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Making the Invisible Visible: The Garment Industry's Dirty Laundry

1 J. Gender Race & Just. 405, 405-417 (1998)

This is the story of some garment workers very dear to my heart who were enslaved in El Monte, California. From their homes in impoverished rural Thailand, these garment workers dared to dream the immigrant dream, a life of hard work with just pay, decency, self-sustenance for themselves and their families, and hope. What they found instead in America was an industry--the garment industry--that mercilessly reaps profits from workers and then closes its eyes, believing that if it refuses to see, it cannot be held responsible. What these workers also found were government bureaucracies so inhumane and so impersonal that such agencies confuse their purpose to serve the people with a mandate merely to perpetuate themselves.

On August 2, 1995, modern slave labor in America emerged from invisibility with the discovery of seventy-one Thai garment workers, sixty-seven of whom were women, in a suburb of Los Angeles: El Monte, California. These Thai workers were held in a two-story apartment complex with seven units where they were forced to work, live, eat and sleep in the place they called "home" for as long as seven years. A ring of razor wire and iron inward-pointing spikes, the kind usually pointed outward to keep intruders out, surrounded the apartment complex. They ensured the workers could not escape.

The workers lived under the constant threat of harm to themselves and their families. They were told that if they tried to resist or escape, their homes in Thailand would be burned, their families murdered, and they would be beaten. As proof, the captors caught a worker trying to escape, beat him, and took a picture of his bruised and battered body to show the other workers. They were also told that if they reported what was happening to anyone, they would be sent to the Immigration and Naturalization Service (INS). The workers were not permitted to make unmonitored phone calls or write or receive uncensored letters. Armed guards imposed discipline. Because the workers were not permitted to leave, their captors brought in groceries and other daily necessities and sold them to the workers at four or five times the actual price. When the workers were released and we first took them to the grocery store, they were shocked by the prices of toiletries, toothpaste, shampoo, fruits and vegetables. They had, of course, no way to know that they had been price gouged at the same time that they were making less than a dollar an hour for their eighteen-hour work days.

Hundreds of thousands of pieces of cloth, spools of thread, and endless, monotonous stitches marked life behind barbed wire. Labels of brand name manufacturers and nationwide retailers came into El Monte in boxes and left El Monte on blouses, shorts, shirts and dresses. Manufacturer and retailer specifications, diagrams, details and deadlines haunted the workers and consumed their lives.

The workers tell me that though eighteen-hour days were the norm, they sometimes worked more depending on how quickly the manufacturers and retailers wanted their orders. The workers had to drink large quantities of coffee or splash water on their faces to stay awake. When they were finally permitted to go upstairs to sleep, they slept on the floor, eight or ten to a bedroom made for two, while rats and roaches crawled over them. The Thai workers were denied adequate medical attention, including care for respiratory illnesses caused by poor air, eye problems

The criminal case was the first of many conflicts I would see between the mandates of traditional legal avenues for achieving justice and the goals of nontraditional political and social activism. The criminal case highlighted the tension between the limited redress that forms the model for most (though certainly not all) traditional litigation, and the achievement of justice broadly defined. Because the workers were the key witnesses in the criminal case, the prosecutors at the U.S. Attorney's office warned them not to speak out about the abuses they had endured. Whereas this restriction may have made sense in the context of the criminal prosecution, it served to silence, indeed make invisible again, the Thai workers at a time when their own voices needed to be heard. Thus, a conflict existed between the criminal law's narrow focus on punishing the workers' captors and a larger hope that subordinated individuals and communities could increase control over their own lives.

In February 1996, the captors pleaded guilty and were sentenced to prison terms of two to seven years. Yet the workers' struggles were just beginning. Upon conclusion of the criminal case, the workers' civil lawsuit could now proceed.

On one level, the civil lawsuit is significant simply because workers have accessed the legal system. In the large majority of cases, the notion of legal protections for exploited workers and redress for violations is illusory. Workers too seldom find the legal system open to them. The significance of the workers' civil lawsuit, however, is greater still than the fact that workers have gained access. The suit is also significant because it names the manufacturers and retailers whose clothes the garment workers sewed. Rather than limiting its theories of liability to the immediate captors of the Thai workers, this lawsuit seeks to establish corporate accountability.

The theories against the manufacturers and retailers fall into four categories. First, they are joint employers of the workers, and therefore subject to all federal and state labor laws governing employers. The manufacturers and retailers defend themselves by maintaining that the manner in which they practice, and the way the industry has been structured, allows manufacturers and retailers to "independently contract" with sewing shops who make their clothes, insulating them from employer status.

Second, the manufacturers and retailers acted negligently in hiring and supervising the workers. The El Monte operation was structured so that more than seventy Thai workers were held against their will and forced to work eighteen hours a day, while a couple "front shops" in downtown Los Angeles employed seventy some Latina and Latino garment workers in "typical" sweatshops--the kind that characterize the Los Angeles garment industry. The manufacturers and retailers sent their goods to the front shops. Many of the workers at the front shops performed finishing: ironing, sewing buttons and buttonholes, cutting off thread, packaging and hanging and checking finished clothes. The manufacturers and retailers sent quality control representatives to the front shops to ensure that their clothes were being made to specification. The turnaround time the manufacturers demanded was much too fast for the downtown locations to have been furnishing all of the work. Such large quantities of high quality garments could not have been filled by workers making the requisite minimum wage and overtime.

Third, the manufacturers and retailers violated various provisions of state law requiring all those engaged in the business of garment manufacturing to register with the California Labor Commissioner and to avoid the use of industrial homeworkers for garment production. Federal law also provides that any person or corporation that places products in the stream of commerce for sale for profit must ensure that its products are not produced in violation of minimum wage and

moment when comprehension washes over the faces of the Latina workers, a light of understanding goes on in their eyes, and they begin to nod their heads slowly in agreement, you feel the depth of that connection.

Working across racial lines has also posed challenges for me as an Asian American woman. As such, the Latino workers who first came to see me were skeptical and a bit suspicious of me. “¿Si ayuda los Thaiandeses, porque quiere ayudarnos?” [“If you are helping the Thai workers, why would you want to help us?”] I answered the best I could in Spanish, “Porque creo in justicia, y la lucha es muy grande. Si no luchamos juntos, no podemos ganar.” [“Because I believe in justice and the struggle is a big one. If we do not fight together, we will not succeed.”] The garment industry’s structure magnifies ethnic and racial conflict at the bottom--workers against factory operators. Workers, who are primarily Latino and Latina, see their daily subjugation enforced by factory operators who are primarily Asian; Asian owners transfer the pressure and exploitation they experience from manufacturers and retailers to the garment workers. Ironically, Asian owners learn Spanish to enable them to communicate, but often little more than “rapido, mas rapido.” Poverty and helplessness experienced by immigrants, Asian and Latino, combine with language and racial differences to make the garment industry a source of racial tension. Meanwhile, manufacturers and retailers, like puppet masters high above the scene they create and control, wield their power with impunity.

Third, the workers’ struggles and their strength have challenged the government. The workers’ case says to the INS that its way of doing business as usual is totally unacceptable. The INS cannot be a tool of exploitative employers to keep workers from bettering their lives. The workers in the garment industry further challenge the narrow ways in which government compartmentalizes the lives of subordinated individuals. Garment workers’ cases are about labor law violations, so they fall under the purview of the Department of Labor. But in an industry like the garment industry, where almost all the workers are poor women of color, we have a civil rights problem. Why are manufacturers and retailers not investigated for rampant civil rights abuses? Why is the State Department not involved, where issues of foreign policy, and manufacturer and retailer conduct in countries around the world, so clearly impact the human rights of poor workers in other countries and immigrant workers in the United States? Where is the Presidential Commission on rooting out the shameful existence of sweatshops in this country? Such a commission ought to call on manufacturers and retailers, who create and profit from such conditions, to take responsibility and change their practices.

Fourth, the workers’ lawsuit challenges our legal system. It says that our legal system has to be able to bridge the gap between reality and justice. Manufacturers and retailers cannot simply walk into court with an argument that on its face looks like an independent contracting relationship without looking at the reality of what they have done. Manufacturers and retailers have created a structure intended to get around existing law and to perpetuate subordination of workers.

The lawsuit also challenges the legal system’s primary focus on lawyers. The legal system is a forum for lawyers--a place where we write our briefs, argue in court, play our game and go home. The question for me as a lawyer is this: how are the workers made better off, even if we win this suit, if they do not feel like they have been participants in the process? The fact that the workers often want to rely on lawyers makes the struggle more difficult. Moreover, whether through an inflated sense of self-importance, or a desire for self-preservation, we all too often want

interracial solidarity is not. The Latina workers have thus remained largely invisible to the public.

The media likes simplistic stories. I have learned that they portray isolated “heroes” and nameless groups of “victims.” The continuous victim status imposed on the workers gives the false impression that they are not full human beings engaged in a struggle for justice, committed to a better world, and intent on ensuring that others do not suffer what they have.

More recent coverage of exploitative conditions and inhumane treatment of workers in the garment industry further highlights this problem. Morning television talk show host Kathie Lee Gifford and her reaction to the discovery that her private label was being sewn by child laborers in Honduras and sweatshop workers in New York received extensive news coverage. Just as legal education might have us believe that lawyers solve the problems of an inequitable society through lawsuits, news coverage paints a picture of celebrity goodwill as the antidote to exploitation. When Gifford and her former football-star husband handed out \$300 cash to workers denied minimum wage and overtime in New York, major newspapers and news stations across the country reported it in the headlines.

This kind of news coverage suggests that workers want handouts. Again, the worker as independent actor is made invisible by worker as passive, powerless recipient. From my experience, they do not want one-time handouts. What they want is a just day’s pay for a just day’s work. The workers continually attend court hearings, get on buses to come to meetings, spend hours responding to discovery requests and the other demands of litigation. They have gone with me to retail stores to see garments they made selling for a price they could never afford. People who question, or ignore altogether, the value of this level of participation by the workers utterly miss the power of litigation to teach and to change. The workers continue to fight, not for the far-off possibility of collecting money, but for the sense of control it gives them over their lives and out of a fundamental belief that social justice demands it.

Finally, I want to share one story about the media that illuminates the many facets of the struggle for justice. Several months ago, I received a call from a Hollywood producer. The producer had called before, soon after the Thai workers were discovered. At that time, I had told her that the workers’ story was not mine to sell, and she would have to wait until the workers were in a position to decide for themselves if they wanted their story told this way. She was calling again now because the criminal case was over and the suit against the manufacturers and retailers was going well. She billed it as a huge Hollywood movie that would get the workers’ story out to millions of people, and then she said, “To make this really work, we need a hero.”

I interrupted this familiar refrain with, “The workers are the heroes; they are the ones who endured, who were resilient, who have worked to rebuild their lives and who continue to engage in the fight for justice.”

“No, no, no,” she insisted. “I have read all the newspaper accounts and you’ve really been a hero. But what we need is an *American* hero.”

Now I had spent many months dealing with unreasonable, often ignorant, even offensive people and positions, but I was momentarily stunned. After she repeated herself, I responded, “You must mean a white hero then, because I am an American.”

It was her turn to pause, no doubt realizing, even without understanding why, that she had said something wrong. She countered, “Oh, of course you are . . . and I’m not a bad person” and proceeded to list the movies she and her company had produced to show they were an

outsider. Here, I am not just talking about the times I have been ignored, when a white male attorney representing a garment manufacturer reached directly past me to shake the hands of my white male co-counsel, for example. I am not talking about those many instances.

I am talking about the attorneys *on our side* who say, "If you want to do all that political and educational stuff, organize meetings with the workers and visit them in their homes at night, go ahead and do that. But leave the 'real' lawyering--the hard-core strategizing, brief writing and arguing--to the real lawyers." But to me, the traditional, so-called "real" lawyers, who are not engaged in the workers' lives, cannot represent them in the lawsuit in a way that is true to the workers. The lawyer activist has to be an active participant in the litigation to ensure that the workers' lives guide the litigation. Lawyer activists have to be active participants in litigation to transform the practice of law.

Lawyer activists are often marginalized by non-lawyers as well. Many progressive activists with whom I have worked refer to lawyers as "necessary evils." They feel that lawyers distort and destroy a struggle, wanting to speak for the workers and take over the cause, insisting on leading rather than joining. Non-lawyer activists often seek to limit the role of the lawyer activist to that more suited to a traditional lawyer--at the margins of the struggle.

So what is our role as lawyers? How can we make transformative work--both in our profession and our communities--real? I do not know the answers to these difficult questions. I do not even know if finding answers is the ultimate goal. But I believe that anyone who tells you these tensions are not worth struggling over misses the essence of what it means to be an advocate for people *and* an advocate for justice. Law school does a good job of telling you that all of these tensions are really nonsense, or at best, that they make for interesting discussions in those "soft, fuzzy" courses but have no place in the real practice of law. I want to tell you that is absolutely wrong.

The workers say that they are engaged in the struggle not for money, and not necessarily even because they think we will win the lawsuit or radically alter the corporate power structure. They are engaged, they say, because their humanity depends on it. And I would say we engage in the struggle with them not for their humanity, but for ours.