DIRECTORS ROUNDTABLE

WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

Charles Robinson

& the Legal Division of the University of California

THE SPEAKERS

Charles Robinson
General Counsel & Vice President – Legal Affairs, University of California, Office of the President

Michael Kahn
Senior Counsel, Crowell & Moring LLP

Hailyn Chen
Co-Managing Partner, Munger, Tolles & Olson LLP

Raymond Cardozo
Partner, Reed Smith LLP

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, directorsroundtable.com.)

TO THE READER

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of the achievements of our distinguished Guest of Honor and his colleagues, we presented Charles Robinson and the system-wide Legal Division of the University of California with the leading global honor for General Counsel and Law Departments.

The University of California is a 10-campus system with five medical centers and three affiliated national laboratories. With headquarters in the University of California's Office of the President and attorneys located throughout the system, the Legal Division supports the university's fundamental missions of teaching, research, and public service by providing cogent advice, zealous advocacy, and proactive and ethical counsel.

Mr. Robinson addressed "The Role of University Counsel in Influencing Controversial and Socially Charged Issues: Bridging the Divide on University Campuses." The distinguished panelists' additional topics included handling disputes for a public university vs. a private client; a lawyer's role in representing higher education institutions – balancing competing interests; and litigating appeals that pose enterprise-wide risk.

The Directors Roundtable Institute is a 501(c)(3) not-for-profit which organizes the preeminent worldwide programming for Corporate Directors and their advisors, including General Counsel. Join us on social media for the latest news for Directors on corporate governance and other important VIP issues.

Charles Robinson

General Counsel & Vice President – Legal Affairs
University of California
Office of the President

Charles F. Robinson began his tenure as General Counsel and Vice President, Legal Affairs for the University of California in January 2007. Operating out of the University's Office of the President, he is the Chief Legal Officer of the University system, providing advice and counsel to The Board of Regents, the President, the campus Chancellors, and other senior University officials. He oversees a legal staff of 125 attorneys throughout the University system (ten campuses, five medical centers and one national laboratory); represents the University in all legal and regulatory proceedings; and retains and manages outside counsel.

Prior to joining the University, Robinson served as Vice President, General Counsel and Corporate Secretary for California's wholesale electric transmission operator, the California Independent System Operator Corporation, where he oversaw the Government Affairs and Market Analysis Departments, in addition to the Legal Department. Prior to that, he served as Assistant General Counsel for Litigation for Packard Bell NEC in Sacramento, as Division Counsel for the Raychem Corporation in Menlo Park, and as a Litigation Partner at the law firm Heller Ehrman White and McAuliffe in San Francisco. He holds a Bachelor of Arts degree from Harvard University and a Juris Doctorate degree from Yale University.

UNIVERSITY OF CALIFORNIA

University of California

The University of California opened its doors in 1869 with just 10 faculty members and 38 students. Today, the UC system includes more than 280,000 students and more than 227,000 faculty and staff, with 2.0 million alumni living and working around the world.

For almost 150 years, UC has expanded the horizons of what we know about ourselves and our world. Our campuses are routinely ranked among the best in the world, but our reach extends beyond campus borders. Our students, faculty, staff, and alumni exchange ideas, make advancements and unlock the secrets and mysteries of the universe every day. They engage with their local governments, serve California schools, protect the environment and push the boundaries of space.

Education and research as pioneering as California itself

From all backgrounds, ethnicities and incomes, UC attracts the best and brightest. UC undergraduates come from all over California, and they work hard to make it to college. In fact, 37 percent of UC students come from low-income families.

UC's faculty are the drivers behind innovations in biotechnology, computer science, art, and architecture — and they bring that knowledge, that greatness, directly to the classroom.

Thousands of California jobs, billions of dollars in revenues, and countless everyday household items — from more plentiful fruits and vegetables to compact fluorescent light bulbs — can be traced back to UC discoveries. Similarly, many of the state's leading businesses are based on UC technology, founded by our faculty or led by UC graduates.

KAREN TODD: Hello! My name is Karen Todd, and I am the Executive Director and Chief Operating Officer of the Directors Roundtable.

I would like to thank everyone who is listening in today for taking time from your busy schedules to attend this program. I want to especially thank the people of the University of California, and the law firms that support your legal team, for their cooperation on this event, and the many other outside law firms, universities and organizations who are in the audience. I would also like to express our appreciation to the staff of Reed Smith for their help with this webinar.

The Directors Roundtable is a civic group operating globally to organize the preeminent programming for Boards of Directors and their advisors, including General Counsel and their legal departments. Since 1991 – that's 30 years – we have never charged the audience to attend any of our more than 800 events worldwide.

Our Chairman, Jack Friedman, created this series after speaking with corporate directors, who said their companies were not acknowledged for their achievements and good citizenship. He wanted to give executives and corporate counsel an opportunity to speak about their organizations, the actions that give them pride, and their successful strategies in navigating a business world that is constantly changing.

We honor General Counsel and their legal departments so that they can share this information with the Directors Roundtable community, via today's program and the full-color transcript document that will be made after the event and provided to more than 100,000 leaders worldwide.

Today, we are very pleased to honor Charles Robinson, General Counsel, and the Legal Division of the University of California, many of whom are in attendance. The University of California currently has more than 280,000 students and 227,000 faculty and staff.

I would also like to introduce our Distinguished Panelists:

Michael Kahn, from Crowell & Moring LLP; Hailyn Chen, of Munger, Tolles & Olson LLP; and Raymond Cardozo, from Reed Smith LLP.

A special certificate has been sent to Charles acknowledging his leadership and the valuable contributions of the legal department, along with the original of this letter from the dean of his alma mater, the Yale School of Law, which I will now read:

> Dear Charles,
>
> Allow me to add my personal congratulations to the chorus of praise for your being presented with the leading World Honor for General Counsel by the Directors Roundtable in San Francisco.
>
> Charles, you are an example of excellence and endurance for our entire community. I can only hope that all of our alumni rise to your powerful challenge to think openly, boldly, and radically with a firm belief in the power of human dignity for all. Congratulations on this honor and thank you for your lifetime of pioneering work.
>
> With heartfelt congratulations,
>
> Heather K. Gerken, Dean and
> Sol & Lillian Goldman, Professor of Law
> Yale Law School

I will now turn it over to Charles for his presentation.

CHARLES ROBINSON: Without further ado, I guess I will kick off the event.

Good morning, everyone, and thank you very much for the wonderful introduction, Karen! I'm honored on behalf of myself and my colleagues at UC Legal to be recognized by Directors Roundtable today. I'm grateful to join the ranks of the distinguished counsel and law departments that have received this honor in the past, and I welcome the opportunity to speak today about the role that university counsel play in bridging the divide on university campuses over controversial and socially charged issues.

I also welcome the opportunity to put on a suit for the first time in about a year!

I want to start by acknowledging some of the people who have made this day possible. Thank you again to Directors Roundtable, and especially Jack Friedman and Karen Todd, for choosing to honor us and for organizing this event. I want to thank our clients – the Regents, President Michael Drake and the other leaders at UC – who have supported us financially and otherwise, even during lean times, and who have *mostly* followed our advice. You endeavor every day to serve society, and you truly make the world a better place.

I do want to thank my legal team at UC Legal, and I'll have a little more to say about them in a moment.

A special thanks to Kelly Drumm and Epiphanie Gillette, my Chief of Staff and Assistant Chief of Staff, respectively. Epiphanie worked with Directors Roundtable to coordinate this event, and Kelly generally points me in the right direction and makes sure that I arrive on time, armed with her wise counsel.

Thank you to my fellow panelists who are joining me today – Michael, Hailyn and Ray – we've worked together for an embarrassing number of years, and I value your thoughtful insight, exceptional dedication and experienced perspective in all the work that you've done for UC over the years. And Ray, let me thank you and express my appreciation to you and Reed Smith for sponsoring today's event.

Finally, on a personal note, I do want to thank my wife of 32 years, Victoria, who is attending this event today. I am forever indebted to you for your unwavering support and your boundless patience.

Now, if you will indulge me for a few minutes more before we get to the subject at hand, I would like to say a few words about the university and the legal department that you have chosen to recognize today.

I am privileged and honored to serve the University of California, which is widely regarded as the best public university system in the world. I know that sounds like hyperbole (and we've heard a lot of that in recent years), but it is the case that no other university offers the level of excellence in teaching and research at the scale that UC does. The UC system comprises 285,000 students and 227,000 employees – including nearly 12,000 tenured or tenure-eligible faculty members. We operate 10 hospitals and a $15 billion health enterprise, and we oversee three Department of Energy national laboratories, including two nuclear weapons labs.

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>
> *– Charles Robinson*

The better-known campuses are UC Berkeley and UCLA, but seven of our nine undergraduate campuses are members of the prestigious 69-member Association of American Universities, a consortium of the country's top research universities. That's one-tenth of the membership.

Our dedicated Health Sciences campus in San Francisco receives more NIH grant funding than any other public institution in the United States.

I could cite the usual statistics about the number of Nobel prizes won by UC researchers – three alone in the last round of awards – but I am proudest of the opportunity offered by UC to the most disadvantaged in our society. UC enrolls more Pell Grant recipients given, to students of families eligible for federal aid, than the entire Ivy League combined, and fully 57% of California resident undergraduates attended the university entirely tuition-free in 2018–2019, the last date for which this data is available. On an undergraduate base of about 220,000 students, that means UC dramatically improves the lives of more than 125,000 students, and the lives of their families, and the lives of the members of their communities.

About five years ago, the *New York Times* decided to do a different kind of ranking of universities than those compiled by the *U.S. News & World Report* and similar organizations. The *Times* rankings were based on the university's contribution to social mobility. When the results were released, the headline read, "California's Upward Mobility Machine." Six of the top ten universities listed were UC campuses, including numbers one, two, three, four, five and seven. I sent that article to everybody I knew, and I should say that we continue to dominate these rankings, even to this day.

I am also privileged to lead what, in my unbiased opinion, is the best group of legal professionals on the planet. UC Legal comprises 200 dedicated attorneys, legal support and legal operations specialists. We operate at all 10 of our campus locations and day-to-day practice in about two dozen legal practice areas.

In addition to working in such traditional corporate law areas as litigation, real estate, and labor and employment law, we are among the few in-house departments that can claim a regular practice in constitutional law, both state and federal. We are even called upon to handle the occasional FCC or FAA regulatory question – we operate student TV and radio stations and we have an airport at the Davis campus.

Like other corporate law departments, we are strapped for resources, and our success can only be attributed to the unmatched dedication of the team to our clients and to the mission of the university. You, the team, are richly deserving of the recognition afforded by this award.

I will now turn to the topic of the day: the role that university lawyers play in addressing controversial issues and bridging divisions on campus. I will divide my comments roughly into four parts: first, I'll talk about where I think we stand as a country today on divisive issues; next, I will talk

about some of the challenges and controversies evident in higher education; after that, I will talk about the role of university counsel generally in addressing division on campus; and finally, I will give you examples of our work during the time that I have been with the university.

So, where do we stand as a country? As many of you know, this event originally was planned for about this time last year and was postponed due to the COVID-19 pandemic. In the ensuing year, the divisions in the country have grown only wider, with the deaths of Ahmaud Arbery, Breonna Taylor and George Floyd, and the emergence of the Black Lives Matter movement; with the contentious election season culminating in the casting of 156 million votes, nearly evenly divided; and with the concerted attempts to overturn the election results in its aftermath. These developments form an unfortunate backdrop for my comments today.

The divisions in our country have been evident from its founding. Regrettably, we've been unable or unwilling to come to grips with our most enduring vulnerabilities – race and nationality. Darker urges in the body politic that previously have lurked below the surface have become socially acceptable in recent years.

And the threat is not over. Now open, it's hard to imagine that this Pandora's box will be closed any time soon. And while I fear for the country, my concerns are more personal: I fear for my family, especially for my son.

The institutions that historically have served us – and here, I'm thinking of the courts and the traditional media – have attempted to hold the line against this perversion of our discourse, but they have been harmed by concerted attacks and efforts to delegitimize their motives. The consequences of this campaign were played out in the assault on the U.S. Capitol Building, an outcome

that was as predictable as it was horrifying. A fuse was lit, and we now are struggling to contain the resulting explosion.

Now onto some of the challenges and divides faced by higher education. Fundamentally, colleges and universities have witnessed a decline in their traditionally high standing with the American public. This decline is of particular concern to me because, among the obvious reasons, universities play a critical role in fact-finding and truth-telling. Through a time-honored process of peer review and testing of hypotheses, universities help establish a common foundation from which we can organize and govern ourselves. They also contribute to an educated populace, a prerequisite to an effective democracy. Yet, in a poll conducted by the Pew Research Center in 2017, 58% and 19% of Republicans and Democrats, respectively, agreed with the statement that, "Colleges and universities have a negative effect on the way things are going in this country." These are scary numbers to a university administrator like me.

And despite reams of evidence showing economic gain for college graduates, commentators are questioning the value of a college degree. Our colleges and universities have been characterized as anti-right, anti-religious, anti-Semitic, and anti-American.

Across the country, legislators have proposed dramatic budget cuts to public universities, in part decrying what they perceive to be a bias in the curriculum. State officials have subpoenaed raw data and unpublished research materials of university professors on controversial public policy issues such as climate change. These efforts have been viewed by some to be deliberate acts of intimidation and a direct threat to academic freedom. Threats have been made to cut off federal funds for universities accused of barring conservative speakers from appearing on campus. UC Berkeley was among those receiving a presidential tweet to that effect, after an event featuring Milo Yiannopoulos was canceled due to a burgeoning riot on the campus.

The immigrant and international communities on college campuses have received particular attention. Efforts were undertaken to terminate the Deferred Action for Childhood Arrivals, or DACA, program, placing tens of thousands of college students across the country at risk of deportation. Officials have sought to deny and revoke visas for international students studying remotely due to university-imposed COVID restrictions, and they have stepped up arrests and prosecution of foreign-born researchers

– predominantly Chinese nationals – raising concerns about racial profiling and the chilling effect on international collaboration.

As for divisions on campuses, debate over activities at colleges and universities, of course, have been a tradition for decades. Since I joined the university in 2007, just about every social trend that has emerged in the larger community has played out on UC campuses. In 2011, the Occupy movement took hold. Tent encampments sprang up on campus quads, and cries of "mic check" rang out, culminating in the infamous event in which campus police at one of our campuses used pepper spray to disperse a crowd of seated student protesters.

We've grappled with the rise of mobile devices and social media, which, for all the good that they do, have also been used as platforms for bullying and for organizing flash mobs of anarchists. Our efforts to bolster the security of the data entrusted to us have sparked rigorous debates, particularly among our faculty, about the tension between data security and data privacy.

Despite the devastating effects of Prop 209, barring among other activities the use of race and gender in admissions, our campuses have become browner and majority-female at the undergraduate level. These developments have raised important questions about the efficacy of "safe spaces" and "trigger warnings," and they've also resulted in an increase in racist and anti-Semitic graffiti on campus.

The Sustainability movement has prompted calls for the university to divest our retirement system of investments in fossil fuel companies, requiring us to balance the interests of the greater community in a healthier planet and the financial interests of our pensioners.

The Israeli-Palestinian conflict has led to mock checkpoints and contentious debates about political dissention vs. ethnic and religious bigotry.

The "Me Too" movement has taken hold, dictating that we confront our history of tepid response to sexual harassment claims, and that we take to account the abusers.

In present day, we are answering the call of the Black Lives Matter movement; we are reimagining campus safety and the role of police on our campuses.

And we are weighing the religious heritage of indigenous peoples with the quest for scientific discovery, as we facilitate the return of artifacts and remains to native tribes and we negotiate the development of a great terrestrial telescope on a sacred mountaintop in Hawaii.

Now onto the role of university counsel. What, then, is the role of lawyers in the rough and tumble of university politics? We have many but let me mention a few. Fundamental to the role is preserving the integrity of the institution. The university cannot serve as an effective fact-finder and truth-teller unless it is seen to be walking the walk, not just talking the talk. This is the basis on which trust is established, and nothing destroys trust faster than hypocrisy. Integrity is essential for the university generally, and especially for university leadership in addressing the institution's internal divisions.

Our lawyers serve this cause in a couple of ways. We seek to anchor the university and its leaders to the mission and values of the institution, and I'll talk a little more about values in a moment. While our leaders are being buffeted by the storm and mired in day-to-day concerns, it is essential that the lawyers maintain perspective, take the long view, and assure that the institution remains true to itself. My lawyers have heard me describe this as "standard bearing," meaning, literally, we carry the standards of the institution into every conversation, and we exhort those standards when necessary.

We also provide what I call "ethical counsel." Our job does not end with a dry presentation of legal analysis. We seek to make decisions and offer solutions that are not only legally permissible and sound, but are the right thing to do. There are employment disputes that we will not settle for any amount of money, because we cannot reward misconduct or dishonor employees that play by the rules. Conversely, there are medical malpractice

claims that we will not defend, because, at the end of the day, we were wrong, we made a mistake. We have advised our managers to resolve all doubt in favor of student safety, employee safety, patient safety – regardless of the possible legal consequences. If a surgeon is engaging in disruptive behavior and needs to be placed on leave, "we have your back," we have assured our department heads.

So, what are the values that we hold, as standard bearers for the university? I think our Mission Statement and Ethical Values Statement were distributed to registrants in advance of this event, and they can be found on our website. In my view, our values stem from UC's nature as a university that is both public-supported and research-oriented. As a public institution, UC's mission is service for the public good, and achieving this aspect of the mission requires, among other attributes, transparency and accountability. As a research university, UC's mission is opportunity creation and discovery; achieving this part of the mission requires freedom of thought, tolerance of dissent, and diversity and inclusion of all kinds.

We at UC Legal have aspired to hold the university to these principles. Let's talk now about some examples. When a group of students at one of our campuses advertised a party they scurrilously called "Compton Cookout," using a diatribe of racist and sexist stereotypes directed especially at black women, we resisted the calls for the students to be disciplined. We counseled, instead, to meet the hate speech with equally forceful counter-speech.

We applied the same standards more recently with regard to a university professor who used his private phone to tweet anti-Semitic nonsense.

When animal rights activists – terrorists, really – submitted Public Record Act requests for animal research material, we urged disclosure (with appropriate safeguards).

We regularly assure that our whistleblower protection policies, our open meeting laws, and our conflict-of-interest rules, are fully implemented and have real meaning. We have urged that the world-renowned researcher and the third-level manager equally be held to account for their misconduct. We require as a condition to approving litigation settlements that effective systemic and personal corrective action be implemented.

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>
> – *Charles Robinson*

We challenge ourselves, within our own department and team, to live the UC values.

Hearing the call for justice in the Black Lives Matter protests, we solicited candid, sometimes painful, feedback from our team members, and we are pursuing a comprehensive program to promote equity and justice within our team and within the larger legal community.

We are reviewing our litigation settlements to assure that the outcomes are not reflective of race or class. In the wake of efforts to overturn the recent presidential election, we weighed terminating our relationship with law firms that potentially engaged in unethical conduct – mindful, however, that our actions require more than simply a difference of opinion or a different political outlook.

We endeavor in other ways to stay true to the mission of the university and bridge divides. Our lawyers are educators. Following the "Compton Cookout" incident, we produced one-page summaries explaining the dictates and the virtues of the First Amendment, even for the most offensive speech. We followed up with appearances at meetings of the Black Students Union and other student groups, to address concerns and answer questions. We volunteered to meet with and be confronted by the faculty researchers who were directly targeted by the animal rights terrorists. It was a spirited discussion, to be sure, but it was also productive.

Our lawyers are problem-solvers. In 2015, following an increase in anti-Semitic graffiti at some of our campuses, the university was called upon to adopt the State Department definition of "anti-Semitism." On review, we quickly realized that the statement was not suitable for a university, because of its potential to chill free speech and free inquiry. We drafted, instead, a set of principles against intolerance, differentiating conduct from speech, and emphasizing that, in a civil society, free speech comes with responsibilities as well as with privileges. Some in the broader community felt that the principles should directly reference anti-Semitism, but we felt that we could not prioritize one community without seeming to exclude others. The solution was to draft a contextual document, akin to a legislative history, that accompanies the principles and recounts the rise of anti-Semitism as a key factor in their adoption.

Our lawyers are process wonks. As for many institutions, the "Me Too" movement was a wake-up call and an opportunity to take a comprehensive look at our policies and practices governing sexual misconduct. UC Legal took a lead role in drafting federal rules that account for the impact of the process on sexual assault victims, while preserving the rights of all parties to notice and a fair hearing. A process that is perceived to be fair can often moderate a negative reaction to a disappointing outcome.

We expect to play a similar pivotal role in upcoming reviews of our policies regarding campus safety and policing, and our policies covering race and ethnic discrimination and harassment.

Our lawyers have been mediators of multiple, oftentimes conflicting, institutional objectives. Following the pepper spray incident that I mentioned before, Chris Edley (then dean of the Berkeley Law School) and I were called upon to review the university's practices with respect to campus protests. UC has a storied history of civil disobedience, and Berkeley proudly is the birthplace of the Free Speech movement. The trick was to honor these traditions while making clear that all participants at a protest still are to be held accountable for their actions. Dr. King, after all, wrote his famous letter from a Birmingham jail, though the state's response was far from proportionate – and that's an important feature of accountability.

Our resulting Campus Protests Report emphasized pre-conflict communication among administrators and students; oversight by civilian leadership during an event; deescalation practices; and post-incident review and accountability. In the end, the report received more positive than negative response – perhaps the best that we could have hoped for, under the circumstances.

And, of course, in our most familiar role, our lawyers are advocates in the public arena for the university's values. UC has a long history, extending back to the 1978 *Bakke* case, involving the UC Davis School of Medicine, of advocating and defending actions to make our campuses more diverse and more inclusive.

More recently, we have taken a lead role in advocating for the rights of our immigrant community. As a point of pride, UC was the first university in the United States, and possibly the first plaintiff altogether, to challenge the efforts of the prior administration to rescind the DACA program, which deferred deportation for children who, through no fault of their own, had been brought by their parents to the United States illegally. Nearly everyone agreed that these DACA recipients are among the most disciplined and accomplished young people in our communities, but they had become

leverage in a contest between the political parties in Washington.

We were successful in obtaining the first court order enjoining the administration from ending the program, and in a decision captioned *Department of Homeland Security v. Regents of the University of California*, the United States Supreme Court sustained our victory last June. For me, this was the realization of a dream from childhood. I was raised with stories of Thurgood Marshall and the methodical campaign executed by the NAACP to desegregate the nation. These stories were a major motivation to me for becoming a lawyer.

I recall waking up on the day that the administration had planned to end the DACA program and thinking that, because of the efforts of our team, 700,000 people, and thousands of our students, researchers and workers, were going to work and going to school that day without fear of losing their lives to deportation.

More recently, a high school fellow working at one of our campuses' Legal Affairs offices, who, herself, is a DACA applicant, was brought to tears describing what the case has meant to her.

Let me close, then, with this: the role of counsel, especially counsel in public institutions, has changed dramatically since I started my career many years ago. We are no longer simply legal technocrats, but thought leaders – or thought partners – with a seat at the table. By dint of our training, based on Socratic reasoning and an appreciation for precedent, we see all sides of an issue, and we take a long view in developing solutions. These tools, I think, make us uniquely positioned to address divisive issues arising on campus.

My advice to younger lawyers, perhaps just starting out on their careers, is two-fold: find a client whose mission resonates with your own values; and use the seat at the table given you to help the institution stay true to those values. If you do these two things, your practice can be immensely fulfilling, and you can be part of something great for the benefit of your community.

I've taken up enough of your time. I see Ray is back! Again, I am very grateful for the recognition that you have bestowed on UC Legal and me, and I look forward to the comments by my esteemed colleagues on the panel. Thank you very much.

RAYMOND CARDOZO: Thank you very much, Charlie. That was a very vivid depiction of the remarkably broad mission of the university, the incredible challenges that come with such a broad arena, and how they resonate for you personally.

One thing that came in loud and clear in your remarks is just how much it is the University of *California* – the eighth largest economy in the world, one of the most (if not the most) progressive states in the Union. Can you speak a little bit or tell us if the challenges the university faces are different from those of other large universities in other states and, if so, how?

CHARLES ROBINSON: I'm not so sure that they are different in kind than the issues facing other *public* universities in other states. We have a need to work with a hugely diverse group of constituents – the legislature, with our labor unions, with our faculty senate – and that's probably common at other universities. I think there's a lot more complexity associated with working within a university system. California can be a little more litigious than perhaps the other states, and so that introduces some additional challenge. But by and large, the same issues of funding and trying to increase partnerships with private entities and working through free speech issues – all of those things are probably similar in other states.

I will say that, because Berkeley is the birthplace of the Free Speech movement, we get a lot of people who come to California and come to Berkeley for symbolic reasons, and so that introduces a little bit more complexity to the work that we do, as well.

RAYMOND CARDOZO: It feels a little bit similar, but on steroids. In particular, when you mentioned – the word I picked up on was California being more litigious – it does seem, working with you over the years, that people have come in at the university from all sides.

CHARLES ROBINSON: Nicely said! And I take that with pride, because the

University of California is a symbol for a lot of things that are *right* about this country. People litigate with the University of California, especially because of who we are and some of the work that we do. Again, I take that as a point of pride.

RAYMOND CARDOZO: Since the pandemic hit, everyone's world has been rocked, and there is a tendency to focus on just the next month, the next few months, the next year – getting through it. Where do you see the biggest challenges facing the university in five to 10 years?

CHARLES ROBINSON: The biggest challenge to the university in five to 10 years is something that we're already beginning to think about. We need to find better ways of commercializing our inventions, for one example. We need to find ways to partner more with other institutions. I think we have some governance challenges. As we become bigger and bigger – when I started, we were an $18 billion entity; we are now a $40 billion entity – many of our campuses are substantial universities in and of themselves. That creates a huge challenge for a President and for a Board to figure out how best to add value to the institution, how to be engaged in the collaborations to make the university even stronger and even more effective in carrying out its mission. Those are the kinds of things that I think about.

We're not in the business of litigation – at least I hope we're not in the business of litigation! I tend to think transactionally, such as, what are the great things that we can do working with private partners. Frankly, working with the other segments within California higher ed, the CSU system and community college system. There are ways that we can do things better for the good of the people of California.

RAYMOND CARDOZO: Let me ask you one last question. One of the things that was left out from your presentation was just the incredible breadth and variety of stakeholders that you must address, between the Regents, the university administrators, each separate campus, the faculty, students, staff, parents. What do you do when there's disagreement among those stakeholders on major issues, as there surely must regularly be?

CHARLES ROBINSON: Yes, I touched upon it in my remarks; a lot of it has to do with transparency – not surprising

people. We do mediate among a lot of different constituents, and it's important to be straightforward, to be an honest broker among the various constituents. We have contentious issues where, quite frankly, as the lawyers, we could steer or influence a decision in one way or another, but it's very important for us to play it straight down the middle and give people our honest legal assessment. It's very important to admit when the law doesn't necessarily have the answer. That happens frequently, and it's a policy call; but it's largely about being seen as an honest broker. In order to do that, you have to avoid surprising people, and you have to be a straight shooter.

RAYMOND CARDOZO: Thank you very much, Charlie, and congratulations again. I think we should bring Michael into the conversation here.

Michael Kahn graduated from UCLA and Stanford Law School, after which he clerked for Judge Ben Duniway on the Ninth Circuit Court of Appeals. He has had a national trial practice for 40 years. He's a member of the American Law Institute and has been inducted into the California Lawyers Hall of Fame [California State Bar Hall of Fame].

Welcome, Michael, and take it away!

MICHAEL KAHN: Thank you, Ray! Charlie made his case that the university does it a different and special way, and I'm going to be a witness from another perspective. Charlie gave you the inside view, and I'm going to give you a little bit of the outside view.

Before I do, though, I have to say, Charlie, you got a letter from the dean of your law school. When I was in law school, if the letter came from the dean, we all thought it was *bad* news. Congratulations on that!

I've known Charlie Robinson for over 30 years. When he worked for the government, I was first his regulator. (He didn't like that very much.) Then I was his boss. (He liked that less!) When he worked for a large corporation, I was his lawyer; and when he moved to the University of California, I was again his lawyer, and I'm going to be talking about that.

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>
> – *Charles Robinson*

I can attest that in every role, Charlie has approached his responsibilities with a fierce dedication to the mission and values of the institution he served. Congratulations, Charlie, on an exemplary career and a well-deserved honor.

Since most of my assignments for Charlie have involved disputes – either with litigation being anticipated or having already begun – I will focus my brief remarks on the differences between handling such situations for the University of California and for other clients.

In my practice, I begin the analysis of every dispute by focusing on the goal of my client. Working for UC is underscoring the importance of this approach. Once the goals have been established, the strategy and tactics follow. Winning the case, making key motions – even settling the matter – are really strategies and tactics. They are not the *goals* of the endeavor. A client must take into account a myriad of factors in setting his goals, including total cost, precedent, public relations, internal consequences and, of course, the mission and values of the institution.

Let me demonstrate the differences between UC and private institutions by discussing two types of disputes I have handled for the university (which also arise in the private sector). First, I will use the example of intellectual property theft in the context of employees leaving the institution, and next, I will discuss the context of high-profile employee terminations.

UC, and *all* universities, are constantly faced with a situation of faculty and other employees leaving for other institutions, and taking with them grants and contracts, intellectual property, and other employees. In the private world, such situations, though very stressful, are relatively straightforward. The defense of them follows a playbook which is grounded in the goals of protecting the assets of the corporation in a cost-effective manner, while managing the reputational and competitive assets of the company.

As Charlie has made clear, at UC, this kind of problem must be handled with reference to the mission and values of the university. This means that the positions the university takes must be sensitive to a wide variety of viewpoints held by the university's stakeholders. The university must accommodate its mission to promote research *and* to achieve the maximum public good. It must be mindful of what is in the best interest of its faculty members, who need the flexibility to advance their careers at UC and elsewhere. And the university must be mindful of the interests of the California state government and the people of the State of California in preserving their assets and the reputation of the university and not spending scarce state resources to produce results that are not cost-effective and needed.

Above all, the university must identify which of its values is truly at stake in a case. Does the situation require the university to make a statement that dishonest behavior will not be tolerated, and that other universities may not trample on its rights? Or does the university need to turn the other cheek in recognition that the public and the university's interests will be best served by allowing what might otherwise be viewed as improper activity?

Agreeing on the right goal in these situations is a lot harder than it might seem. Corporations are founded on a principle of command and control. When a key group of employees leaves a corporation with heads and briefcases full of secrets, a business leader decides how much the corporation cares. If there are disagreements, the corporate ladder governs the decision-making.

"Command and control" is an alien concept at a public university – especially at the University of California. [LAUGHTER]

The department chairs, the deans, the faculty organizations, all have viewpoints and fiefdoms. The campus administration and the university administration in Oakland, where Charlie resides, have perspectives. Ultimately, the Regents have to approve the settlement, and the legislature is always available to second-guess.

The dominant spirit of the university is to decide hard questions through collaboration and consensus, so the question of what to do when a rival private college has just hired faculty and intends to take their grants, research and support staff, is decided at a forum worthy of the United Nations.

To summarize, the question of what to do about any particular legal dispute at UC must be decided in a complex decision-making environment. It is the burden of university counsel to figure out how to formulate the goals for handling such matters, by reference to the mission and values of the university.

Perhaps nowhere is this problem more keenly felt than the area of high-profile employment litigation. Unfortunately, in a wide variety of circumstances, universities are forced to terminate employees, be they coaches, administrators, faculty, and other people in the administration. Often, the terminated employees are public figures, and at the very least, they are very often very big people on campus.

Now, most certainly, terminated employees have privacy rights. But in the public university setting, how the university handles the termination and the surrounding circumstances are often matters of intense public and political interest – how the case is handled; how the case is tried; whether it is settled (as Charlie was alluding to), and for how much, are all matters of public interest and, often, public record, as are the collateral consequences of the matters, such as programs to prevent further abuses and provide relief for victims.

Again, in the private sector, handling such cases involves difficult, but tried and true playbooks, decisions of damage, and cost control. But in the public university setting, the exercise of squaring the goals of the termination process with the mission and values of the university involves balancing the views and interests of the numerous public, campus and political stakeholders and, occasionally, unfortunately, the victims, to chart a course which will produce the most value-driven and cost-effective result.

Now, I know there are many university lawyers listening to this presentation. Under Charlie's leadership, they have a daily diet of balancing these complex interests. They do not merely solve legal problems and dispose of cases. Instead, they manage the mission and values of the university, which is a much more complicated and difficult task, as Charlie has enumerated in his comments.

Thank you, and I look forward to the remaining part of this presentation!

RAYMOND CARDOZO: Thank you, Michael. Just one question for you, picking up on those remarks, and particularly the public aspect to the university. What role do public relations and government relations have in how you handle a case for the university?

MICHAEL KAHN: It's very important. When you work with university counsel where Charlie resides, and with the campus counsel – they are attuned to this, also – you realize that the public's going to know about the results here, and often, the public knows about the problem before you do. You often hear about it in the newspapers first. So, you have to be very conscious of the actions you take and how the press is going to react.

A lot of it has to do with messaging, too. If there are victims, it's very important that the victims, or their parents, get messaging that makes clear that the university, first and foremost, is interested in the safety of the students and the transparency that Charlie has indicated.

Keeping your eyes and ears attuned to public reaction and the reaction of not only the broader public, but also the more defined public – the parents and the other people who have interest – is a really important function in handling these litigations. And the university does its very best to be sensitive to this.

CHARLES ROBINSON: Ray, if I could just say –

RAYMOND CARDOZO: Absolutely! Jump in, Charlie.

CHARLES ROBINSON: Among the readers of newspaper are my Regents, so I will say it's vitally important that we have an understanding of what the message will be about any *legal* matter that the university is going to be involved in. In fact, I would say, more generally, *any* matter that the university is going to be involved in.

I do regularly request the opportunity to review statements, or at least make sure that a lawyer on my leadership team has the opportunity to review statements that relate to our litigation.

We sometimes opt *not* to be as aggressive as a corporation might be, in the way that we communicate about something – again, because we have the public interest in mind, and because we're speaking to a lot of different constituencies. It's definitely the case that we work very closely with our communications group, and that I have given directives that I need to make sure that senior leadership in the department review communications about legal matters in the media.

RAYMOND CARDOZO: Thanks, Charlie. Let's bring in Hailyn Chen next.

> "Through a time-honored process of peer review and testing of hypotheses, universities help establish a common foundation from which we can organize and govern ourselves. They also contribute to an educated populace, a prerequisite to an effective democracy."
>
> – *Charles Robinson*

Hailyn Chen is the co-managing partner of Munger, Tolles & Olson, where she practices complex business litigation, white collar and government investigations. She's been named one of the top women lawyers in California by *The Daily Journal* numerous times, and she serves by appointment of the California State Supreme Court on the California State Bar's Board of Trustees.

HAILYN CHEN: Thank you, Ray. Thank you, Charlie, for that inspiring speech. I've known Charlie for a little less than Mike has known Charlie, for nearly a decade, and worked with him on legal issues systemwide at UC and across all of UC's 10 campuses. I'd like to speak about a different topic, because what really stands out to me is Charlie's leadership of what has got to be one of the most diverse and inclusive groups of 150 lawyers anywhere in the country, and their unwavering commitment to the mission and the values of the university.

Charlie, I second Mike's congratulations on an impressive career, and to that, I add my gratitude for your leadership of UC's amazingly diverse, inclusive and dedicated group of lawyers in the Office of General Counsel.

I want to underscore just how important that diversity and inclusion is, not just for the sake of diversity and inclusion in itself, but for achieving the fundamental mission of the University of California. And listening to Charlie's description of the astounding range of legal issues facing UC in recent years, and in grappling with just a few of them myself, as outside counsel working in partnership with UC, there can be no doubt that UC's at the forefront of tackling the most challenging, most novel issues facing our country: defending the legal status, the privacy and civil rights of immigrants – not just DACA recipients at UC, itself, but the nearly 700,000 DACA recipients nationwide; creating and implementing the nation's first ever comprehensive set of policies for preventing, detecting, addressing and investigating sexual assault in the patient care context; drafting principles against intolerance that, at the same time, promote free speech and free inquiry, and implementing them on campuses where emotions are running high, political divisions run deep, and campus officials must ensure the safety of their campus community; and preventing and addressing racial injustice and systemic racism affecting the nation, and the campus community – UC has really led the nation in handling our country's most pressing and complicated legal issues.

Doing this incredibly challenging work, requires not just legal skills and expertise in the abstract; it requires diversity of background, diversity of thought, and diversity of lived experience. Nowhere is the diversity of a legal team more important than at the University of California – the flagship public institution and research institution of the most diverse state in our nation.

What has diversity meant for the university and for the public that it serves? A diversity of voices and background and lived experience of the women, the people of color, the LGBTQ lawyers representing the university, and the diversity of viewpoints that Charlie and his team of lawyers bring to the table – that's been critical to, if not

fundamental to, UC's ability to tackle these novel, cutting-edge issues.

It's also been critical to diversify in the legal profession. People of color comprise 60% of the adult population in California, but fewer than a third of California's licensed attorneys are people of color, and only around 40% are women. The diversity of UC's legal department and the amazing diversity of the leadership of UC's legal department sets an example. It's an example that is meaningful, because it shows those around us what is possible. If you can see something, you can be something. That's had a meaningful impact on so many throughout the legal profession. It's had a meaningful impact on my junior colleagues. I am lucky to get to work with an amazingly diverse group of associates, and so the women, the people of color, the LGBTQ lawyers on my team, having them watch the diverse leadership of UC lawyers in action has shown them what is possible. It's shown *me* what is possible. I'm one of a tiny handful of women in the country leading an Am Law 200 firm, and as one of the two women attorneys on the State Bar Board of Trustees, collaborating with other women of color on some of the country's toughest problems has shown me what is possible. Seeing first-hand the better outcome that an institution achieves when it is led by diverse voices, diverse backgrounds, diverse lived experiences, *that* has inspired me to redouble *my* commitment in advancing diversity and inclusion at my firm and in the legal profession.

The diversity of UC's lawyers matters to the future of our legal profession. And there's one experience that sticks out in my mind. About a year and a half ago, I was sitting next to Therese Leone, deputy campus counsel for UC Berkeley, in the gallery of a courtroom in the Ninth Circuit courthouse in San Francisco. I was waiting for my oral argument in a Title IX case in which I'm representing the university, and as we were sitting there, the back three rows of the gallery began to fill up with a procession

of high school students from a local public high school. It was their field trip – to go and watch some arguments happening in a courthouse. And, if memory serves me right, it had a few dozen kids; every one of them was a person of color. There were black, brown, and Asian faces filling the back of the courtroom. I tried to put myself in their shoes. To get to the courtroom, they had to walk through these giant, imposing doors of the courthouse at the national historic landmark, and for those of you who have visited the courthouse, it is an impressive building. They had to walk past the marble staircase, take a gold elevator – literally a gold elevator – up to the third floor, and walk down a marble hallway with these great, vaulted ceilings and marble mosaic floors, into a courtroom that, in reading up on the history of the courthouse, it was built literally to showcase the importance and affluence of the United States as a world power in 1905. It was built in the style of an Italian renaissance palazzo. If any of you have been in Courtroom 1 of that courthouse, you know that the room is encrusted with ornamentation ranging from carved fruit motifs to plaster cupids, Corinthian columns, more marble mosaics – it is an impressive display of opulence and power. How incredibly intimidating and inaccessible it must have seemed to these schoolkids – many of them immigrants, or children of immigrants – all of them people of color. How much must that space have communicated, "This is not a space for you."

The judges took the bench – three white men; our argument was heard last, so I got to watch all the arguments that came before me. All the attorneys who stood up to argue were also white men, save for one, a Latina woman representing a criminal defendant. At some point during this whole thing, Therese leaned over and whispered to me, "Think about how important it is for these kids to see *you*, a woman of color, arguing here in his courtroom." It hadn't really struck me until she made that comment, but yes, how important to see a person of color taking up space – taking up space with her voice, her ideas, her advocacy, her leadership; taking up space in a particular space that looks like that.

And for Charlie and his incredibly diverse and inclusive team of lawyers across the university system, if you can see something, you can be something. Watching these diverse

attorneys take up space with their leadership, their voice, their ideas, with their diversity of background and lived experience, watching them guide the university through the nation's most challenging issues, is an example for our legal profession, and it's an example for enterprises across the country, of the importance of diversity to advancing access to justice, and to achieving the best outcomes for mission-driven, value-driven institutions.

Now I'd like to turn to another topic, one that was introduced by Mike in his remarks, and I'd like to amplify some of his comments on balancing competing interests with another example from my experience in working with UC.

As a number of commenters have mentioned, the need to balance the interests of various stakeholders is paramount, and these interests are often not just intentions but, in many ways, irreconcilable in some circumstances. There is a need to weigh the risks of litigation and regulatory scrutiny on multiple fronts.

Nowhere is that challenge more apparent than in a university's obligation to prevent, address and remedy sexual violence and sexual harassment in its campus community.

The problem of preventing and remediating sexual violence and sexual harassment on college campuses is one of the most challenging problems facing any institution in the country, not only because of the lasting damage and trauma that sexual violence wreaks on its survivors, but also because of the values of shared governance, the imperative of providing due process, and because of the complex, ever-evolving and conflicting legal and regulatory backdrop against which this work must be done.

Colleges and universities are subject to a myriad of laws and regulations regarding the handling of sexual violence that creates a possibility of lawsuits from various stakeholders, and gives rise to government

enforcement actions from an ever-increasing number of federal, state, and local government agencies.

In deciding how to respond to reports of sexual misconduct, schools must comply with Title IX regulations, which, of course, have whipsawed from one end of the political spectrum to another with the changes in federal administration, and the laws are too many to name now – the Clery Act, the Violence Against Women Act, and an increasing number of state laws covering everything from the Affirmative Consent Standard to the process provided in student sexual misconduct discipline – schools must weigh competing litigation risks. There's often no clear path that avoids the possibility of a lawsuit for either the complainant or respondent or, in many cases, both. Or the possibility of regulatory scrutiny from federal agencies like the Department of Education's Office of Civil Rights, or in recent years, from any number of the federal research funding agencies like NIH or NSF. Of course, in the case of a public agency like UC, a state regulatory body will investigate, like the state auditor. Then you layer on top of that the complicated set of reporting obligations – obligations that change depending on the status of the respondent, what research funds are implicated, where the sexual assault took place. Layer on top of that the limited university resources, as Charlie mentioned, that can be brought to bear on handling these ever more complex issues.

As Mike noted, university counsel must have a clear understanding of these circumstances and what the goals are. What are the goals in any given circumstance? Then you can choose the path that maximizes the possibility of achieving those goals. Those goals can include, for example, ensuring the protection of complainants and complainants' interests. Those goals can ensure the immediate safety of the campus community. And that may mean accepting the risk of respondent litigation, accepting the risk that you will get sued.

Understanding the goals of an institution committed to shared governance and composed of numerous different stakeholders – that's a real challenge. The role of the university counsel includes not just application of laws such as Mike mentioned, it includes so much more: listening to and understanding the client stakeholders' goals, figuring out who the ultimate client decision makers are – and that differs depending on the

circumstances; and building consensus. That's particularly important when choosing a path that will ultimately result, inevitably, in litigation and regulatory scrutiny.

It's a tall order, but it's one that UC lawyers accomplish every day. The goals that the university pursues – as Mike mentioned – may differ from the usual goals that a for-profit commercial institution has.

I'll leave you with this. I recently spoke on a UC Berkeley panel on educational institutions' handling of sexual misconduct, together with a number of speakers that included Suzanne Taylor, the system-wide Title IX director for UC. She talked about all of the goals that the university may try to achieve, but one of them in particular stuck out to me, and it really stuck out to the audience, as well, because they remarked on it. And that goal was this: Kindness and fairness for the parties involved. *Kindness*. How often do you hear "kindness" as a goal that an institution is trying to achieve? I think that is just a perfect illustration of the uniqueness of UC's mission-drive, values-driven enterprise. It underscores the importance of diversity and inclusion, and the diversity of lived experience, in achieving those goals.

Thank you, Charlie, for your leadership of this amazing enterprise, and of the UC legal team that helps it down its difficult path every day.

CHARLES ROBINSON: Thank you.

RAYMOND CARDOZO: Thank you, Hailyn. That was a really nice bookend to Charlie's remarks in reminding us how the university leads us forward and teaches us what we could be and should be. When Charlie alluded to the ugly racial division that we've all been suffering through increasing, that continued leadership symbolism of the strength of our diversity is a breath of fresh air.

I'm going to shorten my remarks considerably, to make sure we have some time for questions from the panelists.

> "What, then, is the role of lawyers in the rough and tumble of university politics? We have many but let me mention a few. Fundamental to the role is preserving the integrity of the institution."
>
> – *Charles Robinson*

Working with Charlie and his team for many years, I'm always struck by the sheer breadth of the risk that they manage in the institution. I'm an appellate practitioner by trade, so I often see cases at the tail end of litigation, and some of those are really train wrecks for the institution. One of the most overused phrases among litigators is "bet the company" litigation or, in this case, "bet the university." My remarks were focused on broad thinking about what really should be included in that category of matters that bear elevated risks to the whole institution and should be managed as such. I'm going to shorten that list down to just three, two that have a particular focus on the university, and then I'll send everyone the full list later.

The first one that comes to mind is very unique to the university – the deployment of an essential power of the institution. The university has a very unique constitutional provision that gives it complete self-governance powers. The California Supreme Court has defined this constitutional governance as establishing the university as akin to a fourth branch of government.

But, as Marie Antoinette learned the hard way, if you are not judicious in your exercise of sovereign powers, the guillotine emerges pretty quickly. When Charlie talked about the public relations and government atmosphere in which the university operates and Michael described the very public sphere in which it operates – that underscores the importance of being very selective, and also thinking about consistency and how the use of this awesome sovereign power can be deployed in litigation. It's a nice bat to wield, but if you swing it too many times, it can come across to the adjudicators as, "You can't touch me; we're untouchable." There's an arrogance to it.

I participated in a review Charlie had where we went through a whole spectrum of a set of cases of a certain type. There was a discussion of which and how and when this particular sovereign power would be deployed. Those kinds of exercises are very valuable for any large enterprise, because any large enterprise has awesome power, but it needs to exercise it with awesome responsibility. To use the "bet the company" metaphor, picking when and how you're going to place the bet, and doing it consistently, is an effective way to manage enterprise-wide risk.

The second category that comes to mind is very unique to the university and enterprises like this: matters that put on the line core values of the organization. That part isn't unique to any large enterprise; every large enterprise has core values, and the thing that's interesting about this category, the most overused example of "bet the company" litigation is high dollar value – multi-billion-dollar disputes. But as Charlie's remarks pointed out, the matters that put on the line the core values of the university, can arise in a wide variety of formats. Any one of these "free speech" cases invokes powerful feelings among the speakers and the constituents they represent, those who oppose the speech, and the broader community. For these types of matters, where Charlie talked about being a standard bearer, you bear that standard in every brief you file in a dispute. How you articulate that constant balance between "we have values, but we are always going to come down on the side of permitting free

and open civil discourse" – that matters because there are eyes on every one of these briefs, including in the smallest of disputes.

I've cited a couple of examples where I think Charlie and his team of 150 lawyers manage risk very well and do what large enterprises should be doing: thinking about what their standard is and bearing that standard consistently and repeatedly across the spectrum of their ways. I want to highlight one example not involving the university, that is not a great example, but good for how to manage enterprise risk, and a sobering one. That is matters that put at risk the essential regulatory permission to operate.

Within the last year or so, we had – and I'll be a little bit euphemistic about the business – an online service provider come to us after they had suffered a published loss in the Court of Appeal that basically declared that the service they provided violated regulatory requirements, it's illegal. The thing that stood out about that dispute was it began as a collection matter instituted by the institution against someone who had signed up for the service but hadn't paid the bill. That individual fired back with this argument that it's illegal. The institution lost in the trial – won in the trial court, so they felt pretty comfortable – but that individual kept going and took it up on appeal. By the time they came to us, it was too late; they'd suffered a published appellate decision, and there was no conflict in the law; the chances of a Supreme Court review were a long shot.

They put their whole significant part of the enterprise on the line or at risk on a matter that was $6,000 in value. That's an example of a case that should have never even reached a judgment in the trial court, much less appeal.

When you're thinking about "bet the company" litigation, one of the most important things in managing enterprise-wide risk is thinking about what bets you shouldn't even be placing and taking those matters out of

play long before they see the light of day. This could be any matter across the spectrum, but it's also one that with a good screening and internal elevation procedure within the organization can be readily taken out of play.

We can go down and – everyone on this webinar, could list probably five or six other matters and strategies they would put around it. I just want to mention one or two related examples that a friend of mine, Mark LeHocky, who was the general counsel of Ross Stores, mentioned to me when we were discussing this topic. He is now a mediator, and he says, one of the things that he sees as a real impediment to problem solving is the invocation of principle or precedent. "This matter is too important; we're going to die on the vine fighting over it, and we're going to fight over it to the bitter end."

In reality, it's very important to think through what really falls into that category and what doesn't. Because his point is, in reality, most of the problems do not, and that mentality prolongs that.

Disputes, for almost all large enterprises, are a negative value add. They're not part of the core mission, and they distract from it. The number one goal should always be efficient and practical problem solving, and so one of the impediments to that is calling a matter a "bet the company" matter when it really isn't.

But then he did give this example of one that *is*, where the precedent *is* "carries the day," and that was a dispute with a supplier who wanted to be given an indemnity for any defects in their goods. Well, Ross had 5,000 suppliers. This wasn't a big matter, but if they give *this* particular supplier indemnity, they can't live with that arrangement. It's going to be a disaster for the business enterprise. That was the vine they were ready to die on, because they were going to die if they accepted it.

With that, I will wrap up my remarks, and I'm going to take a quick look at the chat screen to see if we have any questions; otherwise, I have some additional questions for the panelists.

CHARLES ROBINSON: First, a couple of comments on your comments, Ray. A live issue for us is when we choose to join litigation with an *amicus* brief. As you might imagine, UC is frequently asked to join litigation or submit an *amicus* brief, because of who we are. We are actively trying to

put together a consistent set of principles around what we do in that regard – the *ad hoc* approach that we've taken isn't necessarily strategic, and we need to be more strategic in choosing when we become involved.

Your comment, also, about placing important issues of the university at risk, or important functions of the university at risk, also resonates. As you know, we have constitutional autonomy, which, at a high level, basically means that the legislature is not permitted to enact legislation that controls us. We are controlled by the Board of Regents, except in very narrow cases.

Constitutional autonomy is a defense that we could assert in a number of areas, but we guard it jealously for the reason that you described; you don't necessarily want to put at challenge or at risk your constitutional autonomy, unless you're very certain that it's worth it.

I just wanted to provide you with a couple of comments and illustrate some of the points that you just made.

RAYMOND CARDOZO: Yes, Charlie, you've reminded me also that one thing that often escapes attention, when you mentioned *amicus* brief, sometimes your important interests are put on the line – not in your case, but in someone else's case. When you see that, and realize the implications for your own organization, getting involved in lending a helping hand when you can is something I see across the spectrum of appellate practice as underutilized. Everyone's got their hands full managing their own matters and so on but keeping an eye on that forum is good.

One topic I'll throw out to all the panelists to comment on is how the public's perception of the university affects how you handle a dispute when representing it. Michael, do you want to start on that one?

MICHAEL KAHN: Yes, I will. This may be counterintuitive, but one thing we worry about when we have to go to a jury, and sometimes the judges, is the fact that the public is very often very mad at the University of California, and the reason they are is that their kids don't get in. Some legislators feel the same way. The University of California is very selective, and lots of really qualified people don't get in. When we do polling, jury research and the like, what we would have thought was a very positive feeling, will very often be negative feelings because the person's kids don't get in, or they feel the university is elitist. So you have to manage disputes understanding how the public feels, and that also goes to how you deal with the legislature in matters.

If you don't mind, Ray, I'd like to follow up and ask Charlie a question. Charlie, you alluded to when to invoke this constitutional autonomy. There are other situations where you could make an argument that if you find against us, it's going to cost us billions of dollars, but the worry is, they might find against you, and then you're going to be stuck with it. "Well, we didn't really mean it!" [LAUGHTER]

My question is, how do you go about the decision-making process. How do you go about figuring out when to invoke constitutional autonomy or when to make the arguments that "you can't do this to us because terrible things will happen," and when you decide to bite your tongue?

CHARLES ROBINSON: It's essentially a risk-based approach, so we communicate with the leadership of the university, and we talk about the risk of proceeding in a particular way vs. what you gain, or what you lose by *not* deciding to join issue on a matter. A lot of it is legal advice and assessment of the likelihood of prevailing. A lot of it has to do with the potential impact of a win or a loss. The probability and impact are important factors for us to consider. Then the rest of it is somewhat policy-based and how important is the policy to the university. One of the things that I say is that if we're too conservative and we restrict ourselves too much – a constraint that we think is suspect or that we think shouldn't be there – we're essentially imposing it on ourselves. If you're not willing to challenge certain constraints, then, in effect, you're constraining yourself; you're subject to the constraint.

Those are the kinds of things that we talk about at a high level with the leadership at

the university. But at the end of the day, it's always a client call – hopefully well-informed by the lawyers. Sometimes it's tricky to know who the client is – I will say that, as well. That's common, in large corporate entities. It's almost the foundational question you start with: Who is my client here? Then I can engage them and have a conversation.

RAYMOND CARDOZO: I would like to offer some observations on a different topic and then flip it over to the panelists. One of the things that stands out about the university, in my appellate practice, more so than others, is a repeat player in the courts. In many of my large appeals, it's more of an episodic event for that client in that particular court. But the university is one of the few clients where I find myself paneled all over the state, seen more than once.

I'll offer two remarks on what that means. First, Charlie, when you talk about being a standard bearer, the consistency of the message is really important when you're a key player. You have an opportunity to build a brand with the decision maker that episodic players don't.

One of the other things appellate lawyers always talk about is selectivity of issues – being very careful picking your best ones to go forward. With the university, that applies not just within the case, but across the case – which cases do you push the issues in, the old adage of bad facts making bad laws; you take your swing in the cases where you've got the best hands. I'm just curious about the other panelists' experience as a frequent flyer on behalf of the university and how that affects what they do with a dispute before the decision maker.

CHARLES ROBINSON: Let me just say quickly, roughly within two weeks of my arrival at the university, one of my lawyers came to me and said, "Hate to tell you this, but sanctions were just entered against us by a judge for all sorts of bad behavior by outside counsel in discovery. We may even have an issue sanction coming down the pike." After switching out counsel and ultimately settling the matter, I actually requested an opportunity to meet with the judge in the case, with opposing counsel, and the purpose of the meeting was to apologize for the misconduct that had occurred. The reason for it is exactly the reason that you mentioned: we are a repeat player, particularly in federal court. We do have a brand; and I thought it was important for this judge to know that we didn't condone what had been engaged in on our behalf. I think it also went a little way with opposing counsel, because we've seen that opposing counsel down the road, and I think they appreciated it, as well.

RAYMOND CARDOZO: We have two minutes left, and I want to close with this question from the audience that came in. Do you consider the likelihood of success without assertion of constitutional autonomy and the risk of not asserting it – for example, use it or lose it?

CHARLES ROBINSON: Yes, absolutely. It is frequently the case that constitutional autonomy is one option or one defense, and that there may be statutory or other constitutional defenses that could be asserted, as well. So, yes. As you're balancing what you're trying to achieve and what you could lose, we also weigh how likely is it that we could win *without* exposing our constitutional autonomy to challenge or to risk. That's critical.

The risk of *not* asserting it, yes. We always consider that, as well. It's pretty important to us, so it requires a really important issue before we are willing to assert it, and expose it to challenge. In the time I've been with the university, I think there was a criminal case filed against one of our faculty members in which we had to assert it, or we had to allow him to assert it through his independent counsel. But we don't do it very often.

I hope that answers the question!

RAYMOND CARDOZO: Yes. I'll just add one thing on the "use it or lose it" from the appellate end of things. It's not going to be noticeable if you don't assert the argument in a trial court decision and someone looks at a case and whether it's a trial court ruling. It does get a little bit more interesting when, and you're looking at a Court of Appeal decision that seems to have the facts where the immunity could be asserted, and you're arguing here in this case, and they look back at that decision and it wasn't raised. The stakes of not asserting it, and how you balance that, gets a little bit more complicated as you move up the chain.

I see we've come to the end of our time. I cannot thank the panelists enough for what was a really wonderful discussion, and Charlie, congratulations again. I know I speak for everyone when we say how much we enjoyed your really inspiring remarks today. Congratulations to your entire UC Legal Team as I know many of them are out there in cyberspace listening in on this.

CHARLES ROBINSON: My thanks to my fellow panelists, on behalf of the team, and the leadership of UC. We really appreciate all that you've done for us as our counsel over the years. Thank you very much. Thank you to Directors Roundtable, as well.

Michael Kahn

Senior Counsel

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Michael Kahn is senior counsel at Crowell & Moring and is a member of the Litigation Group. Mr. Kahn's practice involves federal and state court proceedings throughout the United States. He has tried over twenty cases to verdict with a success rate of over ninety percent. He has also argued over a dozen appeals in State Supreme Court and Federal and State Courts of Appeal and has arbitrated over a dozen cases to decision (with over a ninety percent success rate).

Mr. Kahn has been involved in numerous landmark cases including *PeopleSoft v. Oracle* in which he represented PeopleSoft; *U.S. v. Stringfellow* in which he was lead trial counsel and *City of Atascadero v. Merrill Lynch* in which he represented the "Killer Bs." He was appointed by the California Supreme Court to represent the defendants in a landmark search and seizure case and a death penalty case.

Mr. Kahn has been recognized by *Super Lawyers* as a leading business litigation lawyer since 2004.

Prior to joining Crowell & Moring, Mr. Kahn was a senior counsel at the San Francisco firm of Folger Levin & Kahn LLP.

Government Appointment Roles and Representative Matters

- Member and Committee Chairman: Advisory Group, Civil Justice Reform Act of 1990, United States District Court for the Northern District of California, 1990-1994.
- Commissioner: State Senate Commission on Property Tax Equity and Revenue, 1990.
- Member: California State Insurance Commissioner Task Force on Insurance Industry Practices; Chairman: Unfair Practices Committee, 1991-1994.
- Member: Northern District of California Masters' Committee of the Task Force on Expedition of Dispute Resolution, 1982-1988.
- Member: California State Insurance Commissioner Task Force on Environmental Liability Insurance, 1993-1994.

Crowell & Moring LLP

Founded over 40 years ago with a commitment to build a different kind of law firm, Crowell & Moring LLP today is an international law firm representing clients in litigation and arbitration, regulatory and transactional matters. We are internationally recognized for our representation of Fortune 500 companies in high-stakes litigation, as well as our ongoing commitment to pro bono service and diversity. With approximately 560 lawyers based in the United States, Europe, Middle East, and Asia, the firm helps international corporations and emerging enterprises navigate complex legal challenges and create business solutions across the globe.

The firm is particularly noted for its strength in the following core areas:

Litigation & Trial:
Litigation is a core strength of the firm and our deepest practice. Fully two-thirds of our lawyers prosecute and defend cases, handling billion-dollar civil trials, criminal trials, administrative proceedings, and arbitrations in the United States and in global forums on matters spanning all practice and industry competencies.

Regulatory & Policy:
Our firm has deep experience working with agencies across the U.S. Executive Branch and government agencies within the EU. It is home to more than 100 former government officials who have held pivotal positions in the U.S. and international agencies. Our lawyers and consultants have experience drafting, negotiating, and implementing critical regulations that impact business across industries.

Transactions & Corporate:
Crowell & Moring offers a full-service corporate practice with an emphasis on M&A, joint ventures and strategic partnerships, corporate securities and finance and complex outsourcing, IP and commercial arrangements in industries such as healthcare, defense, financial services, retail/consumer goods, energy, life sciences and high tech.

Investigations:
Our firm conducts investigations on behalf of leading businesses, boards, and individuals, both for internal purposes and in response to government enforcement inquiries and actions. We have represented clients in matters spanning more than 80 countries and six continents in high-profile and international internal investigations, congressional probes, compliance counseling, and monitorships, with focus subjects ranging from FCPA to financial fraud, to whistleblower complaints.

Hailyn Chen
Co-Managing Partner

MUNGER TOLLES & OLSON LLP

Hailyn Chen is a Munger, Tolles & Olson litigation partner and Co-Managing Partner of the firm.

She focuses her practice on complex business litigation, white collar criminal defense and government investigations. Ms. Chen frequently represents higher education institutions in a range of litigation matters and investigations.

In 2020, Ms. Chen was named among California's "Top Women Lawyers" by the *Daily Journal* and "Managing Partner of the Year" by *Corporate Counsel*. Ms. Chen was appointed by the California Supreme Court in 2020 to a second three-year term on the State Bar of California's governing body, the Board of Trustees.

Ms. Chen earned her undergraduate degree from Yale University, where she was one of the first female coxswains to lead the Yale varsity men's crew and was awarded the MVP award in 1996.

Ms. Chen has significant experience in preparing complex commercial litigation and class actions for trial, representing companies in various sectors including energy, financial services, entertainment and technology.

Higher Education Law
Ms. Chen has counseled higher education clients in internal and government investigations, crisis management, criminal prosecutions and ongoing compliance issues related to government claims and federal grants. She is a member of the National Association of College and University Attorneys (NACUA) and has developed a broad understanding of the unique management, operational and regulatory challenges universities face.

Internal Investigations and White Collar Defense
Ms. Chen has significant experience in leading internal investigations, representing the company itself in some instances or the independent, special and/or audit committee in others. These investigations have covered a wide range of issues, including alleged financial misconduct, alleged misuse of government grants and university resources, and alleged conflict of interest, nonprofit tax law, and False Claims Act violations.

Munger, Tolles & Olson LLP

For more than 55 years, Munger, Tolles & Olson attorneys have been partnering with clients on their most important and complex cases and deals.

With offices in Los Angeles, San Francisco and Washington, D.C., we maintain a national and international practice. Our principal areas of practice include litigation, corporate, labor and employment, environmental, real estate, financial restructuring and tax.

Munger Tolles has purposefully maintained a low-leverage environment and eschewed the high-leverage model adopted by many firms. We believe our one-to-one overall partner-to-associate ratio instills a work ethic that results in a cost-effective approach for our clients. In every representation, our 200 lawyers are expected to make a difference in developing and implementing strategies to obtain the best results for the client.

In a survey conducted by *The American Lawyer*, clients said they called on Munger Tolles in "precedent-setting cases that require a creative mind." Where resources are needed, the survey noted that we are able to deploy an "army of trial lawyers capable of waging war."

We are involved in some of the most high-profile legal cases in the country and count among our clients Bank of America, Transocean, Edison International, Verizon, Rambus, Oaktree Capital Management, KB Home, LG Display, Yucaipa Cos. and Berkshire Hathaway. Descriptions of these and other representations can be found on our Practice and Industries website pages.

In order to provide excellent service, we strive to hire only the most qualified and creative lawyers. We believe that clerkships provide valuable experience. In this regard, about 80 percent of our attorneys served as law clerks to federal or state judges. Sixteen attorneys were clerks to U.S. Supreme Court Justices. Beyond clerkships, our attorneys also have experiences that bring an additional dimension to our client service. Many of our litigators honed their courtroom skills while serving as assistant U.S. attorneys and a number of our lawyers have advanced degrees in relevant subject matter areas, including physics, engineering and medicine. We are proud to count among our lawyers one of the top 18 trial lawyers in the country as identified by *Chambers USA*, as well as one of the *Daily Journal*'s "Ten Top Lawyers of the Decade."

Raymond Cardozo

Partner

ReedSmith

Ray's practice focuses on complex commercial litigation and appellate matters, including real estate litigation, tort and punitive damages claims, statutory/regulatory disputes, class action, commercial licensing/intellectual property, financial services, products liability and mass torts, employment discrimination, telecommunications and other litigation. He has had lead responsibility for more than 200 appellate matters in the state and federal courts, has argued numerous cases before the United States Supreme Court, California Supreme Court, federal circuits and state appellate courts, and has played a significant strategic and advocacy role in numerous complex commercial litigations at the trial court level. Prior to joining Reed Smith, Ray served for years as a Deputy Attorney General in the Office of the California Attorney General.

Ray is a member of the American Academy of Appellate Lawyers and is Second Vice-President of the California Academy of Appellate Lawyers. He is certified as a specialist in appellate law by the California State Bar Board of Legal Specialization. He has served as the firm's Global Chair of its Litigation Department, as a member of the firm's Senior Management team, as the San Francisco Office Managing Partner, as the Practice Group Leader of the firmwide Appellate Group, and as a partner member of the firm's Diversity Committee. Ray also serves on the Board of Directors of the Lawyers' Committee for Civil Rights and on the Leadership Council of the Center for Youth Development Through Law. The *Chambers* and *Legal 500* publications have ranked Ray as among the top in his field, and he has also repeatedly been selected by his peers for inclusion in *The Best Lawyers in America* and the Northern California *Super Lawyers* lists.

Experience

- *Handley v. MarEast Realty* (Cal.App. First District 2019) Retained after jury verdict in real estate dispute and handled appeal resulting in reversal with directions to enter judgment for client.
- *Jogani v. Jogani* (Cal.App. Second District 2019) Reversing dismissal of multi-billion dollar claims asserting interest in substantial real estate partnership.
- *Khoury v. Regents of Univ. of Cal.* (Cal. App. Fourth District, Div. One 2019) Reversing judgment against Regents in writ of mandate matter with directions to enter judgment for Regents.
- *Omidi v. National Resident Matching Program* (Cal.App. Second District 2019). Affirming summary judgment on contractual and tort claims against provider of medical school residency and fellowship matching program.

Reed Smith LLP

At Reed Smith, we believe that the practice of law has the power to drive progress. We know your time is valuable and your matters are important. We are focused on outcomes, are highly collaborative, and have deep industry insight that, when coupled with our local market knowledge, allows us to anticipate and address your needs. You deserve purposeful, highly engaged client service that drives progress for your business.

We know the legal industry has changed. Clients have made it clear that they are seeking greater value for their legal spend. We have embraced this change, because you deserve purposeful, highly engaged client service that drives progress for your business.

In some ways, we like to believe we helped fuel the change. For nearly a decade, Reed Smith has been at the forefront of turning client service into client value. Our lawyers are committed to adding value, and our business professionals are dedicated to innovating how we create client value.

Today, the Reed Smith Client Value Initiative includes multiple departments and dozens of professionals, all focused on providing standard-setting services that earn client trust and build strong relationships. This is how we stand out in a highly competitive industry.

While we appreciate recognition from industry observers, we celebrate when clients recognize the value in our partnership. Recently, this includes receiving the top ranking for *Financial Times*' 2018 New Business & Service Delivery Models, winning ACC's 2017 Value Challenge for a client technology initiative; *Corporate Counsel*'s 2017 Best of the Best for Firms with Alternative Fee Arrangements; and *Legal Week* British Legal Awards' 2016 Best Use of Technology.