

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

CHICAGO TRIBUNE COMPANY,

Plaintiff,

-vs-

UNIVERSITY OF ILLINOIS BOARD OF
TRUSTEES,

Defendant.

No. 10 C 568

Chicago, Illinois
April 20, 2011
9:30 a.m.

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOAN B. GOTTSCHALL

APPEARANCES:

For the Plaintiff:

SNR DENTON US LLP
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Chicago, Illinois 60606
BY: MS. NATALIE J. SPEARS

For the Defendant:

GREENBERG TRAURIG, LLP
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Chicago, Illinois 60601
BY: MR. GREGORY EDWARD OSTFELD

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1 (Proceedings heard in open court:)

2 THE CLERK: Case 2010 C 568, Chicago Tribune
3 Company vs. University of Illinois Board of Trustees.

4 MS. SPEARS: Good morning, your Honor. Natalie
5 Spears, SNR Denton, on behalf of Chicago Tribune.

6 MR. OSTFELD: Good morning, your Honor. Greg
7 Ostfeld on behalf of the Board of Trustees of the University
8 of Illinois.

9 THE COURT: I don't know what the Tribune's
10 response is. I certainly don't have any problem with staying
11 this until --

12 MS. SPEARS: We filed an opposition.

13 THE COURT: You did.

14 MS. SPEARS: Yes, we did.

15 THE COURT: Tell me what kind of opposition it is.

16 MS. SPEARS: I have a copy to tender up if you
17 would like. I think it would be important for the Court to
18 read it.

19 I may have underlined, in full disclosure.

20 THE COURT: When did it come?

21 MS. SPEARS: Yesterday. Early, I believe.

22 THE COURT: I've got it here.

23 MS. SPEARS: It's fairly short, your Honor.

24 THE COURT: If you don't want to talk about it,
25 then just hold silent for a minute and let me read it.

1 (Brief pause.)

2 THE COURT: I think this result, I have to tell
3 you, personally is somewhat appalling. That's the way I read
4 the statute. The statute is what the statute is. But the
5 fact that all these private records, when Congress has
6 clearly tried to protect student records, the fact that
7 they're going to be spread on the public record basically
8 makes my stomach turn a little bit.

9 I think the Seventh Circuit ought to opine before
10 all of this is made public. If I'm right, great. If I'm
11 wrong, then we've managed to avoid a whole lot of disaster to
12 people.

13 MS. SPEARS: Let me -- I know you haven't had a
14 chance to read it, so let me -- the University's motion to
15 stay here essentially acts as though the fate of the
16 University is essentially hanging by the thread of your
17 Honor's order, and it's not.

18 THE COURT: I think a lot of these people are
19 hanging by my order.

20 MS. SPEARS: The order, though, is narrow in the
21 sense that what the order does is -- FERPA is not a basis for
22 rejecting a FOIA. But as the Court pointed out, there are
23 state court privacy exemptions that still exist. And so in
24 that respect, the University -- it is not a mandate that the
25 University essentially do anything in that regard.

1 THE COURT: First of all, all of this was hot news,
2 what? Two years ago? So it's not like the public is sitting
3 with baited breath waiting for a result.

4 Secondly, you know, I'm a District Court Judge, and
5 it seems to me the Circuit ought to opine on this. And the
6 Circuit ought to opine on this before lots of people are
7 irreparably injured, which they will be.

8 Did I think there were other remedies? Yes. Does
9 the University think there are other appropriate remedies?
10 Obviously it doesn't. It thinks this is the remedy.

11 I just think that -- I'm sorry that I didn't see
12 your opposition, but I just think that the fact that people,
13 individuals, are going to be so injured by this --

14 MS. SPEARS: But they're not. And that's the
15 point.

16 THE COURT: Why are they not? Because the press
17 doesn't care how much is spread of record publicly? I don't
18 know.

19 MS. SPEARS: No, because the ruling in this case is
20 to the specific Tribune request there are -- with regard to
21 that request, first of all, the ruling that your Honor made
22 was a narrow one as to just the federal FERPA Statute itself
23 not being a basis for the University to wholesale say that
24 these records are private records. And the Court actually
25 specifically made a narrow ruling in that regard. All that

1 does is send the University back to consider whether or not
2 state privacy law exemptions apply.

3 And the FERPA Act, actually what it says is that
4 there is -- to be a violation in any event would have to be a
5 policy or a practice. The specific instance of the Tribune's
6 request which the Court narrowed its ruling to just a week
7 ago at the University's request to have the specific, you may
8 recall, the specific relief narrowed to this request, does
9 not require the University specifically to do anything except
10 go back and consider. So I think a stay right now is
11 inappropriate. It doesn't meet the requirements of a stay.

12 THE COURT: You're saying this order doesn't
13 require the University to do anything?

14 MS. SPEARS: Well, all it does is it removes -- and
15 not that it's not important, obviously the relief is one of
16 the -- as your Honor pointed out, one of four bases on which
17 the Court can rule that FERPA was not a bar to the Tribune's
18 FOIA request, that the University could not assert FERPA as a
19 basis.

20 We also have three other grounds, obviously that
21 they weren't education records, that these were applicants,
22 and not students, and the Court chose not to rule on those
23 matters but said this is not a roadblock here. So that sends
24 the University back to consider under state court and state
25 law.

1 So there is no -- and if your Honor wants to take
2 time to look at what we laid out --

3 THE COURT: To me, the injury to these individuals
4 is so overwhelming from this order if the University complies
5 with it, that without a dispositive ruling by the Court of
6 Appeals -- I just don't want to be the person responsible. I
7 don't know what people are going to do. I don't know if they
8 got in, they didn't get in, I don't know what happened to
9 these people, but the effect of this, it seems to me, is
10 catastrophic.

11 Presumably there are people who are students who
12 are now going to be under, if this is made public, they're
13 going to be under a cloud, that cloud got them in rather than
14 their merits. This is very -- we know enough from other
15 situations to know that this is extremely damaging to
16 individual human beings.

17 And I don't believe I'm the last word on it. I
18 think the last word is someone else.

19 And I also think the Tribune has a remedy if you
20 don't like the stay. I think your remedy is to go and get a
21 mandamus from the Court of Appeals. If the Court of Appeals
22 thinks I was clearly right, they can fix this. But if I were
23 to deny the stay and it was to go up to the Court of Appeals
24 and they were to disagree with me, the cat would be out of
25 the bag. There would be no getting the cat back in the the

1 bag.

2 So I think in this situation the -- I understand
3 the legal arguments. I mean, whatever the legal arguments
4 are, the irreparable injury is such that it seems to me that
5 there ought to be a Court of Appeals ruling before this
6 information is made public.

7 I don't know. I mean, I would think that the
8 Tribune could get the Court of Appeals to expedite this, to
9 deal with this quickly. I mean, obviously it ought to be
10 dealt with reasonably quickly, it shouldn't sit around for
11 two years waiting. But I'm going to grant the motion.

12 MS. SPEARS: Thank you, your Honor.

13 MR. OSTFELD: Thank you, your Honor.

14 (End of proceedings.)

15 C E R T I F I C A T E

16
17 I certify that the foregoing is a correct transcript
18 from the record of proceedings in the above-entitled case on
19 April 20, 2011.

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22
23 /s/Colette M. Kuemmeth
24 Court Reporter
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