



UNIVERSITY OF CALIFORNIA
HASTINGS COLLEGE OF THE LAW

REPORT

To: The Board of Directors
cc: David L. Faigman, Chancellor & Dean
From: Chip Robertson & Albert Zecher
Date: May 28, 2022
Re: Re-Examination of Board's Decision to Pursue Renaming of the College

I. Introduction

On November 2, 2021, the Board of Directors of UC Hastings College of the Law unanimously voted to remove “Hastings” from the College’s name. The Board acted in recognition of the complicity of Serranus C. Hastings in the harms perpetrated against Yuki Indians in the Round Valley and Eden Valley region prior to his founding of the College.

Several alumni expressed disagreement with the historical basis of that decision, which was primarily drawn from work by Professor Brendan Lindsay commissioned by the College.¹ In recognition of the importance of thoroughly considering this important question, the Board asked us to serve as a Committee to further review Professor Lindsay’s analysis as well as the arguments of the alumni who disagreed with it. (We will refer to these individuals as the “correspondents.”)

The Committee examined Mr. Lindsay’s and the correspondents’ arguments² and is now issuing this report confirming that the historical record supports the conclusion that Judge Hastings

¹ Brendan Lindsay, *Serranus Clinton Hastings in Eden and Round Valleys: White Paper* (December 14, 2021) (hereinafter “White Paper”), available at https://www.uchastings.edu/wp-content/uploads/2022/01/Hastings-Legacy-Review_FINAL-1.pdf; Brendan Lindsay, *Serranus C. Hastings Rebuttal Talking Points and Timeline* (May 5, 2022) (hereinafter “Addendum”) (attached to this report).

² The Committee met with Professor Lindsay and asked questions regarding the basis for certain assertions contained in the White Paper. The Committee also asked Professor Lindsay to provide additional analysis that he believed was responsive to critiques of White Paper. Several correspondents requested to see Professor Lindsay’s response and then submitted their own further responses. The Committee received memoranda from Kristian Whitten, Class of 1973, on May 10, 2022 and from Stephen K. Easton, Class of 1970, the Hon. Richard Flier, Class of 1970, and Donald Craig Mitchell, Class of 1971 on May 11, 2022. These documents are attached to this report. We also benefited from other input from alumni, including Judge Flier’s comments at our March 10, 2022 Board meeting, Mr. Mitchell’s January 10, 2022 memo to Chancellor & Dean David Faigman, and various columns written by Mr. Whitten in the *Daily Journal*. We do not attempt in this report to address every matter raised by the

engaged in conduct that promoted and failed to stop the killings of Indigenous persons in Round Valley.³ The conduct of Judge Hastings is reprehensible and is properly the justification for the Board of Directors' decision to not continue to honor his legacy.

Certain key facts are not in dispute, particularly that the population of Yuki Indians in Round Valley was virtually extinguished as a result of White settlement in the second half of the Nineteenth Century, going from 6000 prior to 1848 to 168 in 1880.⁴ Nor has any of our correspondents disputed that a major element of this destruction was the fact that many Yuki Indians were killed by White settlers and severely abused by them in other ways.

Rather, the dominant theme running through the correspondents' arguments is that they believe the evidence does not support the conclusion that Judge Hastings knew of the atrocities committed by White settlers against the Yuki Indians, other than one set of killings by an employee of his. They emphasize that Judge Hastings offered a statement under oath (his deposition) averring to this during an 1860 state legislative investigation of the conflict between Whites and the Yuki Indians.⁵ Because of their conclusion regarding Judge Hastings' knowledge of the acts against the Yuki Indians, they believe that there is no reason to remove his name from the school.

We agree with the correspondents that there is no incontrovertible proof that Judge Hastings knew more than he acknowledged. However, we also find that, even accepting Judge Hastings' statement on the limits of his knowledge, he knew enough about, and was involved enough in, serious wrongdoing as to bear meaningful responsibility for it. In other words, even when Judge Hastings is given the benefit of the doubt as to his claimed level of knowledge, we conclude that he played a significant role in the grievous wrongs perpetrated against the Yuki Indians during this period.

We discuss two key areas of Judge Hastings' responsibility below. First, Judge Hastings employed a man, H.L. Hall, to tend his livestock in Eden Valley, even after learning the man had engaged in a mass killing of Indians in retaliation for livestock losses; and the man went on to commit an even more egregious massacre while still employed by Judge Hastings. Second, Judge Hastings was instrumental in creating and then supporting – financially and politically – a

correspondents; rather we focus on the historical question of Judge Hastings' responsibility for wrongdoing. The Board's view in forming this Committee was that this question could have a decisive bearing on whether the Board should maintain or revise its position on renaming the College.

³ We note that the Board does not sit as a court of law considering whether to hand down a criminal conviction against Judge Hastings. While, as discussed below, we do conclude that the evidence supports the conclusion that Judge Hastings was complicit in criminal acts against the Yuki Indians, the practical question for the Board is whether Judge Hastings acted in a manner that was wrong, from a moral point of view, such that our school should not honor him by bearing his name. Therefore, we have considered whether the evidence supports this conclusion as more likely than not, rather than applying the higher standard from criminal law.

⁴ White Paper at 55.

⁵ *Id.* at 58-59.

citizen militia, the Eel River Rangers, to a degree that he bears responsibility for the well-documented atrocities committed by this group.

II. The Historic record is replete with actions undertaken by Judge Hastings that supported, contributed to, and resulted in the killings of indigenous persons in Round Valley.

A. Judge Hastings' employee engaged in a mass killing of indigenous people to protect livestock and ranch land owned by Judge Hastings; and despite having knowledge of this killing, Judge Hastings failed to take any action to have his employee prosecuted for it, and in fact continued to employ him and permit him to remain as tenant on his lands. During that subsequent employment, this man engaged in another mass killing on Judge Hastings' behalf for which Judge Hastings must bear responsibility.

Judge Hastings said in his deposition that he retained H.L. Hall as caretaker of his livestock in Eden Valley starting in August 1858.⁶ Judge Hastings also acknowledged learning in January 1859 that Hall had killed 14 Indigenous men in retaliation for the killing of horses.⁷ This had occurred the day prior to Judge Hastings' arrival on a visit to Eden Valley in January 1859. Judge Hastings, however, said Hall had concealed the fact of these killings.⁸ Hastings said that he learned of them from his son, who shared the information while they were returning home from Eden Valley.⁹ This was the only one of the "outrages," to use his word, against the Yuki Indians that Judge Hastings said he knew about prior to the legislative investigation.¹⁰

⁶ *Id.* at 58.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* Hall described in his deposition this attack and the indiscriminate killing it involved, although he cites a lesser number of deaths. After learning that several horses had been killed by Indians, Hall and two other men approached a rancharia they believed was inhabited by those responsible. "We found some 18 or 20 Indians who ran as soon as they saw us. I think 8 or 10 were killed and the balance escaped." *Id.* at 60. They then killed one more Indian man who refused to leave his hut and attempted to shoot them with a bow and arrow, Hall said. *Id.* They set fire to his hut and then shot him when he emerged. *Id.* Thus, by his own description, Hall and his group simply killed the Indians based on their presence at this rancharia.

¹⁰ *Id.* at 59. One correspondent states that this information merely made Judge Hastings "aware that Mr. Hall had killed people who were believed to have rustled his cattle," but not of Hall's "killing Native Americans indiscriminately." *See* Flier, May 11, 2022, at 1. We do not agree, because Judge Hastings had every reason to understand Hall's killings here as indiscriminate and otherwise culpable.

As quoted above, the only facts Judge Hastings recounted were that Hall had killed 14 Indians at a camp where there were the remains of horses. Judge Hastings did not indicate that he had any information that showed Hall had somehow determined that all (or any) of these 14 men were involved in a theft of horses before killing the men, nor even that Hall killed the men after (rather than before) finding the carcasses. Nor did Judge Hastings indicate that he

Despite having learned of Hall's killing of 14 Indigenous men, Judge Hastings stated in his deposition, he continued to employ Hall through April 1859, and thereafter permitted Hall to remain a tenant farmer on his lands.¹¹ There is no evidence that Judge Hastings contacted law enforcement to report these killings that occurred on or near his land at the hand of his ranch caretaker.

This is significant not only because it indicates acquiescence to Hall's past conduct, but because Hall went on to commit another, apparently more grievous outrage in February 1859, again in retaliation for loss of livestock Hall was trying to protect. As Hall recalled at deposition, he discovered the destruction of livestock on the property and thereafter five men "...volunteered to go out with me and punish the Indians."¹² They followed a trail and "found the Indians."¹³ There were about 30 in this camp, and Hall's group killed eight men, while the rest escaped.¹⁴ However, Hall said they "found no evidence of stock having been killed in this camp."¹⁵ After following the trail further they found a camp with the remains of livestock, inhabited by three to four women and three to four children. When asked if he had seen any of the women killed, Hall at first declined to answer, but then said, vaguely, "I did not see any killed nor did I kill any of them. I saw one of the squaws after she was dead, I think she died from a bullet. I think all the squaws were killed because they refused to go further. We took one boy into the valley and the infants were put out of their misery and a girl 10 years of age was killed for stubbornness."¹⁶

In sum, as of January 1859, Judge Hastings had every reason to know that Hall was likely to kill large numbers of Indians on his behalf as part of Hall's work protecting Judge Hastings'

made further inquiry to determine anything more about the reason for Hall's actions – the presence of the carcasses appears to have been fully sufficient justification in his eyes for the killing of 14 men at the camp. This seems to us the definition of indiscriminate and wrongful killing. As noted above, Hall's own description of the event confirms it was as indiscriminate as Judge Hastings' uncomplicated description suggests. *Supra* n.9.

Incidentally, even making the fairly absurd assumption that Hastings imagined Hall had engaged in some kind of juridical fact-finding before killing the men at the camp with the horse carcasses, Judge Hastings knew Hall had no authority to convict others of the crime of theft, let alone to inflict capital punishment on them. (This was before Hall even served in the Eel River Rangers, so he was not cloaked under that particular authority of law.)

In sum, Judge Hastings' indication that he understood this set of killings by Hall to be related to the theft of horses by no means negates the fact this report provided Judge Hastings with the information that he was employing a man who engaged in large-scale, extra-legal, and indiscriminate killings as a means of retaliating for livestock theft.

¹¹ White Paper at 58. In contrast, Hall stated that he was still caring for Judge Hastings' stock in February 1860. *Id.* at 59.

¹² *Id.* at 60.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

livestock, yet Judge Hastings continued to employ Hall in that capacity. More losses occurred in February, and, predictably, Judge Hastings' agent committed more mass violence. Judge Hastings therefore, in our view, bears significant responsibility for Hall's February massacre.

B. Serranus Hastings promoted, requested the creation of, and provided material support to, the Eel River Rangers Militia, which engaged in the killing of indigenous persons in order to protect land and livestock owned by Hastings.

The correspondents do not dispute that the Eel River Rangers engaged in atrocities against the Yuki Indians, so we will not recount those. (We note that these atrocities were documented by an investigative committee of the State Legislature that stated in 1860, "Within the last four months, more Indians have been killed by our people than during the century of Spanish and Mexican domination,"¹⁷ and called the actions in Mendocino county "a slaughter."¹⁸) Rather, as noted above, the correspondents question whether Judge Hastings should be considered responsible for those atrocities in any way because they believe the evidence does not support the conclusion that he knew of the militia's actions. We, in contrast, think his deep involvement with the militia means that he bears meaningful responsibility even if it is true that he lacked actual or detailed knowledge of the militia's actions.

To begin, Judge Hastings was instrumental in the formation of this militia. He led the creation of petitions to the Governor to authorize the militia starting in April 1859 and personally wrote to the Governor to further encourage him.¹⁹ When the Governor issued in June a commission to form the militia to a man who expressed reluctance due to a belief he would not get paid, Judge Hastings offered to fund the company in advance of payment from the State.²⁰ That man still refused, so Judge Hastings called another meeting at which an alternative leader, Walter S. Jarboe, was elected as captain of the militia.²¹ Jarboe began leading militia expeditions against Indians in August 1859, killing, by Jarboe's own account, 16 Yuki Indians in one attack – apparently illegally, because this preceded his receipt of a commission from the Governor in September.²² According to a U.S. Army officer posted in the area, Jarboe and his men had killed 64 Indians by late August.²³

Judge Hastings supported the ongoing operations of the militia in meaningful ways. The company carried a letter from Hastings promising to reimburse those who supplied the militia.²⁴

¹⁷ *Id.* at 41.

¹⁸ *Id.* at 42.

²¹ *Id.* at 24.

²¹ *Id.* at 24.

²¹ *Id.* at 24.

²² *Id.* at 24-26.

²³ Addendum at 14.

²⁴ White Paper at 25; Addendum at 13

Judge Hastings wrote the Governor offering to supply ammunition to the militia.²⁵ Hastings also provided political support, writing to the Governor in October 1859 endorsing Jarboe and asking for the size of the company to be increased.²⁶ In February 1860, Judge Hastings wrote to the Governor to support the creation of a second militia in Round Valley, thus implying a belief that this was an effective and appropriate way to deal with the concern that Yuki Indians were killing settlers' livestock.²⁷

We believe the above facts describe a level of involvement by Judge Hastings with the Eel River Rangers that makes him in meaningful degree responsible for their actions. Advocating for the creation of a citizens' militia, "armed with Rifles and Revolvers," as the petition stated,²⁸ lacking substantial training or professional military leadership, to take to the field in a setting of high conflict, where the adversaries were less armed and regarded as having lesser rights than White people, was an endeavor predictably creating a high risk of gross abuse. Furthermore, by supporting the militia through a written guarantee of reimbursement to its suppliers; endorsing it to the Governor and encouraging the Governor to create a new militia in a neighboring region; and, if he followed through on certain statements, supplying it with funds and ammunition, Judge Hastings made himself an active sponsor of the militia's activities, with responsibilities for those activities. Either Judge Hastings did not concern himself with what the militia was actually doing, even merely to confirm that it was not engaging in mass violence – which his ongoing support for the militia clearly obligated him to do – or he knew and did not object. In either case, he is implicated in the militia's wrongdoing.

The correspondents' arguments do not reveal any new evidence that could support the conclusion that Judge Hastings' actions did not promote, support or contribute to the killing of Indigenous people in Eden and Round Valley by the Eel River Rangers. They contest the validity of Professor Lindsay's conclusion that Judge Hastings must have known about the Eel River Rangers' atrocities. They point to Judge Hastings' sworn deposition in which he denied such knowledge²⁹ and the absence of any direct proof to the contrary. Professor Lindsay, in contrast, points to the notoriety of the Rangers' conduct, which was covered not only in the California but also in the Eastern press;³⁰ the existence of one report from Jarboe to Judge Hastings on the militia's activities, suggesting there might have been ongoing reports³¹; his relationships with multiple members of the Rangers, including Hall and other employees or

²⁵ *Id.* at 12.

²⁶ *Id.* at 15. Notably, this endorsement occurred after Jarboe's company had operated illegally for about a month prior to the Governor's commission and committed at least one mass killing reported in *The Trinity Journal*, *The Sacramento Daily Bee* and *The Nevada Democrat*. *Id.* at 13-14.

²⁷ White Paper at 37.

²⁸ White Paper at 93.

²⁹ *Id.* at 59.

³⁰ Addendum at 3.

³¹ White Paper at 27.

former employees³²; and other factors. More broadly, Hastings had staked property and reputation on the standing up of the militia as a mechanism to defend his substantial Eden Valley land and ranching investment, and it seems likely that so ambitious and successful a businessman as Judge Hastings would therefore follow closely the militia's activities. We think Professor Lindsay makes the better argument.

We will not, however, further parse the historical record and the analyses made by both sides on this question. The discussion in this section should make clear why Judge Hastings, having helped start the Eel River Rangers and then supported their operations, must bear a meaningful degree of moral responsibility for their actions, whatever his level of actual knowledge of those actions, such that it is not appropriate for our law school to bear his name.

III. Conclusion

As discussed above, we believe the evidence clearly supports the conclusion that Judge Hastings acted wrongfully toward the Yuki Indians in ways that caused them grievous harm. He employed a man, H.L. Hall, after Judge Hastings admittedly learned that he knew that man had engaged in unlawful, mass killing of Yuki Indians, and that man engaged in further atrocities while still in Judge Hastings' employ, taken in furtherance of the interests of Judge Hastings. And Judge Hastings promoted the creation of, and then provided material support to, a militia, which itself engaged in atrocities against the Yuki Indians.

To be clear, we have recounted here only the conclusions that can be derived most directly from the undisputed historical record. We do not mean to suggest that we have concluded that what we describe here is the limit of Judge Hastings' culpability, for there is much beyond this that suggests further complicity and wrongful acts. Rather, we wanted to show that even interpreting the record in a manner highly favorable to Judge Hastings, including by crediting his own statements as the correspondents have done, the evidence still indicates that the school should not be named after Judge Hastings and that the Board should feel full confidence in affirming its prior decision.

Addendum: Two other questions

While our charge from the Board was to address the factual basis for its understanding of Judge Hastings' actions, we want to address two further matters raised by the correspondents.

1. The Procedural Validity of the Board's Prior Resolutions

³² Addendum at 2.

One of the correspondents has claimed that the Board’s decision to rename the school is marred by procedural errors.³³ We disagree.

First, this correspondent notes that the Board did not follow University of California rules regarding renaming. The College is governed by its Board of Directors, not the University of California Board of Regents, though we are an affiliate of the University with many important connections. The College is not subject to internal administrative procedures of the University, nor does the University purport to make such rules for the College.

Second, this correspondent claims the College “did not follow its own procedures” in calling an emergency meeting on November 2, 2021 and documenting the factual basis of that emergency.” This is incorrect. The meeting was a “special meeting,” as defined in California Government Code 11125.4, which was permitted to be called on less than 10 days’ public notice. The agenda for that meeting stated as follows:

Government Code 11125.4(c) requires that to have a special meeting the Board must find that the delay necessitated by providing 10 days’ prior notice as is normally done would cause a substantial hardship to the College or that immediate action is required to protect the public interest. In this case, it is proposed that a substantial hardship would be caused because legislation is already being prepared relating to the name of the College, and it is necessary for the Board to consider this subject so that the College can engage constructively in the legislative process.

This was approved unanimously by the Board, as required. It was the Board’s view that the Chancellor & Dean needed direction from the Board immediately to be able to represent the College in legislative discussions that had already begun. The Board then unanimously voted that the name Hastings should be removed from the school.

Furthermore, even if it were correct that the November 2 meeting was somehow invalid, the issue would be moot. The Board met again on December 14, 2021, after providing the standard 10 days’ notice, and ratified the November 2 action by unanimously passing another resolution identifying San Francisco College of the Law as its choice of a new name. Thus, even if the Board’s action on November 2 were somehow deemed to lack authority, the Board took equivalent action at its December 14 meeting.

The issue is moot for another reason. This report and the process it documents shows the Board’s genuine willingness to reconsider the action it (lawfully and properly) took on November 2 and December 14 based on input from community members. The public, including our alumni, have had far more than 10 days’ notice – over half a year, in fact, since November 2, 2021 – to consider the Board’s decision and, for those who disagreed, to mount their objections. The materials received from the correspondents are far more thorough than anything they could have

³³ Flier, *supra* n.2.

produced in a 10-day notice period, and those materials are receiving thoughtful and full consideration by the Board through this review process.

2. Did Judge Hastings Commit Genocide?

One of the “Whereas” clauses of the Board’s first motion to pursue renaming the school, dated November 2, 2021, said, “Serranus Hastings promoted and funded genocide.” One of the correspondents objects to that characterization. He rightly points out that standard definitions of genocide have an element of an intent to destroy a group.³⁴ We conclude that the Board does not have adequate information to say that Judge Hastings engaged in genocide.

The foremost definition of genocide probably comes from the Rome Statute of the International Criminal Court. It states,

- [G]enocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:
- (a) Killing members of the group;
 - (b) Causing serious bodily or mental harm to members of the group;
 - (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
 - (d) Imposing measures intended to prevent births within the group;
 - (e) Forcibly transferring children of the group to another group.³⁵

This correspondent argues that “exterminating the Yuki Indians – i.e., ‘genocide’ – was not the [Eel River] Rangers’s objective. Rather, the objective was to dissuade the Indians from continuing to steal horses and rustle cattle.”³⁶

We do not believe the matter is as clear cut as this correspondent suggests. True, an effort to “dissuade”, as he describes Judge Hastings’ actions, does not suggest an intent to destroy a group in whole or in part. “Dissuade,” however, is the correspondent’s term. If, in contrast, Judge Hastings decided that to protect his livestock he needed to *destroy* the Yuki people in whole or in part, that would be a genocidal intent. The fact that his motive was economic would not change the intent.³⁷ The view that Whites needed to destroy California Indian tribes would not have been

³⁴ Mitchell, May 11, 2022, at 2.

³⁵ Article 6, Rome Statute of the International Criminal Court. Available at <https://www.icc-cpi.int/sites/default/files/RS-Eng.pdf>. Mr. Mitchell refers to definition in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which is identical. https://www.un.org/en/genocideprevention/documents/atrocities-crimes/Doc.1_Convention%20on%20the%20Prevention%20and%20Punishment%20of%20the%20Crime%20of%20Genocide.pdf. In his text, Mr. Mitchell quotes the definition in the Oxford English Dictionary, but we believe that it is more appropriate to use the definition enacted in international law.

³⁶ Mitchell, May 11, 2022, at 3.

³⁷ As one scholar has explained,

unique to Judge Hastings. For example, California Governor Peter Burnett stated in 1851 that “a war of extermination will continue to be waged between the two races until the Indian race becomes extinct, must be expected;” and militia colonel J. Neely Johnson, who would become governor in 1856, stated (while representing Governor John McDougal in discussions with federal authorities) that if negotiations with the Indians were not successful, the State “would then make war upon [the Indians], which must of necessity be one of extermination to many of the tribes.”³⁸ Closer to home, according to a settler interviewed for the legislative investigation, Judge Hastings’ sometime employee H.L. Hall said “that he did not want any man to go with him to hunt Indians who would not kill all he could find because a knif would make a louse.”³⁹

However, while we cannot share the correspondent’s confidence that he knows that Judge Hastings did not intend to destroy, in whole or in part, the Yuki Indians, we also believe that we cannot know that he *did* so intend. Therefore, we agree with the correspondent that we should not describe Judge Hastings acts as genocide. Because that term was used in the Board’s November 2 motion, we recommend that it be revised when the Board otherwise ratifies that motion.

Ultimately, for the decision before the Board, it makes no difference how the allegations against Judge Hastings might be classified under international law.⁴⁰ As noted above, the Board does not sit as a criminal court handing down a conviction. The Board must determine whether the evidence indicates that Judge Hastings was responsible for acts that were wrongful from a moral

In the case of genocide, the primary motive – the intent to destroy – can in turn be based on a multitude of secondary motives; and these “motives behind the motive” may exist alternatively or cumulatively. The perpetrator may have acted for political reasons (the pursuit of a particular policy or the perception that the victim group represents the political opposition) or for economic reasons (*e.g.* the acquisition of land or other property of group members). He may have acted out of racist motives (*e.g.* the creation of a territory in which only one race would exist) or for “personal” motives (a category whose limits are however difficult to determine).

Paul Behrens, *Genocide and the Question of Motives*, 10 J. of Internat’l Crim. Justice 501, 510 (alteration in original) (2010).

We also note that there is scholarly argument that the White settlers along with government actors did inflict genocide against the Yuki Indians during this time period. Benjamin Madley, *California’s Yuki Indians: Defining Genocide in Native American History*, 39 WESTERN HISTORICAL QUARTERLY 303 (Autumn 2008).

³⁸ Madley, *supra* n.37, at 309-310.

³⁹ White Paper at 87.

⁴⁰ If we were to use terms from international law, it would appear that Judge Hastings was complicit in “crimes against humanity.” Those, according the Rome Statute, include any of a list of acts “when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” Article 7, Rome Statute. The list includes a number of wrongs that the historical record indicates H.L. Hall and the Eel River Rangers committed against the Yuki Indians, such as murder, extermination, enslavement, imprisonment and rape. *Id.*

point of view. As described above, we conclude the answer is clearly yes, such that he does not deserve the honor of being the namesake of our school.