

## PANEL DISCUSSION: THE EL MONTE SWEATSHOP SLAVERY CASES\*

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*Gowri Ramachandran, Hon. Audrey B. Collins, Julie Su,  
Scott Cummings & Muneer Ahmad†*

### I. INTRODUCTION

GOWRI RAMACHANDRAN: We are very lucky to have this panel of speakers with us today. With us are two of the attorneys and the judge who heard the El Monte sweatshop and trafficking cases. We also have an expert in social movements and their relationship to litigation and the court. It's truly an amazing panel. They've all won many, many awards, collectively, and individually.

I will begin my introductions with Justice Collins. Justice Collins was nominated in January 1994 to the Central District of California. She received her commission that May. She served well in that court, and eventually became Chief Judge of the District in 2009 to 2012. In 2014, she left the District Court and was appointed to the California Court of Appeal by Jerry Brown, where she is now serving. Before her appointment to the bench she was an associate at Los Angeles Legal Aid Foundation. She then joined the LA County D.A.'s office and became the first African-American woman to become a deputy there. She served as Deputy General Council on the Webster-Williams Commission that investigated the LAPD response to the 1992 riots. We are very, very honored to have her here. I know she had cases this morning, so we are really grateful that she made it out here. Justice Collins will say a few words about the decisions themselves and her involvement as the presiding judge in the case.

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\* What follows is an edited and annotated transcript of the live remarks made by selected panelists on March 18, 2016 during the Southwestern Journal of International Law's symposium, "The U.S. District Court for the Central District of California, 1966-2016: International Context."

† Gowri Ramachandran is a law professor at Southwestern Law School. She moderated the El Monte Sweatshop Slavery Cases panel and introduced the speakers. Introductions and brief biographies for the four panelists appear in Professor Ramachandran's opening remarks.

We are also going to have Commissioner Julie Su, who is the Labor Commissioner for the State of California. She's a nationally recognized expert on worker's rights and civil rights. She has dedicated her career to advancing justice on behalf of poor and disenfranchised communities. She is a MacArthur Foundation Genius, and was appointed by Governor Brown to be Labor Commissioner in April 2011. Prior to becoming Labor Commissioner, she was Litigation Director at Advancing Justice L.A, which is a non-profit civil rights organization devoted to issues affecting the Asian-American community. In 1994, which is a year relevant to this case, she started her legal career at Asian-Pacific American Legal Center (APALC), where she was doing a Skadden Fellowship at APALC. She was the lead attorney for Thai garment workers who were trafficked into the United States. We're going to hear from Commissioner Su on why the case was filed, the facts of the case that led up to it, and about the significance of the El Monte decision.

We also have Professor Muneer Ahmad from Yale Law School with us today. He's a clinical professor there, where he co-teaches the Transnational Development Clinic, and the Worker and Immigrant Rights Advocacy Clinic. He clerked for William Sessions in the US District Court for the District of Vermont. After that, he moved on to a Skadden Fellowship at APALC. Before he moved to Yale, he taught at American University in D.C. He has a lot of experience representing immigrants in all kinds of labor, immigration, and trafficking cases. He also represented a prisoner at Guantanamo Bay for three years. He's written quite a bit on all these topics. Professor Ahmad will talk about the specific social movement that resulted from this case, the anti-trafficking movement, and the legislation, policy, and reform that it has led to.

Last but not least, we also have Professor Scott Cummings from UCLA with us today. He's the Robert Henigson Professor of Legal Ethics and Professor of Law at UCLA. He's the Faculty Director of a new program there called LEAP, Legal Ethics and the Profession, which promotes research and programming on the challenges facing the contemporary legal profession. He has a history of dedication to public interest. He worked also as a Skadden Fellow, right around the same time as Commissioner Su and Professor Ahmad. He has also worked at the Community Development Project at Public Counsel, here in Los Angeles. He gave transactional legal assistance to non-profit organizations there and small businesses. He went on to clerk for Judge Wallace Tashima on the Ninth Circuit before he joined the

UCLA faculty. He does research on law and social change. He published the first public interest textbook called *Public Interest Lawyering: A Contemporary Perspective*.<sup>1</sup> He is also co-editor of a leading casebook on legal ethics.<sup>2</sup> Many people I know use that casebook. Professor Cummings will primarily talk about the relationship between litigation and courts and social movements. This El Monte case and the anti-trafficking movement is a really great example of that.

## II. PANEL DISCUSSION

JULIE SU: Thank you so much. It is a pleasure to be here. I am going to set the stage for the panel by talking a little bit about the facts of this case,<sup>3</sup> and why we filed the kind of case that we did. This case involved seventy-two garment workers from Thailand who were trafficked into the United States from rural areas. They were promised good wages, a decent job, and a chance to help their families get ahead. Of the seventy-two workers, sixty-seven were women. This was no accident. The fact that an overwhelming majority were women attests to the burdens that women, not just in Thailand, but the world over, really face in terms of having to support their families.

They were all brought into the United States on false passports and when they got to Los Angeles, they were taken to this apartment complex in El Monte, which is no more than fifteen minutes from here. There, they were forced to sew garments for up to eighteen hours a day until their fingers were raw and their vision blurred. Then they had to drag their tired bodies upstairs to sleep in apartment-sized bedrooms made for two, with eight or ten to a room. A parameter of razor wire surrounded the entire apartment complex.<sup>4</sup> All the windows were boarded up, with only a little light sliver entering through. What they told me later when I met them was that in the middle of the night, when they would hear any noise outside, they would go to the window and wave desperately even though there was obviously no chance that they would ever be seen.

Over the duration of their imprisonment, a few workers escaped. It was interesting to both criminal prosecutors and to the public afterwards that the first few escapees did not say anything about what they had experienced. Even though, had they done so, there was a good

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1. ALAN K. CHEN & SCOTT L. CUMMINGS, *PUBLIC INTEREST LAWYERING: A CONTEMPORARY PERSPECTIVE* (2013).

2. DEBORAH RHODE & DAVID LUBAN, *LEGAL ETHICS* (5TH ED. 2009).

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

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

chance their co-workers and friends would have been rescued. This really goes to show how deep the oppression and the sense of helplessness that they and the others felt. The entire time there, their captors told them that they are not supposed to be in this country, that they didn't speak English and had no rights, and that if they reported their captors, they would end up in a much worse situation.

Finally, in 1992, a worker drugged the guard, climbed over the fence, hailed a taxi, and was taken to the Thai temple in Hollywood.<sup>5</sup> Over a period of a few months, she ended up meeting some friends. They helped her write a letter to the local police. The letter said, "This place is dangerous. Bring guns. Help." That is what began a federal investigation into what was going on in the complex. Ultimately, in August of 1995, a multi-agency raid that included the Department of Labor, state labor law enforcement agencies, the local police, as well as the Immigration and Naturalization Service (INS) got the workers out of the complex and arrested their captors.<sup>6</sup> Unfortunately, after the raid, the fears of the workers who were held in this apartment complex happened and occurred. All of the workers were taken and were then thrown into federal detention where they were set for deportation.

That's where a small group of activists and myself became involved. We had actually been contacted before the raid because they were looking for Thai-speaking translators for assistance. After the raid, the front page of the Los Angeles Times said what had happened,<sup>7</sup> and we thought, "Where did the workers all go?" When we learned that they were being detained and being treated like criminals, we thought that was simply unacceptable and wrong.

We raced to the federal courthouse where they were being held and we made the policy argument that these workers shouldn't be held further because it really plays into the arguments of exploitative employers. Everybody's watching this case now. Every day workers are being told, in workplaces where they're being treated as sub-human, "if you speak out, you're the one who's going to be deported, and you're the one who's going to be punished." We don't want to reinforce that message. This is bad for workers, it's bad for the economy. It's not a good idea, and it's inhumane. Those arguments didn't go anywhere, so we decided to sit in at the federal building and did

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

6. *Id.*

7. White, *supra* note 4.

not leave until we were permitted to see the workers. Over the next nine days, we argued for their freedom. When we were finally able to get them free, we helped to engage in the entire process of their readjustment to life outside of imprisonment.

There was a front shop for the slaves in that shop in El Monte. The front shop was in downtown L.A., not five minutes from here. There was a group of about twenty-two Latino workers who sewed garments. They were more like your typical sweatshop worker. They didn't work eighteen hours a day, but they worked ten or twelve. They weren't held against their will. It wasn't involuntary servitude, but it was economic servitude. They lived in poverty working full-time, year-round. They would clock-in after they started and they would clock-out before they ended. The garments that the Thai workers sewed started there. The companies would drop off cut cloth, patterns, orders, and thread. It would be taken by truck from the front shop to the apartment complex where the Thai workers were being held, sewn there, delivered back to the front shop, and given to the companies.

We filed our lawsuit on behalf of Thai and Latino workers, not only against the captors, but also the manufacturers and retailers they were sewing for.<sup>8</sup> The purpose of our suit, we argued—under the Fair Labor Standards Act (FLSA),<sup>9</sup> and under California law—was that the companies were joint employers of the workers.<sup>10</sup> The reason we did this was because we thought it was really important not just to address the case as an involuntary servitude and trafficking case, but to really focus on the ways that the demands of these companies on a regular, routine basis, created the conditions for exploitation and abuse of workers in their supply chain.

Our point was that the El Monte slave sweatshop was not an aberration. It was one end in a spectrum of abuse that low-wage workers face every day in Los Angeles. We wanted to be sure this case ended up in the casebooks and the history books, not as an isolated example, but that it was part of the economic life of a world in which some desperate workers live in, and those companies that profit from them get away with it. We also wanted to file the case, in large part, because of our belief that the courts and the law (at its best) should be a place where the most vulnerable among us are protected. Where, regardless of your race, education level, wealth, ability to speak English, or immigration status, you can get access, and make demands for justice.

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8. *Bureerong*, 922 F. Supp. at 1450.

9. 29 U.S.C. § 216(b) (2012).

10. *Bureerong*, 922 F. Supp. at 1469.

Our civil suit was filed at the same time that the criminal case against the captors was going forward.<sup>11</sup> Our civil suit was actually stayed for some time while the criminal suit proceeded. Both of those cases were then assigned to Judge, now Justice, Audrey B. Collins.

JUSTICE COLLINS: Good afternoon. I'm going to discuss the sort-of "legal part" a little bit, but not too much because I see that you actually have the major motion, which was a motion to deny the manufacturer's motion to dismiss.<sup>12</sup> There was also a second order, about a year later;<sup>13</sup> you have it so you can read it later.

I am just going to cover the highlights of what happened. As Julie has stated, there was a criminal case<sup>14</sup> and a separate civil case,<sup>15</sup> and I had both on my docket. This does not always happen; sometimes the criminal case and the civil cases involving the same people will be assigned to different judges, but I had both of them. The criminal case concluded fairly quickly. The civil case was stayed while the criminal case proceeded. There were ten individuals charged in the criminal case, including: the leader, who was known as "Monte," some of her sons, her daughters-in-law, the guards, and a couple of people who had actually fled and were in Thailand when this happened. They were indicted on federal charges of kidnapping, conspiracy, indentured servitude, harboring and concealing illegal immigrants. That was around October/November 1995. By February 1996, the case was essentially over. The kidnapping charge was dismissed, the defendants pled guilty to lesser charges of conspiracy to commit several criminal violations, and were subsequently sentenced for up to seven years.<sup>16</sup> When that happened, the civil case was able to get back on track. I was amazed at the speed with which Julie and her team managed to organize and file this civil case together. All of you know—whether you are students or lawyers—that it can take months, even years sometimes to pull something like this together and that you need to watch for the statute of limitations.

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11. The captors were indicted on November 9, 1994 by the US Attorney's Office and the Department of Justice on twenty-three counts of involuntary servitude, kidnapping, transporting and harboring undocumented aliens, and conspiracy to commit the foregoing. Press Release, U.S. Dep't of Justice, Ten Thai Nationals Indicted on New Charges of Slavery and Kidnapping (Nov. 9, 1994), [https://www.justice.gov/archive/opa/pr/Pre\\_96/November95/577.txt.html](https://www.justice.gov/archive/opa/pr/Pre_96/November95/577.txt.html).

12. *Bureerong*, 922 F. Supp. 1450.

13. *Bureerong v. Uvawas*, 959 F. Supp. 1231 (C.D. Cal. 1997).

14. *United States v. Manasurangkun*, No. CR 95-714 (A) ABC (C.D. Cal. Nov. 9, 1995).

15. *Bureerong*, 922 F. Supp. at 1450.

16. *See Manasurangkun* No. CR 95-714 (A) ABC, ECF Nos. 499-523, 547-578.

Although there were of course later reiterations of the complaint, the amended complaint that was filed almost immediately in September of 1995 was the initial complaint against the operators. By the next month, Julie and her team had added the manufacturer defendants [to the complaint]; these were the apparel manufacturers, many of them whom I believe are out of business because I don't see these names around anymore, including Mervyns, which was certainly a big name at the time. A bit later Montgomery Ward and Hub distributors were added.<sup>17</sup>

By March of 1996, the manufacturer defendants had filed motions to dismiss. There were several motions since there were several groups of defendants.<sup>18</sup> I do want to mention, especially for those of you who are students who may not be familiar with the fact that pleading standards changed, that the rulings in this case came at a time when there were very liberal standards for pleading under Federal Rule 8<sup>19</sup>, and a case called *Conley*.<sup>20</sup> Dismissal was proper only if there was either a lack of a cognizable legal theory or in the absence of sufficient facts alleged under a cognizable legal theory.<sup>21</sup>

The landscape changed in 2007 with *Bell Atlantic v. Twombly*,<sup>22</sup> and *Ashcroft v. Iqbal*,<sup>23</sup> which tightened the pleading standards, bringing us to the "plausibility standard."<sup>24</sup> Now I mention this not because I assert that the outcome would have been any different, but it is important to recognize that these motions were historically heard under a different pleading standard.

The initial motion to dismiss resulted in the major ruling that I issued in March of 1996. The first attack on the entire complaint was, ironically, that the plaintiffs waited too long, because all of these events had begun or happened so long ago.<sup>25</sup> But that was obviously not well founded. I found that the limitations period was tolled as to the plaintiffs who were released from the El Monte facility.<sup>26</sup> When you are being held against your will, it is probably pretty hard to get a lawyer and file a case. So that argument was rejected. Moving on to a more substantive argument, the major argument that the manufactur-

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17. *Bureerong*, 922 F. Supp. at 1458.

18. *Id.* at 1459.

19. FED. R. CIV. P. 8.

20. *Conley v. Gibson*, 355 U.S. 41 (1957).

21. *See id.* at 47; FED. R. CIV. P. 8.

22. 550 U.S. 544 (2007).

23. 556 U.S. 662 (2009).

24. *Id.* at 678.

25. *Bureerong*, 922 F. Supp. at 1463.

26. *Id.*

ers made through all of this was, “You can’t touch us. You can’t really think that we could be liable for any of this. We didn’t know what was going on. We were way over here and what was happening was at the hands of the operators, it was all their fault.”<sup>27</sup>

In terms of the FLSA violations (failure to pay minimum wage and overtime),<sup>28</sup> essentially there was a two-pronged attack on that cause of action. The manufacturers first pointed out, which was true, that the Secretary of Labor had already filed these same kinds of charges against the operator-defendants.<sup>29</sup> The operators were of course the people actually holding the victims in indentured servitude. Their argument was that the Secretary of Labor had already filed against the operators so that’s done—individual plaintiffs can’t come now and file the same claims under the FLSA against the manufacturers.<sup>30</sup> And oddly enough, that issue had never resolved, probably because there had never been a case like this before. There had never been a situation like this.

Julie and her team pled this cause of action very creatively, but it was solidly grounded. I found that the legislative history and the basic purposes of the FLSA mitigated in favor of allowing the plaintiffs’ action to proceed.<sup>31</sup> The argument had been that if the Secretary of Labor had already proceeded against anyone that would bar anyone else from proceeding against other defendants.<sup>32</sup> But that didn’t make sense to me because the Secretary of Labor had only filed against the individual operators. I found that under the FLSA, a remedial statute should be construed liberally, and that the claim could proceed.<sup>33</sup> And then the core question of course was, “Had the plaintiffs done enough to allege that the defendants, the manufacturers, were employers within the meaning of the Fair Labor Standards Act?” Essentially the ruling was that at this stage this claim should go forward and be tested by economic reality rather than technical concepts. I didn’t see any reason why there couldn’t be more than one employer, at least at the pleading stage. So, the fact that the operators are there and are clearly in charge of the facility and employing or holding the plaintiffs in ser-

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27. *See, e.g., id.* at 1462.

28. 29 U.S.C. §§ 206, 207, 216(b) (2015).

29. *Bureerong*, 922 F. Supp. at 1463.

30. *Id.*

31. *Id.* at 1466. (citing 29 U.S.C. § 216(c) (2012)).

32. *Id.* at 1464.

33. *Id.* at 1466.

vitude did not preclude the allegation that the manufacturers are also employers.<sup>34</sup>

It is certainly true that the manufacturers are way up at the top and far removed from the factory process. Although it's not a traditional employment relationship, Julie's team had certainly, creatively but solidly, alleged that the operators were acting as supervisors and managers for the manufacturers and that the facility, the factory, where they were held and worked all day, was an integral part of the process of the garment manufacturing.

For the most part, the plaintiffs' other claims were upheld. There was a claim or two that was dismissed because I did not find a private right of action.<sup>35</sup> But actually, one of those claims was still a very important one because it became the basis for a negligence per se claim. That was a claim that alleged violations of federal and state laws for unlawful manufacture of garments, by what are called "industrial homeworkers."<sup>36</sup> As to the plaintiffs' individual claims, I found that there was no private right of action.<sup>37</sup> Nevertheless, when it came to pleading negligence per se, I found that the plaintiffs had alleged enough for the negligence per se claim to survive because that allegation was essentially that the defendants were violating the provisions of the Industrial Homework Act.<sup>38</sup> Such violations are not allowed under California law, and federally this was also a very restricted provision.<sup>39</sup> Thus, even though there was no private right of action, you certainly could base a negligence per se claim on that. In fact, I found that it was a classic negligence per se allegation.<sup>40</sup>

The defendants argued that the harm the plaintiffs suffered here wasn't the harm the statute was intended to prevent.<sup>41</sup> But, with most of these statutes, there is more than one purpose, more than one harm that the statute seeks to prevent. In addition, Congress can attack problems incrementally. It seemed to me that this statute was in fact intended to combat abusive working conditions, among other things.

As to negligent hiring and supervision, the plaintiffs alleged that the manufacturer knew or should have known what was going on.

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34. *Id.* at 1466-68.

35. *See id.* at 1471-77.

36. *Id.* at 1471.

37. *Id.*

38. *Id.* at 1478.

39. *See* CAL. LAB. CODE § 2666 (West 2011); 29 C.F.R. § 530.2 (1985).

40. *Bureerong*, 922 F. Supp. at 1478.

41. *Id.*

That claim also survived.<sup>42</sup> As Julie has mentioned, the complaint was later amended to include back-pay claims for the Latino garment workers who worked in the Downtown L.A. store, which was owned by the same operators. These workers weren't enslaved rather they were denied fair wages and paid very small amounts per hour—\$1.63 an hour for working thirteen hours a day.<sup>43</sup> A later complaint included allegations as to Hub; Hub was the parent of Miller's Outpost, so that was a big deal.

Eventually, about a year later, Hub, the parent corporation, brought a motion to dismiss the claims for false imprisonment and invasion of privacy, and I found that the plaintiffs had sufficiently alleged that Hub was vicariously liable.<sup>44</sup> There was also another negligence per se claim, which was subsequently amended for clarity. The defendant never brought a motion for summary judgment, and the case never went to trial. I won't get into the settlements in great detail only because that may come up again, but there were settlements as early as October of 1997 and as late as July of 1999. In this staggered set of settlements, one defendant group after another settled with both groups of workers: both the Thai workers and the Latino workers who worked at the second factory in Downtown L.A.

I would like to say, in closing, it was not until I was preparing for this panel that I realized the extent of Julie's involvement. I knew then that Julie was a young dynamo who came into my court and just entranced everyone with how hard working she was, how on-top-of-it she was, and how creative her team was, but I didn't know then that she was literally working 24/7. I know a lot of attorneys are working extremely hard when you have a case like this, but I don't mean just on the legal issues. I find out, only now, in reading this background, the extent to which, at night, every night, she was with these workers who were, in a sense, "freaked out" by first being detained and then, when Julie got them released, were living in a foreign world and did not know what to do. They were in an alien territory. They might as well have been on Mars. Julie had to calm them down, walk them through what it was like to live in Los Angeles, and introduce them to the world.

She not only had to do the legal part, which we all know can itself be a 24/7 responsibility, but she was literally their light to the world; their contact to the world. I just want to thank her again for that.

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42. *Id.*

43. *Bureerong*, 959 F. Supp. at 1233.

44. *Id.* at 1236.

JULIE SU: Because we're at a celebration of court, I thought it was really important to say something about what Justice Collins did at the end of the criminal case. We were in the courtroom on the very last day. Plea agreements were being entered and sentencing was underway. I had brought about fifty of the workers with me in the courtroom to watch this happen. They were, as Justice Collins has already said, really frightened throughout most of the beginning of our work together. They were reluctant to file suit, although they understood the value of doing so and scared about testifying, although courageous in the face of the possibility.

We were sitting in this courtroom and at the very end of the case, the criminal defendants had come in. These were their captors, now. All the workers kept their eyes down; they didn't want to make eye contact. Their captors came in, and at the very end, Justice Collins said, "I understand that there are some victims in the courtroom today. I would ask you all to raise your hands." Fifty hands went up. The news media was in there watching, and there was definitely a stir about that. She said to them, "I understand that you've been through something really horrible in this country. You've been denied many of your basic rights. You've come forward now to help us make the legal system work. I understand you've met people who've been helpful to you. I want to tell you that I'm very grateful to you for having stepped forward, for having done this, having played this role." The workers began to cry. It was really powerful for them to have a federal judge address them directly, acknowledge them, and thank them.

I cannot overstate the importance of that moment in the workers' own sense of self-worth, and also in their commitment to the rest of the case going forward. As Justice Collins mentioned, our civil suit took over four years to resolve.<sup>45</sup> Throughout this time, the workers and I were meeting, talking about the case and also about strategies. Every offered settlement was taken to them. They had to decide whether to accept or not. Their involvement and ability to stay engaged in the case was very much due to the fact that the tone was set at the very beginning by Justice Collins' recognition of their humanity and her speaking to them directly.

To talk just briefly about how the case was resolved. There were a number of settlements in the case. I just have to share a couple of crazy moments we had. One of the set initial settlement offer we got from a company was a letter that said, "Dear Ms. Su: Clearly my client

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45. Connie Kang, *Final \$1.2 Million Added to Thai Workers' Settlement*, L.A. TIMES, July 29, 1999, at A1.

didn't know what was going on. Clearly, we're not legally liable for this. Because we're a good company, we're offering \$50 in gift cards to each of your clients to settle the case." Right. There were also a number of moments in which these lawyers would say things like, "Your clients are so poor, Julie, whatever we give them should be good enough. This should not be your crusade, it should be up to them." What these lawyers didn't understand and refused to acknowledge was that the workers themselves really felt like fighting this case. They rejected a number of settlements over time. They accepted some, which ended up being really useful in helping them adjust to life in the U.S. Frankly, Justice Collins' decisions, her rejections of those six motions were really critical in bringing a these companies to the table.

Then, almost four years later, we were set to go to trial against the final company. I really want to acknowledge Dorothy Wolpert who's here, and her firm Bird, Marella, Boxer, Wolpert, Nessim, Dooks, Lincenberg & Rhow came in and helped us prepare for trial against the very last defendant. We ended up settling the case. When we initially filed it, people said, "Don't do it. There's no way. The workers are already free. That's better than they were before. They were supposed to be deported, and they weren't. We filed to be able to keep them here and for better legislation that changed the ability for victims and survivors of trafficking and other kinds of crimes to stay in the country. They've got what they deserve. They got more than they needed." We refused to believe that that was all they deserved.

We ended up settling the case overall for a bit over \$4 million.<sup>46</sup> The two published decisions that Justice Collins talked about not only were the catalyst for the positive resolution of their own case, but those decisions have been cited literally hundreds of times in cases involving low-wage workers at the bottom of the food chain in which the corporate employers at the very top insulate themselves from responsibility by contracting for labor. The theory behind the case and the decisions that she wrote ended up being marvelous for legislation in the state of California that now allow us to more easily hold those kinds of companies responsible. That's a legacy and impact of the case that I think is important to know.

The last thing that I'll say is that the workers really found their voice with this case. It made a big difference for them to be able to make demands in the system, and as I said, now 20 years later, we still get together every school year. We get together every year in August

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46. *Id.*

to commemorate their struggles. To commemorate what they went through, and to enjoy the progress in life that they've had. I just want to say that, for me personally, this case changed my life.

SCOTT CUMMINGS: Thank you for allowing me to join this incredible event and to participate in the discussion of the El Monte case as a seminal event in the illustrious fifty year history of the Central District of California. As you can see, I have the distinction of being the only person on this panel who can claim absolutely no credit in this epic case, which as Commissioner Su so eloquently put it, was not just about compensating the victims of horrific trafficking (though it was certainly about that), but also about building a movement to bring accountability and fairness to a garment industry that had lost those qualities in the last half of the twentieth century. My privilege was to be a (quite nonobjective) observer of this struggle, to watch it unfold and to root on an incredibly talented and visionary team of lawyers, who were lucky enough to hook up with an incredibly fair and courageous judge, to use law to make a difference in the lives of some of the most marginalized workers in America.

I suppose I am here because I also had the privilege of writing an article about this incredible case and the movement that grew out of it.<sup>47</sup> And as I looked back at that piece in preparing for today, I recalled words from the conclusion, which I wanted to start by sharing with you here. It reads as follows:

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. . . . 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, garner the support of powerful allies—and knock a global industry back on its heels.<sup>48</sup>

I wanted to use my time this afternoon to reflect upon how this happened—how this case helped to “knock a global industry back on its heels.” And because the other panelists lived this case and thus know far better than I ever could about its details, I thought I would

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47. See Scott L. Cummings, *Hemmed In: Legal Mobilization in the Los Angeles Anti-Sweatshop Movement*, 30 BERKELEY J. EMP. & LAB. L. 1 (2009).

48. *Id.* at 83.

offer some broader thoughts about what lessons we might take from it about the role of litigation and court decisions in social movements.

Here I would like to frame my remarks by setting out an important train of thought in the legal academy about the role of litigation in producing sustainable social change. This position holds that court decisions generally do very little good, but can often do a lot of harm, to progressive social movements. In perhaps the most prominent social science account of this position, one scholar, reflecting on the legacy of the critical civil rights-era cases, including *Brown*<sup>49</sup> and *Roe*,<sup>50</sup> has argued that “U.S. courts can almost never be effective producers of significant social reform.”<sup>51</sup> This argument has become prominent in law schools, where diverse scholars have claimed that courts are rarely at the forefront of producing social change. In this vein, Lani Guinier and Gerald Torres, in discussing the NAACP, called its litigation approach “important but insufficient”<sup>52</sup> precisely because “the required focus on doctrine and rules deflected time, energy, and resources from the harder work of changing the culture.”<sup>53</sup>

What I want to assert is that, against these voices of skepticism, what the El Monte Sweatshop case teaches more than anything is that litigation and adjudication can work to *spark* a social movement. Litigation, when conducted by the right lawyers, and court decisions, when authored by the right judges, can in fact “change culture” and deepen democracy.

The question I want to explore is how does this happen? What are the key ingredients that go into converting a case, here *Bureerong v. Uvawas*,<sup>54</sup> from something that gets decided and filed in an opinion that sits on the shelf, into an audacious, brilliant campaign to change the way an entire industry, comprised of some of the most powerful economic actors in the world, treats its workers?

I want to suggest that you need three things, which in the El Monte case were both necessary and sufficient. First, you need a visionary and courageous—even fearless—lawyer, someone willing to devote her entire being to a cause. A lawyer that chooses to ignore those who would say it isn’t possible or advisable—those who would

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49. See *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

50. See *Roe v. Wade*, 410 U.S. 113 (1973).

51. GERALD N. ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* 422 (2d ed. 2008).

52. Lani Guinier & Gerald Torres, *Changing the Wind: Notes Toward a Demosprudence of Law and Social Movements*, 123 *YALE L.J.* 2740, 2748-49 (2014).

53. *Id.* at 2748.

54. 922 F. Supp. 1450 (C.D. Cal. 1996).

urge incrementalism and who would discount the lives of immigrant workers as part of the cost of doing business. You would need, in short, the singular Julie Su.

Now, to appreciate her courage and her vision, you must understand the context and the ambition of the anti-sweatshop campaign. The garment industry in the U.S., as many of you know, used to be based almost entirely in New York, where it was large and mostly unionized.<sup>55</sup> In the mid-1950s, at its peak, the International Ladies Garment Workers Union represented nearly half a million workers—over seventy percent of the entire garment industry owing to the strength of union organizing under the New Deal labor law regime.<sup>56</sup> By the early 1990s, garment production had shifted almost entirely to L.A. There were roughly 100,000 garment workers—*only one percent of whom were unionized*.<sup>57</sup> As a result of this and other changes in the industry, particularly the outsourcing of production to low-wage countries like China and the in-sourcing of low-wage immigrant workers, conditions were ripe for worker exploitation.

In 1994, the year before the “discovery” of the Thai workers, the federal government reported that there were 4,500 sweatshops in L.A. defined by systematic labor violations, which included violations such as the failure to pay minimum wage and overtime,<sup>58</sup> violations of health and safety laws,<sup>59</sup> and arbitrary punishment and abuse.<sup>60</sup> This structure was authorized, perhaps more than anything else, by a legal system within which the most powerful actors in the garment industry—the retailers themselves and the manufacturers or “brands” that put their labels on the clothes—were insulated through the *practice of subcontracting* from legal responsibility for the sweatshop conditions under which their garments were produced. Under the old union system, it was not possible to contract out of responsibility for labor standards,<sup>61</sup> but under the new L.A. system of subcontracting, that was the

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55. Cummings, *supra* note 47, at 10-11.

56. Katie Quan, *Strategies for Garment Worker Empowerment in the Global Economy*, 10 U.C. DAVIS J. INT'L L. & POL'Y 27, 30 (2003).

57. 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).

58. U.S. GEN. ACCOUNTING OFFICE, GAO/HEHS-95-29, GARMENT INDUSTRY: EFFORTS TO ADDRESS THE PREVALENCE AND CONDITIONS OF SWEATSHOPS 5 (1994); Stuart Silverstein, *Survey of Garment Industry Finds Rampant Labor Abuse*, L.A. TIMES, Apr. 15, 1994, at D1.

59. Tara J. Radin & Martin Calkins, *The Struggle Against Sweatshops: Moving Towards Responsible Global Business*, J. OF BUS. ETHICS 261, 262 (2006).

60. *Id.*

61. Cummings, *supra* note 47, at 16.

norm. The move from unionized joint employment to nonunionized contracting out subverted the system of labor compliance<sup>62</sup>—normalizing the sweatshop and rendering exceptional the garment firm that actually complied with labor law.

So the question is: How could a lawyer challenge this massively complicated problem? Part of the answer is to point out that transformative leaders like Julie Su are born, but they are also made—in the sense that they are given opportunity. What makes them unique, however, is that unlike most people with opportunity, they use it not to benefit themselves, but to fight for others. Julie Su received a Skadden Fellowship in 1994 to provide legal assistance to low-wage Asian Americans, with a special focus on the garment industry, at APALC—part of a small cohort of lawyers in California who entered public interest law that year to address the garment problem. What was unique about her and relevant to the impact of the case is that she came to the fellowship with an already formed and very sophisticated approach to litigation. She viewed litigation as a vehicle not just to win legal cases, but also to organize workers. It is worth emphasizing that when seventy-two Thai workers were discovered on August 2, 1995, now-Commissioner Su was still a first-year lawyer. It is incredible to reflect back on the courage and skill it took to move from that moment of reaction to only a year later being the leader of an impressive team of the very best civil rights lawyers in this city, in filing this seminal federal lawsuit against the El Monte sweatshop operators and the manufacturers that contracted with it.

*The point I want to stress is that* it took not just a lawyer with legal acumen to do this, but more significantly, a lawyer with a political analysis: someone who understood how the case fit into the broader landscape of the garment industry; how her work connected to the work of unions and other groups fighting similar battles; and how litigation fit into a broader struggle for social change.

*But* she also needed more than that. History is full of stories of the best strategists, with incredibly important cases, meticulously litigated, nonetheless drawing a judge who refuses to see the merits of their claims, who does not have the insight, or the courage, or the work ethic to get to the bottom of the case and do what the law requires. This, then, leads to the *second ingredient* explaining how a case becomes a social movement.

What you need on top of the courageous and brilliant lawyer who initiates the suit is: an equally courageous, brilliant, and fair-minded

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62. *Id.* at 17.

judge, who is willing to follow the letter of the law to side with the powerless against the powerful, even if that means upsetting business as usual in ways that have significant consequences. In short, you need Justice Audrey Collins.

Let me say one thing, because I think Commissioner Su already hit this point on the head: If you go back and read her decision in the *Bureerong*<sup>63</sup> motion to dismiss, what you immediately appreciate is that this is someone who not only cares deeply about law as a set of rules, but who thinks about how those rules actually operate in the real world to affect people's lives. That is, she got the deep doctrinal structure of joint employment exactly correct and she clearly understood how the doctrine worked in practice—or rather, how it *had not* worked to protect the Thai workers and countless others from the treatment they had and continued to receive. Here, if I may respectfully say so, is where in my own reading Justice Collins did something that she did not have to do, but did nonetheless because she understood that law matters to people. She decided that she was not going to allow manufacturer defendants—including Mervyns—to profit on the backs of workers just because the companies had signed contracts saying that they were formally not employers.<sup>64</sup> Instead, she looked at the realities of the situation—the fact that the manufacturers must have known that the amounts they were paying for goods were too low to allow the contractor to pay minimum wage—as evidence of manufacturer responsibility.<sup>65</sup> She did not have to do that; she could have taken the easy way out. The fact that she took the harder path made all the difference, and that difference was this: she gave Julie Su and her colleagues a precedent—a tool that they could use to say to others in this industry, “You can’t continue to conduct business as usual. This must change.”

This leads me to the third and final ingredient for movement success. With a gift of a decision like *Bureerong* in hand, you need a team of lawyers and activists, as committed, as fearless, and as smart as Julie Su, to figure out how to mobilize the victory in this case to have an impact on the thousands of other workers, whose experiences might not have been as sensational as the Thai workers, but who nonetheless labored every day under a system of total oppression and exploitation.

You need, in short, Muneer Ahmad, and the other lawyers who joined APALC and allied organizations to fight for garment industry

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

64. *Id.* at 1467-68.

65. *Id.* at 1468.

accountability. On a personal note, I have had the incredible luck of knowing Muneer from my very first day as a law student, nearly twenty-five years ago. What still stands out is that he was always someone who forced you to never take things at face value—to probe deeper, to get to the underlying cause, and to never be satisfied with the complacency that said things just were the way they were.

Professor Ahmad also arrived at APALC on a fellowship in 1997, part of what I think was one of the most brilliant legal teams ever assembled, and I am including here the NAACP Legal Defense Fund of the 1930s with Charles Houston and Thurgood Marshall. Similar to that team, this one understood that winning a case is only the beginning of a struggle, never the end. I know that Muneer will talk about some of the repercussions of this case, but let me just give you two of what I consider to be the most important highlights.

First, the case spawned a legal campaign that permanently changed law and irrevocably changed industry behavior. The APALC team litigated a series of sweatshop cases after El Monte that were notable for their success and for the attention they brought to the system-wide problem of garment worker exploitation.<sup>66</sup> Perhaps more than anything else, this series of cases, and their deft use of the media, caused garment manufacturers to revise their relationships and clean up their act. And the lawyers used this litigation as a platform to build a new statewide law, AB 633,<sup>67</sup> which effectively codified the legal theory that the team was using in these cases. For the first time, it established as a matter of state law that garment manufacturers were absolutely liable for the labor violations of their contractors,<sup>68</sup> and set up an entirely new expedited administrative process to allow workers to resolve their claims.<sup>69</sup> This was an incredible victory. Now, of course in an incredible example of good things coming full circle, it is the architect of that law, Julie Su, who is now leading the very agency charged with enforcing it.

The second outcome I would like to highlight is this case, and the anti-sweatshop movement it spawned, gave rise to an infrastructure of organizations and a network of alliances that have fueled low-wage worker activism in Los Angeles and beyond. This includes the creation of Sweatshop Watch, which spearheaded policy reforms like AB 633,<sup>70</sup> and the Garment Workers Center, which continues to support

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66. Cummings, *supra* note 47, at 40-42, 51-58.

67. CAL. LAB. CODE § 2673.1(a) (West 2001); *see also* Cummings, *supra* note 47, at 42-48.

68. CAL. LAB. CODE § 2673.1(a) (West 2001).

69. *Id.* § 2673.1(d)(1)-(5).

70. Cummings, *supra* note 47, at 44.

advocacy and education on behalf of garment and other low-wage workers. The point is that the creation of these groups depended on the success of this litigation and would not have happened *but for* the prescient strategic decision by the APALC lawyers to build movement organizations and not just law. There are many organizational ripple effects that continue to be felt, including at places like the UCLA Labor Center and the Wage Justice Center. These groups are built upon and emulate the anti-sweatshop advocacy pioneered by Su, Ahmad, and their colleagues, and, in my mind, are inconceivable without their foundational work.

In the end, what I want to emphasize is the legacy of this case, which went well beyond the specific outcome—which was on its own terms quite significant and should not be forgotten. In total, when one added the settlements from the El Monte litigation to those from related 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.<sup>71</sup>

But beyond the money, it was the movement and what it has done for organization of L.A. economic justice, which is the central legacy of this case. For a case to truly spark a movement, you need to have a judge who appreciates how law works in the real world. You need to have lawyers who are willing to give up control, to see that the victory in the case is only the first step in the movement for change.

So for all of you law students and lawyers out there who want to be like these lawyers, to make a difference like they have and continue to do, you have to be confident enough to take yourself out of the center, to share power with others, to build power with those you are working so hard to help. That is the true definition of leadership and that is the essential factor that distinguished this case from thousands like it—that made this case spark a movement.

So, in the end, what do I say to those naysayers who would tell us that litigation and courts aren't important for progressive causes, that they are, at best, ineffective, and at worst counterproductive? I would say that you don't know Justice Audrey Collins, Commissioner Julie Su, and Professor Muneer Ahmad, and if you did, you would know how, in the right hands, in the right circumstances, and with the right allies, law can be a force to stand up to powerful interests. Thank you all for taking that stand—which will endure forever as a testament to the democratic ideal of “equal justice under law.”

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71. Kang, *supra* note 45.

MUNEER AHMAD: I don't know who decided the speaking order, but I regret being the last of these wonderful presentations. I will say, just sitting here, that there is a sense of nostalgia hearing the descriptions from each of the speakers. As Scott said, I just want to make sure you all know this. Julie was literally one year out of law school when she became lead counsel on this case. I also want to say that Justice Collins is absolutely right that there was never a motion for summary judgment. I can tell you there was a draft motion for summary judgment because Julie, who was my supervisor when I was one year out of law school, said to me, "We need to draft a statement of undisputed facts." I said, "What is that?" She told me, and I said, "Are you crazy? You're helping them to make a list of every undisputed material act?" Somebody spent a lot of time on this, and somewhere on a three and a half inch floppy disk, there's a draft motion floating around.

Scott did such a masterful job talking about the movement aspects of the El Monte work. I just want to enumerate very quickly all that flowed out. Julie talked about the ways in which the decisions from Justice Collins have been used now. Those decisions, the case law originated actually in the agriculture industry, about these chains of production and liability going up the chain. It was a massive innovation for them to adapt those to the garment industry, which differs in a lot of ways from agriculture. Julie alluded to this, but those cases now have been used on moving forward to apply to a number of other industries. That's one legacy. It's purely a doctrinal one.

Scott mentioned that there's a legislative one, AB 633,<sup>72</sup> which was a whole other campaign. There was an ongoing social justice movement around an anti-sweatshop movement, which was huge on college campuses in the late '90s, into much of the 2000's, which then dovetailed with the global anti-sweatshop campaign. These things basically didn't exist in 1994, yet soon after the case broke and the advocacy that was done, they came into full-form.

What I'm going to talk about is yet another movement, which I think the El Monte case helped spark, having to do with trafficking and the anti-trafficking movement. Julie mentioned that when the workers from the El Monte slave sweatshop were freed, the first place that they landed was another form of captivity—at an INS detention center. There's a little bit of cruel irony in the fact that when we celebrate the workers' freedom, we call a freedom party every year in

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72. Assemb. B. 633, 2013-2014, Leg. Reg. Sess. (Cal. 2013) (codified as CAL. LAB. CODE § 2673.1 (West 2001)).

August. What we're actually celebrating is freedom from one captor and incarceration by another.

This happened before I came to Los Angeles and was a part of the case, so I had some critical distance from it. What I understand is that the first wave of work was not just to get the Thai workers out of INS detention, but to actually give them some security and residence in the United States, so they wouldn't be deported either before or after the criminal case was over, or thereafter.

That was done through use of something called an "S" visa.<sup>73</sup> It's a temporary visa, sometimes referred to as a "snitch visa." The legislative history on S visas is relatively thin, but it seems pretty clear that it was designed to provide a temporary ability to stay in the country for those who cooperate with law enforcement in the prosecution of organized criminals.<sup>74</sup> You can see how El Monte might be viewed as an organized crime case, but that really wasn't what it was. That was as close a thing as one could find in immigration law, but not a very good one. It took an enormous amount of advocacy that Julie spearheaded to convince the Justice Department and the White House that they should use these S visas for the Thai workers. This went all the way up to Janet Reno, who was Attorney General at the time. It was an enormous victory.

Following the El Monte case, there were a number of other instances of trafficking that came to light relatively quickly. One involved a group of deaf and mute Mexican workers who were trafficked into the United States and forced to sell trinkets on the subways of New York City.<sup>75</sup> Another involved a woman who was trafficked into the United States essentially for sex slavery.<sup>76</sup> In these and other cases, advocates followed the template that Julie had established, which was to seek and obtain S visas for these workers.

The S visas were not only a weak categorical mechanism for trafficked people, but due to many other constraints, only two hundred are available per year by statute.<sup>77</sup> They require that the immigrant possess critical, reliable information concerning a criminal organization or enterprise.<sup>78</sup> Which again, that is a category of criminal organi-

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73. 8 U.S.C. § 1101(a)(15)(S) (2006).

74. *Id.* § 1101(a)(15)(S)(i).

75. Mark Fineman, *Deaf Migrants' Families Had Feared Abuse*, L.A. TIMES, July 22, 1997, at A1.

76. Jane Doe I v. Lakireddy Bali Reddy, No. C 02-05570 WHA, 2003 WL 23893010 (N.D. Cal. filed Aug. 4, 2003).

77. 8 U.S.C. § 1184(k)(1).

78. § 1101(a)(15)(S)(i).

zation or enterprise; you may or may not be able to fit that category. The process for obtaining an S visa was cumbersome. Because these visas were primarily concerned with aiding prosecutions, they tended to privilege law enforcement needs over humanitarian considerations. This led to advocacy for creation of a dedicated visa for people who have been trafficked into the United States.

In the late 1990's, as trafficking became an increasingly visible issue, a sophisticated anti-trafficking lobby began to take shape. It's interesting to me in this regard; immigrants' rights advocates were a part of this, but were not the loudest voices. This was a campaign that was led to a much more significant degree by women's rights organizations, feminist abolitionists, and religious conservatives who were committed to rooting-out prostitution, and who saw anti-trafficking as one way to advance that agenda.<sup>79</sup>

President Clinton first proposed an anti-trafficking bill in 1998, and in 2000, he signed the Trafficking Victims Protection Act (TVPA).<sup>80</sup> The bill took a "Three Ps" approach to trafficking, as it is still referred to today. Those P's are: Prevention, Prosecution, and Protection. The prevention took the form of a minimal standards regime for elimination of trafficking against which every country in the world is now measured and ranked each year by the State Department.<sup>81</sup> Funding can actually be made contingent upon where those rankings fall.<sup>82</sup> Prosecution took the form of expanded categories of criminal liability for trafficking. The protection category—which is what I will focus on—created two new visa categories: T visa for severe forms of trafficking, and the U visa, which is most related, for victims of certain qualifying crimes.<sup>83</sup>

Now, the creation of the T visa is one of the legacies of the advocacy that Julie led around El Monte. An extension of the T visa template to victims of other crimes, in the form of the U visa, is a further salutatory development of immigration law that flowed from El Monte. That's to say that there's this whole other field of immigration law, which was really irrevocably changed by the path of the first several weeks and months of advocacy on El Monte. It had nothing to do

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79. See, e.g., James C. Hathaway, *The Human Rights Quagmire of "Human Trafficking,"* 49 VA. J. INT'L L. 1, 43 (2008).

80. Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000) (codified as in scattered sections of U.S.C.).

81. See, e.g., U.S. DEP'T OF STATE, *TRAFFICKING IN PERSONS REPORT 1* (2016), <http://www.state.gov/documents/organization/258876.pdf>.

82. See *id.* at 39.

83. 8 U.S.C. § 1101(a)(15)(T)-(U).

with wage and hour law, and nothing to do with the garment industry. It's had this lasting impact now, for nearly twenty years in the form of the TVPA. This is an enormous accomplishment.

Having said that, what I want to do with my remaining comments is talk about the ways in which the thinking about El Monte as a paradigm might lead us to think about different forms of protection than just the T and U visas as they have been created to date. Part of the reason I say that is because, in many ways, the T and U visas were premised on a paradigm of female victims of severe forms of violence, particularly sexual violence. The TVPA was passed along with the Violence Against Women Act in 2000 (VAWA).<sup>84</sup> Taken together, those two pieces of legislation constituted the TVPA and VAWA, and you can see the ways in which trafficking and violence against women become almost collapsed upon one another.

Although the TVPA covers explicitly both sex trafficking and labor trafficking, what one sees in the legislative history and the enforcement thereafter is that sex trafficking gets an out-sized, and prurient kind of interest or attention. Those kinds of preoccupations with the legislation and the way in which it's been implemented, in many ways, have obscured the labor rights dimensions of El Monte. When Julie talked about the workers of El Monte, yes, they were trafficked, but I have never heard Julie describe them as trafficking victims. I've always heard her describe them as the Thai garment workers.

There's a big difference between those two. I think that one of the dangers in the ways in which the anti-trafficking legislation developed is that it has sharpened a popular and legal distinction between what we might think of as extreme forms of immigrant worker population in the form of trafficking, and what we might think of as routine forms of immigrant worker exploitation. Which is to say, the work that most undocumented workers do in the country every day and in every corner of the nation, in turn, contributes to a normalization of immigrant worker exploitation, which does its own kind of damage.

A full recount of El Monte would recognize the inextricability of the slave sweatshop in El Monte from the downtown L.A. front sweatshop. As Julie said, they were an integrated whole. They were part of a single system of production who merely embodied different ends, or different points on the spectrum of immigrant worker exploitation. We might think about whether there are ways then to conceive of a

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84. Violence Against Women Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (codified in scattered sections of U.S.C.).

visa strategy in a way that treats so-called routine labor exploitation as deeply problematic and worth of special attention. This would have the effect of recasting visa beneficiaries from victims to active rights-based, rights-asserting individuals. Rather than passive, they're active. Rather than being saved, they are engaged in their own advancement. In this, I think we're actually being more faithful to the lessons of El Monte.

The litigation was enormously powerful, not just for El Monte and all these movements, but for the workers themselves. There was a very important strategic decision that she made early on, against the advice of most of the seasoned lawyers that she was collaborating with, to bring the Latino front shop workers into the same case as the Thai workers. Before El Monte broke, Julie had been engaged in for the first eleven months of her Fellowship on a large campaign to represent Asian and Latino garment workers together. They worked side-by-side in the factories, so they ought to be represented side-by-side in the courtroom. There was an opportunity for cross-racial solidarity that the case represented. That was deeply powerful to the workers.

I just want to end by saying that trafficking is a very compelling framework, which in turn provides a moral and legal basis for action. That, again, is one of the many important legacies of El Monte. I think that if we really recuperate the memory of El Monte, what we'll see is that so-called ordinary immigrant worker exploitation is not so far off from the extreme forms of immigrant worker exploitation. If we learned from El Monte that trafficking is a powerful rubric for moral and legal action, we might think about recasting so-called ordinary immigrant worker exploitation as extraordinary.

Instead of thinking of the seven or eight million undocumented workers, who are part of the eleven million undocumented people in the country, as just par for the course, what if we instead recognize that as a caste? That is, a large, persistent, racially-marked, labor-subordinate population, who by law and social norm are rendered to the absolute margins of the economy and of society. If we thought about this as what my colleague Owen Fisk refers to as a "debasement of society," rather than just life as usual, that might provide us the moral and legal basis for thinking about front shop and not just sweatshop. Thinking about immigrant workers, and not just trafficking victims. That would be a wonderful advancement of the legacy of El Monte.