

LEGITIMACY AND EFFECTIVENESS OF A GRASSROOTS TRUTH AND RECONCILIATION COMMISSION

JILL E. WILLIAMS*

I

INTRODUCTION

There are two divergent paths for Truth and Reconciliation processes: one toward seeking truth, giving voice to the voiceless, comforting the downtrodden and confronting the powers that be. The other path is toward avoiding confrontation, muting dissent, glossing over differences, appealing to the broadest possible cultural base and ultimately excusing injustice in the name of reconciling the community while supporting the status quo and those powers that depend on it. . . . Among the questions we must ask ourselves is from whom do we seek legitimacy—The grassroots or the establishment. The tendency of popular culture is to seek legitimacy from those in power. This will tend to nullify the process of seeking the truth.¹

This article provides a brief background on the Greensboro Truth and Community Reconciliation process and the event it was created to address. It will then apply some of the lessons described in Professor Gibson's article² to the process in Greensboro by exploring these questions: (1) Who were the victims in Greensboro and what role did they or should they have played in the truth and reconciliation process? (2) How can an institution have broad legitimacy in a community with such low levels of trust? (3) What is reconciliation and has it occurred in Greensboro? Although Gibson offers much valuable advice for building effective truth and reconciliation commissions (TRCs), some of his advice is contingent on the perceived goals of the TRC, while other advice can prove counterproductive.

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* Jill Williams was the executive director of the Greensboro Truth and Reconciliation Commission and is currently the program officer at the Andrus Family Fund in New York, N.Y.

1. ED WHITFIELD, *LESSONS FROM THE GREENSBORO, NC, TRUTH AND RECONCILIATION PROCESS* 1 (2006).

2. James L. Gibson, *On Legitimacy Theory and the Effectiveness of Truth Commissions*, 72 *LAW & CONTEMP. PROBS.* 123 (Spring 2009).

II BACKGROUND

On November 3, 1979, Klansmen and American Nazis confronted a group of anti-Klan demonstrators at a march organized by the Communist Workers Party³ in an African American public-housing project in Greensboro, North Carolina.⁴ Even though the demonstrators had received a parade permit⁵ and the police department, through its paid informant, knew of the Klansmen and Nazis' plans to disrupt the march,⁶ there was no visible police presence when the white supremacists shot and killed five organizers and wounded ten others.⁷ Although the shootings were captured on film by four news crews on the scene, all-white juries acquitted the shooters of all charges in state and federal criminal trials.⁸ In a third, federal civil trial, though, the jury found the shooters as well as two Greensboro police officers and the Klan informant jointly liable for the wrongful death of one victim.⁹ On behalf of the defendants, the City of Greensboro paid nearly \$400,000 in damages to the victim's widow and two injured protesters, but never acknowledged any wrongdoing.¹⁰

Over twenty years later, a group of Greensboro residents and other concerned individuals—including former Communist Workers Party members who had witnessed their loved ones killed that day—recognized that the issues Greensboro was facing in 2000—including institutional racism, poor working conditions and opportunities, and distrust between the police department and African American communities—mirrored the historical context that led to the tragic events of 1979.¹¹ A former Greensboro mayor confirmed that, during her

4. Administrative Report from the Greensboro Police Dep't 7 (Nov. 19, 1979).

5. Application for a Parade Permit from the Greensboro Police Dep't (Oct. 19, 1979) (witnessed and signed by Captain Larry Gibson).

6. Greensboro Police Dep't Internal Affairs Dep't Report, "Planning Activities for the Anti-Klan March Scheduled November 3, 1979" from D.C. Williams to Chief William Swing (Dec. 7, 1979); Nelson Johnson, Statement to the Greensboro Truth and Reconciliation Comm'n's Public Hearing (Aug. 26, 2005); Interview by the Greensboro Truth and Reconciliation Comm'n with Larry Gibson, Captain, Greensboro Police Dep't, in Sanford, N.C. (May 5, 2006).

7. *Id.*

8. In the State trial, the jury could have found the defendants guilty of first-degree murder, second-degree murder, or voluntary manslaughter; they chose to acquit on all charges. Federal prosecutors chose to charge the shooters using Title 18 of the U.S. Criminal Code § 245 (part of the Ku Klux Klan Act), which required that the prosecutors prove that the shooters acted out of racial animus. If the prosecutors had chosen to use § 241, they would have had to prove government involvement, but not racial animus. GREENSBORO TRUTH AND RECONCILIATION COMMISSION FINAL REPORT 286 (2006), available at <http://www.greensborotrc.org> [hereinafter GTRC REPORT] (discussing *State v. Fowler*, No. CR-83-53-G (M.D.N.C. 1980)).

9. GTRC REPORT, *supra* note 8, at 305 (citing *Waller v. Butkovich*, No. CV-80-605-G (M.D.N.C. 1985)).

10. Agreement and Release accompanying Order, *Waller v. Butkovich* (Nov. 5, 1985).

11. For more information on how these issues were related to the events of November 3, 1979, see GTRC REPORT, *supra* note 8. Of particular relevance are the first two chapters: "From Black Power to Multicultural Organizing" and "Labor and Unions in North Carolina's Textile Mills."

tenure, discussions surrounding issues of police–community trust nearly always got bogged down when the divisive topic of November 3, 1979, was inevitably raised.¹² By establishing a more accurate collective memory of what happened, they reasoned, the community would better understand how to move forward.¹³

The concerned citizens created the Greensboro Truth and Community Reconciliation Project, which adapted the TRC model used in South Africa, Peru, and dozens of other countries around the world. Unlike any of these commissions, however, the Greensboro commission (GTRC) was grassroots-initiated rather than government-sponsored. Furthermore, the GTRC had no subpoena power or power to grant amnesty. Like the South African Truth and Reconciliation Commission (SATRC), the GTRC conducted its research and community outreach by taking private statements, holding public hearings, and conducting documentary research. It then released its findings and recommendations in a written final report.¹⁴

III

WHO WERE THE VICTIMS IN GREENSBORO AND WHAT ROLE DID OR SHOULD THEY HAVE PLAYED IN THE TRUTH AND RECONCILIATION PROCESS?

Responses to the truth process in Greensboro—like responses to the 1979 events themselves—were divided. Many opponents pointed to the role that the victims—demonstrators who generally refer to themselves as survivors and who were directly connected to those injured and killed that day—played in the establishment of the GTRC as evidence of its inevitable bias. But, with the creation of the Mandate¹⁵ and by the selection process for the GTRC itself, the survivors and other members of the Greensboro Truth and Community Reconciliation Project created a commission that was independent.¹⁶

12. Interview by Carolyn Allen with the Greensboro Truth and Reconciliation Commission, in Greensboro, N.C., 2005.

13. A portion of the GTRC's mandate included the following explanation: "There comes a time in the life of every community when it must look humbly and seriously into its past in order to provide the best possible foundation for moving into a future based on healing and hope. Many residents of Greensboro believe that for this city, the time is now." MANDATE FOR THE GREENSBORO TRUTH AND RECONCILIATION COMMISSION 1 (2003), available at <http://www.greensborotrc.org/mandate.doc> [hereinafter GTRC MANDATE].

14. The final report as well as detailed information about the work and origin of the GTRC is available at <http://www.greensborotrc.org>.

15. See GTRC MANDATE, *supra* note 13, at 2 ("The Commission will carry out its mandate while operating independently from any external influence, including the Project. It may reach cooperative agreements with organizations, institutions and individuals in order to strengthen its capacity and resources, in [] so [] far as such agreements do not compromise the Commission's independence. The Commission will have full authority to make decisions on its spending, within the limits of available funds, and may elect to have a fiscal sponsor through another institution so long as that relationship is consistent with the spirit of the mandate and the Commission's substantive independence.").

16. The selection process, along with the entire truth process, was conducted in close consultation with the International Center for Transitional Justice. The selection panel for the Commission was made up of representatives from fourteen different groups in Greensboro including mainstream white

Unlike SATRC's mandate, which clearly defined the victims,¹⁷ GTRC's Mandate used the term "victim" only once, in reference to one of the five people killed.¹⁸ Further complicating GTRC's task of defining a group of victims was its mandate to examine the "context, causes, sequence and consequence of the events of November 3, 1979."¹⁹ After much discussion, the GTRC decided to define those harmed (without using the term "victim") as follows:

Our recommendations seek to address the direct harm of those who were killed, wounded or psychologically traumatized, as well as what we believe were indirect harms suffered by groups including[]

- residents of the City of Greensboro, which lost ground on human relations progress made after school desegregation;
- relatives and associates of both CWP demonstrators and Klan-Nazi shooters, who were stigmatized and suffered various forms of backlash;
- progressive grassroots organizers whose work was made more difficult by such processes as red-baiting;
- mill workers and other low-income residents who would have been beneficiaries of more successful organizing for racial and economic justice.²⁰

In his article, James Gibson cautions, "Those directly engaged in the struggle are often 'spoilers' in transitional politics, making the necessary compromises more difficult to achieve. . . . [They must therefore be given] incentives to . . . disengage from the transformation process so that reconciliation efforts can be focused on the majority in the society."²¹ But without those "directly engaged in the struggle," there would be no reconciliation effort.²² In Greensboro, as in South Africa, the post-transition

church leaders, black church leaders, Muslim and Jewish leaders, college and university leaders, neighborhood associations, the local Democratic and Republican parties, and the Mayor's office. Also invited, but declining, to appoint someone to the selection panel were the Greensboro Police Department, the Sons of the Confederacy and Daughters of the Confederacy, and the Greensboro Chamber of Commerce. This panel accepted more than seventy nominations from the Greensboro community and ultimately selected seven commissioners to serve on the GTRC. SELECTION PROCESS FOR THE GREENSBORO TRUTH AND RECONCILIATION COMMISSION (2005), available at www.greensborotrc.org/selection_process.php.

17. The Promotion of National Unity and Reconciliation Act established the SATRC and defined "victim" as

- a) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights . . . (i) as a result of a gross violation of human rights; or (ii) as a result of an act associated with a political objective for which amnesty has been granted; (b) persons who, individually or together with one or more persons, suffered harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights, as a result of such person intervening to assist persons contemplated in paragraph (a) who were in distress or to prevent victimization of such persons; and (c) such relatives or dependants of victims as may be prescribed. Promotion of National Unity and Reconciliation Act 34 of 1995 s. xix.

18. See GTRC MANDATE, *supra* note 13.

19. *Id.*

20. GTRC REPORT, *supra* note 8, at 383.

21. Gibson, *supra* note 2, at 126.

22. Nelson Mandela, for example, both was directly engaged in the struggle against apartheid in South Africa and initiated the Truth and Reconciliation Commission.

truth and reconciliation efforts were initially driven by survivors. The efforts to implement the GTRC's recommendations were driven, as they had been in South Africa, by these survivors, along with an expanded body of concerned citizens. If successful in Greensboro, Gibson's proposed incentives for these survivors to disengage from the truth and reconciliation process would have significantly weakened efforts to implement the GTRC's recommendations. Without the survivors driving the implementation of the recommendations, the "bystanders" would have had no sense of urgency about implementation, and the GTRC's report would largely have been forgotten. Gibson's recommendation would likely create similar difficulties for many social conflicts.

IV

HOW CAN AN INSTITUTION HAVE BROAD LEGITIMACY IN A DIVIDED COMMUNITY WITH EXTREMELY LOW LEVELS OF TRUST?²³

Once appointed by a selection panel representing diverse community stakeholders, the GTRC struggled to establish itself as a legitimate institution in a community with already-low levels of trust. The GTRC found both support and opposition within all local demographic groups. Individuals' reasons for their support and opposition, however, differed depending on race and, to a lesser extent, class. In a door-to-door campaign, GTRC staff, commissioners, and volunteers spoke with hundreds of community members about the events and context of 1979 and the truth and reconciliation process.

In white neighborhoods, canvassers reported that the community members who opposed the truth commission did so because they saw the events of 1979 as being virtually disconnected from the city. These white residents often talked about how the groups involved came from outside the community (an assertion later corrected by the GTRC's report) and had nothing to do with Greensboro. Even if racism was a problem in 1979, they reasoned, these problems no longer existed. With this attitude, these residents thought the events of November 3, 1979, were better left in the past. But other white residents supported the GTRC process and its efforts at racial reconciliation, often because they perceived that clear racial divisions remained in Greensboro.

In black, usually working-class and poor neighborhoods, opponents to the process (including those who were privately supportive, but would not participate or support it publicly) expressed a few different reasons for their opposition or reluctance to participate. Many expressed fear that participation in or support of the process could bring retaliation in the form of violence or intimidation from the police, the Klan, employers, or the housing authority. Others lacked hope that such a process could lead to improvement in their own lives. And still others reported that in their struggles to make ends meet at

23. Unless otherwise cited, the observations in the next two sections were drawn from the experiences of GTRC staff, including the author of this article.

home, they had no time to participate in such a process. Those in the black neighborhoods who supported the truth and reconciliation process typically talked about the need for truth in general, and a true understanding of the events of 1979 in particular.

These differences in opinion played out in a public way when GTRC supporters presented Greensboro's city council with 5300 signatures on a petition calling for the council to endorse the GTRC. The petition sought neither funding nor the council's prior endorsement of the GTRC's findings and recommendations. After hours of deliberation in public and in private, the council members voted six to three—with the six white members, including the mayor, voting against the three black members—to officially oppose the truth and reconciliation program. Interestingly, one white council member reported that her opposition to the process grew out of her belief that racial divisions no longer existed in Greensboro.

The GTRC nonetheless ultimately found that its legitimacy in the community was not significantly undermined by the vote. Although some residents may have seen the council's opposition as a red flag challenging the GTRC's legitimacy, others saw the council's opposition as a sign that the GTRC was truly independent of the institution that many blamed at least partially for the 1979 events. Indeed, many residents from all backgrounds who might have been on the fence about the relevance of the process saw the council's racially divided vote as a sign that Greensboro clearly did have racial divisions that needed to be addressed.

As Gibson predicts, the perception among a critical mass of Greensboro residents of the GTRC's legitimacy was a crucial issue. But in Greensboro, a city divided in part because of different experiences and memories of events like those on November 3, 1979, the GTRC could have spent all of its time promoting itself as a fair, legitimate institution and still not have made much headway. Although the GTRC did attempt to engage the community in a way that reflected its intention to be fair and evenhanded, the commission decided on numerous occasions to focus on producing a report that reflected as many different voices as possible and that was well-supported by sound research.

Although Gibson's recommendations about the need of truth commissions to be perceived as legitimate seem obvious enough, experience in Greensboro leads me to believe that because truth commissions generally work under strict deadlines, it is important for them to weigh their decisions carefully about how much time to spend managing public perceptions of their credibility. Given the GTRC's limited resources in terms of time and personnel, the urge to respond individually to the numerous accusations of bias could have resulted in a less-well-documented and less-evenhanded report, had that urge been left unchecked.

V

WHAT IS RECONCILIATION AND HAS IT OCCURRED IN GREENSBORO?

Since the GTRC's report was released, many Greensboro residents and observers have asked if the process was successful and whether Greensboro is now "reconciled." Views differ, and the differences follow racial lines. Some residents of Greensboro—usually white—tend to define reconciliation in terms of increased trust in relationships across previous lines of conflict and division. To these residents, the notions of forgiveness (and, less often, apology) tend to be primary in determining the success of the process. Although there were a few notable moments during the truth process in which apologies and forgiveness were offered, this group tends to assume that Greensboro's truth and reconciliation process was not successful.

Other residents—usually those most negatively and directly affected by the context and events of November 3, 1979—see the first step of reconciliation in terms of institutional reform. Based on its findings about that context and those events, the GTRC made recommendations about reforms in local, county, and state government, including a living wage for city employees and contractors, and establishing a citizens' review board over the police department. The GTRC made recommendations about the public school system, as well, including incorporating the events and context of November 3, 1979, into the local history curriculum, and about the local media, including a call for more coverage of the context of local conflicts.

For this latter group, the question of whether the truth process in Greensboro was successful remains unanswered. It is clear that, when reporting on the 1979 events and the GTRC process, most local media outlets report the facts more accurately now than they did prior to the report's release. Similarly, Greensboro residents, as evidenced in part in local blogs, discuss the 1979 events with a more accurate understanding of the facts. Furthermore, although the local government has largely avoided much serious discussion of the GTRC report, community groups have taken up some of the GTRC's recommendations and are currently working to get them implemented.

Reconciliation probably includes elements of both increased trust across lines of difference and reformation of the institutions that have allowed an injustice to occur in the first place. No one in Greensboro would argue that the community is fully reconciled at this point. Some might argue that the city is even more divided than it was prior to the truth and reconciliation process. But the divisions are not new. Greensboro's truth and reconciliation process and other, more-current events in the city have merely made some residents more aware of the divide, largely along lines of race and class, which existed long before 1979. Time will tell if a better understanding of what led to that division will contribute to a process of healing for Greensboro.