



political
reform

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DISCUSSION & REVIEW QUESTIONS:

- Towards the beginning of the video, Professor Moe explains that, "...at the heart of it [explaining why America's public schools are failing] lies the power of the teachers unions – the National Education Association, the American Federation of Teachers, and their state and local affiliates." Why do you think this is the case? How did these unions become so powerful?
- Professor Moe informs us that collective bargaining tactics of the teacher's unions result in policies forced on schools such as "...salary rules requiring that teachers be paid entirely on the basis of seniority and credentials, without any regard for whether their students are actually learning anything" and "...seniority rules that allow senior teachers to take desirable jobs when they come open – even if these teachers are mediocre in the classroom or a bad fit for the school. There are also seniority rules requiring that, in layoff situations, excellent young teachers must be let go – automatically – and their senior colleagues must be kept on no matter how incompetent they may be." Why do you think that schools and parents don't bargain better in negotiations with the unions to adopt rules that reward teachers based on merit and performance rather than seniority or anything else? Do you think they are able to? Why or why not?
- Professor Moe points out that teacher's unions have used their mighty political muscle and clout "...to block or substantially weaken major reforms;" that they have "...used their power from the top down, through politics, to stand in the way of accountability, choice, and other major reform efforts." Why do you think that they do this, even if it may be in the best interest of their constituency in the long term? Why do you think that they continue to get away with this, considering that so many people clearly see massive failure and want change? Why don't more people place the blame on the teacher's unions, where it surely belongs?
- We learn that, "...unions are so opposed to choice that they fight to defeat it even for the poorest kids trapped in the nation's worst schools. As a result, after decades of reform efforts, only 4% of public school kids are in charter schools, and less than 1% receive government funded scholarships for private schools." Why do you think that so many people support teacher's unions, even in the face of such obvious damage to schools and learning, and the obvious limitations on freedom for parents and students to choose better schools?
- Considering the overwhelming evidence that teacher's unions are such a significant factor in public schools failing, why do you think that they are still allowed to exist? What can be done to mitigate or reverse this problem? Since teachers have powerful unions to advocate for them, who is advocating for the students, and why are they losing so badly to the teacher's unions in terms of setting up organizational structures, systems, and policies that are in the best interest of the students? Who should be advocating more strongly for students?

EXTEND THE LEARNING:

CASE STUDY: The Rubber Room

INSTRUCTIONS: Read the article, “The Rubber Room The battle over New York City’s worst teachers,” then answer the questions that follow.

- What is the ‘rubber room?’ Which groups are hurt by the existence of the rubber rooms? What do the rubber rooms reflect about the current state of affairs regarding education in New York? How did the teacher’s union get such a tight stranglehold over all of the education system, including the boards of education and other government entities?
- Why are the arbitrators not incentivized to recommend the termination of incompetent teachers? We learn in the article that, “Leading Democrats often talk about the need to reform public education, but they almost never openly criticize the teachers’ unions, which are perhaps the Party’s most powerful support group.” What is the relationship between teacher’s unions and the Democratic party?
- We learn in the article that, “The document that dictates how Daysi Garcia [the principal] can—and cannot—govern P.S. 65 is the U.F.T. contract, a hundred and sixty-six single-spaced pages.” Do you think that it is right for the teacher’s union to have such extensive micro-managing powers over school principals, especially in terms of framing how they are to do their administrating? Why or why not? Do you think a balance can be struck between advocating for teachers and advocating for schools and students? If not, why not? If so, how?



QUIZ

TEACHERS UNIONS VS. STUDENTS

1. Union power _____.
 - a. has created insurmountable problems for effective schools.
 - b. is not as big a problem as it seems.
 - c. has helped improve the quality of education for all students.
 - d. should be increased.

2. The purpose of a union is to represent the interests of:
 - a. Children.
 - b. Union members.
 - c. Student's families.
 - d. Principals only.

3. Unions pursue their job interests through:
 - a. Collective bargaining and political process.
 - b. Townhall meetings.
 - c. Developing relationships with students and parents.
 - d. All of the above.

4. Teacher's unions oppose all of the following EXCEPT?
 - a. Using test scores to measure teacher performance.
 - b. Performance-based pay.
 - c. Removing bad teachers.
 - d. Keeping students in schools assigned to them.

5. The power of teachers unions prevent change and improvement to public schools.
 - a. True
 - b. False



QUIZ - ANSWER KEY

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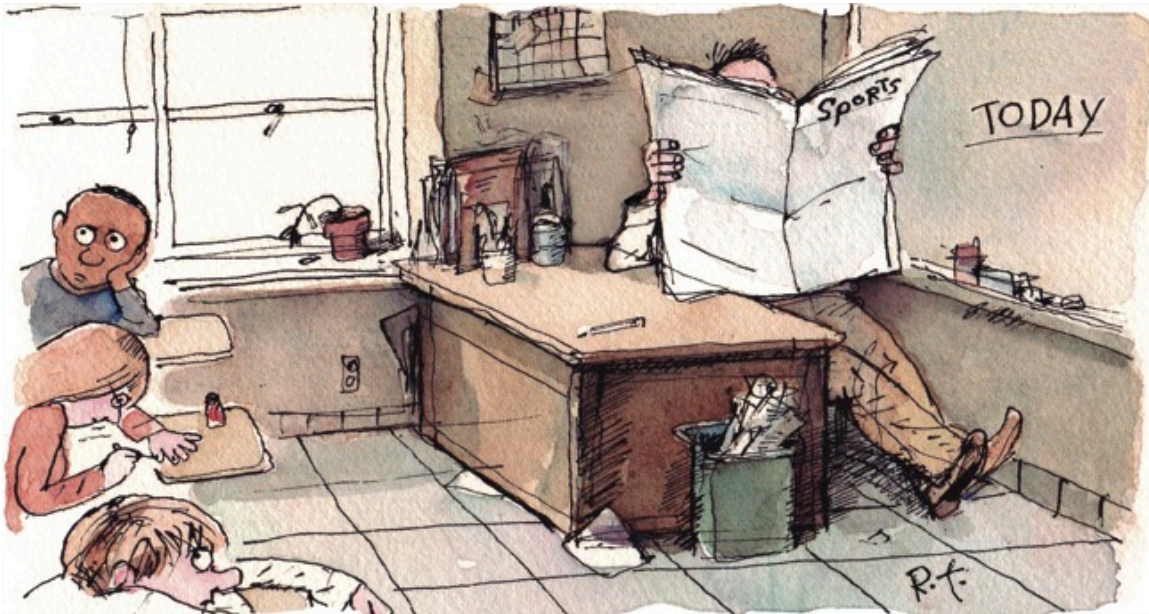
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The Rubber Room

The battle over New York City's worst teachers.

By [Steven Brill](#)



One school principal has said that Randi Weingarten, of the teachers' union, "would protect a dead body in the classroom." Credit Richard Thompson

In a windowless room in a shabby office building at Seventh Avenue and Twenty-eighth Street, in Manhattan, a poster is taped to a wall, whose message could easily be the mission statement for a day-care center: "Children are fragile. Handle with care." It's a June morning, and there are fifteen people in the room, four of them fast asleep, their heads lying on a card table. Three are playing a board game. Most of the others stand around chatting. Two are arguing over one of the folding chairs. But there are no children here. The inhabitants are all New York City schoolteachers who have been sent to what is officially called a Temporary Reassignment Center but which everyone calls the Rubber Room.

These fifteen teachers, along with about six hundred others, in six larger Rubber Rooms in the city's five boroughs, have been accused of misconduct, such as hitting or molesting a student, or, in some cases, of incompetence, in a system that rarely calls anyone incompetent.

The teachers have been in the Rubber Room for an average of about three years, doing the same thing every day—which is pretty much nothing at all. Watched over by two private security guards and two city Department of Education supervisors, they punch a time clock for the same hours that they would have kept at school—typically, eight-fifteen to three-fifteen. Like all teachers, they have the summer off. The

city's contract with their union, the United Federation of Teachers, requires that charges against them be heard by an arbitrator, and until the charges are resolved—the process is often endless—they will continue to draw their salaries and accrue pensions and other benefits.

“You can never appreciate how irrational the system is until you’ve lived with it,” says Joel Klein, the city’s schools chancellor, who was appointed by Mayor Michael Bloomberg seven years ago.

Neither the Mayor nor the chancellor is popular in the Rubber Room. “Before Bloomberg and Klein took over, there was no such thing as incompetence,” Brandi Scheiner, standing just under the Manhattan Rubber Room’s “Handle with Care” poster, said recently. Scheiner, who is fifty-six, talks with a raspy Queens accent. Suspended with pay from her job as an elementary-school teacher, she earns more than a hundred thousand dollars a year, and she is, she said, “entitled to every penny of it.” She has been in the Rubber Room for two years. Like most others I encountered there, Scheiner said that she got into teaching because she “loves children.”

“Before Bloomberg and Klein, everyone knew that an incompetent teacher would realize it and leave on their own,” Scheiner said. “There was no need to push anyone out.” Like ninety-seven per cent of all teachers in the pre-Bloomberg days, she was given tenure after her third year of teaching, and then, like ninety-nine per cent of all teachers before 2002, she received a satisfactory rating each year.

“But they brought in some new young principal from their so-called Leadership Academy,” Scheiner said. She was referring to a facility opened by Klein in 2003, where educators and business leaders, such as Jack Welch, the former chief executive of General Electric, hold classes for prospective principals. “This new principal set me up, because I was a whistle-blower,” Scheiner said. “She gave me an unsatisfactory rating two years in a row. Then she trumped up charges against me and sent me to the Rubber Room. So I’m fighting, and waiting it out.”

The United Federation of Teachers, the U.F.T., was founded in 1960. Before that, teachers endured meagre salaries, tyrannical principals, witch hunts for Communists, and gender discrimination against a mostly female workforce (at one point, there was a rule requiring any woman who got pregnant to take a two-year unpaid leave). Drawing its members from a number of smaller and ineffective teachers’ groups, the U.F.T. coalesced into a tough trade union that used strikes and political organizing to fight back. By the time Bloomberg took office, forty-two years later, many education reformers believed that the U.F.T. and its political allies had gained so much clout that it had become impossible for the city’s Board of Education, which already shared a lot of power with local boards, to maintain effective school oversight. In 2002, with the city’s public schools clearly failing, the State Legislature granted control of a new Department of Education to the new mayor, who had become a billionaire by building an immense media company, Bloomberg L.P., that is renowned for firing employees at will and not giving contracts even to senior executives.

Bloomberg quickly hired Klein, who, as an Assistant Attorney General in the Clinton Administration, was the lead prosecutor in a major antitrust case against Microsoft. When Klein was twenty-three, he took a year’s leave of absence from Harvard Law School to study education and teach math to sixth graders at an elementary school in Queens, where he grew up. Like Bloomberg, Klein came from a world far removed from the borough-centric politics and bureaucracy of the old board.

Test scores and graduation rates have improved since Bloomberg and Klein took over, but when the law giving the mayor control expired, on July 1st, some Democrats in the State Senate balked at renewing it, complaining that it gave the mayor “dictatorial” power, as Bill Perkins, a state senator from Manhattan, put it. Nevertheless, by August the senators had relented and voted to renew mayoral control.

One thing that the legislature did not change in 2002 was tenure, which was introduced in New York in 1917, as a good-government reform to protect teachers from the vagaries of political patronage. Tenure

guarantees teachers with more than three years' seniority a job for life, unless, like those in the Rubber Room, they are charged with an offense and lose in the arduous arbitration hearing.

In Klein's view, tenure is "ridiculous." "You cannot run a school system that way," he says. "The three principles that govern our system are lockstep compensation, seniority, and tenure. All three are not right for our children."

Brandi Scheiner says that her case is likely to be heard next year. By then, she will have twenty-four years' seniority, which entitles her to a pension of nearly half her salary—that is, her salary at the time of retirement—for life, even if she is found incompetent and dismissed. Because two per cent of her salary is added to her pension for each year of seniority, a three-year stay in the Rubber Room will cost not only three hundred thousand dollars in salary but at least six thousand dollars a year in additional lifetime pension benefits.

Scheiner worked at P.S. 40, an elementary school near Manhattan's Stuyvesant Town. The write-ups on Web sites that track New York's schools suggest that P.S. 40 is one of the city's best. I spoke with five P.S. 40 parents, who said that Scheiner would have had nothing to "blow the whistle" about, because, as one put it, the principal, Susan Felder, is "spectacular."

Scheiner refused to allow me access to the complete file related to her incompetence proceeding, which would detail the charges against her and any responses she might have filed, saying only that "they charged me with incompetence—boilerplate stuff." (Nor could Felder comment, because Scheiner had insisted that her file be kept sealed.) But Scheiner did say that she and several of her colleagues in the Rubber Room had brought a "really interesting" class-action suit against the city for violations of their due-process and First Amendment rights as whistle-blowers. She said that the suit was pending, and that she would be vindicated. Actually, she filed three suits, two of which had long since been dismissed. And, a month and a day before she mentioned it to me, the magistrate handling the third case—in a move typically reserved for the most frivolous litigation—had ordered Scheiner and her co-plaintiffs to pay ten thousand dollars to the city in court costs, because that filing was so much like the second case. This third case is pending, though it no longer has a lawyer, because the one who brought these cases has since been disbarred, for allegedly lying to a court and allegedly stealing from Holocaust-survivor clients in unrelated cases.

It takes between two and five years for cases to be heard by an arbitrator, and, like Scheiner, most teachers in the Rubber Rooms wait out the time, maintaining their innocence. One of Scheiner's Rubber Room colleagues pointed to a man whose head was resting on the table, beside an alarm clock and four prescription-pill bottles. "Look at him," she said. "He should be in a hospital, not this place. We talk about human rights in China. What about human rights right here in the Rubber Room?" Seven of the fifteen Rubber Room teachers with whom I spoke compared their plight to that of prisoners at Guantánamo Bay or political dissidents in China or Iran.

It's a theme that the U.F.T. has embraced. The union's Web site has a section that features stories highlighting the injustice of the Rubber Rooms. One, which begins "Bravo!," is about a woman I'll call Patricia Adams, whose return to her classroom, at a high school in Manhattan, last year is reported as a vindication. The account quotes a speech that Adams made to union delegates; according to the Web site, she received a standing ovation as she declared, "My case should never have been brought to a hearing." The Web site account continues, "Though she believes she was the victim of an effort to move senior teachers out of the system, the due process tenure system worked in her case."

On November 23, 2005, according to a report prepared by the Education Department's Special Commissioner of Investigation, Adams was found "in an unconscious state" in her classroom. "There were 34 students present in [Adams's] classroom," the report said. When the principal "attempted to awaken [Adams], he was unable to." When a teacher "stood next to [Adams], he detected a smell of alcohol emanating from her."

Adams's return to teaching, more than two years later, had come about because she and the Department of Education had signed a sealed agreement whereby she would teach for one more semester, then be assigned to non-teaching duties in a school office, if she hadn't found a teaching position elsewhere. The agreement also required that she "submit to random alcohol testing" and be fired if she again tested positive. In February, 2009, Adams passed out in the office where she had to report every day. A drug-and-alcohol-testing-services technician called to the scene wrote in his report that she was unable even to "blow into breathalyzer," and that her water bottle contained alcohol. As the stipulation required, she was fired.

Randi Weingarten, the president of the U.F.T. until this month (she is now the president of the union's national parent organization), said in July that the Web site "should have been updated," adding, "Mea culpa." The Web site's story saying that Adams believed she was the "victim of an effort to move senior teachers out" was still there as of mid-August. Ron Davis, a spokesman for the U.F.T., told me that he was unable to contact Adams, after what he said were repeated attempts, to ask if she would be available for comment.

In late August, I reached Adams, and she told me that no one from the union had tried to contact her for me, and that she was "shocked" by the account of her story on the U.F.T. Web site. "My case had nothing to do with seniority," she said. "It was about a medical issue, and I sabotaged the whole thing by relapsing." Adams, whose case was handled by a union lawyer, said that, last year, when a U.F.T. newsletter described her as the victim of a seniority purge, she was embarrassed and demanded that the union correct it. She added, "But I never knew about this Web-site article, and certainly never authorized it. The union has its own agenda." The next morning, Adams told me she had insisted that the union remove the article immediately; it was removed later that day. Adams, who says that she is now sober and starting a school for recovering teen-age substance abusers, asked that her real name not be used.

The stated rationale for the reassignment centers is unassailable: Get these people away from children, even if tenure rules require that they continue to be paid. Most urban school systems faced with tenure constraints follow the same logic. Los Angeles and San Francisco pay suspended teachers to answer phones, work in warehouses, or just stay home; in Chicago they do clerical work. But the policies implemented by other cities are on a far smaller scale—both because they have fewer teachers and because they have not been as aggressive as Klein and Bloomberg in trying to root out the worst teachers.

It seems obvious that by making the Rubber Rooms as boring and as unpleasant as possible Klein was trying to get bad teachers to quit rather than milk the long hearing process—and some do, although the city does not keep records of that.

"They're in the Rubber Room because they have an entitlement to stay on the payroll," says Dan Weisberg, the general counsel and vice-president for policy of a Brooklyn-based national education-reform group called the New Teacher Project. "It's a job. It's an economic decision on their part. That's O.K. But don't complain." Until January, Weisberg ran the Department of Education's labor-relations office, where, in 2007, he set up the Teacher Performance Unit, or T.P.U.—an elite group of lawyers recruited to litigate teacher-incompetence cases for the city.

"When we announced the T.P.U., the U.F.T. called a candlelight vigil"—at City Hall—"to protest what they called the Gotcha Squad," says Chris Cerf, a deputy chancellor, who, like Klein and Weisberg, is an Ivy League-educated lawyer. "You would think candlelight vigils would be reserved for Gandhi or something like that, but you could hear this rally all the way over the Brooklyn Bridge."

Randi Weingarten is unapologetic. "We believed that the way this Gotcha Squad was portrayed in the press by the city unfairly maligned all the teachers in the system," she says. Weingarten, who was a lawyer before becoming a teacher and a U.F.T. officer, is a smart, charming political pro. She always tries to link the welfare of teachers to the welfare of those they teach—as in "what's good for teachers is good for the children."

Cerf's response is that "this is not about teachers; it is about children." He says, "We all agree with the idea that it is better that ten guilty men go free than that one innocent person be imprisoned. But by laying that on to a process of disciplining teachers you put the risk on the kids versus putting it on an occasional innocent teacher losing a job. For the union, it's better to protect one thousand teachers than to wrongly accuse one." Anthony Lombardi, the principal of P.S. 49, a mostly minority Queens elementary school, puts it more bluntly: "Randi Weingarten would protect a dead body in the classroom. That's her job."

"For Lombardi to say that," Weingarten said, "shows he has no knowledge of who I am."

Should a thousand bad teachers stay put so that one innocent teacher is protected? "That's not a question we should be answering in education," Weingarten said to me. "Teachers who are treated fairly are better teachers. You can't have a situation that is fear-based. . . . That is why we press for due process."

Steve Ostrin, who was assigned to a Brooklyn Rubber Room fifty-three months ago, might be that innocent man whom the current process protects. In 2005, a student at Brooklyn Tech, an elite high school where Ostrin was an award-winning social-studies teacher, accused him of kissing her when the two were alone in a classroom. After her parents told the police, Ostrin was arrested and charged with endangering the welfare of a child. He denied the charge, insisting that he was only joking around with the student and that the principal, who didn't like him, seized upon the incident to go after him. The tabloids ran headlines about the arrest, and found a student who claimed that a similar thing had happened to her years before, though she had not reported it to the police. But many of Ostrin's students didn't believe the allegations. They staged a rally in support of him at the courthouse where the trial was held. Eleven months later, he was acquitted.

Nevertheless, the city refused to allow him to return to class. "Sometimes if they are exonerated in the courts we still don't put them back," Cerf said, adding that he was not referring to Ostrin in particular. "Our standard is tighter than 'beyond a reasonable doubt.' What would parents think if we took the risk and let them back in a classroom?"

Ostrin's case may be vexing, but it is a distraction from the real issue: how to deal not with teachers accused of misconduct but with the far larger number who, like Scheiner, may simply not be teaching well. While maintaining that the union in no way condones failing teachers, Weingarten defends the elaborate protections that shield union members: "Teachers are not . . . bankers or lawyers. They don't have independent power. Principals have huge authority over them. All we're looking for is due process."

Dan Weisberg, of the New Teacher Project, independently offered a similar analogy for the other side: "You're not talking about a bank or a law firm. You're talking about a classroom—which is far more important—and your ability to make sure that the right people are teaching there."

By now, most serious studies on education reform have concluded that the critical variable when it comes to kids succeeding in school isn't money spent on buildings or books but, rather, the quality of their teachers. A study of the Los Angeles public schools published in 2006 by the Brookings Institution concluded that "having a top-quartile teacher rather than a bottom-quartile teacher four years in a row would be enough to close the black-white test score gap." But, in New York and elsewhere, holding teachers accountable for how well they teach has proved to be a frontier that cannot be crossed.

One morning in July, I attended a session of the arbitration hearing for Lucienne Mohammed, a veteran fifth-grade teacher. Mohammed, unlike most teachers sent to the Rubber Room, agreed to allow the record of her case to be public. (Her lawyer declined to make her available for an interview, however.) She had been assigned to P.S. 65, in Brooklyn's East New York section, and was removed from the school in June of 2008, on charges of incompetence.

Mohammed's case was the first to reach arbitration since the introduction of an initiative called Peer Intervention Program (P.I.P.) Plus, which was created to address the problem of tenured teachers who are

suspected of incompetence, not those accused of a crime or other misconduct. P.I.P. Plus was included in the contract negotiated by Klein and Weingarten in 2007. The deal seemed good for both sides: a teacher accused of incompetence would first be assigned a “peer”—a retired teacher or principal—from a neutral consulting company agreed upon by the union and the city. The peer would observe the teacher for up to a year and provide counselling. If the observer determined that the teacher was indeed incompetent and was unlikely to improve, the observer would write a detailed report saying so. The report could then be used as evidence in a removal hearing conducted by an arbitrator agreed upon by the union and the city. “We as a union need to make sure we don’t defend the indefensible,” Weingarten told me. Klein and Weingarten both say that a key goal of P.I.P. Plus was to streamline incompetency arbitration hearings. It has not worked out that way.

The evidence of Mohammed’s incompetence—found in more than five thousand pages of transcripts from her hearing—seems as unambiguous as the city’s lawyer promised in his opening statement: “These children were abused in stealth. . . . It was chronic . . . a failure to complete report cards. . . . Respondent failed to correct student work, failed to follow the mandated curriculum . . . failed to manage her class.” The independent observer’s final report supported this assessment, ticking off ten bullet points describing Mohammed’s unsatisfactory performance. (Mohammed’s lawyer argues that she began to be rated unsatisfactory only after she became active with the union.)

This was the thirtieth day of a hearing that started last December. Under the union contract, hearings on each case are held five days a month during the school year and two days a month during the summer. Mohammed’s case is likely to take between forty and forty-five hearing days—eight times as long as the average criminal trial in the United States. (The Department of Education’s spotty records suggest that incompetency hearings before the introduction of P.I.P. Plus generally took twenty to thirty days; the addition of the peer observer’s testimony and report seems to have slowed things down.) Jay Siegel, the arbitrator in Mohammed’s case, who has thirty days to write a decision, estimates that he will exceed his deadline, because of what he says is the amount of evidence under consideration. This means that Mohammed’s case is not likely to be decided before December, a year after it began. That is about fifty per cent more time, from start to finish, than the O.J. trial took.

While the lawyers argued in measured tones, Mohammed—a slender, polite woman who appeared to be in her early forties—sat silently in one of six chairs bunched around a small conference table. The morning’s proceedings focussed first on a medical excuse that Mohammed produced for not showing up at the previous day’s hearing. Dennis DaCosta, an earnest young lawyer from the Teacher Performance Unit, pointed out that the doctor’s letter was eleven days old and therefore had nothing to do with her supposedly being sick the day before. The letter referred to a chronic condition, Antonio Cavallaro, Mohammed’s union-paid defense counsel, replied. Siegel said that he would reserve judgment.

Next came some discussion among the lawyers and Siegel about Defense Exhibit 33Q, a picture of Mohammed’s classroom. The photograph showed a neatly organized room, with a lesson plan chalked on the blackboard. But, under questioning by her own lawyer, Mohammed conceded that the picture had been taken, in consultation with her union representative, one morning before class, after the principal had begun complaining about her. The independent observer’s report had said that as of just a month before Mohammed was removed—and three months after the peer observer started observing and counselling her, and long after this picture was taken—Mohammed had still not “organized her classroom to support instruction and enhance learning.”

The majority of the transcript of the twenty-nine previous hearing days was given over to the lawyers and the arbitrator arguing issues that included whether and how Mohammed should have known about the contents of the Teachers’ Reference Manual; whether it was admissible that when Mohammed got a memo from the principal complaining about her performance, her students said, she angrily read it aloud in class; whether it was really a bad thing that she had appointed one child in her class “the enforcer,” and charged him with making the other kids behave; whether Mohammed’s union representative should have been present when she was reprimanded for not having a lesson plan; and whether the independent observer was

qualified to evaluate Mohammed, even though she came from the neutral consulting company that the union had approved.

When the bill for the arbitrator is added to the cost of the city's lawyers and court reporters and the time spent in court by the principal and the assistant principal, Mohammed's case will probably have cost the city and the state (which pays the arbitrator) about four hundred thousand dollars.

Nor is it by any means certain that, as a result of that investment, New York taxpayers will have to stop paying Mohammed's salary, eighty-five thousand dollars a year. Arbitrators have so far proved reluctant to dismiss teachers for incompetence. Siegel, who is serving his second one-year term as an arbitrator and is paid fourteen hundred dollars for each day he works on a hearing, estimates that he has heard "maybe fifteen" cases. "Most of my decisions are compromises, such as fines," he said. "So it's hard to tell who won or lost." Has he ever terminated anyone solely for incompetence? "I don't think so," he said. In fact, in the past two years arbitrators have terminated only two teachers for incompetence alone, and only six others in cases where, according to the Department of Education, the main charge was incompetence.

Klein's explanation is that "most arbitrators are not inclined to dismiss a teacher, because they have to get approved again every year by the union, and the union keeps a scorecard." (Weingarten denies that the union keeps a scorecard.)

Antonio Cavallaro, the union lawyer, admitted that the process "needs some ironing out."

Dan Weisberg says that because of the way cases are litigated by the union it's impossible to move them along. He notes that, unlike in a criminal court, where the judge has to clear his docket, there is no such pressure on an arbitrator. One of Weisberg's main concerns is the principals, who have to document cases and then spend time at the hearings. "My goal is to look them in the eye and say you should do the hard work," he says. "I can't do that if the principal is going to be on the stand for six days."

Daysi Garcia, the principal of P.S. 65, is a Queens native and is considered by Klein to be a standout among the principals who attended the first classes of the Leadership Academy. She told me that, despite the five days she had to spend testifying, and the piles of paperwork she accumulated to make a record beforehand, she would do it again, because "when I think about the impact of a teacher like this on the children and how long that lasts, it's worth it, even if it is hard."

The document that dictates how Daysi Garcia can—and cannot—govern P.S. 65 is the U.F.T. contract, a hundred and sixty-six single-spaced pages. It not only keeps the Rubber Roomers on the payroll and Garcia writing notes to personnel files all day but dictates every minute of the six hours, fifty-seven and a half minutes of a teacher's work day, including a thirty-seven-and-a-half-minute tutorial/preparation session and a fifty-minute "duty free" lunch period. It also inserts a union representative into every meaningful teacher-supervisor conversation.

The contract includes a provision that, this fall, will allow an additional seven hundred to eight hundred teachers to get paid for doing essentially no teaching. These are teachers who in the past year—or two or three—have been on what is called the Absent Teacher Reserve, because their schools closed down or the number of classes in the subject they teach was cut. Most "excessed" teachers quickly find new positions at other city schools. But these teachers, who have been on the reserve rolls for at least nine months, have refused to take another job (in almost half such cases, according to a study by the New Teacher Project, they have refused even to apply for another position) or their records are so bad or they present themselves so badly that no other principal wants to hire them. The union contract requires that they get paid anyway.

"Most of the excessed teachers get snapped up pretty fast," Lombardi, the principal of P.S. 49, says. "You can tell from the records and the interviews who's good and who's not. So by the time they've been on the reserve rolls for more than nine months they're not the people you want to hire. . . . I'll do almost anything to avoid bringing them into my school." These reserve teachers are ostensibly available to act as

substitutes, but they rarely do so, because principals don't want them or because they are not available on a given day; on an average school day the city pays more than two thousand specially designated substitute teachers a hundred and fifty-five dollars each.

Until this year, the city was hiring as many as five thousand new teachers annually to fill vacancies, while the teachers on the reserve list stayed there. This meant that, in keeping with Klein's goals, new blood was coming into the schools—recruits from Teach for America or from fellowship programs, as well as those who enter the profession the conventional way. Now that New York, like most cities, is suffering through a budget crisis, Klein has had to freeze almost all new hiring and has told principals that they can fill openings only with teachers on the reserve list or with teachers who want to transfer from other schools.

Even so, the number of teachers staying on reserve for more than nine months is likely to exceed eleven hundred by next calendar year and cost the city more than a hundred million dollars annually. Added to the six hundred Rubber Roomers, that's seventeen hundred idle teachers—more than enough to staff all the schools in New Haven.

The teachers'-union contract comes up for renewal in October, and Klein told me that he plans to push for a time limit of nine months or a year for reserve teachers to find new positions, after which they would be removed from the payroll. "If you can't find a job by then, it's a pretty good indicator that you're not looking or you're not qualified," he said.

In Chicago, reserve-list teachers are removed from the payroll after ten months. Until December, the head of the Chicago school system was Arne Duncan, who is now President Obama's Education Secretary. Duncan has consistently emphasized improving the quality of teachers by measuring and rewarding—or penalizing—them based on performance. "It's my highest priority," he told me.

Leading Democrats often talk about the need to reform public education, but they almost never openly criticize the teachers' unions, which are perhaps the Party's most powerful support group. In New York, where Weingarten is a sought-after member of Democratic-campaign steering committees, state legislators and New York City Council members are even more closely tied to the U.F.T., which has the city's largest political-action fund and contributes generously to Democrats and Republicans alike. As a result, in April of 2008 the State Legislature passed a law, promoted by the union, that prohibited Klein from using student test data to evaluate teachers for tenure, something that he had often talked about doing.

Scores should be used only "in a thoughtful and reflective way," Weingarten told me. "We acted in Albany because no one trusted that Joel Klein would use them to measure performance in a fair way."

Reformers like Cerf, Klein, Weisberg, and even Secretary Duncan often use the term "value-added scores" to refer to how they would quantify the teacher evaluation process. It is a phrase that sends chills down the spine of most teachers'-union officials. If, say, a student started the school year rated in the fortieth percentile in reading and the fiftieth percentile in math, and ended the year in the sixtieth percentile in both, then the teacher has "added value" that can be reduced to a number. "You take that, along with observation reports and other measures, and you really can rate a teacher," Weisberg says.

In a speech in July to the National Education Association, a confederation of teachers' unions, Duncan was booed when he mentioned student test data. But he went on to say that "inflexible seniority and rigid tenure rules . . . put adults ahead of children. . . . These policies were created over the past century to protect the rights of teachers, but they have produced an industrial factory model of education that treats all teachers like interchangeable widgets."

Duncan's metaphor was deliberate. He was referring to "The Widget Effect," a study of teacher-assessment processes in school systems across the country, published in June by the New Teacher Project and co-written by Weisberg. "Our schools are indifferent to instructional effectiveness," the study declared. Under the subhead "All teachers are rated good or great," it examined teacher rating processes, and found that in

districts that have a binary, satisfactory-unsatisfactory system, ninety-nine per cent of teachers receive a satisfactory rating, and that even in the few school districts that attempt a broader range of rating options ninety-four per cent get one of the top two ratings.

The report lays out a road map for “a comprehensive performance evaluation system,” and recommends that for dismissals “an expedited one-day hearing should be sufficient for an arbitrator to determine if the evaluation and development process was followed and judgments made in good faith.” Lucienne Mohammed’s lawyer spent the equivalent of a day disputing whether she should have been familiar with her training materials.

In seven years, Klein has increased the percentage of third-year teachers not given tenure from three to six per cent. Unsatisfactory ratings for tenured teachers have risen from less than one per cent to 1.8 per cent. “Any human-resources professional will tell you that rating only 1.8 per cent of any workforce unsatisfactory is ridiculous,” Weisberg says. “If you look at the upper quartile and the lower quartile, you know that those people are not interchangeable.”

The Rubber Rooms house only a fraction of the 1.8 per cent who have been rated unsatisfactory. The rest still teach. There are fifty Rubber Roomers—a twentieth of one per cent of all New York City teachers*—awaiting removal proceedings because of alleged incompetence, as opposed to those who have been accused of misconduct.

“If you just focus on the people in the Rubber Rooms, you miss the real point, which is that, by making it so hard to get even the obvious freaks and crazies that are there off the payroll, you insure that the teachers who are simply incompetent or mediocre are never incited to improve and are never removable,” Anthony Lombardi says. In a system with eighty-nine thousand teachers, the untouchable six hundred Rubber Roomers and eleven hundred teachers on the reserve list are only emblematic of the larger challenge of evaluating, retraining, and, if necessary, weeding out the poor performers among the other 87,300.

While Mohammed’s hearing was lumbering on in June, the newsletter of the Chapel Street Rubber Room, in Brooklyn—where Mohammed had spent her school days since 2008—was being handed out by two of its teacher-editors. They were standing under a poster of the room’s mission statement: “TRC” — Temporary Reassignment Center— “Is a Community.” The newsletter’s banner exhorted its readers to “Experience. Share. Enrich. Grow.” Articles included an account of a U.F.T. staff director’s visit to Chapel Street and an essay by one of the room’s inhabitants about how to “quit doubting yourself,” entitled “Perception Is Everything.”

The walls of the large, rectangular room were covered with photographs of Barack Obama and various news clippings. Just to the right of a poster that proclaimed “Bloomberg’s 3 Rs: Rubber Room Racism,” a smiling young woman sat in a lounge chair that she had brought from home. She declined to say what the charges against her were or to allow her name to be used, but told me that she was there “because I’m a smart black woman.”

I asked the woman for her reaction to the following statement: “If a teacher is given a chance or two chances or three chances to improve but still does not improve, there’s no excuse for that person to continue teaching. I reject a system that rewards failure and protects a person from its consequences.”

“That sounds like Klein and his accountability bullshit,” she responded. “We can tell if we’re doing our jobs. We love these children.” After I told her that this was taken from a speech that President Obama made last March, she replied, “Obama wouldn’t say that if he knew the real story.”

But on July 24th President Obama and Secretary Duncan announced that they would award a large amount of federal education aid from the Administration’s stimulus package to school systems on the basis of how they address the issue of accountability. And Duncan made it clear that states where the law does not allow testing data to be used as a measure of teacher performance would not be eligible.

Duncan has fashioned the competition for this stimulus money as a “Race to the Top,” offering four billion dollars to be split among the dozen or so states that do the most to promote accountability in their schools. “That could mean five hundred million dollars for New York, which is huge,” Weisberg says. “But New York won’t be able to compete without radical changes in the law.” Such changes would have to include not only the provision forbidding Klein to use test scores to evaluate teachers (which Weisberg is most focussed on) but also provisions, such as those mandating teacher tenure, that are at the core of the teachers’-union contract. Klein has already come up with a debatable technical argument that the testing restriction won’t actually disqualify New York from at least applying for the money (because the restriction is about using test scores only for tenure decisions). Still, having that law on the books would obviously undercut an application claiming that New York should be declared one of the most accountable systems in the country—as would many provisions of the union contract, such as tenure and compensation based wholly on seniority.

We’ll soon see whether the lure of all that federal money will soften the union position and change the political climate in Albany. If it does, Bloomberg and Klein—who are determined reformers and desperate for the money—would have a chance to turn the U.F.T. contract into something other than a straitjacket when it comes up for renewal, in October. The promise of school funds might also push the legislature, which controls issues such as tenure, to allow a loosening of the contract’s job-security provisions and to repeal the law that forbids test scores to be used to evaluate teachers. If the stimulus money does not push the U.F.T. and the legislature to permit these changes, and if Duncan and Obama are serious about challenging the unions that are the Democrats’ base, the city and the state will miss out on hundreds of millions of dollars in education aid. More than that, publicly educated children will continue to live in an alternate universe of reserve-list teachers being paid for doing nothing, Rubber Roomers writing mission statements, union reps refereeing teacher-feedback sessions, competence “hearings” that are longer than capital-murder trials, and student-performance data that are quarantined like a virus. As the Manhattan Rubber Room’s poster says, it’s the children, not the teachers, who are fragile and need to be handled with care.

*Correction, December 1, 2009: A twentieth of one per cent of all New York City teachers are Rubber Roomers, not half of one per cent, as originally stated.