

April 2004

Connecting Litigation to a Grass Roots Movement: Monitoring, Organizing, and Brad H. v. City of New York

Heather Barr

Follow this and additional works at: <http://digitalcommons.pace.edu/plr>

Recommended Citation

Heather Barr, *Connecting Litigation to a Grass Roots Movement: Monitoring, Organizing, and Brad H. v. City of New York*, 24 Pace L. Rev. 721 (2004)

Available at: <http://digitalcommons.pace.edu/plr/vol24/iss2/15>

Connecting Litigation to a Grass Roots Movement: Monitoring, Organizing, and *Brad H. v. City of New York*

Heather Barr*

My first experience of New York City activism and organizing was shortly after I moved to New York. I was working as a caseworker in a shelter for homeless women with mental illness next to the Port Authority.

The agency I worked for, Urban Pathways, also operated two of the city's eight "drop-in centers" for homeless people. Drop-in centers are a homeless services model designed to be easier to access than conventional shelters and thus better at engaging people who are chronically homeless, particularly people with mental illness.¹ Unlike regular New York City shelters, which have a lengthy and frustrating intake process where an individual is shifted around from one shelter to another, fingerprinted, put through a several week assessment process, required to comply with curfews, etc., drop-in centers are designed to permit homeless people to literally "drop in"—come in just for a meal, just for a shower, just to see the doctor, etc., with the goal of gradually convincing the client to accept a full range of services and be helped off the streets.²

In the summer of 1992, the City's budget was in crisis and then-Mayor David Dinkins wanted to narrow the gap in the budget by de-funding all of the city's drop-in centers—total potential savings of \$8 million per year. Activists and the agencies operating the drop-in centers responded quickly, organizing and arranging a protest. The plan was for all of the drop-in cen-

* Heather Barr is a staff attorney for the Urban Justice Center/Mental Health Project, located at 666 Broadway, 10th Floor New York, NY 10012. The author would like to thank Rich Stenberg very much for his help in researching sources for this article.

1. THE DEP'T OF HOMELESS SERVICES, THE SECOND DECADE OF REFORM: A STRATEGIC PLAN FOR NEW YORK CITY'S HOMELESS SERVICES 13-14 (2002), available at <http://www.nyc.gov/html/dhs/pdf/stratplan.pdf>.

2. See *id.*

ters to close for one night, to bring all of their clients and staff and anyone else who cared about the issue, and to set up a soup kitchen/tent city in City Hall Park, yards from the Mayor's office. My colleagues and I, and our clients, were there for about twenty-four hours, sleeping wrapped in blankets in the park, doling out soup, chanting slogans, and handing out fliers to commuters. Shortly after the protest, the drop-in centers were restored to the City budget.³

A year later, I started law school, determined to fight for justice for the downtrodden, but not too sure what I meant by that. Nine years later, I think I'm finally starting to understand the connection between being a prisoners' rights lawyer and sleeping in a park with homeless people—or at least what the connection should be.

I graduated from law school, and went to work for the Mental Health Project at the Urban Justice Center, where I have spent the last six years working with prisoners with mental illness. I started my work post-law school very excited to be a new lawyer, full of enthusiasm about fighting the system and crusading on behalf of the helpless who can't fight for themselves. The fact that there was already a live, dynamic, rapidly evolving movement of bright, committed, activist mental health consumers, that included people who had been incarcerated, didn't really interfere with my fantasy of myself as the only hope of the voiceless and forgotten. I thought it was great that they were getting together, assumed that they would approve of my work, felt they were ungrateful or didn't understand when they occasionally seemed to fail to appreciate what I was trying to do, and generally just thought of the consumer movement's work as parallel to mine—nice, but not so relevant.

I don't want to sound self-congratulatory about having some huge revelation—because that didn't happen—but gradually, over the years, a variety of factors shifted my thinking. The molasses-slow pace of litigation as a tool for reform made me wonder what other tools were out there. I was perplexed by the fact that so much attention—so many news articles and television shows and consensus-building efforts and technical as-

3. See generally Bob Liff & Michael Powell, *Homeless Camp at City Hall*, *NEWSDAY*, Oct. 17, 1991 at 122.

sistance projects and national meetings and policy reports and conferences—had led to so little system-wide change on the issue of the over-incarceration of people with psychiatric disabilities. And the experience of getting to know more and more of the activists in the mental health consumer movement made me begin to question my previous ideas about the role of a public interest lawyer.

I'm far from the first lawyer to struggle with questions of how to connect impact litigation work and lawyering with a broader peoples' struggle, and how the two forms of activism can cross-pollinate and make both approaches more effective.⁴ But I believe that my colleagues and I may have stumbled upon a creative (though still very work-in-progress) way of tying these pieces together in the context of a specific prisoners' rights lawsuit; my goal in this article is to describe that effort.

*Brad H. v. City of NY*⁵

In August 1999, the Urban Justice Center, the law firm of Debevoise & Plimpton, and New York Lawyers for the Public Interest filed a class action lawsuit against New York City in New York State Supreme Court.⁶ The case was called *Brad H. v. City of NY*, and was brought on behalf of a plaintiff class of the approximately 25,000 people with mental illness released annually from New York City jails.⁷ Plaintiffs alleged that the City's practice at the time, of dropping released inmates with mental illness at Queens Plaza between 2 and 6 AM with \$1.50 in cash and a \$3.00 Metrocard, violated these inmates' rights under New York State laws and regulations that require that mental health treatment providers offer discharge planning to

4. GERALD LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992); Mathew Diller, Symposium: *The New Localism in Welfare Advocacy*, 19 ST. LOUIS U. PUB. L. REV. 413, 417-20 (2000); Gerald Torres, *Environmental Burdens and Democratic Justice*, 21 FORDHAM URB. L. J. 431, 450-51 (1994); Lucie White, *To Learn and Teach: Lessons from Dreifontein on Lawyering and Power*, 43 WISC. L. REV. 699 (1988).

5. 729 N.Y.S.2d 398 (Sup. Ct. 2001).

6. Nina Bernstein, *Treatment Plan is Sought After Inmates are Freed*, N.Y. TIMES, Aug. 25, 1999, at B3.

7. Complaint at 3, *Brad H. v. City of New York*, 729 N.Y.S.2d 348 (Sup. Ct. 2001) (No. 11782/99), available at <http://www.urbanjustice.org/litigation/index.html>.

all patients.⁸ The defendants in the lawsuit include the Mayor, Department of Correction, Department of Health and Mental Hygiene, Health and Hospitals Corporation, Human Resources Administration, Prison Health Services, and the director or commissioner of each entity.⁹

“Discharge planning,” while defined in many mental health professional standards, has in New York a specific legal meaning as well.¹⁰ New York State Mental Hygiene Law section 29.15 requires that patients of inpatient programs subject to New York State Office of Mental Health (OMH) licensure shall be discharged only in accordance with a written discharge plan that provides, among other things, for how the released patient will receive on-going mental health services, where the patient will live and what services will be available to her/him in that setting, and how the patient will get the public benefits s/he is entitled to.¹¹ A previous lawsuit against the Health and Hospitals Corporation, *Koskinas v. Carrillo*, established that section 29.15 required not only a written plan, but that housing be obtained prior to discharge for patients in need of housing, and that the hospital has an obligation to follow up with the patient after discharge to ensure that the plan is sufficient and that the patient has been able to implement the plan.¹²

In addition to section 29.15, which governs providers of inpatient services, a regulation, section 587, mandates that providers of outpatient mental health services must also provide discharge planning.¹³ The plaintiffs in *Brad H. v. City of NY* argued that all inmates receiving mental health services while in a city jail must be either mental health inpatients or mental health outpatients, and are thus entitled to discharge planning under Mental Hygiene Law¹⁴ or the Compilation of Codes Rules & Regulations¹⁵—a service that was not being provided to

8. N.Y. MENTAL HYG. LAW § 29.15 (McKinney, 2003); N.Y. COMP. CODES R. & REGS. tit.14, §587 (2003).

9. Complaint at 3, *Brad H.*, 729 N.Y.S.2d 348.

10. N.Y. MENTAL HYG. LAW § 29.15.

11. N.Y. MENTAL HYG. LAW § 29.15(g).

12. *Koskinas v. Carrillo*, 214 A.D.2d 512 (N.Y. 1995).

13. N.Y. COMP. CODES R. & REGS, tit. 14, § 587.

14. N.Y. MENTAL HYG. LAW § 29.15

15. N.Y. COMP. CODES R. & REGS. tit. 14, § 587.

them.¹⁶ The complaint also alleged violation of the New York State Constitution's equivalent of the Eighth Amendment prohibition of cruel and unusual punishment,¹⁷ but the court never reached this claim.

The court ruled for the jail inmates in the *Brad H.* case, issuing first a temporary restraining order on behalf of several named plaintiffs, then a preliminary injunction on behalf of the whole class.¹⁸ The city appealed the preliminary injunction, lost unanimously in New York's Appellate Division, sought leave to appeal to the state's Court of Appeals, and was denied.¹⁹ Lawyers for the jail inmates later filed a motion to have the City held in contempt of court, challenging the city's failure, under the Giuliani administration, to comply with the preliminary injunction.²⁰

On January 8, 2003, lawyers representing the City and the inmates reached a settlement.²¹ The settlement provides for class members to receive, prior to or upon release from jail: medications (a seven-day supply of pills, except where clinically contraindicated), prescriptions (for an additional three weeks), means to fill the prescriptions via Medicaid (and, if necessary in the interim, the Medication Grants Program), a written discharge summary, appointments for aftercare, assistance obtaining public assistance and food stamp benefits, placement in housing or shelter with on-site mental health services (for those class members who are homeless), and transportation.²² The agreement also requires the City to investigate the feasibility of creating a system to file Social Security and Veterans Adminis-

16. Complaint at 3, *Brad H. v. City of New York*, 729 N.Y.S.2d 348 (Sup. Ct. 2001) (No. 11782/99), available at <http://www.urbanjustice.org/litigation/index.html>.

17. See generally *Brad H.*, 729 N.Y.S.2d 348.

18. *Id.*

19. *Id.*

20. *Id.*

21. Susan Saulny, *City Agrees to Help Care for Mentally Ill Inmates After Release*, N.Y. TIMES, Jan. 9, 2003, at B4. See Urban Justice, Mental Health Litigation, *Brad H. v. Giuliani* (providing copies of the whole settlement as well the complaint and an amicus brief filed by the Bazelon Center for Mental Health Law and the National Alliance for the Mentally Ill), at <http://www.urbanjustice.org/litigation/index.html>.

22. Stipulation of Settlement at 24-48, *Brad H. v. City of New York*, 729 N.Y.S.2d 348 (Sup. Ct. 2001) (No. 11782/99), available at <http://www.urbanjustice.org/litigation/index.html>.

tration benefit applications for class members who appear eligible for these benefits while the class members are in the jail, and to implement such systems if feasible.²³ Finally, the agreement also provides that all class members will be released during daylight hours, rather than in the middle of the night, as they were previously.²⁴

Class members have the right to refuse all discharge planning, or to accept some discharge planning services but refuse others.²⁵ They also have the right to refuse discharge planning services initially and then change their mind and accept services later.²⁶ The *Brad H.* agreement does not change how long class members will spend in jail; class members have the right to receive discharge planning services prior to whenever their release date is, and the agreement specifically provides that no one will be held in jail for longer because s/he is a *Brad H.* class member.²⁷ Finally, the agreement provides that if a class member wishes, s/he has the right to have family members and/or significant others involved in the discharge planning process.²⁸

Several provisions of the agreement apply only to class members who are designated as “seriously and persistently mentally ill.”²⁹ Only inmates with this designation are eligible for transportation, and only inmates with this designation have the right to file an application for public assistance (and have it processed while they are in jail, so that their public assistance benefits will be available as soon as possible after they are released).³⁰ Class members are to be designated “seriously and persistently mentally ill,” or not, based on criteria created by the OMH that focuses on the individual’s level of functional impairment.³¹ Class members who are treated with anti-psychotic

23. *Id.* at 42.

24. *Id.* at 21.

25. *Id.* at 15.

26. *Id.*

27. Stipulation of Settlement at 21–22, *Brad H.*, 729 N.Y.S.2d 348, available at <http://www.urbanjustice.org/litigation/index.html>.

28. *Id.* at 15–16.

29. *Id.* at 37–38, 47–48.

30. *Id.*

31. *Id.* at 12

or mood-stabilizing medications while they are in jail are presumed to be “seriously and persistently mentally ill.”³²

The settlement also provides that class members released directly from court can receive the same services as people being released directly from a jail, by going to a Service Planning and Assistance Network office (SPAN).³³ SPAN offices, which are operated by the Bowery Residents Committee, are located in each borough within a half mile of the courthouse and are available for class members to walk in and receive immediate discharge planning assistance.³⁴ Class members who need additional assistance following their release from the jail can also go to a SPAN office to get help.³⁵

During February and March 2003, lawyers for the jail inmates gathered comments from class members regarding the proposed settlement. On April 2, 2003, Judge Richard Braun held a fairness hearing regarding the proposed settlement, where he reviewed comments from class members and others and, based on this information, determined that the settlement was fair and approved it.³⁶ Once the court ordered the settlement the City was given sixty days to bring their services into compliance with the terms of the settlement—hence the June 3, 2003, implementation date.³⁷

The settlement also provided for the City and the plaintiffs to each select a compliance monitor.³⁸ The settlement required that the monitors be either psychiatrists or social workers.³⁹ The two compliance monitors selected by the parties were Erik Roskes, a psychiatrist from Maryland who has practiced in both community and correctional settings, and Henry Dlugacz, who is both a lawyer and a social worker and has worked as a correctional mental health administrator and as an expert in other

32. Stipulation of Settlement at 20, *Brad H.*, 729 N.Y.S.2d 348, available at <http://www.urbanjustice.org/litigation/index.html>.

33. *Id.* at 23.

34. *Id.*

35. *Id.*

36. See Stipulation of Settlement, *Brad H.*, 729 N.Y.S.2d 348, available at <http://www.urbanjustice.org/litigation/index.html>.

37. *Id.* at 48.

38. *Id.* at 49.

39. *Id.* at 50.

litigation.⁴⁰ The two compliance monitors were appointed by the court; their role is to establish benchmarks, monitor the City's compliance with the agreement, and make regular reports to the court regarding the City's compliance.⁴¹ The first of these reports was due in September 2003.⁴² The agreement will bind the city, and the monitoring will continue, for a minimum of five years; if the city does not comply adequately with the agreement, the court order and monitoring will be extended.⁴³

300,000 Mothers

In the summer of 2002, at a moment when the *Brad H.* case was in a lull—the contempt motion pending, a summary judgment motion pending, no trial date in sight, and not much happening on the settlement front—I got very frustrated. I spent a lot of time thinking about the limits of litigation and my frustrations with the fact that although it has become pretty common knowledge that hundreds of thousands of people with mental illness are in U.S. jails and prisons and terrible things are happening to them there, very little has changed.

The reforms that have occurred are, in my mind, often either on too small a scale to make much real difference (e.g., small case management, housing, and diversion programs that provide good services but do so for a minute proportion of people affected), or crippled in their efficacy by the disastrous state of community mental health services in most jurisdictions across the U.S. (raising the perennial question that comes up whenever people talk about the importance of diverting people with mental illness out of the criminal justice system: “Diversion to what?”). Worse yet, a few “reforms” undertaken in response to criminalization seemed actually potentially harmful to people with mental illness (e.g., legislative initiatives to increase use of forced treatment, some mental health courts that “widen the net” of the criminal justice system, etc.).

40. See generally Paul von Zielbauer, *Report Faults City on Health Care for Mentally Ill Jail Inmates Facing Release*, N.Y. TIMES, Dec. 23, 2003, at B3.

41. Stipulation of Settlement at 59-63, *Brad H.*, 729 N.Y.S.2d 348, available at <http://www.urbanjustice.org/litigation/index.html>.

42. *Id.* at 62.

43. *Id.* at 76.

I had become more and more convinced that in New York City at least, “criminalization of mental illness” was largely a housing shortage problem. People need housing or supportive housing. They can’t get it. Without a stable living situation and supportive services, their illness goes untreated. They self-medicate their illness with illegal drugs or commit other criminal acts as a result of poverty, desperation, or psychiatric symptoms. They get arrested. They go to jail.⁴⁴ Sure, they need discharge planning to give them a chance at staying out of jail, but discharge planning for people who have no housing in a city with a dire housing shortage raises the same questions again—discharge to where?

Clearly housing doesn’t solve everything; people who live in supportive housing occasionally get arrested too—situations that sometimes raise questions about the quality of the services provided in supportive housing programs and other mental health programs. And people who live in non-supportive housing or with their families get arrested too; arrests that often seem, in retrospect, like they could have been avoided if the person had had access to really great outpatient mental health and case management and crisis intervention services—situations that illustrate the systemic problems with access to mental health services (and other crucial services such as Medicaid, public assistance, food stamps, etc.) in New York City.

All of which is to say, that the reasons for the “criminalization” of mental illness in New York City, and the barriers people with mental illness who are in the criminal justice system face in successfully escaping that system, are far more complex than just a need for discharge planning. The solutions for many of these problems cannot lie in litigation. A lawsuit that would compel New York City to provide affordable housing for everyone who needs it is a sort of holy grail to New York City public interest lawyers—a holy grail that I do not think any of us ever expect to reach. Improving both quality of and access to mental health services in New York City for all people with mental illness who are in or at risk for entering the criminal justice sys-

44. See HEATHER BARR, PRISONS AND JAILS: HOSPITALS OF LAST RESORT. THE NEED FOR DIVERSION AND DISCHARGE PLANNING FOR INCARCERATED PEOPLE WITH MENTAL ILLNESS IN NEW YORK (1999), available at <http://www.prisonssucks.com/scans/MIReport.pdf>.

tem is also probably not a task that can be accomplished through litigation—at least not through a single lawsuit.

Finally, I was terribly frustrated to have spent so many years litigating about an issue that I don't even think is the real, important issue. Twenty-five thousand people with mental illness who leave the New York City jail system each year don't get discharge planning.⁴⁵ So what? The real issue, the important issue, is why are there 25,000 people with mental illness going through the New York City jail system each year? Who sent them to jail, why were they sent to jail, and shouldn't there be fewer people in jail in general and, in particular, fewer people with mental illness in jail?

So I spent a lot of time trying to figure out what would solve the real problem. I tried to figure out how it can be that so many smart people have spent so much time discussing this issue, finding, to a surprisingly large extent, that everyone agrees that there is a problem and has similar views of what the solutions are, and yet very little has changed. It probably sounds stupid to people better versed than I in the history of social change, but it only gradually started to come to me—there is virtually no people's movement about the criminalization of mental illness.

Virtually none of the very smart people who have spent a lot of time attending meetings about these issues are people who have been personally affected by criminalization. The people in these discussions, except for a very few ex-prisoners and family members of prisoners (who I think are generally given the role of educating policymakers, but do not drive the effort), have been government officials and service providers from the mental health and criminal justice fields. The most significant of the efforts to discuss the issue among policymakers has been the Council of State Governments' Consensus Project, a mammoth undertaking that did an excellent job of demonstrating how much common ground there is on this issue among govern-

45. Complaint at 3, *Brad H. v. City of New York*, 729 N.Y.S.2d 348 (Sup. Ct. 2001) (No. 11782/99), available at <http://www.urbanjustice.org/litigation/index.html>.

ment officials and service providers, but families and consumers played a small role in this project.⁴⁶

So I decided that rather than spend all of my time trying to think of a lawsuit that would abolish prisons, I would try to figure out how to help push a people's movement forward. I started asking foundations for funding to hire a community organizer who would bring together a group of families of prisoners with psychiatric disabilities, and ex-prisoners with psychiatric disabilities, and help the group fight for change. I described the group with the working title 300,000 Mothers—because there are 300,000 prisoners with mental illness in the U.S., all of whom were once someone's child—though I explained that the group would choose their own name once they came together. I pictured the effort being 100% grassroots—completely driven by ex-prisoners and family members.

Some funders looked at me as if I had lost my mind. Some had concerns about whether a group of people directly affected by criminalization could really be organized and effective at advocacy. One funder, who shall remain nameless, said, I swear to God, "Look, 85% of the families of prisoners are poor black and hispanic people—you can't organize them and no one cares what they think anyway, so I don't really see the point." I left that meeting in tears.

Finally, a couple of foundations took a chance on the idea. One foundation gave me a grant for \$50,000 over two years to get started, and another gave me another grant to hire a consultant to help look at the feasibility of the project. With this funding in hand, I started recruiting for the organizer position.

Hiring an organizer was a long and grueling process. First, the whole process made me anxious because I had never supervised anyone before, and did not feel confident in my ability to supervise someone (especially not a community organizer, since I didn't know anything about community organizing). Second, I had a very unclear idea of who I was looking for; in the end, I think I learned quite a bit about organizing and about what I was looking for in an organizer through the recruiting process—not beforehand.

46. See COUNCIL OF STATE GOVERNMENTS, *THE CONSENSUS PROJECT REPORT* (2002), at http://www.consensusproject.org/topics/the_report/toc/.

I started the recruiting process imagining that the person I was looking for was an energetic young person, a year or two out of college, with some experience in organizing. The more I looked at resumes and interviewed people, however, the more wrong that seemed. Every time I interviewed someone, I tried to imagine what the experience would be like, being a family member, usually a mother, of a prisoner with mental illness, or an ex-prisoner, and sitting and talking with the person I was interviewing. I interviewed many smart, committed, energetic people who I just could not imagine in that interaction. I started to think that the only person I could hire was someone who had themselves been personally affected by at least one of the issues we were working on—incarceration and psychiatric disabilities. I spent quite a few sleepless nights worrying about how—or whether—I was ever going to find someone who was an amazing, experienced organizer AND either had been a prisoner or had struggled with a psychiatric disability, or both.

About four months passed without me finding anyone. Finally, in desperation, I sent an email to all of the staff at the Urban Justice Center asking whether anyone knew a great organizer who fit the description of what I was looking for, who perhaps wasn't looking for a job, but that I might be able to interest. This is how I finally found the organizer that I hired, Lisa Ortega. Lisa spent the last ten years as a fierce grass roots community organizer in the South Bronx, where she lives. She is also an ex-prisoner, has raised her three children alone while her husband has been in prison, and was excited to have a chance to work on prison issues.

Since she started in June, Lisa has been doing outreach at courthouses, bus stops where buses leave to visit jails and prisons, and mental health programs where a large proportion of patients are ex-prisoners. More recently, we have connected the organizing with our monitoring in *Brad H. v. City of NY*.

Brad H. Monitoring

The *Brad H.* settlement, in addition to requiring the appointment of two monitors by the court, also provides for moni-

toring by plaintiffs' counsel.⁴⁷ The settlement requires defendants to provide us with bi-weekly lists of all class members currently incarcerated and to permit us, with forty-eight hours notice, to visit the jail and interview groups of at least twenty class members.⁴⁸ The settlement also requires defendants to reimburse some of plaintiffs' counsel's expenses incurred through monitoring.⁴⁹ Shortly after the settlement was implemented, I began recruiting for a staff person to perform these monitoring functions.

I wasn't sure what type of staff person I was looking for. I thought it would be great to get a young (inexpensive!) lawyer or law graduate who could help with the legal work in addition to pounding the pavement talking with class members. I also thought, though, that social work training might be the best background for the position, since a social worker might be better at interviewing class members and could bring a clinical perspective to what was and was not working about defendants' discharge planning system. Then again, with the lessons I had learned from recruiting an organizer, I thought it might be best to hire a person who had a psychiatric disability and/or had been incarcerated, since someone from one of those backgrounds would understand what class members were struggling with from a personal perspective and would probably be better able to build a rapport with class members. I was also desperate to hire a person who was bilingual in Spanish and English, since many class members speak only Spanish.

I was afraid this was going to be another excruciating five-month hiring process, but I was in luck. A consumer advocate named Raymond Ortiz that I had known for several years through his work at a mental health peer advocacy training center saw the announcement and applied. He, in addition to being a mental health consumer, is also an ex-prisoner, is bilingual in Spanish, and had worked for a number of years in counseling. Rather than just hire him, though, we went through a whole process, interviewing social workers, law graduates, and a few bright young college graduates. I spent every interview

47. Stipulation of Settlement at 63-65, *Brad H.*, 729 N.Y.S.2d 348, available at <http://www.urbanjustice.org/litigation/index.html>.

48. *Id.* at 64.

49. *Id.* at 65.

thinking about how a *Brad H.* class member might feel if the person we were interviewing showed up at the jail to speak with him/her. Raymond passed this test heads and shoulders above the other candidates, and we hired him.

Raymond started on a Monday, and spent Wednesday at Rikers Island interviewing class members. He now spends every Tuesday and every Thursday in the jails. He explains to class members about the settlement and the rights they have under the settlement, and asks them about whether they are receiving the discharge planning services they are entitled to under the settlement agreement and how they think the discharge planning services could be improved. For people who appear not to be receiving the services to which they are entitled, we contact defendants requesting an explanation and that services be provided immediately. When interviewing class members, Ray also asks for the contact information for any family members or friends in the community that we could contact, so that we can follow-up with the class member after her/his release and invite the family to join our organizing effort.

Monitoring and Organizing, and the Role of Public Interest Lawyers Working with Grassroots Movements

In outreach to the family and friends identified by *Brad H.* class members, we have found that they are particularly receptive to and enthusiastic about the organizing effort. I believe this is because they are more likely to trust us when they hear that we have been litigating on behalf of their loved one and, most of all, have taken the trouble (and visiting Rikers Island does involve a lot of trouble!) to go and speak with their loved one in jail.

Our experience reaching out to these family members has highlighted for me what an unusual opportunity for community organizing may be created by litigation efforts. Successful litigation, or even just discovery, may offer lawyers an opportunity to reach a group of people who otherwise would be difficult to find through outreach. The fact that an organizer is affiliated with attorneys bringing litigation on behalf of the group may create trust that will help the organizer make a crucial first connection with potential members of an organizing effort.

Connecting litigation to a grassroots organizing effort also has multiple benefits to the litigation. Regular interaction with the people, or families of the people, directly affected by an issue being litigated arms lawyers with day-to-day information that will be invaluable to the litigation. By hearing from people directly affected, lawyers will know whether defendants' practices have changed, how defendants have responded to the litigation, if defendants are trying to discourage cooperation with the litigation (by, for example, retaliating against prisoners who speak with plaintiffs' counsel) or trying to get around it through policy changes, whether an order or settlement is being complied with, etc. Lawyers will also have an opportunity to gather sympathetic stories that may be helpful in the litigation and meet people who may be potential future witnesses.

Beyond the pragmatic advantages of connecting litigation and community organizing, however, I think there are some less concrete but even more important reasons for lawyers to facilitate and be accountable to grassroots movements. Public interest lawyers, motivated as we are by intolerance for injustice and a desire to right wrongs, need to be ever-vigilant about not recreating in our own work some of the power dynamics we went to law school to fight. As people with advanced (and expensive) education, often from comfortable class and privileged racial backgrounds, it is easy for us to fall into a role of fighting *for* people who are oppressed, rather than *with* them. The very role of a lawyer—to *represent* a client—takes away much of the client's power, replacing it with the image of the lawyer as warrior sent into battle on behalf of a helpless person.

None of which is to minimize the important role lawyers play in fighting for social justice. Poor people, prisoners, people with disabilities, and all kinds of other people fighting social injustice need lawyers, and to have the opportunity to make a living working for poor people, fighting for justice, is a great and rewarding privilege. Lawyers have played critical roles in moving forward many people's movements. But I think we can do better than we sometimes do—by working harder to help our clients become leaders.

The point I am trying to make in this paper is not a new one in the discourse about public interest lawyering. It is just a

new understanding for me personally, and one that I am still in the process of trying to live up to.

Over the past six years, I have increasingly come to believe that for our work as public interest lawyers to be legitimate, we must not only be directly accountable to the people we serve, but must also work every day to give the power we have as lawyers back to our clients. There are many ways to give power back—some as basic as the way that we talk to a client or potential client or his or her family members.

But just treating our clients respectfully and trying to empower them individually is not enough. We should also work to raise or provide funds for organizing efforts (perhaps through attorneys' fees). We should approach every litigation project with an eye to how it can be connected with and facilitate a community organizing effort. We should hire people directly affected by the issues we work on to work side by side with us—both because it's morally right to create job opportunities for poor people and because people directly affected will be best at, and most committed to, the job. When we have opportunities to be spokespeople on the issues we work on, we should at least bring a person directly affected with us, or, better yet, have that person speak instead of us.

On September 18, 2003, we held our first kick-off meeting for our organizing effort. We had scheduled the meeting two months earlier and prepared enthusiastically, only to watch with dismay as Hurricane Isabel moved closer and closer to New York City and the weather forecasters issued one dire prediction after another that it would hit on or around the 18th. In spite of whipping winds and newspaper hysteria, however, about thirty-five people came to the meeting—mothers, sisters, daughters, wives, husbands, uncles of prisoners with mental illness, and ex-prisoners themselves. Crammed in a crowded room, meeting each other for the first time, the group identified about thirty things they feel are wrong with the way people with psychiatric disabilities are treated in the criminal justice system, narrowed these down to five top issues, decided to form a group to fight to change these issues, came up with a plan to select a name for the group and write a mission statement and create a newsletter, and chose a next meeting date.

I look forward to being an enthusiastic, but quiet, member of the group.