

PRAYER AND PROTEST: BRINGING A COMMUNITY VISION OF JUSTICE TO A LABOR DISPUTE

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We have tried to say to the workers at Kmart that you are our gift. That God sent you as a gift because you stirred a stumbling, bumbling people just enough to stand up and try to discover what it means to be human, what it means to call a community into being a community.¹

I. EVOLUTION OF A PROTEST

On December 17, 1995, the festive holiday season was well underway in the bustling southern city of Greensboro, North Carolina. However, for the 550 blue-collar workers at the Kmart Hard Goods Distribution Center, good tidings had not arrived. Over the past three and one-half years, workers alleged that this predominantly African-American workforce had been racially and sexually harassed, subjected to an unsafe workplace, denied access to medical treatment for work injuries, paid less than workers at other Kmart facilities, and have been generally disrespected.² To the laborers, the long struggle for a safe, unbiased workplace and a living wage seemed futile. The workers felt that a recalcitrant Kmart had successfully stalled contract negotiations by pursuing an anti-union campaign of harassment and delay.

Several of the Kmart workers planned to protest in the parking lot of the local Kmart store, subjecting themselves to arrest and prosecution.

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1. Reverend Nelson Johnson, Statement at Rockefeller Foundation Convening on Normative Lawyering (May 31, 1996) [hereinafter Normative Lawyering].

2. See Peter Krouse, *Lessons Learned; Kmart Fight Leads to More than Satisfactory Labor Contract*, GREENSBORO NEWS & REC., Sept. 29, 1996, at E1 (recounting workers perceptions of employment conditions at Kmart).

Reverend Nelson Johnson, one of the leaders in the Greensboro struggle and the pastor to several of those arrested, knew that an arrest record could ruin the protestors' lives. They would lose their jobs and go to prison. Moreover, in his opinion, the alleged brutality of the Greensboro police toward African-Americans meant that the workers would almost certainly face beatings and injury.

Reverend Johnson was a member of the Pulpit Forum, an alliance of black Greensboro ministers founded in the 1960s. The Forum had been actively supporting the workers' struggle, distributing leaflets to their congregations, taking out newspaper advertisements, and even initiating a national boycott of the Kmart chain. However, none of these efforts had succeeded. The pastors knew that the workers were tired and dispirited, particularly now in the Christmas season when their scant pay could not support holiday festivities or the purchase of gifts. The Pulpit Forum gathered and, after a night of talking and praying together, eight pastors decided that they would get arrested and go to jail in place of the workers. By doing this, they would send a clear message that the plight of the low-paid, mistreated Kmart laborers was not a "special interest," but rather a matter of community-wide concern.

Reverend Johnson recounted the clergy's deliberations:

So some of us struggled . . . through the middle of the night. . . . [W]e called a late-night meeting of the clergy and after we prayed about this thing, a boy, a young man, a young woman, going out there and really putting their life, their job, their career—all of that—on the line, and if they get thrown in jail and get beat up, not only is it going to make this movement hard, because it will rally [opponents] and frighten [supporters] and they'll get 10 years and out and on drugs. So our decision was that it is the proper role of the faith community to take the lead in this. . . . [W]e felt deeply that at a moment like this . . . if the pastors went to jail, [we're] probably not going to get beaten. There's going to be three or four hundred people who will come to your aid, perhaps.³

Another member, Reverend William W. Wright, felt that the workers' claims needed to have a spiritual connection to "the biblical mandate for justice and righteousness"⁴ and that the clergy were the group best suited to make this connection. The decision to avail themselves to an arrest was made.

The following morning, the congregation of the Faith Community Church gathered for their Sunday worship. A decorated Christmas tree,

3. Normative Lawyering, *supra* note 1, at 58.

4. Interview with Reverend William F. Wright, African American member of the Pulpit Forum (Apr. 28, 1998).

topped by a black angel, greeted worshipers and the African-American congregation sang "Joy to the World." However, as their pastor, Reverend Johnson, gave his sermon, the congregation quickly realized that this was not a routine pre-Christmas Sunday. He explained his decision to stand in the place of the Kmart workers. When concluding the worship service, he asked the members of the congregation to join him at the Super-Kmart, to bear witness and to offer support. For Reverend Johnson, the mistreatment of these workers was "a matter of community. Not just people living together, but people actually believing and helping one another."⁵

Later that day, the eight pastors were arrested as they prayed in the Kmart parking lot, along with a state representative and an aid to the Governor who happened to be in town and felt moved to join in the protest.⁶ Members of the pastors' congregations surrounded the prayer group. The pastors' arrests raised the level of community understanding and concern about the situation. Even the newspaper coverage of the struggle placed the events prominently on the community page.⁷ There was also opposition to the pastors' behavior.⁸ However, the pastors felt that regardless of the type of reactions from others, at least people were talking about the issues. To the pastors, talk was the first stepping stone to resolution. As Reverend Nelson Johnson relates:

Up until this point, we [had] not been able to have any meaningful conversation with the majority [of the] community. . . . After [the prayer vigil arrests], the president of the Chamber of Commerce got in touch and said we really need to talk this matter through.⁹

For others, the ministers' protest did much more than spur dialogue. Michael Zucker, the director of Corporate and Financial Affairs for the Union of Needletrades, Industrial and Textile Employees (UNITE), felt that the Minister's decision was a critical turning point in the workers' struggle, because the ministers had tremendous moral authority in the community. While the ministers' protest did not bring an immediate resolution to the dispute, it did force community members to address a problem that had previously been avoided. For the first time, the Mayor and the president of the Chamber of Commerce came forward to help broker a resolution.

5. Normative Lawyering, *supra* note 1, at 66.

6. See Lorraine Ahearn & Peter Krouse, *Clergy Charged in Labor Protest*, GREENSBORO NEWS & REC., Dec. 18, 1995, at A1, available in 1995 WL 9459041.

7. See *id.*

8. See David Dubuisson, Editorial, *A Broadened KMART, Battle Runs the Risk of Getting Lost in Economic Theory*, GREENSBORO NEWS & REC., Jan. 28, 1996, at F2, available in 1996 WL 5754184. But see *Paper's Role Appreciated*, GREENSBORO NEWS & REC., Jan. 12, 1996, at A14, available in 1996 WL 5751890 (citing a letter to the editor encouraging the community to continue to work in their pursuit of justice at Kmart).

9. Normative Lawyering, *supra* note 1, at 59.

The Pulpit Forum, however, was not satisfied. To them, the Kmart conflict was much broader than the isolated issue of labor/management relations. Rather, the Forum chose to frame its view of the larger issue behind the treatment of the Kmart workers as a question of how to bring a corporate citizen under the discipline of the community.¹⁰ Many Sundays for several months, members of the Pulpit Forum prayed at the Super-Kmart parking lot, and were often arrested. The workers from the plant began to join in the soulful protests. Eventually, the demonstrations included a diverse array of community members: white and black workers and ministers, representatives of the local business community, politicians, university professors and students. Even children joined the picket lines.¹¹

On Martin Luther King day in January of 1996, a number of protestors decided that "the only way we could celebrate the King holiday [was] to invite others to join us in jail." A rally was held in one of the churches in honor of the day and in recognition of the collective struggle. "So that's what we did on King day . . . it had meaning, and it had power."¹² As protestors continued to return to the site, the media and public pressure grew. The Pulpit Forum used the network of African-American clergy to spread word of the protests and the message behind them, resulting in Kmart boycotts throughout the South.

A few months later, in May, 1996, a new vice-president of Kmart emerged on the scene and said "it's time to end this war."¹³ After years of alleged foot-dragging, Kmart finally came to the bargaining table for good faith negotiations with the workers' union. In the laborer's opinion, the company's treatment of its workers began to improve.

The struggle for economic justice and community resistance to Kmart's drive for maximum corporate profits is not over. However, a group of pastors and workers have begun to transform a traditional labor/management dispute into a community-wide exploration of the responsibilities of individual and corporate citizens. The group seized the moral high-road, found common ground with new allies, and brought together members of a community known for its history of racial conflict. As Reverend Johnson summarized, "We're going to walk together towards a new city."¹⁴

10. *See id.* at 61.

11. Compton-Holt interview, 4/29/98. *See generally* Millicent Rothrock, 39 *Arrested in KMART Protest*, GREENSBORO NEWS & REC., Jan. 16, 1996, at A1, available in 1996 WL 5752415.

12. Normative Lawyering, *supra* note 1, at 60; *see also* Rothrock, *supra* note 11, at A1.

13. Normative Lawyering, *supra* note 1, at 63.

14. *Id.* at 65.

II. HISTORY

To appreciate the larger task assumed by the Pulpit Forum and Kmart workers, it is important to recognize the climate created by the collective history of Greensboro, North Carolina. In the 1960s, Greensboro gave birth to the civil rights sit-in movement. Students from North Carolina A & T University sat-in to demand service at the local Woolworth's lunch counter. In the 1970s, a union effort to organize black and white workers in the textile industry had increased tension. Union organizers reported that some in the industry encouraged the Ku Klux Klan to disrupt the cross-racial coalition and undermine the union's fledgling movement. At a peaceful march by civil rights and union supporters in 1979, Klansmen and Neo Nazis gunned down thirteen participants, killing five of them in the infamous Greensboro Massacre.

III. KMART COMES TO GREENSBORO

For Kmart, Greensboro was attractive for several reasons. First, Greensboro is geographically well situated to serve as a central, regional transportation center. Second, North Carolina is an anti-union state where wages are relatively low. Third, Kmart negotiated concessions from the city and county, including the construction of roads and provision of public water to the site. Thus, the Kmart Corporation, a \$35 billion dollar international retail chain with 200,000 employees nationwide, opened the distribution center in Greensboro in March of 1992. Located on thirty-seven acres, the size of thirty-five football fields, the Greensboro facility supplies hard goods stock for all Kmart stores in five states—North Carolina, South Carolina, Virginia, West Virginia, and Tennessee. It is one of fourteen such Kmart distribution centers in the United States.

Kmart hired 550 workers for the Greensboro location. The work is relatively low skilled, involving mostly moving, lifting, and transporting. The workforce at the facility is approximately sixty-five percent African-American and thirty-five percent white. For the first few years, however, all of the managers were white.

The plant opened in late spring, before construction was complete. The weather was very hot and workers complained that temperatures in the huge, unventilated warehouse often soared well above 100 degrees. For many weeks, Port-O-Johns served as the only restroom facilities. Employees also complained that workers and management were not allowed to use the same bathrooms, that managers frequently insulted workers, that sexual harassment and racial slurs were common and tolerated, and that complaints about injuries or sickness were ignored. According to Reverend Johnson, the number of injuries, back injuries in

particular, was "horrendous." Reverend Johnson reported that over 200 work-related injuries occurred at the facility during the first year of operation. In one case, when a worker injured her back, she was referred to a company doctor who reportedly told her to go back to work. Following the doctor's orders, she re-injured her back causing permanent damage. Another worker fell and hurt his leg. His coworkers carried him to the company nurse who simply gave him some ice and told him to return to work. When the injury worsened, the worker's private doctor prescribed surgery. That worker reports, "I will have to wear a brace the rest of my life, and the doctor said I should be on permanent light duty. But the first day back I was assigned to loading trucks."¹⁵

IV. NEGOTIATION AND PROTEST

The union supporters began very cautiously in the Spring of 1993. North Carolina is a right-to-work state where anti-union sentiment is strong among many segments of the public. In fact, workers believe that it is this labor climate that initially attracted Kmart to Greensboro and contributed to the company's decision to situate the center in the city. Despite the anti-union tradition of the region, Kmart workers felt they needed a labor union to assist in their struggle and to combat the worker mistreatment at the Kmart facility. The workers had no organizing experience and several unions turned them down when the workers asked for representation. The workers persisted, however, and eventually the Amalgamated Clothing and Textile Workers Union (ACTWU)¹⁶ agreed to represent them.

Union organizers began by passing around a toll free number to workers who seemed supportive and by meeting with interested workers on the weekends at their homes. Secrecy was of the utmost importance. Despite the secrecy, Kmart management soon discovered the unionizing efforts. Workers believed that in an attempt to curb the union campaign, Kmart portrayed the ACTWU representatives as outsiders coming in from the north. Nonetheless, the vote for union certification was surprisingly strong, with the union winning by a 2-1 margin in September of 1993.¹⁷

Unbeknownst to the workers, the toughest battle would begin after the certification. Phil Cohen, the UNITE business agent for the Greensboro

15. Friend's of the Poor People's Organization, *The Story of the Greensboro Kmart Workers: Moving Toward Authentic Community*, August 1996. The worker was Mike Thompson.

16. The ACTWU has since merged with the International Ladies Garment Workers' Union (ILGWU) to form the Union of Needletrades, Industrial and Textile Employees (UNITE).

17. See Sheila Long, *KMART Employees Vote to Join Union Greensboro Distribution Center*, GREENSBORO NEWS & REC., Sept. 11, 1993, at B6 (noting that 52.4% of employees voted in favor of unionizing), available in 1993 WL 7739062.

local recalls, "[t]he real challenge was negotiating the first contract."¹⁸ No Kmart hard goods distribution center had ever been unionized and it seemed the company would resist every step.¹⁹ Kmart hired an aggressive law firm known throughout the community as a "union busting" firm. In response, the Pulpit Forum took out an ad in the local African-American newspaper expressing support for the workers.²⁰ The clergy also wrote to the Kmart corporate officials, prompting a company Vice-President to come from Troy, Michigan to meet with a group of the ministers.²¹

At first, contract negotiations proceeded sporadically. Workers attributed the slow pace to Kmart management coming up with a pretext to delay meetings for a month or more. Simultaneously, according to members of the Pulpit Forum, the harassment of workers was increasing within the plant. The union filed scores of claims with the National Labor Relations Board (NLRB), asserting that Kmart management was bargaining in bad faith. The company managed to delay responding to these claims as well. The workers sensed that significant help from the NLRB was unlikely, for even a finding in their favor would result in nothing more than a slap on the wrist for Kmart. According to Reverend Johnson, it was "amazingly clear" that Kmart was not trying to work out the terms of a contract, but was "simply trying to wear out these young men and women."²²

The effort to negotiate a new contract had been going on for a few months when the union discovered that workers in Greensboro were earning five dollars per hour less than other Kmart workers performing the same tasks at other sites. The Greensboro workers also accumulated personal leave time at a lower rate than employees at other distribution centers. In addition, the workforce at all but one of Kmart's thirteen other hard goods distribution facilities was primarily white.

In 1994, Kmart became the lead corporate sponsor of the Greater Greensboro Open, an annual golf tournament with prominent professional golfers and national television coverage. Grasping the opportunity, the Pulpit Forum and Kmart workers wrote letters to the event sponsors to explain their impression of Kmart's mistreatment of its employees. As the tournament approached, the union and supporters of the workers indicated that they might use the tournament as an opportunity to draw attention to their dispute with Kmart and to their belief that Kmart was not working

18. Interview by Lincoln Mitchell with Phil Cohen, UNITE Business Agent (Apr. 28, 1998).

19. *See id.*

20. *See Normative Lawyering, supra* note 1, at 53.

21. *See id.* at 54.

22. *Id.* at 53.

with the community of Greensboro.²³

In fact, the union did seize the opportunity. In the middle of the tournament, sixty-four workers went on the green and sat. As a result, they were arrested.²⁴ This incident provided a brief yet memorable stage for the strikers, but drew a mixed reaction from the media and the greater Greensboro community.²⁵ Many in the media were critical of the demonstrators for disrupting an event that they felt had nothing to do with Kmart's labor strife and which was meant to generate positive feelings about the community. The workers effectively removed themselves from further protest activities because their release from jail was conditioned upon a year's probation.

Protest activity escalated during 1994 and 1995. The Pulpit Forum started its own newsletter as a way to continuously update the community about the situation at Kmart. Approximately 1,700 protestors held a rally at a local, historically-black high school, and the workers and their supporters started a consumer boycott of Kmart. While the boycott did not significantly impact Kmart's Greensboro sales, the ministers and workers had the idea of extending the boycott nationwide and publicizing the boycott through a network of churches and clergy.

Despite extensive effort, the union did not make any significant progress toward a contract between 1993 and 1995. They perceived Kmart's responses as consistently combative. Workers who were thought by management to support the union reported being harassed on the job. Protesters were arrested repeatedly, brought up on criminal and civil charges, and eventually banned from all Kmart property worldwide. The larger community's view was that union people invaded the city and had taken over the city. Elected officials responded by stating that "this is a matter of labor and management, and we have no business getting involved in it."²⁶ The Pulpit Forum strenuously disagreed with this "structure of fragmentation of the community's interests."²⁷ It unsuccessfully pleaded with the Chamber of Commerce and elected officials to press the Kmart corporation to reach some form of settlement.

V. THE SEARCH FOR HEALTHY COMMUNITY

The large-scale arrests eventually helped to recast the struggle.

23. *See id.* at 54-55.

24. *See* Jim Schlosser, *KMART Workers Disrupt GGO*, GREENSBORO NEWS & REC., Apr. 25, 1994, at A1, available in 1994 WL 7334048.

25. *See* Editorial, *Labor Protest Fails to Disrupt the GGO*, GREENSBORO NEWS & REC., Apr. 26, 1994, at A10, available in 1994 WL 7338931.

26. Normative Lawyering, *supra* note 1, at 56.

27. *Id.*

Previously perceived by most political and business leaders as simply a labor-management dispute, the struggle was reframed as a moral issue about the nature of Greensboro as a community. While agreeing with the chamber of commerce that the community needed economic growth, the Pulpit Forum asserted that:

it just can't be any kind of economic growth. . . . We need environmentally safe, good economic growth and . . . we need community standards, and we need a way that the citizens can begin to hold corporate citizens accountable for their behavior.²⁸

The Pulpit Forum went to work with the Chamber of Commerce and the business community to address the larger issue of creating a healthy, sustainable community. "[I]t first was a struggle just to have a [common] language because we were coming from such different places."²⁹ The political and business leaders initially requested that the protests end before a dialogue could begin. The movement's leadership refused, however, believing that a two-part strategy of protest and negotiation would be most effective. The Pulpit Forum's goal was to make the workers' plight a public issue. Deliberate and conscious efforts were made to prevent the issue from being defined solely as a labor-management or racial discrimination issue. Rather, the Forum hoped that the community aspect of the struggle would be addressed with labor and race as central concerns of this larger issue.

The Pulpit Forum highlighted Kmart's status as a large, corporate outsider that might not have operated so unfairly had it been a Greensboro-based company with roots in the community. The Forum emphasized that the problem with large scale international companies is that their management is headquartered elsewhere. Without the faces of a community to serve as human reminders of the lives involved, corporate bodies are more likely to feverishly pursue economic benefits regardless of the impact on the community. The Forum charged that Kmart's refusal to pay a living wage was not only an economic injustice to its employees, but also an insult to the city of Greensboro by undermining efforts to create a "sustainable community" where workers could afford to fully pay their way in the city's economy.

Meeting together, the diverse members of the community were able to agree on a five-point plan for achieving a healthy community: 1) admitting that racial discrimination exists in the workplace and must be actively addressed; 2) raising wages in the city to a sustainable level; 3) preparing the workforce for the jobs of the future; 4) seeking environmentally safe and good economic growth; and 5) developing a way for the city to hold its

28. *Id.* at 62.

29. *Id.* at 60.

corporate citizens accountable for their detrimental behavior.

Concrete steps to implement the plan have since been taken. For example, the City Council adopted a resolution not to spend any tax dollars on a company that does not have average wages of at least \$12.50 an hour. Had such a policy been in effect in Greensboro years ago, Kmart might not have received public road and water assistance from the city.

Despite these advances, the struggle between Kmart and its workers continued. After another mass arrest in March, 1996, Kmart sued several of the Greensboro pastors and workers, as well as the union. Kmart claimed that its business was irreparably damaged. It is doubtful that Kmart could have anticipated the reaction from those sued. Reverend Johnson recalls:

Such good news we had not recently heard [W]e felt honored to have been sued by Kmart and we immediately went to the State Baptist Convention and announced it, and we wrote Kmart and told them that we were going to all of the national conventions and announce [it]. We want[ed] to tell the world about it.³⁰

When Kmart's temporary restraining order came before the federal court, the courtroom was packed. An African-American woman stood up and started to sing "Ain't Gonna Let Nobody Turn Me Around" inside the courtroom. The judge left the courtroom, came outside, and asked the Forum members to make her stop singing. She did stop singing—*when she finished the song*.³¹ The court ultimately ruled against Kmart, though not without many legal maneuvers and some disappointing setbacks along the way. Kmart and UNITE ultimately agreed on a contract which included a \$2.50 an hour wage increase, as well as a number of protections for workers, such as access to arbitration and stronger safety laws.

VI. MOBILIZING DEMAND AND CONSUMER PURCHASING POWER

It is impossible to sort out precisely which of the multi-faceted activities performed on behalf of the Kmart workers finally brought the company to the bargaining table. Yet, it appears that the negative publicity and the actual, or potential, impact of the growing consumer boycott particularly influenced Kmart. When the company finally went to court against the activists, it was to obtain an injunction to prohibit them from demonstrating on any Kmart property worldwide.

Organizing consumer demand can be a powerful tool in community efforts to hold corporations accountable for the manner in which they

30. *Id.* at 63.

31. *See id.* at 67 (emphasis added).

conduct their businesses. In this era of globalization and intense competition, communities may find their purchasing power to be a powerful and effective way to force businesses to recognize and consider community values. If the facts are known, many consumers will choose not to purchase from companies that treat their workers badly, pay below a living wage, pollute the environment, produce clothing in sweatshops or otherwise harm individuals and their communities. This approach places a value not just on consumer goods, but on social goods as well.

Communities can also assert the value they place on social goods by mobilizing themselves to patronize good corporate citizens. For example, taking advantage of the deregulation of the former utility monopoly, some communities are organizing cooperatives to purchase power from environmentally conscious utility companies. Often, this results in obtaining a lower price in the bargain. Businesses themselves are seeking to attract customers by touting their social values.

Consumer boycotts are constitutionally protected First Amendment activity as long as they do not use coercive tactics to cause third parties to comply with the boycott.³² Communities seeking to organize consumer demand need access to lawyers with problem solving skills to help them navigate the legal shoals involved in boycotts, defend themselves in litigation if necessary, and put together the transactions. Communities also may need access to research to help them distinguish good corporate citizens from bad ones. Finally, organizing demand often involves communication strategies such as the successful efforts of anti-sweatshop activists to educate the American public to alleged abuses by Nike and Disney.³³

VII. RACE, CULTURE AND COMMUNITY

Based on the perceptions of the workers and supportive community members, it appears that race infuses the Greensboro story in layered and cross-cutting ways. At one level, old-fashioned racial and gender discrimination can result in the low wages and mistreatment of workers. To the laborers, Kmart's lack of respect for the humanity of workers seemed grounded in its white management's assumption of racial superiority.

32. See *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 776 (1994) (stating that "[t]he freedom of association protected by the First Amendment does not extend to joining with others for the purpose of depriving third parties of their lawful rights.").

33. See, e.g., Joseph S. Pete, *Indiana U. and Purdue Team Up Against Sweatshops*, U-WIRE, Nov. 22, 1999, available in 1999 WL 18826645 (describing efforts by Indiana college students to educate the public about work conditions in sweatshops abroad and in the United States); Michael Grass, *Activists Say Disclosure of Factory Sites and Phone Numbers Is a Victory*, U-WIRE, Oct. 8, 1999, available in 1999 WL 18817717.

The five dollar wage differential for identical work between Greensboro, where the workers were sixty-five percent non-white, and the twelve other Kmart distribution centers, stands as persuasive evidence that racial discrimination played a central part in the mistreatment of the Greensboro Kmart workers. The managers, at the outset, were one-hundred percent white. While it is claimed that all workers at the Greensboro facility were treated badly, minority and female employees were treated worse. Both white and black workers reported that Kmart attempted to sow racial divisiveness among them, as part of its anti-union strategy.³⁴ Through the use of this tactic, Kmart may have hoped that workers who were divided on racial grounds would have difficulty bonding together to address their common problems with Kmart.

At another level, race can influence the economic structure in a way that is more difficult for the public to recognize as "discrimination." Like slavery, many racial justice issues are deeply intertwined with economic issues.³⁵ Without an understanding of the history and the structural role of race, the prevailing low wage rate in Greensboro may not be perceived as malevolent and racist, but simply as flowing from prevailing economic factors in the region. Businesses that claimed to be operating under no conscious, invidious, racial intent were simply taking advantage of the "economic" factor of the prevailing wage rate. This rate, however, tends to be lower in the South because of the history of racial conflict and competition. The highly competitive, global economy, with its own racial component, also plays a strong role. Political leaders and corporate interests become locked into unbridled competition. Cities compete with each other for industrial sites, while corporations search the globe for low-cost labor, "business friendly" environments, and tax and financial concessions from community players. The rules of unbridled competition permit the Mayor, the City Council, even the community of Greensboro, to ignore the resulting racial implications. They proudly tout the benefits of economic growth while giving out tax breaks and building expensive roads to attract new corporate ventures.

The events in Greensboro demonstrate that it is less useful than ever to separate the economic and racial dimensions of civil rights. Entering the economic arena is critical to the future of civil rights. As one member of the Pulpit Forum stresses, "the civil rights movement cannot be about a few laws people are haggling over."³⁶ While involving an intensely local

34. Interview by Lincoln Mitchell with David Bloom, Kmart worker, Greensboro, NC (Apr. 30, 1998).

35. See RICHARD A. POSNER, *ECONOMIC ANALYSIS OF LAW* 524-39 (2d ed. 1977) (discussing relationships among race and economic issues).

36. Interview with Rev. Nelson Johnson, Member of the Pulpit Forum, and with Z. Haller, Minister (Apr. 28, 1998).

context, the treatment of workers in the Greensboro movement is not isolated from the global situation of poor and frequently non-white communities facing the issue of runaway markets and the race to the bottom of the labor market. Members of both the Pulpit Forum and the business community agreed that Kmart paid what the market demanded and believe that the company sought out an area where they could pay below market-level wages. These are viewed as natural business approaches, but they lead to situations where a largely African-American workforce, like the one in Greensboro, is paid less than a majority-white workforce doing the same work.

Race also played a very positive role in the Kmart dispute, which is a story not often heard by white Americans. African-Americans in Greensboro were in the lead, organizing and educating the entire community, including whites. One white worker, David Bloom, reports that "whites learned from African-Americans about the power of sticking together."³⁷ Another white worker, Gail Simon, similarly reported that the Kmart struggle helped bring African-Americans and whites together.³⁸ African-American preachers taught the white mayor and members of the Chamber of Commerce about the importance of the black church as a institution that is rooted in the culture and traditions of the black community and that can exercise leadership for the whole society. Black preachers showed the Mayor and Chamber of Commerce the value of moderating and re-evaluating their zeal for socially detrimental, market-driven economic development. The results can be seen in their joint dialogue and the fruits it bore—the five-point plan for a healthy community. The plan explicitly takes into consideration the issue of racial discrimination, setting goals of improved education, employment and corporate responsibility that ensure all are lifted up and no one is left below. In addition, with the plan, the white community implicitly acknowledges that racial discrimination handicaps the entire community, not just its minority victims.

In the African-American community, members drew together in a crisis providing support and comfort to each other. The African-American community brought knowledge, experience, and perseverance to the fight for justice. They identified collectively with a shared history of overcoming great obstacles and enduring tremendous pain. This strong sense of identity seems negative to many whites. They view it as a refusal to submerge into the "melting pot," a perpetual self-victimization, or even worse, a hostile separatism. But to African-Americans, this community was not about separatism or cultural isolation. It represented a safe space

37. Interview by Lincoln Mitchell with David Bloom, Kmart worker, Greensboro, NC (Apr. 30, 1998).

38. Interview by Lincoln Mitchell with Gail Simon (Apr. 30, 1998).

of love and comfort in the midst of a hostile world. The white community, in a highly segregated place like Greensboro, is geographically and culturally separate. This story illustrates the positive aspects in the way African-Americans experience community with each other and how the larger community can benefit when it makes the effort to learn about this vision of community.

Professor Lani Guinier, in writing about the Kmart campaign, notes the dilemma of trying to address race with both white and African-American communities:

Reverend Johnson concluded that 'race and racism was the major factor in the assumption that you could set up this distribution center in a right-to-work state, hire a lot of black people, and pay them essentially nothing.' Reverend Johnson recognized, however, that if they framed the issue as one of race, many white people would hear it and say, 'That does not concern me, or even worse, I disagree.' But if they framed the issue without discussing race, many blacks would hear it and say, 'That is not responsive to my concerns.'³⁹

Whites did participate after the Kmart campaign was underway and their participation played an important role in the struggle. White clergy, students, and even a white representative from the Governor's office became involved in advocacy and protests. By the end of the long period of contract negotiations, white workers were so tied to their African-American counterparts that when individual African-American workers were sued, the white workers called a press conference to protest the fact that they were not also sued. After all, they too had engaged in the boycott and protest activities.

There are also growing numbers of Hispanics, Asians and other racial and ethnic groups living in this community and working at Kmart. As with many other stories about race, in a country that has barely addressed the black/white paradigm, these groups do not fit neatly into any historically defined racial camp. Black and white workers report that after the contract was signed, Kmart began hiring temporary immigrant workers, in what has been perceived as another effort to divide and conquer. In response to this, Reverend Johnson and the Pulpit Forum have included the immigrant workers in their community dialogue, and they are intent on opposing any Kmart efforts perceived to sow racial insults or divisiveness.

The UNITE labor union played a critical role in organizing the workers and fighting for a contract. Union leaders report that it would not have been possible to represent the workers without their strong

39. LANI GUINIER, *LIFT EVERY VOICE: TURNING A CIVIL RIGHTS SETBACK INTO A NEW VISION OF SOCIAL JUSTICE* 240 (1998).

participation and leadership. The workers were on the front lines against Kmart and provided strength that made it possible for the whole community to persevere.

In many stories involving similar issues, public spaces are places of destructive conflict, where the individual communities do battle. This story is different because it shows, after years of isolation and conflict, the coming together of individual communities to work for the common good. It demonstrates that there are ways to open up all Americans' ability to more fully understand the harms caused by alleged racial discrimination. By putting a community-based framework on the struggle, the Greensboro activists found a way to make race "visible" to whites. For example, one white Greensboro businessman who participated in the Pulpit/Business Forum's efforts to mediate the contract negotiations, came to understand the impact of racism in a personal way. He realized that "nobody ever put obstacles in my way, like they did to the African-American workers at Kmart."⁴⁰

The advocates identified Kmart's impact on the entire community in quite specific ways.

Workers lived in the community. If they could not provide for their families and contribute to the community, it would pull the community down. Parents who can barely make enough to pay the bills have no money left for activities which can enrich the family.⁴¹

Deborah Compton-Holt, an African-American housekeeping supervisor, was one of the workers who enlisted the help of the Pulpit Forum. She helped identify the damage she believed Kmart caused to the community as a whole. For example, hard working people who could not afford to pay rent, buy groceries, and obtain health care were under so much stress that they abused substances and took out their anger on their families. Illuminating the probable link between Kmart and these larger societal problems forced community members to address the real issues. As Reverend Johnson elaborates:

We set up a network of social services programs, a colonial apparatus, to lay on top of them when what they need is work. A decent job, so that they can take care of their families and send their children to school, and that's the issue that we've lifted up Sunday after Sunday in our churches, and we lifted it up so that the city and everybody else can see that there is a way out of this.⁴²

40. Interview with Dwight Davidson (Apr. 20, 1998).

41. Interview by Lincoln Mitchell with Sullivan Hamlet (Apr. 29, 1998).

42. Normative Lawyering, *supra* note 1, at 67.

These problems forced the people of Greensboro to recognize and address their need for a sustainable community. The effort to create a sustainable community shifts the focus from maximizing economic output to improving the quality of life for citizens. While maximizing profit is vital to the survival of a corporation, this philosophy recognizes that other social measurements of success are just as important. Within sustainable communities, economic measurements are

de-emphasized in favor of a new array of social indicators that assess progress in scores of specific areas like economic opportunity, crime reduction, police abuse reduction, economic equity, traffic congestion, drinking water quality [and] air quality.⁴³

The sustainable community approach recognizes that an individual's life is often defined by the atmosphere at the workplace and the environment the workplace creates in the community at large. Recognizing this, it is the responsibility of workers and community members to address these larger issues in the context of the civil rights and labor movements.

VIII. CONCLUSION

The Greensboro case study illustrates important methods and strategies for advocates to utilize when asserting claims for justice. One method involves old-fashioned protest, civil disobedience, and boycotts which may be necessary to gain the disempowered a place at the table of those who make policy and decisions. The goal is not to make permanent adversaries, but rather to make strategic use of adversarial techniques to shift power and gain respect. Another method is to use the courtroom as a stage for communicating the workers' story and for demonstrating the strong community support for those workers.

The workers saw their plight as outright discrimination—the kind that is rooted in the Southern legacy of racism and Jim Crow. When the workers declared their intention to unionize, they locked horns with a Kmart management that seemed, to the workers, determined to keep wages at rock bottom and intent on maintaining the company's economic competitive advantage. However, the cause of the workers proved so compelling, it inspired the African-American community in Greensboro to conduct prayer vigils and public protests, to begin an educational effort, and to enter into dialogues with the Chamber of Commerce and the business community at large. The result was a union contract guaranteeing

43. Regina Austin, Remarks at the University of Pennsylvania Journal of Labor & Employment Law Symposium: Activism & the Law: The Intersection of Labor & Civil Rights Movements (Mar. 26, 1999) (transcript available from the U. Pa. J. Lab. & Emp. L.).

more equitable terms for Kmart workers. More importantly, however, the conflict ultimately created a new Greensboro. This new Greensboro demands greater accountability from the giant corporations that choose to locate facilities in the city. The efforts established a more compassionate and clear-headed vision for community sustainability and secured a stronger focus on the rights of workers, particularly minority workers, whose contributions are essential to the region's economic and social vitality.

The struggle to force Kmart to behave as a responsible corporate citizen illustrates one successful effort to implement a community-based vision of justice. While the events are local, the key themes of the Greensboro struggle are universal. The struggle epitomizes the importance of community and the moral dimension integral to claims for justice. It accents the need to make public institutions accountable for their actions and addresses the intensely local impact of the globalization of the economy. Finally, it establishes a connection of today's struggles to the history of discrimination, oppression and segregation, and illuminates the complex and multi-faceted role of race in contemporary struggles for justice.