learned in the course, and these other students said, "Oh my gosh, wish we had that." Not that it has to be me, but that it would be a lot better if there were some people doing this. I mean, some science professors write or rewrite the papers, more or less in English, for their graduate students. I don't know what these students do when they go out from Caltech. They hire some unemployed English PhD to write their papers. It is quite worrisome, because as important as it is to have people who are paid communicators to make science understandable to the popular audience, it's also important to have scientists who can at least do some of that and can communicate with the people who are going to write the press releases. [Laughter]

ASPATURIAN: Sure. They have the inside perspective, yes.

KOUSSER: And some scientists write marvelously well and speak tremendously well, but, increasingly, a lot of them don't, and it's unfortunate. Sorry, diatribe.

ASPATURIAN: No, that's OK. One of the things I found from the year 2000 was this article from the *Chronicle of Higher Education*, which we talked about earlier [*Session Five*], concerning Caltech's dearth of underrepresented minorities. David Baltimore, the

Institute’s president, calls it—and I’m quoting here—“an unfortunate accident. It’s a statistical fluctuation.” He goes on to say how “a routine deviation can seem significant because of Caltech’s small student body.” And then, of course, you are quoted, and they talk about the situation in your classroom. What did you think about all this when you saw this piece?

KOUSSER: I understood what David was saying. It’s true as a matter of statistics, and he’s a very, very bright man, very cosmopolitan, and very knowledgeable about a lot of things, but you think, “Oh my God, if you had started that line of thought, you should surely have said, “Oh, stop, please; take that all back, that was off the record. What I meant to say was...”” If somebody at the *Chronicle* had been aiming a dagger at Caltech, they could not have found a better one than that. It was really awful.

ASPATURIAN: Well that brings up an interesting question for me. What is your take on the various presidents you’ve worked with? And their provosts, too. You’ve talked about Steve Koonin and Bob Christy.

KOUSSER: Yes. This is one interesting story, I think, about Harold Brown. When he came here, somebody must have told him, “You need to get to know the faculty.” So, he had a series of lunches at the Athenaeum with something like five faculty each time. And the difficulty was that Brown was, by that time I guess, so used to a bureaucratic environment—he had been at the Pentagon during the Kennedy and Johnson administrations—and so concerned with what he had to do immediately, that the luncheon that I went to ran as if the whole thing was scripted. Brown was going around the table saying, “What do you do; what do you do; what do you do, etc.?” And at one o’clock sharp, not 1:05, not one and five seconds, one o’clock sharp, he said, “Thank you gentlemen,” got up, turned on his heel, and sprinted back to the president’s office.
[Laughter]

He was absolutely bloodless as an administrator. I think he did—I guess—some good things. He kept the place together when it wasn’t clear how Caltech was going to exist after the time with [Lee] DuBridge [Caltech president, 1946–1969]; you know: “Can it go on without DuBridge?” And he managed to do that. I probably told you the

story of how I had said to some freshman class that, once a Democrat became President, Harold Brown was going to be secretary of defense?

ASPATURIAN: You did not tell me that, no.

KOUSSER: And I had completely forgotten about that prediction. When Jimmy Carter named him defense secretary, a student who'd been in my freshman class, who was still hanging around here like eight years later—he was in graduate school—called me up immediately and said, more or less, “You know, I didn't think that anything you said in freshman class was worth remembering, but *that*, you really nailed that!” [Laughter]

ASPATURIAN: How did you respond?

KOUSSER: Just laughter. I did tell you, I'm sure, about Harold Brown coming to my freshman class to discuss Vietnam [*Session Three*].

ASPATURIAN: Yes, you did.

KOUSSER: That's really my only big contact with him. I mean, he didn't respond favorably when there were calls to fire me, and for that I was happy. I had very little contact with Goldberger.

ASPATURIAN: Really?

KOUSSER: I'm sure you've heard the story about Goldberger trying to set up an Army analysis center on campus.

ASPATURIAN: The Arroyo Center?

KOUSSER: Yes. There was a faculty meeting at which that was discussed. And nobody except for Hans Liepmann [Von Kármán Professor of Aeronautics, emeritus, d. 2009], I think, stood up for Goldberger. There was a straw vote at the end of it, and it was

something like three votes for him, with everybody else against it. It was really thought to be outrageous, and it was particularly odd since he had been very much against nuclear weapons, against the ABM [anti-ballistic missile] program when he was at Princeton, and he resigned shortly thereafter—I think that more or less drove him out. That was *really* a vote of no confidence in a way that I've never seen at Caltech.

ASPATURIAN: He proposed that because he thought it would guarantee a steady funding stream of some sort or other?

KOUSSER: I don't know. I didn't hear about it very much, but I heard some public discussion, and there was no discussion really of what it meant positively for Caltech. It was more or less that it was our responsibility as scientists to do this sort of thing. I mean there was a proposed study about how to incarcerate radicals basically in concentration camps if there were riots in the streets of a city.

ASPATURIAN: This was something Caltech was supposed to be working on?

KOUSSER: Yes. And that really didn't go over terribly well.

ASPATURIAN: I can imagine.

KOUSSER: I mean, he didn't defend that idea, but this was one of the proposals for studies that ought to be done. Crazy.

ASPATURIAN: It seems amazing that someone with Goldberger's political leanings and record would have landed on this.

KOUSSER: Yes. Did somebody sell it to him? Was there somebody on the trustees that sold it to him? Some donor or something like that? I don't know. It's hard to imagine.

Tom Everhart I worked very well with. He's just very easy to work with. I became convocations chair while he was still president.

ASPATURIAN: That’s right—’90 to ’95.

KOUSSER: And we just got along very well together. When we were discussing who should be the commencement speaker and things like that, it was just fine. There’s a little connection that you get because the president hands out diplomas, and you have to hand out the diploma and make sure that the right name has been read, etc. etc. And a couple of times they were out of order. We bonded through rain I think. [Laughter]

ASPATURIAN: Yes, three years of it.

KOUSSER: But he’d been at the University of Illinois, and I think he had a real commitment to affirmative action.

ASPATURIAN: I agree with that.

KOUSSER: One of the things that he did that really did indicate that was that he actually called African-American and Latino admittees in the L.A. area.

ASPATURIAN: Personally?

KOUSSER: Personally, to try to get them to come. And nobody else has done that, and I was deeply impressed by that. And I think he was a good president. I don’t know whether he became president because Arnold Beckman had given money to the University of Illinois to set up a Beckman Institute there, and people thought, “Oh my God, we’ve got to keep Beckman on board.” He was happy to get rid of being president of a place where the sports teams really mattered, and there was always the possibility of various scandals. That didn’t happen at Caltech, so he was very happy about that. He’s very smart and apparently quite a good engineer, and he had a common touch that nobody else had as president. And I really appreciate that. I remember one day I was walking across campus with my daughter and her husband. We saw him, and I said, “Hi Tom,” and he said, “Hi, Morgan,” and my son-in-law was just blown away that this could happen. He’d been a Yalie.

ASPATURIAN: Now Everhart's provost was Steve Koonin, with whom I guess your relationship was a little less smooth.

KOUSSER: Indeed. I did not have a good relationship with Steve Koonin. I was very happy that he never became president at Caltech. He was clearly running. Every time that Caltech would have an opening for a president, Koonin would somehow show up on campus and give a talk, wherever he happened to be at the time, whether he was with BP [the international conglomerate Beyond Petroleum, formerly British Petroleum] or the Department of Energy, wherever.

He wanted Caltech to be more or less what it was like when he was an undergraduate, and that's one of the reasons that Dabney Library is as it is now, with these sort of outmoded fixtures. It looks like what it was like in the early 1970s. He felt that that was the right thing. It could have had computers at every desk, look sort of modern, but—not at all. That's how he wanted it to be. Its books were the only books that he thought would be in existence eventually.

One thing that was interesting about Robbie [Rochus] Vogt [R. Stanton Avery Distinguished Service Professor and Professor of Physics, emeritus; Caltech provost, 1983–87] when he was provost is that he held dinners; and I went to dinner at Robbie's house. I guess I had known him to say hello before, but not anything else. And he talked about himself and his life for about six hours, I think, and it was absolutely fascinating.

Extraordinary person. I was just mesmerized by all of his talk about growing up in Nazi Germany and becoming a member of the Hitler Youth and managing to live for a couple of years in sort of an abandoned subway that they had. And then getting picked up by some American military person who somehow saw that this was a brilliant guy and brought him to the United States and got him educated; it was just amazing. And then he talked about LIGO, which he was about to become head of, and that was fascinating too. So, I don't know—I don't have any impression of him as provost, but he was an absolutely fascinating guy.

Barclay Kamb I worked with on the Retirement Committee. I think I said something about that earlier [*Session Four*], and how he was just wonderful on that committee and if Caltech had continued to follow the recommendations that we made it

would be better for Caltech today.

David Baltimore and I had a good relationship during the time that we were planning his inauguration. He's by far the most cosmopolitan and humane president that I know of from Caltech. He's a Swarthmore undergraduate, and at Swarthmore you do everything. And I'm sure that he writes very well—you have to write a ton at Swarthmore, whatever field you're in. I like him a lot. I think he's very smart. There were two things where I had reactions that were somewhat unfavorable. One is that like most Caltech administrators, he doesn't know how to thank people, and that seems to be a characteristic that's somehow very much built into the Caltech ethos. And people like to be thanked.

ASPATURIAN: They like to be appreciated.

KOUSSER: They do, and it's something that does not come naturally to him. And it's unfortunate because he's so convivial that you sort of expect it, and you think, "Well, I must have *really* done something wrong." And the other thing is that he went ahead with a lot of projects without having full funding for them—Dabney being the chief example that I know about, but I think there were other things as well. When he came in, it was a sort of go-go stock market and economy. Everybody projects the future in terms of the present, and he sort of thought that it would continue that way, and then it didn't, and I think he was probably ill-served by some people, not so much in Development as by the people who oversaw investments in the treasurer's office. They invested too much in high-tech stuff, invested too much in Pasadena start-ups—

ASPATURIAN: That's right. That crash came in around 2000. It was pretty brutal.

KOUSSER: And I think that overshadowed his presidency, because the rumors were that Caltech had lost 40 percent of its endowment.

ASPATURIAN: I think I heard something like that.

KOUSSER: And then we did it again! In the Great Recession. There were comparisons with Yale and Princeton, places that had diversified enough so that they didn't lose everything. I know that Yale had a terrible experience during the Great Depression. The story is told that they sold IBM in like 1936. [Laughter]

ASPATURIAN: Bad call, yes.

KOUSSER: But Yale did very well during the 2000 crash, and Yale and Princeton always had investment advisors who were Old Blue or Old Tigers etc., and whose only public service in their whole lives was to guarantee that their institutions really did well. Otherwise, they were just making money. And so, they did better for their institutions than they did for their own hedge funds or whatever. I don't know why in the world Caltech couldn't have done that but apparently it didn't.

[Jean-Lou] Chameau [Caltech president, 2006–13]: Before he came, I had been pushing hard on affirmative action, trying to get David Baltimore to do things and had written memos to him.

ASPATURIAN: He was not responsive?

KOUSSER: Well, he was, but somehow just nothing.

ASPATURIAN: His priorities were elsewhere?

KOUSSER: They were elsewhere. He did have a priority of hiring more women, which I think that he succeeded in. But underrepresented minorities, not so much. And they really needed to get an Eddie Grado [*see Session Five*], and I think he was gone before David came in.

ASPATURIAN: I believe that's correct.

KOUSSER: But they needed to redefine that position and really to push and get somebody who was that connected, that good, and who worked that hard. When Chameau came in,

I decided, “I’m going to hit him first thing.” So, I sort of updated the memo and went over to see him and talked about that. He’d been at Georgia Tech. And Georgia Tech had a lot of Black folks.

ASPATURIAN: Yes. It’s in Atlanta, isn’t it?

KOUSSER: It’s in Atlanta. I mean, they have a lot of people who are Black engineers, not just football players and basketball players. And he seemed very committed to this, and he was responsive, in speech at least, to what I said. But so far as I could discern, very little was ever done. I don’t know—Chameau was absolutely impossible for me to understand. He came in thinking, “Don’t make the same mistakes that Baltimore made,” so he ran an extremely lean ship, and lots of people got fired. We spent \$400,000 on Baltimore’s inauguration, and if you remember Chameau’s, they couldn’t have spent \$10,000 on that.

ASPATURIAN: They conjoined it with commencement in 2007.

KOUSSER: It was just nothing. With David the inauguration was an announcement. It was an announcement that we are no longer simply physics and engineering. That biology is the science of the twenty-first century, and we’re going to go into it at as high a level and with as much visibility as we can.

ASPATURIAN: I also think that for Baltimore, after the debacle at Rockefeller University, the Margot O’Toole case, and the congressional testimony, it was important for him to reaffirm his identity at this time as a university president.

KOUSSER: Yes. Although he didn’t push for this. David was happy about the things that we did, but he wasn’t the one who pushed it all. Jerry Nunnally made it possible, and we were just enthusiastic about doing it, and wanted to push for as big a show as we could get, and everybody seemed to like it.

ASPATURIAN: I remember it was a very nice inaugural, and he gave a very lovely speech.

KOUSSER: Yes.

ASPATURIAN: What did you think of Chameau’s decision to go to Saudi Arabia?

KOUSSER: Well, he was rumored to be making twice as much as the Alabama football coach, and I was just astounded at that.

ASPATURIAN: How much does the Alabama football coach make?

KOUSSER: It’s more now—I think he makes something on the order of \$6.5 million a year.

ASPATURIAN: Oh, my goodness! Twice as much.

[PORTION TEMPORARILY CLOSED]

ASPATURIAN: You mentioned last time that you wanted to talk today about your work with California redistricting, which I believe started in the early 2000s; is that correct?

KOUSSER: Let me just first talk about a couple of other cases that were of some considerable interest.

ASPATURIAN: Sure.

KOUSSER: One was the Tom DeLay redistricting case—the mid-term redistricting in Texas.

ASPATURIAN: When was this?

KOUSSER: We're in 2005. That was an interesting case. I had written about Texas redistricting previously and done a report for the 1990s Texas redistricting, but this was extraordinary because it had been more than a hundred years since any state had redistricted in mid-term, except by a court order. And it was extremely high profile: Democratic legislators in the Texas House had broken a quorum in protest and gone to Oklahoma. And then the Senate Democrats, being a slightly higher quality of people, went to Santa Fe.

ASPATURIAN: [Laughter]

KOUSSER: But still, that quorum got broken, or put back together finally, and so the Republican redistricting passed, but the redistricting had huge visibility. The real Republican objective in the redistricting was to get rid of all the white Democratic congressmen. To turn Texas Democrats into a Black and brown party and then run as the white party for the rest of the twenty-first century.

ASPATURIAN: That's a pretty cynical strategy.

KOUSSER: It's been done all over the South.

ASPATURIAN: Was Texas one of the first to formulate this?

KOUSSER: Texas was one of the first.

ASPATURIAN: Was DeLay at the time Speaker of the House?

KOUSSER: When the redistricting took place, he was majority leader.

ASPATURIAN: Yes, that's right. Dennis Hastert was the speaker, OK.

KOUSSER: Yes. And DeLay raised money and did this deal where the money went to Washington and came back to Texas, and in 2002 he managed to get a Republican majority elected in the state legislature. There had not been a Republican majority in the legislature prior to that. DeLay managed to get it done, and it hasn't changed since. Then they redistricted again. There had been a court-ordered redistricting in 2001 that pretty much followed the lines of the 1990s.

ASPATURIAN: Was the governor by this time also a Republican?

KOUSSER: The governor was [James Richard "Rick"] Perry. He took over from Bush in 2000. So anyway, there was this mid-term redistricting, and the object was really to get rid of six white Democrats. There was also a district, District 23, that was growingly Latino. It stretches basically from San Antonio to almost El Paso, so geographically it's a huge district. There was a Latino Republican in the seat, but he got almost no Latino votes, so the Republicans were in danger of losing that seat. When they redistricted, the Republicans took the Latino Democratic percentage down by about ten points, and so in a district where the Democrats had gotten closer and closer to being elected, they just made sure that it wouldn't happen. They split the most heavily Latino county in the country, Webb County, right down the middle, including Laredo, which was where the Democratic challenger lived—that was his base. I was working for MALDEF, and there were more lawyers in this case than I have ever seen in any other case, about a dozen people at each counsel table.

ASPATURIAN: Was this a federal suit?

KOUSSER: A federal district court case. Three-judge panel.

ASPATURIAN: OK. So MALDEF brought suit.

KOUSSER: Yes. Not in MALDEF's name—in the name of LULAC, which is the League of United Latin American Citizens.

ASPATURIAN: In what city was the trial? Where were you?

KOUSSER: It was in Austin.

ASPATURIAN: And Austin of course is a liberal community.

KOUSSER: Yes, it is, but the three judges were not liberal. Anyway, a couple of things of some interest perhaps: One of the difficulties when you've got multiple plaintiffs and multiple lawyers working for different organizations is that there's always some antipathy. Somebody's in charge, and somebody is saying, "You get to argue this, and you get to argue this," and someone else is saying, "No, I want to argue that!" There was some antipathy between MALDEF and the Democratic Party, which was also a plaintiff to this case. And one of my oldest friends in the voting rights community, Gerry (J. Gerald) Hebert was running things for the Democrats as the lawyer in charge for the plaintiffs. And the lawyer for MALDEF, Nina Perales, was rather skeptical of the Democratic Party's interest, and Gerry in general, and so the night before I testified, I was being prepped by Nina and Tom (Thomas A.) Saenz, who is now the chief MALDEF lawyer in in Los Angeles. And Nina was spouting off about Gerry Hebert, etc. So, I just took it in, didn't defend him, but, you know, took it in.

The next day I show up outside the courtroom, and during a recess Gerry, who was at the counsel table, comes out and the first thing he does is: "Morgan!" He gives me a big hug. And Nina is standing right there. And I thought, "Oh, my cover with MALDEF is completely blown." [Laughter] But there were so many lawyers there on both sides, and they were very-high powered, very smart people who did a very good job of trying to destroy my testimony.

I gave my deposition by phone, and I made the mistake of saying that the only way they could have drawn District 23—this huge district—to guarantee Republican representation was to split Webb County. I shouldn't have said "the *only* way"; I should have said "*best* way." If I'd said that, I would have been fine. And so that was the chief part of the cross-examination: It wasn't the *only* way. Well, it's pretty nearly the only way. But I testified as to the intent of the framing of District 23, and even though the three-judge panel decided against that, in fact this was the only part of the case that we won when it got to the U.S. Supreme Court. Justice Kennedy decided that the Twenty-third District had been drawn with a racially discriminatory intent. I didn't get cited, but I thought, "Well, OK, at least we won that."

ASPATURIAN: So, was it sent back to Texas to redraw?

KOUSSER: It was, and they did redraw it, and the Republicans lost the next election. The Democratic candidate who lived in Webb County ran and won. It's gone back and forth, and for now it's back in Republican hands again, because of the 2014 election.

ASPATURIAN: How did you feel as you watched this happening? All the work you'd done in the 1990s, which had resulted in good outcomes?

KOUSSER: Well, actually, we started losing in the '90s if you look at *Shaw v. Reno* and *Miller v. Johnson*. I felt very badly. I wrote about this and was very critical of the Supreme Court, and I analogized *Shaw* to *Plessy v. Ferguson*. I still think that it was a series of very bad decisions; and we continued to lose. Continued to fight hard, but continued to lose—at least, eventually, in the Supreme Court. The three other cases that I should say something about were Texas redistricting after 2011, the Texas voter ID case, and also the North Carolina voter ID case, HB589, which was just argued last week before the court of appeals. We've lost in the district court—we knew we were going to lose there—but I think we will win in the appeals court, and then with a 4:4 split in the Supreme Court, the law may be overturned.

The litigation about Texas redistricting is forever with us, and this case is still in litigation. I testified in two different Texas versions of the Texas redistricting case. One

was in San Antonio in a Section 2 case, which can be filed anywhere, and the other was in Washington, D.C., in a Section 5 case. Texas, instead of going to the Justice Department asking for preclearance, asked for preclearance under Section 5 from the district court—a three-judge panel—of the District of Columbia. We did well on the Section 2 case, which is actually still not decided.

ASPATURIAN: What is the specific issue there?

KOUSSER: It's the most complicated and screwed up bunch of litigation I've ever seen because it's a Section 2 case. Section 2 and Section 5 are separate, and Section 5 is now gone, basically [a reference to a 2013 Supreme Court decision that fundamentally invalidated key provisions of the Voting Rights Act –*Ed.*]. But the courts that were considering this were meeting almost simultaneously, and they were actually communicating back and forth, like, “What are you doing?” or “We'll wait until you've made a decision—”

ASPATURIAN: Is that kosher?

KOUSSER: Well, they were exactly the same issues, and clearly, they could have made decisions that would have screwed up the time schedule and everything else, so I guess they had to do this, but it was very peculiar. Texas appealed the Section 2 decision in San Antonio to the U.S. Supreme Court and asked for the opinion to be stayed and sent back. The Supreme Court actually did that, but then there was a bunch of negotiation, and even though they didn't reach a final decision and issued no opinion, they still allowed this negotiation to go on between various parties, and they redrew the districts in Austin, San Antonio, and Dallas–Fort Worth, without a decision. And the Texas attorney general agreed that the districts would be redrawn.

ASPATURIAN: He is a Republican, I assume?

KOUSSER: Yes, it was Greg [Gregory W.] Abbott, now governor. I have to tell you what the strategy for the redistricting was, and how the redistricting got redrawn, to give you

an impression about all of this, and something of my happiness at this actual redistricting. The Dallas-Fort Worth metroplex has around six or seven million people, more than the two counties of Dallas and Tarrant combined. In 2010 its population was about 65 percent minority.

ASPATURIAN: Mostly Latino?

KOUSSER: A majority of that was Latino, but also a large Black population. And since the early 1990s, there's been a Dallas district that was drawn in 1991 or '92 to elect a Black member of Congress. Eddie Bernice Johnson, who was in the State Senate at the time, was on the redistricting committee. She drew herself a district and she's been its congressional representative ever since.

What the Republicans did was pack her district. She could have carried it with 35 percent Black voters without any trouble; she'd been in office a long time, and people knew her; and she had working relationships with people. She had fundraising capability and all that sort of stuff. So, the Republicans packed her district to between 45 and 50 percent Black voters. Then they drew every other district to encompass a large number of people in the suburbs and exurbs who were overwhelmingly white Republicans, and extended fingers down into the central city—either Dallas or Fort Worth—in order to extract African Americans and Latinos and add them to the suburbs and exurbs to create safely Republican districts, with Black and Latino populations too small to have any chance to elect their candidates of their choice. Republicans did that from the north, they did that from the west, they did that from the south. They managed to draw three safely Republican districts that could not *ever* elect a minority candidate. And they drew the ugliest looking districts you've ever seen if you look at them on a flat, featureless map. One of them, I called the "lightning-bolt district," and the name stuck. Nearly every precinct in the lightning bolt was majority Latino.

ASPATURIAN: Let me see if I can understand this. The Republicans essentially locked minority voters into a few districts?

KOUSSER: They locked minorities into *one* district and diluted every other district with enough white voters from the suburban and exurban counties to ensure that they were reliably Republican districts

The reason that it's interesting to know this is because, as I said, there was a negotiation, and they redrew the districts. Without a final decision, they redrew the districts in Dallas–Fort Worth and made a Black–plus–Latino district in the central part of the overlap between Dallas and Tarrant counties. And they elected a Black member of Congress, Marc Veasey, who was the first-named plaintiff in the Texas voter ID case. He had been in the state legislature. I had not met him, but I had read comments about him, and he's a very impressive guy. MALDEF thought that they were going to get that district for a Latino, but sometimes in politics, friendships matter more than ethnicity, and it happened that Mark Veasey was good friends with the head of the Latino caucus in the legislature. So, the Latino legislative caucus ended up endorsing Veasey over a Latino candidate. Anyway.

ASPATURIAN: What is the minority population, roughly, of the state of Texas, do you know?

KOUSSER: It's a majority now. It's about 36 percent Latino, maybe more now, and around 12 percent Black, and then there are some Asians.

ASPATURIAN: Texas is still a bright red state, though.

KOUSSER: It is. But when I started my testimony in the voter ID case, I said three things had happened in Texas in the first decade of the twenty-first century. One, for the first time since statehood, white Anglos are a minority. Two, the white voters became predominantly Republican. Three, the Latinos moved more wholeheartedly toward the Democratic party, and so that meant the Republicans had to do something.

ASPATURIAN: Hence all the frantic ID legislation afterward, yes.

KOUSSER: Right. So, we won on the Texas Section 5 case in a three-judge court in Washington. For each of these, I produced a hundred-page report, which I spent a lot of time doing.

ASPATURIAN: Did you actually spend a lot of time in Texas doing this, or were you able to do it—?

KOUSSER: I could do most of it here.

ASPATURIAN: I guess so much is online now.

KOUSSER: But I did some stuff in Texas. Anyway, at the end of my report, I go through all the amendments that were proposed and rejected to the voter ID law, which would have alleviated a lot of the problems and made it less draconian.

ASPATURIAN: What was the gist of the law that they wanted?

KOUSSER: Well, the voter ID law requires you to present a photo identification, but it's only a limited number of official documents that they'll accept. For example, if you are a State of Texas employee and have your face on a State of Texas identification card, that does not qualify. A covert-carry gun permit qualifies. A University of Texas student ID does not.

ASPATURIAN: I'm amazed this has even become an issue. This is just incredible.

KOUSSER: Well, in each of these states there have been discussions about whether at least a public in-state college or university ID should qualify as valid identification, and in the South that has been mostly beaten down.

Texas kept saying to the district court, "We have to have a decision quickly, because we need to administer this for the 2012 election." So, the three-judge panel of the district court left out intent. But they included all of those amendments I had worked on, and that's what their decision was formally based on. So, I felt good; I felt like my

testimony and what I had worked on so hard to get done at least had some influence over the decision even though I didn't get cited. And then two hours after Section 5 got thrown out by the Supreme Court, the governor, Greg Abbott, announced that Texas was going to put the voter ID law into effect. They put it into effect for the 2014 election, and it's still under litigation—there was another district court trial. I didn't testify in that one. The district court threw out the law on intent as well as effect grounds, and that decision was then overturned by the Fifth Circuit, which is the most conservative circuit in the country. Then they sent it back to the district court, which has not made a decision,

But we're now, all sitting around thinking that the Supreme Court is likely to become much more liberal, and so it may well be that this will be overturned, whatever the Fifth Circuit does. The Fifth Circuit still has control over the decision, and they were not going to make a decision. They're just dragging their feet, and there was an appeal to the U.S. Supreme Court to try to get the Fifth Circuit to make a decision. The Supreme Court actually said, "If you don't make a decision by July 20th of this year, we're going to take other action." So, something could go into effect or at least be decided decisively for the 2016 election. I don't know; we'll see. The North Carolina case was really extremely interesting.

ASPATURIAN: What are the dates there?

KOUSSER: Well, the law was passed immediately after the Supreme Court decided to invalidate Section 5 in *Shelby County*.

ASPATURIAN: We should clarify just for the interview that this was essentially a decision that overturned key provisions of the 1965 Voting Rights Act.

KOUSSER: Right. Section 5. The case is *Shelby County v. Holder*, and it was decided on June 25th, I guess, of 2013. I was deposed by two lawyers for the other side.

ASPATURIAN: This is for North Carolina?

KOUSSER: For North Carolina. I was deposed in Washington, in this big fancy law firm; they did a tag team. It was videotaped as these things typically are these days, and one lawyer took five hours; I guess we broke for lunch at some point, and then the other lawyer took two hours. I was on for the whole seven. I've never been so willing to fight back as in that particular deposition. They really bored in very hard. Since I'd cited a lot of newspapers in my report, they wanted to say that newspaper evidence was hearsay and should be disregarded by a court. And they wanted to say that I was being credulous in the way that I looked at newspapers.

ASPATURIAN: Is that the language? "You're being credulous, Professor Kousser."

KOUSSER: Yes. And so, I said, "Let me tell you how I became a historian." Oh boy, did they blow up. [Laughter] "You're filibustering. Answer the question." And so my attorney, who had not had to do terribly much during this deposition—she trusted me fortunately—said, "Let him answer. You can make your objections; let him answer." And so I started talking about something that I talked about earlier in this interview [*Session One*], which was that I grew up reading two newspapers that were diametrically opposed in their news coverage. I had to develop a faculty for critical thinking from a very early age to do this. To think that I would be uncritical of newspapers—that facility was built into my very bones. And so finally they let that go.

ASPATURIAN: That line of questioning evaporated.

KOUSSER: Yes. I mean they did say later, "You can't take what newspapers say; newspapers make mistakes." But of course, there's a lot of evidence in them that you can't get any other way. Anyway, that was sort of fun. You can see how strange I am to think that being grilled for seven hours is fun. Then, the trial was last summer in Greensboro [North Carolina].

ASPATURIAN: Who brought the suit?

KOUSSER: There were a whole series of people. The first named plaintiff is the League of Women Voters. I was actually working for the Southern Coalition for Social Justice, but also with the ACLU. The Justice Department was in the suit; the NAACP was involved in the suit. So, everybody but MALDEF, I think, was piling on.

ASPATURIAN: There aren't too many Latinos in North Carolina.

KOUSSER: It's a growing proportion, but MALDEF didn't get in the suit for some reason. Anyway, again, a huge number of lawyers. But also, North Carolina is a place where there is this so-called Moral Monday movement. When Republicans took over the state legislature in the 2010 election, they started repealing everything and passing all sorts of bad legislation. They almost got rid of one of the campuses of the University of North Carolina. But people started sitting in, led by the head of the NAACP. And for this trial, they had a 5,000-person march in Greensboro. People came up from Charlotte, from Raleigh, from Durham, and it was incredibly impressive; it was also jam-packed. You had to go through two metal detectors to get into the courtroom, and the only reason I got into the courtroom is that I was testifying. Otherwise, there were no seats. I'd never seen anything like that. The head of the Moral Monday movement testified before I did, and he was just incredibly impressive: Reverend William Barber. He is the most impressive Black minister or civil rights leader that I've seen since Martin Luther King.

ASPATURIAN: Is he a young man?

KOUSSER: He's middle-aged, fifty-ish, I guess. He has some disabilities; he walks with a cane, but he stood during his testimony. He didn't need a microphone; he has this booming voice. And he just comes across as the epitome of morality and civil rights. The civil rights movement is still alive and well in there. He's knowledgeable about the history. One of the things that is most interesting to me is that people in North Carolina are very well aware of what had happened in their state in the nineteenth century.

ASPATURIAN: That's what you said earlier [*Session Six*]*—*that they seemed extraordinarily well informed.

KOUSSER: There is a guy named Rick [Richard L.] Hasen, who teaches law at UC Irvine, and he is the chief election-law blogger in the country. Everybody who does anything about election law listens to what he has to say. He was going to give a talk in North Carolina, and so he emailed me and said, "Is there anything that I should read about the history of redistricting or election law in North Carolina?" And I said, "Rick, I don't mean to be egotistical about this, but you ought to read my book." And so he read the chapter in *Shaping* [*The Shaping of Southern Politics*] on North Carolina, and the parallels are absolutely perfect. He gave this talk in North Carolina, which a lot of people went to, and it starts out with this interlude—two pages or so taken from *Shaping*. He published that in a *Harvard Law Review* online, and it got a lot of publicity.

So, yes, I think they are more aware of history in North Carolina than are the vast majority of people in a lot of places, but they could have cribbed from this, and it's been available. There have been various things available; there's a race relations library at Duke that's had stuff online for a while or so.

ASPATURIAN: So, what is the status of this case now?

KOUSSER: It has been argued before the appeals court on the Fourth Circuit in Richmond.

ASPATURIAN: Were you there for that as well?

KOUSSER: No.

ASPATURIAN: But I suppose your testimony was part of the record?

KOUSSER: Yes. And the lawyer that I was working with has done a marvelous job on this all along. She's a very bright woman.

ASPATURIAN: Is she with the ACLU?

KOUSSER: No, the Southern Coalition for Social Justice. And she examined me and all that during the trial. The lawyers for the other side decided after my deposition that they

were my big buddies, so they were sort of coming over and shaking my hand, and all that sort of stuff. But, you know, Tom [Thomas] Farr, who was their chief person, used to be Jesse Helm’s lawyer, so I don’t really feel that enthusiastic about—

ASPATURIAN: Being convivial, yes.

KOUSSER: So, the point of all of these things is that both Texas redistricting cases, and the Texas and North Carolina voter ID cases are all big, high-level national cases.

ASPATURIAN: With big implications.

KOUSSER: And for all of them I wrote long, long papers, which attempted at least to have enough interesting material in them. I told a lot of stories—I told you I like to tell stories—but they were stories that had a point. And I tried to make it interesting enough that the law clerks wouldn’t simply dismiss them as “Oh, that’s old history.” But I spent some time in the center of things.

ASPATURIAN: When is a ruling expected in the North Carolina case?

KOUSSER: I think we’re going to get a ruling late this month.

ASPATURIAN: And what are your expectations?

KOUSSER: The expectations are that it’s going to be a unanimous opinion striking down the law. They have already heard this case once. The plaintiffs moved for summary judgment before the 2014 elections, and the appeals court decided in their favor and then the decision was stayed by the U.S. Supreme Court—Scalia was still alive at that point—and thrown back to the district court. The district court had to hear the whole case, but the summary judgment part of it was simply in abeyance.

ASPATURIAN: Do you think this is an indication that the political or judicial winds are shifting?

KOUSSER: I think the judicial winds are shifting. Last week's Supreme Court decision on abortion has very strong implications for voting rights and particularly for voter ID laws.

ASPATURIAN: How?

KOUSSER: Texas, in the women's health case, argued that if a lawyer can come up with any plausible justification for a particular law, it doesn't matter whether there was any evidence presented to the legislature for it, or whether the legislature actually believed it, or whether a judge could find that the evidence for a factual premise was more convincing than the evidence against a factual premise. So, the Texas lawyers could argue that the legislature had acted legitimately to protect women's health by requiring that the abortion clinic facilities be equivalent to a surgical care unit, or that it was a necessary protection of women's health to have a doctor with admitting privileges in a hospital within thirty miles. Either of those things was plausible or asserted to have been the reason. Then the court's responsibility was simply to accept what the Texas legislature or its lawyers said. The Supreme Court, Breyer's decision, does not accept that at all.

ASPATURIAN: They rejected that reasoning?

KOUSSER: Breyer, who is always crazy about facts, goes through fact after fact after fact, and he just shreds the arguments. I'm working on a voter ID case in Alabama now, where the state's lawyers have said, "It doesn't even matter that we have no evidence of fraud. All we have to do is to assert that there will be more confidence in the validity of the elections because somebody thinks there might be fraud." And that's a sufficient justification.

ASPATURIAN: And it's that type of thinking the Supreme Court has just soundly rejected in the abortion case.

KOUSSER: Yes. So if they apply that same reasoning in the voter ID cases, then things have changed.

ASPATURIAN: This is all assuming we get a Democratic president in the upcoming election.

KOUSSER: It is, but the precedent in women's health is already there without another Democratic member of the Supreme Court. So that's a relatively important thing. So I did all these cases. It's very exciting to write these papers. One of the things that I've learned about myself is that I can still throw all-nighters. If I still have to. [Laughter] But I wrote the North Carolina report in four months. Did all the research and wrote the report while teaching, and that was tough.

ASPATURIAN: How many historians like you are actively involved in shaping public policy?

KOUSSER: Well, it depends upon whether you count all of the historians who've testified for tobacco. A lot of them have made a lot of money testifying for the tobacco companies. This happened essentially after the tobacco companies switched from saying that there is no evidence that tobacco causes cancer or heart disease to saying that everybody knows and has always known that it causes cancer and heart disease. So, they now get historians to say how everybody knew that tobacco was harmful to your health, and, as a consequence, they must have been willing to accept that risk. So, some historians have made half a million dollars out of these cases.

ASPATURIAN: Let's take them out of the equation.

KOUSSER: I'm not sure what the answer to that question is. There are five or six people, maybe a few more, who have done expert witness testimony in voting rights cases. There have been some prominent historians who have now testified in gay rights cases, particularly in *Lawrence v. Texas* in 2003 and in the Proposition 8 case in California [*Perry v. Schwarzenegger*], which went to the Supreme Court. Nancy Cott at Harvard, a past president of the Organization of American Historians, and George Chauncey, who's at Yale, have testified in gay rights cases. I'm sure that there are others. There's a lot of

testimony in riparian cases—these are navigable rivers cases—but I don't know who works in that area.

ASPATURIAN: It's a different area, yes.

KOUSSER: There are now going to be sessions at the American Historical Association and the Organization of American Historians, both in the coming year, on expert witnessing.

ASPATURIAN: Is that new?

KOUSSER: I don't think we've done sessions on expert witnessing at these conventions before. I've talked about being an expert witness and then presented material from the expert witness work, but I don't think there have been sessions before.

ASPATURIAN: Are you speaking at any of these?

KOUSSER: I'm on the AHA session. But then, to go back to the California Voting Rights Act, I could say something about that. That's separate, but it's interesting and distinctive in some ways.

ASPATURIAN: I'd like to ask a question first. I don't know if you have an answer to this. Why is Texas repeatedly such a center of reactionary resistance? It is not a monolithically conservative state. And as you pointed out, it now has at least a 50 percent minority population. I don't know how many of the Latinos are citizens and therefore eligible for the vote, but surely a substantial number. I just wondered what your thoughts were on this.

KOUSSER: Well, the first thing that you need to know, or need to remember, is that Texas has not been that reactionary for that long. In the 2008 election, the lower house of the legislature split almost 50:50. It was 76:74 Republican, and only then because of a very close election that in the end went that way. Now the 2011 redistricting has made

electing Democrats much more difficult. But the basic reason is that Latinos don't register in large enough numbers and don't vote in large enough numbers.

ASPATURIAN: And I suppose the Republicans would like to keep it that way, so they're going to these extraordinary efforts?

KOUSSER: That's true, but it's very frustrating, because there have a series of campaigns that sought to energize Latinos. There was a Latino candidate for governor, and that flopped. And then the idea was well, we'll appeal for suburban women's votes, and Wendy Davis ran in 2014. And that flopped. Somehow or another, Texas has never had a Proposition 187.

ASPATURIAN: To galvanize Latinos.

KOUSSER: To galvanize Latinos. Because 187 was extraordinary in its effects in California. There was a session of the Western Political Science Association in 2002 or 2003, and I was a commentator on a lot of papers that looked at what happened after 1994 in California in terms of Latino political participation and voting. What we know on a national level is that people who have higher socioeconomic status, higher education, more wealth, and so forth are more likely to vote, and they usually vote fairly predictably, etc. And so, I was looking through these papers, looking at the tables, and it looked to me like the coefficients were wrong, that they had the wrong sign. Because the authors found that in California people who were younger, less educated, and hadn't been here very long were more likely to vote. They registered in higher numbers, and they turned out in higher numbers. And I thought, "Well they've just gotten the plus and minus signs wrong." But not true. After 1994, after Prop. 187, there was this huge upsurge in Latino registration, and there was a peer group effect. People went into the electorate at the same time. Sometimes they didn't register Democratic, but they were much more Democratic in their voting behavior. And they turned to vote out at higher levels. So, you're getting kids who didn't even go through college who are registering to vote and voting at higher levels than their parents' generation. And it was really extraordinary how it just transformed—

ASPATURIAN: Sure, the political landscape of California.

KOUSSER: It's just utterly different. And people keep thinking, "What's going to do that for Texas?" And nothing's done it so far. And if you read Texas newspapers, if you read what these people say, you think, "Oh my goodness, this is another planet." The woman who is one of the chief sponsors of the Texas Voter ID law made this famous statement about public education: "Public education was invented in Moscow, Russia. It's a Communist plot." Which would come as considerable news to many.

ASPATURIAN: Benjamin Franklin, for example.

KOUSSER: Horace Mann [the Boston Brahmin, who was an early and active proponent of public education in America in the nineteenth century –*Ed.*] is turning over in his grave. The Communist plot in Russia that produced public education in Boston in the 1840s. [Laughter] Very interesting. But she continues to be elected.

ASPATURIAN: There must be something in the air down there.

KOUSSER: It's hard to understand because three of the ten largest cities in the country are in Texas. You've got Houston, which had the first openly lesbian mayor in the country; you've had Black mayors in Dallas, you've had Black or Latino mayors in Houston, Austin, and San Antonio.

ASPATURIAN: You have the University of Texas.

KOUSSER: So, it's hard to understand. To get back to the California Voting Rights Act. I was involved in CVRA from before the beginning, in essence. It was fostered by Joaquin Avila, and another guy called Robert Rubin, who worked for the Lawyers' Committee for Civil Rights under Law in San Francisco. During the 1980s, Joaquin filed a series of cases and won a big case in Watsonville in 1987.

ASPATURIAN: Oh yes, you talked about this last time [*Session Seven*].

KOUSSER: And then he lost a case in Pomona and some other cases. He had expected that he would win a case, and that after that he would be able to file cases and people would settle.

ASPATURIAN: Were these all dealing with at-large versus district elections?

KOUSSER: They were at-large versus district cases, and they were brought under Section 2 of the national Voting Rights Act. And so, by the 1990s he was pretty frustrated by all this. When Gray Davis got elected governor in 1998, Joaquin and Robert Rubin, started working on a new law focused on at-large elections and focused more on Latinos than anybody else, because there were a much higher proportion of Latinos in California than African Americans.

ASPATURIAN: At-large election of judges?

KOUSSER: No, at-large elections of city councils. Also, school boards, community college boards, and water boards.

ASPATURIAN: Down at the real local level.

KOUSSER: Yes, we're down at the real local level, where politics starts and where lots of zoning decisions are made. Looking at school boards—when you've got an increasingly Latino student population, shouldn't you have a Latino on the board, etc. etc.? So, the way that they framed this law was to ensure that some of the things that made it hard to win a Section 2 law were pushed out of the way. You didn't have to show that you have a 50 percent-plus-one citizen voting age population. You didn't have to show that you could draw a compact district that was 50 percent-plus-one; in fact, you didn't necessarily have to draw districts. You could have other ways of electing people. You didn't have to prove historical discrimination. It might help, but you didn't have to do that. You didn't have to prove that no Hispanics could be elected, although that's in a special place in the law and is sort of close to being a requirement. What you had to

prove really was racially polarized voting in at-large elections. So, Joaquin sent this proposed law to me and said, “What do you think of this?” And it seemed fine to me.

ASPATURIAN: What year are we in now?

KOUSSER: We are probably in 2001 when the law was introduced, and it’s still called the California Voting Rights Act of 2001, even though it was actually passed in 2002. So before Gray Davis was recalled as governor, they got the law passed. They then started filing suits, and the most important suit they filed was in Modesto, *Sanchez v. Modesto*.

ASPATURIAN: Where is Modesto?

KOUSSER: It’s in the northern Central Valley, south of Sacramento. They filed a motion for summary judgment, although I don’t think that’s what they call it in California law, but it amounts to the same thing. And the judge in Stanislaus County, which is where Modesto is, decided against them.

ASPATURIAN: So, this was a single judge?

KOUSSER: Single judge. I was not even deposed in the case. The judge decided that the CVRA was unconstitutional. You will perhaps recall that the lawyer for the County of Los Angeles in *Garza* was a guy named John McDermott.

ASPATURIAN: Yes. With whom you subsequently worked [*Session Six*].

KOUSSER: He also was the lawyer to go to for local jurisdictions in voting rights cases. He argued the case and convinced the Stanislaus County judge to throw out the law.

ASPATURIAN: But you two had previously worked together on a case in Monterey, so he shifted back over, as your daughter said, to the dark side?

KOUSSER: Yes. This is a very dark side, because if CVRA was unconstitutional, maybe the Voting Rights Act was unconstitutional. He'd pushed that position before, unsuccessfully. So, this went up to a court of appeal in California. They took a couple of years, but they overturned the Stanislaus County judge and said that CVRA was constitutional. Then the California Supreme Court sustained that decision. McDermott tried to get the Supreme Court to accept CRVA as a case, and they did not.

ASPATURIAN: Since you had worked with this guy both adversarially and collaboratively, did that make you more aware of what his tactics were likely to be?

KOUSSER: Well, I knew what to expect if I worked against John. He's very smart, and his style of writing briefs is very, very good and more sharp-tongued than a lot of lawyers. Fortunately, I did not have to work against him. I wrote a report, but we never even got to the deposition stage, and at that point, Modesto settled—this is now 2007—and Joaquin and Robert Rubin presented them with a bill for \$3.5 million.

ASPATURIAN: These are the court costs.

KOUSSER: This is what Modesto had to pay them as lawyers. So, 2007: Anything else happen in 2007? The Great Recession starts, OK? Imagine yourself to be a member of a local school board or a city manager in a small jurisdiction in the Central Valley, for example. And Robert Rubin and Joaquin Avila show up in court and file suit against you. The Modesto outcome was very widely known; newspapers publicized it all over: "They got \$3.5 million! These terrible lawyers, saying Modesto owed them \$3.5 million." So, what happened was that the vast majority of places settled, particularly school boards. And they started moving towards single-member districts.

I worked on a case with Joaquin in Tulare County, and that took forever. I was deposed three times. John McDermott had some sort of illness and dropped out of these suits and become a federal magistrate, I think. So eventually Tulare County settled, and—it's like an infection. The settlements would hit one county, and everybody in Stanislaus County would suddenly switch from at-large to single-member districts, and then in Kern County, and Tulare County, etc. etc. And it finally got down to L.A. By

that point, poor Joaquin had had a stroke, and so he's pretty much out of it. Robert Rubin left the Lawyer's Committee and went into private practice. And MALDEF and ACLU were in trouble because the Great Recession had hit their contributions and hit their endowments. So private lawyers started getting into the cases a lot.

ASPATURIAN: What was the incentive for private lawyers to do this?

KOUSSER: When the law was written, it was written by plaintiffs' lawyers. So, if you bring suit, even if the case doesn't go to court, even if you do not even file a brief, you file what is called a demand letter. Suppose that the local jurisdiction changes from at-large to single-member districts. If you can plausibly say that it's your actions by filing this demand letter that caused the district to change, then you can collect. And if you lose, unless the suit is held by a judge to be frivolous, you don't have to pay anything.

ASPATURIAN: So, this was not primarily *pro bono* on the part of these—

KOUSSER: It was not *pro bono* at all. That was exactly how the law was designed and how it needed to be designed, because what it did was give self-interested attorneys an incentive to bring about needed change. And that is exactly what has happened.

ASPATURIAN: This is very interesting.

KOUSSER: I started working with a guy who had not done any voting rights cases, and we worked in Palmdale. Basically, I taught him how to do voting rights law, and that was fun. Palmdale did go to court; it went to full trial. I was the chief expert witness, and we wiped the floor with them. There were two attorneys for the plaintiffs, one of whom was a big-time litigation attorney who basically financed the suit, so that the legal aides could be paid, and all the exhibits could be produced. But we won this case, and I'm told they got something over \$3 million. Then, boy, the whole Santa Clarita Valley switched. Lancaster didn't, so I worked as a sort of consultant at Lancaster; and then the lawyers started filing cases in Orange County and in the San Gabriel Valley, and this continues, and I continue to work with them. We also went to trial in Highland, which is just east of

San Bernardino.

I don't know why these local jurisdictions don't just settle, because they really do lose a lot of money, and their lawyers don't know what they're doing. Since 2007, over two hundred local jurisdictions have switched from at-large to single-member districts. The majority of the voting rights cases that have been won since 2006 have been won in California.

ASPATURIAN: Has its model for incentivizing private lawyers to become involved been adopted elsewhere in the country?

KOUSSER: No. Joaquin had pushed the Washington Voting Rights Act. It made it through one house of the Washington State legislature three times, and each time the Republicans blocked it in the other house. There was a proposal in Illinois that I don't think got anywhere. The people who have actually made the most money are people who have done consulting for the local jurisdictions. One guy in Claremont has basically made millions telling local jurisdictions to settle.

ASPATURIAN: I was going to say; it seems like a no-brainer to me. We can all go make money giving that advice.

KOUSSER: But they don't always take it. It didn't go to trial, but the most interesting case in some ways that I worked in was in Compton. Compton is now about 70 percent Latino in population, and up until this lawsuit, they'd never elected a Latino to the city council or anything else that required city-wide elections. And it was very strange because I was working of course for Latinos, and here I was working in the first Black versus brown case, and I had mixed feelings about that.

On the other hand, the African Americans in Compton were acting just like the whites in Mobile. And it showed that power is power, and those who have it want to keep it, and that Blacks can be as discriminatory and intransigent as anyone else, but they settled in Compton, and when I was cross-examined in Palmdale, I brought this up. By that point I was probably overconfident. I said, "I think your case is very weak. I think you should have done what the enlightened city of Compton did and settled."

ASPATURIAN: I'm sure that went over big in Palmdale.

KOUSSER: But the judge, a very attentive judge, paid attention when I got up and gave him a lecture about ecological regression. He's Anglo, but he's very sympathetic. He had two Black clerks and a Black court reporter, and he was clearly somebody who's very sympathetic to minority concerns, and so I thought, "Well, OK." Palmdale brought in an expert witness, who was Steve Thernstrom.

ASPATURIAN: Steve Thernstrom, from Harvard, went to work for the city of Palmdale?

KOUSSER: Yes. He's gone to work in voting rights cases against the minority side all across the country. And one of the difficulties with Steve is that he never seems to do any real work. He did not do any statistical analysis; he didn't interview people. He drove around Palmdale, I think, doing what's called the windshield survey. [Laughter]

ASPATURIAN: What's a windshield survey?

KOUSSER: It's about what you think. He drove around looking at places and came to conclusions on the basis of that. [Laughter] And he made some statements, which I'm sure were said in the best of faith, but they were easy to interpret as racist, and they *were* interpreted as racist and apparently the judge's law clerks were apoplectic about these statements, and so he did not do Palmdale any good.

Anyway, the California Voting Rights Act has been extremely successful. And I've been involved in maybe ten cases, most of which don't even get to the litigation stage. Often, I don't even hand in a report. Sometimes I do some tables and prepare to do a report if necessary. But it's worked very well, and what it has done, I think, has made it possible for often small local jurisdictions to integrate Latinos into the governmental structure. I did work a case in Santa Barbara; that's a fairly large and certainly a fairly visible jurisdiction. But most of the places are relatively small, for example, a large number of community college boards. And particularly with school boards, you had a district population that's maybe 40 or 50 percent Latino in the student population and you don't have a Latino on the board.

It's not necessarily that people are racist, but in an at-large system where there haven't been any Latinos elected before, and it's a relatively small town, the Latino population is not terribly rich and there's no incentive to run, because you don't think you can win. With single-member districts, there's an incentive to run and win, and suddenly you've got a Latino on the board who probably is fluent in Spanish, and parents can come talk to this person, not just to the teachers or the principal. It's not that people weren't sympathetic before, it's that it eases the transition of people into community and civic life; it eases the integration of governance in California from the bottom up. It's been very successful in that regard, and it's a story that nobody knows about.

ASPATURIAN: Have you discerned whether there are—I don't know if I've got the right word—institutional or cultural differences between voting rights cases involving African Americans and involving Latinos?

KOUSSER: I don't really think so. I think they're very similar. African Americans have been fighting for political rights in the United States for a longer time than Latinos, and they're usually more prepared. There's more of a recognized political elite there than there is with Latinos. But Latinos have managed to step into politics very rapidly. And now in California, there is at the highest level a huge cadre of incredibly competent people. What the CVRA has done more than anything else is to move that political involvement to the local level and to move it right in. Once that ice is broken, then it's possible for people to move up. You move up because you've got a good bench, you get into more of the major leagues, etc., but also because you've got more members of the community. I really think that's a very important thing and I'm happy to have been part of it.

J. MORGAN KOUSSER**SESSION 9****July 12, 2016**

ASPATURIAN: I want to start by observing that that there has been some criticism that the majority–minority redistricting, which we discussed last time, has played into the hands of the Republicans by enabling them basically to quarantine Democrats within a small number of districts. How do you respond to that?

KOUSSER: Well, the phrase that I always used was minority–opportunity districts. Not majority–minority districts. Each state has a certain proportion of whites or sometimes Hispanics and certainly Asian Americans who will cross ethnic lines and vote for their party’s nominee, particularly, the Democratic Party nominee, in the general election. So, it’s quite possible to elect minorities from districts that are not majority Black or Hispanic. The Supreme Court, I think quite unfortunately, ruled in *Bartlett v. Strickland*, which I talked about earlier [*Session Seven*] that you could not make a Section 2 claim against a district unless a majority of the voting age population belonged to a minority group.

I published my first article on this in 1993, and I argued that the best way to interpret the major Supreme Court decision in *Gingles* was to interpret it as requiring minority–opportunity districts and being flexible about percentages of minorities in a district considering what the Supreme Court had called in a 1973 case “an intensely local appraisal of the circumstances.” So, I argued that in many cases, it was first of all a violation of the constitutional rights of protected classes to pack them unnecessarily into districts. So, for example, there are State Senate districts in Alabama where the Republicans said, “We are required by the Voting Rights Act to keep exactly the same proportion of the VAP of Blacks in each district that are majority–minority as in the last apportionment, and since in most of those districts the population is actually decreasing, we had to take Blacks from outside the district and push them into the district.” And in many places what they have done is pack Blacks into these districts in larger proportions

than they had before. The Supreme Court actually finally decided in an Alabama case last year that packing was illegal.

ASPATURIAN: Even with Scalia on the Court they decided this?

KOUSSER: With Scalia on the Court, yes. And that decision has now been remanded, to the local court. But it was also the case that the Supreme Court in a series of cases seemed sensitive to the practicalities of redistricting and exactly what proportion of Blacks or Hispanics had to be in the district. A good example is the Supreme Court's decision in the Texas 2006 case called *LULAC v. Perry*. I testified in that case, and I think I may have discussed before [*Session Eight*] what had been done in District 23. And I testified that it was intentionally discriminatory. What they did was they kept the same proportion of Hispanics, but they switched from Democratic Hispanics to Republican Hispanics and decreased the proportion of Hispanic Democrats below the level where the candidate of choice in the Hispanic community could be elected. Justice Kennedy actually was sensitive to that and overthrew that district, not on intent grounds but on effect grounds. So, it's very clear that the Republicans have taken advantage of the desire to have districts where minorities could win.

The most blatant coalition between Republicans and Democratic Blacks was in Georgia in the 1990s, and they clearly packed the districts more than they needed to. In California in 2001, Democrats packed Hispanics more than they needed to, particularly in the State Senate. And that meant that they decreased the proportion of Hispanics in other districts. A lot of the Hispanic incumbents were quite happy to have their districts packed because then they didn't really have to work hard for reelection.

This is a complicated issue and what I want courts to do is to look at the realities of electing Hispanics and to continue to hold to the theory, to the principle, that is expressed in that 1973 case, which is that the minorities have to have an equal opportunity to vote *and* to elect members of their choice. So, it's the equality of opportunity to elect, which got written into the 1982 amendments, that's most crucial. And the Supreme Court has been fairly sensitive to that recently, and that seems to me a very good thing. There's no question that Republicans have tried to pack as much as is

possible, but the tactic that is even worse is the one that I described in Texas, which is having just enough minorities in a district, through quite blatant gerrymandering, so that minorities can't elect anybody anywhere else. And that way Republicans can ensure that Blacks elect nobody.

In most Southern states there is one Black member of Congress. There's not even one in Tennessee anymore, but there's one in South Carolina, two in North Carolina, and two in Georgia. One in Louisiana, one in Mississippi. There are more in Florida since the larger states have more members of Congress but they're going to lose one soon. In some of these, you could elect all white Republicans by cutting the districts up. So, there are problems of packing, there are problems of cracking, as it's called, and it's unclear what's going to happen in 2021, but it will be a more sophisticated discussion, I think, than it has been before.

ASPATURIAN: You mentioned wanting to talk about historiography, so let's do that and then move into the Caltech topics. I read a review of your book *Colorblind Injustice* by a fellow named Benedict, and then I read your response to it. He had many good things to say, but he seemed to feel that you had a personal policy agenda that overcame what should be a historian's objectivity. You responded that he basically couldn't see the forest for the trees. Is this part of what you wanted to talk about? The historian's methodology?

KOUSSER: No. *Historical Methods* is a journal, and I want to talk about that as well. In historical scholarship there is an obvious danger that people will get committed to particular positions, and there's no difference between getting committed to a position because you have a current public policy principle, desire, or goal, and getting committed to it because you have a particular position in the historiography.

ASPATURIAN: I agree. I mean there's no way to have a particular policy agenda with regard to, say, the High Middle Ages.

KOUSSER: But you might find things in the High Middle Ages that might be reflective of things that happen today. John Benton, who used to have this office, did an article on

Héloïse and Abelard that was very much affected by his feminism. John had four daughters, and he wanted to show that Héloïse had more to do with Abelard’s philosophy than people had thought.

ASPATURIAN: I see what you’re saying, yes.

KOUSSER: The first course that I ever took on Tudor–Stuart history was at Princeton with a guy named Lawrence Stone [*see Session Two*]. And people who were against his mentor and therefore against him engaged in bitter intellectual debates of the kind that I think only the British can have. But he was committed to a position and continued to work on it and find evidence for it the rest of his life; and I think he just put out the evidence.

One of the things I’ve tried to do, both in policy-oriented and in non-policy-oriented scholarship, is to set up hypotheses clearly so they can be tested. To give them the hardest tests or set of tests that they can possibly come up against, and to lay out all the evidence, with all the sources made clear, so that people can make their own decisions. That seems to me to be the only honest way to do it. Inevitably, for whatever reason, you may get committed to a point of view. But my goal is to make the scholarship as convincing as possible and also as open to refutation as possible. In the phrase that I learned from a guy named Donald McCloskey, now Deirdre McCloskey—*—he had a gender transformation—* “Put your thesis at risk.” I went to Don’s economic history workshop at the University of Chicago, and he would stamp that on the front of every workshop paper that was handed out to everybody. And I always felt that that was a wonderful slogan, and I’ve tried to follow it.

So, I recognize the problem. I don’t think it’s any graver for people to have a position on a particular current issue than it is for people who have a position on a past issue. And I think that the best way to go about dealing with it is to acknowledge it quite openly. I also think that if one takes the position, as some historians do, that historians really ought not to comment on current public policy and they ought not to orientate their scholarship towards current public policy questions, all that does is leave current public policy to other people. To law professors and to people who do what is derisively and

rightly called “law-office history,” and it’s both dishonest—because everybody does have positions on public policy issues—and bad for public policy and for the historical profession. Or the economics profession. Or the political science profession, or the astronomy profession, if there is something that’s particularly relevant to astronomy, or whatever the science. I think it’s best to face those issues openly and make what contributions you possibly can. OK, I want to talk a bit about *Historical Methods*, a journal that I was editor of for twelve years.

ASPATURIAN: What was the timeframe?

KOUSSER: From 2000 to 2012. This is a journal that has been going since the late 1960s—I think 1967. And I started taking it from the very beginning, when it was a mimeographed newsletter. It’s gone through several editors. A previous editor, who had been at [UC] Riverside, was on soft money and got cut, so he was no longer affiliated with the university and didn’t have time to edit a journal anymore. So, the plan was for Caltech to take it over and for four people to coedit it: Phil Hoffman, David Hacker, James Lee, and me. And Caltech was going to support it significantly, we thought.

ASPATURIAN: The division chair at this time was John Ledyard?

KOUSSER: Yes. James Lee had edited a Chinese history journal here. Chinese history is divided into periods, and he had turned it into the best journal for that period. And he got a lot of help; he had a secretary who did a huge amount of work for him, etc. That was supposed to be the arrangement. But then James left, and David Hacker did not get hired [*see Session Four*]. Phil was never really very interested in this, and then he became editor of the *Journal of Economic History*, which is a more prestigious job. So, I was left with it.

When I came in as editor, there was essentially no backlog of accepted articles, so I had to start more or less at the beginning, and then I started trying to commission special issues and get papers, etc. I had a secretary who worked with me; I didn’t give her very much to do, but at one point an article was submitted in LaTeX, which I don’t do, and it had to be converted to Word, because that was what the publisher wanted, and

so I asked her to do this, and it was apparently a huge pain. There were a lot of equations in it—it's much harder to write equations in Word than it is in LaTeX. So, she complained to her supervisor, who told me never to give her anything else for the journal. So, from then on, I handled all the correspondence. I was the sole editor. I did all the stuff by email and did all the editing by myself. I just gave nothing else, anything at all, to my secretary, and I didn't have a secretary at all for, I don't know, four or five years.

ASPATURIAN: Lynn Bryant had worked for you prior to this.

KOUSSER: She was very, very good. It was heaven having Lynn around because she typed a lot of papers, and she was interested in the subjects.

ASPATURIAN: I remember Lynn. She had a lot of personal integrity too.

KOUSSER: Yes. She caught a lot of errors. But then she went to work for Development and eventually for Jerry Nunnally. So, I did this all, and it took me a while to get used to being editor. It's an extremely interesting sort of journal. Its home then was an organization called the Helen Dwight Reid Education Foundation, HELDREF. Helen Dwight Reid was a political scientist at Smith, independently wealthy, and died without leaving any heirs. So, her will established this foundation, whose purpose basically was to support "orphan journals"—niche journals that were not major journals in the field. So that's what HELDREF did, and they had a good deal of money. They owned a building in Washington, D.C., and had, I don't know, seventy or eighty journals, of which *Historical Methods* was one, and had done good things.

A woman named Barbara Kahn was the executive editor of about four HELDREF journals, and she was my executive editor. She taught me a great deal about how to edit things, how to deal with referees who didn't get their referee reports in, people who didn't get papers back and all that sort of stuff. So that was actually quite a good deal of fun. I decided that the journal, which had been almost entirely a demography journal and basically a European demography journal, would try to get articles from all over, and articles on very different subjects.

ASPATURIAN: You wanted to make it a lot more eclectic.

KOUSSER: Yes. So, I actually ended up publishing a lot of papers by a guy named David Galenson, an economic historian, whom I mentioned earlier [*Session Three*]. He had been here part-time, and part-time at the University of Chicago, and then there was a squabble here over giving him tenure in humanities, and so he stalked off. Anyway, David got on this kick, which is very interesting and very interdisciplinary. He came up with a way to try to figure out something about kinds of intellectual accomplishment. Typically, we think of people who do very brilliant work when they're young that seems to come out of nowhere as being the definition of genius. Think Leonardo.

ASPATURIAN: Mozart.

KOUSSER: Yes. But there is another kind of intellect. It's a kind of intellect that takes a while to develop and usually consists of working again and again and again at much the same thing, never being terribly satisfied.

ASPATURIAN: Didn't [the *New Yorker* writer] Malcolm Gladwell turn this into a book?

KOUSSER: Malcolm Gladwell stole things from David. But David did several books on this, so he got full credit. For the latter type of brilliance, think [Claude] Monet [French Impressionist painter]. Painting those damn lilies again and again. Or the haystacks. There was a Monet exhibit at the Chicago Art Institute once, and I went to it. The exhibit had six haystacks. And I was just overwhelmed seeing this image again and again, and seeing what he had done with it, and the variations on it, and the depths of his understanding of it. David went through on the order of thirty or forty textbooks on Impressionist and post-Impressionist art, and he looked at how many pictures there were by each artist and at how many times in these books each picture and each artist would occur. And it works out that it's a bimodal curve: Some artists have one picture or one statue or one creation that usually develops entirely out of nothing very early in their career, or just a few in a very tight period, and this is what they get known for; and some

artists have as much citation but it's for a whole series of different things. So he did that for art, and he did it for poetry.

ASPATURIAN: Was he doing that here, or was this back in Chicago?

KOUSSER: Back in Chicago. And he started sending me these papers, and I started publishing them. He couldn't get them published anyplace else. The art historians said, "No, you study one artist or one picture—that's what you do." The economists said, "Well it's not really economics—economics is how much it costs." So, I published, I don't know, half a dozen of these articles eventually. I'm sure that it made some people angry to see that, but I thought his work was really brilliant, and that it really captured an interdisciplinary aspect brilliantly. I also came up with a series of rubrics like Perfecting Data, Evidence Matters, Database Developments, and also something related to interdisciplinary research.

So, I tried to get articles that would fit under these rubrics, and I also encouraged the submission of articles that would probably not be published elsewhere, particularly articles on the development of databases. Many of the most important work that gets done in history or economics or even political science comes out of new databases, and unless somebody publishes an article about the database, lots of people don't know about it. And they're the sorts of articles that say, "Here's what we've got. Here's what it's good for. And here's a good example of this sort of thing." There have been these marvelous, dramatic developments in databases for historians, and people in history departments don't know anything about them.

ASPATURIAN: The young people coming out of universities are not being exposed to this?

KOUSSER: Absolutely not. Because it's quantitative, and history has become very, very anti-quantitative. But the stuff is really incredibly interesting.

There are huge developments in Minnesota, where they've got population censuses. When I was going through graduate school, all you had from population censuses in the United States was what was published in print. No individual level data, no samples. So, the University of Minnesota has got this huge archive that has

computerized samples from the U.S. censuses back to the time when the census started bringing out samples. And there are whole censuses that are available online now, going back to 1850, 1860. They have now got censuses and other population developments from something like fifty countries in the world, a huge amount of it in individual data. And you can do things with this that are just astonishing.

This was of the things that David Hacker did. He came out of Minnesota and eventually went back. One of the reasons I wanted to recruit him was that I wanted somebody from Minnesota to bring these data and these techniques, and a familiarity with them, to Caltech, but it didn't work out. There's been this problem about the so-called demographic transition in the United States. Demographic transition is when birth rates and death rates start to go down. And so you get fertility going down, and at the same time the mortality rate of people, particularly very young people, starts to go down dramatically. When does that happen? In particular, when does the birth rate start to decline?

Prior to Hacker's work, it had been thought that in the United States it started to decline as soon as we started to measure it—that is, the 1790 census. But individual-level data allows you to look at that much more closely, and what he found was that the United States was not so different from the rest of the world, and that it really started to go down between 1840 or 1850. And that makes a huge amount of sense, because in 1837 you vulcanize rubber, and one of the first things they did with this was produce condoms. And you've also got the first stirrings of the women's rights movement.

ASPATURIAN: That's right, it was an outgrowth of the abolitionist movement in part.

KOUSSER: Yes. And the keys to the fertility transition are some mechanical ability to stop fertility, some knowledge of when women are more fertile and when not, and some ability of women to control their fertility. It all happened in the 1830s and '40s. The whole picture fits together. You could do that with the Minnesota project, and with the abilities that David had, and it made things finally make sense. So, I was very enthusiastic about that.

And there are other archives, and I was publishing lots of their stuff too. But

HELDREF fell upon bad times; it was controlled by one family, and apparently a fairly ne'er-do-well family member managed to run the foundation into the ground, so the foundation sold off all its journals. It was bought by Taylor and Francis, which is a big international conglomerate with 1500 journals. I did not work so well with them. They were perfectly fine, but it wasn't a big thrill. Barbara Kahn had been guiding the journal forever, and she was not hired by them. A couple of young people for whom this was just clearly a temporary job worked on it. So eventually I left. Another thing that I did was to start a book review issue, so one issue out of the four issues of the year consisted of very long reviews of books that were historical but quantitative or social scientific. Nobody else did that.

So, I tried to do a series of things. I tried to diversify the journal in subject matter and in areas of concentration, so there were a couple of Middle Eastern articles, there was an African article—things that *Historical Methods* hadn't done before. And I spent a lot of time editing. I spent three weeks doing nothing but rewriting one article.

ASPATURIAN: I can relate.

KOUSSER: I'm sure. It was somebody whose first language is Dutch. I thought it was an important article, so I did it. And I tried to innovate by creating a sort of cross between a journal that only published reviews, like *Reviews in American History*, and one that published lots of articles as well. By the end of my tenure, I gave the editors who succeeded me—one of whom was David Hacker, now back at Minnesota—a full year of articles so they didn't have to rush around and try to get things helter-skelter for a year. I even gave them some people signed up to do book reviews for the special issue. They dropped the special issue, and I don't know whether they've kept up other things.

ASPATURIAN: You no longer follow the journal?

KOUSSER: Not as much. But all of the things on the front cover are the sort of rubrics I established, and so I was very happy.

ASPATURIAN: Were there any articles you published that engendered a lot of controversy?

KOUSSER: No, not really, not in that journal. The article that I took three weeks to work on was on the Irish potato famine. It had estimates of deaths in the potato famine that were very substantially below what the estimates generally are. He looked at it from the standpoint of migration statistics, and his estimates of migration were much higher than other people's estimates. So, it wasn't so much that he was looking at the deaths per se. He was just using a subtraction method, looking at how many people in the population had emigrated, and what would the death rate have to have been to have the population that was left in Ireland at the end.

And that probably is controversial, but I didn't know anything about the Irish potato famine beforehand and I don't follow the literature itself. But when I went to conferences, people would often talk about the articles, so it was getting read. Anyway, that's what I did.

ASPATURIAN: The secretary issue aside, Caltech supported you on this?

KOUSSER: Not at all.

ASPATURIAN: You lost a couple of your coeditors too, now that I think of it.

KOUSSER: I lost the coeditors; there was no time off; there was no support. And the library cancelled the journal in 2007.

ASPATURIAN: Yes, you talked about this earlier.

KOUSSER: And I had asked Kim [Douglas, then-director of libraries] specifically when it came up on a list not to cut it, because I was the editor. But she did. So. No support.

ASPATURIAN: You taught at the Hong Kong University of Science and Technology in 2014. Was it a visiting position?

KOUSSER: Yes Three-and-a-half months.

ASPATURIAN: Was that through your association with James Lee, by any chance?

KOUSSER: Yes.

ASPATURIAN: How did you find that? Was it interesting?

KOUSSER: It was quite interesting. It would have been more interesting, I guess, in some sense if I had been teaching what James asked me to teach.

ASPATURIAN: Which was?

KOUSSER: Hong Kong in 2017 is to have a new local government. At least, changes in government are supposed to happen in 2017. He wanted me to teach something related to political structures of local government around the world. Which is something that I don't know anything about. And I took one look at the Hong Kong form of local government and said, "No. This would be fraud." Hong Kong's legislative council of seventy people is elected in two ways. One is area representation, the sort of representation we're familiar with, and the other is sort of occupational representation.

ASPATURIAN: Weren't there big demonstrations in Hong Kong about this not too long ago?

KOUSSER: I'm coming to that. [Laughter]

ASPATURIAN: OK.

KOUSSER: Occupational representation is really quite bizarre. All the people in sports get to elect some representatives. People in the financial services industry, which consists of about 30,000 people, get to elect as many people as several hundred thousand people. I took one look at that and said, "It's a fix." These are people who are clearly just named

by the CCP—the Chinese Communist Party. If this system existed at the time of British rule, they were elected by the British consul, or the Queen, or whoever. And it would be fraud to say anything about this, because if you put in, say, a proportional representation system, which is one form of electing people to local governments, it wouldn't make any difference if half the legislative council is still going to be elected by essentially whatever Beijing decides. It's crazy. Plus, there was an appointed mayor, or chief executive, who had huge amounts of power, much more than the legislative council had. So I thought, given that I know nothing about it—I mean I know something about municipal government, but I don't know the literature around the world—and that it would be a fraud even if we studied it, I don't want to do that. So, I taught a course on the U.S. Supreme Court, a version of the course that I teach here. I used the same textbook, and I made people read cases and write briefs. I didn't make them do outside reading, except for a couple of graduate students who took the course.

So, I get to Hong Kong and start teaching around September 1. And around September 10, Occupy Hong Kong [a pro-democracy political movement and series of peaceful protests] breaks out. And the chief issue in Occupy Hong Kong is the form of local government, particularly the elected executive; but if you listened hard, there were proposals to change the way the legislative council was elected, and the proposals were essentially to shift to more area representation and less occupational representation. Had I been prepared to teach this course it would have gotten a lot more attention.

It was quite interesting to be there during this time, which lasted almost until we left, around the first week of December. And some of my students were engaged in it. HKUST is sort of out in the sticks, to the extent that there're any sticks in Hong Kong; it's not in the middle of the town. So, it's not as centrally part of the sort of Hong Kong student experience as Hong Kong University or the Chinese University of Hong Kong. It's the third leading university, basically. It's very young, about twenty-five years old, and pushes very hard. It's very ambitious. The president, Tony Chan, was a Caltech undergraduate, and I had long conversations with him.

It's a very interesting place. I thought when I went there, "Here I am, an old white guy, teaching a course on the U.S. Supreme Court. Kids don't know very much American history at all." They don't have a court system much like ours. The Hong

Kong court system is actually still pretty British and pretty independent, although Beijing doesn't like that. Beijing would like Hong Kong cases to be appealed to Beijing, which has no tradition of the rule of law at all. At the beginning of the Occupy Hong Kong, Joshua Wong, who was its face more than anybody else, got arrested, and the Hong Kong courts let him out on a writ of habeas corpus. That wouldn't happen on the Mainland.

But here I am, with these kids whose English is probably not perfect and who don't know anything about the subject. I had the stereotypes about the reticent, shy Hong Kong Chinese and all that sort of stuff—"I won't be able to relate to them; they won't talk to me, I'll teach the course and that'll be it." Completely untrue. Within a couple of weeks, kids were spending two or three hours in the afternoon in my office talking to me about *everything*.

It turned out that teaching about civil liberties and the rule of law at the time of Occupy was really quite on topic. The number of kids who took the course was similar to the number of kids who take it here, but there were kids who just didn't have any idea about the rule of law. The young woman who was my TA said her only experience with law was that her father and her family in general had been involved in one lawsuit and they won because they paid the judge more than the other side did. So, she was really quite fascinated by everything. Very nice, very smart. I think her father had just died, and so she was in some psychological difficulties at the beginning and talked to me about him, and I sort of said, "Well, you know, it's a terrible thing; I lost my mother at a similar age. Here's one thing that helped me at the time, etc. etc." And it seemed to help her; she was very thankful. But kids would talk about everything. Here's what it's like on the Mainland, and here's what it's like to be a female graduate student in a society that basically thinks women should get married and have kids.

And I learned quite as much, probably more, than any of these kids did from our interactions. But I had a huge number of interactions, and I keep talking to kids who were in the class. They were as warm as they could possibly be. Took me out to dinner at the end. We went to a real Chinese Hong Kong place where nobody spoke English at all, and it was just great fun. It's the first time I've ever lived, really, in a big city. Certainly, I've never lived in anything like a big Asian city. My wife was an Asian studies major, and so she had always wanted to go to China, and she went on a couple of

trips, and then we went to Shanghai. My former student Francis Chong, whom I've talked about [*Session Three*], invited me to come to Singapore, so I went down there and got an incredible tour of Singapore.

So altogether it was just a wonderful experience. I liked everything except the humidity and the heat, which really is a grave difficulty for me because I exercise all the time. But it was amazingly interesting. On October 7th, which is my birthday, they had a faculty discussion on the Occupy movement, and the Umbrella movement [a series of political protests staged in Hong Kong in 2014]. They put me on it, so I was the outsider, in some sense, and it was a great experience. I enjoyed it quite a good deal. I even started off with an American joke, which they actually laughed at.

ASPATURIAN: So, it sounds like these universities, at least in Hong Kong, have a fair amount of intellectual freedom still?

KOUSSER: They do in Hong Kong. On the Mainland, no. But Tony Chan came to that seminar thing, so he knew who I was. And so, I eventually got in contact with his office.

ASPATURIAN: This is the president?

KOUSSER: The president. He didn't take my freshman class, or anything, but I sort of called him up and invited him to the seminar. Which was very nice. James Lee, when he was there—he's a world traveller and he's got more frequent flyer miles than anybody else I've ever seen—was quite gracious, and the colleagues were nice and all that sort of stuff. But one of the things that was funny is that many of the permanent faculty there have PhDs either from England or the United States. And they didn't have people in their offices all the time. And I'm not quite sure why I did. Maybe because I was an outsider. Maybe because I was obviously very passionate about everything and required the students to do a lot of stuff. Many of them were pretty uncomfortable with getting up before a class and talking in English. But I just made them do it. And we got deeply into a lot of topics. It ended up that I had to teach the class very differently because I had to fill in huge amounts of stuff about American history that they didn't know.

ASPATURIAN: Sure. You had to give them a context.

KOUSSER: Where is Illinois? What are the ethnic groups in the United States? When did they immigrate? What are race relations like? Etc. etc. etc. So, in that sense it was very different, but it was interesting.

ASPATURIAN: I have a note here that you wanted to put into the record some thoughts concerning a faculty meeting on women at Caltech and an experience with the honor code, and then I have one more question.

KOUSSER: There was a tenure controversy in this division over a woman named Caroline Fohlin, who was an economic historian, and I thought quite good. I won't go into the tenure battle, but during the time that she was being considered for tenure, Lance Davis, who was the senior economic historian, said something to her that she took, at least, to be quite discriminatory. She had at that point one child. She has three now. And the basic comment was, "If you're a serious scholar, you don't have children." So she didn't get tenure, and that was well known, particularly among the female scholars at Caltech.

ASPATURIAN: That comment?

KOUSSER: Well, that comment plus the fact that she didn't get tenure, etc. Anyway, after she had actually left, I think, her husband, who was in the admissions department at Caltech, got a job as director of admissions at Johns Hopkins. So she went to Johns Hopkins; she was sort of part-time at Harvard for a while, on soft money, and now they're both at Emory. I'm a Facebook friend of hers, and I still see her. His relatives live in South Pasadena, I think, so she comes out here once in a while.

Anyway, the female faculty members at Caltech decided that they would like to amend the list of protected categories to include something that said you can't discriminate against a woman who decides to have children. I can't remember exactly what the language was, but that was the idea. So, we had a faculty-wide meeting about this. And I went thinking, "OK, these women are clearly quite bright, they're leaders in their fields, etc., they can stand up for themselves. I'm here to vote the right way, not to

say anything.” And so, I didn’t say anything. But the reaction by the basically older male faculty was so adverse that they voted to eliminate *all* protected categories.

ASPATURIAN: Do you know what year we’re in here? Decade?

KOUSSER: I think it’s after 2000. They voted to eliminate all protected categories: race, gender, veteran status, disability, etc. And nobody said anything after this vote. And I thought, “Well surely the women will get up and say something.” [Laughter] And they didn’t. And so, I finally raised my hand, and I said, “You can’t do this. This violates federal law. Plus, if I were a lawyer with a client who fell into one of these categories and who had been denied tenure here, I could point to this vote as indicating the discriminatory nature of the Caltech faculty. I could just say that and sit down. Done.” There was a member of the general counsel’s office there who spoke after I did and contradicted me. According to her, legally the people who grant tenure and make promotion decisions and hiring decisions are the trustees, and it doesn’t matter what the faculty says. I thought that that showed such complete ignorance of the way the process works, and the way judges would know that the process worked, as to be malpractice for a counsel to say this.

At that point, David Baltimore spoke up. I don’t know if he said, “Actually, Morgan’s right,” but he basically agreed with me. And so, the earlier vote was rescinded, and we went back to the standard categories. They did not include discrimination on the basis of a decision to have a baby or not, but I think there was some chagrin at how far people had gone. And it was a sign of the attitude towards women of the Caltech faculty at that point.

ASPATURIAN: Did anyone come up to you afterward and say, “Let’s discuss this some more?”

KOUSSER: No. Nobody. I’m sure that virtually nobody else remembers this, but I remember it. I mean, the chair of the faculty was female. I don’t think it was the first female chair of the faculty. It wasn’t that people weren’t electing women. A lot of women who managed to make it in academia in the generation that preceded Caroline’s

had had to develop such thick skins, and there's also this "Well I made it, when things were much rougher than you have it, girl" view of things. Eleanor Searle was like that in our division. You've got to have a lot of respect for somebody who managed to make it through that, and yet, it doesn't mean that it has to be like that for everybody.

OK. Honor code.

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KOUSSER: In 2009, Alex Hudson, one of the kids who had been in my class and been chairman of the BoC, decided to appoint a committee to see whether there needed to be any changes in the BoC rules. And so it was appointed; Alex was the co-chair. The faculty co-chair was Jared Ledbetter [professor of environmental microbiology]. Chris Brennan [Hayman Professor of Mechanical Engineering, emeritus], Nai-Chang Yeh [professor of physics], and I, along with a bunch of students who had been on the BoC before, were all on it. So, we actually ended up meeting at least once a month, maybe sometimes once every two weeks, and I learned a huge amount about the BoC.

I really pushed hard for a total overhaul of the BoC procedures to one where the chair would serve more as a judge and as a guardian of fair procedure. Right now, the chair serves as prosecutor as much as anything else. There is no judge. There is nobody who represents and works along with the accused. When somebody is accused, they often go in, and the first line that they hear is something like, “You know what you’re accused of.” Huh? Maybe sometimes they do, but sometimes they don’t, and they don’t know how to prepare, and they don’t know what the procedures are going to be like. So, one of the things that I found out was that the people who are accused come in not

knowing what the procedures are going to be, and not having anybody to be their advocate or explain to them what's going to happen.

So, the redraft of the whole thing was that somebody who is not the chair would essentially be the prosecutor and go out and gather the evidence. There would be more people elected to the BoC so that the people on it don't have to spend immense amounts of time doing this, because currently their "juries" operate by whoever doesn't have physics homework due the next day. Another thing that they don't have is precedents, not even within the same year. So, they may decide cases that are essentially similar in different ways.

ASPATURIAN: Everything is ad hoc?

KOUSSER: Everything is ad hoc. So, we proposed that there would be a secretary who would take minutes and write up each case in a way that would hide the relevant names but could at least be used as precedents. Also, that there would be some sort of a retreat before the year got started in which the prospective members of the BoC would be apprised of what goes on.

So there were all of these sorts of things plus the fact that BoC currently has no written accusation and after people are accused, that's the end of it. They don't present any evidence, necessarily; they don't know what the outcome is. So, we redrafted everything. Alex was working on this in his senior year, but he was busy and didn't quite get it written up, when a terrible thing happened. There was the suicide of a student from Page House, Brian Go. There had been another suicide a few years earlier. Both of those boys had been in my freshman class, and they were both the outstanding student in the class. The other was originally from Russia—Pavel Batrachenko. His native language was not English, yet he wrote better in English than anybody else in the class. He won an international physics prize during the time that he took my course. He was absolutely brilliant. It was just a terrible tragedy. And Brian Go was the president of Page House. You don't expect that sort of person to commit suicide. Very sociable, very nice.

Anyway, that happened late in the spring, and it discombobulated the whole student body. And any honor code changes had to be voted on by all the houses, and it

just got lost, and so there were no changes in the BoC procedures. We'd spent a year on this, and the students on the BoC were converted. Everybody else was happy with it too, and yet it came to nothing.

ASPATURIAN: Can it be revived?

KOUSSER: I've tried. I've tried to get Alex, who was a graduate student in England for at least a couple of years, to finish writing it up and send it back. He was just too busy doing other things, and so it was hopeless. So. Again, it's an attempt to establish the rule of law. The rule of law is really important.

ASPATURIAN: For a place whose motto is "The truth shall make you free," it would seem to be an important consideration.

KOUSSER: Yes, happenstance. So, it's another failure.

ASPATURIAN: Let's talk about something that wasn't. You won the Feynman Teaching Award in 2011. First professor in HSS I believe.

KOUSSER: Yes.

ASPATURIAN: Were you surprised?

KOUSSER: I was actually not surprised by the time that I went to the faculty meeting, but I was surprised before. I wasn't surprised when I went to the faculty meeting because I almost never go to general faculty meetings, and Jonathan Katz, the division chair, really pushed me to go, so I figured something must be up. I had some inkling that it was going to happen, but I didn't really know. But it was very delightful. Since then, I've learned more about it because I was on the selection committee for the Feynman Prize, which you have to be on for two years after winning it yourself. Actually, I was on for three years because the guy who won after me then immediately left Caltech and went to Harvard.

ASPATURIAN: Oh yes, John Johnson.

KOUSSER: I learned something about the process by which one is nominated and wins. And it's usually because of one student who organizes things and pushes hard. And I'm sure that that was true in my case as well, particularly with one former student of mine who was my first student ever to get into Yale Law. She's now in corporate law in New York City. But I was very, very pleased and managed to say things that I don't think I was embarrassed later to have said. There was actually a discussion of teaching at that faculty meeting after the Feynman Prize was given out, and I was a little astonished and rather dismayed at some of the things that people said. There was certainly a very strong view that teaching doesn't count at Caltech, and one guy who has been here for a couple of years—I forget what area he's in, chemistry or biology, I think—said he was told that in regard to teaching, a solid B was what he should aim at. Nothing more. And I think that's probably an exaggeration. I don't think you have to get that high. And it's quite disturbing. I mean, there are a lot of people here who are good teachers, but it was disturbing also to read some of the nominations for the Feynman Prize. People would sort of generally denigrate other people: “This is a good teacher, not like other teachers.” “They actually had read their notes before they came to class to lecture.” I was thinking, “Oh my God.” [Laughter] Yes indeed.

ASPATURIAN: What form of interaction in general have you had with the science and engineering faculty over the years?

KOUSSER: Not terribly much. At first, playing basketball. Later, sometimes on committees. But not terribly much. I didn't join the Athenaeum until three or four years ago. I almost never eat there unless somebody I want to go and have lunch with is there.

ASPATURIAN: For example, you've never contemplated team-teaching a course on science and the law or anything like that?

KOUSSER: No. I wouldn't have any idea who would be interested. Now, some people in HSS do have large amounts of interaction. People in neuroeconomics interact with the

biologists. Dan Kevles always did, had large amounts of stuff. Prior to the time that I came here, when the humanities division was primarily a service division, there was a lot of interaction on the grounds that we weren't threats to anybody, and the humanists were thought of as nice people to have around, and all that sort of thing. But no, I've not had very much connection with the rest.

ASPATURIAN: Staying with HSS, what do you think of the directions in which the division is going?

KOUSSER: Well, I haven't been happy with the directions in a lot of respects. What really worked in social science when I was young here was the overlap between economics and political science; and there was some overlap with economic history; social science, and history as well. But those interconnections have drifted apart.

ASPATURIAN: It's fragmented.

KOUSSER: Economics has become the group in charge much more than it used to be. Micro-theory is more important, and there are more people who do sort of really abstract micro-theory. There are connections, but they're not as strong as they used to be—for instance experimental economics and political science in what's called political economy, although it's much more economics than politics. And the growth has been on the fringes, in fields like neuroeconomics and finance. We have perfectly good scholars in both areas, but they're tangential to the connection between politics and economics.

Neuroeconomics is drawn to neurobiology, and finance to business schools, where they're always competing with business schools for finance professors. We've decided we can't compete in financial terms because a good finance professor probably starts at \$300,000. We basically get people who are sick of teaching MBAs, but we never have enough of them for them to have as many business colleagues as they're used to. And we don't have the business databases. We've got some, but we don't have the resources of a business school.

ASPATURIAN: You don't have the infrastructure to support anything major.

KOUSSER: Right. The connection between humanities and social sciences is not as strong as it once was. Phil Hoffman, Jean-Laurent Rosenthal [Axline Professor of Business Economics], Tracy Dennison [professor of social science history], and I are all in that sort of group, and the group is often set apart now. We have a seminar series and all that, but it doesn't have all that much connection with humanities anymore, and humanities is sort of also moving away. We are probably going to expand in media studies, so that also moves away from sort of a cross between history and literature. So, the division has not grown, particularly, and the people who are being added to it are on the fringes rather than in the middle. I think that's a mistake from the standpoint of intellectual coherence and productivity.

When I was first here and doing a lot of work in statistics and some work in rational choice theory, it was easy to get people to read my papers and to get good comments from them and all that sort of stuff. I could still do this to some degree, but I have much less contact with them, and it would be much harder to know whom to talk to or what to expect. So, the division instead of growing together has grown apart. I think that's a mistake.

ASPATURIAN: Anything else you would like to put into the record?

KOUSSER: There's one thing, and that is my database. When the renewal of the Voting Rights Act came up in 2005-6, there was a concern on the part of the people who were voting rights experts that there would be a challenge to the coverage scheme of Section 5. I've maybe talked about this before, but quickly, Section 5 was the provision in the bill that required covered jurisdictions to pre-clear any changes in their election laws with the Justice Department. The covered jurisdictions were particularly located in the Deep South, but there were also four counties in California, three in New York, several in the Dakotas, etc. There was a Texas case called *City of Boerne v. Flores* in 1997 in which the Supreme Court articulated the view that a law of Congress had to be "congruent and proportional" to the problem that the Constitution gave Congress the right to attack.

Congruent and proportional sounds like it fits in with the coverage scheme perfectly, so people were quite worried about the *Boerne* decision. We expected an

attack on the coverage scheme, and it came within a week of the time that the revision of the law was signed into force. There was a case from Northwest Austin Municipal Utility District Number One, *NAMUDNO v. Holder*. It was a challenge to the coverage scheme. Even before that case was filed, I thought that it was an important thing to try to figure out some objective measure of the adequacy of the coverage scheme. And after *NAMUDNO* was filed, I was quite concerned about this, and certainly after it was decided in 2009, I was even more concerned about it. So, what I decided to do was to develop a database consisting of all of the Section 2 and Section 5 cases ever filed, all of the objections under Section 5, all of what are called a More Information Requests under Section 5. Any settlements, cases that had been settled out of court (if I find out about them), any cases brought under the Fourteenth and Fifteenth Amendments, all about voting rights by race. So, during the 2005-6 consideration of the renewal, Ellen Katz, who is a professor of law at Michigan, created a database of all Section 2 cases. She had, I think, something like 324 cases. My database now consists of around 4,400 cases, so well over ten times as many.

I used sources that are fairly readily available. There were a whole lot of things published or available on the Internet for the 2005 renewal. But I also got case lists from friends that I've made as a result of my voting rights work. Ellen had a hundred law students working on her database. I had two SURF students, and me. And we put together a database that's not finished yet, but it's larger than anybody else has ever done. So an email friend who is French and was editor of a special issue of a journal called *Transatlantica* got me to submit an article, so I finally put together an article on the database [https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2592829].

One of the things that I did in the database is to put all of the cases in the county where they came from, and to include some statistics about each county, as well as lots of statistics about the cases. Is it a Section 2 case, a Section 5 case, is there a settlement, does it involve at-large elections, does it involve redistricting, and so on and so on. And I had the idea about drawing maps. That went through several iterations, and finally led to maps that are quasi three-dimensional, so the number of cases in each county is some sort of projection that seems to come out of the county. In fact, that is an incredibly effective way to look at this and to think about it. So, the bare statistic is that from 1957—that is,

from the first Civil Rights Act that had anything to do with voting—to 2006, about 93 percent of the voting rights events, including Section 2, Section 5, settlements, etc. etc., come from covered jurisdictions. Ninety-three percent! That’s a pretty good target. That sounds congruent and proportional. Name me another program that hits 93 percent of the time. If your stockbroker advised you correctly on stocks 93 percent of the time, you wouldn’t be doing this. [Laughter] You’d be retired some place.

ASPATURIAN: I might still be doing this, but I take your meaning.

KOUSSER: But when you see that on a map, and you see these huge projections coming out of Texas, and Mississippi among all the places that are—

ASPATURIAN: —flatlands.

KOUSSER: The flatlands. That’s actually very convincing.

ASPATURIAN: That’s a pretty vivid representation.

KOUSSER: So, I wrote this up, and the French journal just wouldn’t publish it. There was just delay after delay after delay, and it was important because 2015 was the fiftieth anniversary of the Voting Rights Act. I wanted to get the damn thing published before the real fiftieth anniversary on August 6. So, I went after the editor and gave him a sob story and tried to make him feel guilty and said, “Can I at least publish this, do a preprint of it, on SSRN?” And so, he said, “OK.” Finally. And so, I uploaded a preprint, which I hadn’t done before.

ASPATURIAN: What is SSRN?

KOUSSER: Social Science Research Network. And it really publishes a huge amount of stuff, and now because journal costs are so high, and so few journals are open-access, it’s a way to publish the next-to-last version of things. So, I uploaded it and two days later, I got a call from a guy with the *New York Times* editorial page. He’d read it. He wanted to

talk. And we talked. And he had very good questions, and he had been very thorough about it, so I thought, “Well, this is nice,” and we emailed back and forth on this. And then on Saturday afternoon I got an email from a friend with a link to the *New York Times* editorial page for the next day, and it had a big article about it [<https://www.nytimes.com/2015/04/19/opinion/sunday/voting-rights-by-the-numbers.html?mcubz=0>]. So, I was pretty happy about that.

ASPATURIAN: I bet.

KOUSSER: And people that I hadn’t heard from in years, and some people that I’d never heard from, emailed me and were happy about it. It got an incredible number of hits for a piece on election law, because he had links to the original article, and lots of people enjoyed it. And I ended up doing a talk about that to a group of people who give money to Caltech.

ASPATURIAN: The Associates?

KOUSSER: No, it’s not the Associates, it’s a subset of that.

ASPATURIAN: Well, there’s the President’s Circle; there’s the Provost’s Circle. The Torchbearers?

KOUSSER: The Torchbearers. I’ve now given the talk to several places—Democratic clubs in Pasadena, etc. With those maps, everybody understands it.

ASPATURIAN: You can see the topography of the policy.

KOUSSER: It absolutely doesn’t matter what group you’re talking to. I gave the talk at Stanford Law, and everybody understands it. So, the fact of the matter is—what this shows—is that the Supreme Court decision in *Shelby County v. Holder*, which overturned Section 5, is based not on legal principles; it’s based on empirical facts, or empirical assertions. And the assertion is that the coverage scheme is no longer adequate because

the coverage scheme doesn't track the incidence of acts of discrimination in voting rights anymore.

ASPATURIAN: Doesn't accurately reflect what's happening on the ground.

KOUSSER: But it *does*. Chief Justice [John] Roberts was wrong. He didn't have any data. I'm the only one who has that data. And he further says that the number of cases has gone down. But what you can show—and you can also show this very graphically if you plot the cases not on a map but on a timeline and you superimpose important decisions by the U.S. Supreme Court—is that after important decisions that were pro-voting rights, the number of cases goes up dramatically. After cases that are anti-voting rights, the number of cases sinks. It is extremely logical, and when you tell people that, they say, “Of course.” But nobody has ever had any data to show that before. What I concluded was that the Supreme Court creates its own reality. It makes decisions that are adverse to voting rights, and then it says, “Ah! Look, there are not so many cases anymore.” Of course, there are not.

ASPATURIAN: I'm curious; has this very vivid visualization of public policy data been done much at all?

KOUSSER: Not with regard to voting rights. With regard to some other things, yes. It's extremely dramatic to see. I don't know how much you read the *New York Times*. “The Upshot” column that they publish has wonderful graphics. And there's a similar column in the *Washington Post*. Two things that have happened recently are really very, very dramatic. One is what probably should be considered the Tufteization of American newspapers, because Ed Tufte's influence on using graphics as a way to present data has just seeped down to the newspapers, and some of the interactive graphics that they have are just marvelous. [Edward Tufte, professor emeritus at Yale, is a pioneer in the field of data visualization. –*Ed.*]

The second thing is that they're paying a lot more attention to scholarship in political science and economics, but particularly in political science, and it's really dramatic. At the same time, NSF [National Science Foundation] has cut off funding for

political science. It had been supporting political science for like thirty years, and Congress said, “No.” So, there are no more grants in political science. The newspapers are taking political science very seriously and moving the information from political science and economics working papers right into the public domain very rapidly. That’s a tremendously good thing for the country as a whole, but it’s so paradoxical that at the same time that research support is declining and the number of majors in political science is declining dramatically because of law school decline, academic political science is more influential than it has ever been among the elite class of policy makers and the creators of the background of public policy.

ASPATURIAN: One of many contemporary paradoxes.

KOUSSER: Indeed. Just at the time that we’re getting the most interesting political campaign ever—the most difficult to understand and the one that needs the most study—we’ve cut off the ability to immediately study it. I don’t know whether national election studies are even going to actually exist for 2016.

ASPATURIAN: Interesting. I’d like to come back after the election and do a coda to this. Let’s hope it goes the way we’d like it to go. If it doesn’t, well, we’ll take that as it comes. Thank you very much.

KOUSSER: My pleasure.

J. MORGAN KOUSSER**SESSION 10****April 11, 2019**

ASPATURIAN: We are going to be talking—to start—about your work over the last couple of years on three voting rights cases in California. Why don't we take them chronologically? That would take us to Kern County first.

KOUSSER: That's correct. Kern County was a federal Section 2 case [reference is to Section 2 of the federal Voting Rights Act of 1965]. There had not been a successful Section 2 case in California since 2001, and so MALDEF brought this case. It was a case that challenged district lines for the board of county supervisors of Kern County.

Kern County is currently 30-something percent Latino. The way that the Board of County Supervisors' districts were drawn, one district in the center of Bakersfield was pretty overwhelmingly Latino, and four other districts split Latino populations, so that there was an insufficient Latino concentration in any of them to allow Latinos to elect a candidate of their choice. And that suit challenged these lines.

What I testified about was racially polarized voting. This got to be a very complicated thing. Usually it's not so complicated, but somewhat embarrassingly to me, what happened was this: There is a way—which I knew to be available—to estimate the degree of racially polarized voting for multi-candidate elections. It had previously been available in a set of programs called Zelig, like the Woody Allen movie. Gary King of Harvard had set up Zelig as this sort of overarching platform for programs; and one of them was set up several different ways to analyze data using ecological inference, which is a procedure—that he had pioneered—using two variables. And some of his students and collaborators extended that to multiple variables.

So, I knew that this program was available through Zelig, which basically provided input and output in a common framework for lots of kinds of programs. Other programs were sort of dropped into this, and so I thought that I would use this in order to do my calculations. I also knew, for reasons that I didn't understand, that this multivariate ecological inference had been taken out of Zelig for a while, and then had

been brought back in. So, I tried to use that, and it didn't work the way that it was supposed to. I ended up contacting the person who was in charge of that part of the Zelig module—

ASPATURIAN: What time frame are we talking about here?

KOUSSER: I had tried to use it in an earlier case in, I think, 2014. It hadn't been available, but I had managed to find an old version of the program on the Web that sort of got left over, as nothing ever really goes away on the Web.

So I had used it before, but I wanted to use the more up-to-date program. The guy who was actually in charge of this was a Caltech graduate. I had not taught him when he was here, but I contacted him; and he sort of led me through it, and he couldn't get it to work right either. I was up against deadlines, and I couldn't get my research finished. So, I told the court I couldn't get finished because the program didn't work the way it was supposed to, and I will get this part of it done as soon as I possibly can. The lawyers for the other side jumped on me and said I was incompetent, because I should have been able to use the program.

ASPATURIAN: They jumped on you in court, or they jumped on you privately?

KOUSSER: They jumped on me with their three expert-witness political scientists. One is Jonathan Katz [Sugahara Professor of Social Sciences and Statistics]. And Jonathan particularly jumped on me, saying that I was out of date and really was a generation behind.

ASPATURIAN: Was this done in the courtroom?

KOUSSER: This was done in their report.

ASPATURIAN: I see, I see. Like some sort of preliminary thing?

KOUSSER: Yes. I had submitted a report, and the other side had three expert witnesses who submitted reports, one of whom was Jonathan, and basically, he attacked me. One of the other guys attacked me on other grounds.

ASPATURIAN: Just to put into the record here, Jonathan was your former division chair at that point, yes? [He served as chair of the Caltech Division of the Humanities and Social Sciences from 2007 to 2014. –*Ed.*]

KOUSSER: Yes. So, I finally got everything in the program to work, with a good deal of help. The former Caltech guy who was running things said, “Write this particular code, and you will get the right results, despite the fact that it’s not what the directions in the manual say.” So, I go through this quite scathing bunch of depositions, and I was trying to be open and honest about everything that I’d done.

ASPATURIAN: Was this 2017?

KOUSSER: This was in 2017. The lawyers for the other side, whom I’d worked against before—

ASPATURIAN: These are the guys representing the county.

KOUSSER: These are the guys representing Kern County. This is a law firm in Northern California called Nielsen Merksamer [Nielsen Merksamer Parrinello Gross & Leoni], and Nielsen has attempted to set itself up as the go-to law firm for local jurisdictions in California. They have managed to convince a lot of people to hire them, and they’ve made a good deal of money. Anyway, Nielsen just continued to be scathing about me in all the papers they submitted. They tried to Daubert me—there’s a case called Daubert, and it’s a way of getting rid of expert witnesses who really don’t know anything. So, they made a Daubert Motion to get rid of me. This is not unusual, but it’s never worked against me, at least.

Anyway, I think I analyzed 22 elections to show that they were racially polarized. I basically analyzed every election that was not a two-party election—for example, I

analyzed statewide Democratic primaries—plus all of the local elections, whatever they related to, whether it was the Board of County Supervisors or something else. I had to use more elections than I usually would, because there weren't very many Board of County Supervisors elections with a Latino candidate. In a couple of cases, there was a Latino Republican candidate for the Board or other local office in an area where there were few Latinos. They didn't get many votes, but because there weren't many Latinos in the first place, it wouldn't be considered a case of racially polarized voting. It was certainly not evidence of racial polarization in the same way that a Latino candidate not getting a majority of Latino votes in a heavily Latino area would be. So, I used 22 elections in preparation for the full trial.

ASPATURIAN: With respect to Jonathan Katz, was this difficult for the two of you? I mean, this is a small department, and you were facing off in the courtroom over a politically charged issue.

KOUSSER: We had faced off before. The one other time that we worked against each other in a trial, it was a CVRA—California Voting Rights Act—trial. The trial started one afternoon, and I was supposed to testify the next morning. But after the first afternoon, the jurisdiction settled, and my attorney called me up and said, “You don't have to get up early in the morning.” [Laughter]

ASPATURIAN: OK, so this time you wind up in the courtroom.

KOUSSER: We wind up in the courtroom, in Fresno. Prior to my testimony I had gotten hold of the program that Jonathan had ran.

ASPATURIAN: Which I think it was not Zelig.

KOUSSER: It was not in Zelig, but it was in R. I'm not very good in R at all, but I could follow enough of what he'd done.

ASPATURIAN: When you say you got hold of his program—

KOUSSER: As part of discovery, he had to turn over his program. So, he was using the same basic program as I, but with different parameters. In Zelig, there were a set of standard parameters, and there was a fairly low number of iterations to estimate these coefficients, compared to the number of iterations Jonathan had used. So, I decided, “OK, I’m going to rerun all of my estimates using his parameters”—instead of 100 iterations, there’d be 10,000 iterations or something like that. So, I managed to figure out enough about R that I could run it with exactly his parameters. Now, he had only run four or five elections; he didn’t run all the other ones. And he also did something else: It will come up again in the discussion of other cases, so maybe I should take the time to talk about it. Very often to try to validate the use of a particular method for estimation, people will take something where they know the answer, and then use this method as if they didn’t know the answer.

ASPATURIAN: They’re trying to reverse engineer?

KOUSSER: It’s not reverse engineering; it’s a test. So, in California, we actually have registration figures by ethnicity on an individual level. We can estimate the ethnicity for Spanish surnames by running a registration list through a Spanish surname dictionary. So, for example, we know that Mr. Gomez was Latino and a Democrat; and we know that Mr. Jones was not Latino and also a Democrat. We can also estimate that in exactly the same way if we were operating only on a precinct level. So, we know the Latino proportion in every precinct; we know the Democratic proportion in every precinct; and essentially, we regress one against the other. Some statistical methods are more sophisticated than others, but that’s basically it. So, you can get an estimate of the proportion of Democrats who are Latinos and the proportion of Latinos who are Democrats by that sort of regression. But you have the data on the individual level, so you can see whether the estimate that you get is the same as the known quantity that you already have.

So, in a case back in 2007, 2008, a UCLA political scientist, Jeff [Jeffrey B.] Lewis, decided that he would do that to try to show that the method actually gave bad results—particularly that it overestimated the proportion of Democrats who are Latinos.

But what he was looking at was not exactly the same situation that the estimation we were mostly interested in was concerned with. He was looking at a nonpartisan local election, and it's voting, not registration. Registration and voting may be different things.

We have a pretty good idea from exit polls that the proportion of Latinos who are registered Democratic is much lower than the proportion of Latinos who vote Democratic. So, it may not be a perfect test, but Jeff had made that same argument against it in a previous case that I was in, so I'd heard it before. So, Jonathan, in the Kern County case, just copied Jeff Lewis's method and said, "I can show that the estimate that comes out of the registration statistics is different from the actual registration statistics on the individual level, so the whole method won't work."

ASPATURIAN: The whole approach is flawed.

KOUSSER: "You can't get there from here." But as I said, one of the things that I had done was to redo all of my estimates and all of the registration estimates using Jonathan's parameters. It turned out that in all cases, they come out almost exactly the same as the Zelig parameters. You may not have 10,000 iterations, but 1000 is plenty. So, I knew that that was the case, but it was too late for my deposition.

I hadn't thought about doing this before I was deposed; I was too busy doing other things. But I knew that if Jonathan had actually run those elections, he would have gotten the same estimates as I did. So, it was very comforting to be going into my testimony knowing this. And when I told the MALDEF attorneys, they were happy about that.

And during my testimony, I kept trying to bait the attorneys from the other side into asking me about whether I knew that my estimates were correct and whether they were the same as Jonathan's. I must not have done a very good job, because they didn't ask the question. It was a little funny because, as I said, I'd worked against the Nielsen attorneys before, and they had just been absolutely scathing in their court papers; but when we got into the trial, they wore kid gloves. It was like that *Monty Python* sketch where they hit this old woman with pillows.

ASPATURIAN: I remember it.

KOUSSER: The “torture.” At one point the attorney asked me some question—I forget what it was, but at that point I was fairly confident that things were going well, and I said, “You know the answer to that question; you asked me that question in deposition in such-and-such a trial or before such-and-such a case. I can go through the answer, but you know how that’s going to come out.” And the judge said, “I think you guys have a traveling road show.”

ASPATURIAN: [Laughter] Sounds like the judge was enjoying himself at this point.

KOUSSER: He was enjoying himself, but I think that sort of thing also undercut their previous attempts to say that I didn’t know anything about what I was doing.” So, it came out just extremely well. Knowing that my estimates came out the same as Jonathan’s would have if he had run the analysis, the attorneys from MALDEF asked Jonathan when he got on the witness stand if he had ever run any of the elections. I wasn’t there; I was back in Pasadena. He had denied that in deposition, but on the stand, he stopped his testimony. There was an hour-and-a-half recess, and it turned out that he *had run* the elections and come out with the same results as I did. That helped convince the judge.

ASPATURIAN: I see. So, they found that there was a pattern historically of discrimination. And what was the recommended remedy?

KOUSSER: They redrew the districts so that there is now a second majority Latino district. Unfortunately, in the 2018 election, the Latinos split. There was a second Latino candidate who just wouldn’t get out of the race, and so the white incumbent won reelection.

The attorneys had been just wonderful in this case. I had worked with Denise Hulett, who is the chief MALDEF attorney on voting rights now—I’d worked with her before in a case in the early 2000s. For this case a couple of young women, both Latina, were working with her, and it was their first case. They worked incredibly hard, and they were just wonderful. Very often you think about what’s going to happen after this generation of lawyers and experts who’ve been working on voting rights for a long time

is no longer active. I don't know what's going to happen; we haven't been able to get new experts, which is very sad.

ASPATURIAN: Really, that's discouraging.

KOUSSER: But you worry about the lawyers, too, and these two young women were just terrific; and I thought, "Well, I don't know if they can replace Denise, and certainly not immediately, but there is hope." So, I was very happy about the Kern County case, which came out very well. Everything that I said worked. So, I thought it was terrific.

ASPATURIAN: Yes, and as for the election you mentioned, maybe voters will know better next time.

KOUSSER: Yeah, you hope so. In other instances, it's been fairly clear that a stalking horse candidate was put up. I don't know whether that was the case here at all. Could be. I have no idea. So that's the first case, and that got decided in February of 2108. And then I immediately launched into Santa Clara.

ASPATURIAN: Which was an Asian voting rights issue?

KOUSSER: That was an Asian voting rights issue.

ASPATURIAN: Santa Clara being in the heart of Silicon Valley, I think.

KOUSSER: It is. There is a fairly large Asian community. It's multiethnic, multi-home country. There are Chinese, Indians, Koreans, Vietnamese, Southeast Asians—but when you get to the elections, they have been pretty cohesive. If you simply get the percentage of Asians by precinct and look at the votes for Asian candidates, they're fairly cohesive. Except for one Asian American candidate who ran four times for the city council, getting a smaller percentage each time. Santa Clara was a fascinating case. I haven't lived there or anywhere in the Bay Area, so I don't know very much about it personally, but it's easy

to find out a lot about Santa Clara politics. The largest issue in Santa Clara politics from about 2005 on was actually about the 49ers. The 49ers built a stadium.

ASPATURIAN: That's a sports team, right? Football?

KOUSSER: NFL. They left their old stadium in San Francisco and built a stadium in Santa Clara. So, they had all of the hassles, as you can imagine, building the stadium, and then amazing hassles afterwards. Most dramatically, I think, was the fact that just adjacent to the new stadium is a whole series of youth soccer fields. Youth soccer plays on Saturdays and sometimes, I guess, on Sundays; and the NFL plays on Sundays. The 49ers wanted to use space for parking.

ASPATURIAN: I was going to say, parking must be a nightmare.

KOUSSER: [Laughter] So there were a great many local soccer moms, and this was a time when the soccer moms took on the establishment and won. The new mayor [Lisa Gillmor] they elected wasn't just a soccer mom. Her father [Gary Gillmor] was a former mayor and continued to have what is called a political machine there.

ASPATURIAN: Kind of a local Nancy Pelosi.

KOUSSER: She's not entirely an innocent "get into my Volvo, kids" soccer mom.

ASPATURIAN: This is an Asian soccer mom?

KOUSSER: No. There had been no Asians on the city council at all until this case was won. But there were three soccer moms on the city council. The 49ers laundered money through—I think—a Southern California Indian tribe to give independent expenditures to the city council. It was just beyond belief. But the 49er stadium issue did not entirely override racially polarized voting. Since the early 20th century, there had never been an Asian American on the city council in Santa Clara. There were a bunch of elections—I think there were ten with Asian candidates—some of which were not racially polarized,

so I used other elections for, I think, the Santa Clara city school board and the county school board. A majority of the elections showed racially polarized voting.

ASPATURIAN: What in the structure of the voting accounted for the racial polarization?

KOUSSER: Well, Santa Clara's actually pretty segregated between Asians and non-Asians.

ASPATURIAN: Really? I would not have expected that.

KOUSSER: It does seem a little peculiar. Asians live in the northeastern part of the town. It's not exactly your classic ghetto—these are million-dollar homes. But there is an Asian area, and so you can find racially polarized voting. Jeff Lewis from UCLA testified in this case, and again he used Democratic registration figures to show that in trying to predict Asian American registration, you got different figures using the method based on putting people into areas as opposed to using individual data. So, this time—it takes me a long time to have an idea—I finally had the idea of saying, “OK, maybe Democratic registration estimates are a bit off. But let's look at the estimates of Asian Republicans, the estimates of Asians who express no party preference—”

ASPATURIAN: Independents.

KOUSSER: Let's look at all the of the rest of the ethnic groups and all the political choices. And if you looked at all of them, in almost every other instance besides Democratic registration for the particular ethnic group involved, the estimates were pretty good. They're a good deal closer to actual registration totals, measured at the individual level. So, I thought of that but not until after I'd completed my report. But I hadn't been deposed yet. The lawyers came down here, and I was deposed at a law firm in Pasadena. To get the data that would be presented in the trial into evidence, it had to be mentioned at least in my deposition and become an exhibit in my deposition. So again, I baited the attorneys for the other side, and said, “I think that the methods I was outlining would give better for Asian American Republicans, for example, than for Democrats.” So, when the

attorney said something like, “Well, how do you know that?” I said, “Actually I have tables here if you’d like to look at them.” And at that point, he couldn’t say no. I then gave him a 20-minute lecture explaining all of these things. His face was white when it began; it got whiter.

ASPATURIAN: What did you conclude were the reasons that Asians could not get elected?

KOUSSER: I think there was an anti-Asian prejudice. It can be rationalized all sorts of ways: “They’re not really qualified”; “They don’t have quite so much experience”; “They’ve never been real estate agents.” [Laughter] There’s a lot of city council people who are real estate agents. Maybe “they weren’t lawyers.” A lot of them were tech people, including one Caltech graduate who was up there. Anyway, we won that case as well. The judge really understood what I had said when I presented my testimony about the registration figures and the registration-based estimates. The judges in the Kern County case and the Santa Clara case were both exceedingly good. They paid huge amounts of attention. They took a lot of notes; they wrote very careful opinions. They asked good questions of both sides; were just marvelous. And the attorneys in Santa Clara for my side were very, very good.

ASPATURIAN: What was the proposed remedy in this particular case?

KOUSSER: The remedy was to draw districts. And they drew districts.

ASPATURIAN: What had been going on before?

KOUSSER: The voting was at-large. This is CVRA, and it was at-large. So, the court drew a district that was about 40 percent Asian American in voter registration. In 2018, an Asian American candidate who’s a Sikh, and who had run before at-large and lost, ran in an election in this new district and won. So, I told my wife about this, and her response was “QED.” And yet, Santa Clara is appealing the ruling in this case, but if I were the lawyer for this, I would just say, “Look at the outcomes, look at the outcomes. Same guy couldn’t win at large, he won with the district.”

ASPATURIAN: Why is Santa Clara appealing? They want to go back to at-large? They prefer it?

KOUSSER: Well, they do now, but by the time the appeal gets up to the Court of Appeal it's going to be another six, eight months, and they're going to be getting ready for another election by districts. The whole council will have been elected by districts, probably, by the time it gets decided.

ASPATURIAN: And they may have a different view by that time.

KOUSSER: They certainly may. Santa Clara has a lot of money, but they didn't hire as expensive a law firm as Santa Monica did. Santa Monica has a lot of money too, and they want to keep their positions, and they're willing to pay. Santa Clara actually had a referendum on at-large in 2018.

ASPATURIAN: Before this case was decided?

KOUSSER: It was at just about the same time that the case was decided. The voters voted against staying at-large.

ASPATURIAN: And the city council is still appealing?

KOUSSER: Still appealing.

ASPATURIAN: Well, people don't want to give up their power and their prerogatives.

KOUSSER: They don't want to give up their power. They wanted a demonstration that their citizens didn't approve of this, and it's going to cost them. These cases can be very expensive. The plaintiffs' attorneys filed for something like two and a half million dollars, and more power to them.

ASPATURIAN: And the defense of course is all funded by the taxpayers, yes?

KOUSSER: Well, everything is. If the plaintiffs win, then the plaintiffs are all funded by the taxpayers as well. So, this is certainly—the meter has gone up to around \$5 million already.

ASPATURIAN: Meanwhile the taxpayers have said they don't want to return to at-large. Is there anything left there, like a local newspaper that's covering this?

KOUSSER: There are local newspapers that are covering it, and they have not been favorable to the lawsuit or to the defense of the lawsuit. They've basically often said, Give up.

ASPATURIAN: Accept the inevitable. Move on.

KOUSSER: Right. Yes. So that was Santa Clara, and that's the first Asian American case that's gone to trial. It's not the first Asian American case under the California Voting Rights Act. I did a report in a case from Arcadia that had Chinese plaintiffs, and a report in a case from Fullerton that had both Asian American and Latino plaintiffs. Arcadia settled; Fullerton settled. Neither of those went to trial. One of the things that shows is that the CVRA is not just for Latinos; it's also for Asian Americans, if they were discriminated against. There are places where Asian American candidates can be elected pretty easily, including areas that don't have a huge Asian American population: Ted Lieu in the South Bay, for example. He was in the State Senate; now he's in Congress [District 33]. Asian Americans in his district are, I think, under 20 percent of the voters.

ASPATURIAN: And he got elected anyway.

KOUSSER: Yes. He's a good candidate. He actually represents Santa Monica now, among other places. So, Kern and Santa Clara are two of the cases, and the third is Santa Monica. Santa Monica was another case that Kevin Shenkman was involved in. I think he's brought almost 90 CVRA cases.

ASPATURIAN: Does he work for MALDEF?

KOUSSER: No. He worked with Southwest Voter Registration. He was not employed by Southwest, but they coordinated efforts. Southwest Voter would look to the local community and make sure that it actually wanted districts, could do a campaign, that sort of thing. They would help fund plaintiffs. Southwest Voter is having some difficulties right now, partly because the guy in charge there for a long time died of cancer and is almost impossible to replace.

ASPATURIAN: He left a leadership vacuum.

KOUSSER: Yes. Anyway, Kevin has brought a lot of cases, and I worked with him on Palmdale and Highland cases that went to trial. Only four CVRA cases have actually gone to trial—Palmdale, Highland, Santa Clara, and now Santa Monica. I've been the chief expert witness in all four of them, and we've won all four. Part of the Santa Monica case was simply a CVRA case, where basically all you had to prove was that there was racially polarized voting.

ASPATURIAN: Santa Monica is also at-large?

KOUSSER: Santa Monica was at-large. But in Santa Monica, there's an additional factor, and that is racially discriminatory intent. We should go back to the late 1980s now. In 1987, in Santa Cruz County, there was a case under the federal Voting Rights Act called *Gomez v. Watsonville*. Watsonville had an at-large election for city council. It was challenged; the attorney was Joaquin Avila. [See Session Seven]

ASPATURIAN: I think you talked about this.

KOUSSER: Yes. I probably talked about this in terms of the foundation of the CVRA. Joaquin thought that he would be able to use this case to get at-large elections abolished in lots of different places, and when he was unsuccessful, eventually he proposed the California Voting Rights Act. So that's how you got to the CVRA. But among the places that were rumored to be challenged in the late '80s, early '90s, was Santa Monica. No case was actually filed, but lots of rumors were flying around that there was going to

be.

So, Santa Monica appointed a commission to determine whether it should change its form of elections from at-large to something else. And I had just worked in the *Garza v. L.A. County* case, which we discussed before. [See *Session Six*] I'd written a long report on intent, and the judge issued his decision at least partially on the basis of intent, and at the appeals court level it was decided entirely on the basis of intent. So, I was known as the “intent expert” around here.

One of the attorneys that I worked with on *Garza* was Mark Rosenbaum, who was the ACLU attorney at the time. Someone from Santa Monica approached him, and he recommended that they hire me as a consultant to the commission to decide whether there was a possibility of a successful case on the basis of racially discriminatory intent in Santa Monica. And so, I went down and read newspapers on microfilm and found out that in 1946, Santa Monica shifted from a commission form of government in which three people were elected at-large to this council-manager form of government with seven members, also elected at-large. And the campaign to set up the new form of government was just full of racial comments. One of the things I discovered was that the local newspaper, the *Outlook*, was very pro at-large and very pro setting up this new form of government. It was in fact the driving force behind it.

Apparently, there was also criticism of the expanded at-large feature of the government, and one of the things that was said was that this was going to make it harder for what we would call people of color to get elected. I should say that Santa Monica at that point had a larger Black and Latino population than it has had since, and that it was all essentially centered in the area where Interstate 10 came through—the Pico neighborhood, which is now where Latinos are. But back then, that area was Black plus Latino, and in fact there were protests saying that you're going to destroy our neighborhoods when the 10 freeway was built through the area.

ASPATURIAN: Which I'm sure went nowhere.

KOUSSER: Well, they actually went to a state commission on this but, sure, the state commission just said no. So, there were a lot of blatant statements, with people who

were against the at-large election saying, “Who will the colored people”—the Mexicans, the Jews—these are all quotations—“go to when they are seeking influence on the city council?” And the *Outlook* responded by essentially saying that minorities must realize that they will be better off if there are elected liberal-minded people with a citywide view who will protect them. Like, “Let’s let the benevolent white businessmen”—all men then—“protect the poor deluded people who can’t really do it for themselves.”

It also happened that at that same time, in November 1946, that there was a referendum on the new at-large city Santa Monica council, there was also a statewide referendum [Proposition 11] on adopting on a fair employment practices commission [FEPC] for California, just a purely racial issue. The question was, Will there be a prohibition of discrimination by race in employment and a commission to enforce this? It turns out that the *Outlook* published the election returns a day or two after the election, and among all the referenda that were on the ballot, they published precinct-level returns just for the changes to the City Council and for the referendum on FEPC.

ASPATURIAN: So, they laid it all out for you, basically.

KOUSSER: Yes. And so, I just did the correlations.

ASPATURIAN: Like shooting fish in a barrel.

KOUSSER: The correlations were almost exact. If you were for FEPC, you were against the change in the city council. If you were for at-large elections, then vice versa. [Proposition 11 was defeated statewide by a wide margin. –*Ed.*] So I wrote a report, presented it to the commission, talked to them, and said, “Look, I can’t guarantee this; I only spent a somewhat limited time on it”—still it was a 20–30 some page report—“but I think you would have difficulty defending against an intent charge.”

ASPATURIAN: This was 1992.

KOUSSER: This was 1992. So, the commission voted 14 to 1 to get rid of at-large elections. They also voted 8 to 5—not everybody voted—to recommend a proportional

representation system rather than a district system, but the vote was overwhelmingly to get rid of the at-large elections. There had previously been groups formed in Santa Monica to get rid of the at-large election, but the only issue that was discussed was whether or not Latinos would have the opportunity to elect candidates of their choice. So it wasn't that this was just in the background, or that it wasn't articulated. It certainly was.

There was one Latino on the commission who dropped off by the end, but there was also one African American who was very much in favor of districts. So, then there was a meeting of the city council. I wasn't invited and didn't go, but a lot of people testified, and all the discussion was about at-large elections hurting Latinos, and the question was whether they were going to put a referendum on the ballot to get rid of the at-large system and put in districts. And the city council voted 4 to 3 not to do that.

One more thing that you need to know about Santa Monica elections. Santa Clara elections have this little strange thing about them—the 49ers stadium is the huge issue. With Santa Monica, it's renters' rights.

ASPATURIAN: Oh, yes, I know about renters' rights in Santa Monica.

KOUSSER: And the organization SMRR—Santa Monicans for Renters Rights—has dominated the city council for something like 30 out of the last 40 years. They've had a majority, not just a plurality but a majority, on the city council. The head of SMRR in 1992 was the swing vote on the 4–3.

ASPATURIAN: Really?

KOUSSER: I did not see a video of this—apparently, many, if not all of the city council meetings are recorded—until almost the time of the recent trial in Santa Monica. But when I did see it, the crucial discussion was about Latinos and district elections and the representation of the Pico neighborhood. Up to that point, they'd never had anybody from the Pico neighborhood on the city council. Traditionally in Santa Monica, and it's been this way at least since 1930, the class division line is Montana [Montana Avenue]. If you're north of Montana, you're rich. Well, today, if you're south of Montana, you're

still rich but not quite as rich, and you're probably a renter.

So anyway, in 1992 the crucial city council person [Dennis Zane] said, "I recognize what you've been saying about Latinos and districts," and he actually proposed a plan that had some district and some at-large representation, which was never voted on. But he also said that in order to ensure that there will be an adequate amount of affordable housing, the city can't have any districts, because if we do, then the member of the city council representing that district will get so much pressure against housing for poor people from his or her constituency that we won't be able to put affordable housing here in my district. Every other city council member will face the same pressures, and so we won't be able to have as much affordable housing as I think we ought to, and there is a trade-off between representation for people, such as those who live in the Pico neighborhood, and these sorts of policy concerns." It's not clear to me why he held the view that districts posed a threat to renters' rights and affordable housing.

ASPATURIAN: Renters' rights, basically.

KOUSSER: Well, it's not just renters' rights; it's affordable housing. That's different from the rights of renters who have been there for 30 years and have had relatively minor rental increases. These are old people—old white people, basically—sitting in places that they could never afford if there wasn't rent control. These are not downtrodden people for the most part. These are people who are living a mile from the beach, at prices that are a third of what they would be paying in a fair market. But where's the affordable housing? Almost half of the affordable housing at that point [1992] was in the Pico neighborhood, in one-seventh of Santa Monica. Guess what else was there? Waste treatment plants.

ASPATURIAN: I read about those, yes. I had no clue until I was doing prep for this interview.

KOUSSER: Everything that you can think of—waste treatment, garage facilities for the Santa Monica buses—

ASPATURIAN: All the industrial stuff, basically. It's all there.

KOUSSER: Yeah, exactly. So, here's the trade-off: You get district representation, *or* you maybe get more affordable housing, but that's the choice. There are a lot of middle-class Latinos who live around the Pico neighborhood and who may not want more affordable housing in their area. Maybe they should. Maybe it would be a better thing for everybody, but they probably have attitudes toward affordable housing that are not different than attitudes of other people.

Alright. So, we go into the trial and—

ASPATURIAN: This is twenty-five years later.

KOUSSER: Twenty-six years later. Santa Monica hires Gibson, Dunn & Crutcher. Gibson Dunn is a big L.A. law firm full of really smart people. They don't have any experience in voting rights.

ASPATURIAN: Why did Santa Monica hire them, then? They didn't take the case seriously enough?

KOUSSER: Oh, they took the case very seriously. I don't know. You'd have to ask Santa Monica. I was not—

ASPATURIAN: Privy to their discussions.

KOUSSER: Consulted. But I think they knew that Gibson Dunn would throw a lot of resources into it, and they did. I was deposed for 11 hours over two days, which is a relatively long deposition. It's usually maybe seven hours. And they were really well prepared. They had my deposition transcripts for cases where I had forgotten that I had ever testified. And they would say, "in such-and-such a case in 2006, you said such-and-such," taking two sentences out of context in a 300-page deposition. "You want to change your mind about that?" Very smart, young—young to me—Black Republican lawyer—and the number of Black Republican lawyers is not large. Very, very smart, and

he almost never smiled. That became something of a matter of consequence, maybe, in the trial.

So, he just goes after me hammer and tongs for 11 hours, and I figure this is going to be a really tough testimony. What you do in deposition is you find out what the expert is going to say, and you also have everything indexed and cross-indexed and all that sort of stuff if you've got the resources that Gibson Dunn has. And so, whatever the expert says on trial testimony, they'll say, "Well, on page 109 of your deposition, didn't you say—"

ASPATURIAN: They try to impeach your trial testimony with what you said at deposition, I guess.

KOUSSER: He did that again and again. So, we had a two-pronged case. One prong was racially polarized voting; the other was intent. There was also some stuff on what are called the "Senate factors" in federal voting rights act cases—the history of discrimination and certain other factors—but basically it came down to racially polarized voting and intent. On my side I was with the same lawyers that I had worked with in Palmdale, and I guess most of them were on the Highland case as well—so Kevin Shankman and several other lawyers. Interestingly, Gibson Dunn hired as an expert to try and tear down my intent testimony a very old friend of mine named Allan Lichtman. Allan became famous—really famous I guess—by predicting the 2016 election outcome. He predicted a Trump victory. He's a liberal Democrat. He's testified in a whole slew of voting rights cases. He's almost always been for minorities and has always, previous to this case, been for minorities. But this case, he testified against minorities.

ASPATURIAN: Why? Conviction? Does he live in Santa Monica?

KOUSSER: No, he lives in Washington, D.C. The Washington metro area. Um—money.

ASPATURIAN: I imagine they had fairly deep pockets if they could hire this very pricey law firm.

KOUSSER: Yes. Allan is a very good debater, and he throws himself into things. He threw himself into this and just said all sorts of things about me and my testimony.

ASPATURIAN: Did your friendship survive this?

KOUSSER: No.

ASPATURIAN: It did not. I'm sorry to hear that.

KOUSSER: We'd been friends since the early 1970s.

ASPATURIAN: Really, really.

KOUSSER: I invited him nearly forty years ago to Caltech. He came out, spent a year here, and actually met another visiting professor—a Russian physicist [V.I. Keilis Borok] who studied pattern recognition, which apparently was at that point in some parts of physics. Allan picked up pattern recognition and wrote a book called “13 Keys to the Presidency” [*The Keys to the White House*], and he's been predicting the outcomes of presidential elections ever since. He's got a pretty good track record. He's quite a smart guy. He just, I think, did not do a good job in this case. So, I ended up testifying for five times as long as I've ever testified in a case.

ASPATURIAN: Really.

KOUSSER: Seven full days and parts of three other days. Including four days of cross-examination. Speaking of the frown, this Gibson Dunn Crutcher attorney—

ASPATURIAN: This is the unsmiling legal beagle?

KOUSSER: Not only unsmiling; he was frowning, very harshly, all the time. He would frown and say something, and I would try to get a word in edgewise, and it would be like, “Just answer the question, yes or no. I'm asking the questions; you don't get to ask the

questions.” So on and so on. At one point that I think might have been my fourth day of cross examination, he said something like, “Professor Kousser, you will remember because you were in the courtroom when so-and-so lay witness testified,” and I said something like, “It seems like ten years ago.” And everybody laughed, including the judge.

ASPATURIAN: Who was the judge?

KOUSSER: Her name was Yvette Palazuelos.

ASPATURIAN: So, they drew a Latina judge?

KOUSSER: They drew a Latina judge. That did not help them, I think.

ASPATURIAN: I wouldn't think so necessarily.

KOUSSER: She seemed to me to work very hard. I was sitting right next to her, and she was just furiously taking notes all the time when I testified; and I could watch her taking notes when other people testified. At some points, I wasn't very clear, and she would ask questions, and it was all good. She had a good staff. Great court reporters. I always try to make friends with the court reporters, trying to speak slowly enough and distinctly enough so that they get everything. The judge had been in law practice here, I think, when the *Garza* case took place. [See *Session Six*] One of the keys to *Garza* was that the most Latino district in the board of county supervisors was Ed Edelman's district. Edelman was a Westside liberal white Jew who was quite responsive to the Latino community, but he feared that a good Latino candidate running against him could beat him.

ASPATURIAN: Sure.

KOUSSER: He wanted to ensure that the Latino proportion of his district didn't rise more than necessary, so he kept adding white areas in the San Fernando Valley. [See *Session*

Six] So, one of the things that Kevin Shenkman and I decided in planning the Santa Monica testimony was that we were going to make an analogy between Edelman and the Santa Monica city council. Good, liberal Democrats, not racist, but they want to preserve their power; and so, we decided we were going to mention this. I was clearly going to mention *Garza* because it was intent and was a similar case. So, in court I kept talking about that and saying, “You don’t have to prove that these are terrible racists—I don’t think that they were terrible racists. Santa Monica city council doesn’t have any racist policies, but sometimes they have policies that happen to place all of the municipal ‘bads’ in the Latino area. They don’t do that because they hate Latinos; they do it because they don’t want these things in their areas.”

ASPATURIAN: Has there ever been a Latino representative on the city council?

KOUSSER: One. And he was beaten the first time he ran for reelection. He was elected in 1990 when there was the beginning of discussion about Latinos and districts. He was a leader on moving to district representation, and he tried to push it when he got in. It failed and then he got beaten for reelection in a campaign that had severe racial overtones. He came back and ran in 2012 when none of the incumbents ran for reelection, and he managed to finish fourth out of four candidates to win, and then he got reelected in 2016. In 2018 he got elected to the state board of equalization. And so of course they appointed a Latino—actually a Latina—to fill his position on the city council. But they’d already lost the case by that point, and so they’re trying to look as good as possible.

ASPATURIAN: So, was the proposed remedy there also to move to district voting?

KOUSSER: Yes.

ASPATURIAN: Is Santa Monica fighting the court ruling, or are they going to settle?

KOUSSER: Absolutely, they’re going to fight it. They’ll take it up to the Supreme Court.

ASPATURIAN: Really?

KOUSSER: We can't be sure, but this will likely be the most expensive voting rights case in the history of the United States for anybody, including Texas redistricting. This will be more expensive because Gibson Dunn must charge \$800, \$900 an hour.

ASPATURIAN: How ironic that it's coming out of Santa Monica. Right? The "People's Republic of Santa Monica."

KOUSSER: This is one of three cases being appealed at this point. *Poway* is in federal district court; there have already been a couple of decisions that have gone against *Poway*. I don't think *Poway* is going to go all the way.

ASPATURIAN: *Poway* is which?

KOUSSER: *Poway* is in a relatively affluent area of San Diego County. This is another Ed Blum case. He is the chief organizer of the Harvard affirmative action case.

ASPATURIAN: Oh, yes.

KOUSSER: He brought a case called *Evenwel* [*Evenwel v. Abbott*] that may well turn out to be more important than any of the rest of them. It would have required Texas to redistrict its state legislature on the basis of citizens, not population. The Supreme Court split on the decision—this was after [Antonin] Scalia died, and Merrick Garland was proposed to succeed him, but didn't get in. So that is what is in the background of the current census case that the Supreme Court will hear later this month. There is one amicus brief that makes it very, very clear that that's what they are really going for. They want to be able to exclude non-citizens from redistricting. So, if there's an area like East LA, which has a lot of non-citizens, they will make the congressional district that includes East L.A. much larger. That means Latinos can't elect as many candidates, and Democrats can't elect as many candidates.

So, with *Poway*, the federal district court judge has basically said, "Well, you

contended that the districts are drawn in a fashion that relies predominantly on race, but you haven't shown me any evidence of this. If you want to win, go back and show me any evidence of this"; and I don't think that they're likely to be able to. So, my guess is that *Poway* will not be successful in an appeal. [In May 2020, the U.S. Supreme Court declined to hear the challenge to *Poway*, thus allowing the lower court's decision to stand. –*Ed.*]

ASPATURIAN: With Santa Monica, on the other hand, there seems to be clear evidence—

KOUSSER: I think Santa Monica's going to have trouble. I think that they will probably have trouble because of the intent finding, and because the judge wrote a 71-page opinion that is full of facts, and typically appeals courts don't overturn very factually specific findings. An appeals court may decide that the judge got the law wrong. I don't think she got the law wrong, but they could decide that. But basically, Santa Monica wants to throw out the CVRA for everybody, and they're going to use as much money as they have, which is virtually infinite, to try to do this.

What you have to realize is that with the four cases that have gone to trial, about 350 other local jurisdictions have switched from at-large voting to district voting because of the CVRA. They're everywhere, and a lot of them are in the Central Valley. A lot of them are school boards. Many of the California school boards are 40, 50, 60, 70 percent Latino in school-age population but didn't have a single Latino board member until the CVRA forced them to change to districts; and now they have one, maybe two Latinos on the school board. Presumably Latino parents of kids in school may feel a little better coming to a school board meeting, understanding what's going on. I don't know. Santa Monica is going to overthrow this? I think Santa Clara is going to have a really rough time too, just because of my wife's QED.

Santa Clara has already had district elections—they didn't enjoin them. Santa Monica has successfully enjoined the district election on appeal. So, they won't have any district elections until 2020 at the earliest.

ASPATURIAN: Has there been much coverage of this? Has the *L.A. Times* dug into it and its implications in a major way?

KOUSSER: No

ASPATURIAN: You would think it would be something that would interest them, particularly the larger ramifications of a successful appeal.

KOUSSER: Right. You would think so. But they don't do nearly so much local reporting anymore. In 1992, they did enough local reporting that there was even coverage of my testimony before the commission. They have not had much in the way of reporting on this Santa Monica case. It's a shame. What they did was to publish an op-ed by a couple of members of the Santa Monica city council saying, "Oh, we're pure." That was before the trial.

ASPATURIAN: Well, it's not a pretty look for Santa Monica, is it?

KOUSSER: It's not. One of the things that Santa Monica did has only come to light—and only half-light—since the case started to go to trial. They had four expert witnesses on racially polarized voting. Only one of them testified. The other three very clearly found that there was racially polarized voting and told the city manager or city attorney so, and the city said, "Here's a check, thank you, goodbye." The fourth one, again, was Jeff Lewis from UCLA! He actually also found racially polarized voting, but he looked at a whole lot of elections, and it's clearly possible to elect Latinos to the rent board or even to the school board, but somehow not to the city council, which is a lot more important body. It's possible because SMRR will endorse them, and if they get an SMRR endorsement, they can get elected. When Jeff was presenting his evidence before the court, one of the elections he looked at was a rent board election with only three candidates for three positions, and he said, "There's no racially polarized voting here." Of course, there was no racially polarized voting; there wasn't any opposition!

Santa Monica's chief contention here, and the chief contention that they'll put on appeal—besides various things that they'll say about the intent case—will be that Latinos often cast one or more of their ballots for non-Latino candidates who do get elected. The Latino candidate they vote for usually loses, but Latinos will also vote for white candidates who will win, as long as they are endorsed by SMRR, and isn't that enough;

what more do you want? I would call that second-class citizenship. They can elect a candidate of their choice, so long as the candidate's white. But Santa Monica has contended all along that all of those elections have to be counted, and that to give more weight to elections with Latino candidates would be racially discriminatory and maybe even a Fourteenth Amendment violation.

ASPATURIAN: That argument will probably fly with the current Supreme Court.

KOUSSER: I don't know whether the Supreme Court is going to take Santa Monica. I mean it's hard to determine what the Supreme Court is going to do at this point. It depends on what the posture of the case is by the time they get to it.

ASPATURIAN: So, what else have you got coming up?

KOUSSER: Well, one of the things we haven't discussed is the freshman humanities course that I taught last fall. Where I sent you the syllabus and even—

ASPATURIAN: The final.

KOUSSER: Exam.

ASPATURIAN: Let's have the title of that on the record, please.

KOUSSER: I think it's "Why Trump, and What Does it Matter."

ASPATURIAN: Something like that, yes. And you said you had about 25 kids take the class. In two sections.

KOUSSER: I'd been teaching a course on the post-Second World War United States, and I just decided, well, this is the most important set of circumstances that's probably ever going to come along in these now kids', then adults' lives.

ASPATURIAN: Let's hope so. Let's hope nothing more important comes along.

KOUSSER: I mean the principal consequences of Trump's election, are really three: One is the viability of racism as a campaign issue. By far the most important in terms of policy is climate change, and whether we're going to be able to limit the destruction of climate change, and that's going to, I think, dominate their lives. Not just because they're scientists and engineers, just because they're people. They're going to feel the impact of climate change a lot longer than I am. They're going to see consequences of this; my grandchildren are too.

ASPATURIAN: That's right.

KOUSSER: The third consequence is health care. I think that's going to have a large impact on their lives, too, because I think if the Trump administration succeeds, it will basically screw up health care—not only for poor people and relatively poor people, but for everybody. And a lot of these kids are going to go to work at some point in their lives in a sort of gig economy, even if they're consultants to software companies, and they're not going to have any health care unless they can buy it on some sort of mutual market that's got to be regulated. They or somebody they know is going to have a pre-existing condition. You don't want to sit around and watch your mother die of cancer and have no insurance. So, I decided I was going to do this, and I thought, "There's a huge upsurge in the literature on this, and it's not something that just happened in 2016. There are proximate and more long-range causes."

ASPATURIAN: Yes, it didn't happen in a vacuum.

KOUSSER: So, you could discuss immigration in the United States. You can discuss the history of racial demagoguery in the United States. You can discuss the increasing amount of political polarization. You can discuss the growth of the health care issue. That was key to the Tea Party movement, so you can discuss the Tea Party movement. How different was the Tea Party movement from Trump? Is it no Tea Party, no Trump? How about climate change? Or science? How has the federal government affected science, scientific education, and research; and what's going to happen if we have a whole series of politicians who don't believe in science? So, it seemed to me that this

was something that would be interesting. It was something where there is a certain surge of literature that they probably haven't read.

ASPATURIAN: It's also relevant to their lives in a very direct, immediate way.

KOUSSER: And relevant for the rest of their lives. There are things that they could possibly take away from this that would inform their lives for long periods of time. So I gave this as a freshman humanities course. It seems pretty successful. They seemed to be quite interested. They give terrific reports.

ASPATURIAN: I'm sure.

KOUSSER: The way that I set up this type of course is that they have to read two outside books and report on some aspect of them—both written reports and oral reports in class. They did that. Lots of people did PowerPoint presentations; some didn't. A lot of them were quite good. The books didn't always agree, so people would clash: "Things are really polarized and really have been for a long time"; "No they're not." "This is only the elite—the masses of voters are not so polarized"; "Yes they are." That was interesting as well. There was a dearth of literature that I could find that was immediately relevant, at least, on gender issues. There was some that was directly related to Hillary, but the view, which I believe to be correct, that if Hillary had been a male, she would have won—there was no way to get at that.

ASPATURIAN: A lot of anecdotal thinking about it.

KOUSSER: Yeah, and there were a couple of books about Hillary. One saying, "No, she just ran a terrible campaign"; the other saying she was discriminated against because she was female. I think the latter is more convincing, but we needed more literature on that. If Lord help us, we get a female Democratic candidate in 2020 and she loses again, we may get a lot more literature on this. But we'll see.

ASPATURIAN: Are you going to teach this again, next year?

KOUSSER: I think so.

ASPATURIAN: It's going to be an election year.

KOUSSER: It would be in the fall of 2019. But the primaries will be going on. The Trump administration will continue.

ASPATURIAN: It looks very much as if that's the case. Well, I never believed that there would be a possibility of impeachment. I thought people who thought so were just living in another dimension.

KOUSSER: Right. I think that's true. I don't think you could get a third of the Senate Republicans to convict.

ASPATURIAN: Of course not. Unless he tanks the economy, then, yes, it might very well happen.

KOUSSER: Possibly.

ASPATURIAN: I think he is having his feet held to the fire on not tanking the economy.

KOUSSER: He's trying. What frustrates me right now about my own career is that for the first time in my life as a scholar, large numbers of people in the populace, outside of political science, are talking about issues that I've been studying for 50 years. Voter suppression, voter ID and voter ID laws, purges of the electorate—and I still have a great deal to say about it. I'm working on two large projects. One is a project about the CVRA. There are at least four other people or groups who are working on it that I know about, and I've been spending so much time teaching and sometimes in court cases, I haven't been able to publish that.

ASPATURIAN: Ah-ha.

KOUSSER: And I have now started working on the National Voter Registration Act—Motor Voter—and there is not a single monograph on Motor Voter. There are some articles about various facets of it, but nobody has written anything about the struggle for voter registration reform, which went on for at least 24 years before it was finally adopted, and I’ve started going quite deeply into that. It’s quite fascinating. It’s amazing, we sort of have this aura about us— about the United States—that we’re in favor of more people voting—

ASPATURIAN: Well, we thought we were.

KOUSSER: But we haven’t been for quite a long time, actually. There’s this view that there were dark ages when we disfranchised Blacks and wouldn’t let them vote, and now we’re in this enlightened era.

ASPATURIAN: “It’s all behind us now.”

KOUSSER: But that’s not the case. And it was amazingly polarized along partisan lines very early. These were things that I had maybe known at the time but had forgotten since then; but the story of the development of voter registration reform is just incredibly fascinating to me, and it’s quite pertinent. It’s a large part of H-1, which is the Democrats’ bill that’s passed the House. It is a comprehensive bill and does a lot of things. It’s probably not part of H-4, which is basically a renewal of the federal Voting Rights Act, particularly Section 5, but it’s related to it. It would be nice if I could produce this scholarship and also a sort of semi-popular book.

ASPATURIAN: You need to go on sabbatical?

KOUSSER: I likely need to retire.

ASPATURIAN: You mean from other activities, teaching and the court cases?

KOUSSER: From teaching. It’s a great dilemma for me, because I love teaching.

ASPATURIAN: Obviously—that’s quite clear.

KOUSSER: I have three people doing independent work under me now. One of them is working on the NVRA [National Voter Registration Act], and there’s a young woman who’s working on privacy legislation. This is a really hot topic.

ASPATURIAN: Are they SURF [Summer Undergraduate Research Fellowship] students? Are they research assistants?

KOUSSER: Independent Studies, so it’s a course.

ASPATURIAN: I see. Cool.

KOUSSER: And we meet once a week. What I’m doing with the young woman is quite interesting. I think it’s something that might possibly be done at some other places, but it’s something that’s much more likely to happen at Caltech and very unlikely to happen at the vast majority of educational institutions these days. If she were an undergraduate at UCLA, the chances that she would have a professor who would sit down an hour a week with her to discuss things is—

ASPATURIAN: Very low. What is her name?

KOUSSER: Her name is Rona Yu. She heard a lecture by a UCLA law professor [Adam Winkler] who gave a talk here about privacy, and she got interested in it. She contacted him and talked to him—she’s an aggressive person—and said, “Would you be willing to give me a course on this by telephone every week?” or something like that, and he said, “OK.” She had to get a mentor here, and she’d been in my freshman class, and so she grabbed me. So, I was just going to be this liaison and sort of oversee things, and we started talking. She’s interested in privacy regulations, but she was naïve about how they might work and how to go about studying them. As anybody in these circumstances might be.

I knew a lot about regulation in general, but I didn't know anything about privacy at all. The guy from UCLA is wonderful: he told her lots about privacy, and she has contacted other people. She just calls professors up and talks to them, and they talk to her. It's interesting. We started meeting once a week last term, and we've continued those conversations: Should this regulation be on the national level—there's a California privacy law now. Is it a good idea that we have state regulation, and could it possibly interfere with national regulation? What are the pros and cons of doing privacy legislation at a national level as compared to a state level? Should it be all by regulation? Should some of it be by the courts? Should it be international—she's currently reading a book on the possibility of international regulation. Mark Zuckerberg wrote an op-ed in the *Washington Post* two weeks ago talking about an international regulation. Issue after issue keeps coming up related to privacy that no rule-making authority could keep up with. Should some of it be handled by some sort of commission and a judicial or quasi-judicial procedure?

To the extent that I've been able to make any contributions toward what she's studying, it's because I've been able to think of these sorts of questions and, as I've said, I know about some of these issues, for instance, as they pertain to meat regulation. Why did it occur on the national level? Did it occur on the state level? What's the interference about that? And she's just taken all this stuff and run with it.

ASPATURIAN: Does she have a major?

KOUSSER: She's not a history or economics major. I think she's a computer science major. She's really interested in stuff. And she will now just devour hearings. Not your average Techer. I've run into things in the newspapers, whatever, and sent her a link, and we go back and forth on all this. It's fascinating to do this even on a topic that I'm not an expert in.

ASPATURIAN: And with such a young person, too.

KOUSSER: It's very hard to think about giving that up.

ASPATURIAN: Caltech is unique in that respect. There are some very unusual aspects to this place that you really would miss because you're not going to find them anywhere else.

KOUSSER: But I have a lot of stuff to contribute to public policy, I think.

ASPATURIAN: Yes. Particularly in this current climate.

KOUSSER: Yeah. And who knows how many years left.

J. MORGAN KOUSSER**SESSION 11****October 22, 2020**

ASPATURIAN: Welcome to the first Archives oral history Zoom interview. We're going to start with the congressional testimony you gave last year on the renewal of portions of the Voting Rights Act. If you'd like to, start by giving a little background and talking about what happened there.

KOUSSER: Well, the background is *Shelby County*. [*See also Session Eight*] In 2013, the U.S. Supreme Court effectively struck down Section 5 of the Voting Rights Act, which is the pre-clearance section. They didn't actually strike down Section 5; what they struck down was Section 4, which has the coverage scheme in it. It had been clear for some years before that time that the Supreme Court was interested in the coverage scheme, and that became a big issue during the renewal of Section 5 in 2006. So, there was a lot of material that had been collected to try to say, yes, the coverage scheme in Section 5 is still valid. But that material had not been synthesized; it had not been put into a big database, for example.

So, in 2009, I started compiling a large database, which I think we've talked about before. [*See Session Nine*] The primary purpose of the database was to look at voting rights cases under Section 5 and Section 2, and also at Section 5 objections by the Federal District Court of the District of Columbia, more information requests by the Justice Department under Section 5, Fourteenth and Fifteenth Amendment cases, settlements—all sorts of cases, so I put them all together and put them into counties where they came from. The purpose was to see whether the coverage scheme of Section 4 tracked over time with actual outcomes in which a court or a settlement ruled or agreed that there had been a violation. So, then that could be presented to a court or to Congress or whatever to see whether in fact the coverage scheme was in fact outmoded.

ASPATURIAN: I think we talked about this, and you discovered that the convergence was like 91 percent. I recall your saying that if you bet on the stock market with that figure, you would make out very well. [*See Session Nine*; actual figure was 93 percent. –*Ed.*]

KOUSSER: Right. So, after *Shelby County*, the Congress was interested—the Democrats in Congress were interested—in proposing a new scheme and to try and justify that scheme, but they hadn’t had control of the House since 2013. And so, the first time they got that opportunity was in 2019 [after the 2018 midterm elections, in which the Democrats won a majority in the House of Representatives]. There was a bill proposed called HR4, which set out to essentially overturn results in *Shelby*. There were a lot of panels, month after month, usually made up of voting rights attorneys, other law professors, and public policy people; and they had had at least one historian, my friend Peyton McCrary, who used to work for the Justice Department but who retired just before the Trump administration came in.

So, he had testified, and he was good friends with Keenan Keller, the chief counsel—I don’t know if he was chief counsel for the whole judiciary committee or just the subcommittee on constitutional rights. His wife used to work in the Department of Justice Voting Section, and so she knew Peyton, and Peyton knew Keenan. I think what happened was that Keenan wanted to get another historian to testify, and Peyton gave Keenan my name.

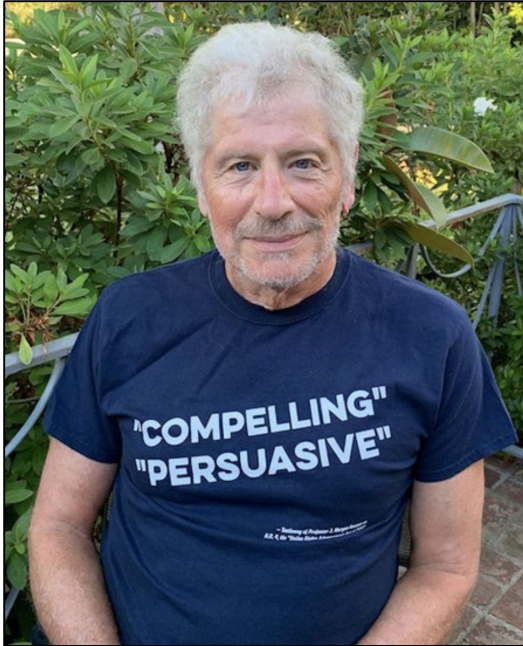
What they did not know when they asked me to testify was that I had complied this database, so I told them about it and asked if I could display a map and a couple of graphs in my oral presentation, and more in my written presentations, and they said fine. So, I flew to Washington almost exactly a year ago. I know a little bit about how to get around in Washington, but I’m not sure that I remember it all from time to time, so I worry that I’ll get off on the wrong metro stop; and I don’t know House office buildings, one from another, so I have to look and all that sort of stuff. So I got there early because I was afraid I was going to be late. And so I was, I guess, the first person to arrive on the panel of seven people; and Keenan, whom I didn’t know, grabbed me, pulled me into his office, and said, “Oh, you have just what we need. I wish we had had this before *Shelby County*.”

And so, when I was giving my talk, they had a graph—two graphs—and a map running in the background, and the members of Congress who were sitting on the dais could see what was on it as I described it. There was only one Republican—I think maybe there has to be one member of each party present at every committee hearing, maybe not. The one Republican there was Mike [James Michael] Johnson from Louisiana. While I was testifying, I knew that he was looking at the map, which showed how bad the *Shelby County* decision was and how accurate the coverage scheme actually had been; and—I don't know—I flatter myself that he was looking more and more dismayed by seeing this. Anyway, I thought it went very well.

Jerry [Jerrold] Nadler, the chair of the House Judiciary Committee, actually was there. At one point, a Republican witness challenged something that I had said about Section 2. It was sort of an arcane point, but it goes back to exactly what congressional intent was in the 1981 changes, and I represented what I thought congressional intent was and this other law professor had disputed that, and Nadler, who was in Congress in 1981, said, “Oh, yes, Dr. Kousser is right about this. This is exactly what we intended.” So that was nice as well. [*MK subsequently added*: “I looked back at the records and found that this was John Eastman, then professor of law at Chapman University. More recently, he staunchly backed Trump's fraud lawsuits after the 2020 election, and he was forced to resign from Chapman. See <https://www.washingtonpost.com/nation/2021/01/14/john-eastman-chapman-university-departure/>]

The report came out and it was about ninety or a hundred pages; and about five or six pages were taken directly from my testimony. Given that they must have had, I don't know, eighty or ninety witnesses over a period of weeks, that was very nice. And they included a map, and I think both figures from my paper, and then they referred to my testimony as *quote*, “compelling and persuasive,” which I thought was nice.

ASPATURIAN: Of course.



KOUSSER: My son got a T-shirt made, which has “compelling and persuasive” on it. And I wore that. That’s on a picture that appeared on the Caltech website when they did that story. [“A Long March Toward Progress”]: <https://www.caltech.edu/about/news/long-march-toward-progress>] I got my wife to take a little picture of that, and they used it. That was very good.

Tomorrow, I will talk to people who work for one of the interest groups that has starting planning for a bill that will be like

HR4—maybe it will be exactly HR4—which would be introduced in the new Congress, if Biden wins and if the Democrats take over the Senate. HR4 did pass the House. But it’s sitting on Mitch McConnell’s desk [R-Kentucky; at the time, Senate Majority Leader].

ASPATURIAN: So, it can pass the Senate by a simple majority vote?

Kousser: Well, it *can pass* by simple majority vote, but unless they get rid of the filibuster, it can be filibustered.

ASPATURIAN: I see.

Kousser: So, if they change the filibuster from sixty votes to fifty votes—and I think they’re going to need to do that in order to get anything through, and my expectation is that Biden is going to come around on that. During the primary, Elizabeth Warren [Senator Elizabeth Warren, D-Massachusetts] was very vocal about getting rid of the filibuster; interestingly, Bernie Sanders [Senator Bernie Sanders, Independent-Vermont] was opposed to getting rid of the filibuster, but I don’t think there’s any hope of getting anything substantial through if Mitch McConnell can just veto everything.

There is also a bill called HR1, which is a conglomeration of a series of bills; it is

every Democratic wish list in election methods. It's got a requirement for redistricting commissions for congressional seats in every state. It's got campaign finance reform. It's got same-day registration. It's got elimination of disfranchisement for former felons. It's got online registration, even mandatory registration, so if you have any connection with a state office, instead of being opt-in, it's opt-out. If you get your driver's license, or if you change your address, you automatically get registered to vote, if you weren't already. It's still very rare, but that's what we've got in California now. Same thing if you got unemployment benefits where you have to deal with the unemployment office, welfare benefits, any connection with a state office, registration would be automatic.

So, HR1 would move the country toward a sort of European system, where it's the government's responsibility to register you to vote rather than your responsibility to register to vote. It wouldn't quite be like that, but it would be much more like that. I'm not sure that its proponents are going to get anything like that through, although they may get pieces of it through.

I know this is slightly off-topic, but it's related to this. The Supreme Court has just accepted a Cert petition [Writ of certiorari. This is when parties to a lower court decision petition the Supreme Court to order the lower court to send up the record of that case for review. –*Ed.*]. This is on two cases from Arizona [*Brnovich v. DNC*], which has two sorts of important provisions that relate to whatever Congress might do in a Biden administration, at least potentially. Okay: Section 2 of the Voting Rights Act has not been declared unconstitutional, although the [Amy Coney] “Barrett Court” might well move to declaring it unconstitutional, but so long as it's within the Constitution, it needs to be amended—revised, reformed—and this particular case points out how it might be.

Paradoxically, when the Voting Rights Act was passed, the primary concern of Congress and most of the act's outside agitators was whether individuals could register to vote or not, and whether they could vote freely. So, the focus was on literacy tests, property tests, discrimination at the registration level, poll taxes—those sorts of things—but it was individual discrimination that was the primary concern. Not the whole concern; there was some concern about questions of election structure—we had an Alabama case called *Gomillion v. Lightfoot* in 1960. This was the “Tuskegee gerrymandering case,” in which the powers that be in the Alabama legislature had

gerrymandered Macon County, which was the most heavily Black county in the country—where Tuskegee Institute is—to redraw the city of Tuskegee’s boundaries into this strange 28-sided figure to make it over 95 white percent in an 84 percent Black county. Which is hard to do.

But once Blacks got enfranchised and once the registration obstacles were brushed away by the FVRA, the reaction by white Jim Crow Southerners was to put into effect changes in election structure. Instead of disfranchising people, you let them vote, but you change their elections from district elections to at-large elections, and you change government positions from elected officials to appointed officials and introduce other sorts of election structures. So by the time that Section 5 was renewed for the third time—the FVRA passed in 1965 and was renewed in 1970 and 1975, so this was 1982—the chief focus was on election structure in Section 2, and the 1982 Senate report [#97–417], which is the authoritative document about what Section 2 means and how to litigate Section 2 cases, was primarily concerned with election structure, particularly with at-large elections. So, there are seven “Senate factors” that you have to address in a Section 2 case, which include things like a history of discrimination in the local or state jurisdiction and whether there was a slate-endorsing candidates in a race and other things that are particular to election structures and that don’t fit very well anymore.

Well, jump to post-*Shelby County*. What has happened is that states have passed laws that make it harder for individuals to vote: Voter ID laws were the paradigm. But there are other things. Even laws like the ones at issue in the Arizona case still have individual aspects to them. So, if you’re litigating a Section 2 case now, and you have one of the completely personal acts that you’re trying to overturn, you have to sort of shoehorn the evidence into these factors that are based on election structure. I’ve had to do that in North Carolina, Texas, and Alabama voter ID cases, and it’s not easy.

So, the Supreme Court in the Arizona cases is considering two provisions: One is, does your ballot count if you’re in the wrong precinct? Arizona says that even though you would vote for president or governor or senator regardless of what precinct you’re in, they just throw out the whole ballot if you’re in the wrong precinct. And people often go to the wrong precinct because they move and change precincts all the time now. And because of that, they may get misled and go back to the polling place for their old

house—they may be used to, say, voting at the local fire hall and the local fire hall is no longer the local polling place. Lots of reasons.

So, there’s that, and there is another provision that I’m actually forgetting right now, but it’s another personal provision. [MK *subsequently added*: “This is the so-called “ballot harvesting” provision. If you vote absentee, Arizona says you must either mail the ballot yourself or get it delivered to a polling place or drop box by a family member. This is a big problem for people in care homes and particularly in Arizona, on Indian reservations, which are very large and often have no at-home mail delivery. Native Americans on reservations may have to drive for many miles to get to a post office. As a consequence, tribal groups and political parties have organized to pick up ballots and deliver them or mail them in groups. The Democratic Party challenged this law, and that’s the second law that’s at issue in the Supreme Court.”]

So with writs of Certiorari, the Supreme Court doesn’t have to take the case; it’s purely discretionary on their part. People are saying, “Oh, you [i.e., the Supreme Court] have got to take this case because, well, the Senate factors don’t fit anymore and so the court needs to set out new factors or redefine what Section 2 means.” Some of them want Section 2 to be overturned. But that’s a big ask. So, they say it needs some sort of new analysis to be set out. My view, having read at least some of the Cert petitions and briefs in the case, is that’s Congress’s job. So, I agree that Section 2 needs some changes because it’s very hard to figure out how to litigate Section 2 cases that are what are called voter *denial* cases rather than voter *dilution* cases, but I think that should be up to Congress.

I hope that that is one of the things that lands on Congress’ plate if Biden wins, and the Democrats take the Senate. I’m sure there are voting rights lawyers who’ve seen it coming for months now and should begin to have that in mind. That may crowd out some of the things that were in HR1; I’m not sure. It may be that Congress will wait to see what the Supreme Court does, but given a 6–3 conservative majority, I wouldn’t wait. I would try to elbow my way in there if I were Congress.

ASPATURIAN: Do you anticipate you might be asked back to give testimony, again, if—

KOUSSER: I don't know, but I might be. I'm not sure. They may be proposing a slightly different coverage scheme, and there certainly have been a lot of cases. There's something on the order of 300 cases that I call Covid cases, but whether all of those would be things that relate to minorities at least explicitly, I'm not sure. ["Covid cases" refers to legal challenges that Republicans brought in the run-up to the 2020 election, against "drive-thru" voting and other modifications that election officials made to facilitate voting during the Covid19 pandemic. –*Ed.*]

ASPATURIAN: Hard to know at this point?

KOUSSER: Yes, I have not gone through all of them. I've been busy flitting around doing other things. But I've been trying to keep up with the ones I could.

ASPATURIAN: So, I guess we have to wait and see what happens. If the election goes the way we hope, there will be some interesting movement on the voting rights front, it looks like.

KOUSSER: Certainly. Anyway, the interest groups are already organizing, and I'm sure they're going to get me to do more things on the database.

ASPATURIAN: I would imagine so.

KOUSSER: They put out a report last year, and so they'll put out another report next year. So, I will be working with them. I think the deadline date is in January [2021].

ASPATURIAN: So, we'll wait and see. Let's move on and talk about Santa Monica [*Pico Neighborhood Assn. v. City of Santa Monica*] since you say there's been a big new development. I've acquainted myself with the more recent background to this case, and I gather that about eighteen state representatives have filed an appeal with the [state supreme] court on this.

KOUSSER: Well, we haven't talked, I think, about the decision of the state court of appeal [Intermediate courts in California are called "court of appeal," without the "s." –*Ed.*]. The superior court's decision was about seventy-five pages long, and it was a decision I was very happy with. It essentially adopted all of my analysis. [*See Session Ten*] Usually it's the case that the court of first instance, whether the local court, federal district court, or the superior court, is a fact finder. They hear all the testimony, they can evaluate witnesses, they can read absolutely everything; and the judge in the Santa Monica case did read everything. She was very careful: Judge [Yvette M.] Palazuelos. So, the appeal court usually defers to the local court on facts, unless the local court has gone really wrong about the way that the judge looked at facts.

This court of appeal did not defer at all. What it said was that since a great many of the facts are either available in print or on video, they would review them *de novo*, as if the local court had not said anything. In federal court, it's clear that only if there has been an egregious error does an appeals court do that. State court I'm not as familiar with, but I think the idea is roughly the same. Anyway, this appeal court decided both that we were completely wrong on all the facts and that we were wrong on the law.

Let me go back and talk just a minute about the CVRA [California Voting Rights Act]. I probably talked about this before [*Session Six*] but let me review the most important facts. This CVRA was really something that came out of a set of Section 2 cases in California that Joaquin Avila, who was the act's principal draftsman, had brought in the 1980s and '90s. He had successfully won a case in Watsonville in 1987, which I think we discussed, but in a case in Pomona in 1988 or '89, the [federal] appeals court decided against him. And what they said was that unless you can draw a district in which a given minority group—Latino in this case—constitutes a majority of the citizen voting age population, you don't have a viable case and you can't win. And so, to bring a case you have to be able to prove that you can draw at least one district in the system in which minorities can win without any crossover vote *and* there has to be a majority of citizen voting age population.

Now this was very hard to do because during the 1980s, the census did not give citizen voting age population by ethnic group on the precinct level or the census block level. So, you couldn't even show that statistic in the 1980s. You just had to estimate it

in one way or another. The 1990 census does give you what's referred to as CVAP [citizen voting age population] on the census block level. So, you can figure out what you need to do. But one of the things that this does is that it forces big arguments about exactly how you draw these districts and exactly who's in it.

So, in *Garza*—the Los Angeles County Board of Supervisors case—I think my testimony was over in one day; I testified three or four hours, all told. [See *Session Six*] But the demographers testified for two and a half months. And the question was whether you could draw a district that was 50 percent Latino CVAP or not. And some of the demographers said, “Well, you can get to 49”; and some of them said, “If you make different assumptions, you get to 51.” And it was all how many angels dance on the head of a pin. Didn't make any difference at all. If you draw a district that's anywhere near that high in citizen voting age population, in the conditions of Los Angeles in 1991, the person who's going to be elected is going to be Latino. If it's 45 percent, probably if it's 43 percent, then the chances are almost 100 percent, that a Latino is going to be elected, and that the Latino is going to be representative of the Latino community.

So, in order to overcome all of this mess that made it more difficult to win cases, Joaquin drew the CVRA, which finally passed in 2002, somewhat after Gray Davis became governor. And when he drew it, he relaxed the idea that you had to have a 50 percent plus one district. He allowed for what are called *influence districts*, where a minority group can influence the election of whoever's elected in that district without necessarily being able to guarantee that somebody of that ethnicity will be elected. And he got rid of some of the Senate factors [in the Federal Voting Rights Act]. So, you could prove Senate factors, but you didn't have to prove them. The CVRA really has only one requirement in it—that you prove racially polarized voting. So, when we get to the appeals court in the Santa Monica case, the court of appeal says, “No, that's not what the CVRA means.”

ASPATURIAN: I see, they reinterpreted it.

KOUSSER: And they reinterpreted it purely on the basis of language. So, it is very much an Amy Coney Barrett–[Antonin] Scalia way of looking at things. They completely

ignored anything that was said in the state legislature about what the purpose of the law is and how it should be interpreted. There are committee reports, there are legislative analyst reports, there are four statements about what it should mean—all which say the difference between CVRA and FVRA is that you don't have to have a majority-minority district. And you don't have to prove Senate factors. And you don't have to prove intent. So, they're very clear on all of this.

But by completely dismissing all of these, and I think quite badly misreading the words of the law, the court came to the conclusion that because the most heavily Latino district that you could draw in Santa Monica was only about 30 percent Latino CVAP, a Latino candidate couldn't win.

ASPATURIAN: Was this a unanimous decision?

KOUSSER: It was a unanimous decision.

ASPATURIAN: Who appointed these judges, do you know?

KOUSSER: The one who wrote it was a Jerry Brown appointee. And he had been a Gray Davis superior court appointee. I was surprised at that. Judge Wiley [John Shepard Wiley, Jr.] is actually a very scholarly sort of person. He taught at UCLA Law School. He also taught at Harvard Law as a visiting professor, published articles in *Harvard Law Review*. Having read his opinion and watched him in the oral argument, which is available by Zoom, I'm surprised at this. But, so, he didn't "have to look" at any evidence that we had presented about racially polarized voting. He just dismissed the CVRA evidence as inconsequential because, he said, since you can't draw a 50 percent district or an almost 50 percent district, you can't win, so that's that.

And then he completely reinterpreted the evidence on the intent basis, which I had predominantly presented, just as I had predominantly presented the racially polarized voting analysis. On intent, there were two major decision nodes, one in 1946, one in 1992. In 1946 there was one advertisement with about two hundred names in it in the local Santa Monica newspaper saying that you should vote for the new charter, an at-large charter with a city manager.

ASPATURIAN: Oh, yes, you talked about this.

KOUSSER: And one of those people was Black, and one was Latino, but when I was going through the Santa Monica newspaper in 1992, when I was initially reading all that stuff, I did not know the names of these people; they're not identified. They're not identified with the NAACP or a Latino group or something like that, and so I didn't know who had signed this. There was no group that endorsed the charter that represented minorities. But the court basically said, "All you have to know is that [in 1946] a couple of minority leaders endorsed this, so the whites who were in favor of the new charter cannot have been doing it because of racial discriminatory reasons."

ASPATURIAN: This was the Jerry Brown appointee?

KOUSSER: This was the Jerry Brown appointee.

ASPATURIAN: Interesting. A little surprising.

KOUSSER: Very surprising. It's just astonishing. On that we filed a letter—there was a letter filed by the plaintiffs for the state supreme court last week.

ASPATURIAN: I heard that they include Alex Padilla, the secretary of state [now U.S. senator from California], and eighteen state legislators—state senate and assembly.

KOUSSER: And perhaps most importantly they include Richard Polanco, who was the chief sponsor of the bill in the Senate when it passed in 2002. Another letter was submitted a couple of days ago, I think, that went back and looked at *Brown v. Board of Education* and in fact, if you look at *Brown v. Board of Education*, there was significant Black opposition to filing a school integration case—in Topeka, in Delaware, and in Washington D.C. There were five cases that were consolidated into Brown, and there were fights within Black communities in at least three of those places.

ASPATURIAN: And none of those objections invalidated Brown, so—

KOUSSER: Right. And those objections wouldn't have given the white supremacists, segregationists, a "get out of jail free" card as implied by what was said in the court of appeal. In 1992, the opposite thing happens: NAACP and MALDEF endorsed getting rid of at-large elections because they thought it would help minorities get elected. So, they were very explicit about this, and they were explicit as members of whatever organizations they were representing. Judge Wiley just overlooks that.

I testified before the Santa Monica charter commission in 1992, as I think I told you. [*See Session Ten*] The commission voted fourteen to one to get rid of the at-large elections on the grounds they were discriminatory against Latinos, but then the city council voted four to three against holding a referendum and letting people vote on it. The swing vote on the city council said, "the choice is between more public housing—more subsidized housing—and minority representation," and because he favored more subsidized housing, he voted against it. I take that as a recognition that he voted against the district system because the district system would give people more representation and maybe they would fight the subsidized housing, more than 50 percent of which went into a minority area.

Anyway, Judge Wiley said on that, "Well, he just favored more subsidized housing; that's not racist. That's pro-poor people, and the fact that he was willing to substitute that for representation is inconsequential." So yesterday afternoon, the state supreme court accepted the case for review, and they de-published the court of appeal decision.

ASPATURIAN: What does that mean?

KOUSSER: What it means is that the court of appeal decision cannot be cited as authority in any other court.

ASPATURIAN: But the original decision can be cited?

KOUSSER: No.

ASPATURIAN: Not that one, either.

KOUSSER: In California, an original superior court decision cannot be cited as authority.

ASPATURIAN: I see, OK.

KOUSSER: The original decision is published—well, this goes back to when everything was in print. Nowadays, it might not be published in print, but you’ll continue to be able to find a court of appeal decision on the internet. And it will be in *Westlaw*, and it will be in *LexisNexis*, but it can’t be cited as authority. If you’re in another court of appeal or another superior court, you can’t say “as the court of appeal said in *Pico Neighborhood Association v. Santa Monica*.” You can say that’s persuasive, but you can’t cite it as authority. [MK subsequently elaborated: “As I understand it, “persuasive” means that even though you might find the argument convincing, it doesn’t have the authority of a recognized opinion behind it. It’s similar to citing a dissenting opinion. Someone might be convinced that the dissent in *Roe v. Wade* was correct, but that conviction isn’t “good law.” This has become more and more confused recently, when conservative justices are citing conservative dissents in cases in which the majority opinion hasn’t yet been overturned, but they think or hope it will be.”]

I had *never* heard of de-publishing until yesterday, and so I did a quick internet search and found what I found. It’s unclear to me whether a case that is accepted for review is automatically published. The state supreme court’s statement that the court of appeal opinion was de-published implies that it’s not automatic. But I’ve asked some lawyers and haven’t gotten an answer on that.

ASPATURIAN: So, when will they be adjudicating this?

KOUSSER: I don’t know when they’re going to hear the case, but I think they’re probably going to hear it relatively soon.

ASPATURIAN: If they rule against Santa Monica, will Santa Monica then appeal to the U.S. Supreme Court? From what you’ve said, the city has very deep pockets.

KOUSSER: They have very deep pockets. The difficulty is this: The state supreme court has certified one question, and the question is all about what you have to prove to win a CVRA case. So, it has been set up to be purely a question about the interpretation of state law.

ASPATURIAN: Ah, OK.

KOUSSER: That doesn't mean that Santa Monica can't appeal, but it makes it less enticing for the U.S. Supreme Court to take it.

ASPATURIAN: They may decline to hear an appeal in other words.

KOUSSER: Yes, they don't have to take Cert on it. And they may think, this is a just a question of state law. I expect Santa Monica's going to lose because they are really completely wrong about the original intent of the law. And the original intent of the law is not in question. It is only because of this court of appeal opinion, which is really a bizarre use of the public meaning of the text. It doesn't even fly with a commonsensical reading of the public meaning of the text, which is the Barrett-Scalia framework. So, I think it's likely that Santa Monica's going to lose. And if Santa Monica loses, I doubt that the state supreme court is going to say anything about the constitutionality of the CVRA.

ASPATURIAN: They're not going to issue that broad a decision?

KOUSSER: Yeah, so you can say, "Well, this is an unconstitutional law, it doesn't matter"; or perhaps Santa Monica will say the fact that you can allow somebody to win if they're not a potential majority of a district means that the law is unconstitutional, but it's a constitutional requirement. That's the way they have been interpreting a particular case [*Bartlett v. Strickland*] by the U.S. Supreme Court; it's a constitutional *requirement* that you cannot have a grievance if you're a minority group unless you can draw a majority minority district. I don't think that's even the right reading of the *Bartlett* case, but there are a lot of conservatives who read *Bartlett* that way. And the Supreme Court could go

ahead and make a decision that would decide it in that vein. But they're really going to have to be reaching far down and far out to take that course.

ASPATURIAN: Do you anticipate being deposed again or called back to testify?

KOUSSER: No. At this point it purely is the record that they've seen before.

ASPATURIAN: So, you must be pleased about this because if the state supreme court had declined to take it, the decision would have stood.

KOUSSER: Right. Yes, I'm very pleased about that. One of the things that it potentially means is that the CVRA is going to continue.

ASPATURIAN: Of course.

KOUSSER: SO, there will be other cases, and the general view is if you can win a CVRA case in Santa Monica, you can win a case anywhere—and other communities are going to fold. So, there may not be other cases that go to trial, but if they do go to trial, then the same team that wins Santa Monica can win in other places as well.

ASPATURIAN: Well, I guess we will have to see.

KOUSSER: Yes.

ASPATURIAN: So, you also wanted to talk about—I think it's *Jones v. DeSantis* in Florida.

KOUSSER: Yes. I worked very hard on *Jones v. DeSantis*. I want to give you some of the background on the case.

ASPATURIAN: Please do, because I think this is the first time we've talked about this at all.

KOUSSER: At least 20 percent of the people in the United States who've served felonies and are disfranchised live in Florida. The estimate of the number of people who are disfranchised in Florida for having committed felonies is upward of one million.

ASPATURIAN: I should interrupt for one second and ask you to give a brief overview of *Jones v. DeSantis*.

KOUSSER: Well, I'm getting there. [Laughter] Felon disfranchisement has been a big issue in Florida for a long time. In 1975, the state legislature passed a law that would have enfranchised anybody once they got out of jail and off probation and parole. That was declared unconstitutional because it was seen by the state supreme court as an infringement on the governor's powers to grant executive clemency. However, the consequence of this was that Reubin Askew, the first liberal Democrat elected governor in Florida, essentially gave executive clemency to anybody once they got off parole and probation. And his successor, Bob [Daniel Robert] Graham [also a Democrat], did the same thing.

So, for nearly sixteen years, you had a very large number of people who had served time getting their right to vote back, as well as other rights that felons get denied in Florida. You can't be hired for certain types of jobs even if they don't involve working for the state—jobs where you have to be certified in some sense. Probably not a barber or beautician, but that sort of thing. In the 1990s, it's unclear to me what happened, but the number of people who got executive clemency went down dramatically, and then during [Governor] Jeb Bush's second administration after *Bush v. Gore*, there was a big push in the legislature to get rid of felon disfranchisement. It didn't pass. It passed one house of the state legislature, not the other one.

But Jeb Bush actually was responsive to this, and the number of people who got executive clemency went up to about 20,000 a year. So, there were a whole lot of people in the pipeline potentially, but there was also some movement. Then his successor, also a Republican, who wanted Black support for governor let, I think, 90,000 people get executive clemency in one year.

ASPATURIAN: Who was this successor; was that Charlie Crist?

KOUSSER: It was Charlie Crist. Then when Rick Scott got in in 2010—

ASPATURIAN: Another Republican.

KOUSSER: He cut the number of people who were getting executive clemency from 90,000 a year to 3,000 in eight years. And Ron DeSantis has been much worse. Something under one hundred people in two years got executive clemency.

ASPATURIAN: Let me ask a question. Was this cutback done on philosophical grounds, or out of the practical realization that most felons, ex-felons, I should say, were voting for Democrats?

KOUSSER: It's impossible to determine that. I think Charlie Crist was clearly trying to appeal to the Black vote, and I think he tripled Bush's percentage of the Black vote. Still just 18 percent or something. But it was substantial enough to get him elected. Rick Scott—one of the things that became clear in various pieces of litigation is that the governor has absolute discretion on this. So, if he thinks you've got a DWI—a DUI, rather—he might just decide you're not responsible enough or that that was a very bad thing that you did: "I know that you are drug-free now and started a business, you're married and you're raising your kids well now, and all that sort of stuff, but I don't like it." That's all he has to say. There are huge barriers to getting back your rights under executive clemency. You have to file a whole lot more forms than the average person has to file on income taxes. I think you have to write an essay. Can you imagine the average person convicted of a felony writing a long, coherent essay on "why I deserve..." Anyway, there have been many, many efforts to overturn this both by lawsuits and bills in the legislature. From 1998 to 2018, there were fifty-three bills in the legislature. Only a couple of them got out of committee. Ninety-five out of 118 of the sponsors of the bills were Black.

All of the lawsuits alleged racial discrimination, alleged that felon disfranchisement was a relic of Jim Crow, and pointed out that a wildly disproportionate proportion of the people in the state prisons were Black. This is not news. I think probably any Black or white Southerner since 1870 or 1875, if asked the question, "Is a

disproportionate number of the people in the state prison Black?” would have been able to answer that question correctly. Which is probably the only question they could answer correctly about any facet of state government anytime. Anyway.

That’s something of the history of this. In the 2018 midterms, nearly 65 percent of the state’s voters voted for Amendment 4 [to the Florida state constitution], which said that you got your vote back if you had completed your whole sentence and parole and probation, so long as you weren’t convicted of murder or a sex offense. The question was what “whole sentence” meant. And the contention of the state legislature was that it meant that you had to pay off all of your legal financial obligations. In Florida, your legal financial obligations include restitution to your victim, if there’s a victim. They include fines, fees, and court costs.

An important fact: Court costs and fees are the way that Florida supports its court system. They don’t have anything to do with the crime: If you commit a felony, you have to pay a certain amount, whether the felony is murder or possession of drugs or shoplifting or whatever. You have to pay if you get a public defender—that’s part of your court fees. Some of the fees you would have to pay for in the initial draft of what became SB7066 would include drug tests, if you were on probation and had to get a urine test every two weeks. You would have to pay for the lab work on that, for example. And that can be a fairly large amount if you’re an ex-felon where you have difficulty getting jobs and so on. Probably particularly if you’re female, but the proportion of ex-felons who are females is, I think, under 10 percent.

Anyway, the constitutional amendment was passed in 2018, and the question was what the state legislature was going to do. The proponents of this amendment thought it should go into effect immediately and not have a state law interpreting what the amendment said, but the legislature decided that they had to pass a law. Before an initiative goes on the ballot in Florida, there has to be a hearing before the state supreme court to decide two things: first, is this initiative a violation of the single-subject rule—that is, does it concern one subject or a bunch of subjects? If it concerns a bunch of subjects, the court doesn’t allow it as a constitutional amendment. There’s a single subject rule in California as well.

The second thing is whether the purpose of the law is clear, and the court said that

the law was relatively clear. But the lawyer who appeared for the group that was pushing Amendment 4 was asked explicitly whether he thought legal financial obligations were part of a whole sentence, and he said, yes, he thought that they were.

So, in the session after Amendment 4 passed, the state legislature considered a bill, and the principal framer of the legislative bill, which is called SB7066, although it was really a Florida house bill, said, “We are bound by the terms of the amendment to include all legal financial obligations.” But they didn’t act like that, in fact. One of the things that happens typically in Florida is that fines and fees are converted into civil liens. The reason that they’re converted into civil liens is that the government wants to make some effort actually to collect these moneys, and, as you can imagine, people very often don’t pay these things back. Only about 20 percent of the fines and fees and restitution is ever paid back. But in order to try to collect some of them, the state converts these to civil liens.

But that’s no longer part of the criminal liability, and the question became whether a financial obligation that is converted to a civil lien is still a disfranchising device. The Florida senate actually voted for a bill that said if fines and fees are converted into civil liens, they don’t count anymore for disfranchisement purposes, but the house insisted that everything counts.

So, the argument that I faced when I took this case on for the NAACP Legal Defense Fund is that if the Florida legislature was purely doing what the voters wanted in Amendment 4 and if what the voters wanted was absolutely clear, then there couldn’t be a racially discriminatory purpose behind it. [*MK subsequently added: “Courts almost never attribute discriminatory purposes to voters, and in any event, Amendment 4 obviously represented an attempt to make the state constitution less restrictive. If it was a fact that the legislature in SB7066 was doing nothing more than implementing the voters’ absolutely, transparently clear intention, that was an absolute defense against a charge of racially discriminatory intent.”*]

ASPATURIAN: When did the NAACP come to you about this case?

KOUSSER: I don’t know. September, October last year perhaps.



Kousser in the Washington, D.C., Legal Defense Fund Offices of the NAACP, behind the desk of the late civil rights pioneer and Supreme Court justice Thurgood Marshall.

ASPATURIAN: A year ago in other words.

KOUSSER: Yes. I finished the paper in February because I remember being deposed on March 13th, the last pre-Covid day in Los Angeles.

ASPATURIAN: Right. That's correct.

KOUSSER: And so, the problem that I set for myself at the beginning of the long paper that I wrote as a report for the case was to see what kind of evidence was presented to the voters. What the lawyer said in a closed hearing, which is not publicized, before the Supreme Court, didn't seem to mesh with what the voters' intention was when they passed Amendment 4. So, the first part of the paper evaluates what I call the "faithful steward" defense [i.e., the claim that the legislative bill "faithfully implemented" the clear intent of Amendment 4]—that the faithful stewards of the voters were automatons in essence. [See <https://www.docketbird.com/court-documents/JONES-et-al-v->

[DESANTIS-et-al/Exhibit-12-Expert-Report-Kousser/flnd-4:2019-cv-00300-00286-013\]](#)

And so, what I did was I asked whether it was possible to determine in a systematic way what information was presented to the voters about what completion of a “whole sentence” meant. What I did was to look at ten of the largest newspapers in Florida. In terms of metropolitan areas, Florida is pretty decentralized, and there are a lot of relatively small metropolitan areas. Jacksonville’s the largest, which surprised me; I would have thought Miami.

Anyway, so I looked at ten newspapers. Eight of them were available on a source called newspapers.com, which I bought access to. I used the search term “felon voting,” and I looked at every article that came up on that phrase from October 1 through the day after the election in November in 2018; and I took down every mention of the words of the amendment or anything else that would explicitly get me to a definition of what the “whole sentence” intended. There are fifty-five such articles. Exactly two of them mention all of the legal financial obligation: restitution, fines, fees, court costs. Two out of fifty-five. Twenty very explicitly say you’ve completed your sentence when you get out of prison, off probation, and off parole; and then there are others that say, “well, you have to pay restitution,” but they don’t mention anything else. And then there are some that say you have to pay restitution and are inexplicit about whether you have to pay other things. And there are some that simply quote the ballot summary, which does not mention fines, fees, restitution, etc., but it’s unclear when reading it whether one would have assumed that those financial parts of it were included.

So, what I concluded from that was if the “faithful stewards” defense is correct, then it has to include everything that’s in the final passage in the law. Otherwise, you’re not being a faithful steward; you’ve got discretion in the legislature. And if you’ve got discretion, then the question is, *Why did you exercise your discretion in this particular way?* Did you exercise your discretion to include all of these things because you wanted to disfranchise Democrats, disfranchise Blacks, etc.?

So once that’s disposed of—and here’s one thing that I should have pointed out before—there’s another piece of evidence that it turns out that none of the courts took much interest in, but it’s actually an important sort of thing. Florida has this strange, commission—I don’t know if any other state has it, and I can’t remember exactly what

it's called—that's put together of state bureaucrats—the financial something estimating commission [Financial Impact Estimating Conference]. And what it does is look at every initiative and say “Okay, what is it going to cost local government, what is it going to cost state government?” and so it makes some sort of estimate of these things. It's composed of really diligent state bureaucrats; I don't mean that to be critical of them. They know what the government has done, they know what the government can do. They can figure out things that nobody else who is not an expert on these things can figure out. And they invite all sorts of local authorities in to help them figure out all of the possible concerns that they would have.

So, what did they say the “completion of the whole sentence” meant? Well, they put out a report that said, “We don't know what it means. It could mean that you would have to include all these financial obligations, or it might not. If it does, we need more money because what former prisoners owe is a bureaucratically extremely difficult thing to figure out.” One of the things they said is that in order for anybody to determine what any one person owes, you have to consult at least eleven separate databases.

ASPATURIAN: They put this out after the amendment had passed, is that right?

KOUSSER: They put it out before the amendment had passed.

ASPATURIAN: They put it out before the amendment went on the ballot.

KOUSSER: Yes. And the chair of the committee works for the legislature. So, the legislature clearly had access to this. This is a sort of a think tank for the legislature. I mean, it's a wonderful thing—I wish every state government had that. State governments plunge into things sometimes without knowing what the financial consequences are.

Anyway, so they didn't know. This is important for two reasons. One, I got a sense of the bureaucratic complexity of making the determinations as to how much anybody owes for anything. And two, that these very knowledgeable people, many of them lawyers, couldn't figure out immediately what “whole sentence” meant. That tended to undermine the “faithful servant” explanation of things.

Okay, so, not only do I consider what amendments were proposed and what got

rejected during the debate over SB7066, particularly the discussion about converting fines to civil liens, but there's also some debate about strategy among the people who had sponsored the amendment. They didn't want to have any implementing bill at all. But once they knew that the Republican majority was going to pass some implementing bill, they tried to sweet-talk them. And they tried to ensure that none of the Black legislators said, "This is a racist bill." And the Black legislators held off and didn't say much at all until the very last couple of days when it became clear that they had lost entirely.

But one of the things that the Black legislators asked Jamie [James "J.W."] Grant, the GOP sponsor of the bill, to tell them or to comment on was what the racial consequences of the passage of his bill would be, and he kept saying, "I don't want to know." Of course, he did know. He's very smart. Not only was he a very knowledgeable person; he's head of the criminal justice subcommittee in the Florida house of representatives. He sure knows the racial composition of the prison system in Florida. He could probably tell you to a tenth of a percentage point.

ASPATURIAN: Is he African American?

KOUSSER: No. He's white. I think there were two African American Republican members of the house, but otherwise all the house members who were Black were Democratic, and they're very smart and very eloquent and made good statements after it was clear that the bill would pass in its very restrictive form. One more thing about Jamie Grant is that he kept saying, "I'm just amazed that anyone would charge that there could possibly be any racial purpose behind this. I'm shocked, *shocked*." Three days before the election in 2018, his hometown newspaper, the *Tampa Bay Times*, had a banner headline that took the whole top of the front page—"Amendment 4 to Enfranchise Democrats and Blacks." The racial consequences of this were extremely clear and the racial consequences of cutting back on it were clear as well.

So, they passed SB7066. One of the things that I pointed out was that they did not know—and Grant admitted it as well during floor debate—how people were going to find out what their legal financial obligations were, and that they recognized the bureaucratic complexity of this. This has a name in the sociological literature; it's called

bureaucratic disentanglement. They *knew* that this was bureaucratic disentanglement and made no effort to allocate some money for this. It would not have been very expensive but *allocate something*—and they didn't. They set up no process whatsoever so that people could find out how much they owed and exactly what they owed it for; and that seemed to me additional proof that what they were doing had racial consequences, and they knew about it.

Every additional kind of information that they added as a repayment requirement had to be gotten from some different source—the secretary of state's office, the county clerks' office, whoever you paid restitution to—which was often not recorded anywhere. If you had burglarized somebody's home and you had to pay restitution to her, she didn't have to report that to the county court; the county court might not even know whether or not you had paid restitution. Every time they added another requirement, everyone knew it would have a disproportionate impact because it made the process that much more complex and difficult to get through, and the majority of people who had to negotiate it were Black. That counted for me as a racially discriminatory reason for the whole package of legislative action and inaction.

So, the case, even before I got into it, had already gone to a federal district court for a preliminary injunction and been granted a preliminary injunction on the basis that this was a poll tax, and that it was racially discriminatory, as well, but principally that it was a poll tax—a tax on voting. That decision had been appealed to the Eleventh Circuit Court of Appeals, which had a three-judge panel that had backed the district court judge, Robert Hinkle, on that.

But that wasn't the full trial. In the full trial I testified by Zoom. Judge Hinkle was on senior status, sort of partially retired, a Clinton appointee. He was very attentive but very antagonistic to deciding on the basis of intent. My guess is that this is because he had already written a fairly extensive opinion on the basis of a discriminatory impact and particularly on the basis of the Twenty-Fourth Amendment—the poll tax amendment. I surmise that Judge Hinkle thought that he didn't really even have to make an argument about racial impact because of his first opinion. It had already gone up to the 11th Circuit and the plaintiffs had already won on that, so why not write a similar opinion; why not be neutral on the issue of intent or decide against the plaintiffs on intent? He said it was a

close question, a very close question, but he decided against us, and he didn't consider the vast majority of my evidence. He agreed about the importance of conversion to a civil lien and agreed that that meant that the "faithful steward" defense was not convincing, but still he felt that he was confined, constrained, by the second state supreme court decision.

And here I want to get into quickly something of legal strategy. After SB7066 was passed, but before the federal trial, Governor [Ron] DeSantis went to the state supreme court and got an advisory opinion. Most state supreme courts can't give advisory opinions, but in Florida they can; and so, they were asked for an advisory opinion about whether Amendment 4 included legal financial obligations.

Now at that point, no complete evidence about why this amendment was passed was presented to the state supreme court. It was much less evidence than was available to the federal district court. But the state supreme court decided that that's what Amendment 4 meant. DeSantis had already appointed three members to the state supreme court by that point, two of whom, including Barbara Lagoa, who was mentioned along with Barrett for the U.S. Supreme Court, had been appointed to the 11th Circuit by the time the case got back to the 11th Circuit.

So armed with this state supreme court decision that said that Amendment 4 meant legal financial obligations regardless of what the legal financial obligations were—just legal financial obligations in general—DeSantis appealed the federal district court's decision, which ruled that the law violated the Twenty-Fourth Amendment. Judge Hinkle had ordered the state to start registering former felons to vote and required them to make a decision within three weeks on the eligibility of any former felons who applied to register, and if the state couldn't make a decision, then they were allowed to vote.

ASPATURIAN: By default.

KOUSSER: Anyway, DeSantis appealed that decision in *Jones v. DeSantis*, and he asked the 11th Circuit to hear the case not with the three-judge court, which is the usual thing, but to hear it *en banc*, meaning all of the judges hear it.

ASPATURIAN: How many?

KOUSSER: Eleven. One of the judges, a guy who had just been appointed from Alabama, had heard a similar case when he was on the Alabama supreme court, and he recused himself from hearing the Florida case. The two Florida judges, both of whom had been on the Florida supreme court when they issued the advisory opinion after the passage of SB7066, were asked also to recuse themselves, but they refused, including Lagoa. So, of the ten justices who were left, five of them, very recent appointees, had been appointed by Trump. The decision was six to four, overturning the district court opinion and ruling that the law was constitutional and entirely valid.

The federal district judge, Hinkle, had pointed out that at the time he heard the case—it was about a year after the passage of SB7066 and several months after it went into effect, so that at least some people who were former felons could try and register, even though they didn't have executive clemency—there had been by his calculation, 85,000 former felons who tried to register. Of the people who had applied to the state to get a decision about whether or not it was legitimate for them to register, the number that the secretary of state had validated as able to register was zero. So, Judge Hinkle guessed that at this rate, it would take until 2026 before even those 85,000 could find out whether they could register and well into the 2030s before people who appeared later on the list would be able to tell whether they could register or not. And if you make a mistake, and you try to register and it's not legitimate for you to register, that's a felony in Florida.

ASPATURIAN: Talk about a Catch-22!

KOUSSER: Indeed. So, the state said, "Well, we just can't do this. We just can't get all these things through." Until two weeks ago. When apparently around 35,000 of the former felons have actually gone through the process of getting registered.

ASPATURIAN: Is this partially the Mike Bloomberg effect? Or is this independent of that?

KOUSSER: Ah! It's hard to tell. LeBron James, Mike Bloomberg, The FRRC (the Florida Rights Restoration Committee) have been pushing for this. [In the 2020 presidential election, NBA player LeBron James and former New York City Mayor Michael Bloomberg made substantial donations to assist some of Florida's ex-felons to

clear their debts so that they could register to vote. *—Ed.*] It's an outgrowth of the people who brought Amendment 4 in the first place. But suddenly a couple of weeks ago, the state supreme court started giving the local registration supervisors a list of names of people who were not eligible to register. They suddenly were able to do this. Some of whom have probably already voted. So, the interpretation that people are putting on this is that this is a first step in a legal contest—

ASPATURIAN: Yes, of course—

KOUSSER: Of the election in Florida.

ASPATURIAN: 2000 all over again.

KOUSSER: Yup. Anyway, the opinion of the Eleventh Circuit Court is particularly bad, and it underlines the deleterious effect on the law of the public text/original intent interpretation in the courts in general, initially, and eventually in the Supreme Court. Judge William Pryor, who wrote the opinion of the court, is a Bush II appointee who has actually been on the court for a while; he is a former attorney general of Alabama and was mentioned for the Supreme Court when Kavanaugh was being considered. And he has at least adopted a Scalia-type plain text method of interpretation. So he interprets the Twenty-Fourth Amendment on the basis of the words “a result of” rather than “on account of”; and since it's different from what's in the Fifteenth Amendment or the Nineteenth Amendment—Black suffrage and women's suffrage [respectively]—he interprets that to mean that the explicit justification for a particular tax has to be to disfranchise somebody; otherwise it's not against the Twenty-Fourth Amendment.

This seems to me to be a bizarre interpretation of the Twenty-Fourth Amendment. The dissents go after him on this point by citing the congressional debates and a congressional report on the Twenty-Fourth Amendment when it passed Congress. And what Judge Pryor says is that it doesn't matter what a congressman said about their intentions in passing the amendment; that's entirely irrelevant. What matters is what the judges decide the words mean.

Now, in some sense this is a segue into what's going to happen in the Supreme Court if you want to go there.

ASPATURIAN: Yes, I would like to discuss that briefly. I think it would be interesting to have your view.

KOUSSER: Well, I'm just outraged by the method of interpretation that Judge Barrett wants to make mandatory, mainstream. Justice Thomas has said the same thing, and he really goes off the deep end criticizing Congress for trying to constrain judges by issuing reports that talk about their interpretation of what a law means. He says that the judiciary should pay absolutely no attention to that, and the consequence of that is judicial supremacy where the judge doesn't have to listen at all to what Congress or a state legislature says in determining what a law means. Now we have seen that twice already today. We saw that with respect to the Santa Monica case, and we have seen that with respect to the Florida case. What? Are you gone? *[At this point the Zoom connection unaccountably crashed. The interview resumed the following day. -Ed.]*

October 23, 2020

ASPATURIAN: Okay, I'll just say that if we have another incident like yesterday, I guess we will go through the same thing again: I'll give you a phone call and say, "I don't know what to do."

So, I wanted to ask you what you thought about the current Supreme Court situation, with Justice Amy Coney Barrett presumably about to be confirmed and all the talk about expanding the court or changing term limits, and in general what her elevation to the court is likely to mean for the judiciary.

KOUSSER: Okay. One of the things that I wanted to say, just to tie these comments to the comments I've already made about particular cases, is that the thing that Republicans played up about her more than anything else in the hearings was that she is a believer in original intent. But it's only a particular kind of original intent. It's not the kind of original intent that asks why do the members of Congress or a state legislature pass what

they pass, and what did they think they were doing. It's the kind of original intent where the judge looks at the text and chooses some dictionaries from that time and tries to see what *Webster's Dictionary*, or whatever dictionary he looks at, thought the word "equality" or some other particular word meant; and then they get to decide, for example, that the equal protection clause means X.

They say the same thing about the Second Amendment, which is a very interesting case for a plain text form of interpretation, because if you look at the case *D.C. [District of Columbia] v. Heller* [2008], which wrote a personal right to bear arms into the Constitution, there had never been a case previously at the Supreme Court level that said there was a personal right to bear arms. What Justice Scalia does is sort of a supposed textual interpretation: If you read the amendment, it starts with the militia clause, but Scalia only discussed the militia clause after he discussed the right to bear arms, as if the militia clause were simply sort of a reason, rather than something that qualified the clause that came after it. But in any case, he decides what a right to bear arms meant in 1791, and then that's it. There's a personal right to bear arms, *boom*.

Or also to look at Justice Scalia—since Barrett clerked for him and identifies with him—he said in a statement that I have used on exams often, that the equal protection clause originally didn't mean to include women, and if you want to include women in the Constitution, there's a perfectly good amendment process, and that's what you should use. Because the Supreme Court shouldn't interpret the equal protection clause in a way that it wasn't interpreted in 1868 when it was ratified. But to use that as an example: At what level were the words meant by the framers? Did they say, "Anybody who's interpreting this clause at a later time should only mean exactly what we meant there, or are we passing something that says equal protection of the laws and the ideas of equal protection of the laws as we know them will change? And so, we are putting that phrase in the Constitution at a higher level—the level of not just the cultural practices of 1866, when the Congress passed the amendment, or of 1868 when it was ratified, but in the broader sense of equal protection of the law."

If they were doing that, then it's their original intent to include whatever the cultural consciousness of the law meant at the time that a case was brought, not what someone may have thought in 1868. So, you can include transgender people, you can

include homosexuals, you can include women, you can include Chinese. You might have had a lot of problems in 1868 with people who say, “Well, we didn’t mean Chinese; they’re not Americans. We meant Blacks, we meant whites, that’s it. We didn’t mean Indians.”

So, in order to take this plain text form of interpretation as being commonsensical, you have to believe that the framers of the Constitution were not aware that they were framing a constitution for a culture that they knew would change. They’re not framing something for the ages, they’re framing something for absolutely right now. And that’s all. And it’s only the judges who can decide what they intended. You don’t look at, for example, what John Bingham, the principal draftsman of the Fourteenth Amendment, thought. You don’t look at what he experienced over time. You don’t look at his view of natural law and the extent to which natural law was drawn into the privileges and immunities clause, as well as the equal protection and due process clauses of the first section of the Fourteenth Amendment.

You don’t look at any of that; you just look very narrowly at a definition that is very time-bound. There are lots of words that you define in a way that is extremely time-bound. The words may not even have existed before. The word may have a very specific meaning that it didn’t have ten years ago, or the word may not even have existed then. It’s a very narrow form of constitutional interpretation. And it is not something that is apparent. Ask yourself, where in the Constitution does it tell you how to interpret it? And if you believe in plain meaning, you flip through the Constitution and you say, where did it tell us about plain meaning? It’s an infinite regress in some sense.

Anyway, the consequence of the standard that Barrett proposes to use is that the judges get to decide everything. There was another phrase that was used in her hearings: super-precedent. Why does one precedent count more than another precedent? Well, I think the reason is this: When Robert Bork, who was supposedly this originalist, was in his nomination hearings, the questions he was asked particularly focused on *Brown v. Board of Education*, and the feeling that in 1868 equal protection was not understood to include desegregation of schools. And he just didn’t have a good answer to this.

So, the answer to this is to say, “Well, we know it’s not true that segregation was meant to be disestablished by the equal protection clause”—that’s what the originalists

think; I don't necessarily think that, but a lot of people do. "But" originalists say, "we also like *Brown v. Board of Education*, so regardless of our belief in the plain meaning theory of original intent, we'll make an exception for *Brown v. Board of Education*, and we will call it a super-precedent, which we will not overturn, regardless of whether we believe in original intent and plain meaning."

So, then the question comes—and it was a very important question in the Barrett hearings—whether *Roe v. Wade* is a super-precedent, and she said no. So here is Amy Coney Barrett's philosophy: *She gets to decide what the original meaning was, she gets to decide what form of interpretation is correct, and she gets to decide what's a super-precedent. And if she puts them together and they fit, then it's constitutional, and if she puts them together and they don't fit, it's not constitutional.* Otherwise, she's simply a robot and just makes decisions on the basis of setting out the clear constitutional meaning and throwing it up against the wall. This is actually very much more absurd than how it was presented during her hearings, and the way that the general public seems to have some understanding of it.

Now what does this mean she will do? I think she will do anything she damn well pleases. I think she is completely unconstrained. And I think what will particularly happen is that *Roe v. Wade* is gone, and really the only question is how it is overturned and how quickly it is overturned. And I think that means in at least twenty states it will be illegal to get an abortion. And a bunch of them are actually going to go and prosecute women who get abortions. We've never had that. That's very radical. That's radical by nineteenth century standards. Doctors they prosecuted, or people who provided abortions, whether they were doctors or not, they prosecuted, but they never prosecuted women. But some women are going to be prosecuted, and that's going to be an interesting thing to see. What are you going to have to do? Exclude all women from juries? Are you going to question all women on a jury panel as to whether they've ever had an abortion? *Do you use birth control? What kind of birth control do you use?* This is craziness.

Some of the things that she's written about voting rights are very, very worrisome to me. I think there's probably a majority now on the Supreme Court to overturn part of the Voting Rights Act, and she's just one more person on that. I think that's weird and

bad. In particular, she divides rights into two kinds: individual rights and civic rights. Civic rights are things like the right to vote and the right to serve on a jury, and she says they can be restrained by the state because they're the sorts of rights related to what you do as a citizen. And so, if the state wants to say, "Well, we think that people like this are probably not going to be good enough citizens, then we can constrain their rights." For example, people who are not literate, or people who are not literate up to a certain level, or people who are not literate in English should not be trusted with the vote.

That reasoning was used, as I said, in the Florida case to say "we have two different kinds of former felons. We have former felons who can pay off their legal financial obligations, and those who can't." What Judge Pryor said in the court's majority opinion was that the state has made a choice not to enfranchise those people who can't pay off their legal financial obligations because the state thinks that they're not as likely to be as good citizens. Barrett can do the same thing. The chief individual right that she wants to protect is the right to bear arms. She doesn't think that's a civic right even though—and this shows what a boring academic I am—if you look at her dissenting opinion in *Kanter v. Barr*, which is a Second Amendment case, and if you look at her citations about civic rights, they're all about the idea that the Second Amendment is something that allows you to be part of a militia: If you're a man, you have to have a rifle, and you have to be willing to go someplace and pick it up and trot out and do your militia duty. That's a civic right. That's where the idea came from. But she says "No" after *Heller*; that [i.e., the right to bear arms] is an individual right, and these other things are civic rights that can be infringed.

So, what infringements on the right to vote are constitutional, according to her? I don't know, but it seems like a dangerous proposition to make. I think the kinds of decisions that she is virtually certain to make besides the abortion decision are about the right to discriminate on the basis of religion. We've already got some of those cases. We've already got probably a five-person majority on the Supreme Court—five-man majority on the Supreme Court—to make those decisions, but the issues are going to come up particularly with respect to people whose sexual preference or sexual identity is homosexual or different from their birth identity. And the question is whether you can discriminate against them. I think the answer that she will give is yes. I think also with

respect to parochial schools, the Supreme Court has been moving very rapidly to ruling that if a state subsidizes private schools, they can't subsidize secular private schools without subsidizing parochial schools, and there was a decision last term about that. But I think she is likely to carry that even further.

ASPATURIAN: Given these scenarios you've outlined, which are shared by a great many people, what do you think of the remedies that are being proposed?

KOUSSER: Well, I think it is too soon to expand the court. I go back and think about FDR trying to do that. He had just won every state but two in the 1936 election, and he had two-thirds majorities in both houses of Congress, and he couldn't get that through. And the Supreme Court was threatening the core of his program. There were cases pending at that point on Social Security, on the minimum wage, on the Agricultural Adjustment Administration, which were very important parts of the New Deal program. And he thought that these would probably be all thrown out by the Supreme Court. They had already thrown out a lot of very important laws, both at the state and national level. There was a crisis not far in the future that you could see coming, and he still couldn't get it [expanding the court] through.

I think if you ask yourself in a Biden Administration, assuming a majority in the Senate and the filibuster set at fifty rather than sixty votes, where you would put an expansion of the Supreme Court in priority—would you put it No. 1, No. 2, 3, 4, 5, 6?—I sure wouldn't put it very early because it might blow everything else up. You do coronavirus, you do climate change, you do tax changes, you do infrastructure. And if you potentially hold out the possibility of expansion, that could be done simply by congressional act because the number of people on the Supreme Court is not fixed. Enacting term limits could not be done by congressional act; it requires a constitutional amendment. It might be conceived of as less radical than expansion, but it is actually much harder to get across. So, I think if you make murmurs about expansion as Biden decided yesterday that he's going to do by appointing a bipartisan commission to report in 180 days, perhaps that keeps in the minds of the justices, particularly in the mind of the

chief justice, that he does not want this court in his regime to go down as the court that became simply another partisan organization.

ASPATURIAN: That, I believe, is partly what happened in 1936, '37. One or two of the justices—

KOUSSER: Right. There were two justices that shifted. So just keep that [court expansion] in the background. Don't propose it. Don't force it now. Keep it in the background and see if it works, like the "switch in time that saved nine," as they said. Or another way that it was put by wags at the time, was that there was a newly discovered room in the Supreme Court building where the justices go to change their minds.

ASPATURIAN: I also wanted to ask you about your recent talks. You've been to several California campuses, probably virtually.

KOUSSER: Virtually. Yes, I gave a talk at USC Law School on Tuesday. I'm going to give a talk at Berkeley next week.

I was supposed to give a talk at Toronto [University of Toronto, Canada]. There were three of us scheduled to be on this particular session. The guy who wrote the book called *The Fight to Vote* [Alex Keysaar], which has been widely cited, and Allan Lichtman, who is a very well-known voting expert, and I. And the session was cancelled. It was cancelled because of protests that there were three white males on the panel.

ASPATURIAN: Now, Lichtman is the individual with whom you—

KOUSSER: Had considerable conflicts in Santa Monica. [See *Session Ten*] But he knows a lot about voting rights. What happened was that the people at Toronto were trying to schedule a couple of sessions, and both of the women that they were trying to schedule couldn't come in October. They could come in February, so they put them on a program in February. If we could have had one of those women on the session, then it wouldn't have been cancelled, I'm sure. There were two of us talking at USC on Tuesday. The other person was my friend Franita Tolson, who's a professor of law at SC. She is Black;

she is much sought after. She's going to be a CNN commentator in this election, et cetera, et cetera. She's very, very busy, and I knew that Franita just couldn't schedule another day. So, I have mixed feelings about the decision to cancel. There aren't a lot of women who work on voting rights.

ASPATURIAN: You said that before, yes.

KOUSSER: There aren't a lot of minorities who work on voting rights, and I've tried to recruit minority professors to work on voting rights, and it's just not worth their time. They've got other things that they have to do; and it doesn't help their career, so they don't do it. So, it's very hard to find some people.

ASPATURIAN: Was voting rights the topic at USC?

KOUSSER: Yes.

ASPATURIAN: Interesting audience over there. How did the discussion go over, and what kind of response did you get?

KOUSSER: Well, it was at the law school. It was both law professors and law students, and it was very well received and quite interesting. I started out talking about the Florida case. It's like a dark cloud over my head, following me wherever I go, whatever I do. But Franita had a lot to say about everything. She's a very smart woman and very tuned into everything that's going on. She is a law professor who is actually very concerned with the history of voting discrimination, as well as current voting discrimination. I don't know how she gets anytime to write, given how many calls there are for her to say things. She has a blog every day; she's part of another blog. It's just amazing. And she has kids, too. Superwoman. Anyway, she had a lot to say. It went very well. People stayed thirty minutes afterwards; the Zoom conversation went on.

I also talked at the University of California, San Francisco, the medical school. There are some interns there who have gotten very interested in voting discrimination, and they're working in this election trying to get minority voters to turn out in Nevada.

Doesn't really help to get minority voters to turn out in California—Democrats are going to carry California anyway. But they have become very interested in the history of voting discrimination, so that was an interesting audience, too. They had a lot to say. That went very well. And then next week, there is a Caltech–MIT alumni event about the CNN special on John Lewis. I don't know if you've seen it. It's very good.

ASPATURIAN: I have seen a special on John Lewis. I don't know who produced it.

KOUSSER: Well, there was one produced a couple of weeks ago on CNN.

ASPATURIAN: No, that one I have not seen. I saw one on cable. He was an amazing man.

KOUSSER: Two hundred and thirty people have signed up for this. A lot of people who've signed up—well, not a lot of people but some people who signed up—mentioned that they were students in my classes, but by no means all. And a lot of Caltech alumni. So that's going to be interesting.

ASPATURIAN: Is it being recorded?

KOUSSER: I think so.

ASPATURIAN: That would be good.

KOUSSER: So, I'm sort of scurrying around. I read a recent biography of John Lewis, which is quite unsatisfactory. It was rushed out to take advantage of the fact that he just died and to sell more copies. But I'm going back and reading a book about SNCC and all that. And then an hour ago, I was asked to at least partially write something that is going to be presented to Congress about the new renewal of the Voting Rights Act.

ASPATURIAN: This is all in your retirement, right?

KOUSSER: This is all in my retirement. [Laughter] So I've got to scramble around and figure out what to do about that. It's got to be done relatively quickly. But it's an opportunity to put into force lots of things that I've been working on, thinking about, etc. for a long time. This comes out of my testifying before Congress last October. That is how they found out who I was.

ASPATURIAN: I asked you yesterday if you thought you might be asked back, and you said you didn't know but now, twenty-four hours later, we have an answer to that question.

KOUSSER: Looks like, yes. I haven't told my wife yet. She thinks that I should be more retired, but [laughter] we can't go anywhere anyway, so—

ASPATURIAN: That's true, and when you've spent a lot of your academic life working in an area of public policy, I think you have to expect that these things are going to emerge.

KOUSSER: This is more than I expected, but we'll see what happens. I guess I wanted to say at least a bit about teaching, which we haven't discussed at great length, I think? I can't remember what all has gone on in all these hours.

ASPATURIAN: We did look at it quite a bit, but why don't you start, and if we've already covered that territory, I'll interrupt you to say so.

KOUSSER: Okay. My next to the last Supreme Court class meeting, I was expecting to see my usual twenty people on Zoom; and I clicked on Zoom and suddenly there were sixty-four people. The kids in this year's class had advertised on the Caltech alumni Facebook page to try to get former students in any of my classes to Zoom-bomb me and join in. It was absolutely wonderful. I saw people who I hadn't seen a long time, and we held a sort of normal class. One the guys who turns out to be from the class of 1998 said that his kids use the textbook that we had back then on the Supreme Court, which he still had, and it's part of their dinner table conversation. They're teenagers, and they were very interested in the class and so they stayed around as he did, as well. He had to put a

younger child to bed, but the high schoolers stayed around and listened to the whole class.

It was just fascinating to see all of them. Most of them sent in a few sentences about what my classes have meant to them—sort of tributes and all that—which the students had managed to put on a sheet as you would use if you were a graduate student advertising your research, etc.; and it was so heartwarming. And so wonderful to find out that some of the students that I had no idea I had any effect on at least “said” that I had an effect on them; and also, to hear that from some I knew I had had an effect on that it continues, fifteen years, twenty years later. To have kids say “This was my best class at Caltech” when they obviously didn’t come to Caltech to take a Supreme Court class.

ASPATURIAN: Very gratifying.

KOUSSER: Yes, it was indeed. In many ways it was extremely hard and disappointing to have your last quarter of teaching be virtual. There was a planned two-day seminar with people talking about my work and stuff like that; that was cancelled. Maybe it will happen sometime, but it can’t happen now. There was supposed to be a dinner. My kids—my own children—were going to come. My daughter was going to fly out from New York and all that. Maybe next year.

ASPATURIAN: Hopefully. You know you did email me about this group testimonial, and I think you included a link to the Excel spreadsheet of their comments, which I was going to ask you about appending to the oral history.

KOUSSER: That would be lovely.

ASPATURIAN: Okay, good. We’ll do that.

KOUSSER: I worked really hard teaching and tried to help as best I could and to try to be as sensitive to each individual as was possible. I didn’t want to pry into people’s lives and have people go to me rather than to go to a psychologist or something like that. So it wasn’t that; but sometimes it became apparent that the kids were having a tough time, or

that they needed to be told how good they are. One of the things that happens to people at Caltech is that when they're in high school and all that came before then, they're the stars. They're the best science students at school. They're valedictorians, or science prize winners or something like that. They come to Caltech, and everybody is like that. And so many of them think, "I'm no good; I really can't do it. This is not what I want to do," they decide. They need to be told that they can do things well, and that they are good and "don't lose hope, we'll get through this. You may have trouble, you may think you can't get through this paper, tell me, talk to me about it. Here's how to do it." And several of the students mentioned how that sort of thing was helpful to them, and that's very reassuring; it's very heartwarming.

ASPATURIAN: And, of course, from your long career at Caltech and your perspective, you can also assure them that it's not always the kids who do brilliantly in science who go on to the most successful and fulfilling careers by a long shot.

KOUSSER: Absolutely.

ASPATURIAN: So that makes a difference, too. Thank you. It's been very nice to see you. Even in this very strange set up.

KOUSSER: Yes.

ASPATURIAN: And you have two talks coming up, so good luck with those. And you have your testimony to prepare for Congress. And we have an election. So—

KOUSSER: Thank you so much. This has been wonderful. I've enjoyed it immensely.

ASPATURIAN: It's been very enjoyable. Thanks. We'll be in touch.