

8-2024

From UC Hastings to UC Law SF: An Examination of the Renaming Process and Analysis of Institutional Identity

Oliver Cheng

Follow this and additional works at: https://repository.uclawsf.edu/hastings_law_journal



Part of the [Law Commons](#)

Recommended Citation

Oliver Cheng, *From UC Hastings to UC Law SF: An Examination of the Renaming Process and Analysis of Institutional Identity*, 75 HASTINGS L.J. 1741 (2024).

Available at: https://repository.uclawsf.edu/hastings_law_journal/vol75/iss6/11

This Note is brought to you for free and open access by the Law Journals at UC Law SF Scholarship Repository. It has been accepted for inclusion in UC Law Journal by an authorized editor of UC Law SF Scholarship Repository. For more information, please contact wangangela@uchastings.edu.

Notes

From UC Hastings to UC Law SF: An Examination of the Renaming Process and Analysis of Institutional Identity

OLIVER CHENG[†]

The University of California, Hastings College of the Law, changed its name to the University of California College of the Law, San Francisco, after it found that its namesake, Serranus Hastings, contributed significantly to the eradication of Native Americans in the Round Valley and Eden Valley. After deciding to pursue restorative justice initiatives while retaining Hastings as its namesake, the College faced extensive backlash from national press, major donors, and its stakeholders. In response, the College removed its namesake and renamed itself the University of California, College of the Law, San Francisco, or “UC Law SF” for short.

The College has been criticized by many for its lack of stakeholder engagement throughout the renaming process, as well as its new name. However, it has been a longstanding practice for the College to act without adequate stakeholder engagement, with the corollary downsides of the practice only becoming widely apparent during its renaming. The foremost regret lies not in the divestment of its stakeholders but rather the foregone opportunity to examine the College’s governance structure. This Note conducts an overview of the internal and external procedures of the renaming process, studies the origins of the College’s governance structure as an independently governed affiliate of the University of California, and highlights the upsides of becoming a true campus of the University of California.

[†] J.D. Candidate, Class of 2024, University of California, San Francisco College of Law (formerly UC Hastings); Senior Symposium Editor, *UC Law Journal*, Volume 75. I have utmost gratitude for Professor Shanin Specter, for his supervision, wisdom, and oversight. I would also like to thank the following, in no particular order: Evelyn Wynn, Dashiell Tucker, Brian Weikel, all that I have interviewed and spoken to (formally and informally), and the UC Law Journal Notes Team and its hardworking Editorial Staff. All errors, substantive or technical, are attributable to none but the Author.

TABLE OF CONTENTS

INTRODUCTION	1743
I. THE RENAMING PROCESS: INTERNAL EFFORTS	1751
A. THE ORIGINS OF THE COLLEGE'S NAME CHANGE	1751
B. THE FIRST WAVE OF THE NAME CHANGE: THE COLLEGE'S RESPONSE.....	1752
1. <i>The Hastings Legacy Review Committee: Report and Recommendations on Restorative Justice Initiatives and Balancing Considerations of a Name Change</i>	1752
2. <i>The White Paper: Findings of Serranus Hastings's Involvement in the Killings of Native Americans</i>	1757
3. <i>Dean Faigman's Report to the Board of Directors: The End of the Name Change?</i>	1760
C. THE SECOND WAVE OF THE NAME CHANGE: REVIVAL OF THE MOVEMENT AND APPROVAL OF A NAME CHANGE	1762
II. THE RENAMING PROCESS: EXTERNAL MOVEMENTS	1766
A. AN INTRODUCTION TO THE COLLEGE'S GOVERNANCE STRUCTURE	1766
B. LEGISLATIVE EFFORTS: ASSEMBLY BILL 1936.....	1768
C. LITIGATION OF THE RENAMING PROCESS: HASTINGS COLLEGE CONSERVATION COMMITTEE V. STATE OF CALIFORNIA	1770
III. AN EXAMINATION OF INSTITUTIONAL IDENTITY.....	1774
A. AN OVERVIEW OF THE COLLEGE'S GOVERNANCE STRUCTURE	1774
B. THE DESIRABILITY OF A SUBSEQUENT NAME CHANGE	1776
1. <i>Perspective of the Student Body on the Renaming Process</i>	1776
2. <i>Challenges to Subsequent Name Change</i>	1779
C. CHANGING THE COLLEGE'S GOVERNANCE STRUCTURE IS A REALIGNMENT OF INSTITUTIONAL POWERS AND A CORRECTION OF ITS DRAWBACKS	1781
1. <i>The College's Decision to Not Rename Itself UCSF Law is Illustrative of Institutional Tensions</i>	1784
2. <i>A Change in the College's Governance is Historically Consistent and Addresses Shortcomings from the Renaming Process</i>	1786
3. <i>The Path Forward: Lessons from the Past</i>	1788
CONCLUSION.....	1793

INTRODUCTION

After being known as the University of California, Hastings College of the Law (known widely as “UC Hastings”) for nearly 145 years, the school recently changed its name to the University of California College of the Law, San Francisco (“UC Law SF” or “the College”). Founded in 1878, UC Law SF is the original law department of the University of California¹ and the oldest law school in California.² The College changed its name after recognition that its namesake, Serranus Hastings, was significantly involved in the killing of Native Americans.³ On January 1, 2023, the College became known as UC Law SF.⁴

Fitting into a broader national trend of institutional name changes,⁵ there are three focal points for why a school may change its name. Firstly, a name change may not introduce significant complexities. Schools may decide to retain an *institutional* name while changing only a *portion* of their name, such as the name of its restrooms,⁶ a specialized program like a business school,⁷ or a building.⁸ Accordingly, a name change may present no formidable barriers. Secondly, a prospective name change may provide schools with fundraising

1. *Our Story*, UC L. S.F., <https://www.uchastings.edu/our-story> (last visited Aug. 9, 2024).

2. *UC Law San Francisco (formerly Hastings)*, LSAC, <https://www.lsac.org/choosing-law-school/find-law-school/jd-programs/california-law-san-francisco> (last visited May 16, 2024).

3. *Recognition and Reconciliation*, UC L. S.F., <https://www.uclawsf.edu/our-story/hastings-legacy> (last visited May 18, 2023).

4. *UC Hastings Is Now UC Law SF*, UC L. S.F., <https://www.uclawsf.edu/new-name> (last visited May 16, 2024).

5. E.g., Adam Kilgore & Scott Allen, *Washington’s Name Change Happened Fast, But It Was Decades in the Making*, WASH. POST (July 13, 2020, 6:05 PM EDT), <https://www.washingtonpost.com/sports/2020/07/13/washingtons-name-change-happened-fast-it-was-decades-making> (describing Stanford’s decision to change their sports team name from “Indians” to “Cardinals,” and Miami University in Ohio’s decision to change their sports team name from “Redskins” to “RedHawks”).

6. William A. Drennan, *Where Generosity and Pride Abide: Charitable Naming Rights*, 80 U. CIN. L. REV. 45, 52 (2011).

7. See, e.g., *David Booth: A Legacy of Impact*, UNIV. OF CHI. BOOTH SCH. OF BUS., <https://www.chicagobooth.edu/about/david-booth#:~:text=David%20Booth%2C%20%271%2C%20one,Chicago%20Booth%20School%20of%20Business> (last visited May 18, 2023) (noting that the University of Chicago changed the name of its business school after receiving \$300 million); Kristy Bleizeffer, *Purdue’s Newly Renamed Business School Secures Largest Donation in Its History: \$50 Million*, POETS AND QUANTS (Feb. 13, 2023), <https://poetsandquants.com/2023/02/13/purdues-newly-renamed-b-school-secures-largest-donation-in-its-history-50-million>; Liam Alford & James Kling, *School of Business Renamed as the Mitchel E. Daniels Jr. School of Business*, EXPONENT (Feb. 3, 2023), https://www.purdueexponent.org/campus/article_aec6b6d2-a3fa-11ed-93cf-6be93d0c796a.html.

8. David Steele, *Year of Reflection Prompts Course Reversal*, INSIDER HIGHER ED (Mar. 29, 2022), <https://www.insidehighered.com/news/2022/03/30/university-richmond-removes-controversial-building-names> (indicating the University of Richmond changed the name of its buildings after discovering certain namesakes were affiliated with owning slaves and white supremacy).

opportunities,⁹ an endeavor boasting a substantial market.¹⁰ During 2021, higher education institutions raised \$52.9 billion in charitable contributions,¹¹ with the largest donations coming from foundations and alumni.¹² As a broader practice, it is common for schools to launch capital campaigns—publicly announcing fundraisers with predefined objectives—to secure financing across a spectrum of purposes, including scholarships, infrastructural development and maintenance, and recruiting educators.¹³ From a donor’s standpoint, charitable contributions can have positive tax implications.¹⁴ Lastly, a school may change its name in response to public condemnation of a namesake.¹⁵ In such instances, the central concern is the perception that retaining the namesake of a controversial figure, like a Confederate leader, conveys an implicit endorsement of the views associated with that individual.¹⁶

The process for a school name change generally consists of an affirmative majority vote from a school board.¹⁷ Alternatively, a board of trustees may adopt recommendations from a specialized naming committee,¹⁸ or if the school focuses on a program within a larger entity, action may be required at the

9. See, e.g., *Naming Opportunities*, UC DAVIS HEALTH: BETTY IRENE MOORE SCH. OF NURSING, https://health.ucdavis.edu/nursing/about_us/hall/naming.html (seeking \$25,000 to name a room and \$1.5 million to name a classroom or lab) (last visited May 18, 2024).

10. See Drennan, *supra* note 6, at 55 (citing a study that in 2007, American nonprofits “logged over \$4 billion in naming rights deals”).

11. CASE, VOLUNTARY SUPPORT OF EDUCATION 5 (Feb. 16, 2022), <https://www.case.org/resources/voluntary-support-education-key-findings-2020-21>.

12. *Id.*

13. See Mark J. Drozdowski, *How Do Students Benefit From Fundraising Campaigns?*, BEST COLLEGES (Nov. 10, 2021), <https://www.bestcolleges.com/news/analysis/2021/06/24/how-students-benefit-from-fundraising-campaigns>; see also Mike Stetz, *Penn Law’s New Name Bombs, So Penn Law Is Back—For Now*, NAT’L JURIST MAG. (Nov. 11, 2019, 2:54 PM), <https://nationaljurist.com/national-jurist-magazine/penn-laws-new-name-bombs-so-penn-law-back-now/#:~:text=The%20Philadelphia%20school%20became%20the,the%20release%20of%20New%20Coke> (noting that Penn Law stated in a news release that the donation would “increase student financial support, ensur[e] robust support for historically underrepresented students” and fund pro bono programs).

14. E.g., I.R.C. § 170(c); Drennan, *supra* note 6, at 48–49.

15. E.g., Alonzo Small, *Hanover School Board Officially Approves New Names for Lee-Davis High, Stonewall Jackson Middle*, ABC NEWS (Oct. 14, 2020, 6:33 AM EDT), <https://www.wric.com/news/local-news/hanover-county/hanover-school-board-officially-approves-new-names-for-lee-davis-high-stonewall-jackson-middle> (noting that two schools were previously named after Confederate leaders).

16. Lauren Farrar, *When Should a School’s Name Get Canceled?*, KQED (Sept. 1, 2021), <https://www.kqed.org/education/535294/when-should-a-schools-name-get-canceled>.

17. E.g., Abe Asher, *Virginia School Board Votes to Rename High School Named After Founding Father Who Owned Slaves*, INDEPENDENT (Jan. 4, 2023, 5:26 AM GMT), <https://www.independent.co.uk/news/world/americas/george-wythe-virginia-school-renaming-b2255577.html>.

18. *Committee on Naming*, PRINCETON UNIV., <https://namingcommittee.princeton.edu> (last visited May 18, 2024).

university level.¹⁹ Though the precise process by which a school changes its name varies, when addressing public criticism of a namesake, virtually every institution of higher education establishes either a committee or task force to consider a name change, ²⁰ “balanc[ing] the harms caused by retaining the problematic name with the harms caused by changing it.”²¹ Schools often choose to include the perspective of stakeholders, soliciting feedback from the student body and alumni.²² In some instances, a name change may nonetheless require approval from an external body, such as the Attorney General or the UC Office of the President.²³

Although not the first law school to change its name, UC Law SF sets itself apart from other schools as the first law school to change its *institutional* name.²⁴ As detailed earlier, law schools have traditionally undergone name changes to pursue fundraising opportunities or to distance themselves from a namesake’s wrongdoings.

Three law schools underscore the economics of contemplating a name change. In November 2019, the University of Pennsylvania Law School accepted a \$125 million donation from the W.P. Carey Foundation, announcing that its name would be the University of Pennsylvania Carey Law School.²⁵ Notably, despite tremendous dissent from stakeholders regarding the change from “Penn Law” to “Penn Carey Law,” the institution opted to retain its official identity as the University of Pennsylvania Carey Law School.²⁶ In 2019, Drexel

19. See, e.g., Memorandum from Lee Fisher, Dean, CSU Cleveland-Marshall College of Law on Summary of Findings and Information on Law School Name Issue to Laura Bloomberg, Provost, Cleveland State University (Feb. 28, 2022).

20. See *id.* at 2 n.3.

21. HASTINGS LEGACY REV. COMM., RECOMMENDATIONS OF THE HASTINGS LEGACY REVIEW COMMITTEE 5 (2020) [hereinafter “HLRC REPORT”].

22. See, e.g., *Building Name Review Committee*, BERKELEY OFF. OF THE CHANCELLOR, <https://chancellor.berkeley.edu/task-forces/administrative-committees/building-name-review-committee> (noting that a name change requires considering the perspectives of the entire campus community) (last visited May 18, 2024).

23. *Id.*

24. HLRC REPORT, *supra* note 21 at 6 (noting that the Committee did not identify any “other American institution of higher education that . . . changed its name in response to revelations about its namesake”).

25. Staci Zaretsky, *Despite Historic Gift, T14 Law School Will Get to Keep Its Name—For Now*, ABOVE THE L. (Nov. 19, 2019, 1:46 PM), <https://abovethelaw.com/2019/11/despite-historic-gift-t14-law-school-will-get-to-keep-its-name-for-now>.

26. PENN CAREY L., <https://www.law.upenn.edu> (last visited May 18, 2024). At least part of the disapproval stems from the fact that in 2011, the University of Maryland had changed its name to Maryland Carey Law after a \$30 million donation from the W. P. Carey Foundation. See Ashley Ahn, ‘A Complete Nightmare’: Penn Law Students and Alums Reflect on Name-Change Process, DAILY PENNSYLVANIAN (Nov. 19, 2019, 12:26 AM), <https://www.thedp.com/article/2019/11/penn-carey-law-ruger-rename-backlash-student-alumni>. One graduate even went so far as to describe Penn Carey Law as the “McDonald’s of law schools,” comparing the denominator between the schools as a franchise. *Id.* Penn Carey Law underwent subsequent criticism several years later for a building named after Supreme Court Chief Justice Roger Taney because of

University's law school underwent a name change, transitioning from its original donor Earle Mack to Thomas Kline, following a contribution of \$50 million.²⁷ This name change was similarly driven by fundraising imperatives.²⁸ In September 2022, Duquesne University was also renamed after Thomas Kline, who had graduated from the school in 1978.²⁹

When examining schools that changed their names in response to negative associations, it is insightful to consider the experiences of four schools. In January 2020, UC Berkeley removed the name John Boalt from one of its principal buildings after a lecturer discovered racist writings from the namesake.³⁰ Much like UC Law SF, Dean Chemerinsky of UC Berkeley Law formed a committee to investigate the writings and to provide recommendations.³¹ In May 2021, the University of Illinois Chicago School of Law removed namesake Chief Justice Marshall³² because of his ownership of slaves and judicial decisions upholding slavery.³³ Perhaps infamously, George Mason University embarked on a renaming process in 2016. Initially, the school announced its intention to honor Justice Antonin Scalia by adopting the name "Antonin Scalia School of Law."³⁴ However, following public embarrassment as to the proposed name's acronym, a week later, Dean Butler announced a substitute name, the Antonin Scalia Law School. Despite the subsequent name change, George Mason faced further controversy after deciding to re-brand as a

controversies surrounding his legacy. Karen Sloan, *Penn Law to Remove Name of Controversial Supreme Court Justice from Building*, REUTERS (June 28, 2022, 2:07 PM PDT), <https://www.reuters.com/legal/legalindustry/penn-law-remove-name-controversial-supreme-court-justice-building-2022-06-28>.

27. Joel Mathis, *Drexel Renames Law School After Thomas R. Kline*, CITY LIFE (Sept. 18, 2014, 6:07 AM), <https://www.phillymag.com/news/2014/09/18/drexel-renames-law-school-thomas-r-kline>.

28. Debra Cassens Weiss, *Drexel Renames Its Law School for Trial Lawyer Who Is Donating \$50M*, ABA J. (Sept. 18, 2014, 10:27 AM CDT), https://www.abajournal.com/news/article/drexel-renames_its_law_school_for_trial_lawyer_who_is_donating_50m.

29. Karen Sloan, *Personal Injury Lawyer Gets Another Namesake Law School with \$50 mln Gift*, REUTERS (Sept. 8, 2022, 11:20 AM PDT), <https://www.reuters.com/legal/litigation/personal-injury-lawyer-gets-another-namesake-law-school-with-50-mln-gift-2022-09-08>.

30. Gretchen Kell, *UC Berkeley Removes Racist John Boalt's Name from Law School*, BERKELEY NEWS (Jan. 30, 2020), <https://news.berkeley.edu/2020/01/30/uc-berkeley-removes-racist-john-boalts-name-from-law-school>.

31. Memorandum from Dean Erwin Chemerinsky to the UC Berkeley Building Name Review Comm. on Proposed De-naming of Boalt Hall 1 (Nov. 30, 2018) [hereinafter "Dean Chemerinsky Report"].

32. Brian Flood, *Board Approves New Name for UIC Law*, UIC TODAY (May 20, 2021), <https://today.uic.edu/board-approves-new-name-for-uic-law>.

33. Karen Sloan, *U.S. Law School Changes Name to Drop Early Supreme Court Justice*, REUTERS (Nov. 18, 2022, 2:25 PM PST), <https://www.reuters.com/legal/legalindustry/us-law-school-changes-name-drop-early-supreme-court-justice-2022-11-18>.

34. Daniella Diaz, *GMU Law School Renaming After Antonin Scalia Hits Snag*, CNN (Apr. 5, 2016, 7:39 PM EDT), <https://www.cnn.com/2016/04/05/politics/george-mason-university-antonin-scalia-law-school-name-change/index.html#:~:text=The%20school%20first%20announced%20it,fan%20of%20the%20conservative%20justice> (noting that observers called the school "ASSoL" for short).

conservative law school, with ethical concerns arising from teaching arrangements between several Supreme Court Justices and the school.³⁵ Finally, in 2022, the University of Richmond changed its name for reasons bearing strong similarity to UC Law SF's renaming. The University of Richmond removed its namesake T.C. Williams after research revealed that he was a slaveowner.³⁶ Like Serranus Hastings, Williams donated a large sum of \$35,000 to the school during the late-nineteenth century.³⁷ Furthermore, with even stronger similarity, a descendant of Williams demanded that the University of Richmond provide compensation for the name change, seeking the school's \$3.3 billion endowment³⁸ or \$300 million secured by campus buildings and personal guarantees from a number of faculty.³⁹ As a comparison, assuming an interest rate of seven percent, Serranus Hastings's contribution of \$100,000 to establish UC Law SF would be worth \$1.7 billion as of 2022.⁴⁰

In the context of school name changes, four barriers warrant careful examination: (i) economics; (ii) social backlash; (iii) loss of goodwill; and (iv) procedural barriers, including constitutional or legal barriers. The first and most conspicuous obstacle arises from economics. Beyond costs normally associated with name change, including rebranding initiatives, facilities and signage, and merchandise, litigation costs may represent an unanticipated expenditure

35. See Steve Eder & Jo Becker, *How Scalia Law School Became a Key Friend of the Court*, N.Y. TIMES (Apr. 30, 2023), <https://www.nytimes.com/2023/04/30/us/supreme-court-scalia-law-school.html> (reporting that several conservative Supreme Court Justices received salaries of \$30,000 for two weeks of teaching, accommodated lodging overseas, and more). The concerns are consistent with recent controversies surrounding Justice Thomas and his all-inclusive vacations from a GOP megadonor. See Natalia Musumeci & Oma Seddiq, *Clarence Thomas Accepted Lavish Vacations on a Private Jet and a Superyacht from a GOP Megadonor for Years, Report Reveals*, BUS. INSIDER (Apr. 6, 2023, 8:00 AM PDT), <https://www.businessinsider.com/clarence-thomas-luxury-vacations-gop-megadonor-harlan-crow-report-says-2023-4>.

36. *Board Action on School of Law Name*, UNIV. OF RICHMOND (Sept. 23, 2022), <https://trustees.richmond.edu/naming>.

37. Liam Knox, *A Law School's 'Denaming' Evokes Donor Family's Ire*, INSIDE HIGHER ED (Feb. 28, 2023), <https://www.insidehighered.com/news/2023/03/01/law-school-denaming-sparks-donor-debacle#:~:text=Thomas%20C.,the%20university%20throughout%20his%20life>.

38. Jeremiah Poff, *Descendant of University of Richmond Donor Demands \$3.3B Back After Namesake Canceled by 'Woke' Activists*, WASH. EXAM'R (Feb. 17, 2023, 9:08 PM), <https://www.washingtonexaminer.com/policy/education/descendant-of-university-of-richmond-megadonor-demands-school-return-3-3-billion;infra> Part II.C.

39. Caitlin O'Kane, *A Virginia Lawyer Is Demanding University of Richmond Pay \$3.6 Billion After Removing Family Member's Name from Law School*, CBS NEWS (Feb. 14, 2023, 12:43 PM EST), <https://www.cbsnews.com/news/university-of-richmond-tc-williams-law-school-name-change-robert-c-smith-demanding-pay-3-6-billion-slave-owner-removed>.

40. Nanette Asimov, *Hastings Descendants Dispute Law School Name Is Racist. They Want the Name Kept—Or a \$1.7 Billion Payout*, S.F. CHRON. (Oct. 5, 2022, 7:56 AM), <https://www.sfchronicle.com/bayarea/article/Descendants-of-Serranus-Hastings-sue-state-and-UC-17487289.php>.

The relevant statute provides that "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." CAL. EDUC. CODE § 92212 (West 1977).

causing financial distress.⁴¹ In the case of UC Law SF, as of early 2023, more than *half* of the name change costs were associated with legal fees.⁴² Furthermore, gifts from donors introduce a particularly delicate and intricate dimension to economic considerations, as exemplified by the University of Richmond and litigation over its name change. Removing a namesake “usually requires the school to return the gift or otherwise reconcile with the donor,” potentially with interest.⁴³ Costs originally anticipated to induce financial strain may thus mature into financial fatality. And, even if a school can afford the return of a gift and litigation costs, removal of a namesake produces disincentives for donors. Namesake donors may perceive their contributions as nonpermanent, or at least subject to revocation with sufficient public disapproval. Meanwhile, non-namesake donors may withhold contributions if they disagree with the decision to remove a namesake.

Secondly, schools face a confluence of social pressures when deciding to remove a namesake. Social pressures encompass not only the opinions of present and past members of a student body but also individuals who hold sympathy toward the namesake, as well as those most directly impacted by a namesake’s transgressions. While it is not unexpected for a student body voice its opinions,⁴⁴ the outcome of an institution’s internal deliberations to retain or remove a namesake are less foreseeable. For instance, a committee’s process for investigating and providing recommendations may take years.⁴⁵

The body tasked with considering removal must closely scrutinize the implications of a name change, considering concepts of “cancel culture” and “erasure.” With respect to cancel culture, those opposing removal of a namesake employ the term pejoratively to mean “mass cancelling as a way of expressing

41. See, e.g., Kim Thies, *The True Cost of a Name Change: Confederate Names in Hanover County, VA Schools*, MEDIUM (July 3, 2020), <https://medium.com/@kthies/the-true-cost-of-a-name-change-1493543a2796> (noting that Hanover County in Richmond, Virginia spent over \$275,000 in litigation and insurance costs); Steward Doreen, *MISD: Cost of Renaming Lee Could Cost \$3.469 Million*, MIDLAND REP.-TELEGRAM (Oct. 7, 2020), <https://www.mrt.com/insider/article/MISD-Cost-of-renaming-Lee-could-cost-3-469-15629478.php> (detailing the \$3.469 million in costs to change the name of two high schools, breaking down costs as fees to facilities, contractor project costs, signage, athletics, and more).

42. 2023 California Annual Report Assembly Bill 1936, from David L. Faigman, Chancellor & Dean, UC L. S.F., to California Senate President pro Tempore Toni G. Atkins & Assembly Speaker Robert Rivas (July 27, 2023) (on file with author). As of February 2024, legal costs fell just below 50% of total costs. See E-mail from David Seward, Chief Fin. Officer, UC L. S.F., to Oliver Cheng (Feb. 20, 2024) (on file with author).

43. CHANCELLOR & DEAN DAVID FAIGMAN, *THE LEGACY OF SERRANUS CLINTON HASTINGS* 8 n.4 (2020). [hereinafter “DEAN FAIGMAN’S REPORT”].

44. See, e.g., Ryan Schmelz, *Students Urge CSU to Remove John Marshall’s Name from Law School*, SPECTRUM NEWS (Feb. 12, 2022, 10:31 AM ET), <https://spectrumnews1.com/oh/columbus/news/2022/02/08/efforts-grow-to-urge-csu-to-remove-john-marshall-s-name-from-law-school>.

45. See, e.g., Memorandum from Lee Fisher, *supra* note 19, at 2 n.3.

disapproval and exerting social pressure,”⁴⁶ usually implying a movement to be reactionary, perhaps sensationalist, and without sound justification. Similarly, erasure is the process of historically erasing the narrative of marginalized communities, largely to promote only a partial account of a narrative and to further dominant groups.⁴⁷ The essence of erasure is that its practice “renders certain people and groups invisible.”⁴⁸ And as applied in the context of a namesake undergoing public condemnation, the action of removing a namesake, even as a gesture of condemnation, can have perverse effects on those most significantly harmed by the namesake’s actions. Thus, while some groups may oppose removal of a namesake on grounds of cancel culture, a namesake’s victims or the descendants of victims may also oppose removal to prevent erasure of their suffering. These considerations are later highlighted in Part I, examining the manner in which concerns of erasure drove the College’s decision to retain Hastings as its namesake.

The third consideration relates to the goodwill that a school has accumulated. The College’s name change illustrates that goodwill can arise even in the context of a geographic name change.⁴⁹ Goodwill relates to the reputation and prestige accrued to an institution.⁵⁰ When a school changes its name, it abandons “goodwill, to the detriment of past, current, and future students.”⁵¹ A name bearing sufficient similarity to another may serve as a cause of action for trademark infringement if it is likely to confuse consumers.⁵² Yet, schools sharing a geographic designation are a special instance.⁵³ Courts generally treat schools that share a geographic designation as meriting less trademark protection, as they are merely descriptive of location.⁵⁴ The extent of protection varies in accordance with the likelihood of a confused audience. There is a judicial presumption that students engage in sufficient diligence and care with

46. Rhona Shennan, *What Is Cancel Culture? Meaning, Examples of Cancelled Celebrities, and How It Relates to ‘Woke’ Culture*, NAT’L WORLD (Dec. 2, 2021, 2:35 PM), <https://www.nationalworld.com/culture/what-cancel-culture-meaning-examples-cancelled-celebrities-woke-3480037> (quoting *Cancel Culture*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/cancel%20culture> (last visited July 9, 2024)).

47. *Black Erasure*, LAWRENCE HALL (Feb. 15, 2022), <https://www.lawrencehall.org/blog/brave-conversations-black-erasure>.

48. *Id.*

49. *See infra* Part III.

50. *See* Alexandra J. Roberts, *Goodwill U: School Name Change & Trademark Law*, 3 IP THEORY 129, 129 (2013).

51. *Id.* at 131.

52. *Id.* at 133 (discussing a dispute between the newly named public school “Denver State University” and the private school “University of Denver” and that “a geographically descriptive mark is one of the weakest mark types” meriting little protection).

53. For example, Boston College Law School and Boston University, or the University of San Francisco School of Law and UC Law SF.

54. Roberts, *supra* note 50, at 133–34.

respect to choosing schools.⁵⁵ Students are further presumed to be sophisticated consumers and are accordingly likely to exercise due care in applying for and matriculating to their targeted school.⁵⁶ In contrast, confusion is more likely to occur with employers, where the risks of brand confusion between schools are higher.⁵⁷

The fourth concern relates to procedural barriers. The crux of the concern relates to matters that escalate the difficulty of executing a name change: lawsuits to block a name change, bureaucratic procedures within a university or the lack of a defined system for considering renaming, or administrative difficulties, such as updating signage and documents. Procedural barriers have heightened importance for public schools, which trigger First Amendment interactions between government speech, commercial speech, and schoolhouse speech.⁵⁸ Complexities range from the ambiguous identity of the speaker, the content of the message conveyed, and the speech's location.⁵⁹ If harnessed correctly, however, First Amendment protections may operate as a defense to litigation in opposition of a school's name change rather than a cause of action.⁶⁰

Because of its distinctive history, UC Law SF faced a series of unique challenges in the process of renaming. Deliberations surrounding the name change were momentous themselves, as it implicated not a change in the name of a building or entity within a university⁶¹ but rather a change in the institution itself. Removing Hastings as a namesake meant risking forfeiture of goodwill that had accumulated for nearly a century and a half.⁶² Moreover, the name change process, already formidable due to financial constraints, became particularly elaborate from political challenges that arose due to the renaming requiring legislative approval.⁶³ Examining the renaming process not only provides an account of a pivotal event in the College's history but also serves as an apparatus for critiquing the College's governance structure. This Note chronicles the sequence of events leading up to the name change, offering that

55. *Id.* at 134–35.

56. *Id.*

57. *Id.* at 135–36 (noting that if two schools have confusingly similar names, the reputation of an inferior school is not approved by free-riding on the reputation of a superior school but rather floods the market and downgrades the exclusivity and value of the superior school, and thus the inferior school).

58. Joseph Blocher, *School Naming Rights and the First Amendment's Perfect Storm*, 96 GEO. L.J. 1, 3 (2007).

59. *See id.* at 32.

60. *See generally* California's anti-SLAPP law. CAL. CIV. PROC. CODE § 425.16 (West 2023); *accord* College Defendants' Notice of Special Motion to Strike and Special Motion to Strike at 3, Hastings Coll. Conservation Comm. v. State, No. CGC-22-602149 (Cal. Super. Ct. Dec. 30, 2022) [hereinafter Special Motion to Strike] (describing how some First Amendment claims are subject to a special motion to strike).

61. DEAN FAIGMAN'S REPORT, *supra* note 43, at 8.

62. LSAC, *supra* note 2.

63. *Infra* Part II.

the process' deficiencies were a natural corollary to the College's anomalous governance.

Part I describes the process of the name change, from the inception of the movement to the College's approval of the name change. Part II examines the jurisprudence of the name change, including the College's state-constitutional law status, efforts of lawmakers, and a lawsuit attempting to block the process. Part III undertakes a review of the College's governance, studies challenges to a subsequent name change, and provides a critique of the institutional governance underpinning the College's decision-making.

I. THE RENAMING PROCESS: INTERNAL EFFORTS

The College's renaming process stretched for over five years, beginning with an article from the San Francisco Chronicle and ending with the passage of Assembly Bill 1936 ("AB 1936").⁶⁴ The name change involved a sequence of internal efforts from the College's leadership and external efforts from the California Government.⁶⁵ This Part reviews the former.

A. THE ORIGINS OF THE COLLEGE'S NAME CHANGE

The genesis of the College's name change is attributed to an op-ed that appeared in the San Francisco Chronicle on July 8, 2017.⁶⁶ The article, written by John Briscoe, a former adjunct professor at the College, was titled "The Moral Case for Renaming Hastings College of the Law."⁶⁷ While brief, Briscoe wrote broadly about America's "ever-evolving relations with race" and how the names of "streets, schools, [and] buildings" face a national movement for name changes.⁶⁸ Shifting the focus away from slavery and racism, Briscoe revealed a lesser-discussed chapter of American and California history: Native American genocide.⁶⁹

Between 1542 and 1834, European diseases caused the California Native population to decline markedly, falling from 350,000 to 150,000.⁷⁰ From 1834 and onward, the population fell from 150,000 to 18,000 for a different reason; Indian-hunting raids.⁷¹ One quote from Peter Burnett, the first governor of California, encapsulates the perspective at the time: "[A] war of extermination

64. See John Briscoe, Opinion, *The Moral Case for Renaming Hastings College of the Law*, S.F. CHRON. (July 9, 2017, 1:40 PM), <https://www.sfchronicle.com/opinion/openforum/article/The-moral-case-for-renaming-Hastings-College-of-11275565.php>; Assemb. 1936, 2022 Leg., Reg. Sess. (Cal. 2022).

65. See *infra* Part I.A and Part II.

66. See Briscoe, *supra* note 64.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

will continue to be waged between the two races until the Indian race becomes extinct”⁷²

The College’s flagship journal once described Serranus Hastings as a “man of diverse and magnificent accomplishments,” with accolades as a Congressman, Chief Justice of Iowa and California, and Attorney General of California.⁷³ Despite such acclaim, the prominence of the name “Hastings” had all but faded from public recognition, becoming known instead as the name of California’s oldest law school.⁷⁴ The year of 2017 marked a pivotal shift, when Briscoe accused the College’s namesake of supporting and financing Indian-hunting expeditions.⁷⁵

B. THE FIRST WAVE OF THE NAME CHANGE: THE COLLEGE’S RESPONSE

The internal efforts of the College’s renaming is best understood as a sequence of two waves. The first wave involved (i) the formation of a committee tasked with studying the allegations from Briscoe’s article, (ii) a white paper detailing Serranus Hastings’s involvement in Native killings, and (iii) Chancellor and Dean David Faigman’s report and recommendation to the Board of Directors. Although the focus points have factual and analytical overlaps with each other, each was produced as part of the College’s response to Briscoe’s article.

1. *The Hastings Legacy Review Committee: Report and Recommendations on Restorative Justice Initiatives and Balancing Considerations of a Name Change*

The College responded to Briscoe’s article by forming a committee. Its efforts first began in 2017, when recently appointed Chancellor and Dean David Faigman (“Dean Faigman”), who had taught at the school for over thirty years prior, learned about Serranus Hastings’s involvement in Native killings from the Briscoe article.⁷⁶ Dean Faigman initiated his own research on California’s genocide during the nineteenth century⁷⁷ before establishing the Hastings Legacy Review Committee (“HLRC”).⁷⁸ The HLRC was created to “assess and provide recommendations for responding to the history of [the College’s]

72. BRENDAN LINDSAY, SERRANUS CLINTON HASTINGS IN EDEN AND ROUND VALLEYS, WHITE PAPER 38 (2021) (quoting *Journey of the Senate of California*, 3rd Session, 1852, 714) [hereinafter WHITE PAPER].

73. Edward A. Hogan, *History of the Hastings College of Law*, 4 HASTINGS L.J. 89, 89 (1953).

74. Briscoe, *supra* note 64.

75. *See id.* Briscoe also condemned Governor Leland Stanford, the founder of Stanford University, for approving appropriations bills which funded Native-hunting expeditions. *Id.*

76. *Addressing the Wrongs of Serranus Hastings*, UC L. S.F., (Oct. 27, 2021), <https://www.uchastings.edu/2021/10/27/addressing-the-wrongs-of-serranus-hastings>.

77. *Id.*

78. *Id.*

founder.”⁷⁹ As a temporary committee, it was comprised of “[thirteen] volunteer members [including] alumni, faculty, staff, educators, and practitioners in the areas of tribal law.”⁸⁰ On July 29, 2020, the HLRC concluded its term and objective by submitting its report to Dean Faigman (the “HLRC Report”).⁸¹

Additional context is necessary for understanding the College’s response. When the HLRC was established, the College also commissioned a historical study of Serranus Hastings’s legacy.⁸² Written for the purpose of informing the HLRC’s findings,⁸³ the study was written by Professor Brendan Lindsay, a historian at Sacramento State specializing in Native American genocide.⁸⁴ Lindsay also served as a member of the HLRC.⁸⁵ The HLRC Report, the final action of the Committee, relied upon the historical narrative of the white paper, grounding its analysis on the paper’s historical findings.⁸⁶ More specifically, the conclusion of the HLRC Report was extensively predicated on the white paper’s report that Serranus Hastings carried a “significant responsibility for violence” against Native tribes in Mendocino County.⁸⁷ Thus, examining the HLRC Report is more revealing of the College’s discussions of whether to remove or retain Hastings as a namesake, rather than a review of the historical record. Nonetheless, the two are relationally important.

The HLRC placed a clear emphasis on restorative justice. In its recommendations, the HLRC urged restorative justice initiatives, after meeting regularly with representatives of the Yuki Tribe and representatives of the Round Valley Indian Tribes (RVIT), the people most directly affected by Serranus Hastings’s legacy.⁸⁸ The HLRC Report encouraged the establishment of an Indian Law Center at the College to develop and foster jurisprudence in the field, formation of a charity to provide pro bono services to Round Valley Tribes, continued conversation with a group of Yuki descendants,⁸⁹ dedication of a memorial on the College’s campus in honor of the Yuki people, and more.⁹⁰ After the HLRC Report’s release, the College adopted all of the recommended initiatives as well as others, including a commitment to announcing Serranus

79. *Hastings Legacy Review Committee*, UC L. S.F., <https://www.uchastings.edu/our-story/hastings-legacy/hlrc> (last visited May 20, 2024).

80. *Id.*

81. *Id.*

82. *Addressing the Wrongs of Serranus Hastings*, *supra* note 76.

83. WHITE PAPER, *supra* note 72, at 3.

84. *Brendan Lindsay*, CSU ACADEMIA, <https://csus.academia.edu/BrendanLindsay> (last visited Apr. 15, 2024).

85. DEAN FAIGMAN’S REPORT, *supra* note 43, at 2 n.3.

86. HLRC REPORT, *supra* note 21, at 2.

87. DEAN FAIGMAN’S REPORT, *supra* note 43, at 2.

88. *Id.* at 1.

89. The Yuki people were the people most directly harmed by Serranus Hastings’s legacy. *See infra* text accompanying note 120.

90. HLRC REPORT, *supra* note 21, at 3–4.

Hastings's actions against the Yuki at annual convocation and commencement ceremonies.⁹¹ Other contributions involved naming a library after a Yuki name or a name determined by the Round Valley Indian Tribes and the installation of a permanent memorial to the Yuki people, with historically informative text, on campus.⁹² As of July 27, 2023, the College has spent \$168,000 on restorative justice efforts, including fellowships, funding for the Indigenous Law Center, and RVIT meetings and travel expenses.⁹³

The HLRC Report offered unclear intentions on whether or not Hastings should be removed as the College's namesake. The HLRC weighed a spectrum of considerations but focused on the negative impacts associated with retaining a namesake, from offending current and prospective students to making it difficult to obtain philanthropic support.⁹⁴ Crucial to their analysis was the fact that Hastings, as a namesake, had built goodwill for nearly a century and a half, accumulating a meaning as a college rather than a man.⁹⁵ The HLRC posited that retaining Serranus Hastings as a namesake could have resulted in loss of goodwill and philanthropic support, but recognized that removing its namesake

91. *Initiatives for Reconciliation and Partnership*, UC L. S.F., <https://www.uchastings.edu/our-story/hastings-legacy/initiatives> (last visited May 20, 2024).

92. *Id.* Anecdotally, conversations with my colleagues on campus reveal a student perspective that the College's restorative justice efforts are performative rather than substantive. For instance, under statute, amongst other initiatives, the College is supposed to leverage its Moot Court and Trial Advocacy programs to benefit students of the RVIT, as well as institute a moot court competition related to California's treatment of Natives. CAL. EDUC. CODE § 92200(e) (West 2023). My personal view is that it is, and it is not. The RVIT region suffers from acute economic scarcity, struggling even with broadband access. *Addressing the Wrongs of Serranus Hastings*, *supra* note 76. Reparations will always be subject to budgetary constraints, and the College lacks the means to provide direct financial support without detriment to its institutional purpose. *See* DEAN FAIGMAN'S REPORT, *supra* note 43, at 5 (noting the College is a "modestly sized institution with limited "capacity to address all that is needed."). While dedication of a memorial to the Yuki or the naming of a library is certainly easy to criticize, I struggle to conceive of alternatives or additions that the College could have pursued, notwithstanding a sentiment that something more should be done. The College is constrained by its economic capabilities to fully address the needs of the Yuki and Round Valley people. Seemingly, then, the College did the next best thing; it engaged with those stakeholders widely and pursued alternatives: helping the Yuki record tribal stories, establishing a program to provide pro bono legal services to the Round Valley area, and more. *Id.* at 4. If reparations of a pecuniary nature remain desired, then the means of pursuit are better left to local governments or the State of California. *E.g.*, Dustin Gardiner, *California Reparations Task Force Releases First Estimate of Damages: Up to \$1.2 Million per Black Resident*, S.F. CHRON. (May 2, 2023, 12:02 AM EST), <https://www.sfchronicle.com/politics/article/california-reparations-estimate-18000628.php>. Lastly, the state of California recognized its contributions to Native American genocide less than five years ago. *On Native American Day, Governor Newsom Signs Legislation to Support California Native Communities, Advance Equity and Inclusion*, OFF. OF GOVERNOR GAVIN NEWSOM, <https://www.gov.ca.gov/2022/09/23/on-native-american-day-governor-newsom-signs-legislation-to-support-california-native-communities-advance-equity-and-inclusion> (last visited Aug. 10, 2024). While the impacts of Native genocide are everlasting, the dialogue for restorative justice and reparations is only beginning.

93. Annual Report to the Legislature AB 1936, from Dean Faigman to California Senate President Pro Tempore Toni G. Atkins and Assembly Speaker Robert Rivas (July 27, 2023) (on file with author).

94. *Id.*

95. HLRC REPORT, *supra* note 21, at 5.

would have identical detriments, as well as lead to public confusion about the College's new name.⁹⁶

Beyond its speculative analysis of social harms, the HLRC Report highlighted apparent challenges that would arise if the College changed its name. Given the unique circumstances of the College's formation,⁹⁷ a name change would require action from the California Legislature.⁹⁸ Moreover, in connection with Serranus Hastings's financial contribution to establish the College, a name change potentially obliged the "State to restore to Serranus Hastings's family the sum of \$100,000 plus 'all unexpended accumulated interest.'"⁹⁹ This concern later became a central argument during the lawsuit attempting to block the College's name change.¹⁰⁰

The HLRC also briefly addressed the consequences of erasure. One leader of the RVIT feared that a name change would prematurely terminate the College's restorative justice initiatives.¹⁰¹ The College's concerns that removal of its namesake would serve as a disincentive to future donors¹⁰² bolstered fears that a name change would undermine restorative justice efforts. In the final analysis, the HLRC recommended against a name change, or in favor of retaining Hastings as a namesake, citing restorative justice and erasure as integral considerations.¹⁰³

The significance of the HLRC Report does not end in its recommendations to the College Chancellor and Dean. Rather, the most important aspect of the HLRC Report is what was described as *missing* from the Committee's process. The HLRC Report itself concedes that it "did not conduct an in-depth analysis of the financial costs of changing the name of the College," including estimated legal expenses.¹⁰⁴ Hence, despite recommending against a name change, the Committee made its recommendation without study of the counterfactual, the challenges, and the consequences of a name change.

The HLRC Report further acknowledges that input from "students, alumni and the greater community" was lacking at the time of the recommendation.¹⁰⁵ While the HLRC engaged with stakeholders on its restorative justice efforts, it chose not to consult broadly with other stakeholders on matters such as whether

96. *Id.*

97. *Infra* Part II.A.

98. HLRC REPORT, *supra* note 21, at 6.

99. *Id.*

100. *Infra* Part II.C.

101. *Infra* Part II.C.

102. *See* HLRC REPORT, *supra* note 21, at 5 (conveying fears that a name change could result in a decline in contributions from alumni).

103. *Id.* at 5–6.

104. *Id.* at 6.

105. *Id.* at 7.

namesake removal was warranted, and if so, what alternatives the College could be renamed after.

A dissenting view from the HLRC Report, authored by Paul Laurin, underscores the lack of stakeholder engagement throughout the process.¹⁰⁶ Laurin criticized the HLRC for hastily making recommendations without rigorous debate and for divesting alumni of their opportunity to provide input.¹⁰⁷ Criticizing the HLRC for making their recommendation in accordance with an “accelerated timeline,”¹⁰⁸ Laurin emphatically wrote that the Committee had fallen short of its charge:

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.¹⁰⁹

In the past, Laurin served as the former president of the College’s Board of Governors, the premier entity tasked with managing relationships with over 20,000 alumni.¹¹⁰ Laurin revealed that alumni were not only neglectfully excluded from discussions but had been precluded from participation because an HLRC subcommittee had not disseminated a community survey which had been extensively prepared.¹¹¹ Members of the subcommittee tasked with community engagement, including the former Chief of Staff to Dean Faigman, the Chief Marketing Officer, and the General Counsel at the time, had left the College prior to releasing the survey, and “with them . . . the impetus to organize the effort at soliciting community opinion and further input and analysis” also left.¹¹² After departures from the subcommittee, the task of community engagement ceased at the subcommittee level and was thereafter continued by the HLRC as a whole.¹¹³ Yet, despite the fact that a community survey had already been developed, no effort was made to release the survey, leaving the student body and alumni disenfranchised as a whole.

The HLRC committee did make its recommendations on the belief that community engagement would take place later. The HLRC Report recommended to Dean Faigman that he “further examine, survey or develop the issues related to [the] name change,” which included seeking input from the

106. *See id.* exhibit D at 1.

107. *Id.*

108. *Id.* exhibit D at 2.

109. *Id.* exhibit D at 1.

110. *Id.* exhibit D at 2.

111. *Id.* exhibit D at 3.

112. *Id.*

113. E-mail from John DiPaolo, General Counsel and Secretary, UC L. S.F., to author (Nov. 13, 2023) (on file with author).

community and study of the financial and legal issues implicated with a name change.¹¹⁴ Indeed, the HLRC urged that its decision against changing the College's name should not be deemed final.¹¹⁵ Thus, the fault that the Yuki Tribe and the RVIT were the only stakeholders appreciably consulted throughout the entirety of the renaming process is not fairly attributable to the HLRC. Rather, the exclusion of widespread consultation took place after the release of the Report. Even after the College decided to change its name—reluctantly, as evinced by the second wave of the name change process—the lack of stakeholder engagement remained a persistent theme throughout the renaming process.

2. *The White Paper: Findings of Serranus Hastings's Involvement in the Killings of Native Americans*

Professor Brendan Lindsay's contributions to the name change were primarily directed towards studying Serranus Hastings's involvement with the killings of Native Americans during the nineteenth century. Submitted on May 23, 2018, Lindsay's white paper corroborated the historical narrative released by the Committee, which found that Serranus Hastings contributed significantly to the killings of Native American killings.¹¹⁶

In his final report to the Board of Directors, Faigman wrote "I leave to the reader the details of the reprehensible treatment of our Native American brethren described in Lindsay's work."¹¹⁷ Indeed, Lindsay's white paper is a culmination of years of study and analysis, with reference to contemporary letters, sworn depositions, and other primary materials.¹¹⁸ Because Lindsay's white paper served as a factual and historical basis for the College's actions throughout the renaming process, this Note relies on it comprehensively. However, even as of 2024, the extent of Serranus Hastings's culpability in the killing of Native Americans has undergone considerable debate.¹¹⁹

114. HLRC REPORT, *supra* note 21, at 2.

115. *Id.*

116. *Id.*

117. DEAN FAIGMAN'S REPORT, *supra* note 43, at 5.

118. *E.g.*, WHITE PAPER, *supra* note 72, at 58 app. C.

119. See Kristian Whitten, *Serranus Clinton Hastings: A Counterpoint on Culpability*, CAL. SUP. CT. HIST. SOC'Y REV., Fall/Winter 2023, at 1, 3 (describing prior historical studies that found Serranus Hastings to have "masterminded" the killings as unsupported and comporting with existing law at the time); see also CHIP ROBERTSON & ALBERT ZECHER, RE-EXAMINATION OF BOARD'S DECISION TO PURSUE RENAMING OF THE COLLEGE 2 (2022), <https://www.uclawsf.edu/our-story/hastings-legacy/hlrc> (noting that the College's Board of Directors rejected the characterization of the killings as "genocide" and the lack of incontrovertible proof). The latter citation is from a subcommittee's report dated on May 28, 2022, after "[s]everal alumni expressed disagreement with the historical" record that Lindsay produced. *Id.* at 1. Those alumni disputed whether or not Serranus Hastings was aware of the atrocities committed. *Id.* at 2. The subcommittee, tasked with investigating the historical record in controversy, affirmed Lindsay's findings but found a lack of genocidal intent, as defined

The Yuki Tribe was most directly harmed by Serranus Hastings's actions.¹²⁰ They lived in separate villages throughout the Round and Eden Valleys, later part of Mendocino County, as a hunter and gatherer society.¹²¹ Though not a cohesive group of people,¹²² the Yuki nonetheless shared a mutual threat: settler-colonialism from the Gold Rush. By the 1850s, the food source of the Yuki was threatened by settlers.¹²³ Sawdust from the American logging industry polluted rivers and killed fish, livestock drove off native species, and recreational hunting devastated the population of game.¹²⁴ The Yuki, living at subsistence levels, were faced with little alternative but to raid American livestock and to attack settlers, resulting in retaliation from ranchers and settlers.¹²⁵ As recognized by the College, Serranus Hastings was instrumental in orchestrating hundreds of killing sprees targeting Natives.¹²⁶

Serranus Hastings was the owner of Eden Valley, the land in which the killings were conducted.¹²⁷ Rising to prominence for his legal work as Chief Justice of Iowa and California, efforts in banking and owning land, and having strong political connections within California,¹²⁸ Serranus Hastings was one of the largest landowners in California.¹²⁹ Using a state-wide program that sold land at a discounted price,¹³⁰ Serranus Hastings purchased Eden Valley to raise livestock.¹³¹

by international law. *Id.* at 7. As an alternative to Lindsay's research and findings, Whitten's article offers a direct counterpoint to Serranus Hastings' culpability, questioning his knowledge and involvement in the killings, as well as the propriety of judging an individual by contemporary standards. Whitten, *supra*, at 13. Whitten's article was published as a response to an article in the preceding issue, authored by John Briscoe, who not only described Serranus Hastings as guilty of committing "grievous misdeeds," but also offered a novel perspective on a movement to de-name institutions and buildings. See John Briscoe, *Of Colleges and Halls and Judges Bearing Gifts: Reflections on the Great Denaming Debate*, CAL. SUP. CT. HIST. SOC'Y REV., Spring/Summer 2023, at 1, 2.

120. Assemb. 1936, 2022 Leg., Reg. Sess. (Cal. 2022). Used to describe the Witukomno'm people of Uksismulha'nt, known today as Eden Valley, the word "Yuki" actually means *enemy*. Emails and Letters from Board of Directors Briefing on Name Feedback (compiled as of June 20, 2022) (correspondence from descendants of the Witukomno'm people to Assemblymember James Ramos) (on file with author). Still, given the prevailing practice of the College to refer to the tribe as the "Yuki," that terminology is replicated in the Note for referential consistency.

121. WHITE PAPER, *supra* note 72, at 14–15.

122. *Id.* at 5.

123. *Id.* at 16.

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* at 15.

128. *Id.* at 3.

129. *Id.*

130. *Id.* at 10–11 (describing Hastings's purchase of land through the School Land Warrant system and his exploitation of a loophole allowing him to acquire 10,720 acres of land).

131. *Id.* at 15.

Motivated by a desire to protect economic and property interests, Serranus Hastings contributed significantly to the mass killings of Natives. First, Serranus Hastings hired H.L. Hall to manage livestock and property.¹³² In the beginning, Serranus Hastings owned over four hundred horses.¹³³ In 1858, only four months after Hall had moved into Eden Valley, tensions with the Yuki escalated.¹³⁴ Hall had hired Yuki workers for physical labor but refused to compensate them after their labor, resulting in the Yuki killing horses in retaliation.¹³⁵ After more horses were killed, Hall recruited some men and attacked a village, executing half a village.¹³⁶ Following these killings, Serranus Hastings expanded his business, increasing the livestock in the valley to six hundred horses.¹³⁷ But tensions in the valley continued to spiral, and Hall sought protection from Serranus Hastings.¹³⁸ Throughout his employment, Hall slaughtered over two hundred Natives.¹³⁹ Hall later testified before a state investigative committee that he had killed many women and children, including infants.¹⁴⁰ After learning about the killings, Serranus Hastings fired Hall but acquiesced to his actions, allowing him to remain as a farmer on the land.¹⁴¹

Second, Serranus Hastings used his accumulated influence and resources to support militias that decimated the Native population. Serranus Hastings intensified settler-native hostilities by reporting native-settler hostilities to the press and by petitioning his friend, Governor Weller, to establish a militia.¹⁴² Eventually, a militia was formed and commissioned to exterminate Natives while protected under the law, under the guise of public safety.¹⁴³ The militia—the Eel River Rangers—a state-backed venture, was paid wages and supplied with ammunition and provisions.¹⁴⁴

Even before the Eel River Rangers were officially sanctioned in 1859, the company had killed hundreds of Natives and captured many more for

132. *Id.*

133. *Id.* at 15–17.

134. *Id.* at 17.

135. *Id.*

136. *Id.*

137. *Id.* at 18.

138. Tensions rose in part from the killings but also because white settlers frequently enslaved and kidnapped Indian women and children. In retribution, Natives killed a handful of settlers, causing other settlers in the region, like Hall, to panic. *Id.*

139. *Id.* at 19.

140. *Id.* at 20.

141. *Id.* at 58.

142. *Id.* at 19–22.

143. *Id.* at 22–25 (describing the Militia Law of California, which “empower[ed] volunteers . . . to defend the lives and property of citizens”).

144. *Id.* There is some evidence that the militia defrauded California and federal government by running a reimbursement scheme. *Id.* at 24. The Eel River Rangers would source supplies from local businesses, which in turn would submit reimbursement claims to the government. *Id.* The militia would artificially inflate supply estimates and overrepresent the number of men employed, resulting in fraud, waste, and abuse. *Id.* at 24–25.

servitude.¹⁴⁵ In addition to his political and financial support to the organization, Serranus Hastings regularly received written reports from the company captain, Walter Jarboe.¹⁴⁶ Though only operating for a year, Hall, Jarboe, and the Eel River Rangers collectively devastated the population of the Yuki. In 1848, the Yuki population was estimated at six thousand.¹⁴⁷ The population had declined to five thousand by 1856, following the discovery of gold.¹⁴⁸ After 1864, only three hundred Yuki remained.¹⁴⁹ During the 1870s, the Yuki had ceased to be the majority population amongst the Round Valley Indian Tribes.¹⁵⁰ The extent of the Eel River Rangers' impact on the Yuki population has never been recorded in detail, but a conservative estimate of six hundred Natives were killed in the valleys, with many more taken as slaves.¹⁵¹ Today, the Round Valley Indian Tribes consists of seven distinct tribes, including the Yuki.¹⁵²

3. *Dean Faigman's Report to the Board of Directors: The End of the Name Change?*

Dean Faigman's report to the College's Board of Directors was a culmination of the efforts of the HLRC and Professor Lindsay. On September 11, 2020, Dean Faigman submitted a report to the Board of Directors, which included HLRC's three-year report, the white paper, and an outline of the plan forward.¹⁵³ Dean Faigman recognized the historical record and adopted the restorative justice recommendations from the HLRC Report in their entirety.¹⁵⁴ But he could not do so for the name change, as the HLRC did not reach a unanimous consensus on renaming, and thus he provided his own recommendation.¹⁵⁵

Dean Faigman recommended against removing Hastings from the College's name.¹⁵⁶ First, Dean Faigman balanced the loss of reputational recognition from removal with Serranus Hastings's misdeeds.¹⁵⁷ Principal to the analysis was the consideration that Hastings had become known as namesake rather than the surname of Serranus Hastings.¹⁵⁸ Second, pursuing namesake

145. *Id.* at 25–26.

146. *Id.* at 27.

147. *Id.* at 55.

148. *Id.*

149. *Id.*

150. *Id.* at 5.

151. *Id.* at 4.

152. Thomas Fuller, *A New Name for California's Oldest Law School? It's Not Easy*, N.Y. TIMES (Mar. 17, 2022), <https://www.nytimes.com/2022/03/17/us/new-name-california-law-school.html>.

153. DEAN FAIGMAN'S REPORT, *supra* note 43, at 1; DEAN FAIGMAN'S REPORT, *supra* note 43 app. A.

154. *Id.* at 3–7.

155. *See supra* text accompanying note 109.

156. DEAN FAIGMAN'S REPORT, *supra* note 43, at 7.

157. *See id.*

158. *See id.* at 8.

removal could lead to further erasure of Serranus Hastings's misdeeds against tribal members, a concern relayed frequently in restorative justice conversations.¹⁵⁹ During discussions, none of the participating tribes collectively, as a unified voice, asked for removal.¹⁶⁰ In fact, many individual members of the Yuki and other tribes advocated against removal. Dean Faigman reasoned that because removing Hastings as a namesake would be more symbolic than remedial to the tribes, removal was not warranted.¹⁶¹ Instead, he argued at that time that the College should adopt the HLRC's recommendations for restorative justice, bringing "concrete benefits to the Yuki people and the Indian Tribes of Round Valley."¹⁶²

Later in September 2020, the Board of Directors adopted Dean Faigman's recommendations, and the College's renaming efforts pivoted away from propriety of changing its name and studying that process's attendant challenges, and towards restorative justice efforts.¹⁶³ By December 2020, Dean Faigman launched the Restorative Justice Advisory Board (RJAB) to implement and oversee those initiatives.¹⁶⁴ Similar to the HLRC, RJAB's membership consisted of alumni, faculty, staff, and even students, with some overlap with the first committee.¹⁶⁵

From the HLRC's establishment to Dean Faigman's memorandum, the momentum to engage with stakeholders gradually declined. In their recommendations, the HLRC re-assigned the task of community engagement to Dean Faigman.¹⁶⁶ Dean Faigman, thereafter, served as the intermediary between the College and its stakeholders, consulting with members of the tribes, over a hundred alumni, and faculty.¹⁶⁷ The endeavor of seeking widespread stakeholder engagement ended there. Satisfied with the conversations he had those he had conversed with, Dean Faigman wrote that he did "not believe that [the question of renaming] ought to be decided by majority vote," describing challenges with identifying the relevant constituency.¹⁶⁸ While Dean Faigman consulted with some stakeholders on the matter of removal, the larger community—at least alumni and current students—should have been consulted, especially with the

159. *Id.*

160. *Id.* at 10.

161. *Id.* at 10–11.

162. *Id.* at 10.

163. *UC Law SF Restorative Justice Advisory Board*, UC L. S.F., <https://www.uchastings.edu/our-story/hastings-legacy/tjab> (last visited May 20, 2023).

164. *Id.*

165. *Id.* Notably, Paul Laurin was not appointed as a member of RJAB.

166. *See supra* Part I.B.1.

167. *See* Board of Directors Briefing on Name Feedback received via Emails/Letters (totaling 270 emails and letters addressed to Dean Faigman) (on file with author). DEAN FAIGMAN'S REPORT, *supra* note 43, at 10.

168. DEAN FAIGMAN'S REPORT, *supra* note 43, at 10.

existence of prior efforts of the HLRC subcommittee.¹⁶⁹ When the College contemplated a new name, its pattern of stakeholder divestment was repeated again,¹⁷⁰ with only a handful of stakeholders driving conversations of the geographic designation.¹⁷¹

The first wave of the name change ended almost a year after the Board's adoption of Dean Faigman's report. On July 2, 2021, the President of the RVIT and Dean Faigman released an article in the Sacramento Bee that described conversations between the College and the RVIT.¹⁷² The two wrote that a "principal grievance of RVIT representatives was their erasure from California [history]."¹⁷³ Ongoing talks between the College and RVIT discussed partnership strategies, from pro bono support to economic development and construction of a memorial on campus to the Yuki.¹⁷⁴ The two echoed sentiments conveyed in Dean Faigman's report to the Board of Directors, questioning the value that a name change would bring to the living descendants of Serranus Hastings's crimes.¹⁷⁵ Though the article did not expressly foreclose the possibility of a name change, it re-emphasized the College's commitment to restorative justice.¹⁷⁶ But, four months later, the College's decision to retain Hastings as a namesake drew national press, initiating a second wave of the movement to change the school's name.

C. THE SECOND WAVE OF THE NAME CHANGE: REVIVAL OF THE MOVEMENT AND APPROVAL OF A NAME CHANGE

The second wave of the renaming process began with articles published by the New York Times that revitalized public interest in a name change.¹⁷⁷ It

169. See *supra* Part I.B.1. Whitten argues that "it was fundamentally unfair to abruptly reverse the long-studied and considered decision [by the HLRC] not to change the name, thus preventing the many stakeholders who had assumed that the name would not be changed from contributing in any meaningful way to that decision." Whitten, *supra* note 119, at 4.

170. See *infra* Part III.B.

171. *Id.*

172. James Russ & David L. Faigman, Opinion, *UC Hastings Namesake Killed, Displaced California Tribes. But Changing Name Isn't Enough*, SACRAMENTO BEE (July 3, 2021, 6:00 AM), www.sacbee.com/opinion/op-ed/article251138474.html.

173. *Id.*

174. *Id.*

175. *Id.*

176. *Id.* In *Hastings College Conservation Committee*, Defendants' notice of special motion to strike incorporates the article as a declaration, asserting that "Dean Faigman did not initially recommend changing the College's name, though he recognized that . . . a name change was not off the table." Special Motion to Strike, *supra* note 60, at 14.

177. Thomas Fuller, *He Unleashed a California Massacre. Should This School Be Named For Him?*, N.Y. TIMES (June 22, 2023), <https://www.nytimes.com/2021/10/27/us/hastings-college-law-native-massacre.html>.

encompasses the public criticism that followed, and the Board of Directors' eventual decision to approve the name change.

After the Board of Directors declined to rename the College and pursued restorative justice measures, the name change movement ceased for approximately a year. On October 27, 2021, the movement was revived, this time by an article from the *New York Times*.¹⁷⁸ The piece covered California's Native American genocide, emphasizing the thousands of Natives who were killed by settlers during the Gold-rush era, and California's support of the killings.¹⁷⁹ The author, Thomas Fuller echoed Professor Lindsay's findings, adding that the "expeditions carried out at Mr. Hastings's behest . . . [were] the most deadly of 24 known California state militia campaigns."¹⁸⁰

The significance of Fuller's article lies not only in its historical contributions but also its effect on the public and breadth of readership. Fuller's work rekindled discourse surrounding the College's name change, raising discussions to a national level. More importantly, Fuller's piece garnered the attention of key stakeholders—stakeholders that actually mattered to the College's decision-makers.

Former Mayor Willie Brown expressed his discontent with the College's retention of its namesake, remarking, "I'm not terribly proud of carrying the Hastings name on my law license."¹⁸¹ One of the largest donors of the College, Joseph Cotchett told the *San Francisco Chronicle* that he would "do everything in [his] power as a 55-year alumnus of Hastings to change the name," even threatening to pull his name from the Cotchett Law Center,¹⁸² a cornerstone building of the College.¹⁸³ Lastly, California Senator Scott Wiener criticized the school, stating that "Hastings definitely needs a name change" and characterized the College being "named for someone who exterminated Native Americans [as] untenable."¹⁸⁴ The disapproval of these three prominent critics exerted tremendous social pressures. Seeking to clarify the standpoint of the College, Dean Faigman wrote that "[t]here is no effort from me or the College to oppose a name change," maintaining that the College's commitment at the time was

178. *Id.*

179. *Id.*

180. *Id.*

181. *Leading Law School Seeks to Remove Genocidal Founder's Name*, AP NEWS (Nov. 2, 2021, 8:22 PM PDT), <https://apnews.com/article/california-kamala-harris-san-francisco-native-americans-law-schools-e769bcf29467a373c3f79fe53bf833f1>.

182. *Id.*

183. *UC Law SF's Newest Building is Named Cotchett Law Center*, UC L. S.F., (Aug. 27, 2020), <https://www.uclawsf.edu/2020/08/27/uc-hastings-cotchett-law-center>.

184. *UC Hastings Seeks to Remove Name of Founder Who Funded Native American Massacres in 1850s*, CBS (Nov. 2, 2021, 8:19 PM PDT), <https://www.cbsnews.com/sanfrancisco/news/uc-hastings-seeks-to-remove-name-of-founder-who-funded-native-american-massacres-in-1850s>.

focused on pursuing restorative justice and that a name change was never conclusively eliminated.¹⁸⁵

On November 2, 2021, the Board of Directors held an emergency meeting,¹⁸⁶ voting affirmatively to remove Hastings from the College's name and to authorize Dean Faigman to work with the California Legislature and Governor's Office to that end.¹⁸⁷ Thus, the College's leadership was authorized to work with legislators and stakeholders to change its name.¹⁸⁸

After a process of almost five years, on July 27, 2022, the Board of Directors voted unanimously for the "University of California, San Francisco," following a meeting with the Round Valley Indian Tribes and designees of the Yuki Indian Committee.¹⁸⁹ Though representatives proposed an indigenous name, Powe'no'm—meaning "one people"—as the replacement,¹⁹⁰ the Chair of the Board of Directors rejected the proposal and reported that a poll of "[f]aculty, alumni and others" largely favored a geographic choice.¹⁹¹

The communication from the Board of Directors on July 27, 2022, displays a salient shortcoming of the College's decision-making process, and its governance structure more broadly. Throughout the renaming process, the College continuously defied traditional principles of governance, namely practices furthering transparency and stakeholder engagement. At no point after the release of the HLRC Report did the College ever consummate the vision of the HLRC: to consult broadly with the community at large.

To the extent stakeholders were consulted, the composition and quantity of stakeholders was not publicly revealed. For instance, when the Board of Directors selected a geographical name for the College, there were only vague references to its efforts to engage stakeholders.¹⁹² The College did not publicly provide details regarding the size and outreach of any engagement, specifications for whom was considered a relevant stakeholder, and published

185. *Addressing the Wrongs of Serranus Hastings*, *supra* note 76.

186. Memorandum of Points and Authorities in Support of Plaintiffs' Motion for Preliminary Injunction at 13, *Hastings Coll. Conservation Comm. v. State*, No. CGC-22-602149 (Cal. Super. Ct. 2022) [hereinafter Motion for Preliminary Injunction].

187. *UC Law SF Board Directs Chancellor & Dean to Pursue Name Change*, UCL S.F., (Nov. 2, 2021), <https://www.uchastings.edu/2021/11/02/press-release-updates>.

188. *Id.*

189. *Chancellor & Dean David Dean Faigman: Board of Directors Votes on New Name Change for the College*, UCL S.F. (July 27, 2022), <https://www.uchastings.edu/2022/07/27/chancellor-dean-david-faigman-board-of-directors-votes-on-new-name-for-the-college>.

190. Alana Minkler, *UC Hastings Name Change Becomes California Law*, PRESS DEMOCRAT (Sept. 26, 2022), <https://www.pressdemocrat.com/article/news/uc-hastings-name-change-bill-passes>.

191. Nanette Asimov, *Law School Board Votes to Rename Hastings 'UC College of the Law, San Francisco'*, S.F. CHRON. (July 27, 2022, 6:27 PM), <https://www.sfchronicle.com/sf/article/Law-school-board-votes-to-rename-UC-Hastings-17333001.php>.

192. See UCL S.F., *supra* note 189.

results of the engagement only in terms of percentages.¹⁹³ What were the relative number of faculty, lecturers, staff, or others forming the overall number of respondents? Was the student body adequately represented? Were alumni represented?¹⁹⁴ Only some of these questions were answered as of 2023.¹⁹⁵

The College's community outreach can be compared with CSU Cleveland Law. When CSU Cleveland Law was deciding whether or not to remove John Marshall from its name, the authoritative body vested with decision making was at the university level, in contrast to the College.¹⁹⁶ Like UC Law SF, CSU Cleveland Law formed a committee to resolve the discussion of removal, but from the outset, Dean Fisher emphasized that students and alumni were the biggest stakeholder groups and appointed over two-thirds of the thirty-one-person committee as such.¹⁹⁷ In contrast, the HLRC consisted of thirteen members and contained no students whatsoever.¹⁹⁸

Turning back to CSU Cleveland Law, the extent of their community engagement on renaming was extensive. Over 1,349 stakeholders responded, consisting of alumni, students, CSU students, the legal and general community, and faculty and staff.¹⁹⁹ Alumni and students constituted over 80% of all stakeholder feedback.²⁰⁰ As a whole, stakeholders indicated a desire for a name change.²⁰¹ In his report and recommendation, Dean Fisher included a summarized version of themes from stakeholders, links to three forums featuring experts on naming and on Justice Marshall, and links to three town halls which were open to the community.²⁰² While CSU Cleveland Law did not open the matter to a "majority vote," it nonetheless recognized the importance and value

193. *Chancellor & Dean David Dean Faigman: Board of Directors Votes on New Name for the College*, *supra* note 189.

194. HLRC REPORT, *supra* note 21 exhibit D, at 2.

195. As a public school, the College is required to provide certain materials upon request. During the writing of this Note, I obtained a document titled "Board of Directors Briefing on Name Feedback via Emails/Letters," which contained a total of 270 respondents. Board of Directors Briefing on Name Feedback received via Emails/Letters, UC L. S.F. (compiled as of June 20, 2022) (on file with author). Respondents are broken down as belonging to either internal or external communities. *Id.* While the briefing provides statistical summaries on the breakdown of support for a name change and possible substitute names, there is no summary on the composition of stakeholders. *Id.* Many respondents are indeed comprised of alumni, a handful of students, and a collection of faculty, staff, or lecturers. *Id.* But the report contains an equally implicating fact: feedback dates back only until *after* the release of the New York Times articles. *Id.* Thus, stakeholder engagement seems to be an afterthought to supporting the College's decisions rather than driving and informing them. If this were not the case, stakeholder engagement would have taken place before the Board of Directors made its initial recommendation, during the HLRC's term or after the submission of the HLRC Report.

196. Memorandum from Lee Fisher, *supra* note 19, at 1.

197. *Id.* at 2.

198. DEAN FAIGMAN'S REPORT, *supra* note 43 app. A, at 1.

199. Memorandum from Lee Fisher, *supra* note 19, at 4.

200. *Id.*

201. *See id.* (noting the composition of stakeholder responses and their respective responses in favor of a name change, permitting computation of a weighted average).

202. *Id.* at 4-5.

of consulting with its stakeholders, evidenced by the emphasis on stakeholder feedback.

Paradoxically, one would expect CSU Cleveland Law to have a less structured renaming process than the College with its centralized authority, given CSU Cleveland's authoritative bifurcation between the law school and university. However, the lack of unitary authority evidently created a stronger incentive for a structured approach to stakeholder outreach. In contrast, UC Law SF took advantage of its centralized authority, engaging in stakeholder outreach as an afterthought to the New York Times articles.²⁰³

II. THE RENAMING PROCESS: EXTERNAL MOVEMENTS

The College's name change required unified acts from both internal and external bodies. Internally, the name change was ushered through HLRC, Dean Faigman's office, and the Board of Directors. Externally, the renaming process required an act of the California Legislature and Governor. The jurisprudence of the renaming process includes a study of the cases on the College's anomalous governance, briefly covers the efforts of lawmakers, and concludes with an overview of the lawsuit attempting to block the name change, which remains ongoing as of 2023.²⁰⁴

A. AN INTRODUCTION TO THE COLLEGE'S GOVERNANCE STRUCTURE

An analysis of the College's governance requires an understanding of its founding, informed by history and the legal landscape. The College was established by the California Legislature in 1878, driven by the philanthropic vision of Serranus Hastings.²⁰⁵ As part of his contribution, Serranus Hastings stipulated that the College must "forever be known and designated as Hastings College of the Law," that the "business of the College shall be managed by the Board of Directors," and that "the College [be] affiliated with the University of California."²⁰⁶ The California Legislature accepted the terms unequivocally, and Governor William Irwin codified the agreement into law later that year.²⁰⁷

The College's governance structure is traceable to two landmark decisions from the California Supreme Court. In *Foltz v. Hoge*, Clara S. Foltz sued the College to compel her admission after it had excluded her from enrollment on

203. *See supra* note 195.

204. *Hastings Coll. Conservation Comm. v. State*, No. CGC-22-602149 (Cal. Super. Ct. filed Oct. 4, 2022).

205. *See Hogan, supra* note 73, at 90.

206. *Id.*

207. *Id.*

the sole basis of gender.²⁰⁸ The College argued that its Board of Directors enjoyed “absolute discretion in the matter of the admission of students,” and while being affiliated with the University of California, was not subject to the latter’s practice of admitting females.²⁰⁹ The California Supreme Court, ruling in favor of Foltz, held that the Act of 1878 which created the College was intended to create a single institution to be governed by the same laws.²¹⁰ As an affiliate under a parent institution, the College was thereby subject to the same laws and rules, with special exceptions arising only as necessary for “harmonious operation[s].”²¹¹ Accordingly, the College, despite its autonomy, could not reject applicants on the sole basis of gender.²¹²

Just a few years after *Foltz*, the College’s sovereignty was challenged again, but this time, concerning the entity presiding over the governance of the College. The University of California, as the parent institution of the College, was established similarly to the College, “created by statute in 1868, with control over the University invested in the Regents.”²¹³ Ten years later, in 1878, after the College and its Board of Directors was created, the California Legislature passed two statutes that attempted to transfer control of the College.²¹⁴ In 1883, the Legislature “assumed to transfer control of the college to the regents of the university,” while in 1885, another act “assumed to make another transfer by creating a board of trustees for the college.”²¹⁵

In *People ex rel. Hastings v. Kewen*, the California Supreme Court deemed the statutes unconstitutional, finding that the California Constitution, amended one year after the College’s establishment and only a few years before the legislative acts, was intended to preserve distinct governance structures between the University of California and the College.²¹⁶ The 1879 California Constitution provided the following:

The University of California shall constitute a public trust, and its organization and government shall be perpetually continued in the form and character prescribed by the organic act creating the same, subject only to such legislative

208. 54 Cal. 28, 30–31 (1879). Though she did not attend the College, Clara Foltz was the first woman to be a lawyer on the Pacific Coast and was awarded a posthumous Doctor of Laws by the College in 1991. *First-Year Curriculum*, UCL. S.F., <https://www.uchastings.edu/academics/first-year-curriculum> (last visited May 20, 2023). One of the five first-year student cohorts at UC Law SF is now named Foltz Inn—after Clara Foltz.

209. *Foltz*, 54 Cal. at 32–35.

210. *Id.* at 33.

211. *Id.*

212. *Id.* at 35.

213. *Tafoya v. Hastings Coll.*, 191 Cal. App. 3d 437, 441 (1987) (internal citation omitted).

214. *See People ex rel. Hastings v. Kewen*, 69 Cal. 215, 216 (1886).

215. *Id.*

216. *Id.*

control as may be necessary to insure compliance with the terms of its endowments, and the proper investment and security of its funds.²¹⁷

Nullifying the Legislature's attempted transfers in 1883 and 1885, the *Kewen* court held that the intention of the 1879 California Constitution was to "prohibit [legislative] changes as to the university; and if the college is a portion of the university, such prohibition would extend to it."²¹⁸ This construction elevated the governance structure of the University of California to that of a "constitutional department or function of state government."²¹⁹ Ironically, the California Constitution was seemingly intended to shield the University of California from legislative interference.²²⁰ Instead, it shielded the College from both the legislature and also the control from the University of California. Thus, *Kewen* "[froze] an imperfect relationship and an anomalous structure on both the University and Hastings,"²²¹ petrifying the sovereignty of the Board of Directors.

The College's independent governance derives its authority from *Foltz* and *Kewen*, with the 1878 act that created it enduring in the Education Code.²²² Its governance is not only anomalous because of its derivation from a convergence of constitutional, statutory, and judicial authority. Rather, its governance is also anomalous because the College remains affiliated with the University of California, subject to its laws and policies, while remaining a sovereign entity free from control under the Regents.²²³ Although a more recent case, in the California Court of Appeal, attributes the anomaly to "differences in the details,"²²⁴ the renaming process illustrates the immense effects that details can have on procedures and outcomes.²²⁵

B. LEGISLATIVE EFFORTS: ASSEMBLY BILL 1936

After the College's internal efforts, the renaming process required an act of the California Legislature. Assembly Bill 1936 (AB 1936) was introduced by Assemblymember James Ramos on February 10, 2022, six months after the

217. CAL. CONST. art. IX § 9 (1879).

218. *Kewen*, 69 Cal. at 216.

219. *Tafoya v. Hastings Coll.*, 191 Cal. App. 3d 437, 442 (1987).

220. See Hogan, *supra* note 73, at 91.

221. THOMAS G. BARNES, HASTINGS COLLEGE OF THE LAW: THE FIRST CENTURY 84–85 (1978) (ebook available at https://repository.uclawsf.edu/cgi/viewcontent.cgi?article=1000&context=faculty_books).

222. See CAL. EDUC. CODE §§ 92200–92215. For instance, section 92201 provides that "[t]he college is affiliated with the University of California, and is the law department thereof." CAL. EDUC. CODE § 92201 (West 1976).

223. *Id.*

224. *Tafoya*, 191 Cal. App. 3d at 442.

225. See *supra* Part I.

Board of Directors authorized the changing of the College's name.²²⁶ To become law, AB 1936 required approval from the California Legislature, a bicameral body consisting of the California State Assembly and the California State Senate, as well as the Governor's approval.²²⁷

Among other proposals, AB 1936 designated the College's legal name as College of the Law, San Francisco.²²⁸ AB 1936 also requested that the Board adopt five restorative justice measures: (i) name the college's campus library an appropriate Yuki name or name determined by the Round Valley Indian Tribes; (ii) ensure reading of an annual statement of Serranus Hastings's atrocities against the Yuki at convocation and commencement ceremonies; (iii) reengage in consultation with the RVIT if there is a change in the geographical name of the college; (iv) develop opportunities with the School's Moot Court and Trial Advocacy and Competition Groups with the RVIT; and (v) to institute a moot court competition related to California's treatment of Native Americans and atrocities committed against them.²²⁹ Moreover, AB 1936 contained declarations from the Legislature that "S.C. Hastings . . . promoted and financed Native American hunting expeditions . . . funding bounties resulting in the massacre of hundreds of Yuki men, women, and children,"²³⁰ in recognition of the historical record established by the College.

AB 1936 was approved by the Assembly and Senate on May 26, 2022, and August 25, 2022, respectively.²³¹ Governor Newsom signed the bill into law on September 23, 2022,²³² with the name change taking effect on January 1, 2023.²³³ The Governor's signing took place on the 55th Annual Native American Day, accompanied by other bills dedicated to supporting California Native Communities.²³⁴ Governor Newsom's signing fits into a broader state-wide recognition of the "violence, discrimination, and exploitation sanctioned by [California] government," of which an executive order signed by Newsom

226. See *California AB 1936: University of California Hastings College of the Law*, TRACKBILL, <https://trackbill.com/bill/california-assembly-bill-1936-university-of-california-hastings-college-of-the-law/2224300/#:~:text=Existing%20law%20establishes%20the%20Hastings,Hastings%20College%20of%20the%20Law> (last visited Aug. 10, 2024); Elizabeth Moore, *UC Law SF Board Directs Chancellor & Dean to Pursue Name Change*, UC L. S.F. (Nov. 2, 2021), <https://www.uclawsf.edu/2021/11/02/press-release-updates>.

227. *The Life Cycle of Legislation: From Idea into Law*, CAL. STATE ASSEMBLY <https://clerk.assembly.ca.gov/sites/clerk.assembly.ca.gov/files/LIFECYCL.pdf> (last visited May 20, 2023).

228. Assemb. 1936, 2022 Leg., Reg. Sess., sec. 20(a) (Cal. 2022).

229. *Id.* at sec. 20(e).

230. *Id.* at sec. 1(q).

231. *AB 1936*, FAST DEMOCRACY, <https://fastdemocracy.com/bill-search/ca/20212022/bills/CAB00024306> (last visited May 20, 2023).

232. OFF. OF GOVERNOR GAVIN NEWSOM, *supra* note 92.

233. *UC Hastings is Now UC Law SF*, UC L. S.F., <https://www.uclawsf.edu/new-name> (last visited May 20, 2023).

234. OFF. OF GOVERNOR GAVIN NEWSOM, *supra* note 92.

acknowledged and apologized for the state-sanctioned militia campaigns against Natives during the 1850s.²³⁵

C. LITIGATION OF THE RENAMING PROCESS: *HASTINGS COLLEGE CONSERVATION COMMITTEE V. STATE OF CALIFORNIA*

On October 4, 2022, descendants of Serranus Hastings and a group of alumni sued the State of California, Dean Faigman, and the Board of Directors to block the name change.²³⁶

In their complaint, Plaintiffs listed seven causes of action, alleging (i) breach of the contract clauses under the California and United States Constitutions, impairing the State's obligations in an agreement with Serranus Hastings; (ii) that AB 1936 constituted a bill of attainder and an ex post facto law; (iii) violation of Article 9, Section 9 of the California Constitution prohibiting changes in the form and character of the School; (iv) *ultra vires* amounting to a waste of taxpayer money; (v) deprivation of Civil Rights under 42 U.S.C. § 1983; (vi) breach of contract, requesting specific performance; and (vii) breach of contract, seeking damages.²³⁷ The complaint also made factual allegations that the news articles describing Serranus Hastings's support and financing of Native American raid were "poorly sourced" and that the New York Times article was a "hit-piece" that "wrongfully, maliciously and baselessly" attacked his reputation.²³⁸

On November 2, 2022, Defendants filed a special motion to strike, seeking an order to strike or dismiss the lawsuit.²³⁹ Defendants sought to dismiss the lawsuit pursuant to California's anti-SLAPP statute, reasoning its endeavors with the name change were based on activities protected under the "right of petition or free speech United States Constitution and California Constitution."²⁴⁰ First, Defendants claimed the contract claims failed because the writing in which the claim is based references a statute rather than a

235. *Governor Newsom Issues Apology to Native Americans for State's Historical Wrongs, Establishes Truth and Healing Council*, OFF. OF GOVERNOR GAVIN NEWSOM, <https://www.gov.ca.gov/2019/06/18/governor-newsom-issues-apology-to-native-americans-for-states-historical-wrongs-establishes-truth-and-healing-council> (last visited Aug. 10, 2024).

236. Complaint at 15, *Hastings Coll. Conservation Comm. v. State*, No. CGC-22-602149 (Cal. Super. Ct. Dec. 30, 2022) [hereinafter Complaint]; *Chancellor and Dean David Dean Faigman: Update on Status of Name Change*, UC L. S.F. (Nov. 3, 2022), <https://www.uclawsf.edu/2022/11/03/chancellor-and-dean-david-faigman-update-on-status-of-name-change>; *Hastings College Conservation Committee v. State of California: Stop Cancel Culture's Attack on Serranus Hastings!*, CTR. FOR AM. LIBERTY, <https://libertycenter.org/cases/hastings> (last visited Aug. 10, 2024) (describing the College's renaming process as the "Left's attempt to cancel . . . Serranus Hastings" and rewrite history).

237. Complaint, *supra* note 236, at 14–21.

238. *Id.* at 3–4.

239. Special Motion to Strike, *supra* note 60, at 1.

240. *Chancellor and Dean David Faigman: Update on Status of Name Change*, UC L. S.F. (Nov. 3, 2022), <https://www.uclawsf.edu/2022/11/03/chancellor-and-dean-david-faigman-update-on-status-of-name-change>.

contract.²⁴¹ Moreover, Plaintiffs' lacked standing as they were not parties to the agreement, nor successors-in-interest or third-party beneficiaries.²⁴² Second, the ex post facto claim was inapplicable, as those constitutional protections apply only to criminal laws.²⁴³ Similarly, AB 1936 was not a bill of attainder as it did not target a specific person, or, if it did, it targeted only Serranus Hastings.²⁴⁴ Third, the claim under Article 9, Section 9 of the California Constitution was meritless because the protections were only against legislative interference.²⁴⁵ And since the College had changed its name and requested legislative assistance for mere statutory conformity, the name change did not even amount to legislative interference.²⁴⁶ Lastly, Defendants argued that the *ultra vires* claim and civil rights claim under section 1983 were also meritless, given that Plaintiffs had no showing of unlawfulness or deprivation of rights.²⁴⁷

On December 19, 2022, the anti-SLAPP motion to strike was denied.²⁴⁸ While Defendants argued that their meetings and hearings were protected activities, the court reasoned that "none of the Plaintiffs' claims were predicated on Defendants' protected activity". The Plaintiffs' defendants' claims "challeng[ed] the enactment of AB 1936 and the consequences that flow[ed] from that statute."²⁴⁹ Accordingly, Plaintiffs' claims were based on the renaming decision and its consequences rather than the speech leading up to the statute's implementation.²⁵⁰

On November 17, 2022, Plaintiffs filed a preliminary injunction to enjoin Defendants from altering the name of the school.²⁵¹ The thrust of Plaintiffs' argument was that Serranus Hastings's contribution amounted to a contract with the California Legislature—as opposed to a gift—and that the agreement was subject to a reversionary clause which required retention of the Hastings name.²⁵² When ruling on a preliminary injunction, a court considers the reasonable probability that the plaintiffs will prevail on the merits and whether

241. Special Motion to Strike, *supra* note 60, at 18–19.

242. *Id.* at 20.

243. *Id.* at 24.

244. *Id.* at 24–25.

245. *Id.* at 25.

246. *Id.*

247. *Id.* at 25–26.

248. Order Denying Defendants' Anti-SLAPP Motion to Strike at 1, Hastings Coll. Conservation Comm. v. State, No. CGC-22-602149 (Cal. Super. Ct. Dec 30, 2022) [hereinafter Order Denying Defendants' Anti-SLAPP Motion].

249. *Id.* at 3.

250. *Id.*

251. Plaintiffs' Notice of Motion and Motion for Preliminary Injunction at 3, Hastings Coll. Conservation Comm. v. State, No. CGC-22-602149 (Cal. Super. Ct. Dec. 30, 2022).

252. Plaintiffs' Notice of Ex Parte Application and Ex Parte Application for an Order to Stay of AB 1936 by Enjoining Defendants at 12, Hastings Coll. Conservation Comm. v. State, CGC-22-602149 (Cal. Super. Ct. Dec. 30, 2022).

the plaintiffs are likely to suffer a greater injury from denial of the injunction than defendants would from its grant.²⁵³ Thus, Plaintiffs relied on their previous claims and facts from the complaint.²⁵⁴ On December 9, 2022, Defendants filed an opposition to Plaintiffs' motion for preliminary injunction, emphasizing that preliminary injunctions are extraordinary and that Plaintiffs failed to show a likelihood of prevailing on the merits.²⁵⁵ Defendants maintained that Hastings made a donation to the State for the purpose of starting a law school.²⁵⁶ Following that donation, the Legislature enacted a statute to create the College, with the stipulation that the donation would not be refunded unless the State withheld funding or the College ceased to exist, in which the \$100,000 would be returned to Serranus Hastings's heirs with interest.²⁵⁷

On December 30, 2022, the court denied Plaintiffs' preliminary injunction motion.²⁵⁸ The court first noted the extraordinary nature of preliminary injunctions, as well as emphasized the caution that courts must take when enjoining public officers or agencies from performing their duties—especially when those powers are from other government branches.²⁵⁹ Proceeding to evaluate Plaintiffs' likelihood of prevailing on the merits, the court addressed the contracts clause claim first, finding that the 1878 Act that created the College was a statute and not a contract.²⁶⁰

In accordance with the unmistakability doctrine, Plaintiffs had failed to overcome the presumption that the Act was not intended to create contractual rights; there was no showing of a clear and unequivocal contractual intent.²⁶¹ Second, AB 1936 was not an ex post facto law as it was a civil statute with no punitive purpose or effect to deem it criminal.²⁶² Likewise, AB 1936 was not a bill of attainder as the only person it targeted was Serranus Hastings.²⁶³ Third, Article 9, Section 9 of the California Constitution was not violated because it was the Board that passed a resolution removing the Hastings name, not the California Legislature.²⁶⁴ Fourth and fifth, as to the ultra vires tax expenditure

253. Order on Plaintiffs' Motion for Preliminary Injunction at 3, Hastings Coll. Conservation Comm. v. State, CGC-22-602149 (Cal. Super. Ct. Dec. 30, 2022) [hereinafter Order on Plaintiffs' Motion for Preliminary Injunction].

254. *See id.*

255. Opposition to Motion for Preliminary Injunction at 1, 8, Hastings Coll. Conservation Comm. v. State, No. CGC-22-602149 (2022) [hereinafter Opposition to Motion for Preliminary Injunction].

256. *See id.* at 9.

257. *Id.*

258. Order on Plaintiffs' Motion for Preliminary Injunction, *supra* note 253.

259. *Id.* at 3.

260. *Id.* at 3–4.

261. *Id.*

262. *Id.* at 5.

263. *Id.* at 5–6.

264. *Id.* at 7.

and section 1983 claims, the court found there was no showing of either.²⁶⁵ As for the final claims alleging breach of contract, the court noted Plaintiffs' failure to sustain their burden.²⁶⁶ Balancing the equities of the case, the court held the Plaintiffs had not met their burden for injunctive relief.²⁶⁷

On December 4, 2023, Defendants filed a demurrer to the complaint, citing issues of standing and echoing arguments in the Special Motion to Strike.²⁶⁸ On February 6, 2024, the court sustained the demurrer without leave to amend,²⁶⁹ mirroring the analysis undertaken in the order denying the preliminary injunction. While concluding that Plaintiffs had standing, the court sustained the demurrer to the contracts clause claim and found the actions of the California Legislature which created the College to be a statute rather than contract.²⁷⁰ The Legislature instead merely "authorized" Serranus Hastings to establish a law school and did not contain an unmistakable indication of binding the State contractually.²⁷¹ The demurrer to the bill of attainder and ex post facto cause of action was sustained because AB 1936 was a civil and not punitive statute; similarly, the only effected person would be Serranus Hastings and not any of the Plaintiffs.²⁷² Similarly, Plaintiffs' claim based on Article 9, Section 9 of the California Constitution was dismissed because the purpose of that provision was to prevent legislative interference, whereas the name change was initiated by the Board of Directors.²⁷³ As for the final claims based on waste of taxpayer funds and violation of civil rights, the court found Plaintiffs had not alleged unlawful conduct.²⁷⁴

The lawsuit seeking to block and impede the College's name change has arguably been its most formidable barrier. Aside from administrative challenges—including branding, communications outreach, and signage—that have resulted in additional time and costs, legal fees have been the most recent ongoing costs. And perhaps unsurprisingly, the College's biggest cost. As of

265. *Id.*

266. *Id.*

267. *Id.*

268. *See generally* Special Motion to Strike, *supra* note 60 (arguing that Plaintiffs' claims are meritless and the Court should strike or dismiss those claims); Order on College Defendants' and State of California's Demurrers, Hastings Coll. Conservation Comm. v. State, No. CGC-22-602149 (Cal. Super. Ct. Dec. 30, 2022) [hereinafter Order on College Defendants' and State of California's Demurrers] (concluding that the Defendants' demurrer is sustained without leave to amend).

269. Order on College Defendants' and State of California's Demurrers, *supra* note 268, at 7.

270. *Id.*

271. *Id.* at 4–5.

272. *Id.* at 6.

273. *Id.* at 6–7.

274. *Id.* at 7.

July 27, 2023, the litigation fees amounted to \$1,171,425 out of the \$1,981,771 total that has been spent on the name change.²⁷⁵

III. AN EXAMINATION OF INSTITUTIONAL IDENTITY

The College's renaming process required a unified venture between California lawmakers and the College's leadership.²⁷⁶ It serves not only as a compelling case study for the decision-making procedures of the College but also as an occasion to examine the shortcomings of its governance more broadly. The renaming process highlights the College's disinterest in seeking wide-ranging perspectives from stakeholders, as well as the absence for such a necessity.

When reflecting on the name change, discussions focus centrally on the content of the new name, with many criticizing the College's abrupt change of position and accelerated agenda throughout the process. The renaming process revealed troubled historical findings, raised novel political and legal challenges, and was momentous in redefining the College's identity. But discussions fail to consider the renaming process in the context of the College's history. The most significant regret is not the College's new name or the shortcomings of the renaming process. Instead, the foremost regret is the missed opportunity to reconsider the College's identity as an independent institution, within the context of its relationship within the University of California.

A. AN OVERVIEW OF THE COLLEGE'S GOVERNANCE STRUCTURE

The College operates like a corporation. As codified in the Education Code, "[t]he business of the college . . . shall be managed by the board of directors."²⁷⁷ Directors derive their authority not only from the Education Code but from other sources, like the California Constitution and statutes.²⁷⁸ The procedures for exercising director authority is further delineated by the College's bylaws and standing orders.²⁷⁹ The College has officers, consisting of a dean, a registrar, and eleven directors.²⁸⁰ Unlike a corporation, however, directors are appointed by the California Governor and approved by the Senate.²⁸¹

The College's directors also do not enjoy plenary decision-making powers. For instance, while the College endowment fund is managed by directors or their

275. Faigman, *supra* note 42. The report writes that the College is in "negotiations with its insurance carriers seeking recovery of legal cost incurred." *Id.* See *infra* Part III.B.2. for a discussion of renaming costs.

276. See *supra* Part I and Part II.

277. CAL. EDUC. CODE § 92204(a) (West 1976).

278. See *supra* Part II.A; CAL. GOV'T CODE § 3560(c) (West 1978).

279. UCL S.F., BY-LAWS § 5.5 (2023), <https://www.uclawsf.edu/wp-content/uploads/2023/06/College-of-the-Law-San-Francisco-BYLAWS-Final-2023.pdf>.

280. CAL. EDUC. CODE § 92207 (West 1976).

281. CAL. EDUC. CODE § 92206 (West 1976).

delegees, they must conform to the investment and management policies of the Regents of the University of California.²⁸² Certainly, the College remains subject to constraints, being “*affiliated* with the University of California . . . [and] the law department thereof.”²⁸³ What is the meaning of affiliation?²⁸⁴ Under the governance cases, while the decision-making body of the College was preserved anomalously and kept separate from the Regents,²⁸⁵ the University of California and College nevertheless share characteristics associated with that of a singular entity. Courts have treated the two identically,²⁸⁶ while faculty and the president of the University of California issue diplomas to students.²⁸⁷ The University of California even holds legal title to some of the College’s property.²⁸⁸ However, while not considered among the ten campuses of the University of California, the College is unmistakably a public school, receiving approximately a quarter of funding from the State of California and two thirds from student tuition.²⁸⁹ In short, whereas the College is *de jure* affiliated with the University of California, its control under the Board of Directors signifies it operates as a *de facto* standalone institution.

The lack of stakeholder engagement throughout the renaming process bespeaks the anomaly of the College’s governance. At its theoretical core, governance from a body independent of the Regents should bring flexibility, sensitivity to issues, and increased accountability among stakeholders. But the renaming process shows that the College’s autonomy did not result in expedient resolution of conflict, nor widespread consideration of stakeholder perspectives. In fact, if anything, the College’s governance structure enabled it to evade widespread stakeholder engagement, undermining its accountability to its constituents. It certainly has done so in the past.²⁹⁰ Moreover, the renaming process stretched nearly six years, drew national press and controversy, and nevertheless required the actions of external bodies to implement a name change. And in the end, the renaming process was revitalized only by public condemnation. If the lessons of the renaming process stand for a singular proposition, it is that College’s governance demonstrates the dangers that its

282. CAL. EDUC. CODE § 92205 (West 1987) (emphasis added).

283. CAL. EDUC. CODE § 92201 (West 1976).

284. See *infra* Part III.C (examining the historical context of UC “affiliates”).

285. *Supra* Part II.A.

286. See, e.g., *Tafoya v. Hastings Coll.*, 191 Cal. App. 3d 437, 447 (1987) (“In the only two cases concerning the status of Hastings to reach our highest court, it has affirmed that Hastings is an affiliate of and governed by the same laws as the University.”).

287. CAL. EDUC. CODE § 92203 (West 1976).

288. CAL. EDUC. CODE § 92214 (West 1976).

289. LEGIS. ANALYST’S OFF., THE 2022-23 BUDGET: HASTINGS COLL. OF THE LAW 1 (May 2022), <https://lao.ca.gov/reports/2022/4593/Hastings-College-of-the-Law-051022.pdf>.

290. *Supra* Part III.C.

isolated authority poses to decision-making transparency and stakeholder engagement.

The shortcomings of the renaming process present an opportunity to reconsider the College's institutional identity. It has long been taken for granted that the College is part of the University of California but is independently governed. The College's governance as merely a difference in "detail"²⁹¹ is not only misplaced dogma from cases dating back over a century but is incongruous with the premise of having a discrete institutional identity.²⁹²

B. THE DESIRABILITY OF A SUBSEQUENT NAME CHANGE

Stakeholder reception of the renaming process has never been rigorously assessed. The name "UC Law SF" represents the final product of the renaming process, with its final phases galvanized only by the condemnation of major donors and influential media outlets. Despite numerous opportunities to engage with all types of internal stakeholders during the renaming process, the College regressed to its habitual practice of making decisions informed by a select few and without transparency. The selection of a geographic designation brought relative safety from ongoing criticism, as well as a prophylactic from prospective criticism of an additional namesake.

However, the new name also engendered other points of criticism. As an abbreviation, UC Law SF obscures some of its imperfections: the University of California College of the Law, San Francisco, is unwieldy and verbose. Is UC Law SF the preferred shorthand designation? Is it UC Law? What of the College's *true* name, as provided by statute, "College of the Law, San Francisco."²⁹³ The inclusion of "UC" at the beginning of the College's legal name merely signifies its statutory affiliation, despite not being recognized as one of the ten campuses of the University of California.²⁹⁴ In all, the multiplicity of shorthand and alternative names of the College presents an obstacle to its goal of accumulating reputational goodwill, as well as nuisance to refer to in everyday parlance.

1. *Perspective of the Student Body on the Renaming Process*

As of the closing of 2023, no comprehensive endeavors have been made to thoroughly examine public reception of the College's new name. From the

291. *Infra* Part II.A.

292. See *Foltz v. Hoge*, 52 Cal. 28, 32 (1879).

293. CAL. EDUC. CODE § 92200 (West 1976). The former version of section 92200 said that "the law college founded and established by S.C. Hastings shall forever be known and designated as the Hastings College of the Law."

294. Board of Directors Briefing on Name Feedback received via Emails/Letters, UC L. S.F. (compiled as of June 20, 2022) (on file with author).

College's perspective, those studies are purposeless and serve only to intensify negative sentiments of the name. Yet, the fact remains that internal stakeholders—at least comprising of current students and alumni—were not afforded a holistic means of providing feedback.

During the spring semester of 2023, I launched a poll that was released to the entire student body.²⁹⁵ The poll consisted of ten questions and asked students about how they felt about removing Hastings from the College's name, questions about the new name, what they would change about the name. More broadly, it asked about the desirability of a subsequent name change. At the closing of the poll, there were 394 respondents, totaling almost a third of the student body.²⁹⁶ This exceeded the number of respondents that the College solicited and presented to the Board of Directors by almost fifty percent.²⁹⁷ The questions and their responses were as follows:

- 1) When were you aware that the School was changing its name?
 - a. 2023 (19 respondents)
 - b. 2022 (296 respondents)
 - c. 2021 (78 respondents)
 - d. Other (1 respondent)
- 2) Are you generally aware of the circumstances for why the name "Hastings" was removed from the School's name?
 - a. Yes (391 respondents)
 - b. No (2 respondents)
 - c. Other (1 respondent)
- 3) In your opinion, should the name "Hastings" have been removed?
 - a. Yes (187 respondents)
 - b. No (173 respondents)
 - c. Other (34 respondents)
- 4) Overall, are you satisfied with the new name, UC Law SF?
 - a. Yes, absolutely (28 respondents)
 - b. Yes, but I have other concerns (57 respondents)
 - c. No, and I would prefer a different name (149 respondents)
 - d. No, and I have other concerns (19)
 - e. No, we should have stayed as UC Hastings (118 respondents)
 - f. Other (23 respondents)

295. I have immense gratitude for the UC Law Associated Students (UCLAS), the elected student government of UC Law SF for sharing my poll with the student body. As an individual student, I lacked the means to send campus-wide emails, a privilege that UCLAS possesses in exclusivity. UCLAS shared the poll with the premise that it was not to "relitigate the issue of the name change" but to "provide meaningful insight to the administration and larger UC Law SF community." For data collection, I created four polls with identical questions that corresponded to each class year. A separate poll was sent to LL.M, MSL, CSL, and HPL students.

296. At the time of the poll, there were 1,197 students enrolled in the College's J.D. program.

297. Board of Directors Briefing on Name Feedback received via Emails/Letters, *supra* note 294.

- 5) Should the School consider changing its name again?
 - a. Yes (186 respondents)
 - b. No (148 respondents)
 - c. I have no opinion (60 respondents)
- 6) If you answered “yes” to the question above, what name would you prefer?
 - a. [Short answer text]
- 7) Who do you feel had the ultimate authority to effectuate the name change?
 - a. Current students or alumni (49 respondents)
 - b. Members of the Board of Directors (127 respondents)
 - c. California (i.e., the California Legislature and Governor Newsom) (113 respondents)
 - d. The Chancellor and Dean’s Office (105 respondents)
- 8) What is the School’s official, legal name?
 - a. University of California, College of the Law (1 respondent)
 - b. University of San Francisco Law (0 respondents)
 - c. University of California, College of the Law San Francisco (349 respondents)
 - d. University of California, San Francisco College of the Law (25 respondents)
 - e. College of the Law (0 respondents)
 - f. College of the Law, San Francisco (3 respondents)
- 9) What is one change that you would make about the name change? Please answer in 1-2 sentences.
 - a. [Short answer text]

The results of the poll have interpretive imperfections because both questions and responses were written retrospective to the name change. For instance, a student may believe it was proper to remove Hastings as a namesake but dislike the College’s new name, therefore indicating a preference for its former name.

Nonetheless, the poll represents a first step towards identifying temperaments of the new name. The eagerness of the student body to provide feedback is shown by the fact that almost a third of the student body responded when it was released, during final examinations, and by the magnitude of responses over a short time. While this Note confines its analysis to questions six and nine, the responses of the poll are accessible in the footnote here.²⁹⁸

Question six asked respondents what name they would prefer if they supported a subsequent name change. An overwhelming majority indicated a

298. Oliver Cheng, UC Law SF: Name Change Poll (available on Google Sheets: <https://docs.google.com/spreadsheets/d/1FeQGJ21qyVvbgqkIU4Nc9e5MIJiQ6zKuYGKLwZWgkOM/edit?usp=sharing>).

preference for UCSF Law or UC Hastings, with the latter presumably signifying enough discontent with the new name UC Law SF to undergo a reversion.²⁹⁹ Question nine produced similar outcomes, wherein a supermajority of the student body conveyed reservations about the new name, most notably pertaining to its clunkiness, lack of recognition to the RVIT and Yuki Tribe, and inherent confusion with UCSF.³⁰⁰ While a subsequent name change is supported only by a slender majority, the prevailing sentiment is that if students were able to change a single thing about the name change, it would be to rename the College “UCSF Law.”

Despite responses of varying polarity, a persistent theme emerges from the poll: students are dissatisfied in one way or another with the renaming process. Such discontentment is likely rooted in either the perceived inadequacies of their engagement throughout the renaming process or disapproval of the College’s new name. Overall, the paramount insight from the poll is not in its substantive responses but rather the eagerness of the student body to be involved in the College’s affairs, at least when provided an opportunity.

2. *Challenges to Subsequent Name Change*

A subsequent name change of the College is unlikely without significant internal change. First, a subsequent renaming would require an additional name. As discussed later, UCSF Law was and remains inaccessible. Additionally, the emergence of an additional namesake seems unlikely, given the associated risks of being denamed and the University of California preference for geographic designations. Second, the prospect of a subsequent name change would trigger both existing and novel challenges. It would require a demonstrated level of interest from internal stakeholders, a consideration left unresolved even by the student poll, and would also entail substantial depletion of the College’s political and financial resources.

Another factor cutting against a subsequent name change is the potential impact on the College’s restorative justice efforts. However, those efforts would likely not be frustrated by a subsequent name change. As a product of discussions with RVIT and Yuki representatives, the College committed to a number of restorative justice efforts.³⁰¹ Five of those commitments are codified in the California Education Code,³⁰² including a request from the Legislature that the Board of Directors “[r]engage in consultation with the Round Valley

299. *Id.*

300. *Id.*

301. *See supra* Part I.B.

302. CAL. EDUC. CODE § 92200 (West 1976) (requesting that the Board of Directors ensure a reading of the “atrocities committed by S.C. Hastings against the Yuki people” at the convocation and commencement ceremonies and pursue related Moot Court initiatives).

Indian Tribes if there is a change in the geographical name of the location of the college.”³⁰³ And if the College’s name is ever changed again, it will likely remain as a geographic designation. Hence, a subsequent renaming would have little impact on ongoing restorative justice programs.

More compelling against a subsequent name change is the underlying economics, representing the largest constraint to a subsequent name change.³⁰⁴ As of January 2023, the College “incurred \$1.8 million in costs associated with its name change.”³⁰⁵ Initially, the College received \$885,000 from the state legislature, with the remaining covered by its reserves.³⁰⁶

Breaking down costs, \$890,000 was spent on external contracts with firms to implement institutional changes, such as internet domain, while \$867,000 was spent on legal costs from the ongoing litigation.³⁰⁷ As of March 2023, the College identified additional costs from physical signage, totaling \$1.4 million in addition to the \$1.8 million that was spent.³⁰⁸

For 2023–2024, the College requested an additional \$2 million from the state to cover expenses,³⁰⁹ signifying an underestimation of the financial demand levied by the name change. Even after implementing its new name, the College incurred costs from the logistics of effectuating the new name, requiring a minimum of six months to convert physical and digital uses of the name, replace building signs and logos, change the names of journals, organizations, centers, and modify email domains.³¹⁰

Since the March 2023 report, costs have changed slightly as of 2024. The most recent report of the College’s naming expenses is dated February 20, 2024, with legal costs totaling \$1,208,748.86 out of \$2,602,755.78.³¹¹ After \$2.6 million has been spent on renaming the College, a subsequent name change would render many of those costs wasted, even if the College is successful in its negotiations to recover legal costs from its insurance carriers.

However, there is an alternative to the renaming process that strikes a balance between financial straits and the obstacles to renaming. According to

303. *Id.* at § 92200(e)(3).

304. This Note uses several documents to report the College’s renaming costs, including two reports from the California Legislative Analyst’s Office and two documents from the College’s Chief Financial Officer. Given that costs are broken down differently across reports, numbers throughout this Note change depending on the point in time during the renaming process and a report’s classification of an expense.

305. PETEK, *supra* note 42, at 5.

306. *Id.* at 4.

307. *Id.* at 5.

308. *Id.*

309. *Id.* at 4.

310. David Faigman, *A Message from Chancellor and Dean David Faigman: The Time is Coming to Flip the Switch on Our New Name*, UC L. S.F. (Nov. 14, 2022), <https://www.uclawsf.edu/2022/11/14/a-message-from-chancellor-and-dean-david-faigman-the-time-is-coming-to-flip-the-switch-on-our-new-name>.

311. Seward, *supra* note 42.

the Board of Director bylaws, the section governing the College's unofficial name provides that "[a] modified version of the corporate name may be used to represent the [College] with the permission of the Chancellor and Dean"³¹² From a public standpoint, there is strong sentiment of confusion with the College's name. Few would argue that the College's new name is intuitive. Aside from the fact that the College's new name *already* provokes confusion with UCSF, the multiplicity of short form names—between UC Law SF and UC Law—only makes it more difficult for people to refer to the College with precision. Either the College should favor one short name over another, through its unofficial but branded name, or it should dispel any confusion outright and rename itself UCSF Law, despite the attendant challenges.

C. CHANGING THE COLLEGE'S GOVERNANCE STRUCTURE IS A REALIGNMENT OF INSTITUTIONAL POWERS AND A CORRECTION OF ITS DRAWBACKS

An earlier comparison was drawn between the College and a corporation. However, unlike a corporation, those harmed or negatively affected by decision-makers have no recourse. There simply is no comparable analog between a stakeholder of the College and a shareholder bringing a direct or derivative suit against a corporation. Thus, when the College's stakeholders have grievances, their avenues for pursuing reform are limited.

The elected student government, the Associated Students of UC Law SF (UCLAS), is the principal entity tasked with representing the interests of the student body and serves as a means for advocating grievances to the College's leadership.³¹³ However, their influence on matters is inherently limited, hampering their ability to adequately represent the student body. For instance, the extent to which the student body may be heard by the College's decision-makers is limited solely to the UCLAS President, who is invited to participate in meetings of the Board of Directors, Board of Trustees, and Board of governors.³¹⁴ But even in those meetings, the UCLAS President is provided with only limited opportunities contribute, primarily attending meetings in an observational capacity and without voting power.³¹⁵

UCLAS has been sidelined from the College's procedures in other ways. During the renaming process, the College deliberately did not assign UCLAS

312. BY-LAWS, *supra* note 279, at § 3.2.

313. *Student Government*, UC L. S.F., <https://uclawsf.edu/campus-life/student-government> (last visited Aug. 10, 2024).

314. UC L. S.F., 2023-2024 STUDENT HANDBOOK 43, <https://www.uclawsf.edu/wp-content/uploads/2023/12/Student-Handbook-23-24-10.10.23.pdf>. The Board of Trustees is a 501(c) entity tasked with leading fundraising for the College, whereas the Board of Directors "coordinates outreach efforts for the College to alumni and students." *Id.* at 44.

315. Interview with Kyle Freeman, President (2023–2024), Univ. Cal. L. Associated Students, at UC L. S.F. Campus (Oct. 25, 2023) (hereinafter Interview with UCLAS President).

the task of disseminating community engagement initiatives,³¹⁶ despite the fact that UCLAS had previously informed the Board of Directors of the existence of such capabilities.³¹⁷ The *only* matter the College permitted the student body to vote on was what the Associated Student body would be named following the name change.³¹⁸ Aside from the poll conducted for this Note, the student body has not been given an opportunity to provide meaningful input on the renaming process.

Efforts to seek reform can take place in the form of student activism. Student activism has the potential for effectuating desired change, but as an undertaking, has difficulty consummating its objectives because of its required coordination, tenuous support from official channels like UCLAS, and opposing efforts from the College's leadership.³¹⁹ Rarely, but not without instance, do student-led movements induce the change they desire.

However, student activism has had recent success. On May 15, 2023, KQED published an article that described the stories of students, their frustration with the College's "alleged pattern of inaction," and complaints of discrimination.³²⁰ There, students described the efforts of key administrators, including the Dean of Students, as dismissive of their concerns.³²¹ Students even pointed to the renaming process as a broader message about the College as "fall[ing] short . . . [with] student voices . . . not driving the conversations about inclusivity."³²² The student movement culminated when the Dean of Students left the College and pursued a change in employment.³²³ Thus, like with the renaming process, the College's leadership considered stakeholder perspectives only after publication from a media outlets, like KQED or the New York Times, and widespread public disapproval.

316. *Id.*

317. Video Recording: Board of Directors Meeting on November 2, 2021, at 51:38 (on file with author) (informing the Board of Directors of a subcommittee that historically functioned as a liaison between the student body and College administration, specifically noting the capability of a "structured inflow of information and responses from the students").

318. *Id.* Before the name change, UCLAS was known as the Associated Students of UC Hastings (ASUCH).

319. As mentioned in Part III.B, launching campus-wide communications are exceedingly difficult and require assistance from UCLAS. Anecdotally, UCLAS members have told me that emails can only be used for official purposes, making it difficult to organize student-led protests. Thus, efforts to organize and communicate across the student body are difficult, even if accomplished through restricted communicative channels. *Supra* Part III.B.

320. See Sydney Johnson, *UC Law SF Students Say Complaints of Racism and Discrimination Were Dismissed*, KQED (May 22, 2023), <https://www.kqed.org/news/11949802/uc-law-sf-students-say-complaints-of-racism-and-discrimination-on-campus-were-dismissed>.

321. *Id.*

322. *Id.*

323. E-mail from Morris Ratner, Provost & Acad. Dean, UC L. S.F., to UC L. S.F. Community (Apr. 18, 2023) (on file with author).

The College's practice of operating in the shadows without consulting stakeholders has been longstanding. If sunlight is said to be the greatest disinfectant, then the College's governance structure serves to eclipse widespread inclusivity with its decision-making functions. In 2010, following the appointment of Frank Wu as the Chancellor and Dean of the College, Shauna Marshall led the College's first campus-wide strategic planning.³²⁴ Adopting principles from rebellious lawyering, Marshall sought to inform the College's Strategic Plan by interacting with its stakeholders: focus groups were established for students, faculty, staff, and alumni, an online survey was disseminated, and a consulting firm was retained to analyze results.³²⁵ Community meetings with students, faculty, and consultants were held to draft a cohesive plan.³²⁶ Yet despite the completion and unveiling of the Strategic Plan, a culmination of months of community outreach and collaborative work, the plan was shelved when an alternative plan—one with “little input from stakeholders” and one with little connection to the “needs of the wider community”—was adopted.³²⁷ When reflecting on the decision of the Board of Directors to pursue the developmental plan, Marshall notes not only the lack of student and staff voices from the plan, but also the Board of Director's misguided concerns with prioritizing U.S. News and Report rankings rather than core issues integral to the community.³²⁸

The College's leadership has strategically avoided consulting with its stakeholders, a practice only revealed and elevated during its renaming process. Its adoption of the development plan was an action exemplifying the practices of the regnant institution described by Marshall: “one ruled by a powerful elite that sets the agenda and program with all too often little regard for the impact of its policies on staff, students, the legal community or the greater society that their graduates are supposed to ultimately serve.”³²⁹ This plan, coupled with the renaming process and the student activism with the Dean of Students make clear

324. See Shauna Marshall, *Rebellious Deaning: One African American Woman's Vision of a Progressive Law School*, 24 CLINICAL L. REV. 135, 136, 161 (2017) (describing the structure of law schools as “regnant” institutions, with little regard for their communities).

325. *Id.* at 162–63, 163 n.70 (noting an “unusually high response rate of 42%” for the survey).

326. *Id.* at 163.

327. *Id.* at 164–65 (reporting that the CFO “confer[ed] almost exclusively with outside architects, designer and planners” to develop the plans). The plan that the College adopted, the “Master Plan,” was to “build a new classroom building and additional student housing in collaboration with UCSF, to create an academic village.” *Id.* at 165.

328. *Id.* at 167–68.

329. *Id.* at 136. Instinctively, one is inclined to apply corporate law principles, such as the business judgment rule. It may not be proper to question the decisions of the College's Board of Directors in hindsight. For instance, perhaps the development plan is one that sets the College on the most “efficient” path, relative to the trajectory of the Strategic Plan. But in this thought experiment, one should be reminded of the absence of other analogous principles: electing or removing directors, proxies, shareholder activism, derivative suits, breach of fiduciary duty claims, and more. In my view, the critique of law schools standing as regnant institutions is most compelling in the context of analyzing process or the lack of process, or even the lack of respect for process.

that any reform at the College that is unsupported by its leadership requires the scrutiny of national readership and criticism of major donors. Hence, if the College is to ever regain trust and increase its accountability with its stakeholders, it must acknowledge the shortcomings of its current governance structure.³³⁰

1. *The College's Decision to Not Rename Itself UCSF Law is Illustrative of Institutional Tensions*

Changing the College's governance structure requires an understanding of its systemic levers and an analysis of its institutional heritage. The College's avoidance to rename itself UCSF Law and selection of UC Law SF as its new name accentuates its institutional tensions with the University of California. Sentiments from the student body, common sense, and understanding from the general public all indicate that UCSF Law was, and is, the preferred nomenclature.

The College is affiliated with the University of California,³³¹ yet its autonomous governance structure restricts its access to the full spectrum of resources with the institution. The College decided against UCSF Law as a name because it knew that doing so would trigger institutional conflicts. By changing its name to UCSF Law, it would conflict directly with UCSF, the university known for health and medicine.³³²

Inter-institutional conflict between the College and the University of California about naming rights to UCSF has long been the subject of public speculation. A few of those arguments are articulated here. UCSF is similar to the College in that it is part of the University California, but dissimilar in that UCSF is amongst the ten officially recognized campuses of the University of California.³³³ UCSF has professional schools of dentistry, medicine, nursing, and pharmacy, along with a graduate division which includes 20 PhD programs

330. The College could empower UCLAS with both procedural and substantive powers to ensure the perspectives of its student body is included. But this only solves one subsection of its constituency of stakeholders. Another amendment to the current regime would be to expand the College's DEI initiatives. At present, the College's current DEI program has commendable achievements, but expanding its role to be involved at the highest levels of decision making would improve further engagement of stakeholders: by infusing diversity, equity, and inclusion into "every aspect of the College's operations." *Diversity, Equity, and Inclusion: Our Mission and Commitment*, UC L. S.F., <https://uclawsf.edu/diversity> (last visited Aug. 10, 2024). Diversity and inclusion initiatives could be expanded beyond their normative conceptions of scholarship, advocacy, and events to permeate decision-making processes, firmly rooting DEI values at the institutional level. By empowering its DEI program, a dedicated staff of employees could be assigned the task of engaging with "relevant" stakeholders.

331. *See supra* Part II.A.

332. *UCSF Overview*, U.C. S.F., <https://www.ucsf.edu/about> (last visited Aug. 10, 2024).

333. *Id.* The ten recognized University of California campuses include Berkeley, Davis, Irvine, Los Angeles, Merced, Riverside, San Diego, Santa Barbara, Santa Cruz, and San Francisco. *Campuses & Locations*, UNIV. OF CAL., <https://www.universityofcalifornia.edu/campuses-locations> (last visited Aug. 10, 2024).

and 12 master's programs.³³⁴ Differences also arise in the context of economics; UCSF has an endowment of \$9.45 billion,³³⁵ dwarfing UC Law SF's budget of \$123 million.³³⁶

Trademark infringement naturally is relevant to the discussion of naming rights. The Regents own the mark for UCSF,³³⁷ which suggests infringement is an issue that could arise in the course of a dispute. However, given that the College is considered affiliated with the University of California and has been treated identically in other contexts,³³⁸ it is wholly unclear whether an institution is capable of self-infringement. Of course, UCSF could turn to other theories to oppose a subsequent renaming endeavor by the College. But, perhaps the interests of the College and UCSF are not as diametrically opposed as one may postulate. Pursuit of trademark infringement or other opposition is founded on an inability to resolve conflict through other means. Not only have the two maintained a consortium since 2008,³³⁹ the two remain part of the University of California institution. Surely, the existence of an ongoing relationship and ability to confide in the leadership of the University of California could result in some arrangement.

Renaming possibilities could be further improved if the College considered an alteration to its governance structure, such that it no longer would be the Board of Directors making decisions for the College but rather the Regents. Instead of remaining merely affiliated with the University of California, the College could submit itself to the Regents, concentrating decision making within a single body. There, the dynamic between two campuses of the University of California would simplify existing complexities.

The shift in governance would not only perfect the vision of the Legislature during the nineteenth century;³⁴⁰ it could also bring consistency throughout California statutes. As of 2023, the College is listed as the only "special college" under the California Education Code, but in the past, there were statutes governing the College of Medicine.³⁴¹ If the Board of Directors were to assign its governance authority to the Regents, institutional tensions may seemingly resolve themselves. After all, a singular governing entity is unlikely to fight with itself, when its interests are better satisfied by pursuing complementary

334. *UCSF Overview*, UNIV. OF CAL. S.F., <https://www.ucsf.edu/about> (last visited Aug. 10, 2024).

335. *Budget*, UNIV. OF CAL. S.F., <https://www.ucsf.edu/about/ucsf-budget> (last visited Aug. 10, 2024).

336. PETEK, *supra* note 42.

337. *Trademark Status & Document Retrieval (TSDR): 85380464*, U.S. PAT. & TRADEMARK OFF., https://tsdr.uspto.gov/#caseNumber=85380464&caseType=SERIAL_NO&searchType=statusSearch (last visited Aug. 10, 2024).

338. *See supra* Part II.A.

339. *UCSF–UC Law Consortium on Law, Science & Health Policy*, UC L. S.F., <https://www.uclawsf.edu/academics/centers/consortium> (last visited Aug. 10, 2024).

340. *Supra* Part II.A.

341. CAL. EDUC. CODE §§ 92230–32 (West 1994).

endeavors. Though, this change would require both the Board of Directors and Regents to acknowledge tangible benefits of consolidation.³⁴² Moreover, even if the College's leadership and the Regents reached an understanding, it is unclear whether the UCSF name would subsequently be appropriated.

As the past indicates, the College's leadership is unlikely to pursue a change in its governance. An alteration to its governance necessarily implicates a relinquishment of power, with the current incentives structured to preserve power dynamics. There is safety with maintaining a status quo that has stood for nearly a century and a half, coupled with longstanding beliefs that the College's governance is unalterable because of its statutory and constitutional origins.³⁴³ The College even has precedent that supports a strong preference for its governance structure; it has previously declined a proposal to merge with one campus of the University of California, even on the brink of financial catastrophe.³⁴⁴ Nonetheless, in the wake of the name change, the College should duly consider a change in its relationship with the University of California.

2. *A Change in the College's Governance is Historically Consistent and Addresses Shortcomings from the Renaming Process*

A change in the College's governance is historically consistent and is an institutional correction of a misconception that has withstood for over a century. Initially, the University of California was comprised of a system of "affiliate" schools as part of an institutional strategy of growth.³⁴⁵ Affiliates included schools in medicine, pharmacy, dentistry, and law.³⁴⁶ Unlike the other schools that were affiliated by written agreements, the College, as the affiliated school of law, was uniquely affiliated by statute.³⁴⁷ The affiliation strategy enabled Regents to "share the risk in launching new endeavors in education" with independent schools or association.³⁴⁸ Much like the College's independent governance structure, each affiliated school was governed by its own board of trustees.³⁴⁹ In return for their affiliation, the University of California awarded degrees.³⁵⁰ By 1899, the Regents grew concerned about the multiple governing

342. Beyond consolidated control over all campuses and affiliates, the upside to the Regents is not immediately clear. Interview with David Faigman, Chancellor & Dean of University of California, College of the Law, San Francisco., at University of California, College of the Law, San Francisco Campus (Dec. 20, 2023).

343. See *supra* Part II.A.

344. See *infra* Part III.C.3. My conversations with faculty also reveal that the College contemplated integration with the University of California at some point during the 1980s.

345. VERNE A. STADTMAN, *THE UNIVERSITY OF CALIFORNIA, 1868-1968*, at 125 (McGraw-Hill 1970).

346. *Id.* at 129–36.

347. *Id.* at 131.

348. *Id.* at 138.

349. *Id.* at 130.

350. *Id.*

regimes, with fears about maintaining high standards.³⁵¹ By 1934, the affiliated schools had become integrated with the University of California.³⁵² As of 2024, the College remains the only affiliate school of the University of California.³⁵³

The logic underlying preservation of the College's independent governance made little sense at the time, and even less sense today, serving as an anachronistic growth strategy from another century. The College's renaming process should have concluded by renaming itself UCSF Law, accomplished by merging with UCSF or otherwise, or by integrating with the University of California as a standalone campus. Doing so would not only have been supported by stakeholders and sensibility but also would have directly addressed longstanding institutional imperfections.

Even almost a year after the adoption of the name UC Law SF, the renaming process continues to be criticized. Supporters of Serranus Hastings believe removal was unsupported or dispute the College's historical account,³⁵⁴ others argue removal was not necessary because Natives had no preference for removal, and critics of the College's restorative justice efforts proclaim such initiatives as performative and inadequate. And, of course, many stakeholders feel sidelined by the lack of inclusivity throughout the renaming process.

While the College's leadership takes the brunt of criticism from the renaming process, its stakeholders shoulder the regrets of foregone opportunity. During the renaming process, few, if any considered the implications of changing the College's name as an opportunity to reshape its institutional identity.

An examination of institutional identity offers a new perspective. While much of the discourse during the renaming process centered on the downsides of namesake removal, not enough attention was devoted to the upsides of pursuing a substitute name. College discussions instead focused on the ramifications of a new name, whether it would be received positively by the public and whether it would be politically and financially feasible. At the time, there was not enough consideration of whether a name change would present institutional opportunities beyond simple renaming.

Beyond changing its governance as consistent with the history of affiliate campuses, the College should do so in light of the shortcomings from the renaming process. Its current governance has established a normative practice of avoiding widespread consultation with its stakeholders. This practice is inconsistent with furthering transparency in decision making and inconsistent with the practice of what it means to be part of the University of California.

351. *Id.* at 137.

352. *Id.* at 137–38.

353. *See supra* Part II.A.

354. *See supra* Part I.B.2

When UC Berkeley Law removed the name Boalt from its building, Dean Chemerinsky reported that the five-person committee that he had formed to address the name change had solicited commentary yielding over 2,000 responses.³⁵⁵ After the committee completed its task, Dean Chemerinsky received an additional 600 messages providing input,³⁵⁶ at this phase exceeding the College's outreach by several magnitudes. Like the principles extolled by CSU Cleveland Law, the Berkeley committee reported that feedback from the community had served as an "essential component" and that the law school would "continue to provide opportunities for the law school community to provide its collective input."³⁵⁷

Evident from the shortcomings of the College's renaming is its practice of making decisions without stakeholder involvement. UC Berkeley Law's community outreach shows a systematic, ordered methodology for naming and renaming as a University of California campus, requiring an appropriate consultive process.³⁵⁸ As a mere affiliate, the College's outreach evidently fell short of that mandated threshold. To realign its practices with the expectations of stakeholders and to promote fairness, the College should rigorously evaluate the shortcomings of its current governance.

3. *The Path Forward: Lessons from the Past*

There has never been a stronger opportunity to examine the upsides of a change in the College's governance than the wake of the renaming process. Thus far, this Note has underscored the shortcomings of the renaming process and examined the benefits of governance reform. However, insufficient attention has been devoted to delineating what a change in governance would entail.

The learnings of the renaming process advocate for a paradigm change in the College's operations. However, the scale and extent of change are tethered by constraints of reality, politics and economics, and stakeholder interest. The most accessible reformation that the College could undertake is to procedurally enhance the involvement of its stakeholders. The renaming process is most easily criticized for the lack of widespread engagement and the lack of transparency for the results of any engagement.

One reason that the College did not consult broadly during its renaming was motivated partly by concerns of practicality, whether it was capable of identifying the College's constituents.³⁵⁹ Another reason articulated was that it

355. Dean Chemerinsky Report, *supra* note 31.

356. *Id.*

357. *Id.* at 18.

358. *See, e.g.*, Letter from Richard C. Atkinson, President of the University of California, to Chancellors, Laboratory Director, and Vice President of Agriculture and Natural Resources (Dec. 19, 2022), <https://policy.ucop.edu/doc/6000434/NamingProperties>.

359. *See supra* Part I.

would have been improper for a decision to be made by a majority vote.³⁶⁰ But, surely, while it was unrealistic for the College to decide its renaming by referendum, that concern alone should not have eclipsed the value of soliciting community input. Similarly, with respect to the challenges of identifying the College's constituents and developing a methodology for outreach, mere administrative difficulties should not have served as a bar to outreach. Instead of relying merely on emails and letters from stakeholders,³⁶¹ the College may have entrusted a more systematic outreach to its DEI program,³⁶² integrated UCLAS representatives within Board of Director meetings or other subcommittees, or mirrored the inclusive framework adopted by UC Berkeley Law during its renaming process. Any or all of which would act as safeguards to the abridgement of stakeholder interests.

More considerably, reformation can take place in the College's governance structure. A change on that scale invariably requires the Board of Directors and other bodies to relinquish their authority. Looking back at the governance cases, the College's spar with its parental institution resulted in its formation, affiliation with the University of California, and its independent governance structure. Hence, a governance change not only induces structural changes that are rooted in the College's history, but it also signifies a rebirth as a true campus of the University of California. Structural changes in this manner have three likely possibilities: (i) a merger of sorts with UCSF, expanding renaming possibilities, (ii) a merger with another campus of the University of California, or (iii) consolidation under the University of California, as a standalone campus.

A campus merger within the University of California is less cumbersome than consolidation under the institution and is supported by precedent. Around 2013, the College operated at a structural deficit and was losing about a million dollars every year.³⁶³ Two years later, then-Chancellor George Blumenthal of UC Santa Cruz proposed a merger with the College as a means of alleviating its financial hardships.³⁶⁴ Support for the merger was split. The President of the University of California, Janet Napolitano, strongly favored the merger, but the College's faculty were split.³⁶⁵ However, the prominent issue of the merger was

360. *See supra* text accompanying note 168.

361. *Supra* Part I (in reference to the Board of Directors Briefing on Name Feedback, totaling 270 respondents).

362. This would likely require an expansion of authority and responsibilities for the College's DEI program. *See supra* note 330.

363. GEORGE BLUMENTHAL & IRENE RETI, FROM THE MYSTERIES OF THE UNIVERSITY TO THE MYSTERIES OF THE UNIVERSITY: AN ORAL HISTORY WITH UC SANTA CRUZ CHANCELLOR GEORGE BLUMENTHAL 1322 (2021), <https://escholarship.org/uc/item/0c00c5xb> [hereinafter BLUMENTHAL INTERVIEW 2021].

364. *Id.* at 1323.

365. *Id.* at 1325. Blumenthal stated that based on his impression, about a third of faculty were supportive of the merger, a third open to the proposal, and the remaining against it. My conversation with Blumenthal and

the requirement that the Board of Directors and Board of Trustees relinquish their authority, a proposition that was untenable at the time.³⁶⁶ The merger proposal was eventually declined and was followed by a change in the occupation of the College's Chancellor and Dean.³⁶⁷

While never consummated, the merger with UC Santa Cruz serves as a case study for what a change in the College's governance would entail, illuminating a number of tangible benefits. First, faculty would benefit from being truly integrated with the University of California. At the time of the proposal, a merger would have resulted in a more generous sabbatical policy, increased parental leave, participation in a home loan program, spousal hires, enhanced support for grant administration, and representation amongst the Academic Senate and Regents.³⁶⁸

In addition to the enumerated benefits, faculty would benefit otherwise by adopting UC policies. Before the proposal, one faculty member faced backlash for their expression of political views and required intervention from the Dean.³⁶⁹ If the College adopted or were subject to the UC's Academic Freedom policy, one of the most sophisticated and developed policies amongst universities and second only to the University of Michigan, the faculty member would have been protected as a matter of institutional policy.³⁷⁰ Even as of 2022, the shortcomings of the College as an affiliate have effects beyond those displayed in its renaming. In 2022, the College's Academic Policy³⁷¹ drew national scrutiny following the invitation of Ilya Shapiro to speak on campus.³⁷² Although the College recently amended its policy in April 2023,³⁷³ faculty rights and academic policies would have been more clearly defined from the outset under the University of California. The deficiencies of the College's Academic Freedom policy are only the most recent limitations that have drawn attention.

with those that were faculty at the time inform me that a formal survey was not conducted. Interview with George Blumenthal, Chancellor Emeritus, University of California, Santa Cruz (Nov. 16, 2023) [hereinafter Blumenthal Interview 2023].

366. BLUMENTHAL INTERVIEW 2021, *supra* note 363, at 1324–25.

367. *Id.* at 1325.

368. George Blumenthal, Presentation on the Opening of a Conversation about the UC Hastings-UC Santa Cruz Relationship (Apr. 29, 2015) [hereinafter Merger Presentation] (unpublished presentation) (on file with author).

369. Blumenthal Interview 2023, *supra* note 365.

370. *Id.*

371. *Academic Freedom Policy*, UC L. S.F. (May 5, 2021), <https://www.uclawsf.edu/2021/05/05/academic-freedom-policy>.

372. *E.g.*, Robby Soave, *UC Hastings Law Students Silence Conservative Speaker, Demand Anti-Racism Training*, REASON (Mar. 2, 2022, 6:02 PM), <https://reason.com/2022/03/02/ilya-shapiro-uc-hastings-law-school-students-protest-racism-supreme-court>.

373. *Academic Freedom Policy*, *supra* note 371.

As an affiliate, the College has historically always faced an uphill battle with drafting policies or creating its own internal procedures.³⁷⁴

The College's operations may benefit from a merger. As with any merger, economics serves as the most discussed inflection point. Central questions that were raised during the UC Santa Cruz merger were whether it would result in an increased budget or result in cost savings.³⁷⁵ In short, the financial implications are unclear. However, a merger suggests the elimination for functions necessary for standalone schools, like the College requiring its own registrar.³⁷⁶ Hence, the College would rely on resources from a university, such as those under Title IX.³⁷⁷ The elimination of functions for standalone schools and reliance on another university's resources accordingly may result in cost savings, and if executed in similar fashion to the UC Santa Cruz merger, would at least be cost neutral to implement.³⁷⁸ Lastly, there is a reflexive tendency to draw financial comparisons with other law schools within the University of California, but any comparisons drawn may not be on equal footing.³⁷⁹

Increased opportunities for scholarship are more predictable. As of 2022, the College has 64 full-time faculty members,³⁸⁰ with the number of adjunct faculty increasing over the years.³⁸¹ The College's increasing reliance on adjunct faculty is suggestive of a strategy to reduce costs and a reduced ability to attract full-time talent,³⁸² which may be remedied with shared governance. Becoming integrated with the UC system opens access to UC-sponsored research

374. Prior struggles included the College's internal procedures for advising on grant applications. Blumenthal Interview 2023, *supra* note 365. The renaming process is another variation, whereby the College had little guidance for initiating a procedure, such that it conducted its own research for the procedure of other educational institutions.

375. *Id.*

376. *Id.*

377. *Id.*

378. *Id.*

379. While the College's budget and finances are publicly available, the budget of peer law schools within the system is not as readily accessible. There are detailed financial reports of the University of California and reports on investments and so forth, but the amount of funding that each law school receives from its respective university campus is not publicly accessible. Moreover, comparing the College's bottom line relative to other law schools may be inapt, as it would not account for expenditures that are idiosyncratic to the College, such as the construction of its newest building or the renaming costs. This logic cuts the other way, as well. For instance, one source has informed me that one UC law school operates at an annual loss but is supported by the university's funds. Comparisons drawn between that law school and the College would surely not be on equal footing.

380. UC L. S.F., CALIFORNIA-HASTINGS UNIVERSITY OF—2022 STANDARD 509 INFORMATION REPORT 2 (Jan. 23, 2023), <https://www.uclawsf.edu/wp-content/uploads/2022/12/Std509InfoReport-12-15-2022.pdf>.

381. Blumenthal Interview 2023, *supra* note 365.

382. *Id.*; GABRIEL PETEK, THE 2024-25 BUDGET: COLLEGE OF THE LAW, SAN FRANCISCO 5 (Mar. 2024), <https://lao.ca.gov/reports/2024/4875/College-of-Law-SF-030524.pdf> (reporting that the College has a goal of "hiring additional faculty to work towards an American Bar Association goal of having a minimum share of classes taught by full-time faculty").

opportunities, increasing intellectual collaboration and scholarly contributions.³⁸³

Tenure is another area of focus. Tenure at the College is a decision made by the Board of Directors.³⁸⁴ Under the UC system, tenure is decided on chancellor level rather than Regent, and is solely based on academic considerations,³⁸⁵ to avoid political entanglement.³⁸⁶ Lastly, integration with the UC system may enhance advocacy and representation of its constituents. Under the College's current structure, it is subject to certain UC policies and has limited means of shaping policy.³⁸⁷ A merger or consolidation under the University of California enables the College to have representation and advocacy in shaping policy, like in the UC Academic Senate.³⁸⁸ Similarly, the student body may have an opportunity to engage in policymaking at the university level.³⁸⁹

A UC merger may also benefit students. Under the UC Santa Cruz merger, students at the College would have access to classes in graduate programs, ranging from complementary disciplines in health, environmental studies, social justice, and labor.³⁹⁰

In the broader landscape of scholarship and education, consolidation or merger³⁹¹ with the University of California may be inevitable. The College is the "last freestanding research law school in the country."³⁹² The College is freestanding because of its independent governance and separate budget from other University of California campuses.³⁹³ Although in 2023, the ABA reports only fifteen independent law schools and does not consider the College as independent,³⁹⁴ other sources have considered it an independent law school since it has no corollary university, notwithstanding its affiliation with

383. Blumenthal Interview 2023, *supra* note 365.

384. *Id.*

385. *Id.*

386. *See, e.g., Academic Freedom: The Case of Angela the Red*, TIME (Oct. 17, 1969), <https://content.time.com/time/subscriber/article/0,33009,840245,00.html> (describing the controversy of when the UC Regents fired Professor Angela Davis). Following the controversy, the Regents re-delegated the authority to decide tenure appointments back to the Chancellors. Blumenthal Interview 2023, *supra* note 365.

387. *See, e.g.,* Part III.A (noting comport with investment policies).

388. Blumenthal Interview 2023, *supra* note 365.

389. *See, e.g., Student Regent*, U.C. BD. OF REGENTS, <https://regents.universityofcalifornia.edu/about/members-and-advisors/student-regent.html> (last visited Nov. 16, 2023).

390. Merger Presentation, *supra* note 368.

391. This Note only explores the concept of merging with a University of California campus within the context of Santa Cruz. However, notwithstanding geographical barriers, there is no reason that a merger with another campus would be infeasible, especially in a digital age.

392. BLUMENTHAL INTERVIEW 2021, *supra* note 363, at 1322.

393. *Id.* at 1322–23.

394. *Independent Law Schools*, AM. BAR ASS'N, https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/independent-law-schools (last visited Aug. 10, 2024).

University of California system.³⁹⁵ Nonetheless, the scarcity and steady decline of independent law schools is indicative of the benefits of association with a university. Scale, seemingly, is key to enhancing outcomes in operations and economics. Applied to the College, consolidation or merger with the University of California can open avenues for shared policies and resources.³⁹⁶ Joining the University of California certainly is no panacea,³⁹⁷ but the upsides, especially in light of the College's recent attention with the press, suggest the arrangement as warranting at least some examination.

In recent years, the College has conveyed the financial stability of its operations,³⁹⁸ suggesting the lack of a necessity to consider consolidation or merger with the University of California. But just as bankruptcy should not govern the contemplation of a merger or acquisition, economic catastrophe should not be the sole measure for whether the College should consider a change in its governance. To broaden its vision for growth and excellence, the College should further examine the upsides and ramifications of a merger or integration with the University of California.

CONCLUSION

After almost a century and a half of being known as UC Hastings, the College changed its name to UC Law SF. In its endeavor to reconcile with the problematic past of its namesake, Serranus Hastings, the College emphasized restorative justice towards those most directly harmed. One facet of the renaming process is criticized because the College did not consult broadly with its stakeholders. While the College engaged with the Yuki Tribe and RVIT for its restorative justice measures, it did not do so for other stakeholders, including alumni and current students. Another facet subject to widespread criticism is the College's new, but unofficial name, UC Law SF. Its semblance to UCSF, an institution of international repute for health and sciences, germinates confusion between the two not only from similarities based on nomenclature, but also as distinct campuses within the University of California. Both critiques are compelling. In hindsight, the renaming process is viewed primarily as a

395. See, e.g., ALM Media, *Future of Independent Law Schools is in Peril*, YAHOO FIN. (July 24, 2018), <https://finance.yahoo.com/news/future-stand-alone-law-schools-065404358.html>.

396. Blumenthal Interview 2023, *supra* note 365.

397. See Kevin Kiley, *Can Funding Be Fair?*, INSIDE HIGHER ED (Jan. 30, 2013), <https://www.insidehighered.com/news/2013/01/31/university-california-rethinks-how-it-funds-campus> (noting a pre re-benching preference for the University of California to allocate more money to older campuses like Berkeley and Los Angeles than newer ones such as Santa Cruz or Davis). Conceivably, governance under the University of California may result in higher fees for students, perhaps a premium to pay for enhanced outcomes.

398. See, e.g., PETEK, *supra* note 42 (noting tuition as the largest funding source and an increase in tuition fees and enrollment with budgets for cost increases); Interview with David Faigman, *supra* note 342 (acknowledging that donations to the College in recent years have increased).

confluence of logistical, financial, and legal challenges. But looking back even further—to the College’s founding—the shortcomings of the renaming process are symptomatic of deeper structural issues.

As an institution governed by its own Board of Directors, rather than the Regents of the University of California, the College’s ability to benefit under the University of California system is imperfect. Because the College is only affiliated with the system, it functions as a sovereign institution, leaving the upsides of shared resources and policies, cross-campus scholarship, and likely financial and naming opportunities untapped. As the renaming process comes to a close with litigation to block the name change, the College should reflect on its relationship with the University of California, considering a merger or integration with its parental institution.

This approach is not just remedial of the shortcomings of the renaming process and consistent with the historical context of what it means to be an affiliate of the University of California. Rather, a governance change furnishes an additional opportunity for the College to re-define its institutional identity in accordance with its heritage and to secure its trajectory as a true campus of the University of California.