

## The school reform deniers

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**By Steven Brill**

*All opinions expressed are his own.*

Every year I tell students in a journalism seminar I teach about the junior reporter for *The American Lawyer* – the magazine I founded and edited – who committed a classic error when he submitted a draft of a profile about some lawyer in the news who had made it big. Midway through the article, the young reporter described a showcase this lawyer had in his office that displayed a bunch of combat medals. The reporter declared, matter-of-factly, that our legal hero had won the medals for his heroics in Vietnam, which was relevant, he added, because the lawyer made his war record and his lock-n-load approach to his work part of his pitch to potential clients.

In the margin next to the statement about the lawyer having won the medals I wrote, “Who says?” When the reporter came to ask me what I had meant, I told him to check with the Pentagon about the supposed medals. Which the reporter did, and which caused a mini-scandal after we reported in our otherwise positive profile that our hero hadn’t won them.

The story has three points. First, that reporters should believe nothing told to them by a biased source, especially when what they are being told is a checkable fact. Second, that while opinions deserve balanced reporting of both sides’ views, facts are facts. They are knowable. The guy either got medals or he didn’t. Third, the best way to test facts that you think you know is to put them in front of the person with the greatest stake in refuting them. In this case when we confronted the lawyer with the Pentagon’s records that he had not won any medals, he produced no evidence to the contrary and, in fact, ultimately confessed his deception. Case closed.

I have thought about the lawyer who didn’t win the medals a lot in the two years since I parachuted into a giant story that I started out knowing little about: the battle raging across the country over education reform. After I had seen a reference to them in the *New York Post*, I showed up one morning in June 2009 at one of New York City’s “Rubber Rooms.” These were the places that housed hundreds of New York City teachers whom the Department of Education had accused of misconduct or incompetence, but who were protected by union tenure rules and, therefore, remained on the payroll for years pending the outcome of endless arbitration hearings, which typically resulted in them being returned to class by arbitrators whose \$1,400-a-day contracts had to be approved every year by the teachers’ union.

The minute I saw these people sleeping, playing board games, chatting, or — in the case of a cheerful, \$85,000 a year former middle school teacher — lounging in a beach chair she had brought from home, the story seemed obvious. As schools chancellor Joel Klein and his staff had argued, the Rubber Room was a symbol of a system gone haywire.

However, there seemed to be another side. The union had maintained that the Rubber Room teachers were victims, and New York's public radio station, WNYC, had broadcast a report in which several of these Rubber Room teachers were interviewed complaining about how they were being persecuted for having complained about Klein's misdeeds or misconduct.

WNYC simply and fairly presented the two points of view: the City's claim that these were teachers with awful records, and the teachers' claim that they were wonderful pedagogues targeted by tyrannical bureaucrats. I had no dog in this fight; either story would have been a good one – featherbedding incompetents or targeted whistle blowers drummed out of class. But I took the approach that there was lots that could be knowable about these idle teachers. First, I could spend as much time as possible with those who have the greatest stake in the argument — the Rubber Roomers themselves – and get them to tell me the specifics of their cases or to give me their own (union-paid) lawyers' briefs in defense of the charges against them. Almost all refused to provide any such documents. That was telling, though not dispositive.

Most important, I could read the thousands of pages of testimony offered by both sides in their arbitration hearings to develop an objective view of whether the charges of incompetence made sense. That made all the difference. For example, would you want someone teaching your kids if her lawyer hours contesting the evidence of whether she had actually ever had custody of her teachers' manual, which was her defense to the charge that she hadn't prepared lesson plans, graded papers, or set up her classroom properly? Or, would you want your son or daughter being taught by a teacher whose defense for appointing the biggest kid in her class as the "enforcer" to keep the other children in line was that she was teaching "self-governance"?

In another case, trumpeted on the website of the United Federation of Teachers as an example of school officials targeting a terrific teacher simply because she was a high-salary veteran, the record – which was uncontested by the teacher's own lawyer – showed that she had been found passed out dead drunk in front of her high school history students.

A few of the 800-plus Rubber Roomers were probably put there unfairly. But for me – and for my readers after I reported on the evidence — the reality that these were rooms full of malingerers became clear.

#### THE UNION PROBLEM

As I moved on from the Rubber Room to begin the broader look at the education reform battle being waged across the country, which culminated in a book published last week ([\*Class Warfare: Inside the Fight to Fix America's Schools\*](#)), I found that thinking about the lawyer who didn't win those war medals was a great way to cut through the rhetoric on both sides.

For example, there's debate about charter schools and whether being freed from a union contract, as the charters mostly are, really matters. American Federation of Teachers

president Randi Weingarten (with whom I probably spend the most time in interviews for the book) brags about how the Brooklyn charter school she runs is unionized and is a raging success. In May, former Democratic National Committee chairman and Weingarten friend Howard Dean was on MSNBC's "Morning Joe" saying the same thing. The fact is that this teachers' union-run charter school — with only 28% of its students testing proficient in English and 34% in math — got an "F" in student performance and student progress for the latest completed school year [annual report card that New York City gives out to all schools](#).

Sitting in successful charter schools and then the failing public schools in the same communities and watching what they do differently similarly helped cut through the rhetoric about what makes some schools effective and others failures. I sat with supervisors in non-union charter schools as they spent most of every day observing their teachers and giving much-appreciated feedback about even seemingly trivial issues ("You lost eye contact when you put the book in front of your face."). Then I watched assistant principals in the public schools mostly stay in their offices, fearing they would be accused by the union of harassment if they observed and coached too much. This made the differences in student outcomes at the best charter schools completely understandable, and it made the dry policy arguments about the value of supervision and accountability tangible — and undeniable.

Reading the hundred-page union contracts in force across the country pierced the unions' claim that these are standard agreements only meant to provide decent working conditions for teachers and protect them from abuse at the hands of tyrannical principals. They turned out to be treasure troves of small-print clauses that make a mockery of the notion that public education's priority is to nourish children rather than protect the adults. Like the one in New York City that specified the work day down to the half-minute and doesn't allow principals to comment on the format of a teacher's lesson plan. Or the ones in Wisconsin that paid teachers to attend both the state and regional union chapters' conventions.

Listening to teachers' unions' promise to "collaborate" to bring about reform rings hollow when you discover that, embedded in the much-celebrated agreement between the unions and New York state officials last year to enact reforms related to winning the [federal Race to the Top grant contest](#), are loopholes that mean that those reforms are not likely to happen any time soon. This is so obvious that New York Mayor Michael Bloomberg, when I asked about the small print in the deal, concedes in *Class Warfare* that the reforms promised in return for the federal grant money are not going to happen.

The kumbaya feeling you get watching union leaders sit on panels with reformers and calmly discuss their joint mission to do what's best for children fades when you read the over-the-top lawsuits they have filed to block reforms, or when you cull through their financial records or their campaign finance filings and see how they continue to sponsor the politicians who take the most hard line anti-reform positions and punish those who stray and support even the mild reforms that they claim to support.

When you hear the soft-spoken and highly-regarded education historian and former reformer turned anti-reformer Diane Ravitch speak, you get the sense that there must be a substantive other side of these issues. That evaporates when you read her anti-reform book and see that there is no there there. Ravitch presents no alternative path; she mischaracterizes the reformers' arguments (by saying, for example, that they want to rely solely on test scores when they always say that rigorous classroom observations and other subjective evaluations should be at least as much, if not more, a part of the equation); and, as with other anti-reformers, she cherry-picks all kinds of data, lunging for whatever she can to rebut the simple and obvious argument that effective teaching is what counts the most in the classroom and that, as in any workplace, the best performance is not likely to spring from a system that guarantees that teachers can't be supervised or be evaluated in any meaningful way and that ties their compensation or assignments only to how long they have been on the job.

I have now worked my way through a fog of claims that give new meaning to the notion that if you repeat something that is plainly untrue enough times it starts to seem true, or at least becomes part of the debate. For example, there's the refrain from the deniers, including Ravitch, that charter schools skim only the best students in a community. Some may, but not the best ones like those in the [KIPP](#) or [Success Academies](#) networks, where students are admitted by lottery and which teach the same ratio of learning disabled students as the traditional public schools. Those are facts.

Or there's the unions' canard, also routinely repeated in the press (and even in a [thoughtful review](#) of my book in Sunday's *New York Times*) that unions can't be the problem because southern states with weak laws protecting unions have some of the worst performing school systems. First, teachers unions generally have so much political clout that they are often strong even in states without strong unions generally. Second, in the last decade as reform-minded officials in states like Florida and Louisiana have pushed for accountability, the results have been clear. For example, before Jeb Bush — probably the most ardent education reform governor ever — took office in Florida in 1999, his state's fourth graders ranked third from the bottom in reading; when he left, they ranked sixth from the top. Meantime, New Orleans, which was among the nation's worst performing urban school system before Hurricane Katrina, now ranks as one of the best because of the reformers' overhaul that accompanied the rebuilding of the system following the hurricane.

## FACING FACTS

I've now read all the white papers and commission reports. I've learned all the policy wonk acronyms, and logged hours with everyone from teacher trainees, to the secretary of education, to Weingarten and Ravitch. Yet after all of that it still seems as uncomplicated as it did when I saw my first Rubber Roomer with his head resting on a card table. I mean no disrespect to all the dedicated people who are the "experts" in education policy, but for me the problem and its root causes still seem as un-debatable as the practice of paying that guy to sleep for three or four years.

There are just too many undeniable facts to make the basic issues debatable:

- Fact: American public education is failing our children and it is especially failing the disadvantaged children who need it the most. Amazingly, the unions occasionally even deny this, claiming that all of the multiple international comparisons are somehow inaccurate. One of the challenges in doing the book was picking from the array of [shocking, depressing statistics](#) showing how poorly our public schools are performing compared to those in other countries, including countries we don't usually think of as our global competitors in the knowledge economy.

- Fact: This is not a matter of money. We spend much more per student than those other countries for our lousy results, and while we've kept increasing our spending, we haven't improved performance.

- Fact: This is not about class size as much as it is about who is in front of the class. Of course, a classroom with 40 children is not likely to work as well as one with 10. But at the margins, class size doesn't matter. We've consistently lowered class size in America with no growth in student performance (but with explosive growth in teachers' unions' dues collections). And the charter schools that work the best typically have the same size or slightly larger classes than the traditional public schools.

- Fact: Charter schools are not the magic bullet; there are too few of them, and probably not more than half are performing significantly better, if at all, than traditional public schools. It's the 95,000 public schools that we need to fix. But we now know from the charter schools that do produce great results that all children – even those from impoverished or dysfunctional families – can be taught by effective teachers. Poverty, broken families, race discrimination are huge obstacles, but they are not excuses for allowing kids to fail.

#### AND SOME SIMPLE QUESTIONS WITH OBVIOUS ANSWERS

These knowable facts produce five simple questions that, I think, have obvious answers:

1. Given that, other than retail sales clerks and cashiers, K-12 teachers are the largest work force – 3.2 million – of any single occupation in the United States, and that theirs is arguably the most important occupation, can there really be a debate about whether their performance should be measured and acted on so that what they do best can be studied and taught to others, so that the best ones can be encouraged and advanced to become mentors, and so that the worst ones can be retrained or ushered out of the classroom?

2. Can we really accept the teachers' unions' argument that because tests to measure a student's progress aren't perfect, or because the supervisor observations that are also part of any good teacher evaluation process are subjective, that we just shouldn't try, especially when our public schools are failing us so miserably?

To an outsider like me, that seems completely, undeniably insane – which was exactly Bill Gates's reaction when an education expert from Harvard first explained it to him in a 2007 meeting, after which Bill and Melinda Gates channeled much of the Gates

Foundation's resources into encouraging school systems to measure and reward teacher performance.

3. In what other workplace would the most important workers be laid off only on the basis of how long they had been on the job, with the last in being the first out (a system called LIFO)?

The union's argument — which much of the press dutifully reports as if it is another of those on-the-one-hand/on-the-other-hand issues — is that if LIFO wasn't there to protect teachers, the most senior teachers would be fired first so that the principals could save money. Apart from the fact that this underscores the insanity of paying people based only on how long they have been on the job, it also ignores the obvious fact that while that discriminatory strategy may have been used in the first half of the last century, when these LIFO restrictions were put in place, it plainly isn't possible since the passage of the federal age discrimination act in 1967. Not only would that kind of discrimination be illegal, it is also the easiest discrimination claim to sue an employer for. If an employer lays off 100 people and they are disproportionately old, it's an open and shut case, with the simple age data as Exhibit A. It's not anything like the difficulty of proving discrimination in hiring.

4. Isn't it obvious that union leaders have a basic conflict of interest with their own members in this debate? If the most important factor in a teacher's professional life became promotions or salary bumps based on his or her individual performance, then the union contract — whose core provision is lockstep compensation, based only on how long a teacher has been on the job — would become that much less important. So union membership and union dues would become that much less important.

That's why so many dedicated, high-performing teachers I met felt alienated from their union (and why turnout in union elections is so relatively low).

In fact, I found that by taking apart and re-doing the typical contract that union leaders fight so hard to protect we could spend the same overall amount on public school teachers yet afford to pay teachers \$65,000 to \$165,000, instead of the \$30,000-\$110,000 we generally pay, thereby offering the compensation and merit-based environment necessary to attract and keep dedicated professionals. Among the ways to do that: 1) substitute standard 401 (k) pension plans for the costly back-loaded pensions that benefit the senior teachers who are most likely to vote in the low-turnout teachers' union elections (and that now costs major urban school systems \$10,000-\$20,000 per teacher); 2) allow for slightly larger class size (which would free up \$7,000-\$20,000 per teacher across the country); eliminate the 10-15 sick or personal days in a 34-38 week work year prevalent across the country (and stop allowing teachers to cash in the days they don't use); 3) stop paying automatic salary increases (now amounting to \$5 billion a year nationally) just because a teacher gets some advanced degree, when all the research now shows [zero correlation between those degrees and teacher effectiveness](#); 4) stop paying automatic seniority-based increases above what would now be the higher starting salaries and use that money to pay the top third or top quarter of performers the highest salaries; 5) stop paying teachers for doing union work or for the two or three years that they

remain idle pending tenure-required disciplinary or removal hearings; and 6) allow for distance learning that allows more students to take advanced courses and implement other technology-enabled efficiencies that the unions have resisted.

With the saving generated from this “grand bargain” to revitalize public school teaching – in essence by swapping performance for protection — we could give teachers the kind of status, career paths and compensation that countries with the best public education results offer. It would be great for kids. And it would be great for the majority of teachers who are dedicated professionals, and who in various polls and recent union contract votes have consistently demonstrated a disdain for civil service-like tenure protection and a yearning to be treated and rewarded like professionals. But it would be an unsettling departure for traditional union leaders who still see the old lockstep contract as the key to preserving their power.

5. Can we regard the opposition of Democrats to reforms that would eliminate the unions’ stranglehold on public education, including even LIFO, as anything other than obedience to the teachers’ union leaders who are their patrons – especially in the face of a growing cadre of Democrats, including the Democratic president, who now favor these reforms because they have come to believe that school reform is the civil rights issue of our time?

#### DON’T OVERSIMPLIFY

To be sure, my reporting produced more complicated results than knee-jerk anti-unionists or some of the reformers would expect.

First, good teaching is a lot harder than most outsiders understand; it’s grueling work that hundreds of thousands of teachers do really well and with amazing dedication, though they are too often undercut and demoralized by mediocre colleagues and the unions that protect them, as well as by uncaring school bureaucracies.

Second, teachers’ union leaders are not one-dimensional obstructionists or villains. I found places where they are engaged in real reforms aimed at helping the children instead of the adults.

Nor is the other side always right. There are many situations where the reformers have been naïve, arrogant, or hypocritical. For example, Teach for America is hilariously hypocritical when it comes to teacher accountability; the organization rates its teachers rigorously, but won’t tell parents or prospective employers of those teachers anything about the ratings for fear of hurting their corps members’ morale. Huh?

Moreover, the solution to fixing America’s schools isn’t simple just because the problems and the path are obvious. Re-tooling America’s 95,000 K-12 public schools and retraining, reinvigorating and, where necessary, weeding out and replacing any significant portion of America’s 3.2 million public school teachers is exponentially harder than launching a few thousand successful charter schools mostly run and taught by a relatively small corps of highly-motivated, best-and-brightest types, many of whom soon approach burnout. (The

most articulate warning in the book about this comes, ironically, from the co-founder of KIPP, arguably the country's most successful network of charter schools.)

That's why my prescription for how we turn around public schools — not by abolishing the unions but by persuading or forcing them to engage in real reforms so that they can help move those 3.2 million teachers in the right direction — might surprise some reformers, as well as Weingarten (who I think could become a “Nixon to China” figure in that effort). In other words, once you get into the weeds of reporting about our schools, the solution becomes more complicated than either side would have you believe.

That said, the issue of whether we need to throw out a system in which we allow unaccountable, unmeasured civil servants to produce failure when our nation's economy, security, and core values depend on success is not complicated at all. It doesn't take Woodward and Bernstein to see that the deniers are running on empty. It reminds me of the old debates over whether cigarette smoking is bad for your health. Curing lung cancer is complicated. Identifying a leading cause wasn't. It only seemed complicated for as long as it did because those with an interest in denying the obvious spent so much for so long to keep the debate going.

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