

BRADLEY CENTER FOR PHILANTHROPY AND CIVIC RENEWAL  
COMMISSIONED PAPER

# The Robertson v. Princeton Case: Too Important to Be Left to the Lawyers

by Neal B. Freeman  
*with Comments and Freeman's Responses*

HUDSON INSTITUTE



**The Bradley Center for Philanthropy and Civic Renewal** at Hudson Institute aims to explore the usually unexamined intellectual assumptions underlying the grantmaking practices of America's foundations and provide practical advice and guidance to grantmakers who seek to support smaller, grassroots institutions in the name of civic renewal. The Bradley Center is directed by **William A. Schambra**, who has written extensively on the theory and practice of civic revitalization.

This and other publications of the Bradley Center can be found online at <http://pcr.hudson.org>.

**Hudson Institute** is a nonpartisan policy research organization dedicated to innovative research and analysis that promotes global security, prosperity, and freedom. We challenge conventional thinking and help manage strategic transitions to the future through interdisciplinary and collaborative studies in defense, international relations, economics, culture, science, technology, and law. Through publications, conferences, and policy recommendations, we seek to guide global leaders in government and business.

The views in this publication are solely the views of the authors. No opinions, statements of fact, or conclusions contained in this document can be properly attributed to Hudson Institute, its staff, its contracted agencies, or the institutions with which the authors are affiliated.

# The Robertson v. Princeton Case: Too Important to Be Left to the Lawyers

by Neal B. Freeman

Comments by

Pablo Eisenberg, Peter Frumkin, Heather Higgins, Adam Meyerson, Anne D. Neal, James  
Piereson, Terrence Scanlon, Jack B. Siegel, Tim Walter, and Martin Morse Wooster

Edited by Krista Shaffer

A Bradley Center for Philanthropy and Civic Renewal  
Commissioned Paper

**HUDSON INSTITUTE**

February 2009

# Table of Contents

<b>The Robertson v. Princeton Case:.....</b>	<b>1</b>
Too Important To Be Left To the Lawyers by Neal Freeman	
<b>Comments and Freeman’s Responses.....</b>	<b>5</b>
Pablo Eisenberg: The Robertson Case Was a Waste.....	5
of Time, Energy and Money	
Freeman’s Response to Eisenberg.....	5
Peter Frumkin.....	6
Freeman’s Response to Frumkin.....	7
Heather Higgins.....	7
Freeman’s Response to Higgins.....	7
Adam Meyerson.....	7
Freeman’s Response to Meyerson.....	8
Anne D. Neal: Lessons for Alumni and Trustees.....	9
Freeman’s Response to Neal.....	9
James Piereson.....	9
Freeman’s Response to Piereson.....	12
Terrence Scanlon.....	12
Freeman’s Response to Scanlon.....	13
Jack B. Siegel.....	13
Freeman’s Response to Siegel.....	15
Tim Walter.....	15
Freeman’s Response to Walter.....	15
Martin Morse Wooster.....	16
Freeman’s Response to Wooster.....	16
<b>List of Contributors.....</b>	<b>17</b>

# The Robertson v. Princeton Case: Too Important To Be Left To the Lawyers

by Neal B. Freeman

It's a pleasure to work once again with the folks at Hudson Institute. Back in my New York days, I spent memorable days at the institute's original headquarters on the banks of the Hudson River. Founder Herman Kahn would convene for marathon conversations an eclectic group of business leaders, journalists, academicians and military brass. Conversations with Herman tended to be highly autobiographical and on one of these occasions, Frank Cary, then the president of IBM and the only one of our number with the stature to do so, chided Herman for dominating the proceedings. Herman wheeled around—at almost three hundred pounds, he was the world's largest physicist—and replied, “Frank, you don't understand. Some people learn through the eye by reading, others through the ear by listening. I learn through the mouth by talking.”

Who knows, sometime during the course of these remarks I may become a wiser man myself.

You are all generally familiar with the Robertson v. Princeton lawsuit, the most important donor rights case since the Buck Trust case a generation ago. I will try to add some color and emphasis to accounts that have appeared in the press. I do so after stipulating that I am speaking only for myself and not for the Robertson family, nor—much as I'd like to—for Princeton University.

The story begins forty-eight years ago this month when a young and charismatic President exhorted his fellow Americans to bear any burden, pay any price in the cause of freedom. Two of those fellow Americans, Charles and Marie Robertson, patriots both, answered the call. With officials at Charles' alma mater, Princeton University, they devised a program to develop young Americans for government service in the international arena—foreign service officers, trade and development

officials, intelligence analysts and such like. In 1961, to launch and sustain the program, the Robertsons made a contribution of \$35 million. Inside the Beltway, that may sound like loose change spilled from a bailout bill. But it was at the time the largest contribution ever made to the university. It is thus useful to remember as this story unfolds that the Robertsons are one of Princeton's most generous donor families. It should also be noted that the Robertsons were private people who were assured by Princeton that their contribution would remain anonymous.

The new program, housed on campus at the Woodrow Wilson School of Public and International Affairs, got off to a promising start—so promising in fact that the rumor began to spread, and then take root, that the lavishly funded program was in actuality a CIA front. Fearing damage to its academic reputation, Princeton then asked the Robertsons for a second contribution—this time, the gift of their privacy. The Robertsons consented, their patronage was publicly acknowledged and Robertson Hall, designed by the eminent architect Minoru Yamasaki, became the visible symbol of the school.

Over the decades that followed, the Wilson School grew in reputation and influence, becoming both an ornament to the university and a resource for the nation. The initial Robertson gift of \$35 million grew just as impressively. After giving away hundreds of millions to support the Wilson School, the Robertson Foundation—the supporting organization set up to administer the family contribution—had amassed assets of approximately \$930 million by late 2007. This stellar investment performance, in perfect symbiosis, fueled the ongoing academic excellence. The Robertson Foundation—directed by a board comprising four university appointees and three family members—was

regarded as an unqualified success; indeed, as a model of collaboration between a donor family and an academic institution.

Over time, of course, the founding generation gave way to successors. On the family side, Charles and Marie passed on and were succeeded in family leadership by their four children and a cousin. Leadership turned over periodically at Princeton, too, bringing in people who had not been present at the creation of the foundation and seemed to the family to be less collegial and, ultimately, less committed to the founding vision. As the years passed, squabbles over procedural issues began to harden into principled disagreements. In the view of the second-generation Robertsons, the foundation was falling victim to mission creep. They became particularly concerned that the Wilson School was no longer turning out enough first-tier candidates for the foreign service. In one cohort of 66 Wilson students, for example, only three had entered the foreign service. More from that same cohort had gone into management consulting, more into investment banking, more into exotic quarters of the financial services industry. While those professions may have been warmly esteemed in the offices of the Princeton Alumni Fund, they were taken as warning signals by the Robertson family. The Wilson School seemed to be morphing into some hybrid form of business school. As the data crystallized year to year, the Robertsons came to believe that mission creep had turned into mission deflected, if not mission aborted. Princeton seemed committed to a course that their parents had not intended and would not have supported.

After years of disagreement and contentious meetings, the family filed suit in July 2002. In their complaint, the plaintiffs sought what their lawyers referred to as the “death penalty”—the transfer of the foundation’s funds to other universities willing to carry out the Robertson mission. It is accurate to say that the lawsuit was filed and then pursued more in sorrow than in anger. Both of Charles and Marie’s sons were themselves devoted Princeton alumni.

The university responded to the suit with a flurry of press attacks on the Robertsons—which I will not rehearse here—and launched a war of attrition designed

to divide the family and exhaust its resources. And so the battle was joined . . .

Let me offer some observations on the winding course of this case that led to the settlement announced last month.

First, as Herman Kahn might have put it, a word about the correlation of forces. On the Robertson side, we had three first-class law firms—trial counsel in California, local counsel in New Jersey, settlement counsel in New York. We had two publicity offices. We had more than a dozen expert witnesses, each a brand-name specialist in some obscure corner of the nonprofit world. And we had a cadre of donors and would-be donors around the country that followed the case closely and provided sympathetic counsel. My own role fell under the category of litigation support, in which capacity I helped to give shape and direction to the case, while maintaining such coherence as we could between our twin campaigns, the one in the court of law and the other in the court of public opinion. (Yes, the great Irving Kristol was correct when he observed that the problem with contemporary society is that nobody can tell you what they do for a living in twenty-five words or less.) I had never been engaged in high-stakes litigation before, but I regarded our team as formidable, and likely to be irresistibly so. We had good people and plenty of them. That opinion was formed, alas, before the massed legions of Princeton University lumbered onto the field. In the conflict that followed, we might as well have been cast as the Tibetans, with Princeton as the Chinese army. What we discovered over the next six and one-half years is that if you walk down any corridor of New Jersey power—be it business, labor, law, media, finance, philanthropy or academia—you are likely to find ensconced in the corner office a chauvinistic Princetonian. You are virtually certain to find a person who hopes to send his or her children or grandchildren to Princeton. I have encountered such intensity of institutional allegiance only twice before. First at the US Military Academy. During my White House Fellows days, I was surprised to find that Army officers, by then well established in their careers, still measured each other by how they had performed in classroom and PT contests waged fifteen years earlier at West Point. Indeed, we know from their writings that

even Eisenhower and MacArthur, well into late middle age, continued to eye each other through the prism of their performance as cadets. The other example is Yale. I returned to New Haven as a journalist in 2004, curious to learn why almost all of the stars of that political season had sprung from the same small college—George Bush, John Kerry, Howard Dean, Dick Cheney, Joe Lieberman. What I found at Yale was that curiosity ran elsewhere . . . to the question of how John Edwards had somehow managed to infiltrate their ranks. The point here is that Princeton was the home team and we were the visiting squad. Home court advantage was a factor from beginning to end, a reality that was punctuated by the home-town press coverage of the settlement itself. Readers of those stories could be forgiven for thinking that all of the issues had somehow been compromised away and that there had been no clear winner in the case.

Let me make a second point about the legal process. Watching big-time litigation up close should require parental consent. The process is nasty, brutish and long. Of the various motions filed by Princeton, none of them sought to sharpen the issue or resolve the case, all of them had the effect of delaying the proceedings, and not a few of them should have been memorialized on plaques in the Museum of Legal Nonsense. I am not a lawyer and I am thus not closely informed about the term “legal abuse,” but to my untrained eye there was massive abuse of the system in this case. In her statement on the settlement last month, the President of Princeton opined that it was “tragic” that Princeton had been obliged to spend almost \$40 million on legal fees—money that could have been better spent on education. I would observe, with due respect, that it was at the very core of Princeton’s strategy to run up the legal bills and starve out the Robertsons. The Robertsons were ready—indeed, eager—for trial by 2004.

One result of a war of attrition is . . . attrition. On the family side, one of the original plaintiffs died. Members of the third generation grew to maturity and sought a voice in family councils. The original trial judge retired. His successor, swamped with administrative work, had to withdraw from the case. Her successor, a third judge, was called out of retirement to preside at trial. On the Princeton side, it should be conceded,

there were signs of subtle improvement over the years, as the Wilson School seemed to tack back toward the original Robertson mission. I leave it others to determine whether this late vocation was a matter of conviction or of case-related optics. Princeton even began a publicity campaign highlighting the contributions to public service made by its illustrious graduates. The results were mixed. One day I opened a document to find a glowing endorsement of the Wilson School from its distinguished alumnus, Eliot Spitzer. Shortly thereafter came the news that the Governor had been conducting interstate commerce at the Mayflower Hotel. He was quickly replaced in the campaign by equally devoted Wilson alumnus, Anthony Lake, about whom we have heard nothing but good things. And on the investment side, performance turned dramatically, from what had been notably good to what became alarmingly bad. Over the past year, the Foundation fund, as a consequence of Princeton’s huge bet on so-called alternative investments, has plunged precipitously. In its ill-fated attempt to out-Yale Yale in investment performance, Princeton had loaded up on private equity, hedge funds and other illiquid assets. My guesstimate is that at the time of the settlement the fund had declined to \$585 million. (I should note that Princeton has disputed this figure, while declining to release supporting data.)

Let me comment, finally, on the settlement and what it means for the world of philanthropy. Just to remind you of the facts: Princeton paid \$100 million to settle the Robertson lawsuit, the largest “donor intent” award in history.

One of the most heuristic documents produced during the discovery process was an audit of foundation spending. One of the Big Four accounting firms, PriceWaterhouseCoopers, had been commissioned by the family to conduct a forensic audit of Robertson Foundation accounts. What PWC found was that large chunks of overhead had been misallocated, that professors and other personnel had been improperly billed to the foundation, that the construction of a building unrelated to the Robertson program—a building!—had been charged to the foundation. In total, according to PWC, more than \$100 million of foundation funds had

been misused by university officials.

Now, as it happened, the trial structure prescribed by the court would have begun with a presentation by the plaintiffs of the basic PWC findings. Day after day, a chronicle of Princeton's alleged misdeeds would have unfolded in the media capital of the world. Even at this distance, one can almost hear the taunts of the tabloids, the clucking of *The New York Times*. In my view—regardless of the verdict in the trial—Princeton's reputation would not have been stained; it would have been irreparably damaged. For Princeton to settle was a thoroughly rational decision.

The family had its own calculus of concerns. You've all heard the wisecrack, "If somebody says, 'it's not the money, it's the principle of the thing,' you can bet it's the money." For the Robertson family it was, clearly, about the money *and* the principle. They wanted the money to carry out the original intentions of their parents to develop young talent for the foreign service and especially now, when a young and charismatic President has called on his fellow Americans to regenerate the soft power of diplomacy. The Robertsons also sought to uphold the lapidary principle that when a contribution is made for Purpose A, it cannot and should not be diverted to Purpose B. They sought to uphold that principle not only for their own family, but for donors and grantees everywhere. They succeeded. For donors, this case has brought a heartening example; for grantees, a sobering effect.

There were absolutists on both sides of the case—those who sought, on the one hand, a Mosaic reaffirmation of the Eighth Commandment or, on the other, a clarion declaration that donor rights should expire the moment

the check clears. The absolutists were destined for disappointment at trial. In all likelihood, the verdict would have turned on an esoteric legal point, a conclusion fascinating to a few dozen lawyers and frustrating to a few million laymen. I sense no buyer's remorse on either side. The Robertsons reclaimed funds sufficient to the family task and secured at least for this generation the principle of donor rights. Princeton, for its part, was publicly embarrassed and financially penalized, but it managed to avoid the death penalty. Even before the legal contest was resolved, Princeton set up a new Office of Stewardship, whose responsibility it is to conform campus spending with donor intention. At this moment in time, the safest place on the planet for donor intent may well be Princeton, New Jersey.

At the risk of grandiosity, let me conclude by stating what I think this case means. At the heart of every charitable contribution is the concept of trust—trust by the donor that the grantee will do what he has agreed to do. If that trust is allowed to erode, if the donor can no longer rely on the grantee's assurance, then charitable contributions will decline and the civil society they sustain will decline along with them. If that were to happen—if the private, voluntary, civil society that Tocqueville first acclaimed, and that the Bradley Center still celebrates, were to wither away—America would abandon one of its defining national traits. Absent a vibrant civil society, only government would be left to fill the social vacuum and the America of tomorrow would come to look very much like the Europe of today.

As you work your way through your list of New Year's resolutions, please remember to thank the Robertson family. They have rendered a public service in the highest traditions of the Woodrow Wilson School.

*Neal B. Freeman is chairman of the Foundation Management Institute. He can be reached by e-mail at [nealfreeman@foundmgmt.com](mailto:nealfreeman@foundmgmt.com).*



# Comments and Freeman's Responses

## Pablo Eisenberg: The Robertson Case Was A Waste of Time, Energy and Money

The lawsuit brought by the Robertson family against Princeton University for allegedly violating donor intent has been a waste of money, time and effort. Its resolution should bring a sigh of relief to all parties concerned, especially the Woodrow Wilson School for which this affair was a major distraction.

The out-of-court settlement is being touted by some conservatives as a victory for “donor intent,” since the second generation Robertsons claimed that the money from the Robertson Foundation had not been used to graduate sufficient numbers of students for work in public foreign service organizations. These advocates should be reminded that the donors were Charles and Marie Robertson, not their children who sued Princeton.

All the evidence points to the fact that Charles and Marie were satisfied with the Woodrow Wilson School's work and record. Until their death, they did not complain about the use of their money. As board members of the Robertson Foundation, composed of three family members and four representatives of Princeton, they approved, along with other family trustees, the “Bowen formula” for financing the school for over forty years. Not until recently did their children object to the original agreement between the university and the Robertsons. Donor intent should be measured by the views and attitudes of the original donors, not those of their progeny. By that measure, donor intent clearly has been maintained by the university.

The original foundation's Certificate of Incorporation states that the school will be a place where students can prepare themselves for a career in public service, with a special emphasis on areas of the federal government concerned with international relations. It does not say that the school would only be a training

ground for career foreign service officers, a point the younger Robertsons seemed to stress in their law suit. The younger Robertsons appear to have been piqued both by a narrower view of the school's purpose and the board's decision to hire a professional investment firm to manage the foundation's investments, a change which greatly enhanced the foundation's assets.

Advocates for the Robertsons stress how few graduates of the school seem to have entered the foreign service. One has to note that with the advent of the Reagan administration the appeal of government service for young people lost much of its allure. Over the past 25 years government service has been vilified by politicians, mostly conservative, and many of our brightest, but disillusioned, civil servants left to go elsewhere. Budget cuts, the downsizing of our diplomatic corps and the elimination of the US Information Agency also resulted in fewer opportunities for graduates interested in foreign service. No wonder there was not a massive demand for a foreign or government service career, but that was not the school's fault.

Yet despite these obstacles the employment statistics of graduates are impressive. Between 1973 and 2006, 72.5 percent of graduates chose to work in public or non-profit sector, including 41.5 percent who went to work in government service. In 2006, 88 percent of graduates chose employment in the public or nonprofit sector, 59 percent of whom entered government service. That is an impressive track record, laying bare the fatuous claims of the younger Robertsons.

Over the past 45 years, the university may well have improperly used a little of the Robertson money or made some accounting errors, but on the whole it has run an outstanding program which made the original donors proud and would still make them proud today. The children have made a philanthropic mountain out of a molehill.

## Freeman's Response to Eisenberg

I agree that, for Mr. Eisenberg and his fellow Princetonians, this case was a waste of time. The expert witness on this point is Richard Levin of Yale. Dr.

Levin has just completed a remarkable 15-year run as president, during which time he overhauled the physical plant, filled in the blanks in a world-class faculty, improved the student experience by every measure—even as he grew the Yale endowment faster than any of its peers. Just as one index of the esteem in which he is held: Levin’s subordinates in the Yale administration have been recruited for top jobs at Oxford, Cambridge, Pennsylvania, and Duke. In an anniversary interview celebrating Levin’s many achievements, this exchange occurs:

Q: If you were to pick something of which you’d say, “I could have done this better,” what would that be?

Levin: The Bass gift [of \$20 million for the study of Western civilization, which Yale returned in 1995] remains the best example. I should have moved quickly to implement the program Mr. Bass intended. Because the issue was complicated, I didn’t deal with it immediately. It was a good lesson. Subsequently, when there has been a sign of trouble, I have been much more vigilant.

Exactly. Princeton should have settled the Robertson case in 2002. Better still, Princeton should have been sufficiently vigilant to deal with the Robertsons’ concerns immediately, long before the family felt compelled to file suit.

As for the Robertsons, the case was not a waste of time. Indeed, it’s difficult to imagine how they could have spent their time more productively. They reclaimed their parents’ legacy; they struck a reverberating blow for donors’ rights; and they won \$100 million to carry out their philanthropic mission. General opinion has regarded this result as a win-win-win, made all the more unambiguous by Princeton’s implicit admission of culpability. (There may be certain philanthropic situations that only nonprofit experts are fully equipped to misunderstand.)

I have admired Mr. Eisenberg’s trenchant commentary over the years and thus I can’t help but notice when he’s off his game. This statement, for instance: “*The out-of-court settlement is being touted by some conservatives as a victory for ‘donor intent.’*” Notice, first, the quotation marks, which signal the reader that he or she is about to

encounter a preposterous notion, much in the way one comes across a reference to “flying saucers.” Notice, second, that the only people who seem to be falling for this preposterous notion are *some conservatives*, by which phrase I think Mr. Eisenberg intends to summon not the ghost of Edmund Burke but a visage of low intelligence and mean spirit. Well, take a hypothetical example. Suppose that Mr. Jones offers a contribution to Mr. Smith to build a biology lab. Suppose further that Mr. Smith then takes the check and builds a hockey rink instead. Is this an ideological act? If so, by whom, and to what ideological end? Or is it an old-fashioned wrongful act? Is Mr. Smith saying in so many legalistic words: “You can forget all that talk about the bio lab. We now control the money and we’re going to build a hockey rink.” And if that is what Mr. Smith is saying, is that an approach that *some liberals* would embrace? Or is Mr. Smith of the mindset that would use quotation marks as tongs, holding at arm’s length a principle so fundamental to the philanthropic transaction as donor intent?

Quite apart from the problem of donor intention torn or twisted is the problem of misused funds—money spent on projects unrelated to even an elaborately evolved sense of mission. Mr. Eisenberg’s insouciant shrug reflects a position that, to my knowledge, no fiduciary has dared to take. In public, I mean.

### Peter Frumkin

Standing at the end of a long line of cases before **S**it, the Robertson case is yet one more instance in which well-meaning donors have had their intent modified—and at times fully thwarted—by equally well-meaning recipients. While Princeton did enlarge the purpose of the original gift, few could argue that the Woodrow Wilson School has not contributed to the public good by preparing leaders for all forms of public service. I think the compromise worked in the case actually represents a fair resolution of the matter at hand. It would be unreasonable to demand the entire gift be returned and it would also be unfair not to give the family a chance to redirect some of their gift toward its pre-

cise original purpose.

In trying to fashion solutions to challenges from donors, the courts face a difficult problem. Often it is very hard to determine when a charitable intent has become impossible or impractical to implement. Equally difficult is the task of even deciding what constitutes a legitimate interpretation of the purposes of a charitable gift. While the past several decades have seen many other cases like *Robertson* and while trust lawyers have tried to find ways of crafting ever more airtight expressions of charitable intent, problems like the one encountered by the Robertsons are likely to continue to arise. Why? Two reasons: Death leaves the one person who really knew what was intended out of the process. Second, the passing of time inevitably changes the conditions on the ground. Donors who are very concerned about preserving their intent in perpetuity should recall Carnegie's dictum that "to die rich is to die disgraced." They should simply avoid endowment gifts altogether and make instead operating grants while they are alive. In the end, this is the only sure solution to the problem of donor intent.

### Freeman's Response to Frumkin

Mr. Frumkin's comments are both irenic and solo-monic. My only suggestion would be that, in his next life, he become a judge, preferably in New Jersey.

### Heather Higgins

Thanks to Neal Freeman for marvelous commentary on *Robertson v. Princeton*, and to the Robertsons themselves for having the fortitude and principle to see this through. Such examples will be particularly important as we confront those who think donor intent is a smoke screen—the *Wall Street Journal* in a December 24, 2008 editorial reported that Congressman Becerra "told us the whole idea of donor intent is a 'convenient excuse' used by philanthropists, like saying 'the devil made me do it'"—and those who believe tax-exempt funds are really public money in private trust. One fears that the short-sighted temptation of getting at all those golden eggs will once again lead to the practical evisceration of the producing goose.

One other practical point: Donors are increasingly aware that many universities view donors as a necessary evil to be borne patiently till the funds are received, and then ignored. But on a personal basis, the sucking up is often sufficiently convincing to persuade donors that that it is their good fortune to be the exception. Even if that's miraculously true, remember that people make policy and interpret intent; whoever it is that you have the good relationship with will someday be replaced with someone else. The *Robertson* case is a cautionary tale about the perils of creating gifts that go on in perpetuity rather than having limited lives and the opportunity to renew . . . or not.

### Freeman's Response to Higgins

Ms. Higgins makes the point better than I did (an annoying habit of hers). There are no lasting solutions to the problem of human weakness and the Robertsons do not claim to have devised one. Eternal vigilance, as someone once put it in a different connection, is the condign response.

### Adam Meyerson

There are three important numbers to remember in the Princeton-*Robertson* settlement.

**14 percent** is the proportion of Masters in Public Affairs alumni of the Woodrow Wilson School between 1973 and 2006 who took jobs upon graduation who went to work for the federal government in international affairs. (Another 11 percent went to work for the federal government overall, and another 17 percent for state, local, and foreign governments.) The explicit purpose of Charles and Marie Robertson's gift to Princeton in 1961, then the largest contribution in the university's history, was to create a graduate school to prepare students "for careers in government service (particularly federal government service in areas concerned with international relations and affairs)." The Wilson School's graduate program is an outstanding academic institution, and its distinguished alumni include the likes of General David Petraeus and President Clinton's National Security Adviser Anthony Lake. But if Princeton had focused more of the Robertsons' gift on its primary purpose,

as the university began to do during the course of the litigation, their heirs would never have launched this costly lawsuit.

**\$100 million** is the approximate total that Princeton will pay to settle the lawsuit—\$40 million to reimburse the plaintiffs’ family foundation for the costs of litigation, and \$50 million plus interest to establish a new foundation to achieve the donors’ original purpose. This astonishingly high sum is a significant partial victory for the Robertsons and for the cause of donor intent. Princeton can also declare partial victory. The university will now legally enjoy unrestricted access to most of the Robertson funds—currently totaling about \$700 million—to spend as it wishes. But the magnitude of the settlement is a recognition that there was sufficient merit in the Robertsons’ charges to bring the case to trial. As a result, universities and other grantees in the future will pay more attention to understanding, clarifying, and at least initially adhering to the intentions of their donors.

**\$40 million** was the cost of the litigation for the Robertsons. Donors throughout America owe a great debt of gratitude to the Robertson family. They fought like tigers to honor Charles and Marie’s philanthropic intentions, and to publicize the violations of donor intent that sometimes occur in university giving. But the enormous cost of such litigation will be prohibitively high for most donor families, and suggests that lawsuits will be used only as a rare recourse in conflicts over donor intent, at least in cases with deep-pocket defendants such as Princeton.

For donors, the Robertson case is a reminder of three lessons.

**Be wary of gifts in perpetuity.** Endowment giving for universities and other institutions should be approached with great caution. In particular, donors should be aware that grantee organizations can dramatically change their world views in future generations.

**Consider intermediaries.** Donors who do want to leave endowment-like legacies may want to give to intermediary institutions that can disburse funds according to whether the ultimate grantee is fulfilling the purposes of the gift. The supporting organization structure that was

used by the Robertson Foundation (the board included family members but was controlled by Princeton) is not necessarily an effective protection for carrying out philanthropic intent after the donors’ death.

**Write it down.** One reason the Robertson family was able to proceed as far as it did with its case against Princeton is that Charles and Marie Robertson wrote down clearly the purposes of the graduate school they established.

### Freeman’s Response to Meyerson

**M**r. Meyerson has the basics of the story right, but some of his numbers are drawn from press releases and are thus colored by advocacy. The only number that has to be accosted here is the \$700 million “currently” in the Robertson fund. If only. As late reports drift in from dark precincts of the private equity world, it may well be that my estimate of \$585 million is off to the high side by a substantial margin. Either way, we’ll find out in a few months at the end of the fiscal year.

More substantively, I would concur with Mr. Meyerson’s three cautionary and characteristically sensible lessons, to which I would add a fourth. In some donor circumstances, the best option of all is to include a sunset provision, whereby the foundation goes out of business at a time certain or, more commonly, a circumstance certain. Foundation executives, not to mention their accountants and lawyers, can be understandably slow to appreciate the merits of such a provision, but sunseting can be the apposite answer for some family philanthropies.

And a word about those Princeton PR people. They were nothing if not stakhanovite, but their bump and hustle sometimes overtook plausibility. A case in point. When asked to explain why they had settled the case, Princeton stated that, while they were confident they would prevail at trial, it would cost at least \$10 million to try the case. Let’s see. Princeton paid the Robertsons \$100 million rather than pay \$10 million in legal fees to kick their butt in court? I don’t think so.

## Anne D. Neal: Lessons for Alumni and Trustees

When discussing national security matters, President Ronald Reagan was fond of saying “trust but verify.” Thanks to the Robertsons, alumni and trustees should now think the same way. In the past, most alumni believed they could give no-strings attached donations to their alma maters, trusting, as Neal Freeman says, “that the grantee will do what he has agreed to do.” The Robertson case at Princeton, like the earlier controversy over the Bass gift at Yale, has shown us that universities have broken that compact of trust. As a result, it is now imperative for devoted alumni and trustees to take an active role in ensuring their alma maters live up to the high standards of excellence and integrity expected of them.

When giving to a university, donors must apply the same kind of diligence and vigilance they would when making any other comparable investment. Donors have a responsibility to make sure that they give wisely—which means, finding a faculty friend, targeting their gift to a program close to their heart, clearly stipulating their instructions in writing and following up to ensure that the donation is properly implemented. Since the special protocols of higher education make giving particularly challenging, donors are frequently unaware of which questions to ask, much less of what constitutes an acceptable answer. To help clarify matters, the American Council of Trustees and Alumni created its Fund for Academic Renewal and published *The Intelligent Donor’s Guide to College Giving*.

Donor vigilance, of course, in no way detracts from the university’s own responsibility to carry out the donor’s intent. The fact is, alumni give more than \$8 billion a year to their universities—a massive source of financial support for higher education. Boards would be well advised to take steps to affirm their commitment to following donor intent, especially in these straitened times. They could, for starters, create a stewardship committee responsible for the review and monitoring of large targeted gifts, and also explore other ways to address donor concerns.

The Robertsons have shown us that thoughtful, targeted gifts benefit universities as they call them to fulfill their

highest ideals. For that, alumni, trustees and all those concerned about higher education should be thankful.

## Freeman’s Response to Neal

I am grateful to Ms. Neal for reminding us of the singular contribution of the Robertson family to the cause of responsible grantmaking. There has been much muttering over the years on the subject of donor intent—muttering about commitments bent and broken, muttering about deals that turned out not to be deals—but real progress could be achieved only when somebody drew a line in the sand and said, “This far and no further.” That’s what the Robertsons did, at considerable risk to their otherwise comfortable lives, their fortunes, and (at least when the PR machines were cranked up full blast) their reputations. They gave new life to the tired concept of donor intent. We hope that Ms. Neal and others in a position to do so will consolidate the Robertson victory and build productive, respectful relationships between donors and grantees.

## James Piereson

Judging by the post-settlement commentary, Princeton University and the Robertson family remain as much at odds now over the meaning of their agreement as they were during the course of their contentious litigation. Neal Freeman, in his lucid summary of the case, describes how over the course of many decades the university ignored the terms of its initial agreement with the Robertson family and then during the course of the lawsuit stonewalled and stretched out the litigation as a strategy to bleed the family with mounting legal costs. In the end, as Mr. Freeman says, the university eventually gave in for fear of embarrassing material about its dealings with donors that would be brought out at trial (some of which had already been published a few years ago in *The Wall Street Journal*). The settlement decreed that the university would pick up some \$40 million in legal costs incurred by the Robertson family in the course of the litigation and fund a new foundation controlled by the family to train students for work in government service. Mr. Freeman judges the settlement to have been a victory for the principle of donor intent.

Princeton University, however, continues to take an entirely different view of the matter. In a letter to *The Chronicle of Philanthropy* (January 29, opposite page), Robert K. Durkee, vice president and secretary of the university, declares that Princeton was the aggrieved party and that it was the descendants of the Robertsons who, in fact, broke with the intentions of their parents. “It was the Robertsons, not Princeton,” he writes, “who were trying to overturn the donor’s intent.” In his view, due to a sophisticated public relations campaign mounted by the plaintiffs, the press mistakenly “bought into” the Robertsons’ view that the university had violated the terms of the original 1961 agreement. Mr. Durkee seems especially bitter about the fact that the Robertsons were able to draw upon the resources of another family foundation, the Banbury Fund, to cover costs of litigation (thereby frustrating the university in its tactic of bleeding the family through legal expenses). He thinks, in retrospect, that it was a mistake for the university to have created a supporting organization to administer the grant which eventually provided an opening to the family to challenge the university’s administration of the funds. It would have been better for the university simply to have accepted the gift with restrictions so that no one later would have had standing to challenge its control of the funds.

It is hard to accept Mr. Durkee’s version of the case in view of the material that has already been made public showing that university officials going back several decades chose to ignore the terms of the gift and deliberately spent funds on purposes unrelated to the training of students for government service. As that purpose, originally inspired by President Kennedy, lost its caché among academics from the late 1960s onward, the university began to divert Robertson funds to other academic purposes more in keeping with the trends of the time. It is perfectly understandable why the university did not want this material opened up for public discussion, in view of the effects it might have had on current and future donors to the institution. On the other hand, the academics and administrators at Princeton University no doubt feel that they must adapt their academic programs to changing times and circumstances and that such programs cannot be bound and limited by agreements made with donors a half century ago.

Such loud disagreements between the parties are rather unusual in the wake of such legal settlements because

they usually wish to “move on” and place behind them the unpleasant accusations and allegations that are typically exchanged during the course of an expensive lawsuit. They are a measure of the continuing acrimony between the family and the university that must have been built up not only during the course of the litigation but over the many years that preceded it.

What lessons, however, should “innocent bystanders” take from this important case?

From the standpoint of donors, the case itself, along with Mr. Durkee’s commentary on it, points to the dangers of awarding endowment gifts to colleges and universities in order to achieve some well defined purpose. It is very difficult over a long period of time to hold an institution to any such purpose. The administrators who negotiated the agreement pass on and are replaced by deans and professors with no personal knowledge and little concern for it. The principals (generally of advanced age) who awarded the gift soon pass on. The money eventually begins to slosh about in a growing endowment to be deployed to any number of needs of the moment. The purpose itself may lose its urgency and importance in the academic setting or even in the wider world. Many colleges and universities today administer endowments awarded years ago to study the Soviet Union. Perpetual endowments, contrary to Mr. Durkee, are not the best means for donors of achieving such purposes.

It might have been better for the Robertson to have made a pledge to Princeton University for a period of years to underwrite their stated purposes. A portion of the funds might have been paid out at the beginning of the project, with additional funds released later on the basis of performance. The term of the gift could have been extended out to as long as fifteen or twenty years and either folded up at that time or extended for another period. It is difficult for anyone to look into the future beyond such a time frame and thus unwise to project any well-defined purpose much further out on to the horizon. Many donors, in fact, prefer to make such gifts for far shorter periods of time—three or five years being the preferred standard, with extensions based upon reviews and performance. Donors have need of such a practice in order to counter the position suggested by Mr. Durkee—that once the money is in the university’s hands, it alone is the final arbiter as to its use.

## *“Robertson vs. Princeton vs. Donor Intent”*

*Letter to the Editor, The Chronicle of Philanthropy, January 29, 2009*

*To the Editor:*

*The settlement of the six-and-a-half-year-old lawsuit brought against Princeton University by members of the Robertson family (The Chronicle, January 15) has attracted plenty of good advice for nonprofit groups: Be clear about the purpose of a gift, have clear guidelines for its use, stay in touch with the donors, and involve their children.*

*But one lesson of the lawsuit is that a university can do all these things—as Princeton did—and still end up in court. In 1961 Princeton and representatives of the Robertson family signed a written document that spelled out the purpose to be served by Marie Robertson’s \$35-million gift and the means by which the gift would be administered. For 47 years Princeton has fully adhered to the terms of that document, creating at its Woodrow Wilson School of Public and International Affairs one of the world’s leading graduate programs to prepare students for government and public service.*

*For 20 years, until his death in 1981, Marie’s husband, Charles Robertson, chaired the Robertson Foundation board that oversaw the use of the gift. His son William Robertson began serving on that board in 1974, shortly after his graduation from Princeton, attended every meeting, frequently praised the university’s use of the gift, and never cast a dissenting vote as a board member until he filed his lawsuit in 2002.*

*Despite all this, William Robertson went to court in an attempt to overturn two key decisions his parents had made: that the gift should be controlled by Princeton and that it should be used to support and expand the graduate program of the Woodrow Wilson School. He did this initially because of a dispute over engaging professional management for an endowment that by then exceeded \$500-million. As time went on and the endowment increased to more than \$900-million under the professional managers who were selected, he downplayed this issue and instead challenged Princeton’s right to make decisions about how best to support its graduate program.*

*One of the great ironies of this lawsuit is that the press bought into the family’s assertion that the case was about Princeton’s adherence to “donor intent.” While it may have been about whether Princeton properly carried out the terms of the certificate of incorporation that created the Robertson Foundation, and we have no doubt a trial would have convincingly demonstrated that Princeton did, the question of “intent” raised by this trial was precisely the reverse: whether the descendants of a donor can overturn the donor’s intent—as expressed in a carefully negotiated written document agreed to by the donor and the university—with respect to both the purpose of the gift and the mechanism by which it would be administered.*

*It was the Robertsons, not Princeton, who were trying to overturn the donor’s intent.*

*There is another issue of “donor intent” raised by this case, and it also involves actions taken by the Robertsons. In the 1940s Charles Robertson established a family foundation, the Banbury Fund, to support charitable purposes. In their lawsuit against Princeton, the Robertson family members who controlled that foundation drew upon its assets not to support charitable purposes, but to pay for their legal and public-relations expenses. Over the course of the lawsuit, their expenses exceeded \$40-million, and the assets of the Banbury Fund dropped from approximately \$50-million when the lawsuit began to under \$10-million.*

*So if the first lesson of this lawsuit is that conscientious adherence to the terms of a gift is no protection against ending up in court, the second is that entering into a lawsuit against an opponent who does not have his own resources at risk can lead to a very lengthy and expensive litigation, coupled with an aggressive public-relations campaign.*

*A third lesson is to think twice before creating the kind of “supporting organization” that was established to administer Marie Robertson’s gift.*

*Such a mechanism can help sustain the interest of the donor and the donor’s advisers, but there are other ways to achieve this goal without introducing a structure that confers corporate obligations and standing to sue that ordinarily would not be available to donors of restricted gifts.*

*This lawsuit was settled when the Robertsons decided not to take the case to trial. To avoid continuing legal expense, Princeton agreed to a settlement amount that will be paid out over a 10-year period and used solely to support charitable purposes.*

*But the key term of the settlement agreement is that the Robertson Foundation is being dissolved, with all of its assets being transferred to Princeton, which will have sole authority to decide how these funds are to be invested and how they can best be used. This means that the bulk of Marie Robertson’s gift is now protected from further attempts to divert it to other uses and that it can continue to be used, in perpetuity, as she intended in making her gift, to support the graduate program of Princeton’s Woodrow Wilson School.*

*Robert K. Durkee  
Vice President and Secretary  
Princeton University*

Robertson v. Princeton thus stands as a reminder to donors that their gifts to colleges and universities are not self-executing.

### Freeman's Response to Piereson

Mr. Piereson's comments are both measured and instructive. I would add only the following gloss.

I should have made it clear in my paper that the Robertsons have in fact moved on. They are fully engaged in building their new foundation. I, too, have moved on, although I found irresistible Bradley Center Director Bill Schambra's invitation to reflect on the case, which riveted the attention of donors and would-be donors for almost seven years.

Princeton cannot move on quite yet. It has unfinished business with its alumni, many of whom are concerned that what happened to the Robertsons could happen to them. Given the current state of its finances, Princeton must persuade the alumni to continue high levels of financial support. The university's message thus reduces to something like this: "We did nothing wrong and we promise not to do it again." Will it work? In time, I'm sure it will. Loyalties run long and memories tend to fade. Will it work long-term? It's probably more likely that, a generation hence, another generous family will have to remind Princeton of its obligations to donors.

Mr. Piereson states, and Mr. Eisenberg suggests, that foundations occasionally outlive their missions. That's quite true (though not as frequently true as grantees choose to believe). Over time, missions are accomplished or in other ways rendered irrelevant. But that was not the case here. Through most of the Clinton administration, all of the Bush administration and into the early days of the Obama administration, the State Department has pleaded for more language specialists, more regional experts, more professionals steeped in the culture of nations now emerging beyond Old Europe and the Anglosphere. It could be convincingly argued that the Robertson mission is more important today than the day the first check was written.

### Terrence Scanlon

Neal Freeman aptly summarized his assessment of the Robertson v. Princeton case in a December 11 commentary he wrote for the *American Spectator Online* just after the settlement was announced: "Princeton blinked." I think that's about right.

Freeman noted there that after a six-year war of attrition, Princeton was starting to look like the "Dennis Kozlowski of American universities." The school acted like an arrogant bully in rejecting the family's charge that it was misappropriating funds intended for students to build careers in government service. Had the case gone to trial, the Robertsons were prepared to present evidence in court showing that Princeton misused as much as \$200 million dollars from the Robertson Foundation on activities unrelated to the purposes of the gift.

Freeman ended his commentary by writing, "The next time a nonprofit executive is seized by larcenous impulse it may be necessary only to whisper in his ear the magic word, 'Princeton.'"

I am completely sympathetic to Freeman's view of Princeton's malfeasance. However, I would note that in reaching the settlement Princeton admitted no wrongdoing. Indeed, Princeton continues to denigrate the Robertsons—most recently in a letter-to-the-editor from a Princeton vice president appearing in the January 29 issue of *The Chronicle of Philanthropy*. Moreover, the Robertson Foundation will be dissolved and the university will walk away with all but \$100 million of the money. Freeman estimates that under Princeton's mismanagement the foundation currently has about \$585 million.

Martin Wooster, who has written at length about the case for Capital Research Center (see CRC's web site at <http://www.capitalresearch.org/pubs/pdf/FW0506.pdf> and chapter 2 of his CRC book, *The Great Philanthropists and the Problem of "Donor Intent"*), warns that "universities can and will exploit every available loophole to divert a gift to causes they prefer." I can only advise that donors must still be very careful in making gifts that will continue over decades.



## Freeman's Response to Scanlon

Mr. Scanlon's comments are noted with appreciation and with the exception that I wish my real-time comments on the settlement, heat-of-battle stuff, had been more seemly. One more reason to thank the Bradley Center for this chance to consider the case in depth, and at some distance from the event.

### Jack B. Siegel

*From the Charity Governance Consulting LLC blog, online at <http://www.charitygovernance.com>. Reproduced with permission from Jack Siegel.*

THE ROBERTSON FAMILY TAKES A PAGE OUT OF HILLARY CLINTON'S PLAYBOOK  
Dateline: December 11, 2008, New York City

When we learned yesterday from CNBC that the Robertson Family lawsuit against Princeton University had settled, we jumped on a plane to the East Coast so that we could bask in the zeitgeist. Our conclusion after learning the terms of the settlement: The Robertson Family took a page out of Hillary Clinton's playbook. First, spend a fortune kicking the something out of your opponent. Then, when you lose, ask your opponent to reimburse you for the cost of breaking his face. That is the upshot of what happened yesterday.

William Robertson and the other plaintiffs agreed to drop their lawsuit. In exchange:

1. Princeton reimburses (over a 3-year period) the Banbury Fund for up to \$40 million in litigation costs. The Banbury Fund is a tax-exempt foundation controlled by the Robertson Family that funded their side of the litigation. The reimbursement will be funded with money from the Robertson Foundation, the entity that currently supports the Woodrow Wilson School.

2. The Robertson Foundation will transfer \$50 million to a foundation to be created by the plaintiffs. The new charity's mission will be to prepare students for careers in government service. The transfer will take place over a 10-year period.

3. The Robertson Foundation will be dissolved and its remaining assets will be administered as a restricted endowment. That endowment was reported to be worth \$900 million as of June 30, 2008. Reports indicate that it is currently worth between \$600 and \$700 million.

Princeton University apparently incurred somewhere around \$40 million in defense costs. The university will be able to recover those costs from the Robertson Foundation.

The attorney for the Robertsons, Ron Malone, told *The Chronicle of Philanthropy* (issue dated December 10, 2008) that the family settled because

Princeton has a 1,000-year view of the world . . . . The family was facing spending the rest of their lives litigating against Princeton and using up all the Banbury dollars to do that.

There is one problem with that logic: Princeton presumably had that same world view back in 2002 when the family filed the lawsuit. It was perfectly foreseeable that the litigation costs would be crushing. In that sense, the entire folly was irresponsible, particularly given some of the facts that have come out. In particular, as we recall the facts, the senior Mr. Robertson was involved with the Robertson Foundation when some of the changes that his children objected to were made.

What is truly galling about this settlement is that for \$80 million, we don't even get a judicial decision that advances the ball on such questions as donor standing. Which leads to today's lessons:

A. Institutions Should Keep Children Off Boards. Large colleges and other philanthropic organizations should fight like hell to convince donors that once the donor is dead, other family members should have no input into how the money is administered. It's one thing for donors to be on the board of a supporting organization; it is quite another to have subsequent generations and their baggage on the board of the organization. The old adage holds: Children should be seen, but not heard.

B. Provide for Alternative Dispute Resolution. Both the donor and the institution should provide that any

disputes over the administration of a restricted fund, including assessing donor intent, should be resolved through a private alternative dispute resolution process. The agreement should provide a time limit on the process and provide that no expenses will be reimbursed from the donated funds. It should also cap the expenses that both parties can spend on the process (with adjustments for inflation).

C. Legislatures Need to Clarify Standing. We need to move away from revolving questions of standing under the common law. Anybody can file a lawsuit and then spend years arguing over whether they have standing. That becomes a bargaining chip, as we assume it was in this case. We need clear statements from legislatures defining when and who other than the state attorney general can challenge a charity's compliance with the terms of a restricted gift. The statutes also should provide clear rules about how members of the public (including family members) can bring non-compliance to the attorney general's attention and how the attorney general should respond. Uncertainty breeds this sort of litigation.

The other two branches of government fell way short in this case. The New Jersey Attorney General was missing in action. It is the AG's responsibility to intervene to protect charitable assets. Yet the record is devoid of any action by the New Jersey Attorney General. Separately, the court should not have allowed this case to drag on. The 350 pages in opinions from just over a year ago fueled the litigation and the costs. A probate court is supposed to do equity, and one of its considerations should be to prevent charitable assets from being frittered away. Courts should stop indulging litigants in big-dollar cases. Just because big dollars are involved doesn't mean justice can only be done by devoting years and tens of millions of dollars to the dispute.

D. Donors Should Check Their Egos. Donors should stop telling institutions that they know more about running institutions than the professionals who run the institutions. Complex restrictions lead to waste. Times change. Donors, who will die, are simply unable to predict what life will be like 20 or 40 years after they are rotting in the ground. There is a reason for the rules against perpetuity. The dead should not control the future.

To this end, serious consideration should be given to charging donors for the waste and inefficiency that restricted gifts create. One approach would be change Section 170 and the corresponding gift and estate tax provisions of the Internal Revenue Code. Give a charity an unrestricted gift and you get a 100 percent deduction for the gift. Give a charity a restricted gift and you only get a 50 percent deduction. Economics would cure the arrogance of some large donors very quickly. Before the world goes ballistic, we acknowledge that this proposal needs work, but at some point, we need to eliminate the wastefulness that results from trying to tie the hands of charities that don't have the self-restraint to say "no."

We are disgusted by William Robertson's sanctimonious statement reported by *The Chronicle of Philanthropy* (issue dated December 10, 2008):

This is a message to nonprofit organizations of all kinds and throughout our country that donors expect them to abide by the terms of designated gifts or suffer the consequences.

Ah, the grand crusade. As we read the outcome of this suit, Robertson achieved nothing except to waste somewhere around \$80 million on lawyers and the other costs of litigation. The \$50 million that will go to the new foundation will be used for purposes that strike us as not all that much different than they would have been had they remained at Princeton. We do have one bit of advice for Robertson and the universities that will apparently be the beneficiaries of the new charity: Don't put your own children on the board.

*From an e-mail by Jack Siegel to William Schambra dated February 3, 2009:*

I have been busy lately so haven't been able to go through my records, but the question I think is fundamental to the dispute is what decisions changing the mission did the senior Robertson participate in while he was still alive. My understanding and recollection is that the senior Robertson saw some of these changes in direction coming while he was alive, acquiesced, and didn't bring a suit. To me, if that is the case, it greatly undercuts the Robertson children's challenge.

As food for thought, it is unclear why the conservative movement (which I often sympathize with) takes the side of the donors' survivors in these cases. The movement is so worried about tort litigation and overzealous lawyers. The attorney general has standing to reprimand charities that don't follow donor restrictions. Once a member of the public (a survivor) brings an alleged departure from restrictions to the attention of the AG, why should the survivors have further legal rights? I thought you guys were against private causes of action where statutes don't specifically provide for them. Moreover, if conservatives truly believe in the sanctity of private property, why don't they recognize that the property is no longer owned by donors or the survivors following a gift? It is owned by the charity subject to the purpose restrictions.

The fundamental problem in this entire area is the belief of donors that they can predict the future. If conservatives truly believe that the free flow of capital is a good thing, they should not be sanctioning policies that impede that flow. Conservatives don't like it when the government restricts the flow of capital. Why do they like it when dead people restrict the flow?

Donor restrictions that go on for decades are fundamentally at odds with the efficient flow of capital because they allow the dead to dictate the future. When I speak to groups on this topic, I point out that when looking back, I recognize how different the world is today than when I was in high school in the early '70s. No computers, no Internet, four television stations, limited international travel, no CDs or DVDs, now dated medical procedures, no oil crisis, no developed India or China, strong labor unions, etc. Why do 80-year olds believe they can predict the world's needs even 10 years after they are gone, let alone 40 or 50 given the changes that have occurred in the world while they were alive? Why should we indulge their belief that they can predict the future with tax subsidies? I have to wonder: If the majority of colleges and universities were perceived as conservative, would the conservative movement be taking the side that it apparently takes in these disputes, particularly if the surviving children supported liberal causes? I suspect if he were alive, John Olin would agree with me.

## Freeman's Response to Siegel

I have been trying to convey a sense of what the Robertsons were up against in their contest with Princeton. Mr. Siegel saves me further trouble. He reflects pitch-perfectly the attitude of many institutions toward their donors, which is: "Give us the check and then sit down and shut up." When the Robertson family rose to make the point, "Excuse me, sir, but we had an agreement—" they were pronounced contumacious. I don't know if Mr. Siegel is serious when he suggests that donors should be "charged for the waste and inefficiency that restricted grants create," but he is saying aloud what many grantees murmur among themselves. Put aside the prudential question of whether nonprofit bureaucracies should be calling attention to "waste and inefficiency"—thanks to the Robertsons, happy days for Mr. Siegel are not yet here again.

## Tim Walter

I met in conversation last year with a group of about thirty foundation leaders in a wide-ranging dialogue on topics including perpetuity, donor-intent and mandatory payout. At a certain point, the topic of fundraising requests by university endowments came up and generated a surprising amount of energy and opinion—much of it suspicious and negative. Suffice to say, it seems that there is a gap of trust to be bridged between university leaders and experienced donors with regard to gifts to endowments. Clarity of expectations and clear communication of results would certainly help.

## Freeman's Response to Walter

Amen, brother.

## Martin Morse Wooster

Neal Freeman's insider's account substantially adds to our understanding of the motives and tactics the Robertson family used in their lawsuit. But as someone who followed the case more closely, perhaps, than any outside observer, I offer two comments on the strengths

and weaknesses of the Robertsons' case.

First, the Robertsons' strongest weapon was their forensic accounting of how Princeton University misused Robertson Foundation money. They persuasively showed that Princeton was manipulating overhead charges and joint professorships to divert a substantial amount of Robertson Foundation money away from the Woodrow Wilson School and towards projects that Princeton preferred. The report shows that universities can and will use overhead charges to violate donor intent.

The weakest part of the Robertsons' case was the notion that Princeton was somehow at fault when students entered the Woodrow Wilson School, received their master's degrees in public policy, and then decided to pursue other careers. When, as happened at least once, a student entered the Woodrow Wilson School, received a master's degree, and then decided to become a professional oboist, the career change is not Princeton's fault.

One also wonders what sort of powers Princeton's Office of Stewardship will have. The Robertsons showed some smaller violations of donor intent by Princeton, most notably with a Danforth Foundation grant for "religious work" that Princeton diverted into general operating support. Will the Office of Stewardship be an accountability office that will have the power to fix donor intent violations? Or (as is more likely the case) will they be development officers with new titles but not new responsibilities?

Princeton's triumph over the Robertson family reminds donors that they should be very careful in their gifts to higher education. Princeton's misuse of Robertson Foundation money substantially weakens the bonds of trust that universities have with their donors, and should remind donors to exercise caution before entering into any agreements with universities.

## Freeman's Response to Wooster

Mr. Wooster's comments are, as always, heuristic. His argument that Princeton is beyond criticism when Wilson students "decide to pursue other careers" misses the point, however, and I hope not intentionally so. Remember, Wilson is a professional school, designed to prepare young adults for a specific career. We're not talking about Camp Be-All-You-Can-Be for wayward youth.

To shift the frame of reference somewhat, suppose that students at Harvard Medical School began to show a marked trend toward careers in architecture, rather than medicine. Suppose, also, that the trend continued for many years and then accelerated, all with the clear if mostly tacit encouragement of the dean and his administration? Would donors to the medical school not have cause for alarm? Would the governing board not have the right, indeed the responsibility, to address the situation? Would it be the right course for *any* responsible party to shrug his shoulders and say, "Hey, it's a free country and we need architects and oboists every bit as much as we need doctors." No, the Wilson School produced so many investment bankers not because of some spontaneous counseling riot on Career Day, but because the school made it known systematically that would-be bankers would be warmly welcomed, that they would be appropriately trained and that they would be introduced to Wall Street recruiters in the most favorable settings. A perfectly valid mission, most people would agree. It was just not the Robertsons' mission.

Mr. Wooster's characterization of the settlement as a "triumph" for Princeton leaves the flabber a mite gasted. I have had my say elsewhere on who won and who lost the case, but, even so, Mr. Wooster reminds us of what the ancient warrior said to those congratulating him on his victory over the Roman legions: "One more such victory and Pyrrhus is undone."

# Contributors

Pablo Eisenberg

*Senior Fellow, Georgetown Public Policy Institute*

Neal B. Freeman

*Chairman, Foundation Management Institute*

Peter Frumkin

*Professor of Public Affairs, University of Texas at Austin  
Director, RGK Center for Philanthropy and Community Service*

Heather Higgins

*President, The Randolph Foundation*

Adam Meyerson

*President, The Philanthropy Roundtable*

Anne D. Neal

*President, American Council of Trustees and Alumni*

James Piereson

*President, William E. Simon Foundation*

Terrence Scanlon

*President, Capital Research Center*

Jack B. Siegel

*Principal, Charity Governance Consulting LLC*

Tim Walter

*CEO, Association of Small Foundations*

Martin Morse Wooster

*Senior Fellow, Capital Research Center*



The Bradley Center for Philanthropy and Civic Renewal

# HUDSON INSTITUTE

1015 15th Street, NW  
Sixth Floor  
Washington, DC 20005  
Tel: 202-974-2400  
Fax: 202-974-2410  
[www.hudson.org](http://www.hudson.org)

