

FEATURED ARTICLE

DEFINING CORRUPTION THROUGH COLLEGE ADMISSIONS: ANSWERING THE CALL FOR A REDEFINITION OF CORRUPTION BY TURNING TO THE REAL WORLD

Philip M. Nichols*

ABSTRACT

The United States has two problems with corruption. Most evidently, the United States experiences corruption, and suffers its harms. More problematically, the United States' legal system struggles with the concept of corruption, and how to define it. Over the last fifteen years, the Supreme Court has aggressively narrowed its definition, acutely undercutting the ability of the legal system to control corruption. Legal scholars, and the public, have emphatically responded with calls for reconsideration and redefinition. The furious reactions to the Court's definitional sleight of hand, however, seem to die out after those calls are made, and legal scholarship lies adrift, seeking a useful approach to defining corruption. Intriguingly, an approach lies directly in the vision of the legal system. For the past quarter century, while the Supreme Court has enfeebled the law, activity among anticorruption organizations has surged. Those practitioners have coalesced around a shared understanding of corruption. This Article explores that definition by applying it to the recent scheme involving college admissions. To do so, the Article first must explore the missions of universities and the admissions process that supports those missions, and second must closely examine the scheme itself. When applied to this scheme, the general understanding effectively distinguishes corrupt acts from other acts and provides other insights. Corruption is a real-world phenomenon, and the general understanding shared by real-world practitioners constitutes a valuable tool, which merits consideration and use by the legal system.

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* Joseph Kolodny Professor of Social Responsibility in Business and Professor of Legal Studies and Business Ethics, the Wharton School of the University of Pennsylvania. © 2023, Philip M. Nichols.

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INTRODUCTION

The United States has two problems with corruption. Most evidently, corruption occurs in the United States, which almost certainly inflicts the same harms and degradations as found in other countries.¹

More problematically, the United States' legal system struggles to conceptualize corruption, let alone to control it. Over the last fifteen years, the Supreme Court has weakened or eradicated laws intended to control corruption.² Often, they have done so by narrowing the definition of corruption, or by redefining it in ways that limit the scope of those laws.³

The enfeeblement of anticorruption laws through definitional sleights of hand has generated calls for reconsideration of the definition of corruption.⁴ The

1. See TRANSPARENCY INTERNATIONAL, CORRUPTION PERCEPTIONS INDEX 2022 at 2 (2023) (giving the United States a score of 69 out of 100, which places it in the second tier of integrity). Numerous studies measure the harms inflicted by corruption, which include: shorter lifespan, increased infant mortality, lower levels of education and literacy, environmental degradation, increased bureaucracy, degradation of qualifications of bureaucrats, increased costs to conducting business, and decreased business efficiency. See Philip M. Nichols, *Corporate Accountability for Corruption and the Business Case for Transparency*, in THE CAMBRIDGE COMPANION TO BUSINESS & HUMAN RIGHTS LAW 260, 266–70 (Ilias Bantekas & Michael Ashley Stein eds., 2021) (reviewing studies); Philip M. Nichols, *The Business Case for Complying with Bribery Laws*, 49 AM. BUS. L.J. 325, 335–41 (2012) (reviewing studies).

2. See Ben Covington, *State Official Misconduct Statutes and Anticorruption Federalism after Kelly v. United States*, 121 COLUM. L. REV. F. 273, 278–79 (2021) (stating that over time and “across several different statutes, the Court has narrowed the reach of federal official corruption law (sometimes dramatically so”).

3. See Michael S. Kang, *The End of Campaign Finance Law*, 98 VA. L. REV. 1, 27 (2012) (“The corruption interest had been dramatically shrunk down to what the Court had previously called a ‘crabbed view of corruption[.]’” (quoting *McConnell v. FEC*, 540 U.S. 93, 152 (2003)); Ciara Torres-Spelliscy, *Deregulating Corruption*, 13 HARV. L. & POL’Y REV. 471, 479 (2019) (noting that the Supreme Court “has wreaked havoc on the meaning of the word corruption—nearly defining it away to meaninglessness—while simultaneously gutting nearly every campaign finance law it has touched”).

4. See Scott P. Bloomberg, *Democracy, Deference, and Compromise: Understanding and Reforming Campaign Finance Jurisprudence*, 53 LOY. L.A. L. REV. 895, 898 (2020) (noting that the narrowing of

response from legal scholarship has been largely theoretical.⁵ The voices and experience of those who deal with corruption around the world have played little or no role in those jurisprudential discussions. The disconnect between jurisprudential theory and reality risks the development of legal structures and theories that, while elegant, have little effect in controlling corruption.⁶

Among practitioners who work with corruption, and those who study or work with practitioners, a general understanding of corruption has emerged. This Article articulates that understanding: corruption is an abuse or misuse of authority or trust for personal-regarding reasons rather than the reasons for which authority or trust was bestowed.⁷ This Article argues that corruption is a real-world phenomenon, and therefore legal scholarship would be well-served by using an understanding developed by real-world practitioners. To demonstrate the utility of this understanding, this Article uses and thoroughly explicates a real-world situation widely decried as corrupt—a scheme involving the college admissions system.⁸ The Article first reviews universities' missions and the ways in which admissions systems support those missions.⁹ The piece then thoroughly examines the structure of and actions involved in the scheme to exploit the college admissions system.¹⁰ By applying the general understanding to that scheme,¹¹ the Article demonstrates the utility of that understanding. The general understanding capably distinguishes between corrupt and noncorrupt actions and provides insights into each.¹²

Not all of the structures or actions associated with college admissions that have generated accusations of corruption fall within the general understanding of corruption. Some commentators argue, for example, that the general failure of the

definitions by the Supreme Court has “prompt[ed] calls for reform from the public and from scholars”); Jacob Eisler, *The Unspoken Institutional Battle over Anti-Corruption: Citizens United, Honest Services, and the Legislative-Judicial Divide*, 9 FIRST AMEND. L. REV. 363, 366 (2011) (calling for the development of corruption theory); Deborah Hellman, *Defining Corruption and Constitutionalizing Democracy*, 111 MICH. L. REV. 1385, 1421 (2013) (arguing that Congress must develop a theory and definition of corruption); Anthony Johnstone, *A Madisonian Case for Disclosure*, 19 GEO. MASON L. REV. 413, 449 (2012) (calling for a broader and more informed understanding of corruption); Anna A. Mance & Dinsha Mistree, *The Bribery Double Standard: Leveraging the Foreign-Domestic Divide*, 74 STAN. L. REV. 163, 203 (2022) (arguing that Congress must redefine corruption); Torres-Spelliscy, *supra* note 3, at 476 (observing public demand for definitional reform).

5. See, e.g., Deborah Hellman, *A Theory of Bribery*, 38 CARDOZO L. REV. 1947, 1952 (2017) (stating that she will parse theory, philosophy, and “intuition” to develop a theory).

6. See David Fontana & Aziz Z. Huq, *Institutional Loyalties in Constitutional Law*, 85 U. CHI. L. REV. 1, 83 n.393 (2018) (“There is also some reason to think the [*McDonnell v. United States*] decision rests on an infirm understanding of how quid pro quos distort public action.”); Miriam Galston, *Buckley 2.0: Would the Buckley Court Overtake Citizens United?*, 22 U. PA. J. CONST. L. 687, 689 (2020) (decrying, in the context of campaign finance law, “the disconnect between the lofty rhetoric” and reality, and warning that “the Court has created an alternative universe”).

7. See *infra* notes 58–69 and accompanying text.

8. See John F. Gaski, *The College Admissions Racket*, 56 SOC'Y 357, 357 (2019) (labelling the scheme as corrupt).

9. See *infra* notes 72–125 and accompanying text.

10. See *infra* notes 126–204 and accompanying text.

11. See *infra* notes 205–302 and accompanying text.

12. See *infra* notes 303–12 and accompanying text.

college admissions process to serve the missions of universities constitutes corruption; this Article argues that there are good reasons not to include general system failure within any understanding of corruption.¹³ On the other hand, some observers suggest that influence exerted by or on behalf of well-connected applicants corruptly distorts the admission process; this Article finds the exclusion of undue influence from the general understanding of corruption to be problematic.¹⁴ Practitioners and scholars alike should consider either reconciling undue influence with the general understanding, or developing a separate definition.

I. DEFINING CORRUPTION

A. *The Supreme Court's Shrinking Definition*

For over a decade, the Supreme Court has progressively narrowed the definition of corruption. Many, but not all, of the opinions doing so involve campaign finance. The Court set the stage for these moves in *Davis v. Federal Election Commission*, in which the Court considered the constitutionality of a law intended to reduce the inherent advantage that wealth gives to well-off, self-financed candidates.¹⁵ The Court held that Congress has no legitimate interest in mitigating the “*natural advantage* that wealthy individuals possess” and that “preventing corruption or the appearance of corruption are the only legitimate and compelling government interests” that justify congressional interference in campaign finance.¹⁶ In his dissent, Justice Stevens observed that the majority opinion ignored a long line of cases that upheld “statutes designed to protect against the undue influence of aggregations of wealth on the political process.”¹⁷ *Davis*, therefore, performed the double duty of both focusing attention on corruption and removing undue influence from the Court’s understanding of corruption.

Three years later, in *Skilling v. United States*, the Court considered the appeal of Jeffrey Skilling, the former Chief Executive Officer of Enron.¹⁸ While with Enron, Skilling and other executives initiated a complicated scheme of accounting frauds and corporate transfers that greatly increased the reported revenues and profits of Enron, and thus increased the value of its shares.¹⁹ As a consequence, Skilling and other executives received large bonuses and salary increases.²⁰ When the scheme was discovered, Enron collapsed in the then-largest bankruptcy in history, affecting tens of thousands of people.²¹ The government successfully prosecuted

13. See *infra* notes 313–18 and accompanying text.

14. See *infra* notes 319–22 and accompanying text.

15. 554 U.S. 724, 728, 741 (2007).

16. *Id.* at 741 (emphasis in original) (citations omitted).

17. *Id.* at 754–56 (Stevens, J., dissenting) (citations omitted).

18. 561 U.S. 358, 367 (2010).

19. Mance & Mistree, *supra* note 4, at 184.

20. *Skilling*, 561 U.S. at 369.

21. For an article-length discussion of the scheme and the bankruptcy, see generally Douglas G. Baird & Robert K. Rasmussen, *Four (or Five) Easy Lessons from Enron*, 55 VAND. L. REV. 1787 (2002).

Skilling for denying Enron honest services, the statute usually used to prosecute corruption in both the private and public sectors.²² Skilling appealed, and the Court took advantage of his appeal to limit the definition of corruption pursuant to the honest services statute: the Court held that the statute “covers only bribery and kickback schemes.”²³ Because Skilling’s self-enriching abuses of his powers “entailed no bribe or kickback, it [therefore did] not fall within” the new definitional boundaries of the statute.²⁴

The Court continued to narrow its definition of corruption in a series of cases that examined the validity of laws limiting campaign contributions and independent expenditures related to campaigns. In *Citizens United v. Federal Election Commission*, decided in the same term as *Skilling*, the Court doubled down on quid pro quo bribery being the only recognizable form of corruption.²⁵ The Court further constricted the boundaries of what could be included in an understanding of corruption: “we now conclude that independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption.”²⁶ The Court also made a bold empirical claim: “The appearance of influence or access, furthermore, will not cause the electorate to lose faith in our democracy.”²⁷ Justice Stevens, again dissenting, noted that the Court’s definition of corruption excluded many behaviors that most people consider corrupt.²⁸ The Court reiterated its narrow understanding of corruption in *McCutcheon v. Federal Election Commission*, which found aggregate limitations on campaign donations unconstitutional.²⁹ The Court once again excluded behaviors from the realm of corruption: “Ingratiation and access . . . are not corruption.”³⁰ Justice Breyer, in dissent, called out the tautological nature of the Court’s arguments: “The plurality’s first claim—that large aggregate contributions do not ‘give rise’ to ‘corruption’—is plausible only because the plurality defines ‘corruption’ too narrowly.”³¹

In a case not involving campaign finance, the Court again narrowed its definition of corruption. *McDonnell v. United States* considered former Governor Robert F. McDonnell of Virginia’s appeal of his criminal conviction.³² While serving as Governor, McDonnell accepted about \$175,000 in the form of luxury items, lavish parties, and money from a business executive who wanted to get a product tested

22. 561 U.S. at 375.

23. *Id.* at 368.

24. *Id.*

25. 558 U.S. 310, 359 (2010).

26. *Id.* at 357; see ZEPHYR TEACHOUT, CORRUPTION IN AMERICA 232 (2014) (“The opinion comprehensibly redefined corruption, and in so doing, redefined the rules governing political life in the United States.”).

27. 558 U.S. at 360.

28. *Id.* at 447–48 (Stevens, J., concurring in part and dissenting in part).

29. 572 U.S. 185, 227 (2014).

30. *Id.* at 192 (quoting *Citizens United*, 558 U.S. at 360).

31. *Id.* at 235 (Breyer, J., dissenting).

32. 579 U.S. 550 (2016).

for government approval and then included in the state health plan.³³ McDonnell accepted these benefits in exchange for arranging meetings with government officials and for endorsing the product at an event in the Governor's Mansion.³⁴ A jury found McDonnell guilty of violating federal corruption laws.³⁵ Liability under these laws turned on whether McDonnell had acted "in the performance of any official act."³⁶

In his appeal, McDonnell did not contest that these exchanges happened; instead, the Court focused its attention on the meaning of "official act."³⁷ The court explicitly ruled out the myriad informal or small ways that officials exercise the power and trust bestowed by their constituencies, and instead held:

an "official act" . . . must involve a formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee. It must also be something specific and focused that is "pending" or "may by law be brought" before a public official.³⁸

Arranging meetings, endorsing products, hosting events in official venues, and similar acts do not fall within this understanding of official acts.³⁹

In this series of cases, the Supreme Court has not definitively articulated a unified or overarching understanding of corruption. A few simple principles, however, shine through. The Court considers corruption to consist only of bribery. A quid pro quo exchange must be explicit. The actions by officials for which bribes are paid must fall within a handful of actions that are specifically designated in a formal authorization, rather than the general powers that accompany anyone who has been entrusted with authority.

To be fair, the Supreme Court's understanding of corruption has not evolved in a vacuum. The Court has wrestled with such issues as the tension between campaign donation limits and rights to engage in speech, the possible vagueness of laws criminalizing denial of honest services, the give and take nature of politics, and the relationship between elected officials and their constituencies.⁴⁰ In the eyes

33. See *United States v. McDonnell*, 792 F.3d 478, 487–93 (4th Cir. 2015), *vacated*, 579 U.S. 550 (2016).

34. *Id.* at 486–88; see George D. Brown, *McDonnell and the Criminalization of Politics*, 5 VA. J. CRIM. L. 1, 17–18 (2017) (describing the bargain).

35. 792 F.3d at 493.

36. 18 U.S.C. § 201(b)(2); see 792 F.3d at 504–05 (explaining interaction of laws).

37. 579 U.S. at 556.

38. *Id.* at 574.

39. See *id.* Jeffrey White opines that the decriminalization of paying for an opportunity to meet with government officials "begins to price access to one's representative." Jeffrey A. White, *McDonnell's Misapprehension of the Role of Access in Politics and Public Corruption*, 96 N.C. L. REV. 1175, 1189 (2018).

40. See Usha R. Rodrigues, *The Price of Corruption*, 31 J. L. & POL. 45, 88 (2015) ("The *McCutcheon* plurality, like the majority in *Citizens United*, purports to strike a reasoned balance between the speech interests of political donors and the legitimate government interest in protecting against corruption or its appearance."); Erin Sheley, *Criminalizing Coercive Control within the Limits of Due Process*, 70 DUKE L.J. 1321, 1339 (2021) ("The Court thus cited the need to avoid a potential vagueness problem [in *Skilling*]"); Anita S.

of many, however, the Court has swung too far in the direction of protecting those interests or activities, and has unnecessarily shackled corruption laws.⁴¹ Indeed, given the abrupt changes wrought by the Court's definitions, some have likened these decisions to bombshells thrown upon the states' attempts to reign in corruption.⁴²

It is no surprise, therefore, that numerous commentators have called for reconsideration of the definition of corruption. These calls come from several quarters. To some, the problematic narrowing of definitional reach by the Supreme Court simply requires remedy.⁴³ The general public, whose understanding of corruption generally does not align with that of the Court, asks for definitional reform.⁴⁴ Practitioners, frustrated by the degradation of tools to control corruption, ask for more useful definitions.⁴⁵ These concerns culminate in a popular demand that Congress develop an understanding of corruption and translate that definition into

Krishnakumar, *Reconsidering Substantive Canons*, 84 U. CHI. L. REV. 825, 869 (2017) (“Although the majority opinion in *Skilling* limited the reach of the new honest-services statute, it did so in a manner that very consciously sought to preserve coverage of the primary conduct associated with the doctrine . . .”); Brennan T. Hughes, *The Crucial “Corrupt Intent” Element in Federal Bribery Laws*, 51 CAL. W. L. REV. 25, 53 (2014) (noting the Court’s interest in narrowing corruption laws to avoid infringing on logrolling and other “benign” acts of governance); Khari L. Cyrus, Comment, *Charting Vagueness Shoals through the Narrowing of Corruption Statutes*, 21 U. PA. J. CONST. L. 267, 296–97 (2018) (discussing the Court’s desire to avoid constraining “activities like logrolling and political horse-trading, activities that have long been accepted”); Jonathan S. Gould, *The Law of Legislative Representation*, 107 VA. L. REV. 765, 823 (2021) (stating that the Court’s “idealized vision of constituent representation was at least plausible in *McDonnell*”).

41. See Rodrigues, *supra* note 40, at 50–51 (“[S]ocial science research that reaches back decades shows that . . . [the *McCutcheon* plurality,] by its own logic, has over-privileged money-as-speech.”); William W. Berry, *Criminal Constitutional Avoidance*, 104 J. CRIM. L. & CRIMINOLOGY 105, 121 (2014) (“[B]y confusing the concepts of vagueness and ambiguity, the *Skilling* Court abdicated its role as a court while simultaneously and improperly engaging in the role of a legislature.”); Jacob Eisler, *McDonnell and Anti-Corruption’s Last Stand*, 50 U.C. DAVIS L. REV. 1619, 1622 (2017) (“The Court has thus revealed it expects little in terms of disinterested commitment to the public good from democratic representatives.”); Gould, *supra* note 40, at 823 (noting that *McDonnell*’s rationale regarding relationships with constituents “was quickly applied to cases involving non-constituents”).

42. NORMAN ABRAMS, SARA SUN BEALE & SUSAN RIVA KLEIN, *FEDERAL CRIMINAL LAW AND ITS ENFORCEMENT* 341 (6th ed. 2015) (“*Skilling* was a bombshell.”); Robert Weissman, Commentary, *Let the People Speak: The Case for a Constitutional Amendment to Remove Corporate Speech from the Ambit of the First Amendment*, 83 TEMP. L. REV. 979, 980 (2011) (“*Citizens United* was thus a bombshell.”).

43. See Hellman, *supra* note 4, at 1386 (“The main front in the battle over the constitutionality of campaign finance laws has long focused on defining corruption.”).

44. See Bloomberg, *supra* note 4, at 898 (noting that the narrowing of definitions by the Supreme Court has “prompt[ed] calls for reform from the public and from scholars”); Jessica Medina, *When Rhetoric Obscures Reality: The Definition of Corruption and Its Shortcomings*, 48 LOY. L.A. L. REV. 597, 625–26, 637 (2015) (noting that the Court’s definition is at odds with public perception and arguing that Congress must define corruption).

45. See Hana Ivanhoe & Zulaikha Aziz, *Combating Corruption to Counter Conflict: Proposals for In-Country Reform and International Community Intervention*, 38 BERKELEY J. INT’L L. 355, 358 (2020) (noting that the lack of a definition in the U.S. Code “remains a source of consternation for anti-corruption activists and peace-building practitioners alike”).

legislation.⁴⁶ Deborah Hellman, in particular, argues that the power to develop that understanding lies in Congress rather than with the Court, because corruption affects the operation of politics and governance.⁴⁷

With respect to the source of a new definition, some bemoan the lack of theoretical discourse by the Court and suggest that the roots of definitional reform must lie in the parsing of theory.⁴⁸ The corruption that vexes the United States, however, is not theoretical; the Supreme Court's understanding is problematic because, among other things, it does not align with how real people experience that phenomenon.⁴⁹ A real world understanding of corruption, therefore, would seem to offer Congress much value as it develops its own understanding of corruption.⁵⁰

B. A General Understanding of Corruption

Over the last twenty-five years, practitioners who work in the field of corruption control, followed by scholars of corruption, have coalesced around a common understanding—which, for convenience this Article will call the “general understanding”—of corruption. Before the mid-1990s, global institutions tended to avoid discussions of corruption. Even though corruption significantly impeded their work, international and transnational organizations considered the subject too political for safe discussion.⁵¹ In 1993, however, several people involved in

46. See Hellman, *supra* note 4, at 1421 (arguing that congress must develop a theory and definition of corruption); Mance & Mistree, *supra* note 4, at 203 (proposing congressional action); Medina, *supra* note 44, at 637 (arguing that to reach destructive behaviors, Congress must define corruption).

47. See Hellman, *supra* note 4, at 1421 (arguing that courts should safeguard rights, but must defer to legislative bodies in defining corruption). Hellman acknowledges but disposes of the argument that courts should define corruption as safeguards of the process of democracy. *Id.* at 1414; see Bloomberg, *supra* note 4, at 899 (agreeing emphatically with Hellman).

48. See Eisler, *supra* note 4, at 366 (decrying the lack of “direct inquiry into the nature of corruption” and the haphazard development of theory); Hellman, *supra* note 4, at 1421 (arguing that Congress must develop a theory and definition of corruption).

49. See Pedro Gerson, *Return of the King: Corruption Backsliding in America*, 3 INT'L COMPAR., POL'Y & ETHICS L. REV. 985, 997–98 (2020) (arguing that the Supreme Court's definition of corruption is so narrow that it excludes many behaviors considered by most people to be corrupt); Stuart P. Green & Matthew B. Kugler, *Public Perceptions of White Collar Crime Culpability: Bribery, Perjury, and Fraud*, 75 LAW & CONTEMP. PROBS. 33, 34 (2012) (finding that respondents to a survey “sought to criminalize both commercial bribery and payments accepted by an office-holder in return for performing a non-official act, despite the fact that neither form of conduct is a crime under current American federal law”); Medina, *supra* note 44, at 625–26 (observing the difficulties created when the Court's definition is at odds with the public perceptions of corruption); Torres-Spelliscy, *supra* note 3, at 476 (noting that the vast majority of people in the United States disagree with the Supreme Court's narrow definitions and want reform).

50. See Mance & Mistree, *supra* note 4, at 202 (“In the past, courts relied on common usage and public conceptions of bribery in their decisionmaking. They looked to everyday usage of the words ‘bribe’ or ‘bribery’ to determine their meaning and seemed to emphasize that the terms were familiar to the public.”).

51. Angus Scrimgeour, then Vice President of the Multilateral Investment Guarantee Agency, recalls that “the ‘c’ word was taboo in diplomatic circles.” Kofi A. Annan, Jagdish Bhagwati, Shengman Zhang, Peter D. Bell, Peter Richardson, H. Paul Crevier, Angus Scrimgeour, Robert Picciotto, J. Michael Finger & Stephen Fidler, *Howling over Wolfensohn*, 127 FOREIGN POL'Y 6, 12 (2001). The Australian Development Policy Centre more tartly observes that “Corruption was a word not muttered in polite company, not in front of one's friends (strategic allies) anyway.” Grant Walton & Stephen Howes, *Using the C-Word: Australian Anti-Corruption*

international issues formed a nongovernmental organization to directly confront corruption, and in 1995 this organization, Transparency International, published the first of its very influential Corruption Perception Indexes.⁵² In March of 1996, the members of the Organization of American States signed the Inter-American Convention Against Corruption, the first international instrument intended to foster cooperation in the control of corruption.⁵³ Very soon thereafter, James Wolfensohn, President of the World Bank Group, admonished the Bank's Board of Governors: "let's not mince words: we need to deal with the cancer of corruption."⁵⁴ These events unleashed a torrent of efforts to control, as well as research on the nature of, corruption.⁵⁵

When attempting to understand corruption as a social phenomenon, a crisp, bright-line definition may be neither possible nor desirable. As Geoffrey Hodgson points out,

[D]efinitions in the social sciences are likely to have fuzzy boundaries. . . . Absolute precision, like absolute cleanliness, is impossible . . . [In social sciences] definition[s] are more concerned with the demarcation of one real-world species of entity from another, among an empirical ensemble of varied entities. This basic problem of empirical demarcation is found in both social sciences and biology, where there is typically substantial variation and a lack of pure types. In these disciplines, the role of a definition is to demarcate and assign a term to a type of entity – to distinguish one species from another, with possible fuzziness and awkward boundary cases. The role of such a definition is to identify the essential distinguishing characteristics, or to "carve" reality "where the joint is," as Plato reported of Socrates in *Phaedrus*.⁵⁶

Policy in Papua New Guinea, DEVPOLICY BLOG (Aug. 22, 2014), <http://devpolicy.org/wp-content/uploads/wp-post-to-pdf-enhanced-cache/1/using-the-c-word-australian-anti-corruption-policy-in-papua-new-guinea-20140822.pdf>.

52. See Peter Larmour, *Civilizing Techniques: Transparency International and the Spread of Anti-Corruption* 1–3 (The Australian National University Asia Pac. Sch. of Econ. and Gov't Policy and Governance Discussion Paper 05-11, 2005) (providing history of Transparency International).

53. Inter-American Convention Against Corruption, Mar. 29, 1996, 35 I.L.M. 724.

54. James Wolfensohn, *Address to the Board of Governors at the Annual Meetings of the World Bank and the International Monetary Fund*, in VOICE FOR THE WORLD'S POOR 45, 50 (Andrew Kircher et al. eds., 2005). When Wolfensohn joined the Bank, General Counsel advised "for God's sakes don't talk about the 'c' word because you will get fired[,]" advice that Wolfensohn heeded for a few years. HEATHER MARQUETTE, CORRUPTION, POLITICS AND DEVELOPMENT: THE ROLE OF THE WORLD BANK 11 (2003). Wolfensohn's use of the word "corruption" initiated a profound change in how international institutions approached corruption. Paul Collier, *The C-Word*, TLS (July 14, 2017), www.the-tls.co.uk/articles/corruption-paul-collier/.

55. See Régis Bismuth, Jan Dunin-Wasowicz & Philip M. Nichols, *The Transnationalization of Anti-Corruption Law: An Introduction and Overview*, in THE TRANSNATIONALIZATION OF ANTI-CORRUPTION LAW 1, 1 (Régis Bismuth, Jan Dunin-Wasowicz & Philip M. Nichols eds., 2021) (discussing the explosion in activity and research).

56. Geoffrey M. Hodgson, *On Defining Institutions: Rules Versus Equilibria*, 11 J. INST. ECON. 497, 497–98 (2015).

Although he points out the dangers of relying on crisply bounded definitions, Hodgson also notes that practitioners and scholars discussing a social phenomenon “should be able to point with adequate lucidity to the class of phenomena to which the term is attached.”⁵⁷

Among practitioners, a dominant conception of corruption has emerged that attempts to do just that. I would articulate this conception as:

The abuse or misuse of authority or trust for personal reasons instead of the reasons for which authority or trust was conferred.⁵⁸

Articulations of this understanding permeate anticorruption practice. The World Bank, after years of activity and substantial discourse, “settled on a straightforward definition—the *abuse of public office for private gain*.”⁵⁹ The International Monetary Fund’s definition mirrors that public-focused understanding,⁶⁰ while the definition used by the International Chamber of Commerce, more lengthily, focuses on the private sector:

[T]he intentional offering, promising or giving, [or solicitation or acceptance] . . . of any undue pecuniary or other advantage, to any person, who directs or works for, in any capacity, another private sector entity, for this or another person, in order that this person act or refrain from acting in breach of this person’s duties[.]⁶¹

Transparency International offers an understanding that encompasses both the public and private sector, “the abuse of entrusted power for private gain.”⁶² Myriad other

57. *Id.* at 497.

58. See Bernadette Atuahene & Timothy R. Hodge, *Stategraft*, 91 S. CAL. L. REV. 263, 295 (2018) (“A widely agreed-upon definition of corruption is ‘[t]he abuse of an entrusted power for private gain[.]’”) (first alteration in original) (citation omitted); Matthew S. Erie, *Anticorruption as Transnational Law: The Foreign Corrupt Practices Act, PRC Law, and Party Rules in China*, 67 AM. J. COMP. L. 233, 239 (2019) (“Classical definitions hold corruption to be the abuse of public office for private gain.”); Sung Hui Kim, *The Last Temptation of Congress: Legislator Insider Trading and the Fiduciary Norm Against Corruption*, 98 CORNELL L. REV. 845, 897 (2013) (“Under most modern definitions, corruption involves an abuse of trust”); Dongmin Kong & Ni Qin, *China’s Anticorruption Campaign and Entrepreneurship*, 64 J. L. & ECON. 153, 153 (2021) (noting that corruption is “typically defined as the abuse of public power or authority for private benefit”).

59. WORLD BANK, *HELPING COUNTRIES COMBAT CORRUPTION: THE ROLE OF THE WORLD BANK* 8 (1997). “In considering its [anti-corruption] strategy the Bank sought a usable definition of corruption and then developed a taxonomy of the different forms corruption could take consistent with that definition.” *Id.* Susan Rose-Ackerman, who consulted with the World Bank for many years while serving on the faculty at Yale Law School, defines corruption as the “misuse of public power for private gain.” SUSAN ROSE-ACKERMAN, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM* 91 (1st ed. 1999).

60. See IMF, *The Role of the Fund in Governance Issues – Review of the Guidance Note – Preliminary Considerations*, IMF Policy Paper, at 1 (Aug. 2017) (describing corruption as “the abuse of ‘public office for private gain’”).

61. Memorandum from the Int’l Chamber of Com. to the OECD Working Grp. (Sept. 13, 2006) (discussing further provisions to be adopted to prevent and prohibit private-to-private corruption), <https://icwbo.org/content/uploads/sites/3/2006/06/Memorandum-to-the-OECD-Working-Group-on.pdf>.

62. *What is Corruption?*, TRANSPARENCY INT’L, <https://www.transparency.org/en/what-is-corruption> (last visited Nov. 20, 2022).

practitioners describe corruption in similar ways.⁶³ This general understanding has, in turn, ineluctably seeped into the scholarship of those who study, often in international contexts, efforts to control corruption.⁶⁴

Corruption, thus defined, can take several forms.⁶⁵ Embezzlement, for example, involves the conversion of property entrusted by one to another.⁶⁶ Nepotism involves the appointment, by someone who has been given the authority to make appointments, of a family member or other affined person because they are affined rather than because they merit appointment.⁶⁷ Of the many iterations of corruption that fall within this understanding, however, bribery is the most scrutinized and studied—so much so that the word corruption is often used to mean only bribery.⁶⁸ Bribery involves the quid pro quo exchange of the misuse of authority or trust in exchange for a personal benefit.⁶⁹

I belabor this section, with extensive and perhaps excessive citations, to underscore one point. This understanding of corruption is *the* standard understanding among those who seriously study or spend time working on issues of corruption. The fact that such an understanding exists, however, cannot end the inquiry. This Article proposes the utility of turning to the real world for an understanding of corruption. To test that proposal, I apply the general understanding to a real-world incident, to which we have access to a sufficient body of facts, in order to determine whether the general understanding does draw lines and differentiate, whether it does “carve reality.”⁷⁰ That incident involves college admissions.

63. See Ivanhoe & Aziz, *supra* note 45, at 359 (“A common definition of corruption invoked among international institutions and the international civil society community is some iteration of *the misuse abuse of public office or entrusted power for private gain*.”).

64. See, e.g., Madhav S. Aney, Shubhankar Dam & Giovanni Ko, *Jobs for Justice(s): Corruption in the Supreme Court of India*, 64 J. L. & ECON. 479, 483 n.6 (2021) (defining corruption as “the use of public office for private gain”); Jeffrey R. Boles, Leora Eisenstadt & Jennifer M. Pacella, *Whistleblowing in the Compliance Era*, 55 GA. L. REV. 147, 186 n.180 (2020) (using practitioner definition of corruption); Monaliza O. da Silva, *Ethical Standards, Transparency, and Corruption in Brazilian Courts*, 52 N.Y.U. J. INT’L L. & POL. 777, 821 (2020) (defining court corruption as exchange of authority for personal benefit); Stephen R. Munzer, *Dam(n) Displacement: Compensation, Resettlement, and Indigeneity*, 51 CORNELL INT’L L.J. 823, 861 (2019) (defining corruption as “an abuse of trust for personal, familial, or political gain”); Philip M. Nichols, George J. Siedel & Matthew Kasdin, *Corruption as a Pan-Cultural Phenomenon: An Empirical Study in Countries at Opposite Ends of the Former Soviet Empire*, 39 TEX. INT’L L.J. 215, 244 & n.188 (2004) (finding use of this understanding in Bulgaria and Mongolia).

65. See WORLD BANK, *supra* note 59, at 8–9 (noting behaviors encompassed by this understanding).

66. See Cecily Rose, *The Limitations of a Human Rights Approach to Corruption*, 65 INT’L & COMP. L.Q. 405, 415 (2016) (defining embezzlement and distinguishing it from bribery).

67. See George D. Brown, *Carte Blanche: Federal Prosecution of State and Local Officials After Sabri*, 54 CATH. U. L. REV. 403, 408 (2005) (defining nepotism).

68. See MICHAEL JOHNSTON, SYNDROMES OF CORRUPTION: WEALTH, POWER, AND DEMOCRACY 20–21 (2005) (lamenting the confusion of the two words).

69. See Bruce E. Cain, *Moralism and Realism in Campaign Finance Reform*, 1995 U. CHI. LEGAL F. 111, 113 (1995) (describing the traditional definition of bribery).

70. See *supra* note 56 and accompanying text.

II. THE SCHEME TO EXPLOIT COLLEGE ADMISSIONS

According to the general understanding, corruption occurs when an actor abuses or misuses authority or trust for personal reasons rather than the purpose for which authority or trust was conferred. In order to apply the general understanding to college admissions, then, we must first understand the purposes and powers involved in the admissions process. Those purposes and powers are surprisingly complex. This Article uses Yale College as an example, given that the bribery of a Yale soccer coach triggered the investigation that led to the wider sets of revelations.⁷¹

A. *The College Admissions Process*

The college admissions process is the means by which a university assembles its undergraduate constituency. Importantly, this process serves as a tool to support the overarching mission of a university.⁷² The role and purposes of universities are the subject of much debate, but as a community, Yale University very clearly describes its mission:

Yale is committed to improving the world today and for future generations through outstanding research and scholarship, education, preservation, and practice. Yale educates aspiring leaders worldwide who serve all sectors of society. We carry out this mission through the free exchange of ideas in an ethical, interdependent, and diverse community of faculty, staff, students, and alumni.⁷³

Yale does not make the genesis of its mission clear, but one can guess it. Yale University is a nonprofit organization overseen by a board of trustees, formally called the Yale Corporation.⁷⁴ This board consults with a wide variety of stakeholders in Yale, including faculty, administrators, staff, current students, and alumni.⁷⁵ One could conclude, therefore, that its mission is the result of collaboration among various stakeholders in the University.

71. See *infra* notes 128–29 and accompanying text.

72. See Stanley E. Henderson, *SEM and the Student Journey: The Role of Strategic Enrollment Management in Student Engagement*, 4 STRATEGIC ENROLLMENT MGMT. Q. 144, 144 (2017) (enrollment “touches ‘every aspect of institutional function and culture’” (quoting MICHAEL G. DOLENCE, STRATEGIC ENROLLMENT MANAGEMENT: A PRIMER FOR CAMPUS ADMINISTRATORS 8 (1993))); see also *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265, 311–12 (1978) (plurality opinion) (linking admissions to the mission of a university).

73. *Mission Statement*, YALE UNIV., <https://www.yale.edu/about-yale/mission-statement> (last visited Nov. 27, 2022). The myriad purposes and roles of universities are discussed in GEOFFREY BOULTON & COLIN LUCAS, *WHAT ARE UNIVERSITIES FOR?* (2008).

74. *Board of Trustees*, YALE UNIV., <https://www.yale.edu/board-trustees> (last visited Nov. 27, 2022); see Richard H. Hiers, *Institutional Academic Freedom or Autonomy Grounded Upon the First Amendment: A Jurisprudential Mirage*, 30 *HAMLIN L. REV.* 1, 52 n.338 (2007) (noting the distinction and that “Yale Corporation is not Yale University”).

75. *Board of Trustees*, *supra* note 74.

Yale College, the program at Yale University which admits and teaches undergraduate students, provides its own mission statement within the broader umbrella of that of the university:

The mission of Yale College is to seek exceptionally promising students of all backgrounds from across the nation and around the world and to educate them, through mental discipline and social experience, to develop their intellectual, moral, civic, and creative capacities to the fullest. The aim of this education is the cultivation of citizens with a rich awareness of our heritage to lead and serve in every sphere of human activity.⁷⁶

In short, Yale commits itself to high-quality scholarship and teaching that can positively affect the world. In support of that goal Yale seeks to create a student body that (a) consists of sufficiently diverse backgrounds and capabilities—in a broad experiential and intellectual sense, as well as in a cultural and ethnic sense⁷⁷—to create a learning experience within itself,⁷⁸ and that (b) is comprised of students with backgrounds and personal attributes and skills that can contribute to Yale’s mission and who seem likely to thrive intellectually at Yale.⁷⁹

To create this student body, Yale undertakes a painstaking review of every applicant to the University.⁸⁰ Yale describes this review as holistic: “The admissions committee does not make its decisions based on a piecemeal review of an applicant’s recommendations, test scores, activities, or individual elements of a high school transcript. It considers each application as a comprehensive picture of that student.”⁸¹ Broadly, however, the process, similar to other holistic admission

76. *Mission Statement of Yale College*, YALE UNIV., <http://catalog.yale.edu/ycps/mission-statement/> (last visited Nov. 27, 2022).

77. An undergraduate class made up only of people interested in poetry, or only of people from one city, or only people who participated in varsity sports would probably not comprise a sufficiently diverse student body to satisfy Yale’s mission regarding leadership. See *Keyishian v. Board of Regents*, 385 U.S. 589, 603 (1967) (“The Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues, [rather] than through any kind of authoritative selection.’” (quoting *United States v. Associated Press*, 52 F. Supp. 362, 372 (S.D.N.Y. 1943))).

78. See *Identity, Culture, Faith*, YALE UNIV., <https://admissions.yale.edu/identity-culture-faith> (last visited Nov 27, 2022).

79. See *What Yale Looks For*, YALE UNIV., <https://admissions.yale.edu/what-yale-looks-for> (last visited Nov. 27, 2022) (“[T]wo questions guide our admissions team: ‘Who is likely to make the most of Yale’s resources?’ and ‘Who will contribute most significantly to the Yale community?’”). The connection between a university’s mission and the admission process was explicitly recognized in *Students for Fair Admissions v. President and Fellows of Harvard College*, 397 F. Supp. 3d 126, 133 (D. Mass. 2019) (“In aid of realizing its mission, Harvard values and pursues many kinds of diversity within its classes, including different academic interests, belief systems, political views, geographic origins, family circumstances, and racial identities.”), *aff’d*, 980 F.3d 157, 163 (1st Cir. 2020), *argued*, 142 S. Ct. 895 (2022).

80. See *What Yale Looks For*, *supra* note 79 (noting that Yale “carefully and respectfully review[s] every application”).

81. *Advice on Selecting High School Courses*, YALE UNIV., <https://admissions.yale.edu/advice-selecting-high-school-courses> (last visited Nov. 27, 2022).

processes, examines three sets of criteria: academic indicators, background, and personal qualities and attributes.⁸²

Like most schools, Yale evaluates indicators of the ability to thrive academically at Yale.⁸³ These indicators consist largely of transcripts from secondary school and scores on standardized tests—the SAT⁸⁴ and the ACT.⁸⁵ With respect to course transcripts, Yale does not impose a list of required courses or a minimum grade average, instead only noting that it seeks “students who have consistently taken a broad range of challenging courses in high school and have done well.”⁸⁶ Similarly, Yale does not *require* any particular score on standardized tests and claims that “successful candidates present a wide range of test results.”⁸⁷ Yale does, however, provide the median test scores of recently admitted applicants, which suggest that successful applicants actually tend to have earned high scores on these tests.⁸⁸

Background diversity constitutes a critical aspect of creating an enriching student body.⁸⁹ The Board of Directors of the American Council on Education observes that

Diversity enriches the educational experience. We learn from those whose experiences, beliefs, and perspectives are different from our own, and these lessons can be taught best in a richly diverse intellectual and social environment. It promotes personal growth-and a healthy society. Diversity challenges stereotyped preconceptions; it encourages critical thinking; and it helps students learn to communicate effectively with people of varied backgrounds.⁹⁰

Yale would not be Yale if all its students grew up in near-identical suburban communities in one region of the country, had all faced similar challenges, or had all

82. See Michael N. Bastedo, Nicholas A. Bowman, Kristen M. Glasener & Jandi L. Kelly, *What are We Talking About When We Talk About Holistic Review? Selective College Admissions and Its Effects on Low-SES Students*, 89 J. HIGHER EDUC. 782, 783 (2018) (discussing factors considered in holistic admissions).

83. *What Yale Looks For*, *supra* note 79.

84. “SAT” no longer stands as an acronym for anything. In 1926, S.A.T. stood for Scholastic Aptitude Test, and in 1993 it stood for Scholastic Assessment Test; since 1997, however, SAT has served merely as a trademark and not as an abbreviation. See Allen Cheng, *The Complete Story: What Does SAT Stand For?*, PREPSCHOLAR (July 15, 2021), <https://blog.prepscholar.com/what-does-sat-stand-for>.

85. Similarly, A.C.T. once stood as an acronym for American College Testing, but ACT is now just a trademark. See Allen Cheng, *What Does ACT Stand For? The Complete Story*, PREPSCHOLAR (July 15, 2021), <https://blog.prepscholar.com/what-does-act-stand-for>.

86. *What Yale Looks For*, *supra* note 79.

87. *Id.*

88. *See id.*

89. The Supreme Court recognized the value of diversity in *Fisher v. University of Texas at Austin*. See 570 U.S. 297, 308–09 (2013) (“The attainment of a diverse student body . . . serves values . . . including enhanced classroom dialogue . . . [O]btaining the educational benefits of ‘student body diversity is a compelling state interest[.]’” (quoting *Grutter v. Bollinger*, 539 U.S. 306, 325 (2003))).

90. AMERICAN COUNCIL ON EDUCATION BOARD OF DIRECTORS, ON THE IMPORTANCE OF DIVERSITY IN HIGHER EDUCATION 1 (2012), <https://www.acenet.edu/Documents/BoardDiversityStatement-June2012.pdf>.

learned in the same way.⁹¹ Yale could not claim to be an international community if all its students hailed from one country.⁹² Admissions officers at most universities, including Yale, consider background in assembling a class that is diverse enough to constitute a learning experience in and of itself.⁹³

The third broad set of inputs considered by Yale and other elite universities—the individual qualities of applicants—may have become the most controversial of the criteria used by admissions officers in assembling a student body.⁹⁴ Plaintiffs in an ongoing lawsuit allege that any consideration of ethnicity or race, in particular Harvard University’s use of “personal ratings,” constitutes impermissible racial discrimination.⁹⁵ The lawsuit’s allegation of stereotyping and bias have focused attention on the necessary subjectivity of evaluating personal character.⁹⁶

The personal ratings system used by Harvard considers characteristics such as sense of humor, energy, self-confidence, concern for others, grace under pressure, and other similarly important but necessarily nebulous qualities.⁹⁷ Other schools articulate different qualities. Duke University, for example, “look[s] for students ready to respond to those opportunities intelligently, creatively, and enthusiastically.” Duke “like[s] ambition and curiosity, talent and persistence, energy and humanity.”⁹⁸ The University of Michigan seeks students who not only have strong academic records but “who also have the drive and motivation to challenge

91. See generally *Yale College Class of 2025 First-Year Class Profile*, YALE UNIV. (2021), https://admissions.yale.edu/sites/default/files/yale_classprofile2025web.pdf (describing the very diverse backgrounds of members of class).

92. As Yale puts it, “The world comes to Yale.” *The world comes to Yale*, YALENEWS, <https://news.yale.edu/photos/world-comes-yale>.

93. See Geoffrey Maruyama & José Moreno, *University Faculty Views About the Value of Diversity on Campus and in the Classroom*, in DOES DIVERSITY MAKE A DIFFERENCE? 9 (2000) (“Most American colleges and universities have held that all students benefit when campuses reflect a broad range of intellectual and social perspectives, and that attracting a diverse student population is an important part of establishing an environment that broadens students’ perspectives.”); Ashley A. Smith, *Focus on Diversity at Community Colleges*, INSIDE HIGHER EDUC. (Apr. 13, 2018), <https://www.insidehighered.com/news/2018/04/13/growing-number-community-colleges-focus-diversity-and-inclusion> (noting the trend toward active diversification in two-year colleges).

94. See Nick Anderson, *Federal Judge Rules Harvard Does Not Discriminate Against Asian Americans in Admissions*, WASH. POST (Oct. 1, 2019), https://www.washingtonpost.com/local/education/federal-judge-rules-harvard-does-not-discriminate-against-asian-americans-in-admissions/2019/10/01/dc106b54-a8a1-11e9-a3a6-ab670962db05_story.html (describing controversy and “passion”).

95. *Students for Fair Admissions v. President and Fellows of Harvard Coll.*, 397 F. Supp. 3d 126 (D. Mass. 2019), *aff’d*, 980 F.3d 157 (1st Cir. 2020), *argued*, 142 S. Ct. 895 (2022). For a discussion of this case, see *Equal Protection — Affirmative Action — First Circuit Holds That Harvard’s Admissions Program Does Not Violate the Civil Rights Act*, 134 HARV. L. REV. 2630 (2021).

96. See OiYan A. Poon, Liliiana M. Garces, Janelle Wong, Megan Segoshi, David Silver & Sarah Harrington, *Confronting Misinformation through Social Science Research*, 26 ASIAN AM. L.J. 4, 8–9 (2019) (criticizing the distortion of social science research by those alleging discrimination but noting that the issue is now in the public eye).

97. *What We Look For*, HARV. COLL., <https://college.harvard.edu/admissions/application-process/what-we-look> (last visited Nov. 27, 2022).

98. *What We Look For*, DUKE UNIV., <https://admissions.duke.edu/what-we-look-for/> (last visited Nov. 27, 2022).

themselves and take advantage of the many opportunities we have to offer.”⁹⁹ The Massachusetts Institute of Technology agrees: “while grades and scores are important, it’s really the match between applicant and the Institute that drives our selection process.”¹⁰⁰ William & Mary College notes that “you’re in the right place” if you’re “smart, genuine, curious, and bold.”¹⁰¹ The United States Military Academy at West Point evaluates, understandably, “leadership.”¹⁰² Yale evaluates the quality of applicants in a less explicit, but similarly holistic, manner: “The great majority of students who are admitted stand out from the rest because a lot of little things, when added up, tip the scale in their favor. So what matters most in your application? Ultimately, everything matters.”¹⁰³

Examination of personal characteristics also draws attention in another way. In the language of college admissions, offers to attend a college are called “slots.” The number of slots is finite and relatively fixed.¹⁰⁴ All slots are used to support the mission of the university; many are used to build a rounded and diverse student body.¹⁰⁵ Some slots, however, are allocated to bring into the student body applicants with particular characteristics and skills that satisfy specific needs of the university.¹⁰⁶ Yale’s culture, like that of other academically selective colleges, encompasses rich traditions in the performing arts, student engagement in political life and scientific research, and athletics, and slots are allocated to specific needs throughout these activities.¹⁰⁷ Of those, the slots allocated to athletics are often most predictable.¹⁰⁸ “A slot for a premier bassoonist may open only once every

99. Melissa Purdy, *What We’re Really Looking For in Your Application*, U. OF MICH. UNDERGRADUATE ADMISSIONS (Nov. 16, 2014), <https://admissions.umich.edu/explore-visit/blog/what-were-really-looking-your-application>.

100. *What we Look For*, MASS. INST. TECH., <https://mitadmissions.org/apply/process/what-we-look-for/> (last visited Nov. 27, 2022).

101. *Undergraduate Admission*, WILLIAM & MARY, <https://www.wm.edu/admission/undergraduateadmission/index.php> (last visited Nov. 27, 2022).

102. *A Message from the Director of Admissions*, WESTPOINT, <https://www.westpoint.edu/admissions/message-from-the-director> (last visited Nov. 27, 2022).

103. *What Yale Looks For*, *supra* note 79.

104. See Peter Q. Blair & Kent Smetters, *Why Don’t Elite Colleges Expand Supply?* 3–4 (Nat’l Bureau of Econ. Rsch., Working Paper No. 29309, 2021) (explaining the trends in selective universities’ number of offers).

105. See Steven E. Stemler, *College Admissions, the MIA Model, and MOOCs: Commentary on Niessen and Meijer (2017)*, 12 PERSPECTIVES PSYCH. SCI. 449, 449–50 (2017) (discussing connection between admissions and university mission, and noting that the connection goes beyond classroom performance).

106. See John R. Thelin, Opinion, *Admissions, Athletics and the Academic Index*, INSIDE HIGHER EDUC. (Apr. 3, 2019), <https://www.insidehighered.com/views/2019/04/03/how-admissions-and-athletics-intertwine-ivy-league-colleges-opinion> (discussing the use of admissions slots to support specific activities).

107. See *id.* (discussing deliberations and negotiations about the allocation of slots among athletics and other activities).

108. See Andy Thomason, *In Bribery Scheme, Coaches Sold Their ‘Admissions Slots’ to Nonathletes. Wait, Coaches Influence Admissions?*, CHRON. HIGHER EDUC., Mar. 13, 2019, <https://www.chronicle.com/article/In-Bribery-Scheme-Coaches/245891> (“[I]t’s ‘fairly common’ for selective institutions to grant a specific number of slots to the athletics department each year[.]” (quoting Karen Peters, athletics administrator at the University of Portland, formerly at Stanford)). Not all selective universities allocate slots to athletics. Even though, for example, twenty percent of MIT’s undergraduate students participate in intercollegiate athletics, MIT’s “coaches [do not] have discretionary ‘slots’ which they may fill. Prospective athletes to MIT are subject to the same

four years at Colgate, and the able student with her heart set on both Colgate and the bassoon may be flat out of luck.”¹⁰⁹ The baseball team, on the other hand, will need a pitcher every year.

Athletics inarguably plays a significant role in Yale’s history and culture. Yale participated, for example, in the very first intercollegiate athletic competition in the United States: a rowing competition between Yale and Harvard held in 1852.¹¹⁰ Yale continues to field elite crews, and the Harvard-Yale Regatta continues to be an important part of Yale’s culture.¹¹¹ Similarly, “The Game” between Harvard and Yale no longer determines national champions, but, as the second-oldest football rivalry in the United States, is still “just as important to the players, the students, the alumni, as football is to the kids at Alabama and those large schools. It’s still as big a rivalry as any.”¹¹² It would be difficult for Yale to compete at an elite (or any) level in rowing without a competent oarsperson to serve as the stroke of the boat or to field a football team without a quarterback. The admissions process takes these institutional needs into account when selecting students that will comprise each class.¹¹³

Colleges use these slots for two types of athletic applicants. Highly skilled applicants receive full scholarships (Yale, it should be noted, does not award athletic scholarships).¹¹⁴ Governing bodies of collegiate sports impose limits on the

rigorous, academically-focused admissions process as all other applicants.” *Does MIT Recruit Athletes?*, MASS. INST. TECH., <https://mitadmissions.org/help/faq/does-mit-recruit-athletes/> (last visited Nov. 28, 2022).

109. MALCOLM GETZ, *INVESTING IN COLLEGE: A GUIDE FOR THE PERPLEXED* 243 (2007).

110. Scott R. Rosner, *The Growth of NCAA Women’s Rowing: A Financial, Ethical and Legal Analysis*, 11 SETON HALL J. SPORTS L. 297, 299 (2001).

111. See *Collegiate Rowing Polls*, ROW2K, <https://www.row2k.com/polls/index.cfm?cat=college&type=IRA/USRowing%20Varsity%20Eight%20Coaches%20Polls> (displaying various polls showing that Yale is one of the top-ranked rowing programs); *Rowing*, NCAA, <https://www.ncaa.com/rankings/rowing/d1/regional-rankings> (NCAA poll showing Yale in top ten women’s rowing programs). Daniella K. Garran, a historian of rowing, observes that “the Harvard-Yale Regatta – to rowing enthusiasts – is as anticipated as the Super Bowl is to football fans.” Blair Shiff, *The History Behind America’s Oldest Active Collegiate Sporting Event*, ABC NEWS (June 9, 2017), <https://abcnews.go.com/Sports/history-americas-oldest-active-collegiate-sporting-event/story?id=47852376>. Crew at Yale has also contributed to the national culture. For example, the “crew cut” hairstyle originated with John Hay Whitney, an oarsman at Yale, who found short hair more convenient when rowing. Judith Ann Schiff, *John Hay Whitney: Philanthropist, Film Producer, and Father of the Crew Cut*, YALE ALUMNI MAG. (Apr. 2002), http://archives.yalealumnimagazine.com/issues/02_04/old_yale.html.

112. Jack Williams, *Harvard Triumph over Yale to Show Heart of the Game Is Still Beating Strong*, GUARDIAN (Nov. 22, 2014), <https://www.theguardian.com/sport/2014/nov/22/harvard-yale-the-game-college-football> (quoting Tim Murphy, then head football coach at Harvard); see Chris Bracken, *A Game Unlike any Other*, YALE NEWS (Nov. 17, 2017), <https://yaledailynews.com/blog/2017/11/17/a-game-unlike-any-other/> (“[T]he annual football game has attained a special place in arbitrating the fierce rivalry between the schools. . . . Despite the sea of changes that have engulfed it over the past century-plus, that tradition means that Harvard-Yale will always stand as the dictionary definition of rivalry.”).

113. Following the admissions scandal, Yale continues to recruit athletes but has imposed more accountability on coaches and recruits. See Scott Jaschik, *Yale Acts on Admissions and Athletics*, INSIDE HIGHER EDUC. (Sept. 3, 2019), <https://www.insidehighered.com/admissions/article/2019/09/03/yale-adopts-new-procedures-athletics-and-admissions> (describing changes).

114. See Jackson Toby, *How Scholarships Morphed into Financial Aid*, 23 ACAD. QUESTIONS 298, 298–99 (2010) (distinguishing athletic scholarships from academic scholarships). Members of the Ivy League athletic

number of athletic scholarships a college may provide to students in each sport.¹¹⁵ The governing body of Division I football, for example, the National Collegiate Athletics Association, only allows colleges to give eighty-five scholarships to football players each year.¹¹⁶ Colleges may only offer the equivalent of twenty scholarships for women's rowing.¹¹⁷

These limits, however, apply only to the number of athletic scholarships a school may offer, not to the size of the team.¹¹⁸ Coaches need far more than just scholarship athletes.¹¹⁹ Admissions committees, therefore, use slots to bring in another group of applicants, often called "preferred walk-ons."¹²⁰ "No figures are publicly available on how many slots college admissions offices reserve for athletic recruits each year," and "[m]ost schools are usually closely guarded on" the process through which recruited athletes are admitted.¹²¹ The dean of a prominent university described the process in general:

Each year, the dean said, his institution sets aside a specific number of slots for all athletes. The athletics department regularly turns over a list of prospective students that coaches are recruiting, and the admissions office conducts an initial review of their files. As long as an applicant is qualified and nothing

conference, to which Yale belongs, do not offer athletic scholarships. Jayma Meyer & Andrew Zimbalist, *A Win Win: College Athletes Get Paid for Their Names, Images, and Likenesses and Colleges Maintain the Primacy of Academics*, 11 HARV. J. SPORTS & ENT. L. 247, 252 n.25 (2020).

115. See Barbara Osborne, *Failing to Fund Fairly: Title IX Athletics Scholarships Compliance*, 6 TENN. J. RACE, GENDER & SOC. JUST. 83, 98–100 (2017) (listing limits on scholarships for different sports mandated by NCAA).

116. *Id.* at 98; NCAA, 2022–23 NCAA DIVISION I MANUAL § 15.5.6.1 (2019), <https://web3.ncaa.org/lstdbi/reports/getReport/90008> [hereinafter NCAA MANUAL]; see also Kerensa E. Barr, Comment, *How the "Boys of Fall" are Failing Title IX*, 82 UMKC L. REV. 181, 200 (2013) (discussing the evolution of the limit on the number of football scholarships).

117. Osborne, *supra* note 115, at 99–100; NCAA MANUAL, *supra* note 116, § 15.5.3.1.2; see Rosner, *supra* note 110, at 316–17 (arguing that the large number of scholarships allowed for women's rowing helps schools comply with rules requiring gender parity in the number of scholarships offered). Equivalency means that the value of a full scholarship may be divided and given in smaller portions to more than one athlete. See Osborne, *supra* note 115, at 99; NCAA MANUAL, *supra* note 116, § 15.5.3.2 (explaining equivalency).

118. See B. Glenn George, *Forfeit: Opportunity, Choice, and Discrimination Theory Under Title IX*, 22 YALE J.L. & FEMINISM 1, 12 n.41 (2010) ("Participant numbers should not be confused with scholarship numbers. The NCAA limits scholarships by sport but does not limit participant numbers.").

119. See, e.g., Erin E. Buzuvis, *The Feminist Case for the NCAA's Recognition of Competitive Cheer as an Emerging Sport for Women*, 52 B.C. L. REV. 439, 458 n.118 (2011) (noting that while allowed twenty scholarships, the average collegiate women's rowing team has a roster of around sixty athletes).

120. The NCAA Division I Manual does not contain a definition of "preferred walk-on." Joseph W. Schafer, Comment, *NCAA Division I Transfers "Are Now Basically Screwed,"* 66 BUFF. L. REV. 481, 528 n.212 (2018). The term generally denotes students who are not actively recruited by an athletic team, and are not offered a scholarship nor counted against the limits on the number of scholarships that may be offered by a program. Cadie Carroll, *Compliance Departments Weigh in on the Preferred Walk-On*, J. NCAA COMPLIANCE 3, 3–4 (2014).

121. Gabriella Borter, *U.S. College Admissions Scam Shows Coaches in Smaller Sports Can Be Big Players*, REUTERS (Mar. 15, 2019), <https://www.reuters.com/article/us-usa-education-cheating-coaches/u-s-college-admissions-scam-shows-coaches-in-smaller-sports-can-be-big-players-idUSKCN1QW2JS> (quoting Mike Newcomer, founder of an admissions consulting company).

goes amiss later, the dean said, his office commits to enrolling each athlete coaches want. In the end, it's up to them.¹²²

The dean emphasized the trust placed in coaches. "To a large degree, we are just trusting our athletics department We're not telling them who to recruit. We have no way of knowing who's a good athlete, or whether a walk-on's going to walk off the team."¹²³

Regardless of whether offered a slot as a scholarship athlete or a preferred walk-on, an applicant must still satisfy the first of the factors considered by admissions committees—academic indicators. Indeed, admission of an athlete to Yale relies more heavily on academic indicators than does general admission. The Ivy League, the athletic conference to which Yale belongs, limits recruitment of athletes to those applicants whose grades and test scores are "within the bands of proximity to" the admitted class as a whole.¹²⁴ The policy, known as the Academic Index, was adopted by the Ivy League "as a way to ensure that the academic capabilities of athletes are generally representative of each school's student body as a whole."¹²⁵ An athletic applicant must, therefore, present Yale with excellent grades and test scores.

The purpose of this explication is not to defend Yale's mission nor its admission process. People can argue that universities such as Yale should have a different mission, should play a different role in society, should constitute their student bodies differently, should no longer field athletic teams or host performing arts, or should admit applicants through different processes or using different criteria. People, in other words, can demand that Yale not be Yale. Those arguments, however, have little to do with the purpose of this explication: to provide a real-world context in which to apply the general understanding of corruption.

The complicated admissions process at Yale embodies the conferral of trust and authority for a particular reason. That reason is to support the university's multifaceted mission. Applicants to Yale College are evaluated in terms of academic indicators, background, and individual characteristics and skills. Some admission slots are reserved for applicants whose particular characteristics and skills support particular aspects of the university's mission and culture. Among those are athletic applicants whose skill level does not quite merit elite status, but who still can satisfy needs of athletic teams. The university bestows broad discretionary authority

122. Eric Hoover, *Bribery Scandal Reveals 'Weak Spots' in the Admissions System. Don't Look So Shocked.*, CHRON. HIGHER EDUC. (Mar. 13, 2019), <https://www.chronicle.com/article/bribery-scandal-reveals-weak-spots-in-the-admissions-system-dont-look-so-shocked/>; see Glenn M. Wong & Joseph R. Pace, *NCAA Division III Athletic Directors: An Analysis of the Responsibilities, Qualifications, and Characteristics*, 4 ARIZ. ST. SPORTS & ENT. L.J. 356, 390–91 (2014) (describing admissions meetings).

123. Hoover, *supra* note 122 (quoting an unnamed dean).

124. See Thelin, *supra* note 106.

125. CHRIS LINCOLN, *PLAYING THE GAME: INSIDE ATHLETIC RECRUITING IN THE IVY LEAGUE* 6 (2004). David Espin opines that the Ivy League "should be put on a pedestal and emulated by other conferences throughout the NCAA." David J. Espin, Book Review, 18 MARQ. SPORTS L. REV. 445, 447 (2008).

to admission officers and athletic coaches and trusts that they will use their authority to best support the university's mission. The college admissions scandal must be understood in the context of the entire college admissions process, even though the scheme at the heart of the scandal targeted only this small category of athletic walk-on slots.

B. Rick Singer's Scheme

In April 2018, Federal Bureau of Investigation agents met with Morrie Tobin; the government was investigating financial crimes committed by Tobin, and Tobin hoped to exchange information for leniency.¹²⁶ During these interviews, Tobin provided a great deal of information about the “pump-and-dump” scheme through which he and his co-criminals had defrauded investors of millions of dollars.¹²⁷ Tobin also provided the agents with information about a completely different, and unsuspected, crime. Tobin revealed that he was negotiating with Rudolph Meredith, the head coach of a Yale soccer team, to make private payments to Meredith in exchange for ensuring Tobin's daughter's admission to Yale as a recruited athlete.¹²⁸

Tobin agreed to wear a listening device at his meeting with Meredith. At that meeting, Meredith stated that he would designate Tobin's daughter as an athletic recruit, thus almost assuring her admission to Yale, in exchange for \$450,000; he also took \$2,000 in cash as an initial payment.¹²⁹ Further surveillance of Meredith revealed several conversations with William “Rick” Singer, an admissions consultant.¹³⁰

As an admissions consultant based in Southern California, Rick Singer operated both a for-profit corporation, The Edge College & Career Network, and a nonprofit organization, The Key Worldwide Foundation, each of which assisted high school students in the college application process.¹³¹ In telephone conversations, Singer described a wide-ranging scheme to circumvent the normal admission processes to several highly-regarded universities, and asked Meredith to recruit other coaches

126. Joel Rubin, Matthew Ormseth, Suhauna Hussain & Richard Winton, *The Bizarre Story of the L.A. Dad Who Exposed the College Admissions Scandal*, L.A. TIMES (Mar. 31, 2019), <https://www.latimes.com/local/lanow/la-me-morrie-tobin-college-admissions-scandal-20190331-story.html>.

127. *Id.* In an agreement with the prosecution, Tobin pleaded guilty to one count of securities fraud and one count of conspiracy to commit securities fraud. Plea Agreement at 1, *United States v. Tobin*, No. 18-cr-10444 (D. Mass. Dec. 3, 2018).

128. Jennifer Levitz & Melissa Korn, *The Yale Dad Who Set Off the College-Admissions Scandal*, WALL ST. J. (Mar. 14, 2019), <https://www.wsj.com/articles/the-yale-dad-who-set-off-the-college-admissions-scandal-11552588402>.

129. *Id.*; Press Release, U.S. Dep't of Just., Former Yale University Coach Pleads Guilty to Accepting Bribes to Facilitate Admissions to Yale (Mar. 28, 2019), <https://www.justice.gov/usao-ma/pr/former-yale-university-coach-pleads-guilty-accepting-bribes-facilitate-admissions-yale>.

130. Rubin et al., *supra* note 126.

131. See Information at 1–2, *United States v. William Rick Singer*, No. 19-cr-10078 (D. Mass. Mar. 5, 2019), <https://www.justice.gov/file/1142901/download> [hereinafter Information].

into the scheme.¹³² In a later telephone call with a parent of a prospective applicant, Singer described the scheme as the creation of a “side door” that guaranteed admission:

[W]hat we do is we help the wealthiest families in the U.S. get their kids into school . . . they want guarantees, they want this thing done. . . . There is a front door which means you get in on your own. The back door is through institutional advancement, which is ten times as much money. And I’ve created this side door in. Because the back door, when you go through institutional advancement, as you know, everybody’s got a friend of a friend, who knows somebody who knows somebody but there’s no guarantee, they’re just gonna give you a second look. My families want a guarantee. So, if you said to me ‘here’s our grades, here’s our scores, here’s our ability, and we want to go to X school’ and you give me one or two schools, and then I’ll go after those schools and try to get a guarantee done. So that, by the time, the summer of her senior year, before her senior year, hopefully we can have this thing done, so that in the fall, before December 15th, you already knows she’s in. Done. And you make a financial commitment. It depends on what school you want, may determine how much that actually is. But that’s kind of how the [sic] side and back door work.¹³³

Upon learning of the nature and extent of the scheme, agents opened a focused investigation, dubbed “Operation Varsity Blues.”¹³⁴ Singer and one of his associates, Mark Riddell, eventually agreed to cooperate in the investigation in exchange for leniency, and other charged parties agreed to provide information upon pleading guilty.¹³⁵

The investigation found a two-pronged scheme. One prong involved manipulating indicators of the likelihood of academic success, and the other involved deceitfully presenting the applicant as one whose personal attributes met a particular need of the school, almost always in regards to athletics.¹³⁶

132. See Rubin et al., *supra* note 126 (describing interactions between Singer and Meredith).

133. Affidavit in Support of Criminal Complaint at 13, United States v. Abbott, et al., No. 1:19-cr-10117 (D. Mass. Mar. 11, 2019), <https://www.justice.gov/file/1142876/download> [hereinafter Affidavit].

134. Melissa Korn, Zusha Elinson, Sadie Gurman & Jennifer Levitz, *The Tip, the Yale Coach and the Wire: How the College Admissions Scam Unraveled*, WALL ST. J. (Mar. 13, 2019), <https://www.wsj.com/articles/the-tip-the-yale-coach-and-the-wire-how-the-college-admissions-scam-unraveled-11552524237>.

135. See Affidavit, *supra* note 133, at 6–7 (referring to Singer as Cooperating Witness 1, Riddell as Cooperating Witness 2, and Meredith as Cooperating Witness 3, and noting that each cooperated with the investigation “in hopes of obtaining leniency”); see also, e.g., Cooperation Agreement at 1–2, 5, United States v. Isackson et al., No. 19-cr-10115 (D. Mass. Apr. 8, 2019), ECF No. 314-1 (setting out terms of cooperation and noting that cooperation accompanies guilty plea).

136. Although universities reserve slots for many different student activities, those reserved for athletic teams are the most predictable and are usually allocated every year. See Thelin, *supra* note 106 (discussing the allocation of slots among student activities, and the predictability of athletic slots). In describing Singer’s choice to exploit athletic slots, Tim Rohan summarizes: “It seemed like the perfect crime.” Tim Rohan, *How a USC Water Polo Dynasty Doubled as a Perfect Entryway for the Admissions Bribery Scandal*, SPORTS ILLUSTRATED (Mar. 20, 2019), <https://www.si.com/more-sports/2019/03/20/usc-admissions-scandal-bribery-water-polo-jovan-vavic>.

1. Indicators of the Likelihood of Academic Success

As discussed, colleges evaluate the likelihood that an applicant will thrive academically at that particular school.¹³⁷ Even applicants whose personal attributes fulfill particular needs of a school must satisfy academic indicator requirements.¹³⁸ The admissions process most typically uses the grade transcript of the applicant and scores on standardized tests as indicators of academic success.¹³⁹

Singer and some parents did tamper with applicants' transcripts.¹⁴⁰ They did so by having someone other than the applicant take online courses in the applicant's name, thus populating the transcript with courses beyond the applicant's actual abilities and earning grades higher than those the applicant would have earned.¹⁴¹ When asked by Gordon Caplan, a parent of an applicant, if this was "kosher," Singer replied:

Absolutely, I do it all the time man. I do it all the time for families and then we take college classes for kids, you know, online to raise their GPA. Because again, it's not, nobody knows who you are 'cause you're, you don't take a, there is nothing that, you know, is filmed when you take your test and everything, that's what's so great about it.¹⁴²

When Singer commented that the only way that this form of cheating would be detected was "if you guys tell somebody," Caplan responded, "I am not going to tell anybody."¹⁴³

137. See *supra* notes 83–88 and accompanying text.

138. The imposition of academic standards on athletic recruits has generated controversy; some people argue that these requirements impose a disproportionate burden on applicants of color. See Lacey Reynolds, Dwalah Fisher & J. Kenyatta Cavil, *Impact of Demographic Variables on African-American Student Athletes' Academic Performance*, 26 EDUC. FOUNDS. 93, 93–94 (2012) (discussing admission criteria and controversy).

139. Graham Beattie, Jean-William Laliberté, and Philip Oreopoulos acknowledge that "research shows that past performance strongly predicts college achievement, which explains why institutions rely on past grades or standardized tests for admission." Graham Beattie, Jean-William P. Laliberté & Philip Oreopoulos, *Thrivers and Divers: Using Non-Academic Measures to Predict College Success and Failure*, 62 ECON. EDUC. REV. 170, 170 (2018). They note, however, the wide variance in performance among matriculating applicants with similar scores, and suggest several non-academic indicators to supplement grades and test scores. *Id.* at 181.

140. Singer also fraudulently obtained course credit for at least one student already enrolled in a university. Karen Littlefair arranged with Singer to have an employee of The Edge College & Career Network take three online courses at Georgetown University for credit in her son's name, and also arranged to have an employee take an online course at Arizona State University in her son's name, after which the credit was transferred to Georgetown. Information at 3–5, *United States v. Littlefair*, No. 19-cr-10463 (D. Mass. Nov. 22, 2019), <https://web.archive.org/web/20200221123739/https://www.justice.gov/usao-ma/page/file/1224566/download>. Littlefair pleaded guilty and does not dispute the accuracy of the information. Plea Agreement at 1, *United States v. Littlefair*, No. 19-cr-10463 (D. Mass. Nov. 22, 2019).

141. Information at 7, *United States v. Abbott et al.*, No. 19-cr-10117 (D. Mass. Apr. 8, 2019) [hereinafter *Parent Information*].

142. Affidavit, *supra* note 133, at 27. Gordon Caplan pleaded guilty and does not dispute these facts. Plea Agreement at 1, *United States v. Caplan*, No. 19-cr-10117 (D. Mass. May 21, 2019).

143. Affidavit, *supra* note 133, at 27.

Singer and the parents used far more elaborate measures to tamper with standardized test scores. The ACT and the SAT, the two standardized tests most widely used in the admissions process, are general subject tests; some colleges allow or require the submission of scores on specific subject matter tests, called the SAT IIs.¹⁴⁴ Local education professionals administer the tests to students taking the test as a group at a fixed time and day in centers located in or near their secondary schools.¹⁴⁵ The College Board, which oversees the SAT, notes that “Uniform procedures are essential to a standardized testing program. To ensure comparable scores, testing staff must follow the same testing procedures[.]”¹⁴⁶ Under special circumstances, however, such as certain psychological diagnoses or travel, students may take the tests separately or at different testing facilities for longer amounts of time.¹⁴⁷

The first step in Singer’s scheme was to procure a diagnosis that the applicant’s thought processes necessitated taking either the SAT or ACT over multiple days.¹⁴⁸ In a conversation with William McGlashan, Singer explained the importance of such a certification: “if [the applicant] gets multiple days, then I can control the center.”¹⁴⁹ Though it is not clear whether Singer worked in concert with any of the psychologists who diagnosed the applicants, he did refer to one individual as “our psychologist.”¹⁵⁰ Diagnosis of learning and test-taking disabilities is difficult, and observers have criticized the ease with which students may deceive psychologists.¹⁵¹ Singer did guide parents in coaching applicants on how to present what he calls “discrepancies” to psychologists: “I also need to tell [your daughter] when she gets tested, to be as, to be stupid, not to be as smart as she is. The goal is to be slow, to be not as bright, all that, so we show discrepancies.”¹⁵² Singer sweetened the deal by noting that a diagnosis of “discrepancies” would entitle students to extra time when taking examinations while in college: “Here’s the great thing.

144. See *supra* note 87 and accompanying text (describing use of the SAT and ACT).

145. See generally THE ACT TEST, ADMINISTRATION MANUAL (2014) (describing required process and staffing); COLLEGE BOARD, STANDARD TESTING MANUAL (2019) (describing required process and staffing).

146. COLLEGE BOARD, *supra* note 145, at 6.

147. See Craig S. Lerner, “Accommodations” for the Learning Disabled: A Level Playing Field or Affirmative Action for Elites?, 57 VAND. L. REV. 1043, 1044 (2004) (describing accommodations).

148. See Affidavit, *supra* note 133, at 22–23 (“You get extended time, you gotta get the extended time first.”).

149. *Id.* at 61.

150. *Id.* at 25. Singer seemed confident that psychologists would produce whatever diagnosis he requested. In an email sent to both a psychologist and to a parent, Augustin Huneus, Singer stated that Huneus’s child “needs testing for 100 percent time with multiple days” and then told Huneus and the psychologist, “Please connect.” *Id.* at 96. Augustin Huneus pleaded guilty and does not dispute the information. Plea Agreement at 1, United States v. Huneus, No. 19-cr-10117 (D. Mass. May 21, 2019).

151. See Benjamin J. Lovett, *Disability Identification and Educational Accommodations: Lessons from the 2019 Admissions Scandal*, 49 EDUC. RESEARCHER 125, 126–27 (2020) (describing lack of guidelines for diagnoses, noting the criticisms of ease of obtaining a misdiagnosis, and noting lack of consistency in extending time); Benjamin J. Lovett & Anne L. Bizub, *Pinpointing Disability Accommodation Needs: What Evidence Is Most Relevant?*, 12 PSYCH. INJ. & L. 42, 43 (2019) (noting lack of legal standards and difficulties with diagnoses).

152. Affidavit, *supra* note 133, at 25.

When she goes to college, she gets to bring this report with her and she'll get extended time in all those things in whatever school she goes to, which is huge again. She'll get all the accommodations when she gets to college as well."¹⁵³ Unfortunately, these cynical observations play into national stereotypes that negatively affect students who actually do learn in diverse ways.¹⁵⁴

Having secured a diagnosis that required the applicant to be tested separately from other students (because those other students took the examination in the standard one-day format), the next step was to move the location of the test to one of the testing sites that Singer "controlled." Singer explained how this was easily accomplished:

So normally— so anybody— you know, for— all of the kids that have taken the [test] some live somewhere else. They always— and essentially if anybody were to— to ask, essentially, "We're going to a— a bat mitzvah," or, "We're going to a wedding. We're going to be gone that weekend. That's the weekend we're going to take the test."¹⁵⁵

Both the SAT and ACT allow for changes of test location, because even in the non-fraudulent world, "[m]istakes happen and schedules change."¹⁵⁶

Singer did not actually control the test sites; instead, he paid test administrators to violate their responsibilities to the College Board or ACT. At the West Hollywood test center, Singer worked with Igor Dvorskiy, the director of a private school who also served as a test administrator for the College Board and for ACT.¹⁵⁷ In exchange for payments from Singer, Dvorskiy would allow another of Singer's accomplices, usually Mark Riddell, to answer questions from the applicant, sit in the place of the applicant, or correct the examination after the applicant had completed it.¹⁵⁸ Dvorskiy would then certify that the examination had been taken in accordance with the rules and would return the examination to either the College Board or the ACT for grading.¹⁵⁹ As Singer explained to Caplan:

153. *Id.* at 25–26.

154. See Doron Dorfman, *Fear of the Disability Con: Perceptions of Fraud and Special Rights Discourse*, 53 L. & SOC'Y. REV. 1051, 1083 (2019) (noting concerns over fear of backlash against abuses revealed in the college admissions scandal); Lerner, *supra* note 147, at 1045–46 (describing extremely cynical attitudes towards accommodations in general).

155. Affidavit, *supra* note 133, at 32.

156. *Changing Your Registration Info*, COLLEGE BOARD, <https://collegereadiness.collegeboard.org/sat/register/policies-requirements/changes> (last visited Jan. 31, 2022); see also *Register for the ACT Test!*, ACT, <https://www.act.org/content/act/en/products-and-services/the-act/registration.html> (last visited Jan. 31, 2022) (allowing test takers to change the location of their examination).

157. Indictment at 2–3, *United States v. Ernst*, No. 19-cr-10081 (D. Mass. Mar. 5, 2019) [hereinafter Indictment]. Igor Dvorskiy pleaded guilty and does not dispute the accuracy of the Indictment. Amended Procedural Order at 1, *United States v. Dvorskiy*, No. 19-cr-10081 (D. Mass. Nov. 13, 2019).

158. Indictment, *supra* note 157, at 8; Information at 4–7, *United States v. Riddell*, No. 19-cr-10074 (D. Mass. Mar. 5, 2019). Mark Riddell "expressly and unequivocally" pleaded guilty to the Information. Plea Agreement at 1, *United States v. Riddell*, No. 19-cr-10074 (D. Mass. Mar. 23, 2019).

159. Indictment, *supra* note 157, at 9; see Affidavit, *supra* note 133, at 36 (quoting Singer as saying, "Igor does his part. He signs off. He's the site coordinator.").

When [your daughter] takes the test, . . . she's going to take the test like she's regularly taking the test, but she will take it, [Riddell] will be there. [Riddell] can answer any questions that she has. But [Riddell] will proctor the test. She will have all the time, she'll use her computer. She will think when she's done with the test she has taken the test. No doubt about it. . . . And then she'll—she'll leave at the end of the test time. . . . And you'll— you'll meet [Riddell] and Igor, and you'll— you'll go your own way. [Your daughter] will go in and take the test. She'll be the only one, taking it in the room with— with [Riddell]. She will take the test. She will walk out the door. At the end of it she'll say to you, “Dad, it was so hard,” or “I'm so tired,” or whatever the typical reaction out of the kid. Then [Riddell] will finish the exam. He will then take the exam and look at her— what she's done, and then ensure that whatever score we decide that we want to get— he has it down to a— unbelievable that he can do it. Get that number based on the four sections. She'll do the computer writing of the essay herself. That'll be all her. He can help her if she wants some guidance [inaudible] approach. But other than that, that will be all her writing. And she will sign it and she'll walk out of there and she will never know that this actually occurred. You will get your results back in, you know, anywhere from, 11— depends on what day it goes back in. But anywhere from 11 to 20 days. And she'll get her results and she'll say, “Oh, my God, Dad, I got a 33!”¹⁶⁰

2. Recruiting for Particular Characteristics

The other prong of Singer's scheme falsely presented applicants as students possessing characteristics that satisfied particular needs of the college.¹⁶¹ In particular, Singer and the parents sought to exploit the needs of colleges to admit students with specific athletic skills.

As a first step, Singer sought coaches who would exercise their admissions authority in exchange for payments. Indeed, Singer's queries of Rudolph Meredith, asking about other coaches who would exchange admissions for payment, were among the overheard conversations that moved the focus of the initial investigation from Meredith to Singer.¹⁶² On at least one occasion, Singer steered a client away from the schools that the applicant wanted to attend and toward a

160. Affidavit, *supra* note 133, at 33–34. Singer had a similar arrangement with a test center in Houston. Niki Williams, the test administrator in Houston, pleaded guilty to a charge arising from allowing Riddell to take examinations in the place of applicants in exchange for payments from Singer. Press Release, Dep't of Just., Former Houston Independent School District Employee Sentenced in College Admissions Case (Dec. 21, 2020), <https://www.justice.gov/usao-ma/pr/former-houston-independent-school-district-employee-sentenced-college-admissions-case>.

161. See *supra* notes 104–07 and accompanying text (discussing the use of the admissions process to satisfy specific needs).

162. See Rubin et al., *supra* note 126 (describing conversations and investigation).

school at which he had an arrangement with a coach.¹⁶³ The particular sport mattered far less than the relationship between Singer and the coach.¹⁶⁴

As a second step, Singer and his associates produced an athletic “profile.” The profile served as an explanation of the ways in which the applicant satisfied a particular need of the college, thus justifying admission on that basis, rather than through the general admission process.¹⁶⁵ As Singer put it, “Admissions just needs something to work with to show [the applicant] is an athlete.”¹⁶⁶

Singer also noted, “Obviously we have stretched the truth but this is what is done for all kids.”¹⁶⁷ Truth had almost nothing to do with the profiles created by Singer and his associates (including applicants’ parents).¹⁶⁸ For example, Singer and his associates created a basketball profile that described an applicant as six feet, one inch in height, when in reality the applicant stood five feet, five inches tall.¹⁶⁹ Another applicant, who did play basketball, but whose parent acknowledged “was not sufficiently competitive to be recruited,” was falsely described as having played for the “Beijing Junior National Team.”¹⁷⁰ An applicant who did not play competitive water polo was described as a member of the “Italian Junior National Team,” while another applicant was falsely described as an “All Ex Patriot Japan National Select Team Player,” and a member of the “All National Championship Tournament Team.”¹⁷¹ Some applicants were falsely described as ranked tennis players who had won multiple championships.¹⁷² An applicant who was not on a track and field team was described as a three-year varsity pole vaulter who ranked among the best pole vaulters in the state of California.¹⁷³ A parent worried that one applicant’s “skill level may be . . . so weak as to be a clear misfit at practice,” but the applicant was described by the coach as potentially “the fastest player on our

163. See Melissa Korn & Jennifer Levitz, *In College Admissions Scandal, Families from China Paid the Most*, WALL ST. J. (Apr. 26, 2019), <https://www.wsj.com/articles/the-biggest-clients-in-the-college-admissions-scandal-were-from-china-11556301872> (relating story of student who wanted to attend Columbia University or Oxford University but was told by Singer that she would attend Yale University).

164. In a conversation with John Wilson, Singer told Wilson—at the direction of investigating agents—that he had secured a relationship with a fictitious athletic administrator at Harvard. “[I]t doesn’t matter the sport at this point. [The fictitious administrator] will figure it out and get it done . . . [S]he will just get [the applicant] in through athletics in one of the sports but it won’t matter. It won’t matter at all.” Affidavit, *supra* note 133, at 128–29.

165. See *supra* notes 111–21 and accompanying text (explaining that while most students are admitted on the basis of personal qualities, background, and indicators of academic success, colleges also admit students to satisfy particular needs, often athletic).

166. Affidavit, *supra* note 133, at 166.

167. *Id.* at 165–66.

168. Laura Janke had been an assistant soccer coach at the University of Southern California and then worked as the assistant director of a summer soccer camp. Janke pleaded guilty and does not dispute the indictment. Plea Agreement at 1, *United States v. Janke*, No. 19-cr-10081 (D. Mass. May 17, 2019).

169. Affidavit, *supra* note 133, at 183.

170. *Id.* at 83–84.

171. *Id.* at 131, 163.

172. *Id.* at 143, 162.

173. *Id.* at 146–47.

team . . . this kid can fly.”¹⁷⁴ For one applicant, Singer’s associate Laura Janke created completely fabricated profiles in two different sports; Singer advised the applicant’s parents to send both profiles to the athletic administrator with whom he worked and to “ask her to use whichever one she likes.”¹⁷⁵

In the third step of the scheme, parents of applicants paid. The flow of money is described in greater detail in the following subsection.¹⁷⁶

The fourth step involved submission of the false profile. The coaches who collaborated with Singer submitted applicants to fill slots allocated for preferred walk-ons.¹⁷⁷ Singer, for example, reported that a water polo coach “is giving me [one] boys slot.”¹⁷⁸ Singer also spoke of a sailing coach who refused to give Singer more than one slot because the coach needed his other slots “to recruit some real sailors.”¹⁷⁹

Singer provided the most detailed explanation of the submission process when describing the role of Donna Heinel, then the Senior Associate Athletic Director at the University of Southern California.

I take [the applicant’s] transcript, test scores, and profile to the – to the senior women’s athletic director, who actually is the liaison for all sports at USC, football, everybody has to go through her And then she, they have meetings every other Thursday, which are called subcommittee meetings, where the dean of admissions, and two admissions off – two admissions staff and she are there, and they go through the athletes for that particular subcommittee meeting. It could be water polo this week, it could be football the next week, it could be basketball. Just depends on where they are in the seasons and what’s going on. . . . So what she does is, she already works on presenting the kids before she gets to the meeting so she knows everything about them, she knows why they want them, she knows where to slot them based on their GPA and test score, and be ready to answer questions if admissions has questions. . . . [The applicant will] get presented and if they, in the committee if they say okay good, she’s in¹⁸⁰

William McGlashan, a parent for whom Singer and his team submitted a false profile that included a photograph edited to make his child appear to be a football player, provided a succinct reaction: “Pretty funny. The way the world works these days is unbelievable.”¹⁸¹

174. *Id.* at 123–24.

175. *Id.* at 165.

176. *See infra* notes 184–204 and accompanying text.

177. *See* Affidavit, *supra* note 133, at 126 (quoting Singer’s explanation to a parent that “all of the coaches have – you know, they have guaranteed spots.”).

178. *Id.* at 123.

179. *Id.* at 128.

180. *Id.* at 58, 99–100.

181. *Id.* at 65, 68.

The final step of the process involved covering up the misrepresentation, if necessary. Singer advised parents that this took almost no effort; after receiving a notification to attend orientation for athletes, they should ignore it and “sign up for the first orientation date for regular students and just go to that date and from that point on [the student is] no longer a part of athletics.”¹⁸² If a persistent coach, administrator or admissions officer asked why an applicant admitted as an athletic recruit did not show up for practice, Singer advised parents to falsely claim that the student was injured.¹⁸³

3. The Flow of Money

The complicated flow of money uncovered by the Varsity Blues investigation requires separate explication. The transaction that opened the door to the Varsity Blues investigation did not involve Singer. Instead, the parent negotiated with and paid coach Meredith directly.¹⁸⁴ In the transactions managed by Singer, however, Singer usually acted as the conduit for payments to test administrators, coaches, and athletic administrators.¹⁸⁵

The transfer of money was often made through the guise of donations to The Key Worldwide Foundation, the nonprofit organization controlled by Singer.¹⁸⁶ Singer, in fact, advised parents that structuring transfers in this way enabled parents to deduct the transfer from their taxes.¹⁸⁷ Some parents paid money to The Edge College & Career Network, the for-profit corporation controlled by Singer.¹⁸⁸ These transfers could be disguised as business expenses for tax purposes.¹⁸⁹ Some parents split the transfer of money between the for-profit organization and the

182. *Id.* at 105.

183. *Id.* at 87, 151, 182.

184. Information at 4–5, *United States v. Meredith*, No. 19-cr-10075 (D. Mass. Feb. 28, 2019). In a different transaction involving Meredith, Singer did act as the conduit. *See id.* at 4 (describing payment to Meredith by Singer).

185. *See, e.g.*, Affidavit, *supra* note 133, at 20 (quoting Singer telling a parent “it will be through the, our foundation, our 501(c)(3), and then we’ll send the checks to all the parties”).

186. Indictment, *supra* note 157, at 7.

187. *See, e.g.*, Affidavit, *supra* note 133, at 20 (quoting Singer advising Jane Buckingham that the payment will be structured as a tax-deductible donation, to which Buckingham responds “Oh, even better!”). Jane Buckingham pleaded guilty and does not dispute the accuracy of the information to which the Affidavit was appended. Plea Agreement at 1, *United States v. Buckingham*, No. 19-cr-10117 (D. Mass. Apr. 8, 2019).

188. *See, e.g.*, Information at 1, 9, *United States v. MacFarlane*, No. 19-cr-10131 (D. Mass. Apr. 23, 2019), <https://web.archive.org/web/20210101094158/https://www.justice.gov/usao-ma/page/file/1156361/download>. Toby MacFarlane pleaded guilty and does not dispute the accuracy of the information. Plea Agreement at 1, *United States v. MacFarlane*, No. 19-cr-10131 (D. Mass. Apr. 23, 2019).

189. *See, e.g.*, Affidavit, *supra* note 133, at 124–25 (quoting Singer advising John Wilson that Wilson can “write off as an expense” the payment, to which Wilson replies “Awesome!”). Wilson was later convicted for filing a false tax return. Anemona Hartocollis, *2 Parents Are Convicted in the Varsity Blues Admissions Trial*, N.Y. TIMES (Oct. 9, 2021), <https://www.nytimes.com/2021/10/08/us/varsity-blues-trial-wilson-abdelaziz.html>.

nonprofit, and sometimes paid directly to an account controlled or designated by the coach or administrator as well.¹⁹⁰

Some parent transferred cash. Peter Sartorio reveled in the anonymity of cash: “There is nothing on my end that shows that your company, [Singer], or anybody, received any cash payments. Only payments they could look at would be an invoiced amount or an actual check. . . . But anything that was done verbally, that was verbal and there’s no record. There’s nothing. There’s nothing.”¹⁹¹ Some parents transferred shares in companies.¹⁹² Parents usually transferred money from their own accounts, but sometimes transferred money from businesses that they controlled, and in one case even transferred money from the account of a nonprofit organization.¹⁹³ One parent used a cynical form of barter: in exchange for Singer arranging for his daughter to cheat while taking the ACT examination, the parent allowed Singer to use the parent’s influence in having another applicant admitted to the college on whose governing board that parent had served.¹⁹⁴

The act of paying coaches and administrators took a variety of forms. One payment could have been a scene in a movie.¹⁹⁵ Singer handed Michael Center, a tennis coach at the University of Texas, \$60,000 in cash in a parking lot in Austin as payment for facilitating the admission of an applicant as an athletic recruit.¹⁹⁶ Gordon Ernst received \$2.7 million as “consulting fees” from The Key Worldwide Foundation in exchange for facilitating admission to Georgetown University.¹⁹⁷ Most payments to Ali Khosroshahin, then a soccer coach at the University of Southern California, and to Laura Janke went to the account of a private soccer club they controlled.¹⁹⁸ Similarly, payments to Jorge Salcedo, then a soccer coach at the University of California Los Angeles, were made to a sports marketing firm

190. See, e.g., Affidavit, *supra* note 133, at 125 (listing transfers to profit and nonprofit and payment to Singer); *id.* at 166 (listing transfers to profit and nonprofit and payment to account at the University of Southern California).

191. *Id.* at 179–80; see Parent Information, *supra* note 141, at 24. Peter Sartorio pleaded guilty and does not dispute the accuracy of the Information. Plea Agreement at 1, United States v. Sartorio, No. 19-cr-10117 (D. Mass. Apr. 8, 2019).

192. See, e.g., Affidavit, *supra* note 133, at 112 (describing transfer of shares of Facebook).

193. See, e.g., Parents Information, *supra* note 141, at 11 (describing transfers from Abbott Family Foundation). Gregory and Marcia Abbott each pleaded guilty and do not dispute the accuracy of the Information. Plea Agreement at 1, United States v. Abbott et al., No. 1:19-cr-10117 (D. Mass. Apr. 8, 2019), ECF No. 313; Plea Agreement at 1, United States v. Abbott et al., No. 19-cr-10117 (D. Mass. Apr. 8, 2019), ECF No. 314.

194. Affidavit, *supra* note 133, at 48–49.

195. See, e.g., THE GODFATHER: PART II (Paramount Pictures 1974) (in which Senator Pat Geary solicits a bribe from Michael Corleone).

196. Affidavit in Support of Criminal Complaint at 5, United States v. Center, No. 19-cr-10116 (D. Mass. Mar. 6, 2019), <https://www.justice.gov/file/1142871/download>. Michael Center pleaded guilty and does not dispute the information. Plea Agreement at 1, United States v. Center, No. 19-cr-10116 (D. Mass. Apr. 8, 2019).

197. Indictment, *supra* note 157, at 13. Gordon Ernst pleaded guilty and does not dispute the accuracy of the allegations. Plea Agreement at 1, United States v. Ernst et al., No. 19-cr-10081 (D. Mass. Sept. 15, 2021).

198. Affidavit, *supra* note 133, at 163; Indictment, *supra* note 157, at 10. Ali Khosroshahin pleaded guilty and does not dispute the accuracy of the Indictment. Plea Agreement at 1, United States v. Khosroshahin, No. 19-cr-10081 (D. Mass. June 3, 2019).

that he controlled.¹⁹⁹ Jovan Vavic, then a water polo coach at the University of Southern California, directed that the money be “split” in interesting ways.²⁰⁰ Singer, through his enterprises, paid tuition for the education of Vavic’s children, subsidized the salaries of two of Vavic’s assistant coaches, and sent money to an account at the University of Southern California that supported the water polo team.²⁰¹

Vavic was not alone in having money sent to his athletic program. John Vandemoer, then a sailing coach at Stanford University, did not receive direct payments or payments to a privately controlled entity. Instead, all of the known payments made in exchange for Vandemoer fraudulently recruiting athletes were made to the Stanford sailing program.²⁰² William Ferguson, then a volleyball coach at Wake Forest University, received payments through a private volleyball club that he controlled, but also directed that smaller payments be made to Wake Forest’s athletic booster club and to the University’s volleyball program.²⁰³ Donna Heinel, the Senior Associate Athletic Director at the University of Southern California, received \$20,000 each month from Singer’s nonprofit organization in exchange for facilitating falsified recruitment, but also directed that more than \$1.3 million go into accounts at USC that she controlled.²⁰⁴

III. APPLICATION OF THE GENERAL UNDERSTANDING TO THE COLLEGE ADMISSIONS SCHEME

This Article proposes that the general understanding of corruption enables us to differentiate corrupt acts from other behaviors. Singer’s elaborate scheme, designed to exploit an equally elaborate college admissions process, provides a rich set of facts on which to test that proposition.

The general understanding of corruption describes corruption as the abuse or misuse of authority or trust for personal benefit rather than the reasons for which authority or trust was granted. Thus, analysis of Singer’s scheme begins by asking whether abuse or misuse of authority or trust occurred.

199. Affidavit, *supra* note 133, at 108; Indictment, *supra* note 157, at 15. Salcedo pleaded guilty and accepts responsibility for his role in Singer’s scheme. Sentencing Memorandum of Defendant Jorge Salcedo at 7, United States v. Salcedo, No. 19-cr-10081 (D. Mass. Mar. 12, 2021).

200. See Affidavit, *supra* note 133, at 101 (Singer tells Augustin Huneceus that Vavic will tell them how to “split” the money).

201. *Id.*; Indictment, *supra* note 157, at 11. A jury found Vavic guilty of all counts brought against him. Anemona Hartocollis, *Former U.S.C. Coach in Varsity Blues Scandal Is Found Guilty*, N.Y. TIMES (Apr. 8, 2022), <https://www.nytimes.com/2022/04/08/us/jovan-vavic-varsity-blues-trial.html>.

202. See Information at 3–4, United States v. Vandemoer, No. 19-cr-10079 (D. Mass. Mar. 5, 2019) (describing the payments).

203. Indictment, *supra* note 157, at 16. William Ferguson entered into a deferred prosecution agreement, in which he accepted responsibility for his conduct. Deferred Prosecution Agreement at 1, United States v. Ferguson, No. 19-cr-10081 (D. Mass. Sept. 15, 2021).

204. Affidavit, *supra* note 133, at 85; Indictment, *supra* note 157, at 11.

A. *Abuse or Misuse of Authority or Trust*

One important differentiator of corrupt and noncorrupt behavior is whether authority or trust are at play. An actor cannot abuse or misuse trust or authority if there is no trust or authority to abuse or misuse. As a starting point in any analysis of whether a scheme is corrupt, therefore, we must ask whether the actors had in fact been imbued with authority or trust.

Universities generally expect successful applicants to demonstrate some degree of academic potential.²⁰⁵ Universities evaluate this potential through grades and standardized tests.²⁰⁶ Singer's scheme, in its first prong, sometimes involved the generation of false grades, through the mechanism of proxies taking online exams or even entire online courses in the name of the student; more often, the scheme involved the generation of false standardized test scores, by securing accommodation through misdiagnosis, and using the accommodation as cover for having someone coach the student, correct answers after the exam was taken, or take the exam in the place of the student.²⁰⁷

Applying the general understanding of corruption to the facts yields an interesting result: some of the actors in this prong of the scheme acted corruptly and some did not, and thus the scheme cannot be painted with a broad brush. The difference between the two rests on the conferral of authority or trust. Take, for example, the psychiatrists who misdiagnosed students. Some of those psychiatrists may have been duped by students, whose parents, on Singer's advice, coached them to act in ways to secure a misdiagnosis.²⁰⁸ Although their diagnosis played a critical role in Singer's scheme, getting duped hardly constitutes abuse or misuse of authority or trust. I am unable to find, for example, instances in which physicians have been found accountable when patients engage in "malingering," that is, faking symptoms of fatigue or illness to escape work, military, or other duties.²⁰⁹

Duping medical professionals enabled test administrators to manipulate the test taking process or the tests themselves.²¹⁰ The nonprofit organizations College

205. See *supra* note 82 and accompanying text.

206. See *supra* notes 83–88 and accompanying text.

207. See *supra* notes 135–55 and accompanying text.

208. See *supra* notes 143–48 and accompanying text.

209. Indeed, psychiatrists are warned that even though they are generally shielded from legal liability for misdiagnosing malingering, they should be circumspect in such diagnoses because of the potential harms to the patient in making such a difficult determination. See Kenneth J. Weiss & Landon Van Dell, *Liability for Diagnosing Malingering*, 45 J. AM. ACAD. PSYCHIATRY L. 339, 346 (2017) (concluding that "while forensic examiners may have immunity from liability in most cases, it is not an excuse to wield their swords wantonly"); see also Daniel S. Goldberg, *Doubt & Social Policy: The Long History of Malingering in Modern Welfare States*, 49 J.L. MED. & ETHICS 385, 387–91 (2021) (discussing history of and policies regarding malingering). Diagnosing diversity in learning and test-taking abilities is similar to diagnosing general fatigue and illness, because learning diversity is "a broad term that covers a pool of possible causes, symptoms, treatments, and outcomes. Partly because learning disabilities can show up in so many forms, it is difficult to diagnose or to pinpoint the causes." SHARYN NEUWIRTH, NAT'L INST. OF MENTAL HEALTH, LEARNING DISABILITIES 8 (1993).

210. See *supra* notes 148–50 and accompanying text.

Board and ACT appoint test administrators, and imbue those administrators with substantial authority. Test administrators proctor the examinations, and certify that the examinations are taken in accordance with the standards established by the College Board and the ACT.²¹¹ Test administrators are trusted to perform these tasks without direct monitoring.²¹² Test administrators may exercise discretion rather than rigidly adhering to process; for example, a test administrator might decide, in the circumstance of a particular examination setting, that one student should take the examination separately from other students in order to protect the integrity of the examination.²¹³ The administrators involved in Singer's scheme, however, deviated in ways not at all within their authority. Rather than using their authority in the manner intended, they misused that authority by giving undeserving students extra time and by allowing students to cheat. Rather than acting as trusted actors should act, administrators abused the trust given them by knowingly certifying altered examinations.²¹⁴ These test administrators clearly satisfied the first component of the general understanding of corruption.

Mark Riddell's nefarious actions, on the other hand, do not. Riddell did not serve as a test administrator, but he frequently stood in for students or corrected their examinations.²¹⁵ Many of the same adjectives that the average person might apply to the test administrators' actions could be applied to Riddell: dishonest, deceptive, dishonorable. Riddell, however, had no direct or indirect connection to ACT or the College Board, and neither organization had empowered or entrusted Riddell. Setting aside his liability as an integral part of a fraudulent scheme, Riddell's actions by themselves were scurrilous, but they do not satisfy the first component of the general understanding of corruption.

After manufacturing grades and test scores, Singer and his accomplices manufactured fake athletic profiles for applicants, which coaches then used to secure admission for applicants as preferred walk-on recruits.²¹⁶ As with many other aspects of a university, college athletics contribute to the culture of the university and to the experiences of all students. Admissions administrators, however, do not have the expertise of coaches; coaches and athletic administrators enjoy broad authority, and, most importantly, are trusted by admissions administrators to nominate appropriate candidates.²¹⁷ Colleges do not hold coaches and athletic

211. Affidavit, *supra* note 133, at 7.

212. See, e.g., Nancy T. Tippins, *Implementation Issues in Employee Testing*, in *THE OXFORD HANDBOOK OF PERSONNEL ASSESSMENT AND SELECTION* 881, 885–86 (Neal Schmitt ed., 2012) (describing test administrators as “trusted” and describing their extensive responsibilities).

213. See *id.* at 885 (discussing the need for discretionary decision-making by test administrators generally).

214. See *supra* notes 157–59 and accompanying text.

215. See *supra* note 160 and accompanying text.

216. See *supra* notes 165–75 and accompanying text.

217. See Hoover, *supra* note 122 (“To a large degree, we are just trusting our athletics department We’re not telling them who to recruit. We have no way of knowing who’s a good athlete, or whether a walk-on’s going to walk off the team.” (quoting unnamed dean)); Chris Teare, *Why Didn’t College Admissions Officers Catch the Varsity Blues Scandal?*, *FORBES* (Jul. 28, 2019), <https://www.forbes.com/sites/christeare/2019/07/28/why-didnt->

administrators to a standard of perfection; coaches sometimes make mistakes in recruiting athletes.²¹⁸ The coaches and athletic administrators employed in Singer's scheme, however, went far beyond mistake. They purposefully nominated applicants with little or no experience, abilities, or interest in the sports at issue. The slots allocated to those sports were filled by applicants who could not contribute to the athletic undertaking, and who would not contribute to the culture of the university nor to the overall experiences of other students in the ways intended for those slots. These coaches and athletic administrators clearly misused their authority and abused the trust of their universities.

The admissions system could have been manipulated by someone who had not been bestowed with authority or trust. Amateur hacker Bill Demirkapi serves as an example. Demirkapi, himself a potential college applicant, found flaws in his high school's information technology systems that allowed him to view data such as grade point averages.²¹⁹ The same vulnerabilities gave him access to millions of student records throughout the United States.²²⁰ Demirkapi also found vulnerabilities in a different software used in college admissions processes and was able, as a test of those vulnerabilities, to designate himself as "admitted" to a college (to be clear, Demirkapi used this "admission" only as a test, and did not take advantage of the admission designation).²²¹

Demirkapi clearly had no authority, as none of these schools, nor any of the vendors of the information system used by the schools, authorized Demirkapi to do anything with regard to college admissions. He had no authority or trust to abuse. If Demirkapi had hacked the system and admitted himself to a college, he would have acted deceitfully and deceptively. He could not, however, have acted corruptly under the general understanding of corruption. The same would be true of an applicant who secretly submitted intentionally falsified athletic credentials. Although deceitful, an applicant with no connection to the school would have no authority or trust to abuse or misuse and could not fall within the general understanding of corruption.²²²

college-admissions-officers-catch-the-varsity-blues-scandal/#3ec2525413d4 (former admissions officer discusses the extensive process coaches undertake and notes that admissions staff must trust coaches).

218. See Wong & Pace, *supra* note 122, at 390 (discussing role of coach and administrator in evaluations).

219. Joseph Cox, *Teen Security Researcher Suspended for Exposing Vulnerabilities in His School's Software*, VICE (Aug. 9, 2019), <https://www.vice.com/en/article/59nzzj/teen-security-researcher-bill-demirkapi-suspended-for-exposing-vulnerabilities>; Roger Kisby, *This Teen Hacker Found Bugs in School Software That Exposed Millions of Records*, WIRED (Aug. 9, 2019), <https://www.wired.com/story/teen-hacker-school-software-blackboard-follett/>. Although Demirkapi purposefully did not do so, Jean Adams notes that using "Demirkapi's technique, any malicious attacker could view, change or even erase all of a child's sensitive information." Jean Murrell Adams, *Are Your Child's School Records Safe?*, LINKEDIN (Aug. 29, 2019), <https://www.linkedin.com/pulse/your-childs-school-records-safe-jean-murrell-adams/>.

220. Cox, *supra* note 219; Kisby, *supra* note 219.

221. Kisby, *supra* note 219. Demirkapi was admitted to the Rochester Institute of Technology on a legitimate basis. Cox, *supra* note 219.

222. See Kirsten Hextrum, *The Hidden Curriculum of College Athletic Recruitment*, 88 HARV. EDUC. REV. 355, 366–67 (2018) (discussing misrepresentation by athletic applicants).

High school student Bill Demirkapi was not entrusted or empowered by any college, but university leadership does enjoy such trust. Interestingly, public reaction to disclosure of Singer's scheme included accusations of corruption levied against the colleges themselves. In commenting on Singer's scheme, Steve Cohen opines that "the college admissions system is as corrupt and corrupting as before."²²³ Richard Reeves, makes the accusation specific: "Rather than bribing coaches, the wealthiest parents can just bribe—sorry, *donate to*—the college directly."²²⁴

University presidents may reserve a handful of the several thousands of admissions offerings and use their entrusted discretion to allocate the slots.²²⁵ Understandably, presidents do not openly discuss the use of these slots.²²⁶ Let us take, then, as a pure hypothetical, that the President of Yale University explicitly exchanged admission to Yale for a donation of a new science complex and one hundred fully paid scholarships.²²⁷ This direct exchange of admission for a donation would not fall within the general understanding of corruption. In our hypothetical, Yale University confers upon its President the authority to directly admit a handful of candidates, and trusts the President to do so in a way that inures to the benefit of Yale and its community.

The fact that Yale has (hypothetically) bestowed this power on its president does not elevate the act above criticism. It may be that it is unfair to admit an applicant because that applicant's family has vastly more money than other families and is willing to give that money to Yale. It may also be unfair that the one hundred neediest successful applicants will get full scholarships and the one hundred and first will get nothing, and thus may not be able to attend. College admissions is rife with specific inequities, which the United States must wrestle with as it struggles

223. Steve Cohen, *Time to Be Honest: College Admissions Not a Level Playing Field*, THE HILL (Sept. 21, 2020), <https://thehill.com/opinion/education/517353-time-to-be-honest-college-admissions-not-a-level-playing-field>. Although an attorney, Cohen studies and writes books about college admissions. See J. Craig Williams, Joy Blanchard & Steve Cohen, Lawyer 2 Lawyer, *The College Admissions Scandal*, LEGAL TALK NETWORK (Mar. 22, 2019), <https://legaltalknetwork.com/podcasts/lawyer-2-lawyer/2019/03/the-college-admissions-scandal/> (discussing Cohen's background at 2:53–3:10).

224. Richard V. Reeves, *It's Not Just Corruption. Entrance into Elite US Colleges Is Rigged in Every Way*, THE GUARDIAN (Mar. 12, 2019), <https://www.theguardian.com/commentisfree/2019/mar/12/us-college-admissions-scandal-corruption-rigged>. Reeves is a Senior Fellow of Economic Studies at the Brookings Institute. See *Richard V. Reeves*, BROOKINGS, at <https://www.brookings.edu/experts/richard-v-reeves/> (last visited Jan. 31, 2022) (discussing Reeves' background).

225. See WILLIAM G. BOWEN, LESSONS LEARNED: REFLECTIONS OF A UNIVERSITY PRESIDENT 67 (2013) (discussing university leadership's authority in the allocation and use of these slots).

226. Among other things, openly discussing the criteria for any student's admission might expose that student to harmful public reactions.

227. The standard trope is the exchange of admission for a new building. See, e.g., Phil Willon, *The Rich Buying Names on College Buildings is "Legal Bribery," Gov. Gavin Newsom Says*, L.A. TIMES (Mar. 16, 2019), <https://www.latimes.com/politics/la-pol-ca-governor-gavin-newsom-college-scandal-bribery-20190315-story.html> (reporting Governor Newsom's statements). The admissions administrators with whom I spoke suggested that this was unlikely, given the scale of university donations.

with general inequity.²²⁸ Beyond matters of fairness, the public may have a deep and legitimate interest in the process of admitting and nurturing critical talent and future leadership.²²⁹ Nonetheless, the hypothetical President of Yale has abused or misused no authority nor trust, and has in fact used authority as intended. The act would not fall within the general understanding of corruption.

Abuse of authority or trust differentiates corrupt from noncorrupt behavior. Duped psychologists did not act corruptly because being duped does not constitute abuse or misuse of authority. The administrators of test centers misused the authority and abused the trust placed in them by the test organizations, and thus could be considered to have acted corruptly. Mark Ridell, on the other hand, acted deceitfully, but because the test organizations had conferred on him no authority or trust on him, his actions would not fall within the definition of corruption. Similarly, the coaches who created false credentials abused the trust placed in them by their universities; those universities have not placed trust on applicants, so an applicant who presented false credentials would not have acted corruptly. Finally, a university president who uses powers entrusted to them in ways contemplated by the university would not have misused their authority, even if some people find that use of authority condemnable. In all cases, misuse or abuse of authority or trust can distinguish noncorrupt from potentially corrupt behaviors, but misuse or abuse alone are not sufficient to define behavior as corrupt. The malfeisor must also have abused or misused that power or trust for personal-regarding reasons.

B. Personal-Regarding Interest

The general understanding of corruption requires not only abuse or misuse of authority or trust, but also that the abuse or misuse occur for self-serving reasons instead of the reasons for which authority or trust were conferred. Singer's scheme again illustrates the behaviors that fall within this understanding, and those that do not.

The test administrators, coaches, and athletic administrators who abused or misused trust or authority mostly did so for money. In most instances, parents, at Singer's instruction, put money into either his for-profit or nonprofit organization, and those organizations in turn passed money to the malfeasors.²³⁰ Not all of the

228. See Brian Holzman, Daniel Klasik & Rachel Baker, *Gaps in the College Application Gauntlet*, 61 RSCH. HIGHER EDUC. 795, 795–96 (2020) (discussing research that shows that “privileged students are more likely to enroll in any college and, within the 4-year sector, are more likely to enroll in selective colleges than are underrepresented minorities and low-SES students”); Daniel Klasik, Kristin Blagg & Zachary Pektor, *Out of the Education Desert: How Limited Local College Options Are Associated with Inequity in Postsecondary Opportunities*, 7 SOC. SCIS., art. 165, 2018, at 1 (discussing differences in the futures of people who attend selective colleges and people who attend less-selective colleges, and noting that this “set[s] up the potential for a reproduction of the existing income gaps”).

229. See Don Hossler, Book Review, 61 J. HIGHER EDUC. 711–12 (1990) (reviewing ALDEN THRESHER, *COLLEGE ADMISSIONS AND THE PUBLIC INTEREST* (1989)) (noting that the admissions process “plays an important role in shaping the demand and supply of educated talent”).

230. See *supra* notes 185–204 and accompanying text.

malfeasors misbehaved in order to get money; other benefits included tuition payments, shares in corporations, and, in one case, even the exchange of favors.²³¹ Regardless of the benefit, in each case the test administrators, coach, or athletic administrator acted with their own interests in mind, rather than acting in the ways that the colleges intended.

Jovan Vavic, a world-renowned water polo coach at the University of Southern California, received tuition payments for his children, but also directed that Singer's organizations use some of the money to subsidize the salaries of assistant coaches and to send some of the money to a fund supporting the water polo team.²³² Similarly, Donna Heinel, an athletic administrator at the same university, collected twenty thousand dollars each month in illicit payments from Singer, but also directed more than a million dollars to accounts that supported athletic programs within the university.²³³ Each might argue that they did not act as they did entirely for personal benefit, but each did receive some personal benefit.

Stanford's sailing coach, John Vandemoer, presents the more compelling case. Vandemoer took no benefits for himself, Singer instead gave half a million dollars to the internal fund supporting the sailing program, and even received a handwritten note of thanks from Stanford for doing so.²³⁴ Vandemoer's actions do not fall within the general understanding of corruption. He abused or misused the authority and trust given him by Stanford, but he did not do so for personal-regarding reasons. Again, this does not mean that Vandemoer acted laudably or ethically. He did use the authority for reasons other than those intended by Stanford, and his actions did deprive Stanford of the actual sailors for whom Stanford designated those slots. Nonetheless, the general understanding distinguishes corrupt behavior from other actions, and in the absence of a self-regarding reason for his actions, Vandemoer's acts fall outside of the general understanding of corruption.

The behaviors engaged in by the participants in Singer's scheme generally involved exchanges of benefits for abuse of power and trust. The general understanding of corruption, however, does not require exchange. Nepotism, the inappropriate exercise of power to benefit kin, provides one example.²³⁵

Return again to the hypothetical President of Yale University. Suppose that Yale admitted the child of this President to its undergraduate program. The child could be exactly the type of applicant that Yale seeks in order to fulfill its mission, in which case there would be no questions regarding corruption pursuant to the general understanding. The admissions officer exercised authority, but did not abuse or misuse that authority, and the President's power did not come into play.

231. See *supra* notes 192–94, 201 and accompanying text.

232. See Rohan, *supra* note 136 (describing Vavic's coaching accolades and the distribution of money).

233. See *supra* note 204 and accompanying text.

234. Billy Witz, *A Cog in the College Admissions Scandal Speaks out*, N.Y. TIMES (Sept. 27, 2021), <https://www.nytimes.com/2021/09/27/sports/stanford-varsity-blues-college-admission.html>.

235. See Benjamin Means, *The Value of Insider Control*, 60 WM. & MARY L. REV. 891, 896 (2019) (providing “the classic definition of nepotism: unfair preferences based on kinship”).

Suppose, instead, that the President simply called the admissions office and said, “You work for me. Admit my kid.” Suppose further that the admissions office complies. Unlike the instances discovered in the Varsity Blues investigation, no exchange has occurred. The President gave an order, and the admissions office obeyed the order. Nonetheless, this would fall within the general understanding of corruption. The President has abused or misused authority, and personally benefited simply by abusing that authority.²³⁶

Nepotism is not the only example. The misappropriation of property over which an actor has authority would also fall within the general understanding of corruption.²³⁷ Cristina Nicolescu-Waggoner considers “[m]isappropriation of public funds for private gain” to be “the most common and most relevant form of corruption that blocks rule of law establishment and democratic consolidation.”²³⁸ Indeed, a survey of students in Bulgaria and Mongolia found that, while students considered all forms of corruption harmful, they considered the theft of property by officials during the privatization process more harmful than local businessperson paying bribes to obtain contracts or foreign businesspersons paying bribes to obtain approvals.²³⁹

Singer’s scheme did not involve misappropriation of property. A court ruling on motions from Gordon Ernst, Donna Heinel, William Ferguson, and Jovan Vavic specifically considered whether admission slots constitute property belonging to a college. The court decided that admission slots are not property and instead constitute decisions made by colleges.²⁴⁰ Universities are, however, no strangers to misappropriation. As President of American University, for example, Benjamin Ladner misappropriated more than half a million dollars of the university’s money, using it to pay for things such as personal meals and an extravagant engagement party for his son.²⁴¹ Priscilla Slade, as President of Texas Southern University, also misappropriated more than half a million dollars, including for a bar bill of one hundred thousand dollars.²⁴²

236. See Sarah Hudson & Cyrlene Claasen, *Nepotism and Cronyism as a Cultural Phenomenon?*, in THE HANDBOOK OF BUSINESS AND CORRUPTION 95, 96 (Michael S. Abländer & Sarah Hudson eds., 2017) (“Nepotism and cronyism can be seen as a form of corruption in that they concern an abuse or misuse of power and trust for purposes other than for which that power or trust was given.”).

237. See Kilkon Ko & Cuifen Weng, *Structural Changes in Chinese Corruption*, 211 CHINA Q. 718, 719–20 (2012) (discussing forms of corruption experienced in China, including misappropriation).

238. CRISTINA NICOLESCU-WAGGONER, NO RULE OF LAW, NO DEMOCRACY 12 (2016).

239. Nichols et al., *supra* note 64, at 234 n.139.

240. *United States v. Ernst*, 502 F. Supp. 3d 637, 650–51 (D. Mass. 2020).

241. See Patrick R. Baker, Paula Hearn Moore & Kaleb Paul Byars, *Nonprofit College Crash: Enforcing Board Fiduciaries Through Increased Accountability and Transparency in the IRS Form 990 Procedure*, 2 BYU EDUC. & L.J. 167, 176 (2019) (describing misappropriation).

242. See Meredith Downes, *University Scandal, Reputation and Governance*, 13 INT’L J. EDUC. INTEGRITY, art. 8, 2007, at 9 (describing misappropriation).

Neither of these nor other incidents of misappropriation directly involved an exchange.²⁴³ Indeed, Meredith Downes describes these acts as “on-the-job consumption.”²⁴⁴ Nonetheless, these acts fall within the general understanding of corruption. American University did give Ladner authority to spend the university’s money for entertainment and social events. The university intended, however, for such spending to further the interests of the university, for example in generating donations or attracting faculty.²⁴⁵ American University trusted Ladner to spend the money in ways that might inure to the benefit of the university, but he abused that trust and spent the money for his own benefit, in ways that did not in fact benefit the school.²⁴⁶ Such spending falls within the general understanding of corruption.

When applied to college admissions, the general understanding fully explains why some undertakings and actors should be considered corrupt. The general understanding also distinguishes between corrupt actions and those that are not. The test center administrators misused and abused authority and trust, and did so for personal benefit in the form of money. They acted corruptly. Johan Vavic and Donna Hinkel also misused and abused authority and trust. While they did so in part for reasons that were not self-regarding, they also did so in part for money. They too acted corruptly. John Vandemoer, on the other hand, did misuse and abuse authority and trust, in the same way that Vavic and Hinkel abused and misused, but he did so entirely for the benefit of the sailing program and not for self-regarding reasons. His actions do not fall within the definition of corruption. Self-regarding actions extend well beyond bribery, and include forms of corruption such as nepotism and misappropriation.

The Varsity Blues investigation also evoked accusations of corruption that go beyond the actions undertaken by the actors described in this and the previous subsection. The nature of those accusations does not fall within the general understanding. Reviewing those accusations, therefore, allows for a fuller evaluation of the usefulness of the general understanding of corruption.

IV. “CORRUPTION” THAT DOES NOT FALL WITHIN THE GENERAL UNDERSTANDING OF CORRUPTION

The Varsity Blues investigation generated substantial outrage aimed at the scheme itself.²⁴⁷ College admissions as a whole, however, also faced accusations

243. The presidents who misappropriated did, of course, exchange misappropriated funds for goods and services.

244. Downes, *supra* note 242, at 9.

245. See, e.g., Nadine Ann Skinner, *The Rise and Professionalization of the American Fundraising Model in Higher Education*, 3 PHILANTHROPY & EDUC. 23, 36–38 (2019) (discussing the growth of alumni development units within universities and their relationship to the missions of universities).

246. See Baker et al., *supra* note 241, at 176.

247. See Kirk Carapezza, *Varsity Blues Prosecutor Surprised by Public Outrage at College Admissions Scandal*, GBH NEWS (Mar. 29, 2021), <https://www.wgbh.org/news/education/2021/03/29/varsity-blues-prosecutor-surprised-by-public-outrage-at-college-admissions-scandal> (discussing public outrage).

of corruption. Those accusations included the claim that college admissions has failed in its purpose, and that it is rife with undue influence. Interestingly, neither of these would fall within the general understanding of corruption.

A. Failure

Recall that Yale's admission process seeks to support Yale's mission.²⁴⁸ Yale University's mission includes "educat[ing] aspiring leaders worldwide who serve all sectors of society . . . through the free exchange of ideas in an ethical, interdependent, and diverse community."²⁴⁹ Yale College's mission includes educating "exceptionally promising students of all backgrounds from across the nation and around the world" in order to "cultivat[e] citizens with a rich awareness of our heritage to lead and serve in every sphere of human activity."²⁵⁰ The admission process is meant to support these missions by stocking Yale's academic community, first, with intellectually curious and capable students,²⁵¹ who, second, together constitute a community of such wide and differing characteristics and backgrounds that they enhance the experience and educations of one another.²⁵²

Yale's admission process may have failed on both counts. William Deresiewicz, a former professor at Yale, argues that admitted students do not contribute to Yale's mission, and that they themselves recognize this shortcoming.²⁵³ Deresiewicz describes students who magnificently complete assigned tasks, but who lack intellectual curiosity or motivation and whose lifetime of over-programming have left little time for self-discovery or awareness of the needs of a greater society.²⁵⁴ The late Lani Guinier, attending a graduation ceremony at Yale, found much celebration of the test scores of students and scant indication that any cared about the world: "Where was evidence of the college's own self-described mission of educating future leaders and citizens of a democracy?"²⁵⁵ Guinier, describing highly-selective universities in general, observes that most students' energies are focused on their own successes and accumulation of power and wealth, rather than on societal good.²⁵⁶

Deresiewicz and Guinier each lay blame squarely on the college admissions system. Deresiewicz, who spent a year working with Yale's admission office, finds

248. See *supra* note 72 and accompanying text.

249. *Supra* text accompanying note 73.

250. *Supra* text accompanying note 76.

251. See *supra* notes 79, 83–88 and accompanying text.

252. See *supra* notes 77–78, 89–93 and accompanying text.

253. Deresiewicz recounts a conversation with one of his students that concluded with "So are you saying that we're all just, like, really excellent sheep?" WILLIAM DERESIEWICZ, *EXCELLENT SHEEP* 2 (2014).

254. *Id.* at 7–25.

255. LANI GUINIER, *THE TYRANNY OF MERITOCRACY: DEMOCRATIZING HIGHER EDUCATION IN AMERICA* 8–9 (2016).

256. See *id.* at 21.

fault with both the evaluation of academic indicators and of personal qualities.²⁵⁷ Because schools evaluate academic potential through grades and courses taken, students overload on advanced placement courses, regardless of interest, and perform according to the directions of the instructor.²⁵⁸ Because schools evaluate personal qualities through leadership in extracurricular activities, students again overload on activities, again regardless of actual interest or meaningful participation.²⁵⁹ Guinier, while critical of standardized tests, offers a more subtle criticism. The grueling admissions process creates in admitted students a belief that they are more meritorious and therefore deserve to enjoy material spoils, rather than enter into a life that includes service.²⁶⁰ Deresiewicz worries that as a generation whose attitudes were shaped by this admission process instructs their own children on gaming college admission, this mindset will become locked into the elite.²⁶¹

Yale's admission system may also fail with respect to Yale's objective of creating a student body diverse enough to be a learning experience in itself. A striking number of Yale's undergraduate students share a similar, privileged economic background. Nearly twenty percent of the students belong to families whose income ranks among the highest one percent, and nearly half are part of families whose income ranks among the highest five percent.²⁶² Scarcely two percent are part of families whose incomes are among the lowest twenty percent.²⁶³ Other schools in which Singer attempted to place applicants have similarly economically homogeneous student bodies.²⁶⁴

Academics and admissions consultants attribute this lack of economic diversity to the admissions process. Theodosia Stavroulaki outlines a relatively straightforward link centered on academic indicators: because even small changes in ranking substantially affect selective universities, selective universities must admit only students with high standardized test scores.²⁶⁵ Because high scores, in turn, correlate more closely with economic resources than intelligence or ability, selective universities are "boxed" into an admissions system that fails to yield an economically

257. See *supra* note 82 and accompanying text (discussing academic indicators, background, and personal characteristics as the three sets of criteria used by admissions offices).

258. DERESIEWICZ, *supra* note 253, at 36, 38–39.

259. *Id.* at 38–39.

260. GUINIER, *supra* note 255, at 9–11.

261. DERESIEWICZ, *supra* note 253, at 35.

262. *Economic Diversity and Student Outcomes at Yale University*, N.Y. TIMES, <https://www.nytimes.com/interactive/projects/college-mobility/yale-university> (last visited Jan. 21, 2023).

263. *Id.*

264. *Id.*; see David Orentlicher, *Economic Inequality and College Admissions Policies*, 26 CORNELL J.L. & PUB. POL'Y 101, 105 (2016) ("At the 193 most selective colleges and universities in the United States, students from the richest quartile of the population outnumber students from the poorest quartile by a ratio of fourteen to one.").

265. Theodosia Stavroulaki, *Equality of Opportunity and Antitrust: The Curious Case of College Rankings*, 17 J. COMPETITION L. & ECON. 903, 913–16 (2021).

diverse student body.²⁶⁶ Other observers acknowledge the trap created by standardized tests, but also note the ability of wealthy families to game holistic admissions criteria, using resources such as college admissions consultants, availability of the required extracurricular activities, availability of advanced courses, ability to visit schools, editing of admission essays, and an understanding of the admissions process.²⁶⁷ “This comes down to the different decisions you can make when you have money versus when you don’t.”²⁶⁸

The failures of college admissions probably inflict harms on universities and on society. Most obviously, these failures hinder universities in fulfilling their mission. Both Deresiewicz and Guinier observed these difficulties.²⁶⁹ More generally, scholars who study college admissions observe that the admissions process favors those with abundant resources and disfavors those with fewer.²⁷⁰ These flaws in turn “lock in” social ossification, significantly affecting the opportunities for students to use college as a means of changing their socio-economic positions.²⁷¹

Gregory Unruh proposes that system failures within organizations should be considered a form of corruption.²⁷² Corruption, according to Unruh, occurs when a subsystem within an organization “is not performing duties as originally intended to, or performing them in an improper way, to the detriment of the system’s original purpose.”²⁷³ Unruh argues that this “positivist” account of corruption provides managers with a more precise definition than does a definition that requires inquiry into the context in which the actions of putatively corrupt actors occur: regardless

266. *Id.* at 914; see James Chu, *Cameras of Merit or Engines of Inequality? College Ranking Systems and the Enrollment of Disadvantaged Students*, 126 AM. J. SOCIO. 1307, 1333 (2021) (finding empirical support for a similar theory).

267. Nell Gluckman, *How the Wealthy and Well Connected Have Learned to Game the Admissions Process*, CHRON. HIGHER EDUC., Aug. 2, 2019, at A16.

268. *Id.* (quoting Arun Ponnusamy, Chief Academic Officer at an admissions counseling company); see also Catherine Gewertz, ‘Side Door’ Routes to College Admission No Surprise to Counselors, EDUCATIONWEEK (Mar. 14, 2019), <https://www.edweek.org/teaching-learning/side-door-routes-to-college-admission-no-surprise-to-counselors/2019/03> (“The ‘side door’ of admissions unveiled in the indictment . . . struck many veteran counselors as being only a hair’s breadth away from the loopholes savvy parents routinely exploit to get their children into top schools.”).

269. See *supra* notes 253–61.

270. See Kelly Ochs Rosinger, Karly Sarita Ford & Junghee Choi, *The Role of Selective College Admissions Criteria in Interrupting or Reproducing Racial and Economic Inequities*, 92 J. HIGHER EDUC. 31, 47–48 (2021) (noting a correlation between certain common admissions criteria and lower admission of low-income students); Bastedo et al., *supra* note 82, at 782–83.

271. See Klasik, Blagg & Pekor, *supra* note 228, at 3 (observing perpetuation of socio-economic status); Michael N. Bastedo & Ozan Jaquette, *Running in Place: Low-Income Students and the Dynamics of Higher Education Stratification*, 33 EDUC. EVALUATION & POL’Y ANALYSIS 318, 319 (2011) (noting that changes to the admission process have not resulted in gains in college placement for low-income students).

272. Gregory Unruh, *To Red-Card Corruption, You Have to Know What a Foul Is*, MIT SLOAN MGMT. REV. (Jul. 7, 2015), <https://sloanreview.mit.edu/article/to-red-card-corruption-you-have-to-know-what-a-foul-is/#article-authors>.

273. *Id.* Unruh uses the Fédération Internationale de Football Association as an example of subsystem failure that constitutes corruption.

of any other factors, whenever a system fails, it is considered corrupt.²⁷⁴ Universities are organizations, and the admissions process constitutes a subsystem. This definition would therefore consider the general failures of college admissions to be a form of corruption.

The general understanding of corruption, on the other hand, would not, for two reasons. First, the general failures of the admission system do not involve abuse or misuse of authority or trust. Admissions officers do exercise a great deal of discretionary power, but even though the results might not be as hoped, the officers are exercising that power in exactly the way the universities intended. In the absence of abuse or misuse, failure does not fall within the general understanding.

Second, the admission officers are not exercising authority for personal-regarding reasons. Admissions at selective universities is gruelling work, as committees sift through tens of thousands of applications.²⁷⁵ Admissions officers may endure this work because they are committed to the mission of the university and to students.²⁷⁶ Nothing in the stories told by Deresiewicz and Guinier suggest that any failures they perceive in the college admissions system could be attributed to personal-regarding interests of admissions officers. Absent abuse or misuse for personal benefit, the actions of admissions officers do not fall within the general understanding.

Failures in the systems used by any organization, not only the admissions systems of universities, do not fall within the general understanding of corruption. Failure alone does not suggest abuse or misuse, nor does it suggest self-regarding motivation. Thus, the observation that the admission process does not work as intended raises important societal questions, but these questions do not fall within the analytical framework created by the general understanding of corruption. This may be appropriate. Unruh's definition of corruption, namely failure, does not distinguish between the venal or the incompetent or the accidental. In the case of college admissions, however, it is useful to distinguish systemic failure from the venal acts of Singer and his colleagues, because the causes of each, and therefore the solutions, differ.²⁷⁷

274. *Id.*

275. See Adriel Hilton, *Working in College Admissions: What You Need to Know*, NE. UNIV. (Jun. 26, 2018), <https://www.northeastern.edu/graduate/blog/working-in-college-admissions/> (describing workload and noting that the "job of a college admissions counselor can be stressful and cause burnout").

276. See, e.g., *id.* ("It can be a rewarding entry-level position working with prospective students, helping them make life-changing decisions.").

277. A critique of social inequity exceeds the capacity of this article; in general, structural flaws, misaligned incentives, and systemic inequity contribute to the alleged general failures of admission processes, whereas misplaced trust and personal greed contributed to the college admissions abuses led by Singer. Each will require different solutions.

B. Undue Influence

When announcing the first set of indictments in the Varsity Blues investigation, U.S. Attorney Andrew Lelling forcefully stated, “There can be no separate college admissions systems for the wealthy. And I’ll add that there will not be a separate criminal justice system either.”²⁷⁸ At the very moment of Lelling’s assertion of equality, one of the applicants that Singer had successfully placed at the University of Southern California was on a yacht in the Bahamas with the family of the Chair of USC’s Board of Trustees.²⁷⁹

Lelling somewhat mischaracterized Singer’s scheme. Singer did not create a separate system for the wealthy; instead, he and his associates abused the existing system.²⁸⁰ Nonetheless, the juxtaposition of Lelling’s aspirational statement with the reality of a wealthy applicant hobnobbing with a wealthy university official suggests another iteration of corruption in college admissions: undue influence.²⁸¹

A professor at the University of Southern California suggests that this is in fact the case, claiming, “There is an illness in higher education, and its name is corruption. Corruption, in its most effective version, is an open secret—the ‘old boys’ club,’ the ‘smoke-filled room’ or the ‘network.’”²⁸² Another professor claims that “the children of wealth and privilege may well have experienced different admissions standards . . . in which the primary value was . . . social networking and political connections.”²⁸³

“Undue influence” defies easy definition.²⁸⁴ Samuel Issacharoff refers to a form of corruption that involves “a distortion of political outcomes as the result of the undue influence of wealth.”²⁸⁵ This definition, and others like it, do more to describe outcome than to draw a line around behaviors considered corrupt. Such

278. CBSNews, *U.S. Attorney Announces Charges Against Felicity Huffman, Lori Loughlin, Others in College Admissions Scandal*, YOUTUBE (Mar. 12, 2019), <https://www.youtube.com/watch?v=43yWBAeRTc> (making the statement at 1:07).

279. Kelly McLaughlin, *Lori Loughlin’s Daughter Was Vacationing in the Bahamas on a USC Trustee’s Yacht as the College-Admissions Scandal Broke*, INSIDER (Mar. 14, 2019), <https://www.insider.com/lori-loughlin-daughter-olivia-usc-trustee-yacht-college-admissions-scandal-2019-3>.

280. Lelling himself observed that “in the public discussion of the case it sometimes gets lost. The schools were the victims.” *Operation Varsity Blues and the Need for Internal Controls at Academic Institutions*, JONES DAY TALKS (May 2021), <https://www.jonesday.com/en/insights/2021/05/jones-day-talks-operation-varsity-blues-and-the-need-for-internal-controls-at-academic-institutions>.

281. See Gluckman, *supra* note 267, at A16 (describing the parents as “well connected” and ready to use their connection).

282. Viet Thanh Nguyen, *College Admissions Are Corrupt Because Universities Are: Here’s How to Fix Them*, WASH. POST (Mar. 19, 2019), <https://www.washingtonpost.com/outlook/2019/03/19/college-admissions-are-corrupt-because-universities-are-heres-how-fix-them/>.

283. Hal Berghel, *A Critical Look at the 2019 College Admissions Scandal?*, 53 COMPUTER 72, 74 (2020).

284. The phrase “undue influence” also describes a defense to breach of contract. See Rebecca Hollander-Blumoff & Matthew T. Bodie, *The Market as Negotiation*, 96 NOTRE DAME L. REV. 1257, 1298–99 (2021) (discussing undue influence in contract law). This article uses the term only in the context of potential corruption.

285. Samuel Issacharoff, *On Political Corruption*, 124 HARV. L. REV. 118, 121–22 (2010) (referencing the definition provided by the dissenting opinion in *Buckley*).

definitions also fail to distinguish undue influence from artful persuasion.²⁸⁶ We are left with approaches such as that of Adam Samaha, who in differentiating quid pro quo corruption from undue influence, goes no further than concepts that are “somehow defined.”²⁸⁷

No one has measured whether or to what extent social influence and connections affect admission decisions, nor is it clear how such influence could be measured. Some who study college admissions have suggested, however, that admission rates for legacy applicants—applicants whose parents or other relatives attended that university—suffices as a proxy.²⁸⁸

In a study of thirty universities with the lowest admittance rates in the United States, Michael Hurwitz found that legacy applicants on average enjoyed more than three times the admission rate than did students with no legacy connections.²⁸⁹ Yale does view legacy as a positive factor, and usually more than ten percent of an admitted class qualify as legacies.²⁹⁰ At USC, fifteen percent of the Class of 2024 qualify.²⁹¹

Legacy admissions might not serve as a useful proxy for undue influence in admissions. Yale’s mission includes the building of a strong community, which includes alumni.²⁹² Alumni families contribute to universities in myriad ways, donating time and personal capital, as well as financial support. Critics, however, point to the social ossification at risk when the children of successive generations enjoy preferential admission, as well as the risk such preference poses to the diversification of student bodies.²⁹³

286. See John S. Shockley, *Direct Democracy, Campaign Finance, and the Courts: Can Corruption, Undue Influence, and Declining Voter Confidence Be Found?*, 39 U. MIAMI L. REV. 377, 389 (1984) (chiding courts for not distinguishing between undue influence and persuasion).

287. Adam M. Samaha, *Regulation for the Sake of Appearance*, 125 HARV. L. REV. 1563, 1610 (2012).

288. See Allan Ornstein, *Wealth, Legacy and College Admission*, 56 SOC’Y 335, 338 (2019) (including “alumni linkage and legacy” among the factors that “permit[] children of the rich and powerful to be admitted because of hereditary privilege”).

289. Michael Hurwitz, *The Impact of Legacy Status on Undergraduate Admissions at Elite Colleges and Universities*, 30 ECON. EDUC. REV. 480, 486 (2011).

290. See Jordan Fitzgerald & Olivia Tucker, *Yale College Council Calls for End to Legacy Preference in Admissions, While Quinlan Defends Practice*, YALE NEWS (Nov. 4, 2021), <https://yaledailynews.com/blog/2021/11/04/yale-college-council-calls-for-end-to-legacy-preference-in-admissions-while-quinlan-defends-practice/> (Dean of Undergraduate Admissions says legacy is a positive factor in holistic evaluation); Erin Duffin, *Share of Legacy Students at Yale University Class of 2012-2026*, STATISTA (Nov. 8, 2022), <https://www.statista.com/statistics/939996/ivy-league-legacy-students-yale-university-class/> (showing percentages of legacies in admitted classes).

291. See UNIVERSITY OF SOUTHERN CALIFORNIA, FIRST-YEAR STUDENT PROFILE AND ADMISSION INFORMATION (2021), <https://about.usc.edu/files/2020/09/First-Year-Student-Profile-2020-Final.pdf>.

292. See Fitzgerald & Tucker, *supra* note 290 (comments of Andrew Lipka).

293. See John C. Duncan, Jr., *Two “Wrongs” Do/Can Make a Right: Remembering Mathematics, Physics, & Various Legal Analogies (Two Negatives Make a Positive; Are Remedies Wrong?) The Law Has Made Him Equal, But Man Has Not*, 43 BRANDEIS L.J. 511, 563–64, 566 (2005) (“[P]referential treatment can be given to the children or grandchildren of alumni who attended a law school that was ordered to abandon official *de jure* race discrimination only 50 years ago.”); Steve D. Shadowen, *Personal Dignity, Equal Opportunity, and the*

Undue influence in general, beyond college admissions, can inflict real harms on both an organization and society in general. Those with undue influence create the agenda for organizations, which may leave important issues and decisions out of consideration.²⁹⁴ Undue influence leads decision makers to hear only one set of inputs, leaving much of a constituency without a meaningful means of input.²⁹⁵ The lack of input skews decisions, resulting in, among other things, misallocations of time and resources.²⁹⁶ In the political realm, this favors those with wealth, creates hardships and barriers for those without, and locks in economic inequality.²⁹⁷ In both the public and private sectors, undue influence increases overall distrust and disengagement.²⁹⁸

Undue influence seems to occur along a gradient. At one end, as in the case of Governor McDonnell, a person might give money or other appreciated things to a decision maker in exchange for access and influence.²⁹⁹ This clearly falls within the general understanding of corruption. A person with authority abuses that authority, and does so for personal-regarding reasons rather than the reasons for which authority was granted.

At the other end of the gradient, undue influence may not involve direct exchange; instead, gifts and informal relationships create a sense of connectivity and obligation.³⁰⁰ Self-interest, to the extent it exists, exists only indirectly. Undue influence might operate to the benefit of the wealthy, or the elite, or some other class of people, but it would not be clear to a particular individual within that class that they would benefit.³⁰¹ Geoffrey Hodgson warned of “fuzziness and awkward

Elimination of Legacy Preferences, 21 GEO. MASON U. C.R. L.J. 31, 57–61 (2010) (criticizing discriminatory and class immobilization effects of legacy preferences).

294. Joshua Rosenthal, *Accountability Vouchers: A Proposal to Disrupt the Undue Influence of Wealthy Interests on State Politics*, 45 U. TOL. L. REV. 211, 219–20 (2014).

295. See Marianne Bertrand, Matilde Bombardini, Raymond Fisman & Francesco Trebbi, *Tax-Exempt Lobbying: Corporate Philanthropy as a Tool for Political Influence*, 110 AM. ECON. REV. 2065, 2070 (2020) (noting charitable donations may allow for undue influence); Rosenthal, *supra* note 294, at 218–19 (only a narrow set of voices are heard, leaving a large constituency out of decision making consideration).

296. See RICARDO FUENTES-NIEVA & NICHOLAS GALASSO, WORKING FOR THE FEW: POLITICAL CAPTURE AND ECONOMIC INEQUALITY 17 (2014) (stating that concentrations of income skew expenditures to favor those with access, rather than expenditures that maximize overall good); Bertrand et al., *supra* note 295, at 2070 (discussing corporate charitable donations being misallocated to politically connected charities).

297. FUENTES-NIEVA & GALASSO, *supra* note 296, at 11–12.

298. See Paul Dragos Aligica & Vlad Tarko, *Crony Capitalism*, CESIFO DICE REPORT, Sept. 2005, at 27 (2015) (discussing mistrust in private sector); Susan Rose-Ackerman, *Political Corruption and Democracy*, 14 CONN. J. INT’L L. 363, 369, 371 (1999) (discussing mistrust in political realm); Derek Tisler, *Theft, Fraud and Undue Influence: Determining the Scope of the Federal Funds Bribery Statute*, 2018 U. CHI. LEGAL F. 399, 399 (2018) (noting mistrust and disengagement in political realm).

299. See *supra* notes 83–84 and accompanying text (discussing McDonnell).

300. Rosenthal, *supra* note 294, at 217.

301. Similarly, in the corruption prosecution of former Ukrainian Prime Minister Pavlo Lazarenko, the court deliberated between requiring proof that the Ukrainian government itself had been the immediate victim, or only that Ukraine was offended in the far more generalized sense that its law has been violated. Philip M. Nichols, *United States v Lazarenko: The Trial and Conviction of Two Former Prime Ministers of Ukraine*, 2012 U. CHI. LEGAL F. 41, 69–71 (2012).

boundary cases.”³⁰² If undue influence at this end of the gradient falls under the general understanding of corruption, it does so only very awkwardly. This, perhaps, is a cost of the precision afforded corruption practitioners and scholars through the use of the general understanding of corruption.

V. THE GENERAL UNDERSTANDING SATISFIES DEFINITIONAL NEEDS

A definition is useful when it accurately sorts the mass of human observations and experiences and when it allows people to communicate a shared understanding.³⁰³ The general understanding of corruption satisfies both of these needs and does so in a more effective manner than does the crabbed definition offered by the Supreme Court.

Application of the general understanding to the college admissions scheme demonstrates its capacity to draw lines. Igor Dvorskiy acted corruptly when he allowed students to cheat while taking standardized tests; Mark Riddell did not act corruptly when he cheated on behalf of students taking those same examinations.³⁰⁴ The College Board and ACT had authorized Dvorskiy and trusted him; no one had bestowed power or trust on Riddell. Donna Heinel acted corruptly when she repeatedly presented falsified student profiles to the University of Southern California’s admission system; Bill Demirkapi did not act corruptly when he hacked the college admissions system and presented a falsified profile of himself.³⁰⁵ USC empowered Heinel with substantial authority regarding admissions and trusted her; no university had empowered or even knew of Demirkapi.

Similarly, Michael Center acted corruptly when he recruited fake tennis recruits in exchange for, literally, a bag of cash, as did Gordon Ernst when he received “consulting fees” and Ali Khosroshahin when payments were made to the account of an organization he controlled.³⁰⁶ On the other hand, John Vandemoer did not act corruptly when he recruited fake sailors to Stanford because all of the money paid in exchange for those slots went to accounts controlled by and for Stanford University.³⁰⁷ Ernst, Center, and Khosroshahin misused their power for personal-regarding reasons, but Vandemoer did not. A university administrator who squandered thousands of dollars on an ill-advised university party for alumni would not

302. Hodgson, *supra* note 56, at 498.

303. See WESLEY L. GOULD & MICHAEL BARKUN, *INTERNATIONAL LAW AND THE SOCIAL SCIENCES* 15 (1970) (discussing the need to organize the flood of real-world information through theory); William J. Aceves, *Institutionalist Theory and International Legal Scholarship*, 12 AM. U. J. INT’L L. & POL’Y 227, 231 (1997) (discussing usefulness of theory); Edward Poznański, Book Review, 23 J. SYMBOLIC LOGIC 353, 353 (1958) (reviewing CARL G. HEMPEL, *FUNDAMENTALS OF CONCEPT FORMATION IN EMPIRICAL SCIENCE* (1952)) (discussing meaningfulness of shared definitional understanding).

304. See *supra* notes 215–16 and accompanying text.

305. See *supra* notes 219–22 and accompanying text. Again, Demirkapi created falsified profiles only as a security test and did not take advantage of them.

306. See *supra* notes 196–98 and accompanying text.

307. See *supra* note 234 and accompanying text.

have acted corruptly, whereas Benjamin Ladner's expenditure of university funds for his son's engagement party did constitute corruption.³⁰⁸

It is worth noting that, with respect to Singer's scheme, the general understanding draws lines not too dissimilar from those that the Supreme Court's more constrained definition would draw. Most of the parties involved in Singer's scheme exchanged something of high value (the quid) for an action that fell within the delineated powers of an official (an "official act" as a quo). This does not have to be the case. A university president who ordered the admission of their unqualified child would fall within the general understanding of corruption but outside of the Court's narrow quid pro quo definition. A coach who accepted cash payments to introduce a potential applicant to other coaches would fall within the general understanding but outside of the Court's definition.³⁰⁹ Indeed, the general understanding, which is a product of the real-world experiences of practitioners, seems far more aligned with what people think of as corrupt than does the Court's definition, which it uses simply as a tool to avoid conflicts it perceives between corruption control and constitutional principles.³¹⁰

The general understanding does not, however, encompass all behaviors that people have described as corrupt. We saw that the general understanding does not encompass all systems failures within an organization. When mental health professionals misdiagnose applicants seeking special accommodations for standardized tests, for example, that does not fall within the general understanding.³¹¹ Nor does the possible failure of admissions systems to support the missions of universities.³¹²

At least two arguments support the exclusion of failure from any definition of corruption. First, including failure in a definition of corruption stigmatizes the exercise of authority and the making of decisions. Some degree of failure is inevitable.³¹³ Failure is inevitable when making decisions in the absence of complete information; in other words, in the real world.³¹⁴ Failure accompanies creativity, innovation, and boundary pushing.³¹⁵ Indeed, failure provides healthy learning

308. See *supra* note 246 and accompanying text.

309. Martin Fox, a youth coach in Texas, played such a role. Indictment, *supra* note 157, at 18. Martin Fox pleaded guilty on the information. Judgment in a Criminal Case at 1, *United States v. Fox*, No. 19-cr-10081 (D. Mass. Nov. 16, 2020).

310. See *supra* note 6 and accompanying text.

311. See *supra* notes 208–09 and accompanying text.

312. See *supra* notes 275–77 and accompanying text.

313. See Derek E. Bambauer, *Ghost in the Network*, 162 U. PA. L. REV. 1011, 1025 (2014) (noting that in any complex system "failures are inevitable"); Charles J. Tabb, *Bankruptcy and Entrepreneurs: In Search of an Optimal Failure Resolution System*, 93 AM. BANKR. L.J. 315, 316 (2019) ("In almost any endeavor, and certainly in entrepreneurial activity, some degree of failure is inevitable.").

314. See BARUCH FISCHHOFF, JUDGEMENT AND DECISION MAKING 48 (2012) ("In situations where information is limited, and indeterminate, occasional surprises—and resulting failures—are inevitable. It is both unfair and self-defeating to castigate decision makers who have erred in fallible systems . . .").

315. See Kaci Bishop, *Framing Failure in the Legal Classroom: Techniques for Encouraging Growth and Resilience*, 70 ARK. L. REV. 959, 961–62 (2018) (discussing the relationship between failure and creativity,

experiences for individuals and organizations.³¹⁶ The legal system recognizes the problematic nature of stigmatizing failure: the business judgment rule protects decision makers from penalty for simple failure and creates space for creativity within business organizations.³¹⁷

Including systemic failure within a definition of corruption would also intumesce that definition to the extent that it might no longer draw meaningful distinctions. Suppose that applicant *A* represents the ideal applicant and that not admitting applicant *A* constitutes failure. Applicant *A* might not be admitted because an admissions officer accepted a bribe to admit applicant *B* instead, or because the president of a university ordered the admission of the president's child instead of *A*, or because the university received so many applications that the admissions officer could not read applicant *A*'s application in time, or because *A*'s file was lost, or the internet service failed to deliver it, or because the interface was poorly designed and *A* checked an incorrect box. A definition of corruption that included failure would encompass each of these as failure, even though the facts, contexts, and solutions are very different. A scholar or practitioner could not use a failure-including definition to meaningfully distinguish—and would probably resort to creating subdefinitions within that definition.

including in legal education); Jason G. Dykstra, *Teasing the Arc of Electric Spark: Fostering and Teaching Creativity in the Law School Curriculum*, 20 WYO. L. REV. 1, 37 (2020) (“[C]reativity requires a level of risk taking and acceptance that failure is simply ‘part of the creative process.’ An environment that discourages risk taking or penalizes failure is not apt to facilitate creativity. The ‘freedom to fail’ while taking calculated risks is critical to innovation.”); Shaunna Smith & Danah Henriksen, *Fail Again, Fail Better: Embracing Failure as a Paradigm for Creative Learning in the Arts*, 69 ART EDUC. J., no. 2, 2016, at 6, 7–8 (stating that failure is essential for creativity).

316. See Joseph Amankwah-Amoah, Nathaniel Boso & Issek Antwi-Agyei, *The Effects of Business Failure Experience on Successive Entrepreneurial Engagements: An Evolutionary Phase Model*, 43 GRP. & ORG. MGMT. 648, 670–73 (2018) (discussing ways in which entrepreneurs learn from failure); Daria Fisher Page, *A Pedagogy of Anxiety: The Dangers of Specialization in Legal Education and the Profession*, 44 J. LEGAL PROF. 37, 73 (2019) (“The core of becoming an expert is failure”). See also discussion of entrepreneurial preparedness from failure in Jason Cope, *Entrepreneurial Learning from Failure: An Interpretative Phenomenological Analysis*, 26 J. BUS. VENTURING 604, 604 (2011):

[R]ecovery and re-emergence from failure is a function of distinctive learning processes that facilitate a range of higher-level learning outcomes. . . . [E]ntrepreneurs learn much not only about themselves and the demise of their ventures, but also about the nature of networks and relationships and the “pressure points” of venture management. . . . [T]hese powerful learning outcomes . . . increas[e] the entrepreneur’s level of entrepreneurial preparedness

Id.

317. See William T. Allen, Jack B. Jacobs & Leo E. Strine, Jr., *Realigning the Standard of Review of Director Due Care with Delaware Public Policy: A Critique of Van Gorkom and Its Progeny as a Standard of Review Problem*, 96 NW. U. L. REV. 449, 449–50 (2002) (discussing role of business judgment rule in “encourag[ing] directors to act without undue inhibition” and engage in risk-taking); Sarah E. Light, *The Law of the Corporation as Environmental Law*, 71 STAN. L. REV. 137, 181 (2019) (“[T]he business judgment rule . . . creates a protected sphere of discretion.”).

The general understanding of corruption also does not include one end of the spectrum of undue influence. Directly paying for access would be included, but the influence created through connection and relationships probably would not.³¹⁸

Practitioners, and scholars, might need to devote more time and attention to understanding undue influence.³¹⁹ Undue influence inflicts harms on both individuals and on society in general.³²⁰ Undue influence critically undermines confidence and trust in governance.³²¹ Indeed, much of the criticism of the Supreme Court's narrow definition emphasizes the Court's exclusion of undue influence.³²²

CONCLUSION

The United States experiences real and damaging harm from corruption. At some point, the political and legal systems will need to face corruption head on. One exacerbating factor has been the Supreme Court, which has side-stepped tensions between corruption control and other interests by redefining corruption to the point of rendering corruption-controlling laws nugatory. Many legal scholars, as well as practitioners involved in the control of corruption and the general public, have responded by calling on legal scholarship to shape a more comprehensive definition that Congress can adopt in place of the crabbed definition pieced together by the Court.

Legal scholarship has, for the most part, ignored this call to action, hampered by a perceived lack of theory on which to base a definition. Corruption, however, is a real-world phenomenon, and legal scholarship should turn to the real world. Practitioners deeply involved in corruption control have in fact developed a shared understanding of corruption: corruption is an abuse or misuse of authority or trust for personal-regarding reasons instead of the reasons for which authority or trust was conferred. That understanding can be tested against the real-world example of the college admissions scheme.

As befits application to the real world, the college admissions scheme must be thoroughly understood. The admissions process involves many working parts, which work together to fulfill the mission of the university. The college admissions scheme took advantage of one piece of the admissions system, but the scheme can only be understood in the context of the whole process.

318. *Supra* notes 300–02 and accompanying text.

319. See Bloomberg, *supra* note 4, at 899 (“Others have argued that preventing corruption is not the only interest at play when a legislature restricts the financing of elections, and so the Court should recognize other government interests, such as electoral integrity, political equality, or political participation.”).

320. See *supra* notes 294–98 and accompanying text.

321. See generally LAWRENCE LESSIG, REPUBLIC, LOST: THE CORRUPTION OF EQUALITY AND THE STEPS TO END IT (2015) (discussing erosion of trust).

322. See Mance & Mistree, *supra* note 4, at 188 (“*Citizens United* expanded the role of corporate influence in politics, effectively legalizing forms of influence that were previously considered ‘quid pro quo corruption’ and ‘undue’ for their tendency to corrupt—or to appear to corrupt—the integrity of government.”).

A definition is useful when it enables distinction and organization of a mass of observations and when it allows for effective communication through a shared understanding. By those standards, the general understanding is quite effective. Application to the college admission scheme demonstrates how the general understanding works, that it does draw distinctions, and that it explains those distinctions in ways that support shared explanation.

The general understanding does not include everything that people consider corrupt. In the case of failure, sufficient reasons support non-inclusion, whether it is failure of the college admissions system to actually support universities' missions or system failure in general. Fewer reasons, however, support not including certain types of undue influence. Legal scholars and policymakers would do well to investigate undue influence, either to develop a separate definition or to understand how it fits within the phenomenon of corruption.