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Chancellor & Dean

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To: UC Hastings Board of Directors
From: Chancellor & Dean David Faigman
Re: The Legacy of Serranus Clinton Hastings
Date: September 2, 2020

I. INTRODUCTION

Although we can never remove the sins of the past, we might sometimes have the chance to atone for them. Hastings College of the Law has such an opportunity today.

Our founder, Serranus Clinton Hastings, promoted and financed Indian hunting expeditions in the 1850s in the Eden and Round Valleys of Northern California. These expeditions resulted in the deaths or dislocation of 100s of Yuki Indians, and the enrichment of Serranus Hastings, who took possession of large parts of these lands. He later became the first Chief Justice of the State's Supreme Court and, in 1878, founded the first law school in the state, Hastings College of the Law in San Francisco.

This history cannot be altered. However, following a thorough review of the historical record, it is now incumbent upon us to reconcile with the sins of the past that bear our name.

In this memorandum, I set forth a path forward by which the College can begin to make amends. The plan I propose responds to past crimes by acknowledging truth, honoring the memory of the victims, uplifting their descendants, and building bridges where none existed before. We have already begun a dialogue with the Yuki people—the tribe most directly targeted by Serranus Hastings and his agents—in an effort to define opportunities for collaboration, growth, understanding, and friendship.

The path forward outlined here permits the College to confront its past and pursue a future that is consistent with our mission and ideals of public service.

II. BACKGROUND

On July 8, 2017, during my first full year after being appointed as Chancellor & Dean, John Briscoe, formerly an adjunct professor of law at UC Hastings, published an editorial in the *San Francisco Chronicle* entitled “The Moral Case for Renaming Hastings College of the Law.” In that article, Briscoe described how “Serranus Clinton Hastings was [a] promoter [and] financier of Indian-hunting expeditions in the 1850s.” Hastings went on to become the first Chief Justice of the Supreme Court of the State of California and founder and first dean of our law school.¹ Although Briscoe did not expressly call for UC Hastings Law to change its name, he concluded his editorial by observing: “Our rising sensibility obliterates the names of those who sought to enslave or discriminate against a people. How ought we treat the names of those who sought to exterminate a people?”

After the editorial’s publication, I heard from numerous alumni and several faculty members about this issue. In particular, Professors Shauna Marshall and George Bisharat contacted me about this matter and strongly advocated my taking action or calling upon the Board of Directors to do so. I have had the benefit of several conversations with these two scholars since, and, upon their own initiative, they organized a day-long symposium in September 2018 on Serranus Hastings’ legacy, in which I had the honor to participate.

In order to better educate myself on the subject, I read two general histories regarding the treatment of the California Indians in the mid-nineteenth century.² Both of these books mentioned Serranus Hastings’ role in the genocidal acts of the time, but without great detail regarding his actions.

I contacted one of these authors, Professor Brendan Lindsay, and asked him if he would consider writing a more focused historical examination of Serranus Hastings’ role in the genocide that he described in his exhaustively researched book; and ultimately his services were retained. At around the same time, I asked then-Chair of the Board of Directors, Tom Gede, if he would chair an ad hoc committee to consider and make recommendations to the Chancellor & Dean regarding Serranus Hastings’ legacy. In collaboration with Director Gede, I formed the Hastings Legacy Review Committee (HLRC or the Committee), which Director Gede chaired and Robert Sall, the then-President of the Board of Trustees, acted as vice-chair.³

¹ Briscoe noted, additionally, that Leland Stanford, past Governor of the State of California and founder of Stanford University in the name of his son, Leland Stanford Jr., similarly provided official sanction and funded such expeditions.

² These were Benjamin Madley’s “An American Genocide: The United States and the California Indian Catastrophe, 1846-1873,” and Brendan Lindsay’s “Murder State: California’s Native American Genocide, 1846-1873.”

³ HLRC Membership included Blake Atkerson, Esq.; Curtis Berkey, Esq.; Little Fawn Boland, Esq.; Prof. Jo Carrillo; Joseph Cotchett, Esq.; Virginia Dario Elizondo, Esq.; Tom Gede, Esq., Chair; Jenny Kwon, M.Ed., Ed.D.; Paul Laurin, Esq.; Prof. Brendan Lindsay; Robert Sall, Esq., Vice-chair; Prof. Reuel Schiller; and CFO David Seward B.A., MBA. Additionally, John DiPaolo served as counsel to HLRC, and Academic Dean Morris Ratner served in an advisory capacity. Finally, Chief of Staff Anne Marie Helm served as Secretary to the Committee from 2017 to 2019. Professor Lindsay accepted an honorarium of \$10,000 for his work on the historical paper; he was not paid, beyond reimbursement for travel expenses, for his work on the HLRC.

The HLRC began its work in August 2017. I received the Committee's Report on July 29, 2020. It is attached in full in Appendix A, along with a Summary of that Report in Appendix B.

Over a period of three years, the HLRC met regularly. Importantly, and to their great credit, Committee members reached out to the descendants of the Yuki Tribe, which was most directly targeted by Serranus Hastings and his agents, as well as associated tribes, particularly those belonging to the Sinkyone Intertribal Council in Ukiah and the governing council of the Round Valley Indian Tribes in Covelo. Members of the Committee met with these groups on several occasions, two of which I joined. Additionally, the Committee hosted a group of Sinkyone Council members on campus for a set of productive meetings with the Committee, students and the College's administration regarding the horrors of the past and the difficult circumstances the tribes continue to face today.

III. THE CONTEMPORARY CONTEXT: THE TIMES IN WHICH WE LIVE

We belong to a generation that is trying to come to terms with our past. The United States was founded upon principles that inspired, but which were more aspiration than reality. The *Declaration of Independence* stated emphatically that "All men are created equal," at a time when hundreds of thousands of African American men, women, and children were enslaved, and women were denied the most basic equal protections of the law. The Constitution that followed the *Declaration* created a government that normalized slavery, though the founders were sufficiently embarrassed by that "peculiar institution" that they did not refer to it by name.

Indeed, the founders seemed to understand that future generations were doomed to reconcile what they failed to accomplish themselves. In 1820, for instance, Thomas Jefferson wrote to John Holmes regarding Missouri's admission to the Union as a slave state, stating that, "this momentous question, like a fire bell in the night, awakened and filled me with terror. I considered it at once as the knell of the Union. It is hushed indeed for the moment. But this is a reprieve only, not a final sentence." Even today, we have not yet reached a final sentence.

Although slavery came to inform much of the political debate in the nineteenth century, particularly between "States' rights" and Federal authority, another insidious stain on our Nation's history continued to deepen and spread across the American landscape throughout that century and beyond. The settlement of the United States, from the very start, was a progressive displacement and killing of the indigenous people who had made North America their home from time immemorial. Settlers, ultimately supported by State and National action, caused scores of Indian tribes to be dispossessed from their lands through war, murder, theft often accomplished by legal artifice, and other nefarious means. This was conquest justified by a sense of manifest destiny among those populating the new country of the United States. Moreover, like the enslavement of African Americans, the treatment of Native Americans was justified on the belief in the hierarchy of humanity, in which some races were superior to others. Notions that "all [people] are created equal" were observed neither in principle nor practice.

To no small extent, the Civil War came to be understood as a battle over this very principle of equality. Toward the end of the war, President Abraham Lincoln referenced the *Declaration of Independence* in consecrating the battlefield at Gettysburg. He began his brief speech with these now famous words: “Four score and seven years ago our fathers brought forth on this continent, a new nation, conceived in Liberty, and dedicated to the proposition that all men are created equal.” Of perhaps greater gravity, he finished his speech, stating, “that we here highly resolve that these dead shall not have died in vain – that this nation, under God, shall have a new birth of freedom – and that government of the people, by the people, for the people, shall not perish from the earth.”

However, once again, future generations would be needed to move practice toward ambition. Throughout the second half of the twentieth century it appeared that the moral universe was beginning to bend toward justice. The courts invalidated Jim Crow throughout American society, and Congress passed the Civil Rights Act of 1964 and the Voting Rights Act of 1965. But it was a path replete with setbacks, as the assassinations and riots of the late 1960s, Nixon’s “Southern Strategy” in the 1970s, the war on drugs in the 1980s, and mass incarceration of the 1990s all illustrate. It might have been thought, however, that the twenty-first century might yet realize the promises of the eighteenth and nineteenth centuries, especially with the election of Barack Obama in 2008, the first Black president.

Still, throughout the country today the battle for equality continues. A core part of that struggle concerns society’s reckoning with an American past beset by great wrongs. In particular, an important question of the day is how monuments celebrating past leaders who committed great wrongs during their lifetimes should be treated. This issue is complicated by the fact that many of our greatest leaders were deeply flawed individuals by today’s standards, and perhaps by their own as well, including such historical luminaries as George Washington, James Madison, and Thomas Jefferson. Virtually every physical structure around us, including states, cities, counties, universities, and streets, are named for people of very different times who espoused values and practices we now abhor. Moreover, most of those individuals, however many sins they might have committed, also did much good.

The question of how we today might address past wrongs and attempt to remedy their contemporary manifestations is complicated. The evaluation of how best to proceed ought to occur case-by-case and context-by-context. The issue is not simply one of ceasing to honor individuals who, by current standards deserve little or none. It must be a process that considers the totality of circumstances surrounding the matter.

IV. THE HASTINGS LEGACY REVIEW COMMITTEE

As described above, in order to assist me in my evaluation of how the College should respond to the facts surrounding our founder’s role in the mass killings of California Indians in the mid-nineteenth century, I formed the Hastings Legacy Review Committee in August 2017. I am indebted to that Committee for their work in addressing this issue. Although the Committee operated independently, at its invitation I met with members on multiple occasions to help

further their work. Moreover, when the Committee reached out to the descendants of the tribes most affected by Serranus Hastings' actions, I lent the weight of my office to those conversations, including visiting Round Valley for discussions with Round Valley Tribal leaders.

The HLRC Report is attached as Appendix A to this memorandum. In my recommendations below, I adopt their proposals in their entirety.

Importantly, in forming the HLRC, I asked the Committee to work with Professor Brendan Lindsay, author of "Murder State: California's Native American Genocide, 1846-1873," to provide a more detailed and focused historical examination of Serranus Hastings' role in the genocide that occurred in California. His Executive Summary is available as Exhibit A of the Committee's Report.

Finally, not surprisingly, this issue has gained the attention of many of our alumni. As I was preparing this memorandum, I received a copy of a petition being circulated by several well-respected retired jurists that was sent to about 100 alumni. Since I refer to that petition below, I have included it in full as Appendix C.

V. THE LEGACY OF SERRANUS CLINTON HASTINGS

Professor Brendan Lindsay's historical paper starkly describes the actions of our founder in being "responsible in part for fomenting violence and atrocity against California Indians." Serranus Hastings' actions were a shameful part of what was then commonplace and, indeed, an official extension of policies promulgated by the State of California and the federal government, however ill-conceived or misguided. That said, Serranus Hastings, as a leading figure in Northern California, not only went along with the bigotry of the era but contributed materially to its horrific consequences. I leave to the reader the details of the reprehensible treatment of our Native American brethren described in Lindsay's work. These actions led to the wanton death and victimization of hundreds of people, the theft of property, and the destruction of a way of life with profound consequences for their descendants.

In light of the essential purpose of this memorandum—which is to make recommendations to redress as best can be the ills Serranus Hastings wrought—it is important to highlight that what occurred over a century and a half ago continues to reverberate today. This matter is not simply about correcting the historical record by our reconciling with the wrongs of the founder of Hastings College of the Law. The effects of Serranus Hastings' crimes against humanity echo in the conditions prevailing today for the descendants of his victims.

As the HLRC recognized, we have a special opportunity as a school of law to partner with the Yuki descendants and associated tribes to provide concrete and meaningful measures to assist them and be a partner to help them assist themselves.

At the same time, we must realize that as a modestly sized institution of higher education, our capacity to address all that is needed is limited. Hence, we must identify measures that are clear, concrete and achievable.

Based on all these considerations, I adopt and recommend to the Hastings College of the Law's Board of Directors the following initiatives:

- Form a nonprofit organization, a 501(c)(3) entity, in association with, and jointly governed by Yuki descendants selected by the government of the Round Valley Indian Tribes to provide an organizational structure to raise capital, organize pro bono legal and other support, assist tribal leadership with federal, state and county matters, water and property rights, economic development and efforts to meet the social needs of the community;
- Dedicate a permanent and public memorial to the Yuki people at an appropriate location on the Hastings campus, with display panels, historical explanations and cultural presentations;
- Provide a fully functional, interactive public website to allow dissemination of the College's approach, to seek public input and to keep the public advised of historical, academic, and programmatic work to address the broader issues and the restorative justice agenda;
- Establish clinical or experiential educational programs for our students and those of other UC campuses to address the specific needs of residents of Round Valley, including the possibility of a center for pro bono legal assistance in tribal legal matters and public law assistance that could be staffed with student interns, faculty leadership and pro bono contributors;
- Collaborate with Governor Newsom's Tribal Advisor to engage with, and contribute to, that office and the newly formed Truth and Healing Council, which is working to clarify the historical record of mistreatment, violence and neglect of Native Americans in California;
- Organize pro bono attorneys with a connection to Hastings to assist in mutually agreed-upon goals and objectives;
- Assist tribal leaders, where possible, with other community needs such as local education and curriculum, preservation of the Yuki legacy with an emphasis on youth, preservation of tribal oral traditions and stories, and advancement in teaching and preserving native languages;
- Assist with fundraising and the legal aspects of establishing a museum or cultural center in Round Valley, along with a project for protection of sacred sites and repatriation of artifacts and human remains;
- Highlight the injustices of the past by bringing attention to the public at large and the Hastings community with a lecture series, guest speakers, tribal elders, dealing with "Righting the Wrongs";
- Support the collaboration of Hastings staff with tribal members to seek grant opportunities from public and private sources to address issues and concerns of tribal leadership;
- Establish an Indian Law Program and related academic and educational programs at Hastings, available to all students interested in studying Indian Law. The goal of these programs is the encouragement of scholarship, educational growth, opportunity and

support for students, and recruitment of qualified individuals from the Round Valley Tribes and/or Yuki descendants for legal education and career opportunities in law;

- Honor and commemorate the Yuki people by publicizing these efforts by opinion and editorial pieces, perhaps individually or jointly written with a representative of the Yuki descendants, to acknowledge the tragic history of the Round Valley community and to encourage reconciliation through restorative justice.

These initiatives provide the opportunity for the College to partner with the Yuki and associated tribes in Round Valley to leverage our expertise and resources, and to learn from their expertise and experience, in multiple and mutually beneficial ways. These initiatives can help chart a new path between a college named for an individual responsible for unspeakable acts against a group of people, and the descendants of those people. And perhaps most importantly, effectuating these measures means that the crimes committed against the Yuki people do not go forgotten by future generations.

The HLRC recognized, however, that this very insight—that the school bears the name of the perpetrator of indefensible crimes—raises the important question of whether that name should now be removed from the College. The Committee did not reach a definitive recommendation on this issue, explaining as follows:

HLRC did not reach consensus on the question of whether to re-name the College; ... while a majority of members were of the view the name should not be changed, there were dissenting views, one of which is attached. HRLC submits its report and recommendation with the recognition that you, as Chancellor & Dean, may wish to further examine, survey or develop the issues related to a name change by whatever means you wish.

Since receiving the Committee’s Report, I have reflected deeply on the question of “what’s in a name” and now recommend to the Board that the College should not remove the name “Hastings.” The remainder of this memorandum explains my reasons for reaching this conclusion.

VI. FACTORS TO CONSIDER IN REMOVING A NAME

In thinking about how an institution responds to disrepute subsequently discovered, or recognized, about a namesake, an institution must consider not only the namesake’s historical wrongs but also the namesake’s degree of notoriety in today’s society. Institutions named after former presidents such as Woodrow Wilson or Confederate leaders such as Robert E. Lee must contend with the fact that their namesakes, and their namesakes’ objectionable conduct, are widely known to the general public. The school must consider whether any positive associations with or attributes of the namesake can justify the significance of association with the namesake’s wrongs. Although changing the name of an institution is never a simple matter, the loss of reputational value largely supports replacing a now-discredited historical figure with a name that

better represents what the school stands for today. A recent example of this is Princeton University's decision to remove Woodrow Wilson's name from its School of Law and Policy.

When a school is named for an individual who has fallen into relative obscurity, however, very different considerations come into play. Because few know who the person was to begin with (or, sometimes, that the name is even that of a historical figure), the name is unlikely to communicate any significant message, positive or negative, to most of the public. Indeed, it may be that it is only in the context of considering the current significance of the institution's name that the namesake's misdeeds become a matter of focus. In effect, these individuals' misdeeds would likely have been lost to all but historians and, in cases such as ours, to the descendants of those directly affected, but for the fact that something was named for them.⁴

A school whose name is associated with an otherwise generally unknown donor gains name-recognition, in such cases, from factors independent of the personality or deeds of the person for whom it is named. Such a school's reputation comes from those who walked its halls and made a name for themselves, carrying the name of the school with them. Those individuals include, in particular, the graduates of the school and the scholars associated with the institution. And the longer that a school has existed, the more entangled is its name with its students, scholars and alumni, rather than the name of a long-ago donor.

Removing a name also has the effect of erasing that individual from history—especially when applied to an otherwise obscure historical actor. Erasure is a strategy that can be employed in service to any ideological agenda. While erasing the legacies of white men for their past wrongs is central to many current debates, the concept of historical erasure more typically involves erasure of minority-group members and their acts and accomplishments. An oft-repeated concern of tribal members I spoke with was that their stories are largely absent from the stories of America and California. Many other groups relegated to the margins of society today are similarly absent from the history books. We should strive to avoid erasure, not promulgate it. Erasure gives a lie to our past and ill-prepares us to find truth today. Erasing a school's name does not alter the past but might undermine our ability to learn from it.

A final and basic consideration relevant to changing a name involves how fundamental the name is to the entire institution. Unlike a building or even a school within a university, removing the historical name of a free-standing college or university is a change not lightly undertaken.

⁴ It should be noted that when naming opportunities involve someone who has donated a major gift, removing the name usually requires the school to return the gift or otherwise reconcile with the donor or his or her heirs. This can be an expensive proposition, both in terms of return of the original gift and possible litigation costs. That would be true in the case of UC Hastings, as the state law establishing the school specifies that the original Hastings bequest must be returned, with interest, to the heirs of UC Hastings if the name is changed. Additionally, because the name was established in a statute, it would probably require an act of the legislature to change the name. However, if changing the name were the right course of action, these factors would simply represent necessary costs and challenges.

VII. THE HASTINGS NAME

In deliberating on all of the factors that might be considered in contemplating removing the name Hastings from the College, I have reached the conclusion that, when taken together, the factors relevant to considering this question overwhelmingly point toward retaining the name UC Hastings College of the Law.

UC Hastings Law is profoundly more than its founder's name, and Serranus Hastings is not widely known or associated with UC Hastings. Although Serranus Hastings was a leading and wealthy figure of his day, his name is but a footnote in history. The school was not named in his "honor," but merely as a consequence of a sizable donation to the State to establish the school. But for the controversy surrounding the name itself, few would know who Serranus Hastings was. Indeed, despite our community's appropriate focus on the significance of Serranus Hastings' actions, I am confident that most of the legal profession has no idea who Serranus Hastings was or that UC Hastings was named after him.

The name Hastings College of the Law, in contrast, has a long and distinguished history. Many local, state, and national leaders are counted among its graduates. Its alumni are named partners at national law firms, celebrated trial attorneys, and are leaders in private law firms of every size. Graduates of Hastings Law are disproportionately represented in the California judiciary. The school is known for producing graduates dedicated to public service and who work in the public interest. Hastings is also famous for being the home of the 65-Club from 1942 until around 1995, which included faculty members who were among the most celebrated legal scholars of the second half of the twentieth century. Today, the Hastings name is associated with students, staff and faculty dedicated to excellence in a wide assortment of subject areas and experiential education. And the Hastings name is associated with a growing physical presence in the heart of San Francisco, as the Academic Village takes shape, and partnerships with other UC campuses continue to develop and flourish.

Additionally, Hastings has no greater entity to fall back upon for name identification. The Wilson School could change its name and still have the name of Princeton University behind its School of Law and Policy. As a stand-alone public college, the name Hastings is all there is.⁵

⁵ It has been suggested that if UC Hastings removed Hastings it might do what other UC schools do, which is to adopt the name of the city in which it is located. This is not available to us, because UCSF is already taken by one of the great health sciences universities in the world. Furthermore, the point is not so much that there is no alternative name that the College could plausibly adopt, but rather that there is no alternative name that would be understood by the relevant public as standing for the "former" UC Hastings and that would carry the esteemed reputation the College has attained. In contrast, almost anyone who was familiar with the former Wilson School of Law and Policy knew it was at Princeton and will now know that Princeton School of Law and Policy is the same place; and anyone who now learns of the Princeton School of Law and Policy will accord it the high level of prestige that Princeton enjoys. The same would not be true if UC Hastings were to adopt a geographic identifier. For example, were the College to adopt the name, "UC Bay Area College of Law", it would not be facially apparent that this was merely a new name for the old Hastings, nor would the name immediately convey *any* positive reputational message.

There is also a more fundamental question. What would removing the Hastings name accomplish? As noted, since the school is not actually associated with the historical man, removing his name would have no effect on the reputation of the school, beyond creating substantial ambiguity regarding the who, what, and where of the school formerly known as Hastings. It would, perhaps, allow the school to “move on,” in that whatever future name selected would permit us to put distance between the school and the acts of its founder.

Erasing the name Hastings today, however, does not erase what the man did in his day. More importantly, it is not obvious that separating the school from this history is the right thing to do in any case. Only by remembering the past, and learning from it, can we move forward into a more enlightened and compassionate future. Although we should not honor his memory, Serranus Hastings nonetheless stands as a historical lesson for our time.

Worthy of note, in the Committee’s and my many conversations with members of the Yuki and associated tribes, they have not called upon us to change the name of the school. Many expressly opposed it. In my meetings, several representatives repeated the lament that their stories, their narratives, were largely absent from the history of the United States and California. They called upon us to confront their history, to remember it, to commemorate it, and work to reconcile it. Many of the initiatives identified above accomplish just this. In particular, we are planning a prominent historical display in the renovated lobby of Kane Hall, which will be designed in collaboration with Yuki Tribal representatives.

I have heard from many alumni and faculty who feel strongly about the present issue, though they fall on both sides of the question. There is certainly no consensus on how best to proceed in this matter, nor would I expect there to be one given its difficulty. In any case, I do not believe that this is a question that ought to be decided by majority vote, even if I could identify the exact constituency that should be asked to vote. Perhaps the most revealing sentiment comes from a petition, attached as Appendix C, penned by four well-respected former jurists—Justice James Lambden, Justice Joseph Grodin, Judge Thelton Henderson, and Justice Maria Rivera. That petition asks that I “re-examine what it means to have a premier law school bear Judge Hastings’ name, considered in particular from the perspective of the original Tribal inhabitants.” In an accompanying note, Justice Lambden wrote, “Please note that we are not advocating that the school’s name be changed.” (Emphasis in original.) I believe that I have fulfilled this request, and many of the suggestions offered in the Petition are encompassed in the initiatives outlined above.

Removing the name of the school would do nothing for the people living today that are descended from the victims of Serranus Hastings’ crimes; and it would do nothing for the current and future generations of law students who need to learn of this history and the challenges that Native Americans continue to face. The initiatives proposed above, which I pledge to pursue with full vigor and attention, will bring concrete benefits to the Yuki people and the Indian Tribes of Round Valley. Many of these initiatives will also benefit the UC Hastings community by substantially expanding the curricular and scholarly opportunities on our campus.

Unlike the merely symbolic gesture of erasing his name from the College, developing a true partnership between the descendants of those Serranus Hastings wronged and the school that bears his name, will create substantive opportunities to transcend that history and live and work for common goals.

VIII. CONCLUSION

The nation today is confronting deep divisions regarding how best to respond to historical wrongs. This debate is far greater than whether a particular statue is removed, or the name of a building is changed. Arguments around naming are a manifestation of much larger divisions, divisions over how best to order our current society.

Ours is a country in which the enslavement of African Americans and the profound mistreatment of indigenous peoples was an original sin of our founding and officially countenanced for a considerable time thereafter. Moreover, the echoes of those practices continue to sound in multiple manifestations of inequality today. It is to that inequality that we must attend.

Although the debate about naming is important, it is in truth subservient to a greater concern. In considering the removal of the name of a historical figure that has fallen into disrepute, the true objective is, or ought to be, what that decision means for those alive today.

In considering the question of how the College should respond to the crimes against humanity committed by Serranus Hastings, I have sought to take into account the myriad factors that are relevant to that decision. Ultimately, the important focus was on how best to address the needs of the current generation of Yuki Tribal members and of the UC Hastings legal community. This included ways that the school could partner with the descendants of the Yuki people to reconcile with that history but, more importantly, to forge new bonds between the College and the Yuki Tribe and the associated tribes in Round Valley.

The initiatives set forth above begin a long-delayed reconciliation. I look forward to working with Yuki Tribal representatives and the Round Valley Governing Council to effectuate these, and likely future, initiatives.

APPENDIX A

HASTINGS LEGACY REVIEW COMMITTEE REPORT TO CHANCELLOR & DEAN DAVID FAIGMAN

Including:

Exhibit A

Brendan Lindsay,
Executive Summary,
Serranus Clinton Hastings in Eden and
Round Valleys Historical Paper

Exhibit B

Copy of relevant provisions of the
Education Code §§ 92200 et seq.

Exhibit C

Copy of the March 26, 1878 Act to Create
Hastings College of the Law, in the
University of the State of California

Exhibit D

Paul Laurin's Dissenting Views
on Re-naming

**HASTINGS LEGACY REVIEW COMMITTEE
REPORT TO CHANCELLOR & DEAN DAVID FAIGMAN**

Submitted July 29, 2020

1. **REPORT BY:** Hastings Legacy Review Committee (“HLRC”)
- Chair Thomas Gede
- Vice Chair Robert Sall
2. **SUBJECT:** Recommendations of the Hastings Legacy Review Committee
3. **BACKGROUND:**

In 1878, California’s first Chief Justice, Serranus C. Hastings donated \$100,000 to the State of California to establish a law school in his name as part of the University of California. Hastings College of the Law was formed on the basis of this gift, and the institution’s name was codified as such in the Education Code.

In recent years, there has been heightened scrutiny concerning the role of the College’s founder, Chief Justice Hastings, in the mass killing of California Indians in the 1850’s and 1860’s, most notably in the Round Valley and Eden Valley areas in Mendocino County. In particular, the Yuki tribal people of that area were decimated in targeted violence in which Serranus Hastings was likely complicit. There has been some public response and call to address the past and remove the association of the Hastings name from Hastings College of the Law.

The Hastings Legacy Review Committee (the “Committee” or “HLRC”) was formed by Chancellor & Dean David Faigman in August 2017 to research and evaluate the appropriate public response to the participation, if any, in these genocidal acts by the College’s founder. HLRC consists of 13 volunteer members, including alumni, faculty, staff, educators and practitioners in the areas of tribal law including, water rights, land conservation transactions, cultural resource protection, land claims and environmental protection.

Dean Faigman charged the Committee with examining the extent to which Justice Hastings was involved in these murders and other acts of violence perpetrated against the native peoples in those regions and throughout the state, and if the Committee determined that Justice Hastings had some culpability, to make recommendations to the Dean as to what the appropriate institutional response should be. This report should be understood to be solely for the consideration of, and further action by, the Chancellor & Dean, as he formulates his own plans and recommendations for the College.

Professor Brendan Lindsay of Sacramento State University is the author of *Murder State: California's Native American Genocide, 1846-1873*. Professor Lindsay was commissioned in 2017 to research and write a historical paper describing Hastings’ actions in the Round and Eden Valleys, and to place those actions in the context of the history of California’s Native population. Dean Faigman also invited Professor Lindsay to serve on the Committee, a position that he

graciously accepted.

Professor Lindsay's white paper further corroborated the historical narrative that Serranus Hastings bears significant responsibility for violence in eastern Mendocino County in 1859. For a summary of those findings, see **Exhibit A**. Accordingly, the Committee believes that the College must make a public response, acknowledge these atrocities, and establish programs to benefit and improve conditions in the affected tribal communities. This report provides several discrete recommendations to achieve those ends, outlined below. Additionally, this report sets forth reasons why the Committee believes that merely changing the name of the College would not be a meaningful or significant public response.

In seeking to study what would be a meaningful public response, the Committee sought input from the Native American community. With the assistance of Intertribal Sinkyone Wilderness Council, and following meetings and dialogue with the Council, we established relationships with the descendants of the affected Native peoples, including the members of the Tribal Council of the Round Valley Indian Tribes (RVIT). As part of this process, HLRC has focused its efforts on those most impacted by the Hastings legacy, the Yuki descendants living in the Round Valley. HLRC has addressed means by which the College can help the Yuki descendants and related tribes to tell their stories, keep the memory of these crimes in focus, and appropriately frame Serranus Hastings' role in the history not only of this institution, but also of the region and its people. The Committee has undertaken to collaborate on academic and public service endeavors as our institution comes to terms with responding to the darker side of our founder's legacy.

HLRC has concluded that, as an institution, we could make a significant positive impact for the benefit of the local tribal communities still most affected by the killings and theft of property that took place more than 160 years in the past. Recognizing that Serranus Hastings' murderous actions are a stain upon the noble institution that he founded, the Committee supports the institution taking affirmative steps to engage in restorative justice. The Round Valley region of Mendocino County suffers from many social ills, including poverty, addiction, unemployment and lack of public resources. HLRC has concluded that the best approach for the College was not to whitewash or to promote the erasure of the killings, enslavement and displacement in which Serranus Hastings was a willing participant. Rather, it is to highlight it, and to respond by showing another side – by establishing an institutional partnership with the affected tribal community, addressing the existing social needs and providing a significant contribution to its growth and well-being.

HLRC reached consensus on the recommendations below to develop collaborative and supportive programs to benefit the affected tribal communities and to develop a restorative justice agenda, academic engagement and public awareness. HLRC did not reach consensus on the question of whether to re-name the College; as explained below, while a majority of members were of the view the name should not be changed, there were dissenting views, one of which is attached. HLRC submits its report and recommendation with the recognition that you, as Chancellor & Dean, may wish to further examine, survey or develop the issues related to a name change by whatever means you wish. However, this Committee has discharged its duty to report and make recommendations per the original charge.

4. REPORT AND RECOMMENDATIONS OF THE HASTINGS LEGACY REVIEW COMMITTEE

HLRC submits this report to the Chancellor & Dean as contemplated in its formation and charge to examine the legacy and role of Serranus Hastings relating to multiple genocidal acts and theft of property of Native American people in Northern California. While there are dissenting views expressed on some of the issues addressed herein, this report was unanimously approved by the Committee on July 28, 2020. The report incorporates the Background set forth above and includes various recommendations for consideration of the Chancellor & Dean for implementation at the College.

To develop recommendations for positive action by the College, HLRC appointed a subcommittee to consider programs in law that might be of benefit for Native American students, including available resources for establishing law related programs, promoting legal and political externships, scholarship, and recruiting students interested in the study of Indian Law. Among other things, HLRC strongly supports an effort to establish an Indian Law Center at Hastings that would become the preeminent Northern California resource for legal education in this field and would allow the recruitment of students whose practices will focus on Native American legal issues and meeting the legal needs of that community.

As part of the Committee's outreach in Round Valley, our delegation discussed with community leaders the needs of tribal members and potential means for Hastings to engage with the community to achieve their goals. We have discussed the potential formation of a jointly-administered IRC § 501(c)(3) charitable entity which could raise funds through philanthropy and other public or private resources for funding, and to implement programs with the assistance of our institution's resources in legal practice, education, clinical work, access to alumni and others willing to contribute through pro bono services.

The Committee envisions that Hastings should provide not only the types of programs recommended herein, but also, advance the means to speak to a broader audience by actively communicating Hastings' efforts at reconciliation and partnership with the Round Valley tribal community, encouraging and supporting their educational goals and establishing a longstanding institutional process and commitment toward restoration, reparation and involvement.

Recently, we have been informed that a core group of Yuki descendants has been organized at the Round Valley Tribal level, to have primary involvement in the interaction with Hastings. This group presently consists of Reuben Becerra (Chair), Marlene Fulwider (Secretary), Julian Medel (member), Deb Hutt (Sergeant at Arms), Doug Hutt, William Hutt (youth seat), Maria Medel, Ozua Medel and Mona Oandasas (Vice Chair). The Committee anticipates that this core group will be the persons with whom Hastings will primarily communicate going forward, if these recommendations proceed to action.

The following goals were identified as potential projects supported by tribal leadership, and through which both an institutional and pro bono effort of alumni and students could have positive impacts in a community very much in need:

- Formation of a 501(c)(3) entity in association with, and jointly governed by, the Round Valley Indian Tribes to provide an organizational structure to raise capital, organize pro bono volunteers, assist tribal leadership with state and county issues, property issues, economic development and efforts to meet the social needs of the community;
- Structure clinical or experiential education programs bearing in mind the specific needs of residents of Round Valley, with the potential support for a center for pro bono legal assistance in tribal legal matters and public law assistance, potentially staffed with student interns, faculty leadership and pro bono contributors;
- Reach out to Governor Newsom’s Tribal Advisor to engage with, and contribute to, that office and the newly-formed Truth and Healing Council, which is working to clarify the historical record of mistreatment, violence and neglect of Native Americans in California;
- Organize pro bono attorneys with a connection to Hastings to assist in defined goals;
- Assist tribal leaders with other community legal needs such as contributing resources to local education and curriculum, preserving the Yuki story, preservation of tribal oral traditions and stories, and advancement in teaching and preserving native languages;
- Assist with the legal aspects of establishing a museum or cultural center in Round Valley, along with a project for protection of sacred sites and repatriation of artifacts and human remains;
- Bring attention to the public at large and the Hastings community with a lecture series, guest speakers, tribal elders, dealing with “Righting the Wrongs”;
- Support the collaboration through the use of Hastings staff to seek grant opportunities from public and private sources issues and concerns of tribal leadership;
- Dedicate a memorial to the Yuki people at an appropriate location within the Hastings campus, with display panels, historical explanations and cultural presentations;
- Provide a fully-functional, interactive public website to allow dissemination of the College’s approach, to seek public input and to keep the public advised of historical, academic, and programmatic work to address the broader issues and the restorative justice agenda;
- HLRC further recommends the establishment of an Indian Law Program and related academic and educational programs at Hastings, available to all students interested in studying Indian Law. The goal of these programs is the encouragement of scholarship, educational growth, opportunity and support for students, and recruitment of qualified individuals from on the Round Valley Tribes and /or Yuki descendants for legal education and career opportunities in law;

- Finally, HLRC encourages the Dean to engage to publicize these efforts and disseminate an opinion and editorial, perhaps individually or jointly written with a representative of the Yuki descendants, to acknowledge the tragic history of the Round Valley community and to encourage and publicize these efforts at reconciliation.

5. CONSIDERATIONS RELATING TO THE NAME OF THE COLLEGE

In recent years, many institutions of higher education have considered renaming structures on their campuses in light of evidence that donors or other people associated with the institution have connections to some of the worst episodes of American history. In each instance, these institutions have balanced the harms caused by retaining the problematic name with the harms caused by changing it. This Committee engaged in a similar balance. In our discussions, the Committee also recognized the current wave of sensitivity toward monuments and institutional names with a racist legacy, and the public outcry for an end to racism and the removal of such symbols.

Calculating the harms caused by retaining the name is necessarily speculative, but the calculation is nonetheless a searching one. A decision to retain the name risks adverse publicity and members of the public may react negatively to the College's decision. Such a reaction could have a negative impact on the College if there were political repercussions that affected our relationships in Sacramento. Additionally, retaining the name may send a message to prospective students, current students, alumni, faculty, staff, and the public that the College is insensitive to the profoundly negative impact that Serranus Hastings' legacy has had on California society in general, and on the lives of contemporary Native Peoples in particular. This impression of insensitivity could have a number of negative impacts. Most significant would be if retaining the name interfered with the College's ability to educate students by contributing to a campus environment in which Native American students or other students of color felt marginalized. Retaining the name might also make it more difficult for the College to recruit such students. Similar difficulties might arise with respect to faculty and staff. Finally, there may be a segment of alumni less inclined to donate if the College retains the name.

The Committee also considered the harms that would result from a decision to change the name. Some of these harms are speculative, but also potentially serious. For better or worse, the College's identity is intimately connected with the name Hastings. Indeed, the Committee discussed the ways in which the word "Hastings" has acquired secondary meaning that is independent of the name associated with the school's original donor. We are a standalone law school, not associated with a specific university or campus. When people think of Hastings, they generally think of the college, not the man. Accordingly, our identity as an institution, including our national reputation and our alumni's reputations, is particularly associated with the secondary meaning of the name of the College. Changing the name, given the secondary meaning that it has acquired after 142 years, could lead to public confusion about our identity. This, in turn, could result in a decline in applications and perhaps a loss of philanthropic and alumni support.

There are also more concrete harms associated with changing the College's name. These relate to the College's peculiar constitutional status and the nature of Serranus Hastings' bequest to the school. Because the name of the institution is codified in the California Education Code, a legislative act would be required to change its name. See **Exhibits B** and **C**. Additionally, based upon the language of the original gift and the legislation approving it, should the College cease to use the name Hastings, it appears that the statute would require the State to restore to Serranus Hastings' family the sum of \$100,000 plus "all unexpended accumulated interest" that has accrued in the last 142 years. The potential financial consequences in terms of both the status of the bequest and the legal costs of resolving the issue are substantial and cannot be fully known, even if the Legislature were to consider a name change. Potential financial risk is especially problematic at this time, given the significant financial stress and uncertainty the College is experiencing as a consequence of the COVID-19 pandemic.

Finally, the Committee considered the question of "erasure." As former Harvard University President Drew Gilpin Faust has noted, changing names may amount to falsely negating historical truths and legacies. The people and culture behind these names, she has maintained, should be historically understood and contextualized. Erasing a name takes away that important opportunity. When the question of a name change was posed to leaders of the Round Valley Indian Tribes, one response was to the effect: "If you change the name, we'll never hear from you again."

The Committee balanced these harms and benefits of a name change and a majority of the Committee concluded that the College should not change its name. This conclusion is based on three considerations. First, we must recognize that the College's situation is *sui generis*. The Committee has not been able to identify any other American institution of higher education that has changed its name in response to revelations about its namesake. Changing the name of a building, a quad, or a road on campus is substantially different from changing the name of the institution as a whole, especially if the name in question has acquired an secondary meaning. The former has only a minimal impact on the public identity of the institution, while the latter would have substantial past, present and future impacts, particularly on a small, free-standing institution like Hastings.

Second, the Committee noted that there are considerable financial risks associated with a name change. Most concerning to the Committee was the fact that the extent of these risks is both unknown and potentially enormous. The Committee notes that this Committee did not conduct an in-depth analysis of the financial costs of changing the name of the College and leaves that question to further consideration by the Chancellor & Dean. Even if the legal issues related to a name change could be resolved in a manner that minimized the cost to the College, the legal expenses would be considerable and the financial instability that could arise prior to the resolution of the issue might be substantial. Considering the College's resources and the perilous economic times we are entering, the Committee believes that avoiding these risks is important to the institution.

Finally, in making its recommendation on this issue, the Committee did not discount the risk that a decision not to change the College's name could have a negative impact on its relationship with some of its stakeholders. However, fundamental to the Committee's

consideration of how the College should deal with Serranus Hastings' legacy was the principle of restorative justice. As such, several Committee members articulated that central to our considerations here are the affected tribal communities (the most important stakeholders in this matter) and their concerns about erasure and role we can play in reaching truth and healing.

Nonetheless, there were dissenting views on the name change issue, acknowledging the issue is very challenging and may need more development. While none of the Committee members supported a name change *at this time*, four of the Committee members, including members of the faculty, expressed views that a decision regarding name change should not be final, that further study is warranted, and that input on the subject from students, alumni and the greater community needs to be obtained before a permanent decision is made. Suggestions were made for a further study group or committee to be formed to continue with solicitation of public input. HLRC submits that the Chancellor & Dean may wish to further study the broader historical context or call for additional research and analysis relating to the question.

The Committee is confident that the implementation of its many substantive recommendations, outlined above, will put the College at the forefront of the state's efforts to come to terms with the devastating effects of settler colonialism on California's Native Peoples. Accordingly, the Committee believes that whatever the impact of a final decision to change or not to change the College's name turns out to be, it will be substantially mitigated by the College's actions – actions that aim to be concrete, rather than symbolic, steps towards restorative justice.

6. CONCLUSION

In conclusion, the Committee recommends that the Chancellor & Dean consider the following special actions:

- That the Chancellor & Dean give due consideration to recommendations for engaging a faculty chair for the establishment of an Indian Law Center at Hastings, and the implementation of same. Such a program, if pursued, should encourage scholarship, invite academic study and debate, support community educational needs to aid in efforts to develop the growth and encourage individuals of Native American descent to study the law, and provide the continued and sophisticated study of contemporary and historical aspects of the tribes;
- That the Chancellor & Dean seek approval for Hastings to develop and implement programs for the reconciliation and partnership with the Round Valley Tribal Community, encourage and support community academic and educational goals and establish an ongoing institutional commitment and process toward restoration, reparation and involvement.
- That the Chancellor & Dean seek approval for authorization to work with assigned faculty and pro bono volunteers to establish clinical programs for public service and education consistent with the shared goals of Hastings College of the Law and Round

Valley Tribal Community representatives with particular emphasis on working with and defining the goals of the core group of Yuki descendants;

- That Hastings provide its organizational support and legal resources for the formation of a 501(c)(3) entity, with shared management in association with designated representatives of the Round Valley Indian Tribes, to pursue funding and establishment of programs designed to meet the shared goals of Hastings and the Round Valley Tribal Community.
- That the Chancellor & Dean give appropriate consideration to an interactive public website as outlined above, and for a means of deriving further input from alumni, students and the community at large as to the question of a permanent name change for the College.

Attachments:

- Exhibit A - Executive Summary pages from Brendan Lindsay's White Paper (3 pages)
- Exhibit B - Copy of relevant provisions of the Education Code §§ 92200 *et seq.*
- Exhibit C - Copy of the March 26, 1878 *Act to Create Hastings College of the Law, in the University of the State of California* (2 pages).
- Exhibit D – Paul Laurin's Dissenting views on Re-naming.

Exhibit A

Brendan Lindsay,
Executive Summary,
*Serranus Clinton Hastings in Eden and
Round Valleys Historical Paper*

Serranus Clinton Hastings in Eden and Round Valleys

Historical Paper

Prepared for the Hastings Legacy Review Committee by:
Brendan Lindsay, Ph.D.

Submitted: May 23, 2018
Revision 3: June 3, 2019

STATEMENT OF PURPOSE

This white paper explores the actions of Serranus Clinton Hastings in the historical context of the California Gold Rush, and what role, if any, he played in atrocities committed against California Indian peoples living in and around Eden and Round valleys near the present-day town of Covelo in Mendocino County during the 1850s and 1860s. As founder, endower, and namesake of the University of California's Hastings College of the Law, this is vital to our understanding of the history leading up to the establishment of the college in 1878.

EXECUTIVE SUMMARY

The story of Serranus Clinton Hastings is both unique and commonplace. Commonplace in that he is emblematic of many Americans arriving in California following the discovery of gold in 1848: Hastings came seeking greater fortune, acquired public land, and to build a new life for himself and his family. Much like his countrymen, he had little concern for Indian peoples, beyond the threat they posed to his property. He is unique in the scale of his landholdings, his lasting wealth, his public notoriety, and, especially, his political power and influence. Unlike most others who came for the Gold Rush, Hastings became lastingly wealthy owing to his entrepreneurial activities and investments, a portion of which was founded on his landholdings.

After a successful political career in territorial and state politics in Iowa, Hastings came to California as part of the Gold Rush. Unlike most of the so-called Argonauts, he determined to make his fortune outside the Mother Lode, through a combination of public service, legal practice, and entrepreneurship. In all of these pursuits he achieved success, particularly in his entrepreneurial pursuits.

Hastings arrived with a prominent reputation owing to time in the territorial and state legislatures and as a one-term member of the U.S. House of Representatives for Iowa, where he was also chief justice of the state's highest court. Arriving in California, being a well-known and prominent Democrat, Hastings was appointed as the first Chief Justice of the California Supreme Court. Following his time on the bench, he was elected as the state's third attorney general. While there is significant evidence that Hastings was heavily involved in banking and real estate ventures while in these offices, there is no evidence that he used these positions in any official capacity to further his interests. Having cemented strong political connections in the state, Hastings left public service and turned his eye to pecuniary pursuits.

Focusing on real estate speculation and acquisition, Hastings became one of the largest landowners in California, owning many tens of thousands of acres throughout the northern half of the state. The money to acquire these lands came from a modest nest egg brought with him from Iowa, his salaries as chief justice and attorney general, legal fees received as a practicing attorney, the proceeds of individual and corporate banking and finance activities, logging, and the profits generated by agriculturally driven businesses (including farming, stock raising, and viticulture). Most of all, cycles of land purchase, sale for profit, and acquisition of new properties, combined with the revenues generated by leases of his properties, account for his notable wealth. It is because of the centrality of land to his fortune that questions arise about his role in negatively influencing Indian-white relations in Northern California. Indeed, some have charged that he is responsible in part for fomenting violence and atrocity against California Indians, particularly in and around his holdings in Eden Valley.

According to the historical record—including depositions, letters, and statements by Hastings' contemporaries—significant proof exists that this was the case. Serranus Hastings purchased all of Eden Valley, drove hundreds of head of livestock there, and had a series of stockmen manage his herds. As Eden Valley was home to approximately six hundred Yuki people at the time, the combination of violent stock managers mistreating Indian people and competition for resources created a strained relationship that led to cycles of violence in the valley, as well as in nearby Long and Round valleys. Particularly in colder months, the Yuki came onto the valley floor to forage for grass seeds, acorns, game, and fish, only to find the grass eaten and the game driven off by large herds of cattle and horses, the acorns eaten by hogs, and the path to rivers and streams blocked by white settlement. As a result, the Yuki raided stock to subsist. In

retaliation, white ranchers and settlers killed the Yuki. In response, the Yuki killed more stock—now in retaliation, not just to eat—and, rarely, also killed white men. This cycle repeated, over and over. It is important to note, this state of affairs was not unique to the region or for men like Hastings: these cycles of violence existed throughout the state of California in the 1850s and 1860s. While not unique, it is important to note that there were some contributing factors to this often-seen cycle that were indeed exceptional in the case of Eden and Round valleys.

Hastings' first stock manager, H. L. Hall, who both watched the cattle and horses and operated a farm with over fifty Indian workers, mistreated the local Indigenous population. Hall, known for his violence against Indians, abused and cheated Indian workers, and whipped them if they complained. This led to Yuki retaliation against the stock housed in the valley. Hall not only went out on brutal retaliatory raids against the Yuki, he also notified Hastings of the threat to his investments—without telling Hastings of his role in starting the trouble. Hastings responded by bringing his considerable political and financial influence into play—something not to be found elsewhere in terms of his prominence.

Hastings visited Eden Valley, had personal and community meetings with settlers in the region (the settlers primarily lived to the north, in adjacent Round Valley, not in Eden Valley itself), and suggested forming a volunteer company to suppress local Indian populations. He dictated the petitions to the governor, a personal friend of his, and also offered to finance the operations of the company until state or federal funds could reimburse these efforts. For those hesitant to support such actions, Hastings personally implored individuals to reconsider. He also wrote military commanders and the governor personal letters urging action. In his letters to the governor, he offered to provide salaries and supplies, as well as facilitate the formation and operation of the volunteer companies. Assisting him in this was his business partner, Thomas J. Henley, the Superintendent of Indian Affairs for California. Henley made his home in Round Valley, which also contained a reservation—the Nome Cult Indian Farm. Henley's interests were well-served by formation of a volunteer company: The company would suppress local Indian resistance and bring prisoners there, which would augment the reservation workforce—a workforce Henley and his cronies were using to work their farms, sawmill, and ranching operations, free of charge and at the expense of the federal government. In advance of the governor's approval, Hastings selected a captain for the company and encouraged its formation. Indeed, the Eel River Rangers, as they called themselves, took the field without authorization.

The operations of the company seem to have been well known to Hastings. The captain of the Eel River Rangers, Walter S. Jarboe, a notoriously violent “Indian fighter,” kept Hastings apprised of the Rangers' activities in back-channel reports. During these operations, Hastings continued to write the governor and monitor developments in the field. In particular, he scorned U.S. Army officers in the region, who protected Indian interests rather than advanced white interests. Hastings also gave intelligence to the local press, encouraging them to support the efforts of the Eel River Rangers. For Hastings, Henley, and the local white population, the operations of the Rangers were a huge success.

By the time the Eel River Rangers disbanded in 1860, evidence suggests that Eden Valley had been totally depopulated of Yuki people. This conflict—the Rangers and other white settlers fighting with Yuki over land and resources, July 1859 to January 1860—became known as the Mendocino War. Eventually, it spread into the adjacent valleys and produced disastrous consequences for not only Yuki living there, but other Native American groups as well. Conservatively, approximately six hundred Native Americans were directly killed in Long, Round, and Eden valleys, and many hundreds more taken prisoner and forced into slavery on Henley's Nome Cult Indian Farm or the Mendocino Reservation, or on private ranches and farms as domestic and agricultural slaves (euphemistically called apprentices or servants by whites). This included women and children, some of whom were clearly also being sexually abused by the almost all-male population of Round Valley. Evidence also suggests that hundreds more Native Americans were killed or captured by unauthorized vigilante companies.

By the conclusion of the Mendocino War in January 1860, word of atrocities had spread to the point that the state sent a five-man investigative committee to the region to take depositions and formulate

a report on the conflict. Made up of members of the California State Senate and Assembly, the investigation produced two reports: a majority report supported by four members, and a minority report authored and supported by one member. The latter report, authored by an assemblyman from Mendocino County, supported the efforts of the local settlers. The majority report condemned what had happened as despicable. Neither report, however, produced any substantive outcomes. Despite the fact that many of the depositions taken included clear evidence of criminal behavior—including rape, murder, and fraud—no charges were ever brought against the members of the Eel River Rangers or the settlers involved in ad hoc, unauthorized companies operating against the Native population of Round, Long, and Eden valleys. As to Serranus Hastings, he was not called out or singled out for the role he played.

Hastings' holdings were secure, and his direct involvement in the affairs of Eden and Round valleys ends in the historical record after 1861. But the consequences of his actions and those of his fellow Americans have been lasting and devastating, particularly for the Native Americans driven onto reservations as part of the campaigns Hastings orchestrated. While Hastings did not come under direct scrutiny at the time, the federal government undertook investigations into the activities of Hastings' business partner, Thomas J. Henley, and his agents and employees working at the reservation in Round Valley, uncovering wide-ranging fraud and malfeasance. Despite Henley and his subagent's firings, corruption persisted for decades to come, with a revolving-door of agents and superintendents holding these patronage posts engaging in similar nefarious practices, to the detriment of the Native Americans of Round Valley and California. Violence against the much-depleted California Indian population of the region continued into the 1870s, although on a much reduced scale. The Round Valley Indian Reservation continued to operate, but with the Yuki no longer forming its core population—the war had so devastated their numbers, they were soon outnumbered by other California Indian groups being removed to the reservation, sometimes from many miles away. Yuki or not, the reservation remained a horrific place for internees. Corruption by Indian agents was the rule rather than the exception. Native Americans, in addition to the continued specter of violence, rape, and kidnap, suffered from malnutrition, disease, and exposure. Reservation life was further complicated by white squatter's attempts to claim portions of the Round Valley, despite its designation as a federal Indian reservation. Ultimately, the settlers won out, and the size of the reservation reduced to make way for settlement.

By the 1880s, national events began to overtake the surviving Native Americans in and around Round Valley. The Dawes Act, a federal law designed to force Indian assimilation by allotting lands to individuals rather than maintaining tribal holdings in trust passed in 1887. Allotment granted title to individual Indians, then offered the remainder of lands for sale to non-Indians. This resulted in further losses for Native groups unable to resist allotment, including Native Americans in Round Valley. Meanwhile, the Native Americans of Round Valley were overlooked or ignored by developments that might have helped them. For instance, efforts at reform in some parts of the state—especially southern California—concentrated on former Mission Indian populations, and mostly disregarded the rural Native populations in the rest of the state.

American citizenship for Native Americans in the 1920s, Depression-era federal programs, and the rise of employment during World War I and World War II provided some small benefits, but nothing close to ameliorating the extreme poverty found in the Round Valley region. Without the protection of federal Indian treaties, the Yuki and other Indian residents of the valley had few protections and almost no legal recourse. In 1936 the Round Valley Indian Tribe, a conglomeration of the descendants of several Native groups, including the Yuki, was recognized by the federal government, following the creation of a tribal constitution and government under the New Deal's Indian Reorganization Act of 1934. Despite federal recognition—something many California Indian groups are still battling for today—life remains difficult for the Native Americans of Round Valley. In the years following World War II, the reservation and its surrounding area have witnessed a steady economic decline. The most recent employment figures for the reservation suggest an unemployment rate of nearly ninety percent. Meanwhile, to the south, Eden Valley remains non-Native land.

Serranus Hastings, well known as a philanthropist, legal scholar, and California founding father, has a complicated legacy, one containing connections to the darkest chapter in the history of California. While one cannot say the \$100,000 endowment made by Hastings in 1878 was drawn entirely from monies generated by his real estate investments in Eden Valley, or the stock he raised and sold that had lived and grazed there, one can argue that some fractional portion of his total fortune certainly did emanate from there—and thus from his actions supporting atrocities against Native Americans, especially the Yuki of Eden and Round valleys. While many white Californians in the nineteenth-century California had blood on their hands, either by participation, complicity, or silent acceptance of atrocity, Hastings' involvement in this episode was nonetheless significant.

Exhibit B

Copy of relevant provisions of the
Education Code §§ 92200 et seq.

Code: Section: [Up^](#) [Add To My Favorites](#)**EDUCATION CODE - EDC****TITLE 3. POSTSECONDARY EDUCATION [66000 - 101060]** (Title 3 enacted by Stats. 1976, Ch. 1010.)**DIVISION 9. UNIVERSITY OF CALIFORNIA [92000 - 92961]** (Division 9 enacted by Stats. 1976, Ch. 1010.)**PART 57. UNIVERSITY OF CALIFORNIA [92000 - 92988]** (Part 57 enacted by Stats. 1976, Ch. 1010.)**CHAPTER 3. Special Colleges [92200 - 92215]** (Chapter 3 enacted by Stats. 1976, Ch. 1010.)**ARTICLE 1. Hastings College of the Law [92200 - 92215]** (Article 1 enacted by Stats. 1976, Ch. 1010.)

[92200.](#) The law college founded and established by S. C. Hastings shall forever be known and designated as the Hastings College of the Law.

(Enacted by Stats. 1976, Ch. 1010.)

[92201.](#) The college is affiliated with the University of California, and is the law department thereof.

(Enacted by Stats. 1976, Ch. 1010.)

[92202.](#) The college shall afford facilities for the acquisition of legal learning in all branches of the law. To this end it shall establish a curriculum of studies and shall matriculate students who reside at the University of California or elsewhere in the state.

(Enacted by Stats. 1976, Ch. 1010.)

[92203.](#) The faculty of the University of California shall grant, and the president shall sign and issue, diplomas to the students of the college.

(Enacted by Stats. 1976, Ch. 1010.)

[92204.](#) The business of the college, which includes the power to incur indebtedness, shall be managed by the board of directors. Six directors constitute a quorum for the transaction of all business. The directors shall serve without compensation.

One of the directors shall always be an heir or representative of S.C. Hastings. All other directors taking office after January 1, 1981, shall serve for terms of 12 years. Directors in office prior to January 1, 1981, shall serve for the terms provided in the bylaws of the college in effect on that date.

(Amended by Stats. 1980, Ch. 1155, Sec. 31.6.)

[92205.](#) In the investment and management of endowment funds and properties under its jurisdiction, the Board of Directors of the Hastings College of the Law shall comply, to the extent practicable, with the endowment investment and management policies of the Regents of the University of California. Any variance from the endowment investment and management policies of the regents shall be presented to, and reviewed by, the board, which shall adopt a resolution specifying the reasons for the variance. In addition, the board shall comply with all of the following requirements:

(a) The utilization of funds shall be in accordance with the terms specified by the donor.

(b) Prior to the delegation of any authority to engage in making investments, reallocations, or reinvestments of endowment funds on its behalf, the board shall seek and review the written opinion of the general counsel regarding the propriety of the proposed action under the endowment investment and management policies of the regents then in effect.

(c) "Endowment fund" means a fund derived from a gift, bequest, or grant, the terms of which stipulate that the fund principal remain inviolate and that only the income may be expended.

(d) Annual audits shall be conducted by a certified public accountant firm in accordance with generally accepted auditing standards established by the American Institute of Certified Public Accountants.

(Amended by Stats. 1992, Ch. 31, Sec. 1. Effective January 1, 1993.)

92205.5. It is the intent of the Legislature that the Regents of the University of California provide for a review of the annual audits conducted pursuant to subdivision (d) of Section 92205 and annually report any violations revealed by these audits to the Board of Directors of the Hastings College of the Law, to the appropriate fiscal and policy committees of the Legislature, and to the Legislative Analyst.

(Amended by Stats. 1992, Ch. 31, Sec. 2. Effective January 1, 1993.)

92206. Vacancies occurring in the board of directors after January 1, 1981, other than through the death or resignation of the heir or representative of S.C. Hastings, shall be filled by the Governor and approved by the Senate, a majority of the membership concurring.

(Amended by Stats. 1980, Ch. 1155, Sec. 31.8.)

92207. The officers of the college are a dean, a registrar, and 11 directors. The dean and registrar shall be appointed by, and may be removed by the board of directors.

(Amended by Stats. 1980, Ch. 1155, Sec. 31.9.)

92209. The dean of the college is ex officio a member of the faculty of the University of California.

(Enacted by Stats. 1976, Ch. 1010.)

92210. Professorships may be established in the name of any founder who pays to the college the sum of one hundred thousand dollars (\$100,000) or such greater sum as may be determined by the directors.

(Amended by Stats. 1980, Ch. 1155, Sec. 31.11.)

92211. The sum of 7 percent per annum upon one hundred thousand dollars (\$100,000) shall be appropriated annually by the state and shall be paid in semiannual payments to the directors of the college.

(Enacted by Stats. 1976, Ch. 1010.)

92212. If the state fails to pay to the directors of the college the sum of seven thousand dollars (\$7,000) annually, pursuant to Section 92211, or if the college ceases to exist, the state shall pay to the heirs or legal representatives of S. C. Hastings, the sum of one hundred thousand dollars (\$100,000), and all unexpended accumulated interest, unless the failure is caused by mistake or accident, or the omission of the Legislature to make the appropriation at any one session.

(Enacted by Stats. 1976, Ch. 1010.)

92213. All courses by the college at Sacramento shall be deemed to be given at the site of the college in San Francisco.

(Enacted by Stats. 1976, Ch. 1010.)

92214. The Director of General Services shall transfer the property located at 55 and 75 Hyde Street in the City and County of San Francisco to the University of California to be used for the benefit of the Hastings College of the Law for school purposes.

The university shall have the power to sell or lease the property to a nonprofit corporation in order to provide housing facilities for the students, faculty, and employees of the college.

If such property is sold, it shall be sold for its fair market value, with such valuation approved by the Department of Finance, and the proceeds of the sale shall be deposited in the General Fund. If such property is leased, the proceeds of the lease shall be deposited in the General Fund.

(Enacted by Stats. 1976, Ch. 1010.)

92215. The power to incur indebtedness pursuant to Section 92204 shall include, but is not limited to, the power to issue revenue bonds in the name of the board of directors and as obligations of the board of directors. Revenue bonds may be issued pursuant to the provisions of Chapter 5 (commencing with Section 92400) of Part 57 and, for such purposes, the board of directors shall have the same powers to issue revenue bonds for the benefit of the Hastings College of the Law as are conferred upon the Regents of the University of California for the benefit of the University of California by Chapter 5 (commencing with Section 92400) of Part 57 and shall be subject to the limitations imposed therein. Any such bonds issued for the benefit of the Hastings College of the Law shall be issued in the name of Hastings College of the Law without using the name of the University of California.

(Added by Stats. 1979, Ch. 325.)

Exhibit C

Copy of the March 26, 1878 Act to Create
Hastings College of the Law, in the
University of the State of California

UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW

200 McALLISTER STREET
SAN FRANCISCO, CA 94102-4978

**LEGAL STATUS OF
HASTINGS COLLEGE OF THE LAW**

- The Act creating Hastings College of the Law, March 26, 1878 (copy attached), was enacted prior to the time the University of California was elevated to constitutional status.
- It states that:
 - (1) S. C. Hastings be authorized to found and establish a law college whose officers shall be a Dean, Registrar, and eight directors who shall, when vacancies occur, fill the same from members of the Bar Association of the City of San Francisco with always one director being some heir or representative of S. C. Hastings;
 - (2) that the Law College shall affiliate with the University of the State upon such terms as shall be for the welfare of the College and the University; and
 - (3) that the College shall be the Law Department of the University.
- The University was elevated to constitutional status in 1879. The Constitution provided that there was to be no change in the substantive law relating to the University and the institutions that had been previously affiliated. The new constitutional provision specifically provided that "The University..., and its organization and government shall be perpetually continued in the same form and character prescribed by the Organic Act creating the same..."
- As early as 1879, the Supreme Court ruled that the College should affiliate with the University and be governed by the laws applicable to the University "...except as otherwise provided, either in the act of 1868 or in the act of 1878..." (Foltz vs. Hoge, 54 Cal. 28)
- More recently, in 1987, the Court of Appeals, in Tofoya vs. Hastings College of the Law, had this to say: "Thus, in the only two cases concerning the status of Hastings to reach our highest court, it has been affirmed that Hastings is an affiliate of and governed by the same laws as the University."
- The California Education Code provisions governing the University of California apply to Hastings. Section 92201 provides that Hastings is affiliated with the University and is the Law Department of the University.
- While there is no formal written agreement between the University and Hastings, there is ample evidence of a cooperative, friendly relationship which has lasted 112 years.

TWENTY-SECOND SESSION.

fourteenth, in the year one thousand eight hundred and seventy-six, and of May seventh, and October first, of the year one thousand eight hundred and seventy-seven, are hereby in all things ratified and confirmed and made valid.

SEC. 4. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed, and this Act shall take effect immediately.

CHAP. CCCL.—[See volume of *Amendments to the Codes.*]

CHAP. CCCLI.—*An Act to create Hastings' College of the Law, in the University of the State of California.*

[Approved March 26, 1878.]

The People of the State of California, represented in Senate and Assembly, do enact as follows:

SECTION 1. That S. C. Hastings be authorized to found and establish a Law College, to be forever known and designated as "Hastings' College of the Law." That the officers of said college shall be a Dean, Registrar, and eight (8) Directors. That the Directors shall be Joseph P. Hoge, W. W. Cope, Delos Lake, Saml. M. Wilson, O. P. Evans, Thos. B. Bishop, John R. Sharpstein, and Thos. I. Bergin, of the Bar Association of the City of San Francisco, who shall, when vacancies occur, fill the same from members of said Association or otherwise, and shall always provide for filling a vacancy with some heir or some representative of the said S. C. Hastings. That the Dean and Registrar shall be appointed by the Directors. Authorizing founding of Law College.

SEC. 2. Said College shall affiliate with the University of the State, upon such terms as shall be for the welfare of the College and University, and shall be the Law Department of the University. Shall affiliate with University.

SEC. 3. The Faculty of the University shall grant diplomas to the students of the College, and the President shall sign and issue the diplomas.

SEC. 4. There shall be set apart for the use of the students of the College some room or suitable hall at the University, and the Board of Supervisors of the City of San Francisco is authorized to supply a suitable hall in the City of San Francisco for the students and Directors. Room for students.

SEC. 5. The Dean of said College shall be ex officio of the Faculty of the University, to be designated as such by the Directors of the College.

SEC. 6. The diploma of the students shall entitle the student to whom it is issued to a license to practice in all the Diploma made license to practice.

Courts of this State, subject to right of the Chief Justice of the State to order an examination, as is in ordinary cases of applicants without such diploma.

Condition.

SEC. 7. This Act is passed upon the condition that said S. C. Hastings shall pay into the State treasury the sum of one hundred thousand dollars, and is never to be refunded except as hereinafter provided.

SEC. 8. The sum of seven per cent. per annum upon one hundred (\$100,000) thousand dollars is to be appropriated by the State and paid in two semi-annual payments to the Directors of the College.

Business of College.

SEC. 9. The business of the College shall be to afford facilities for the acquisition of legal learning in all branches of the law, and to this end shall establish a curriculum of studies, and shall matriculate students who may reside at the University of the State as well as students residing in other parts of the State.

SEC. 10. Professorships may be established in the name of any founder of such Professorships who shall pay to the Directors the sum of thirty (\$30,000) thousand dollars.

SEC. 11. All the business of the College shall be managed by the Directors without compensation, and all acting officers, including the Dean and Registrar, shall be appointed by the Directors and removed by them.

SEC. 12. The Law Library Association, of the City of San Francisco, shall grant to the students the use of their library upon such terms and conditions as they may agree with the Directors of the College.

Object of Act.

SEC. 13. The object of this Act being to grant a perpetual annuity for the support and maintenance of said College, should the State, or any government which shall succeed it, fail to pay to the Directors of said College the sum of seven per cent. per annum, as above stipulated, or should the College cease to exist, then the State, or its successor, shall pay to the said S. C. Hastings, his heirs or legal representatives, the said sum of one hundred (\$100,000) thousand dollars and all unexpended accumulated interest; *provided*, that such failure be not caused by mistake or accident, or omission of the Legislature to make the appropriation at any one session.

SEC. 14. That the Chief Justice of the Supreme Court of the State (or if there be no such judicial officer of the State or Government) shall be the President of the Board of Directors, five of whom shall be a quorum to transact all business.

SEC. 15. This Act shall take effect and be in force from and after its passage.

Exhibit D

Paul Laurin's Dissenting Views on Re-naming

Response Comments Regarding Proposed Recommendations of HLRC: Statement of Paul J,
Laurin of May 19, 2020

A moment on process: Recently the tempo of decision-making for the HLRC has loped ahead, in part on non-controversial matters but also as to controversial ones. Late last year after Anne Marie Helm departed essential aspects of what we intended to do were abandoned, as far as I can tell without much discussion. I have felt since last month, in the midst of a global pandemic, that a “cram-down” of a minority view is underway on the critical issue of naming of the College. Given the process, written plan and substantial efforts undertaken since 2017 I believe fundamental fairness mandates that the vital process of discussion and debate over name change occur over an appropriate schedule and slow down. We have not completed that process. In fact, we have just begun it. If there are gripping concerns about the existential threat such action poses to the College, this is a place to air that. Cramming a recommendation through is not going to provide the closure and healing we should be encouraging by our process.

Now more substantive comments which I will asked to appended to any report submitted as presently formulated:

The HLRC is poised to make a historic and disturbing finding on the conduct of its founder. Serranus Hastings did not use his position of power and prestige as he should have, on that we all seem to agree. However, the full measure of the public morality of the man remains somewhat obscured behind some of his outsized accomplishments. But that he was significantly responsible for genocidal atrocities against the native peoples of Round Valley is not in dispute.

Going back years, what initiated our endeavor was the public condemnation of SH and call for a reexamination of the naming of the college for a historical figure possessed of such dubious appetite and ambition to accumulate wealth at the expense of others.

What we have learned in viewing the specific acts of Hastings and his cohorts in the Round Valley has only served to solidify the view that Hastings was capable of, and likely engaged, in reprehensible brutality directed against native peoples. One can be confident it likely did not end there. But the analysis remains unclear in putting the man into broader context of the other events of the day such as the Civil War, slavery and immigrant exploitation.

It is disturbing to confront such a character as the progenitor of the school and realize he reflects the dark professional ethos of a preeminent lawyer and jurist of the time in California.

This is a hard and unpleasant task. But it is vital that it be done because treatment of native peoples and race stand so central to the North American experience.

I submit that the report as drafted with its recommendation on name changing *fundamentally has failed* to do what the committee set out to do: That is, to robustly grapple with and deliberate the public policy implications of name change, fully informed by pertinent historical context, legal analysis and critical community input from the alumni and broader community.

Now we must acknowledge his name will be inescapably associated with the most inconceivable of crimes, made more inconceivable because of the stature he enjoyed. And his name is the name many of us carry on our diplomas.

I know this *fundamental failure* of the committee has occurred because I spent hours reconstructing the committee's timeline. In doing so I was disappointed, because I felt much time, effort and good will had been dismissed.

I am also dismayed because I feel a critical opportunity to do right by an open and fairly informed process is being rejected on an accelerated timeline amidst a great global crisis.

I also believe the short shrift given to name change in the report and the Committee perhaps misses a broader and critical opportunity for the law school, within the broader context of the University of California.

I view my role in serving as not only a single alumnus and life-long Californian educated entirely in its public education system, but also as the former president of the BOG, the volunteer board of the 20,000 plus member alumni association—for 4 years I served on the BOG. It is *the* group dedicated to and predicated upon promoting alumni engagement and inclusion in the ongoing life of the college.

Sadly, those alumni are being excluded and rebuffed in a fundamental way by this process.

In June 2018, Professor Schiller wrote a carefully considered and reasoned memo for the Subcommittee on Renaming entitled Proposal Regarding Renaming. [I will submit it with this statement.]

I literally was the sole dissenter from its reasoned view that the committee could not as a fundamental organic matter credibly make a name change recommendation. The memo submitted (while I was in Europe) literally says:

- [i]t is imperative that the decision [on name change] be made only after a robust, transparent process that includes input from all stakeholders.
- [It further states] Notwithstanding Professor's Lindsey's report, "the Committee believes that there is some historical information with respect to other aspects of Hastings' life , as well as substantial non-historical information with respect to the consequences of renaming that have not been generated."
- Finally, in crafting the guidance on naming considerations, Professor Schiller for the subcommittee expressed discomfort at applying the principles to a specific instance, stating "One of the basic assumptions of the rule of law is that there be a substantial separation between the institutions that craft the rules of general applicability and those that apply those rules to specific cases."
- [That is to say, the Committee in identify appropriate considerations should not also engage applying them.]

I do not believe these recommendations were rejected but instead the Committee (in part at my recommendation stated as a “disagreement”) chose to leave the record open and develop it to see where it would lead. Principal in doing so was the expectation, stated by Professor Schiller, that the Committee would retain outside counsel to advise on bequests and donative issues as well generate information on Constitutional and Legislative issues.

Professor Schiller’s reluctance to recommend name change was not embraced in June 2018. Instead the Committee undertook to fully develop the record, get advice on pertinent legal and legislative issues, seek community input and then revisit the issue.

Since we clearly have not done that, this raises the question what has changed since then regarding the issues informing name change (as contrasted with the very significant work done on restorative programs at the college) then: As far as I can tell, Nothing. Nothing but the conclusion that the difficulties and impediments of an easy and conservative approach are worth abandoning these vital inputs.

When I reviewed my archives, I realized Anne Marie Helm lead the subcommittee on a community survey. Multiple drafts were exchanged. I found extensive discussion all the way through July 2019. Chief Marketing Officer, Alex Shapiro, was brought in expressly to support the technological roll out of an online survey to alumni and the community.

I was not notified and found no reference in the meeting reports of any determination to abandoned that important process. But Ms. Helm, Mr. Shapiro, John McCoy and Elise Traynum have all departed the college, and with them apparently the impetus to organize the effort at soliciting community opinion and further input and analysis.

In late 2019 after Anne Marie’s departure and until February, 2020, I located no HLRC communications regarding the survey or name change issues.

Then, in notes of the February 27, 2020 meeting *I see a refence to the report being presented in person—it was not circulated to me by email. (I was absent due a death in the family and notified the Chairman of that circumstance..)*

Then on April 2, 2020, well after the emergence of our tragic global pandemic, the report was circulated by email for the first time to me with, again for the first time to my knowledge, an affirmative recommendation for no name change. The email directed an up or down vote on the lengthy report within 13 days. Revisions were submitted on April 23, requesting a vote within 7 days. I and others voiced concerns over the surprising fast tracking of the report, including a new and central conclusion on name change. Initial reassurances of more time were followed by a May 11 email rejecting the requests for more time and discussions and directing a vote within 3 days. At the suggestion of Professor Schiller acknowledging, this conference was set up. I believe with the objective of convincing me to join a putative majority.

But this approach is a big mistake. Given the absence of community input, legal analysis and historical context, if any recommendation is to be made it should be to create a study group to do

that work and really look seriously and pragmatically at name change. Exactly what Professor Schiller concluded so emphatically on the record as it existed in 2018.

On the current record, which we undertook to develop, I find myself in the position Professor Schiller was in in 2018, feeling that we lack the critical input necessary for the robust discussion and careful deliberation that his report contemplated and the committee endorsed.

In short, on this record I do not believe it appropriate for the committee to now issue a recommendation on the re-naming. In effect, we have only started the necessary discussions and we don't have all the data we agreed and worked toward generating for over a year. I do concur whole-heartedly in the programs of restorative justice advanced by the committee. They are a tangible and a powerful way of channeling the law school's resources and energies.

If we must rush forward, even in the face of global pandemic, on name change I support a statement of pros and cons only. But I would prefer to complete the work we undertook and I have spent years attending to.

Some final words on perspective and opportunities:

In this new age in which we live, I submit that *the benefits* of name-change should be carefully considered, and not assumed to be disruptive and upsetting to a status quo which frankly faces deep challenges financially and perhaps culturally as well. A couple data points bear stating, in March 2020, due to Covid- 19 UC law schools reported the need for funding of tens of millions in unexpected expenses. Further, I have read reports that amongst public law schools and UC law schools in particular, UC Hastings' students carry the largest load of student debt.

In a nation in which the "student class" is burdened by over a trillion in student debt and economic recovery hinges in part on the successful transition of these new professionals to productive economic life, I believe the Board of Directors must think outside the box—perhaps dramatically so—and that name-change might be exactly a course to chart a new approach to revamp UC Hastings' historical insular identity.

But this is not to detract from the main thrust of what I have seen as the HLRC function, to assess Serannus Hastings' conduct, a point that buttresses my sympathy for name change.

I note that public comment on Judge Hastings' conduct dates back at least to 2007 in internet-available articles. Hastings was expert in utilizing "externalities" to shift to the State the substantial expenses of clearing his claimed lands and perpetuating a slave system predicated on terror, killings, rapes, and forced family separation which funneled into the slave camp known as the Nome Cult Farm, where one could eat only if one could work.

This system of liquidation, enslavement and shifting of externalities is, and I believe the committee has found it, "genocidal", with all that terms carries with it.

We now live in a world of fundamental changes and his antiquely worded sentiments take on new significance. In the *Me Too*, post-Charlottesville, *Black Lives Matter*, *Standing Rock* era, I am concerned we run the risk of missing the tidal changes in attitudes and values with which all our boats may be lifted. Perhaps these are the polemics the report suggests we can and should avoid. For sure, we understand that these issues inform the cultural matrix through which the Board must act, and, ultimately, may be judged. But now with Covid 19, no greater invitation to re-imagining the future could exist.

It is hard for me to conceive the impact it will have if we recognize “significant proof” of genocidal atrocities, a truly monumental placard in the history of the institution, yet still stand by the surname *in perpetuity*. I am concerned we are at risk of grave minimization by way of the banalization of the term “genocide”.

When we started there were apprehensions, even outright resistance to calling this conduct a “genocide.” Aside from ignoring the process we agreed to, I am concerned the proposed recommendation on name change does not adequately reflected the significance of the findings we are now subscribing to. Once the school itself accepts that proposition (genocidal atrocities by its founder), even by way of ad hoc assessment, I think the obligation to act with utmost care and sensitivity must be apparent, and should ultimately repose with the Board as the chief policy making body of the law school.

In this regard, the recommendation misses a critical opportunity to respond to the “Moral Case for Renaming” the school as it was raised in the 2017 SF Chronicle article. I don’t think it is enough to say we will be criticized either way we go. What are the moral issues, and where do they lead? Professor Shiller provided a very detailed road map for these consideration.

I am sure there are substantial pockets of attachment to the name, perhaps deep ones. Yet why not think in terms of the naming alternatives, which could be substantial for the law school at this very difficult time. I note a recent article outlining a \$50 million gift given by former dean Gordon Rausser to the College of Natural Resource’s at Berkeley in February of this year (<https://news.berkeley.edu/2020/02/29/college-of-natural-resources-receives-50-million-naming-gift/>). In these extraordinarily challenging economic times, when the very existence of significant components of the higher education system and the welfare of the “student class” is at issue, I believe our analysis should be more robust on the subject of real and tangible benefits of name-change.

For my own part, and those I informally poll, it is hard to justify retaining a name for the school of a confirmed human rights’ criminal. If any fight would be worth fighting, it would seem that would be it. In any event, it may be justified. On the issue the alumni should be heard. Position papers and discussion should be encouraged, as we planned they would be.

Therefore, I dissent from any naming recommendation without completing our tasks, undertaken and now abandoned, of alumni outreach, legal analysis and historical contextualization.

I am reminded of one of the first events at the College I attended: a lecture by William Brennan entitled "In Defense of Dissents." I hope in that spirit my dissent serves the ends of fair process.

APPENDIX B

**HASTINGS LEGACY REVIEW COMMITTEE
UC HASTINGS COLLEGE OF THE LAW
Summary of Report and Recommendations**

HASTINGS LEGACY REVIEW COMMITTEE
UC HASTINGS COLLEGE OF THE LAW

Summary of Report and Recommendations

submitted to Chancellor & Dean David Faigman, July 29, 2020

1. The Hastings Legacy Review Committee (HLRC) was formed by Chancellor & Dean David Faigman in August 2017. The HLRC was asked to examine the historical involvement of founder Serranus Clinton Hastings in mass killings of California Native Americans in the Eden and Round Valleys in Northern California in the 1850's and 1860's. The HLRC was also asked to make recommendations for any action that should be taken by the College. The HLRC completed its Report and Recommendations and submitted it to the Chancellor & Dean on July 29, 2020.
2. As part of the Committee's work, Professor Brendan Lindsay of Sacramento State University, author of Murder State: California's Native American Genocide, 1846-1873, was commissioned to research and write a historical paper describing Serranus Hastings' actions in the Round and Eden Valleys. Professor Lindsay completed a white paper that corroborated the historical narrative that Serranus Hastings bears significant responsibility for violence against Native Americans in eastern Mendocino County in 1859, and in particular against the Yuki people. A detailed summary is included with the Report and Recommendations of the HLRC.
3. The HLRC reached out to the Round Valley Indian Tribes (RVIT) and other tribal organizations to discuss the development of a relationship with the modern descendants of the affected tribal communities and to pursue restorative justice programs and activities to heal the historical wrongs. Based on the positive response, HLRC reached a consensus to develop collaborative and supportive programs to benefit the affected tribal communities and to develop a restorative justice agenda, academic engagement and public awareness.
4. The HLRC considered the pros and cons of changing the name of the College. Pros included, among other things, that failure to change the name would signal insensitivity to the profoundly negative impact that Serranus Hastings' legacy had on the affected community, resulting in adverse publicity and reputational damage. Cons included, among other things, that changing the name would lead to confusion and reputational injury of another sort – that the Hastings name is associated with the College, not the man. In other words, the name has taken on a secondary meaning not associated with Serranus Hastings. Additionally, the RVIT, which includes the descendants of the affected tribal community, was not in favor of the name change, as it would constitute “erasure” and remove the opportunity to contextualize, and seek restorative justice for, the gruesome and repugnant historical acts in which Serranus Hastings was complicit.
5. The HLRC did not do an in-depth analysis of the potential costs and impact of changing the College's name, but the committee members as a whole agreed the name should not be changed at this time. Rather, a significant number of the committee urged the Chancellor & Dean to leave open the question for further study and review as appropriate. One Committee member dissented

on the process used by the Committee and called for more study and the conduct of surveys of alumni and relevant communities. However, the Committee unanimously set as its highest priority the restorative justice programs and assistance directed at reconciliation and healing with the affected tribal community.

6. The HLRC set forth multiple recommendations to the Chancellor & Dean, including the following, as abridged for this summary:

- the formation of a 501(c)(3) entity in association with, and jointly governed by, the RVIT, to provide an organizational structure to address various tribal needs;
- structure relevant clinical or experiential education programs;
- reach out to and engage with Governor Newsom’s Tribal Advisor and the Truth and Healing Council;
- organize Hastings-connected pro bono attorneys in connection with this effort;
- assist tribal leaders with various legal and tribal cultural needs;
- assist with the legal aspects of establishing a museum or cultural center in Round Valley and related projects;
- establish a lecture series with guest speakers, tribal elders, and others dealing with “Righting the Wrongs;”
- seek grant opportunities towards concerns of the tribal leadership;
- dedicate a memorial to the Yuki people at an appropriate location within the Hastings campus, with display panels, historical explanations and cultural presentations;
- provide a fully-functional, interactive public website to focused on the historical, academic, and programmatic work and the related restorative justice agenda; and
- promote and encourage legal education for Native American students, including engagement of a faculty chair for the establishment of an Indian Law Center at Hastings.

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APPENDIX C

**NOTE AND PETITION TO CHANCELLOR &
DEAN FAIGMAN FROM JUSTICE LAMBDEN**

JUSTICE JAMES LAMB DEN

CALIFORNIA COURT OF APPEAL (RET.)

350 SAINT CATHERINE'S SQUARE

BENICIA, CALIFORNIA 94510

Dear Frigman

We wanted to let you and the Board know that we sent the enclosed packet to more than 100 well known Hastings graduates; and we will report the responses that we receive.

sincerely
James Lambden

P.S. Please note that we are not advocating that the school's name be changed.

To the Friends of Hastings College of the Law:

We find ourselves in a moment of heightened consciousness of our country's history and of the enduring social inequality that resulted from oppression of some of our people, including Native Americans.

This renewed interest in social justice presents another opportunity to acknowledge the historical reality of Justice Serranus Clinton Hastings, the source of the founding endowment of California's first law school.

We ask you to consider signing the enclosed request for a resolution that would recognize the need to re-examine what it means to have a premier law school bear Judge Hastings' name, and to encourage and develop a comprehensive study of his role in the history of California and, more broadly, of racial justice in the legal history of California.

We hope to send the letter to Dean David Faigman and the Board of Directors this month.



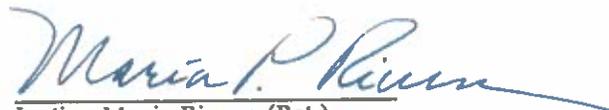
Justice James Lambden (Hastings, 1975)
California Court of Appeal (Ret.)
Former Chairperson Judicial Council Committee on Access and Fairness
Former Chairperson California Commission on Access to Justice
Founding Member, California Tribal/State Court Forum



Justice Joseph Grodin
California Supreme Court (Ret.)
Hastings Professor Emeritus



Judge Thelton Henderson (Ret.)
U.S. District Court, Northern District of California



Justice Maria Rivera (Ret.)
California Court of Appeal
Former Chairperson Judicial Council Committee on Access and Fairness

San Francisco, California

San Francisco, California
August, 2020

To Dean Faigman and the Board of Directors of Hastings College of the Law:

At the first meeting of the newly formed California's Tribal Court/State Court Forum in December of 2010 an awkward silence filled the room when it was announced that the Tribal courts would have access to the California Judicial Council's "Serranus" website.

All of the tribal judges who were present knew that California's first Chief Justice, Serranus Clinton Hastings was actively involved in the genocidal theft of tribal ancestral land before he headed the Supreme Court. He thereby became one of the wealthiest men in the state and founded Hastings College of the Law in 1878. His complicity in the theft of native land and the murder of indigenous people has been well documented (*see attached*).

We are asking that you resolve: to re-examine what it means to have a premier law school bear Judge Hastings' name, considered in particular from the perspective of the original Tribal inhabitants; to take the lead in developing an introductory course on the historical context and development of the law in California (including Hastings' role in that history); and to make a robust commitment to the examination of racial justice in its curriculum.

This is not intended to "cancel" Justice Hastings. It is intended to be part of a larger effort to educate our law students more comprehensively regarding California's legal history—not just the great, but also the loathsome. As a wise woman recently wrote, "we must find a way to move from the merely celebratory to the pedagogical mode for complex figures in our history. We need to know about them fully, not just what we admire. Erasing them is not the way we can learn and change."

If not now, when?

Signed: _____

_____ (please print name and class year)
(and return in the enclosed envelope)

THE MORAL CASE FOR RENAMING HASTINGS COLLEGE OF THE LAW

by John Briscoe

San Francisco Chronicle, July 8, 2017

In America's ever-evolving relations with race, we ride a new wave of sensibility. A moment's reflection reveals the extent that our streets, schools, buildings — even our nation's capital — are named for slaveholders. Many more, no doubt, are named for "mere" racists.

A college at Yale no longer bears the name of John C. Calhoun, in response to increasingly vocal outrage that Calhoun owned slaves and, perhaps worse, was an ardent and eloquent proponent of slavery.

The University of San Francisco just renamed its Phelan Hall, originally named for a former San Francisco mayor who railed against Chinese immigrants and whose campaign slogan was "Keep California white." The hall is now named for legendary football star and magnanimous public servant Burl Toler, an African American.

In this rising crest of new awareness, where, in relation to slavery and racism, might we place genocide?

Between the first European "contact" in 1542 and 1834, the native Californian population dropped from 350,000 to 150,000. The causes of the population collapse were European diseases, abuse at the hands of the Spanish and suicides. After 1834, however, when the native population plummeted from 150,000 to 18,000, the cause was different: Indian hunting was sport for the mostly white gold-seekers and settlers. Indian-hunting raids nearly annihilated the population and had the added benefit of ridding the state of those who might assert their land rights, rights guaranteed under international law.

Serranus Clinton Hastings was promoter and financier of Indian-hunting expeditions in the 1850s. Hastings later founded Hastings College of Law in San Francisco, now the oldest law school in the state, and a part of the University of California system.

Leland Stanford solicited volunteers for his Civil War-era army campaigns against California Indians and, as governor, signed into law appropriations bills to fund those killing expeditions. He later founded Stanford University in the name of his son, Leland Stanford Jr. Both Hastings and Stanford had made fortunes in real estate.

Their ability to acquire land titles was facilitated by the massacre of the rightful claimants, a near-extinction they promoted and funded. As UCLA professor Benjamin Madley wrote in his sobering "An American Genocide," published in 2016 by none other than Yale University Press, both Stanford and Hastings had "helped to facilitate genocide."

Our rising sensibility obliterates the names of those who sought to enslave or discriminate against a people. How ought we treat the names of those who sought to exterminate a people?

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THE GENOCIDAL NAMESAKE OF THE HASTINGS SCHOOL OF LAW

by Bruce Anderson

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A stern visage, the very picture of 19th century rectitude, looked down on passersby from a banner at the corner of McAllister and Larkin, fin de siècle San Francisco. The banner celebrated the adjacent law school, which is named after Serranus Clinton Hastings, born in New York, law degree in Indiana, west to frontier Iowa where he was that state's first congressman and first chief justice, then out to California during the Gold Rush where he became Chief Justice of the California State Supreme Court.

Hastings, through his term as a congressman and founding legal father of the state of Iowa, was already a nationally-connected Democrat when he arrived in California in 1849 looking to add to the small fortune he'd made in Iowa real estate. He knew the Gold Rush also meant a land rush as thousands of Americans made their way into the under-populated state to make their fortunes. But Hastings preferred to look around for likely real estate and legal sinecures rather than pan for gold; and as he prospected for free land he also got himself a seat on California's early supreme court as its chief justice. The Mendocino Indians soon had the judge sitting on them in Eden Valley, near Covelo, which the judge had appropriated for himself as a horse and cattle ranch, remarking that he'd found the place "uninhabited except for some Uka Indians."

The foreman of Judge Hastings' Eden Valley ranch was a giant Texan named H.L. Hall, "Texan Boy Hall" as he was known, and a giant at 6'9" and 280 pounds, a doubly intimidating presence to the Indians who were still trying to adjust to the lethal unpredictability of ordinary-size white men when they first encountered Texan Boy, a recreational Indian killer who showed up with the first wave of white settlers in the Round Valley area in the middle 1850s, and may have killed more Indians than any other single American, including Kit Carson, the generally recognized champ.

While Hall ran Judge Hastings' ranch in Eden Valley, Hastings built himself a big house in Solano County, a remove which would later lend the judge what he seemed to think was

plausible deniability when his foreman became a little too notorious for his freelance retaliatory rampages against the Indians on the judge's behalf, and the judge reluctantly let Texan Boy go. A psychotic baby killer, after all, was an unseemly sort of employee for a state supreme court judge. Texan Boy, though, soon got a paid job killing Indians with Jarboe's Eel River Rangers.

The Indians had been casually murdered in every part of Mendocino County since the Gold Rush. And every year saw new and larger expeditions of both settlers and Army units sent out to kill them. But Judge Hastings, Texan Boy Hall and Walter Jarboe, in California's first public-private partnership, managed to convert dead Indians to cold cash in expeditions against them throughout the Eel River drainage, from Covelo to Hayfork, public funding arranged by Judge Hastings.

"A little more than a year ago, Hall of Eden Valley employed 13 Indians in place of pack mules to go and pack loads from Ukiah City to Eden Valley, and promised to give each one a shirt in payment; the distance, I think, is about 40 miles. The Indians commenced complaining at not receiving the shirts, and he, Hall, whipped two of them, to keep them quiet; he said he never gave them the shirts after he whipped them." (Indians War Files) In retaliation for not getting their shirts from the judge and Texan Boy, the Indians, knowing exactly on whose behalf Texan Boy was acting, killed Judge Hastings's \$2,000 stallion. At the time, no white man in Mendocino County was in danger of drowning in the milk of human kindness, but Judge Hastings and Texan Boy Hall were extreme even by the frontier standards of 1856.

In retaliation for the death of Judge Hastings' stallion, neighboring rancher William T. Scott would testify, Texan Boy got up a gang of his friends and "commenced killing all the Indians they could find in the mountains; when Hall met Indians he would kill them. He did not want any man to go with him to hunt Indians who would not kill all he could find, because a knit (sic) would make a louse. Mr. Hall said he had run Indians out of their rancherias and put strychnine in their baskets of soup, or what they had to eat."

Scott related another incident when Hall, having killed all the adult males among a group of Yuki Indians he'd encountered near Covelo, took some women and children into his custody with the apparent aim of taking them in to the reservation at Covelo. "I think all the squaws were killed because they refused to go further. We took one boy into the valley, and the infants were put out of their misery, and a girl ten years of age was killed for stubbornness."

But Judge Hastings was still unhappy about the Indians killing his stallion, and he seemed to consider Texan Boy's random revenges inadequate pay back for the loss of the horse. The judge wanted *all* the Indians of inland Mendocino, Humboldt and Trinity counties permanently gone. On July 11, 1859, the judge called 16 Covelo-area settlers together who all signed a declaration selecting "Walter S. Jarboe as Captain of our Company of Volunteers against the Euka Indians."

Of course Texan Boy Hall was first among Jarboe's Rangers. Texan Boy would be paid to kill Indians, for him the best of all possible worlds, and Hastings, the state's number one judge, had no trouble persuading the state legislature to pay Jarboe and his Rangers to

empty inland Mendocino County of all the Indians Jarboe's Eel River Rangers could find to kill.

The Indians didn't have horses and they didn't have guns. Jarboe and Hall and their Rangers would typically ride down on Indian rancherias at dawn, slaughtering men, women and children right down to infants. The only casualties the white warriors suffered was an occasional non-combat injury unrelated to their one-way war. Bows and arrows were no match for dragoons, and certainly no match for the Chief Justice of the California State Supreme Court.

The newspapers of Northern California regularly urged extermination of the Indians, so when news of large scale murder drifted out of the seemingly infinite recesses of an area larger than some states, an area which is today bordered by I-5 to the east and 101 on the west, Clearlake to the south, and the Trinity mountains to the north, they were blithely reported like this:

"Massacre of Indians in Mendocino — Captain Jarboe's Rangers attacked an Indian ranch eight miles from Indian Valley, Mendocino County, lately, killing quite a number. Hall, the 'Texan Boy,' 6 feet 9 inches high, and weighing 278 pounds, who is the dread of all red skins, a week or two ago killed two Indians in a fair fight..." (The Napa Reporter, August 22, 1859)

By the end of the Civil War, and certainly by 1870, the Indians were finished. They'd fought back as best they could without the horses and guns their enemies possessed, but they'd been hit so hard and so fast all they could do was fight on the run, retreating right on into extinction.

Judge Hastings, attorney, jurist, rancher, real estate developer, and mass murderer is memorialized as the Hastings School of Law, San Francisco. Pioneer Ukiah made Walter Jarboe the town's first law enforcement officer. A man named James Jarboe is contemporary America's domestic terrorism section chief for the FBI, which may or may not be of historical significance, as may or may not be a very large Covelo horseman named Hall, as in Texan Boy Hall, who is presently confined to the state hospital at Napa. A New Age impresario calling himself TimoThy is trying to buy Eden Valley to convert it to an "Earth Village sustainable community" featuring "a straw bale roundhouse" and cabins for TimoThy's followers that would be called "earth arks." For \$33,000 you can buy in. Funny thing is, Eden Valley fully sustained people for 12,000 years before Judge Hastings and Texan Boy moved their horses and cows in on them and started killing them. Eden Valley was already an earth ark.

Hastings bequeathed several million dollars to the fledgling University of California. In gratitude, the University named its new law school after him.

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AND SEE: Murder State, California's Native American Genocide 1846-1873, Brendan C. Lindsay, University of Nebraska Press 2012; and An American Genocide, the United States and California Indian Catastrophe, Benjamin Madley, Yale University Press 2016)