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Publication Date

2009-10-29

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Hemmed In: Legal Mobilization in the Los Angeles Anti-Sweatshop Movement

Scott L. Cummings*

This Article recounts and analyzes a pivotal story of contemporary labor activism: the anti-sweatshop movement in the Los Angeles garment industry. At its most ambitious, the movement sought to make legal responsibility follow economic power, rupturing the legal fiction that protected profitable retailers and manufacturers from the labor abuses committed by their contractors. Toward this end, anti-sweatshop lawyers and activists deployed a multi-dimensional tactical approach, pioneering the integration of targeted litigation and worker organizing in ways that challenged the conventional wisdom about the demobilizing impact of law—and marked the emergence of a new wave of low-wage worker organizing outside of the conventional labor law regime. This Article examines how law lived up to its promise in the anti-sweatshop movement. It begins by outlining the role of law in facilitating the rise of modern sweatshop labor in the garment industry, showing how industry actors combined legal opportunities for foreign outsourcing and domestic subcontracting with anti-union efforts and aggressive immigrant hiring to deregulate garment production in Los Angeles. It then offers a close descriptive account of the coordinated litigation, legislative, and grassroots campaign to reform industry labor practices by assigning liability to the retailers and manufacturers that ultimately benefited from sweatshop abuse. The Article concludes by appraising the results of the anti-sweatshop movement, examining what was achieved and what remained undone, while suggesting theoretical implications for the study of labor law and the relationship between law and organizing.

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I.

INTRODUCTION

The labor movement has long occupied a central place in the debate over the role of law in social change in America.¹ Alongside the civil rights movement, early Twentieth Century labor activism remains the iconic ex-

1. See Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. REV. 443, 470-71 (2001).

ample of collective action in U.S. social movement history,² producing one of the major pieces of progressive reform legislation in the past century:³ the 1935 National Labor Relations Act (NLRA) governing union organizing and collective bargaining.⁴ The decline of American unionism in the post-war era prompted a critical examination of law's culpability, with labor scholars faulting the NLRA's election process for sanctioning employer intimidation,⁵ criticizing the NLRA's remedial structure for providing inadequate worker remedies for illegal employer conduct,⁶ and blaming courts for judicial interpretations of federal labor law that had the effect of "deradicalizing" the labor movement.⁷ A parallel critique held that the framework of employment rights that emerged out of the civil rights movement—symbolized by Title VII's antidiscrimination mandate—further eroded labor solidarity by redefining workplace identity in individualistic, rather than collective, terms.⁸ This position echoed—and informed—a broader scholarly critique of law's role in social change in the post-civil rights era that charged movement activists with succumbing to the "myth of rights,"⁹ pursuing ineffectual court-based social change strategies while divesting from the gritty—and more productive—work of grassroots mobilization.

Against this historical backdrop, it is striking that the field of labor organizing—a site of progressive disenchantment with law—has now become a crucial locus of law's resurgence as a tool of social reform. There is mounting evidence that legal innovation and entrepreneurialism are contributing to a new dynamism within the labor movement,¹⁰ evident over the past decade in stories of the successful integration of law and organizing by immigrant worker centers,¹¹ community-labor coalitions,¹² and other grass-

2. See Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 942-48 (2007).

3. See NELSON LICHTENSTEIN, *STATE OF THE UNION: A CENTURY OF AMERICAN LABOR* 35-38 (2002).

4. National Labor Relations Act of 1935, Pub. L. No. 74-198, 49 Stat. 449 (1935) (codified as amended at 29 U.S.C. §§ 151-169).

5. Paul Weiler, *Promises to Keep: Securing Workers' Rights to Self-Organization Under the NLRA*, 96 HARV. L. REV. 1769, 1777 (1983).

6. Benjamin I. Sachs, *Employment Law as Labor Law*, 29 CARDOZO L. REV. 2685, 2694-95 (2008).

7. Karl E. Klare, *Judicial Deradicalization of the Wagner Act and the Origins of Modern Legal Consciousness, 1937-1941*, 62 MINN. L. REV. 265 (1977).

8. Katherine Van Wezel Stone, *The Legacy of Industrial Pluralism: The Tension Between Individual Employment Rights and the New Deal Collective Bargaining System*, 59 U. CHI. L. REV. 575, 577 (1992).

9. STUART A. SCHEINGOLD, *THE POLITICS OF RIGHTS: LAWYERS, PUBLIC POLICY, AND POLITICAL CHANGE* (1974).

10. See Victor Nardo, *Impacting Next Wave Organizing: Creative Campaign Strategies of the Los Angeles Worker Centers*, 50 N.Y.L. SCH. L. REV. 465 (2005-2006).

11. See, e.g., JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS* (2005); see also JANICE FINE, *WORKERS CENTERS: ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM* (2006).

roots formations to mobilize low-wage workers.¹³ The new wave of labor activism has reconstituted its relation to legal mobilization in crucial respects, auguring labor law's "renewal."¹⁴ In particular, the use of law by contemporary labor activists has spilled outside the confines of the NLRA system,¹⁵ whose "ossification" has exerted a "hydraulic" pressure pushing worker organizing into alternative legal fora.¹⁶ This decentering—both of the primacy of the federal labor system and the role of unions within it—has produced creative experiments in inter-disciplinary legal mobilization to promote low-wage worker organizing and enhance conditions of employment. The scholarship has focused on the use of employment law to spur labor organizing,¹⁷ driving the "functional integration of American work law."¹⁸

Yet labor activists have, in fact, begun to leverage a broader range of legal regimes to advance multiple labor goals, from direct worker mobilization to the protection and expansion of unionized industries. For instance, labor activists and lawyers have filed suits under international human rights law to mobilize immigrant workers,¹⁹ asserted claims under local land use law in an effort to block big-box retailers from entering markets dominated by unionized groceries,²⁰ and threatened environmental lawsuits to gain leverage in the negotiation of community benefit agreements with labor-friendly provisions.²¹ These efforts suggest that a more fundamental re-orientation is under way within the labor movement, with activists adopting a "legal pluralist" approach to organizing that takes strategic advantage of the multiple and intersecting ways in which both employee and employer activities are legally regulated to leverage the power of law to advance labor goals. Legal pluralism in this context refers to the competing formal and informal law systems that comprise the "hybrid legal spaces" governing economic activity,²² which may be deployed by labor activists as a way to

12. Chris Rhomberg & Louise Simmons, *Beyond Strike Support: Labor-Community Alliances and Democratic Power in New Haven*, 30 LAB. STUD. J. 21 (2005).

13. Sameer M. Ashar, *Public Interest Lawyers and Resistance Movements*, 95 CAL. L. REV. 1879 (2007).

14. Benjamin I. Sachs, *Labor Law Renewal*, 1 HARV. L. & POL'Y REV. 375 (2007).

15. Cynthia Estlund, *The Ossification of America Labor Law*, 102 COLUM. L. REV. 1527 (2002).

16. Sachs, *supra* note 14, at 376-77.

17. Sachs, *supra* note 6, at 2685; *see also* GORDON, *supra* note 11, at 185-236 (discussing the use of a worker's rights legal clinic to promote organizing).

18. Richard Michael Fischl, *Rethinking the Tripartite Division of American Work Law*, 28 BERKELEY J. EMP. & LAB. L. 163, 197 (2007).

19. Michael J. Wishnie, *Immigrant Workers and the Domestic Enforcement of International Labor Rights*, 4 U. PA. J. LAB. & EMP. L. 529 (2002).

20. Scott L. Cummings, *Law in the Labor Movement's Challenge to Wal-Mart: A Case Study of the Inglewood Site Fight*, 95 CAL. L. REV. 1927 (2007).

21. Scott L. Cummings, *Mobilization Lawyering: Community Economic Development in the Figueroa Corridor*, in CAUSE LAWYERS AND SOCIAL MOVEMENTS 302, 326-27 (Austin Sarat & Stuart A. Scheingold eds., 2006).

22. Paul Schiff Berman, *Global Legal Pluralism*, 80 S. CAL. L. REV. 1155, 1169-71 (2007).

galvanize collective action among workers or enhance the terms and conditions of their employment. This movement toward legal pluralism as a way of advancing worker rights reflects not simply an instrumental choice by labor activists to engage outside of formal labor law, but also the erosion of traditional divisions between labor organizing and other activist domains.²³ Many of the most innovative and prominent efforts to organize low-wage workers, for example, have not been formally allied with organized labor, but rather have grown out of more traditional community organizing, or developed in connection with groups focused on civil rights, immigrant rights, and welfare.

While the engagement with new legal strategies has revitalized labor, it has also helped to redeem the transformative ideal of law. Law's status as a vehicle of social change, ascendant in the civil rights era, was diminished as "massive resistance" and the rise of the conservative movement left many of law's progressive promises unfulfilled. The classic—and now well rehearsed—criticisms of law as a tool of social reform emphasized its inability to change social practice on the ground,²⁴ and its cooptation of more radical activism.²⁵ Lawyers, as the engineers of top-down rights strategies, were reproved for imposing their own views of social change on less powerful client groups in ways that deprived them of a meaningful stake in the fight and weakened lawyer accountability.²⁶ Authentically transformative lawyering, it was argued, required closer integration of legal strategy and grassroots empowerment, so that the "clients" of legal rights strategies could be converted into the "agents" of meaningful social reform.²⁷ Out of the welter of new wave labor activism, some lawyers for low-wage workers have paid heed to this call, rebuilding a vision of legal practice that aspires to transformative impact but departs from the canonical vision of public interest law in key respects. Thus, the more instrumental, flexible approach to labor organizing suggested by the pluralist model has its parallel in a more politically integrated, tactically versatile model of legal practice. Within this new lawyering paradigm, court victories are not endpoints but rather moments in broader campaigns to stimulate collective action and leverage political reform;²⁸ litigation is not the exclusive implement of legal

23. Thanks to Noah Zatz for pointing this out to me.

24. JOEL F. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE* (1978); GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (1991).

25. Lobel, *supra* note 2, at 942-48.

26. Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interest in School Desegregation Litigation*, 85 *YALE L.J.* 470, 489-93 (1976).

27. See Anthony V. Alfieri, *Reconstructive Poverty Law Practice: Learning the Lessons of Client Narrative*, 100 *YALE L.J.* 2107, 2140-41 (1991); Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 *WIS. L. REV.* 699, 760-66.

28. Austin Sarat & Stuart Scheingold, *What Cause Lawyers Do For, and To, Social Movements: An Introduction*, in *CAUSE LAWYERS AND SOCIAL MOVEMENTS*, *supra* note 21, at 10-11.

activism but rather one of many problem solving tools;²⁹ and clients are not passive subjects to be counseled but rather allies to be educated and empowered for future struggles.³⁰ As worker organizing has drawn new sustenance from its re-engagement with multiple sources of law, progressive lawyering has responded, in part, by refashioning itself as a multi-dimensional practice in the service of organizing.

How has this movement to integrate law and organizing fared? While there are a growing number of stories of legal mobilization campaigns outside of the NLRA context, the evidence of their short-term impact and transformative legacy is less developed.³¹ Nor is there a detailed empirical picture of the variables that impact success and failure or a comparative analysis of which variables matter across contexts. Generating this data is critical to appraising the potency of new legal mobilization strategies in the low-wage work arena and understanding their trade-offs. Because these campaigns are highly context-specific and turn on the particular constellation of actors and events, thick case studies based on qualitative research are well-suited to evaluating the factors shaping the outcomes of specific campaigns.³² Such analyses promise not just to inform debates about the scholarly purchase of new theories of labor law and legal mobilization, but also to guide labor activism on the ground.

Toward this end, this Article recounts the story of anti-sweatshop activism in the Los Angeles garment industry. It is a detailed case study of the decade-long campaign to bring accountability to the country's largest garment production sector, constructed on an elaborate system of sub-contracting that insulated powerful industry retailers and manufacturers from legal liability for employment violations committed by garment contractors. The campaign, which began in the mid-1990s, developed at the cusp of the new wave of low-wage worker organizing—and marked a pivotal juncture in its evolution. It dramatized the extremes of immigrant labor abuse in the United States, revealing both its surprising pervasiveness and nexus to the mainstream economy. The campaign burst onto the international stage in early August 1995 when more than seventy undocumented Thai workers were found in slave-like conditions in a garment subcontracting company in a suburb of Los Angeles,³³ where they labored eighty hours a week for less

29. For a discussion of alternative forms of legal problem solving, see William H. Simon, *Solving Problems vs. Claiming Rights: The Pragmatist Challenge to Legal Liberalism*, 46 WM. & MARY L. REV. 127 (2004).

30. GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992).

31. Gordon's work stands out as an important exception in this regard. See GORDON, *supra* note 11.

32. ROBERT E. STAKE, *THE ART OF CASE STUDY RESEARCH* 4 (1995).

33. Kenneth B. Noble, *Thai Workers Are Set Free in California*, N.Y. TIMES, Aug. 4, 1995, at A1; see also Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 J. GENDER RACE & JUST. 405, 406 (1998).

than two dollars a day in an apartment complex surrounded by barb-wire fence,³⁴ producing clothing for brand-name manufacturers and major retailers, including Mervyn's.³⁵ The Thai worker story was an iconic moment in the emergent anti-sweatshop movement, drawing intense media attention to the workers' struggle to recover stolen wages and reconstruct their lives.

The campaign also illustrated the divergent fortunes of union-driven and extra-union legal mobilization. As the Thai worker case made its way through the litigation process, it conveyed a triumphant story about the role of legal action in defending workers' rights—providing a counter-narrative to the tale of organized labor's declining power to protect garment workers. The case occurred at a crucial point along the arc of labor activism in the Los Angeles garment sector—just as the Union of Needletrades, Industrial and Textile Employees (UNITE) was planning a major campaign to unionize the designer clothing manufacturer Guess, Inc.—and offered a study in contrasts. While the Guess campaign, which included a wage-and-hour class action to pressure the company, failed in its bid to organize the company and its contractors, the civil lawsuit filed in the Thai worker case resulted in a favorable legal ruling suggesting that the manufacturers that contracted with the sweatshop might be liable as “joint employers,”³⁶ and a roughly \$4.5 million settlement for the workers.

Finally, the anti-sweatshop campaign, as it developed in the wake of the Thai worker case, pioneered the strategic integration of targeted litigation with grassroots worker organizing in a way that challenged the conventional wisdom about the demobilizing impact of legal action and directed significant attention to new legal strategies to organize workers outside of the traditional labor law regime. The legal campaign, directed by the Asian Pacific American Legal Center (APALC), was used to spur further legal and political mobilization, contributing to the creation of new anti-sweatshop organizations and the passage of a state-wide joint employer law covering the garment industry. APALC lawyers thus broke with conventional conceptions of professional role, orchestrating a sophisticated political campaign that not only rattled a global industry, but also provided a template for law and organizing that was widely emulated by groups around the country. Yet they did so against enormous odds, challenging major companies in a low-wage manufacturing sector increasingly vulnerable to the forces of global outsourcing. Their campaign thus tested new-wave law and organizing techniques in an industry closely identified with the old economy, underscoring both the promise and perils of this approach.

34. George White, *Workers Held in Near-Slavery, Officials Say*, L.A. TIMES, Aug. 3, 1995, at A1.

35. Julie Su, *El Monte Thai Garment Workers: Slave Sweatshops*, in NO SWEAT: FASHION, FREE TRADE, AND THE RIGHTS OF GARMENT WORKERS 143, 143 (Andrew Ross ed., 1997).

36. *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1469 (C.D. Cal. 1996).

This case study examines how law lived up to its promise in the anti-sweatshop movement, charting the pivotal legal and organizing efforts and evaluating their success across different metrics. Part I outlines the role of law in facilitating the rise of modern sweatshop labor in the garment industry, detailing how industry actors combined legal opportunities for foreign outsourcing and domestic subcontracting with anti-union efforts and aggressive immigrant hiring to deregulate garment production in Los Angeles—legally separating the sites of economic abuse (contractors) from the sites of economic power (manufacturers and retailers). Part II then details the multifaceted campaign to challenge this legal divide. It focuses specifically on how lawyers collaborated with activists to weave together impact litigation, legislative advocacy, and grassroots organizing in a coordinated effort to assign liability for garment labor abuse to the retailers and manufacturers who wielded power over the industry structure and ultimately benefited from its operation. Part III concludes by appraising the results of this campaign against sweatshops, detailing what was achieved and what remained undone, while suggesting theoretical implications for the study of labor law and the relation between law and organizing.

Before turning to the case, a note about the power and limits of the case study method is in order. The story about the Los Angeles garment industry is—as all stories are—a partial view of a set of complex processes.³⁷ Invariably, case study narratives submerge real-life ambiguity and reduce the subtlety of events to a neat storyboard.³⁸ These problems are inherent in scholarship that reconstructs past events and are embedded in the methodological approach adopted here. To produce this case study, I conducted in-depth, semi-structured interviews with key actors in the anti-sweatshop campaign. While these interviews provide important insights into individual actors' views about strategy and outcomes, they have built-in biases, both because interviewees have their own partial view of events and because I only have first-hand accounts from some, but not all, of the actors involved. I attempted to fill out the case by supplementing the interviews with additional data from multiple sources, including media reports of the campaign, legal cases and briefs, organizational documents from anti-sweatshop groups, and secondary academic sources. Omissions certainly remain and no one can claim to produce an authoritative account. Nor do I claim to be an impartial observer of the events I recount. To the contrary, I have known some of the activists involved for many years and have formed views about the context and inner workings of the campaign through many conversations over the course of years. Finally, I am duly cautious about generalizing too much from the specific facts of the case,

37. See Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 Wis. L. Rev. 699, 701.

38. See A.L. Epstein, *The Case Method in the Field of Law*, in *THE CRAFT OF SOCIAL ANTHROPOLOGY* 205 (A.L. Epstein ed., 1979).

embedded as it is in the particular political, economic, legal, and institutional ecology of Los Angeles garment work. Nonetheless, despite the case's particularity—and the partiality of my account—the story I recount of legal resistance in the garment industry reveals structural patterns and transcendent themes, providing a rich foundation for thinking about the opportunities and risks of transformative lawyering practice and the future of low-wage worker organizing.

II.

THE ANTI-SWEATSHOP MOVEMENT IN THE LOS ANGELES GARMENT INDUSTRY: A CASE STUDY

A. *Law in the Construction of Garment Sweatshops*

The structure of the garment industry is commonly represented by a pyramid with garment retailers at the apex, manufacturers in the middle, and contractors at the base.³⁹ The pyramid is meant to depict the market relationships in the industry: a small group of powerful giant retailers like Wal-Mart and Target operate on a national scale and control access to consumers;⁴⁰ retailers purchase garments from a diverse cohort of manufacturers, which design “brands” and thus are the creative force in the industry;⁴¹ the manufacturers, in turn, externalize production through the use of a contingent of contractors, typically operating as small shops with short-term orders from multiple manufacturers, which they meet by hiring workers to cut and sew—and sometimes placing orders with their own subcontractors.⁴²

Within this pyramid system, power flows downward. Retailers have substantial bargaining power to determine the wholesale price to the manufacturer, which, in turn controls the price paid to contract shops. Because contractors compete for bids and face the threat of foreign competition they are under intense pressure to cut costs, which they must achieve by reducing wages.⁴³ The pressure on contractors to reduce labor costs often translates into illegal labor abuses committed against the workforce. In the worst cases, contract shops become sweatshops,⁴⁴ characterized by “extreme exploitation, including the absence of a living wage or benefits,” “poor working conditions, such as health and safety hazards,” and “arbi-

39. Sweatshop Watch, *California Garment Industry: Pyramid of Power and Profit* (2005), available at <http://college.usc.edu/cdd/civic/bmus/attachments/11341661/11634277.pdf>.

40. EDNA BONACICH & RICHARD P. APPELBAUM, BEHIND THE LABEL: INEQUALITY IN THE LOS ANGELES APPAREL INDUSTRY 80-81 (2000).

41. *Id.* at 27-28; see also ASIAN PAC. AM. LEGAL CTR. ET AL., REINFORCING THE SEAMS: GUARANTEEING THE PROMISE OF CALIFORNIA'S LANDMARK ANTI-SWEATSHOP LAW 10 (2005).

42. BONACICH & APPELBAUM, *supra* note 40, at 135-37.

43. *Id.* at 137.

44. *Id.* at 135-40.

trary discipline.”⁴⁵ How could a production system built upon systematic labor violations exist in the heavily regulated modern U.S. economy? This section describes the legal rules that enabled sweatshop employment in the garment industry.

1. Union Organizing

Garment sweatshops have a long history in the United States.⁴⁶ Their initial demise is largely a story about the successful unionization of the garment industry during the first half of the Twentieth Century. This effort was led by the International Ladies’ Garment Workers’ Union (ILGWU), which used a model of “triangular” negotiation between the union, manufacturers, and contractors to effectively take wages out of competition. To achieve this goal, the union negotiated jointly with the garment contractor and manufacturer associations, agreeing with both on a wage scale to be paid by the contractors to the garment workers.⁴⁷ This triangular system was permitted by NLRA § 8(e), which specifically exempted union actions against manufacturers forming part of an “integrated process of production in the apparel and clothing industry” from the prohibition on secondary boycotts.⁴⁸ Section 8(e) thus legally permitted the ILGWU to strike manufacturers that failed to source jobs to union contractors, even though the ILGWU had no unionized workers directly employed by the manufacturers.⁴⁹ This arrangement institutionalized a system of “joint employership” in the garment industry that empowered the union to deal directly with manufacturers, which set the ultimate price for labor. Under this system, the ILGWU represented nearly 450,000 workers—over seventy per cent of the garment industry—at its peak in the mid-1950s.⁵⁰

The success of this model of garment unionization at the mid-point of the Twentieth Century rested on four pillars: the power of the unions to effectively bargain with manufacturers, the physical concentration of production in New York, the constriction of the immigrant labor market in the inter-war and immediate post-war period, and the relative power of manufacturers to set prices vis-à-vis retailers. These pillars began to crumble in the 1970s.

At the systemic level, unionization was hindered by the deficiencies of the NLRA election process, which permitted employer intimidation and failed to provide union organizers meaningful protection from employer re-

45. Sweatshop Watch, *The Garment Industry* (2001) [on file with author].

46. BONACICH & APPELBAUM, *supra* note 40, at 3; *see also* Jeriy Loo, *Fashion’s Dirty Laundry: A Brief History of Sweatshops*, in *SWEATSHOP SLAVES: ASIAN AMERICANS IN THE GARMENT INDUSTRY* 2, 2 (Kent Wong & Julie Monroe eds., 2006). R

47. Katie Quan, *Strategies for Garment Worker Empowerment in the Global Economy*, 10 U.C. DAVIS J. INT’L L. & POL’Y 27, 29 (2003).

48. National Labor Relations Act § 8(e)v, 29 U.S.C. § 158(e) (2000 & Supp. V. 2006).

49. Quan, *supra* note 47, at 30.

50. *Id.* R

tiation.⁵¹ In addition, there was a deliberate effort to undercut garment union power by moving domestic production out of New York, where garment sector unionism was strong. Starting in the 1970s, Los Angeles emerged as the nonunion production alternative to New York because of its weaker tradition of unionism.⁵² By 1992, Los Angeles's garment work force was nearly double what it had been two decades before,⁵³ while New York had lost a third of its garment workforce during the same period.⁵⁴ The expansion of the garment industry in Los Angeles occurred on an entirely nonunion basis, with union density standing at only one per cent by the mid-1990s⁵⁵—down from fifteen per cent two decades before.⁵⁶

2. *International Trade*

The shift in production from New York to Los Angeles was part of a broader global movement of garment production that reinforced the decline of garment unionism. The outsourcing of garment production from its hub in the Northeast began in the 1950s and 1960s, with apparel assembly sourced first to the American South, then to East Asia.⁵⁷ The impact of this first wave of foreign outsourcing was limited by a series of voluntary bilateral agreements negotiated under the General Agreement on Tariffs and Trade that restricted the importation of specified foreign-made garment products.⁵⁸ In 1974, however, these agreements were replaced by the Multi-Fiber Arrangement (MFA),⁵⁹ which continued quotas for twenty years but allowed the quotas to grow in a way that facilitated more out-

51. See James J. Brudney, *Neutrality Agreements and Card Check Recognition: Prospects for Changing Paradigms*, 90 IOWA L. REV. 819, 832-33 (2005); Sachs, *supra* note 6, at 2694-97. In this environment, garment unions—like other private sector unions—saw their ability to successfully organize diminish, which contributed to a decline in membership. Total garment union membership fell from 800,000 in the early 1970s to less than 300,000 in 1997—a more than sixty per cent reduction. See Edna Bonacich, *Intense Challenges, Tentative Possibilities: Organizing Immigrant Garment Workers in Los Angeles*, in ORGANIZING IMMIGRANTS: THE CHALLENGES FOR UNIONS FOR IN CONTEMPORARY CALIFORNIA 130, 137 (Milkman ed., 2000). By contrast, during roughly the same period, total domestic employment in the garment industry fell just over forty per cent. See BONACICH & APPELBAUM, *supra* note 40, at 16.

52. RUTH MILKMAN, L.A. STORY: IMMIGRANT WORKERS AND THE FUTURE OF THE U.S. LABOR MOVEMENT 84-85 (2006).

53. *Id.* at 89 tbl. 2.2 (showing that the number of workers in the Los Angeles apparel and textile industry grew from 55,500 in 1971 to 98,800 in 1992).

54. *Id.* at 88.

55. See Ruth Milkman & Kent Wong, *Organizing Immigrant Workers: Case Studies from California*, in REKINDLING THE MOVEMENT: LABOR'S QUEST FOR RELEVANCE IN THE 21ST CENTURY 100, 112 (Lowell Turner et al. eds., 2001).

56. MILKMAN, *supra* note 52, at 85 tbl. 2.1.

57. Bonacich, *supra* note 51, at 137.

58. EDMOND MCGOVERN, INTERNATIONAL TRADE REGULATION: GATT, THE UNITED STATES AND THE EUROPEAN COMMUNITY 507 (2d ed., 1986).

59. Arrangement Regarding International Trade in Textiles (Multifibre Arrangement), Dec. 20, 1973, 25 U.S.T. 1001 (entered into force on Jan. 1, 1974).

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sourcing to developing countries where labor costs were low.⁶⁰ As a result, foreign outsourcing grew in the 1980s, producing an increase in garment imports and a decrease in domestic garment sector employment.⁶¹ Asian countries, particularly China, emerged during this period as major apparel exporters, followed by countries in Latin America and the Caribbean that benefited from special tariff reductions on apparel assembly.⁶²

The outsourcing trend accelerated in the 1990s, propelled by the passage of the North American Free Trade Agreement (NAFTA) in 1994 and the advent of the World Trade Organization (WTO) in 1995. NAFTA generated a significant shift in production to Mexican maquiladoras and led to an explosion in apparel and textile imports from México.⁶³ With the creation of the WTO, the MFA was formally replaced by the Agreement on Textiles and Clothing, which provided for the gradual phase out of all garment quotas by 2005,⁶⁴ and further accelerated the outsourcing trend.⁶⁵

California remained the one bright spot in the domestic garment industry. While the rest of the country saw garment production fall, California—particularly Los Angeles—saw an increase in employment between 1978 and 1997.⁶⁶ The peak year of garment employment in Los Angeles County was 1996, with over 97,000 “cut and sew” apparel workers.⁶⁷ This growth in garment employment reflected the drive to move production from New York to union-free shops in Los Angeles. It also underscored the interplay between the international legal regime and domestic production. The continuation of import quotas throughout the 1990s trapped some garment production in the United States. An important focus of the production that remained was on the high fashion market, characterized by cutting-edge design and quickly changing styles, which called for tighter quality control and quick-turnaround production. Los Angeles, with its high concentration of fashion designers, became a garment production magnet.⁶⁸ By the mid-1990s, the Los Angeles garment industry had grown to be the nation’s biggest and was the largest manufacturing industry in Los Angeles,⁶⁹ powered by the production of women’s outerwear.⁷⁰

60. BONACICH & APPELBAUM, *supra* note 40, at 56–57. R

61. *Id.*, at 16, 55–57.

62. *Id.* at 55.

63. *Id.* at 56–57.

64. Agreement on Textiles and Clothing, opened for signature Apr. 15, 1994, 1868 U.N.T.S. 14.

65. BONACICH & APPELBAUM, *supra* note 40, at 16. R

66. Bonacich, *supra* note 51, at 137.

67. LABOR MKT. INFO. DIV., CAL. EMPLOYMENT DEV. DEP’T, INDUSTRY EMPLOYMENT & LABOR FORCE (2007).

68. BONACICH & APPELBAUM, *supra* note 40, at 17–18. R

69. *Id.* at 16; JACK KYSER & GEORGE HUANG, L.A. ECON. DEV. CORP., THE LOS ANGELES AREA FASHION INDUSTRY PROFILE 2 (2003).

70. BONACICH & APPELBAUM, *supra* note 40, at 18. R

3. Immigration

As offshore companies sought a competitive edge by moving production to take advantage of low-paid foreign workers living *outside* the United States, domestic contractors responded in kind by focusing on hiring foreign workers already *inside* American borders: immigrants willing (or forced) to accept the low pay and no benefits policies that contractors had come to demand as the industry standard.

While the halcyon days of garment union organizing coincided with racially restrictive controls on immigration,⁷¹ the era of deunionization was framed by a selective liberalization of immigration law, which resulted in an explosion in undocumented entry. The passage of the 1965 Immigration and Nationality Act amendments eliminated the discriminatory national origin quota system, which had blocked Asian immigration, and imposed new limits on Latin American immigrants.⁷² While this spurred the legal entry of Asians, it capped legal Mexican immigration at levels that proved too low to meet demand, resulting in a dramatic increase in undocumented entry.⁷³ After the passage of the Immigration Reform and Control Act in 1986, which increased border security and imposed sanctions on employers that hired undocumented workers,⁷⁴ undocumented immigration not only grew,⁷⁵ but also changed in ways that exposed immigrants to greater economic and legal insecurity. Because it was harder to cross the border, immigrants began to stay longer and moved out of seasonal agricultural work into the urban low-wage sector.⁷⁶ Though Asian immigrants were not generally part of the undocumented flow, they too became bound up in the system of labor abuse as disproportionate victims of the increasing problem of human trafficking.⁷⁷

By 1990, Los Angeles had emerged as the immigration capital of the United States, surpassing New York as the city with the largest foreign-

71. IMMIGRATION AND CITIZENSHIP: PROCESS AND POLICY 158-62 (Thomas Alexander Aleinikoff, David A. Martin & Hiroshi Motomura eds., 2003).

72. Immigration and Nationality Act, Pub. L. No. 89-236, 79 Stat. 911 (1965).

73. DOUGLAS S. MASSEY, JORGE DURAND & NOLAND J. MALONE, BEYOND SMOKE AND MIRRORS: MEXICAN IMMIGRATION IN AN ERA OF ECONOMIC INTEGRATION 43-44 (2002). In the 1970s, an estimated 900,000 of the 1.4 million Mexican immigrants who entered the United States were undocumented. See JEFFREY S. PASSEL, PEW HISPANIC CENTER, UNAUTHORIZED MIGRANTS: NUMBERS AND CHARACTERISTICS 37 (2005); Jeffrey S. Passel, *Undocumented Immigration*, ANNALS AM. ACAD. POL. & SOC. SCI., Sept. 1986, at 181, 190.

74. 8 U.S.C. 1101 (2006).

75. PASSEL, PEW HISPANIC CENTER, *supra* note 73, at 6.

76. MASSEY ET AL., *supra* note 73, at 120-23, 128-33.

77. Aiko Joshi, *The Face of Human Trafficking*, 13 HASTINGS WOMEN'S L.J. 31, 46 n. 136 (2002); see also Jennifer M. Chacón, *Misery and Myopia: Understanding the Failures of U.S. Efforts to Stop Human Trafficking*, 74 FORDHAM L. REV. 2977 (2006).

born population (4 million).⁷⁸ The growth in the Los Angeles foreign-born population was fueled by the rapid rise of immigrants from Latin America, with the majority coming from México,⁷⁹ though the Asian population (mostly Filipino, Chinese, and Korean) also grew rapidly in the 1980s.⁸⁰ Significantly, Los Angeles was also the center of undocumented immigration, with an estimated 1.5 million undocumented residents in 1992, the largest contingent being from México.⁸¹ Los Angeles's pool of immigrant labor made it a magnet for manufacturers seeking labor flexibility and the garment industry readily incorporated immigrants as the mainstay of its workforce. In 1990, eighty-five per cent of the garment sector workforce was immigrant (and two-thirds women), with half from México and fourteen per cent from Asia.⁸² Though the proportion of undocumented garment workers was not known with precision,⁸³ one study from 1980 finding that over eighty per cent of Latino garment workers were undocumented was suggestive of the magnitude of the industry's reliance on undocumented labor.⁸⁴ These workers, in particular, were more prone to tolerate sweatshop conditions for fear of employers exposing their lack of legal status if they complained of abuse.

4. Corporate Organization

Organized labor's lack of success in the Los Angeles garment industry was partly a product of the relative weakness of unionism there, but it also reflected organizational changes in the garment industry itself that disrupted the stable relationship between manufacturers and contractors that allowed unions to thrive in mid-century New York.

At the bottom of the industry pyramid, the system of garment contracting changed in ways that challenged union organizing. Whereas the old New York model was to source production to a limited group of larger contractors, the Los Angeles model was to source production to a large number of small-scale, high-turnover firms, any one of which could be ef-

78. George Sabagh & Mehdi Bozorgmehr, *From "Give Me Your Poor" to "Save Our State": New York and Los Angeles as Immigrant Cities and Regions*, in *NEW YORK AND LOS ANGELES: POLITICS, SOCIETY, AND CULTURE – A COMPARATIVE VIEW* 99, 102 (Halle ed., 2003).

79. *Id.* at 105.

80. Paul Ong & Tania Azores, *Asian Immigrants in Los Angeles: Diversity and Divisions*, in *THE NEW ASIAN IMMIGRATION IN LOS ANGELES AND GLOBAL RESTRUCTURING* 100, 102 (Ong et al. eds., 1994).

81. Sabagh & Bozorgmehr, *supra* note 78, at 106.

82. BONACICH & APPELBAUM, *supra* note 40, at 170-74.

83. Bonacich, *supra* note 51, at 138.

84. BONACICH & APPELBAUM, *supra* note 40, at 174-75. In 2000, the figures were seventy per cent Latino (mostly Mexican) and twenty per cent Asian (mostly Chinese and Korean). See GARMENT WORKER CTR. & SWEATSHOP WATCH, *CRISIS OR OPPORTUNITY? THE FUTURE OF LOS ANGELES' GARMENT WORKERS, THE APPAREL INDUSTRY AND THE LOCAL ECONOMY* CRISIS 6 (2004), http://www.garmentworkercenter.org/media/1/2004_Garment_Industry_Report.pdf [*hereinafter* CRISIS OR OPPORTUNITY].

fectively shut down by the withdrawal of manufacturer contracts.⁸⁵ These small firms engaged in fierce competition to outbid each other,⁸⁶ driving down prices in order to attract business from manufacturers.⁸⁷ While the Los Angeles garment industry still constituted an integrated production system under the NLRA, manufacturers were able to effectively thwart unionization by shifting production among small contracting shops to make organizing any one shop extremely difficult.

Manufacturers moved toward this more aggressive contracting posture in part because of changes at the pinnacle of the industry pyramid that threatened their economic position. As the number of contractors grew, the number of retailers diminished, concentrating power in the hands of a small cohort of giant department stores and discount chains like Wal-Mart.⁸⁸ The new market dominance of these retail giants conferred greater power to set prices, which allowed the retailers to drive a harder bargain with manufacturers, particularly those outside the high-end sector especially vulnerable to the threat of outsourcing.⁸⁹ In addition, many retailers began to produce their own brand labels, which competed directly with the traditional manufacturers in price and quality. As a result, retailers increasingly dictated the industry's cost structure by setting prices through bulk purchasing and offshoring their own private label production.⁹⁰ Manufacturers, their profits diminished, looked to make up the difference by forcing lower prices on their network of contractors.

5. Labor Enforcement

For manufacturers, extracting cost savings at the contractor level meant setting the price of jobs at low margins that created incentives for contractors to “sweat out” profits by paying below the minimum wage, eliminating employee benefits, and reducing investments in employee safety.⁹¹ It also meant that manufacturers sought to insulate themselves from the legal consequences of contractor abuse. Contracting was therefore done not just to implement an economic division of labor, but also to enforce a legal division of accountability. Whereas manufacturers in the post-

85. BONACICH & APPELBAUM, *supra* note 40, at 139–40. Based on 1998 Department of Labor figures, Bonacich and Appelbaum estimated that there were 4,500 registered contracting shops in Los Angeles.

86. Lora Jo Foo, *The Vulnerable and Exploitable Immigrant Workforce and the Need for Strengthening Worker Protective Legislation*, 103 YALE L.J. 2179, 2187–88 (1994).

87. Cf. Shirley Lung, *Exploiting the Joint Employer Doctrine: Providing a Break for Sweatshop Garment Workers*, 34 LOY U. CHI. L.J. 291, 302 (2003) (noting that in 1994, “the GAO estimated that less than 1000 manufacturers, who outsourced work to 20,000 contractors and subcontractors, dominated the industry”).

88. Nelson Lichtenstein, *Wal-Mart: A Template for Twenty-First-Century Capitalism*, in WAL-MART: THE FACE OF TWENTY-FIRST-CENTURY 3, 9 (Nelson Lichtenstein ed., 2006).

89. Bonacich, *supra* note 51, at 132.

90. *Id.*

91. Lung, *supra* note 87, at 302.

ment reported that there were 4,500 sweatshops in Los Angeles,¹⁰⁰ while a state study found that half of California's garment shops were in violation of minimum wage laws and two-thirds broke overtime laws.¹⁰¹ A 1998 Department of Labor survey repeated similar conclusions, finding that nearly two-thirds of garment firms in Los Angeles were violating wage-and-hour regulations, underpaying workers by over \$70 million per year.¹⁰² As these figures underscored, the shift in the garment industry from joint production to individual contract subverted the system of labor compliance—normalizing the sweatshop and rendering exceptional the garment firm that complied with labor law.

B. *Law in the Resistance to Garment Sweatshops*

The anti-sweatshop movement in Los Angeles took shape around the goal of reconstituting the fractured system of garment regulation. At its most ambitious, the objective was to make legal responsibility follow economic power by rupturing the legal fiction that protected profitable manufacturers and retailers from the labor abuses committed by their contractors. Beginning in the mid-1990s, at the height of the Los Angeles garment industry's employment strength and on the cusp of the decline that began with the phase-out of foreign production quotas, a coalition of activists and lawyers pursued this goal—sometimes in coordination and at other times in isolation. This anti-sweatshop movement developed along four interrelated paths: union organizing, impact litigation, policy advocacy, and grassroots organizing.

1. *A Fledgling Coalition*

The story of anti-sweatshop activism unfolded in dramatic fashion, with lawyers and activists seizing upon high-profile cases of abuse to achieve policy change. Yet it began, more tentatively, with the development of relationships among activists and the formation of an anti-sweatshop coalition. In the 1980s, though the problem of garment sweatshops was familiar to individual advocates who saw abuse through the eyes of clients and co-workers, it was still largely hidden from public view. The low political profile of garment sweatshops meant limited opportunities for coordinated action among activists. Moreover, despite the small size of the advocacy community, there were no formal mechanisms of inter-organizational exchange and coordination. This situation began to change in the early 1990s as high-profile stories of garment industry abuse emerged, highlighting the extent of the sweatshop problem—both in Los Angeles and

100. U.S. GEN. ACCOUNTING OFFICE, REPORT NO. GAO/HEHS-95-29, GARMENT INDUSTRY: EFFORTS TO ADDRESS THE PREVALENCE AND CONDITIONS OF SWEATSHOPS 5 (1994).

101. Stuart Silverstein, *Survey of Garment Industry Finds Rampant Labor Abuse*, L.A. TIMES, Apr. 15, 1994, at D1.

102. BONACICH & APPELBAUM, *supra* note 40, at 3.

San Francisco—and creating openings for collaboration around legislative and grassroots initiatives. These openings allowed activists from multiple disciplines to come together in different types of alliances to chart new strategies for shifting accountability for sweatshop violations to manufacturers and retailers.

Organized labor emerged at the forefront of the drive to resuscitate legal joint employer status between manufacturers and contractors—though this time in the form of statewide legislation, rather than through collective bargaining. The political opportunity to press for a state joint employer bill first came in 1990, when reports of sweatshop raids revealing widespread wage-and-hour violations committed by judgment-proof garment contractors prompted state policy makers to take up the matter.¹⁰³ The joint employer legislative campaign was led by the ILGWU, which joined with a range of California organizations to form the Coalition to Eliminate Sweatshop Conditions as a vehicle to lobby for the bill.¹⁰⁴ For the first time, the Coalition formally brought together major anti-sweatshop players, which included the ILGWU, immigrant rights organizations, worker centers, and women's rights groups. The Coalition, in conjunction with the California Labor Federation, succeeded in gaining passage of joint liability bills by the California State Legislature in 1990, 1991, and 1994,¹⁰⁵ only to see them vetoed by Republican Governors George Deukmejian and Pete Wilson.¹⁰⁶

At the grassroots level, groups also came together in campaign-specific alliances. In 1992, the Asian Immigrant Women Advocates, based in Oakland's Chinatown, mounted a campaign against the dress designer Jessica McClintock after a dozen Asian immigrant women complained of being denied \$15,000 in wages by one of McClintock's defunct contractors.¹⁰⁷ The campaign took out prominent advertisements in *The New York Times* and picketed McClintock boutiques, drawing widespread public attention to the discrepancy between the designer's profit and the workers' penury, while also enlisting the San Francisco-based Asian Law Caucus and American Civil Liberties Union (ACLU) to fight McClintock's legal challenges to the boycotts.¹⁰⁸ In Los Angeles, the Korean Immigrant Workers Advocates (KIWA) coordinated boycotts, prompting a lawsuit by McClintock to prevent picketing in front of her Beverly Hills store. APALC represented KIWA and student protesters in the lawsuit.

103. BONACICH & APPELBAUM, *supra* note 40, at 225.

104. KATIE QUAN, *CTR. FOR LABOR RESEARCH & EDUC. - INST. OF INDUS. RELATIONS, LEGISLATING SWEATSHOP ACCOUNTABILITY 5* (Univ. of Cal., Berkeley 2001).

105. *Id.* at 4–6.

106. Quan, *supra* note 47, at 32.

107. Ruth Needleman, *Building Relationships for the Long Haul: Unions and Community-Based Groups Working Together to Organize Low-Wage Workers*, in *ORGANIZING TO WIN: NEW RESEARCH ON UNION STRATEGIES* 71, 74–75 (Kate Bronfenbrenner et al. eds., 1998).

108. *Id.* at 76–77.

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As the anti-sweatshop coalition developed, there were a number of non-lawyers who made key contributions. Katie Quan, a former ILGWU organizer (and now co-director of the UC Berkeley Labor Center), and Roy Hong, founder of KIWA, were both important leaders who helped to articulate the coalition's campaign agenda.¹⁰⁹ In addition, UNITE's regional director, Steve Nutter, made crucial connections between the coalition and organized labor and also promoted a state-wide legislative approach.¹¹⁰ The coalition also drew heavily from the ranks of legal organizations, which brought together the experience of senior advocates with the energy of brand-new lawyers. Lora Jo Foo, a former garment worker and labor organizer in San Francisco, joined the Asian Law Caucus in 1992 after seven years at a labor-side law firm. She focused on litigating immigrant labor cases in sweatshop industries, particularly in San Francisco's Chinatown. Foo was joined in the early anti-sweatshop network by another senior lawyer from San Francisco, Rose Fua, who worked at Equal Rights Advocates (ERA), an impact litigation group focusing on women's rights. An infusion of younger advocates occurred through legal fellowship programs, which provided a key stimulus to the incipient movement. In 1994, the Asian Law Caucus and ERA were both awarded fellows to work on garment issues: Leti Volpp, a Columbia graduate, won the prestigious Skadden Fellowship to build a garment worker project at ERA (and later moved to the ACLU Immigrants' Rights Project), while Laura Ho, from Yale, received the National Association of Public Interest Law fellowship to work with Foo at the Asian Law Caucus. That same year, Julie Su also received the Skadden Fellowship to provide legal assistance to low-wage Asian American workers, with a special focus on the garment industry, at APALC in Los Angeles.¹¹¹

2. *The Rise of Law: The Thai Worker Case*

When Su started working at APALC in 1994, the group was not focused on legal advocacy for low-wage workers, but concentrated instead on a variety of other issues, including language access and voting rights for Asian Americans, as well as domestic violence and hate crimes.¹¹² Though they had represented individual employees in wage-and-hour cases, they had not attempted to invest resources in combating labor abuse in targeted industries with large concentrations of immigrant workers.¹¹³ Su's fellow-

109. Email from Julie Su, Litigation Director, Asian Pac. Am. Legal Ctr., to Scott Cummings, Professor, UCLA School of Law (Apr. 11, 2008).

110. *Id.*

111. See Telephone Interview with Julie Su, Litigation Director, Asian Pac. Am. Legal Ctr. (Feb. 19, 2008).

112. Telephone Interview with Julie Su, Litigation Director, Asian Pac. Am. Legal Ctr. (July 13, 2006).

113. *Id.*

ship project was meant to change this through an industry-focused approach to immigrant labor violations, but her initial proposal was quite broad, reflecting her inexperience and limited understanding of the structure of the garment industry.¹¹⁴ She was drawn to litigation, but was interested in structural reform, not simply individual representation: “I felt like if we could attack a structure, we might not just help individual workers, but prevent the abuse before it happened.”¹¹⁵ She also recognized the limits of legal action and from the beginning sought to use litigation as a vehicle not just to achieve joint liability, but ultimately to organize workers.¹¹⁶ Thus, in the first year of her fellowship, she attempted to learn from experienced lawyers like Foo and Fua, but also to help support direct organizing efforts, conducting some limited background research to assist in the planning of the impending union campaign against Guess.¹¹⁷ She also met actively with other groups as APALC’s representative in the Coalition to Eliminate Sweatshop Conditions.¹¹⁸

Though legal cases are often criticized as demobilizing political efforts by co-opting grassroots leaders and holding out the false promise of change, they can—sometimes—galvanize political action by naming injustice, revealing the vulnerability of adversaries, and demonstrating the possibility of reform.¹¹⁹ The Thai worker case was such a catalytic event. When seventy-two Thai workers (sixty-seven women and five men) were discovered on August 2, 1995 after state and federal labor agents raided a factory in El Monte, Su—still a first-year lawyer—could no longer proceed to study the industry at a comfortable pace. Instead, she was forced to take a crash course that placed her at the center of the case that came to define anti-sweatshop activism.

The Thai workers found in El Monte were smuggled there by an organized crime ring that took their passports and withheld their earnings in payment for transporting the workers to the United States.¹²⁰ They were held by force, cowed by threats that if they tried to escape, their families would be murdered and they would be reported to the Immigration and Naturalization Service (INS).¹²¹ In 1995, a worker who escaped through an

114. Telephone Interview with Julie Su, *supra* note 111.

115. Telephone Interview with Julie Su, *supra* note 112.

116. Telephone Interview with Julie Su, *supra* note 111.

117. *Id.*

118. *Id.*

119. Michael McCann, *Law and Social Movements*, in *THE BLACKWELL COMPANION TO LAW AND SOCIETY* 506, 511 (Austin Sarat ed., 2004).

120. James Sterngold, *Agency Missteps Put Illegal Aliens at Mercy of Sweatshops*, N.Y. TIMES, Sept. 21, 1995, at A16.

121. Su, *supra* note 33, at 406. In fact, there was evidence that the INS was aware of the Thai worker’s plight well before the 1995 raid. In 1992, an INS agent investigating the El Monte compound had written several memos to his superiors detailing suspicious activity there; although the INS asked federal authorities for a search warrant, the United State’s Attorney’s office in Los Angeles did not seek court permission to execute it, citing a lack of evidence. See Paul Feldman, Patrick J. McDonnell &

air conditioning duct contacted the INS and the DLSE about the abuses occurring at the El Monte factory.¹²² As the INS sought to gather enough information to get a federal warrant, state labor department agents, supported by their federal labor department counterparts and the Los Angeles and El Monte police, executed a warrant and conducted the raid.¹²³

Once discovered, the Thai workers were not immediately freed. Instead, the INS put the workers into detention at a federal penitentiary.¹²⁴ Su, part of a group of Asian American activists, demanded the workers' release, arguing that their detention sent the wrong message by discouraging other abused workers from reporting violations.¹²⁵ When their calls for immediate release went unheeded, the group set up an office in the INS building and resorted to "aggression and street tactics."¹²⁶ Twenty-one workers were released on \$500 bail each after one week;¹²⁷ the rest were released two days later.¹²⁸ On top of managing the Thai workers' mounting legal issues, Su spent the next several weeks providing logistical support to help the workers transition to their new lives—searching for housing, recruiting volunteers to teach English, and making doctor appointments—while taking the workers to Los Angeles attractions like Griffith Park and Disneyland.¹²⁹ This was not simply diversionary, but done as part of the task of helping the workers reintegrate after the twin horrors of enslavement by their El Monte employers and incarceration by the U.S. government. In addition, the workers received significant community support from the Thai Community Development Corporation, which helped to find new jobs and homes.¹³⁰

The legal process related to the Thai worker case proceeded on multiple tracks. The operators of the El Monte shop—ten Thai nationals, including a 66-year-old grandmother known as "Auntie," who ran the shop, and her five sons¹³¹—were indicted on federal charges of kidnapping, which carried a potential life sentence, as well as lesser charges of conspiracy,

George White, *Thai Worker Sweatshop Probe Grows*, L.A. TIMES, Aug. 9, 1995, at A1; Patrick J. McDonnell & Paul Feldman, *Wilson Attacks INS Over Sweatshop Probe Politics*, L.A. TIMES, Aug. 25, 1995, at B1.

122. Patrick Lee & George White, *INS Got Tip on Sweatshop 3 Years Ago*, L.A. TIMES, Aug. 4, 1995, at A1.

123. *Id.*

124. Su, *supra* note 33, at 407.

125. *Id.* at 407.

126. *Id.* at 408.

127. Karl Schoenberger, Patrick J. McDonnell & Shawn Hubler, *21 Thais Found in Sweatshop Are Released*, L.A. TIMES, Aug. 12, 1995, at A1.

128. Su, *supra* note 33, at 408.

129. K. Connie Kang, *Final \$1.2 Million Added to Thai Workers' Settlement*, L.A. TIMES, July 29, 1999, at A1; Pamela Warrick, *THE FREEDOM FIGHTER; LAWYER JULIE SU FINDS INSPIRATION IN THE THAI GARMENT WORKERS SHE'S ASSISTING*, L.A. TIMES, Sept. 4, 1995, at E1.

130. Peter Hong, *Speaking Up for the Silent*, L.A. TIMES, Aug. 23, 1995, at B2.

131. Patrick J. McDonnell & Maki Becker, *7 Plead Guilty in Sweatshop Slavery Case*, L.A. TIMES, Feb. 10, 1996, at A1.

indentured servitude, and harboring and concealing illegal immigrants.¹³² Eight pled guilty to the lesser charges in exchange for the government dropping the kidnapping count and were given sentences of up to seven years; two remained fugitives thought to be in Thailand.¹³³

The released Thai workers faced the immediate problem of their undocumented immigration status. Their short-term dilemma was resolved when they were granted S visas under a newly enacted program providing temporary status for noncitizens providing “critical reliable information” concerning “a criminal organization or enterprise.”¹³⁴ Under the S visa program, the Thai workers were allowed to remain in the United States in exchange for being willing to testify as material witnesses in the criminal case against the sweatshop operators.¹³⁵ Although the law provided that S visa holders could adjust to permanent resident status after three years if they “substantially contributed to the success of an authorized criminal investigation,”¹³⁶ the Thai workers were not granted permanent residency until 2002.¹³⁷ The lengthy negotiations between the workers’ lawyers and INS officials centered on the application of the S visa law, originally passed to help prosecute drug trafficking and terrorism cases, to provide permanent status to victims of human trafficking.¹³⁸ It was only after a series of meetings between Su and federal officials—including a meeting between Su and Attorney General Janet Reno—that the INS was ultimately persuaded to give the workers permanent residency.¹³⁹

Recovery of the estimated \$5 million the workers were owed in back wages was pursued both by public officials and private lawyers. On the public side, the California DLSE took a leading role investigating the El Monte sweatshop, called SK Fashions, and the manufacturers with which it did business.¹⁴⁰ The DLSE first imposed fines on several manufacturers

132. Paul Feldman & Patrick J. McDonnell, *Sweatshop Operators Indicted*, L.A. TIMES, Nov. 10, 1995, at B3.

133. McDonnell & Becker, *supra* note 131, at A1.

134. 8 U.S.C. § 1101(a)(15)(S).

135. Kenneth Chang, *Not Home Free; Thais Freed from Sweatshop Are Adjusting to Life in U.S., but the Future Is Uncertain*, L.A. TIMES, June 19, 1996, at B4.

136. 8 U.S.C. §§ 1255(j)(1)(B), 1255(l)(1)(A).

137. K. Connie Kang, *Once Virtual Slaves, 71 Thai Workers Win U.S. Residency*, L.A. TIMES, Nov. 18, 2002, at B1.

138. Julie A. Su, *The Progressive Critique of the Current Socio-Legal Landscape: Corporations and Economic Justice*, 4 SEATTLE J. SOC. JUST. 237, 242 (2005).

139. *Id.*; see also Kang, *supra* note 137, at B1.

140. The federal Department of Labor was also involved in investigations into allegations that some of the products from the El Monte shop ended up on the racks at retailers Neiman Marcus, Robinson’s May, and Macy’s, and asked that the retailers contribute toward the \$5 million owed to the workers. See *Balanced Solution is Required for Garment Industry Trouble*, L.A. TIMES, Aug. 20, 1995, at M4; see also Kenneth B. Noble, *U.S. Warns Big Retailers About Sweatshop Goods*, N.Y. TIMES, Aug. 15, 1995, at A14 (stating that Labor Secretary Robert Reich called a meeting of major apparel retailers, including Federated and May, to “discuss ways to prevent goods made by slave labor from being sold”).

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dealing with SK Fashions for failing to following a state licensing law.¹⁴¹ The DLSE then moved to distribute back pay awards from assets it had seized from the El Monte shop operators and some of its manufacturers during the initial raid.¹⁴² In March of 1996, the state paid the workers \$1 million from the seized assets of SK Fashions and money received from five manufacturers that paid into a fund as part of a settlement with the state, which had threatened prosecution under a state law holding manufacturers liable for the labor violations of unlicensed contractors.¹⁴³

On the private side, a coalition of legal organizations led by APALC filed a civil lawsuit just over a month after the El Monte raid on behalf of sixty-four Thai workers against the sweatshop operators,¹⁴⁴ both individually and as SK Fashions, seeking hundreds of millions of dollars in damages for involuntary servitude, fraud, misrepresentation, assault, false imprisonment, and violations of the Racketeer Influenced and Corrupt Organization ACT (RICO).¹⁴⁵ In an amended complaint filed in October of 1995, the plaintiffs added ten “manufacturer” defendants, including Mervyn’s, which allegedly used the shop to produce its private-label items, and manufacturers Tomato, LF Sportswear, Ms. Tops, Topson Downs of California, F-40, New Boys, Bigin, Italian Club, and B.U.M. International.¹⁴⁶ The amended complaint incorporated a range of employment claims against these manufacturer defendants, asserting that they failed to pay wages and engaged in illegal industrial homework under federal law. It also alleged that the manufacturers violated state laws prohibiting contracting with unlicensed entities, negligent hiring, and unfair business practices.¹⁴⁷

The legal team assembled to file the federal lawsuit forged new connections between APALC and the labor and civil rights legal community, while drawing upon the relationships formed through the earlier process of anti-sweatshop coalition building. Su, along with the director of APALC, Stewart Kwoh, realized at the outset that they were going to need co-counsel given the magnitude of the case.¹⁴⁸ Through UNITE’s regional director Steve Nutter, Su was connected to Della Bahan—a labor lawyer at the

141. Kenneth B. Noble, *Manufacturers Fined in Sweatshop Inquiry*, N.Y. TIMES, Aug. 16, 1995, at A22.

142. The state senate placed additional pressure on the manufacturers, at one point calling them to testify at a public hearing in the El Monte City Hall. See Paul Feldman & Carl Ingram, *8 Suspects in Sweatshop Ring Plead Not Guilty*, L.A. TIMES, Aug. 22, 1995, at B1.

143. George White, *Sweatshop Workers to Receive \$1 Million*, L.A. TIMES, Mar. 8, 1996, at B1.

144. Ian James, *Freed Thai Workers File Lawsuit*, L.A. TIMES, Sept. 6, 1995, at B3.

145. *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1458 (C.D. Cal. 1996). “The high damage amount was partly symbolic, Su said, because the alleged operators could not totally repay the victims for what she called their ‘recklessness’ and ‘inhumanity.’” James, *supra* note 144.

146. *Bureerong*, 922 F. Supp. at 1458; K. Connie Kang, *Thai Workers Sue Top Clothing Businesses Over El Monte Plant*, L.A. TIMES, Oct. 26, 1995, at B1.

147. *Bureerong*, 922 F. Supp. at 1459.

148. See Telephone Interview with Julie Su, Litigation Director, Asian Pac. Am. Legal Ctr. (Aug. 9, 2007).

Pasadena-based law firm of Rothner, Segall, Bahan & Greenstone—and the two formed the lead counsel team in the case.¹⁴⁹ Bahan brought in Dan Stormer from the Pasadena-based civil rights law firm of Hadsell & Stormer; the firm had a reputation as a litigation powerhouse and Stormer was considered to be extremely strong in settlement negotiations.¹⁵⁰ Because there was great interest from nonprofit legal groups in supporting the anti-sweatshop cause, Su, Bahan, and Stormer convened an early discussion about how large the legal team should be, ultimately deciding to bring in all the organizations that wanted to partner.¹⁵¹ In the end, the team included attorneys from nonprofit public interest law organizations allied with the anti-sweatshop cause: Lora Jo Foo and Laura Ho from the Asian Law Caucus; Lucas Guttentag and Leti Volpp from the ACLU Immigrants' Rights Project; and Mark Rosenbaum, Daniel Tokaji, and David Schwartz from the ACLU Foundation of Southern California.¹⁵²

In terms of division of labor, Bahan was responsible for the case management and APALC maintained primary contact with the client group, though Su, as a young attorney, was careful not to be pigeonholed as client liaison and worked to ensure that the nonprofit lawyers generally were involved in discovery, brief writing, and arguing motions.¹⁵³ Since the younger attorneys at APALC, the Asian Law Caucus, and the ACLU were eager to be part of the case and gain experience working with some of the state's top public interest attorneys, they put in an enormous amount of hours on discovery and legal research.¹⁵⁴ Though they deferred to the judgment of the more experienced litigators—particularly Bahan, Stormer, and Rosenbaum—on issues of strategy, they were able to play important roles by helping to draft the complaint, taking depositions, and arguing some early motions.¹⁵⁵ For instance, Su and Tokaji worked closely together to help file the initial complaint, draft the opposition to the companies' motions to dismiss, and handle the massive discovery.¹⁵⁶ Though decisions were generally by consensus, some tensions arose. In particular, there was a feeling among some of the APALC attorneys that the senior lawyers were skeptical about their capabilities and their choice to invest their time in client empowerment activities. Su bristled at “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,

149. *Id.*

150. *Id.*

151. *Id.*

152. Email from Julie Su to Scott Cummings, *supra* note 109.

153. *Id.*; see also Kang, *supra* note 129 (noting that Su met with the sweatshop workers nightly for eight months).

154. See Telephone Interview with Julie Su, *supra* note 148.

155. *Id.*

156. Email from Julie Su to Scott Cummings, *supra* note 109.

brief writing and arguing—to the real lawyers.’”¹⁵⁷ Yet for Su, client education and empowerment were integral to the broader anti-sweatshop strategy, providing the glue to hold the workers together during the litigation process and build a foundation for future activism. In addition, while tensions arose in the case, which was strategically complex and litigated under difficult circumstances, deep friendships were also forged. Bahan—“a woman in a sea of men”—was a role model for Su, teaching her “everything from where to look for the applicable rule for a specific judge to strategizing in an enormously complex and unprecedented case.” Su recalled being “in awe of her,” and counted her friendship with Bahan as one of the important legacies of the case.¹⁵⁸ In addition, Su pointed to the opportunity to work with “some of the premier attorneys in the country working for social and economic justice” as a “gift” that not only allowed her to hone her litigation skills, but also brought her into contact with a group of highly respected lawyers who would remain professional mentors and friends.¹⁵⁹

The key to the case was surviving the defendants’ motion to dismiss. The defendants’ motion struck at the heart of the workers’ claims, which sought to extend liability for the El Monte abuses to the manufacturers that had contracted with SK Fashions. At one level, the focus on manufacturer liability recognized the economic realities of the case: with the individual sweatshop operators incarcerated and their business assets already seized, the claims against the manufacturers held the only possibility of recovery. Yet the focus on the manufacturers was also an effort to address the broader economic structure of the garment industry by sending a message to the manufacturers that they would be held to account for their contractors’ labor abuses. In legal terms, this argument was framed in terms of applying FLSA’s “joint employer” theory, which had long been used to target labor violations in subcontractor relations,¹⁶⁰ to the garment industry.¹⁶¹

The strategy paid off. On March 21, 1996, federal district court judge Audrey Collins, an African American Clinton appointee and former legal aid lawyer, denied key parts of the defendants’ motion to dismiss. In particular, she denied the defendants’ motion to dismiss the joint employer liability claim, citing the “economic realities” of the contractors’ relationship to the manufacturers.¹⁶² Despite the fact that the court found the defendant

157. Su, *supra* note 33, at 416-17.

158. Email from Julie Su to Scott Cummings, *supra* note 109.

159. *Id.*

160. *See, e.g.*, *Real v. Driscoll Strawberry Associates, Inc.*, 603 F.2d 748 (9th Cir. 1979) (reversing a district court dismissal of a claim by agricultural workers that they were employees of a strawberry grower and its contractor under the joint employer test of the FLSA); *see also* Rick McHugh, *Recognizing Wage and Hour Issues on Behalf of Low-Income Workers*, 35 CLEARINGHOUSE REV. 289, 296 (Sept.-Oct. 2001).

161. Leo L. Lam, Comment, *Designer Duty: Extending Liability to Manufacturers for Violations of Labor Standards in Garment Industry Sweatshops*, 141 U. PA. L. REV. 623, 646-52 (1992).

162. *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1468-69 (C.D. Cal. 1996).

manufacturers were “clearly removed from the actual garment manufacturing process that transpired in the El Monte facility” and that there was “no ‘traditional’ employment relationship,” it pointed to allegations that the manufacturers contracted out to avoid liability and set unfairly low prices in concluding that the plaintiffs had sufficiently stated a claim of manufacturer “control” over the sweatshop employees.¹⁶³

The victory on the motion to dismiss was followed by a series of legal maneuvers that ultimately resulted in settlement. On the heels of the ruling, the plaintiffs’ lawyers amended their case to include back pay claims for a group of Latino garment workers employed in the downtown Los Angeles “front store” owned by the El Monte factory operators.¹⁶⁴ The amendment was filed, in part, to bolster the Thai worker case: by demonstrating that the downtown store had too few workers and sewing machines to produce the quantity of garments in the time frame demanded by the manufacturers, the case suggested that the manufacturers’ quality control agents “either knew or should have known” that the garments were being produced elsewhere by exploited labor.¹⁶⁵ Because it was brought on behalf of Latino workers who were not enslaved—but denied wages in the normal course of employment—the suit was designed to highlight the endemic problem of labor abuse outside the extreme situation of El Monte, while also fostering cross-racial collaboration between Asians and Latinos in the garment industry.

This amendment was followed by another amended complaint in the Thai worker case that incorporated multiple claims against manufacturer Hub Distributing, Inc., including a novel state law theory arguing that Hub had negligently sold goods tainted by sweatshop labor for profit. This theory was modeled on the “hot goods” provision of FLSA, which prohibited the sale of goods made in violation of labor law across state lines but contained no individual right of action. Hub moved to dismiss on multiple grounds. On March 3, 1997, Judge Collins issued an order denying critical parts of Hub’s motion.¹⁶⁶ Though she did dismiss the sale of tainted goods claim, she granted plaintiffs leave to amend the complaint to include a properly pleaded negligence per se claim based on FLSA’s hot goods provision.¹⁶⁷

Settlement negotiations took place in the context of intensive media coverage that generated an enormous wellspring of public sympathy for the Thai workers.¹⁶⁸ Rather than face a possible trial, with the negative exposure that it would have entailed, the main defendants moved to jointly settle

163. *Id.*

164. *39 Garment Workers File Suit to Recover \$1.8 Million in Wages*, L.A. TIMES, Apr. 5, 1996, at B4.

165. Su, *supra* note 35, at 146.

166. *Bureerong*, 959 F. Supp. 1231.

167. *Id.* at 1237-38.

168. Su, *supra* note 33, at 413.

the case before summary judgment. On the plaintiffs' side, though Su wanted to gain a definitive court judgment on the joint liability issue, the workers were eager to put the case behind them—and the lawyers had already won favorable rulings on the motions to dismiss. In late October 1997, five of the manufacturer defendants—Mervyn's, Montgomery Ward, B.U.M. International, and LF Sportswear, and (in a separate undisclosed agreement) Hub—settled for more than \$2 million while admitting no wrongdoing.¹⁶⁹ This was in addition to previous settlements with other manufacturers totaling \$300,000,¹⁷⁰ and on top of the \$1 million already given to the workers as part of the DLSE's back pay award. Although the workers could not regain the time lost in bondage and most still labored in the Los Angeles garment industry, the settlement punctuated a dramatic turnaround. Two years after the El Monte raids they had recovered over three-fifths of their back wages.

The October settlement with the main defendants also raised the issue of payment for the lawyers. Su was concerned about the collection of attorney's fees because she did not want to play into "the rumors and deep distrust coming from some segments" of the Asian-American community, evident in media stories in Thai news outlets suggesting that APALC simply wanted to use the case to make money.¹⁷¹ As a result, the lawyers agreed after the October settlement that APALC would proceed pro bono against the remaining defendants and that Stormer and Bahan, whose firms relied on fees to function, would withdraw. Stormer and Bahan were replaced by Ekwon Rhow, a law school classmate of Su, who worked at the Los Angeles law firm of Bird Marella, which agreed to take the case on a pro bono basis. Bird Marella handled depositions, preparation for summary judgment, and settlement negotiations with the remaining defendants.¹⁷² The case finally drew to a close in 1999, when the plaintiffs won a final \$1.2 million settlement from Tomato, Inc., the El Monte sweatshop's largest customer.¹⁷³ In total, when one added the settlements from the APALC litigation to those from the earlier DLSE actions, the workers' ultimate recovery stood at over \$4.5 million—or about \$10,000 to \$80,000 per worker based on the length of employment.¹⁷⁴

169. Patrick McDonnell & George White, *Sweatshop Workers to Get \$2 Million*, L.A. TIMES, Oct. 24, 1997, at D1.

170. *Id.*

171. Telephone Interview with Julie Su, *supra* note 148; Email from Julie Su to Scott Cummings, *supra* note 109.

172. Telephone Interview with Julie Su, *supra* note 148.

173. Kang, *supra* note 129.

174. *Id.*

3. *The Decline of Union Organizing: The Guess Campaign*

As a matter of principle, the Thai worker litigation shared much in common with the garment union's organizing drive against the Los Angeles-based designer jeans manufacturer Guess, which developed along a parallel path during the same five-year period at the end of the 1990s. Both sought to impose legal responsibility on targeted manufacturers as a way to improve labor conditions and empower garment workers. Yet, as a matter of strategy and outcome, the two campaigns were strikingly distinct. While the Thai worker case represented the use of law to enforce legal minimum standards in response to unanticipated events, the Guess campaign involved the strategic deployment of legal and organizing resources to take wages out of competition in the Guess sub-industry through collective bargaining. And while the Thai worker case resulted in compelling victory, the Guess union campaign ended in acrimonious defeat.

As a matter of chronology, the genesis of the union drive occurred just before the Thai worker case exploded into public view. At the moment of the El Monte raid, the ILGWU was in the midst of planning its own campaign to jumpstart the union's flagging fortunes in the Los Angeles garment industry. By 1992, the ILGWU had barely 2,000 members in Los Angeles (down from 4,000 to 5,000 in the mid-1970s),¹⁷⁵ with virtually all of them outside the garment industry.¹⁷⁶ Accordingly, in 1994 the ILGWU's Los Angeles organizing staff, with the reluctant blessing of the more powerful union leaders in New York, developed a plan to target Los Angeles's largest and most successful garment manufacturer, Guess,¹⁷⁷ which offered a number of strategic advantages from an organizing perspective. Guess had built a visible brand name producing designer jeans and was the most profitable apparel manufacturer in Southern California in the mid-1990s.¹⁷⁸ Its production system was large (3,500 workers employed mostly through seventy contractors) and geographically concentrated in downtown Los Angeles,¹⁷⁹ making sectoral organizing possible. Also, Guess had emphasized in its advertising that its products were "Made in the USA," rendering the firm susceptible to a media campaign sully that claim.¹⁸⁰ Moreover, the union believed that there were economic factors keeping high-end denim production in the United States, including the need for quality fabric, skilled production workers, and quick turnaround.

175. MILKMAN, *supra* note 52, at 89 tbl. 2.2; Milkman & Wong, *supra* note 55, at 105. Union density in the garment industry, at two percent, was much lower than in the Los Angeles region as a whole.

176. MILKMAN, *supra* note 52, at 163.

177. *Id.* at 162-63.

178. BONACICH & APPELBAUM, *supra* note 40, at 214, tbl. 8 (showing that Guess was Southern California's most profitable apparel manufacturer in 1996-1997, with nearly \$67 million in annual profit, and a sales volume that ranked it as the 21st largest domestic apparel manufacturer).

179. MILKMAN, *supra* note 52, at 162, 164.

180. *Id.* at 162-63.

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The ILGWU organizers decided that targeting Guess offered a second-best solution to labor's problems in the Los Angeles garment industry. They understood that shop-by-shop organizing was doomed to fail since manufacturers could easily move work from one contractor to the next,¹⁸¹ and that the optimal solution would be to take wages out of competition in the entire regional garment industry.¹⁸² However, although the union local had a good reputation for organizing immigrants, it faced resource constraints and internal problems, including a shortage of Spanish speaking representatives,¹⁸³ and lacked critical national-level support for a large-scale campaign.¹⁸⁴ Thus, the Guess campaign was conceived as a transitional strategy, giving the union a prominent beachhead in the industry,¹⁸⁵ while allowing it to claim progress in a broader campaign to revitalize the labor movement.¹⁸⁶

The specific strategy was two-pronged. On the ground, union leaders planned to organize 500 to 1,000 workers to conduct shop-level "unfair labor practice" (ULP) strikes over specific illegal practices by employers.¹⁸⁷ The advantage of ULP strikes from a legal perspective was that workers who undertook them could not be permanently replaced by employers, as they could in strikes over general economic concerns.¹⁸⁸ ULP strikers could thus be freed up to walk picket lines without the fear of (legally) losing their jobs. This "ground war" was to be combined with a corporate campaign—an "air war"—designed to publicize the sweatshop conditions of Guess workers in order to damage its image and reduce sales.¹⁸⁹ The objective was to obtain a collective bargaining agreement that would cover Guess and its contractors, raising wages while obtaining a commitment from Guess not to outsource its production work.¹⁹⁰

The environment for the air war seemed auspicious. In 1992, the company had been the target of a Clinton administration probe finding that several Guess contractors had committed substantial labor violations.¹⁹¹ In the face of a threatened government lawsuit, Guess became the first garment manufacturer in the country to participate in the Department of Labor's industry compliance program, signing on to an agreement to monitor contractors, pay back wages, and refrain from doing business with offending

181. Milkman & Wong, *supra* note 55, at 113.

182. MILKMAN, *supra* note 52, at 164.

183. Milkman & Wong, *supra* note 55, at 113.

184. MILKMAN, *supra* note 52, at 164.

185. *Id.*

186. Milkman & Wong, *supra* note 55, at 112.

187. MILKMAN, *supra* note 52, at 164-65; Milkman & Wong, *supra* note 55, at 115.

188. See Estlund, *supra* note 15, at 1538 n.50 ("'Unfair labor practice strikers,' whose strike is provoked or prolonged by the employer's illegal conduct, are not subject to permanent replacement.").

189. MILKMAN, *supra* note 52, at 165.

190. *Id.* at 170.

191. BONACICH & APPELBAUM, *supra* note 40, at 229-30.

shops.¹⁹² Thus, Guess had already been publicly shamed and was under intense scrutiny.

Yet internal changes at the union challenged the organizing plan. In 1995, the ILGWU merged with its counterpart, the Amalgamated Clothing and Textile Workers Union (ACTWU), to become UNITE.¹⁹³ In the aftermath of the merger, UNITE's New York-based national leaders, reflecting their skepticism about the wisdom of any type of garment industry organizing, halved the number of organizers working on the ULP strikes to fifteen and instructed the local union to focus instead on the corporate campaign, which it viewed as more likely to succeed.¹⁹⁴

The emphasis on the corporate campaign, while diminishing the role of organizing, simultaneously elevated the role of law as a key component of the air war.¹⁹⁵ The affirmative use of a lawsuit to draw attention to labor abuse was a common tactic in the context of corporate campaigns.¹⁹⁶ As a union conducted research on corporate operations, labor violations were often uncovered, giving rise to the potential for a lawsuit that focused negative media attention on the company.¹⁹⁷ With advanced planning, the filing of the lawsuit could be timed for maximum public relations effect.

UNITE followed this playbook in the first phase of the Guess campaign, deftly orchestrating its legal and media strategy to seize the offensive against the company. At the outset, UNITE received an unintended gift from the Department of Labor, which named Guess as one of only thirty-one companies nationwide on its 1995 Fair Labor Fashions Trendsetter List.¹⁹⁸ This gave UNITE a chance to draw a sharp distinction between image and reality, which it took advantage of in July 1996, when state labor regulators—acting upon a complaint filed by UNITE on the basis of its Guess research¹⁹⁹—raided eight illegal home-sewing operations they claimed had produced garments for Guess contractors.²⁰⁰ Though Guess lawyer Daniel Petrocelli from the Los Angeles firm of Mitchell Silberberg & Knupp (who would later gain fame for winning the civil wrongful death suit against O.J. Simpson) disputed the connection to Guess, the allegations

192. *Id.* at 230.

193. MILKMAN, *supra* note 52, at 166.

194. *Id.* at 167.

195. Charles Heckscher, *Living with Flexibility*, in REKINDLING THE MOVEMENT, *supra* note 55, at 59, 74.

196. Telephone Interview with David Prouty, General Counsel, UNITE HERE (Mar. 3, 2008).

197. *Id.*

198. Stuart Silverstein & George White, 'Good Guy' Labor List Gets a Bad Rap, L.A. TIMES, Dec. 6, 1995, at D1.

199. Thomas J. Ryan, *Guess Finally Floats IPO but It Comes in at \$18; Firm also Hit by New Labor Troubles*, DAILY NEWS REC., Aug. 8, 1996, at 3.

200. Stuart Silverstein & Vicki Torres, *String of Illegal Home-Sewing Sites Found, Regulators Say*, L.A. TIMES, July 31, 1996, at D1.

raised concerns about Guess's labor practices just as the company was preparing for an initial public offering (IPO) to raise \$200 million in capital.²⁰¹

The IPO was a key pressure point for UNITE, offering both media attention and the chance to inflict real economic damage on Guess by shaking investor confidence in the company and reducing the IPO price—thereby reducing the total capital raised.²⁰² The IPO, initially scheduled for August 1, 1996, was delayed after the revelations of home-sewing operations, combined with UNITE picketing at Guess's investor meeting at New York's Waldorf-Astoria, rattled investors' nerves.²⁰³ In the interim period, UNITE organized demonstrations at Guess IPO functions, Guess retail outlets, and the Los Angeles office of Merrill Lynch, one of the firms underwriting the IPO.²⁰⁴

When Guess regrouped to launch its IPO on August 7, UNITE counterpunched the same day by filing a class action lawsuit in California Superior Court on behalf of 2,000 workers claiming labor abuse.²⁰⁵ The lawsuit named the company and sixteen contractors (fifteen cut-and-sew shops and one laundry²⁰⁶) as defendants and included federal and state wage-and-hour claims, as well as state unfair business practices and negligent hiring claims.²⁰⁷ In addition, the complaint alleged that Guess was liable for its contractors' violations under a third-party beneficiary theory, arguing that the company owed obligations to the workers based on its compliance agreement with the Department of Labor.²⁰⁸ A key argument was that Guess had detailed information from its contractors about how long it took to produce individual garments (based on the monitoring it undertook in accordance with the compliance agreement), and that it therefore must have known that its contract prices were insufficient to provide for legal wage payments to the workers. Along these lines, the complaint asserted that "Guess engaged and continues to engage in a pattern and practice of contracting at unfairly low prices by utilizing garment contractors who are chronic violators of labor laws."²⁰⁹ The factual allegations in the

201. Stuart Silverstein, *Guess Fires Back at Charges of Illegal Sewing Operations*, L.A. TIMES, Aug. 6, 1996, at D2.

202. Milkman & Wong, *supra* note 55, at 116.

203. MILKMAN, *supra* note 52, at 167.

204. The contractors named in the suit were: A&B Contractors Inc.; Buzz Sportswear International, dba Indigo Denim; Elkay Corp., dba Infinity Jeans; Evan's Apparel; Hong Kong Garment Corp., dba Joyce Fashion; Il Hong Sangsa Inc., aka Wu Yung; Jeans Plus; Kelly Sportswear; L.A. Industrial Laundry; Mona Maris; Monterey Fashion; P&K Fashions; Parks Fashion; Pride Jeans; Select Sewing; and Total Denim Concepts. *See* Ryan, *supra* note 199.

205. *See* Kristi Ellis, *Guess, Contractors Hit with Class Action Suit*, WOMEN'S WEAR DAILY, Aug. 8, 1996, at 7; *see also* Stuart Silverstein, *Workers Sue Guess, 16 Contractors*, L.A. TIMES, Aug. 8, 1996, at D2.

206. Ryan, *supra* note 199.

207. Ellis, *supra* note 205.

208. Telephone Interview with Della Bahan, Bahan & Associates (March 10, 2008).

209. *Id.*

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complaint drew, in part, on information uncovered in the state labor raids on the home-sewing sites.²¹⁰ Petrocelli again disputed Guess's relation to the offending contractors and called the lawsuit "a case that is by and for the benefit of UNITE."²¹¹ While Guess had hoped that its IPO would be priced at between \$21 and \$23 a share, it had to settle on only \$18—reducing the amount of capital raised from an expected \$200 million to \$125 million.²¹² Although market conditions and investor discomfort with Guess's debt burden were cited as key factors influencing the IPO price, the bad publicity generated by the lawsuit also played a role.²¹³

The class action suit occupied a central place in the Guess campaign strategy—and highlighted the complexities of using litigation to advance union organizing. On the one hand, it sought to use law to both remedy specific employment grievances by workers and bring attention to the broader issue of sweatshop abuse by challenging Guess's reputation as a "good guy" garment manufacturer.²¹⁴ In this sense, it was analogous to the lawsuit in the Thai worker case, which was similarly brought to achieve the twin goals of recovering unpaid wages and raising public awareness. But the Guess campaign presented distinct circumstances that made the lawsuit a more problematic tool. Specifically, the endgame was not just to win the lawsuit, but to win the "air war," with victory ultimately measured by Guess's recognition of UNITE as the workers' union. While it was one thing to use a lawsuit to generate publicity, it was another to translate publicity to concrete gains at the bargaining table. Determining how best to coordinate the class action and organizing drive also raised issues of legal ethics since lawyers for the class ultimately had to look out for the class's interest in recovering damages, which was not coextensive with UNITE's interest in winning an agreement. Although the workers were told about the relationship between the lawsuit and the organizing drive and consented to the representation in light of the potential for conflict, the appearance of competing loyalties haunted the campaign. Moreover, the reliance on law by UNITE made the organizing campaign susceptible to the countervailing use of law by Guess. And while the plaintiffs in the class action could rely on the strength of legal protections for victims of wage-and-hour violations,

210. *Id.*

211. *Id.*

212. Ryan, *supra* note 199; Janet Ozzard, *New Challenges Push Guess into Changing Corporate Culture*, WOMEN'S WEAR DAILY, Nov. 7, 1996, at 1.

213. Ryan, *supra* note 199; Ozzard, *supra* note 212.

214. The lawsuit, combined with subsequent ULP charges, also prompted action from the Department of Labor, which announced a "thorough review" of Guess in October 1996, *see* George White, *Labor Department to Investigate Guess Apparel: It Says Firm Was Selling Garments Made at Alleged Sweatshop; Company Denies Wrongdoing*, L.A. TIMES, Oct. 5, 1996, at D2, which was followed by Guess's suspension from the Department's Trendsetter List in November, *see* Stuart Silverstein, *Guess Is Left Off 'Good Guy' List Pending Labor Inquiry; Apparel: The L.A. Company Says the Censure Is Based on Flawed Government Evaluations*, L.A. TIMES, Nov. 28, 1996, at D1.

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it proved more difficult for the union to contest Guess's actions under the NLRA, reflecting the unequal legal playing field on which union battles are played out.

Della Bahan, co-lead counsel in the Thai worker case, was charged with navigating this difficult legal terrain. Bahan, who represented the class and UNITE in subsequent legal battles with Guess, came in with a distinguished and diverse public interest background. After graduating from Boalt Hall School of Law in 1979, she moved to Los Angeles where she was a fellow at the Center for Law in the Public Interest, represented Central American asylum seekers at El Rescate, and practiced labor law, first at Reich, Adell & Crost and then as a partner at Pasadena-based Rothner, Segall, Bahan & Greenstone, where she was at the time of the Guess campaign.²¹⁵ Bahan had long represented the ILGWU and after the UNITE merger continued to be the union's main outside counsel.²¹⁶ Bahan was given "a couple of months head's up" by David Young, the organizing director at UNITE, about the Guess campaign and participated in formulating legal strategy.²¹⁷ Young was the main client contact at UNITE, which paid for Bahan's time as class counsel and in connection with the other Guess litigation that ensued.²¹⁸ She was assisted by David Prouty, who had joined UNITE from ACTWU, where he had focused on organizing campaigns in Southern textile mills.²¹⁹ While Prouty represented some workers in their ULP actions in front of the National Labor Relations Board (NLRB), his primary role was to supervise litigation as UNITE's in-house counsel.²²⁰

That task turned out to be a monumental one, as Guess bounced back from its early setbacks to launch a legal counteroffensive that stretched union resources to the limit. The Guess corporate leadership was adamantly opposed to unionization and the company invested significantly in opposing the UNITE effort.²²¹ To thwart UNITE's legal strategy, Guess's lawyers responded on two fronts: playing vigorous defense against the UNITE lawsuits while simultaneously going on the legal offensive with affirmative litigation of their own.

First, the Guess lawyers attempted to negate the union's litigation efforts, which included the class action and ULP complaints to the NLRB. A key strategy in the class action was to undermine the strength of the class by soliciting workers to legally "opt out." Guess lawyers attempted to persuade workers to opt out of the class in the course of conducting fact-finding interviews at their worksites. Through this process, the lawyers

215. Telephone Interview with Della Bahan, *supra* note 208.

216. *Id.*

217. *Id.*

218. *Id.*

219. Telephone Interview with David Prouty, *supra* note 196.

220. *Id.*

221. Ozzard, *supra* note 212.

succeeded in obtaining opt-out declarations from more than 400 workers before the plaintiffs' lawyers learned of the practice and filed a motion to stop it.²²² A Los Angeles Superior Court Commissioner initially ordered Guess to halt the solicitation, but refused to invalidate the opt-outs already received.²²³ The Superior Court appointed a referee to investigate the workers' claims of coercion and ordered them to testify about the company's opt-out solicitation practices in a trailer set up in the Guess parking lot.²²⁴ The process placed tremendous strain on Bahan, who enlisted the help of Dan Stormer and Bob Newman, a well-known litigator from the Western Center on Law and Poverty who also had his own practice on the side. With their assistance, Bahan was able to invalidate the opt-outs altogether—though by this time Guess had succeeded in diverting the focus of the case away from labor abuse and significantly delaying the litigation process.

Meanwhile, Guess pursued a parallel strategy of attacking Bahan as class counsel. Exploiting the potential conflict in Bahan's dual role as class counsel and counsel for UNITE, Guess won a protective court order prohibiting Bahan from sharing any discovery from the class action with the union. When Bahan disclosed to the NLRB that one contractor had admitted in a deposition for the class action that he threatened workers with closing down his shop in retaliation for their union organizing, Guess moved to amend the protective order to prevent her from sharing this information. The court amended the order and Bahan was required to pay Petrocelli's attorney's fees as a discovery sanction.²²⁵ Placed in the middle of a conflict over her proper role, she withdrew from the class action after the opt-out dispute had been resolved, handing the case over to Michael Rubin at the San Francisco-based labor law firm Altshuler Berzon, who brought in the Santa Monica litigation boutique Strumwasser & Woocher to help litigate the case along with Newman.²²⁶ Rubin and Fred Woocher played the role of legal strategists, while Strumwasser associates Sean Hecht and Kevin Reed were responsible for coordinating discovery and preparing the class certification petition.

With respect to the ULP complaints filed by UNITE and the workers with the NLRB, Guess followed the common employer strategy of delaying remedial action. The goal of seeking delay was to take away organizing momentum during the critical early stages of the campaign. A common employer practice was to fire workers in response to organizing, contest the

222. Plaintiffs' Points and Authorities Re: Referee's Report and Recommendations; Declarations of Brenda Figueroa and Juan Ruiz at 1-3, *Figueroa v. Guess?, Inc.*, No. BC 155 165 (L.A. Super. Ct. 1997).

223. Stuart Silverstein, *Guess Ordered to Halt Alleged Coercion*, L.A. TIMES, June 20, 1997, at D2.

224. Telephone Interview with Della Bahan, *supra* note 208.

225. Email from Della Bahan, Bahan & Associates, to Scott Cummings, Professor, UCLA School of Law (Apr. 10, 2008).

226. *Id.*

ULP charges, and then reinstate the workers after the organizing campaign had been defeated (or lost steam) in order to comply with NLRA rules.²²⁷ This was the path Guess took to counter UNITE's ULP-focused ground war. After UNITE launched its campaign in August 1996, Guess fired twenty workers engaged in union organizing activity. UNITE immediately brought a ULP complaint to the NLRB challenging the firings, while also charging Guess with illegal surveillance and threatening to move production abroad in the event of union success.²²⁸ Guess agreed to settle the complaint by reinstating the workers in January 1997, though they denied wrongdoing, stating instead that the firings were a "seasonal adjustment to employment."²²⁹

Guess quickly invoked the ultimate sanction, announcing its intention to move a significant portion of its production to México and South America.²³⁰ In an article that ran in *The Wall Street Journal* on January 14, 1997, Chief Executive Officer Maurice Marciano stated that the union campaign was a "factor" in the move, which had been initiated five months earlier and was set to reduce the volume of Guess apparel produced in Los Angeles from seventy-five per cent to thirty-five per cent.²³¹ Bahan, on behalf of UNITE, promptly filed another ULP complaint challenging the threatened move as illegal retaliation.²³² The NLRB stayed its approval of the January ULP settlement and scheduled a hearing on UNITE's charges.²³³ After nearly 200 workers demonstrated *against* UNITE in May 1997, UNITE filed another complaint alleging that Guess had illegally organized the protest, though the company denied any involvement.²³⁴ UNITE filed other ULP charges, although Guess's strategy of contesting each one (and filing ULP charges of its own against UNITE) allowed it to defer the ultimate NLRB reckoning of the ULP complaints—including the key one concerning the decision to offshore production.

As it sought to limit the scope of UNITE's affirmative litigation, Guess deployed a second strategy focused on battering the union with a series of new lawsuits to force it into a defensive legal position. The Guess

227. See, e.g., Sachs, *supra* note 6, at 2695.

228. Stuart Silverstein, *NLRB Prepares Complaint Against Apparel Firm Guess; Labor: Accusations Include Firing Pro-Union Workers. Guess Disputes Allegations*, L.A. TIMES, Nov. 22, 1996, at D2.

229. Stuart Silverstein, *A UNITEd Effort*, L.A. TIMES, Feb. 16, 1997, at D1.

230. Mary Beth Sheridan, *Guess Inc. to Move Much of L.A. Work South of the Border*, L.A. TIMES, Jan. 15, 1997, at A1.

231. Rhonda Rundle, *Guess Shifts Apparel-Making to Mexico from Los Angeles Amid Labor Charges*, WALL ST. J., Jan. 14, 1997, at A2.

232. Letter from UNITE General Counsel Max Zimny to Fred Feinstein, General Counsel, National Labor Relations Board, Re: Guess? Inc., N.L.R.B. Case No. 21-CA-31807.

233. Kristi Ellis, *NLRB Sets Complaint on Guess*, WOMEN'S WEAR DAILY (Los Angeles), Nov. 20, 1997, at 12.

234. John R. Emshwiller & Frederick Rose, *Guess Jeans Falters in Trying to Expand Clothing Maker Faces Bitter Fight with Union, Problems with Stores*, CONTRA COSTA TIMES, Nov. 28, 1997, at C8; George White, *Guess Workers Stage Anti-Union Demonstration*, L.A. TIMES, May 17, 1997, at D1.

lawyers designed these suits to drain union litigation resources, while also chilling UNITE's boycott activity. The company was particularly concerned about boycotts at its flagship Rodeo Drive store in Beverly Hills, which UNITE launched on August 20, 1996. The next day, Guess moved in state court for a temporary restraining order and an order to show cause why a preliminary injunction should not be issued to limit UNITE activities at all of Guess's Southern California stores.²³⁵ The preliminary injunction was issued on September 12, imposing restrictions on the number, noise level, and location of the picketers.²³⁶ Guess then filed a number of motions to hold UNITE in contempt of the injunction based on its activities at the Rodeo Drive and Orange County South Coast Plaza stores. The trial court found UNITE in contempt of the injunction and ordered the union to pay fines and \$50,000 in opposing counsel's legal fees. UNITE's appeal failed.²³⁷ UNITE filed a related lawsuit on state constitutional grounds seeking to enjoin six Los Angeles-area malls from restricting its access to protest Guess stores. The trial court refused to issue an injunction and the California Court of Appeal, in a devastating published decision, held that the malls' rules limiting boycotts to identified persons in designated areas at specific times, restricting the size and content of posters, and requiring the union to purchase liability insurance and post a damage deposit, did not violate UNITE's free speech rights.²³⁸

Guess brought two additional state court lawsuits that added to UNITE's legal strain. In the first, filed after the launch of the campaign in 1996, Guess charged UNITE and the women's group Common Threads with libel and defamation in connection with their use of the Guess logo on protest signs and their participation in a poetry reading at the Santa Monica bookstore Midnight Special, at which activists criticized Guess labor practices.²³⁹ Guess dropped part of the suit in March of 1997, citing "many reasons, including but not limited to the cost and expenses of litigation."²⁴⁰ The remainder of the suit settled shortly thereafter. In early 1998, Guess filed another action alleging that the union had stolen the company's trade secrets by illegally obtaining its confidential list of specialty stores that carried the Guess brand and contacting the stores to persuade them to stop

235. Appellant's Opening Brief at 2-3, *AFL-CIO v. Guess?, Inc.*, No. B117317, (Cal. Ct. App. June 26, 1998).

236. *Id.* at 3.

237. *Calif. Court Nixes UNITE Bid in Guess Contempt Lawsuit*, *WOMEN'S WEAR DAILY* (Los Angeles), Mar. 26, 1998, at 4.

238. *UNITE v. Superior Court*, 65 Cal. Rptr. 2d 838 (Cal. Ct. App. 1997).

239. *Guess Pulls Part of UNITE Suit*, *DAILY NEWS RECORD* (Los Angeles), Mar. 26, 1997, at C2; Julia Stein, *Yet Another SLAPP: A Guess Inc. Lawsuit against a Literary Reading in Los Angeles*, *ACTIVIST TIMES, INC.*, Feb. 23, 1997, <http://www.textfiles.com/magazines/ATI/ati-68.txt>.

240. *Id.*

purchasing Guess items.²⁴¹ Guess won a temporary restraining order prohibiting UNITE from using the list and the case quickly settled.

In the face of these legal skirmishes—and under mounting pressure after Guess’s offshoring announcement—UNITE soldiered on with its air war, but the cumulative effect of the lawsuits began to take its toll on the campaign, with UNITE incurring substantial legal fees.²⁴² The union did succeed in mounting some high-profile public actions, the largest of which brought nearly 1,000 people—including Guess workers, clergy, college students, and community activists—out in a march on the Los Angeles garment district in October of 1997.²⁴³ The union also orchestrated a protest in front of the Santa Monica branch of Robinsons-May, in which Rage Against the Machine’s guitarist was arrested,²⁴⁴ and planned a Guess boycott during the holiday shopping season.²⁴⁵

Yet the media campaign collapsed under the weight of the mounting legal setbacks. The campaign’s fatal blow came in April 1998, when the NLRB, while acknowledging that Guess had engaged in a series of ULPs,²⁴⁶ rejected UNITE’s most serious charge—that Guess’s decision to move production to México was retaliatory—finding instead that the decision had been made before the union drive started.²⁴⁷ With the campaign reeling by the now legally sanctioned move, Guess finally agreed to reinstate thirteen workers fired for union organizing and pay \$113,000 in back wages to the twenty employees fired in the immediate wake of the campaign.²⁴⁸ Guess also agreed to eliminate company-sponsored employee committees that the union claimed were behind the anti-UNITE employee demonstrations.²⁴⁹ Yet, at this point, these gestures were largely symbolic. Though UNITE would continue with the campaign, even intensifying the ULP litigation,²⁵⁰ Guess had won a decisive victory. UNITE put a brave face on the ruling, vowing to carry the fight overseas by enlisting foreign unions to put pressure on Guess distributors and retailers in other coun-

241. Vicki Young, *Congress Seeks Data on Claiborne Payments to Union*, WOMEN’S WEAR DAILY (New York) March 26, 1998, at 1.

242. Milkman & Wong, *supra* note 55, at 117; *see also* Email from David Prouty, General Counsel, UNITE HERE, to Scott Cummings, Professor, UCLA School of Law (April 15, 2008) (noting that the amount was around \$500,000).

243. *See* Patrick J. McDonnell, *Marchers Protest Garment Sweatshops*, L.A. TIMES, Oct. 5, 1997, at B1.

244. *33 Are Arrested at Guess Protest in Santa Monica*, L.A. TIMES, Dec. 14, 1997, at B5.

245. John R. Emshwiller & Frederick Rose, *Guess Jeans Falters in Trying to Expand*, CONTRA COSTA TIMES, Nov. 28, 1997, at C8.

246. BONACICH & APPELBAUM, *supra* note 40, at 270.

247. Stuart Silverstein, *Guess to Rehire Laid-Off Workers, Pay Back Wages*, L.A. TIMES, Apr. 22, 1998, at D2.

248. *Id.*

249. *Id.*

250. *See* Guess?, Inc. and UNITE, 2003 WL 21514151 (N.L.R.B. June 30, 2003); Guess?, Inc. and UNITE, 2000 WL 33664316 (N.L.R.B. Div. of Judges July 6, 2000).

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tries,²⁵¹ but by the end of 1998 the campaign was in retreat. Though there was no public statement of surrender, the union withdrew funds from further garment organizing.²⁵²

The one outstanding matter was the class action lawsuit, which would end as a bittersweet victory for the workers who endured nearly three years of litigation. Despite the dissolution of the organizing drive, class counsel still had obligations to obtain the best financial outcome for the class members, many of whom had been disillusioned by the delay and the failure of the union drive. The case dragged on for over a year after the NLRB issued its ruling on Guess's offshoring decision. The turning point came when lawyers at Strumwasser & Woocher successfully moved the court to order Guess to turn over documents related to its industry compliance program (showing whether Guess knew of its contractors' labor violations), which the company had withheld on the ground of attorney-client privilege.²⁵³ Shortly thereafter, in July 1999, UNITE and Guess settled the suit for nearly \$1 million, with Guess admitting no wrongdoing.²⁵⁴ UNITE's lawyers stated that while 2,000 workers would be eligible to receive back pay awards under the settlement, only fifteen per cent were expected to come forward since many class members had long since left the industry.²⁵⁵ Though some workers felt that they had waited too long for too little, the relative success of the wage-and-hour class action was a fitting epilogue to the story of UNITE's failed organizing campaign: while it dramatized the limits of using law to spur union organizing, it also reinforced the power of law as a tool to enforce employment law compliance on recalcitrant manufacturers. Indeed, the legal outcome of Guess class action was based on a joint employer theory that held Guess legally liable for the abuse of its contractors—precisely the same outcome as in the Thai worker case, which also announced its final settlement that same month. The end of both cases thus marked a pivotal point in the anti-sweatshop movement: away from traditional labor organizing towards an alternative model focused on using employment law to both promote industry-wide legal reform and grassroots worker mobilization.

251. Teena Hammond, *UNITE Carrying Fight Abroad in Attempt to Organize Guess*, WOMEN'S WEAR DAILY, July 1, 1998, at 5 (stating that “[u]nions in Argentina, Australia, Belgium, Brazil, France, Germany, Holland, Israel, Italy, Japan, Philipines, South Africa, Spain and the United Kingdom have agreed to support UNITE in its ongoing battle to organize the manufacturer” by distributing leaflets at retail stores).

252. See MILKMAN, *supra* note 52, at 168-69.

253. Interview with Sean Hecht, Executive Director, UCLA School of Law Environmental Law Center, in L.A., Cal. (April 2, 2008).

254. Nancy Cleeland, *Guess to Pay up to \$1Million to End Suit*, L.A. TIMES, July 21, 1999, at C2.

255. *Id.* To the consternation of some of the workers who did recover, Strumwasser & Woocher took a cut of the award as attorney's fees to compensate the firm for the below-market fees that it had been receiving from UNITE.

4. *The Integration of Law and Grassroots Organizing*

Though Guess's decision to shift production outside of the United States technically only impacted the union campaign, it was an ominous portent of the broader challenges confronting anti-sweatshop activists at the turn of the millennium. By 1999, the full force of NAFTA and declining apparel quotas was being felt in the garment industry:²⁵⁶ employment in Los Angeles's garment manufacturing sector was 10,000 jobs lower than at its peak three years earlier and the trajectory was downward.²⁵⁷ And there was evidence that piece rates were declining as a result, with the brunt of the industry's downturn falling hardest on the most vulnerable workers, particularly undocumented immigrants.²⁵⁸ From this vantage point, Guess's move symbolized a larger trend.

Nonetheless, the political momentum from the Thai worker case was significant. In the immediate aftermath of El Monte, state and federal labor officials increased resources for monitoring garment production and enforcing labor rights.²⁵⁹ Secretary of Labor Robert Reich, in particular, became actively involved in the sweatshop issue. Under his leadership, the Department of Labor began more aggressively using FLSA's "hot goods" provision, which could only be enforced by the government, against garment manufacturers and retailers accused of selling apparel made under illegal conditions across state lines, threatening to sue unless they entered into compliance agreements.²⁶⁰ Reich also began to issue a No Sweat Garment Enforcement Report, which listed contractors that had violated labor laws, along with the manufacturers for which they worked. In August 1996, President Clinton convened industry stakeholders—including retailer, manufacturer, union, and human rights groups—to form an Apparel Industry Partnership to develop a code of conduct and to monitor industry labor standards.²⁶¹ Manufacturers and retailers started implementing their own labor monitoring programs and working with anti-sweatshop groups, though critics argued that these voluntary schemes were too lenient.²⁶² Though the failure of UNITE's organizing drive dampened the garment reform mood,

256. Nancy Cleeland, *Garment Jobs: Hard, Bleak and Vanishing*, L.A. TIMES, March 11, 1999, at A1 (stating that the rate of outsourcing to México was accelerating, with sixty-four percent of Los Angeles manufacturers sourcing some work to México 1999, more than triple the percentage in 1992).

257. CRISIS OR OPPORTUNITY?, *supra* note 84, at 8; KYSER & HUANG, *supra* note 69, at 2.

258. Cleeland, *supra* note 256.

259. *See, e.g.*, Don Lee, *State Will Increase Its Inspections of Clothing Makers*, L.A. TIMES, Jan. 11, 1996, at D1.

260. BONACICH & APPELBAUM, *supra* note 40, at 228-29.

261. *Id.* at 242-43. Though the partnership was launched with much fanfare, it ultimately broke apart around the question of monitoring, as union and human rights groups pulled out after the formation of the Fair Labor Association, which they viewed as too weak to enforce the already watered-down standards contained in the Code of Conduct. *See id.* at 244.

262. George White, *El Monte Case Sparked Efforts to Monitor, Root Out Sweatshops*, L.A. TIMES, Aug. 2, 1996, at D1.

the heavily publicized victory in the Thai worker case still presented an opportunity for further action.

a. Impact Litigation Phase I: Momentum

APALC moved quickly to capitalize on the Thai worker success. In 1997, Su was joined by Harvard Law School-trained Skadden Fellow Muneer Ahmad, Yale Law School graduate and Echoing Green Fellow Betty Hung, and Michigan Law School graduate Christina Chung. As the Thai worker case was coming to a close, the APALC lawyers decided to focus their efforts on a litigation campaign targeting the garment industry. The campaign presented trade-offs for the organization. It meant concentrating on fewer high-impact cases rather than handling a larger number of individual actions—though this was mitigated by the fact that the impact cases privileged group representation.²⁶³ Through this high-impact strategy, APALC would seek to extend the joint employer theory developed in the Thai worker case more broadly within the industry—setting a precedent that would force other manufacturers and retailers to take seriously their responsibility to ensure labor standards were met.²⁶⁴ Toward this end, cases would be coordinated with a media campaign: the filing of each suit would be timed with a press conference and media contacts would be used to pressure defendants to agree to worker demands.

In addition, the garment industry focus meant elevating the theme of workers' rights in an organization historically known for its dedication to Asian American legal issues more broadly. The garment industry was targeted, in part, because a significant portion of its workforce was Asian. Yet it was primarily the lawyers' commitment to attacking the exploitation of low-wage workers that animated their garment strategy.²⁶⁵ In the specific context of the garment industry in Los Angeles, however, there was a strong possibility that APALC would be on the side of representing the largely Latino workforce against the predominantly Asian-immigrant-owned contract shops. However, while the lawyers realized that their garment litigation would create tensions with some segments of the Asian-American community, they viewed it as their responsibility as members of a progressive legal organization to side with the workers.²⁶⁶ As an internal matter, the lawyers tried to choose garment cases based not just on their public impact, but also on their potential to promote cross-racial alliances among workers in the industry in order to build worker solidarity.²⁶⁷ How-

263. Email from Muneer Ahmad, Professor, American University Washington College of Law, to Scott Cummings, Professor, UCLA School of Law (May 10, 2008).

264. Telephone Interview with Julie Su, *supra* note 112.

265. Email from Julie Su, Litigation Director, Asian Pac. Am. Legal Ctr., to Scott Cummings, Professor, UCLA School of Law (Apr. 14, 2008).

266. Email from Muneer Ahmad to Scott Cummings, *supra* note 263.

267. *Id.*

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ever, where cases did not present this opportunity, APALC pursued them nonetheless in the name of workers' rights.²⁶⁸

Deploying this model, APALC won a string of quick successes in the immediate wake of the Thai worker case. In November 1999, APALC filed a lawsuit in federal court on behalf of an Asian garment worker employed by a Walnut, California contractor that produced clothing for the Los Angeles-based manufacturers City Girl, Inc., BCBG Max Azria, and Hobby Horse, Inc.²⁶⁹ The worker suffered "regular headaches, sleeplessness and high blood pressure" as a result of the poor conditions in her factory.²⁷⁰ City Girl filed a defamation suit against the worker, APALC as an organization, and APALC lawyer Ahmad for his role speaking at a press conference and to the media.²⁷¹ However, after APALC publicized the effort to intimidate the worker, the defendants settled in May 2000 in an agreement that paid the worker \$20,000 in damages and \$10,000 to APALC for attorney's fees.²⁷² Also in November 1999, APALC filed a suit on behalf of three Latino garment workers who alleged that they were fired for reporting labor violations at their shop. The shop contracted with and was monitored by two manufacturers, John Paul Richards Inc. and Francine Browner Inc. (a division of the same company that owned BCBG), which settled the case in September 2000 for \$134,000, admitting no liability and calling it a "business decision."²⁷³

In December 1999, APALC's Su and Ahmad teamed up with Julia Figueira-McDonough—a Skadden Fellow and UCLA School of Law alumnus who was working at the Legal Aid Foundation of Los Angeles (LAFLA)—to sue another garment manufacturer, J.H. Design Group. This case was coordinated to reinforce the emerging student anti-sweatshop movement, which had gained steam the year before with the formation of United Students Against Sweatshops—an alternative to the industry-sponsored Fair Labor Association that focused on gaining commitments from university administrators to develop and enforce codes of conduct for university contractors.²⁷⁴ APALC filed the complaint in federal court on behalf of eight Latino garment workers who worked for a manufacturer that sold jackets to universities, including UCLA, USC, Indiana, Michigan, Wisconsin, and Florida. The case, like its predecessors, alleged federal and state violations of minimum wage and overtime laws, and claimed that two

268. Email from Julie Su to Scott Cummings, *supra* note 265.

269. Kristi Ellis, *BCBG, City Girl, Hobby Horse Settle Unfair Labor Practices Suit*, WOMEN'S WEAR DAILY, May 31, 2000, at 11.

270. *Garment Workers Fight for Justice*, ASIAN PAC. AM. LEGAL CTR. NEWSLETTER (Asian Pac. Am. Legal Ctr., Los Angeles, Cal.), Fall 2000, at 3, 7.

271. *Id.*

272. City Girl Settlement Agreement and Mutual General Releases (May 2000) (on file with author).

273. Kristi Ellis, *Settlement in Sweatshop Case*, WOMEN'S WEAR DAILY, Sept. 25, 2000, at 22.

274. BONACICH & APPELBAUM, *supra* note 40, at 304.

workers were fired in retaliation for raising the violations with government regulators, while another was fired for raising complaints directly with the employer.²⁷⁵ Correcting the problem that had led to partial dismissal in the Thai worker case, plaintiffs in this matter alleged that by transporting illegally produced garments across state lines, the defendants committed “negligence per se,” incorporating FLSA’s hot goods provision as the predicate violation.²⁷⁶ In addition the plaintiffs asserted, as they had in the Thai worker case, a claim under California Business and Professions Code § 17200, which permitted claims for any “unlawful, unfair or fraudulent business act or practice.”²⁷⁷ Though damages were unavailable under § 17200, the plaintiffs sued for injunctive relief and restitution.²⁷⁸ J.H. Design settled the case in March 2000 for \$172,000.²⁷⁹

In November 2000, APALC and LAFLA filed a similar federal lawsuit against XOXO Clothing Company and its contractor on behalf of twelve garment workers who alleged that they were not paid wages for work performed over a six week period.²⁸⁰ The suit was well-publicized and featured a press conference and a statement of support for XOXO workers by *Sex in the City* actress Sarah Jessica Parker.²⁸¹ XOXO settled a mere two weeks after the suit was filed for \$62,000—a figure that included liquidated damages and was therefore roughly five times the amount of unpaid wages.²⁸²

b. *Legislation: A.B. 633*

Critics of early public interest lawyers faulted them for placing too much faith in courts to produce social change, which often led to disappointing political results.²⁸³ The anti-sweatshop lawyers, by contrast, did not rely entirely on litigation to change industry practice. Instead, they were pragmatic about rights, viewing litigation as one part of a politically multi-faceted campaign that included efforts “above” in the legislative arena and “below” at the grassroots level. This pragmatism reflected both a generational divide and the influence of legal training. The lawyers in-

275. Seconded Amended Complaint for Injunctive and Declaratory Relief and Damages for Violation of the Fair Labor Standards Act and California Labor Code; Unfair Business Practices; Negligence; Wrongful Termination, *Benavides v. J.H. Design Group*, No. 99-11389 WMB(BQRx), at 2 (C.D. Cal. Dec. 1999).

276. *Id.* at 8-9.

277. *Id.* at 10-13.

278. *Id.* at 12-13.

279. Settlement Agreement and Mutual Release, *Benavides v. J.H. Design*, No. 99-11389 WMB(BQRx) (C.D. Cal. Mar. 2000).

280. Marla Dickerson, *XOXO Sued by Contractor's Unpaid Garment Workers*, L.A. TIMES, Nov. 22, 2000, at C2; *Two Groups Plan Suit Against XOXO*, WOMEN'S WEAR DAILY, Nov. 21, 2000, at 11.

281. *Garment Workers Win Major Victory*, ASIAN PAC. AM. LEGAL CTR. NEWSLETTER (Asian Pac. Am. Legal Ctr., Los Angeles, Cal.), Spring 2001, at 1, 3.

282. *Id.*

283. See SCHEINGOLD, *supra* note 9.

volved had come of age during the era of public interest law's reappraisal—attending elite law schools where critical dialogue about public interest law was robust—and had assimilated a skeptical view of the power of law to change society. This is not to suggest that their approach was entirely informed by academic debates. For her part, Su's feelings about the limits of law were “totally gut,” formed in response to her disaffection with law school,²⁸⁴ where she was part of a group of students who conducted a sit-in outside the Dean's office in protest of Harvard's failure to appoint faculty of color.²⁸⁵ Her views were also forged through her exposure to role models outside the law, like organizers at KIWA, where she volunteered to work on the Los Angeles arm of the boycott against Jessica McClintock.²⁸⁶ Su cited that campaign, which focused on McClintock's “ethical responsibility” to its workers, as “a powerful early education in both the importance of legal strategies and their limits.”²⁸⁷ Through these experiences, Su became committed not just to law as such, but rather to law as a spur to broader organizing and advocacy.

Su and her colleagues' interest in combining law and organizing was evident well before the impact litigation campaign started, when just before the El Monte raid, APALC and many of the other groups that had previously assembled as the Coalition to Eliminate Sweatshop Conditions decided to formally launch Sweatshop Watch.²⁸⁸ Although the group was formed to broadly handle anti-sweatshop advocacy,²⁸⁹ it also became a vehicle to coordinate the response on behalf of the Thai workers, since Su and other advocates believed that it was not useful to create an additional coalition just for that purpose.²⁹⁰ The founding organizations of Sweatshop Watch were APALC, UNITE, the Asian Law Caucus, Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA), KIWA, Asian Immigrant Women Advocates, and ERA.²⁹¹ From its inception, Sweatshop Watch was designed to be the media advocacy and public policy arm of the anti-sweatshop movement. The group was led by director Nikki Fortunato Bas, herself a former garment worker, who collaborated with board members like Su and Lora Jo Foo of the Asian Law Caucus. The group's early efforts included mounting a Retailer Accountability Campaign that used

284. Telephone Interview with Julie Su, *supra* note 111.

285. Natasha H. Leland, *Supporters Hold Vigil for Law Students*, THE HARVARD CRIMSON, April 11, 1992, available at <http://www.thecrimson.com/article.aspx?ref=222318>.

286. *Id.*

287. Email from Julie Su to Scott Cummings, *supra* note 109.

288. Email from Julie Su to Scott Cummings, *supra* note 265.

289. Sweatshop Watch History, <http://web.archive.org/web/20071203153130/http://www.sweatshopwatch.org/index.php?s=53> (last visited Aug. 27, 2009).

290. Email from Julie Su to Scott Cummings, *supra* note 265.

291. Sweatshop Watch, 10th Anniversary, 1995-2005 [on file with author]. http://www.sweatshopwatch.org/media/powerpoint/SWhistory_whtback.ppt (last visited Feb. 26, 2008).

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protests and letter-writing to generate public pressure on retailers accused of selling goods produced by workers in the El Monte sweatshop.²⁹²

Sweatshop Watch's major test came in 1999 when it spearheaded the effort to pass a statewide law to extend liability for wage-and-hour violations to garment manufacturers and retailers. Sweatshop Watch was joined in this effort by a larger group of advocacy organizations doing garment worker cases, including legal services groups LAFLA and Bet Tzedek, which had joined with APALC to form their own coalition for garment workers.²⁹³ Thus, at the moment APALC was launching its impact litigation campaign in court to establish joint liability under federal law, Sweatshop Watch pursued a parallel campaign at the state legislative level to codify joint liability under California law. The two efforts were meant to complement each other. As Su stated: "We used the constant threat of litigation to bring manufacturers to the table. . . . The reason they were there was that they didn't want to be sued any more."²⁹⁴

Sweatshop Watch's 1999 campaign built upon a longer history of advocating for garment manufacturer liability. Garment worker advocates in California first pressed for manufacturer joint liability in the late 1970s.²⁹⁵ The apparel industry blocked the attempt and a softer piece of legislation, the Garment Registration Act, was passed in 1980.²⁹⁶ That legislation simply required manufacturers and contractors to register with the state and pass examinations in order to receive operating licenses.²⁹⁷ The Act only held manufacturers liable for labor violations when they used unregistered shops.²⁹⁸ However, because registration was easy to obtain and labor enforcement of contractor shops was lax, the law did little to deter abuse: as the 1998 Department of Labor survey of the garment industry revealed, it was nearly two-thirds of *registered* shops that were found violating wage-and-hour laws.²⁹⁹ Moreover, registration did not solve the problem of how to recover back wages when contractors went out of business.³⁰⁰

Though the Coalition to Eliminate Sweatshop Conditions had tried and failed to pass a joint liability law as late as 1994,³⁰¹ the post-El Monte climate provided a unique opportunity that Sweatshop Watch and APALC seized. With a Democratic Governor, Gray Davis, finally in Sacramento

292. Patrick J. McDonnell, *Retailers Assailed in Sweatshop Protest*, L.A. TIMES, Feb. 24, 1996, at B1.

293. BONACICH & APPELBAUM, *supra* note 40, at 313.

294. Telephone Interview with Julie Su, *supra* note 111.

295. Lora Jo Foo, *Negotiating AB 633, The Garment Accountability Bill*, CAL. LAB. & EMP. L. Q., Winter 1999, at 5.

296. *Id.*

297. Cal. Lab. Code § 2675 (West 2003).

298. Foo, *supra* note 295, at 5.

299. *Id.*

300. See Catherine Bridge, *Union's Fight Over Fashion Factories Goes Domestic*, THE RECORDER, July 13, 1999, at 4.

301. *Garment Industry Bill Advances*, L.A. TIMES, Sept. 15, 1995, at A22.

and publicity from El Monte and Guess heightening consumer awareness about sweatshops, apparel industry representatives, recognizing that some change was inevitable, were pressured into participating in a dialogue of reform—or else risk the passage of a much more pro-worker bill than they were willing to accept.³⁰²

California State Assemblyman Darrell Steinberg (a Democrat from Sacramento), sponsored legislation, referred to as Assembly Bill (A.B.) 633, and worked with Tom Hayden (a Democrat from Los Angeles) in the state Senate to advance the bill through the legislature.³⁰³ On the anti-sweatshop side, the Asian Law Caucus's Foo and APALC's Su were the key lawyers, drafting the main provisions of A.B. 633 and its amendments.³⁰⁴ Su also helped to promote garment worker participation in the process of developing the bill, at one point coordinating a legislative visit by some of the Thai workers, who testified in front of a state Assembly committee considering the bill.³⁰⁵ In the original bill, workers would have been given a private right of action to sue manufacturers and retailers in court to hold them strictly liable for any wage-and-hour or health-and-safety violations committed by their contractors.³⁰⁶ This met with stiff resistance from the garment industry, whose lawyer, Stanley Levy, a partner at Manatt, Phelps & Phillips, argued instead for tightening the registration requirements and increasing labor enforcement.³⁰⁷

The private right of action became a crucial sticking point. It was fiercely opposed by industry leaders who believed that it would expose manufacturers and retailers to class actions and unlimited liability.³⁰⁸ Even while conceding some form of joint liability, the industry tried to channel enforcement through the state DLSE, which they knew from experience was too under-funded to adequately police abuse.³⁰⁹ Industry representatives proposed that a civil action only be allowed if the DLSE's Labor Commissioner did not resolve claims through the administrative enforcement process in a timely fashion, and then only if workers waived their right to bring class actions and recover attorney's fees.³¹⁰

Sweatshop Watch rejected this proposal, knowing that it would make it economically infeasible for private attorneys to take on joint liability cases.³¹¹ Garment advocates and industry representatives remained at an

302. Quan, *supra* note 47, at 32–34.

303. Dan Morain, *Bill Advances to Ensure Garment Workers' Pay*, L.A. TIMES, Sept. 10, 1999, at C2.

304. Foo, *supra* note 295, at 5.

305. Kang, *supra* note 129.

306. Foo, *supra* note 295, at 5.

307. Bridge, *supra* note 300, at 4.

308. Foo, *supra* note 295, at 5, 34.

309. *Id.* at 5.

310. *Id.*

311. *Id.*

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impasse on the issue until the Senate scheduled the bill for debate. Fearing that Governor Davis would veto a bill that threatened increased litigation, Sweatshop Watch and other garment advocates made a difficult decision: bowing to the “political realities,” they agreed to the removal of the private right of action provision altogether.³¹² With that impediment removed, the bill was passed by the legislature and signed into law on September 28, 1999, taking effect on January 1, 2000.

Though industry had achieved a significant goal by individualizing the case processing of A.B. 633 claims through the DLSE—thereby minimizing liability exposure—the final bill nonetheless represented a major step forward in garment regulation. For the first time, it established as a matter of state law that “a person engaged in garment manufacturing. . . shall guarantee payment of the applicable minimum wage and overtime compensation, as required by law, that are due” from its contractors.³¹³ Though workers were allowed to enforce this wage guarantee “solely by filing a claim with the Labor Commissioner,”³¹⁴ A.B. 633 set up an expedited administrative process within the DLSE designed to resolve claims within 120 days of being filed.³¹⁵ Either party could appeal the Labor Commissioner’s decision to state court.³¹⁶ In terms of remedies, in addition to imposing a wage guarantee on manufacturers, A.B. 633 also provided for the recovery of liquidated damages against contractors in an amount equal to unpaid wages and overtime.³¹⁷ To incentivize claims, A.B. 633 provided for attorney’s fees for workers who prevailed at the Labor Commissioner’s hearing,³¹⁸ although guarantors were jointly and severally liable for the fees only if they are found to have acted in bad faith.³¹⁹

Once the bill was passed, the focus of Sweatshop Watch quickly turned from enactment to implementation.³²⁰ A key battle shaped up over A.B. 633’s implementing regulations. Though A.B. 633 was touted as establishing joint liability for manufacturers and retailers, the language of the bill, which imposed the wage guarantee on “a person engaged in garment manufacturing,” was not so clear. The law defined persons engaged in “garment manufacturing” as those “sewing, cutting, making, processing, repairing, finishing, assembling, or otherwise preparing any garment. . . for sale or resale. . . or any persons contracting to have those operations per-

312. *Id.* at 34.

313. Cal. Lab. Code § 2673.1(a) (West 2003).

314. *Id.* § 2673.1(c).

315. *Id.* at § 2673.1(d).

316. *Id.* § 2673.1(g).

317. *Id.* § 2673.1(e).

318. *Id.* § 2673.1(f).

319. *Id.*

320. *California’s Sweatshop Reform Law: Two Years Later*, SWEATSHOP WATCH (Sweatshop Watch, L.A., Cal.), Dec. 2001, at 5-6, available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1033&context=globaldocs> (last visited Aug. 27, 2009).

formed.”³²¹ The dispute centered on whether this definition covered retailers, which were not explicitly included or excluded from the bill. When the DLSE finally issued its proposed regulations in 2001 it did not clarify the matter, instead providing a circular definition of “manufacturers” as “persons who are engaged in ‘garment manufacturing,’ within the meaning of the law, but who are not contractors.”³²² During the public comment period, comments were submitted from Sweatshop Watch and its allies.³²³ After public hearings on the proposed regulations ended, the advocacy groups continued to meet with California’s labor officials to discuss their concerns with industry efforts to revise the meaning of “manufacturer” under the law.³²⁴

These concerns focused on the written and public comments of Paul Gill, an industry consultant, who proposed revising the definition of manufacturer to create a “safe harbor” for retailers by providing that “any individual or company that purchases finished goods of wearing apparel from a registered manufacturer or purchases services incidental to the manufacturing process from a registered manufacturer shall not be required to register with the Labor Commissioner and shall not be presumed to be engaged in garment manufacturing.”³²⁵ The garment advocates rejected this definition as creating “loopholes” and supported the Labor Commissioner’s “less detailed definition of ‘manufacturer’” as a “better approach to ensuring that AB 633’s wage guarantee will not be defeated by changes in industry business practices.”³²⁶ The Labor Commissioner ultimately agreed with the advocates’ position and left the definition of manufacturer as it was, clarifying that “these regulations neither automatically exempt nor automatically include retailers.”³²⁷ When the regulations became final in October 2002, Sweatshop Watch claimed victory in beating back industry’s attempt to exclude retailers.³²⁸ As they stood, the regulations could be read to allow workers to recover against those retailers that engaged in “garment manufacturing” either by directly contracting for the production of their own

321. Cal. Lab. Code § 2671(b).

322. California Labor Commissioner, Notice of Proposed Rulemaking, AB 633, at 4, *available at* <http://www.dir.ca.gov/dlse/GMT-NOTICE.pdf> (last visited Sep. 29, 2009).

323. PROPOSED AMENDMENT AND ADOPTION OF REGULATIONS BY THE STATE LABOR COMMISSIONER TO IMPLEMENT THE PROVISIONS OF AB 633 AND OTHER STATUTES GOVERNING ENFORCEMENT OF MINIMUM WAGE AND OVERTIME REQUIREMENTS IN THE GARMENT INDUSTRY, AND THE REGISTRATION OF PERSONS ENGAGED IN GARMENT MANUFACTURING 3, *available at* <http://www.dir.ca.gov/dlse/633FSOR2.doc> (last visited Sep. 29, 2009).

324. *California’s Sweatshop Reform Law*, *supra* note 320, at 5.

325. PROPOSED AMENDMENT AND ADOPTION OF REGULATIONS, *supra* note 323, at 6.

326. *Id.* at 5.

327. *Id.* at 8.

328. *Sweatshop Watch Scores Major Policy Victories: Assembly Bill 633 Regulations*, SWEATSHOP WATCH (Sweatshop Watch, L.A., Cal.), Dec. 2002, at 6, *available at* <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1037&context=globaldocs> (last visited Aug. 27, 2009).

brand labels or contracting with a manufacturer to do so.³²⁹ With the battle over the regulations concluded, advocates turned their attention to monitoring implementation of the bill³³⁰—and to educating workers so that they would be empowered to enforce the new guarantee.

c. Legal Consciousness: The Garment Worker Center

The vehicle designed for worker empowerment was the Garment Worker Center (GWC), which was created in the wake of A.B. 633 by garment workers and representatives of Sweatshop Watch, APALC, CHIRLA, and KIWA³³¹—four organizations that became part of the GWC’s steering committee.³³² The formation of the GWC was part of a broader movement of worker centers across the country, which had developed in earnest in the late 1980s and early 1990s as community-based institutions serving low-wage, particularly immigrant, workers.³³³ While most worker centers were place-based, focused on a particular city or neighborhood rather than an employment sector,³³⁴ the GWC was specifically created as the Los Angeles anti-sweatshop movement’s organizing arm to target labor abuse in the garment industry³³⁵—one of the first “multiracial, multilingual garment workers’ center in the country.”³³⁶

The GWC emerged at the intersection of UNITE’s failed Guess organizing drive and Sweatshop Watch’s successful A.B. 633 campaign. In the early 1990s, UNITE had established a Garment Workers Justice Center to respond to workers’ claims of labor abuse, but shut it down in the wake of the Guess defeat,³³⁷ raising a concern among advocates about how to provide continued institutional support to organize garment workers.³³⁸ This concern was heightened with the enactment of A.B. 633, which advocates knew could only be effectively enforced through coordinated outreach to workers and assistance in bringing claims.

The twin concerns about legal enforcement and organizing were reflected in GWC’s original mission: to support workers in recovering unpaid

329. This interpretation was stated by the California Appellate Court in *Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles*, 117 Cal. App. 4th 1138, 1153 (2004); see also Brief of Amicus Curiae State of Cal. in Support of Plaintiffs-Appellants, *Castro v. Fashion 21*, 88 Fed. Appx. 987 (9th Cir. 2004) (No. 02-55629) (supporting the view that a retailer engaged in garment manufacturing may be held jointly liable under A.B. 633).

330. *Sweatshop Watch Scores Major Policy Victories*, *supra* note 328, at 6.

331. Telephone Interview with Kimi Lee, Director, Garment Worker Center (Mar. 3, 2008).

332. Victor Narro, *Finding the Synergy Between Law and Organizing: Experiences from the Streets of Los Angeles*, 35 FORDHAM URB. L.J. 339, 346-47 (2008).

333. FINE, *supra* note 11, at 8-11.

334. *Id.* at 13.

335. Telephone Interview with Julie Su, *supra* note 111.

336. *Garment Workers Fight for Justice*, *supra* note 270, at 7.

337. Garment Worker Center, Frequently Asked Questions, <http://www.garmentworkercenter.org/background.php?itemid=236> (last visited on Mar. 5, 2009).

338. See Telephone Interview with Julie Su, *supra* note 111.

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wages while also promoting collective worker efforts to reform the garment industry.³³⁹ The task of melding these two goals fell to Kimi Lee, the GWC's founding director.³⁴⁰ Lee brought to the job unique experience combining law and organizing, along with a deep personal connection to garment labor abuse. In the early 1970s, her parents had fled the military crackdown on ethnic Chinese in Burma, where her mother was a garment worker—a job she continued to hold after moving to San Francisco.³⁴¹ In college, Lee was active on the Jessica McClintock campaign and in 1998 became a field organizer at the ACLU of Southern California, where she conducted community outreach on civil rights legal issues.³⁴²

Lee was hired in 2000 with funding from the progressive Los Angeles Liberty Hill Foundation and began working from a desk in APALC's office. In January of 2001, the GWC—with a \$100,000 grant from Liberty Hill and other small foundations—opened its own office in the garment district to maximize worker accessibility, though it formally remained a project of Sweatshop Watch.³⁴³ The GWC reached out to workers by distributing multi-lingual flyers and setting up a toll-free hotline in English, Spanish, Thai, and Mandarin, which workers could call to get information on their rights.³⁴⁴ It also organized workshops and distributed booklets on labor laws that explained what garment workers could do to pursue their claims.³⁴⁵ The GWC, which had a staff of three Asian Americans including Lee and Taiwanese American organizer Joann Lo, took steps to reach out to Latino workers (Lo spoke fluent Spanish), while seeking to build bridges between Asian and Latino garment workers.³⁴⁶

In its early phase, the GWC patterned its activities after other worker centers, like the well-known Workplace Project on Long Island, which used the draw of legal service provision to bring workers into the center's organizing activities.³⁴⁷ At the beginning, there was a workers' committee that advised GWC staff, but the development of worker membership and a formal Worker Board did not occur until later.³⁴⁸ Although it conducted

339. See, e.g., Patrick J. McDonnell, *Center Offers Garment Workers a Voice*, L.A. TIMES, Apr. 14, 2001, at B1.

340. Telephone Interview with Kimi Lee, *supra* note 331.

341. See David Greenberg, *Workers' Woes: Kimi Lee's Parents Fled the Oppressive Regime in Burma. Today, She's an Activist Fighting for the Rights of Those Exploited in Sweatshops*, L.A. BUSINESS J., June 28, 2004, at 48, available at <http://www.allbusiness.com/north-america/united-states-california-metro-areas/174813-1.html>.

342. See *id.*

343. McDonnell, *supra* note 339; Telephone Interview with Kimi Lee, *supra* note 331.

344. FINE, *supra* note 11, at 50; McDonnell, *supra* note 339.

345. McDonnell, *supra* note 339.

346. FINE, *supra* note 11, at 62-63; Telephone Interview with Kimi Lee, *supra* note 331.

347. GORDON, *supra* note 11, at 121-22; Telephone Interview with Kimi Lee, *supra* note 331.

348. Telephone Interview with Kimi Lee, *supra* note 331; see also *Workers Prepare to Take Leadership in the Garment Worker Center*, SWEATSHOP WATCH (Sweatshop Watch, L.A., Cal.), Summer 2002, at 3, available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1035&context=globaldocs> (last visited Aug. 27, 2009).

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educational workshops and provided social service referrals,³⁴⁹ the GWC's primary focus was to help workers resolve wage-and-hour violations through the A.B. 633 process.³⁵⁰ To implement this system, GWC staff, with assistance from between fifteen and twenty volunteers, used a three-tiered process.³⁵¹ First, volunteers would assist workers in researching the manufacturers that had contracts with their shops in order to identify potential guarantors. Cases would then be handed off to GWC staff to help the workers with their wage claims. Frequently, cases settled before claims were even filed, after contractors received demand letters from the GWC. When that did not occur, staff would help workers file their claims with the Labor Commissioner and prepare for the initial meet-and-confer conference. Cases that proceeded beyond this phase were typically referred to lawyers at APALC, LAFLA, or Bet Tzedek. During its first year of existence, the GWC helped about a dozen workers through the wage claim process.³⁵²

As was evident from the fact that Lee started off in an APALC office, relations between the GWC and APALC were close. Yet, aside from the GWC's practice of referring wage claims to APALC at the hearing stage, there was no formal plan to coordinate strategy between the groups. That changed quickly, as workers who made clothes for Los Angeles-based Forever 21, a popular retailer of young women's clothing, began coming to the GWC in April of 2001 complaining of labor abuse.³⁵³ By June, nineteen Latina workers had come to the GWC,³⁵⁴ claiming that they had worked in unsafe factories for up to twelve hours a day and were owed several hundred thousands of dollars in unpaid wages and overtime.³⁵⁵ Some alleged that they had been fired for protesting their treatment.³⁵⁶ The GWC "helped the nineteen workers strategize how they could work as a group to support each other in their cases," which led to the workers' decision to target the individual factories as well as Forever 21.³⁵⁷ After meeting with the workers as a group to formulate a collective strategy to recover from Forever 21,³⁵⁸ the GWC attempted to contact the company's president, Do

349. FINE, *supra* note 11, at 93; McDonnell, *supra* note 339; Telephone Interview with Kimi Lee, *supra* note 331. R

350. FINE, *supra* note 11, at 86; Telephone Interview with Kimi Lee, *supra* note 331. R

351. Telephone Interview with Kimi Lee, *supra* note 331. R

352. *Id.*

353. Narro, *supra* note 332, at 348. R

354. Press Release, Asian Pac. Am. Legal Ctr. & Garment Worker Ctr., Garment Workers Celebrate End of Year With A New Beginning End of Campaign Against Forever 21 Announced (Dec. 14, 2004), available at http://www.garmentworkercenter.org/media/f21/GWC_F21_settlement.pdf.

355. *Id.*

356. *Id.*

357. *Boycott Forever 21!*, SWEATSHOP WATCH (Sweatshop Watch, L.A., Cal.), Dec. 2001, at 1, available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1033&context=globaldocs> (last visited Mar. 5, 2009).

358. Narro, *supra* note 332, at 349. R

Won Chang, to resolve the workers' claims. When he refused a meeting and his assistant rejected demands to improve factory conditions, GWC staff and APALC lawyers began laying the groundwork for a coordinated legal and organizing campaign against the company.³⁵⁹

d. Impact Litigation Phase II: Retrenchment

When APALC filed suit against Forever 21 on September 6, 2001,³⁶⁰ it began its most ambitious and sophisticated campaign to date. For the first time, the campaign put the role of retailers in workplace abuse front and center. Forever 21 was targeted as a high-profile retailer based in Los Angeles that produced its own label and therefore was responsible for contracting for the production of its garments, ninety-five per cent of which was done in the city.³⁶¹ Because Forever 21 was focused on young women's clothing, which has a short fashion cycle, it was believed that the company would be reluctant to outsource to foreign contractors that would create delay.³⁶² Thus, the Forever 21 campaign struck at the pinnacle of the garment industry's pyramid structure. As a tactical matter, the lawsuit was specifically designed to be part of a larger national campaign against the retailer that was coordinated at the grassroots level by the GWC, with media assistance by Sweatshop Watch. In this way, it was a test of the new multi-disciplinary organizational structure that had been put into place in order to wage anti-sweatshop campaigns. It was also a chance for the GWC, a new organization, to make its name as a worker organizing group.

From APALC's perspective, the Forever 21 case was, in addition, part of a broader litigation effort to advance its goal of extending joint liability into the retail sphere. Building on the momentum of the public launch of the Forever 21 suit, APALC moved three months later, on December 18, 2001, to sue Bebe,³⁶³ another popular vendor of its own brand-name young women's clothes based south of San Francisco. The history of both cases was closely intertwined, with each lawsuit winding its way through nearly three years of complex legal proceedings while advocates attempted to coordinate public pressure through boycott actions. They were premised, however, on two different legal theories.

359. GARMENT WORKER CENTER, FOREVER 21 CAMPAIGN TIMELINE (2004), http://www.garmentworkercenter.org/media/f21/2004_05_f21_Timeline.pdf.

360. Nancy Cleeland, *Lawsuit Against Forever 21 Alleges Unfair Labor Practices*, L.A. TIMES, Sept. 7, 2001, at C2.

361. FINE, *supra* note 11, at 104.

362. *Id.*

363. Kristin Young, *Bebe Hit by Worker Lawsuit*, WOMEN'S WEAR DAILY, Dec. 19, 2001, at 4, available at <http://www.wwd.com/fashion-news/article-1174836> (last visited March 5, 2009). APALC filed another suit against Bebe in May 2002 on behalf of six Chinese garment workers for labor violations at the factory of Bebe contractor S&W Manufacture, Inc. Kristin Young, *Bebe Sacked with Labor Lawsuit*, WOMEN'S WEAR DAILY, May 24, 2002, at 3. Settlement negotiations in this suit proceeded in tandem with the original suit.

Because of the absence of a strong control relationship between Forever 21 and its contractors, the legal strategy in that case—crafted by APALC’s Christina Chung—focused on establishing liability under state law, rather than pressing for FLSA joint employer status. Chung and Su—assisted by Bird Marella, the Los Angeles firm that had provided pro bono support in the Thai worker case—therefore initially brought the case in state court on behalf of the nineteen workers against the contract shops for whom they worked, the entities that directly hired them (the “manufacturer defendants”), and Forever 21 and its owners (who in turn hired the manufacturers).³⁶⁴ The original state court complaint alleged no federal claims against the manufacturers or contractors, instead asserting violations of California wage-and-hour law. The initial state claims against Forever 21 alleged unfair business practices under California Business and Professions Code § 17200, violations of record keeping requirements, negligence per se for selling “hot goods” and allowing industrial homework, and negligent supervision of its contractors.³⁶⁵

In contrast, the suit against Bebe (brought by APALC’s Su, Chung, and Figueira-McDonough, who had just joined APALC from LAFLA) was built around federal law claims.³⁶⁶ The case was brought in federal court on behalf of seven Chinese garment workers claiming labor violations against Bebe and its contractor, Apex Clothing Corporation.³⁶⁷ The complaint looked similar to those filed in the previous City Girl and XOXO cases, combining FLSA wage-and-hour claims with state law claims for negligence per se; negligent hiring, supervision, and entrustment; and unfair business practices.³⁶⁸ Yet, although the state claims were significant, the focus of the case was on establishing joint employer status under FLSA, which APALC lawyers believed they could do given Bebe’s level of operational control over Apex. Specifically, the workers claimed that Bebe controlled all aspects of production and that Apex effectively operated as a department of Bebe, existing merely to supply the labor.

With the key legal issue thus defined, the Bebe suit proceeded in straightforward fashion. In September 2002, the plaintiffs moved for partial summary judgment on the issue of joint employer status, arguing that “Bebe

364. Appellants’ Opening Brief at 5-6, *Castro v. Fashion 21, Inc.*, 88 Fed. Appx. 987 (9th Cir. 2004) (No. 02-55629).

365. *Id.* at 8.

366. As in the Forever 21 case, Bird Marella provided pro bono assistance.

367. *Zhao v. Bebe Stores, Inc.*, 247 F. Supp. 2d 1154, 1154 (C.D. Cal. 2003); see also *Seven Chinese Garment Workers Sue Bebe Clothing Stores, Inc. for Sweatshop Abuses*, Asian Pac. Am. Legal Ctr. (Asian Pac. Am. Legal Ctr., Los Angeles, Cal.), Spring 2002, at 7, available at http://www.apalc.org/newsletters/newsletter_2002_spring_pdf (last visited Mar. 5, 2009).

368. First Amended Complaint for Injunctive and Declaratory Relief and Damages for Violation of the Fair Labor Standards Act and California Labor Code; Negligence; Unfair Business Practices; Wrongful Termination; Retaliation, *Zhao v. Bebe Stores, Inc.*, 247 F. Supp. 2d 1154 (C.D. Cal. Feb. 2002) (No. 01-10950 GAF (CTx)). The complaint also included claims under state law alleging failure to provide meal and rest breaks, and failure to provide accurate wage statements in writing. *Id.* at 16-17.

quality control personnel conducted daily, on-site inspections to ensure compliance with Bebe's detailed quality standards and then inspected garments before shipping them."³⁶⁹ Yet, in sharp contrast to the favorable joint employer ruling APALC had received in the Thai worker case, district court Judge Gary Feess, a Clinton appointee and former U.S. Attorney, issued a legal rebuke to the Bebe plaintiffs, holding that they could not pursue claims against the retailer as a joint employer.³⁷⁰ In particular, the court found that plaintiffs had not shown control under the "economic realities" test, emphasizing that "Apex contracted with companies other than Bebe Stores; Bebe Stores contracted with garment sewers other than Apex; Apex owned and operated its own production facility; Apex had sole control over and responsibility for hiring and firing its employees; and Apex controlled the working conditions of its employees."³⁷¹ As for the fact that one of Bebe's quality control managers "maintained an office at Apex to deal with quality control problems as they arose," the court said that plaintiffs did not show that the managers exerted day-to-day control over Apex employees—that job, the court found, was left to Apex supervisors.³⁷² Thus, whereas the court in the Thai worker case held out the possibility of joint liability based on structural market dynamics,³⁷³ the Bebe court limited its inquiry to a formalistic analysis of the contractual relationships at stake. Its analysis suggested that a retailer or manufacturer could only be a joint employer when its representatives were primarily responsible for the day-to-day management of the contractor's employees—a standard that would be almost impossible to meet because of the contractual separation between the parties. APALC contemplated an appeal of the district court's ruling, but Su believed that "the tide had turned," with the courts becoming resistant to the notion of expanding corporate liability.³⁷⁴

After the district court's ruling in late 2002,³⁷⁵ APALC pressed ahead while the GWC and Sweatshop Watch organized a grassroots campaign to pressure Bebe to settle. Supporters sent postcards with anti-sweatshop messages to Bebe president, Manny Mashouf, and protested outside Bebe stores, distributing flyers to customers with the campaign's slogan, "to be . . . or not to be . . . a sweatshop."³⁷⁶ In February 2003, the GWC,

369. Plaintiffs' Motion for Partial Summary Judgment at 2, *Zhao v. Bebe Stores, Inc.*, 247 F. Supp. 2d 1154 (C.D. Cal. Sep. 2002) (No. 01-10950 GAF (CTx)).

370. *Zhao*, 247 F. Supp. 2d at 1155.

371. *Id.*

372. *Id.* at 1160.

373. *Bureerong v. Uvawas*, 922 F. Supp. 1450, 1468 (C.D. Cal. 1996).

374. Telephone Interview with Julie Su, *supra* note 111.

375. Katherine Bowers, *Calif. Court Exonerates Stores on Sweatshops*, *WOMEN'S WEAR DAILY*, Nov. 18, 2002, at 2, available at <http://www.wwd.com/fashion-news/calif-court-exonerates-stores-on-sweatshops-744574> (last visited Mar. 5, 2009).

376. "To be . . . or Not to be" a Sweatshop?, *SWEATSHOP WATCH* (Sweatshop Watch, L.A., Cal.), Spring 2003, at 3, available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1038&context=globaldocs> (last visited Mar. 5, 2009).

Sweatshop Watch, and United Students Against Sweatshops, organized a 300-person march outside a Santa Monica Bebe store calling on Bebe and other manufacturers to stop using sweatshops.³⁷⁷ Yet the district court ruling prefigured the outcome, which came on March 3, 2004 in the form of a confidential settlement agreement with Bebe.³⁷⁸ APALC continued to pursue its claims against Apex and was awarded a default judgment against the company for \$1.4 million, which it was unable to collect.³⁷⁹

Though the Forever 21 case produced no negative legal precedent, it raised a different set of challenges to APALC's litigation strategy. At one level, Forever 21 highlighted the lengths that retailers were willing to go to resist legal responsibility for contractor labor abuse. The case thus involved much more aggressive legal maneuvering than Bebe or any other case that had preceded it. This was apparent at the very outset when Forever 21, realizing that the workers' case rested on the strength of its state law claims, immediately sought to remove the case to federal court. APALC, not wanting to get bogged down in removal proceedings, agreed to amend its complaint to create federal jurisdiction by asserting FLSA claims, but only against the contractors and manufacturers (no federal claims were asserted against Forever 21).³⁸⁰ After some additional wrangling over the propriety of federal jurisdiction, APALC refiled its complaint in federal court on November 5, 2001.³⁸¹ Less than two weeks later, the GWC announced a boycott of Forever 21 stores, which drew garment workers and community members to picket stores every Saturday through the end of the year.³⁸² The GWC's Joann Lo was the key organizer who worked on the campaign.

In December 2001, Forever 21 moved to dismiss all but the unfair business practices claim. APALC then settled with the other defendants that had appeared: manufacturers One Clothing and Sany Fashion.³⁸³ At that point, APALC filed its own motion to dismiss the action—without

377. *Id.*

378. Press Release, Asian Pac. Am. Legal Ctr., "Bebe" Settles Two Lawsuits Alleging Sweatshop Abuses (Mar. 3, 2003), available at <http://www.apalc.org/PressRelease/2004/Mar.3.2004> (last visited March 2, 2009); Email from Julie Su, Litigation Director, Asian Pac. Am. Legal Ctr., to Danae McElroy, Research Assistant to Scott Cummings, Professor, UCLA School of Law (Aug. 9, 2007).

379. Email from Julie Su, Asian Pac. Am. Legal Ctr., to Danae McElroy, Research Assistant to Scott Cummings, Professor, UCLA School of Law (Aug. 7, 2007).

380. Appellants' Opening Brief at 5-6, *Castro v. Fashion 21, Inc.*, *supra* note 364.

381. *Id.* Figueira-McDonough, who arrived at APALC in October of 2000, was also listed as a lawyer on the federal court complaint.

382. Narro, *supra* note 10, at 473.

383. Appellants' Opening Brief at 10, *Castro v. Fashion 21, Inc.*, *supra* note 364. One Clothing agreed to pay seven of the nineteen plaintiffs \$175,400. This amount included back wages as well as statutory damages and penalties. Additionally, One Clothing signed a consent decree that it would "take reasonable steps to ensure that its garments are not produced under sweatshop conditions." The decree required One Clothing to establish a multilingual toll-free number that workers could use to report sweatshop conditions to the manufacturer, organize annual trainings for workers and factories on federal and state labor laws, and guarantee that factories were sanitary. *Garment Workers Announce Major Victory Against One Clothing and Forever 21*, ASIAN PAC. AM. LEGAL CTR. NEWSL. (Asian Pac. Am.

prejudice—against Forever 21 for lack of federal jurisdiction, since the only remaining claims in the lawsuit involved the pendant state law violations against Forever 21.³⁸⁴ APALC's goal was to get out of federal court and refile its claims against the retailer in state court. Forever 21 opposed the motion and filed an additional motion for partial summary judgment. At a hearing on all the motions on March 4, district court Judge Manuel Real dismissed all of plaintiffs' claims, including the unfair business practices claim that Forever 21 had not tried to dismiss.³⁸⁵ The dismissal was *with prejudice* and, as such, blocked APALC from refiling in state court.

In the wake of the district court's dismissal of the claims against Forever 21, the case split along two tracks. On the heels of its legal victory, Forever 21 sought to quell ongoing boycotts, filing two suits against individuals and groups involved in the demonstrations. One suit charged the GWC, Sweatshop Watch, and the GWC's Lee and Lo with libel and other torts.³⁸⁶ The other alleged defamation, interference with prospective business advantage, unfair business practices, and nuisance against the nineteen plaintiffs, CHIRLA, and Victor Narro,³⁸⁷ who was about to move from CHIRLA, where he directed the Workers' Rights Project, to become Sweatshop Watch's co-executive director. The ACLU of Southern California, assisted pro bono by the law firm Loeb & Loeb in conjunction with lawyers from the National Lawyers Guild, took the cases and moved to strike the complaints by filing motions under the state Strategic Litigation Against Public Participation (SLAPP) statute, which allowed a court to dismiss causes of action "arising from any act of that person in furtherance of the person's right of petition or free speech."³⁸⁸ Under public pressure, Forever 21 dropped the suit against the workers, but continued on against the organizations and advocates.³⁸⁹

By targeting the organizing and public relations arms of the campaign, Forever 21's lawsuits attempted to neutralize the use of the boycott to bring public pressure to bear on it to settle. Forever 21 thus struck at the heart of the advocates' attempt to integrate law and organizing. The suits also led to a showdown between Forever 21 and the advocacy groups, which responded by ratcheting up their organizing efforts. After the suits were filed, the workers organized a press conference condemning Forever 21 for retaliation,³⁹⁰ which was followed by a series of actions, including a campaign to

Legal Ctr., Los Angeles, Cal.), Spring 2002, at 5, http://www.apalc.org/newsletters/newsletter_2002_spring.pdf.

384. Appellants' Opening Brief at 11, *Castro v. Fashion 21, Inc.*, *supra* note 364.

385. *Id.* at 13.

386. *Garment Workers Ctr. v. Superior Court*, 117 Cal. App. 4th 1156 (Cal. Ct. App. 2004).

387. *Fashion 21 v. Coalition for Humane Immigrant Rights of Los Angeles*, 117 Cal. App. 4th 1138 (Cal. Ct. App. 2004).

388. Cal. Civ. Proc. Code § 425.16(b)(1).

389. *See Narro*, *supra* note 332, at 350-51.

390. *See id.* at 351.

put up billboards reading “Forever 21, Sweatshop Made” around Los Angeles in August 2002.³⁹¹ The workers also organized a national speaking tour in the fall of 2002.³⁹² In the meantime, workers continued reaching out to universities and community organizations, while staging demonstrations at local Forever 21 stores.³⁹³

These public actions proceeded in tandem with the two SLAPP motions. In both cases, the advocates suffered early setbacks: the trial court in the GWC case continued the GWC’s motion to strike and permitted Forever 21 to conduct limited discovery,³⁹⁴ while the court in the CHILRA case denied CHIRLA’s motion to strike on the merits, finding that Forever 21 had a “probability” of prevailing on their claims based on videotaped footage of Narro handing out allegedly defamatory fliers at a demonstration.³⁹⁵ However, both of these rulings were reversed on appeal: in April 2004, the Court of Appeals issued a writ of mandate to stay discovery in the GWC case,³⁹⁶ and reversed the dismissal of CHIRLA’s motion on the ground that the statements contained in Narro’s flyer, which recounted the workers’ claims against Forever 21, were not false.³⁹⁷

By this point, however, the campaign had already dragged on for nearly two-and-a-half years and the coalition the advocates had worked so hard to create began to show signs of strain.³⁹⁸ GWC staff and workers were reportedly bored and frustrated by the ongoing picketing,³⁹⁹ and the deteriorating relationships between the organizers and attorneys led to “conflict resolution meetings” and a feeling among the attorneys that they could not “discuss litigation and organizing strategies with the organizers because of the different legal issues highlighted by [the federal employment and state SLAPP] cases.”⁴⁰⁰

Nonetheless, after extensive discussions between APALC’s Chung, the GWC’s Lo, and the workers involved, the plaintiffs decided to move forward on the second track of the legal case: appealing the district court’s dismissal on the ground that its supplemental jurisdiction over the state claims ceased once the federal claims were dismissed⁴⁰¹—and therefore the

391. *Forever 21 Boycott Gains Momentum*, SWEATSHOP WATCH (Sweatshop Watch, L.A., Cal.), Fall 2002, at 6, available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1036&context=globaldocs> (last visited Mar. 5, 2009).

392. *Id.*

393. *Forever 21 Boycott Goes National*, SWEATSHOP WATCH (Sweatshop Watch, L.A., Cal.), Dec. 2002, at 3.

394. *Garment Workers Ctr. v. Superior Court*, 117 Cal. App. 4th 1156, 1160-61 (Cal. Ct. App. 2004).

395. *Fashion 21*, 117 Cal. App. 4th at 1144.

396. *Garment Workers Ctr.*, 117 Cal. App. 4th at 1159.

397. *Fashion 21*, 117 Cal. App. 4th at 1150-53.

398. See Narro, *supra* note 332, at 353-54.

399. FINE, *supra* note 11, at 105.

400. Narro, *supra* note 332, at 354.

401. See Appellants’ Opening Brief at 16, *Castro v. Fashion 21, Inc.*, *supra* note 364.

state claims should have been dismissed without prejudice to a subsequent state court case on the same grounds. Chung was the primary author of the legal brief to the Ninth Circuit making the case and, with Su, argued the appeal. In March of 2004, the Ninth Circuit Court of Appeals agreed with the plaintiffs and reversed the district court, stating that the state claims presented novel issues of California law and that it was “inappropriate for the district court to have retained the supplemental state claims against the Forever 21 defendants after the federal claims were dismissed.”⁴⁰² This decision cleared the way for APALC to bring the state law claims against Forever 21 in state superior court,⁴⁰³ which it did in May 2004.⁴⁰⁴

With this victory coming within a month of the favorable appellate court decisions in the SLAPP suits, the campaign received a considerable boost that rejuvenated public demonstrations and placed pressure on Forever 21 to settle, which was heightened by the prospect of ugly boycotts during the holiday shopping season.⁴⁰⁵ On December 14, 2004, the parties reached a confidential settlement agreement with Forever 21. Their press release provided few details: “[The parties] have reached an agreement to resolve all litigation between them. In addition, the parties have agreed to take steps to promote greater worker protection in the local garment industry. . . . Under the parties’ agreement, the national boycott of Forever 21 and related protests at the Company’s retail stores, initiated by the Garment Worker Center in 2001, have ended.”⁴⁰⁶

The resolution of the Forever 21 case, in conjunction with the Bebe settlement earlier in the year, constituted a turning point in the anti-sweatshop movement in Los Angeles. On the one hand, the outcome of both cases allowed advocates to claim success. For APALC, the cases reaffirmed the power of law to hold retailers to account, with each case deploying different joint liability theories to ultimately win settlements for workers. For the GWC, in turn, the Forever 21 campaign helped to establish the organization as a major player in the industry, providing media attention that allowed it to recruit new worker members and build worker leadership.⁴⁰⁷

Yet the cases also revealed difficulties and divisions that would become magnified as the movement progressed. As the Bebe ruling demonstrated, litigation was risky: even in a case with strong facts showing an intricate relationship between Bebe and its contractors, the court found the absence of control in language that seemed to immunize retailers and manufacturers from liability so long as their representatives were not on the shop

402. *Castro v. Fashion 21, Inc.*, 88 Fed. Appx. 987 (9th Cir. 2004).

403. Press Release, *supra* note 354.

404. *Id.*

405. Narro, *supra* note 332.

406. Press Release, *supra* note 354.

407. FINE, *supra* note 11, at 105; Narro, *supra* note 332, at 358.

floor supervising garment workers. In addition, as the bruising litigation against Forever 21 underscored, retailers and manufacturers were becoming more sophisticated and aggressive when contesting joint liability in the courts. Particularly as the outrage from the Thai worker case subsided, retailers and manufacturers were under less public pressure to bend quickly to garment litigation demands and were willing to fight to keep large-scale impact cases out of court—preferring instead to confine garment labor disputes to the A.B. 633 process, which provided administrative enforcement of individual claims. In addition, the garment industry was dramatically contracting—nearly one-third smaller in 2004 than it was in 2000—and the impending phase-out of apparel quotas under the MFA raised concerns about the industry’s continued relevance. APALC never formally ended its impact litigation campaign and remained ready and willing to litigate more garment cases. However, against the backdrop of these structural changes, Forever 21 was the last garment case that the organization filed.

Moreover, the Forever 21 case laid bare tensions underlying the ambitious effort to combine law and organizing as a strategy to attack sweatshop abuse. At one level the case, which saw APALC take the side of Latina workers against successful Korean American business owners, strained ties with this segment of the group’s Asian American constituency.⁴⁰⁸ At the grassroots level, the length and complexity of the case frustrated some GWC organizers, who began to view impact suits as too top-down to complement the group’s worker empowerment goals. For instance, the GWC’s Lee viewed the confidential settlement as a “downside” to the case, since it could not be used to publicly advance worker organizing goals.⁴⁰⁹

The cessation of APALC’s impact litigation drive to establish joint liability in court refocused attention on the pursuit of garment workers’ rights in alternative venues. Two strategies emerged, reflecting the new political terrain that anti-sweatshop activism had come to occupy in the decade after the El Monte raid. First, the move away from courts as a forum for pursuing systemic reform magnified the importance of the A.B. 633 administrative process as a route for enforcing individual rights. Second, in the absence of unionization—and in the aftermath of Forever 21—advocates sought to develop different methods for linking individual case representation to the goal of promoting collective worker organizing.

e. Individual Rights: The Limits of Enforcement

The enactment of A.B. 633 posed a classic problem of legal reform: how to translate law on the books to change on the ground.⁴¹⁰ In what came as no surprise to those who had followed the DLSE’s history of inade-

408. Telephone Interview with Julie Su, *supra* note 111.

409. Telephone Interview with Kimi Lee, *supra* note 331.

410. HANDLER, *supra* note 24, at 18-22.

quate enforcement efforts, a report produced by UCLA School of Law professor Gary Blasi revealed significant problems with the early phase of A.B. 633 implementation.⁴¹¹ To begin with, workers were not using the process in significant numbers. Looking at claims in the Southern California DLSE office during the first fifteen months of A.B. 633's operation, the report found that only 382 workers had filed claims, a number that "likely represent[ed] well under one percent of those who ha[d] potential claims."⁴¹² The report attributed the low number of filings to administrative difficulties in initiating the claims process and the lack of information about A.B. 633 provided in languages that community members could understand. More distressing than the lack of claimants was the lack of success of those who did file claims in recovering against the statutorily defined "guarantors." The wage guarantee was touted as the critical advance in the law, permitting workers to recover against economically viable manufacturers and retailers. Yet the report revealed that the DLSE had been able to identify guarantors for only 30 of the 189 contractors named in the claims.⁴¹³ More disturbing still were the figures on financial recovery: although the report showed that workers had been awarded over \$320,000 in back pay by the Labor Commissioner, *nothing had been recovered from the guarantors.*⁴¹⁴

The report's conclusions pointed advocates in two directions—increasing the number of claims filed and augmenting enforcement of the wage guarantee. The GWC was on the frontlines of A.B. 633 enforcement and invested heavily in reaching out to workers and helping guide them through the administrative process. Yet without meaningful enforcement of joint liability, the law was an empty letter—simply an additional layer of bureaucracy to navigate for those with individual wage claims. And particularly after advocates had succeeded in thwarting the industry's attempt to draft A.B. 633's implementing regulations so as to exclude retailers from the wage guarantee, attention was focused on how the Labor Commissioner and the courts would deal with retailer liability.

The opportunity to test A.B. 633's treatment of retailers arose in a case that came out of the GWC in 2002. Four Latina garment workers claimed that their contractor, D.T. Sewing, forced them to work seventy hour weeks at less than \$4 per hour for several years.⁴¹⁵ The contractor produced garments sold by young women's fashion retailer Wet Seal. The workers, represented by Cassandra Stubbs, a Skadden Fellow at Bet Tzedek, sought recovery against Wet Seal. The contractor and manufacturer had shut

411. See generally GARY BLASI & ASSOCIATES, IMPLEMENTATION OF AB633: A PRELIMINARY ASSESSMENT (July 26, 2001), available at http://www.law.ucla.edu/docs/ab633_preliminary_assessment.pdf.

412. *Id.* at 3.

413. *Id.* at 4.

414. *Id.* at 6.

415. Leslie Earnest, *Wet Seal Faces Wage Claims*, L.A. TIMES, Oct. 20, 2003, at C1.

down. The workers won a favorable ruling at the Labor Commissioner hearing, which found that the presence of Wet Seal monitors at the contract shop “established a direct working relationship between the Wet Seal and DT Sewing.”⁴¹⁶ Wet Seal, which the Labor Commissioner held liable for \$90,000 of the \$240,000 owed in back wages to the workers, responded by invoking its right to appeal the Labor Commissioner’s decision to the state superior court.⁴¹⁷ While trial was pending, the GWC organized several actions against the company to pressure it to settle, which it did in January 2004. In addition to paying the \$90,000 ordered by the Labor Commissioner, Wet Seal agreed to give \$40,000 to Bet Tzedek to support its anti-sweatshop activities,⁴¹⁸ hire an independent monitor to oversee production, and provide quarterly monitoring reports upon request.⁴¹⁹

Yet while Wet Seal brought notoriety and favorable precedent on retailer liability, its very uniqueness begged the question of how much A.B. 633 had actually improved industry conditions for garment workers more broadly. Drawing upon data collected for nearly three years after the period covered in the Blasi report, the Garment Workers Collaborative sought to provide an answer to that question with a comprehensive evaluation of A.B. 633 in 2005 that was drafted primarily by Chung.⁴²⁰ The verdict was not good. The report found that “poor implementation of A.B. 633 by the DLSE and flagrant disregard of the law by many apparel companies effectively strip A.B. 633 of its power.”⁴²¹ On the positive side of the ledger, the number of claimants had risen fourfold since the law’s passage,⁴²² and the DLSE seemed to be doing a better job of identifying guarantors, finding them in about half of the cases studied.⁴²³ In addition, there were significant improvements in the average worker recovery—up from \$417 to \$1,365.⁴²⁴

However, the good news stopped there. Workers were recovering, on average, less than one-third of the total amount of unpaid wages owed to them and were typically not recovering any liquidated damages or penalties provided for in A.B. 633.⁴²⁵ Contractors were settling claims for about thirty per cent of what the workers were owed, while guarantors settled

416. Order, Decision or Award of the Lab. Comm’r, October 24, 2002, Labor Comm’r State of Cal., Dep’t of Indus. Relations, DLSE, *quoted in* FINE, *supra* note 11, at 90.

417. Earnest, *supra* note 415; Leslie Earnest, *Wet Seal Trial Could Assign Duty to Pay Contractor Workers*, ORANGE COUNTY REGISTER, NOV. 29, 2003.

418. Leslie Earnest, *Wet Seal Is Set to Settle Wage Claim*, L.A. TIMES, Jan. 21, 2004, at C1.

419. FINE, *supra* note 11, at 91. In a subsequent case, retailer Charlotte Russe agreed to pay \$800 to a garment worker for minimum wage and overtime violations after the Labor Commissioner ruled in the worker’s favor. *See* Amanda Bronstad, *Clothing Lines*, L.A. BUS. J., Aug. 1, 2005, at 12.

420. ASIAN PAC. AM. LEGAL CTR. ET AL, *supra* note 41.

421. *Id.* at 37.

422. *Id.* at 19.

423. *Id.* at 26.

424. *Id.* at 20.

425. *Id.* at 22.

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infrequently and when they did paid an average of only sixteen per cent of what the workers claimed in back wages.⁴²⁶ Only fifteen per cent of guarantors paid anything to workers and, even when workers received a Labor Commissioner order directing guarantors to pay, a full sixty per cent of guarantors still paid nothing.⁴²⁷ Thus, it appeared that most guarantors were opting out of the process, forcing workers to come after them in court, while contractors were offering workers low-ball settlements in the knowledge that workers would be reluctant to incur the costs and risks of fully litigating their claims.⁴²⁸

The report attributed the problems to poor enforcement by the DLSE, which regularly failed to subpoena records and did not adequately enforce the law requiring contractors to keep written records of guarantors.⁴²⁹ Furthermore, although the DLSE had the legislative authority to pursue collections, it seldom used it,⁴³⁰ leaving workers to refer collections to the Franchise Tax Board,⁴³¹ which had a weak reputation for collecting judgments.⁴³² In this environment, where contractors and guarantors could successfully settle claims for amounts far below what they were worth—or get out of paying altogether—there was “no incentive to ensure that workers are paid their wages in the first place.”⁴³³ Though the report made the appropriate recommendations, calling on the DLSE to step up its enforcement efforts, the echoes of similar calls long since unheeded left little room for optimism that change would come soon.

5. *A Fractured Coalition*

With the MFA set to expire on January 1, 2005—eliminating textile and apparel quotas that had restricted imports from developing countries—advocates braced for the impact on Los Angeles’s garment industry and began thinking of possible responses. In the run up to the expiration, experts predicted that 81,000 apparel jobs would be lost in California,⁴³⁴ and that about half of the garment workers in Los Angeles would lose their jobs.⁴³⁵ Garment advocates convened a meeting in mid-November 2004, called “The Future of California’s Garment Industry: Strengthening Oppor-

426. *Id.* at 24.

427. *Id.* at 22.

428. *Id.* at 25.

429. *Id.* at 30.

430. *Id.* at 23.

431. Cal. Rev. & Tax. Code § 19290 (West 2003).

432. CAL. STATE AUDITOR, FRANCHISE TAX BOARD, SIGNIFICANT PROGRAM CHANGES ARE NEEDED TO IMPROVE COLLECTIONS OF DELINQUENT LABOR CLAIMS 1, 13 (2004), available at <http://www.bsa.ca.gov/pdfs/reports/2003-131.pdf>.

433. *Id.*

434. AM. TEXTILE MFRS. INST., THE CHINA THREAT TO WORLD TEXTILE AND APPAREL TRADE 2 (2003), available at <http://www.ncto.org/textilecrisis/china.pdf>.

435. David Greenberg, *Impact of China on Apparel World Is Debated*, L.A. BUS. J., Nov. 22, 2004, at 3.

tunities for Immigrant Workers,” at which they discussed different models for holding retailers accountable, the potential of international campaigns, options for job retraining and transitional support for ex-garment workers, and the possibilities for worker-ownership and other types of development initiatives.⁴³⁶ In their final report, the convening groups seemed resigned to losing a significant part of the garment industry that they had fought so hard to protect. Though the report called for promoting “sweatshop-free, locally produced apparel that boasts high quality and quick turnaround,” its broad recommendations suggested that advocates were also thinking about transitions, emphasizing the general need to improve the quality of work, increase job training, legalize immigrants, improve the social safety net, support responsible trade policy, and expand economic opportunities.⁴³⁷

The worst predictions about the demise of the garment industry in a post-MFA world did not materialize in the short term. American garment imports from China did increase sharply immediately after the MFA’s quota phase-out,⁴³⁸ but a number of factors combined to staunch the outward flow of garment jobs, including the continuation of some tariffs, and the reintroduction of limits on Chinese imports based on China’s WTO accession agreement providing for safeguards against market disruption.⁴³⁹ By 2006, roughly 60,000 apparel manufacturing jobs still remained in Los Angeles.⁴⁴⁰

Yet there was no question that the industry had fundamentally changed. And as they stepped back to survey the damage, both advocates and industry leaders held law at least partly to blame for the industry’s declining fortunes—albeit for different reasons. While advocates cited the inadequacy of legal enforcement as a cause of poor working conditions, industry leaders argued that intensive government regulation had demonstrated a “hostile attitude” that prompted producers to leave.⁴⁴¹

The disenchantment with law in the anti-sweatshop movement was apparent at the grassroots level, where the GWC began disinvesting in legal activities after the Forever 21 campaign. The GWC’s decision to deemphasize direct staff involvement in legal processes stemmed from an internal evaluation of how best to promote its organizational mission. Although

436. *The Future of California’s Garment Industry: Strengthening Opportunities for Immigrant Workers*, (Sweatshop Watch, L.A., Cal.) Nov. 11-12, 2004 available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1010&context=globaldocs>.

437. CRISIS OR OPPORTUNITY, *supra* note 84, at 11-14.

438. *Asia’s Economic Outlook is Bright, but Risks Loom*, IMF SURVEY (Int’l Monetary Fund, Wash. D.C.), May 23, 2005, at 143, available at <http://www.imf.org/external/pubs/ft/survey/2005/052305.pdf>.

439. VIVIAN C. JONES, CONG. RESEARCH SERV., CRS REPORT FOR CONGRESS, SAFEGUARDS ON TEXTILE AND APPAREL IMPORTS FROM CHINA 3 (2006).

440. JACK KYSER, L.A. COUNTY ECON. DEV. CORP., MANUFACTURING IN SOUTHERN CALIFORNIA 4 (Mar. 2007), <http://www.laedc.org/reports/Mfg-2007-Report.pdf>.

441. Aurelio Rojas, *Furor Over Apparel Job Losses: Industry Cites Sweatshop Laws; Worker Advocates Say They’re Ineffective*, SACRAMENTO BEE, May 25, 2003, at A3.

the GWC had from its inception focused on helping workers file wage claims, the volume of individual claims began to clash with its goal of fostering worker collective action. The ministerial nature of the wage claims was time consuming and GWC organizers found themselves asking: “What’s our purpose? How’s this tied to organizing? How much of our resources do we want going to this?”⁴⁴² Particularly after the Forever 21 campaign stretched the GWC’s resources to the limit, the organization decided to restructure its legal clinic by emphasizing more of a “self help” approach to wage claim filings.⁴⁴³ Under this model, the GWC trained about a dozen workers to serve as “peer counselors” to new workers who approached the GWC for assistance.⁴⁴⁴ The peer counselors helped workers through the full range of the A.B. 633 process: collecting documentation on unpaid wages, making a demand on the employer, filing the claim, and conducting settlement negotiations.⁴⁴⁵ If negotiations failed to yield a settlement, workers were expected to represent themselves at the Labor Commissioner hearing aided by a peer counselor; as a *quid pro quo* for this peer assistance, workers were required to become members of the GWC.⁴⁴⁶

The self-help model was designed to build worker capacity by giving individual workers the tools to pursue their own claims, while also helping to create a new cadre of peer counselors with the knowledge to help other workers navigate the A.B. 633 process. By requiring membership in exchange for services, the GWC sought to expose workers to the larger anti-sweatshop movement, provide opportunities to engage in collective action, and cultivate new leaders with a sense of ownership in the GWC to guide future organizing drives. Under this model, legal enforcement through the A.B. 633 process became a means to the end of promoting worker empowerment.

The move toward self-help reflected a broader shift in the GWC away from legal engagement. For the GWC, the lesson from the Forever 21 campaign was that lawyer-driven social reform goals could overwhelm the objective of promoting worker leadership and development.⁴⁴⁷ Instead of having its involvement in reform campaigns drive the deployment of worker organizing, the GWC decided to make worker organizing the centerpiece of all its activities. This meant freeing itself from other organizational ties that would place restrictions on its ability to foster worker participation. Toward this end, the GWC decided to withdraw from funding arrangements that did not centrally involve worker organizing, reverting back to its initial funding structure of relying on smaller foundation

442. FINE, *supra* note 11, at 86.

443. *Id.*

444. *Id.*

445. *Id.* at 86-87.

446. *Id.*

447. Telephone Interview with Kimi Lee, *supra* note 331.

grants.⁴⁴⁸ As a result, the group shrank in numbers, from eight staff in 2005 to just two in 2007, producing a greater reliance on volunteers and members.⁴⁴⁹ It also ceased its involvement with the Los Angeles Workers Advocates Coalition—created to focus on legal strategy—which the GWC came to view as outside the scope of its immediate mission. Additionally, the GWC cut back on policy work because of resource constraints.⁴⁵⁰ In 2006, in a move that had been contemplated from the organization’s inception, the GWC formally separated from Sweatshop Watch, where it had been a project, and established itself as an independent nonprofit organization.

The GWC’s activities changed as well. Though it still helped workers file wage claims, and referred some workers to legal groups for assistance, the GWC relied even more heavily on up-front education to help workers to file claims on their own. In turn, the GWC began concentrating its efforts on popular education workshops to promote worker political consciousness and leadership development, while launching an initiative to form worker committees inside factories to improve health and safety conditions.⁴⁵¹ The goal of this new strategy was to create “systemic changes” through organizing in the garment industry while endowing the workers with a stronger sense of “ownership” in the GWC.⁴⁵² Once a critical player in the movement to integrate litigation and grassroots organizing to create corporate accountability in the Los Angeles garment industry, the GWC now forged ahead on its own, organizing workers in an industry slashed by globalization, abandoned by unions, and unredeemed by law.

III.

LAW AND LABOR REFORM IN THE GARMENT SECTOR: A CRITICAL APPRAISAL

The decade of anti-sweatshop activism from El Monte to the phase-out of the MFA marked a pivotal moment in the rise of a new wave of labor activism focused on low-wage immigrant workers in Los Angeles. It coincided with, and in some cases sparked, the emergence of new campaigns that combined labor organizing and legal struggle to promote workers’ rights in immigrant-dominated low-wage industries, such as day labor, restaurants, and car washes. In this sense, the decline of the anti-sweatshop movement signaled both an end and a new beginning—a story of the monumental effort to improve standards for manufacturing workers in an era of globalization and the lessons for subsequent campaigns in service industries protected from outsourcing. Yet the struggle in the Los Angeles garment

448. *Id.*

449. *Id.*

450. *Id.*

451. Narro, *supra* note 10, at 481.

452. *Id.*

industry persists, albeit in a very different form. This part evaluates the consequences of the anti-sweatshop movement and analyzes contemporary challenges and opportunities for further reform.

A. Consequences

Though the anti-sweatshop movement did not achieve its most ambitious goal of extending joint employment in the garment industry, it could point to a number of accomplishments, both at the individual and systemic levels.

1. Individual

On an individual scale, the campaign brought about two types of changes: restoring wages and dignity for a subset of injured garment workers while creating new leadership in the field of low-wage worker advocacy.

From a financial perspective, APALC's litigation campaign, combined with the GWC's program of assisting workers in the A.B. 633 wage claims process, accounted for monetary recoveries that totaled more than \$6 million. This included the roughly \$3.5 million APALC won in the Thai worker case, along with the smaller settlements in City Girl, John Paul Richards, J.H. Design, and XOXO. It also included the approximately \$2.5 million the GWC helped workers recover through 2005 in the A.B. 633 process.⁴⁵³ In addition, the Thai workers recovered \$1 million from the DLSE's back pay award. Although the confidential settlements in the Forever 21 and Bebe cases did not reveal whether there were monetary settlements, if there were they would raise this total. Also, if the \$1 million recovery of the workers in the Guess class action is added, the total monetary recovery from 1995 to 2005 exceeds \$8 million.

There were non-monetary outcomes that accrued to the workers as well. By 2004, the GWC had provided educational and leadership training to thousands of garment workers and claimed over 100 active members. Similarly, according to Su, one of the movement's "biggest successes was just how workers involved in cases developed in terms of their consciousness, leadership, and engagement."⁴⁵⁴ There is no systematic evidence of the impact of movement experiences on the workers' legal consciousness or sense of individual empowerment—and this study did not undertake to measure worker attitudes. However, there were opportunities for worker participation in movement activities that may plausibly have promoted worker empowerment goals. Some of the Thai workers, for instance, spoke publicly about sweatshop conditions, testified on A.B. 633, and met with

453. Email from Kimi Lee, Director, Garment Worker Center, to Scott Cummings, Professor, UCLA School of Law (June 22, 2009).

454. Telephone Interview with Julie Su, *supra* note 111.

leaders at the AFL-CIO about the relationship between law and organizing. This engagement, according to Su, “helped them to feel greater control over the circumstances of their lives.”⁴⁵⁵ And partly because of this participation, individual workers received significant public attention for their roles in the anti-sweatshop movement. The Thai workers, for instance, were the subject of intense media coverage and received substantial civic support in making the transition from the El Monte compound to life in the community. There were individual success stories too, with one worker starting her own restaurant.⁴⁵⁶ The Forever 21 workers also were the subject of a powerful documentary, *Made in L.A.*, which aired in 2007. Public recognition of the role the workers played in the anti-sweatshop struggle complemented other efforts to promote their empowerment.

From a professional standpoint, the anti-sweatshop campaign also enhanced the careers of many involved. APALC’s Julie Su won several prestigious awards, including the Reebok International Human Rights Award in 1996 and the MacArthur Fellowship, commonly known as the “genius grant,” in 2001.⁴⁵⁷ APALC also attracted an impressive group of young lawyers who have gone on to continue their leadership roles in the low-wage worker field. Christina Chung was a key member of APALC’s anti-sweatshop litigation team, the intellectual architect of the Forever 21 case, and the only lawyer besides Su who worked on all of the garment litigation. She now works at the Employment Law Center-Legal Aid Society in San Francisco, where she remains a leader on workers’ rights issues. Muneer Ahmad became a professor at American University’s Washington College of Law and was recently appointed to the Yale Law School clinical faculty, where he will focus on immigrant rights. Betty Hung became the Directing Attorney of the Employment Project at LAFLA and is now at the Inner City Law Center. Julia Figueira-McDonough is a City Attorney focusing on labor enforcement in low-wage industries. Judy Marblestone, a 2003 Equal Justice Works Fellow from the UCLA School of Law (and co-author of the 2002 A.B. 633 report with Gary Blasi), is now a lawyer at the New York union-side labor law firm Gladstein, Reif & Meginniss. And Yungsohn Park, a 2005 Skadden Fellow from the Boalt Hall School of Law, is still with APALC.

455. *Id.*

456. Karen Robinson-Jacobs, *From Virtual Slavery to Being Boss; Entrepreneurs: Couple Once Indentured in a Garment Sweatshop Now Run Their Own Successful Restaurant*, L.A. TIMES, Oct. 25, 2001, at C1.

457. James Sterngold, *Civil Warrior: When It Comes to Battling the Garment Industry’s Threadbare Labor Practices, Julie Su Has a Particular Genius*, L.A. MAGAZINE, Nov. 1, 2002, at 58; Index of Reebok Human Rights Award Recipients, http://www.reebok.com/Static/global/initiatives/rights/text-only/awards/recipients/past_index.html.

2. Systemic

From a system-wide perspective, there were a number of changes wrought by the anti-sweatshop campaign at the levels of industry practice, governmental policy, and organizational action.

At the industry level, though retailers and manufacturers ultimately resisted the imposition of a strong form of joint liability, there was evidence that at least some nonetheless changed their way of doing business with contractors. Instead of turning a blind eye to contractor labor abuse, there were visible industry efforts to implement monitoring systems and work with anti-sweatshop groups on reform. Some companies hired private monitoring firms to police their contract shops, while a handful of conscientious retailers sat down with activists to develop responses to labor abuses.⁴⁵⁸ Observers debated whether these efforts were sincere or simply window-dressing to insulate the retailers and manufacturers from charges of insensitivity and protect their images.⁴⁵⁹ However, particularly after the El Monte raid, the heightened public awareness of garment labor abuse constrained the ability of industry actors to conduct “business as usual.”⁴⁶⁰ As a result of anti-sweatshop activism, retailers were, for the first time, pressured to disclose where their clothes were made and ensure that they were produced under appropriate conditions.⁴⁶¹ Giant retailers like Wal-Mart incorporated codes of conduct into their contracts with suppliers stating that the suppliers were bound to comply with labor laws.⁴⁶² And in the period after the Thai worker case, advocates believed that they had the “green light” to sue noncompliant companies, which may have deterred some of the most egregious abuse.⁴⁶³ In addition, the public outrage over garment sweatshops fed into the growing consumer appetite for “sweat-free” production alternatives. This created a market space for companies promoting sweat-free policies like American Apparel, the successful retailer and manufacturer that boasted of its pro-labor (and anti-union) policies, and the short-lived SweatX, launched by Ben & Jerry’s founder Ben Cohen and unionized by UNITE.⁴⁶⁴

458. Andrea Adelson, *Look Who’s Minding the Shop: California Garment Makers Try to Police Workplace*, N.Y. TIMES, May 4, 1996, at 33; George White, *El Monte Case Sparked Efforts to Monitor, Root Out Sweatshops*, L.A. TIMES, Aug. 2, 1996, at D1.

459. Adelson, *supra* note 459.

460. Telephone Interview with Julie Su, *supra* note 111.

461. *Id.*

462. On the basis of these agreements, the International Labor Rights Fund in 2005 sued Wal-Mart on behalf of workers in Africa, Central America, and Asia, claiming that contractor labor abuses violated their rights as third-party beneficiaries to the contract. Press Release, Int’l Lab. Rights Forum, *Sweatshop Workers on Four Continents Sue Wal-Mart in California Court* (Sept. 13, 2005), available at <https://www.laborrights.org/creating-a-sweatfree-world/wal-mart-campaign/1526>. The workers’ suit was dismissed, although an appeal is pending.

463. Telephone Interview with Julie Su, *supra* note 111.

464. Nancy Cleeland, *Clothing Firm Adopts Non-Sweatshop Concept: It Hopes to Stay Competitive and Turn a Profit*, L.A. TIMES, Apr. 9, 2002, at C1.

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There were also identifiable changes in government enforcement practices and labor policies. Although labor enforcement resources ebbed and flowed—and were never at a level that was satisfactory to advocates—the public backlash against sweatshops after El Monte forced some reforms. In the short term, the federal Department of Labor under Secretary Reich stepped up enforcement efforts, particularly through the use of “hot goods” prosecutions, and in 1996 claimed that it had recovered \$7.3 million in back wages for 25,000 workers during the three years prior.⁴⁶⁵ The federal Trendsetters List and Clinton’s Apparel Industry Partnership also promoted monitoring programs that proponents argued reduced the incidence of labor abuse in monitored shops.⁴⁶⁶ Similarly, the California DLSE reported increased enforcement activity in the short term, while Governor Arnold Schwarzenegger announced in 2005 a budget that provided \$6.5 million in funding to add new enforcement and audit positions to state agencies, including the DLSE, in an effort to launch a coordinated Economic and Employment Enforcement Coalition.⁴⁶⁷ However, while the initiative conducted nearly 950 “sweeps” during its first year and assessed \$3 million in penalties for violations of workers’ compensation and other rules, critics noted that it had issued less than twenty wage-and-hour citations and completed no wage audits.⁴⁶⁸

Anti-sweatshop advocates could also point to new laws on the books as an important result of their efforts. The most visible achievement was A.B. 633 but there were other laws passed in the context of movement activism. In 2004, the Los Angeles City Council enacted a local anti-sweatshop ordinance requiring city garment contractors to pledge compliance with employment and labor laws and pay workers a “procurement living wage,” while providing for penalties and contract termination in the event of noncompliance.⁴⁶⁹ Following passage of the sweat-free ordinance, Sweatshop Watch fought for its enforcement, achieving a victory when the Los Angeles City Council agreed to hire the Workers Rights Consortium—a labor rights organization that grew out of United Students Against Sweatshops to monitor condition in factories that produce university logo apparel⁴⁷⁰—to monitor contractors’ compliance with the law.⁴⁷¹ At the

465. Adelson, *supra* note 458.

466. Alexis M. Herman, *After El Monte an Upswing: Labor: Conditions Are Better, But Unscrupulous Independents Bear Watching*, L.A. TIMES, Aug. 4, 1997, at 5.

467. Khahn T.L. Tran, *Schwarzenegger Takes Aim at Sweatshops*, WOMEN’S WEAR DAILY, Dec. 7, 2005, at 14.

468. Susan Ferriss, *Wage Probe Criticized*, MONTEREY COUNTY HERALD, Apr. 24, 2006.

469. L.A., Cal., Admin. Code div. 10, art. 17, §§ 104.43.3, 10.43.5 (2005); *see also* Narro, *supra* note 332, at 357-58.

470. Worker Rights Consortium, History, at <http://www.workersrights.org/about/history.asp>.

471. *Independent Monitor Hired to Enforce Los Angeles’ SweatFree Law*, SWEATSHOP WATCH (Sweatshop Watch, L.A., Cal.), Spring 2007, at 6 available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1026&context=globaldocs> (last visited Aug. 27, 2009).

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federal level, outrage over El Monte was cited as one of the motivating factors that spurred passage of the Trafficking Victims Protection Act of 2000, which made trafficking a federal crime and provided a pathway to legal residence for trafficking victims.⁴⁷² Advocates also pressed for changes in A.B. 633 after reports of its inadequacies. Lobbying by Sweatshop Watch in 2005 and 2006 led to a change in the administration of the Garment Special Account, which is the fund garment workers can tap to collect awards by the Labor Commissioner that go unpaid by contractors and guarantors.⁴⁷³ The Legislature more than doubled the annual appropriation for the fund and developed a “streamlined” process to release funds if demand for monies exceeded that amount.⁴⁷⁴

Finally, the anti-sweatshop movement in Los Angeles generated an infrastructure of organizations and a network of alliances that fueled continued low-wage worker activism. Sweatshop Watch and the GWC were created as separate entities and, though some collaborations dissipated, others like the Garment Workers Collaborative persist. In addition, some of the relationships forged during the height of the campaign spawned new alliances, such as the Coalition of Immigrant Worker Advocates—which includes CHIRLA, the GWC, the Institute of Popular Education of Southern California (or IDEPSCA, its Spanish acronym), KIWA, La Raza Centro Legal, LAFLA, the Maintenance Cooperation Trust Fund, National Day Labor Organizing Network, and Sweatshop Watch—and the Multi-Ethnic Immigrant Workers Organizing Network—which includes CHIRLA, the GWC, IDEPSCA, KIWA, and the Pilipino Workers Center of Southern California. Sweatshop Watch also helped to found the Worker’s Rights Consortium and Sweatshop Watch’s first director, Nikki Bas, remains on its advisory board. Even the failed Guess campaign was credited with forging alliances between labor activists, students, and religious groups.⁴⁷⁵ The UCLA Downtown Labor Center, started in 2002, has been a key mediating institution, with Victor Narro directing a project that focuses on bringing together unions and immigrant workers to improve conditions in low-wage industries.⁴⁷⁶ Most recently, the Wage Justice Center was formed by two USC Law School graduates, who used seed funding from the Echoing Green foundation to create an organization dedicated to enforcing judg-

472. Grace Chang & Kathleen Kim, *Reconceptualizing Approaches to Human Trafficking: New Directions and Perspectives from the Fields*, 3 STAN. J. CIV. RTS. & CIV. LIBERTIES 317, 335 (2007).

473. *California’s Garment Workers Receive Owed Wages Through Garment Special Account*, SWEATSHOP WATCH (Sweatshop Watch, L.A., Cal.), Spring 2007, at 3, available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1026&context=globaldocs> (last visited Aug. 27, 2009).

474. *Id.*

475. MILKMAN, *supra* note 52, at 169.

476. Kent Wong & Victor Narro, *Educating Immigrant Workers for Action*, 32 Lab. Stud. J. 113, 114 (2007).

ments for unpaid wages in the garment industry and other low-wage sectors.⁴⁷⁷

B. Challenges

While the movement's accomplishments were real and far-reaching, garment retailers and manufacturers remain generally insulated from legal liability for labor abuse, while advocates still struggle to achieve a minimal level of enforcement of the individual labor claims of garment workers who are left in the Los Angeles industry.⁴⁷⁸ In one sense, these outcomes reinforce the familiar critique of legal mobilization efforts: judicial decrees do not change facts on the ground, state bureaucracies do not enforce the law, and socially powerful actors undo even minor gains achieved by marginalized groups. But while the attempt to combine law and organizing in the anti-sweatshop movement was limited by these factors, a more nuanced account suggests that the setbacks could be attributed not to the nature of legal mobilization itself, but its particular application in the Los Angeles garment production context.

1. *The Limits of Law: Scale and Contingency*

In campaigns for social reform, where law is deployed matters.⁴⁷⁹ In the garment context, advocates were sophisticated about playing at all levels where they felt there were advantages to be gained. This was apparent throughout the impact litigation campaign: APALC sought to leverage the benefits of federal court when its lawyers believed it had strong claims of manufacturer "control" and state court when it viewed retailer liability as more likely under state law theories of unfair business practices and negligence. Advocates also took advantage of the relatively labor-friendly Clinton administration to press for greater Department of Labor involvement and lobbied for more state enforcement resources for the DLSE. With respect to legislative reform, advocacy similarly occurred on different tiers. A.B. 633 leveraged the power of the California labor department to establish a statewide wage guarantee, while the Los Angeles anti-sweatshop pro-

477. The Wage Justice Center, About Us, <http://www.wagejustice.org/advocating-low-income-workers-rights.html>; The Wage Justice Center, Our Board, <http://www.wagejustice.org/advisory-board/founding-directors.html>.

478. A recent enforcement sweep conducted by state investigators from the California Economic and Employment Enforcement Coalition cited fourteen garment businesses (out of twenty-one that were inspected) for labor violations, including failure to pay minimum wage and overtime, maintain workers' compensation insurance, and provide itemized deduction statements. Press Release, Economic and Employment Enforcement Coalition, EEEEC Cites LA Garment Businesses for Labor Violations (Dec. 22, 2008), available at <http://www.dir.ca.gov/DIRNews/2008/IR2008-73.html>.

479. See Richard Abel, *Speaking Law to Power: Occasions for Cause Lawyering*, in CAUSE LAWYERING: POLITICAL COMMITMENTS AND PROFESSIONAL RESPONSIBILITIES 69, 70 (Austin Sarat & Stuart Scheingold eds., 1998) (describing the "spatial organization of power").

curement ordinance used the hook of the city's local contracting power to establish sweat-free standards.

Anti-sweatshop advocacy was also notable for the places it avoided or could not reach. Lawyers did not, for instance, seek to litigate federal cases up the ladder to the Supreme Court, which was viewed as a venue unlikely to provide a favorable ruling on issues related to immigrant labor. In the Bebe case, APALC even declined to appeal to the Ninth Circuit, fearing that the political climate might produce an appellate court decision upholding—and thus adding further weight—to the damaging district court ruling on joint liability. This skepticism was motivated in part by the Supreme Court's 2002 ruling in *Hoffman Plastic Compounds, Inc. v. NLRB* that undocumented workers fired illegally for participating in union organizing were not protected by federal labor laws that award workers back pay in such situations.⁴⁸⁰ This anti-immigrant message made lawyers loath to litigate other immigrant worker claims to higher levels of the federal court system.⁴⁸¹ The ruling also affected litigation efforts on the ground, as lawyers reported that employer defendants sought to intimidate immigrant workers by requesting information about their legal status in discovery.⁴⁸² However, the Coalition of Immigrant Worker Advocates was able to mitigate the potential damage to ongoing litigation efforts by successfully advocating for the passage of a state law, S.B. 1818,⁴⁸³ clarifying that all California labor laws apply to workers irrespective of immigration status.⁴⁸⁴

In the end, however, garment advocates could not affect the operation of the global rules of the game that profoundly influenced the macro-level distribution of garment production. Thus, the impact of both NAFTA and the phase-out of MFA quotas fundamentally altered the economic terrain on which anti-sweatshop activism was played out. Particularly as 2005 approached, there was a sense of the inevitability of industry decline and the enormous difficulty of organizing in the face of the threat of offshoring. In that sense, the harbinger of Guess had come to fruition. It is, however, too simplistic to suggest that anti-sweatshop activism was defeated by globalization, both because free trade did not eliminate garment production from Los Angeles and because the movement suffered other blows unrelated to market dynamics. But it did seem clear that the inability to influence the scope and content of trade pacts at the level of global governance limited the options for legal and political intervention at the national level. While advocates gained leverage at the outset of the campaign from the fact that

480. *Hoffman Plastics Compound, Inc. v. NLRB*, 535 U.S. 137, 137 (2002).

481. Telephone Interview with Julie Su, *supra* note 111.

482. Su, *supra* note 138, at 239.

483. Narro, *supra* note 10, at 497-505.

484. S.B. 1818 is codified at CAL. CIV. CODE § 3339 (West 2008), CAL. GOV. CODE § 7285 (West 2008), CAL. HEALTH & SAFETY CODE § 24000 (West 2006), and CAL. LAB. CODE § 1171.5 (West 2003).

part of the industry was effectively trapped inside the United States by trade rules, once that leverage was lost the advocates saw their power limited by the newly expanded threat of manufacturers to ship production elsewhere. From this perspective, it was not the weakness of law that failed the anti-sweatshop movement, but rather the relative power of law as it operated at the global level to overshadow countervailing efforts at the local level. The reform of international trade rules had economic impacts that overpowered legal and organizing efforts to improve conditions at the local and state level. Unable to play at all levels of the system, advocates were badly handicapped in their struggle—underscoring the lesson that legal change in one arena competes with, and may be diminished by, change in another.

This is not to suggest that local law was completely subservient to global governance. In the garment context there were other barriers to the movement that were not related to the location of legal reform efforts. Another important impediment for the legal campaign turned out to be the courts themselves. An impact litigation campaign is inherently uncertain, both because lawyers cannot control which judge they draw in any given case and, once the judge is assigned, what the ruling on the merits will be. In the Thai worker case, the lawyers struck gold: they were assigned Judge Collins, a legal-aid-lawyer-turned-federal-judge, who was willing to listen to arguments of structural injustice and publish an opinion that extended the concept of joint employment to redress violations against undocumented immigrant workers. This was in sharp contrast with the Bebe case, in which APALC drew another Clinton appointee, Judge Feess, who—in a case that was weaker in sympathy value but arguably stronger on the facts showing Bebe’s control—granted the employer’s motion to dismiss based on a narrow reading of FLSA’s “economic realities” test that found no control despite Bebe’s on-site monitor. The contrast with Collins was stronger still when the Forever 21 plaintiffs drew Judge Real, a notoriously difficult and idiosyncratic appointee of President Lyndon Johnson, who threw out their entire state law case with prejudice on what the Ninth Circuit agreed were the flimsiest of grounds. The assignment of different judges in Bebe and Forever 21 might not have changed the outcome of the overall campaign, but they might have strengthened APALC’s hand in continuing to use litigation to pursue the worst offenders. Instead, the legal outcome in these cases contributed to the cessation of garment impact litigation efforts.

2. *The Opposition to Law: Industry Resistance and Internal Dissent*

The retailers and manufacturers, for their part, left nothing to chance. Although they, too, had to face the uncertainty of judicial assignments when sued, the outcomes in the cases may have owed as much to their legal maneuvering as it did to judicial ideology. Particularly in Forever 21, the defendants combined hardball tactics in the plaintiffs’ lawsuit—aggressive

removal and the pugnacious pursuit of dismissal with prejudice—with their own SLAPP suits against activists involved in the retail boycott. The case therefore had much in common with the litigation strategy deployed by Guess to thwart UNITE’s organizing drive. In both cases, though the companies ultimately settled, they could claim victory in the larger battle: Forever 21 by winning a confidential settlement that appeared to resist major changes to company practices, and Guess by staving off unionization.

Outside of the judicial arena, companies learned how to adapt to the stricter regulatory environment after *El Monte*. While they complained about the negative business impact of lawsuits, they also took steps to insulate themselves from their reach. In negotiations over A.B. 633, industry leaders were able to excise a private right of action, channeling workers into an administrative process where class actions were not allowed—and where contractors and guarantors could effectively undercut enforcement efforts by stonewalling investigations, providing low-ball settlement offers, and failing to pay out even when so ordered by the Labor Commissioner. And although some companies responded conscientiously by instituting legitimate contractor monitoring to prevent abuse, others tried to game the system by sourcing production to a larger number of contractors in order to attenuate the appearance of legal control.⁴⁸⁵ In addition, companies like Bebe used monitoring not as a way to promote labor compliance but rather to shield themselves from joint liability. One facet of the Bebe case involved the question of whether the company’s use of a private monitoring company gave rise to legal control. In response to the Department of Labor’s “No Sweat Initiative,” Bebe had contracted with private monitoring firm Apparel Resources, Inc. to visit its contract shops, check time cards and payroll records, and interview workers.⁴⁸⁶ The court held that the use of the monitor did not demonstrate Bebe’s “control” over its contractor, and suggested that if it did, the federal policy promoting monitoring would be defeated since no company would opt to monitor for fear of joint liability.⁴⁸⁷ Thus, as a matter of law, by contracting out monitoring services, manufacturers could avoid liability.

The concerted industry effort to resist legal enforcement of employment law stood in contrast to the cracks that developed on the garment advocates’ side, where grassroots opposition to the primacy of legal tactics eventually resulted in estrangement between coalition’s organizing base—the GWC—and its legal and policy wings. This division likely had much to do with personalities and power, but it also spoke to the difficult marriage of law and organizing in the pursuit of progressive political causes. It is most prominently on the left where there is palpable anxiety about the role

485. Telephone Interview with Julie Su, *supra* note 111.

486. *Zhao v. Bebe Stores, Inc.*, 247 F. Supp. 2d 1154, 1156 (C.D. Cal. 2003).

487. *Id.* at 1161.

of law and lawyers in movements for democratic change. This is because the progressive vision aspires to deep democracy grounded in the active participation of—and control by—those on the bottom. Such a vision does not abide legal elites setting the agenda. Without minimizing the real economic divisions between retailers, manufacturers, and contractors, it was perhaps easier to coalesce around the clear goal of profit-maximization than the more amorphous concept of worker empowerment. The APALC lawyers, for their part, were focused on linking law to organizing and engaged in a model of empowerment lawyering that was a thoughtful effort to navigate the tensions between legal action and democratic accountability. The tensions that emerged, therefore, did not stem from the typical top-down lawyering that drew criticism during the civil rights period. To the contrary, the tensions stemmed from the structural challenges of integrating law and organizing, as well as from the specific dynamics of the anti-sweatshop effort in Los Angeles. In particular, the Forever 21 campaign, with its protracted legal wrangling and unsatisfying outcome, sharpened the distinction between the reality of what was provided through law and the image of what was possible through worker struggle—even if this image was a romantic one. And in the fallout from the campaign, as a more radical notion of democratic accountability came to hold sway within the ranks of the GWC, the ideal of social change desired by its staff and members appeared beyond the reach of what law could afford. This is not to suggest that organizing emerged as a more effective tool of reform in the garment industry: there is no evidence that the model of worker organizing employed by the GWC has increased worker solidarity or promoted industry reform beyond what was accomplished through coordinated legal and organizing efforts. Rather, what the GWC's movement away from APALC highlighted was the challenge inherent in forging lasting bonds between organizations that shared complementary social change philosophies, but had divergent organizational priorities and tactical preferences.

C. Opportunities

The garment advocates' political savvy and tactical sophistication left a deep imprint on the industry and created a template for legal mobilization that influenced efforts in other arenas. Sixty thousand garment workers remain in Los Angeles—making garment still the second largest manufacturing industry in the city⁴⁸⁸—and thus so does garment advocacy. Yet its contours have changed profoundly, moving from adversarial strategies to impose legal and legislative reform to more collaborative efforts to develop incentives to promote voluntary labor compliance. Advocates have also looked to support workers in other low-wage industries tethered to the local

488. See KYSER, *supra* note 440, at 5.

economy in ways that make it possible to organize without the threat of capital flight that impeded organizing garment producers.

1. Inside the Garment Industry: Stakeholder Collaboration and Transnational Mobilization

The trio of anti-sweatshop organizations that emerged at the forefront of the struggle to reform the garment industry—APALC, Sweatshop Watch, and the GWC—remain invested in its future. Though the GWC has reverted to its core mission of organizing, APALC and Sweatshop Watch have tentatively charted new directions that point to both the local and international spheres. At the local level, APALC and Sweatshop Watch have jointly focused on taking advantage of Los Angeles’s location as the epicenter of high-end fashion to move garment producers onto the “high-road,” where the efficient production of high-quality, market-competitive items complements respect for worker rights. The focus has been on niche industries, such as premium denim production, which has remained in Los Angeles because of its quick-turnaround time and specialized finishing processes that require close monitoring.⁴⁸⁹ Instead of imposing accountability through regulation—a goal that has receded in the face of political resistance, market outsourcing, and ineffective enforcement—the strategy has emphasized identifying producers that have strong local ties, fostering best practices, and cultivating relationships between industry, worker, and governmental stakeholders to promote high-road employment practices. Rather than deploy adversarial tactics to pressure industry labor compliance, the groups have sought to strengthen dialogue with industry leaders and seek out collaborative models for industry development.

As the legal organization responsible for the impact litigation campaign, APALC’s move toward collaborating with industry leaders challenges its litigation identity and tests its credibility with the industry it once strenuously fought. It also underscores the political pragmatism that has animated its work from the inception of the anti-sweatshop struggle. While the group has not eschewed litigation—and emphasizes that the threat of litigation is still necessary to respond to abusive garment companies⁴⁹⁰—it has adopted a more collaborative approach, not out of an ideological commitment to its methodology, but out of a practical recognition of the barriers to other approaches. In particular, Su views collaboration around policy reforms as a way “to try to get the city to invest in the industry and make a difference in remaining jobs.”⁴⁹¹ With the industry at a crossroads she believes that “the policy approach may be one of the strongest weapons currently for creating better working conditions in Los Angeles’ garment

489. Michael Barbaro, *Reborn in the U.S.A.*, N.Y. TIMES, Sept. 26, 2007, at H1.

490. Email from Julie Su to Scott Cummings, *supra* note 265.

491. Telephone Interview with Julie Su, *supra* note 112.

industry, particularly in light of the strong global forces, but it is by no means the only one.”⁴⁹²

To advance this strategy APALC worked in 2006 with the UCLA School of Law Community Economic Development Clinic to explore ways to promote high-road local production.⁴⁹³ The result was a memorandum proposing a mix of supply-side and demand-side incentives. On the supply side, it proposed production incentives for high-road manufacturers, such as tax breaks and below-market loans, as well as assistance in procuring start-up capital through investment funds and business development programs. Another proposal involved assisting producers through the formation of a garment industry advocacy group that would work in the interests of both workers and manufacturers to provide technical and training assistance to local manufacturers and contractors seeking to adopt high-road production. The model for such a group was New York’s Garment Industry Development Corporation, which has focused on sourcing work from designers to local New York-based contractors and working with manufacturers to develop systems to monitor the quality of garments.⁴⁹⁴ On the demand side, proposals were considered to incentivize local sweat-free production by marketing to customers who prioritize sweat-free local production and have the disposable income to be able to select such items.

For Sweatshop Watch, as a policy advocacy organization, the move toward collaborative strategies to voluntarily enhance labor standards is more consonant with its core mission and perhaps for that reason it has taken the lead role in advancing the high-road strategy. One of its key initiatives is the “Made in L.A.” project that seeks to attract and retain socially responsible companies in Los Angeles, while encouraging them to adhere to a sweat-free standard by providing economic incentives for voluntary compliance.⁴⁹⁵ In 2006, Sweatshop Watch reported it would “develop proposals for how the City can stimulate local production and promote model working conditions within Los Angeles’ garment industry.”⁴⁹⁶ Toward this end, Sweatshop Watch has met with local city officials to develop ideas about appropriate types of incentives and is considering the designation of locally made sweat-free garments as “Made in LA” as a marketing tool to appeal to consumers who desire clothing made under ethical conditions.⁴⁹⁷ The group acknowledges, however, that it must be able to

492. Email from Julie Su to Scott Cummings, *supra* note 265.

493. I direct the UCLA Community Economic Development Clinic and worked on this project.

494. Vickie Vertiz, *Piece by Piece: Garment Workers, Livable Wages, and Economic Development in Los Angeles County*, 7 TEX. HISP. J. L. & POL’Y 147, 177 (2001).

495. Telephone Interview with Rini Chakraborty, Executive Director, Sweatshop Watch (Feb. 19, 2008).

496. *Transforming LA into the Sweat-Free Capital*, SWEATSHOP WATCH (Sweatshop Watch, L.A., Cal.), Spring 2006, at 2, available at <http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1024&context=globaldocs> (Aug. 27, 2009).

497. Telephone Interview with Rini Chakraborty, *supra* note 495.

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convince manufacturers and retailers to buy into the Made in LA concept for it to work since only they have the power to source production to high-road shops. The end goal is to make Los Angeles “the capital of sweat-free fashion.”⁴⁹⁸

Sweatshop Watch has also moved to capitalize on the power of local government contracting to influence the quality of garment production. In the wake of the successful passage of anti-sweatshop ordinances in cities across the country, the group has worked to establish a national consortium of sweat-free cities and states.⁴⁹⁹ The objective is to have consortium members agree to coordinate their monitoring programs and contract only with certified vendors in order to leverage the purchasing power of government agencies to sustain high-road factories.⁵⁰⁰ At the local end, Sweatshop Watch would work with Los Angeles-based companies to gain certification and procure government contracts.⁵⁰¹

Sweatshop Watch has also, more tentatively, sought to look outside of the United States to build the transnational reach of the anti-sweatshop movement—effectively meeting the industry on its own global terms.⁵⁰² Its current efforts in the global sphere depart from its previous engagement. In 1999, Sweatshop Watch was involved in one of a trio of lawsuits that sought to internationalize the legal struggle against sweatshops by targeting producers in Saipan, the capital of the United States Commonwealth of the Northern Mariana Islands, which as part of the United States could export goods duty-free while being exempt from labor laws. Sweatshop Watch (along with Global Exchange, UNITE, and the Asian Law Caucus) was a party in the first case, which was filed in state court against U.S. retailers, including Abercrombie and Fitch, Calvin Klein, J. Crew, J.C. Penny, Levis, Liz Claiborne, May, Nordstrom, Polo, Sears, The Gap, and Tommy Hilfiger. The suit alleged that the retailers violated California’s unfair business practices law by, among other things, advertising that their garments were sweat-free and shipping “hot goods.” There were two federal class action lawsuits on behalf of Chinese female workers, one against the same retailers alleging violations of RICO and the Alien Torts Statute,⁵⁰³ and the other against Saipan contractors for violations of federal and Commonwealth employment laws.⁵⁰⁴ The cases were litigated by Michael Rubin, the labor lawyer from Altshuler Berzon who helped to litigate the Guess class action, and Milberg Weiss Hynes & Lerach. All of the defendants

498. *Id.*

499. *Id.*

500. *Id.*

501. *Id.*

502. Cf. Jill Esbenshade, *Going Up Against the Global Economy: New Developments in the Anti-Sweatshop Movement*, 34 *CRITICAL SOCIOLOGY* 453 (2008) (tracing the development of the anti-sweatshop movement toward addressing the challenges of globalization).

503. *Doe I v. The Gap*, No. CV-01-0031, 2001 WL 1842389 (D. N. Mar. I. Nov. 26, 2001).

504. *Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058 (9th Cir. 2000).

ultimately settled in 2003 for a total of \$20 million and agreed to a code of conduct for Saipan workers and independent factory monitoring.⁵⁰⁵

Though interest in litigation targeting foreign sweatshops has remained,⁵⁰⁶ Sweatshop Watch has recently pursued a less litigious transnational path focused on network building. In 2005, it organized a convening of anti-sweatshop groups from Canada, China, Guatemala and México to strategize about how to address sweatshops in the post-MFA era. Sweatshop Watch staff also went to China to meet with labor rights groups about sweatshop conditions there. In México the group has sought to build ties with independent labor groups and has supported a campaign by the Coalition for Justice in the Maquiladoras on behalf of Mexican workers fired for organizing a plant that produced jeans for Levis—writing letters to Levis headquarters protesting the factory’s actions. These efforts are still embryonic, yet suggest the directions Sweatshop Watch is moving in order to find meaningful ways to intervene on a global scale.

2. *Outside the Garment Industry: Sticky Worksites and the Future of Low-Wage Worker Advocacy*

Anti-sweatshop efforts in Los Angeles have also fed into activism in other low-wage sectors. Because of the challenges of targeting exportable manufacturing industries evident in the garment campaigns, advocates have focused on targeting non-exportable industries tied to the local economy—either because they offer immobile services, have fiscal ties to local governments, or are linked into regional economies. These “sticky” industries offer opportunities to build a more secure organizing base and implement reforms that cannot be undermined by foreign outsourcing. In this vein, APALC and other anti-sweatshop groups have sought to improve conditions in immigrant-dominated low-wage service industries. For instance, APALC has joined the Taxi Workers Alliance with LAFLA to advocate for the labor rights of Los Angeles taxi drivers, while also focusing on home health care workers. Other groups have explicitly modeled new campaigns on the law and organizing strategies honed by the garment advocates. For instance, the Los Angeles Workers Advocates Coalition—including LAFLA, Bet Tzedek, CHIRLA, KIWA, and Sweatshop Watch—has drawn upon the Forever 21 campaign in developing a multi-faceted strategy for reforming the car wash industry, and has thus far won passage of a state-wide law requiring car wash registration and the creation of a restitution

505. Jenny Strasburg, *Saipan Lawsuit Terms OKd: Garment Workers to Get \$20 Million*, S.F. Chronicle, Apr. 25, 2003, at B1.

506. Julia Fisher, *Free Speech to Have Sweatshops? How Kasky v. Nike Might Provide a Useful Tool to Improve Sweatshop Conditions*, 26 B.C. THIRD WORLD L.J. 267 (2006). There have also been calls to bring international human rights claims on behalf of domestic garment workers. See Leslie D. Alexander, *Note, Fashioning a New Approach: The Role of International Human Rights Law in Enforcing Rights of Women Garment Workers in Los Angeles*, 10 GEO J. ON POVERTY L. & POL’Y 81 (2003).

fund for workers denied wages.⁵⁰⁷ By challenging the boundaries between law and organizing and reframing the meaning of effective lawyering for immigrant workers,⁵⁰⁸ the anti-sweatshop movement has informed the next wave of low-wage worker activism.

D. Implications

Moving from the empirical to the theoretical, the anti-sweatshop case study also sheds light on important questions related to the trajectory of labor law and the relation between law and organizing.

1. Labor Law

The effort to contest sweatshops in Los Angeles occurred on the cusp of a larger movement to deploy multiple sources of law to promote labor reform in the low-wage work sector. As this legal pluralist model of organizing has taken root, the literature has begun to focus on its broader implications for labor law. Does the decentralized labor system offer a more dynamic and flexible approach to worker mobilization or, more modestly, are there aspects of this new regime that are better suited to advance specific labor goals than the antiquated NLRA? I have suggested that before we can adequately answer this question, we need more information about the conditions under which successful campaigns occur and the variables that shape outcomes. Drawing from the anti-sweatshop case study, here I map some of the issues that may inform this analysis.

First, the legal pluralist approach focuses attention on the role of lawyers in making strategic choices about the direction of campaigns, which raises important questions about how those lawyers are held accountable to workers. Operating outside the traditional union paradigm, lawyers must manage tripartite relationships with organizers and clients, who are often part of fluid organizational forms without clear boundaries or decision making structures. In this environment, where lawyers work—in unions, grassroots organizations, or public interest law centers—and how workers are organized—as informal coalitions, class action plaintiffs, or worker center members—influence how conflicts are negotiated and how campaigns are planned and executed. In the anti-sweatshop case, for example, the question of how lawyers related to worker collectives complicated efforts to use law in both the Guess and Forever 21 campaigns. In Guess, Bahan withdrew as class counsel and union counsel when her joint role became a focal point of the defense strategy to portray her as operating under an irresolvable conflict of interest. Even after she left the case, problems with lawyer-client relations remained evident in the dissatisfaction that some of the workers felt with the settlement in the case and its disconnection from the

507. Narro, *supra* note 332, at 359-64.

508. Telephone Interview with Rini Chakraborty, *supra* note 495.

union organizing campaign. In the Forever 21 campaign there were tensions around the workers' dual identity as GWC members walking picket lines and plaintiffs in the lawsuit. These tensions welled up around the question of whether the settlement agreement should be confidential. The workers accepted that this was the best way to resolve the case, but the result was disappointing to the organizers since it negated their ability to publicize the company's wrongdoing as a way to sustain collective action.

The type of organizational actors involved also influences how campaigns are framed and judged. While the involvement of unions may centralize decision making in a way that clarifies lines of lawyer accountability, it also may alter the stakes, redefining how campaign objectives are set and outcomes are evaluated. This was evident in the contrast between the UNITE and Thai worker cases. In the UNITE campaign, the wage-and-hour class action succeeded in recouping \$1 million for the workers, but the campaign was ultimately viewed as a failure because of the way that the litigation was positioned relative to the organizing goal. Since the union framed the goal in terms of a union contract, the payout in the class action was seen as a depressing footnote, ending the organizing rather than stimulating it. In contrast, because the litigation in the Thai worker case occurred outside of any formal organizing campaign, the successful resolution of the litigation was seen as a stimulus that had the effect of galvanizing mobilization. It therefore contributed to worker and activist mobilization and helped to build organizational capacity over time.

Yet this points to a paradox of the legal pluralist approach. Union-backed campaigns with the traditional goal of raising labor standards are judged harshly when they fail to deliver, but that is in part because they set themselves a higher bar. Campaigns like the impact drive mounted by APALC are mobilizing to the degree that the objective is the enforcement of minimum legal standards—as opposed to enactment of higher standards through collective bargaining.⁵⁰⁹ While minimum enforcement in an industry like the garment industry, with systemic non-enforcement of employment law, is an important advance, it is not equivalent to the traditional labor goal of higher standards. Accordingly, one should be cautious about the metrics that are applied to the use of law by union and non-union actors,

509. See Sachs, *supra* note 6, at 2745 (stating that “extant employment law offers no protection, for example, to workers whose initial organizing efforts are directed toward securing a wage above the minimum”). Although the enforcement of legal minimums is typically the outcome of employment litigation campaigns, there are some examples of settlements in employment lawsuits that impose contractual obligations on employers to prospectively exceed minimum standards in their treatment of workers. See, e.g., Ashar, *supra* note 13, at 1916 (describing a settlement on behalf of restaurant workers that “secured guaranteed sick days and paid vacation for all employees of the restaurant and some measure of job security”); Matthew T. Bodie, *The Potential for State Labor Law: The New York Greengrocer Code of Conduct*, 21 HOFSTRA LAB. & EMP. L.J. 183, 186 (2003) (calling the Greengrocer Code of Conduct created as part of an employment settlement between the New York State Attorney General and New York City greengrocers “an off-the-rack collective bargaining agreement”).

rights, however, the record was more negative. In particular, although the campaign won a significant victory in the passage of A.B. 633, that achievement was limited by poor enforcement efforts, which underscored the gap between the promise of the formal law and the reality of its operation in practice.

However, fitting the anti-sweatshop story within conventional theoretical accounts of legal mobilization robs it of some of its unique power and importance. For one, it obscures the vulnerability of the workers involved. Anti-sweatshop activism occurred in an industry that relied heavily on undocumented workers, who toiled in the legal shadows on terms that made them reluctant to call attention to themselves—let alone assert their rights against powerful employers. Yet anti-sweatshop groups were able to mobilize workers to take legal action against their employers, walk on picket lines in front of retail stores, attend legislative sessions to revise state law, and sustain involvement in worker center governance. This is not simply to suggest that worker empowerment occurred, but that an important accomplishment of the anti-sweatshop campaign was that it ruptured the legal invisibility of the workers and revealed them as a force for change despite their vulnerable legal status.⁵¹²

Moreover, one comes away from the anti-sweatshop campaign with a stronger appreciation of the tradeoffs of legal and organizing strategies—and the complex interaction between them. Significantly, the anti-sweatshop campaign drew attention to the critical role of media coverage as a link between legal campaigns and organizing drives. The lawyers involved in the movement were extremely sophisticated in their use of the media to disseminate their message, coordinating lawsuits around press conferences and leveraging media coverage to pressure recalcitrant employers. But while media attention from the Thai worker case propelled the campaign in the early stage, it became more difficult to generate the same pressure over industry actors as media images of the Thai workers receded. Also, the extreme nature of the Thai worker facts, with graphic evidence of enslavement, made later cases focused on the routine—albeit still egregious—non-payment of wages appear less compelling by comparison. Employers also took more aggressive efforts to chill public relations campaigns by filing SLAPP suits against the workers and activists, as in *City Girl* and *Forever 21*, and mounting their own media counteroffensives.

In the end, the anti-sweatshop movement trained the spotlight not just on the limits of law, but the difficulties of organizing.⁵¹³ While global outsourcing and negative legal decisions hampered the movement, so too did the way that the organizing was often executed. In the *Guess* campaign, for instance, UNITE was criticized for its failure to fund enough organizers for

512. Su, *supra* note 33.

513. Cf. Cummings & Eagly, *supra* note 1, at 502-16.

the “ground war,” concentrating its resources instead on its corporate campaign in a way that weakened its ability to sustain the interest and commitment of workers over the long haul of the organizing drive. Similarly, in the wake of the Forever 21 case, there was dissension within the GWC about the appropriate course garment organizing should take, causing a reformulation of the group’s goals and a decline in its staff. While the GWC’s goal of worker empowerment remained intact, its methods changed. Instead of collaborating with other anti-sweatshop groups in legal and organizing campaigns, the GWC focused on building worker power from within the organization through worker consciousness-raising and educational activities. This shift raised questions about the effectiveness of the GWC’s organizing approach as a means to achieve systemic industry reform.⁵¹⁴ Echoing this concern, Su suggested that “the law and organizing model deserves to be evaluated not only in terms of the lawyers’ roles, but also by how effective, grassroots and sustainable the organizing is.”⁵¹⁵ A central lesson of the anti-sweatshop movement, then, is that organizing is subject to its own limitations and internal challenges that require careful consideration as the efficacy of law and organizing campaigns is assessed.

IV.

CONCLUSION

Stepping back from the decade-long struggle against sweatshops in Los Angeles, one is struck by the scope of the campaign and the courage of the activists involved. It was an effort that challenged a complex, global economic system with a sophisticated approach that sought to fuse the best of law and organizing into a potent weapon to change an industry built on labor exploitation. It was, of course, an ambitious undertaking and one that perhaps could only have been done by a band of young, idealistic lawyers and activists undaunted by power and untainted by experience. Yet, in the face of powerful adversaries, the advocates managed to leverage public outrage and legal might to shine the spotlight of attention on an industry operating in the shadows. They managed to defy the odds, win significant cases, pass major laws, and garner the support of powerful allies. And for a moment, they were able to knock the industry back on its heels.

That they did not deliver the final blow is not an indictment of their efforts, but rather an acknowledgment of the magnitude of their task. The anti-sweatshop campaign met resistance by a well-resourced and coordinated adversary and was undercut by the forces of macro-level global change. Precisely for this reason, garment advocates have shifted their

514. For a discussion of the political risks of privileging non-legal strategies, see Lobel, *supra* note 2, at 983-87.

515. Email from Julie Su, Litigation Director, Asian Pac. Am. Legal Ctr., to Scott Cummings, Professor, UCLA School of Law (Apr. 15, 2008).

strategy away from litigation and toward efforts to collaborate with those manufacturers who remain to craft a solution that both promotes the bottom line and respects workers rights. Yet the movement's innovative efforts to integrate law and organizing endure in the form of organizational alliances and individual leaders whose experience has shaped their advocacy in other low-wage sectors where the threat of global outsourcing cannot be invoked to chill worker organizing. In this sense, the story of garment advocacy in Los Angeles may be read not just as a final act in the drama of deindustrialization—but also as a bridge to a new model of low-wage worker organizing in the service sector.