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ADDRESS

By Mark G. Yudof, Esquire
President of the University of California

*The Annual Dinner
of The American Law Institute
was held in the Grand Ballroom
of The Westin St. Francis, San Francisco, California,
on Tuesday evening, May 17, 2011.
President Roberta Cooper Ramo presided.*

President Ramo: Ladies and gentlemen. Hello, hello. Thank you. Thank you very much. Well, thank you.

This has been a completely extraordinary Meeting. We don't come out to California all that often, but when we do we have extraordinary participation by people, and I would take full and complete credit for the fact that we have had such riveting, amazing programs for two, really three days now. It's also been raining and really cold outside. So the quality of the discussion has been fabulous, we have many new members that we are all completely thrilled about, and tonight our Annual Dinner, which is the gala event of the entire American Law Institute year, has come, and you guys clean up real well. (*Laughter*)

I was just thinking as I came in, a couple of things. One is that it would take an extraordinary person as a speaker to make you decide that you wanted to have dinner in the hotel in San Francisco, and I think we have such a person today.

Sitting at the table, I have to tell you, with Mark and Judy Yudof is sort of like sitting at the table with, what can I say, the president and first lady of a large country, because everybody wanted to come and talk to them. And it turned out that it wasn't just the citizens of their country here, but it turns out they have been, in our world of The American Law Institute that is the most remarkable lawyers, judges, and scholars in the United States, they have been everywhere, and everywhere they have been I can tell that they have made wonderful friends in every way.

It turns out that I don't have to tell you too much about Mark Yudof because apparently you are all his best friend or Judy's best friend. In case those of you who came to the table—and most of you did, to say hello—wonder why they weren't eating dinner, they didn't buy a ticket. (*Laughter*)

Actually the truth is that this is their second dinner of the night—I'm not making this up—and when I spoke to President Yudof and I asked him to speak, he said, "The only problem is I have to give another speech, and we have to eat another dinner before." And I said, "No, no, no, I understand, you know, that's too much to ask of anybody." He said, "No, but I really want to speak to The American Law Institute."

And that meant a great deal to all of us, Mark, it really did, and later we will buy you dinner, both of you, I promise we will.

You have all had a chance to see Mark's remarkable biography. I should tell you at dinner that I was asking Judy, whom I had never met before, how life was, where they lived. She said, you know, I never thought when I married him we'd be in public housing for so much of our marriage. (*Laughter*) And I always admire someone who sticks with their spouse no matter what the situation is, Judy, so it's all good.

And I wasn't exactly kidding when I said that Mark was in a way like the president of a country, because the fact of the matter is, although he has been a major figure in virtually every public academic setting in our country—Pennsylvania, Michigan, Minnesota, Texas, all wonderful places, and now California—that the University of California system is really like a large country.

I saw this and I brought this piece of paper up, because I almost couldn't believe it. He became the 19th President of the University of California. It has 10 campuses; five medical centers. I mean, I can barely live with one doctor, Mark, I can't even imagine what you're thinking. Three affiliated national laboratories; 220,000 students. That I could understand, and I know you are an expert in freedom of speech, among other things. When I was a regent at the University of New Mexico, when we raised tuition every year I thought freedom of speech was maybe an overrated right; it was really more than I thought was necessary sometimes. And 180,000 faculty and staff. So imagine being the president of a country with that many doctors and that many people with tenure. (*Laughter*) Shocking.

It is a complete honor for us to know that one of our members, Mark Yudof, is such a major figure, not just in education in the United States but education in the world. My own belief has always been that the American system of higher education, in particular public higher education, which was so unusual when it was founded, is really one of the core values of our country and one of the things that makes us great, and it is an honor, Mark, for me to meet you and it is an honor for all of us to have you here. Thank you for coming.

Ladies and gentlemen, the President of the University of California. (*Applause*)

President Mark G. Yudof: Thank you, Roberta, and it is such a pleasure to see so many old friends, my friend Doug Laycock from the Texas law faculty and Charlie Robinson, a new member, who is the general counsel—I've told him to hold up five fingers when I should take the Fifth Amendment—and Gordon Appleman, who offered to organize a Texas wave for me and, like many of his ventures, has not succeeded. (*Laughter*) And it is a great honor to be here, and I was really happy to accept Roberta's invitation.

I should start by saying I am not really sure how to compete with the strawberry rhubarb verrine. I first had to start by going to Wikipedia to find out what a verrine is; I thought it was some fruit I hadn't heard of. But I will give it my best shot.

Next month marks my third anniversary as president of the University of California. I came here from Texas, excited to serve what is, bar none, the best public-university system in the world, it just is, and if you ask people around here they would say that. (*Applause*)

When I came, I harbored some of the dreams of many California newcomers. Maybe I would meet a movie star, or be discovered by Hollywood, sort of minimalist on the hair, but there are people who succeed that way. Or—at a minimum—be cast as a character actor. I mean, I could play a law-school dean in my sleep, let me just tell you that. (*Laughter*)

Hope springs eternal in the Golden Land, as Joan Didion definitely did not say, but alas, to date, no producers have called. I did, however, meet a movie star—an action hero best known as The Terminator. (*Laughter*)

He was the governor who smoked cigars in a tent, and fortunately I was prepared to deal with Governor Schwarzenegger, because while I served at the University of Minnesota—and Bob Stein will remember this—the governor was a former wrestler who performed with a feathered boa around his neck—Jesse “The Body” Ventura. (*Laughter*)

Now what is it about me and governors? (*Laughter*) Now here's a hypothetical. If Hulk Hogan had ever gotten the political itch and had run for office in his native Georgia, I would probably be president of Georgia Tech today, that's my prediction. (*Laughter*)

Now this is not to suggest that my time here has been uneventful. The Great Recession began within months of my arrival and, at present, for the second time in three years, I am engaged in an effort to bridge what is essentially a billion-dollar hole in the budget.

As a result, I have been forced to do some things which I dare say have not been popular with the faculty and the staff and the students. I presided over furloughs of virtually all of our employees, including me, that really hurt—they celebrated my furlough days at the office—and a 40 percent increase in tuition in three years. And I found, this is taking my key from Roberta, that—I had always had enthusiasm for the First Amendment. I taught a course on it, Constitutional Law. What can I say? California is a rich cornucopia of folks exercising their free-speech rights, (*laughter*) and it has given me a certain perspective on the Constitution.

If I ever go back to law teaching, which I expect, I'm going to start with the Second Amendment, (*laughter*) that's my plan, and I may deal with quartering of soldiers, I don't know. Letters of marque and reprisal, there are all sorts of things I could deal with. But the root cause of these experiences is what brings me to the serious theme of this evening's address: the chipping away at—if not the outright decline of—the notion of a commonwealth, or the public good.

It was 50 years ago that John Kennedy, President Kennedy, famously called on Americans to “ask not” what their country could do for them, but what they could do for their country. And it almost sounds quaint, given the current political climate; at least it sounds quaint to me when I think about it.

For a news cycle or two, the news media took advantage of the JFK anniversary to reflect on just how far society had traveled downstream from his New Frontier ethic. But then it got distracted; there was Charlie Sheen, after all. And so we are here today.

Now, during the many demonstrations against fee increases, students and their allies have consistently taken up the chant: “Whose university? Our University!” In my day, in my day, admittedly when the dinosaurs roamed the earth, in my day the battle cry was, “Make love, not war,” a call to arms which I personally find more alluring. (*Laughter*)

But I do get the point the current students are trying to make—that is, that they have a stake in the administration. They have a stake in the university. They have a stake in the decisions the legislature, the board of regents, and others make.

Still, the more I ruminated over the question “Whose university,” the more I realized that this chant actually frames a more profound societal question, with implications that go far beyond the University of California, or even public education in general.

It is a question for American society as a whole—how to distinguish between the “public good” versus the “private good,” how to strike a balance between the two, a balance that navigates, at least in my judgment, a course between JFK’s noble call and the rhetorical stance of many that government is never the solution, it is only the problem.

To begin with, there is the idea of a commonweal, a somewhat archaic term for what we now call the commonwealth—the notion that individuals and groups come together for the public good, whether it is to raise money for the schoolhouse or run a fire station or win a war.

There are also, in economic terms, “public goods” and “private goods.” “Public goods,” like public water systems, a public fire department, or a public park, are normally nonrival in consumption, and difficult to exclude in benefit. In other words, we all contribute something, and in return we get tap water, protection from fire, and a nice place to walk on a Sunday afternoon. That is a public good. I understand that these examples don’t fit classical economics definitions, but I’m using them in a broader, more generic sense.

But many goods are actually mixed in nature. They are hybrids, or public-private goods. For example, private mediators that work within a state-court system are hybrids, and they are hybrids that actu-

ally, I think, serve the “public good.” A private mediator may save both taxpayers and the litigants hundreds of thousands of dollars, and they may expedite the dispute-resolution process under the guidance of the judiciary.

These hybrid goods have existed for generations. The transcontinental railroad was built with both government bonds and private rail bonds, so that is a good example. So was the private aerospace industry that grew in response to President Kennedy’s call to go to the moon. And historically, these hybrids have maintained a pretty good balance between the public and the private interest.

But in the last few decades, a clear privatization trend has emerged that has driven American policy in all segments of our society, or nearly all segments, and it is tipping the balance of many hybrid goods towards the private side. Several factors—efficiency, ideology, distrust of government, distrust of government’s capability to perform these services—determine this trend. But widespread privatization also indicates a shift in our understanding of what it means to be a public good.

Many years ago, as a young legal scholar—I won’t say how many years ago—I first encountered *Social Statics*, perhaps not a best seller in recent years, a book by the British philosopher Herbert Spencer. And as you probably know, Spencer is the guy whom Justice Holmes famously chastised in the substantive due-process case *Lochner v. New York* [198 U.S. 45 (1905)]. Justice Holmes said, and I quote, “The Fourteenth Amendment does not enact Mr. Herbert Spencer’s *Social Statics*.” [Id. at 75 (Holmes, J., dissenting).] Holmes, of course, was objecting to the incorporation of pretty much any economic philosophy into the Constitution.

So, being a person who figured what is Holmes talking about, I went to the library and secured a volume of *Social Statics*, the first person to check it out in 27 years, (*laughter*) in which Spencer argued that the postal service, among other institutions, he recommended it to be fully privatized. And I remember thinking at the time, this man is genuinely crazy. What do you mean privatize the post office, of all things? I thought he had gone too far. A private post office just seems—the postal service seemed a quintessential government function to me.

But today, of course, the U.S. Postal Service no longer receives a direct public subsidy—and it hasn't since 1983. And while the USPS still benefits from a legally protected monopoly on mailbox delivery, many people today do use private “postal services,” like UPS and FedEx.

In fact, if the U.S. Postal Service were a private-sector company, it would have ranked 28th on the 2009 Fortune 500 list. But that same year, UPS ranked 43rd, and FedEx ranked 59th—and the Fortune 500 list has only included those companies for the last 16 years.

And most ominously for the U.S. Postal Service, the first-class mail volume declines every year. Today there was an article that they wouldn't be able to pay retirement or health benefits to their employees, and right now the level of first-class mail is at the same level it was in 1987. Now I admit the world has changed, there are e-mail and text messages and all that, but let's face it, the private competitors are eating their lunch, usually at higher prices. It has been privatized to a large extent in exactly the way that had been advocated for in *Social Statics*.

So today Spencer's central thesis seems less extreme, and this is what he said. Very interesting. “[T]hat which is beneficial to the community as a whole,” he wrote, “it will become the private interest of some part of the community to accomplish.” So for him the public good could be provided through private auspices.

Now, if you look around, evidence of a tilting towards Spencer's ideology lies across the spectrum and the landscape of America. In Afghanistan in December of 2008, 69 percent of the Pentagon's forces were private contractors. In Korea, only 30 percent of those involved in the war effort were private contractors. Of those private contractors in Afghanistan, only 14 percent were Americans. So the costs of the war—you can draw your own conclusions—have not been socialized across America. They have not.

The landscape of American law enforcement has also changed. In 2008—the latest year for which we have statistics—one million private security personnel worked directly for U.S. companies. But only about 883,000 sworn law-enforcement officers were employed by the federal, state, and local agencies. The private cops significantly outnumber the public cops.

The shift towards private security has been in the making for several years. In the 1980s, about 27 percent of local governments outsourced at least one service to private police. But by the 1990s, that figure had increased to 45 percent.

At the same time, in the research world, government funding of R&D as a function of GDP has declined by 60 percent in the last 40 years. Research and development funding as a percentage of GDP has fallen by 60 percent. In fact, as the national academies reported last year, “U.S. consumers [now] spend significantly more on potato chips than the government devotes to energy R&D.”

Similarly, the rest of the world used to envy America’s infrastructure, which was largely financed with public money. But now we invest only two percent of our GDP in it—pennies relative to China’s nine percent, and the European Union’s five percent. China of course is aggressively investing in its infrastructure after decades of not doing so, but it will still probably level out at a higher percentage, maybe four to five percent, in the next several years.

Of course, “privatization” does not equate with “decline,” and that is really not my message. With regard to infrastructure, the recent financing of our country’s highways actually provides a good example of Spencer’s thesis that private companies will step in to benefit the greater community.

In 1992, legislation reduced federal restrictions on the tolling of federal highways. From that point on, of the average of 150 centerline miles added per year of expressway-standard highways, between 50 and 75 miles, or one third to one half, were financed based on toll roads, and while revenues are still about five percent of highway expenditure, the trend towards privatization of the highway system seems to continue.

California, as many of you know who are from the state, is the home of freeways that would not charge for these great highways. But we did eventually get a few toll roads.

So if you want to beat the traffic in Orange County, for example, you hop onto 73 for five bucks. And when you get onto 73, ironically it

leads you to the campus of the University of California-Irvine, a public university that's transformed several lima bean fields into an institution that benefited Californians for over 40 years.

So the trend towards privatization is upward across the board—and it's even upward at NASA. A few minutes ago, I mentioned JFK's call to go to the moon. In the 1960s, a private aerospace industry grew symbiotically in response to his call.

Today, however, NASA has just awarded \$270 million outright to private American companies. And the reason is that once its aging shuttle fleet is relegated to museums later this year, it hopes private rockets and crew capsules will continue taking American astronauts into space.

But let me turn to what I know best, which is the realm of public higher education. Now, relative to the data I have just cited, what we are seeing in public higher education isn't actually so much a turn to privatization as a systematic reduction in funding, disinvestment, if you will, in public support.

Now it didn't used to be this way. True, public universities have always been hybrid goods. There are private returns unique to the individuals who consume this particular good, and who pay a price, tuition, representing a portion of the total cost.

And then there are benefits flowing to the entire polity. I would like to think investment in public higher education is good for economic growth, it's good for cultural transmission, it's good for participation in democracy, and it's actually good for health care and higher tax rates and lower incarcerations and reduced welfare payments.

Put simply, public universities are classic hybrid goods that appropriately receive both tax support and tuition support from families. But the balance between taxpayer support and tuition support has also shifted. In 1970, the government contribution to public universities was nearly 60 percent of the total revenue, and tuition was 15 percent. In 2009, the government contribution had fallen to 25 percent, and the student contribution rose to 19 percent, which is close to, but rising somewhat above, its 1970 level.

So the balance between taxpayer support and tuition support has tilted towards the former for some important reasons. You see, state governments and public research universities developed an extraordinary compact. In return for financial support from taxpayers, universities agreed to keep tuition low to provide access for students from a broad range of economic backgrounds. They would also train graduate and professional students, promote the arts and culture, help solve the major problems in the community, and perform groundbreaking research. And they made this compact because they understood that a well-educated population is a necessary—although I admit not sufficient—condition for a broader economic prosperity, cultural growth, and an informed democracy.

We all felt the truly extraordinary nature of this compact after World War II, when the public-private balance of these institutions actually tipped towards the public. The GI Bill gave hundreds of thousands of returning soldiers access to higher education. And that was followed by things like Pell Grants and the California Master Plan, which formalized massive governmental financial support for private universities.

But all that has changed. Twenty-eight states have already slashed funding for their public universities. And the reason this is happening is because more and more Americans no longer believe that this compact that I have described is important.

Now part of this can be explained, it's sort of interesting, by demographics. In the 1960s, 57 percent of American families had children under the age of 18. Today, that number hovers around 46 percent. In California, frequently when elections are held, the vast majority of voters simply do not have children under the age of 18 at all, and so you have higher participation rates by an aging population.

Along these lines, American senior citizens—and I favor helping senior citizens and gerontologists and other people that will see me through—along these same lines, American senior citizens now receive more than seven times the amount of federal benefits that American children do.

And you also know that 73 percent of all undergraduates in the U.S. attend public universities and community colleges. But as the value

of a college degree continues to grow, those degrees really look like private goods to those who don't have students in their own families.

Of course, many people rightly observe, and I don't want to be misquoted, that the public-university students only pay a portion of the cost. But I admit there are many cross-subsidies, and it is not always easy to determine who pays for what in a modern public university.

And great research universities like the University of California incur additional cost. Let's start with the proposition that it rightfully costs more to hire, retain, and support faculty who are creators of knowledge than those who merely transmit the knowledge; I mean that's just true. You can call them rock stars or movie stars, but it is a relatively small proportion of the population that actually can make discoveries, and I am talking about in the humanities, in the sciences, and across the board, and those types of faculty have different requirements. They don't have the same teaching loads. They have a different teaching style.

So in my judgment, when you look at the cost of a modern American university, the university's research and teaching mission, its public-service mission, are intertwined, and that ultimately helps our undergraduates.

Still, at the end of the day, a college graduate's earning potential is greater than that of a high-school graduate. I know there is a lot of discussion about this, but the facts are undeniable. They do earn more money, and significantly more, even accounting for the opportunity cost of being in college. And the general perception seems to be, often not articulated: "Why should I, when I'm struggling to make ends meet, subsidize your kid's future Lexus by giving tax dollars to higher education?"

But the abandonment of state support for public universities creates some big problems, and these problems have an impact on everyone. First, the privatization occurs because of this abandonment, as I wrote nearly 20 years ago—when privatization really started to gain traction—and it's been a long time, it can create "a system of haves and have-nots within the same state university."

For example, private industry, with an eye towards a specialized workforce and strong profits, might fund several engineering chairs, but it really rarely gives money to the English department. A prosperous alumna may justifiably donate to the business school that started her career, but the undergraduate library may still suffer for funds.

These examples may sound trivial to nonstudents. But when you compromise the overall quality of a public university, the many functions it performs in the broader community—the hospitals it operates, the agricultural programs it manages, and many, many other things—all suffer from that development.

Second, privatization has distributional consequences among the consumers of education. Even with scholarships, full pricing limits access for many families. And when students from less affluent families do find ways to attend, their education can suffer because they can only go to school part time because they have to send a check home to their family, because they have the pressure to graduate on time, because they have a growing student-loan debt.

And third, privatization further weakens both the public commitment to these universities, and a public understanding of the society-wide value of a public higher education. In other words, the further we privatize, the less we see public universities viewed as integral to the public good. We tend to believe that only the immediate, direct beneficiaries—the students and their families—should pay, and if private industry kicks in the difference, then so much the better. But in my view, the private funding cannot replace and the tuition money cannot constitute the entire funding base for universities.

Now let me give you an example, and you can read between the lines of this. Earl Warren, that remarkable jurist that I think maybe everyone in this room greatly admires, came from a working-class, immigrant family in Bakersfield. His immigrant father joked that he was “too poor to have a middle name.” No one in Earl Warren’s family had a college degree.

And yet, because the University of California accepted students from all social and economic backgrounds, Warren graduated from

Berkeley. For the rest of his life, he credited the university with shaping his incredible career—a career that, as we know, on the anniversary of *Brown v. The Board of Education* [347 U.S. 483 (1954)] today, had an incredible impact on America and American society.

Now I have been out visiting California high schools, and I have met the new Earl Warrens of this state. They are in towns like Watsonville and Fresno and Anaheim. Just like Warren, they are mostly working class, mostly from immigrant families. But their names are more likely to be Ernesto or Elena than Earl. And they are bent on achieving dreams just as lofty as the great Chief Justice's dreams—dreams that will ultimately benefit all of us, selfishly their dreams will benefit all of us. And just like Warren, they know that their ticket is a college education.

You see, California, perhaps better than any other state, lays bare the discrepancy between this country's vibrant private sector and its withering public one.

This state has a true \$2 trillion economy. It is not Greece. It is not Ireland. It is not Portugal. It is the eighth largest economy in the world, the eighth largest, \$2 trillion. When you drive from LAX to UCLA, or down 101 in Silicon Valley, you pass all these new office complexes and shopping malls. And you are sharing that potholed road with all these employees in shuttle buses from thriving companies like Google and Apple and Microsoft and hundreds of others.

But California's state government has a \$26 billion budget deficit. So, you see, it is not the economic part of California that's broken—it's the political part, a \$26 billion deficit on a \$2 trillion economy, \$2 trillion economy. And that brokenness, which exacerbates the discrepancy between our private and public sectors, ripples out across the entire state.

The best check against that discrepancy is the University of California, and the University of Nebraska and Indiana University and the Universities of Washington and Virginia and so forth. Its service mission is to provide an excellent, affordable education to all qualified students. It educates the future leaders who will drive the public sector, who will pay the taxes, and will reform, we hope, that public sector.

The university maintains a critical role in the state's wealth creation. Because if the pie does not grow, it is difficult to realize the ambition of bridging the divide between our private and our public sectors. So, in order to preserve these missions, public universities must be able to depend on a three-part funding base—the family contribution, private support, and state funding.

I would propose a new higher-education compact, somewhat different than the one in the past, and I would say there are three things in the 21st century we need to think about. First, these institutions should look at their operations with what I call a “private” sensibility. We have to have realistic priorities, we have to eliminate weak programs, we have to have common IT services, and by and large in higher education, we have been mediocre at achieving these things over the last 20 years. You would never think of Oxford or Harvard or the great historic universities, Bologna, as being models of efficiency for anyone, at least not understood as keeping costs down, but I think we are in an era where we need to look seriously at those efficiencies.

Second, the state government should rededicate itself to supporting the universities' core functions, because many of these core functions will not be carried out in the private sector. You may work for Dell or IBM, and they may have some great programs, and they will hone your skills as an engineer, but who among them is teaching Chaucer, and where are the anthropology and the sociology courses, and where is Descartes? Wallace Stevens, a lawyer poet, that's my highest rung. And so it is important that those core functions be covered by state governments.

You know, at heart, I am still a Philadelphia lawyer. In fact, like many Philadelphia lawyers, I do continue to read the footnotes, and it drives Charlie Robinson mad, but I do.

But I came to this state after years in Texas and in Minnesota. And I stand before you tonight as the University of California president. And so my answer to the posed question reflects both the sum of my experiences, and the future that I see for public universities.

In answer to the question, “Whose universities?” I say “Our universities.” And by “ours” I mean all Californians, perhaps all Americans. Old, young, baby boomers, families, students, alumni, first generation, children of immigrants, faculty, farmers, those in business, and yes, even those who practice law.

With our ownership, of course, comes responsibility. And our responsibility—our moral imperative—is to leave the University of California and all these other great public universities better than when we were put in charge of them. The Ernestos and the Elenas deserve no less than Earl Warren received, and no less than the baby boomers received, and no less than today’s students receive.

The University of California gave the state, to quote Wallace Stegner, “a society to match its scenery.” It might be a hybrid, but it exists for the public good, and that is a value very much worth protecting. Thank you very much. (*Applause*) Thank you.

President Ramo: Very nicely, Mark will answer a few questions. I know there are some, so if anybody has any questions raise your hand. We have a microphone. A faculty member with tenure. (*Laughter*)

Professor Herma Hill Kay (Cal.): President Yudof, thank you, first, for a wonderful address. It was an address worthy of this audience, and we thank you so much.

President Yudof: Thank you.

Professor Kay: I just have one question based on a story that one of your predecessors, Clark Kerr, told about the time that he sent a budget to the California legislature and the California legislature sent back more money than he had asked for, and Clark Kerr reported that he turned it down as an incredible infringement of the university’s autonomy. (*Laughter*)

First of all, I wonder could that ever happen today, and if so, would you feel free or would you want to make the same response that Clark Kerr made?

President Yudof: You know, Herma, for years you always ask me questions I can’t answer. I would say first, I doubt whether I would turn

down the extra money. I am very conscious of our constitutional autonomy, and at a point in time last year, I'll just tell you a little story, the state owed us \$1.2 billion that they had either borrowed or suspended payments. The state could not issue bonds or commercial paper, which we could, and one of our state senators said, you know, we really ought to—this constitutional autonomy is not a good idea, the legislature ought to take over, to which my mental response, I didn't say it publicly, is they ought to put the whole state under the board of regents rather than the other way around. (*Laughter*)

I do think there are conditions in which you would not take the money, and we have some of those issues today. Because there's also what I like to call Yudof's law, (which is at least as accurate as Moore's law), which holds that the less money you receive from the legislature the more control they want; that is, they are in a relationship that is not symbiotic but reciprocal—less money, more control.

So we have a \$20 billion budget, two and a half billion from the state of California, and I get protests for setting salaries for people who aren't even paid by the state of California, they are called surgeons, people like that. And so I don't know, I think there is some respect for the constitutional autonomy, Herma, I do want to say that, but I think every year there are side deals and inroads that you have to resist to the best of your ability, and we will try to do that.

President Ramo: One more over there.

Professor John A. Sebert, Jr. (III.): Mark, I remember, with respect, your comments at the Association of American Law Schools meeting about a decade ago, about the declining funding of higher education from the states, and law schools are facing a lot of particularly significant challenges, I think, right now with reduction in placement opportunities and somewhat of a reduction in their applications, and I wondered if you had any particular advice for the law faculty and law deans in the room as to how to go forward.

President Yudof: Okay. Well, you know, I am a member of the Boalt law faculty, and since I have been a law-school dean, my view is you should always support your dean. (*Laughter*) If I can help you by

supporting you, I will do that; if you think you will get more votes if I oppose you, I will do that, too.

I don't have any particular advice, but it is an alarming trend. The tuition at public law schools has just grown geometrically, but this is a function of the problem that I described. What you do then, it's like you have multiple businesses. So you raise the price on your MBAs, you raise the price on your law degrees, you can't raise the price on your Ph.D.s in philosophy. And so slowly, either by law or just by practice, you begin pulling public funds out of the law schools so that you can give it to liberal arts and fine arts and other things, and you say you're on your own because you've got people, at least in their view, that can potentially repay it.

I guess my advice would be that you need to have fulsome scholarship assistance because otherwise all is lost in terms of access. I just don't see an answer to that trend, but it is a subproblem to what I have described here today. It is a distributional consequence of the undernourishment of public universities, and it is a problem we face at the University of California because our professional programs are really quite expensive, maybe not by private-school standards, and then I would say there are other things. Many of the law schools are encouraging public service by the law students, there are other attributes of a publicly oriented law school that are worth preserving, but I don't really have a financial answer. I wish I did.

President Ramo: Last question.

Unidentified Speaker: My question was actually a related question, which was I had heard the same talk at the ALS many years ago. And part of what you emphasized links back to the Opening Session of the Meeting yesterday about lawyers from public service and how, as the costs of law school go up in public law schools, how harder it gets to get lawyers who can provide equal access to justice, and I would like to hear your comments about that.

President Yudof: Well, I think you're right, the more expensive it gets, the more debt they have, the more difficult it is after law school to take certain sorts of jobs. We do have many public-spirited students

who, at least for a period of time, will engage in public service, but it does hurt that enterprise. It means that you are worried about the debt overhanging you, and the problems are even more acute, by the way, in medical schools, where a medical-school graduate today can easily owe a quarter of a million dollars.

Now that's bound to have some impact on where you look for a job, but having said that, I still think there are people who will persevere and engage in the type of public service you are talking about, and it is up to the dean and the faculty, I think, to nurture that, because people are price conscious, but it doesn't drive their entire lives, you see that every day. Among other things, they are called law-faculty members, okay, (*laughter*) and university presidents. I still think it took me like ten years or eight years in academia to meet the best offer I got out of law school, but I never regretted it because I thought it was a very fulfilling life, and we've got to emphasize that, but it's no doubt that it makes it more treacherous.

The other thing I want to say is demand is not inelastic at all law schools. So you have law schools that are not the Berkeleys and the Harvards and UCLAs and Virginias and Pennsylvanias and so forth of the world. We don't have that sort of market power, and they can't charge as much, and you may see a deterioration, where they can't keep the student-faculty ratios where they should be, where they can't have the writing programs for the students, where they can't offer all the scholarships. We tend to think of the elite law schools that have that sort of market power, but there are an awful lot of other law schools out there that really find it very difficult.

The high-tuition route is not a panacea for all of higher education. I mean that's true of the privates as well; we think of Stanford or we think of Yale or Chicago or something. But a lot of these private universities are really suffering because they don't have the endowments, and they do not have the inelasticity of demand to demand any price that they put up, and if they put up any price, you can check; this is what the pros do. These rates are heavily discounted, so two schools may have nominally the same tuition, but one has a 50 percent discount called a

scholarship, and others are discounting 10 percent so they really have a different effective price.

Well, thank you all for being so attentive. I appreciate the opportunity. (*Applause*)

President Ramo: I can only hope, Mark, that you and Judy don't have yet another dinner to go to tonight. (*Laughter*)

You know, sometimes people ask me, as they ask all of us, why we are so devoted to The American Law Institute, and I always say easily, because it is true, every time I come, I come away a better lawyer. Most often it is also true that I come away hopefully smarter than I arrived, and every once in a while we are lucky enough in a group like this, after listening to such a remarkable address, to come away a better person.

I think this was really a call to action, Mark, for us all to rethink, because after all, I have always believed that lawyers were the foot soldiers in the American democracy, and you have made us all, I think, feel the need to leave here thinking about what you said and maybe to do something about it. I thank you very much. (*Applause*)

And so I want everybody to go quickly to bed, (*laughter*) because tomorrow morning is a historic day. We may finish Trusts. I'm not promising anything. We will award, really it is historic, the first American Law Institute medals for young scholars; it's really a remarkable day. And we will discuss, in the afternoon, many of the issues that have been raised tonight, and that is the role of nonprofits in our society. I thank you all. Good night. (*Applause*)

