

An open letter to the *Chicago Tribune*

We have read with ever increasing dismay the “State of Corruption: Clout goes to college” series of stories that have dominated both the front and the editorial pages of the *Chicago Tribune* since May 29, 2009. Not dismay at the University of Illinois or its administrators; rather, dismay at the way that the *Chicago Tribune* has told the story. As long time academics who care deeply about the integrity of the Academy, we are disappointed in the *Tribune’s* performance here. Consider three questions about that performance: (1) was there really a story here worthy of the kind of front page attention and editorializing focus lavished on this issue this past month? (2) Even if there was, has the *Tribune* told the story in a fair and unbiased way? (3) Since we conclude both that there was not much of a story here and that it was reported in a biased and slanted manner, this gives rise to the motivational question: what has apparently motivated the *Tribune* to go after this distinguished University and its equally distinguished administrators? We take up each question in turn.

(1) *The non-story story.*

We have between us taught at many different universities in the United States. The story the *Tribune* has “discovered” about the University of Illinois could be written about every one of them. This fact is not one to be celebrated, nor is the fact that “everyone does this” given as an excuse. But this fact does call into question whether the story merits the amount of attention given it by the *Tribune*, to say nothing of the shocked tone of the *Tribune’s* editorials and columns.

There are several reasons why every university receives pressure to its admissions process from the outside. One of these is particularly applicable to public universities like the University of Illinois. University of Chicago Law Professor Brian Leiter in his *Law School Reports* for June 29, 2009 sees this reason clearly:

“The *Chicago Tribune*...appears to have missed the actual story (they are journalists after all): the University of Illinois is hostage to the public purse for a lot of its operations, so every request for ‘special consideration’ on admissions from a politician with influence on the purse strings comes with an implied threat: admit this student, or lose funding.”

Those with power, no surprise, tend to use it.

Particularly when that power can be used to further the welfare of one’s children, other relations, friends’ children, etc., Politicians are human in this respect, and are tempted to help

those to whom they feel (rightly or wrongly) a special obligation. Indeed, we would be surprised if the *Tribune's* own senior staff had not used the power of their own positions to influence admission decisions about their children at various mid-western universities.

Third, the line between proper and improper influence on admissions decisions is a difficult one to draw, vague when drawn, and thus on both counts easy to step over by well-intentioned administrators. Surely it is *relevant* to the candidacy of some applicant that someone of good judgment thinks well of them, just as it is *irrelevant* that a person of power wants the applicant admitted without regard to his or her merit. Success in any walk of life – politics included – can be a proxy for both power and judgment, making the influence wielded by such people hard to classify as proper (based on judgment) or improper (based on power alone).

However ubiquitous the practice may be, and however expected because inevitable for the reasons just given, one might still think the University of Illinois admission practices are morally bankrupt and therefore newsworthy on that ground alone. If and when yet another Illinois ex-Governor goes to jail, for example, that will be newsworthy, no matter how numbingly familiar the story has become to residents of this state.

Yet what are the improprieties laid at the feet of the University's administration? That they listened to politicians at all on particular admissions? To the extent politicians have information or judgment to impart about particular candidates, they like anyone else *should* be listened to by admissions officers. Alternatively, perhaps the impropriety is that University administrators put their thumb on the scale a little for those applicants whose admission was supported by powerful politicians. This is presumably what President White had in mind when he said (in his much quoted e-mail to Chancellor Herman) that we should "stretch some but not too much in these cases, then call them as we see them." To the extent that the threat described by Leiter is real, then (like it or not) the University's welfare demands that such politicians be appeased in some such fashion.

It would be nice if political coercion had no influence on admissions decisions and that only the merit of each individual candidate mattered. It would be nice, too, however, if all the factors (like geographic distribution of a class), or the accidental whims of fate that arbitrarily direct the attention of admission officials as they read files, also had no influence, because each of these too is unconnected to the merit of individual applicants. A rational and moral admissions policy is one that *minimizes* the influence of any of these merit-unrelated factors,

without hoping to *eliminate* such influences entirely. When the numbers of cases so influenced by these merit-unrelated factors is small, the dereliction (if any) is itself small potatoes.

Another allegation of impropriety laid at the feet of University administrators is that promises of scholarships or jobs were received in exchange for positive admission decisions. Even if the unsubstantiated *Tribune* allegations of a “quid pro quo” being received by University administrators in exchange for certain admissions were true – about which, more below – this also would be morally untroubling. For the quid pro quo alleged is nothing beneficial to either the administrators or the students so admitted. It is not that *they*, the administrators, were promised money or jobs. It is not that scholarship monies or jobs were promised for the unqualified students. Only that such administrators were promised either more resources (scholarships) with which to allow students otherwise unable to attend to do so, or more employment opportunities for students otherwise unable to find them on their own. When no choice is given to the University on some merit-unrelated admissions by those holding the purse strings, such as the Governor, what is the wrong in obtaining extra resources for the University’s merit-admitted students? How is that worse than using such admissions to blunt the implied threat of lesser funding —are not both a way of making the best of a bad situation?

(2) *The slanting of the story told by the Tribune.*

One of the striking features of the *Tribune*’s month-long campaign is the imbalance of its emphasis. It has vigorously attacked the reputations of President White, Chancellor Herman, and other University administrators and admissions officers. They all have been castigated on the *Tribune*’s front page editorial (June 28, 2009) as swimming in a “sewer” that they have created. Moreover, the colorful prediction was made that “within days, perhaps sooner,” we will hear “a few thudding sounds like lonely bowling balls tossed down a dark alley” and we will “realize that you’re listening to the political heads of Chancellor Herman and his crew rolling into history.” (John Kass, June 26, 2009).

One would have thought that this kind of outrage, venom, and incendiary invective would have been directed at those exerting the pressure – legislators, the Governor, the Board of Trustees – and not those suffering under it. As Brian Leiter noted in his June 28 *Law School Reports*, “Attacking University officials over this scandal is like attacking the victim of a robbery for handing over his money.” Where is the *Tribune*’s “off with their heads” mentality with respect to legislators like State Senator Chris Lauzen, for example, who (when disappointed by

Law School Dean Heidi Hurd's reluctance to admit Lauzen's clouted candidate), expressed the view that she should have been fired for the insolence of expressing distaste at his influence. (*Tribune*, May 31, 2009). Later defending himself in print (*Tribune*, June 22, 2009) Senator Lauzen said his contact of state lobbyists on behalf of an applicant had merely been a call "asking for information, not admission. I have seen applicants enter the admission and financial aid processes with incomplete applications." Where is the *Tribune's* critical faculties and harsh judgment in pointing out to its readers the transparent poppy cock that this is?

University administrators make easy targets. They are after all academics – mathematicians, philosophers, business scholars – who must attempt to navigate the choppy waters of Illinois state politics. They themselves have no clout, and can be attacked in the press with relative impunity. Perhaps the *Tribune's* focus on them rather than on the state's politicians is due to the predictably lesser repercussions. Perhaps the *Tribune* realizes that saying of some of the state's most powerful politicians, "They swim in a 'sewer' that has a 'stink,' a 'smell,' a 'stain,' characteristic of 'political corruption', that their 'political heads will roll into history' like 'lonely bowling balls tossed down a dark alley,'" might not go so well for the *Tribune* or its staff.

In addition, of course, sometimes there just is nothing newsworthy in pointing a finger at some Illinois politicians, our recent Governor being a case in point. That Blagojevich directed the admission of some unqualified applicants is so far down on the list of his alleged derelictions that it is of little interest to anyone to add this one to his list. New villains are needed to keep a story fresh, and where better to find them than in the unfortified halls of academe?

A number of University of Illinois' most senior and most distinguished professors have circulated recently a letter complaining of the "demonizing" of the University's administration, and Chancellor Richard Herman in particular. "Demonizing" is the right word for the *Tribune's* misemphasis here. A more balanced investigation would have agreed with Northwestern University Law Professor Ron Allen's conclusion in a letter he wrote to the *Tribune* on June 26 that did not get published: "It seems to me like Ms. Hurd deserved the praise of the citizens of Illinois rather than their contempt, and that is an important part of this story that, at a minimum, deserves investigation."

Apart from this fundamental misemphasis in its reportage and editorializing, the *Tribune* also has speculated negatively about facts it could have investigated but did not.

Item 1: The *Tribune* editorial of June 28, 2009 states (quoting from its own story of two days earlier) that “several clouted students received full-ride scholarships.” The editorial then repeats this in italics: “One more time: *several clouted students received full ride scholarships.*” Given the astonishment expressed, the implication is that unqualified applicants not only were admitted but also got to go for free! Yet did the *Tribune* check to see whether those receiving such scholarships were less qualified than others receiving scholarships? Did it investigate whether the students they are talking about didn’t fully deserve the scholarships they received, and that their receipt of them was purely based on merit? Rather than seeking the truth, the *Tribune* wanted its readers to infer what it itself had no evidence to support.

Item 2: The *Tribune* twice remarked that it was “unclear” whether jobs were ever received in its jobs-for-admission stories. (June 25, June 26). Once (June 26) the *Tribune* made it sound like what was unclear was only *where* the jobs were, in private practice or in government. Yet again, whether any jobs were received because of the alleged “deal” was a documentable fact. The *Tribune* could have asked and investigated whether any jobs were in fact delivered by the then Chairman of the Board of Trustees, Lawrence Epply to law graduates at the bottom of their class at the University of Illinois Law School. The answer to this question is almost certainly no, as testimony before the Commission will establish; but that answer being unwanted by the *Tribune*, the question was never asked.

Item 3: One would also have the impression from reading the *Tribune* that the paper’s “Clout goes to College” investigation is the precursor to a federal investigation into University of Illinois admission practices. On numerous occasions the *Tribune* has expressed its satisfaction that the federal prosecutors with subpoena powers are coming after these alleged sewer-rats who run the state’s flagship University. Yet the truth of the matter is that the focus of the federal investigation is former Governor Blagojevich, not the University. The subpoenas directed by the feds to the University seek *Blagojevich’s* influence on the University, not the influence generally imposed on the University’s admission process by politicians.

Item 4: As the former Dean of the Law School made plain in her *Tribune* comment of June 28, 2009, no one could read her e-mails the way the *Tribune* stories, columns, and editorials of June 26 and June 28 read them. No one, that is, interested in the truth more than they are interested in telling the story they want to tell. The *Tribune* has been chided by widespread criticism on this point. E.g., Ron Galowich in his letter to the *Tribune* of June 29: “Any

knowledgeable and reasonable person would know Dean Hurd was being sarcastic..." Brian Leiter in his *Law School Reports* for June 28: "odd is that they [the Tribune staff] missed the sarcasm in former Dean Hurd's e-mails to the Chancellor: are journalists really this humorless?" Showing that one doesn't have to be a lawyer or a law professor to understand sarcasm, one law student wrote to the *Tribune* (Chicago Tribune.com topix/Forum, 6/21/09): "I am dumfounded that the Tribune did not pick up that Ms. Hurd's e-mails were sarcastic. When I read them, I understood that they were clearly sarcastic. How could the Tribune have missed the obvious so easily?" Former Dean Hurd in her response on this point (*News-Gazette*, July 1, 2009) attributes this misreading to the "tin ear" of *Tribune* writers. We are not so charitable: the sarcasm is so obvious that the Tribune's misreading of it seems deliberate, what lawyers call wilful blindness. Our colleague, Leon Dash, the Pulitzer Prize-winning journalist who also holds a distinguished chair in Journalism at this University, also makes no charitable reading of the Tribune on this point: "The Tribune's deliberate misreading of former Dean Hurd's sarcasm, to cite just one example, is an egregious abuse of journalistic ethics."

Item 5: In its stories on the supposed jobs-for-admissions deal, the *Tribune* (June 26, June 27) states that "*at least 24 students*" were admitted from the special admit list. Why not, "*at most 24 students*" were admitted? Or better: why not say precisely what the document (an e-mail from Assistant Dean for Admissions Paul Pless dated March 8, 2007) actually said: there were 24 such students, neither more nor less, over this period? Only those who want the story to be as bad as it can be slant the facts in this way.

Item 6: Again in the context of its jobs-for-admissions columns and editorials, the *Tribune* describes the jobs allegedly promised as "patronage style jobs" (June 26), as part of "Illinois' entrenched system of patronage" (June 26), and as "corruption and patronage" (June 26). In ordinary understanding – and certainly in the understanding of those familiar with recent political scandals in Illinois – the term "patronage" connotes personal benefits to the recipient. Even on the *Tribune's* version of the facts, there is no allegation that any University administrator could benefit from the jobs allegedly promised. Use of the word "patronage" is just more incendiary rhetoric, used to enhance the supposed "corruption" (another much-used *Tribune* word here) at the University of Illinois.

(3) *The Tribune's motivations.* So why does a nationally respected newspaper like the *Chicago Tribune* exaggerate and slant in order to elevate a minor story into front page "news"

and editorial crusading? A slow summer and a paper whose declining revenues place its survival in question? That's too easy – and too shallow, as well as too cynical, for us. Our reading of the *Tribune's* motives for instigating this month-long witch-hunt is (hopefully) both subtler and closer to the truth. It is twofold.

First, some *Tribune* staffers seem to have deluded themselves into thinking that they are the next Woodward and Bernstein. More than one generation of politicians were clearly captivated by the glamour of John F. Kennedy and his “Camelot.” The same is true for many young journalists and their image of the Pulitzer-Prize winning investigative journalism that uncovered the Watergate scandal. Some of those starry-eyes journalists appear to work at the *Tribune*. One sees such a self-image in the repeated patting on the back and self-congratulation appearing in many of the *Tribune's* stories about the UI scandal (e.g., June 25, June 26, June 28). The pride the *Tribune* obviously takes in having started this witch-hunt can only exist because the *Tribune* sees itself as leading a crusade worthy of a Pulitzer Prize.

Second, there is a punitive/deterrence motive that seems to explain the *Tribune's* excesses here. When the University of Illinois President Joseph White refused to release to the *Tribune* individual data from student records, when Chancellor Herman failed to produce all of the documents arguably covered by the *Tribune's* FOIA request to the University, when former Law School Dean Heidi Hurd failed to return the *Tribune's* “repeated” calls to her, the anger of the *Tribune* is palpable. To punish such “insolence” to the *Tribune*, and to deter its recurrence, the *Tribune* has published the least favorable speculations possible about the motives of each of these three University administrators. One ignores the *Tribune* at one's peril!

Speculations about other people's motivations are always just that, speculations. However, since the *Tribune* has given itself free rein to indulge its own speculations about the motives of various University personnel, it seems fitting that one speculate as to the *Tribune's* motives for stepping out of line.

* * * * *

The *Tribune's* “clout goes to college” stories have all been about the abuse of power of University administrators and politicians. Newspapers also wield a great deal of power, and like all power, theirs too can be abused. Such is the case here. The *Tribune* should publicly apologize to those whom it has unjustifiably demonized. We are not so naïve as to expect this. Criticism such as this more often evokes anger than it does guilt. Indeed, we were advised

against publishing this letter – “the *Tribune* has more ink than you do,” we were told. Yet “ink” is only as good as its content. What say you, *Tribune*? Can you own up to your mistakes and at least express remorse for unjustifiably damaging the distinguished careers that took lifetimes to build?

Steven Beckett
Director, Trial Advocacy Program

Leon Dash
Swanlund/Center for Advanced Study Professor of Journalism and Law

Matthew Finkin
Albert J. Harno and Edward W. Cleary Chair in Law

Eric Freyfogle
Max L. Rowe Professor

Nuno Garuopa
Professor of Law and H. Ross and Helen Workman Research Scholar

Christine Hurt
Professor of Law and Co-Director, Program in Business Law and Policy

Jay Kesan
Professor of Law and Director, Program in Intellectual Property & Technology Law Mildred Van Voorhis Jones Faculty Scholar

Peter Maggs
Clifford M. and Bette A. Carney Chair in Law

Michael Moore
Charles R. Walgreen, Jr. Chair and Co-Director, Program in Law and Philosophy

Andrew Morriss
H. Ross and Helen Workman Professor of Law and Professor of Business

Peter Nardulli
Professor of Political Science and Law

Larry Ribstein
Mildred Van Voorhis Jones Chair in Law

Jacqueline Ross
Professor of Law

Lawrence Solum
John E. Cribbet Professor of Law

Charles Terry
Professor of Law

Thomas Ulen
Swanlund Chair in Law and Director, Illinois Program in Law and Economics