

Letter from David Balfour, Editor-in-Chief of Nicotine & Tobacco Research, to the President of the University of Alberta demanding that the University censor and sanction Prof. Carl Phillips because Phillips questioned NTR's conflict of interest policy and the failure of an author to declare an apparent COI.

For context, please see the correspondence between Balfour and Phillips that appears in a separate posting accompanying this one.

from David Balfour <d.j.k.balfour@dundee.ac.uk>
to [U of A President]
cc [Phillips]
hecht002@umn.edu
date Thu, Feb 19, 2009 at 2:19 AM
subject Personal attack
mailed-by dundee.ac.uk

Dear Dr Samarasekera,

A member of your university staff, Dr Carl V Phillips, has taken it upon himself to publish on his website an e-mail conversation we have had concerning his view that one of the authors of a paper in the journal I edit failed to declare a conflict of interest. I wish to make it clear that our journal took his accusation seriously and investigated it fully. Dr Hecht did not contravene the rules on conflicts of interest as they are laid out in the instructions to authors. These, like those for most other journals, focus on potential financial conflicts of interest. Dr Phillips seems to take the view that the scientific views a scientist holds should also be declared as conflicts of interest. Although we have rejected the main substance of Dr Phillips accusation, we are still considering a way of publishing an erratum which indicates that Dr Hecht has served as an expert witness while making it absolutely clear that he was not paid for his services.

In his webpage, Dr Phillips says that I copied the correspondence between us with "what appears to be the team of senior editors". This sneering comment refers to the team of deputy editors of the journal whose names are clearly listed in the journal. It does not appear to be a team of senior editors - it is a team of senior editors.

I understand that Dr Phillips has been an expert witness in cases in which Dr Hecht has also appeared. These scientists take different views and provide opposing testimony. People are invited to be expert witnesses because their research and experience has led them to take a particular view which they can defend in court. I believe it extraordinarily insulting to suggest that the data reported in papers published by Dr Hecht, or any other author in our journal, is manipulated so that it fits with testimony given as an expert witness. All our papers are subject to rigorous review and any conclusions drawn must be justified by the data reported.

It seems to me that the material published on his webpage by Dr Phillips, which clearly indicates his affiliation to the University of Alberta, represents a personal attack on Dr Hecht and myself. I understand that Dr Phillips is a paid consultant of the tobacco industry and takes funds from the industry to support his work. I also understand that he is paid by a tobacco company for his testimony. I am, therefore, forced to the conclusion that Dr Phillips' attack may be designed specifically to damage Dr Hecht's standing and that of our journal, Nicotine & Tobacco Research in which he publishes. I assume one objective is to diminish the value of Dr Hecht's testimony in subsequent court cases. It also occurs to me that Dr Phillips may gain financially by his attack either directly or indirectly by encouraging continued support for his work and testimony from the tobacco industry.

I would ask therefore, that the University of Alberta to

1. formally distance themselves from this personal attack on Dr Hecht and myself
2. insist that Dr Phillips makes it clear on his webpage that (a) his work and testimony as an expert witness are financed by the tobacco industry and (b) that he accepts fully that Dr Hecht did not contravene in any way the conflicts of interest requirement of the journal as they are stated in our instructions to authors. He should also immediately withdraw from his webpage any suggestion that Dr Hecht was willfully misleading.
3. insist that Dr Phillips makes it very clear that his view of the material that should be included amongst conflicts of interest are his personal view and to state clearly with whom he discussed these views before he published them on his webpage.

Please consider this e-mail a formal complain about a member of your staff. I will be informing my own University authorities of this personal attack on me from a member of your staff. Before doing that I would like to be in a position to tell them what action the University of Alberta proposes to take.

Thank you,

David Balfour

Professor David Balfour
Centre for Neuroscience
Division of Molecular & Translational Medicine
University of Dundee Medical School
Ninewells Hospital, Dundee DD1 9SY
Scotland

tel: +44 (0)1382 632524
fax: +44(0)1382 633923

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Open response to Balfour attack on me (via the University of Alberta) by Carl V. Phillips

For context, please see Balfour's letter of 19 Feb 2009 to the President of the University of Alberta, demanding that she censor my writing, and the correspondence between Balfour and myself that appears in a separate posting accompanying this one. Note that the latter is the entire correspondence between us (which is to say that he offered no response to my last email before demanding that the University censor me, and there are no actual "personal attacks" by me that have been omitted).

I will start by noting that Balfour never actually claims that any of the basic factual points I make are inaccurate or even misleading (he asserts such an accusation about one thing I did not actually say – see below -- but not anything that I really did say). He apparently disagrees with my view of what real conflict of interest is, but he merely asserts his disagreement, offering no substantive argument for his position let alone any reason that holding my view should subject me to sanctions. He asserts that his reading of Nicotine and Tobacco Research's conflict of interest policy is different from mine, but again offers no substantive argument. And yet without even so much as a single argument that I am wrong, he demands that the University censor me from stating my opinion.

Probably the most critical observation about Balfour's letter is that he is attempting to mislead the reader on several points. He probably assumes that the University's President and her staff will not be familiar with the details of my writings, including my website, let alone the correspondence. Thus he knows that if his letter stood without response, he would be able to succeed at causing the reader to believe some things that are clearly not true (an act that is often referred to as "lying"). In particular:

-Balfour refers to my correspondence with him as personal attacks, though there is nothing even a little bit personal in it. I address him and discuss Hecht entirely in the context of their public professional roles as editor of a journal and as a researcher/author/consultant. There is nothing in what I wrote that was intended as personal, and I do not notice anything that would likely be misinterpreted that way. This should be immediately obvious to anyone who reviews the record. (However, I suspect that most readers would conclude that writing to a University to demand that it punish one of its professors is very much a personal attack.)

-Balfour demands that my University require that I put disclosures about my finances and associations on my website, which implies that such information is not already there. The truth is that statements about my financial and other interests appear probably twenty times – maybe twice that -- on the website, in various forms and places, including a long discussion in the FAQ (the most-read part of the website) about our funding and why tobacco harm reduction researchers are cut off from other funding sources and thus need industry funding. Most relevant, the correspondences I had with Balfour and with the editor of another journal began with me explicitly pointing out that I knew about Hecht's undisclosed conflict of interest because I am a consultant on the same lawsuit that he is employed on. (Apart from Balfour's demand being misleading, I have to note the irony of him demanding that I declare conflict of interests on my website, which I do even though there are no rules that require that I do, while he goes to great lengths to avoid requiring that Hecht declare his COIs, even though the journal has a clear rule about that.)

-Balfour wrote "I believe it extraordinarily insulting to suggest that the data reported in papers published by Dr Hecht, or any other author in our journal, is manipulated so that it fits with testimony given as an expert witness." Yet I never suggested that I believed that was the case. In fact, I explicitly wrote to Balfour that I did not think Hecht's paper in his journal was particularly relevant to the case, but that it was still close enough in subject matter that a disclosure was clearly warranted. (I did report my assessment that a different paper that Hecht authored in a different journal had some very odd points in it, including one clearly inappropriate categorization for aggregating some results and a strange choice of one detail to report. These were remarkably perfect in their tendency to support the plaintiff's (Hecht's) side in the lawsuit in question. But I did not say anything about data being manipulated or anything about a paper in his journal. The other journal did require Hecht to publish an erratum to disclose the conflict of interest that resulted from his work on the lawsuit since he explicitly denied having any COI when the paper was first published.)

-In parts of his letter, Balfour implies that I am clearly wrong in my challenges. And yet several times in his correspondence, in several ways, he clearly concedes that I had a good case. Readers of the correspondence will notice that he never came close to saying, "I agree that Hecht worked as a consultant on that case and did not disclose it, but it is my declared opinion of the editor that he never needed to disclose it." Instead, there is a series of amorphous and changing claims that seek to define the consulting work as not really being consulting work. Even within the attack letter, Balfour noted that his journal is considering publishing an erratum. Thus, even while trying to convince my University that I had written something that was so outlandish and appalling that it demands sanction and censorship, he concedes that my primary thesis is sufficiently supported that both making excuses and taking action to correct the problem are warranted.

Not so much a lie, but strangely misleading in its own way are Balfour's several statements that imply he believes that universities, in and of themselves, have scientific/political/philosophical opinions or that they behave as corporations with

individual professors being official spokespeople. Such attitudes can sometimes be found coming from naïve local advocates or corporations who do not understand universities and so demand that they change or clarify "their" position. But anyone who understands universities knows that professors never speak for an entire university (or even an entire department), and the institutions do not form opinions about whether the professors' analyses are correct. Obviously the University President and staff know this, and it is difficult to imagine that Balfour does not know it – some medical schools do function more like corporations than academic institutions, and I suppose his might be one of these (I do not actually know anything about it one way or another – it is just a possibility), but he is also a journal editor and so deals with academics. I am left wondering who is the real target audience he is he trying to mislead, and why?

Balfour implies that something I wrote damages the reputation of him, or his journal, or perhaps Hecht. It is not clear exactly what he is claiming the damage is, let alone what the causal pathway is from my writing to that outcome, so it is difficult to respond precisely. But I believe that whatever his exact claim is, his expressed confidence that nothing of apparent dubious ethics has occurred must mean that he does not think I really could have damaged anyone's reputation. After all, if nothing is amiss and I am the only one who would possibly think something is (which he seems to be claiming), then no one's reputation could be damaged. I merely called attention to something that happened (the basic facts are not in dispute), and if it really is clearly of no consequence, then I have just wasted some time but done no other damage. If, on the other hand, Balfour's other claims are wrong, and some of what happened is genuinely embarrassing, then it was those who took the embarrassing action, and not those of us who merely reported it, who did the damage.

For completeness of response to his complaints: Balfour seeks to find some strange significance in my uncertainty that the people he CCed were his senior editors. I indicated uncertainty because he referred to his senior editors but never actually said that was who was CCed (he did not attempt to explain who he was CCing or why). I simply did not want to presume I knew exactly who they were or how to categorize them(*). In addition, I hesitated to define the unlisted recipients too precisely in case some of them did not want to be associated with this or did not endorse what he wrote. Balfour's strange reaction to an insignificant phrasing suggests he is desperately searching for any excuse to attack me. I will note, however, that to his credit, he did refrain from claiming that my publicizing of our email conversation was inappropriate. I note that I openly CCed several people on my original correspondence, he forwarded what I and he wrote to at least the many aforementioned editors (without suggesting he needed my permission to do so), and neither one of us said anything implying a request for or presumption of confidentiality. Thus, everyone involved clearly recognized this as a public conversation.

(*)Note: Given that this has escalated into a personal attack on my employment and freedom of speech, and now that Balfour has confirmed exactly who they were, I no longer feel it is appropriate to screen those who were CCed from identification: His fellow editors need to either stand up against this or be considered complicit in it. Thus I

have changed the accompanying file to include the names of who he CCed and who among that group replied.)

The most appalling part of Balfour's letter is the demand to the University that the institution force me to publicly state "that he accepts fully that Dr Hecht did not contravene in any way the conflicts of interest requirement of the journal as they are stated in our instructions to authors". But it remains my opinion (a professional academic research opinion, given that I do research and write papers on the topic of conflict of interest), and that of others who have observed this matter, that Hecht clearly did contravene that stated rules. Note that Balfour tries to sow some confusion between my views on what conflict of interest rules *should* be and what his journal's written rules are, trying to suggest that I think there was a problem only because I have a more robust view of conflict of interest. In fact, my opinions include both the claim that Balfour and his journal (and many others) have a very naive view of what constitutes a conflict of interest (a view that happens to be shared by most everyone who thinks seriously about these matters, though that does not even matter for present purposes), and that even under this naive and narrow view the stated policy of his journal was ignored.

Thus, Balfour is demanding that the University force me to change one of my professional opinions and publicly repudiate it. Obviously he is free to have a different opinion, and he directly controls which opinion is acted upon by his journal, but he obviously has no business in demanding that force be exerted upon me so that I change my opinion. My right to hold and state my opinion is protected by basic rules of free speech, and furthermore there is a concept known as "academic freedom", which adds a layer of protection within a university, and the academy as a whole, to any researcher/scholar presenting his professional analysis.

I am not sure it will be obvious to non-academics and non-scientists reading this just how outlandish Balfour's demand is, but an analogy might be the following: Imagine if someone wrote an honest and substantively accurate online review that found fault with a restaurant or product, and then the company that was criticized filed a lawsuit demanding that the government force the author to change his opinion. It is a disgrace that someone would make such a demand and still presume he has legitimacy as an editor of what is considered a scientific journal (a role that should not be friendly to thought censorship), let alone call himself a scholar or a professor.

Not too far behind this, in terms of appalling, is the demand that the University force me to "make[] it very clear that his view of the material that should be included amongst conflicts of interest are his personal view and to state clearly with whom he discussed these views before he published them on his webpage". The latter bit is pure Big Brother, demanding that I disclose the list of who I choose to associate with professionally on a particular matter (Balfour certainly did not volunteer to disclose who he corresponded with before forming his opinion!). If my colleagues wish to make public statements about this, they can (one of them has chosen to post his own opinions about it on his blog), but they also have the option of choosing to not do so. Apparently David Balfour believes that the crime of thinking that David Balfour did something

wrong is an offense that removes someone's right to have private conversations. (I can only assume that he wants this information so that he can also attempt to bully and intimidate my colleagues by sending innuendo and demands to their universities' presidents. Naturally, I am not inclined to facilitate this.)

It also rather amusing how the Big Brother half of the above quasi-sentence is undermined by the first bit: He points out (correctly) that what I wrote represents my opinion, so it cannot matter who I talked to along the way to forming that opinion. As for the demand that I point out that my opinion is my opinion, I assume that we all were taught in grade school to not start every sentence in our essays with "I think..." Of course what I wrote is my opinion. What else would it be? Who would ever think otherwise?

As a more cerebral assessment of what Balfour wrote, it is interesting how violently he attributes my attempts to defend and improve the ethics of our profession to some corporate conspiracy. My assessment of that is that, unlike the clearly misleading theatrics elsewhere in his letter, I think(!) he actually believes this. The anti-tobacco extremists have become so insular and so anti-intellectual that they simply do not realize that lots of other people have different scientific/philosophical/political opinions than they do. Of course each of us has our opinions, and thus inevitably disagrees with people who have other opinions. But most of us understand that people who genuinely have different opinions exist. Indeed, those of us who are scholars/scientists/philosophers think it is critical to attempt to understand why others have the other opinions, and even try to talk to and debate with the people with different opinions to better understand them. The anti-tobacco extremists have made such a habit of only talking to themselves that they have lost touch with the majority of people whose opinions differ from theirs, and as a result they can only conceive of someone disagreeing with them if they are paid to do so. This would simply be a fascinating bit of anthropology, except for the huge amount of damage it does to public health.