

Princeton University – Robertson Foundation Settlement: Long Overdue And A Great Relief, But Not Without Its Price

By Robert L. Duncan

Editor's note: The following incorporates portions of a news release issued by Princeton University on December 10, 2008.

In July of 2002 members of the Robertson family filed a complaint requesting the Superior Court of New Jersey to sever the connection between Princeton University and the Robertson Foundation and give them control of funds that Marie Robertson had given the University in 1961 for the purpose of supporting the expansion of the graduate programs of the Woodrow Wilson School of Public and International Affairs, one of the University's most celebrated programs. Mrs. Robertson and her husband Charles, a member of the class of '26 at Princeton, were strong believers in the role that the university community might play in the shaping of international policy. The family members claimed, among other things, that the University had misused their parents' gift by ignoring its stated purpose. The University strongly denied the allegation.

Douglas Eakeley, a member of the law firm of Lowenstein Sandler PC and lead counsel for the University, noted that the Woodrow Wilson School remains one of the pre-eminent schools of public and international affairs in the world. He went on to note that, under the University's stewardship, the original endowment of \$35 million had grown to more than \$880 million.

As the largest donor intent lawsuit ever filed, the case has been followed with keen interest by institutions which are the beneficiaries of restricted endowments, including colleges and universities, hospitals and healthcare institutions and other public charities. The fundamental question of how closely such organizations must adhere to a donor's demands has never received an entirely satisfactory answer, and there is a particular urgency to this matter today, a difficult time for the economy and an ever shrinking philanthropic dollar. Put another way, in the absence of an express directive from the donor, how far can the beneficiary of his gift stretch the intentions he did express without violating the terms of the gift? If a university is possessed of an underfunded IT department and an English department with an endowment that is generating far more income restricted to that department than can possibly be used, this is not an academic question.

As with so many lawsuits with great public importance and an impact far beyond the interests of the parties, over the years following the filing of the complaint, many arguments were aired in the press. The University maintained that the gift was intended to create a high caliber graduate school that would attract the very best students who, eventually, would go on to play a leadership role in the federal government. University officials pointed to a number of Woodrow Wilson School graduates,



Douglas S. Eakeley

including General David Petraeus and Anthony Lake, a national security adviser under President Clinton, in this regard. But, they pointed out, they have little control over what jobs students chose after graduating. They indicated that documents establishing the Robertson Foundation included nothing that might be read to require that a specific percentage of such graduates take jobs with the federal government.

In October of this year the case was cleared for trial. In light of the extraordinary legal expense both parties had incurred from the inception of the suit, there was then ample incentive to accelerate settlement discussions that had been underway for some time but without much enthusiasm. In reaching a settlement in December, the University issued the following statement:

Princeton University will have full control of the endowment associated with the Robertson Foundation and will continue to use the endowment to support the graduate program of the Woodrow Wilson School under a settlement agreement that ends the six-year old lawsuit brought against the University by members of the Robertson family.

Under the terms of the agreement, the Robertson Foundation will be dissolved and its assets will be transferred to the University to create an endowed fund that will be controlled solely by the University. The fund – to be called the Robertson Fund – will provide the same kind of support for the graduate program of the Woodrow Wilson School as the Robertson Foundation has been providing for the past 47 years. In addition, over a three-year period the Robertson Fund will reimburse the Banbury Fund, a Robertson family foundation, for \$40 million of legal fees paid by that organization during the course of the litigation, and beginning in 2012 the Robertson Fund will provide \$50 million, paid over seven years, to a new charitable foundation designated by the Robertson family that will support the preparation of students for government service.

"This settlement achieves the University's highest priorities in this lawsuit, which were to ensure that Marie Robertson's gift will continue to sup-

port the graduate program of the Woodrow Wilson School and that the University would have full authority to make academic judgments about how these funds are to be used," said Princeton President Shirley M. Tilghman. "The funds will continue to be managed by our investment managers at PRINCO – the Princeton University Investment Co. – who have significantly increased the value of the Robertson gift since being engaged in 2004.

"It is tragic that this lawsuit required the expenditure of tens of millions of dollars in legal fees that could and should have been spent on educational and charitable purposes," Tilghman said. "We had every confidence that we would prevail at trial, and looked forward to the opportunity to refute the claims that were made and demonstrate Princeton's diligent stewardship of this gift over almost five decades. We agreed to this settlement so that we could bring the rapidly escalating legal expenses to a halt before a lengthy trial added even more tens of millions of dollars. The settlement also allows the Banbury Fund to resume funding the charitable objectives for which it was established, and it restricts the spending of the new foundation to activities that are compatible with the purposes we serve in carrying out the terms of Mrs. Robertson's gift."

Princeton's attorneys estimate that each party to the litigation likely would have incurred additional legal expenses in excess of \$20 million to continue to prepare the case for trial, conduct the trial – which was likely to be lengthy – and pursue any subsequent appeals.

The specific terms of the settlement agreement include the following:

- The Robertson Foundation will be dissolved and its funds will be transferred to an endowment fund at Princeton with the same object and purposes as the Robertson Foundation, as understood and interpreted by Princeton.
- Robertson Foundation funds will be used to reimburse the Banbury Fund for certified legal fees and expenses in connection with the *Robertson v. Princeton* litigation of \$40 million under the following schedule:
 - \$20 million in the first year (2009);
 - \$10 million in the second year;
 - \$10 million in the third year.
- Robertson Foundation funds will be used to provide \$50 million, plus interest, in funding for a new foundation to prepare students for careers in government service under the following schedule:
 - \$5 million a year in years four through eight of the agreement;
 - \$10 million in year nine;
 - \$15 million in year 10.

It is expected that the initial \$20 million payment will be made in 2009 and that the payment schedule will extend through 2018.

In coming weeks the seven trustees of the Robertson Foundation will act to dissolve the organization under the terms of its Certificate of Incorporation, which provides that all remaining assets are to be transferred to the University as

a restricted fund with the same purposes that are specified in the Certificate.

The Robertson lawsuit was filed in July of 2002 by members of the Robertson family who sought to seize control of the Robertson Foundation's funds and redirect them to purposes other than the purpose agreed to by the donor and the University in 1961, when the \$35 million gift to Princeton was made and the Robertson Foundation's Certificate of Incorporation adopted. The family members filed the suit after William Robertson opposed a recommendation by the other two members of the Robertson Foundation's investment committee to engage PRINCO to provide professional investment management. Between the engagement of PRINCO and the conclusion of the Foundation's most recent fiscal year on June 30, 2008, the net market value of the Foundation's assets increased from \$561 million to just over \$900 million, even after annual withdrawals of \$22 million to \$33 million of programmatic and capital expenses of the graduate program of the Woodrow Wilson School.

The plaintiffs in the lawsuit included the three Robertson-appointed members of the Robertson Foundation governing board, while the defendants included three of the four University-appointed members, including Tilghman who has chaired the board, and the University itself. The fourth University-appointed trustee, who was not named in the suit, is former New Jersey Governor Thomas Kean.

In reviewing the terms of settlement, Douglas Eakeley, lead counsel, said, "The settlement represents a complete vindication of Princeton and the principles it upheld during the entire unfortunate matter. The Woodrow Wilson School is not a vocational program, and it is now assured never to be such in the future. Control over the Wilson School and the funds that support it are now completely in the hands of the University. It is unfortunate that adhering to such principles proved to be so expensive, but one of the crown jewels of American education has been preserved as a consequence. In time, the funds spent in this matter, and particularly the legal fees, will be recovered. Once lost, the recovery of the Wilson School, or anything like it, would not be possible."

Eakeley went on to state that the Robertson family members had determined not to take the case to trial at a point in time when they had depleted most of the assets of the family's charitable foundation, which had been used to pay for their legal and public relations expenses. The University, he said, had taken a consistent position that the dispute had caused millions of dollars intended for charitable and educational purposes to be diverted to pay for a lawsuit without merit. He added, however, that the settlement served to insure that the original gift would continue in perpetuity to support the graduate programs of the Woodrow Wilson School, free from any further attempts to divert it to other purposes.