Perspectives Podcast -- Episode 5 – Prof. Jerry Kang, UCLA's first Vice Chancellor for Equity, Diversity and Inclusion.

David Hashmall	Hello, and welcome to Perspectives. A podcast brought to you by international law firm Goodwin. I'm your host, David Hashmall, Chairman of Goodwin. Today our guest is Professor Jerry Kang. Jerry is the distinguished professor of law and Asian American Studies at UCLA where he also serves as the University's first vice chancellor for equity, diversity and inclusion. In this position, he is the senior UCLA official responsible for promoting equity and fairness in faculty matters and in student life. Jerry, welcome to Perspectives.
Jerry Kang	Thank you, David. I'm delighted to be here.
David Hashmall	So, you have a wide range of teaching and research interests, including civil procedure, race and communications; but today I'd like to focus on diversity and inclusion in the legal industry, and look specifically at your work at the nexus between implicit bias and the law. Jerry, I watched your Ted talk on implicit bias, and I think our listeners would be surprised to learn about the subtle discrimination that we all seem to engage in. So, tell us, what exactly is implicit bias.
Jerry Kang	Whenever I answer that question, I want to act like a lawyer and just think about both words. What's bias? And what's implicit? So first, let's think about bias. Frankly, bias is anything that is away from some neutral position or some accurate reading so you can think about bias on a scale in your bathroom. It can either measure you at exactly 150 pounds which you might be, or it could be a little bit low or a little bit high, and that's what I mean by bias. Simply, that is sort of divergent from neutral or accurate, so that's bias. I just want to think about that. I don't really want to talk about it and frame it as prejudice, racism, sexism. Let's just think about bias as something that is a little off from accurate or neutral. That's what I mean by bias. Second, let's talk about implicit. Most people think about implicit as opposite of explicit, and when you think about explicit, you usually think about something that is really graphic or high in magnitude, like explicit violence or explicit movies. I think that's actually a mistake. I don't want people to think about implicit as small and subtle always, and explicit as large and graphic. It's better to understand implicit instead as whether or not the bias is subject to introspection. I know that's kind of a weird phrase, but it just means if you ask yourself, Huh, what's my bias towards African Americans? Or what's my bias towards, I don't know, tall Norwegians? If you can ask yourself the question and get an answer back, that's what we call an explicit attitude or stereotype, and an implicit one just means even though you ping your brain for a question, you get no answer back, or the answer you get back is incorrect. So I want to think about implicit more as something you are unaware of and cannot be made aware of simply by asking yourself. So with those definitions of both the word bias and the word implicit, there are like three entailments that I want to emphasize. One, again, we just talked about the difference between explicit vs. implicit. Again, I don't want your readers or your listeners to think that it is large vs. small. It's really about, can you be made aware of it simply by asking yourself honestly, or can you not? Implicit biases are biases that you have that you can't actually know about simply by asking yourself in all honesty. Number 2. When we talk about

	bias, again, which is this thing that is somehow divergent from neutral, it's often then useful to distinguish between biases that are attitudes and stereotypes. To a first approximation, an attitude is kind of like a gut feeling or a warmth or a cold that you feel towards a category. So you might feel warmly towards, I don't know, towards Americans, and maybe a little bit cold towards some other country if you're [inaudible 04:13] patriotic and national. But an attitude is an overall feeling that you have, either positive or negative, thumbs up or thumbs down. A stereotype is a little bit more narrow, and it is a trait that you think a particular category of people or maybe things actually have. Usually I give the example of birds. Birds tend to have feathers. Birds tend to fly. So you might have a trait – the ability to fly, associated with birds, even though not all birds can fly – like penguins swim, and ostriches run. I think they're both birds, but it's this trait that you associate with a category. But it's this trait that you associate with a category. The one thing that I want to distinguish between attitudes and stereotypes is that they kind of do different kinds of work. They both might be divergent from some neutral, and therefore, count as some sort of bias, but you could actually have a positive attitude towards a group; i.e., feel a great deal of warmth, say, to the category of women, because you love your mom, you love your sisters, you love your spouse, but you could still have a stereotype that associates women with being more associated with family vs. career, or more associated with humanities as compared to the sciences, or more associated with kind of support roles vs. leadership roles. That could lead to discrimination in the law firm and other workplaces. So I want people to distinguish different kinds of biases, attitude vs. stereotype. The final thing, and this is like a bonus level of understanding, is to distinguish between implicit bias as an idea and maybe the instrument by which we measure implicit bias. So if I go back to the bathroom scale analogy, we have this idea of weight or mass, and we use some scale, you know, and it's some bathroom scale have that we bought someplace on Amazon or something. But back in the day, maybe we didn't have a scale like that. We had stone scales, and we kind of put ourselves roughly what our weight was. So we have this idea of weight and some device that measures the weight, and the device might be really accurate or not, depending on what you're doing and what the technology is. I want you to think about implicit bias in the same way. We have this concept of implicit bias. An attitude or stereotype that you have that you don't even know that you have. That's what I mean by an implicit bias. How do we measure it? Well, you know, there are lots of different ways to measure it. It is true that reaction time measure called the "implicit association test" is the best known way to measure it, but there are different ways to measure it. Sometimes people get upset with the idea, because they think, Oh, no, no, I couldn't possibly have junk in my head that I don't know about. I resent that, and I dispute that. Some people sometimes object to the measuring device, like the implicit association test compared to something else, but I think sophisticated listeners should always distinguish between the idea and the instrument by which we actually measure that idea. So that's implicit bias in a nutshell.
David Hashmall	Thank you. In my question, I asked you, I said that the subtle discrimination that we all seem to engage in. Is that true, that we all engage in implicit bias, and how

07:17	do we know that?
Jerry Kang	Yeah, I think it's roughly fair to say that, because, you know, if we're really careful and say, Look, implicit biases are kind of soul cognitions, or mental associations, or just junk in our heads that we don't even know that we have. There's reasons to think that these associations, for example, whether you feel warm towards a group vs. cold to a group; or whether you think one group is really good at math whereas another group is really good at English, or one group is really hard working, whereas another group is kind of a slacker. That those social cognitions, there kind of thoughts that go in our head, even if we don't know that they're actually occurring, that they actually influence our behavior at least to a small degree. And when they influence our behavior in the real world, that's what we could plausibly call discrimination. I think there's overwhelming evidence, just overwhelming evidence that implicit social cognitions, or implicit bias, are in all of us. We might have them slightly differently but the data are in some ways overwhelming that we actually have implicit biases as measured by different kinds of tests and given the fact that there is increasing evidence that these implicit biases alter our behavior at least to a small degree on the margins. It is safe to say that we are all influenced by it. Again, I've got no reason to exaggerate. I'm not saying that we're not trying to make decisions on the merits and carefully, but often times our decisions are done quickly. Our decisions are made without perfect information and there's a lot of subjectivity; and often times in those contexts, we will let our implicit attitudes and stereotypes guide our decisions at least on the margins. Even if it doesn't seem graphically different or hugely different, I think it's almost like gravity, it kind of pulls people in a particular direction, and it's likely to influence us all.
David Hashmall 09:28	So how do we begin to overcome something that seems so ingrained in our minds?
Jerry Kang	So, I think the number one step is to recognize that there is a there there. I think it's actually an important part of intellectual maturity and a self-realization that we as individuals and our institutions that we helped build just aren't perfect. I think most of us really want to do the right thing. We want to judge people on their merits. We want to be fair and square. We don't want to even benefit from a rigged game. But it takes a lot for us to recognize that even if we've won a game or a tournament or a challenge or an equity partnership, that maybe the rules of the game weren't entirely fair. So, the first point, I think, is just to recognize that implicit bias is a thing and that it has small consequences is every day behaviors and judgments and that accumulated over time for an entire career that they will have non-trivial impacts on certain people vs. others in ways that cement in inequality. So, I think the first step is frankly just acceptance and realizing that notwithstanding our best efforts to try to be fair and square it turns out that we fail. Not catastrophically all the time, but that we're actually not perfect. There's this gap between what we think we are and claim to be and the reality of our actual behavior and institutions. So that's number one. I think it's just to realize the gap. Because once you've realized the gap, then the question becomes, OK, once you

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	realize the gap and own it, what can we do to try to actually decrease the impact of implicit biases? I think there's a whole bunch of things that we could do to essentially assist or decision making so that we become better at those decisions and less susceptible to implicit biases. We can go into details, but I think, here's one analogy that I find useful. Look, everyone's excited about self-driving cars, and maybe in the next couple of decades we'll really see cars that will take us from door to door without any effort besides typing in a destination, but right now what we have is a system of sophisticated cameras and sensors and algorithms that kind of beep when we're actually straying away from our lane, and the car has reason to think that you're doing it by accident. It's one thing if you intentionally need to veer right. Sometimes that happens. Even crossing lanes that you normally would not cross, and as humans we need to exercise that judgment when we drive. I get that. But sometimes, there's reason to think that we're actually veering left or right by accident, without our knowing; and when the steering wheel vibrates or when a light goes off, when the machines in some ways help check our blind spots and our own limitations, that analogy is a powerful one. Can we build, again, procedures, systems, checks and balances, that recognize that we as humans are not perfect and that we could do actually better by following procedures, practices, checklists that make it less likely for implicit bias to actually influence the ultimate decision.
David Hashmall 13:03	So I know you often lecture to lawyers, judges, government agencies and companies about implicit bias and how to battle it. Do you generally find the audiences that you talk to, are they receptive to your work and your recommendations?
Jerry Kang	You know, I have to admit, they are incredibly receptive. This might be because I have such low expectations to begin with about yet another diversity training, yet another talk about implicit bias; and it is true these days you can't go through whether it's a presidential debate or drinking a cup of coffee without thinking about implicit bias, and lots of people think they already know what it is, and lots of people have talked about it. In part, because I think because people have relatively low expectations about the conversation, and in part because I'm not really trying to sell folks stuff. I'm not trying to actually exaggerate or create a boogey man and suggest that there are trivially easy solutions that evil people are refusing to adopt simply because they're evil. I think the world is much more complicated than that. Because I'm trying to actually trigger what I call a motivational curiosity within a super smart audience, often times quite skeptical but willing to actually learn if there are new facts that I'm providing to learn about what they may or may not be doing on a daily basis. Overall, the reaction is very positive, and sometimes it leads to consequences of some significance. I'll just give you one example, and I don't mean to exaggerate the role that either implicit bias or kind of my conversations with certain judges have had, but you should know that the Washington Supreme Court back in October of 2018 struck down its death penalty statute on the basis of state constitutional law in a case called *State v. Gregory*. Most of the analysis was just the fact that when you do regressions, you find even when you control for everything you think is important, you find that there is kind of weird arbitrary increase of sending African Americans as

	compared to white Americans to a death penalty result, and any time you do any type of statistical regression works, smart statisticians will start arguing about whether you control for the right thing and did the right kind of mathematics, and it's inevitable that you could have dueling experts challenge how robust that particular set of regressions actually is. But here's what the Supreme Court wrote, and I'm quoting this: Quote "Give me evidence before this court and our judicial notice of implicit and overt racial bias against black defendants in this state, we are confident that the association between race and the death penalty is not attributed to random chance." End quote. I just want to emphasize what the court did. They said, given our judicial notice of implicit and overt racial bias. And I think that's actually a profound moment when a court right now, basically in 2018, late 2018, can take judicial notice of a phenomenon such as implicit bias, and that judicial notice which is, again, something in some ways so obvious and so incontestable just that a court recognizes it's a thing how that finding or understanding influences this court's resolution of essentially statistical bickering. And they say, Of course there's going to be statistical bickering, but given everything that we see and the judicial notice of these psychological mechanisms, we're going to say that there is essentially a disparate racial impact, and we won't allow it under our state constitutional law. One year earlier, Tony Greenwald, who invented the IAT with Mahzarin Banaji, and Tony Greenwald and I spent an entire day with the annual Washington judicial conference talking to them about implicit bias, updating them on what the best science suggested is, the impact, and having a really rich conversation about what it is that courts could do. And, of course, they're doing all kinds of things, and I don't by any stretch, want to suggest that somehow one intervention by a [inaudible 17:33] of the academics had that much of an impact, but I just think it's a really interesting moment where courts are now, when the judicial notice of implicit bias, in the ways that courts have historically accepted rational choice theory or law and economics assumptions about human behavior, and that's really having an impact, and so the bottom line is I actually find my audiences to be quite receptive in part because I'm just trying to share facts more than try to bludgeon people with my normative commitments, and I think it's having some consequence. The most interesting example is, again, this death penalty case that came out of Washington just at the end of 2018.
David Hashmall 18:17	Let's talk a little bit about the legal industry, Jerry. There has been a lot of articles and attention paid recently about the lack of diversity in the legal industry. Why do you think the legal industry has struggled to become really fully inclusive and more diverse?
Jerry Kang	Yeah, I'm not sure that the legal industry has done that much worse than other competitive, knowledge-based elite industries; but, again, I think elite law firms, large law firms, have been kind of stuck in an equilibrium for the past 20 years and it's been hard to change. Now why is that the case? I think a couple things come to mind. 1. Let's face it, the law is a status conscious and hierarchical profession. How we think about status, how we think about hierarchy, how we think about eliteness, it is kind of baked into the way we think about law, about law school admissions, where you graduated from, clerkships, whether it's district court, court of appeals, supreme court, state, federal. Let's just own the fact that lawyers are

	status conscious, and that it's a hierarchical profession, and indeed all professions reflect that kind of conscious attention to the importance of status. Number 2 I think is in the law often merit is often hard to measure. There is a lot of subjectivity in what we think to be merit. Now I realize that especially for young attorneys, we often times hire new attorneys into firms just for their raw analytic power as measured by speed at exams and first year law school issue spotters, but the truth is people get promoted on a book of business, and to have a book of business often times it requires you to have the emotional intelligence, the contacts, the imprimatur of other powerful lawyers who actually vouch for you so that you can actually get in front of clients and do the work necessary to get that book of business. So there's a lot of subjectivity in how that part of the game is actually played, and I think there's some truth to the fact that, again, if I just ask you to write an app or debug a program, then maybe I could just measure how quickly you can do it given the [Infosight] given to you, but what it means to actually be the kind of attorney that could actually inspire the confidence necessary for a very large firm to choose that attorney for bet the farm litigation, that's much more subjective and social and hard to measure, and I think that's another aspect. So, again, those are the two things: 1. We're a status conscious profession, and 2. I think merit affecting much – is very often harder to measure than we think it is, especially as we go on to later stages of our legal career. I think the third thing that comes to mind maybe is that the law reflects a certain kind of conservatism and frankly insufficient experimentation. I think the law is a conservative profession, and if you really want to become fully inclusive and more diverse, then you have to actually make some bets and experiment in different kinds of ways. And it's hard for law firms to go do an experiment and try a hiring that looks a little bit different from the normal ways that we used to hire, and if in the past we've always looked for these indicia in each school or law review, federal hardship, and that has been a good enough bet on how we've survived as an elite law firm. It's very hard to get law firms to get off that conservative dime and say, Look, let's play some moneyball office. Maybe that's true, maybe that's not. Maybe it's true for 80% of our lawyers, but we need 20% of our lawyers who are just the opposite of that, who actually can wheel and deal in a different kind of way than those particular attributes would suggest. So I think those are the things that make law just slightly crusty and slightly harder to change, and I think then when you just add that to the general challenges of all hypercompetitive industries, you can see why inclusion and diversity in equity work has in some ways stalled within the legal industry.
David Hashmall 23:08	So that raises to me a really interesting question which is, with all this attention paid to the importance of law firms being fully inclusive and more diverse, how do we measure success in a law firm environment?
Jerry Kang	I think that is exactly the right question, and often times it's reframed now increasingly as are, what are your metrics? What are your key performance indicators? How are you going to measure that your succeeding? And I love metrics, but I do so ambivalently, and I do so without fetishizing them. I think all your listeners, I understand this already. What we can measure is not always important. What is important, we can't always measure. Even though I'm going

to be a big fan of counting and metrics, I just want people to recognize that sometimes the most important things just can't be measured. And just because you can measure it, does not mean that we should consider it to be important. So, what, then, can we measure? Because I think metrics are really important. I'll give you some examples of some things that are easy to measure that I think are largely pointless. One, after you bring in someone to give an electron implicit bias, you can send out a survey and ask, Well, did you like the guy? Did you like the woman who gave the lecture? Were you engaged on a 1-7 point scale. And hopefully if you hired someone who is actually an effective communicator and actually knows the science and isn't just repeating headlines from some bad buzz news feed or something like that, you'll get people to say, Yes, this person was an effective speaker. It's not at all clear that that kind of popularity contest really means that they've learned anything, that they'll keep anything, and they'll change anything, and so the idea that you brought in a popular speaker, well it's good. It's better that than your bringing in an unpopular speaker, but measuring that in terms of just popularity contest or rotten tomatoes rating about a particular speaker isn't really what we should be doing. That is largely unimportant. So what else can we measure. Number 2 is well you can just measure crude demographics, right. When we think about diversity work, equity work and inclusion work, when I think about diversity, I do think about just how are we measuring the heterogeneity or the variance within us all. Often time we are focusing on the really socially seen categories like race, gender, sexual orientation, other kinds of features that are important to who we are at our core. So you can count them. You can say, Well, look, we did this work on implicit buys, do we have movement on the number of African American managers or Latina senior associates. How are we going to count them, or women equity partners. You can certainly count them, and I do encourage people to count them, but that's also enormously crude. Even if you go up or down, it might have gone up not because of any particular training, it might be despite some training; and the reverse could be true. The numbers might have gone down, especially with small n's, small numbers, not because of the training but despite the training. I don't want to over read those numbers, and if we get too obsessed with just the numbers, I think it reinscribes a particular way to see all this work as just cosmetic compliance. If people, including skeptical lawyers, think that all this work about diversity is just checking boxes so you have enough numbers of certain kinds of people to please whether it be buying side firms, or the optics for politically left law schools or news industry rags are either complaining about this or that, if people ultimately view it in deep skeptical ways, you're just counting bodies, and that's all you care about, then I think it actually undermines the really important value on why we're doing it in the first place. And, again, the value that I come back over and over again to is just the idea that we want to judge people fair and square because that's the right thing to do, and also to lead us to build the best teams. If we have evidence that we're not actually measuring people fairly, we're not treating people fairly and not giving them fair opportunities to grow, then we're not who we claim to be, and that's, again, the value of essentially honesty and fairness that I want to always come back to. So the second thing we can count is just bodies – and it's important

	to count bodies, don't get me wrong, by force of affirmative action law. If you get an official contract from the federal government, you have to count bodies, and censuses aren't really important, I just think that that's a crude measure. So, then, how do you actually count things? I've thought about this for a long time. My view now, given my experience more as an administrator than just an academic, is that I actually want to count changes in procedures, checklists, internal audits, accounting practices, data visualizations, baseline indices – that's what I want to count. I actually don't want to count people, per se. What I want to count are the changes that the firm has made to adopt better and best practices, to decrease the likelihood that implicit bias has actually played, had a toll on the decision making processes of the firm. I know that they're in some ways incommensurable. It's hard to count, Oh, adoption of one checklist vs. one better practice, vs. one data visualization that shows you that you're a half centered deviation away from some baseline that you want to try to hit; but the point is far more important than the swings up and down at any given moment is, have you changed the way you interview? Have you changed the way you grant points? In remuneration schemes, have you changed the way you give feedback to associates who need to actually learn. The ways that you change the default processes and procedures I think is the most important thing. That's the thing that outlasts all of us. That's the thing that outlasts individual goodwill or effort. If we change what is normal, then what we've done is rebuilt the roads to actually operate slightly differently. Once you rebuild the roads to either steer in a slightly different direction or have guardrails that function in a particular kind of way, then everyone will be driving better, not just one person who might be especially mindful on doing things correctly. That's what I want to count – all those infrastructural changes to policies, procedures, the way that ordinary business is done. That in my view is the best way to measure success.
David Hashmall 30:20	That's really interesting, Jerry. The way I think about it, tell me whether you think you agree, is that what you really mean on being fully inclusive and being diverse, the numbers really address the diversity; but, probably, what's more important, long term is being fully inclusive. I think that's what you're saying, and it's those procedures and your attitudes that are addressed to inclusivity rather than just numbers on diversity is really what's going to drive success long term. Is that …
Jerry Kang	Yeah, I think that's right. The only thing that I would add is having equitable procedures and having people feel like this is a fair tournament is also an important part of people actually staying and flourishing in your firm. Diversity is just counting, again, how many people are left handed, how many people are right handed. We can count whatever we want, and that's not that hard to do. Of course, we have to be mindful of how, again, severe underrepresentation could make other kinds of things really hard in the firm. Diversity is just step one. The inclusion part, which is really a felt experience, a feeling that when I walk into the firm, that I'm not an outsider, that I'm not just at the margins, but I'm part of the mainstream, that I have as good a shot as everyone else here to actually make it to the top, even if that shot is just going to be hard for everyone, but my shot is no maturely worse, or not maturely better, simply because I happen to be male or simply because I happen to be white vs. Asian. That idea, that feeling of

	inclusion, is really, really important because it's that subject of feeling that I belong, that I'm not merely renting, that I actually own like everyone else is what actually creates the kind of engagement that's important for success in institutions like law firms that require you to really buy in in order to actually get the work done and be driven enough to actually succeed. So, again, inclusion is really important, and it goes beyond just diversity, beyond just critical mass, and I guess the final thing is there's some importance about equity because it's also very hard to feel that you are included if you think the game is rigged. If you think, and again people are all motivated, everybody thinks that they're better than they in fact are. I get that. We're all human. But if you think, Look, you're as good as this other person. You wanted this particular kind of work, whether it's securities regulation or complex litigation, or whatever deal you wanted, and you asked for it, but the other guy got that first work assignment, and, in part, because the other guy got the first work assignment, he gets the second one because now he's building up a certain kind of local expertise and a reputation that he's good at it, then inside of half a year, even though you came in together, same credentials, same fancy schools, if the other person got all the excellent work that you were trying to get, and you feel yourself shut out, and you think that the way that the work was assigned was arbitrary, unmindful, which means that we kind of give work to the people that we like, or are nearby or wo we think based on past associations are the kinds of people who might be good at this, we think that the basic game wasn't fair; and when you think the game isn't fair, it's hard to feel included. It's hard to play as if – it's hard to lean in to the institution if you think the institution is not treating you fairly. I think these three terms are almost always tossed out: diversity, inclusion, equity in whatever order, and I think people ought to recognize diversity is the first step in some sense. You need to have some heterogeneity, some variance and be mindful to critical mass, but what we really want is, as you said, the next level, David, which includes again feeling included. There's different ways to measure that. Not only by feelings but also their behavior and engagement, and inclusion also requires you to be equitable which means that you're keeping eyes on whether people are being given equitable shots at the most interesting work, at the different prizes, at the opportunities for facetime in front of important lawyers and important clients. All of that actually combined together, and this is why I emphasize, What are the procedures or practices the firm has adopted so that we're judging work fairly, that we're also being fully inclusive in giving people the opportunities and not playing without even our knowing, favorites, that tend to break in historically contingent ways where we tend to break in favor of the "in" groups that we belong to.
David Hashmall 35:16	Let me ask you one last question, Jerry. It's about your experiences – UCLA's first vice chancellor for equity, diversity and inclusion. Do you feel you've learned things in this position that have more broadly informed your teaching and research?
Jerry Kang	Oh, yeah, absolutely. And, again, so joke to my lawyer friends, because I didn't really practice. I just clerked and did a little work in the executive branch before starting as a law professor. Yeah, I finally have a real job now in academics, historically had such a luxury, and I think it's really important because as someone

| | who is actually an administrator or just a decision maker, when you're actually working to fix things, you have to build, not just criticize and critique. You have to actually build things, not just tear them down and academics really good at tearing things down, and say, Oh, you screwed up there, you were stupid there, you didn't spot that. How come you didn't read about that? But academics rarely actually have to build things with their own hands, and it's been humbling and I think really important to emphasize the challenge and to really appreciate what it means to try to build things. Connected with this is this idea that often times delay or indecision is not an option. When you actually have to help run a business or help run a city state like UCLA, then even though you have imperfect information, you can't actually wait. Some decisions have to be made even given imperfect information in a conflict of tension and severe distrust. There's just a lot of hard decisions you just can't delay – as an academic, it's a privilege. What? You don't know what it is? You could read another book, and then come back to it after you figure out what all the information said. The general difference is, again, people who actually work for a living without just pontificating or thinking, we have to build, and we have to also make decisions even when we feel like in the ideal world we would get better information, because better information you'll never have, and the decisions have to be made now, and you have to own them. I think that's a really important set of differences than I experienced. Given that, I now understand better how concrete cases in the real world crystallize specific legal questions, and I also have a greater appreciation of pragmatism. As an academic I always – on the one hand, I was critical. I also wanted to be useful, but I now really have an appreciation for what it means to make a pragmatic engagement. I don't mean that all legal scholarship ought to be pragmatic. I come from different traditions that are often very critical, and they do incredibly important work to radically change the frame on how ordinary lawyers and legal academics analyze issues. I don't mean to take anything away from the very critical approaches with which to dismantle current legal doctrine. That said, one of the things that I think I can do most usefully is to engage in pragmatic ways where I'm always thinking about the question as compared to what. In a utopian world, Yes, we could do this, but I understand that we have constraints, and even if we want to nudge the constraints in different kinds of ways, I also recognize that those constraints can't move in a timeframe of one day, one month, one year. They might take a generation. Given those constraints, how do you help the problem become a little less bad or a little less harsh? How do you solve the problem as compared to the status quo, which is doing still a worse job. So I think that kind of attention to pragmatism and the attention to, again, concrete solutions, which lawyers completely understand, that's the experience that I've had being an administrator helping to run, again, a large public university that has its share of challenges confronting freedom of speech, me too, civil rights, all the things that play modern American political and cultural risks. They're manifested here as well. |
| David Hashmall | Jerry, I really want to thank you for a great discussion. I found it really illuminating. I think while perhaps some incremental progress has been made in the legal industry. There's no question, there's a long way to go, and I really want to thank you for all you've done to sort of help lead the way. I hope at some point |

	you'll come back and talk to us again. Thank you, again.
Jerry Kang	Thank you, David. My goal is after I learn how to solve problems here within the university context, I really do want to try to help share solutions across the board to other universities and back to law the law firms. After my noble stint in higher administration, I could return to my scholarship and, again, try to get translations of pragmatic solutions out to institutions, firms, industries. I think they actually really want to do the right thing, they just don't know exactly how, and to the extent that I can help translate the best science into plausible and trackable solutions, I think that's a good thing to do.
David Hashmall	Thank you. [41:21]