

THE OTHER SIDE OF THE PICKET LINE: CONTRACT, DEMOCRACY, AND POWER IN A LAW SCHOOL CLASSROOM

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I.

JUSTICE FOR JANITORS: COMING SOON TO A COLLEGE CAMPUS NEAR YOU

The University of Miami (UM)—my home institution until last year—is known by many for its highly ranked sports teams and, more recently, for the academic prominence increasingly reflected in the annual *U.S. News & World Report* polls. But readers may be less familiar with UM's place in a rather different ranking. In August 2001, the *Chronicle of Higher Education* reported the results of a survey of janitorial pay in American universities.¹ To the mortification of virtually everyone in the UM community, the wages paid campus janitors—technically the employees of Unicco, UM's custodial and landscaping services contractor—ranked 194th out of the 195 surveyed institutions.² What's worse, UM was one of a dozen schools where janitorial staff actually received less than the federal poverty wage.³ And worse still, a study commissioned by the UM Faculty Senate in the wake of the *Chronicle* story revealed that the workers in question received virtually no health-care benefits and were relegated instead to emergency rooms and charitable clinics for what little medical attention they were able to secure.⁴

* Professor of Law, University of Connecticut. Many thanks to Maria Grahn-Farley for including me in both the live and the published versions of this most timely and engaging project; to the student editors for their infinite patience and helpful suggestions; to the many participants in a lively and thought-provoking faculty workshop at the University of Connecticut School of Law; and to Bethany Berger, Mary Coombs, Hillary Greene, Pat Gudridge, Duncan Kennedy, Karl Klare, Jeremy Paul, and Kerry Rittich for generous and insightful critiques of the draft that emerged from the workshop. This essay is dedicated to the eighteen University of Miami students who were disciplined for their involvement in the events recounted here and to the hope that responsible University officials are in the end able to summon up the courage, independence, and commitment to justice demonstrated by the targets of their misguided prosecutorial efforts. See Ana Menendez, *Janitors Won Rights; Students Weren't So Lucky*, MIAMI HERALD, at 1B (June 21, 2006).

1. See Martin van der Werf, *How Much Should Colleges Pay Their Janitors?*, CHRON. HIGHER EDUC. (Wash., D.C.), Aug. 3, 2001, at A27 (discussing survey conducted during 1999–2000 academic year by the Association of Higher Education Officers).

2. *Id.*

3. *Id.*

4. See Report and Recommendations of Ad Hoc Faculty Senate Committee on the Status of Unicco Employees (October 2001) (on file with author, the principal drafter of the report) [hereinafter Ad Hoc Comm. Report].

The fact that it took an article in the national press to bring the sorry state of janitorial pay to the attention of the rest of the UM community reveals quite a bit about the plight of custodial workers in the U.S. As one janitor wryly observed to another in *Bread & Roses*, Ken Loach's fabulous film depicting a union organizing effort among custodial staff in a Los Angeles office building: "Did I tell you my theory about these uniforms? They make us invisible." But as a result of an extraordinary union campaign undertaken during the 2005–06 academic year, the janitors at UM are invisible no more.

The campaign began in August 2005, when the Service Employees International Union (SEIU) came to town. The SEIU is one of several American labor unions in the "Change to Win" coalition that recently broke off from the AFL-CIO over the federation's perceived failure to devote sufficient resources and ingenuity to the task of organizing new workers.⁵ It is also famous for the "Justice for Janitors" campaigns that have successfully organized tens of thousands of custodial workers in Los Angeles and various other cities across the U.S. since the early 1990s.⁶ Miami no doubt provided a tempting new target, coupling as it does one of the highest poverty rates in the nation with a world-class cost of living.⁷ And the University had surely been in the SEIU's sights since its poverty-level pay practices were exposed to all by the *Chronicle*.

But it was the determination and resolve of the janitors—and the support they received from students, faculty, clergy, alums, and others in the greater UM community—that produced a string of victories that were all but unimaginable at the outset of the union effort. By August 2006, the campaign had persuaded Unico (again, the janitors' nominal employer) to recognize the SEIU on the basis of the janitors' signatures—rather than through an NLRB-conducted representation election—and to enter a collective-bargaining agreement providing substantial pay and benefits gains.⁸ More remarkably still, the campaign had prompted University officials to reverse longstanding policy and assume a measure of responsibility for the pay and health-care practices of *all* of its campus

5. See generally Change to Win: Uniting Workers for a Better America, <http://www.changetowin.org> (last visited June 21, 2007).

6. See generally SEIU: Stronger Together, <http://www.seiu.org> (last visited June 21, 2007).

7. See U.S. CENSUS BUREAU, AMERICAN COMMUNITY SURVEYS, RANKING TABLES: 2003, available at <http://www.census.gov/acs/www/Products/Ranking/2003/R01T160.htm> (revealing that 27.9% of Miami residents live below the federal poverty level, the fifth highest percentage for any American city); MERCER HUMAN RESOURCES CONSULTING, COST OF LIVING SURVEY: WORLDWIDE RANKINGS 2006, available at www.itprojects-int.com/recruit/docs/Cost%20of%20Living%202006.pdf (listing Miami as the city with the fifth highest cost of living in the U.S. and among the top 40 in the world).

8. See Steven Greenhouse, *Walkout Ends at U. of Miami as Janitors' Pact is Reached*, N.Y. TIMES, May 2, 2006, at A15 (signature-recognition agreement); Niala Boodhoo, *Pay Day*, MIAMI HERALD, Aug. 24, 2006, at 1C (collective-bargaining agreement with wage increases of 30% or more).

contractors.⁹

These victories were the product of many acts of uncommon courage, including a two-month strike by 150 janitors who risked the considerable wrath of not only their employer, but also hostile UM officials and non-striking colleagues worried that unionization would mean the end of their jobs at UM;¹⁰ the occupation of the UM admissions office by nearly two dozen student activists and a highly respected campus chaplain;¹¹ the establishment by many of the same students of a “tent city” on the lawn just outside the administration building;¹² and ultimately a hunger strike by a small group of workers and students that prompted a great deal of second-guessing locally but nevertheless succeeded in bringing national attention to the effort, albeit at no small personal risk to the participants.¹³

The significance of the janitors’ achievements can scarcely be overstated. Locally, their successes have served as a catalyst for other organizing drives among custodial workers in South Florida, including an effort at Florida International University that has already resulted in union representation for the janitors there,¹⁴ as well as for the adoption of a “living wage” ordinance for the city of Miami.¹⁵ Nationally, the campaign represents an important victory for worker self-organization strategies that avoid the cumbersome and management-friendly election procedures of the National Labor Relations Board.¹⁶ The campaign,

9. See Niala Boodhoo, *Striking Workers at UM to Get Raise*, MIAMI HERALD, Mar. 17, 2006, at 1A (UM announces that a dozen contractors providing various campus services will be required to offer health benefits and raises of “at least” 25% to their employees).

10. See generally Ana Menendez, *Janitors Head Back to Work at Changed UM*, MIAMI HERALD, May 7, 2006, at 1B.

11. See Niala Boodhoo, *UM, Students Reach Accord After Sit-In*, MIAMI HERALD, Mar. 30, 2006, at 3C.

12. See Ana Menendez, *At UM Tent City Among the Trees, Hope Resounds*, MIAMI HERALD, Apr. 26, 2006, at 1B.

13. See, e.g., Abby Goodnough & Steven Greenhouse, *Anger Rises on Both Sides of Strike at University of Miami*, N.Y. TIMES, Apr. 18, 2006, at A18.

14. See Ana Menendez, *FIU Opts to Do the Right Thing about Janitors*, MIAMI HERALD, Oct. 1, 2006, at 1B.

15. See Michael Vasquez, *Miami Leaders Unveil Housing, Wage Initiatives*, MIAMI HERALD, Apr. 7, 2006, at 1C. Not all the news has been good, however. See Ana Menendez, *Better Wages, Health Care Not Enough*, MIAMI HERALD, Feb. 18, 2007, at 1B (Nova Southeastern University responds to unionization effort among employees of Unicco, its business services contractor, by replacing firm with non-union contractors).

16. The legal status of the “card check” strategy employed by the UM janitors—i.e., securing an agreement from the target employer to recognize a union if a majority of employees sign union authorization cards, thus avoiding an NLRB election—is currently at an important crossroads. On the one hand, the NLRB may be on the verge of reversing well-settled precedent and enabling employers faced with pressure to enter a card-check recognition agreement to insist on an election. See, e.g., *Marriott Hartford Downtown Hotel*, 347 N.L.R.B. No. 87 (Aug. 4, 2006). On the other hand, earlier this year, the U.S. House of Representatives passed the Employee Free Choice Act, which would eliminate the need for a card-check recognition agreement—and indeed for an NLRB election, should it come to that—and require an employer to recognize and bargain with a union once a majority of its employees sign authorization cards. See Steven Greenhouse, *House Passes*

moreover, is likely to provide a template for a broader SEIU effort to organize low-wage workers in colleges and universities across the country.¹⁷ Indeed, all concerned learned a very great deal about what works—and what doesn't work—in the context of university organizing, and the successes and mistakes alike will no doubt prove instructive in future efforts at other institutions.

II.

(ALWAYS ALREADY) TEACHING FROM THE LEFT

For those of us who were fortunate enough to participate, the campaign consumed many a waking hour and not a few that would ordinarily be devoted to sleep. Events reached warp speed in February and March of 2006, when the janitors commenced a strike protesting the discharge of a leading union supporter and various other anti-union actions by Unicco officials—actions that had prompted the National Labor Relations Board to issue a multi-count unfair labor practice complaint against the firm in late January.¹⁸ Although well over a hundred UM faculty actively supported the strike in various ways, about a dozen of us coalesced into an informal working group—humorously christened “the comitato” in a nod to the national origin and gorgeous accent of our stalwart communications coordinator—to encourage and organize the larger faculty effort. We arranged off-campus classroom space for colleagues who wished to honor the janitors' picket line; drafted and circulated petitions supporting the strike and condemning Unicco and University interference with the organizing efforts; distributed buttons and produced strike-support signs and t-shirts; and helped to organize and publicize rallies and protests, including an unprecedented march of over 300 faculty and students that wound serpentine through the campus and then—in a magical moment that none of us will ever forget—joined forces with a raucous salsa line of striking janitors at the off-campus site to which UM officials had unceremoniously relegated their picketing.¹⁹

Naturally enough, a key dimension of the faculty effort was educational—attempting to persuade the larger UM community of the justice of the janitors' cause and explaining to the curious the intricacies of the laws and conventions

Top Priority of Unions, N.Y. TIMES, Mar. 2, 2007, at A14. Although the bill fell to a Republican filibuster in the Senate—and in any event faced a veto by President Bush—there were 51 votes for cloture, and the prospects for eventual success may well be enhanced by the 2008 elections. See Steven Greenhouse, *Senate Republicans Block Bill on Unionizing*, N.Y. TIMES, June 27, 2007, at A21. For a perceptive discussion of the legal issues at stake, see James J. Brudney, *Neutrality Agreements and Card Check Recognition: Prospects for Changing Paradigms*, 90 IOWA L. REV. 819 (2005).

17. Email exchange with Renee Asher, Communications Coordinator, Serv. Employees Int'l Union (June 21, 2006) (on file with author).

18. For a first-hand account of the discharge, see Maya Bell, *Fired University of Miami Janitor Leads Strike over Benefits*, ORLANDO SENTINEL, Mar. 1, 2006, at D1. On the NLRB complaint, see *Labor Board Will Hear Union's Case*, MIAMI HERALD, Feb. 2, 2006, at 3C.

19. For contemporaneous accounts of these various activities, see the archives posted on the “Faculty for Workplace Justice” blog at <http://picketline.blogspot.com/> (last visited June 21, 2007).

governing union-organizing campaigns, strikes, and picket lines. To that end, members of the comitato wrote numerous op-ed pieces for the student paper and the local press; conducted teach-ins and participated in campus debates; issued frequent email updates to faculty, students, and staff (none dared call it spamming); and posted a recurring “frequently asked questions” series on our “Faculty for Workplace Justice” blog.²⁰

As a long-time scholar of U.S. labor law—and a former attorney for the National Labor Relations Board—I was able to play a particularly active role in those educational efforts. Indeed, having penned the first public criticism of the University’s handling of the dispute,²¹ I soon found myself in the same position that UM Law colleagues had occupied in connection with other high-profile Florida “law stories” of recent years—including the family law, immigration, and human rights experts who held forth on the Elián saga as well as the constitutional and election law scholars who became minor media celebrities during the 2000 presidential election debacle—giving interviews to local television stations and fielding phone calls from the local and national press.²²

Those activities were going pretty much 24/7 in February and early March, and so it was that I found myself without a moment to spare as the date for the *Teaching from the Left* symposium at Harvard Law School was rapidly approaching. I was lamenting that fact to my wife—fretting about whether I would be able to set aside the strike-support activity for long enough to pull together a topic and a talk worthy of both the occasion and the company—when she responded with a pair of her trademark “innocent” questions: “Michael, isn’t what you’ve been doing lately ‘teaching from the left’? Why don’t you just talk about *that*?”

Indeed. So laptop in tow, I headed for Cambridge, the scene of my own first and most memorable encounter with left law-teaching,²³ and holed up at a coffee house in Harvard Square to begin gathering these thoughts. I decided to focus on a particular event that loomed especially large at the time—with the benefit of hindsight, it looms larger still—and to offer some observations about lessons it might hold for the project of critical legal teaching and study.

III.

WHICH SIDE ARE YOU ON?

The episode in question took place in early March, as the janitors’ strike began and a significant number of faculty began holding classes off-campus in

20. *See id.*

21. Richard Michael Fischl, *UM Policy Contributes to Creation of “Working Poor,”* MIAMI HERALD, Oct. 21, 2005, at A24.

22. I assume that only my mother would be interested in a full collection of citations here, but links to several of the resulting stories appear in the archives of the “Faculty for Workplace Justice” blog, *supra* note 19.

23. *See* Richard Michael Fischl, *It’s Conflict All the Way Down*, 22 CARDOZO L. REV. 773, 774–75 (2001) (describing Duncan Kennedy’s Contracts class circa 1975).

order to honor the picket line. The decision to support the janitors' effort in this way came at the suggestion of several members of the comitato who had been graduate students at Yale during the long union organizing struggle among support staff on that campus. Drawing on that experience, they persuaded the rest of us that off-campus classes could deliver a powerful message to multiple audiences (the striking workers, University administration, and the larger community) and at the same time promote salutary (if not invariably pleasant) dialogue about the underlying dispute with faculty colleagues and especially students.

While not without its bumps, the undergraduate dimension of the off-campus effort was from most reports a success. When the strike began, there was relatively broad support for the janitors' cause among students who were paying attention and very little in the way of organized opposition. Moreover, the South Florida weather cooperated, and many faculty were therefore able to hold their classes on "the Granada Green," a large expanse of lawn located just across the street from the University and thus an easy walk for most students. Indeed, there was a festive atmosphere on the Green, and the clusters of homemade signs, colorful umbrellas, professors in strike-support t-shirts, and students in dark glasses and beachwear made it look more like a music festival than the scene of an increasingly bitter workplace struggle. The venue had the added virtue of making campus support for the strike highly visible to South Floridian motorists passing by during their morning and afternoon commute, and the "off-site" classes were the subject of several generally favorable stories in the local media.²⁴

The law school experience was more complicated. Like most American law schools, UM has fairly large classes—a hundred or more students is typical for a first-year course—and, accordingly, bucolic outdoor sites like the Granada Green weren't suitable for our purposes. Instead, arrangements were made with local clergy to use space in churches, synagogues, and other religious venues to hold classes for participating faculty and their students.

As a symbol of community support for the janitors—support, indeed, with the imprimatur of the clergy—these sites were like manna from heaven.²⁵ But as classroom space, they turned out to be less than ideal. Students accustomed to having a desk on which to spread out the usual array of law school paraphernalia—notebook computer, casebook, statutory supplement, water bottle, and an extra large caffeinated drink of choice—found themselves forced to make do with laps and pews, and the sites presented acoustical, lighting, and connectivity challenges as well. Moreover, many of these venues were some distance from campus, requiring students to confront traffic and parking challenges as they

24. See, e.g., Nicholas Spangler, *UM Janitors' Strike Turns Park into Classroom*, MIAMI HERALD, Mar. 3, 2006, at 1B.

25. On the support of many local clergy for the janitors' cause—as well as the outspoken opposition of a few—see Alexandra Alter, *Coalition of Clergy Embraces the Strikers*, MIAMI HERALD, Apr. 25, 2006, at 1A.

commuted between off-campus and on-campus classes. In sum, unlike the undergraduates with their short walk to the Granada Green, law students attending off-campus classes experienced some real inconveniences—not of the magnitude of those faced by working families trying to get by on poverty-level wages and emergency-room health care, perhaps, but inconveniences nonetheless.

While “the silent majority” of law students seemed to view the off-campus classes as just another hurdle to be cleared in an academic year already disrupted by Hurricanes Katrina and Wilma, an increasingly outspoken group raised complaints about the various logistical problems associated with the alternative sites. For a number of students, the off-campus classes raised philosophical and ideological issues as well. Many, including some who otherwise supported the janitors’ cause, were troubled by the idea of meeting in a church or a synagogue. Others were concerned that better pay and benefits for the janitors might mean an increase in an already steep private-school tuition bill. And more than a few voiced resentment at what they characterized as an attempt by faculty to “coerce” them into embracing a cause they did not in fact support.

Within a day or two after the strike began, the opponents were in full revolt, besieging law school and University administrators to intervene against the ten or so members of the law school faculty who were involved in the off-campus effort. To be sure, many students expressed support for the off-campus classes, more than a few of them noting that the “coercion” argument cut both ways. Thus, the argument went, if faculty holding classes off-campus could be viewed as putting untoward pressure on students to honor the picket line, faculty holding classes on-campus despite the strike might with equal force be accused of putting untoward pressure on students to *cross* it.

To their credit, the vast majority of law faculty—whether teaching on or off-campus—endeavored to accommodate students on the other side of the picket line by taping classes and making the recordings available on the law school web site, an experience that provided the occasion for many of us to learn for the first time just what a “podcast” is. That effort did little, however, to assuage the concerns of students in courses graded with a class-participation component, in which virtual attendees were potentially at a competitive disadvantage relative to classmates in actual attendance. Indeed, protesting students argued forcefully that a podcast was a poor substitute for *any* real-time class. (Whatever else we accomplished during the strike, there is something to be said for a strategy that prompts law students to tout the virtues of active class participation and the Socratic method, however calculated the embrace.)

Beleaguered law school deans, for their part, did their best to resolve myriad logistical challenges, to appease the outspoken on each side, and to fend off criticisms from University officials who seemed far more attuned to the complaints

of students who opposed off-campus classes than to those of their counterparts who supported them.²⁶

IV.

WHAT IS IT ABOUT FLORIDA ELECTIONS?

The conflict was reaching fever pitch when I finally approached the topic with my own spring-semester class, a first-year section of Contracts with just over a hundred students that met twice a week for two-hour sessions. Prior to that point, I had discussed the janitors' campaign with individual students who sought me out—and had shared information about developments with the class and the larger law school community via email—but I had avoided using class time to broach the issue with my more-or-less captive audience. With the commencement of the strike, however, I felt I could no longer plausibly maintain that provisional separation of roles—business-as-usual classroom teacher vs. strike-supporting faculty member—and so I decided to devote the first half hour or so of our session to a discussion of the campaign and to the question of whether we would honor the picket line by holding our class off-campus.

After offering a brief history of the dispute, and fielding a number of questions about various legal aspects of the strike and picketing, I explained that the principal basis for my own support for the janitors' cause was a commitment to workplace democracy—to the belief that employees ought to have a voice in the decisions, practices, and policies that vitally affect their working lives. I noted that there are other ways of providing such a voice—European-style work councils, for example—but that, under U.S. law, union representation is as a practical matter the only form of participatory workplace governance available, particularly to low-wage workers like UM's janitors.

I explained that the same democratic commitment led me to the view that the question of how to pay for any wage and benefit increases that might result from unionization—via tuition increases, reductions in annual raises for faculty and administrators, other forms of cost-cutting, or some combination that would “spread the pain” to all concerned—ought to be addressed by a committee broadly representative of the larger UM community, including students, faculty, administrators, and support staff. Indeed, I noted, a proposal to precisely that effect had been adopted by a nigh unanimous vote of the UM faculty senate in the wake of the publication of the *Chronicle* article—and had been repeatedly urged by student and faculty activists during the janitors' campaign—but had been

26. One of many low points in the relationship between faculty supporting the strike and University officials came when a message was posted on the University web site inviting the parents (yes, the *parents*) of students with complaints about off-campus classes to contact a University vice president, but which made no similar offer to parents of students unhappy with the prospect of crossing a picket line in order to attend class, a telling omission. Yet University officials may have been reading their audience well; judging from my own inbox, in any event, parents of students opposing off-campus classes were far more likely than those of their pro-strike counterparts to feel the need to intervene on behalf of their college- and graduate-school-age offspring.

dismissed out of hand by University officials.²⁷

Turning to the question of whether to honor the picket line by holding our own class off-campus, I said that it seemed to me that my commitment to workplace democracy should extend as well to my *own* workplace—i.e., to the law school classroom—and accordingly I intended to put the question to a vote of the class. I explained that I had arranged for alternative venues, should we need them, and that the class could meet once a week at a synagogue a short walk from campus and once a week at the Quaker meeting house about a mile and a half across town. Whatever the decision, I added, we would videotape the classes and make online podcasts available to those who couldn't or wouldn't attend at the selected site. And with a crack about Florida's infamous role in the 2000 presidential election, I ended the discussion by asking the student government representatives in the class to conduct the vote—thus avoiding the prospect of an election conducted by a partisan in the conflict, namely me. (There was also in my decision to leave the process in student hands a *sotto voce* critique of the refusal by Unico and University officials to respect the janitors' desire to determine *their* own process for achieving union recognition—i.e., via card-check rather than an NLRB-conducted election—a point not lost on my students.)

Our “election supervisors” did what any self-respecting members of the Internet generation would do and proceeded to hold the vote on a commercial web site designed to enable users to conduct and analyze online opinion polls. Although I'd expected a simple up-or-down vote, they decided on their own to offer respondents a third choice (“Other”) as well as an opportunity to explain or amplify their vote in a space designated for “comments or suggestions.” The latter provided me with an unexpected but not unwelcome glimpse into the thinking of my students—particularly that of those who opposed the off-campus option—and more on that in a moment. But the availability of the third-way “Other” option quite nearly produced yet another Florida election debacle.

In the end, there were eighty voters (out of a class of 106), thirty-five favoring off-campus classes, forty opposing them, and five selecting the “Other” option. At first it appeared that all five of the “Others” favored the off-campus option, albeit conditioning their votes in various ways—principally on finding secular sites for our classes. The prospect of a forty-forty tie was avoided, however, when we determined that one of the “Other” votes was cast by my teaching assistant, an upper-level student who was using the “comment” section to let folks know where she planned to meet students during the course of the strike. For want of a single vote, then, we were spared the challenge of deciding how to treat the remaining “Other” votes and—had they been counted as favoring the off-campus option—the even more daunting task of finding a fair and sensible way to break the tie. But *vox populi, vox status quo*, and so we stayed put.

27. See Ad Hoc Comm. Report, *supra* note 4.

V.

“THIS ISN’T WHAT I PAID FOR”

Although I was disappointed by the result, I was heartened by how close the vote had been and was at any rate eager to model good citizenship by demonstrating respect for majority rule and putting the matter firmly behind us. Yet the views revealed via the posted comments suggested the possibility of a “teachable moment” implicating one of the principal problematics of American contract law, so I couldn’t resist pushing my luck just a little bit further with my strike-weary students.

In the end, twenty-four of the eighty voters offered comments, and several conspicuous patterns emerged. For one thing, the overwhelming majority were opponents of the off-campus option; indeed, only one of the twenty-four commenters expressed unconditional support for honoring the picket line. For another, more than a few opponents expressed hostility toward or criticisms of the vote itself, one stating that “a majority decision is wholly [i]nappropriate in the face of the great cost to be imposed by a simple majority” and others insisting that they would not attend class if the off-campus option prevailed. The lone supporter of that option, by contrast, stated that he/she would abide by the class decision whichever way the vote came out.

The opponents struck several other common themes. Some echoed concerns about the religious character of the off-campus sites; others focused on the potential inconveniences, parking foremost among them; still others questioned the effectiveness of the protest to the ends sought by the janitors. But no sentiment was more widely shared than the one captured in the following post:

As law students, we pay a lot of money to come to campus to attend class. . . . To ask all students [to attend] class off-campus is an inconvenience that n[o] one consented to when they enrolled.

This point could not help but catch the eye of their Contracts instructor, and my initial and decidedly partisan reaction (“If only they would use the legal skills we are teaching them to do *good!*”) was quickly overtaken by a critical/pedagogical one (“Why is only one side of this debate invoking contract principles?”). And so I opened our next class meeting by quoting the post and observing that its argument presented us with a splendid opportunity to connect the issues surrounding the janitors’ strike to the themes of our course.

To get the discussion going, I invited the initially reluctant class to flesh out and defend the argument. Responding to my queries, students expanded on the claim that the Law School had an obligation to offer classes on-campus (citing, for example, statements touting the quality of our classroom buildings in the admissions catalog and web site postings) as well as the claim that the use of off-campus sites would constitute a material breach of that obligation (stressing in particular the connectivity problems and the failure of podcasts to deliver a genuine Socratic experience). As argument-construction picked up steam, a volunteer

demonstrated once again that contemporary law students are at their most adept when making “equal treatment” arguments: We are frequently penalized by faculty if we don’t show up to the assigned room at the assigned time, the student wryly observed, and what’s good for the goose ought to be good for the gander—a point that provoked an approving murmur from his colleagues.

After six weeks in my Contracts class, they could hardly have been surprised by what came next. What arguments, I asked, might they muster for the other side of the equation? After some uncomfortable shuffling, one of our “stars” questioned the claim that the University had an unqualified obligation to offer classes on campus in the first place. Recalling the hurricanes that had swept through South Florida the previous fall, he noted that property damage or power outages might have made campus classroom space unusable, a point with particular poignance given the presence in our class of a refugee from one of the New Orleans law schools ravaged by Katrina. We might well be in an analogous situation, he continued, if the janitors’ strike succeeded in bringing the cleaning and maintenance of campus buildings to a halt. In either case, he argued, it’s doubtful that the Law School would be in breach of contract if it arranged for classes to meet elsewhere during the disruption in question.

I developed the point a bit, noting that strikes were indeed treated like so-called natural disasters in some contract settings—in many *force majeure* clauses, for example. I added that one fall I’d moved a seminar to my off-campus home because we were scheduled for the same time-slot each week as the UM marching band’s nearby rehearsals and that no one had ever suggested my work-around was a breach of contract.

There’s a distinction, another student rejoined, between classroom space rendered unusable by outside forces and classroom space that goes unused because of the freely made choices of one of the parties to a contract. We explored that point, noting (on the one hand) that permitting parties to avoid contractual obligations on the basis of philosophical or political commitments had potentially limitless disruptive potential, and (on the other hand) that the distinction between “outside forces” and “freely made choices” might be less clear than it first appears, whether we are talking about marching band rehearsals (which University officials could choose to reschedule or relocate), hurricanes (for which University officials might choose to prepare with alternative power sources etc.), or strikes and picket lines (which University officials might avoid by choosing to adopt more generous labor contracting policies).

Shifting the discussion again, I observed that we had thus far been focused on the contract claims of students who wished to attend class on-campus—despite the picket line—and asked whether those who wished to *honor* the picket line might not have a similar claim. One of the outspoken supporters of the janitors’ cause picked up the cue: “We pay \$33,000 dollars a year in tuition so we can attend law school classes,” she said, “and we never agreed to cross a picket line to get there.” I thought it was a good time to add that I was the one person

in the room who actually had a written contract with the University and that my contract didn't say anything about having to cross a picket line either; in point of fact, the other party to that contract had taken the position that faculty were free to meet their teaching obligations either on-campus or off, so long as appropriate accommodations were made for students unable or unwilling to attend class. But the punchline, I observed, was that folks on either side of the dispute had a perfectly plausible claim that this wasn't what they'd bargained for when they signed up for law school (or law teaching) at UM.

Socratic nudging had thus brought us face-to-face with the problem of contractual gaps—i.e., circumstances arising during contractual performance that had not been anticipated by the parties at the time of agreement—a vexing topic in American contract law. I cited some of the more familiar variations of this problem in contract lore: the famous cow, assumed by the parties to be barren and thus sold at beef-cow prices, that turned out to be pregnant;²⁸ the apartment leased at a premium for its view of a coronation parade that was unexpectedly cancelled when the heir to the throne took ill;²⁹ the landlord who sought to collect rental payments notwithstanding the tenant's ejection from the property by a foreign invader.³⁰ The question conventionally posed in such cases is whether the unanticipated circumstance (e.g., bovine pregnancy) excuses the promised performance (e.g., a sale at beef-cow prices), and the governing doctrines (mistake, impossibility, etc.) are notoriously confused and confusing, a state of affairs that is in no small part the product of judicial efforts to divine a contract-based allocation of risks that *ex hypothesi* weren't anticipated—let alone allocated—in the first place.

Scholarly attempts to develop a principled and workable solution to the resulting quandary run the gamut from those who insist on enforcement according to the contract's literal terms (e.g., "deliver the cow") despite the acknowledged objection that the terms weren't designed to govern the situation at hand;³¹ to those who focus less on the question of how to sort out the parties' dispute than on designing "gap-filling" default rules to promote efficient contracting in the future (e.g., unless otherwise agreed, farm animals are sold "as is" in order to encourage care in pre-sale inspections);³² to those who would put the contract to the side in favor of a Solomonic sharing of the unexpected gains or losses (e.g., if seller and buyer were equally in the dark, why not split the difference between

28. *Sherwood v. Walker*, 33 N.W. 919 (Mich. 1887).

29. *Krell v. Henry*, (1903) 2 K.B. 740 (A.C.) (Eng.).

30. *Paradine v. Jane*, (1647) 85 Eng. Rep. 897 (K.B.).

31. See, e.g., Robert E. Scott, *The Case for Formalism in Relational Contract*, 94 NW. U. L. REV. 847, 871–75 (2000); Andrew Kull, *Mistake, Frustration, and the Windfall Principle of Contract Remedies*, 43 HASTINGS L.J. 1, 38–54 (1991); John P. Dawson, *Judicial Revision of Frustrated Contracts: The United States*, 64 B.U. L. REV. 1, 35–38 (1984).

32. See Scott, *supra* note 31, at 849 & n.3 (collecting law-and-economics literature on contractual gaps).

barren-cow and fertile-cow prices?).³³

The situation at hand was, of course, a remove or two from the one presented in the celebrated cases. Faculty holding class off-campus weren't citing the unanticipated picket line as a basis for avoiding their contractual performance altogether. Instead, they were attempting to meet their teaching obligations and at the same time to express solidarity with the janitors' cause—an effort that finds support, at least in principle, in the loss-sharing literature mentioned a moment ago. But my point to the students was not that holding class off-campus was “the right result under American contract law”; indeed, the relevant law is very much in disarray. It was rather that the contract-based claim—“*this isn't what I paid for*”—could be “flipped” and deployed by those who wished to honor the picket line as well as it could by those who were content to cross it. Accordingly, it wasn't nearly the rhetorical trump card that many had imagined, despite its undeniable intuitive appeal.

VI.

THE DOG THAT DIDN'T BARK

But if “this isn't what I paid for” was potentially available to both sides of the debate—to those who had never agreed to cross a picket line in order to attend class as well as to those who had never agreed to drive halfway across town to do so either—why did the argument appeal to the intuitions of those on one side but not the other?

The argument was, as I've said, a principal theme in the posted comments of those in the class who opposed the off-campus option, and, during the first weeks of the strike, it was increasingly the mantra of critics of off-campus classes among UM law students more generally. It was also a central point pressed by a chorus of critics in a lively debate posted on a popular blog for legal academics.³⁴ And it was echoed most forcefully of all in an anonymous email message I received from someone claiming to be the father of—and, not incidentally, the source of tuition for—an unnamed student in my class. The author presented himself as “a highly successful lawyer (retired)” as well as a former “law school assistant dean and assistant professor,” and he took me to task for submitting the question of where to meet during the strike to a vote of the class, charac-

33. See, e.g., GRANT GILMORE, *THE DEATH OF CONTRACT* 77–83 (1974); CHARLES FRIED, *CONTRACT AS PROMISE: A THEORY OF CONTRACTUAL OBLIGATION* 57–73 (1981); Duncan Kennedy, *Form and Substance in Private Law Adjudication*, 89 *HARV. L. REV.* 1685, 1733–35 (1976). See also Robert A. Hillman, *Court Adjustment of Long-Term Contracts: An Analysis under Modern Contract Law*, 1987 *DUKE L. J.* 1, 4–17 (arguing that a sharing solution to unanticipated events is often required by the parties' agreement but that it should be judicially imposed even when it's not); Gideon Parchomovsky, Peter Siegelman & Steve Thel, *Of Equal Wrongs and Half Rights*, 82 *N.Y.U. L. REV.* 738 (2007) (offering a sharing solution for contractual gaps as well as a variety of other legal problems).

34. See Steven Vladeck, *Strikes and the Classroom*, Mar. 1, 2006, http://prawfsblawg.blogs.com/prawfsblawg/2006/03/strikes_and_the.html (post on the UM janitors' strike by law professor who moved his class off-campus; forty comments follow).

terizing any decision to teach off-campus as a “complete disregard of [my] duty to [my] students, contractual and otherwise.”

Yet the students who wished to honor the picket line didn’t invoke the contractual duty trope—not in their posted comments and not, so far as I know, during the course of the larger campus debate. Puzzled by the dog that didn’t bark—or, better perhaps, by the sound of only one hand clapping—I asked an outspoken supporter of the janitors’ cause why she and her comrades weren’t out arguing that this wasn’t what they paid for either, particularly (I teased) after a month and a half of Contracts classes from *me*. “Professor Fischl,” she earnestly replied, “some things are just too important for contract.”

No doubt. But those who were adamantly opposed to off-campus classes would surely have made a parallel argument: “Some things,” their version would go, “are just too important for majority rule.” Indeed, that was precisely the point made by my anonymous email interlocutor; it was likewise the point of one of the comment-posting students quoted earlier; and I gather it was also very much the point of the opponents of off-campus classes whose posts proclaimed that they would not attend class if the vote went against them. It may even be implicit in the contract-based claim itself, framing as it does the argument against off-campus classes in terms of “rights”—ordinarily scissors to the paper of majority rule—rather than political or personal preferences.

The misgivings about resolving the matter via a vote of the class did not, however, seem to be shared by the students who wished to honor the picket line. Once again, the only unconditional supporter of the off-campus option who saw fit to post a comment during the tally made it clear that he/she would attend class whichever way the vote came out, and quite a few of the more avid janitors’ supporters told me privately that they liked it that I’d put the matter to a vote.

What struck me at the time was that each side of the debate seemed thus to be leading with its chin. Nearly everyone expected the off-campus option to lose the popular vote, and we were all quite surprised—and I for one was gratified—when it turned out to be so close. Yet those who stood to gain from that result were far more likely to criticize my recourse to majority rule than those who stood to lose, and vice versa. Similarly, the janitors’ supporters might have taken some of the force out of their opponents’ most powerful claim by going toe-to-toe on the terrain of contract—that is, by pointing out that this wasn’t what *they’d* “paid for” either—and yet once again that was the road not taken.

To someone who makes a living teaching law students how to construct, deconstruct, and “flip” arguments—and is even the co-author of a book offering a thoroughgoing guide to the tricks of the lawyering trade³⁵—the debate that actually emerged served as a welcome reminder that not every rhetorical deployment is strategic and that patterns of argument may offer a window into competing world-views and political commitments, as the seminal critical legal study con-

35. RICHARD MICHAEL FISCHL & JEREMY PAUL, GETTING TO MAYBE: HOW TO SUCCEED ON LAW SCHOOL EXAMS (1999).

tended a generation ago.³⁶

VII.

ELEPHANTS IN THE ROOM: CONTRACT AS CRITIQUE/DEMOCRACY AS TRANSGRESSION

So what understandings and commitments might have connected support for the vote with a desire to honor the picket line (on the one hand) and the invocation of contract with a willingness to cross (on the other)?

In retrospect, I suppose it's not so surprising that the students who backed the strike—and with it the janitors' demand for a voice in the terms and conditions of their employment—might have embraced a participatory solution to the picket-line question as well; indeed, I had attempted to forge just such a link between workplace and classroom democracy when I first proposed the vote to the class. And on the other side, there was in the contractual rhetoric considerable resonance with the consumerism rife in contemporary university culture, where students are with increasing frequency referred to as “customers” and institutional distinction increasingly equated with quantifiable resources and outputs. Students who've internalized this frame—and grown accustomed to thinking of their education as a product they've “paid for”—might well be expected to object to threatened disruptions in the supply chain whatever the source, be it janitors striking for union rights or a professor asking his class to vote on whether to meet off-campus.

It's my sense that this conflict between democratic and consumerist values played an important role in our drama, but I don't think it's the entire story. There was, after all, an elephant in the room—me—and the arguments deployed by my students may well have been shaped as much by the dynamics of professorial and institutional power as they were by more philosophical concerns.

Thus, it may not do justice to the opponents of the vote to attribute their stance to mere “consumerism.” For one thing, that's a term we don't ordinarily use to describe the kind of courage it takes to stand up to someone (like a professor teaching a first-year law school course) wielding significant power over one's career prospects, particularly when that someone has made it clear that he has strong feelings on the point in dispute. And however clichéd the “student as consumer” metaphor may seem today, there are also traces of a pointed critique of the “faculty-first” culture in much of academia—of a salutary reminder that faculty and administrators alike ought to dance a bit more with the ones what brung 'em. Indeed, the concept of “consumerism” has itself a similarly complex legacy, connoting voracious acquisitiveness as well as efforts in an earlier era to defend “the little guy” against corporate rapacity.³⁷ That the “student as consumer” variant is well on its way to becoming the Official Mission Statement of

36. See Kennedy, *supra* note 33.

37. See OXFORD ENGLISH DICTIONARY (2d ed. 1989) (entry for “consumerism”).

American Higher Education—despite some seemingly salient differences between what takes place (say) on the sales floor of Wal-Mart and what is supposed to be going on in classrooms, during office hours, in the library and residential colleges, etc.—ought not obscure this critical pedigree, and I don't for a moment doubt that many of the students objecting that off-campus classes weren't what they'd "paid for" viewed the effort to honor the picket line as simply another instance of faculty indulging their own tastes and interests at the expense of their students.

But context matters, and the consumerist critique loses a bit of its punch when it is lodged against a professor who has asked his students to decide whose interests ought to prevail and who had, in so doing, risked thwarting his own considerable desire to respect the picket line. It also loses a bit of its punch when it is invoked on behalf of *some* consumers (those who hadn't "paid for" off-campus classes) but not others (those who hadn't "paid for" repeated trips across a picket line) to critique a good faith effort to take the interests of both groups into account. Moreover, the suggestion that faculty supporting the janitors were simply indulging our own selfish interests is difficult to square with the fact that there was an elephant in *our* room as well, in the person of an immensely popular and widely respected University president—Donna Shalala, the Secretary of Health and Human Services under President Clinton—whose profound displeasure with the strike and its supporters was forcefully communicated to the UM community through public statements, press releases, letters to alumni, and eventually a series of highly incendiary full-page ads in the *Miami Herald*.³⁸ Those of us with tenure were insulated from any overt retaliation, but let's just say that the members of the comitato and other faculty who signed petitions, published op-ed essays, wore "Faculty Support the Strike" t-shirts, and participated in various public protests didn't exactly view our actions as career enhancing. (As my mother put it after one of my periodic reports—during which I had acknowledged some concern about biting the hand that was feeding me and my family—"There's just no hand too big for you to bite, is there, dear?")

By invoking the rhetoric of contractual obligation in *this* setting—particularly when coupled, as it frequently was, with a call for discipline of the faculty involved—the opponents of off-campus classes might fairly be viewed as plighting their troth *with* authority rather than challenging it, responding less like beleaguered students resisting an arrogant exercise of faculty power than as apologists for workplace hierarchy and the submission of faculty and janitors alike to institutional control.

Indeed, whatever its transgressive potential as a form of consumer protest, one version or another of "this isn't what I paid for" has an uncanny knack for turning up on the wrong side of workplace struggles, where it serves as a highly

38. I have more to say about those actions and others in a work in progress, Richard Michael Fischl, *Ten Things a University President Ought Not To Do in the Face of a Union Drive: Reflections on the University of Miami Janitors' Campaign* (forthcoming 2007).

effective rhetorical device for changing the subject from an *is* generating opposition and resistance to an *ought* based on a moment of supposed consent, located at a safe remove in the past. As often as not, of course, it's an altogether *imaginary* moment, since the point of contention (a sudden increase in workload, the dismissal of a respected or beloved employee, a picket line you've got to cross to get to work) had not in fact been anticipated, let alone definitively addressed, by the parties' agreement.

There's a coercive quality to the rhetoric of contractual obligation when it's summoned to partisan service in the face of such a "contractual gap," as its deployment in the context of our own predicament attests. Thus did the contrarian students reject a dialogic and democratic solution to our unexpected fix, demanding instead the continuation of "business as usual"—never mind the decidedly *unusual* business of encountering a picket line outside the classroom; never mind the absence of consent on the part of the individual deemed to have a contractual obligation to cross it; never mind any obligations, contractual or otherwise, that individual might have felt he had to the many students who supported the janitors' cause or indeed to the janitors themselves.

The scarcely concealed antipathy of some students toward faculty supporting the strike, expressed in blog postings, email messages, and statements made in various public settings, certainly contributed to the sense of coercion. A frequently heard refrain—"the faculty are shoving their politics down our throats"—conjured up images of brutal infantilization (professor as mother bird gone wild) and intimate violation (professor as sexual predator) that seemed oddly out of proportion to the purported provocation, having less to do with what was actually happening on the UM campus (where faculty and students alike were organizing teach-ins and public debates and inviting participation by representatives from all viewpoints) than with the scripted and highly stylized critique of academia promoted by various right-wing pundits and the editorial pages of the *Wall Street Journal*. Indeed, at the time it felt very much like the outspoken students were the elephant in the room and that the "angry dad" quality of their critique—echoed, it would seem, by at least one genuine tuition-paying "angry dad"—represented a determined effort to bully those of us on the other side of the picket line into submission.

* * * * *

And what of those who favored the classroom vote and wished to honor the janitors' picket line? As I suggested earlier, the obvious common thread was a preference for democratic governance, but attitudes toward authority may have played a role here as well. For one thing, there is always the possibility that some may have been moved as much by a desire to curry favor with their professor—or, to put it more generously, by a respect for his outspoken commitment to the janitors' cause—as they were by any philosophical commitments of their own. But there were costs, potential and real, to their position—less, perhaps, in the prospect of driving across town for class twice a week than in the risk of in-

curing the wrath of their contrarian colleagues and of increasingly irritated University officials—so for most of them the position was likely as heartfelt as it was transgressive.

To be sure, favoring “democracy” in the abstract is about as transgressive as supporting world peace or apple pie. But once again context matters, and it must be recalled that these students were embracing that ideal for settings in which it isn’t ordinarily welcome—i.e., in the workplace and the classroom, realms in which market discipline is increasingly understood as the best and most legitimate source of governance. For its part, workplace democracy is such a precarious, even radical notion in contemporary culture that American employers feel free to oppose union campaigns “by all means necessary,” including—with astounding frequency—the unlawful discharge of campaign supporters.³⁹ Indeed, as the UM experience revealed, no less than a former Secretary of Health and Human Services in a Democratic administration thought she could likewise oppose a union effort with impunity in favor of market-based policies that had resulted in poverty-level wages and virtually nothing in the way of either health care or human services for campus contract workers.⁴⁰

By contrast, classroom democracy seems a tame if somewhat nostalgic notion, perhaps—to paraphrase the famous dictum about the bitterness of academic politics—because the stakes are so low, at least in comparison with union campaigns and other workplace struggles. Here the challenge ordinarily lies less in the resistance students may face from faculty or administrators than in their own complacency, likely born in no small measure of the sense of “student as consumer” empowerment, however false that consciousness may be. Yet again as the UM experience confirms, students who demand a genuine role in university governance are infinitely more likely to face retaliation and serious discipline than—to take a not quite random example—their football-playing colleagues who engage in a host of brutal antics on and off the field.⁴¹

In sum, then, the reluctance of the janitors’ student supporters to join the “this isn’t what I paid for” refrain may thus have reflected a healthy skepticism about the role of market values in higher education, whether workplace or class-

39. See, e.g., KATE BRONFENBRENNER, *UNEASY TERRAIN: THE IMPACT OF CAPITAL MOBILITY ON WORKERS, WAGES, AND UNION ORGANIZING* 43 (2000), <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1002&context=reports> (analyzing data from 400 NLRB-conducted election campaigns from 1998 to 1999 and finding that employers fired union supporters in one out of four campaigns); CHIRAG MEHTA & NIK THEODORE, *UNDERMINING THE RIGHT TO ORGANIZE: EMPLOYER BEHAVIOR DURING UNION REPRESENTATION CAMPAIGNS* 5 (2005), <http://www.americanrightsatwork.org/docUploads/UROCUEdcompressedfullreport%2Epdf> (analyzing data from sixty-two NLRB-conducted election campaigns in Chicago during 2002 and finding that 30% of the employers fired workers for engaging in union activity).

40. See *supra* notes 1–4 and accompanying text.

41. See Ana Menendez, *Schools Put on Good Show after Football Brawl*, *MIAMI HERALD*, Oct. 18, 2006, at 1B (contrasting UM’s treatment of varsity football players involved in “helmet-bashing, punch-throwing” on-field brawl to that of students who peacefully occupied University grounds during janitors’ strike).

room governance is at stake; some things, as my outspoken student had sagely observed, may be too important for contract after all.

VIII. EPILOGUE

So how did it all work out? Pretty well for the UM janitors; as I mentioned at the outset, by August 2006—just a year after the union campaign had commenced—they had secured union representation, a collective-bargaining agreement, and some fairly dramatic improvements in their pay and benefits. And I have no doubt that the off-campus classes played a small but important role in those successes. They generated a great deal of publicity during the first weeks of the strike; made clear to the UM administration that there was strong support for the janitors among substantial segments of both the faculty and the student body; and even the anger they generated among some students put additional pressures on University officials to take seriously the plight of low-wage campus workers they'd been ignoring for at least half a decade.

The off-campus effort had continued in full force until Spring Break, during the course of which University officials reversed longstanding policy and announced wage and benefit requirements for all campus service contractors, including Unicco, the janitors' employer.⁴² Heartened by the good news for contract workers, but concerned that the announcement would take the wind out of the sails of faculty support for the janitors' strike, the comitato urged faculty to resume teaching on-campus when the students returned from break and to seek other ways to express solidarity with the janitors.

The decision was not without controversy among supporters of the janitors' cause and—to the credit of all concerned—was as close as we ever got to the sort of battle over ideological “purity” that too frequently infects left-progressive undertakings. There was, of course, nothing “pure” about teaching classes off-campus as a means of honoring the picket line, since we were still *teaching* and thereby enabling the University to continue its operations without substantial interruption. We were thus debating strategy and symbolic effect, and those of us who favored an end to the off-campus classes were worried that the tactic would lose its punch if attrition set in and, more troubling still, that it was threatening to make the faculty—rather than the janitors—the central focus of student politics in connection with the strike. We urged our colleagues to focus their energies elsewhere, primarily by stepping up educational efforts via teach-ins and outside speakers and by engaging in old-fashioned collective action such as attending rallies and joining the picket line. Perhaps the most effective post-Break strategy was organized by a couple dozen faculty who began holding their undergraduate classes on campus but outdoors on the lawn just outside the University admissions office, the meeting point for the annual Spring tours by high school seniors

42. See *supra* note 9 and accompanying text.

and their parents.

And as for me and my Contracts class: Well, we did alright. I didn't devote any more class time to the strike, though when I was forced to reschedule a session due to a minor medical procedure I teasingly told them that we'd hold the make-up at a nearby church. On a more serious note, in mid-April I hosted a dinner and a showing of *Bread & Roses* for the class in one of UM's residential colleges, urging students with all viewpoints to attend and join a discussion afterwards. About a quarter of the class made it—most though not all seemed to be strike supporters—but it was a convivial evening, and the attendees were appreciative guests and seemingly eager to discuss the events on campus in an informal setting.

When at the semester's end the students submitted confidential evaluations of my teaching, there was no sign of "payback" and indeed only a handful made mention of the strike. To be sure, a couple of those took me to task for "spend[ing] too much time" on the subject, but the others expressed appreciation for the decision to have the class decide whether to honor the picket line. Indeed, I received letters and emails to the latter effect from a number of students once classes were over, several from folks who said they'd voted against moving class off-campus but who thanked me for the way I'd handled the matter and said they'd learned from it. Quite unexpectedly, a further vote of confidence came when the student body gave the annual "Golden Apple Award" for teaching and student service to the law school faculty member most visibly involved in the janitors' strike, an extraordinary and greatly appreciated honor.

In the end, the events of last spring served as a forceful reminder to me that our students are acutely attuned to the manner in which we exercise the power we have as their teachers, and that the most important lessons we impart may lie in what we do rather than what we say. Although the prospect of teaching from the wrong side of the picket line was excruciatingly difficult to reconcile with some of my most cherished commitments, I took the chance that those commitments might be better served by putting my fate in the hands of my students. The experience convinced me that the moments of mutual vulnerability that result when power is partially relinquished may be the moments that count the most.

PART III:
CRIMINAL LAW

