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1C Plenary Session. Views from the Judiciary

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Richard Arnold

UK Court of Appeal, London

Stephen Burley

Federal Court of Australia, Sydney

Paolo Catalozzi

Supreme Court of Italy, Rome

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Federal Court of Justice, Karlsruhe

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Emily C. & John E. Hansen Intellectual Property Institute

**TWENTY-NINTH ANNUAL CONFERENCE
INTERNATIONAL INTELLECTUAL PROPERTY
LAW & POLICY**

Friday, April 22, 2022 – 1:15 p.m.

**SESSION 1: Plenary Sessions
1C. Views from the Judiciary**

Moderator:

Hugh C. Hansen

Fordham University School of Law, New York

Panelists:

Richard Arnold

UK Court of Appeal, London

Stephen Burley

Federal Court of Australia, Sydney

Paolo Catalozzi

Supreme Court of Italy, Rome

Klaus Grabinski

Federal Court of Justice, Karlsruhe

Simon Holzer

Swiss Federal Patents Court, St. Gallen; Meyerlustenberger Lachenal AG, Zurich

Gordon Humphreys

Boards of Appeal, European Union Intellectual Property Office, Alicante

Robin Jacob

*Lord Justice of Appeal of the Court of Appeal, London (retired); Faculty of Laws,
University College London, London*

Carl Josefsson

President of the Boards of Appeal of the European Patent Office, Haar, Germany

Rian Kalden

Court of Appeal of the The Hague, The Hague

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F. Scott Kieff

*Former Commissioner, U.S. International Trade Commission; Kieff Strategies
LLC, Washington D.C.*

Paul R. Michel

*Former Chief Judge, U.S. Court of Appeals for the Federal Circuit, Washington,
D.C.*

Pauline Newman

U.S. Court of Appeals for the Federal Circuit, Washington, D.C.

Peter Charleton

Judge of the Supreme Court, Ireland

Edger F. Brinkman

Senior Judge, Court of The Hauge, The Hauge

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HUGH C. HANSEN: Richard.

RICHARD ARNOLD: Yes?

HUGH C. HANSEN: How are you?

RICHARD ARNOLD: I'm good. Thank you. I hope you're surviving this.

HUGH C. HANSEN: We're starting now. Do we have actually anyone listening to this other than us?

RICHARD ARNOLD: Yes. 75 participants according to the legend.

HUGH C. HANSEN: 74 now. I guess they got fed up, one of them. Let me look at this. It says called to the bar. That's right. I know that as the last call for a drink, but for you, it's pretty important, right?

RICHARD ARNOLD: Yes. It means you become a barrister.

HUGH C. HANSEN: Then made silk is your fancy-schmancy one?

RICHARD ARNOLD: Becoming Queen's Counsel, correct.

HUGH C. HANSEN: Queen's Counsel. How many people become Queen's Counsel, percentage wise?

RICHARD ARNOLD: That varies over time. I'm way behind on the stats. Certainly in my day, typically about 10% of the practicing bar. Of course, you then have to factor into that age, seniority, so as you became more senior a higher percentage would become silks.

HUGH C. HANSEN: Okay. To what extent is Brexit making any difference in your life or will it make any difference in your life as a judge in the UK?

RICHARD ARNOLD: Thus far, it's made very little difference. We're going through basically what you might call transition period two. The first transition period was between actually formally leaving the EU and the end of the transitional period provided for under the withdrawal agreement, which effectively meant that although we had formally left the EU for all practical legal purposes, it made no difference down to the 31st of December 2020.

Now, that has come to an end, but we still have a lot of what we call retained EU laws. That's EU law we incorporated into our domestic legal order. The result of that is that thus far, not a lot has changed, so we're getting little niggles about various transitional aspects of the regime like the extent to which courts in pending cases still have powers to grant EU-wide injunctions on EU trademarks and things like that.

Thus far, it hasn't made a big change. That is going to come further down the road because obviously, one of the key purposes of Brexit was to enable the UK Parliament to change our laws in ways that diverge from EU law. Thus far, that is not a power that has been much exercised and certainly not exercised at all in the intellectual property area but going forwards, one can expect that.

Plus of course, we're not getting the latest EU legislation affecting us. For example, the digital single market directive in the field of copyright and related rights doesn't apply to us and so we're not having to wrestle with all the problems caused by, for example, Article 17 of the DSM directive.

Over time, in addition to legislative divergence you could expect divergence of the case law but thus far, that hasn't happened yet. I was on the

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panel in the first case where we were asked to depart from EU case law, which is a case called Warner and TuneIn and in that case, we decided not to do it.

There were a number of reasons for it, but a key reason was that this was communication to the public and it's an international legal framework. It's not just an EU legal framework. Plus, there were 26 Court of Justice decisions. It was a fairly mature case law albeit much criticized in some respects. It didn't seem to us to make a lot of sense to suddenly create a lot of uncertainty in the UK by suddenly tearing all of that up and starting again. There will be divergence in the future but thus far, the impact has been relatively slight particularly in the IP field.

HUGH C. HANSEN: As a practical matter, did you really ever pay attention to anything else outside of the UK when you were deciding cases?

RICHARD ARNOLD: For sure. We were subject to the supremacy of EU law. Most of my judicial career I spent applying Court of Justice case law.

HUGH C. HANSEN: Okay. Do you think that was true of all the other member state courts?

RICHARD ARNOLD: Well, that's a delicate question, but it was commonly said that one of the ironies of the UK's position was that we were very faithful to the principle of supremacy of EU law. We were good at implementing directives fully and, generally speaking, in time. Our courts faithfully tried to apply CJEU case law. It was also said that that wasn't always true of all other member states but obviously, that's in the eye of the beholder and it's not for me to criticize anybody in any other country.

HUGH C. HANSEN: The reason I ask this is what do you tell a student about going into Europe and what law is going to be applied. If you're in a Dutch case, is it basically the Netherlands you care about and other stuff is going to be secondary? The point is and I'm going to speak to Gordon here about administrative agencies where you have panels from different countries. Are they basically tied to things they grew up with and they're going to be more influenced by them? Anyway, we don't have to go through that.

RICHARD ARNOLD: Let me give you an answer to that because I have had the experience of sitting on a multinational panel myself. Unfortunately, because of Brexit, I won't be able to sit in the UPC, but I am an external member of the enlarged Board of Appeal of the European Patent Office. I sat earlier this year on the VICO appeal. I was one of seven and we were all of different nationalities, all of different legal backgrounds and pedigrees, but we came up with a unanimous decision. You just have to put behind as best you can your national traditions.

HUGH C. HANSEN: Okay. I have some other stuffs here, but I see from the time now, time is up. Is there anything you want to add why this is one of the most wonderful experiences you've had in your life in the last two days?

RICHARD ARNOLD: As always, Hugh. Of course.

HUGH C. HANSEN: Good. We're recording this so that's good we got that straight. Thank you, Richard. Thank you so much for coming. Annabelle is not going to be able to make it. Is Colin here?

PAULINE NEWMAN: Sure.

HUGH C. HANSEN: Colin Burs?

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RICHARD ARNOLD: No. I don't think he's on the call.

HUGH C. HANSEN: No, he had to go. That's about all I have. If you want to just talk among yourselves we can do that too but the-- Okay. Next one. Alphabetical order. Stephen Burley? Where are you?

STEPHEN BURLEY: Yes. Hi, Hugh. How are you?

HUGH C. HANSEN: Just trying to find you on the screen. Oh, there you are. How's Australia doing these days?

STEPHEN BURLEY: Well, it's pretty dark outside at the moment. We're in autumn. It's been raining an awful lot on the east coast where I am but it's a good place still.

HUGH C. HANSEN: When I first started doing IP law outside of the United States and basically in Europe, to a large extent UK, there were a lot of key Australian expats there who had a tremendous influence.

STEPHEN BURLEY: Bill Cornish?

HUGH C. HANSEN: Yes, for one. Interesting, one of them, and I won't mention his name. He actually left because he thought after a while he wasn't getting enough respect, but I don't think that was probably the case. I think Cornish actually forgot he was an Australian.

[laughter]

HUGH C. HANSEN: I guess he thought he was English. Actually, maybe I'm wrong in that.

STEPHEN BURLEY: He seemed to remember it when he was speaking to Australians, particularly. We certainly remembered him.

HUGH C. HANSEN: Okay. AI. What's going on in your country there in AI? The first decision said machine can be author or whatever you want. I see your justice reversed that. What is your position on that?

STEPHEN BURLEY: [phone rings] Nice background music. We've started off with a decision which seemed to think that AI could be an inventor under our Patents Act, but that's been reversed, as you say, on appeal last week. It was a pretty exciting case, but it was a fairly ho-hum decision on statutory construction in the end.

The full court overturned the primary judge on the basis that the word 'inventor' when it's used in the act and the regulations has to be a human inventor. As with a lot of the Thaler litigation around the world, it really prompted a very interesting debate. I don't think legally it was as interesting as it is from a policy perspective. It's a very welcome subject, I think, because artificial intelligence is obviously going to burst things wide open or has the potential to and started being prevalent in the background in commerce. We're going to see more and more of it. I think it's very interesting from that perspective.

HUGH C. HANSEN: From a public--

STEPHEN BURLEY: I--

HUGH C. HANSEN: Go on.

STEPHEN BURLEY: No, you go on.

HUGH C. HANSEN: No, go on. You know they say--

STEPHEN BURLEY: I was going to say that I think that the whole basic underpinnings of the patent system really do commence with the notion of a

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human being rewarded for intellectual effort. Moving away from that is an interesting and important question if it's going to. In the Australian legislation, I think the UK also and elsewhere that's not-- We've not been ready for that and the legislation hasn't provided for that, so it'll have to happen via a different route if it happens at all.

HUGH C. HANSEN: As a matter of public policy, which way do you come out of what should be done?

STEPHEN BURLEY: Obviously, there are tensions between-- If you actually do have an artificial intelligence that's capable of being an inventor then do you allow a patentable invented invention to go unpatented? What hasn't been explored has been whether or not the person who builds and contributes to the machine is really the augmented human intelligence who is probably to be named as the inventor. That's a question which I think is open.

If that person isn't, then I think the system will need to accommodate those inventions being recognized within the patent system. Otherwise, the incentive for use of artificial intelligence will be diminished. I think it should be ultimately-

HUGH C. HANSEN: I actually--

STEPHEN BURLEY: -within the patent system.

HUGH C. HANSEN: My view is we'd better do it because everyone's going to use artificial intelligence and not have to pay for it and it's going to destroy human business. Outcome is making money from this area. I was actually happy to see that lower court decision. It will be interesting to see what happens. In any case, but I'm not a patent person for religious reasons, but I could still think about--

STEPHEN BURLEY: Trade secrets are an inadequate way of dealing with something like artificial intelligence. I don't think that threshold question can be answered in the way that Dr. Thaler was trying to. I think there are more complex dynamics involved. I think we'll get there. I think that thoughts of the whole patent system will need to be rearranged are probably overstated. I think the structure of patents has over hundreds of years accommodated differing technology, so I don't see why artificial intelligence shouldn't be within that, but how you do it precisely is a difficult and interesting question.

HUGH C. HANSEN: Now, do you go by Stephen or Steve or Stevie?

STEPHEN BURLEY: Both, actually. It depends who's asking but feel free, Hugh.

HUGH C. HANSEN: You can just call me Hughie.

STEPHEN BURLEY: Okay. [chuckles] Oh, you're Australian then?

HUGH C. HANSEN: Yes. There you go. Hold on. Now, that made me lose my train of thought.

STEPHEN BURLEY: Take your time, Hughie.

HUGH C. HANSEN: There you are in Australia. How often do you get out of Australia? Do you actually go anywhere else?

STEPHEN BURLEY: Yes. Well, all the time until 2020 and itching to leave the borders. As a matter of fact, my first trip out of Australia was to be New York and Fordham. I'm taking next week's holidays because I was going to be visiting you and hanging around there but maybe next year. I'll have to wait.

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HUGH C. HANSEN: Hopefully, next year. To what extent do you look to law outside of Australia when you're deciding a case?

STEPHEN BURLEY: It depends on the case, obviously. Ones with international resonance where we know that there are overseas decisions that are relevant, we do keep an eye on things. Obviously, our roots in United Kingdom have us looking there frequently. United States development and the European Union developments are also important. Quite often in the big-ticket intellectual property litigation, we find that there's an international dimension. There's parallel cases going on overseas, so they have us looking at what's going on over there also.

HUGH C. HANSEN: Okay. Thank you. I see that time is up. Thanks so much for coming to Fordham. Look forward to seeing you in the future and hopefully live.

STEPHEN BURLEY: Lovely to speak to you.

HUGH C. HANSEN: Paolo. Where is--

PAOLO CATALLOZZI: Here I am.

HUGH C. HANSEN: I know. Oh, there. How are you?

PAOLO CATALLOZZI: Fine. Thank you.

HUGH C. HANSEN: Have you been enjoying these two days at all?

PAOLO CATALLOZZI: Very much. As well as last year. It's always enjoying to attend the conference.

HUGH C. HANSEN: Just going through your-- The Supreme Court of Italy, is that mean the top or--

PAOLO CATALLOZZI: Yes.

HUGH C. HANSEN: Supreme Court is actually --

PAOLO CATALLOZZI: It is last instance.

HUGH C. HANSEN: What?

PAOLO CATALLOZZI: Last instance court. I mean you have first instance, appeal, and supreme court.

HUGH C. HANSEN: How do you like that? How do you like this gig?

PAOLO CATALLOZZI: I like that, an interesting experience. Nice four years and a half that I'm sitting there. I'm enjoying it even if sometimes I miss the first instance court.

HUGH C. HANSEN: You have three levels? Have you been three levels at one time? [crosstalk]

PAOLO CATALLOZZI: No. I skipped the appeal level. It's not compulsory to go all of the courts.

HUGH C. HANSEN: In terms of fun, if you had to be in one place for the rest of your life from start, would you want to be first instance or the supreme court?

PAOLO CATALLOZZI: Well, it's difficult. I had good memories in first instance and I'm enjoying my experience. It's something that you talked yesterday with Richard Arnold and also with the Judge Chin. He used a beautiful expression. He said, "When you're a first instance judge, you search for truth. When you're in appeal or supreme court you search for errors." Probably, he's

right. I really like that expression. Probably it's true. It's just a sentence, but it gives you a quick impression of what's your work.

HUGH C. HANSEN: It's interesting. I was a law clerk to a federal district court judge, court of appeals judge. I asked them that question. They both said first instance if they had to choose. Now, of course, they didn't choose. One of them actually told me, "I don't want to go up," but the other one went up and said, "Really, I have to do it. Come on. This is crazy to stay."

My experience is that a lot of people enjoy the first instance because of its challenges and also you're in control and everything else. Anyway, well, that's neither here nor there. What is this you're a member of the enlarged Board of Appeal of the European Patent Office? What does mean that exactly?

PAOLO CATALLOZZI: Well, it's the same entity that Richard was talking about. It means the European Patent Office has a board of appeal. In some cases, when there is the need to address difficult or controversial issues the case is assigned to a special composition, enlarged, for the appeal and a judge from a member state is part of the panel. Mr. Josefsson is our chief in that--

HUGH C. HANSEN: These are administrative appeals within the European Patent Office?

PAOLO CATALLOZZI: Yes. Yes, it is.

HUGH C. HANSEN: How often do you get to do that or are asked to do that?

PAOLO CATALLOZZI: Oh, not very often, but I was lucky that I will be part of a judgment this year on a quite important referral, on plausibility. I'm looking forward to it.

HUGH C. HANSEN: All right. Ministry of Economic Development. You're the deputy head of that cabinet. Is your background mostly civil service or you practice or both or what?

PAOLO CATALLOZZI: No. Well, my background is mostly as a judge. I entered the judiciary in 1996, so I just had a brief experience as a magistrate attached to the ministry. I was, as you mentioned, deputy head of cabinet of Ministry of Economic Development. It's the ministry in which the National Patent and Trademark Office is placed, so I would cooperate with the national office in those years.

HUGH C. HANSEN: Okay, long experience institutional. Today is it easier, the same, or harder, actually, to do the job of judge, either in terms of getting right decision or getting cooperation?

PAOLO CATALLOZZI: Probably I think it's harder because there's more and more specialization of law. You have more caseload that you have to take into account. There is more pressure on delivering judgments in short time. There are different level of production of laws, the European court of justice, so I think it's a bit more difficult than 25 years ago.

HUGH C. HANSEN: Are you thinking of retiring or getting out?

PAOLO CATALLOZZI: Well, retiring is a bit early.

HUGH C. HANSEN: No, I realize that, but you could go on into something else.

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PAOLO CATALLOZZI: It's my birthday today. I'm 54, so I have to wait 16 years to retire.

HUGH C. HANSEN: You're 54?

PAOLO CATALLOZZI: Yes, today, yes.

HUGH C. HANSEN: Just a child really. Okay. I see we have exactly one minute left is there something you'd like to add to any of this?

PAOLO CATALLOZZI: Well, it's just that I enjoyed the conference this year as last year. The only problem is that I can't follow all these sessions because they overlap but I appreciated them.

HUGH C. HANSEN: You can hear it.

PAOLO CATALLOZZI: Yes, yes. I will do.

HUGH C. HANSEN: In fact, what I'm going to be doing is almost every day, I'm going to be listening to a session because I was only in three.

PAOLO CATALLOZZI: It was a good occasion to see some old friends: Gordon Humphries, I haven't seen him for a long time; Richard Arnold; Klaus Grabinski and some other colleagues.

HUGH C. HANSEN: Okay. Well, thank you, Paolo. Thank you very much, bye-bye.

PAOLO CATALLOZZI: Thank you.

HUGH C. HANSEN: Klaus. There you are.

KLAUS GRABINSKI: Hi, Hugh.

HUGH C. HANSEN: How are you?

KLAUS GRABINSKI: I'm fine thanks.

HUGH C. HANSEN: Where are you physically right this moment?

KLAUS GRABINSKI: I'm at home.

HUGH C. HANSEN: What?

KLAUS GRABINSKI: I'm at home.

HUGH C. HANSEN: Yes, and where is your home?

KLAUS GRABINSKI: Nearby Dusseldorf in Germany

HUGH C. HANSEN: How is Dusseldorf?

KLAUS GRABINSKI: Oh, Dusseldorf is nice. It's on the Rhine riverside and it's 350 kilometers away from Karlsruhe, from the place where my court is located, so I commute 350 kilometers but not every day, of course.

HUGH C. HANSEN: If you could pick one place I take it, I'm just guessing you're in Germany, one place in Germany to live, and you'll still have the same job and everything else. It's just a question of what place would you choose?

KLAUS GRABINSKI: That's a difficult one. Probably I would like to stay in Dusseldorf even though it's not that well-known to people abroad, but also Berlin is very interesting at the moment.

HUGH C. HANSEN: Did you say Berlin?

KLAUS GRABINSKI: Yes.

HUGH C. HANSEN: What's interesting about Berlin right now?

KLAUS GRABINSKI: Well, it's now more than, well, 30 years after reunification but still you see differences between East and West. Now, it's also very close to Eastern Europe. From Berlin to the German-Polish border, it's only

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150 kilometers away, so it's an interesting place. Lots of culture is going on there in the cultural field.

HUGH C. HANSEN: Is Eastern Europe really a different world? Are you guys together now integrated enough or is it differences between you?

KLAUS GRABINSKI: Well, it's a continuous process. I think the way of thinking in Eastern Europe is to some extent different from the way of thinking in Western Europe. You can even see it in Germany. Still even after, as I said, more than 30 years after reunification, there's still a-- When you speak to people from Eastern Germany-- Of course, we've got much closer over the years but there are still some differences. Particularly when you speak to people from the older generations.

HUGH C. HANSEN: The older what? Generations?

KLAUS GRABINSKI: Generations, yes.

HUGH C. HANSEN: They can be a pain in the ass, can't they?

KLAUS GRABINSKI: No comment. [chuckles]

HUGH C. HANSEN: Oh, oh. All right. Let me see. I have some other stuff here. Let me look at the-- We've got time. You've been writing?

KLAUS GRABINSKI: Writing? Yes, all the time. Judgments and other things.

HUGH C. HANSEN: Now, how much time do you actually have? I see the publications and other stuffs. How much time do you have actually to do that?

KLAUS GRABINSKI: Well, quite some time. I think it's interesting also to-- Well, in Germany, we write commentaries. At least some of the judges do, and that again helps others to better understand the case law, hopefully. I'm a co-author of a commentary of the European Patent Convention as well on the German Patent Act.

HUGH C. HANSEN: Wow. Does Brexit mean you have to make changes in these things you're writing or is it just screw them, they're gone, just move on?

KLAUS GRABINSKI: Well, of course in the commentaries, I also tried to follow what was going on in UK as far as EU law was concerned. Now, I still of course have to follow as far as European Patent Convention Law is concerned because in that regard, still, the UK courts apply the same law as we do in Germany. Well, we have the Brexit from the EU, but we don't have a Brexit from the European Patent Convention system.

HUGH C. HANSEN: All right what about this Unitary Patent System?

KLAUS GRABINSKI: Well, it's coming.

HUGH C. HANSEN: Yes, I know. Well, it's coming and it's a good thing nobody has to survive on oxygen or something waiting for this to come. It's been coming for how long now?

KLAUS GRABINSKI: Well, quite a long. Well, if you really trace it back to the beginning, probably since, I don't know, the '50s at least, but, well, I think we are almost there now.

HUGH C. HANSEN: All right and the Brits are gone, right?

KLAUS GRABINSKI: Right. Well, it's pretty much to my regret.

HUGH C. HANSEN: Well, I don't want to waste your time with Brexit, but the craziest thing and wild is they were doing this to make a couple of

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right-wingers in their party, okay, thinking, of course, this plebiscite or whatever was going to be rejected and they didn't go out and argue against it and everything else. It was a complete surprise.

The idea of how much this has caused change is amazing considering its origin had nothing to do with really trying to change the law. Anyway, we don't have to go into that. You can put it in, in a little footnote in one of your articles.

KLAUS GRABINSKI: Yes, I will. I will.

HUGH C. HANSEN: Tell me in 30 seconds, is that going to make a difference? How is that going to help things? Is it unifying where right now everyone is different or what is actually it going to do?

KLAUS GRABINSKI: Compared to the US, the current situation as we have it in Europe when you transpose it to the US, it would mean that each of the federal states in the US would have their own jurisdiction with regard to patents. They apply, to a large extent, the same law, but different courts and no Supreme Court. Now that's the attempt now in Europe to get the states that are member states of the European Union to get together and to have a common system and have one court, the Court of Appeal that then will try to further harmonize the law.

At the same time, you get, for example, an injunction that covers the whole territory of the participating member states, so the whole territory of the US and not just the territory of New York, for example. That's the difference, I think.

HUGH C. HANSEN: Wow, potential. I can see why some of the member states would not be for it because they're going to be afraid of what the unified thing comes up with, which might not be what they're happy with, but okay. I see the clock. Thanks so much.

KLAUS GRABINSKI: Thank you, Hugh. Looking forward to seeing you next year in person.

HUGH C. HANSEN: Hopefully, I used to go and see everybody, and then this COVID thing. I actually don't like most of the people I used to like. You put the COVID and that together, and I have not been traveling the way I used to. Hopefully, we can get back to that because I loved it. I loved the visiting and seeing and the fact that a lot of you people who are here today, I saw in those trips and it made those trips wonderful.

KLAUS GRABINSKI: Absolutely. Thanks.

HUGH C. HANSEN: Thank you very much, Klaus. I guess it's Simon who's next. Where is-- Oh, there is Simon.

SIMON HOLZER: I'm here. I've a short remark, Hugh. If you go through the list in an alphabetical order, then you probably missed Judge Brinkman and also I don't know--

HUGH C. HANSEN: Oh, and Peter Charleton.

SIMON HOLZER: Peter Charleton as well.

HUGH C. HANSEN: Oh, yes. I think they were added towards the end.

SIMON HOLZER: Okay.

HUGH C. HANSEN: We'll get them at the end.

SIMON HOLZER: No problem at all.

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HUGH C. HANSEN: For being late, there are penalties for that. Punctuality is very important. Simon, now you're in Zürich. Why are you in Zürich?

SIMON HOLZER: I am in Zürich because our office, the office of the law firm is there. I think it's the most important city in Switzerland, and it makes sense to have your law firm in Zürich, I would say.

HUGH C. HANSEN: Is that uncontested view?

SIMON HOLZER: It's probably not uncontested. If you would talk to a lawyer from Geneva, he'll probably take a different view, but I think Zürich is a very interesting city at the moment. It's transforming, I think, from a banking city to a high-tech city, I would say. You have Google there with the headquarter. Disney is there. Amazon is there. It's a very interesting place at the moment.

HUGH C. HANSEN: How many different really cultures? First of all, how many languages are spoken in Switzerland officially?

SIMON HOLZER: Officially four.

HUGH C. HANSEN: What are the four?

SIMON HOLZER: German, French, Italian, and Romansh. The fourth one is a Latin language close to Italian.

HUGH C. HANSEN: Okay. What is the language that most people speak? Is there any one language, though, that most people speak?

SIMON HOLZER: Well, the majority is German mother tongue.

HUGH C. HANSEN: How many people speak English?

SIMON HOLZER: I hope most of all. That's a big discussion whether you should start with English in school or with the language of the other parts of Switzerland. Whether you should start with French or English, that's a discussion in most of the classes what should be the first language in school? English is very important. You know. You have to talk English.

HUGH C. HANSEN: To what extent is Swiss German different than German?

SIMON HOLZER: It's difficult to say. It's an Alemannic language Swiss-German. Some say it's close to the Bavarian dialect. It's difficult, I would say. It's a different dialect. You can ask Klaus how comfortable he feels with Swiss German. Most of the Germans do not feel very comfortable with Swiss German, as we do not feel very comfortable with the proper German.

HUGH C. HANSEN: In terms of the law, does this present-- I'm in Switzerland and I want to have a business or something. Am I going to have to worry about where differences in application of the law, depending on what region of the country there is or not?

SIMON HOLZER: Most businesses, I would say, coming to Switzerland, they first check the tax register and then check the tax rate. At the moment, the most popular place to go is probably Zug in the center of Switzerland. It's also the place where all the new crypto business is located.

HUGH C. HANSEN: In practice, the head of the firm's patent and life sciences team, to what extent is your practice doing a law or managing the firm or managing this or managing clients? How much do you actually have to do it as opposed to run it?

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SIMON HOLZER: My personal practice, you mean or--

HUGH C. HANSEN: Yes.

SIMON HOLZER: Yes, I'm still very much involved in the cases. As you can see, Switzerland is not a huge jurisdiction. Our team involves about six, seven lawyers in the patent team, so I'm still very much involved in those cases. I actually still do things, and I like that.

HUGH C. HANSEN: Swiss parliament apparently appointed you an adjunct judge of the Swiss Federal Patent Court. What exactly does that mean?

SIMON HOLZER: That does mean that I'm one of the part-time judges of the Swiss Federal Patent Court. Actually, we're celebrating the 10th anniversary on the 6th of May of the Swiss Federal Patent Court. I think Klaus will also be there, and then Carl will attend this date or the event on that date. That means I'm appointed on a case-by-case basis for hearing patent law cases.

We only have two judges that are full-time judges. One of them is a full-time judge. The other one is a full-time potential judge and all the other judges are appointed on a case-by-case basis to hear patent cases.

HUGH C. HANSEN: Does this interfere with your practice? Is there a conflict that if you're going to be doing this in practice, it-- or whatever?

SIMON HOLZER: Conflicts are a hot topic, I would say. We have very strict rules. I think also the UPC will have to come up with similar rules for their part-time judges. We have very strict rules on conflicts. This is always a topic. It's very difficult in Switzerland. Either you have experienced judges and then you might have risk of conflicts, or you have judges with less experience and you have no conflict. That's a bit the problem.

The actual problems are limited, I would say. So far we had two cases. They went up to the Supreme Court where a party was of the opinion that one of the judges is in a conflict and those cases were decided. The Supreme Court confirmed that there is actually a conflict but beside of that, I don't think that we have major problems, but it's an issue. That's true.

HUGH C. HANSEN: Just a second. I'm just putting --. You came to Fordham and this is great. You see all these people from all-- How often do you actually see any of these people in your day-to-day life?

SIMON HOLZER: I would say probably the judge I meet most often is Klaus on the conferences in Europe. Not through the last two years, I would say, but others less.

HUGH C. HANSEN: What do you think of Klaus, just between you and me?

SIMON HOLZER: [chuckles] Also, no comment, I would say.

[laughter]

SIMON HOLZER: No. I admire him and I like him very much. He's a very loyal guest in one of our events we always have in January when we go skiing. Klaus is a very good skier and normally attends this conference in January in Switzerland.

HUGH C. HANSEN: I guess in Switzerland you almost have to ski just to get anywhere, right?

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SIMON HOLZER: That's true, yes. I'm a bit sad that the season is over right now, but yes.

HUGH C. HANSEN: I see the clock on the wall. Time is up. Thank you very much, Simon.

SIMON HOLZER: Thank you for having me. Bye, Hugh.

HUGH C. HANSEN: My pleasure. Gordon? Oh, there he is.

GORDON HUMPHREYS: Hello, Hugh.

HUGH C. HANSEN: How are you, Gordon?

GORDON HUMPHREYS: A bit tired. [laughs] I was chatting to you until quite late last night and then I had to eat something, so got to bed a bit late but good.

HUGH C. HANSEN: I just want you to know on my diary I took that personally.

GORDON HUMPHREYS: [laughs]

HUGH C. HANSEN: Be careful when you leave me to do something like eating or whatever. First of all, where were you born?

GORDON HUMPHREYS: You asked me this last year. I was born in London and it hasn't changed since last year either.

HUGH C. HANSEN: No. Maybe you can come up with a better explanation of why you've probably never been there after six months or whatever. You fled the UK and what was the reason for that?

GORDON HUMPHREYS: Well, it started with wanting to go to Belgium and get into EU law which I was recommended as a very promising future for young British lawyers at the time by an eminent judge actually, a law lord at the time. He was an acquaintance of my family and he recommended getting into EU law, which seemed like a good idea at the time. That's how it happened.

HUGH C. HANSEN: It's interesting because if you put that in your biography, no one would believe it.

[laughter]

HUGH C. HANSEN: There you are in London with all the good stuff that's going on there and everything else and get involved. It's true actually, especially when you went actually, there was probably even more opportunities than if you were doing it now. Let me just look at-- To what extent of your day-to-day activities, legal activities, professional activities are consumed by what you do as a Chairperson of the Board of Appeal at the EUIPO?

GORDON HUMPHREYS: Just about everything. The working day is consumed by that activity, that's my job. Obviously, there are various roles that I have to assume in a working day as a chairperson. We have deliberations on cases, so sitting as a panel of three and trying to agree on an outcome. From time to time, we have cases before the Grand Board which is a panel of nine members, which is increasingly being used. There I'm just sitting as a member of that Board. I'm not the presiding member. That's the president of the Board of Appeal.

There is some additional work that we do, such as projects on various legal topics. For instance, we've got an ongoing project on bad faith where we're trying to work out a common position with other EU member states regarding criteria for bad faith. The same common criteria approach is taken in another

project in which I'm actually a rapporteur and which focuses on a Convergence Program for Public Policy and Morality. We meet from time to time on that subject and, again, it is a joint work with IP offices from around the EU.

There are various other things that I'm involved in, and sometimes asked to comment on. For example, at the moment we've got plans for EU non-agricultural GIs, which I know that you're very fond of GIs. The Commission's now proposing a regulation in the field of non-agricultural GIs. There'll also be a codification of agricultural GIs bringing all the existing regulations together in one text. Our design regulation is in the process of being reformed, so, often, I can be asked to make comments on this sort of upcoming legislation as well.

HUGH C. HANSEN: How many boards of appeals do you have?

GORDON HUMPHREYS: We have five ordinary boards of appeal, four dealing with trademarks and one dealing with designs. As I already commented, we also have a Grand Board. Both the Grand Board and the designs board are actually ad hoc boards in the sense that nobody's permanently in them. They're doing other jobs as well. The designs board, for example, has members from all the other boards, but it simply meets to decide the particular cases as a panel of three.

HUGH C. HANSEN: Choosing the members of these five boards, how many different countries do they come from?

GORDON HUMPHREYS: Well, the 27 member states of the EU.

HUGH C. HANSEN: No, you don't have--

GORDON HUMPHREYS: Yes, you're right, we don't have everybody obviously from all the member states but I think we cover over 12 nationalities.

HUGH C. HANSEN: When they come in there and this is the thing with IP. I grew up with IP. I'm going to think about trademarks as a certain way. There might be different from someplace else. Now, all of a sudden, we're on a board. To what extent do I bring my natural inclinations of what I think I should be doing in trademark law? How difficult is it for them to get rid of that and now think of a more general view or your view or what?

GORDON HUMPHREYS: I'd say it depends how long the individual has been working in an EU environment. If they've had many years in that kind of environment, like me - I've had 24 years nearly, I would say that I'm not heavily influenced by English law, or Belgian law, which I also studied. I'm not heavily influenced by that because I've had so many years in an EU environment. However, a newer arrival coming from outside the EUIPO may be more influenced by their national system. Although as Richard said, when you're sitting on a panel, you're trying to apply regulation. We've got regulations, obviously, that govern at EU level and we're trying to apply the case law and the regulations to determine particular legal issues. What can come in are, I would say, national procedural evidence law reflexes. For example, the weight that one gives to newspaper articles, for example, that may be just regarded as hearsay or secondary evidence of some sort in certain jurisdictions.

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HUGH C. HANSEN: We have to move on, but I have a final question. To what extent, after being there 27 years, do you consider yourself English or British as opposed to European or whatever?

GORDON HUMPHREYS: I'm a very watered-down Brit, [chuckles] I would say, but probably my colleagues would regard me still as quite British, I would say. I haven't been there 27 years. It's 24, but I've been outside of the UK for over 30 years, so I'm quite a diluted Brit, basically.

HUGH C. HANSEN: Except for your accent. Your accent is probably the same as the day you left. Now, what is the reason for that?

GORDON HUMPHREYS: [laughs] That I can't explain.

HUGH C. HANSEN: That's your heart telling you, "I'm not leaving completely. I don't care what the brain says. I'm still a Brit."

GORDON HUMPHREYS: Like Prince Harry.

HUGH C. HANSEN: Yes. Oh, please don't bring him up. Anyway, time is up. Thank you so much, Gordon. Great seeing you again.

GORDON HUMPHREYS: Okay. Likewise.

HUGH C. HANSEN: The nice thing about this thing here, you can't leave. Yes, you're here alone. Thanks. Robin? Where is Robin?

ROBIN JACOB: I'm here. I better get myself visible

HUGH C. HANSEN: Robin, I see you.

ROBIN JACOB: Yes, I see you.

HUGH C. HANSEN: Good. Now, have you been listening to this or doing work or what?

ROBIN JACOB: Well--

HUGH C. HANSEN: You've been doing work?

ROBIN JACOB: It's Friday night, so I have been having a drink when it's been going on. Cheers.

HUGH C. HANSEN: Good. Let me see. Hold on. You've done a lot of interesting stuffs and important stuffs. What of all the things you've done, do you think was the best experience you had so far?

ROBIN JACOB: Well, do you know, I've thought about that a lot. I've loved every job I've ever had from being a laundry delivery boy when I was in my teens to doing what I'm doing now. Every one of them was great. If you ask which was the very best bit of being a barrister, probably it was the early years when I was getting going and then young Hugh came after me and we were creating law like you couldn't believe, especially procedural law.

On the other hand, first instance judge, patent judge, that was great. Going out on circuit was great. Never been to my own country before. I had to Birmingham. I was dreading going to Birmingham. I thought it has a terrible reputation. But it's a wonderful city.

HUGH C. HANSEN: What city is this?

ROBIN JACOB: Birmingham. You've never been? They probably wouldn't let you in.

HUGH C. HANSEN: Just a second. Gordon, you know where that city is? Okay. That was just a spot test. Good. I'll take a look at--

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ROBIN JACOB: It's where the industrial revolution started for God's sake. It's where our whole world changed.

HUGH C. HANSEN: Well, you'd think they'd been in a lot better shape now if it had started there.

ROBIN JACOB: They're in pretty bloody good shape. That's the trouble, you've never been there so you say, "Oh, better than--" They're not.

HUGH C. HANSEN: That's exactly right. The reason I've never been there and I've been all over Europe there must be a reason. When was the last time you were in Birmingham?

ROBIN JACOB: Sadly, about 10 years ago.

HUGH C. HANSEN: Yes, there you go. You've proven my point.

ROBIN JACOB: I haven't proven anything.

HUGH C. HANSEN: Let's move on. Let's go to an easy one, Kazakhstan.

ROBIN JACOB: Kazakhstan?

HUGH C. HANSEN: Apparently, you are justice of the Astana International Financial Centre in the capital of Kazakhstan.

ROBIN JACOB: No, I'm not. I got timed out when I was 80.

HUGH C. HANSEN: You got what?

ROBIN JACOB: I got timed out. Time expired. I finished.

HUGH C. HANSEN: No, what really happened. I think you went there with some sort of stash money or something and-- What's going on there that you went there to begin. I'm fascinated by that. I'm joking around but-- What was going on that attracted you?

ROBIN JACOB: It was a really interesting and is a really interesting expedition. They must be in terrible trouble now with pressure from Russia because the northern part of Kazakhstan which has a border with Russia for about 1,500 miles. It has more borders than any other country in the world. China on one end. Iraq on the other. They are the old people who used to come up and beat Greece every now and then and horse people and a very corrupt country perhaps pulling itself a bit out of corruption.

It has certainly moved up from near bottom in the world of United Nations list of corrupt countries quite a bit. This area, they have foreign investments and people can invest there and they know they've got a-- If they agree to governance by the court, then they've got something which is probably very special, which is an independent court. It's been very successful. It's getting more and more work and it's becoming a model. I'd like to think exporting the rule of law is not a bad thing to be doing.

HUGH C. HANSEN: Currently, it says here you work as an arbitrator mediator, an expert witness.

ROBIN JACOB: Yes, that's true.

HUGH C. HANSEN: Is that fun?

ROBIN JACOB: Sometimes it is, sometimes it isn't, like every other thing.

HUGH C. HANSEN: What is the pay for that? Is that good?

ROBIN JACOB: Yes.

HUGH C. HANSEN: How good?

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ROBIN JACOB: [chuckles] Of course, it is.

HUGH C. HANSEN: Well, if you need a US voice on any of these things, just let me know. I'll give you 10%, so don't worry about that. In your experience, which is amazing and you've done these wonderful things, what do you see just on the law and courts? Do you see them in good shape now? Do you think the future is, I don't know about the future, or it's moving in the right direction? Do you have any views on that at all?

ROBIN JACOB: It's just bumbling along. You get right decisions and wrong decisions. Young Richard over there, he's made me wrong. Paul used to be a very good judge once, but he's now gone into the moneymaking trade. I don't know where we're going now with-- I don't believe that we're going to get a perfect court system. I don't believe in that. You've got to get the people doing the best job they can and that's what they're doing.

HUGH C. HANSEN: Okay. Let me correct. I gave the wrong idea. I'm not talking about the person element. I'm talking about the state of law today as determined by judiciaries in various countries. Does it look okay or we don't know what's going on or--

ROBIN JACOB: There's a bit of both. China has now joined maybe only temporarily. I hope not. Beyond the world system, people castigate Chinese judges. I don't think they should be doing that. I've met quite a few of them. Yes, the state has some control but not as much as everybody thinks elsewhere. Their patent people are pretty good. They're quite good at sniffing out a good patent or a bad one. I don't know. We haven't got a world patent court. One day maybe in 150 years' time we might.

We're trying this game in Europe, sadly without us which is a loss. That's one of my biggest disappointments is that we played a huge part in creating this court and we're not going to be there. I think that's a loss for us that we're not going to be--

HUGH C. HANSEN: I think it's a fascinating thing to see from over here. [coughs] I thought when I first heard about it, "This is great," but now, I don't know. I'm beginning to see that it could be running into all sorts of-- It seems to me, the EU is more divided than it was when I first got interested. in terms of--

ROBIN JACOB: The world is more divided.

HUGH C. HANSEN: Yes, the world is more divided, you're absolutely right. Well, we can do that. We'll continue on the world divided next year, Robin. The time is up. Thank you very much. Good to see you again.

ROBIN JACOB: Move on. Thank you, Hugh. Thank you for inviting me. I had a great time. That's going to go into the record, by the way as your response to me. You don't have to worry about it.

HUGH C. HANSEN: I took care of it.

[laughter]

HUGH C. HANSEN: All right, Carl. Where's Carl? Somewhere?

CARL JOSEFSSON: Here I am.

HUGH C. HANSEN: There you are. How are you?

CARL JOSEFSSON: I'm fine. Thank you.

HUGH C. HANSEN: European Patent Office. You're a Swede?

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CARL JOSEFSSON: Yes.

HUGH C. HANSEN: How does it feel to be a Swede?

CARL JOSEFSSON: Oh, well, I'm getting used to it now. I always --
[laughter]

HUGH C. HANSEN: You used to be--

CARL JOSEFSSON: I guess the particular test, I'm aa Swede Germany.
I'm a Swede in Munich.

HUGH C. HANSEN: Swede what?

CARL JOSEFSSON: I live in Munich, since five years. I'm a Swede in
Munich that is what--

HUGH C. HANSEN: That's job-related right or you just wanted to move?

CARL JOSEFSSON: That is because I'm President of Boards of EPO.
Pardon?

HUGH C. HANSEN: Do you even consider yourself Europeans in
Sweden?

CARL JOSEFSSON: That's a good question. I do. I certainly do and that's
probably part of the reason why I ended up here. Otherwise, in Sweden, we have
this strange notion that it's Sweden, it's us and then we have the continent.
Basically, Sweden joined the European Union in 1995 and now we are on the
verge to join the NATO as well I think. That is a very swift political development
now.

HUGH C. HANSEN: Thanks to Russia.

CARL JOSEFSSON: Yes. It's a bit of a thorny story in Sweden. Brexit
took a lot of interest in Sweden, because we have this ambiguity here, being a part
of Europe in a different way than Britain, I would say but in Sweden, one talks
about the rest of Europe as the continent.

HUGH C. HANSEN: You're saying to some extent that's changing.

CARL JOSEFSSON: Pardon?

HUGH C. HANSEN: You're saying to some extent that's changing?

CARL JOSEFSSON: Yes. Well, now it's changing very quickly because of
this terrible situation we are in and that is so.

HUGH C. HANSEN: A president of the boards of appeal of the EPO, also
present in the enlarged board. Now, what is the difference between those two
jobs? One is new and one is traditional, right?

CARL JOSEFSSON: Yes. As a chairman of the large board, that's the
traditional judicial role, of course, as the president of the boards that is, the
managerial role as a chief judge, I would say. It's a combination there, which I
think it's common for court presidents that you have both a responsibility for the
staff and the management of the whole placement and you also have a core
judicial function.

HUGH C. HANSEN: Now, you started out as the president of the boards
of appeals?

CARL JOSEFSSON: Five years ago now, yes.

HUGH C. HANSEN: Is that normal to start as the President as opposed to
a member of the boards of appeal?

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CARL JOSEFSSON: Well, actually I was the first president appointed ever, after a structural reform. Before that, well, it was a bit different in the past. In past, the boards of appeal was lead of a vice president and more integrated in the office. Now we're autonomous. We're still formally part of the European Patent Office, but we're autonomous unit, separate unit. That is the difference.
[silence]

HUGH C. HANSEN: One of our people passes -- In 2019, you say the boards of appeals set on 90% of cases in 60 months, your goal is to settle 90% of cases in 30 months by 2023. The reason you want to settle cases it's a better result or just more efficient or what as opposed to fighting in and out in one side or the other?

CARL JOSEFSSON: Well, I think as every judiciary, we want to settle our cases with the highest possible quality and we're a final instance so we have a certain responsibility in that regard but we also want to do this as quick, as swiftly as possible. We are effectively cutting our backlog now. We had almost a couple of years ago, almost 10,000 cases, we're now under 7,000 and it will continue improve situation now and we're not satisfied with our premise times, but that will also improve in coming years significantly and I'm looking forward to that, we in a couple of years should be able to as do court normally settle cases as they come in and not having a backlog anymore. It will take a couple of few years more for us to get there but we are well on track.

RICHARD ARNOLD: I can translate, settle is EPO speak for determined.

CARL JOSEFSSON: Thank you, Richard.

HUGH C. HANSEN: All right, that helps. Thank you, Richard. How many languages do you have--? You need to be in languages or is everything translated for you, in these cases from 70,000 different places come in?

CARL JOSEFSSON: I work in three languages. There are three official languages so, English, German, and French. Well, I work mostly in English, but to a great extent in--

HUGH C. HANSEN: Let's face it, everybody works mostly in English. Isn't that true?

CARL JOSEFSSON: Well, it's a bit different than EPO. We have three official languages.

HUGH C. HANSEN: Doesn't God want you to work in English? CARL JOSEFSSON: Pardon?

HUGH C. HANSEN: Doesn't God want you to work in English?
[laughter]

HUGH C. HANSEN: I think you should try to serve everybody when you do things and that wouldn't be a bad one. Let me just look. Oh, that went quick. Carl, thank you for coming and participating.

CARL JOSEFSSON: Thank you very much.

HUGH C. HANSEN: If you look at how people are dressed, I'm just the worst of almost-- No, no, no, no, no, no, of course, the worst is Robin but, I'm next to the worst and you're all looking pretty good, jackets and ties and all that other stuff. Well done. Anyway, thank you, Carl.

CARL JOSEFSSON: Thank you very much. Take care.

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HUGH C. HANSEN: Rian, there you are. Hi, Rian?

RIAN KALDEN: Hi Hugh. How are you?

HUGH C. HANSEN: This place is just lousy with Swedes now, isn't it? You are Swedish, aren't you?

RIAN KALDEN: Me? No, I'm Dutch.

HUGH C. HANSEN: No, you're Dutch.

RIAN KALDEN: I'm blonde. That's not nice to saying I'm Swedish.

HUGH C. HANSEN: No, no, no, no, no, no, no, no, no. Ever since the war, it's been tough. No, I know you're Dutch. I don't know how that popped up. Starting out in a law firm, Stibbe, how was that?

RIAN KALDEN: That was really nice. I actually started out in the intellectual property department over there. I think thanks to a master I did in London and starting off at Stibbe at the intellectual property department. I think that actually gave direction to my career and I think that's why I'm here now. I would consider it a good start to my professional life.

HUGH C. HANSEN: You worked in London for a while?

RIAN KALDEN: No. I did a master and it's mainly for international students, I must say, but it's one year after you're finished your university studies back at home, and then you have additional year. One of the four subjects that I chose was with Professor Cornish. That's how I came to work with the IP department.

HUGH C. HANSEN: Where was Stibbe located when you were there?

RIAN KALDEN: In Amsterdam, they still are.

HUGH C. HANSEN: That makes sense. You've been in a district court for a while in a criminal division?

RIAN KALDEN: Yes.

HUGH C. HANSEN: You've been doing IP and criminal, I guess you prefer IP?

RIAN KALDEN: Yes, I did. Although I think as a judge, it's actually good to know, to work in that field for a while. It's not the area of law that I'm very much attracted to but I think as a judge, I think it's good to have been working in that area for a while.

HUGH C. HANSEN: You've been on first instance, now you're on a court of appeals and IP. When you're head of the division that covers a wall of IP cases. Is that a lot? Are you overwhelmed? What percentage?

RIAN KALDEN: It depends. At the court of appeal, we're not with too many judges that actually do IP. It's not 100% of all the cases, there's other cases as well. I think I would do like 90% of all the cases I do is still IP but that's also caused by huge patent cases that take a lot of time and therefore, it's not much time left to do other work than IP.

HUGH C. HANSEN: You also though, while you're judge, work as an arbitrator?

RIAN KALDEN: I've done that. Actually, mainly, when I did criminal law cases, I did some arbitration next to that because I was a part-time judge, I worked only three days so I had sufficient time to also do arbitration cases. I don't do that in practice now because I don't have the time to do it. Maybe I'll take it up when I

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finish being a judge, then I may take it up but that'll take some time before it's time to do.

HUGH C. HANSEN: The people I know actually, Robin, I didn't speak to him about it, but who do arbitration actually tend to like it. I'm available for arbitration, by the way, if anyone is looking for an arbitrator.

RIAN KALDEN: We'll think of you.

HUGH C. HANSEN: You now have expedited interim injunction proceeding. Tell us about that, what is that all about?

RIAN KALDEN: Do we have expedited injunction proceedings -- [crosstalk]

HUGH C. HANSEN: I'm reading a note here that says, how does the Dutch expedite the interim injunction proceeding affect the kind of litigation you see?

RIAN KALDEN: I'm not sure who made that note.

HUGH C. HANSEN: One of our people made that note. I have no idea what it is, that's why--

RIAN KALDEN: Maybe ask Edger later on. We can do speedy appeals, but there's nothing like an expedited IP procedure before the court of appeals.

[phone ringing]

HUGH C. HANSEN: Hold on.

HUGH C. HANSEN: I'm sorry. What is your favorite thing to do, Rian?

RIAN KALDEN: In terms of the type of cases that I deal with?

HUGH C. HANSEN: We can do cases, we can do life, we can talk travel.

RIAN KALDEN: [laughs] I must say, over the last two years, I do miss traveling a lot, and also meeting people like these conferences because I think even though you do a great job in organizing online conference, I think it's really not like the real thing. Yes, I do miss that. I would like to do more of that, and also do traveling with the family, and have some shared experience that you can come back to later on. I think it's really worthwhile to do that.

Now life just it rolls on without there being any experiences like traveling together and going to have some experiences that you normally don't have at home like, we went to Curacao, Suriname. We're now go to South Africa, Botswana, and that's trips that you really have a shared experience with the family. That's very worthwhile. It's nice to have a good job and to work but there should be a balance in having also some experiences in your private life. We've missed that over the last two years, I think [crosstalk].

HUGH C. HANSEN: I think everybody's in that situation. This is a tough time, actually. I actually prefer in live, but I'm thrilled to get whatever I can get and this is actually pretty darn good. Present company excluded of course, but okay. Thank you very much.

RIAN KALDEN: Thank you again, and hope to see you in real person next year, everybody.

HUGH C. HANSEN: I'm hoping, everybody, I used to travel like crazy and I'm dying to get back at that.

RIAN KALDEN: Take it up again.

HUGH C. HANSEN: Scott.

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F. SCOTT KIEFF: Hello.

HUGH C. HANSEN: There he is. Now, Scott, how are you?

F. SCOTT KIEFF: I'm well, how are you, Hugh? Thank you for bringing us together.

HUGH C. HANSEN: Now, Scott, is there a reason you put F. Scott Kieff, is there something with that F that's going on that's very important to you?

F. SCOTT KIEFF: Yes. My parents gave it to me. They picked my name, I didn't.

HUGH C. HANSEN: You could have spelled it out if they gave you that name. Think about it.

F. SCOTT KIEFF: They weren't just helping me start in school with low expectations, if I started with an F, I could only go up from there.

HUGH C. HANSEN: You were a commissioner of the USITC, US International Trade Commission, actually. You're an administrative law judge in that, is that correct?

F. SCOTT KIEFF: I was not an administrative law judge. The six commissioners review the decisions by the administrative law judges. We sit like a court of appeal or an appellate panel and in that part of our docket in the trade remedies part of our docket, we sit like a six-member Court of First Instance. We have a couple of different roles inside that agency.

HUGH C. HANSEN: Actually, that sounds pretty cool. You didn't stay there very long. How long were you there?

F. SCOTT KIEFF: I was there for several years. I did not stay my full term. I wanted to return to where I am now back at GW among my colleagues here and also to the private sector consulting world where I do neutral services like many of the others.

HUGH C. HANSEN: What are neutral services?

F. SCOTT KIEFF: Mediation, arbitration, compliance monitoring.

HUGH C. HANSEN: You get paid a lot?

F. SCOTT KIEFF: It is a convenient feature of that activity that folks do pay.

HUGH C. HANSEN: You were clerk for Charles Richard and Charles Richard is one of the names?

F. SCOTT KIEFF: He was a lovely, general, scholar, and teacher and boss, and judge and so many of us in this discussion, worked with him and knew him. He was wonderful. He had enough curiosity for 1,000 cats and was always interested in other people and in the cases and the parties that came before him.

HUGH C. HANSEN: I think he, if my memory serves me, he never even went-- Federal judges in the United States can go senior, which means they can work less and often get paid the same amount, or even retire and get paid the same amount then trials with one of those-- Oh, like someone else who happens to be here today who's remained active. That's an indication of someone special, I think, isn't it?

F. SCOTT KIEFF: Yes. He worked until really just before unfortunately, he passed away. He had started his career in lower Manhattan in the fall of 1929, just as the market had crashed, and really had seen so much of the century evolve,

not from a distance, not as an observer, but as a participant. I remember having conversations with him about modern technologies, and the modern issues that are in debates about IP, like health and standardization, and so forth. One of the things he was always so good at doing was reminding all of us that those actually are not new debates and not new topics and we had all of those same conversations around electrical plugs and electrical outlets. You ever wonder how your plug plugs into an outlet, and it works pretty darn well and in each region, although, of course, different standards across different regions. Same with the evolution of the airplane, and gasoline and plastics, for those of you who like the movie, *The Graduate*. He was very, very much aware of what was happening through so many of these technological changes in our society.

HUGH C. HANSEN: What is your take on where we are now in IP? You've seen it from different perspectives, trying the case, a judge, various aspects of it, law clerk, practitioners, I said, where are we now in IP?

F. SCOTT KIEFF: It's a strange time, but it's a strange time for antitrust as well, for trade as well. It's a strange time in a lot of areas, conflict. If it fits in a tweet, and if the tweet is read and exciting with an exclamation mark, it gets more clicks and that makes-- The undercurrent of the ad universe makes that market flow, but it actually distorts conversations. That distorting effect in collaborative conversations is something that I think we all can fix. We are all professionals interested in professional dialogue, collaborative, substantive dialogue. Sure, that takes a little more time but it's conferences like yours, Hugh, that give us hope, that give us a chance, that gives us the opportunity to try to fix some of this division.

HUGH C. HANSEN: That's going in my diary, too. Thank you. What would you say if there is, and this is the last question because we're out of time, the most important thing that we have to look to in the future in IP, is it Congress of the US now, congressional legislation, is it case law that you want to see developed or what?

F. SCOTT KIEFF: I do hope that we can return to some more reasoned and rules-based systems inside the US. I think frankly, many of our colleagues outside of the US are already doing a pretty good job. We need to catch back up.

HUGH C. HANSEN: Thank you very much. Good seeing you again.

F. SCOTT KIEFF: Lovely to see you, Hugh. Thank you so much for bringing us and including me. Thank you.

HUGH C. HANSEN: Polly, no, Paul.

PAUL R. MICHEL: I'm over here.

HUGH C. HANSEN: There you are. How are you?

PAUL R. MICHEL: Very good. Thank you.

HUGH C. HANSEN: What are all those things behind you? Are those awards?

PAUL R. MICHEL: Yes.

HUGH C. HANSEN: Pretty impressive.

PAUL R. MICHEL: If people collect things like that, they should get a better life. I have a few but I don't take them very seriously.

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HUGH C. HANSEN: Williams College, which is, people don't know, the one's fancy intellectual things up there in New England. Virginia law school. Then you did a lot, I guess what I would call public service, assistant district attorney. Interesting enough, we were both in the Army Reserve around the same time. Assistant Watergate special prosecutor. Now, what exactly did you do in that?

PAUL R. MICHEL: I ran an investigation of a slush fund maintained on behalf of former President Nixon by his secretary Rosemary Woods, and his banker personal friend, Charles Rebozo, known as Bebe Rebozo, and Howard Hughes and a handful of other super-wealthy individuals had contributed cash, usually \$100,000 at a time in a briefcase. It was a very interesting investigation. It was one of the reasons why President Nixon resigned because there was a threat that more revelations would come out than had already come out as a part of the congressional impeachment probe.

HUGH C. HANSEN: Good for you. Court of appeals, Ronald Reagan for the Federal Circuit, which actually, let me just look, shortly after it was created five years or so after it was created, so you're there in the beginning. I get a note from-- We're running out of time. I used the timing they gave me on this, we didn't go over very much, except in the beginning when I couldn't find anything going on. We were going to go a little bit over. Where were we? Appointed that-- Now, I was pretty close to beginning and of course, Charles Rich was there while you were there, right?

PAUL R. MICHEL: Absolutely, and was a great teacher along with Pauline Newman and others who were on the court before I joined in '88. It was a great experience to learn from them and work with them.

HUGH C. HANSEN: If you had to choose one thing, you're doing a million things right now in various aspects of the law, I know you were a judge, if you got to pick one of those that you only could have done one, I think you've already told me that, it's what you're doing now, you get the most reward from.

PAUL R. MICHEL: What I'm doing now is trying to be a public advocate on behalf of a stronger, fairer patent system and other IP regimes by trying to educate policymakers and those in the media or in politics or elsewhere who influence the policymakers, including in the Congress, but not limited to the Congress as an advocacy job in a way but in another respect, you could consider it an educational enterprise. It's very challenging. It's almost always very frustrating, very slow but I think it's the most important thing I could possibly be doing now. I'm 81, I'm fortunate to be in good health, I have lots of energy, I work seven days a week, I love it, and I want to do what I can to try to get IP regimes on a better track for as long as I'm around.

HUGH C. HANSEN: First of all, you're in great shape. I'm 58 and I can say, looking at you that you look great for your age, but you do really and active and all that, that's wonderful.

PAUL R. MICHEL: Everybody looks great. Looking into the screen is such a joy, all these familiar faces of admirable people, friends from past Fordham conferences, I can't wait till we can gather again a year hence, in person. Let's all hope.

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HUGH C. HANSEN: I think you're right about all those that are with us today. The thing I'm worried about is the future of IP or patents. We're looking for Congress, I don't think it's going to come up, we're looking for the courts, I don't think it's going to come. I am afraid Supreme Court screwed this up for various reasons and your court is not helping now. We're going to lose a lot of investment money and everything else. I've already-- I know people who invest in innovation, especially innovation, and they're going to Europe and Asia now with their money. Is it as bleak as I mentioned it or do you think it's actually not as bleak?

PAUL R. MICHEL: I think it's bigger and worse even than you suggest and it will continue unless there's a turnaround in US policy. I think it won't come from the Supreme Court. It probably won't come from the Federal Circuit, although they are doing what they can within the confines of Supreme Court precedent, for example, on eligibility. You're certainly correct, it's hard to count on the Congress doing anything really sensible, or really fast.

I think eventually, there'll be a sufficient outcry by business leaders and venture capitalists and economists, and many other disciplines that will make it clear that the US is headed for a very bad future, unless we rev up the IP regimes, all of them, but particularly the patent regime. That's why I'm spending virtually all my time now trying to help promote that direction. I think the future of the country economically in terms of national security, in terms of global competitiveness, in terms of job creation, and on and on and on it depends heavily, not exclusively, of course, but heavily on restoring strength, predictability, reliability, stability, efficiency, to the entire patent system in the courts and the patent office and everywhere.

HUGH C. HANSEN: I'm glad you're on it. I've always been an admirer of you and what you've been doing and just keep up the good work. [crosstalk] Seven days a week. Now that's getting a little anal here. You can take a day off [crosstalk].

PAUL R. MICHEL: I take chunks of time off, but usually not whole days. It's not bad.

HUGH C. HANSEN: It's great having you here. Thanks so much.

PAUL R. MICHEL: Thank you.

HUGH C. HANSEN: Polly.

PAULINE NEWMAN: Here I am.

HUGH C. HANSEN: How are you?

PAULINE NEWMAN: So far, okay. How about you?

HUGH C. HANSEN: A personal question, but okay. Now, Polly, we're talking about people who look good for their age. I'm not going to tell them your age, which is 99. You look active, it's almost incredible. How are you feeling?

PAULINE NEWMAN: I'm feeling okay.

HUGH C. HANSEN: Now, you could go senior and work less, you could retire and kill yourself like Paul is doing privately. What is it about staying active in your-- I'm not knocking, I think it's great, that keeps you because no one else is pretty much probably in history of the court stayed and done as much as you've done to this stage in life, what is it that makes you want to do that?

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PAULINE NEWMAN: I could have gone senior quite a while ago and as the time went by, I thought that what I'm doing is more interesting, a little more interesting, but more interesting than what I might do if I went senior, and so I just kept on going, and didn't focus on it. In retrospect, perhaps it would have been more interesting 20 years ago, to start a new career. Now, I think I'm probably not up to a new career, so here I am.

HUGH C. HANSEN: Thank heavens, I'm not knocking this, I'm impressed with it, so if it came across, as I'm saying why-- I did say why you're doing it, but not why are you doing this. I think it's wonderful that you're doing it. I think in the current members of the court and as people know this, I think I've already said it, I don't do patents for religious reasons, but in your case, almost always, I think is the best in any case. They often, unfortunately now, you're often in a dissent, which is too bad and that's one of the problems we have with this court now. One question, I have to cut this, not completely short, but a little short because of-- What advice-- I'm always interested in telling students and everything else or young lawyers, what advice do you give a lawyer, and it can be-- It doesn't have to be young it could be anyone, is the best way to be effective in the Court of Appeals?

PAULINE NEWMAN: I don't advise how to be effective. The best advice that I can give, and that I do my best to give to those who want to ask my advice is to be true to the facts, to the truth, to the purposes that we're here for, to understand what we're up to, to be thorough, and not to be phony. To the extent that that's advice, there it is.

HUGH C. HANSEN: It is advice. That's pretty darn good advice. That's going in my diary too. Are you having any fun judging now or dealing with these nincompoops and other things, that's a term of art we use by the way, are you? Is it, "Oh my God, I got to do this." Forget the question, I should never have asked this question. This is the trouble.

PAULINE NEWMAN: It's forgotten.

HUGH C. HANSEN: Good. I have a couple others but I think I'm getting these indications from people that we still have two more people to go. Now, one of the reasons is for some reason, they were not on the original, but we're very glad to have them. Do you have any advice?

HUGH C. HANSEN: Where's Polly? I know I can ask Paul what do you think and all, he's not a judge anymore but Polly has this thing, is, "I'm a judge I can't really say anything that might affect somebody or something in the litigation," something else which I respect, but what you've done is basically wipe my slate clean. That's all I do.

PAULINE NEWMAN: Hugh, I can say that I agree with everything that Paul said. I think that's permitted.

HUGH C. HANSEN: Good. Anyway, thank you so much Polly, and I look forward to getting together with you in the not too distant future.

PAULINE NEWMAN: Yes, the sooner, the better.

HUGH C. HANSEN: Now, where are you now? There's Peter and there's Edger. Now, I had notes and stuff like this, but just give me two seconds, I'm going to see if I can find them. Just don't go away.

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PAUL R. MICHEL: The reason it's so good that Judge Newman remains on the Federal Circuit is that she's the only one there in my opinion, who understands business and business economics and innovation economics, and investor thinking, and the real world that the system is really supposed to be serving, so her presence there is a constant reminder to those who lack that perspective. I think it's absolutely wonderful to-- Keep staying on, Polly.

HUGH C. HANSEN: I'm coming.

ROBIN JACOB: What you said Paul was absolutely right. We've got to the point now when China understands patents better than the United States.

PAUL R. MICHEL: Protects them better as well.

[crosstalk]

PAUL R. MICHEL: Issues them faster, more carefully.

ROBIN JACOB: They understand how it works. They understand that-- The Europe person does pattern waiver for vaccine. If we hadn't gotten the patent system, where would we be now with vaccines?

PAUL R. MICHEL: Right, we wouldn't have them.

ROBIN JACOB: We wouldn't have them.

PAUL R. MICHEL: Here comes to Hugh.

HUGH C. HANSEN: At least I have Peter here. Peter, where are you? Someplace on that screen. There we go. How are you?

PETER CHARLETON: I'm very well. Thank you. How are you, Hugh? Yes. Excellent.

HUGH C. HANSEN: Apparently. You're Irish, is that true?

PETER CHARLETON: Yes, I am indeed. Although I have an English name. Yes, I am Irish [laughs] but I'm a Norman. I'm a Viking. I'm --

HUGH C. HANSEN: Well, that's interesting.

PETER CHARLETON: I am a tall, blond, blue-eyed person.

HUGH C. HANSEN: They're all in Wisconsin. 3,000 Norman's or something. Actually, it's interesting that you're saying that I've just been reading about them, what an influence they've had in our country. Having sat through all of this, what sage advice can you give us as to the future? Either in you, Irish, the world whatever. Can start out with that?

PETER CHARLETON: Well, I'm not sure if there's an elephant in the room in terms of this discussion, but certainly, at what we are most worried about in Europe and I'd say Richard Arnold probably shares that worry is what's actually going on. From the point of view of the violation of human rights in terms of this war that is going on, the fact that the United Nations doesn't seem to be capable of functioning in terms of producing a solution, the fact that an aggressor is actually on the Security Council and there is a very, very strong prospect of another economic spiral such as 2006, '07, '08 happening again in consequence of what has occurred.

If you want to know what's most on my mind, it's probably that because there was a very good American diplomat called Gary Sick, he had a funny name, but he was a really great guy who said that in international relations, and in law, indeed, it's all about moving pieces on a chessboard but every now and then someone will catch the chessboard and literally chuck it up in the air and then

we're all left to try and reassemble the pieces. I think, not just in Kazakhstan, but I think throughout the whole of Europe and the whole of the world, I think there's a lot of things we need to worry about and focus on, in particular getting this conflict sorted one way or the other. That's, I suppose what I'm thinking about here. I don't know why. That's it.

HUGH C. HANSEN: That's good. Now the Supreme Court of Ireland, you're a member of that?

PETER CHARLETON: I've been since 2014, yes.

HUGH C. HANSEN: How do you like that, how is that gig?

PETER CHARLETON: It's great. It's fantastic. If you would want a frank answer, I must say I preferred being a trial judge because being a trial judge, you're dealing with different cases every single day or dealing with different people and I was sitting five days a week, for 10 months of the year and it was very, very, very, very pressurized, but it was good. Where the problems arose were post 2008, when we had the economic crash, because I was sitting on the commercial court and the commercial court dealt with intellectual property with major planning cases. Also with any case, where someone claimed damages of a million euros or more. The problem in Ireland in 2008, was the banks from 2000 to 2008, lend loads of people more than a million, so an awful lot of it became the misery stories of people who overextended themselves in debt. That was a bad side of it but being a trial judge, I think is the best job.

HUGH C. HANSEN: That's interesting. As I was saying, I'm pretty much getting that from everybody I talked to including the two judges I'm close with. Just in terms of Irish law, would you say, doing this also for the people, we might be good again, it's pretty similar to British law, this law, or is that-- Or the things about Irish law that are maybe peculiar or different from other areas?

PETER CHARLETON: Well, the thing that's very different is that which you can see the Irish constitution and that's a strange thing, because Richard Arnold was absolutely correct when he said earlier on that the English courts, the British courts have very, very closely followed rulings of the CJ EU Court of Justice of the European Union, and also the European Court of Human Rights but we had experience because we have a written constitution with human rights clauses and the consequence of that. Basically, nothing that the European Court of Human Rights came up with came as a surprise to us.

Our big differences, people talk about the common law and I was recently speaking in France, and they have a very confused notion that the common law is basically whatever the judge wants to decide himself or herself and move the law in any particular direction. It's not like that but here's the constitutional law is an area of law, which you know better than us, in America means that judges have areas of policy choice, which perhaps, I would certainly think may be better left to politicians and legislators.

HUGH C. HANSEN: That's a good point. Final thing, well, first of all, what's the RTE Philharmonic Choir that founding members supervise? Is that--

PETER CHARLETON: Oh, you found that out that about me? That's very interesting. I used to sing in the-- It's now called the National Symphony fire. We sing with the National Symphony Orchestra and we sing in multiple languages

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from Church Slavonic to German to Latin and that's one of the things I've done over the years on this. I was a second base and his great crack, and I see the time is up so I'm not going to sing you a song.

HUGH C. HANSEN: That's too bad. Yes. As you can see that the time is up. Thank you, Peter. Appreciate that and thanks for participating this year. Finally, it's Edger who has been hiding all this time. Edger Brinkman.

EDGER F. BRINKMAN: Hi Hugh. Great to see everybody again.

HUGH C. HANSEN: Sorry, you track University in the Netherlands, solicitor barrister in Amsterdam, focused on patents and Regulatory Affairs, Judge of the court, the senior judge. What does it mean became a senior judge? What exactly does that mean?

EDGER F. BRINKMAN: Oh, it doesn't say much. Actually, it used to be a vice president a couple of years back but now they call it senior judge. It just means that you're more senior. You get a little bit higher pay, that's it.

HUGH C. HANSEN: Excuse me. How much do you get paid?

EDGER F. BRINKMAN: Oh, I could not possibly comment.

HUGH C. HANSEN: Okay. If I came over there, what could I get as a consultant at your court?

EDGER F. BRINKMAN: Oh, as a consultant. Oh, my God. That means that you would become a civil servant here. They get low pays unfortunately. I think it might be not a lot more than €4,000 or €5,000 a month.

HUGH C. HANSEN: Well, thanks for the warning. That's very helpful in terms of my planning. In terms of what you heard here today, was there anything that struck you as, "Wow, that's really good," or "My God, these people are crazy or whatever." You're the last speaker so you have a chance to pontificate a little bit here.

EDGER F. BRINKMAN: Well, I think some of you already touched upon on the war, of course, but that seems very far away when you're looking at this very benign screen of everybody sitting in their homes. I don't think we should go into more detail about the suffering that is going on out there. Well, I think the most exciting probably is going to be that the unified patent court is likely to be up and running before the next conference. We'll see how things are going to go when the first decisions are going to come off.

HUGH C. HANSEN: How long have you been a judge?

EDGER F. BRINKMAN: Since 2002, so 20 years.

HUGH C. HANSEN: "I've had enough," or "Wow this is great stuff," or "I have to be here, I'll be here." Is there any feeling after a certain amount of years in a position? I could do like academics. I actually am still delighted being academic even as I said since '58. I've been maybe here 5, 10 years but then other people might have other views.

EDGER F. BRINKMAN: I still really very much enjoy being a judge. What I have seen over the past 20 years I suppose if that's also what you're asking is that the cases have been exploding in the amount of papers and the amount of arguments. I mean where it used to be said 20 or 30 pages of documents or lawyer submissions, now it's 130 or even 300 sometimes. I think that's what I've noticed over the last 20 years. It's really gone very lawyerish so to speak. It's also

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interesting to find out the truth and the right course and the right decision in those types of cases but it has really exploded. I mean especially SEP cases or friend cases where you have a whole argument of all of its own, would be worth a tremendous court case and that's then compounded with complicated telecoms, those are a challenge.

HUGH C. HANSEN: I hate to do this Edger, but I'm getting all these things about the time.

[silence]

EDGER F. BRINKMAN: I have been hoping to actually have Fordham, one of the first online events or offline events again. Unfortunately I read that you would still be doing it online but I was thinking the time you might have been.

HUGH C. HANSEN: The University did that, not even in law school. The university just said no live events and they're very concerned about the ramifications of disease and catching stuff and everything else. I really can't blame them. Personally we would've liked to have had a live event but I'm getting a little worried that people used to-- Actually this isn't bad. This what we did today, I haven't felt this good in I don't know how long. I haven't thought about these other things or anything else. I'm a little concerned about Robin but other than that, it has been wonderful for me. It's like a vacation or something so I'm very thankful for that. It's just been wonderful. Thank you all for participating. It's tremendous for our people that have attended and for me, so thank you and by the way there is a reception and you get a little link coming.

How to do it, I think you got email on that. It's interesting enough for me. I mean you think how can you have a reception? Actually it's not bad. We've different tables, we get to meet people and everything, but don't feel pressure except that your name is going in my diary if you don't show up at the reception. That's all. In any case thanks so much everybody. I really sincerely mean that, it's been wonderful. I feel great and blessed and everything else, so take care and stay safe.

RIAN KALDEN: Thank you. See you next year.