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THE WORKPLACE PROJECT

EMILY STEIN*

In the seemingly idyllic setting of suburban Long Island, there exists a thriving underground community of laborers primarily made up of immigrant workers from Latin America. These low-wage immigrant workers take on the dirtiest, dangerous, and most mundane jobs in this pristine community; washing dishes, tending to lawns, and scrubbing toilets. They work for less than minimum wage in unsafe environments¹ and are often treated worse than the meat packers and sweatshop workers who came before them.² This exploitation of low-wage immigrant workers “bears all the hallmarks of sweatshop labor.”³

In response to this widespread exploitation of immigrant workers, Jennifer Gordon, a *magna cum laude* graduate of Harvard Law School, founded the Workplace Project in Hempstead, Long Island, through an Echoing Green fellowship she received in 1992.⁴ The Workplace Project is an independent center run by its members that primarily relies on grassroots organizing to combat the mistreatment of immigrant workers. While Gordon herself admits

* J.D., New York Law School, 2006.

1. JENNIFER GORDON, SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS (2005).

2. See generally UPTON SINCLAIR, THE JUNGLE (See Sharp Press 2003) (1906) (detailing the plight of immigrant workers in Chicago’s meatpacking district).

3. Jennifer Gordon, *Immigrants Fight the Power — Workers Centers are One Path to Labor Organizing and Political Participation*, THE NATION, Jan. 3, 2000, at 16.

4. Gordon’s work at The Workplace Project was the start of a successful career dedicated to social change within the worker community. After six years at the Project, Gordon received the J. Skeely Wright Yale Fellow and taught a seminar titled “Workers, the Law and the Changing Economy” at Yale Law School. She is currently an associate professor of law at Fordham Law School and regularly consults with many foundations, including the AFL-CIO and the Ford Foundation. Gordon was chosen in 1995 as one of *National Law Journal’s* forty leading lawyers under the age of forty in the United States. In 1998, she was named Outstanding Public Interest Advocate of the Year by the National Association for Public Interest Law (now Equal Justice Works) and received a MacArthur Prize Fellowship in 1999. See Jennifer Gordon - Biography, OSI Forum: Suburban Sweatshops — The Fight for Immigrant Rights, http://www.soros.org/resources/events/suburban_20050408/event_biography_folder_view (last visited Jan. 30, 2006).

that her experience at the Workplace Project was not a conventional tale of success, she has established a unique organizational model that has empowered some of the most vulnerable members of American society through community organizing and legal action.⁵

The Workplace Project is dedicated to fighting the unfair labor and living conditions of immigrant workers by providing community education, leadership training, and legal support on labor issues.⁶ Currently, the Workplace Project is divided into separate “worker committees” that focus on specific problem areas within the community such as day labor and domestic work.⁷

A core element of the Workplace Project’s organizing efforts is a unique nine-week workers’ course that utilizes popular education techniques focusing on the history of labor and immigration law in the United States and the current rights of immigrant workers.⁸ The Workplace Project’s unique educational approach is illustrated by comparing the teaching methods used by the Workplace Project with conventional “know your rights” workshops used by other labor organizations.⁹ Instead of solely informing immigrants of their legal rights, the Workplace Project encourages individual workers to identify a specific problem they face, such as an unsafe work environment, and facilitates a group dialogue about the problem.¹⁰ The group then identifies the relevant law, if any, that governs the issue, and attempts to classify discrepancies between legal principles and reality.¹¹ Through this form of “consciousness-raising,” work-

5. GORDON, *supra* note 1, at 5.

6. The Peggy Browning Fund, The Workplace Project, Centro de Derechos Laborales, <http://www.peggybrowningfund.org/wpp.html> (last visited Jan. 30, 2006).

7. *Id.*

8. Popular education was pioneered by Brazilian educator and activist Paulo Freire and Myles Horton, a U.S. educator who founded the Highlander Research and Education Center in rural Tennessee. Both men were dedicated to social justice and believed that poor, marginalized communities could be empowered through raising awareness and critically analyzing issues followed by collective action. MYLES HORTON & PAULO FREIRE, *WE MAKE THE ROAD BY WALKING: CONVERSATIONS ON EDUCATION AND SOCIAL CHANGE* (Brenda Bell, John Gaventa & John Peters eds., 1990).

9. See Jennifer Gordon, *Economic Justice in America’s Cities: Visions and Revisions of a Movement: We Make the Road by Walking: Immigrant Workers, The Workplace Project, and the Struggle for Social Change*, 30 HARV. C.R.-C.L. L. REV. 407, 435 (1995).

10. *Id.* at 435-36.

11. *Id.*

ers develop a greater understanding of the forces that affect them, and can then attempt to resolve problems through collective action.¹² The law is therefore used as “a measure of injustice.”¹³

The workers’ course is offered free of charge, but participants are required to dedicate ten hours of their time to the organization. A worker can fulfill this commitment in various ways, including joining a committee “to teach others what she has learned [in order] to involve more workers in the fight for rights at work.”¹⁴ The most significant of these committees is known as C-POL, which promotes the continued education and organization of Project members by organizing events as part of larger organizing campaigns. Additional support for these efforts is provided by members, staff, and volunteers who engage in extensive community outreach by presenting and distributing Spanish workers’ rights materials at local churches, community groups, and English as a Second Language (ESL) classes.¹⁵ The Spanish-language media is also used to publicize campaigns and events.¹⁶

In addition to community outreach initiatives, the Workplace Project offers a legal clinic that lends support to its organizing efforts by providing legal services to low-wage workers in the area. However, attempts to achieve social change through legal means

12. Lucie E. White, *To Learn and Teach: Lessons from Driefontein on Lawyering and Power*, 1988 Wis. L. Rev. 699, 760-61 (discussing Freire’s work as an example of how active, critical consciousness can re-emerge among oppressed groups as they reflect together about concrete injustices in their immediate world and act to challenge them). This liberation of consciousness is defined by Freire as a fundamentally pedagogic process. See *id.* at 438. Through this process of awareness, critical analysis, and praxis, it is hoped that workers will develop “a concrete understanding of their own power.” *Id.* at 760-61.

13. Scott L. Cummings & Ingrid V. Eagly, *A Critical Reflection on Law and Organizing*, 48 UCLA L. Rev. 443, 468 (2001). See also Jennifer Gordon, *The Campaign for the Unpaid Wages Act: Latino Immigrants Change New York Wage Law*, WORKING PAPERS, Sept. 1999, at 34, available at http://www.carnegieendowment.org/files/imp_wp4gordon.pdf, in which she states:

Education that talks about the vision of the Founding Fathers but makes no mention of the complex issues of the influence of money on politics, concentrated corporate control of the media, voter ignorance and apathy, and the very real barriers to meaningful participation in politics for most people, is doing its students a disservice.

14. Gordon, *supra* note 9, at 436.

15. *Id.* at 434.

16. *Id.*

often conflict with community organizing efforts geared toward the same end.¹⁷ In its early days, the Workplace Project provided legal representation to workers through a walk-in legal clinic. It was soon apparent, however, that workers seeking legal help became more reliant upon legal solutions and less inclined to participate in organizing efforts.¹⁸ The legal clinic also had the unintended effect of “co-opt[ing] potential leaders.”¹⁹ Typically, workers who sought help from the Workplace Project were usually “the most motivated, the most active, and the most prone to taking chances.”²⁰ Once the worker achieved a legal victory, usually consisting of an award of unpaid wages, the worker often left the Workplace Project.²¹ Legal solutions frequently failed to create long-term resolutions to underlying employment problems²² and the threat of litigation rarely led

17. *Id.* Given an attorney’s expertise, knowledge, and privileged position within the legal system, a marginalized client will most likely rely heavily upon the attorney in the context of social justice lawyering. The lawyer’s domination of the relationship and decisionmaking further perpetuates the client’s subordination. The goal should instead be to work with — and empower — the client. See, e.g., Gerald P. Lopez, *Rebellious Lawyering: One Chicano’s Vision of Progressive Law Practice* (1992). “Unique to the law and organizing paradigm is its insistence that lawyers can advance social justice claims and shift power to low-income constituencies through a particular type of legal advocacy — one that is intimately joined with, and ultimately subordinate to, grassroots organizing campaigns.” Cummings & Eagly, *supra* note 13, at 447.

18. As Gordon explains, providing free legal help “taught the worker nothing more than reliance on legal services . . . [because] the worker who benefits from the legal action has not learned the skills needed to fight back the next time she is exploited.” Gordon, *supra* note 9, at 438. In the context of working with disadvantaged populations for social justice, a common criticism of conventional lawyering focuses upon the imbalance of power within the attorney-client relationship. See, e.g., William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455 (1995).

19. Gordon, *supra* note 9, at 439.

20. *Id.* (explaining that “[g]oing to a community labor-rights office . . . entails risk-taking for an immigrant worker who knows that other workers or her employer could easily become aware of the step she has taken”).

21. *Id.*

22. A common criticism of the law is that it is inherently incapable of implementing significant change. “The law merely codified the outcome of struggles over political power” Cummings & Eagly, *supra* note 13, at 453; see David R. Rice, *The Bus Rider’s Union: The Success of Law and Organizing Model in the Context of an Environmental Justice Struggle*, 26 ENVIRONS ENVTL. L. & POL’Y J. 187, 190 (2003) (“The critical legal studies movement, which regards its work as a self-conscious effort to strengthen the connection between law and social justice, concluded that that dominant legal regime perpetuates inequities that form the roots of social injustice.”); see also RICHARD DELGADO & JEAN STEFANCIC, *FAILED REVOLUTIONS: SOCIAL REFORM AND THE LIMITS OF LEGAL IMAGI-*

to significant changes in exploitative conditions.²³ Employers continued to violate the laws with impunity.²⁴ As Gordon observed, a legal remedy sought for a specific, individual harm does not encourage workers “to discuss the larger circumstances surrounding their problem, its root causes, and creative ways to solve it.”²⁵

Gordon realized that the Project “needed a more complex vision of how the law could function to *support* organizing campaigns rather than simply attract people to them.”²⁶ To achieve this goal, the Project restructured the legal services division in order to facilitate a more holistic approach.²⁷ Now, when a worker comes to the Project, he or she meets with an organizer who “explains that the Workplace Project is an organization of workers, not [a] legal services center . . . [and] although the Workplace Project will readily provide free legal counseling, . . . the ‘client’ must commit to giving back to the organization” to receive services.²⁸ The current approach allows legal tactics to be used as part of a larger organizing campaign and facilitates organizing strategies without interfering with organizing efforts directed at achieving lasting change.²⁹ Thus, *organizing* remains “both the end goal and core strategy” of the Workplace Project.³⁰

NATION (1994) (examining the limits of the law in affecting social change); JOEL F. HANDLER, *SOCIAL MOVEMENTS AND THE LEGAL SYSTEM: A THEORY OF LAW REFORM AND SOCIAL CHANGE* (1978).

23. Gordon, *supra* note 9, at 440 (“If employers change their policies in response to a complaint or lawsuit, they often do so in a way that is tailored only to avoid legal liability, leaving the core exploitive conditions intact.”).

24. *Id.* at 441 (“[C]onsidering that in the underground economy existing labor laws are violated with impunity, a new law would have little, if any, practical effect.”).

25. *Id.* at 438.

26. *Id.*

27. *Id.*

28. *Id.* at 443-44. Gordon recognizes that conditioning the provision of legal service upon a worker’s involvement in the organization can be criticized as coercion. However, she points out that rationing legal services upon individual time invested in the Project serves the Project’s long-term goals.

29. *Id.* at 444.

30. *Id.* at 430. Legal scholars have placed a renewed emphasis on the importance of community organizing in the quest for social change. As Stephen Wexler has stated: Poverty will not be stopped by people who are not poor. If poverty is stopped, it will be stopped by poor people. And poor people can stop poverty only if they work at it together. The lawyer who wants to serve poor people must put his skills to the task of helping poor people organize themselves.

A notable example of how organizing through popular education and consciousness-raising can empower immigrant workers is the enactment of the Unpaid Wages Prohibition Act.³¹ Passed in September of 1997, the Act was the culmination of a campaign by members of the Workplace Project in response to the persistent problem of unpaid wages. The year-long campaign set out to increase the penalties for violations of wage laws. According to Gordon, employers at the time had no incentive to comply with these laws because federal and state enforcement agencies were sorely under-funded.³² The penalty for a wage violation was only 25% of the amount owed, and a repeat violation amounted to a mere misdemeanor.³³ The Act successfully rectified this problem; the civil penalty for a wage violation is now 200% of the amount owed and a repeat offense is subject to felony charges.³⁴

The campaign for the Unpaid Wages Prohibition Act utilized conventional organizing techniques. Media coverage served a vital function — it fostered a sense of outrage about the unfair working conditions and made the issue a hot topic to which legislators were forced to respond.³⁵ And though litigation had no role in the campaign, the records kept by the legal clinic identified and documented the pervasive problem.³⁶

Stephen Wexler, *Practicing Law for Poor People*, 79 YALE L.J. 1049, 1053 (1970). See also Steve Bachman, *Lawyers, Law, and Social Change*, 13 N.Y.U. REV. L. & SOC. CHANGE 1, 4 (1984-85) (for the premise that “[o]rganized masses of people, not lawyers, play the critical roles . . .”).

31. See N.Y. LAB. LAW § 196-a (Consol. 2005). A distinction can be made between organizing and popular education:

Popular education . . . has evolved as a process of nonhierarchical learning through which people analyze problems on their own so that they may arrive at a more critical understanding of mechanisms of power and oppression . . . [which] may then form the basis for collective action . . . it is the process of arriving at this understanding, rather than the action taken as a result, that constitutes the core of the popular education technique.

Cummings & Eagly, *supra* note 13, at 482.

32. GORDON, *supra* note 1, at 242 (“The [Department of Labor] had but one inspector for approximately every 7,000 private businesses on Long Island, and little political will to find and punish violators.”).

33. *Id.*

34. N.Y. LAB. LAW § 196-a.

35. See GORDON, *supra* note 1, at 258 (“The press coverage that the group received played a critical role in garnering legislative support for the campaign.”).

36. *Id.* at 203-04 (“The Project’s computer database contained records of the over 900 Latino workers who have sought help from its legal clinic over the previous three

The objective of the campaign was not only to pass the proposed legislation, but also to introduce immigrant workers to the “ideal model around which politics in the United States is shaped and also to the very different way that it functions in reality.”³⁷ The campaign also asked participants to analyze how “the political process might address concrete problems” in workers’ lives and sought to develop among the workers “a belief in their own capacity and legitimacy on political actors, and [to] . . . move from talk into action.”³⁸ Workers participated in all levels of the campaign. During sessions held at the Workplace Project, members “discussed political approaches and ways of communicating their message.”³⁹ Themes that arose from these sessions made the proposed legislation politically palatable to Republican legislators who represented interests traditionally adverse to immigrant and workers’ rights.⁴⁰ Specifically, the campaign stressed that the proposed legislation would: (1) keep people off of public benefits by ensuring that they were paid the wages they earned and did not have to turn to welfare to support their families; (2) increase the revenue to the state by raising the penalties against noncompliant employers by 800% and by scaring employers into paying taxes; and (3) generate funds through increased penalties.⁴¹

Gordon attributed the success of the campaign to several factors other than the nature of the legislation. These included the fact that the campaign attracted a mix of powerful allies to the immigrant community, and the compelling message made non-supportive legislators and the Department of Labor seem as if they condoned employers who did not pay their workers. Gordon also noted that Republicans perceived immigrant workers as controlling money and votes.⁴²

The campaign provided workers with the opportunity to develop valuable organizing, analytical, and outreach skills. Workers

years. And two of the seventy-two cases that the project had filed with the [Department of Labor] over three years, or just 3 percent, resulted in even partial payment to workers.”).

37. *Id.* at 272-73.

38. *Id.*

39. *Id.* at 271.

40. *Id.*

41. *Id.* at 263.

42. *Id.* at 263-65.

conducted legislative meetings themselves instead of having advocates meet with legislators on their behalf.⁴³ Even though workers realized that their meetings did not necessarily serve “as proof of the openness of political debate in the United States, or of the ease of access to power,” these meetings “made them rethink their notions of their ability to exercise political power within the U.S. system.”⁴⁴

The success of this campaign demonstrates how consciousness-raising, critical analysis, strategizing, and action enable “a group of noncitizens [to] assert their rights through the political system when most Americans — even those sympathetic to immigration — assume they have no voice”⁴⁵ The Project facilitated this process by “serv[ing] as the source of communication, support, and mobilization”⁴⁶ while “the affected people planned and executed the campaign as part of their work at the organization.”⁴⁷ In the end, the Workplace Project illustrates how individual campaigns and organizing efforts that offer education, support, and community are effective in implementing change in the lives of their members.

43. *Id.* at 139 (“By the spring of 1997, members carried out legislative visits alone with staff functioning primarily as translators.”).

44. *Id.* at 136.

45. *Id.* at 273.

46. *Id.* at 270.

47. *Id.* at 271.