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Alan Mills

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Guest Feature Article
Lawyers Represent Clients . . . Or Do They?

Alan Mills¹

In most cases, lawyers file cases on behalf of clients. However, lawyers do not get to make substantive decisions about the cases we work on; our clients do. Illinois Rule of Professional Conduct 1.2 makes this clear:

[A] lawyer shall abide by a client's decisions concerning the objectives of representation and . . . Shall consult with the client as to the means by which they are to be pursued.²

But what happens in a class action lawsuit? Once a class is certified, lawyers represent both named plaintiffs and every member of the class. What happens when there is a conflict between what the named plaintiff wants, and what the lawyer believes is in the best interest of the class?³ There have been many court decisions on how these questions are to be resolved in the context of class action cases filed for money damages⁴—consumer fraud⁵, anti-trust⁶, securities fraud⁷, etc. But the issue is much murkier when the lawyer is involved in litigation to further a specific social goal or effect some systemic change, cases generally referred to as public interest litigation⁸. Does the lawyer

¹ Alan Mills is the Executive Director of the Uptown People's Law Center (UPLC), a small nonprofit legal clinic located on the North Side of Chicago. Under Mills' leadership, UPLC has partnered with several private law firms and other nonprofit organizations to initiate a dozen class action cases relating to the conditions of confinement in Illinois prisons and jails. These cases include statewide cases challenging the medical care provided to Illinois prisoners, and the treatment of prisoners suffering from mental illness. He would like to thank Lindsey Brown, summer 2015 PILI fellow at the UPLC, for her help in preparing the research memo that inspired this article.

² ILL. CODE OF PROF'L RESPONSIBILITY R. 1.2 (2010)

³ Mary Kay Kane, *Of Carrots and Sticks: Evaluating the Role of the Class Action Lawyer*, 66 TEX. L. REV. 385 (1987)

⁴ Richard F. Dole, Jr., *The Settlement of Class Actions for Damages*, 71.6 COLUM. L. REV. 971 (Jun. 1971)

⁵ James R. McCall, *Due Process and Consumer Protection: Concepts and Realities in Procedure and Substance—Class Action Issues*, 25 HASTINGS L.J. 1351 (1973)

⁶ Robert H. Klonoff, *Antitrust Class Actions: Chaos in the Courts*, 11 STAN. J.L. BUS. & FIN. 1 (2005)

⁷ Elizabeth Chamblee Burch, *Governing Securities Class Actions*, 80 U. CINN. L. REV. (2011).

⁸ John Denvir, *Towards a Political Theory of Public Interest Litigation*, 54 N.C. L. REV. 1133 (1975)

represent the individual named plaintiff⁹, or the absent members of the class?¹⁰ And in the case of the latter, how is a lawyer to gauge the desires of the class?¹¹ Do organizations working in the same field have a say?¹²

How these questions are resolved can have a tremendous impact on the course of these cases, and in some cases a very real impact on the people most affected by the systems which are the subject of the cases, such as prisons¹³, child protection agencies¹⁴, and schools¹⁵. Herein, I will examine recent conflicts arising in recent class actions in Chicago and my representation of a class of prisoners with mental illnesses against the Illinois Department of Corrections. From there, I will review relevant case law and applicable rules of professional conduct that govern common ethical issues in class action lawsuits. Lastly, I will address the dynamics of the attorney-client relationship and how they may manifest in the class action ethical dilemmas.

CLASS ACTION CONFLICTS IN CHICAGO: PAST AND PRESENT

In August 2015, a very public exchange of “open letters” between We Charge Genocide—a “grassroots, inter-generational effort to center the voices and experiences of the young people most targeted by police violence in Chicago”¹⁶—and the American Civil Liberties Union of Illinois¹⁷ brought these ethical (and practical) issues to a head. For many months, We Charge Genocide had been working with the ACLU to draft the Stops, Transparency, Oversight and Protection (“STOP”) Act—a Chicago ordinance designed to require

⁹ Natalie C. Scott, *Don't Forget Me! The Client in a Class Action Lawsuit*, 15 GEO. J. LEGAL ETHICS 561 (2001)

¹⁰ Mindi Guttman, *Absent Class Members: Are They Really Absent? The Relationship between Absent Class Members and Class Counsel with Regards to the Attorney-Client and Work Product Privileges*, 7 *Cardozo Pub. L. Pol'y & Ethics J.* 493 (2008)

¹¹ Jade Brewster, *A Kick in the Class: Giving Class Members a Voice in Class Action Settlements*, 41 *W. ST. U. L. REV.* 1 (2013)

¹² Lauren B. Edelman, Gwendolyn Leachman, and Doug McAdam, *On law, organizations, and social movements*, 6 *ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE* 653 (2010)

¹³ Eileen B. Leonard, *Judicial decisions and prison reform: The impact of litigation on women prisoners*, 31.1 *SOCIAL PROBLEMS* 45 (1983)

¹⁴ Burton J. Cohen, *Reforming the child welfare system: Competing paradigms of change*, 27.6 *CHILDREN AND YOUTH SERVICES REVIEW* 653 (2005)

¹⁵ Laurene M. Heybach and Stacey E. Platt, *Enforcing the educational rights of homeless children and youth: Focus on Chicago*, 32 *CLEARINGHOUSE REV.* 21 (1998)

¹⁶ *About, WE CHARGE GENOCIDE*, <http://wechargegenocide.org/about/> (last visited Dec. 1, 2015)

¹⁷ *AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS*, <http://www.aclu-il.org/> (last visited Dec. 1, 2015)

the Chicago Police Department to collect and publicly release detailed data on all police stops.¹⁸ In August, We Charge Genocide held a press conference with several aldermen who had agreed to introduce the ordinance.^{19, 20}

But the ordinance was never introduced. Unbeknownst to the aldermen and We Charge Genocide, at the same time that the ACLU was working on the ordinance, it was also engaged in closed-door negotiations with the City of Chicago regarding settlement of potential litigation.²¹ We Charge Genocide wrote the ACLU an open letter accusing the ACLU of both undermining the efforts of We Charge Genocide and of entering into an agreement without obtaining input from the myriad groups²² who had been working on the issue of police misconduct for years.²³ The ACLU responded, claiming that they continued to support the Stop Act, but that they were negotiating settlement of a lawsuit on behalf of unidentified clients, and such settlement discussions are invariably private.²⁴

This very public exchange raises a much broader issue: who is the client in public interest class action litigation? Are the clients really calling the shots, or is litigation often filed in pursuit of the lawyer's own agenda?²⁵ The attorney

¹⁸ *STOP Act: Stops, Transparency, Oversight and Protection Act*, WE CHARGE GENOCIDE, http://wechargegenocide.org/wp-content/uploads/2015/08/CPD.ContactDataOrdinance.FINAL_7.29.15.web_.pdf (last visited Dec. 1, 2015).

¹⁹ *We Charge Genocide Holds Press Conference for Introduction of STOP Act before City Council*, WE CHARGE GENOCIDE, July 28, 2015, <http://wechargegenocide.org/press-release-stop-act-introduced-in-city-council/>.

²⁰ CAN TV, *STOP Act Ordinance Press Conference*, YOUTUBE (July 30, 2015), <https://www.youtube.com/watch?v=NUGNQOVcSL0c>.

²¹ Zach Stafford, *Stop-and-frisk deal: shame on ACLU and Chicago, say anti-violence activists*, THE GUARDIAN, Aug. 14, 2015, <http://www.theguardian.com/us-news/2015/aug/14/shame-aclu-chicago-stop-frisk-we-charge-genocide>.

²² *STOP Act*, WE CHARGE GENOCIDE, <http://wechargegenocide.org/stop-act/> (last visited Dec. 1, 2015): In total, 38 activist and legal organizations supported the STOP Act, including the Uptown People's Law Center.

²³ *An Open Letter to the ACLU of Illinois Regarding Stop and Frisk*, WE CHARGE GENOCIDE, Aug. 12, 2015, <http://wechargegenocide.org/an-open-letter-to-the-aclu-of-illinois-regarding-stop-frisk/>.

²⁴ *ACLU Statement on Agreement with the Chicago Police Department on Stop and Frisk Reform*, AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS, Aug. 13, 2015, <http://www.aclu-il.org/aclu-statement-on-agreement-with-the-chicago-police-department-on-stop-and-frisk-reform/>.

²⁵ WE CHARGE GENOCIDE, *supra* note 23 ("Furthermore, as we expressed in our August 6th meeting, it is highly disingenuous to claim this victory as a result of the usual non-profit legal advocacy work of the ACLU. The City's desire to negotiate with you has much to do with WCG and the larger Black Lives Matter movement's demands for radical change. Your settlement represents just one of many efforts by City officials across the country attempting to co-opt our movement by engaging with less threatening groups")

and either the named plaintiffs or members of the plaintiff class may hold very different opinions about what is in the class's best interest.²⁶ To whom do the attorneys owe an ethical duty? Do the desires of the named class representatives trump unnamed members of the class?²⁷ Can an attorney adopt a litigation strategy or submit a settlement agreement without class (or class representative) approval?²⁸ These questions are vitally important, but the answers are unclear.

This issue is not unique to the recent dispute between We Charge Genocide and the ACLU. In 1966, attorney Alex Polikoff sued in federal court on behalf of community organizer-activist Dorothy Gautreaux along with three other residents in Chicago Housing Authority public housing.²⁹ The resulting class action, *Gautreaux v. CHA* (later *Hills v. Gautreaux* before the Supreme Court),³⁰ challenged the Chicago Housing Authority policy of concentrating public housing almost entirely in segregated Black communities.³¹ However, many community organizations in Chicago's Black community were opposed to bringing the case.³² They felt their communities desperately needed hous-

²⁶ *Id.* ("You never suggested that WCG should not pursue the campaign to pass the STOP Act in Chicago's City Council or that the ACLU was interested in working with the City to address this issue. You only asked us to refer any potential plaintiffs to you for a hypothetical lawsuit regarding stop and frisk. We subsequently emailed the ordinance to you and you provided us with feedback and edits which we wholeheartedly accepted.")

²⁷ *Id.* ("The ACLU's unprincipled failure to inform WCG about these negotiations as soon as they were initiated and invite WCG to participate in them has directly undermined and undercut the organizing and advocacy efforts of Black youth who are targeted by stop and frisk and discriminatory policing in Chicago. You failed to be transparent that these negotiations were taking place and excluded the input of community partners—especially the youth directly impacted by the issue that is the subject of the legislation and who are fighting for their lives").

²⁸ *Id.* ("In light of this history, it was mind-boggling to learn that you have been in negotiations with the City without informing us prior to July 29th. Common decency—let alone respect for the communities' interests you claim to represent—would compel you to inform us of these developments. True solidarity, however, would have required you to not only inform us of your negotiations, but reach out to WCG's youth members before even initiating or participating in them to discuss whether such negotiations should even be entered into, and on what terms").

²⁹ Michael J. Rosenfeld, *The Gautreaux Legacy*, STANFORD UNIVERSITY, http://web.stanford.edu/~mrosenfe/urb_std_Gautreaux.htm (last visited Dec. 1, 2015)

³⁰ *Hills v. Gautreaux*, 425 U.S. 284 (1976)

³¹ Alexander Polikoff, *Gautreaux and Institutional Litigation*, 64 CHI.-KENT L. REV. 451 (1988)

³² Alan Mills, *Ending Segregation versus Fighting Displacement. Gautreaux v. CHA and Avery v. Pierce: Two Attempts to Reform Subsidized Housing* 30-31 (unpublished J.D. thesis) (Spring 1981) (citing interviews with John McKnight and Hal Baron)

ing, and were not interested in being dispersed throughout Chicago.³³ Nonetheless, Mr. Polikoff, aided by the Urban League, located individual CHA residents who agreed to act as class representatives, filed the case, quickly won, and has spent the last 50 years attempting to obtain a remedy for the class³⁴ — all with very limited input from the CHA residents he is representing, and often in opposition to the residents' elected leadership.³⁵

A final example involves the organization that I lead, the Uptown People's Law Center³⁶, in our recent representation of a class of Illinois prisoners who suffer from mental illness.³⁷ In May of 2013, we entered into an agreed interim settlement covering a portion of our claims, calling for increased procedural protections for prisoners with mental illness who faced being sent to

³³ William P. Wilen, and Wendy L. Stasell, *Gautreaux and Chicago's Public Housing Crisis: The conflict between achieving integration and providing decent housing for very low-income African Americans*, 34 CLEARINGHOUSE REV. 117 (2000)

³⁴ Alana Samuels, *Is Ending Segregation the Key to Ending Poverty?*, THE ATLANTIC, Feb. 3, 2015, <http://www.theatlantic.com/business/archive/2015/02/is-ending-segregation-the-key-to-ending-poverty/385002/>: "Alex Polikoff, one of the attorneys who filed the Gautreaux case in 1966, says it's a no-brainer. He continues to work on legislation related to Gautreaux and is behind Thursday's agreement, which will require Chicago to move about 200 families in a Gautreaux-type program."

³⁵ Miriam Axel-Lute, *The Dangerous Rhetoric of Escaping to Opportunity*, ROOFLINES, Aug. 13, 2014, http://www.rooflines.org/3812/the_dangerous_rhetoric_of_escaping_to_opportunity/ ("To make his argument for an important set of policy changes (with which I agree), Polikoff regularly refers to America's poor neighborhoods as war zones that are killing everyone in them. He asks why we are not removing children from harm's way. He speaks of any place in the country that is poor as first and foremost a place to be escaped from. That is a problem, and here's why: Advocates focused on different parts of the issue all agree (repeatedly) that really you need both—fair housing choice and improvement of conditions in the places where many poor people live. . . . But despite that, it seems that the arguments for advancing housing mobility seem to frequently rest on the demonizing of any place that has a lot of poor people and/or people of color living there. This reinforces—unintentionally, and ironically for a movement based in civil rights work—the scary images that the broader society harbors about poor communities of color").

³⁶ UPTOWN PEOPLE'S LAW CENTER, <http://uplcchicago.org/> (last visited Dec. 1, 2015)

³⁷ *ADA Developments in the Great Lakes Region Over the Last Year*, GREAT LAKES ADA CENTER, July 29, 2013, http://adagreatlakes.org/Resources/Anniversary/23rdAnniversary/ADA_Cases.asp ("A class action was brought on behalf of Illinois prisoners with serious mental illness alleging violations of the ADA and the Rehabilitation Act. This class action also alleged violations of the U.S. Constitution regarding insufficient mental health treatment and conditions that constitute cruel and unusual punishment. On May 8, 2013, the Court entered an Interim Agreement that will provide class members some relief while the Illinois Department of Corrections reviews its current staffing ratios and bed treatment space")

solitary, and those already in solitary.³⁸ Some prisoners in solitary said we should not settle at all—they did not trust the Department of Corrections to do anything they said they would do. Others thought we were not asking for enough—that we should press to have *all* prisoners with mental illnesses barred from solitary entirely. The details of the negotiations were not shared with members of the class. While we received letters from many class members, and visited a few in person, we did not obtain authority from either the named plaintiffs or the class as a whole before entering into the partial interim settlement. Unquestionably, the interim settlement reflected the lawyers' views of what the class needed, albeit informed by lots of contact with class members.

CLASS ACTION CASE LAW

The Federal Rules of Civil Procedure mandate that any settlement agreement in a class action lawsuit be approved by the judge³⁹. This ensures that a settlement will benefit all members of the class and not only the named parties (or the lawyer). Rule 23(e) provides that a judge should approve a proposed class action settlement only if it is “fair, reasonable, and adequate.”⁴⁰ Because the rules do not define this standard, federal courts have devised several tests to determine when an agreement satisfies the Rule 23(e) language—the specific formulation of the test varies by circuit. Courts sitting in the Seventh Circuit use the factors set forth in *Armstrong v. Bd. of School Directors of City of Milwaukee*.⁴¹ The factors a judge should consider are (i) a comparison of the strengths of plaintiffs' case versus the amount of the settlement offer; (ii) the likely complexity, length, and expense of the litigation; (iii) the amount of opposition to the settlement among affected parties; (iv) the opinion of competent counsel; (v) and, the stage of the proceedings and the amount of discovery already undertaken at the time of the settlement.⁴² Among these factors, the first is most important.⁴³

The rule gives judges discretion to approve class action settlements despite opposition from class members, or even by one or more of the named plain-

³⁸ *Rasho v. Godinez*, 1:07-CV-1298-MMM-JAG (C.D. Illinois), available at <http://www.clearinghouse.net/chDocs/public/PC-IL-0031-0008.pdf>

³⁹ Fed. R. Civ. P. 23(e)

⁴⁰ *Id.*

⁴¹ *Armstrong v. Board of School Directors of City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980) (overruled on other grounds by *Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998))

⁴² *E.E.O.C. v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985) (citing *Gautreux v. Pierce*, 690 F.2d 616, 631 (7th Cir. 1982))

⁴³ *Hiram Walker*, 768 F.2d at 889

tiffs. Several federal appellate opinions affirm this principle. The D.C. Circuit addressed this issue in a Title VII class action case called *Thomas v. Albright*.⁴⁴ There, nine class members appealed from the district court's approval of the class settlement and argued that it was improper for the court to approve the settlement over the objections of a large number of class members, including several of the named plaintiffs. The court confirmed the rule that "a settlement can be fair even though a significant portion of the class and some of the named plaintiffs object to it."⁴⁵ Courts must consider objections raised by named plaintiffs, but may nonetheless approve a settlement that furthers the best interests of the class as a whole.⁴⁶

Many other cases have similarly held that settlements can be approved, even over the objection of a large number of class members. In *TBK Partners, Ltd. v. Western Union Corp.*, the court found that "majority opposition to a settlement cannot serve as an automatic bar to a settlement that a district judge . . . determines to be manifestly reasonable."⁴⁷ Similarly, *E.E.O.C. v. Hiram Walker & Sons, Inc.* interpreted precedent to state that "a large number of objectors will not result in the reversal of a district court's approval of a consent decree" absent other factors.⁴⁸

ETHICS RULES

The most succinct description of the ethical challenges in class action lawsuits is given by Geoffrey P. Miller, professor of law at New York University:

Given the widespread recognition of the problems of conflicts of interest in class action litigation, one might suppose that decision makers would have developed a workable and well-understood doctrine for assessing these problems. Surprisingly, however, the courts have not articulated coherent principles to guide their analysis. Conflicts of interest are principally dealt with on a case-by-case basis, with the trial court's intuitions and discretion supplying the standard for decision. Nor have rules of professional responsibility made up for the deficit: ethics rules relating to conflicts of interest are predicated on a notion of client consent that is unworkable in the context of class litigation.⁴⁹

⁴⁴ *Thomas v. Albright*, 139 F.3d 227 (D.C. Cir. 1998)

⁴⁵ *Thomas*, 139 F.3d at 232

⁴⁶ *Id.*

⁴⁷ *TBK Partners, Ltd. v. Western Union Corp.*, 675 F.2d 456, 462 (2d Cir. 1982)

⁴⁸ *Hiram Walker*, 768 F.2d at 892

⁴⁹ Geoffrey P. Miller, *Conflicts of Interest in Class Action Litigation: An Inquiry into the Appropriate Standard*, 2003 U. CHI. LEGAL F. 581, 582 (2003)

The Restatement also provides some guidance to lawyers caught in an apparent ethical conflict:

In instances of intractable difference [between members of the class], the lawyer may proceed in what the lawyer reasonably concludes to be the best interests of the class as a whole, for example urging the tribunal to accept an appropriate settlement even if it is not accepted by class representatives or members of the class. In such instances, of course, the lawyer must inform the tribunal of the differing views within the class or on the part of a class representative.⁵⁰

The Restatement further affirms the principle that lawyers in class actions have duties to both the class as well as to the class representatives. Thus, a class-action lawyer may be privileged or obliged to oppose the views of the class representatives after having consulted with them.⁵¹

CONCLUSION

The dispute between We Charge Genocide and the ACLU highlights the danger of attorneys substituting their own agendas for those of their clients. We do not know who the ACLU actually represented, or what role those clients played in the negotiations. We do know that the broader community was not consulted.⁵² However, this case is not unique.

There is an inherent power differential between lawyers and clients.⁵³ The legal process is inherently disempowering to non-lawyers. Courts are governed by arcane rules whose logic is not readily apparent to those outside the profession. Court proceedings are often couched in technical shorthand that is not understood by the casual participant.⁵⁴ Court proceedings are generally not

⁵⁰ Restatement (Third) of Law Governing Lawyers § 128, cmt. d(iii) (2000)

⁵¹ *Id.* § 14, cmt.f.

⁵² Kelly Hayes, *ACLU of Illinois Sells Out Chicago's Black Youth*, TRUTH-OUT, Aug. 14, 2015, <http://www.truth-out.org/opinion/item/32361-aclu-of-illinois-sells-out-chicago-s-black-youth>

⁵³ Michele S. Jacobs, *People from the Footnotes: The Missing Element in Client-Centered Counseling*, in *Lawyers' Ethics and the Pursuit of Social Justice: A Critical Reader* (Susan D. Carle 1st ed. 2005) ("In mental health counseling and lawyering, there is an enormous potential for manipulation because of the power differential which exists and benefits the professional. In both areas of counseling, it is common to first encounter the client when she or he is under the pressure of an impending personal crisis").

⁵⁴ John Gibbons (ed.), *Language and the Law* 8 (1st ed. 1994) ("A main theme that emerges . . . is the great disparity of power within the courtroom, in particular between the legal professionals on the one hand, and the general public, particularly plaintiffs, defendants and witnesses, on the other. . . These disparities in power are both revealed and imposed through language.

held where people live, and are often held during working hours, making it difficult for many people to attend. When dealing with prisoners, or others who are institutionalized, attendance is generally literally impossible.⁵⁵ Lawyers thus have close to a monopoly over information regarding the status of a case. This inherent power imbalance is often exacerbated by issues of race and gender, as lawyers are more likely than the population at large to be white and male.⁵⁶

The settlement process increases the privileged role of the lawyer in the system, as very few parties are willing to negotiate in public—particularly where there is a large, diverse group of plaintiffs, such as is typical in class action cases.

Lawyers also tend to be pretty arrogant people.⁵⁷ Those of us who go into public interest law tend to take on cases where we have well-defined views of the social wrong we are trying to correct and often well-defined views on what the solution should look like. When a lawyer represents a large group of clients, the power imbalance is also heightened, as each individual client has a small voice, while the voice of the lawyer looms large.⁵⁸ Lawyers also generally control the time, place, and method of communication. Rather than meeting

Disparities in power are not limited to the courtroom, however. In private consultation with lawyers non-lawyers may feel disempowered. . .”).

⁵⁵ While prisoners have a constitutional right to access to the courts, see *Bounds v. Smith*, 430 U.S. 817, 821 (1977), in practice, this right does not always extend to court appearances. See also Geoffrey P. Alpert, *Prisoners' right of access to courts: planning for legal aid*, 51 WASH. L. REV. 653 (1975)

⁵⁶ Deborah L. Rhode, *Law is the least diverse profession in the nation. And lawyers aren't doing enough to change that*, THE WASHINGTON POST, May 27, 2015, <https://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/>

⁵⁷ Bryant G. Garth & Austin Sarat (eds.), *Justice and Power in Sociolegal Studies* (1st ed. 1998): (“The literature is full of assertions that lawyers are arrogant (Hengstler 1993: 62; see Menkel-Meadow 1994: 595 [criticizing the MacCrate Report for not paying enough attention to the human aspects of lawyering]). . .”)

⁵⁸ Dean Hill Rivkin, *Reflections on Lawyering for Reform: Is the Highway Alive Tonight?*, 64 TENN. L. REV. 1065, 1067-68 (1997) (“[T]he heightened struggle over our relationships with our clients is a perplexing theme. In days past, reform lawyers genuinely believed that, by virtue of the lawyer-client relationship, they were entitled to be their client’s voice. . . Today, we question anyone’s right to make such an attempt to speak for those who have not spoken for themselves. Nonetheless, in spite of our sensitivity, we find it enormously hard not to silence and disable clients through our empathy and compassion, much less our distance and, yes, despair. There are theories of empowerment, strategies for dealing with differences, empathy training—they help—but the tensions in the lawyer-client relationship in reform litigation—whether in a class action or an individual case—persist”).

in person with each member of a class, lawyers generally send out form letters to large numbers of people at once—setting up a one-way (lawyer-to-client) form of communication.⁵⁹

But in the end, lawyers represent clients. Those of us who practice public interest law must remain vigilant against substituting our goals for those of our clients.⁶⁰ There is no easy way to ensure that all members of a class, and all of the people who we purport to be representing, are consulted, and I do not have any magic formula to ensure that they are. We must stay on guard, and constantly struggle to ensure that the voices of those most impacted are heard, and that our work furthers the actual interests of those we represent.⁶¹ As I tell my clients who are in prison, “I get to go home tonight. You have to live here.”

⁵⁹ Scott, *supra* note 9 (at 575) (“Class action practitioners usually delegate client contact and notice responsibilities to paralegals, law clerks, and legal assistants. Personal face-to-face contact between lawyer and client in large class action lawsuits is not only inefficient, it is nearly impossible. Class members are often residents of various states, perhaps even other countries. Model Rule 1.4 contemplates communication in order for a client to direct the litigation but, as the public law litigation model recognizes, most mass litigation is lawyer-managed; thus, communication generally consists of notices and updates on the progress of the lawsuit, not requests for client input on its direction”).

⁶⁰ This is especially true in the community lawyering context, see Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 113-14 (2000) (“Despite the inherent difficulties of doing so, the community lawyer must identify the community in which he or she works and discern its overarching goals and aspirations. Since we are addressing ‘community’ as a geographically bounded area with something that is transcendent, even in the face of particular internal disagreements as to objectives and methods, we have to come to grips with the fact that a ‘community’ may speak with several voices and give rise to apparently competing goals. Thus, ‘community’ is greater than any single group within the geographic bounds and longer-lived than any particular manifestation of a perceived problem”).

⁶¹ Richard D. Marsico, *Working for Social Change and Preserving Client Autonomy: Is There a Role for Facilitative Lawyering*, 1 *Clinical L. Rev.* 639, 649 (1994) (“‘Client-centered’ lawyering techniques that attempt to eliminate these risks to client autonomy inherent in the attorney-client relationship cannot be completely successful. The most well-intentioned attorney who employs a client-centered approach by actively listening to the client, soliciting information about the client’s legal and non-legal concerns, and involving the client in identifying legal and non-legal alternatives and selecting the best solution, cannot help but influence the client’s decisions in subtle ways. These include making relevancy judgments about how much information to give the client, ordering the information in a way that ultimately influences the client’s choice, and choosing the phrasing and styling of alternatives”).