

**THE MODERN UNIVERSITY AND ITS LAW SCHOOL:
HIERARCHICAL, BUREAUCRATIC STRUCTURES
REPLACE COARCHICAL, COLLEGIAL ONES; WOMEN
DISAPPEAR FROM TENURE TRACK AND REEMERGE AS
CAREGIVERS: TENURE DISAPPEARS OR BECOMES
UNRECOGNIZABLE**

Marina Angel^{*1}

In the early days, there were few women in tenured positions in law schools or higher education generally.² In 1950, there were eleven women tenured or on tenure track as law school teachers—0.5% of 1,645.³ There were some women law librarians who taught legal research and writing.⁴ Things started to change in the 1970s, '80s and '90s.⁵ The American Bar Association reported that women were 41% of law students and 20% of full time faculty in 1986.⁶ Numbers are not everything, but we hoped numbers would transform the face of higher

* Professor of Law, Temple University School of Law. B.A., Barnard College, 1965; J.D., Columbia University School of Law, 1969; LL.M., University of Pennsylvania School of Law, 1977. This article could not have been completed without the research, statistical, and computer skills of my ever patient research assistant Julie Donahue, Temple Law 2006. I also thank Larry Reilly and the staff of the Temple Law Library for their support.

1. My prior articles dealing with changing organizational structures of higher education and women in law are: *Comments in Reply: It's Becoming a Glass House*, 50 J. LEGAL EDUC. 454 (2000) [hereinafter Angel, *Glass House*]; *The Glass Ceiling for Women in Legal Education: Contract Positions and the Death of Tenure*, 50 J. LEGAL EDUC. 1 (2000) [hereinafter Angel, *Glass Ceiling*]; *Professionals and Unionization*, 66 MINN. L. REV. 383 (1982) [hereinafter Angel, *Professional Unions*]; *Women in Legal Education: What It's Like to Be Part of a Perpetual First Wave or the Case of the Disappearing Women*, 61 TEMP. L. REV. 799 (1988) [hereinafter Angel, *Disappearing Women*].

2. Angel, *Disappearing Women*, *supra* note 1, at 801-02.

3. *Id.* at 801. The term tenured will be used to refer to both tenure track and tenured teachers unless otherwise specified. The term contract faculty will be used to refer to all full time non tenure track faculty unless otherwise specified.

4. Angel, *Glass Ceiling*, *supra* note 1, at 2-3, 5 n.8.

5. Angel, *Disappearing Women*, *supra* note 1, at 840.

6. *Id.*

education.

Recent changes in the organizational structure of law schools and universities have not been positive from the perspective of all women and men of color, the last hired. Tenured positions are disappearing rapidly and the nature of those that remain is changing drastically. Organizational structures are becoming more hierarchical, with women at the bottom of the hierarchy.

My 1982 article, *Professional Unions*, described two organizational structures: a traditional coarchival, collegial one that characterized professional relationships, including those of faculty and administrators in the academy, and a hierarchical, bureaucratic one that characterized a business world led by professional managers.⁷ The collegial structure, with higher education as a prime model, allowed those professionals directly involved in the enterprise, the faculty, to play a major role in choosing the direction of the university.⁸

More and more power has flowed to boards of trustees, increasingly containing no academics or former academics, and such trustees' agents—corporate type university presidents.⁹ Salaries for university presidents, although not matching those at the Fortune 500, are well over a quarter of a million dollars at large public and private institutions.¹⁰

In the early days, women in legal education recommended part time employment and extension of the tenure clock to accommodate parenting and other caregiving responsibilities.¹¹ Women have always been the primary caregivers for both children and the elderly.¹² With

7. Angel, *Professional Unions*, *supra* note 1, at 388.

8. *Id.* at 391-93.

9. See Julianne Basinger, *Proving Presidential Worth*, CHRON. OF HIGHER EDUC., Nov. 19, 2004, at 11.

10. Julianne Basinger, *Soaring Pay Big Questions*, CHRON. OF HIGHER EDUC., Nov. 14, 2003, at 9.

11. See Angel, *Disappearing Women*, *supra* note 1, at 838 n.242; Janette Barnes, *Women & Entrance to the Legal Profession*, 23 J. LEGAL EDUC. 276, 293-95 (1970); Kathryn V. Lorio & Elyce H. Zenoff, *What We Know, What We Think We Know, and What We Don't Know About Women Law Professors*, 25 ARIZ. L. REV. 869, 884 n.65 (1984).

12. A new study by the U.S. Department of Labor "shows that the average working woman spends about twice as much time as the average working man on household chores and the care of children." Edmund L. Andrews, *Survey Confirms It: Women Outjuggle Men*, N.Y. TIMES, Sept. 15, 2004, at A23.

The failure to reorganize and accommodate their caregiving responsibilities has forced many women off the path to power positions. See Lisa Belkin, *The Opt-Out Revolution*, N.Y. TIMES, Oct. 26, 2003, § 6 (Magazine) at 42; Robin Wilson, *How Babies Alter Careers for Academics*, CHRON. OF HIGHER EDUC., Dec. 5, 2003, at 1; *60 Minutes: Staying At Home* (CBS television broadcast, Oct. 11, 2004), (visited Apr. 11, 2005) <<http://www.cbsnews.com/stories/2004/10/08/60minutes/main648240.shtml>>.

increased life spans, women are doing double duty, caught in a squeeze between caring for children at the same time that they are caring for elderly parents.

The planners took us at our word and extended time periods for tenure and massively increased part time employment. However, there is a grand scheme behind what is happening. Instead of allowing us to break the glass ceiling and take a proportionate share of tenured positions, they created a permanent underclass of women who have become the contingent workers of higher education.¹³ Reorganization has resulted in new types of full time non tenure track faculty positions—contract faculty—and expanded the number of part time positions—adjunct faculty.¹⁴ For the 2002-03 academic year, the largest number of new law school faculty were 144 Assistant Professors; 47% of whom were women.¹⁵ Many were contract faculty. There were 138 lecturers and instructors—probably all contract faculty—63.8% of whom were women.¹⁶ Adjuncts were 22% of teachers in 1970; they accounted for 42% in 1998.¹⁷

The press is full of headlines proclaiming that women are now

13. This plan is clearly spelled out in American Association of State Colleges and Universities, *Facing Change: Building the Faculty of the Future*, (visited Apr. 11, 2005) <http://www.aascu.org/pdf/facing_change.pdf>. See also Angel, *Glass Ceiling*, *supra* note 1, at 11-13.

14. Angel, *Glass Ceiling*, *supra* note 1, at 11-13.

A parallel change has occurred in law firms. In the old days, it was up or out in seven years: a track similar to the six-year tenure track at universities. Today, it is often seven to ten years to junior, non-equity partner and another three to six years to equity partner. It is no longer necessarily out. New permanent positions have been created—senior associate, legal specialist, junior partner, of counsel—and are overwhelmingly occupied by women. The 2004 survey of the 100 largest firms in Pennsylvania revealed that women were 18.5% of all managing partners, 15% of equity partners, 41% of associates, and 76% of part time attorneys. Marina Angel, *Commission on Women in the Profession 2004 Annual Report Card*, 2004 PA. BAR ASS'N 3 (2004). The president of the Association of the Bar of the City of New York reported that, at the end of 2003, women were 14% of partners in New York City law firms and 42% of associates. E. Leo Milonas, *Beyond Brown, and Thanks!* 44TH STREET NOTES 2 (June 2004), (visited Apr. 11, 2005) <http://www.abeny.org/Publications/presidentcolumn/show_detailphp?id=78>.

The increase in the number of required billable hours – two thousand plus, a number incompatible with human life – combined with the increased time period before equity status, have driven most women and men of color off the partnership track. Most successful men are married with children. Most successful women are not. See Angel, *Disappearing Women*, *supra* note 1, at 837-38.

15. Richard A. White, AALS Statistical Report on Law School Faculty and Candidates for Law Faculty Positions 2002-2003 at Table 3A (visited Apr. 11, 2005) <<http://www.aals.org/statistics/2002-03/page3.html#2>>.

16. *Id.*

17. Angel, *Glass Ceiling*, *supra* note 1, at 11.

close to 50% of law school and medical school classes,¹⁸ implying that this is good for the professions and for women. Women in Soviet Russia accounted for 67% of physicians, but the profession of doctor was a low paying, low prestige job.¹⁹ As women increasingly get more higher education than men, changing organizational structures reduced the value of those degrees and the prestige of the women who obtain them.²⁰ Women have been over 50% of college students since 1984,²¹ they were 56% in 2001.²² Women earned 51% of Ph.D.s in 2002.²³ Women were 41% of law students in 1986²⁴ and 49.1% in 2003.²⁵ Higher education had been the ticket to success in academe and in our society generally. With women predominating in achieving college and graduate degrees something had to be done to keep us in our place as second class, caregiving members of the society.

First, a direct attack on tenure was tried at the University of Minnesota but the faculty rallied themselves, alums and the general public to fight it off.²⁶

Then, a new strategy was developed and implemented. It was predicated on the unquestioned power of university trustees to control budgets. The trustees and their agents, university presidents, simply withheld funds and claimed financial inability to hire additional tenured faculty. There were freezes of tenured and tenure track positions during the 1990s. At the same time, there was a growth in the number of students attending institutions of higher learning; a second major baby

18. See, e.g., Jonathan D. Glater, *Women are Close to Being Majority of Law Students*, N.Y. TIMES, March 26, 2001, at A1; Katherine S. Mangan, *Applications Rise at Medical Schools, as Female and Minority Students Make Gains*, CHRON. OF HIGHER EDUC., Oct. 21, 2004, at 31.

19. Natalia Rimashevskaja, *Perestroika and the Status of Women in the Soviet Union*, in WOMEN IN THE FACE OF CHANGE: THE SOVIET UNION, EASTERN EUROPE, AND CHINA 13 (Rai Shirin, Hilary Pilkington & Annie Phizacklea eds., 1992).

20. See Tamar Lewin, *Despite Gains in Degrees, Women Lag in Tenure in 2 Main Fields*, N.Y. TIMES, Jan. 15, 2004, at A23.

21. See Angel, *Disappearing Women*, supra note 1, at 801; Andrew Hacker, *How the B.A. Gap Widens the Chasm Between Men and Women*, CHRON. OF HIGHER EDUC., Jun. 20, 2003, at B10.

22. Digest of Education Statistics 2003, Post Secondary Education Enrollment, Table 177, *Total fall enrollment in degree-granting institutions, by level, sex, age, and attendance status of student: 2001* (2003), (visited Apr. 11, 2005) <<http://nces.ed.gov/programs/digest/d03/tables/dt177.asp>>.

23. Robin Wilson, *Where the Elite Teach, It's Still a Man's World*, CHRON. OF HIGHER EDUC., Dec. 3, 2004 at A1.

24. Angel, *Disappearing Women*, supra note 1, at 801.

25. NALP, *NALP's Class of 2003 Summary Report (2003)*, (visited Apr. 11, 2005) <<http://www.nalp.org/nalpresearch/2003natl.htm>>.

26. See Fred L. Morrison, *Tenure Wars: An Account of the Controversy at Minnesota*, 47 J. LEGAL EDUC. 369, 369, 390-91 (1997).

boom was working its way through the educational system.²⁷ Universities capitalized on this opportunity by hiring large numbers of contract and part time faculty to deal with the increased numbers of students.

Stories hit the press about gypsy professors who taught part time at several schools in order to make a living wage.²⁸ Universities, claiming it was not good for either students or these fine part time teachers, started converting well-qualified adjuncts to full time contract faculty. The increase in students and the freeze on hiring tenured faculty resulted in an explosion of contract faculty. In law schools, there has been tremendous growth in the number of contract faculty teaching clinics, legal writing classes, and introductory and upper class courses. There has also been an increase in lower level administrators with part time teaching responsibilities.²⁹ We are now told law schools are to be based on a clinical model, similar to that used in medical schools.³⁰

Faculty in the sciences and health care, and increasingly in other specialties, are being hired and tenured on the basis of their grant generating ability.³¹ Once tenured, they must continue to produce grants or they will be reassigned to heavy teaching loads. In other words, people hired for their grant money making abilities not for their teaching abilities will be punished for failure to get grants by being forced to teach large numbers of students, a job for which they were never chosen and may be totally unsuited.

Universities have become the cheap research and development departments of major corporations.³² Faculty in the sciences and health care are no longer free to pursue their own research agendas but must satisfy the desires of their corporate grantors. The recent scandals

27. See Andrea Billups, *Baby Boomlet Puts Record Number in School*, WASH. TIMES, Aug. 20, 1999, at A8.

28. See, e.g. Jonathan T. Church, *Becoming Real: An Adjunct Joins the Tenure Track*, CHRON. OF HIGHER EDUC., Jul. 17, 1998, at A68.

29. Angel, *Glass House*, *supra* note 1, at 455.

30. See Robert J. Reinstein, *From the Bell Tower*, TEMPLE REV., Summer 2004, at 3 [Robert Reinstein is the Dean of Temple's law school.], see generally, Virginia K. Nalencz, *See You in Court*, TEMPLE REV., Summer 2004, at 24.

31. E.g., Temple University, *Guidelines for the President's Review of Tenure and Promotion Applications*, p. 16 (visited Apr. 12, 2005) <http://www.temple.edu/president/content/Promotion_and_Tenure_Guidelines.pdf>. The Temple University administration requested that the Temple Faculty Senate approve contract clinical professors at its Health Science Campus only, on the ground that health care clinical teaching was unique. Today, there are very few traditional tenured professors at the Temple's Health Science Campus and contract teachers are found throughout the university.

32. See generally Derek Bok, *Academic Values and the Lure of Profit*, CHRON. OF HIGHER EDUC., Apr. 4, 2003, at 7.

regarding compromised drug testing highlight the ethical problems brought on by the new corporate financing.³³ Canadian science faculty almost went out on a national strike over the corporate funding issue.³⁴ Major universities are competing to construct new large research and development facilities.³⁵

There is seldom a great deal of grant money for research in the humanities, and the last thing that the universities need is people like me doing feminist scholarship on the corporatization of higher education and new forms of employment discrimination against all women and men of color. A former president of Temple was heard to say, "Why do we need any research in humanities? Hasn't it all been done?" Critical Race theory, Lat Crit scholarship, and feminist research are deemed unnecessary by those traditionally in power. If anything, members of the groups discriminated against—the last hired—should be deterred from doing research on the new, more subtle ways that society marginalizes us and minimizes our contributions. If we are in insecure contract or employment at will positions, we will not be able to do critical research and writing. We will be required to channel our energies and talents into appropriate activities, such as getting grants and/or teaching large numbers of students. If we persisted in documenting discrimination and exclusion, we will be fired or our contracts will not be renewed.

The changes in organizational structure are affecting the type of tenured positions being offered. Universities and their law schools are looking for tenure track teachers in the specialized upper division areas most likely to draw grant support. Tenure track timelines have been extended. Law schools traditionally granted tenure much faster than other segments of the university but have now moved to the six year university track. Universities are trying to extend that period even further.³⁶ Why? The demographics are clear; there is a large group of tenured professors who are due to retire within the next five to ten

33. See, e.g., Gardiner Harris, *Regulation Redefined: The FDA Shifts Focus*, N.Y. TIMES, Dec. 19, 2004, at A1; Gardiner Harris, *Study Links Fourth Painkiller to an Increase in Heart Problems*, N.Y. TIMES, Dec. 21, 2004, at A1; Barry Meier, *Merck Canceled an Early Study of Vioxx*, N.Y. TIMES, Feb. 3, 2005, at C2.

34. Paul Desruisseaux, *Canadian Professors Decry Power of Corporations in Campus Research*, CHRON. OF HIGHER EDUC., Nov. 12, 1999, at A59.

35. See Kelly Field, *Residents Fight Boston U.'s 'BioSafety' Laboratory*, CHRON. OF HIGHER EDUC., Jun. 25, 2004, at A28.

36. See Temple University's Proposals to TAUP, New Article 11, Sect. D, at 12 (revised Nov. 17, 2004) (moving from a six to a seven year tenure track with an eighth terminal year) (on file with author).

years.³⁷ New tenure track faculty will face longer tenure time periods. Because the bar is being raised in terms of research and scholarship, there will be more tenure denials.³⁸ In a short period of time, there will be a drastic decrease in the number of tenured faculty.

Post tenure review is being instituted, making it easier to remove tenured faculty, especially those who do not agree with university, school, or departmental policy – those who are not collegial.³⁹ The term “uncollegial” is often used to describe and denigrate women and men of color, the last hired.⁴⁰ A tenured woman faculty member at Pennsylvania State University was recently fired for strongly disagreeing with departmental policy.⁴¹

Academic freedom is in danger. A school with few tenured faculty would be forced, by the number of people needed to staff faculty committees and governing bodies, also to rely on contract faculty for these assignments. Contract faculty, dependent on the goodwill of administrators for the renewal of their contracts, do not have the same degree of job security, and concomitantly academic freedom, as traditionally tenured faculty. In the near future, detenurization could be decided by a committee composed of tenured faculty and/or contract faculty.⁴² Even where universities require detenurization committees to be comprised of tenured full professors, there is a trend towards allowing a dean to pick all, or a majority, of the committee.⁴³ Obviously, a dean seeking to fire a tenured faculty member would pick faculty members who either agreed with the dean’s assessment or who would be willing to follow the dean’s lead. A faculty dominated by contract teachers would tend to behave in a similar fashion. Mechanisms may already be in place to allow for the drastic redefinition and/or eventual elimination of tenure with the concurrence of a faculty where contract teachers are a majority and tenured teachers are a minority.⁴⁴

37. Denise K. Magner, *The Imminent Surge in Retirements*, CHRON. OF HIGHER EDUC., Mar. 17, 2000, at A18.

38. See Piper Fogg, *No, No, a Dozen Times No*, CHRON. OF HIGHER EDUC., Oct. 1, 2004, at A12; Robin Wilson, *4 Fateful Letters*, CHRON. OF HIGHER EDUC., Oct. 31, 2003, at A10.

39. See Michael L. Seigel, *On Collegiality*, 54 J. LEGAL EDUC. 406 (2004).

40. Angel, *Disappearing Women*, *supra* note 1, at 830-32.

41. Piper Fogg, *Another Kind of Tenure Case*, CHRON. OF HIGHER EDUC., Mar. 19, 2004, at 10. See generally Patrick Kerkstra, *Professor Says His Views May Cost Job*, PHILA. INQUIRER, Feb. 11, 2005, at B1.

42. E.g., Temple University Medical School Bylaws, Art. IV, § E(2), (visited Apr. 11, 2005) <http://policies.temple.edu/getdoc.asp?policy_no=01.20.22>.

43. See generally *id.* at Art. IV, § D(1)(a).

44. E.g., Temple University James E. Beasley School of Law Bylaws, Art. III, § b(i-ii, vii), (visited Apr. 11, 2005) <http://policies.temple.edu/getdoc.asp?policy_no=01.20.12>.

For some reasons, current detenurization proceedings may not start within the individual's school but may be handled centrally.⁴⁵ These reasons may include misconduct in research and creative work⁴⁶ or violation of the university's policies on conflict of interest,⁴⁷ invention and patent,⁴⁸ or sexual harassment.⁴⁹

The total number of tenured teachers may remain constant for a period of time, but, because of the increase in the number of students, the number of classes taught by adjuncts and contract faculty has increased dramatically. Look at your school's class schedule. Well over half the classes are probably taught by contract⁵⁰ and adjunct faculty.⁵¹ They teach first year and upper division legal writing classes, clinical

Temple Law School's bylaws define "full-time member of the faculty" as "all Presidential faculty [tenured and tenure track], all Legal Research and Writing faculty on full-time appointment [1 to 7 year contracts], all full-time faculty on Dean's Appointments, including those who administer academic programs [6 months to 1 year contracts], and the Law Librarian [non teaching]." Temple University James E. Beasley School of Law *Bylaws*, Art. III, § (b)(ii), (visited Apr. 12, 2005) <http://policies.temple.edu/getdoc.asp?policy_no=01.20.12>. All such "full-time faculty" are empowered to make "recommendations on appointment and promotion and tenure of faculty." *Id.* at Art. III, § (b)(iii)(1).

45. Temple University Faculty Senate Bylaws, Art. IV, §9 (visited Apr. 11, 2005) <<http://www.temple.edu/senate/bylaws.htm>>. The Faculty Senate Personnel Committee may be the first and the final faculty body involved in detenurization cases. It makes recommendations. The Board of Trustees has final decision-making authority.

46. Temple University Board of Trustees Policies and Procedures Manual, *Policy on Misconduct in Research and Creative Work*, (May 14, 2002) (visited Apr. 11, 2005) <http://policies.temple.edu/getdoc.asp?policy_no=02.54.01>.

47. Temple University Board of Trustees Policies and Procedures Manual, *Conflict of Interest - Faculty*, (Mar. 11, 1986) (visited Apr. 11, 2005) <http://policies.temple.edu/getdoc.asp?policy_no=04.16.02>.

48. Temple University Board of Trustees Policies and Procedures Manual, *Invention and Patent Policy*, (Mar. 12, 1985) (visited Apr. 11, 2005) <http://policies.temple.edu/getdoc.asp?policy_no=02.53.01>.

49. Temple University, Board of Trustees Policies and Procedures Manual, *Policy on Sexual Harassment*, (Sep. 10, 1992) (visited Apr. 11, 2005) <http://policies.temple.edu/getdoc.asp?policy_no=04.82.01>.

50. During the 2004-05 academic year, Temple has fifteen full time contract faculty; some on nonrenewable contracts and some on renewable contracts ranging from one year to seven years. E-mail from Joyce Saltalamachia, Deputy Director, Association of American Law Schools, to Marina Angel, Professor of Law, James E. Beasley School of Law Temple University (Jan. 24, 2005, 16:45:19 EST) (on file with author).

51. In 2002-03, there were 154 adjuncts. Memorandum from Robert J. Reinstein, Dean, Temple University School of Law, to Marina Angel, Professor of Law (Apr. 30, 2003) (on file with author).

Temple University has a policy on adjunct faculty and a 51-page adjunct faculty handbook. See Temple University Board of Trustees Policies and Procedures Manual, *Policy on Adjunct Faculty*, (Jul. 1, 2003), (visited Apr. 12, 2005) <http://policies.temple.edu/getdoc.asp?policy_no=02.72.11> Temple University Adjunct Faculty Handbook, (2004-05) (visited Apr. 12, 2005) <<http://www.temple.edu/vpfaculty/ADJUNCT.HANDBOOK.04-05.pdf>>.

and trial practice courses, advanced specialty courses. They even teach large core courses. There will be more tenure denials. All this will result in fewer and fewer tenured faculty, insecurity on the part of those few tenured faculty who remain, and total insecurity on the part of contract faculty. In the near future, tenure will be abolished or it will be redefined; tenure only so long as you bring in grants and toe the university's party line.

A major change that has enabled law schools to implement this grand scheme was amendment of the ABA and the AALS accreditation rules to include contract faculty, not just tenured or tenure track faculty, as part of a law school's full time faculty.⁵² The term 'full time faculty' now means tenured and tenure track teachers, and also full time contract professors teaching clinics,⁵³ legal writing,⁵⁴ and substantive courses. The ABA/AALS accreditation rules were also amended to allow adjuncts to be counted as faculty members.⁵⁵ These now include not only traditional adjuncts, working lawyers who teach one course,⁵⁶ but full time lower level administrators teaching reduced loads.⁵⁷

Under traditional tenure rules, full time university faculty members had to achieve tenure within six years or be fired. A major change came about with the mass hiring of full time legal writing teachers. Historically, law schools kept legal writing teachers for only two or three years and then replaced them. In the 1990s, law schools began to retain them as full time teachers to the limit of the six year up or out tenure rule. The slogan developed by full time legal writing teachers who wanted to keep their jobs was "lift the cap,"⁵⁸ meaning get rid of the limit on the number of years a full time faculty member could remain at

52. ABA, Accreditation Standards, § 402(c), (visited Apr. 11, 2005) <www.abanet.org/legaled/standards/2004-05masterstandardsbook.pdf>.

53. *Id.* at § 405(c). Clinical faculty have "a form of security of position reasonably similar to tenure." Long term contracts were envisioned, but long is not defined.

54. *Id.* at § 405(d). Legal writing faculty have even fewer rights than clinical faculty. The requirement is for "such security of position and other rights and privileges of faculty membership as may be necessary to (1) attract and retain a faculty that is well qualified to provide legal writing instruction. . .and (2) safeguard academic freedom.

55. *Id.* at § 402(1) interpretation of 402-1(1). Adjuncts constitute "additional teaching resources," that "may constitute in the aggregate up to 20 percent of the full-time faculty for purposes of calculating the student/faculty ratio." *Id.* There is no limit on the number of adjuncts a school may employ.

56. These kinds of adjuncts may be hard to find in rural areas without a substantial practicing bar.

57. ABA, Accreditation Standards, § 402 interpretation 402-1(1)(A)(iii) ("non-tenure track administrators who teach").

58. Jan M. Levine & Kathryn M. Stanchi, *Women, Writing & Wages: Breaking the Last Taboo*, 7 WM. & MARY J. WOMEN & L. 551, 574 (2001).

a university without tenure. A counter slogan could have been “destroy tenure.” Why would a university retain tenure, with all the protections that surround it, if it could hire full time faculty without tenure? Tenured faculty, having developed relationships with legal writing faculty, agreed to “lift the cap” for them. The legal writing faculty opened the hole in the dyke and almost no one caught onto what was really happening.

Once it became legitimate to have full time contract faculty who could theoretically be renewed forever, their ranks exploded and went well beyond clinical and legal writing teachers. Even those with short term contracts are being integrated into law school and university faculty decision making bodies. Although contract faculty may not currently vote on tenure or promotion of tenured faculty, they are quickly becoming part of the faculty bodies which set tenure standards and could, in the future, vote on individual tenure cases.⁵⁹ As the number of contract faculty with voting rights increases, they will have the power in the not so distant future to vote out tenure or change its nature substantially.

Universities have set into place not only a two tiered system of faculty but a three, four, five, etcetera, tiered system of faculty. Theoretically, under the old model, tenured faculty were at the top of the faculty pyramid with tenure track faculty immediately below them. Then clinical teachers were hired and approved by the ABA on “long term” contracts, envisioned as five to seven year contracts. In reality, these are often only one to two year contracts. The ABA sets no limit on the number of at will or short term contract teachers a school can have.⁶⁰

Universities have purposefully put into place an organizational structure that pits one group of faculty against another. Tenured faculty traditionally looked down upon those who were not tenured. Contract faculty are systematically bombarded with the administration’s message that they are at least as good, if not better than, the tenured faculty; that tenured faculty should be eliminated, because they are a bunch of under productive, overpaid, pampered dead wood. As a young teacher, I heard the line, “One person’s dead wood is another person’s fine old antique

59. The Temple Law School’s legal research and writing faculty on full time appointment are defined as Special Appointment Faculty by Temple University. Temple University Board of Trustees Policies and Procedures Manual, *Policy on Special Appointment Faculty*, Sec. I, Jul. 1, 2003, (visited Apr. 11, 2005) <http://policies.temple.edu/getdoc.asp?policy_no=02.72.12>. The University policy provides that that they may be appointed for a period lasting from six months to a maximum of five years. *Id.* at § IV(2). “Reappointment is entirely at the discretion of the University.” *Id.* at § II(2).

60. ABA, Accreditation Standards, § 402(1) interpretation 402-1(1).

furniture.” I’ve always thought that there was more dead wood in the administration of law schools and universities than in the faculty.

Law schools and universities have made certain that contract faculty know that their salaries are substantially below those of tenured faculty. In those schools which are unionized, a way of increasing the animosity between tenured and contract faculty is to place them in the same bargaining unit. We have already seen, and will continue to see an increase of pressure, even in non unionized schools, to minimize tenured faculty raises in order to allocate a larger share of a total percentage increase to lower paid contract faculty. It has not yet occurred to contract faculty that, as their salaries go up and tenure is reduced in importance or disappears, they will be totally unprotected and easily exchanged for younger, cheaper models.

The duration of contracts has decreased in places where contract lines have existed for a few years. You learn that you have not been renewed if you get a note on the last day of the academic year, June 30th, that your services are no longer required on July 1st.⁶¹ The organizational structure of universities is quickly becoming that of an employment at will corporate work place.⁶² If you think I have invented all of this, I suggest you carefully read the Report of the Association of American Public Colleges and Universities⁶³ and the *Best Practices of Law Schools for Preparing Students to Practice Law* produced by the Clinical Legal Education Association.⁶⁴

For my 1982 *Professional Union* article I wanted a citation for the fact that all power is legally in the hands of a university’s board of trustees. I found such a statement in Justice John Marshall’s opinion in *Dartmouth College v. Woodward*.⁶⁵ Nobody previously cited *Dartmouth*

61. Temple University Board of Trustees Policies and Procedures Manual, *Policy on Special Appointment Faculty*, 1, §V, (Jul. 1, 2003), (visited Apr. 11, 2005) <http://policies.temple.edu/getdoc.asp?policy_no=02.72.12>.

62. See Risa L. Lieberwitz, *The Corporatization of the University: Distance Learning at the Cost of Academic Freedom?*, 12 B.U. PUB. INT. L.J. 73, 98 (2002); Risa L. Lieberwitz, *The Marketing of Higher Education: The Price of the University’s Soul*, 89 CORNELL L. REV. 763 (2004) (reviewing Derek Bok, *Universities in the Marketplace: The Commercialization of Higher Education* (2003)).

63. American Association of State Colleges and Universities, *Facing Change: Building the Faculty of the Future*, 1999 AM. ASS’N. STATE C. U. REP. 1 (visited Feb. 11, 2005) <http://www.aascu.org/pdf/facing_change.pdf> For a criticism of the AASCU report, see Cary Nelson, *The War Against the Faculty*, CHRON. OF HIGHER EDUC., Apr. 16, 1999, at B4.

64. Clinical Legal Education Association, *Best Practices of Law Schools for Preparing Students to Practice Law*, (last modified Aug. 25, 2004) <<http://professionalism.law.sc.edu>>.

65. Angel, *Professional Unions*, *supra* note 1, at 392 (citing Trustees of Dartmouth College v. Woodward, 17 U.S. 518, 632 (1819)).

for that proposition, but it is there. Unfortunately, presidents and boards of trustees have not only become aware of that power but have taken it completely into their hands. There is no longer automatic deference to the academic decisions of faculty decision making bodies but rather the imposition of industrial and corporate models on the faculty by trustees and their hired experts on organizational structures and higher education.⁶⁶

A former acting provost at Temple University described the new model of higher education; some people will develop curriculum, other people will deliver the curriculum 24-7, and still other people will evaluate curriculum and its delivery.⁶⁷ This means that faculty who teach large introductory and core courses will no longer have control of the content and instructional method of their courses.⁶⁸ They will begin to function as high school and elementary school teachers. Course materials, coverage, and method of instruction will be mandated.⁶⁹

When I entered teaching, I was told the life of a law school teacher consists of research, teaching, and service. I have enjoyed the inter-relationship among the three during my academic career. I teach and research in the areas I care deeply about, organizational structures in higher education and discrimination against women and girls. I bring my research back into my courses, both my introductory courses and my advanced courses in Employment Law, Labor Law, and Violence Against Women. I perform law school, university, and public service to improve the status of women and to ensure that the independent voices of faculty are heard and academic freedom respected in the university and the larger society. With the new emphasis on funded research and on teaching predetermined curricula in predetermined ways, freedom to select areas of teaching and research will no longer exist.

Service is being down graded.⁷⁰ There is no need to subsidize

66. See generally Temple Association of University Professionals [TAUP], *Highly Flawed Research: Temple's "Mercer Report,"* TAUP Bulletin (Nov. 2004).

67. Faculty Senate Minutes, Sept. 23, 1999 (reported in 29 TEMPLE U. FAC. HERALD 8 (Nov. 8, 1999)).

68. See Karen W. Arenson, *Professors Teaching? N.Y.U. President Says It Isn't Such a Novel Idea*, N.Y. TIMES, Sept. 3, 2003, at B1; Piper Fogg, *For These Professors, 'Practice' is Perfect*, CHRON. OF HIGHER EDUC., Apr. 16, 2004, at A12.

69. Virginia K. Nalencz, *See You in Court*, TEMPLE REV., Summer 2004, at 24. In the words of Professor Edward Ohlbaum, Director of Temple's Trial Advocacy Program, describing the full time and adjunct faculty teaching in that program, "Of course we have our own teacher training program. We're delighted to have these folks put their own unique stamp on a course, but it's our way or the highway." *Id.* at 27.

70. Proposals to TAUP, *supra* note 36, at New Art. II § B. In decision making regarding tenure and promotion outstanding teaching and research are primary; "secondary weight shall be

attendance at conferences or public speaking if our views are considered negative and counter productive to our employer's approved norms.⁷¹ Certainly, the law school of the near future is not interested in paying someone like me to speak at national conferences criticizing the new order and pointing out institutional discrimination against all women and men of color.⁷²

The genius of the system that has been put in place is that there is very little that can be done to fight it. Although more women are becoming deans and college presidents, there is a somewhat disturbing trend. Several women deans originally taught in or directed legal writing programs,⁷³ which programs used mandated teaching materials and methods.⁷⁴ I have a great deal of respect for these women, but their prior experiences cannot help but color their views of how law schools should be organized. Increasingly, deans⁷⁵ and university presidents⁷⁶

given to outstanding and continuing promise in University service, service to the profession/discipline and discipline-based community service."

71. Last year, my law school managed to hire four white males on tenure track (and one of them had the promise of tenure review within the first year) and one black female contract legal writing teacher, but this did not seem to bother anyone but me. I pointed out these statistics publicly in my acceptance speech for the ABA's Margaret Brent Award. My acceptance speech is available on my profile, as is the four and a half minute video the ABA prepared for the Brent presentation. Marina Angel, *Marina Angel* (visited Apr. 12, 2005) <http://www.law.temple.edu/servlet/RetrievePage?site=TempleLaw&page=Faculty_Angel>.

72. Temple Law School Dean Robert Reinstein responded negatively to my public disclosure of hiring statistics. See Jeff Blumenthal, *Angel Gives Temple a Devil of a Time in Speech*, LEGAL INTELLIGENCER, Aug. 26, 2004, at 3. Dean Reinstein attempted to divert attention from the issue of the school's failure to hire women on tenure track by citing the percentage of women members of the tenured faculty. Obviously, if there are no women or few women on tenure track, the number of women on the tenured faculty will decrease in the future. The dean's tactic was similar to that used by President Lawrence Summers of Harvard when controversy broke out over the failure of Harvard to grant tenure to women. He attempted to divert the issue by citing to the percentage of new hires who were women. If you hire women but don't tenure them, the number of women on the tenured faculty will also decrease in the future. Robin Wilson & Piper Fogg, *Female Professors Say Harvard is Not Granting Tenure to Enough Women*, CHRON. OF HIGHER EDUC., Oct. 1, 2004, at A14. President Summers caused a storm of protests in January, 2005, when he made statements about innate differences between the sexes explaining the lack of women in mathematics and science. Sam Dillon & Sara Rimer, *No Break in the Storm Over Harvard President's Words*, N.Y. TIMES, Jan. 19, 2005, at A14.

73. E.g., Nell Jessup Newton, Dean, University of Connecticut School of Law.

74. Jan M. Levine, *The Politics of Legal Writing: Legal Research and Writing: What Schools are Doing & Who is Doing the Teaching*, 7 SCRIBES J. L. WRITING 51 (2000).

75. E.g., The Dean of Pace Law School is Stephen J. Friedman, previously a partner at Debovoise & Plimpton and still of counsel to that New York City law firm. See *Stephen J. Friedman* (Visited Apr. 12, 2005) <<http://www.law.pace.edu/facbios/friedman.html>>.

76. E.g., President Marc Holtzman of the University of Denver had a long career in corporate finance and broadcasting. See Warren Smith, *Marc Holtzman Joins DU as President* (visited Apr. 12, 2005) <<http://www.du.edu/news/archive/holtzman.htm>>.

are recruited to academia from the corporate world—something that seldom, if ever, happened in the old days.

As these changes occur, in the near future there will be a massive difference in the kind of education provided by elite private institutions and all others. Private institutions that are heavily endowed can continue to provide traditional critical and analytic higher education. Formerly prestigious public universities and all other private and public universities will instead follow a corporate model of cookie cutter education delivered by replaceable cogs in a wheel.

All this is occurring as a second massive wave of baby boomers are entering higher education. Profit, not excellent education, has become the bottom line for private, supposedly non-profit universities and public universities.⁷⁷

77. One of the results of increased profits has been an emphasis on admitting students who can pay full tuition without the need for scholarship assistance. This is closing a traditional route to success in America for poor and middle class students. David Leonhardt, *As Wealthy Fill Top Colleges, Concerns Grow Over Fairness*, N.Y. TIMES, Apr. 22, 2004, at A1. “2005: What’s In . . . for Colleges” are fund raising campaigns, moving up a notch in standing with Moody’s, and going after private support for research. *Special Report: A Year of Recovery*, CHRON. OF HIGHER EDUC., Jan. 7, 2005, at A8. Increased profits also explain the explosion in LL.M. programs for foreign students, who can be charged higher tuition for programs that do not have to meet any accreditation requirements. The only ABA requirement is that an LL.M. program “may not detract from a law school’s ability to maintain a J.D. degree program that meets the requirements of the Standards.” A.B.A., Accreditation Standards, § 308, available at www.abanet.org/legaled/standards/chapter3.html (last visited Apr. 12, 2005).

Scandals have resulted from non-profit private schools’ attempts to maximize their profits. See generally Megan Walde, *Court Hears Milton Hershey Case, Alumni Demand Reforms at School*, PATRIOT-NEWS, Dec. 9, 2004, at B02; Martha Woodall, *Boarding School Seeks Ways to Add Income*, PHILA. INQUIRER, Mar. 8, 2004, at B01.