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PROMOTING ECONOMIC JUSTICE THROUGH TRANSACTIONAL COMMUNITY-CENTERED LAWYERING

LAURIE HAUBER*

Combating the economic impact of discrimination in historically disempowered urban areas is critical in furthering civil rights in the 21st century.¹ Long-term equality cannot be achieved without economic justice.² While there have been tremendous gains in the political and social fronts through litigation and administrative advocacy since the 1960s,³ race-related

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1. See Julian Bond, *Where We've Been, Where We're Going: A Vision for Racial Justice in the 1990's*, 25 HARV. C.R.-C.L. L. REV. 273, 282-83 (1990); Gary Chartier, *Civil Rights and Economic Democracy*, 40 WASHBURN L.J. 267, 269 (2000); Peter Edelman, *Welfare and the Politics of Race: Same Tune, New Lyrics?*, 11 GEO. J. ON POVERTY L. & POL'Y 389, 403 (2004) [hereinafter Edelman, *Welfare*] ("There can be no racial justice without economic and social justice. . . . Traditional civil rights advocates must be willing to redefine their agenda as economic justice for all, including people of color."); Susan R. Jones, *Dr. Martin Luther King, Jr.'s Legacy: An Economic Justice Imperative*, 19 WASH. U. J.L. & POL'Y 39, 39 (2005) [hereinafter Jones, *MLK Speech*]; Deborah Solomon, *Civil Rights C.E.O.*, N.Y. TIMES MAG., July 10, 2005, at 15 (interviewing Bruce S. Gordon, President of the N.A.A.C.P. who stated, "I think we have to define civil rights more broadly. When I say civil rights, I am talking about economic rights.").

2. See text accompanying *supra* note 1. See also Susan R. Jones, *Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law*, 14 WASH. U. J.L. & POL'Y 249, 250-53 (2004) [hereinafter Jones, *Interdisciplinary*].

3. Historically, economic justice was a central goal of the civil rights movement. See Chartier, *supra* note 1, at 269. There was a shift in the 1950s away from social and economic justice toward securing voting rights, and access to housing, public accommodations, and employment. *Id.* at 274-75; see also Paulette M. Caldwell, *The Content of Our Characterization*, 5 Mich. J. Race & L. 53, 95-96 (1999) (explaining that the African-American civil rights

concentration of poverty⁴ in urban areas has become more pronounced in recent years.⁵ Economic justice requires striving to eliminate the imbalance of social and economic power in urban areas by providing equal access to economic opportunities.⁶ Access to economic opportunities includes access to

movement never abandoned its dual focus on economic justice and racial justice through law—termed “legal justice”—but that the economic justice agenda has been overshadowed by the modern focus on legal justice within the American civil rights movement as a whole); Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 413–14, 417, 420–21 (2001) [hereinafter Cummings, *Grassroots*]; Ann Southworth, *Business Planning for the Destitute? Lawyers as Facilitators in Civil Rights and Poverty Practice*, 1996 WIS. L. REV. 1121, 1127–29 (1996) (describing civil rights movement of the 1960s as focused on challenging racial segregation through impact litigation and lobbying); Robert Suggs, *Bringing Small Business Development to Urban Neighborhoods*, 30 HARV. C.R.-C.L. L. REV. 487, 488 (1995) [hereinafter Suggs, *Small Business Development*].

4. While race as used in this article refers to all minority groups, many of the references and data with respect to race are about African Americans as that was the focus during the civil rights era and to a large extent continues to be the focus of the civil rights movement today.

5. EMMA JORDAN & ANGELA HARRIS, *ECONOMIC JUSTICE* 479 (2005) (finding only one-quarter of white households have zero or negative net financial assets whereas 61% of black households and 54% of Hispanic households do not have financial assets); see also CARMEN DENAVAS ET AL., U.S. DEP’T OF COMMERCE, U.S. CENSUS BUREAU, *INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2005* 60–231 (2006) (finding that in 2005, the overall poverty rate was 12.6%, but the poverty rate for blacks was 24.9%); Bond, *supra* note 1, at 278; Peter Edelman, *Where Race Meets Class: the 21st Century Civil Rights Agenda*, 12 GEO. J. ON POVERTY L. & POL’Y 1, 2 (2005) [hereinafter Edelman, *Race Class*] (finding that in 2000, 9.4% of whites were poor, and 22.1% of blacks were living below the poverty line; in 2003, 10.5% of whites and 24.4% of blacks were below the poverty line); Benjamin Quinones, *Redevelopment Redefined: Revitalizing the Central City with Resident Control*, 27 U. MICH. J.L. REFORM 689, 697 nn.15–16 (1994) (noting that poverty has become increasingly urbanized—the majority of the impoverished live in central urban cores, or “central cities,” which is also the area of the most significant increase in poverty rates as well); Southworth, *supra* note 3, at 1129–30 (asserting that anti-discrimination legislation and litigation alone have “proven inadequate to remedy the desperate circumstances of poor minority populations in our cities” and are “unlikely to deliver decent economic prospects for many African-Americans and other historically oppressed groups.”).

6. In recent years more attention is being given toward promoting economic justice again. See *supra* text accompanying note 1; see also Chartier, *supra* note 1, at 269 (“(1) Economic justice has always been a key goal of the civil rights movement. (2) The achievement of economic justice will also contribute instrumentally to the achievement of the movement’s non-economic goals. And (3) the underlying vision of the civil rights movement implies an understanding of community and human dignity from which a commitment to economic democracy flows ineluctably.”); Jones, *MLK Speech*, *supra* note 1, at 43–44; *N.A.A.C.P.’s Julian Bond Sees A New Civil Rights Era Ahead*, N.Y. TIMES, July 13, 1998, at A12 (interviewing Julian Bond, N.A.A.C.P. Policy Leader) (“[P]roviding some measure of economic justice [is] an item on the civil rights agenda [Mr. Bond] said has been largely unaddressed and unfulfilled.”). But see JORDAN & HARRIS, *supra* note 5, at 1121 (stating that some hold the view that access to economic opportunities is not enough, because this assumes that equal access is a fair process that

the resources and means necessary to create successful community businesses.⁷ Economic opportunities increase income and build assets for individuals and communities.⁸ Wealth creation, in turn, leads to greater political engagement

will yield fair outcomes; this fails to consider cultural and psychological factors that could lead to unfair outcomes despite an objectively fair process).

7. Suggs, *Small Business Development*, *supra* note 3, at 488–89 (describing entrepreneurship as an alternative means of escape from poverty that also has the potential to “benefit urban neighborhoods by providing increased employment opportunities, retail services, and tax revenues.”); *see also* Cummings, *Grassroots*, *supra* note 3, at 410–11, 414 (noting that pre-civil-rights-era African American leaders stress the importance of black entrepreneurship and black business development); Janet Jackson, *Can Free Enterprise Cure Urban Ills?: Lost Opportunities for Business Development in Urban, Low-Income Communities Through the New Markets Tax Credit Program*, 37 U. MEM. L. REV. 659, 665–67 (2007); Susan Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, 4 CLINICAL L. REV. 195, 196, 202 (1997) [hereinafter Jones, *Transactional Lawyering*] (“Small business creation [and development] is an essential part of community economic development (CED), a strategy for developing low-income communities[,]” which is “also part of the multifaceted quest for economic justice for indigent people and others marginalized by the dominant society.”); Brad Sears, *Rounding Out the Table: Opening an Impoverished Poverty Discourse to Community Voices*, 30 HARV. C.R.-C.L. L. REV. 306, 309 (1995) (“People must be given the opportunity to develop their own communities, and to own their own businesses[]” and an effort to combat exploitation of urban community residents must “feature strong involvement by community residents, especially in the area of business development and ownership.”); Suggs, *Small Business Development*, *supra* note 3, at 488–89.

The term “community businesses” as used in this article, includes both microenterprises and small businesses. A microenterprise is commonly defined as a business “with five or less employees, which requires \$35,000 or less in start up capital, and which does not have access to the traditional commercial banking sector.” The Association for Enterprise Opportunity, *What is Microenterprise?*, <http://www.microenterpriseworks.org> (follow “About Microenterprise” hyperlink) (last visited July 26, 2007). A small business is defined as “an independent business having fewer than 500 employees.” U.S. Small Business Administration Frequently Asked Questions, <http://app1.sba.gov/faqs> (follow “Advocacy Small Business Statistics and Research” hyperlink; then follow “What is a small business” hyperlink) (last visited July 26, 2007). Community businesses are ones that are owned by residents and/or residents have a meaningful ownership stake, and that meet the needs and preferences of residents, although such businesses need not cater exclusively to residents of a particular community and may attract a significant customer base from outside the community.

8. *See* Suggs, *supra* note 3, at 488–89; Peggy Clark & Amy Kays, *Microenterprise and the Poor: Findings from the Self-Employment Learning Project Five Year Study of Microentrepreneurs*, Executive Summary 1999, at vii–ix (THE ASPEN INST. PUBL’N. NO. 99-011) [hereinafter Clark & Kays, *Microenterprise and the Poor*], available at http://fieldus.org/publications/Microenterprise_and_Poor.pdf. Clark and Kays found that a very large majority (72%) of poor microentrepreneurs experienced gains in household income over five years, an average increase of \$8,484, or about 61% of net worth. *Id.* About half of microentrepreneurs had gains high enough to move them out of poverty, and for most of these individuals the major source of income was the business. *Id.* Average household assets of the poor grew by \$15,909 over five years, primarily housing assets. *Id.*

and power at the individual and community levels.⁹ With power comes a voice and greater ability to influence the course of development, both within one's own community¹⁰ and the larger regional economy.¹¹ Community business development, as a vehicle to increase individual and community power, therefore, plays an important role in promoting economic justice.¹²

This Article examines the importance of community business development in achieving economic justice, focusing on the role of lawyers in representing those businesses. This Article makes the case that transactional pro bono programs that support community business development can be created in such a way to promote economic justice. To focus on economic justice, a transactional program must be community-centered rather than professional-centered.¹³ To be a community-centered program, this Article asserts that it is imperative a program is structured with the following three elements as its

9. Kofi Lomotey, Provost, Fisk University, Address, Race and Wealth Disparities in the United States (Aug. 25, 2006) (discussing nexus between wealth and power). *See also* Michael Diamond, *Community Economic Development: A Reflection on Community, Power and the Law*, 8 J. SMALL & EMERGING BUS. L. 151, 167 (2004) [hereinafter Diamond, *Reflection*]; Martha Minow, *Lawyering for Human Dignity*, 11 AM. U. J. GENDER SOC. POL'Y & L. 143, 163 (2002).

10. Scholars have devoted a great deal of attention to defining communities. While there is not one unified definition, for purposes of this article, I define community as residents of a particular geographic urban area as such boundaries are created by local governments. Based upon this definition, community most often includes more than one group as well as divergent viewpoints. For an in-depth discussion of community, *see* Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67, 112, 114 (2000) [hereinafter Diamond, *Community Lawyering*]; Matthew Diller, *Lawyering for Poor Communities in the Twenty-First Century*, 25 FORDHAM URB. L.J. 673, 678 (1998); Andrea M. Seielstad, *Community Building as a Means of Teaching Creative, Cooperative, and Complex Problem Solving in Clinical Legal Education*, 8 CLINICAL L. REV. 445, 449–52 (2002); Christine Zuni Cruz, *Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557, 583–90 (1999).

11. Diamond, *Community Lawyering*, *supra* note 10, at 108–09; Diller, *supra* note 10, at 678 (noting that lawyers should “help poor communities attain a measure of power and thereby establish a voice in the larger debate over the direction of our society”); Audrey McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 295, 306 (1999) [hereinafter McFarlane, *Race Space*]; Daniel Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217, 218–19 (2000).

12. Jones, *Transactional Lawyering*, *supra* note 7, at 199–200, 202. *See also* Jackson, *supra* note 7, at 702–03 (noting that history reveals that black enterprise is critically important to the economic and social well-being of African American communities, and the presence of thriving minority businesses in the community “‘grants the power and status necessary to reduce prejudice and break down barriers to black economic progress.’” (internal citation omitted)); Robert Suggs, *Rethinking Minority Business Development Strategies*, 25 HARV. C.R.-C.L. L. REV. 101, 102 (1990) [hereinafter Suggs, *Rethinking*].

13. I use the term “professional-centered” to mean transactional pro bono programs that are established primarily to provide pro bono opportunities for business attorneys from private firms relevant to their practice areas.

foundation: (i) a “holistic approach,” (ii) “empowerment through knowledge,” and (iii) “mechanisms of accountability.” The basis for this assertion is the Economic Justice Project (EJP), a model project the author started in Boston in 2001.¹⁴ EJP is a pro bono project that provides legal assistance and education to entrepreneurs in historically disempowered neighborhoods in the Greater Boston area.

Community business development and, more broadly, community and economic development (CED),¹⁵ on their own do not solve poverty in disempowered communities.¹⁶ CED strategies have been criticized on various grounds. Some scholars assert that furthering economic justice requires more than a market-based CED strategy.¹⁷ These scholars argue that a political

14. EJP is a project of the Lawyers’ Committee for Civil Rights Under Law of the Boston Bar Association. Inc. Although EJP still exists, I moved from Massachusetts in June 2003 and therefore the discussion of EJP for the purposes of this article is written in the past tense.

15. CED is generally defined as a need or desire of a community to develop economically by developing businesses, jobs, income, housing, and other asset-related necessities in a manner that enables community residents to improve the quality of their lives and exercise greater determination over their daily affairs. THE NAT’L ECON. DEV. AND LAW CTR., A LAWYER’S MANUAL ON COMMUNITY-BASED ECONOMIC DEVELOPMENT 1–3 (1974). CED can be broken down into overlapping sub-concepts: economic development and community development. Economic development strives to achieve wealth through the mobilization of human, financial, capital, physical, and natural resources to generate marketable goods and services, encourage creation of new businesses, or relocate existing businesses to a particular area. *See e.g.*, McFarlane, *Race Space*, *supra* note 11, at 304–06. Community development refers to social, human, and physical structure development activities at a neighborhood or community level to allow ordinary citizens to come together to address common problems, giving communities a say in what happens through citizen mobilization and leadership. *Id.*

16. Small business development has been criticized for failing to provide the access to resources and networks of support necessary to promote business success. *See, e.g.*, Cummings, *Grassroots*, *supra* note 3, at 449–50 (citing Louise Howells, *The Dimensions of Microenterprise: A Critical Look at Microenterprise as a Tool to Alleviate Poverty*, 9 J. AFF. HOUS. & CMTY. DEV. L. 161,164–71 (2000)). According to Howells, lack of education, job skills and social networks hinder business success among welfare recipients starting businesses. She also claims that current levels of financial and technical assistance are inadequate. In addition, scholars recognize that entrepreneurship is only suited for certain types of persons. *Id.* at 449–50. Entrepreneurs tend to be a form of the elite in their own communities. Studies have found that for the poorest in communities, namely welfare recipients, a more effective way to gain economic self-sufficiency is to assist such individuals in acquiring the skills needed to become employable and the resources needed to retain employment. *See* Lewis Solomon, *Microenterprise: Human Reconstruction in America’s Inner Cities*, 15 HARV. J.L. & PUB. POL’Y 191, 206 (1992). Finally, given the limited scale of many of these businesses, as a group they do not create enough jobs to revitalize a community. Susan R. Jones, *Representing the Poor and Homeless: Innovations in Advocacy*, 19 ST. LOUIS U. PUB. L. REV. 385, 392 (2000) [hereinafter Jones, *Homeless*].

17. A market-based CED strategy generally refers to the primary approach in addressing poverty that evolved in the 1990s with the demise of social welfare programs. CED strategy was premised on the belief that poverty in disempowered communities could be solved through the application of market principles. This private sector approach included strategies such as

strategy is needed in order to address policies that have led to economic and racial segregation and to challenge the distribution of power.¹⁸ This Article recognizes that CED strategies must be implemented in conjunction with a more politically engaged approach to address the injustices that contribute to the continued marginalization of low-income urban communities.

Other critics argue that CED strategies fail to include residents in a meaningful way and fail to provide them with direct benefits.¹⁹ Rather, the focus of CED is on the revitalization of downtown centers through large-scale development projects such as convention centers, stadiums and office towers.²⁰ Although touted as being locally controlled, these revitalization efforts are in reality controlled by the political and business leaders of a community rather than the residents.²¹ Consequently, despite being heralded as a solution to the concentration of poverty in urban areas, these redevelopment initiatives fail to generate real opportunities for residents and are not responsive to residents' needs.²² An additional criticism is that CED strategies take a very localized

affordable housing, access to financial institutions, job training, and business development. *See e.g.*, Cummings, *Grassroots*, *supra* note 3, at 399, 447–58; McFarlane, *Race Space*, *supra* note 11, at 350–54.

18. Cummings, *Grassroots*, *supra* note 3, at 405–09, 459–64 (defining a politically activist strategy as one that applies legal advocacy to support community organizing around economic justice issues, seeking to situate advocacy within the context of a broader progressive movement on behalf of marginalized communities, and instead of targeting economic resources in specific neighborhoods, forging linkages with community groups in different localities in order to create regional, national, and transnational structures to combat economic deterioration of marginalized populations); *see also* Scott Cummings *Between Markets and Politics: A Response to Porter's Competitive Advantage Thesis*, 82 OR. L. REV. 901, 901, 905 (2003) [hereinafter Cummings, *Porter Response*] (noting that “the deep divide between wealthy, job-rich suburbs and poor, job-deprived inner cities continues unabated” and therefore inner city communities are “inescapably constituted by politics and that any serious attempt at inner city development must, therefore, be ‘politically engaged’”). *See generally* Edelman, *Race Class*, *supra* note 5; McFarlane, *Race Space*, *supra* note 11; Audrey McFarlane, *When Inclusion Leads to Exclusion: The Uncharted Terrain of Community Participation in Economic Development*, 66 BROOK L. REV. 861, 922 (2000) [hereinafter McFarlane, *Community Participation*] (noting that the redistribution of power is described as the strategy by which residents help determine “how information is shared, goals and policies are set, tax resources are allocated, programs are operated and benefits like contracts and patronage are parceled out. In short, it is the means by which they can induce significant social reform which enables them to share in the benefits of the affluent society.”) (quoting Sherry Arnstein, *Eight Rungs on the Ladder of Citizen Participation*, in *CITIZEN PARTICIPATION: A CASEBOOK IN DEMOCRACY* 335, 337 (Edgar Cahn & Barry Passett eds., 1970)).

19. Cummings, *Grassroots*, *supra* note 3, at 448, 449; McFarlane, *Community Participation*, *supra* note 18; Shah, *supra* note 11, at 234.

20. McFarlane, *Race Space*, *supra* note 11, at 331, 332; Shah, *supra* note 11, at 247, 248.

21. Shah, *supra* note 11, at 247–48; *see also* Quinones, *supra* note 5, at 715–16.

22. Shah, *supra* note 11, at 248; *see also* McFarlane, *Race Space*, *supra* note 11, at 324, 325; Quinones, *supra* note 5, at 715–16; Sheila Foster, *From Harlem to Havana: Sustainable Urban Development*, 16 TUL. ENVTL. L.J. 783, 801, 803 (2003).

approach toward addressing poverty in inner cities.²³ Scholars argue that promoting development in a particular community perpetuates racial segregation as programs target needs within a particular community.²⁴ Such a focus on local development fails to address the broader structural aspects of poverty.²⁵

As this Article asserts, a community-centered transactional pro bono program that supports community business development is a necessary component in furthering economic justice in disempowered communities. Provided such a program has the three elements set forth in this Article, community business development, which is resident-driven and community focused, leads to political engagement and power at both the individual and community levels. The acquisition of power enables individuals and communities to take more control over their lives and gives them the ability to challenge institutional structures that perpetuate discrimination and related causes of poverty.

Part I of this Article discusses the historical and broader economic factors that have contributed to a race-related concentration of poverty in urban areas and provides the reasons why community business development is so critical in striving for economic justice. Part II discusses the important role lawyers play in promoting community business development. Part III provides an overview of EJP as a model of community-centered lawyering. Part IV discusses the three critical elements a community-centered transactional pro bono program must have to promote economic justice, using the Economic Justice Project to illustrate the application of these three elements. Finally, Part V discusses the benefits and drawbacks of a pro bono model and proposes measures to minimize the potential problems such a model poses.

I. GENERAL OVERVIEW OF URBAN POVERTY AND ENTREPRENEURSHIP

A. *Historical and Macro-Economic Context*

Federal policies such as the construction of freeways,²⁶ discriminatory lending practices,²⁷ mortgage interest deduction for homeownership,²⁸ urban

23. Cummings, *Grassroots*, *supra* note 3, at 455; McFarlane, *Community Participation*, *supra* note 18, at 924; McFarlane, *Race Space*, *supra* note 11, at 300.

24. Cummings, *Grassroots*, *supra* note 3, at 455.

25. *Id.*; *see also id.* at 448–49, 451–52, 455–56; McFarlane, *Community Participation*, *supra* note 18, at 918–19; McFarlane, *Race Space*, *supra* note 11, at 301, 304 (criticizing development's focus on low income communities, and failure to address the broader structural factors that impact such communities).

26. *See, e.g.*, Shah, *supra* note 11, at 224.

27. *See, e.g.*, Jones, *MLK Speech*, *supra* note 1, at 50.

28. *See, e.g.*, Cummings, *Porter Response*, *supra* note 18, at 911.

renewal,²⁹ and zoning restrictions in affluent areas,³⁰ whether intentional or not, have contributed to racial and economic polarization. The federal government's approach to redevelopment—tax abatements and tax increment financing—also has contributed to segregation.³¹ These financing strategies place the focus on capital investment driven by “capitalistic elites,” such as large business owners and investors, rather than low-income residents.³² The race-related concentration of poverty has been exacerbated by policies that emphasize self-sufficiency, including changes in the welfare system and time limits on financial assistance,³³ the limited opportunities to pursue a more formal education,³⁴ and the lack of job skill training for individuals in lower skilled jobs.³⁵

The dramatic increase in poverty in urban areas in recent decades, combined with the related growth in income inequality, is a result of not only federal policies, but also broader structural changes in our economy over the past few decades. Many cities with significant levels of poverty were vibrant industrial or mercantile centers in the past.³⁶ As America's industry declined and was replaced with a service-dominated economy, those manufacturing centers lost their economic base and became virtually abandoned.³⁷ As a result, high paying manufacturing jobs were replaced with low wage jobs in the service industry.³⁸ Moreover, the preponderance of individuals in urban centers with lower education furthered their decline in recent years.³⁹ Also

29. See, e.g., *id.* at 912.

30. See, e.g., McFarlane, *Race Space*, *supra* note 11, at 315, 335–36; Quinones, *supra* note 5, at 716, 729 n.146; Shah, *supra* note 11, at 224–25.

31. See generally Quinones, *supra* note 5, at 714–20.

32. Quinones, *supra* note 5, at 706 (describing how project managers become much more insistent that developments pay for themselves, resulting in redevelopment that is driven more and more by development and capitalistic elites, further removing the possibility of control by or achieving benefits for low-income residents); Shah, *supra* note 11, at 233, 234.

33. See Edelman, *Welfare*, *supra* note 1, at 394–97 (examining background and implications of welfare reform); Jones, *Interdisciplinary*, *supra* note 2, at 258; Jones, *MLK Speech*, *supra* note 1, at 52, 53; Jones, *Transactional Lawyering*, *supra* note 7, at 195 (“The national political trend is away from government entitlements and toward personal responsibility and economic self-sufficiency.”); McFarlane, *Race Space*, *supra* note 11, at 311–12 (discussing government abandonment of wealth redistribution policies and commenting that “both conservatives and progressives have converged in their support of self-help approaches to problems faced by poor communities.” (internal citation omitted)); see also Cummings, *Grassroots*, *supra* note 3, at 422–29 (discussing how the neoconservative and neo-liberal politics of the 1980s and 1990s led to a market-based antipoverty agenda).

34. Edelman, *Race Class*, *supra* note 5, at 10.

35. *Id.* at 11.

36. McFarlane, *Race Space*, *supra* note 11, at 329.

37. See *id.* at 329–31.

38. *Id.*

39. See Edelman, *Race Class*, *supra* note 5, at 6–7; Edelman, *Welfare*, *supra* note 1, at 394.

contributing to the decline of these urban centers, although unintentional, were the 1964 Civil Rights Act and related legal decisions.⁴⁰ The implementation of desegregation policies subsequently enabled people to move from what were thriving black business communities.⁴¹ As a result, these communities lost much of their middle-class, educated base.⁴²

The effects of these federal policies and structural shifts in the economy have led to high unemployment in inner-cities, concentrated among African American males,⁴³ and high levels of poverty in terms of both income and asset accumulation.⁴⁴ U.S. census data show that the poverty rate for African

40. WILLIAM JULIUS WILSON, *WHEN WORK DISAPPEARS* 197 (1996) (arguing that affirmative action policies mandated by the Civil Rights Act of 1964 did not really open up broad avenues of upward mobility; while not intended to do so, the benefits generally went to the more advantaged minority members without adequately remedying the problems of the disadvantaged); Orly Lobel, *The Paradox of Extralegal Activism: Critical Legal Consciousness and Transformative Politics*, 120 HARV. L. REV. 937, 946–47 (2007) (noting that “race theorists gradually began to challenge the apparent success of judicial victories . . . particularly the adoption of the Civil Rights Act[,]” and expressed disappointment at the judicial and legislative victories that followed, “which neglected the economic aspects of racial inequality and seemed to accept merely symbolic changes”).

41. Suggs, *Rethinking*, *supra* note 12, at 109 (discussing decline of service oriented businesses in inner cities after desegregation, “[w]ith the geographic dispersal of the most affluent blacks and the opening up to them of an expanded array of consumer choices, businesses that had relied on segregated markets were poorly equipped to compete in the general marketplace”).

42. See Diller, *supra* note 10, at 677 (noting that social and cultural institutions such as service providers and local businesses are “critical to the quality of life in poor neighborhoods[,]” and “[w]hen these institutions founder, the social structure of the neighborhood deteriorates, leading to an exodus of working class residents that further isolates the remaining residents from the economic and social mainstream”); McFarlane, *Community Participation*, *supra* note 18, at 924–25 (noting that as jobs, retail services and middle class people move from the central cities, the inner-city neighborhoods left behind are typically poor black neighborhoods); Jonelle Jamie-Horry, *Civil Rights and the African American Artist: Have We Overcome?*, IJELE: ART E JOURNAL OF THE AFRICAN WORLD (2000), <http://www.africaresource.com/ijele/vol1.1/horry.html>. Jamie-Horry notes that “the successes of the Civil Rights Movement have had negative effects on the African-American community. . . . [Partly because] [s]uccessful blacks moved from their neighborhoods to the suburbs in search of the American Dream.” *Id.* Meanwhile in the ghettos, a “[l]oss of community spirit, lack of education, and inadequate financial resources resulted in poor blacks being trapped in urban slums.” *Id.* At the same time, support systems collapsed and “[c]rime, alcohol, and individualism pervaded the . . . black community.” *Id.*

43. U.S. DEP’T. OF LABOR, HOUSEHOLD DATA ANNUAL AVERAGES, 214 tbl.5, *available at* <http://www.bls.gov/cps/cpsaat5.pdf> (finding that in 2005, the unemployment rate for all males was 5.1%, the unemployment rate for white males was 4.4%, and the unemployment rate for black males was 10.5%).

44. BRUCE H. WEBSTER, JR. & ALEMAYEHU BISHAW, U.S. CENSUS BUREAU, INCOME, EARNINGS, AND POVERTY DATA FROM THE 2005 AMERICAN COMMUNITY SURVEY (2006), *available at* <http://www.census.gov/prod/2006pubs/acs-02.pdf> (reporting the average income in 2005 for non-Hispanic white men was \$46,807, as compared to \$34,433 for black men). For a discussion of the importance of asset and wealth accumulation, see THOMAS M. SHAPIRO, *THE*

Americans is nearly double the rate of all races.⁴⁵ These factors, combined with a lack of formal education and skills, severely limit opportunities for people to obtain better paying jobs in order to climb out of poverty and build wealth. Given the confluence of these negative factors, small business development is critical to address this concentration of poverty and to achieve economic justice.⁴⁶

B. *Importance of Entrepreneurship*

Community business development plays a pivotal role in today's economy, particularly for low-income individuals and communities.⁴⁷ Entrepreneurship offers a way to escape poverty and build wealth that is not as dependent on

HIDDEN COST OF BEING AFRICAN-AMERICAN: HOW WEALTH PERPETUATES INEQUALITY 4–15, 32–41, 183–204 (Oxford University Press, Inc., 2004); *Diamond Reflection* at *supra* note 9, 165–67; *see also* Jones, *MLK Speech*, *supra* note 1.

45. U.S. CENSUS BUREAU, POVERTY 2005, available at <http://www.census.gov/hhes/www/poverty/poverty05/table5.html>. From 2003–2005, the poverty rate for African-Americans was 24.7%, twice that of the overall poverty rate of 12.4%. *Id.*

46. There is a long tradition of entrepreneurship and business ownership in African-American communities. *See* Michael Porter, *The Competitive Advantage of the Inner City*, HARV. BUS. REV., May–June 1995, at 55, 59 (noting the existence of a culture of entrepreneurship focused on the provision of social services, and that the “largest and most enduringly successful minority-owned businesses have drawn their advantages from serving inner city residents’ cultural and ethnic needs,” such as food products, beauty care, and media); *see also* Jones, *Interdisciplinary*, *supra* note 2, at 252 (noting rapid increase of minority-owned firms and their contribution to economy). Black-owned firms had the highest growth rate of all small businesses for several measures between 1997 and 2002: 45.4% in the number of firms; 24.5% in the receipts; and 16.7% in employer firm receipts. *Id.*; Ying Lowrey, *Minority Business Development Index: A Data Report on American Minority-Owned Business*, (May 7, 2007), available at <http://ssrn.com/abstract=984907>. The share of minority-owned business number has been growing as well, from 7% in 1982 to 18% in 2002. *Id.* at 34. *Cf.* Suggs, *Small Business Development*, *supra* note 3, at 488 (asserting that the lack of business activity among African Americans over the past forty years is a significant factor in the inequality of black income compared to white).

47. *See* Alan Houseman, *Civil Legal Assistance for the Twenty-First Century: Achieving Equal Justice for All*, 17 YALE L. & POL’Y REV. 369, 408 (1998) (noting that micro-enterprise development has expanded enterprise and economic development for women, people of color, long-term welfare recipients and single heads of households, it has helped participants increase income, savings, and assets, reduce welfare payments, build entrepreneurial skills, and move into other employment); Jones, *Interdisciplinary*, *supra* note 2, at 252; Jones, *Transactional Lawyering*, *supra* note 7, at 201–02; Clark & Kays, *Microenterprise and the Poor*, *supra* note 8; FIELD, *Microenterprise: Making a Difference*, FIELD FUNDER GUIDE, Iss. 2, (Sept. 2005) (noting that among welfare participants in a study of microenterprise programs, poverty was reduced by 36% after two years and furthermore that participants appeared to be more adept at sustaining employment).

attaining a formal education as compared to many wage-based jobs.⁴⁸ In general, an entrepreneur has greater earning and asset accumulation potential than does a person with a low paying job in the service industry.⁴⁹ Rather than simply earning an income, residents who own businesses begin to build wealth through asset accumulation, and assets rather than income provide a safety net for people.⁵⁰ Business creation as a poverty reduction strategy among the homeless, for instance, has become a widely accepted strategy to reduce poverty in the past two decades.⁵¹ Community business development has intangible benefits as well. Owning a business creates a sense of self-worth and builds human capital by fostering leadership ability and business acumen.⁵² In addition, business owners serve as role models for others in the community.⁵³

48. See Susan Jones, *Homeless* *supra* note 16, at 393–94 (“Self-employment does not depend on traditional educational credentials . . .”); Suggs, *Small Business Development*, *supra* note 3, at 488–89.

49. See Jones, *Homeless*, *supra* note 16, at 393–94 (arguing that microenterprise often serves as a second source of income for low wage workers and that entrepreneurship can build personal assets such as confidence, self-esteem, and leadership ability); Suggs, *Small Business Development*, *supra* note 3, at 487 (“Yet the inconvenient fact remains that in a market economy, the principal means of creating and accumulating private wealth is business ownership.”). *But see* Cummings, *Porter Response*, *supra* note 18, at 916–17 (arguing that business ownership often generates low wages and limited potential for upward mobility). On the other hand, owning a business, even if it provides low wages, generates assets. Moreover, business ownership can also help individuals develop skills needed to move to a job that provides better opportunity.

50. See Jones, *MLK Speech*, *supra* note 1, at 57 (“Assets matter because they provide more than just an economic cushion. They provide a psychological orientation that income alone cannot provide.” (internal citation omitted)); Lomotey, *supra* note 9 (stating that income is fleeting, but wealth is enduring. If you have a substantial amount of money in the bank, own a big home, or other significant and valuable personal property, you don’t have to live paycheck to paycheck). A majority of Americans have not accumulated assets, which impedes them from moving ahead. SHAPIRO, *supra* note 44, at 186. Private family wealth plays a crucial role in communities as a way to perpetuate inequality. *Id.* Transformative assets, such as inherited wealth prevalent in the middle class, lifts a family in class standing, social status, homeownership, choice of community and children’s schooling, and future asset production. *Id.* Financial resources beyond a weekly paycheck are essential building blocks for a family to better itself, create and take advantage of opportunities, feel secure economically and take risks. *Id.*

51. Jones, *Homeless*, *supra* note 16; SUSAN JONES, *LEGAL GUIDE TO MICROENTERPRISE*, ABA 1–5 (2004).

52. See Jones, *Homeless*, *supra* note 16; Louise Trubek, *The Worst of Times . . . and the Best of Times: Lawyering for Poor Clients*, 22 *FORDHAM URB. L.J.* 1123, 1129 (1995) (“[E]nabling welfare recipients to gain control and involvement in business increases their self-esteem and interpersonal and planning skills, as well as their employability.”).

53. See *e.g.*, Suggs, *Small Business Development*, *supra* note 3, at 493.

The creation of community businesses contributes to the development of the economic, social and civic infrastructure of a community.⁵⁴ Community businesses provide residents with competitively priced goods and services that meet the community's specific needs and consumer preferences and, therefore, more money remains within the community rather than going elsewhere.⁵⁵ Inner-city markets are particularly underdeveloped given a higher population density⁵⁶ and greater spending power compared to surrounding areas.⁵⁷ Moreover, to the extent commercial enterprises exist, they often fail to cater to the needs of the residents.⁵⁸ As businesses develop that are tailored to the needs of a particular community, new businesses are created to support existing businesses, thereby generating a positive growth cycle.⁵⁹ As more residents work and shop within their own community, the community as a whole begins to accumulate assets.

At both the individual and community levels, asset accumulation leads to political engagement and power.⁶⁰ By building wealth through the development of community businesses, individuals can live above a basic subsistence level, which, in turn, encourages people to participate in their own development and to become more active in community affairs.⁶¹ Financial

54. See e.g., Diller, *supra* note 10, at 682 (“[T]he working class residents and small business owners of a poor neighborhood are critically important to building institutions in the community.”); see also JORDAN & HARRIS, *supra* note 5, at 1123–24; Cummings, *Grassroots*, *supra* note 3, at 444.

55. See Porter, *supra* note 46, at 59; Quinones, *supra* note 5, at 692; Sears, *supra* note 7, at 309; Suggs, *Small Business Development*, *supra* note 3, at 488, 489 (“Entrepreneurship may benefit urban neighborhoods by providing increased employment opportunities, retail services and tax revenues.”).

56. Porter, *supra* note 46, at 58.

57. *Id.* at 58–59.

58. *Id.* at 59.

59. *Id.* at 60.

60. Lomotey, *supra* note 9; Minow, *supra* note 9, at 163; see also Diamond, *Reflection* *supra* note 9, at 167 (“New businesses owned by neighborhood individuals or institutions also become repositories of power. They can increase employment for others; increase interactions among neighborhood residents and between residents and outside institutions and government; attract talented and motivated people; and accumulate wealth. Again, these are among the assets that are necessary to develop and utilize community power.”).

61. See Chartier, *supra* note 1, at 283–85 (noting that basic income provides independence and security that fosters self-respect and makes political participation likely; each citizen with income would be a stakeholder in the society, “guaranteeing each . . . a piece of the nation’s economic pie.”); Diamond, *Reflection*, *supra* note 9, at 167; Minnow, *supra* note 9, at 163 (“Entrepreneurial advocacy for poor people can aim to enhance individual social mobility; it can promote neighborhood control and self-sufficiency; or it can emphasize citizen self-governance, using economic projects to strengthen community power and participation in politics.” (internal citation omitted)).

stability gives individuals a stake in the well-being of the community.⁶² Having a successful small business gives owners an incentive to become actively engaged in the community's issues to protect his or her stake.⁶³ When people feel they have a stake, they are more likely to participate in a community's course of development. Moreover, financial stability contributes to a sense of self-respect, and with self-respect comes a sense that one's views and positions matter.⁶⁴ At a community level, the accumulation of assets fosters community pride, gives communities an active voice and greater influence in broader regional issues, and promotes political engagement to bring about systemic changes within the existing power structure.⁶⁵

Starting community businesses is also a means of increasing employment among people of color, particularly African-Americans and Latinos.⁶⁶ Indeed, small businesses create more jobs than all other sectors combined.⁶⁷ Local jobs are generated by creating employment opportunities both for the founders as well as others who work for the business.⁶⁸ Minority owned businesses are more likely to hire minorities from inner-city neighborhoods than non-minority owned businesses.⁶⁹ Moreover, hiring residents can build loyalty among local customers and resident employees can help businesses customize their offerings.⁷⁰

II. ROLE OF LAWYERS IN COMMUNITY BUSINESS DEVELOPMENT

A. *The Importance of Business Legal Assistance*

In order for low-income entrepreneurs to have the same chances of success as all other businesses, they need access to the same range of professional services other businesses routinely obtain, including legal advice.⁷¹ Without

62. Chartier, *supra* note 1, at 283–85.

63. *Id.*; see also Cummings, *Grassroots*, *supra* note 3, at 443–44.

64. Chartier, *supra* note 1, at 285; Jones, *Homeless*, *supra* note 16, at 394.

65. See McFarlane, *Community Participation*, *supra* note 18, at 912; Diamond, *Reflection*, *supra* note 9, at 167; Minow, *supra* note 9, at 163.

66. Suggs, *Small Business Development*, *supra* note 3, at 488–89, 493; Porter, *supra* note 46, at 61–62; Houseman, *supra* note 47, at 408.

67. Jones, *Interdisciplinary*, *supra* note 2, at 252 (“Small businesses . . . are the backbone of the U.S. economy.”); NAT’L FED’N. INDEP. BUS., *Small Business Policy Guide* 13 (2003), available at www.nfib.com/object/2753115.html.

68. See Jackson, *supra* note 7, at 703.

69. Suggs, *Small Business Development*, *supra* note 3, at 503 (“Black-owned businesses employ predominately minorities, regardless of location, while nonminority firms in minority neighborhoods often employ no minorities at all.”).

70. Porter, *supra* note 46, at 65.

71. See John M. Cunningham, *Helping Businesses Get Started: In Praise of an Unsung Legal Specialty*, BUS. L. TODAY, Nov.–Dec. 1995, at 9–10, 12 (discussing legal needs of small business start-ups); Jones, *Homeless*, *supra* note 16, at 410–13; Jones, *Interdisciplinary*, *supra*

equal access to professional services, business networks,⁷² funding opportunities, and training, the likelihood of starting a successful business diminishes tremendously.⁷³ Every basic issue facing a start-up enterprise has a legal dimension, such as permitting and licensing; securing capital; choosing the appropriate legal entity; tax; zoning considerations; intellectual property; contracts; and various risks faced in the day-to-day operations of the business.⁷⁴ As the examples below demonstrate, the need for legal assistance is just as great for low-income entrepreneurs as it is for any other business.

- A small beauty salon in a low-income area in Boston failed to seek legal counsel to determine whether the business could legitimately treat its hairdressers as independent contractors rather than employees. The business was audited by the Internal Revenue Service, which determined that the hairdressers were employees. As a result, the business was required to pay \$10,000 in fines, forcing it to close.
- A language interpreter business needed to hire several interpreters to work on a part-time, project specific basis. Lawyers drafted a basic form independent contractor agreement to remind the parties of their respective obligations.
- A Thai restaurant, Vietnamese restaurant and Mexican restaurant entered into commercial lease agreements without understanding the economic implications of certain terms. The Thai and Vietnamese restaurants were forced to shut down for failure to meet their monthly financial obligations under the lease agreements. The Mexican restaurant, with the help of attorneys, was able to renegotiate a lease agreement with more reasonable terms.

With an attorney, problems can be identified before becoming major and costly, and the business can avoid devastating problems by handling matters correctly the first time.⁷⁵ In the beauty salon example above, had the owner consulted an attorney, she would have avoided having to shut down her business by either treating the hair stylists as employees or changing the terms of their engagement so they could legitimately be treated as independent

note 2, at 255–57; Susan Jones, *Pro Bono Pays Off: Transactional Lawyers Supporting Economic Development in the Nation's Capitol*, 9 J. AFFORDABLE HOUSING 18, 23 (1999) [hereinafter Jones, *Pro Bono Pays Off*]; Southworth, *supra* note 3, at 1143–44 (discussing the legal needs of not-for-profit organizations, which basically have the same constraints as for profit enterprises).

72. See Howells, *supra* note 16, at 167 (citing a study that found microentrepreneurs who achieved self-sufficiency through self-employment possessed strong support networks); Jones, *Interdisciplinary*, *supra* note 2, at 288 (discussing entrepreneurs' need for business networks).

73. Southworth, *supra* note 3, at 1163.

74. *Id.* at 1143–44.

75. *Id.* at 1144.

contractors. In the restaurant examples, by drafting, reviewing and/or helping an entrepreneur negotiate a lease, an attorney could have prevented the businesses, who each had weaker bargaining positions, from signing a lease with onerous terms.

Legal assistance also can strengthen the enterprise by helping it create the infrastructure needed to grow.⁷⁶ In the interpreter business example above, by creating a form agreement the client could use with all of its hires, with no or few modifications, the attorneys were able to help these clients prevent disputes and streamline an aspect of the client's business. Moreover, through legal assistance and education, entrepreneurs are more likely to recognize situations where they should seek legal advice and avoid someone taking advantage of them. In the commercial lease example, by working with an attorney, or attending a legal workshop on commercial leases, or both, the entrepreneurs would have been better able to understand the potential implications of certain terms and decide whether to walk away or enter into informed negotiations with the potential landlord. Finally, lawyers can connect clients to essential business resources such as business planning, marketing, accounting, sales and distribution, as well as sources for capital.⁷⁷ Legal services in a vacuum often accomplish very little unless the business support also exists.⁷⁸

Legal assistance used as a preventative measure, thereby minimizing the risk that the business will suffer irreparable harm, benefits more than just the entrepreneur. The entrepreneur's family and larger community network also reap the benefits of a successful business.⁷⁹ The family no longer lives on the margin, and the community benefits through the creation of jobs for residents, the availability of goods and services that meet the needs of local residents, and the related growth of political power.⁸⁰ Alternatively, when a business fails, particularly small community businesses typically started through family savings and/or high-interest rate loans, the entrepreneur often needs more costly legal services, which adversely impacts both the entrepreneur and his or her family. This, in turn, can have a reverberating effect throughout the community.

76. *Id.* at 1140.

77. Jones, *Pro Bono Pays Off*, *supra* note 71, at 23.

78. See Cunningham, *supra* note 71, at 12 (outlining multi-disciplinary needs of small businesses); Southworth, *supra* note 3, at 1138 (discussing same).

79. See *supra* notes 65–66, 70 and accompanying text.

80. Porter, *supra* note 46, at 59; Diamond, *Reflection*, *supra* note 9, at 167; Suggs, *supra* note 3, at 488–89.

B. *The Need for Free Business Legal Assistance*

Community businesses started by low-income entrepreneurs from historically disempowered communities often face challenges that diminish the likelihood of creating a sustainable business.⁸¹ Significant challenges include access to capital, professional services, and business networks, as well as a lack of relevant experience.⁸² Moreover, ongoing discriminatory practices, whether intentional or not, mean minority entrepreneurs do not start with a level playing field.⁸³ Due to low-income entrepreneurs' limited access to traditional sources of capital and the small revenue base of many of these businesses, particularly in the start-up phase, in many instances they are unable to afford professional services to overcome these obstacles.⁸⁴ In addition, extensive local regulations in most inner city areas significantly increase start-up and operating costs for businesses⁸⁵ and therefore, make paying for legal assistance even more difficult for low-income entrepreneurs. Consequently, in many instances diverting funds to pay for legal fees can be prohibitively expensive. As a result, many entrepreneurs establish businesses without legal assistance, subjecting the business to serious legal and financial risks.⁸⁶ This problem is compounded by a lack of awareness and access to information about legal matters that impact a business.⁸⁷ Because many entrepreneurs fail to recognize legal issues that require attention, as demonstrated in the examples discussed in Section A above, they only consult an attorney if a problem arises, which often is after the business has suffered irreparable economic harm.⁸⁸ Therefore, providing low-income entrepreneurs with access to free or reduced fee legal assistance and education, particularly during the start up phase, is crucial in giving these entrepreneurs the same chance of success as any business.

81. See YING LOWERY, U.S. SMALL BUS. ADMIN., DYNAMICS OF MINORITY-OWNED EMPLOYER ESTABLISHMENTS, 1997–2001 2, 6, 9 (2005), <http://www.sba.gov/advo/research/rs251tot.pdf> (between 1997 and 2001, the survival rate of black-owned businesses was only 61% compared to a survival rate of 72.6% for non-minority owned firms); David L. Torres, *Success and the Mexican American Businessperson*, 6 RES. SOC. ORGS. 313, 314 (1988) (“The Department of Commerce’s Minority Business Development Agency estimates that the failure rates for minority firms are two to four times higher than those for similar nonminority firms.”); see also Leonard M. Baynes, 57 RUTGERS L. REV. 235, 275–78 (2004). Baynes notes that capital market discrimination is a major entry barrier to the development and success of minority businesses as 92% of black entrepreneurs experienced difficulty in raising capital, and nearly 70% of minority businesses use personal funds as compared with only 50% of white businesses. *Id.* Further, banks denied loans to credit worthy black-owned firms nearly twice as often as white-owned firms, and minority businesses generally pay higher interest rates and less favorable loan terms. *Id.*; see also Rafael Efrat, *Minority Entrepreneurs in Bankruptcy*, at 6 (2005), available at <http://ssrn.com/abstract=972656>. Efrat finds that minority-owned businesses tend to have a higher failure rate relative to non minority owned businesses. *Id.* The author attributes this to lower education; lower managerial experience; limited access to financial capital due to lower assets level, discrimination, fewer ties to financial institutions, lower loan application

Access to free or reduced fee legal assistance for residents of historically disempowered areas to start community businesses is very limited. In general, according to studies conducted by the American Bar Association, the current level of pro bono services only meets 20% of the legal needs of the poor.⁸⁹ In addition, the legal services provided to low-income communities traditionally concentrate on litigation matters⁹⁰ and focus on serving “the poorest of the

submissions, higher financing rejection rate; limited market; smaller business size and chosen business entity; under representation in high value and growth industries. *Id.*

82. LOWERY, *supra* note 81; *see also* Howells, *supra* note 16, at 169–70 (finding that microenterprise development is hampered by inadequate financial and technical assistance); Jones, *Interdisciplinary*, *supra* note 2, at 255; Jones, *Pro Bono Pays Off*, *supra* note 71 at 23 (acknowledging that many low income entrepreneurs start businesses without adequate professional assistance); Suggs, *Small Business Development*, *supra* note 3, at 497–98. Suggs notes that:

[Assistance] must include access to the networks of lenders, suppliers, and other players in the business world who in the past have actively excluded blacks and now are ambivalent at best about these new entrants into the mainstream business community. Black entrepreneurs must gain access to and become an integral part of the networks of successful entrepreneurs so that they benefit from the full range of skills, experiences, and relationships that sustain the mainstream.

Id. Furthermore, there is a lack of human and social capital among inner city entrepreneurs. *Id.* at 489.

83. Suggs, *Small Business Development*, *supra* note 3, at 497–98. *See e.g.*, Suggs, *Rethinking*, *supra* note 12, at 110 (discussing the impact of discrimination on minority-owned business firms to succeed).

84. *See* JORDAN & HARRIS, *supra* note 5, at 1108–11 (noting that discrimination in lending decisions is still a serious problem; Black and Latino business owners, all other factors being equal, are denied loans more frequently and receive smaller amounts); Jones, *Interdisciplinary*, *supra* note 2, at 255–56; Porter, *supra* note 46 at 64; Paulette Thomas, *Doing Business in the Inner City: Credit Where Due? Small Businesses, Key to Urban Recovery, Are Starved for Capital*, WALL STREET JOURNAL (New York, NY) June 11, 1992, at A1 (discussing lack of capital or only access is to high priced options such as loan sharks and credit cards). Moreover, small business loans are not granted on objective criteria alone, an evaluation of the individual’s character and project potential are significant considerations.

85. Porter, *supra* note 46 at 63.

86. Southworth, *supra* note 3, at 1144.

87. Houseman, *supra* note 47 at 392–93, 400 (discussing importance of education to help individuals prevent problems from arising, and additionally asserting that “[m]any low income persons do not recognize that they are in a situation that could be improved with legal assistance.”).

88. Southworth, *supra* note 3, at 1144.

89. *See, e.g.*, Houseman, *supra* note 47, at 402 (“Virtually every legal-needs study that has been done over the last ten years tells us that the current system is meeting at most 20% of the legal needs of the population legal services is supposed to be serving.”).

90. Jones, *Interdisciplinary*, *supra* note 2, at 256; Houseman, *supra* note 47, at 408 (calling for legal service programs to expand services provided to include transactional work).

poor.”⁹¹ Furthermore, the substantive focus of transactional community-centered lawyering has been on affordable housing development, job training programs, and childcare.⁹² Largely, small business development in low-income areas has been overlooked.⁹³ When combined, these factors leave low-income entrepreneurs with few, if any, viable options to obtain critical business legal representation.⁹⁴

Given the important role community business development plays in promoting economic justice in disempowered communities, and the lack of options these businesses have for legal assistance, a community-centered program⁹⁵ such as the model proposed in this Article helps to address this

91. Diller, *supra* note 10, at 682–83 (recognizing that representation of poor communities can be broader than simply the representation of poor individuals).

92. Between 2002 and 2007 there was an 80% growth in the number of transactional pro bono programs offering business lawyers volunteer opportunities, growing from twenty-one programs to thirty-eight. Telephone Interview by Melody Barron with Allyn O’Connor, Assistant Staff Counsel, Business Law Pro Bono Project, American Bar Association Center for Pro Bono (Feb. 28, 2007). However, less than one-third of these programs work with entrepreneurs. *Id.* Most focus their efforts on servicing the legal needs of nonprofit organizations. *Id.* Cf. James L. Baillie, *Fulfilling the Promise of Business Law Pro Bono*, 28 WM. MITCHELL L. REV. 1543, 1544–56 (2002) (giving specific examples of business law pro bono programs that match volunteer lawyers with nonprofits); Jones, *Interdisciplinary*, *supra* note 2, at 292 (summarizing bar-based business law pro bono programs from Baillie, *supra*, at 1544–56); Southworth, *supra* note 3, at 1164 (discussing national and local programs that link pro bono counsel with non-profit community economic development organizations).

93. Diller, *supra* note 10, at 682. According to Allyn O’Connor, there also has been a tremendous growth in the number of law school clinics that work with small businesses. Telephone Interview by Melody Barron with Allyn O’Connor, *supra* note 92. However, many of these clinical programs do not target their services to low-income individuals and/or disempowered communities and community impact is not a consideration in the client selection process. See also Scott Cummings, *The Politics of Pro Bono*, 52 UCLA LAW REV. 1, n.741 (2004) [hereinafter Cummings, *Pro Bono*] (noting the reluctance of some law firms to represent small business owners); Jones, *Interdisciplinary*, *supra* note 2, at 256 (noting pro bono small business assistance has been considered an “oxymoron” to many).

94. *Id.* But see Jones, *Interdisciplinary*, *supra* note 2, at 292 (noting that this is changing as more attorneys are volunteering their time for transactional pro bono work for small businesses); Southworth, *supra* note 3, at 1147 (asserting that lawyers role in the civil rights movement is shifting from rights enforcement “toward counseling enterprises and structuring arrangements for future projects”).

95. My use of “community-centered” is similar to approaches described in the growing body of literature regarding community lawyering. See generally Melanie Acevedo, *Client Choices, Community Values: Why Faith-Based Legal Services Providers Are Good for Poverty Law*, 70 FORDHAM L. REV. 1491 (2002); Felice Batlan, *Law and the Fabric of Everyday: The Settlement Houses, Sociological Jurisprudence, and the Gendering of Urban Legal Culture*, 15 S. CAL. INTERDIS. L. J. 235 (2006); Juliet Brodie, *Poverty, Justice and Community Lawyering*, 20 WASH. U. J. L. & POL’Y 201 (2006); Diller, *supra* note 10; Diamond, *Community Lawyering*, *supra* note 10; David Dominguez, *Community Lawyering*, 17 UTAH BAR J. 31 (2004); David Dominguez, *Getting Beyond Yes to Collaborative Justice: The Role of Negotiation in Community Lawyering*,

tremendous unmet need. EJP was formed on the belief that a community-centered project must be dedicated to serving needs of communities rather than focused on providing volunteer opportunities for professionals. Such a model collaborates with communities to identify and meet the needs of entrepreneurs. As such, it is important to learn about the broader cultural, economic, and political context in which individual clients are situated. Collaborating with communities ensures that residents have a voice in the structure and operation of a program created to serve their needs. Such a model also takes an expansive approach toward serving the needs of entrepreneurs by addressing both legal and non-legal needs.

III. OVERVIEW OF THE ECONOMIC JUSTICE PROJECT

The Economic Justice Project (EJP) provided business legal assistance and education to entrepreneurs starting or operating community businesses located in historically disempowered areas in Eastern Massachusetts who could not afford legal counsel.⁹⁶ EJP's core programmatic elements included consultations, legal representation, business legal clinics, community educational workshops, and business legal training for business counselors. EJP reached clients principally through relationships with approximately forty CDC's, micro-lenders, local business associations, state and local government programs and other community organizations that provide business and financial assistance to low-income entrepreneurs. EJP was able to provide legal services to such a large number of entrepreneurs and maximize its impact in communities in large part through the relationships it had established with a

12 GEO. J. POVERTY LAW & POL'Y 55 (2005); Antoinette Lopez, *The Effect of Specialization on Social Justice and Skills Training*, 7 CLINICAL LAW REV. 307 (2001); Shauna Marshall, *Mission Impossible?: Ethical Community Lawyering*, 7 CLINICAL LAW REV. 147 (2000); Robert Rubinson, *A Theory of Access to Justice*, 29 J. LEGAL PROF. 89 (2005); Seielstad, *supra* note 10; Louise Trubek, *Reinvigorating Poverty Law Practice: Sites, Skills and Collaborations*, 25 FORDHAM URB. L.J. 801 (1998); Rose Villazor, *Community Lawyering: An Approach to Addressing Inequalities in Access to Health Care for Poor, of Color and Immigrant Communities*, 8 N.Y.U. J. LEGIS. & PUB. POL'Y 35 (2005); Michael Wright, *Reversing the Prison Landscape: The Role of Drug Courts in Reducing Minority Incarceration*, 8 RUTGERS RACE & L. REV. 79 (2006); Zuni Cruz, *supra* note 10.

96. I targeted geographic areas where: (i) at least a majority of the residents were minority; (ii) there was significant entrepreneurial activity among minority residents; (iii) the unemployment and poverty rates were significantly higher and income levels significantly lower compared to the overall rates for the Boston metropolitan area. Examples of some of the common types of businesses EJP served included cleaning, automotive, technology services, food services (catering and restaurants), hair care, and financial services. The principal legal issues for which EJP clients received legal assistance included entity formation; contract drafting/review; lease review; intellectual property; employment matters; business acquisitions; loans; and zoning, permits, and licenses.

pro bono network of law firms, corporate in-house counsel departments, and solo practitioners.

This Part III provides a general description of EJP's principal programmatic elements, additional project-based initiatives, and its organizational structure. This Part ends with two examples—one to illustrate EJP's approach in serving individual clients and the other to show the relationships EJP established with community organizations.

A. *Five Principal Components*

- *Consultations:* EJP responded to substantive legal questions over the phone from prospective clients, community organizations who referred clients to EJP, and attorneys who represented EJP clients.
- *One-on-one legal representation:* Start-up and existing businesses that met EJP's income and community benefit eligibility guidelines⁹⁷ and were owned by residents in disempowered communities were matched with business attorneys who provided one-on-one legal representation on a pro bono basis (EJP handled some matters in-house).
- *Business Legal Clinics:* EJP held monthly clinics where clients had an opportunity to meet one-on-one with a business attorney to seek advice on legal issues they confronted in starting or operating a business.
- *Legal workshops:* EJP conducted general business legal workshops for start-ups that covered a wide range of business legal topics, as well as specialized workshops for existing businesses on specific topics such as employment matters, commercial leases, contracts, commercial lending, intellectual property and home-based day care providers.
- *Legal trainings for business counselors:*⁹⁸ EJP held classes for staff members at several of EJP's collaborating community organizations to educate them on legal business issues confronting their business clients.

97. Specific criteria EJP considered in determining eligibility included the following: (i) adjusted gross household income and, in the case of existing businesses, net revenues of the business; (ii) access to credit and capital; (iii) family size; and (iv) number and quality of jobs created and/or retained for local residents. EJP did not require that individuals qualify under these eligibility guidelines in order to attend a workshop or business legal clinic or to receive a general phone consultation.

98. Business counselors were EJP's primary contacts at EJP's referral community organizations. These were the individuals who provided technical business assistance and business counseling to entrepreneurs.

B. Additional Activities

In addition to the five programmatic elements discussed above, EJP initiated new, related projects to respond to critical business legal needs among community businesses that evolved over time. For example, in collaboration with one of its community partners, EJP developed a pro bono accountant network to connect EJP clients with basic accounting/bookkeeping assistance. EJP was also part of a group of organizations that created a series of one-day “know your rights” conferences in Chinatown that included a session for start-up and existing business owners. In addition, EJP created signature projects where individual law firms managed a particular project with certain community players. For example, EJP worked with a Boston law firm and a local bank to design a lending project to represent low-income small business borrowers and to jointly teach community workshops on commercial lending. Another Boston law firm created and taught a workshop series for teenagers studying entrepreneurship through the National Foundation of Teaching Entrepreneurship. A satellite office of one of the large Boston law firms “adopted” one of EJP’s target communities as its principal area of focus. It handled most of the client representations in this community, staffed the clinics, and taught the workshops.

C. Key Structural Aspects

i. Community Advisory Group:

The EJP Community Advisory Group was comprised of attorneys, representatives of some of EJP’s collaborating community organizations, clients, and other community leaders. This group met quarterly to offer feedback on strategic issues and to help ensure that EJP remained responsive to community needs.

ii. Screening Committee:

EJP also had a six-member Screening Committee to help determine whether clients met EJP’s eligibility requirements, particularly with respect to community-based considerations.

iii. Quality control measures:

EJP established several monitoring procedures and processes to ensure responsiveness and accountability to clients and communities. Examples included written confirmation of the scope of the work to be performed when a client was matched with an attorney, periodic phone calls with each client, attorney and business counselor during the representation, and formal surveys to all three parties once the representation was completed. EJP also had all clinic and workshop participants complete a survey of their respective

experiences. In addition, EJP solicited input from its constituents on operational issues, both informally and by written surveys. Finally, EJP designed a manual with detailed instructions regarding all operational aspects of EJP and created a sophisticated database to track all quantifiable measurements.

iv. Measuring outcomes

EJP tracked clients after the representation was completed to evaluate measurable outcomes of the business, including: (i) the overall health of the business; (ii) the gross and net revenue growth; (iii) the number of jobs created and the quality of those jobs (e.g., living wage and employee benefits); and (iv) the dollar amount of any financing the business received in connection with EJP's representation. EJP intended to use this data as part of its evaluation of its short-term and long-term impact in its target communities.

D. Specific Examples

Below are two specific examples that illustrate EJP's approach to meeting the business legal needs in its target communities.

A small Brazilian grocery store located in Allston-Brighton was referred to EJP by the Allston-Brighton Community Development Center.⁹⁹ The owner had been operating the business for several months without a signed lease agreement with her landlord. To add to her difficulties, the individual who sold her the business made her pay 10% monthly interest on the loan he gave her for the balance of the purchase price. Consequently, the new owner could not meet the store's monthly expenses. She desperately needed a loan to continue operating the business, but because the landlord refused to enter into a written lease agreement, potential lenders would not consider her loan application. Concerned that she might be forced to shut down her business, she contacted EJP. Attorneys from a large Boston law firm drafted a lease agreement and helped her negotiate reasonable terms with the landlord. The attorneys also worked closely with Working Capital/Accion USA¹⁰⁰ to help the

99. Allston-Brighton Community Development Corporation "engages neighborhood residents in an on-going process of shaping and carrying out a common vision of a diverse and stable community in the face of sustained economic pressures. That vision is evident in community-led projects" that foster a healthy local economy, including small business development through technical assistance, access to capital, workshops and roundtable discussions. Allston-Brighton Community Development Corp., <http://www.allstonbrightoncdc.org/index.htm> (last visited June 16, 2007).

100. "Both ACCION USA and Working Capital serve low and moderate-income entrepreneurs who have been shut out of the traditional banking sector because of a poor credit history, a lack of credit history or the small size of their business. Borrowers run the gamut from operators of part-time, home-based enterprises to owners of hair salons, neighborhood restaurants, corner markets and daycare centers." Press Release, ACCION Inter'l, ACCION USA

client secure a fair loan. Because the seller was in Brazil, and spoke and read only Portuguese, the attorneys took full responsibility for translating the loan documents and handling all logistical and communication difficulties. Because of the law firm's assistance, the client was able to obtain the loan she needed to cover the balance of the purchase price she owed the seller and her business became profitable. Without legal assistance, she would have been forced to shut down her business.

Of the organizations serving entrepreneurs in Lowell, Massachusetts, one of EJP's primary communities, the Lowell Small Business Assistance Center (SBAC)¹⁰¹ assisted the largest number of businesses and offered the most comprehensive set of business services. The EJP-SBAC partnership began when EJP started to represent clients referred by SBAC and to train the SBAC staff on business related legal issues faced by their clients. After this training, the number of clients SBAC referred to EJP increased significantly, as they recognized that most of their clients seeking assistance for business matters also needed legal assistance. The volume was large enough that EJP began holding monthly legal clinics in Lowell to offer consultations and to identify those individuals in need of follow-up representation.¹⁰² EJP also provided bi-monthly legal classes as part of the SBAC workshop series for new entrepreneurs.

Because EJP's presence in Lowell was based on a close relationship with such a strong organization, EJP, in turn, made more significant inroads in Lowell than in most other communities. In its first year, 16% of EJP clients were from Lowell, 30% of EJP's workshops were in Lowell, and 17% of those who received general legal counseling for a startup or existing business were also from Lowell.

IV. ESSENTIAL ELEMENTS OF A COMMUNITY-CENTERED TRANSACTIONAL PRO BONO PROGRAM

Creating a community-centered transactional pro bono program offers an effective means of promoting community business development in low-income urban areas in order to address the impact of discrimination, empower

and Working Capital Join Forces, (July 27, 2001), Accion International Website, http://www.accion.org/media_press_releases_detail.asp_Q_NEWS_E_40 (last visited Aug. 9, 2007).

101. The Lowell SBAC is a non-profit center in Lowell, MA, providing entrepreneurs from ethnically and economically diverse groups with the education, tools, and resources necessary to create, sustain, and expand small businesses. The SBAC provides services such as education, entrepreneurial counseling, legal assistance, financing assistance, technical assistance, mentoring, and crisis intervention. Lowell Small Business Assistance Center, <http://www.lowellsbac.org/index.htm> (last visited June 16, 2007).

102. Lowell is approximately forty-five minutes from Boston and therefore was too far to have individuals attend EJP's main monthly legal clinic in Boston.

individuals to take an active role in the development of their community, and strengthen the fabric of those communities. To accomplish these objectives, it is critical that the following three elements are central features of such a project: a holistic approach; empowerment through knowledge; and mechanisms of accountability. These three elements together help ensure that a program is truly representative of the community's interests. This Part IV defines these three elements and discusses aspects of EJP that illustrate each element.

A. *Holistic Approach*

A project must be designed to identify and meet the most critical business legal needs among low-income entrepreneurs on an ongoing basis, as such needs are defined by community members. This means the program must be proactive in establishing and maintaining extensive ties in its target communities. A project also must have the flexibility and adaptability to respond to needs as they evolve over time. Responding effectively requires working closely with a broad range of organizations in a project's target communities to understand the needs of entrepreneurs. Moreover, the types of services provided likely will vary from one community to the next. In certain communities or subgroups within a community, clinics might be the most effective way to reach entrepreneurs, whereas other communities may respond better to workshops. As this section discusses, conducting extensive community outreach and providing a range of legal services is imperative to promoting economic justice and revitalization at a community level.

i. Needs assessment

To ensure a project accurately assesses the business legal needs among entrepreneurs in a given community, the first step must be to conduct an extensive needs assessment.¹⁰³ The needs assessment must include a determination of specific communities the project should target. Researching a community's demographics, per capita income, and level of entrepreneurship activity is critical. It also is imperative to determine which low-income and historically disempowered communities have at least one well-run organization providing business assistance and counseling to entrepreneurs.¹⁰⁴ Without the

103. See Zuni Cruz, *supra* note 10, at 576 (discussing importance of being knowledgeable about a community and suggesting that knowledge can come in a variety of ways, including from advance "reconnaissance").

104. Diamond, *Community Lawyering*, *supra* note 10, at 116 (recognizing the challenges a new attorney faces in trying to understand a client's community, Diamond suggests a community "guide" to introduce the attorney to the community and aptly warns that the chosen guide may influence the attorney's views of the community and could potentially alienate others in the community through suggestion of partisanship on certain matters).

support that these community organizations provide, business legal assistance will be less likely to increase an entrepreneur's chances of success.

It also is important to canvass the broadest possible range of constituents to ensure the project identifies the business related legal issues of greatest concern to entrepreneurs and that it understands these issues from a community-wide perspective. Rather than simply working with community development corporations (CDCs), contact should be made with all types of community organizations that work with entrepreneurs, such as micro-lenders, trade associations, local business associations, entrepreneurship programs at community colleges, community lending programs of banks, and government entities. A project should also seek input from local business and community leaders, government officials, and attorneys.

Conducting an extensive needs assessment has the added benefits of building an expansive network of support in the project's target communities and establishing a broad client referral base.¹⁰⁵ While working with one or a few "anchor organizations" in each community is important, given turnover and changing priorities of individual organizations, it is critical to have relationships with a broad range of players in a given community. Moreover, establishing relationships with a diverse group of organizations is beneficial in understanding the role entrepreneurial activity plays in the larger context of economic development within a given community.

ii. Building relationships in communities

Cultivating and maintaining a close connection with community organizations is imperative in reaching individual entrepreneurs and businesses.¹⁰⁶ This requires being proactive in establishing contacts with individuals and organizations in a community and getting involved in business related community events.¹⁰⁷ Moreover, few, if any, legal programs have the resources or means to access hundreds of entrepreneurs directly. A legal

105. Jones, *Pro Bono Pays Off*, *supra* note 71, at 23 (urging new programs to consult a variety of organizations as a way to develop a rich base of prospective transactional cases).

106. See generally Southworth, *supra* note 3, at 1135 (noting that community organizations serve as a bridge between lawyers and businesses).

107. See Diamond, *Community Lawyering*, *supra* note 10, at 115 (referencing Gerald Lopez, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603 (1989)) (emphasizing the importance of "getting out of the office, going to community meetings, and talking to and getting to know the people and groups in the neighborhood"); Houseman, *supra* note 47, at 401, 427–28 (discussing the need for "aggressive" outreach initiatives, which requires staff to "get out of their offices and make contact with a variety of organizations and providers in order to reach clients," as well as discussing importance of attending community meetings and interacting with clients in community settings to understand the needs of individuals in a community); Marshall, *supra* note 95, at 147; Zuni Cruz, *supra* note 10, at 576 (discussing importance of having community knowledge).

program must rely on collaborating organizations to encourage their small business clients to seek legal services. During EJP's first year, virtually all 154 entrepreneurs who applied to EJP were referred by one of EJP's forty partner community organizations, and all of its twenty-six legal workshops were sponsored by one or more of those organizations. One of the micro-lenders with whom EJP worked, for instance, required its clients to work with EJP before becoming eligible to receive a loan. Also, as discussed in the second example in Part III of this Article, the strong relationship EJP was able to build with the Lowell SBAC enabled the program to make more significant inroads in Lowell than in most other communities.

Because community organizations generally are well respected in their respective neighborhoods and among individual entrepreneurs, they can be a real asset in addressing the widespread mistrust of attorneys among entrepreneurs from these communities. Many of these entrepreneurs had been "burned" by an attorney or other service provider in the past and, consequently, even though EJP's services were free of charge and provided a direct benefit, it often took several meetings for EJP to demonstrate a genuine commitment and establish credibility and trust. Moreover, the community organizations were very protective of their clients and the organization's reputation was at stake if they gave a bad referral to one of their clients. As a result, some organizations initially were skeptical about EJP and only started working with EJP once EJP experienced some success in several communities. Tailoring a workshop to meet the needs of a community organization's clients was an effective approach to establishing a productive working relationship. Once their trust is earned, community organizations are critical in helping a project establish credibility in communities and connecting a project to entrepreneurs.

iii. Range of services

Providing clients with one-on-one representation should be the foundation of the project. However, through clinics, legal workshops, and extensive community outreach, a project can raise awareness of business and legal matters among a much larger number of entrepreneurs than it can simply through direct client representation.¹⁰⁸ As further detailed in the following section (Empowerment Through Knowledge), raising awareness through education and outreach increases the likelihood that entrepreneurs will recognize potential legal issues and seek an attorney as a preventative measure.¹⁰⁹ Within the first eighteen months, EJP provided legal representation to 120 businesses and educated an additional 915 entrepreneurs

108. Housman, *supra* note 47, at 405 (stressing a need to provide a full range of legal assistance services, including representation, legal advice and referral, and brief legal services).

109. Shah, *supra* note 11, at 251.

and business counselors on legal issues affecting start-ups and existing businesses. EJP served clients from a total of twenty-two communities and established a strong presence in seven communities in the Greater Boston area.¹¹⁰ Moreover, offering multiple services creates more opportunities to identify the most prevalent legal needs confronting a community's entrepreneurs. For instance, EJP often learned of issues that broadly impacted a range of entrepreneurs through the questions and anecdotes raised by workshop participants.

Offering a variety of services and demonstrating an interest in tailoring those services to the needs of a particular community is another means by which a project can build trust in its target communities. This is particularly important given that the project is an outsider to a community. The range and flexibility of services show business counselors that the project is focused on meeting needs of its entrepreneurs rather than serving the project's own interests. For instance, by addressing brief questions from partner organizations and entrepreneurs referred by those organizations, eighty entrepreneurs received either phone or in-person consultations from the EJP staff.¹¹¹ Such a prompt response to the entrepreneurs showed the business counselors that they could count on EJP to support their clients. As a testament to the trust established by this approach, over forty community organizations referred clients to EJP and fifteen organizations organized legal workshops in EJP's first year alone.

Finally, working closely with a wide range of stakeholders enables a project to connect clients to sources of capital and essential business resources such as business planning, marketing, accounting, sales and distribution.¹¹² Providing businesses the range of services they need not only demonstrates the project's commitment to entrepreneurs and communities, it increases the likelihood of long-term success.¹¹³

110. EJP's principal geographic areas included Boston, Mattapan, Dorchester, Roxbury, Allston-Brighton, Jamaica Plain, Lowell and Lawrence.

111. The countless phone conversations and face-to-face meetings EJP had with business counselors regarding client matters was not a data point EJP collected.

112. See Batlan, *supra* note 95, at 235 n.4 (noting the need for lawyers working in communities to involve a variety of professionals to help the client); see also Susan Bennett, *On Long-Haul Lawyering*, 25 *FORDHAM URB. L.J.* 771, 784-85 (1998) (discussing aspects of a collaborative approach to include working with non-lawyers in "interdisciplinary partnerships"); Zuni Cruz, *supra* note 10, at 576 (discussing the importance of making linkages to resources within the community).

113. See Cunningham, *supra* note 71, at 12 (outlining multi-disciplinary needs of small businesses); Southworth, *supra* note 3, at 1138 (same). See generally Jones, *Interdisciplinary*, *supra* note 2.

iv. Flexibility/adaptability

As discussed throughout this Article, ongoing, active involvement in communities enables a project to identify changing needs among entrepreneurs and to make programmatic adjustments in response to those needs. For instance, the “additional activities” discussed in Part III, while not identified during EJP’s initial needs assessment, were all created from ongoing feedback EJP received through extensive interactions with constituents in its target communities. In addition, workshops taught during EJP’s first year were based on requests from individual CDCs. Not only was this an inefficient use of resources, but feedback from several attendees stated that entrepreneurs would benefit more from a series of business legal classes that provided more in-depth information about certain topics. Based on this feedback, EJP began coordinating with all relevant organizations in a given community to develop a series of regularly scheduled workshops that combined both legal and business perspectives.

B. *Empowerment Through Knowledge*

A critical component in the promotion of economic justice is education.¹¹⁴ The majority of entrepreneurs are unaware of business legal issues involved in starting or expanding a business and, consequently, fail to recognize where they could benefit from legal assistance.¹¹⁵ Educating entrepreneurs on basic legal issues that could impact their businesses increases the likelihood that they will recognize and address such issues before they become costly problems.¹¹⁶ Moreover, acquiring knowledge relevant to their business helps entrepreneurs feel more capable of evaluating and making business decisions, which bolsters confidence and can increase the likelihood that the business will succeed.¹¹⁷ Additionally, this ability to assess a business situation ultimately lessens the need for legal assistance in certain instances.¹¹⁸ For example, consider the ethnic restaurants that entered into lease agreements with onerous terms as

114. See Bennett, *supra* note 112, at 785–86 (discussing the critical role of client education as part of lawyering in communities); Juliet Brodie, *Post-Welfare Lawyering: Clinical Legal Education and a New Poverty Law Agenda*, 20 WASH. U. J.L. & POL’Y 201, at 251–52 [hereinafter *Post-Welfare Lawyering*] (discussing role of community legal education in increasing the power of low-income people); Shah, *supra* note 11, at 250–51 (discussing lawyers’ important role as educators as a way to “mobilize people toward empowerment”); Louise Trubeck, *Poverty Lawyering in a New Millennium*, 17 YALE L. & POL’Y REV. 461, 463 (1998) (discussing community legal education as an essential task of poverty lawyering).

115. See Marshall, *supra* note 95, at 161–62.

116. See Houseman, *supra* note 47, at 429 (stating that empowering clients will require giving more attention to the prevention of problems).

117. *Id.*; see also Shah, *supra* note 11, at 251–52 (discussing the role of education for empowerment of individuals and communities).

118. Shah, *supra* note 11, at 251.

discussed in Part II. Had the owners been more knowledgeable about the implications of certain terms, they likely would have looked for another location. At a minimum, they would have known not to execute the lease as presented. As a related point, workshops and other forums that bring entrepreneurs together are a way for entrepreneurs with shared interests to learn from one another and establish a network of support.¹¹⁹ Arming entrepreneurs with knowledge and providing networking opportunities empowers residents of the community.¹²⁰ Knowledge and networks can help improve a business's chance of success, and as discussed in Part I, business success leads to active community engagement.

Because raising awareness of business related legal issues among low-income entrepreneurs was a principal objective, EJP provided workshops, clinics, and trainings for business counselors. An emphasis on educating entrepreneurs was another reason why EJP was so engaged in its target communities—every presentation and engagement enabled EJP to reach yet another audience on the importance of addressing business related legal issues as a preventative measure.

i. Workshops

Business legal workshops can reach and empower a large number of entrepreneurs.¹²¹ Workshops provide entrepreneurs with a basic understanding of the range of legal issues involved in starting or expanding a business.¹²² This, in turn, means more individuals will seek legal assistance before a serious problem arises.¹²³ Workshops should be structured to cover substantive legal topics that typically confront a business in sufficient detail to ensure that an entrepreneur later faced by a similar situation, although she might not remember the precise solutions proposed, learned enough to recognize the issue as one requiring legal assistance.

During EJP's first eighteen months, 654 individuals attended fifty-six legal workshops held in several of EJP's communities. Approximately 20% of clients who sought legal representation came to EJP as a result of attending a workshop. Many even sought advice months after the workshop when they confronted an issue they recalled being discussed. For instance, several workshop attendees sought legal representation to help draft or review

119. Marshall, *supra* note 95, at 161 (stating that a goal of the community lawyer is “to foster connections between clients with similar problems, to lessen the isolation clients often feel” with lawyer representation).

120. See Brodie, Post-Welfare Lawyering, *supra* note 114, at 251–52; Houseman, *supra* note 47, at 429.

121. See Marshall, *supra* note 95, at 208.

122. *Id.* at 161.

123. *Id.* at 161–62.

commercial leases after learning how lease provisions can impact their businesses. After learning about employment issues at a workshop, some attendees contacted EJP when they were ready to hire employees or independent contractors to help protect the business's confidential information and guard against workers competing against their business. Workshop topics were based on discussions with business counselors about the issues of biggest concern to their clients. When deciding on workshop topics, EJP also considered any recurring issues shared by several clients in a given community. Developing workshops based on the most pressing needs identified by entrepreneurs rather than based on the expertise a project has to offer is another means of building a community-centered lawyering program.¹²⁴

ii. Business legal clinics

When large law firms with multiple practice areas staff clinics, a legal project is able to provide guidance on virtually any specific substantive legal issue that arises, such as patents, business litigation matters, complicated trademark issues, and environmental concerns. Moreover, many entrepreneurs who attend clinics either need concrete guidance on rather specific and somewhat technical questions or they have a business idea and they need a basic understanding of the various legal issues they must consider as they start their business.¹²⁵ A thirty or forty-five minute counseling session provides individuals the guidance needed to either address their particular legal issue or to begin executing their business idea.¹²⁶ Approximately 30% of EJP clients came through a clinic and 181 entrepreneurs, in total, attended fifteen business legal clinics.¹²⁷

iii. Legal trainings for business counselors

Similar to entrepreneurs, business counselors often think of legal assistance only after a client faces a problem rather than referring a client to a lawyer to help prevent a problem from arising.¹²⁸ Because legal issues are so interwoven with the business issues, and given that business counselors are the first ones to meet with an entrepreneur, the better business counselors understand the legal dimensions to a business issue or idea, the more effective

124. See Marshall, *supra* note 95, at 161 (“[T]he subjects of public education, ‘know your rights’ workshops should come from needs expressed by the community.”).

125. See Jones, *Pro Bono Pays Off*, *supra* note 71, at 23.

126. *Id.* at 21 (discussing efficiency of clinics compared to the labor intensive nature of client placement for representation).

127. A different law firm staffed the clinic each month. Approximately ten to fourteen entrepreneurs attended each clinic and between six to eight attorneys staffed each clinic.

128. Southworth, *supra* note 3, at 1144.

they become at recognizing when a client needs to seek legal counsel and at making timely referrals.¹²⁹ For instance, as explained in the description of EJP's relationship with the Lowell SBAC in Part III, training SBAC business counselors significantly increased the number of client referrals SBAC made. Consistent with the restaurant examples discussed in Part II, issues involving commercial leases was a common problem among entrepreneurs with whom EJP worked. Often the business counselor would contact EJP when a business owner started having problems with a landlord because the landlord's demands seemed unreasonable. However, those demands were based on the terms of the lease, and at the time the business owner signed the lease, neither the business owner nor the business counselor understood the implications of certain lease terms. Through education, business counselors began recognizing the need to connect the client to an attorney to review or draft a lease and, if possible, help negotiate the terms of the lease before the entrepreneur executed the agreement.

C. *Mechanisms of Accountability*

To be a community-centered program focused on promoting economic justice, certain structures and processes are needed to ensure a project identifies, and remains focused on, the most pressing business legal needs of its target communities rather than the project's own interests.¹³⁰ It is easy for a service provider to lose touch with the communities it serves over time or fail to understand a community's true needs from the outset.¹³¹ This is particularly

129. See generally *id.* (noting that many problems are not brought to a lawyer's attention until too late).

130. See Laura Rovner, *Disability, Equality, and Identity*, 55 ALA. L. REV. 1043, 1093 (2004); Zuni Cruz, *supra* note 10, at 585 (quoting Chief Oren Lyons, spokesman for the Iroquois Confederacy) (noting that lawyers must understand that the best interests of the people are not a judgment of what the lawyer sees as the community's best interest, but rather to allow the community to direct the lawyer).

131. See Diamond, *Community Lawyering*, *supra* note 10, at 70 ("The attorney is often viewed as, and typically is, an outsider to the client."); Rovner, *supra* note 130, at 1093 ("[T]oo often, especially when working with the politically and socially subordinated, lawyers presume theirs is the only knowledge that counts."); Ronald H. Silverman, *Conceiving a Lawyer's Legal Duty to the Poor*, 19 HOFSTRA L. REV. 885, 926 (1991) (noting that infrequent exposure to low-income problems and populations may only sharpen cultural and even racial differences, and some large-firm as well as smaller-firm lawyers doubtless view the "underclass" with alarm and hostility); Paul Tremblay, *Rebellious Lawyering, Regnant Lawyering, and Street-Level Bureaucracy*, 43 HASTINGS L.J. 947, 952 ("Lawyers see clients as persons to be helped, as powerless persons who need to have problems solved through the intervention of the lawyer and her skills. Even if the result of such intervention were good for the client's material existence, that gain might come at the expense of the client's sense of control over her life, her self-esteem, her power."); Zuni Cruz, *supra* note 10, at 585. Cf. Diamond, *Community Lawyering*, *supra* note 10, at 70 ("[P]ower (or the absence thereof) is at least as significant an issue as the legal rights of a

true of programs such as EJP whose staff are outsiders to the project's constituent communities and who utilize pro bono attorneys.

i. Community advisory group

A community advisory group gives different stakeholders a voice and a role in addressing the community's big picture, programmatic issues.¹³² Accordingly, individuals feel more invested in the project's success if they have a formal role.¹³³ An advisory group also acts to ensure that the project continues to adequately identify and respond to the most pressing business legal needs of its communities.¹³⁴ Further, by including representatives from each of the project's constituencies (volunteer attorneys, clients, community organizations, and funders), the project creates an institutionalized means of seeking input from a broad range of perspectives. This network also provides access to other community leaders and potential funding sources and helps with discrete projects.

ii. Screening committee

Having a screening committee that helps determine eligibility where a person's or family's income is above federal poverty guidelines or when the potential community benefit is low leads to a more thorough and objective evaluation of potential clients. Through such a group deliberative process, the project is able to consider community relevant factors that otherwise would likely be ignored. Over time, through a relatively thorough assessment of whether an entrepreneur should be accepted as a client, EJP essentially developed a "common law" of the kinds of cases typically accepted and those typically rejected. Although EJP's screening committee only included pro bono lawyers, another approach would be to include client and community organization representation in the screening process.

client."); Marjorie Silver, *Love, Hate, and Other Emotional Interference in the Lawyer/Client Relationship*, 6 CLINICAL L. REV. 259, 260-61 (1999) (noting that the lawyer/client relationship, by its very nature, is usually characterized by an imbalance of power. Although for some sophisticated or wealthy clients, this imbalance may well be to the lawyer's disadvantage, more often, the attorney holds the greater power).

132. See Zuni Cruz, *supra* note 10, at 584-85 (noting the involvement of community stakeholders influences the willingness of the attorney to be directed and understand the decision-making process).

133. See Rovner, *supra* note 130, at 1094 (noting that employing a collaborative lawyering approach helps clients have a more "politically satisfying" experience).

134. See Diamond, *Community Lawyering*, *supra* note 10, at 79 (discussing the importance of addressing both legal and non-legal issues for effective community lawyering).

iii. Measuring outcomes

Evaluating a project's impact provides another avenue to assess whether a project is meeting the most pressing business legal needs of entrepreneurs and whether it is doing so effectively. A limited impact, for example, helps inform the project how it should adjust its services or its outreach focus. To measure outcomes effectively, criteria and processes that identify and capture all quantifiable information about every business the project serves must be established at the outset. It is also important to track clients after representation has been completed, ideally for at least three years. Evaluating impact after only twelve months, or even two years, can be difficult and somewhat incomplete, particularly where the majority of clients are start-up businesses that take several months to begin operations. Tracking clients for such an extended period is time consuming as it involves not only surveys, but also multiple follow-up calls. To reduce time spent tracking clients post-representation, EJP worked on creating a client follow-up program whereby law firms would be responsible for follow-up phone calls on a monthly rotating basis.

Statistical measurements of EJP's impact, based on the matters closed at the end of eighteen months and informal follow-ups with existing clients and their attorneys, although limited, revealed an encouraging trend.¹³⁵ Twelve percent of EJP clients received loans in connection with EJP's representation. In addition, ten percent of EJP's clients employed individuals after receiving legal representation and for an additional ten percent of EJP's clients, legal representation reduced the risk and potential liability in connection with existing employment relationships.

Comparing a project's data to overall economic indicators in a community to measure the project's community-wide impact can present an even greater challenge. Among other reasons, economic data in many locales is difficult to obtain and is not necessarily accurate. Given these difficulties, it is important not to over-promise funders with anticipated outcomes or data points to be used to evaluate effectiveness. It also is important to recognize and prepare for the fact that measuring community-wide impact is a long-term endeavor, one that could take at least five to ten years to accomplish.

iv. Human capital

Ensuring a project remains accountable to its target communities involves extensive community interaction, which requires a significant investment in

135. In evaluating EJP's impact and community focus EJP also considered the demographics of the individuals served. Approximately 85% of the persons served by EJP were persons of color, 44% were female, 63% qualified as "very low income," and 22% were "low income," based on the HUD 2002 Poverty Guidelines.

human capital. With sufficient staff, a project can institute and maintain sufficient accountability measures, such as: (1) responding promptly to inquiries from entrepreneurs and business counselors; (2) thoroughly screening prospective clients; (3) monitoring the attorney-client relationship; (4) monitoring the business once representation is completed; and (5) evaluating the project's services. EJP hired a full-time community outreach coordinator as part of the solution. EJP also worked with several law student interns, including full-time interns, to handle much of the attorney-client monitoring, initial client screening to gather more information, and the day to day legal administrative matters.

v. Ongoing role of community organizations

Connecting attorneys and business counselors from referring community organizations as part of the client placement process is another way to foster trust between clients and attorneys. Involving the business counselor helps bridge any cultural or socio-economic gaps that often exist between client and attorney. Clients are often more comfortable and forthcoming about sharing information with the attorney if the client's business counselor is involved. As a result, EJP kept the business counselor generally updated on the work between the attorney and client. In many instances, the attorney and client met with the business counselor who was often aware of aspects of the client's situation or larger community issues that the attorney was not. In addition, if an attorney had difficulty reaching a client or if a client did not show up for meetings, the business counselor often successfully intervened.

V. PRO BONO MODEL

This Part discusses the benefits and challenges of using pro bono attorneys as a central feature of a transactional project that supports community businesses in disempowered neighborhoods. As a part of this discussion, it presents suggestions to address the potential drawbacks of a pro bono project. A pro bono project certainly is not the only model a transactional legal program focusing on community business development can use to promote economic justice, and as discussed below, challenges to using pro bono attorneys certainly exist. However, leveraging the resources and expertise of private attorneys is effective in providing high-quality legal services to a large number of individuals and maximizing a project's impact in its target communities.¹³⁶

136. In its first twelve months of operations, over 155 attorneys handled matters for EJP on a pro bono basis. These attorneys came from thirteen law firms, two corporate counsel offices and also included two solo practitioners. The total dollar value of the time volunteer attorneys contributed the first year was approximately \$1,338,000. Volunteer attorneys represented a total of seventy-six clients (EJP represented sixteen clients during this time period). Nineteen

A. *Benefits of a Pro Bono Model*

EJP was able to reach such a large number of entrepreneurs and make such significant inroads in so many communities due to the tremendous support and commitment from both individual attorneys and the institutional support provided by several law firms. EJP was able to utilize attorney support for virtually all aspects of the project as a way to address the labor-intensive nature of this community-centered model. Handling everything in-house, or even everything except legal representation, would require an unnecessarily large staff, which would be challenging to sustain financially. Without a large staff, such a community-focused project would be forced to operate on a smaller scale and without necessary accountability mechanisms, effectively reducing the potential community impact.

In addition to involvement in client representations, workshops, and clinics, pro bono attorneys served on EJP's advisory board and comprised the screening committee. A core group of pro bono attorneys also served as informal advisors to EJP and took the lead developing and administering special initiatives. Attorneys at different law firms translated EJP's marketing materials into Spanish, Portuguese, French and Vietnamese, and as discussed in Part III, individual law firms took on signature projects. Attorneys also conducted legal research to assist EJP develop workshop materials. Attorneys at one firm even co-taught workshops with a few of the firm's corporate clients.

The clinics were so well received that requests were made to hold them in other locations so that entrepreneurs outside of the Greater Boston area could attend. Within the first year, the extensive pro bono attorney involvement enabled EJP to create a monthly clinic in Lowell and begin creating another in a predominately Spanish speaking community to be staffed by Spanish speaking volunteer attorneys. The pro bono attorney involvement also enabled EJP to offer workshops to home-based day care providers in Spanish and Khmai.

This extensive attorney involvement evolved organically in response to EJP's staffing constraints. It also resulted from the tremendous unmet need among corporate attorneys for pro bono opportunities related to their practice area.¹³⁷ While opportunities abound for litigators to assist in housing, family

attorneys conducted legal workshops with EJP and fifty-nine attorneys staffed one or more of the monthly Business Legal Clinics.

137. See Jones, *Interdisciplinary*, *supra* note 2, at 291 (discussing reluctance of transactional lawyers to engage in traditional pro bono activities that have been litigation based and outside their area of expertise); Thomas Morsch, *Discovering Transactional Pro Bono*, 72 UMKC L. REV. 423, 425 (2003) (discussing how the situation for transactional lawyers in pro bono has begun to change, and it is "particularly appropriate for lawyers with transactional skills to provide

law, criminal, and individual rights matters, business lawyers traditionally have limited opportunities to use their professional skills to provide much needed services in underserved communities.¹³⁸ Cultivating this extensive pro bono involvement had several benefits. By encouraging the involvement of pro bono attorneys in most aspects of EJP, the project was able to meet a wide range of interests among corporate attorneys, thereby increasing the number of attorneys connected to EJP. Access to such a large volunteer pool also gave EJP the flexibility to respond to evolving needs in communities. EJP was able to offer more services and reach more entrepreneurs than if it had simply relied on pro bono attorneys to represent individual clients.

B. Potential Challenges of a Pro Bono Model and Proposed Solutions

Scholars opposed to using pro bono attorneys caution that (1) lawyers tend to dominate their clients and act as their decision-makers; (2) pro bono attorneys may not be attuned to a civil rights agenda; (3) a firm's or individual attorney's involvement in pro bono projects is driven by less than altruistic reasons; and (4) attorneys from private firms do not always act in the best interests of their clients, if for no other reason than they fail to understand the client's circumstances and what the client really needs.¹³⁹

i. Lawyer-client relationship

The emergence of CED lawyering introduced a more transactional based approach to lawyering for the poor.¹⁴⁰ In a transactional context, lawyers tend to act more as collaborators with clients, facilitating decisions rather than making decisions for clients.¹⁴¹ The technical details might be beyond what

assistance to a great number of small business owners and social entrepreneurs who need legal help and cannot afford it").

138. Morsch, *supra* note 137, at 425; *see also* Southworth, *supra* note 3, at 1166.

139. *See* Cummings, *Pro Bono*, *supra* note 93, at 106–10, 147–48 (discussing large law firms' self-interested, market-driven motivations for pro bono and concluding that "[a] system that depends on private lawyers is ultimately beholden to their interests. This means not just that private lawyers will avoid categories of cases that threaten client interests, but also that they will take on pro bono cases for institutional reasons that are disconnected from the interests of the poor and underserved—and often contrary to them."); *see also* Southworth, *supra* note 3, at 1154–55, 1163–67 (discussing traditional concern about lawyer domination and client control; stressing the importance of learning clients' needs; raising the potential objection that pro bono lawyers lack the necessary political commitment to serve under-served communities' interests aggressively; and ultimately concluding that many of these traditional concerns are less relevant to transactional pro bono work (as opposed to litigation pro bono) and that although pro bono lawyer participation is not perfect, it is better than the alternative of not having pro bono lawyers participate).

140. *See supra* note 17 and accompanying text.

141. *See* Southworth, *supra* note 3, at 1126 (noting that planning, more than litigation, may lend itself to collaboration with clients); Lucie White, *Facing South: Lawyering for Poor*

clients can or want to grasp; however, the issues underlying these details are central to an enterprise's operations and objectives.¹⁴² Consequently, it is the client who makes these decisions, not the lawyer.¹⁴³ This is in contrast to litigation strategies where the lawyer often plays a more influential role in shaping the client's strategy and story.¹⁴⁴ Also, clients running an enterprise tend to be more sophisticated than the individual poor person or classes of poor people and therefore, are in a better position to evaluate their lawyer's tactics and make strategic decisions regarding their legal representation.¹⁴⁵ Moreover, transactional lawyers themselves believe that their clients should make basic decisions affecting their interests.¹⁴⁶

ii. Transactional pro bono lawyers as civil rights activists?

Some view non-litigation business based projects as less activist.¹⁴⁷ According to Anne Southworth, based on the survey she conducted of attorneys engaged in business planning work for minority entrepreneurs and nonprofits, the attorneys did not view their role as activists.¹⁴⁸ Rather, they saw themselves as facilitators for clients to achieve their objectives, helping to improve the lives of poor people, which they viewed as being 'quite mundane' and disconnected from a notion of "saving the world."¹⁴⁹ They felt that what they did for these clients was no different than what they do for corporate clients.¹⁵⁰ Arguably their own views of their role perpetuate this broader perception that litigators are the driving force behind social change. As more attention is given to economic justice, the lawyer's role is moving more toward structuring future projects rather than enforcement of rights, which, by its

Communities in the Twenty-First Century, 25 *FORDHAM URB. L.J.* 813, 822 (1998) (discussing that for pragmatic welfare reform programs to be successful the low income people are partners, allies, and colleagues rather than clients); Shah, *supra* note 11, at 231–32 (noting that community development lawyering was premised on the belief that lawyers should allow "poor clients to combat poverty on their own terms" and empowerment by encouraging the solution of problems with "clients and lawyers working on equal footing."). See generally GERALD LOPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* (1992) (progressive lawyering requires collaboration with both professionals and non-professionals in their communities to solve both legal and non-legal problems).

142. See Shah, *supra* note 11, at 254–57.

143. Southworth, *supra* note 3, at 1155.

144. See Cummings, *Grassroots*, *supra* note 3, at 446; Southworth, *supra* note 3, at 1156–57.

145. Southworth, *supra* note 3, at 1158.

146. *Id.* at 1162.

147. *Id.* at 1147.

148. *Id.*

149. *Id.* at 1143–1147 (noting lawyers descriptions of their work as "garden variety" and "nothing socially significant").

150. *Id.* at 1142.

nature, has a transactional orientation.¹⁵¹ As a result of this shift, others' perceptions of transactional pro bono work, as well as these attorneys' self-perception, will likely change.

iii. Specific challenges to pro bono involvement

Presented below are the modifications EJP instituted to minimize potential negative impacts of a pro bono model due to the third and fourth points raised above (lawyers are driven by self-serving motives to engage in pro bono and they fail to act in the pro bono client's best interests). Also discussed are aspects that should have been handled differently from the outset to minimize drawbacks of a pro bono model.

a) Middle tier of businesses

During its first year, the majority of applicants rejected by EJP were rejected due to income—businesses that fit the mission of EJP but had the resources to pay some sort of fee for legal assistance. These were businesses located in low- to moderate-income communities that had significant growth potential, both in terms of revenue and job creation for local residents, but did not have access to affordable legal options. Business counseling and financial programs existed that focused on this business segment, but there were no legal programs catering to this tier of businesses.

As a pro bono model, EJP could not radically change its core constituency—eligibility for pro bono representation was based primarily on an individual's income, and the income of the business. However, because of the potential community impact, EJP found it important to determine how it could act as a catalyst to help strengthen these higher-growth potential businesses without impacting its ability to serve its core constituents.¹⁵² As a result, EJP created a referral network of reliable solo practitioners and small firms that supported EJP's mission and were willing to reduce their fees depending on a client's circumstances. Accordingly, creation of a referral network and allocation of resources to maintain it should be major components of a project from inception. Supporting this business segment, whether

151. *Id.* at 1133.

152. Cummings, *Porter Response*, *supra* note 18, at 909 (acknowledging that there is little evidence that urban revitalization is accomplished by supporting "economically marginal" businesses); see also Porter, *supra* note 46, at 70 (emphasizing need to support development of large-scale businesses). Establishing high growth potential businesses in the inner city has the added advantage of spawning related smaller companies in the same location that support the larger company in some form (such as providing supplies, components and support services to the larger company). *Id.*; see also *Inner-City Business Development: Benchmarking Federal Spending and Guidelines for Action*, Executive Summary, INITIATIVE FOR A COMPETITIVE INNER CITY, at v. (1999) (discussing related or supporting industries, or "clusters," their formation, and consequent impact).

through pro bono attorneys, in-house counsel, or a combination thereof, is important for a project focused on promoting economic justice.

b) Trust

A major factor contributing to the lack of trust that often existed between client and attorney was the cultural and socioeconomic chasm between the two.¹⁵³ Often there was a lack of understanding and sensitivity regarding an entrepreneur's background and personal circumstances, as well as the needs and circumstances of his business. In several client situations, the attorney had difficulty tailoring the work product to make it appropriate for the client's business. Additionally, because clients and attorneys operated in two very different worlds, attorneys often failed to recognize non-legal resources a client may have needed. Moreover, pro bono attorneys in general do not have, nor should they be expected to have, the same level of commitment to the project and its mission as does its staff. Finally, several situations occurred where, as a pro bono client, the client received low priority due to the attorney's competing client demands. Given that lack of trust in attorneys was so pervasive in the communities EJP served, one bad experience with a volunteer attorney could have seriously undermined the credibility EJP established with that client's particular referring organization and even with the community in general.

To help bridge this gulf and protect its credibility in its target communities, EJP created a monitoring plan for each client based on the scope of legal issues involved and the anticipated duration of representation. By monitoring the attorney client relationship through regularly scheduled follow-up, potential problems could be (and were) averted. Prior to the establishment of a monitoring system, EJP contacted attorneys and clients on a sporadic basis. As a result, EJP did not learn of problems, such as if the attorney and client failed to connect with one another, until several weeks passed. Regular contact

153. See ABA FORMAL OP. 92-364 (1992) (noting the factors leading to the client's trust and reliance on the lawyer also have the potential for placing the lawyer in a position of dominance, and the client a position of vulnerability); Diamond, *Community Lawyering*, *supra* note 10, at 71 n.11 (“[A]n attorney . . . because of race, class, educational status, place of residence or otherwise, does not share with a client a cultural, geographic, or world view regarding the client's situation and prospects.”); Jones, *Transactional Lawyering*, *supra* note 7, at 212 (noting that one of the reasons clients sometimes fail to divulge relevant information needed by the lawyer could be because the client does not fully trust the lawyer); Marjorie Silver, *Emotional Competence, Multicultural Lawyering and Race*, 3 FL. COASTAL L.J. 219, 231 (2002) (noting differences, such as race, that exist between client and lawyer may “exacerbate the power imbalance inherent in the relationship,” which may create barriers to effective communication and may impair the attorney/client relationship); Silverman, *supra* note 131, at 921 (noting the possibility of cultural, class or racial distance between attorney and low-income client that may impair communication and compromise a relationship of trust).

through a monitoring plan also served to remind the client and the attorney that EJP was available to respond to questions or concerns that arose during the representation. In addition, as discussed in Part IV, EJP also involved the client's business counselor, when applicable, as another means of bridging the gulf that often existed between clients and pro bono attorneys.

The mistrust was not simply a result of an entrepreneur's bad experience with an attorney, but was also due to confusion generally between the client's expectations of her attorney and the attorney's obligations. This issue also underscored the importance of the need for ongoing community education. To help entrepreneurs understand both how to use an attorney and to feel more comfortable doing so, EJP created a simple one-page document for all clients that outlined the attorney's role and obligations. EJP also added a segment to its workshop presentations on "how a business lawyer can help you." As part of the intake process, EJP tried to identify any need for relevant non-legal resources, and help connect clients to them. There also are benefits to having a project staff member attend the first meeting between the attorney and client since the project, as the intermediary, is the entity with whom the client has had contact and established a rapport.

With respect to the business legal clinics, to help attorneys better understand the circumstances and needs of the participants, EJP held a training session at the law firm a few days prior to the clinic. These trainings were intended to give the attorneys a sense of what to expect in terms of the types of issues likely to be raised and the backgrounds of the individuals the attorneys would be meeting, as well as what EJP expected from each attorney. Regarding the business legal workshops, EJP created the curriculum and required volunteer attorneys to teach at least one workshop with EJP before teaching their own. This practice helped ensure that pro bono attorneys taught the substantive material in a way in which the participants could relate.¹⁵⁴

c) Credibility

Success with this kind of pro bono model also depends on establishing and maintaining credibility among participating attorneys and law firms. Thus, a negative volunteer experience creates the risk that the project could lose credibility with the firm or even among multiple firms. As discussed above, continued discussions with attorneys as part of the monitoring plan can avert a potentially negative client-attorney situation. A related concern is placing clients not ready for legal assistance with pro bono volunteers. In its first six

154. EJP developed a standard set of materials to be used with each class to minimize differences in the quality of each class and to have one place to capture all revisions and updates. Also, it was too big of a time commitment to expect volunteer attorneys to create the substantive materials. Attorneys with particular expertise did help create more detailed information for certain specialized workshops such as intellectual property and commercial lending.

months, EJP assigned volunteers to several clients who were not ready for legal assistance either because they needed to resolve more fundamental business planning issues or, despite the entrepreneur's enthusiasm, he or she was not yet ready to fully invest in the business. To address this problem, EJP was planning to require more information from the entrepreneur as part of the application process, such as a business plan. A project should also consider charging a fee or making attendance at a clinic or workshop mandatory, or both, before a person becomes eligible for legal representation.

d) Pro bono commitment

An additional challenge to this model was the fact that the level of commitment of pro bono attorneys toward the project's clients and its overall mission was far less than one would expect from staff members. Further, priorities and interests among individual attorneys and law firms change with respect to pro bono activities. Therefore, it is imperative to take measures not only to maintain interest among a project's existing network of attorneys and firms, but also to continue to work on cultivating relationships with new attorneys and legal institutions.

Despite the incredible demand for assistance from entrepreneurs (by its fourth month, EJP averaged fourteen inquiries per week, placed an average of three to four clients, and received requests to teach workshops close to weekly), there was such a tremendous interest among corporate attorneys that attorneys soon exceeded the demand. Consequently, once a solid base of law firms was established, EJP did little to cultivate new relationships. However, as corporate departments shrunk and the economy picked up in Spring 2003, EJP commonly received only one or two responses to most inquiries and was at risk of being unable to place some clients or even to staff workshops and clinics.

Maintaining and expanding a pro bono network by actively reaching out to in-house corporate legal departments and local and state bar associations must be one of a project's ongoing priorities. Outreach to solo practitioners and smaller firms is also effective in expanding a project's network. These groups are more directly connected to a project's clients due to the possibility that the initial relationship will lead to new, paying clients as the entrepreneur's business grows. Further, to the extent applicants are rejected due to income, it is beneficial to include solo practitioners and smaller firms in a project because their commitment to the project might make them more willing to take on clients on a reduced fee basis. Solo practitioners volunteering with EJP tended to be some of the most committed pro bono attorneys in the project's network.

The level of law firm commitment was driven in large part by whether EJP had a designated contact person who felt invested in the project. The most active and reliable law firms were ones where EJP had principal associate and partner contacts who could build internal support among other attorneys.

Additionally, having individual firms and in-house corporate departments manage a signature project generated committed involvement at an institutional level. Giving law firms ownership over a specific project increases the number of volunteer attorneys from a particular firm and creates a connection between the firm and a community that otherwise would not have existed. These two factors, in turn, strengthen a firm's overall commitment to the project and strengthen the project's relationships with communities. Signature projects are also an effective means to leverage resources since, in addition to the pro bono support from individual attorneys, many of the administrative and coordination responsibilities can then be handled by the law firm.

VI. CONCLUSION

Supporting community business development through a community-centered transactional pro bono program is one part of a multi-faceted strategy to promote economic justice and to address the injustices that contribute to the continued marginalization of low-income urban communities. Helping residents of disempowered communities develop sustainable, community businesses that invest back into the community, create local jobs, and provide goods and services that meet the needs of local residents promotes resident controlled development. By providing these businesses with legal assistance and representation, they have a greater likelihood of succeeding. Successful, sustainable businesses create wealth which, in turn, gives individuals and communities power. Power enables those individuals and communities to challenge existing institutional structures. Power also provides the means required to exert more influence over broader regional economic and political issues that affect the community.

Although the model proposed in this Article is not the only avenue to promote economic justice through community business development, it was an effective approach. EJP focused on meeting the needs in communities rather than catering to the interests of attorneys by: (1) establishing extensive ties in its target communities; (2) providing quality services consistent with the quality of legal services any large business receives; (3) offering a range of programmatic elements; and (4) tailoring its services to respond to changing needs in a particular community. EJP empowered urban entrepreneurs to make informed decisions by making them more knowledgeable about business legal issues. It also created formal and informal mechanisms to ensure EJP was accountable to the communities in which it worked. Finally, it leveraged the resources of the private bar to reach as many entrepreneurs as possible. These considerations combined maximized EJP's impact in its target communities. Similar projects could further extend the impact business legal assistance and education for community businesses can have on America's impoverished urban communities.