Volume 13 | Issue 1

Winter 2009

Role of Legal Services in Workers' Organizing

Nadia Marin-Molina
Workplace Project

Jamie Vargas
Workplace Project

Follow this and additional works at: <https://academicworks.cuny.edu/clr>

Part of the [Law Commons](#)

Recommended Citation

Nadia Marin-Molina & Jamie Vargas, *Role of Legal Services in Workers' Organizing*, 13 N.Y. City L. Rev. 195 (2009).
Available at: 10.31641/clr130108

The CUNY Law Review is published by the Office of Library Services at the City University of New York. For more information please contact cunylr@law.cuny.edu.

THE ROLE OF LEGAL SERVICES IN WORKERS' ORGANIZING

Editor's Note: As part of its Fall 2009 Public Interest Practice Section ("PIPS") series exploring the role of legal services in worker organizing, the *New York City Law Review* conducted the following interviews with Nadia Marín-Molina,¹ Executive Director of the Workplace Project, and Jaime Vargas,² Organizer, on September 23, 2009, at the organization's Long Island office in Hempstead, New York. Ms. Marín-Molina has worked for the Workplace Project for thirteen years, and Mr. Vargas for seven years. The following is an edited transcript of the interviews, conducted by PIPS Associate Editor Jonathan Harris and Managing Articles Editor Shirley Lin.

JAIME VARGAS, ORGANIZER

Q: Tell us about the Workplace Project. When was it started? How did it begin? What kind of community needs does the Workplace Project serve?

A: The Workplace Project started in 1992. It was created as a response to a need that Jennifer Gordon³ identified while working with the Central American community. Many workers had complaints related to wages. Many workers were Central American. Workers were being exploited; they were being mistreated or didn't get paid wages. It was too much for the community of Salvadorans, Hondurans, and Mexicans. So, from that moment an organization began to form.

First, the focus was on labor rights, not only wages and overtime, but also problems of discrimination, workers' compensation, problems with unions, the collection of unpaid wages, and unemployment insurance. These are the basic categories of labor rights violations. But, in addition to labor rights, the Workplace Project found that the community was suffering violations of other rights,

---

¹ Nadia Marín-Molina, Esq., graduated from New York University School of Law in 1996.

² Before joining the Workplace Project, Jaime Vargas founded *El Vocero*, Long Island's first Spanish language newspaper.

³ Jennifer Gordon, Esq., graduated from Harvard Law School in 1992 and is now Associate Professor of Law at Fordham University Law School. Ms. Gordon founded the Workplace Project and served as Executive Director until 1998.

such as civil rights, so the organization had to get involved in counseling about civil rights and other community needs.

You asked how this work was being done. At the beginning, it was individual assistance, like lawyers' assistance. Each case was treated individually; an individual showed up, she or he was heard, and a solution was sought either directly with the employer or through the mediation of a government office. Then the individual was assisted in submitting a complaint for unpaid wages, and in following up on the complaint. But, in any case, it was at the individual level.

As the number of people seeking help for their complaints increased, individual assistance was no longer enough because we didn't have enough staff to take all the cases. So, then, a committee and a basic workers' rights workshop were created. This way, workers who call or come in person are referred to a weekly orientation session, which meets on Tuesdays at 6:30 p.m. There, each worker is required to fill out a form stating their name, the name of their employer, and a basic description of their problem. They get an explanation about the Workplace Project and how a membership organization operates. Then, each worker is referred to one of the committees. The organization has established three committees. The first is the unpaid wages committee, which reaches out to construction workers and landscaping workers. Another is the Alliance for Justice, which includes restaurant, car wash, factory, hotel, and retail workers, as well as workers in other industries. The last committee is the domestic workers committee. There is also a subcommittee of Alliance for Justice for janitors employed at the commercial level—that is, janitors working in buildings and malls. This group also includes a committee on emergency issues at factories. This means that many times a large group of workers from a particular factory shows up and we need to schedule a separate meeting with them.

The committee structure has a process. The first step is for workers to come to the information workshop. Here, we talk about the organization, its benefits, the members' obligations with the organization, and the workers' basic rights. After that, the workers tell us which of their rights have been violated. Then, we split into groups and all workers deepen their understanding by exchanging stories about their different problems and ideas to solve them. So, for example, if there are ten different cases, then ten different workers learned about ten different problems in the workplace. This ac-

compleishes an organizational and educational mission much broader than at the individual level, like when you tell me about your problems and I tell you, "Let's do this." Instead, under the information workshop format, workers express their problems and other workers have an opinion about what would be their own solution to the problems raised. This strengthens the workers' organizational and educational skills, and makes them learn more. Through this process, workers become comfortable with making public presentations, speaking out, and expressing opinions. This educational development of workers wouldn't necessarily happen if they were only working with lawyers.

The second step for workers is to agree to get involved in the solution of their own complaints by participating in the committees, joining the organization, and committing to attend a labor rights workshop with a broader curriculum. This ensures that information on workers' rights, civil rights, financial education, and other issues can be transmitted to the workers' communities and households, and spread among their co-workers. This way, workers know that when they need to submit a complaint, there are community-based agencies who will help them regardless of their immigration status.

The committee system is important because it is the way workers start learning about how to speak to their co-workers and gradually get involved in other workers' problems. These committees allow for the emergence of leaders who become members of the organization and, later, at the assemblies and members' meetings, can become members of the Workplace Project's Board of Directors. The Workplace Project is a membership organization, and the Board is elected by the members.

Q: How many members does the organization currently have?

A: Approximately 1,000 members. When a worker comes with a case of unpaid wages or unpaid overtime, we try to help her or him with the process of filing a case either directly or by a referral to the New York State Department of Labor or another state agency. When I say that we try to help directly, I mean that we try to contact the employer by letter, saying, "You owe this worker this much money. We need you to come talk to us and pay your worker." Some employers agree with the complaint, while others say, "I don't owe anything."

Q: Does the committee take this action of filing a demand letter?

A: Yes, this action is the first action taken. We formally demand that the employer pays. If the employer doesn't pay, then the next step is to organize.

Q: Is this done by the committee? Does the committee contact the employer?

A: The workers on the committee conduct this process. The "locator" on the committee is responsible for communication with the employers. His role is to contact the employers, write the letters, and so on. Then, in the organizing stage, we hold press conferences or send out press releases denouncing employers or companies that aren't paying the right amount to workers. We also hand out leaflets in the commercial shops or, in the case of subcontractors, we go to their houses and a group of workers hands out fliers. This is the part we do with the workers' participation.

When we send a communication to an employer, we do so as labor organizers, not as lawyers. Many times people confuse both things, but we don't really do it like lawyers do. Employers generally opt for getting a lawyer, and ask the lawyer to get in touch with us. A good thing is that generally their lawyers know nothing about labor law. They just get a lawyer, who often has no idea what a labor regulation is in this country.

So, the employers' lawyers send us these horrible letters saying that workers have no right to overtime pay, they have no right to this and that, and that everything is included in the \$200 or \$300 a worker earns per week. There aren't many lawyers who know about labor law and, besides, anyone can send a letter, no? I think this aspect is important to highlight because it shows that employers don't even know what they're doing when they try to avoid paying wages and overtime. They hire a lawyer and think they can get away with not paying because they suppose that when a lawyer sends a letter to someone, that person is going to panic. Or they insult us and tell us that they're going to sue us because we don't have the right to send letters. We often send out news bulletins about companies that have been fined at the same time we send out the demand letters to employers.

Finally, when we have no other option and when employers refuse to cooperate, we go to the Department of Labor. When the situa-

tion is very conflicted, such as when the employers are overly aggressive, we opt for going to the Department of Labor.

Q: Getting back to the issue of in-house legal services at worker centers, how did the Workplace Project make the decision to stop offering direct legal services?

A: Simply put, the organization made this decision due to lack of time. In order to provide individualized attention to all of our cases, we'd need to have real lawyers on staff. At this moment, we're only three organizers. Given that this year we have 147 open cases, we'd need to have at least three lawyers. Approximately 500 workers come here every year.

Once we take cases, we have to start working on them. But, there are exceptions. For example, when we get workers' compensation cases, we refer them to a lawyer right away. When there's a case of human rights violations, we refer it either to New York State's Division of Human Rights or to the Equal Employment Opportunity Commission. But, even when we refer those cases to government agencies, we still need to help workers through the process because the employers always bring in a lawyer, and for workers it is more difficult to do everything by themselves. In some occasions, when cases involve human rights violations or complaints against an employer for violations under the National Labor Relations Act, we end up seeking help from another organization like the Community Development Project of the Urban Justice Center.⁴ They help us in those types of cases, which are few. When we do work with them, we ask them to help us submit lawsuits, respond to lawsuits, submit appeals, translate the appeals that we write in Spanish, and so on. So, our role is then more focused on doing follow up on legal issues, while the lawyer's role is on things that are more related to legal procedures.

Q: What percentage of cases actually get resolved this way?

A: Around 25% of the cases we deal with directly are solved. A solved case means that the worker either received her or his money

---

⁴ The Urban Justice Center serves New York's most vulnerable residents through a combination of direct legal service, systemic advocacy, community education, and political organizing. The Community Development Project (CDP) of the Urban Justice Center formed in September 2001 to provide legal, technical, research and policy assistance to grassroots community groups engaged in a wide range of community development efforts throughout New York.

or was reinstated in the job. Actually, including the cases involving unpaid judgments, we have more or less 35% of cases that are solved. In many cases where workers did not receive their money from a judgment against an employer, we have to train workers to testify at the hearings so that they can collect their money from the employer. Approximately another 30% of cases go to the State Department of Labor. The rest are dropped by the workers, or go directly to the lawyers who take workers' compensation cases.

Q: Some say that the provision of legal services by a worker center is meant to attract workers with the expectation that they will get involved in the organization's initiatives and organizing campaigns. How would you respond to this?

A: Look, direct legal services are understood by workers to be services provided by a lawyer, right? I mean, they think, "It's a lawyer and I'm paying him." If the only service provided is direct representation, then workers don't feel obligated to attend membership meetings or workshops. Providing legal services is a kind of contact between an organization and clients that is both more individualized and more impersonal. We have experienced this here at the Workplace Project, when we used to provide direct legal services.

The way we do it now is that the worker's commitment is basically to get involved. They can do this by joining a committee, attending at least eight committee meetings, and participating in campaigns not only related to unpaid wages, but also in other campaigns that the organization carries out. For example, we have had campaigns on immigration, against immigration raids, on financial education, domestic violence, and well as others. Workers also participate in membership meetings, so that they feel more committed than they'd feel if we were a legal services agency, where they can come to meetings but they don't share an obligation to get involved. When workers come to us asking for a lawyer, we tell them, "Okay, but a lawyer will charge you from the beginning, will charge for listening to you, and also take 33% of what you get."

A lawyer won't tell a worker that she or he has any obligation to attend meetings or participate in the campaigns. But, on the other hand, if the worker doesn't call the lawyer, the lawyer won't do any work on the case, even though the worker is paying for the lawyer's services. Another important difference between a legal services agency versus our organization is that workers become members

with the Workplace Project. They pay a membership fee, and that fee is like the value of their affiliation to the organization, a symbolic value. It's \$5, but then the worker thinks, "This costs me, this membership costs me." It's a way to see the value of their integration in the organization.

Q: It's possible to offer direct legal services conditioned on being a member, paying the membership fee, and a commitment to participating in campaigns. What would be the difference?

A: The difference is that if we offered direct legal services, it wouldn't be possible to take the number of cases that we're supporting right now. We have 147 open cases right now. I don't think any one lawyer could manage 147 cases because lawyers do all the follow up—they go to court if necessary, make phone calls and write letters, and oversee the whole process. Therefore, lawyers need more time in order to dedicate themselves fully to a case. Instead of taking on a case individually, what we do instead is to talk to the workers and explain their cases to them. If there are 20 workers, of whom five are facing a similar legal problem, once we've talked to the group, we've essentially "addressed" the case relevant to at least five workers. In contrast, if we were handling each worker's case individually, we'd spend much more time seeing and explaining to each worker the specifics of her or his case. If we did that, our current capacity to provide direct legal services would not be enough. We'd have to have a legal team with five or ten lawyers, and the organization can't afford to do that.

A lawyer's services differ from the way we help people. We tell them, "You're going to help solve your problem. Here's the phone. Call the Department of Labor and ask about your case. Here's this number. Call the employer and ask about your wages." So, we get workers involved in resolving their own cases. With legal services, workers would just ask the lawyer to do everything. It's like, "Do this, and do it because you're the only one who knows how to do it." Also, we tell workers about options beyond lawyers. There's the State Department of Labor, the U.S. Department of Labor, and small claims courts.

If an organization were to offer direct legal services to workers, it'd have to have many lawyers on staff. I don't know the statistics, but I'm sure that very few organizations handle the number of cases that we take on here. And if they do take on so many cases, can

they do follow up? This follow-through is the advantage that workers have by coming here. The majority of workers have limitations, such as they can't read, and so they come here initially and even continue to come after their cases have been referred to, for example, the Department of Labor. Workers need someone to help them by following up on their cases, which is what we do.

In some cases, we will work more closely with the worker on her or his case. For example, if there's any problem, like the employer says, "I don't know this guy," then we need to gather evidence to prove that the worker worked there. This happens too when workers run into problems with the Department of Labor. Sometimes they'll ask the worker, "Where's the proof that you were really earning this salary?" Then, what can the worker do? Well, we can get testimonies from friends, we can do this, we can do that. This is why workers come here—it's an attraction for them that we help them to the degree they need help.

State agencies, such as the Department of Labor and the Division of Human Rights, and even lawyers often refer workers to the Workplace Project. One reason is that the cases might be too small and lawyers don't want to take them. Another reason is that the agencies—the Department of Labor, for example—don't believe they have jurisdiction, and so they think we can provide a solution. They can't solve it, but they think we can.

NADIA MARÍN-MOLINA, EXECUTIVE DIRECTOR

Q: In Jennifer Gordon's book, *Suburban Sweatshops*,⁵ she describes how the Workplace Project decided to stop offering direct legal services. What is your perspective on that decision?

A: The intersection of law and organizing and how we do it has always been an issue for us. When I came to the organization as a legal intern, Jennifer Gordon was the Executive Director, Omar Henriquez was the organizer on staff, and there was one other person on staff. The legal work was a mix—Jennifer took on some cases, while others were sent to the New York Department of Labor. Occasionally I would go as an intern to represent someone in small claims court. But it was fairly rare for the organization to litigate a case in court. Instead, we would train people to represent

---

⁵ JENNIFER GORDON, *SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS* (2005).

themselves. So, there was always some legal work that was being done, but much of didn't include a lawyer taking a case and working on it himself or herself.

I started working at the Workplace Project as a summer intern in 1995. I started full time in 1996 on a fellowship, and, in 1999, I became Executive Director. After that, we hired Saru Jayaraman, who had just graduated from law school,⁶ as an attorney/organizer. With Saru, we revised the legal clinic model and turned it into the Alliance for Justice program. Saru as the attorney/organizer was one of the driving forces in changing the Workplace Project's model from an individual legal services model to a committee system, where the committees were divided into members who worked in different industries. Before creating Alliance for Justice, the organizer, Omar, would first have individual consultations with workers on Mondays about their situations. He would explain how the organization works, and then ask the workers if they were willing to participate. Participation meant taking the workers' rights course, and fulfilling other requirements. If so, the organization would help them with their case. That was the way it worked.

The one or two committees that existed at that time conducted outreach, but didn't focus on helping workers with their problems. Saru, who was so instrumental in creating the Alliance for Justice, left just after September 11, 2001. I remember that because she ended up working with the workers from the Windows on the World Restaurant in the Twin Towers.⁷ After that, we had to look for somebody to take over Saru's work, but we had a really difficult time filling her position. First, we hired a lawyer who had recently graduated from law school. He lasted only two weeks because of the intense demand to speak Spanish—he spoke some Spanish, but not enough. And there were other people we considered that weren't willing to live on Long Island, work for low wages, or do this kind of work. So, Jaime Vargas ended up being the best candidate. Jaime is an organizer and not an attorney. So, in hiring him, we had to consider whether this position really needed to be filled by an attorney, or whether an organizer would be sufficient. When

---

⁶ Saru Jayaraman, Esq., graduated from Yale Law School in 2000.

⁷ Ms. Jayaraman co-founded the Restaurant Opportunities Center of New York (ROC-NY), which has organized restaurant workers to win workplace justice campaigns, conducted research and policy work in the restaurant industry, and launched their own cooperatively-owned restaurant. She is also the co-founder and co-director of ROC-United, a national restaurant workers' organization.

we thought about it, we found that, in reality, 99% of the work is not legal work. It's about referring cases to the Department of Labor, or going to the Division of Human Rights. We do this now more so than before with the cases we might have taken on as attorneys. But, we could still find an outside attorney to take a case if necessary.

So, that's how the decision was made to transition from a legal services model to a committee system. It was a decision made out of necessity and taken in steps. First came the creation of the committee system, which Jennifer wrote about in *Suburban Sweatshops*, and how the committees worked with the organizing. After hiring Jaime, I was the only attorney left on staff. As I can only do a limited amount, I take the complicated cases or cases where the organizers come to me because they see something unusual. For those cases, I use my legal skills, but oftentimes it is still something straightforward, such as nonpayment of wages or referring the cases to a state agency.

Q: Do you practice law now?

A: I still maintain my license, but the amount of actual legal work I do is very minimal. I maintain my license just in case, even though I haven't stepped into court to represent anybody since becoming Executive Director.

Q: In *Suburban Sweatshops*, Jennifer Gordon discusses the organizational transition from legal services to a committee structure. She questions the elimination of individual legal services because the committees are still mostly focused on resolving individual wage claims. Also, they are still reacting to violations of individual legal rights as opposed to creating proactive organizing campaigns focused on specific industries.⁸ She also questions the decision to not provide legal services in combination with the organizing, especially in the absence of a long-term organizing strategy.⁹ What is your take on that?

A: I think there are two ways to look at it. If we had infinite amounts of money and resources, we probably would like to have an attorney on staff. There are organizations like ours that have eight attorneys on staff. And so the question is, "How should we

---

⁸ GORDON, *supra* note 1, at 217-18.

⁹ *Id.* at 225-27.

spend the money we have?" If we had found an attorney/organizer who was willing to work for the organization when we were hiring to replace Saru, we might have made a different decision about whether to have an attorney on staff. But, you have to deal with the reality that you're in, and the reality is that as an executive director, there's a limited amount of cases you can do. So, one part of the question is about allocation of resources.

The other issue is that legal cases require a huge amount of work. One good example of collaboration between the legal and organizing arenas is our case in Brookhaven, Long Island, when the Town of Brookhaven¹⁰ evicted many immigrant residents in 2005.¹¹ People were being shut out of their homes either the same day or one day to the next, and we said, "This must be illegal." But, it wasn't illegal because the government was doing it. We found out that governments don't have to follow the same kinds of notification systems that a landlord has to follow if they are going to evict someone. We reached out to twelve different organizations and attorneys, but nobody was willing to take the case. All of them said, "There's nothing you can do."

We continued to work with the tenants, even as attorneys told us that there were no legal remedies available. Eventually, tenants got fed up because the Town would shut down two houses one week, one house the next, and then three houses the following week. At one point, the tenants said, "We don't have anywhere to go, so we're going to stay. We're going to put tents up in the backyard. We're prohibited from being in the house, but there's nothing to say we can't put up tents outside the house." We helped tenants set up tents in their backyards, which got a lot of press. Even residents who had been evicted came back to set up a tent and live in it.

We were then able to get the Puerto Rican Legal Defense and Education Fund (now LatinoJustice PRLDEF)¹² to file a discrimination

---

¹⁰ The Town of Brookhaven is a municipality of approximately 434,000 residents (1999 estimate) in Suffolk County, Long Island. Suffolk County Government, <http://www.co.suffolk.ny.us/departments/planning/Publications%20and%20Information/Local%20Government%20Units/02BrookhavenTown.aspx> (last visited Dec. 11, 2009).

¹¹ Bruce Lambert, *Evicted Immigrants Set Up Tents in New Housing Battle*, N.Y. TIMES, Aug. 13, 2005, at B3, available at <http://www.nytimes.com/2005/08/13/nyregion/13suffolk.html>.

¹² LatinoJustice PRLDEF, a not-for-profit organization, litigates precedent-setting impact cases that improve the way Latinos are treated in society. The organization's current areas of focus include immigrants' rights; voting rights; housing, education,

claim against the Town of Brookhaven on behalf of the tenants. But, we know that if we hadn't been organizing in response to the evictions, no one would have taken the case.

Organizing the tent city allowed us access to potential plaintiffs, and PRLDEF was able to interview people and do affidavits to build up enough testimony to file the complaint. However, shortly after the tent city was set up, there was a battle with the Town of Brookhaven, who wanted to kick us out and arrest our organizer. Another problem was that it became difficult to find our plaintiffs in the case, as they were basically living in the woods. Residents had scattered, moved in with their families, or to wherever they could find refuge. But, ultimately, based on the filing of the complaint and the level of protests, Brookhaven stopped their evictions. Would it have happened if there had only been organizing? I don't know. But I don't think the lawsuit would have happened if there hadn't been organizing.

That's one example of how law and organizing can work well together. But, it's now four years later and we haven't even completed discovery in that case. It's likely the case will be going on for several more years. If the Workplace Project had taken this case ourselves, imagine how much time and how many resources we would have poured into this one case. For what? There are so many other things our organization can do with that time and those resources. Besides, it's difficult to maintain a case over four years—some plaintiffs involved in the case have moved away, while others may not be participating in the organization anymore. The Brookhaven case is certainly a positive example of organizing and legal services working together. But, it's also an example of how the legal process takes so long and is so resource intensive—it wouldn't have been worth it for an organization like ours to take the case. Perhaps another organization would have a different opinion. If we had ten lawyers on staff, maybe we would have a different perspective because we could afford to dedicate the time and resources necessary.

Q: If you had infinite resources so that you could, for example, easily hire ten or fifteen staff attorneys, would you then begin to offer direct legal services?

---

and job discrimination; the treatment of day laborers, freedom of movement, and all forms of bias that affect Latinos.

A: If we had infinite resources, and infinite organizers as well as infinite lawyers, then probably yes. The workers feel that they are getting more support when there's an attorney, even if it's a law student, then when it's just us. However, I don't honestly think that having a lawyer on staff would make a substantive difference in the services we provide. Claiming nonpayment of wages, which is the biggest problem we have, is not that complicated or difficult for us to handle. There are organizations that do have many lawyers on staff and, as far as I can tell, they're not making a dent in the problem of nonpayment. For example, can you say that in a particular place, everyone gets paid because of the work of the organizations that have lawyers? Each time we do outreach, it's clear that there are more and more cases of nonpayment. You could honestly never have enough attorneys to solve that problem. The problem is too big, no matter how many attorneys you have, and eventually all of them will end up overworked.

Q: Some worker centers offer direct services by funding it through government contracts. Is that something the Workplace Project has ever considered?

A: It could be an option. We have relatively good relations with certain levels of government and very bad relations with others. We don't have an organizational policy of absolutely no government funds. There are some local government agencies that would never give us money, and we wouldn't want to take it if they did because we haven't had good experiences or a positive relationship with them. With other government agencies, if they were to offer us money, we probably would take it. We have talked in the past about getting community development block grants to fund legal services at the Workplace Project. Because contracting for legal services is something that's fairly rare, I think local governments haven't seen it as feasible. So, getting government funding to offer legal services isn't impossible, but it hasn't been our priority. I wouldn't rule it out completely, though.

Q: There's a third perspective of organizations that, regardless of how much money they have for salaries, consider lawyers as part of the problem. They feel that having attorneys on staff, or continually taking on wage nonpayment cases, creates a dependency on the legal structure that creates the barriers which workers face in the first place. In the context of workers' rights, perhaps having attorneys on staff puts workers in a position where they rely on attor-

neys' recommendations for a course of action that might actually undercut larger organizing goals, even if individual workers receive their unpaid wages.

A: It depends on the attorney—you have to hire very carefully. One of the interview questions we use for summer law school interns is, “What do you think is the cause of poverty?” We also give them hypotheticals such as, “What would you do if a group of workers comes in with ‘x’ problem?” We try to figure out how much the students really believe in the legal system as the solution and how much they believe in themselves as future attorneys having the ability to do anything. If you have an attorney who says, “I’m an attorney and I’ll tell you what to do,” then you have an attorney who will be in constant conflict with the organizing goals of the organization. So you have to hire attorneys who are very much organizers and who understand organizing. They have to both understand internally the debate between legal and organizing strategies, and be able to present that debate to a group of workers and say, “If you do this, you might be able to get \$5,000 in settlement, but then the employer would get a gag order, which means you wouldn’t be able to talk about it.” So, I understand the concern of those organizations, but I think it also depends on the kinds of attorneys on staff.

The other reason I said we would hire attorneys if we had infinite resources is because our Board of Directors is made up of our members. If our Board talks how we’ll allocate our infinite amounts of money for next year, at least some people would want to put an attorney on staff and the majority would support it. People are looking for the best representation for themselves and for others. You can talk about whether it’s a good idea, theoretically, to have attorneys on staff, but, if we had infinite resources, I imagine our members would go in that direction. Right now, the organization could say, “We have three organizers and we really want an attorney, so we’ll take two of our organizers’ salaries to hire an attorney.” But, the Board does have an understanding that a lot of this work doesn’t need to be done by an attorney. In fact, organizers can do much of the work. Plus, Jennifer Gordon, who is an attorney, founded the Workplace Project, so, for people who have been here a long time, how the organization started partially determines how they see its future.

Q: Other organizations, such as the Urban Justice Center’s Community Development Project (“CDP”), also believe that an attor-

ney's role is more appropriately on the outside than within an organization. In her article in this compilation, Tammy Kim from the CDP writes that attorneys should do what they do best, and shouldn't try to organize because that's not their role.¹³ Their role should be to provide support from the outside.

A: One response to that is to look at the role of attorneys in unions. Unions have attorneys and legal departments, but they also hire outside counsel. The outside attorneys hired by the union specialize in union work and are very much in line with the organizing work that the unions do. They're not random attorneys—unions don't just hire attorneys off the street. Unfortunately, worker centers don't have that ability to tap into the legal resources available to unions. Also, we can't find attorneys just anywhere. You can't just go to the corner and find an attorney who will do the kind of work that we need them to do. If we had that, we could say, "Well, we don't need to hire our own attorneys because we can hire outside attorneys to do the legal work." But we don't have many of those outside attorneys who know and understand our work. We need attorneys who are fairly specialized, which is a limited universe of lawyers. We need attorneys we can count on to know about labor issues, immigration, politics, and political legislation. If an organization like the CDP were infinitely big, we wouldn't need our own attorneys because we could rely on the CDP for when we need legal assistance. But, we can't. One of the reasons you might want to develop in-house counsel is because you can't count on getting someone else.

Q: Do you agree with the perspective that providing individual legal services can be a draw to bring workers into larger organizing campaigns, especially if you condition the provision of legal services on becoming an active member?

A: Legal services attract workers because there are lawyers who are willing to take cases for free. And there are many workers with problems. The problem is not whether legal services attract people; it's whether legal services maintain active members. As an organization, you're trying to organize workers for the long term. You can attract a ton of workers to come in and talk about their issues and the injustices in their legal cases. But, how do you take an individual case and make it into an organizing campaign?

---

¹³ E. Tammy Kim, *Lawyers as Resource Allies in Workers' Struggles for Social Change*, 13 N.Y. CITY L. REV. 213 (2010).

People are also attracted to our organizers' workshops and presentations on what to do if your rights are violated, as many of the workers who come to us have had their rights violated. But, when you help people with their individual cases, there's a certain percentage that, because of their individual situations—they don't have the money, they need \$500 to pay the rent now, they don't have the time because they go to church every evening, they don't have transportation so they have to take a \$20 taxi to get here—they're not going to participate or they might be unable to continue participating. It's challenging to maintain participation over the long term.

However, there are people who will stay and participate in the long term, not just for their case but for other campaigns. The larger problem is that you help a number of people, of whom only a certain amount are going to participate in the larger organizing work. But, you still have an obligation to the others because you took on a certain responsibility for their cases. Yet they don't come to meetings, don't take the workers' rights course, and don't come to protests. So then what do you do? We do what other organizations do. We say, "You really need to participate." If they still don't participate, we still help them refer their case to the Department of Labor. That way, if they don't want to participate, they can continue to follow up on their case directly with the Department of Labor. You have to have some way of allowing for the fact that 100% of the people are not going to stay with the organization, no matter how much you promote participation in your meetings and requirements.

The question of whether attorneys should be doing organizing is an interesting one. It depends on the attorney. There are so many times where there is a real tension between the goals of lawyers and organizers. For example, there have been a number of racially motivated attacks in Suffolk County, and since Marcelo Lucero was killed in November 2008,¹⁴ a lot of attorneys and agencies have gotten involved. One local church brought in some private attorneys, who told members, "I'll take your case, but don't talk to the newspapers about it because what you say may contradict what you're going to say in your testimony." The same thing happened

---

¹⁴ Marcelo Lucero, a 37 year old immigrant from Ecuador, was killed by a group of teenagers in a racially-motivated attack. See Cara Buckley, *Teenagers' Violent 'Sport' Led to Killing on Long Island, Officials Say*, N.Y. TIMES, Nov. 20, 2008, at A26, available at <http://www.nytimes.com/2008/11/21/nyregion/21immigrant.html>.

with the prosecutors working on these cases. They were really concerned about contradictions between public statements someone might make in a legislative hearing or to the press, and what they're trying to put forward in their cases. On the other hand, from our point of view, we really need people to speak publicly and say, "This is what happened to me."

The private attorneys, the U.S. Department of Justice, and the New York State Attorney General are all looking into the racially motivated attacks, but it isn't their priority to have affected community members come forward to speak out. This is because they're looking at it from the perspective of prosecuting these cases. For campaigns where there is both a legal and organizing component, you need to have attorneys who understand the broader priorities.

In some ways, it's interesting to compare the ethics of lawyering with the ethics of organizing, although there's no formal code of organizer ethics, as far as I know. You have to ask people what they want to do. The decision is not yours as an organizer or attorney; in the end, it's theirs. As long as you present the options, workers should make the decision whether it's in their interest to take a quick settlement, a gag order, or whatever the case may be. Both in terms of organizing and lawyering, that's what you need to do. We're always going back to the members of the Workplace Project to figure out with them what is the right thing to do. This is always easier said than done. Organizers or attorneys can lay out a strategy that includes, for example, a worker talking to the *New York Times* because it will bring national attention to their issue, but they can't force anybody to do anything.