

## Tenure Denied

Anti-unionism and  
Anti-Intellectualism  
in the Academy

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Westheimer

It was supposed to be a dull day downtown. On September 28, 1999, I rode the subway to the court building where I was to offer testimony to a hearing officer from the New York regional office of the National Labor Relations Board (NLRB). I was to testify, of my own volition, on behalf of New York University graduate students who were seeking to join a union, then return uptown to teach my afternoon class in NYU's School of Education. When I entered the room where the hearing was to take place, it was easy to tell that the stakes were high. I already knew that NYU had hired the same high profile law firm also used previously by Yale and presently by Columbia University. But to my surprise, not one, but three lawyers for the university were present along with two high ranking university officials, each dressed in carefully pressed suits and ties: the Vice-Dean of my school, Tom James, and Vice-President of NYU, Robert Berne. Then there was me, a young, untenured, assistant professor, dressed in rumpled khakis. I was called to the stand, and lawyers for both sides began with prepared questions. The hearing room grew increasingly tense, the questioning increasingly fierce.

Ten months after the trial, I would submit my application for promotion and tenure. Soon after, Ann Marcus, Dean of the School of Education, would overturn the unanimous recommendation of both my own department faculty and all seven outside experts chosen to judge my case that I be granted tenure. By August of 2001, less than two years after testifying against the University's interest in denying graduate students the right to form a union, I would be fired.

This essay is related to my academic research on democratic communities in education. Studying the democratic purposes of schooling, in both elementary and high schools as well as in colleges and universities, has always been compelling to me because the gap between rhetorical and substantive democracy can be so large in these institutions. But while I have always felt strongly about issues of democracy and community in education, this essay is personal and difficult to write. It is an essay I could never have imagined writing. This essay concerns how my academic freedom and, indeed, my legal protection under the National Labor Relations Act were both violated by the administration of New York University. I write this account because I believe it is important to examine the ways university administrators—who are increasingly modeling themselves after corporate executives—respond when grass-roots efforts to reassert democracy and pursue just working arrangements on campuses begin to gain strength. The focus here is on my case at New York University, but the implications reach farther: campuses across the country like Columbia, Brown, Yale, Penn State, the University of Maryland, the University of Pennsylvania, the University of Illinois, and the University of North Carolina all have active organizing campaigns for teaching assistants, and sometimes adjunct and even tenure-stream faculty. This essay is as much about their struggles as it is about those at NYU because, while particular circumstances vary, one disturbing trend remains constant: as university administrations increasingly look to the bottom line and displace educational goals with economic ones, the democratic ideal of the university will suffer, and so will our faculty and students.

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The graduate student organizing drive that ended in an embarrassing defeat for the NYU administration was a victory, I would argue, for the university as a whole. NYU graduate students are now affiliated with the International United Automobile, Aerospace and Agriculture Implement Workers of America (UAW) and have recently negotiated their landmark first contract, that included higher salaries, health benefits, paid professional development courses, proper appointment procedures, and fee waivers. All of these were unimaginable until their successful organizing drive, labor board suit, and, finally, union representation. Now adjunct professors at NYU are also gearing up for a major organizing drive to improve their working conditions while not one but *two* unions are hoping to represent them. These victories, however, were not without costs.

## Union Busting in the Corporate University

When NYU graduate assistants first started organizing their union, I joined faculty colleagues in supporting the assistants' right to choose a union. I did so because I know first-hand the value of the hard work they perform for the university. When I heard some members of the NYU administration claim that a union would damage relations between graduate students and their faculty advisors, and that a union would be harmful to the teacher training graduate students receive, I felt a particular need to speak up—as an education professor who specializes in the subject of community and democracy—to correct these fallacies.

As a faculty member, it is not for me to say whether or not graduate students should choose to unionize. But I *can* say that the vast contributions they make to the university constitute "work" and that honoring that work through a collective bargaining agreement will make the university a richer, more just, and more collegial place for all of us. Most importantly, as a faculty member who sees the work graduate students do in teaching, in research, and in service to the university community, I can say that the choice of whether to unionize should be theirs.

As the graduate assistants began their organizing campaign, the NYU administration naturally wanted to collect evidence for the argument that teaching assistants (TAs), and research assistants (RAs) are not university employees protected under U.S. labor law, but rather *only* students who—because they are learning through their work—do not have the right to form a union. These were exactly the arguments put forth by the University of California at Berkeley in the early 80s and Yale in the 90s to prevent their respective graduate student organizing committees from being legally recognized as employees of the university and, therefore, gaining the legal right to organize. Early on in their anti-union campaign, the administration of the School of Education at NYU sent a letter to some faculty asking for “job descriptions” for our research assistants. They asked a series of questions, beginning with the benign “Describe what your research assistants do.” But the questions quickly became shameless to anyone with any knowledge of the university’s position on graduate student unionization. Here was one such question:

How do you supervise, mentor, guide and evaluate [graduate assistants]? Include how often you meet with them individually, how you orient them, how you review their work, whether they work with others as part of a team, etc.

That university officials would ask professors how they "supervise, mentor, guide, and evaluate" their RAs is not only underhanded—in that it unwittingly enlists professors in the administration's anti-union campaign—but it is troubling because it does so by exploiting professors' own insecurities. Imagine a professor responding this way: “Actually, I don't mentor my graduate assistants all that much, and they spend most of their time photocopying and grading student papers; sometimes they go to the library and get books for me or file papers, or answer the phone, or fix my computer.” No, we are far more likely to say—and the administration and their law firms know this—that we do a terrific job of mentoring and guiding our malleable, young students, and that students' experiences with us are always valuable, always educational, and so on.

Yet it should be clear to any professor that the work graduate research assistants and teaching assistants do on research projects or in teaching classes—while it has a

learning component to it—is nonetheless clear and significant employment. That is, a significant portion of their job is a job, and not related to their course learning any more than a research associate's work at a think tank, government office, or corporate research department (all of whom are guaranteed the right to organize under US labor law) is not "work" even if they are (of course) learning while doing it. University departments and professors benefit from the work that research assistants offer by helping with research projects. Teaching assistants similarly may learn something while teaching, but this learning does not diminish the fact that the university employs them to teach its courses (and generates revenue from their labor). That is why teaching and research assistants should enjoy the right to have an officially and legally recognized graduate student organization to speak on their behalf, one to which the university is legally required to listen.

But what makes this administrative tactic particularly effective is the fact that the working relationship between graduate research assistants and professors is generally multi-layered and complex. Often, for example, a professor will simultaneously employ a research assistant and serve on his or her dissertation committee. This means that the professor and the graduate student will spend a great deal more time together than the time for which the research assistant is paid. For the purpose of responding to administration questions like these, then, it became important for faculty to state explicitly that they were responding only to the *working* relationship in the context of the time for which the research assistant is hired since other educational interactions take place outside of this time frame and are similar to interactions faculty would have with *any* student in a graduate program—whether that student is employed by a research grant or not.

How did I respond to fox-dressed-like-sheep questions from the administration like the one above? I summarized the previous arguments always being careful to note that I was speaking only of the work the students do *as part of their research assistantship*. I also copied my written response including the commentary on the inappropriate nature of the questions to other faculty throughout the school. I didn't know it at the time, but things were about to change dramatically for me and for my application for tenure at the university.

Soon after the university began collecting information to be used to counter the graduate student organizing drive, the question arose of whether I would testify before the National Labor Relations Board for the graduate students. For reasons I've already mentioned, I felt a particular obligation to speak up to counter the administration's claim that the faculty/student relationship would be adversely affected by unionization. I had already joined other faculty at NYU in a petition urging the administration to allow students to exercise their democratic rights and vote on whether they wished to have union representation.<sup>1</sup> After consulting with colleagues, in the fall of 1999 I testified at the NLRB hearings. In a brutal cross-examination, NYU's lawyers barely let me speak. Each of my attempts to respond to questions from the UAW lawyers was abruptly cut off with efforts to discredit my basis for having any knowledge that would enable me to answer the questions I was being asked. For more than two hours they told me that I hadn't been at the university long enough to know anything, that all my testimony was hearsay because it came from faculty meetings and memos, and that—as recorded in one Al Pacino-esque moment with the NYU lawyer screaming at the top of his lungs—"HE KNOWS NOTHING!" I came in thinking the whole day was to be painfully tedious and

boring and I left feeling like I had appeared in what surely must have been an episode of *Law and Order*.

Despite the frequent objections of NYU's lawyers, I did get to offer testimony on several points that the graduate student organizing committee relied on to make their case before the Labor Board. I thought my testimony might make a small addition to the growing mountain of evidence that graduate teaching and research assistants conduct work that should be deemed employment and that they, therefore, have the right to organize. What I did not know at the time was that the Dean of the School of Education at NYU would shortly testify before the Labor Board in direct opposition to my testimony supporting graduate assistants' right to organize. And, naively perhaps, I did not imagine that taking a public position in opposition to university administrators would brand me a "troublemaker" and leave me vulnerable to dismissal.

I was, as it turns out, the only untenured professor university-wide to testify. In May 2001, Associate Dean of Faculty Gabriel Carras told me by telephone that the Dean had overturned the unanimous recommendation of both my department faculty and all seven external reviewers and had denied my tenure bid on the grounds that my scholarship was inadequate.

This news came as a surprise. While one is always nervous in anticipation of tenure decisions, my scholarship was one area in which I felt confident that I had amply met the requirements of the university. I had also been assured by colleagues at NYU and elsewhere that, while tenure decisions can be enigmatic, I did not need to worry about my record of scholarship.

I am uncomfortable listing my credentials, and I will do so now in the briefest possible terms solely to serve the argument of this essay. In six years working at NYU, I had received the highest possible merit ratings awarded by the school each year—exceptional merit. Each year, only about 20% of faculty in my department (including full professors) receive "exceptional merit" evaluations. Before submitting my application for promotion and tenure, I had published a book with Teachers College Press, ten journal articles, several book chapters, essay reviews, newspaper editorials, and reports. I had been invited to lecture on my work 19 times at universities such as Cornell, Harvard, Stanford, and the University of Toronto. And I had presented at academic conferences 27 times.

Between 1996, when I started at NYU, and 2001 when my tenure and promotion bid was reviewed, I had received five awards and fellowships. External awards included Cornell University's Millman Promising Scholar Award for Educational Research awarded to only one person each year from a national competition of scholars.<sup>2</sup> Dean of the School of Education, Ann Marcus, nominated me for this award and she had to choose only one nomination from the entire 180 some members of the School of Education faculty. In an NYU publication, Dean Marcus stated: "This award underscores the significance of [Westheimer's] work as a scholar...His inquiries...are informed by a sophisticated understanding of educational practice. His work is skeptical, rigorous and lucid."<sup>3</sup> I had also received an internal award: In 1997, I received the Daniel E. Griffiths Award, given to only one faculty member, for the best scholarship in the School of Education.

Moreover, in each of the years prior to my labor board testimony, my annual reviews by both department faculty and university administrators were positive:

1996:

- “[Westheimer’s] teaching is exemplary”
- “[He has] established a record of professional activity and involvement which is local, regional and national.”
- “[Westheimer’s] prospects for tenure are excellent”

1997:

- “Students in his [courses] wrote extensive midterm and final reviews that were uniform in their praise.”
- "His research record is admirable"

1998:

- “Through his research and publications, [Westheimer] now has a national reputation”
- “His teaching, research, and scholarship remain excellent”
- "Professor Westheimer is making excellent progress towards promotion and tenure.

1999:

- “Professor Westheimer presents a total picture of quality university teaching.”
- “His productivity and professional activities are exemplary for an assistant professor.”
- [He is making] “excellent progress towards promotion and tenure.”

I received those last reviews in May 1999. Then, in September, I testified.

The administration’s view of my performance changed quickly. Ann Marcus and my Department Chair, Mark Alter, turned hostile and disparaged my research and service to other faculty members. In July 2000, Marcus wrote to me about concern over my "willingness to commit fully to the needs of our programs," without specifying what this might mean. It was the first ever mention of any such concerns. And a senior faculty member in my department with close ties to the department chair told me that while my teaching was “masterful,” there was concern that I needed to be more of a “team player,” “more collegial,” and to go along “with the direction of the department and the school.”

While my department faculty’s tenure and promotion committee wrote in my 2000 review that they found my teaching to be “inspiring,” that I had done “exemplary work,” and that my scholarship was “a model for assistant professors,” Mark Alter for the first time downgraded my rating from "exceptional merit" to merely "merit." Furthermore, I was assigned an onerous administrative workload that neither I, nor any of my colleagues, had ever been assigned before. After I requested a shift in my 2001 teaching load from spring to summer, Alter wrote the following in a November 3, 2000 memo to me listing my administrative responsibilities for the term. I was to:

oversee the continuing professional development of teacher Summer activities...oversee the implementation of course work related to all teacher education programs...assume responsibility for the middle school extension including recruitment, advisement, and course development... oversee the implementation of the doctoral committee's recruitment plans.... coordinate all advisement for both graduate and undergraduate students...ensure that incoming and continuing pre-service and in-service students are advised regarding their programs, course schedules and their registration...Plan and supervise orientations for incoming Fall students...oversee the coordination of summer field activities including student teaching and field observations [and] serve on [any] committees that meet during the summer.

After the denial-of-tenure phone call from the Dean's office, the Deans spent a week trying to get me to withdraw my application for tenure and simply resign. They told me it would look better on my CV to quit rather than to be terminated. They didn't mention that when you withdraw your application you also forfeit your right to file a complaint with the Labor Board or pursue any other legal or administrative remedy. I decided not to withdraw.

Shortly after, the NYU chapter of the American Association of University Professors (AAUP) submitted a petition signed by more than sixty NYU professors calling on the administration to reexamine my tenure application. At the same time, all seven of my external referees, five past presidents of the American Educational Research Association (AERA), and a total of 27 senior scholars in the National Academy of Education signed a statement to NYU raising concern that my tenure case may have been judged on the basis of political activities and calling on NYU to reconsider my application and to ensure that tenure proceedings not be used as retaliation. Then a broader petition with over seven hundred signatures was collected. After reviewing my case, the Associate Secretary of the AAUP national office also sent a strongly worded letter to NYU President Jay Oliva expressing concern that my academic freedom had been violated. Senior education faculty from Stanford University, the University of Washington, Columbia University, the University of Wisconsin-Madison, the University of Illinois-Chicago, and others also wrote letters or phoned the Dean's and President's office to voice concerns over academic freedom raised by my case. Then a Workers Rights Board hearing was convened by community leaders and a report was issued titled "Right to Organize and Academic Freedom at New York University" detailing the Board's finding that I was denied tenure "in retaliation for testifying against NYU on behalf of the union rights of graduate student employees before the National Labor Relations Board." In November 2001, several wonderful colleagues under the leadership of Robby Cohen organized a conference on Democracy and Education at NYU on my behalf. As one newspaper reported it: "Distinguished faculty from some of the nation's top universities gathered Thursday afternoon [in] a show of support...honoring [Westheimer's] scholarship and research in the field of education." Other newspaper and journal articles highlighting the suspicious nature of NYU's actions appeared in the *Chronicle of Higher Education*, *The New York Times*, *The Villager*, *Dissent*, *Academe*, and the *Washington Square News*.<sup>4</sup>

The result of all of this public inquiry? NYU did not respond to the charges. It was now seven months since the Dean had issued her decision to fire me and it would still be several months more before the Federal Government would charge NYU with illegal retaliation<sup>5</sup>. But the Dean of the School of Education, the Associate Dean for Faculty Affairs, my Department Chair, the President and the Vice-President of NYU had little or nothing to say.

## The Marriage of Anti-Intellectualism and Anti-unionism

At this point, one might conclude from my experience at NYU that, while universities' corporate practices may be offensive, they don't really intrude on the day-to-day life of faculty except during exceptional circumstances such as union drives. In fact, however, the increasingly corporate logic of the university has a more far-reaching and insidious influence. These universities can be quite good at one of their primary goals—making money. And money, coupled with the kind of attacks on democratic faculty governance that characterize corporate university culture, can translate into perks for faculty that administrators dole out in return for complicity—low course loads, easy research money, travel budgets, computers. It is easy to speculate where such a convergence might lead: if you're "good" faculty, you are rewarded; if you're bad, you are cut off from plum teaching assignments, research monies, and, possibly, tenure. But ultimately, what faculty—and especially junior faculty—are being asked to give up is their own intellectual independence. The creeping corporate climate of some university departments can easily lead to the substitution of bureaucratic allegiance for scholarly inquiry as the cornerstone of academic life.

In some cases, the effect on the intellectual life of a department might be plain to see. In some schools, faculty elected department chairs—who traditionally served terms

of a few years and then eagerly returned to their intellectual pursuits within the department—have been replaced by chairs *appointed* by university higher-ups with no or at best perfunctory input from department faculty. Some stay in these positions for a decade or more and have little interest in scholarly inquiry. A colleague at a mid-western university reported that her department chair, who had been appointed before my colleague was hired, had suggested to the faculty that research questions that the department wanted investigated should be agreed on by a committee (of senior faculty and administrators) and posted on a Web site—and that faculty should align their research with one of those questions.

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Requiring research to be streamlined according to central criteria (doubtless related to funding opportunities) makes perfect sense if one treats an academic department as a profit center. But it turns scholarly life into something less than we all hope it to be.

At times, the mere fact that departmental faculty are pursuing an active, diverse and uncontrolled set of research agendas may be perceived by department administrators as a negative development. At first glance this seems paradoxical, since nearly every department explicitly proclaims the promotion of such agendas as one of its primary missions. However, as in other bureaucracies, the corporatized department may come to place a higher priority on control and predictability than on the inherently messy and uncontrolled nature of intellectual life. Intellectual independence manifest in independent research may end up seeming threatening to departmental hierarchies. At

NYU, my department had features that have proved worrying in many similar situations and ones that might seem familiar to some readers—an upper cadre of faculty/managers who conduct little if any new research and ground their prestige and security not in refereed publications but in close relationships with the school's administration. This is the classic form of a department whose leadership has been transformed along corporate lines. Too often, while such departments continue to recruit promising scholars on the basis of their research production, the departmental leadership, many of whom may have largely abandoned scholarly life, is caught in a bind: they need such scholars to reproduce the department's reputation and grant-getting ability; but once there, these scholars may pose some level of threat to the order of business within the department (and to the security of the chair who has likely already traded the kind of professional security earned from scholarly inquiry and production for the kind won by allegiance and loyalty to university higher-ups).

Appointed chairs can slowly and steadily shift faculty focus from scholarly pursuits that advance a field to those that advance the chair, a possibility that is especially troubling to junior faculty who will be seeking tenure. Much as external pressures on the corporate university constrain and refocus academic research, so do internal incentives on the departmental level. As in much of university politics, junior faculty remain the most vulnerable. Disguised in language like “research consistent with the needs of the department” or “research that contributes to the mission of the department,” anti-intellectual agendas punish independent thinking and reward docility.

In the field of teacher education, this most often takes the form of departments rewarding only research on the department's own programs (and preferably research that demonstrates how good these programs are). This is like coercing Columbia University historians to report a glorified history of Columbia University or UCLA sociologists to study happy social interactions at the campus student center. Yet asking education faculty to study their own education programs is sometimes called “progressive” and often encouraged by senior faculty and administrators. Professors doing the research may justify pressure from the administration to produce showcase research with the comforting notion that they are engaging in “action research” or “participant observation” (which are invariably deemed progressive regardless of the research question, aim, scope, or underlying values). I should be clear that my intention here is not to demean action research or participant observation as methodologies; indeed, many outstanding researchers have fought long and hard to have good research on one's own teaching or programs recognized as legitimate and valuable scholarship—which it certainly has the potential to be. I only note that in an increasing number of education departments, administrators and senior faculty are encouraging junior faculty (and often doctoral students in search of a dissertation topic) to research and showcase the department's own programs not for the pursuit of better scholarship but rather for the promotion of the department and/or its chair.

For junior faculty, the absence of scholarly discourse or spirit of intellectual inquiry in the department may seem, in the first years of service, disappointing but not tragic—meetings that are all procedure and no content, department chairs with egos but without intellectual convictions, senior faculty who have quit writing or never started. These departments might seem stumbling or unprofessional, but more or less harmless places to pursue one's own professional and scholarly interests. Until my recent experience with NYU, I had never worried much about this facet of poor management. But these departments are the ones most vulnerable. Those faculty whose prestige and

security derives from departmental service rather than from scholarly contributions are more easily pressed into anti-union campaigns. Having now seen how aggressive administration anti-union campaigns can be, I am made far more aware of the need for faculty to defend against the erosion of democratic faculty governance.

While it is impossible to generalize from my experience (indeed, it is not entirely possible to know what drives decisions or organizational arrangements even in the department of which I was a member), it is worth noting that faculty governance in departments that have remade themselves along corporate culture lines can become little more than a parody of pseudo-democratic (or simply non-democratic) governance in which faculty simply (and always) endorse administrative positions. As soon as a faculty member's independence comes into conflict with the power and control of the chair and the university administration, these departments snap into action. This is precisely (and belatedly) when it is discovered that the fact that faculty had little real engagement with intellectual life means that they are left vulnerable to the pressures for conformity and silence that characterize the corporate department and university. Faculty managers' and department chairs' only convictions remain those that do not ruffle administrative feathers of those higher up. And the chill factor that blankets departments in which power has been centralized results in the further entrenchment of anti-democratic tendencies. (A source high up in the administration of the School of Education at NYU reports that few faculty [and virtually no untenured faculty] ever fill out department chair evaluation forms for fear of the close relationship between the Dean and the department chairs. Needless to say, there are no faculty evaluations of the Dean or other senior administrators.)

Institutions of higher education become ones of education for hire.

Under these conditions, the university starts to look less like a place of free exchange of ideas and more like a Hobbesian Leviathan, a place that boasts, as former SUNY New Paltz president Roger Bowen warns, "a settled, conforming, obedient citizenry—not dissenters who challenge convention."<sup>6</sup> In these departments, junior faculty either conform, withdraw from departmental life after being tenured, or leave altogether. In the Department of Teaching and Learning at NYU, ten assistant or associate tenure-track faculty were hired in the past five years; of these ten, five have left the department and another two are actively on the job market. Moreover, the department has now begun to hire primarily "clinical" and part-time faculty who remain always at the command of the chair and are left little time to pursue independent scholarly work (indeed, the department chair's first choice for a new faculty hire to head the department's "research" center is reputed to be a college friend who does not possess a doctoral degree); these clinical faculty are more easily pressed into serving the interests of administrators rather than those of open inquiry. There are many reasons people change jobs, to be sure. And, whether the new hires reflect unionization concerns, budgetary concerns, or concerns over control is hard to say. The model of what might be, however, is hard to miss.

When the weeding is completed, the anti-intellectual mission of the anti-union university becomes clearest. The bottom line is raised to the top. Research that promotes the financial and hierarchical health of the administration is rewarded while independent scholarly thought is punished. Institutions of higher education become ones of education for hire.

This is all the more ironic given the fact that university administrations often make the argument in campus-wide anti-union campaigns that unions will *diminish* intellectual pursuits. “Unions are anti-intellectual” is the university’s line. They argue that the union represents an intrusion of crass interests and power politics into an arena that should be about the integrity of ideas, that the university is dedicated to scholarship and excellence, and that unions ensure mediocrity because of hiring rules and procedures. Actual practice suggests otherwise. Anti-intellectualism and universal endorsement of the university’s anti-union stance may far too easily go hand in hand. Undue administrative influence over research agendas, appointed department chairs and the further erosion of democratic governance, and the hiring of part-time and clinical faculty with no time for scholarly inquiry and little job security are all threats to both scholarly inquiry and university democracy. Anti-intellectualism and anti-unionism are not opposites but rather reinforce each other. In fact, in the corporate university, due process protections afforded by faculty unions may be the best way to protect free and independent scholarly inquiry.<sup>7</sup>

### Where do we go from here?

I recognize that people in all types of jobs are threatened or punished for supporting the right to organize. Before I testified before the National Labor Relations Board, I thought hard about the possible risk to my career, but ultimately, I made my decision based on two assumptions. First, colleagues convinced me that my scholarship record was sufficiently strong that even if my testimony rankled some in the administration, they would be unable to find legitimate grounds for denying tenure. Second, I myself just did not believe that NYU was the kind of place where faculty could be punished for speaking out on behalf of something so mundane, so obvious, so un-revolutionary as the right of graduate assistants to choose whether they want a union. It turns out I was wrong on both counts.

On February 27, 2002, the federal government charged NYU with illegally firing me in retaliation for my testimony in favor of allowing NYU graduate students to unionize. The New York Times headline the next day read “Labor Board Rules that NYU Denied Tenure to Union Backer.”<sup>8</sup> Following a five month investigation, Celeste Mattina, Director of the labor board’s New York region reported that “after balancing the information, we concluded that the real reason for [Professor Westheimer’s] denial of tenure was because of his union activities.”<sup>9</sup> After weeks of wrangling over subpoenas and procedures, the administrative law judge assigned to the case scheduled a trial date in May. This date has now been delayed in the midst of talk about a possible settlement. By the time this is in print, it is likely a decision will have been rendered by the Board. Should the decision prove to be not in their favor, administrators at NYU, by any measure of past behavior, will appeal. They have already retained the same law firm used in their unsuccessful

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attempt to break the graduate student union. Sadly, NYU will also likely continue to fight ongoing unionization efforts by adjuncts and, perhaps one day, by faculty. If we estimate legal fees at \$350 to \$425 per hour, the cost to the university of an endless string of court litigation for their anti-labor practices has been and will continue to be very high—money that could just as easily be spent on student financial aid, hiring new faculty, or raising salaries paid adjunct professors. Indeed, the university seems more comfortable paying lawyers 350 dollars per hour than research assistants fifteen.

Efforts to organize graduate students and adjunct faculty are perhaps the most exciting recent development in the struggle for academic workplace justice. Adjunct faculties' professional lives, in particular, are plagued by low wages, heavy workloads, minimal or no benefits, lack of office space, and a general sense of disrespect within the academy. Nearly half of all professors in the United States are adjuncts, up from a fifth in 1970 and, according to the *Boston Globe*<sup>10</sup>, the numbers are growing.

From the perspective of administrators of the new corporate university, the economic logic of this trend is easy to understand.<sup>11</sup> In 1999, tenured professors at

private and public research institutions earned an average of \$87,000 and \$69,000, respectively. In contrast, adjunct professors are generally paid less than \$3,000 per course which puts their annual salaries (as low as \$20,000) on par or below that of hotel porters or fast-food workers.<sup>12</sup> Sometimes they are paid considerably less than that, even as low as \$600 per course. It shouldn't be surprising, then, that between 1975 and 1995, the number of tenure-track faculty was cut by 10 percent while student enrollment grew considerably. Part-time faculty now account for 45 percent of all college and university teaching positions.<sup>13</sup> Add in graduate student teachers and the figures increase. As Gordon Lafer points out, "an undergraduate signing up for an introductory English class has less than a one-in-four chance of being taught by a tenure track professor."<sup>14</sup> But unlike graduate students, adjuncts can not be construed as laboring for part of their education as students, which is what makes their efforts to unionize particularly frightening to university administrations.

Unfortunately, until the cost of fighting the unions exceeds the fiscal benefits, the anti-union campaigns will likely continue, to the detriment of academic labor, to the detriment of academic freedom, to the detriment of students, and to the detriment of the ideal of the democratic university. It is imperative, therefore, that we continue to ask ourselves: How will administrators respond to workplace justice issues? How should faculty respond? We must clearly be aware of the scare tactics some universities will employ, like hiring anti-labor lawyers at escalating cost to the university budget and to campus morale. We must be aware of the internal chill factor: faculty are afraid to stand up for fear of retaliation or of being ostracized, or simply because intellectual and moral commitments have been suppressed. And we must be aware that the primary motivation for administrators is no longer a matter of reconciling competing interests in a democratic university, but, instead, the strict pursuit of a bottom line. It is this changing face of the university that I believe we have to fight against. As in so many other arenas in our society today where democratic interests are pitted against economic ones, democracy seems to be losing.

As in so many other arenas in our society today where democratic interests are pitted against economic ones, democracy seems to be losing.

Moreover, what makes matters of university governance more complex is that democracy—as embodied in the abilities and desires of campus faculty—is hardly a reliable counterforce to even a weak administration. Universities are plagued with organizational problems that go beyond a repressive hierarchy. Were university administrators to fully honor democratic faculty governance, would faculty step up to the plate? I have already noted how, under a corporate model of governance, appointed department chairs may stay in their positions for a decade or more. A democratic model, however, would require those deeply engaged in scholarship and research to be willing (or required) to take on leadership positions in administration in addition to their roles as teacher and scholar. Countering an increasingly hierarchical and corporatized model of university governance requires commitments of time and energies towards democratic governance that many faculty now shun but that a just workplace requires.

I do not yet know how my case against NYU will end. I do know that I do not regret testifying on behalf of graduate teachers' right to organize. I do not regret speaking out for the rights of adjunct faculty to make a living wage and be offered respect and dignity. These issues are too important, not just for me, but for the hundreds of thousands of academics—graduate students, adjuncts, and tenure-stream faculty—who are still engaged in the struggle over the right to organize, and who need to know that we cannot be cowed into silence by the unprincipled behavior of a handful of administrators. It is up to all of us—tenure stream and part-time faculty, administration, students, and staff—to ensure that we move toward rather than away from the pursuit of democratic governance, of free and open inquiry, and of just working conditions for the entire university community.

We need to remind ourselves and the university administrations where we work of American education's historic ideal: to educate a democratic citizenry ready and able to pursue the common good. And how does one go about teaching democracy? By example, to start with. Albert Einstein—a founding member of a faculty union in Princeton, New Jersey—put it this way: “Setting an example is not the main means of influencing another, it is the only means.” There may be many approaches to pursuing education in the service of democracy, but they must all begin with reflection on ways we can remain democratic in our daily practices. That requires the strength to speak out that can come from joining together in the common cause of improving the conditions under which all of us work.

## Epilogue

At the time I finished preparing this article, adjunct faculty at NYU were working to organize a union; a date had not yet been set for the trial of the Federal Government vs. NYU in the case of my tenure denial. I write this addendum to offer a brief update on what has happened since. First, NYU adjuncts are now represented by Adjuncts Come Together-United Auto Workers (ACT-UAW). Second, the National Labor Relations Board case against NYU on my behalf was settled out of court. NYU agreed to rescind my tenure denial and pay a financial settlement.<sup>15</sup> I have since moved to Ottawa (my partner, Barbara Leckie, is a professor of English Literature at Carleton University in Ottawa) where I am now delighted to be on the faculty of the University of Ottawa.

A few days after the settlement agreement, disturbing internal email communications between senior School of Education administrators at NYU were made

public (I was unable to write about these while the case was still pending). The emails suggest that following my Labor Board testimony, but long before any charges were filed, the administration began preparing a strategy for firing me. Dean Marcus carefully constructed a draft of the letter described in this article that questioned my “commitments to the needs of the Program and the Department.” She circulated this draft to other senior administrators, via email, asking for their careful review and warning them in bold letters that “this is a tough one and may well be used in court.” Another internal memo between departmental administrators describes “all the high merits that Joel got,” along with various external research awards as “a real problem” and noted the difficulty of constructing a negative evaluation given that “Joel is known beyond NYU [and] has the outside letters.”

Other email communications show that Dean Marcus, Vice Dean Tom James, and Associate Dean Gabriel Carras each advised department chair Mark Alter on how best to keep union organizers out of faculty meetings. Following Alter’s success at preventing Professor Robby Cohen from bringing a student union representative to one such meeting, Marcus wrote to Alter, “I have nominated you for leader of our union-bashing negotiating committee.” She also suggested that Professor Cohen and I could share an office and that they could “call it the V.I. Lenin suite.” Moreover, Marcus’ position on the adjunct union drive may be reflected in an email she sent Alter, insisting that the department must be clear that several new faculty hires were temporary positions. “I would like to see these as three to five yrs. max,” Marcus explained in her email “We need people we can abuse, exploit and then turn loose.” These internal communications and others were examined by the federal government, and may have been part of what made them reluctant to believe Marcus’ and others’ protestations that my firing had nothing to do with my outspokenness on union issues.

After these emails were made public, the NYU chapter of the American Association of University Professors (AAUP) wrote to newly appointed NYU president John Sexton, “out of our profound concern with the recent...actions of Dean Ann Marcus of the Steinhardt School of Education in the matter of Professor Joel Westheimer.” I am especially encouraged by the leadership of the AAUP in pursuing this issue not just as a problem for one individual, but as a question about the moral and professional standards for the academic community as a whole. In their letter, they note that the administration’s actions “contribute to an anti-faculty and anti-employee culture that evidently pervades prominent circles within the university administration...This behavior...reflects the attitudes that have placed NYU on the AAUP’s censured administration list...Accordingly, we would like to know what policies or ideas you might have which would prevent the recurrence of this type of behavior. [W]e would be pleased to meet with you to discuss this matter further...Communication and dialogue, of course, are the basis of community.”

As of the writing of this epilogue, the AAUP has received no direct response to these concerns. Mark Alter remains chair of the Department of Teaching and Learning at NYU. Thomas James remains Vice-Dean of the School of Education. However, on November 4—as this issue went to press—Ann Marcus resigned as Dean.

Joel Westheimer  
November 5, 2002  
Ottawa

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## Notes

This article was originally written for a collection of essays on the academic labor movement, *Steal This University! The Rise of the Corporate University and an Academic Labor Movement*, ed. Ben Johnson, Patrick Kavanagh, and Kevin Mattson, forthcoming from Routledge in 2003. I am deeply grateful for the courageous and selfless support of colleagues too many to list here; I would, however, like to make special mention of Robby Cohen, Dean Hubbard, and Gordon Lafer, as well as Bill Ayers, Michael Berkowitz, Pam Burdman, Larry Cuban, Todd Gitlin, Jeff Goodwin, Maxine Greene, Christine Harrington, Lisa Jessup, Ben Johnson, Joe Kahne, Kendall King, Rachel Kirtner, Kitty Krupat, Julie Kushner, Barbara Leckie, Hank Levin, Gary Lichtenstein, Ann Lieberman, Anjana Malhotra, Randy Martin, Kevin Mattson, Deborah Meier, Toby Miller, Nathan Newman, Nel Noddings, Carol Pittman, Maida Rosenstein, Andrew Ross, Carole Saltz, Marc Schachter, Michele Sharon, Ellen Shrecker, Diana Turk, David Tyack, Amy Stuart Wells, Ellen Willis, Sam Wineburg, Jon Zimmerman, and members of the AAUP NYU chapter, SAWSJ, Jobs with Justice, Teachers College Press, and GSOC-UAW. Further documentation related to the case described here can be found at [www.eisnerassociates.com/Westheimer](http://www.eisnerassociates.com/Westheimer).

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<sup>1</sup>More than 170 NYU faculty members signed a petition urging the administration to remain neutral rather than engage in anti-union propagandizing (see also Hal Cohen, "Losing Their Faculties," *Village Voice*, September 12, 2001). For faculty resistance and its relationship to cultural studies including an account of another faculty member's testimony before the labor board, see Toby Miller, "What It Is and What It Isn't: Cultural Studies Meets Graduate-Student Labor," *Yale Journal of Law and Humanities*, v. 13, n 1, 2001, 69-94.

<sup>2</sup>*CALS News*, Cornell University, v. 4, no. 3, November, 1997.

<sup>3</sup>*School of Education Alumni*, Fall 1997, v. 8, no. 6.

<sup>4</sup>Piper Fogg, "A Promising Professor Backs a T.A. Union Drive and Is Rejected for Tenure," *Chronicle of Higher Education*, August 10, 2001; Karen Arenson, "NYU Is Sued Over Denial of Tenure," *The New York Times*, October 3, 2001; Josh Rogers, "NYU Professor Who Backed Union Denied Tenure," *The Villager*, June 21, 2001; Gordon Lafer, "Graduate Student Unions Fight the Corporate University," *Dissent*, Summer 2001; "AAUP Chapter Protests Tenure Denial

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at NYU,” *Academe*. September-October, 2001; William Lucia, & Lisa Fleischer, “Labor Watchdogs Criticize NYU Over Tenure Case,” *Washington Square News*, October 29, 2001; also see [www.eisnerassociates.com/Westheimer](http://www.eisnerassociates.com/Westheimer) for full text of articles.

<sup>5</sup>See Karen Arenson, “Labor Board Rules That N.Y.U. Denied Tenure to Union Backer,” *The New York Times*, February 28, 2002; and Piper Fogg, “NLRB Readies Complaint Against New York U. for Firing Professor Who Backed Union,” *Chronicle of Higher Education*, February 28, 2002.

<sup>6</sup>Roger Bowen. “The New Battle Between Political and Academic Cultures.” *Chronicle of Higher Education*, June 22, 2001. B14.

<sup>7</sup>I do not imply here that faculty who are intellectually disengaged are the *only* faculty who may be anti-union. As Lawrence Glickman pointed out to me, lessons from the organizing drive at Yale University (see Gordon Lafer’s “Graduate Student Unions Fight the Corporate University” in the Summer 2001, v. 48, no. 4, issue of *Dissent*) teaches us that, sadly, some of the most productive (and progressive) scholars may also resort to threats and retaliation against graduate students for their union activity when those activities run against individual faculty interests. Rather I argue that faculty dependent on administration for professional recognition are especially vulnerable and easily pressed into anti-union campaigns regardless of what they might think about, for example, graduate students’ right to make a living wage.

<sup>8</sup>Arenson, “Labor Board Rules that NYU Denied Tenure to Union Backer.”

<sup>9</sup>Fogg, “NLRB Readies Complaint Against New York U. for Firing Professor Who Backed Union.”

<sup>10</sup>David Abel, “Part-Time Faculty Band Together: Adjuncts in City Seek Better Pay,” *The Boston Globe*, 1 January 2001.

<sup>11</sup>Lafer, “Graduate Student Unions Fight the Corporate University.”

<sup>12</sup>Coalition on the Academic Workforce, 2000. *Who Is Teaching In U.S. College Classrooms? A Collaborative Study of Undergraduate Faculty*, American Historical Association, Coalition on the Academic Workforce. <http://www.theaha.org/caw>.

<sup>13</sup>Ibid.

<sup>14</sup>Lafer, “Graduate Student Unions Fight the Corporate University.”

<sup>15</sup>See Lisa Keyes, “Grad Student ‘Norma Rae’ Basks in Victory Over NYU,” *Forward*, May 17, 2002 (<http://www.forward.com/issues/2002/02.05.17/news10.html>); Karen Arenson, “Settlement in N.Y.U. Tenure Case,” *The New York Times*, May 7, 2002; Piper Fogg, “NYU Settles With Scholar Who Was Denied Tenure After Backing TA Union,” *Chronicle of Higher Education*, May 17, 2002; Sascha Brodsky, “N.Y.U. Settles with a Professor Who Backed Union,” *The Villager*, May 15, 2002.