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TENURE DENIED:

Union Busting in the Corporate University

Joel Westheimer

Usually I enjoy giving talks¹—I often get to meet interesting people; I learn a great deal that helps me refine my ideas; and when else other than at official talks (and sometimes while teaching) can you get an entire room full of people to listen to what you have to say? It's one of the strange perks of academia. So, usually, I enjoy giving talks.

But tonight, I confess, is different. While I'm thrilled to see so many here interested in and committed to workers' rights in all areas of the university, I'm not actually so thrilled to be here myself. I never thought I'd be in a position like this, and indeed, no one should have to be in a position like this. Two months ago, a short time after I testified before the National Labor Relations Board on behalf of graduate students' right to organize, I was denied tenure which means that my employment at New York University will be terminated at the end of this year.

What I came here to talk about tonight is related to a topic I address in my own research: 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, tonight my story is a personal one and difficult for me to tell. I tell this story because it is important for us to be able to examine up close 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. My story tonight will focus on New York University but the implications reach farther: campuses across the country at Columbia, Brown, Yale, Penn State, University of Maryland, University of Pennsylvania, University of Illinois, and UNC-Chapel Hill all have active teaching assistant, and sometimes adjunct and, yes, even tenure-stream faculty, organizing campaigns.

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 represented by the United Auto Workers and, at this very moment, tonight, while we are here discussing academic labor, they are in New York discussing a strike authorization—a bargaining option that was unavailable to them until their successful organizing drive and labor board suit last year. And 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 each hoping to represent them.

¹ Text of a talk given by former NYU professor Joel Westheimer on November 5, 2001 at North Carolina State University, during a Campus Equity Week appearance with Barbara Foley and Marc Bousquet.

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So I am going to tell you my story, about how I believe my academic freedom and, indeed, my legal protection under the National Labor Relations Act were both violated by the administration of New York University. In telling my story, I hope to make clear the connections between what happened to me and the labor conditions of other academic workers: adjuncts, tenure-track and tenured professors, and administrators. I will also speculate briefly on the impact on academic labor and academic freedom more generally of the university's shift from the ideal of a democratic and collegial institution to a corporatized one.

When NYU graduate students first started organizing their union, I supported their 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 are "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.

The university 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 students who are learning through this work and therefore have no right to form a union. These were exactly the arguments put forth by 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 faculty asking for "job descriptions" for our research assistants. They asked a series of questions that began 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 troubling—in that it unwittingly enlists professors in the administration's anti-union campaign—but it is sneaky because it does so by exploiting professors' own insecurities. Can you imagine a professor responding with "actually, you know, I don't mentor my graduate assistants all that much, and they spend most of their time photocopying really, 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 a great deal from the work that graduate teaching and research assistants offer by teaching classes and helping

with research projects. 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 graduate research assistant/professor working relationship is generally multi-layered and complex. Often, for example, a professor will simultaneously employ a research assistant as well as serve on their 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 is important for faculty to state explicitly that they are 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 they are employed by a research grant or not. Teaching assistants similarly may learn something while teaching, but this learning does not diminish the fact that the university employs them (and generates revenue) to teach its courses.

So, how did I respond to these fox-dressed-in-sheep questions from the administration? I summarized my arguments that I just gave you and concluded that "in the course of the research assistants' work, I communicate several times each week, guiding, supervising, and evaluating them in the work with which they are charged." I also copied my written response including the commentary on the inappropriate nature of the questions to other faculty throughout the school. Well, I didn't know it at the time. But things were about to change dramatically for me, and my application for tenure at the university.

Soon after the university began collecting information to be used to counter the graduate student organizing drive, I was asked if 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. On September 28, 1999, I testified at the NLRB hearings. NYU had hired an infamous union-busting law firm, also used previously by Yale and currently by Columbia University. To my surprise, two high ranking University officials were present during my testimony, each dressed in carefully pressed suits and ties: the Vice-Dean of my school and Vice-President of NYU, Robert Berne. Then there was me, a young, nervous, assistant professor, dressed in rumpled khakis. In a brutal cross-examination, NYU's lawyers barely let me speak. Each of my attempts to speak was abruptly cut off with attempts to discredit my basis for any knowledge for the questions I was being asked. For two and a half hours they told me that I wasn't 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 upon to make their case before the Labor Board. My testimony contributed 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. I thought my testimony might help to establish graduate students' right to vote on whether they wished to be represented by a union. What I did not know at the time was that School of Education Dean Ann Marcus would shortly testify before the Labor Board in direct opposition to my testimony supporting graduate assistants' right to organize.

Later, I submitted my application for tenure and promotion. Three months ago I learned that, despite the unanimous recommendation of both my own department faculty and all seven outside experts chosen to judge my case, the university administration denied my application for tenure on the basis that my scholarship was inadequate.

I feel strange and uneasy listing the following credentials, but it seems necessary to do so. You can at

least rest assured that although my affidavit prepared with the assistance of my lawyers is 67 pages long, I am only going to give you a brief summary here.

Since I began working at NYU six years ago, I 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 published a book with Teachers College Press, ten journal articles, several book chapters, essay reviews, newspaper editorials, and reports. I have been invited to lecture on my work 19 times at universities such as Cornell, Harvard, Stanford, and the University of Toronto. And I have presented at academic conferences 27 times.

Between 1996, when I started at NYU, and 2001 when my tenure and promotion bid was reviewed, I 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. 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.¹ Among the five awards were also an internal one: In 1997, I received the David E. Griffiths Award, given to only one person, for the best scholarship in the School of Education.

Allow me to read a few excerpts from the annual reviews by both faculty and administrators at NYU:

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 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, the following fall, I testified. I was the only non-tenured professor university-wide to do so.

The administration's view of my performance changed quickly. My Department Chair, Mark Alter, and Dean Marcus, were hostile or would not talk to me and disparaged my research and service to other faculty members. In one faculty meeting, the Dean was so rude to me that many faculty left me voice mail messages expressing shock at her behavior. 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," Dept Chair Alter for the first time downgraded my rating from "exceptional merit" to merely "merit" and I was assigned an onerous administrative workload that neither I, nor any of my colleagues, had ever been assigned before. Although I have and will continue to strongly resist comparing myself to my colleagues from the School of Education who received tenure this year, I simply note the following: five junior faculty in the School of Education were recommended by their Departments for tenure this year, and tenure was granted to four of those applicants. Only my application was denied.

Some here may be familiar with what followed. The Dean's office 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. Instead, I sent an email to the entire school faculty letting them know that I had been denied tenure on the basis of my inadequate scholarship and that I had enjoyed working with everyone and hoped to stay in touch.

Shortly after, the NYU chapter of the American Association of University Professors submitted a petition signed by more than sixty NYU professors calling upon 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, and a total of 27 leaders 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 upon 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 as well.

The result? NYU did not respond.

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I know that people in all types of jobs are threatened or punished for supporting the right to organize. When I was asked to testify 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. After years of "exceptional merit" reviews, academic awards, and the enthusiastic encouragement of the School of Education Dean's office itself, I was fired.

I want to be clear that I am not afraid of genuine criticism of my academic record. If NYU's administration has substantive complaints regarding any aspect of my work, I of course take these most seriously. If my teaching or scholarship is truly not up to standards, then there is no question that I should have been denied tenure. I want to emphasize that I never asked for special treatment. All I asked for is what every faculty member should be able to take for granted—that the decision on my tenure be made strictly on the basis of academic merit, and that my political views play no part in this decision.

I'm sure everyone here can appreciate that it's difficult to be the center of this kind of attention. And it's daunting to speak out at a time when these anti-union tendencies and tactics are sweeping universities coast to coast. But I have been speaking out because this issue is 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.

So before ending, I'd like to say a few words about these ongoing struggles. 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 the numbers are growing.

From the perspective of administrators of the new corporate university, the economic logic of this trend is easy to understand.² 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. 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. Adjuncts and graduate students now account for a majority of class teaching hours. 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." But unlike graduate students, adjuncts cannot be construed as laboring for part of their education as students, which is what makes their efforts to unionize particularly frightening to university administrations.

And so the anti-union campaigns will surely continue, to the detriment of academic labor, to the detriment of academic freedom, and to the detriment of both students and 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 we as faculty respond?

First, we must clearly be aware of the scare tactics universities will employ, like hiring union-busting lawyers at escalating cost to the university budget and to campus morale. We must be aware of the internal chill factor: faculty members are afraid to stand up for fear of retaliation or of being ostracized. And we must be aware that the motivation for administrators is no longer a matter of varying competing interests in a democratic university, but the strict pursuit of a bottom line. It is this changing face of the university (my colleagues Barbara Foley and Marc Bousquet will address these trends more eloquently than I can) that I believe we have to fight against. Like in so many other arenas in our society today where democratic interests are pitted against economic ones, democracy seems to be losing. And here I return to my favorite topic: 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. Albert Einstein—who by the way was a member of Princeton's faculty union—put it this way: "Setting an example is not the main means of influencing another, it is the only means." The only way to pursue education in the service of democracy, therefore, is to become 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.

I do not know how my case against NYU will end. But I will never regret testifying on behalf of graduate teachers' right to organize. I will never regret speaking out now for the rights of adjunct faculty to make a living wage and be offered respect and dignity. And I will always remember and be grateful for everyone who has supported these causes on my behalf and on behalf of all those who fall victim to the increasingly corporatized, anti-democratic, and anti-union tendencies of the American university. This is a time when colleges and universities are changing dramatically. The direction of that change is up to us.

¹ 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."

² For an excellent analysis, see Gordon Lafer's "Graduate Student Unions Fight the Corporate University" in the Summer 2001 (v. 48, no. 4) issue of *Dissent*. These figures come from Lafer's article as well as

recent reports from the Coalition on the Academic Workforce (see <http://www.theaha.org.caw/index.htm>), the National Education Association (<http://www.nea.org/he/heupdate/vol7no3.pdf>), and the National Center for Education Statistics (<http://nces.gov/pubsearch/pubsinfo.asp?pubid2001201>)

Joel Westheimer is an Associate Professor of Education at University of Ottawa. He is currently writing a book on citizenship, education, and democracy. Charges of illegal retaliation in Westheimer's tenure denial have been filed against NYU with the National Labor Relations Board and his case is now under review (for further details, see <http://www.eisner-hubbard.com/westheimer>).