

# TEACHING AND PRACTICING COMMUNITY DEVELOPMENT POVERTY LAW: LAWYERS AND CLIENTS AS TRUSTED NEIGHBORHOOD PROBLEM SOLVERS

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*This article draws from the authors' experiences as lawyers and law teachers whose practices focus on resource-deprived communities. We trace our roots to the poverty and legal services lawyering similar to what Jerry López describes. Our lineage also extends from a practice which López did not describe: that of community development law, focusing on the representation of community groups. We work with these "rebellious clients" to develop organizational capacity to promote their mission of economic and social justice, as they create neighborhood assets such as affordable housing, child care centers and cooperatively owned businesses.*

*Our aspiration for our clinics, community law offices and clients is that they serve as "trusted neighborhood problem-solvers." The reflections that follow describe how we try to supply the elements of "trusted," "neighborhood," and "problem-solver" across a range of physical, financial and institutional constraints. We begin with a contemporary effort to realize López's neighborhood-based law office, highlighting issues that the fictionalized version did and did not confront. In subsequent sections, each author assesses how her clinical practice exemplifies elements of our typology. We describe the process of constructing and supporting the organizational structures through which our rebellious clients achieve their missions, to enable them to achieve their own identity as "trusted neighborhood problem solvers" within their communities.*

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INTRODUCTION: THE ELEMENTS OF “TRUSTED NEIGHBORHOOD  
PROBLEM SOLVER”

This article draws from the authors’ experiences as lawyers and law teachers whose practices focus on resource-deprived communities. We trace our roots in part to the kinds of poverty and legal services lawyering that Jerry López describes: three of us worked in those practices, and one of us recently served as the executive director of the first legal services office founded under the War on Poverty. Our lineage extends also to a practice which López did not describe: that of the legal services community development office, a practice based in the representation of community groups to create neighborhood assets such as affordable housing, child care and medical centers.<sup>1</sup> This vibrant representation of both community-based institutions and the individuals they serve existed before *Rebellious Lawyering* was written and has proliferated in law schools’ clinical programs.<sup>2</sup>

Our vision of lawyering for social change reaches beyond the paradigm of crisis-based intervention which prevails in poverty law practice and legal education, and which keeps the lawyer as the dominant player to leverage resources and implement strategies to achieve the goals. By contrast, whether we form “community economic development” (CED) clinics, small business clinics or community-based legal services offices, our approach affirms the strength of community partners and of our clients as embedded in a community network and as assets to community and advocacy.<sup>3</sup>

Our approach does not diminish the importance of meeting urgent needs; rather, it views urgency as a symptom of structural weak-

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<sup>1</sup> See, e.g., Peter Hoffman, *Legal Aid of Western Missouri’s Economic Development Project: Bringing Self-Empowered Revitalization to Distressed Neighborhoods*, 24 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 403 (2016) (describing Legal Aid’s three decades of assisting community groups in rehabilitating vacant housing in Kansas City); Brian Glick & Matthew J. Rossman, *Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice: The East Brooklyn Experience*, 23 N.Y.U. REV. L. & SOC. CHANGE 105, 157-62 (1997) (describing Brooklyn Legal Services Corporation A and its Community Development Unit’s platform for a geographically based, full service community economic development (CED) practice); Roger A. Clay, Jr. & Susan R. Jones, *A Brief History of Community Economic Development*, 18 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 257, 260-63 (2009) (explaining that CED arose from the civil rights movement with the development of “neighborhood-based, self-sufficiency paradigm[s]” and “broad-based redistributive economic agenda[s]”).

<sup>2</sup> See ROBERT R. KUEHN & DAVID SANTACROCE, CTR. FOR THE STUDY OF APPLIED LEGAL EDUC., 2013-14 SURVEY OF APPLIED LEGAL EDUCATION (2015) (summarizing that of 1,322 clinical offerings reported by 174 law schools, 4.2% are identified as “community economic development” clinics).

<sup>3</sup> For the pioneering expression of the assets-based approach to advocacy on behalf of communities, see generally JOHN P. KRETZMANN & JOHN L. MCKNIGHT, *BUILDING COMMUNITIES FROM THE INSIDE OUT: A PATH TOWARD FINDING AND MOBILIZING A COMMUNITY’S ASSETS* (1993).

ness. We seek to address those weaknesses by embracing strategies that include building community-based strength. For the community law office, the locus of that strength is the network of clients, service providers and institutions that informs the office's advocacy. For the CED lawyer, the strength lies in community-based organizational clients, "rebellious clients" whose mission is to promote economic and social justice. Our job as their lawyer is to build their capacity as corporate actors, so that they can channel their members' individual talents into unified action.

Our common aspiration is that we serve as a "trusted neighborhood problem-solver." This is how we want our clients and community members to think of us. It is how we want our students to envision their sites of practice and their roles as future practitioners. It is a designation that transcends any one strategy or specialization. It also is what we want our community organization clients to be. As we earn our clients' trust through demonstrating our accountability to their mission, we advise them on how to gain their constituents' trust through upholding their fiduciary duties to their organizations and to the communities that they serve. Our goal for them is that they develop into the "trusted neighborhood problem solver" to which their neighbors will turn for assistance and guidance and at which point our work is done.

In this article, we describe what we mean by "trusted," "neighborhood," and "problem-solver" across a range of physical, financial and institutional constraints. We begin with a contemporary realization of López's neighborhood-based law office, including issues that the fictionalized version did and did not confront. In subsequent sections, we offer our reflections on interactions with students, clients or communities that exemplify one or more of the elements of our typology. We describe the process of constructing and supporting the organizational structures through which our rebellious clients achieve their missions. At the close of these vignettes, we review our achievements and shortcomings in the context of community economic development as a justice-driven practice.

#### I. RECLAIMING THE NEIGHBORHOOD-BASED LAW OFFICE IN CHALLENGING TIMES

Born in the heady days of Lyndon Johnson's War on Poverty in 1964, Neighborhood Legal Services Program of Washington D.C. (NLSP) was the first neighborhood-based legal services program established under the new Office of Economic Opportunity (OEO).<sup>4</sup>

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<sup>4</sup> Brian Gilmore, *Love You Madly: The Life and Times of the Neighborhood Legal*

For the architects of the OEO legal services program, access to the legal system was indispensable to an anti-poverty agenda, both to protect the rights of those who lacked economic power and to secure systemic change to overcome inequities that kept people in poverty.<sup>5</sup> They embraced then-novel concepts that lawyers had a responsibility to respond to community-wide, as well as individual needs, to reform the law for the benefit of the poor and that clients should participate in program governance and priority setting.<sup>6</sup>

The focus on serving a “client community” was especially important in the nation’s capital, where poor people were, and remain, disproportionately African American.<sup>7</sup> NLSP’s early neighborhood offices and law reform unit brought advocates to those who were most marginalized.<sup>8</sup> Among other achievements, the program established new protections for poor people, including the warranty of habitability in rental housing, which survive as enduring precedent.<sup>9</sup>

Intervening years saw the reduction of federal funding and efforts to muzzle legal services.<sup>10</sup> With dwindling federal funding—NLSP receives 11.3% today in real dollars of what it did in 1966<sup>11</sup>—the pro-

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*Services Program of Washington, D.C.*, 10 UDC/DCLS L. REV. 69, 76 (2007); see also ALAN W. HOUSEMAN & LINDA E. PERLE, CTR. FOR LAW & SOC. POLICY, SECURING EQUAL JUSTICE FOR ALL: A BRIEF HISTORY OF CIVIL LEGAL ASSISTANCE IN THE UNITED STATES 7 (2007), available at <http://www.clasp.org/resources-and-publications/files/0158.pdf>; Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964).

<sup>5</sup> See generally HOUSEMAN & PERLE, *supra* note 4, at 8-12.

<sup>6</sup> *Id.* at 12-13. For the requirement that legal services programs funded by the federal Legal Services Corporation (LSC) include clients on their boards of directors and directly involve clients in setting the programs’ priorities, see 42 U.S.C. § 2996f(c) (2012) and 45 C.F.R. § 1607.3(c) (2016).

<sup>7</sup> Jenny Reed, *Poverty Rates Remain High for Some Groups of DC Residents*, D.C. FISCAL POL’Y INST. (Sept. 20, 2013), <http://www.dcfpi.org/poverty-rates-remain-high-for-some-groups-of-dc-residents>; Jenny Reed & Wes Rivers, *Poverty in DC Has Jumped Significantly Since 2007*, D.C. FISCAL POL’Y INST. (Oct. 6, 2014), available at <http://www.dcfpi.org/wp-content/uploads/2014/10/ACS-Write-Up.pdf>.

<sup>8</sup> Gilmore, *supra* note 4, at 87.

<sup>9</sup> *Id.* at 96-100 (discussing *Javins v. First Nat’l Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970), *cert. denied*, 400 U.S. 925 (1970)).

<sup>10</sup> Federal financial support for civil legal services generally has eroded over the last few decades. LEGAL SERVS. CORP., FACTBOOK 2015 - BY THE NUMBERS: THE DATA UNDERLYING LEGAL AID PROGRAMS 3 (2016), available at <https://lsc-live.app.box.com/v/LSC-2015-ByTheNumbers> (documenting double-digit federal funding decreases in 1982, 1996 and 2012); see also HOUSEMAN & PERLE, *supra* note 4, at 12; Alan W. Houseman, *The Future of Civil Legal Aid: A National Perspective*, 10 UDC/DCLS L. REV. 35, 41-52 (2007) (summarizing Congressional restrictions on federally funded legal services advocacy). For more on the practical impact of Congress’s restrictions on the use of community-based and other systemic advocacy in federally funded legal services practice, see *infra* notes 25-26 and accompanying text.

<sup>11</sup> In 1966, NLSP received \$914,025 in federal support from OEO, Gilmore, *supra* note 4, at 87, an amount worth \$6,686,403.19 in 2015 dollars, *CPI Inflation Calculator*, U.S.

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gram's ten offices were reduced to three, all of which remain in D.C.'s lowest-income Wards.<sup>12</sup> Motivated by the continued urgency of deep unresolved inequities that led to NLSP's creation, NLSP is reclaiming its legacy to address multi-generational, racially disproportionate poverty perpetuated by lack of access to safe and affordable housing, adequate educational opportunities, meaningful pathways to employment, adequate wages and protection from exploitative schemes that prey on the most vulnerable.

To become a resource that will enable clients—individually and collectively—to emerge from poverty, we are shaping one of our neighborhood offices to serve as a “community hub.” We want community members to see us as an accessible and trusted resource to help them resolve both their individual problems and those that affect their neighborhood more generally. We seek to serve as a convener, bringing together stakeholders—residents, community organizations and others—to facilitate collaborative work to strengthen the neighborhood. While still a work in progress, our effort thus envisions Lopez's “network of cooperative problem-solvers” composed of lay and professional advocates.<sup>13</sup>

#### A. *Building the Hub as a Collaborative Problem-Solver in the Neighborhood*

Embedding a law office in the heart of a geographical service area enables us to make a physical statement about our commitment to meeting our clients literally where they are. Two of NLSP's three offices are located east of the Anacostia River in Wards 7 and 8, where poverty and racial segregation are the most concentrated.<sup>14</sup> The river is a daunting divider, hiding high levels of poverty and struggle from those who spend their time in the halls of power and the wealthy

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DEPT OF LABOR, BUREAU OF LABOR STATISTICS, [https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm) (last visited Jan. 31, 2017). In 2015, NLSP received \$754,494 from the Legal Services Corporation. LEGAL SERVS. CORP., *supra* note 10, at 6.

<sup>12</sup> The District of Columbia is divided into eight geographic “Wards,” each of which is represented in the D.C. Council, the District of Columbia's legislative body, by a popularly elected single member, in addition to four at-large members. *D.C. Councilmembers*, COUNCIL OF D.C., <http://dccouncil.us/council> (last visited Jan. 25, 2017).

<sup>13</sup> GERALD P. LÓPEZ, *REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE* 56 (1992).

<sup>14</sup> According to the 2010 Census, the poverty rate in Ward 7 was 26%, 8% higher than the average of all Wards in D.C., and the population in 2010 was 95% Black Non-Hispanic, compared to the city-wide average of 51%. *DC 2012 Ward Profile—Population—Ward 7*, NEIGHBORHOOD INFO D.C. [hereinafter *D.C. Ward 7 Population Profile*], [http://www.neighborhoodinfodc.org/wards/Nbr\\_prof\\_wrd7.html](http://www.neighborhoodinfodc.org/wards/Nbr_prof_wrd7.html) (last visited Jan. 25, 2017). The poverty rate in Ward 8 was 37%, with a 95% Black Non-Hispanic population. *DC 2012 Ward Profile—Population—Ward 8*, NEIGHBORHOOD INFO D.C., [http://neighborhoodinfodc.org/wards/Nbr\\_prof\\_wrd8.html](http://neighborhoodinfodc.org/wards/Nbr_prof_wrd8.html) (last visited Jan. 25, 2017).

communities surrounding the downtown District.<sup>15</sup>

In 2013, we relocated one of our two “east of the River” offices to a house, one of the modest, single-family homes in Ward 7’s Deanwood neighborhood.<sup>16</sup> Our office conveys a welcoming feel with an aura of professionalism, signaling a seriousness of purpose and respect for our clients and community. As we work in this space, we further appreciate that the neighborhood may be poor with regard to income, but is rich in other assets. Residents in Deanwood tend to be older and many have a deep, multi-generational connection to and pride in their community.<sup>17</sup> A vibrant community center and library provide spaces where community members gather. The AFL-CIO’s “Building Futures” program is located around the corner from our office. Engaging these external resources in formal and informal partnerships to serve a shared constituency moves us toward realization of Lopez’s community-based, multi-disciplinary model.<sup>18</sup>

### B. Solving Problems in Partnership with Community Organizations and Members

Strategic and on-going partnerships with community-based organizations are a foundational piece of NLSP’s delivery model and community-based lawyering. In active collaboration with our partners, we shape on-going community education opportunities to enable residents to recognize and learn how to address recurrent problems that have a legal dimension. Like López, we believe that community education is a foundational element of both individual problem solving and potential systems-changing work.<sup>19</sup> For example, each time a new

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<sup>15</sup> See Brett Williams, *A River Runs Through Us*, 103 AM. ANTHROPOLOGIST 409 (2001) (describing the toxic despoliation of the Anacostia River that occurred simultaneously with the economic and racial segregation of long-term and displaced black residents in the neighborhoods “east of the River”); Clair Zippel, *D.C.’s Black Residents Increasingly Live East of the Anacostia River*, D.C. FISCAL POL’Y INST., Sept. 28, 2016, <http://www.dcfpi.org/wp-content/uploads/2016/09/9.28.16-Poverty-East-of-the-River.pdf> (documenting the increasing segregation east of the River of black and poor D.C. residents since the end of the 2008 recession); Jonathan Schwabish & Gregory Acs, *D.C.’s Economic Recovery: An Unequal Distribution*, URB. INST., Apr. 14, 2015, <http://www.urban.org/urban-wire/dceconomic-recovery-unequal-distribution>.

<sup>16</sup> Audrey Hoffer, *Where We Live: Deanwood in Northeast DC*, WASH. POST., July 25, 2014, [https://www.washingtonpost.com/realestate/where-we-live-in-northeast-dcs-deanwood-a-patchwork-of-progress/2014/07/24/6400d06c-05f0-11e4-bbf1-cc51275e7f8f\\_story.html](https://www.washingtonpost.com/realestate/where-we-live-in-northeast-dcs-deanwood-a-patchwork-of-progress/2014/07/24/6400d06c-05f0-11e4-bbf1-cc51275e7f8f_story.html) (describing the Deanwood neighborhood as “lined with single-story cottages and two-level brick duplexes” with some homes available for under \$50,000).

<sup>17</sup> *D.C. Ward 7 Population Profile*, *supra* note 14 (noting that 13% of residents of Ward 7 are seniors, compared to 11% city-wide, with a 24% increase in the senior population from 1980-1990).

<sup>18</sup> See LÓPEZ, *supra* note 13, at 46-51 (emphasizing the desirability of fusing diverse professional, practical, legal and lay knowledge and expertise to address clients’ problems).

<sup>19</sup> *Id.* at 74-80 (describing education in “self-help and lay lawyering” as a long-term

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apprenticeship class comes to the AFL-CIO “Building Futures” program, we meet with staff to review the problems new class members are likely experiencing and design our workshops accordingly.

Our “Barriers to Employment” project brings similar workshops and the opportunity for immediate consultations to the Deanwood library and other local library branches. Through these structured outreach and education efforts, community members learn that many barriers to employment they face have a legal dimension and can be resolved either through an informed response of the individual or with the help of a lawyer. As a result, community members are better equipped to fight back on a range of issues such as crushing child support, unstable housing, the collateral consequences of criminal records, inaccurate credit reports and consumer debt.

### *C. Building Trust Through Engaged and Systematic Listening and Learning*

Our ability to be effective community lawyers depends on having timely information about unmet needs facing community members. For example, it came as no surprise to learn from our community partners and their clients that criminal records are a significant barrier to employment. It was, however, surprising to learn that student loan debt is another.<sup>20</sup> We had not realized how many low-income community members had borrowed money to finance a pathway out of poverty through trade schools and community colleges. Unpaid debts not only burden community members financially, but impede their ability to find work, as employers now use problematic credit reports as a disqualifier.

While insights from those who work in the community and our clients are helpful, we decided we needed to conduct a more systematic effort to talk and listen to community members about their challenges and their community. We recognized that we needed to institutionalize the type of open-ended and inquisitive inquiry of community members that López captures through Amos’ approach to problem-solving advocacy.<sup>21</sup>

Beginning in 2012, we conducted or participated in structured “Community Listening” projects designed to identify the most press-

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process of changing institutions through transformative engagement with individual clients).

<sup>20</sup> Such information helps shape our priorities. For example, we trained two lawyers to deal with debt issues, with an emphasis on student loans. We are providing more assistance for sealing criminal records and enforcing D.C.’s “Ban the Box” law. *See* D.C. CODE § 32-1342 (LEXIS through 2016 legislation) (codifying the Fair Criminal Record Screening Amendment Act of 2014, D.C. Legis. Serv. 20-152 (West)).

<sup>21</sup> LÓPEZ, *supra* note 13, at 34.

ing needs of low-income D.C. residents, explore community members' views of the strengths and vulnerabilities of their communities and ascertain community knowledge of legal aid.<sup>22</sup> We asked respondents to talk about their most serious challenges and concerns in their communities, rather than asking about more narrow "legal" problems. The city-wide Community Listening Project engaged community members at every step of the process, from its initial planning through implementation, data analysis and public "rollout."

We have rounded out our efforts to ensure that our advocacy addresses our clients' needs and priorities by endeavoring to gain a deep understanding of our immediate neighborhood. In collaboration with a local law school, community members and activists, we used data and many "neighborhood walks" to explore Deanwood, and we mapped its abandoned or blighted properties.<sup>23</sup> The knowledge we gained from the data and discussions among stakeholders substantially shaped our strategic goals for clients. For example, as a result of the NLSP study and our mapping initiative, we expanded our housing practice to focus resources on preserving home ownership, particularly in the Deanwood area. Our ability to document widespread obstacles to sustained employment gave additional data-driven urgency to successful fundraising to support removing barriers to employment.

#### D. Challenges

We face a number of challenges in developing a community-based legal resource for clients. First, the city-wide Community Listening study elicited the painful refrain from clients that "free" lawyers can't be good lawyers, otherwise they would be making a lot more money.<sup>24</sup> Such a misplaced stereotype can doom even the best-intentioned community-focused efforts. We must strive to provide the highest quality service, worthy of any well-heeled private law firm,

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<sup>22</sup> NLSP's effort consisted of interviews of over 130 low-income community members and more than 30 representatives from community-based organizations using a written survey instrument. The city-wide project engaged 130 low income residents in focus groups and conducted interviews of an additional 590. *See* FAITH MULLEN & ENRIQUE PUMAR, D.C. CONSORTIUM OF LEGAL SERVS. PROVIDERS, THE COMMUNITY LISTENING PROJECT (2016), <http://www.lawhelp.org/dc/resource/community-listening-project> (last visited Jan. 7, 2017) (presenting the findings of structured interviews with low income persons in the District of Columbia concerning their most serious problems, legal or non-legal, from the preceding two years).

<sup>23</sup> *Community Engagement*, NEIGHBORHOOD LEGAL SERVS. PROGRAM, [www.nlsp.org/community/community-engagement](http://www.nlsp.org/community/community-engagement) (last visited Jan. 19, 2017) (describing the formation in 2013 of the "Preserving Our Neighborhoods" taskforce, composed of local government officials, activists and residents to investigate the extent of vacant and abandoned properties and the stresses on affordable housing in Deanwood).

<sup>24</sup> MULLEN & PUMAR, *supra* note 22, at 30.

and communicate the quality of our work and staff. Rich people hire lawyers because they recognize that the attorneys' specialized skill sets help them achieve their goals. Our clients should view us the same way—as highly skilled specialists helping them achieve what they want. Community confidence is necessary to secure those critical community partnerships, to bring community members to the “hub” we envisioned and to engage community members in collaborative advocacy.

Second, to many traditional funders of legal aid work, community development work may seem less urgent and less immediately tangible than preventing someone from being evicted, losing critical income that puts food on the table or protecting a vulnerable person from domestic violence, despite the fact that community development work can bring long-term benefits to many. For example, we were unable to persuade a funder to renew a housing preservation initiative that promised real and increasing benefits to Deanwood homeowners because, in its first year, when we had to market the unfamiliar project to the community, we did not meet all of the grant's quantifiable benchmarks.

Third, funding often comes with requirements or restrictions on activities for which the funds may be used. Funders' priorities may dictate the types or numbers of persons served (e.g., survivors of domestic violence, persons leaving incarceration or veterans). Some funders may demand that a program serve a minimum number of persons. Others, including the federal Legal Services Corporation (LSC) may impose limitations on the type or scope of advocacy a grantee may undertake.<sup>25</sup> Some of those limitations, such as those prohibiting grassroots organizing, participating in boycotts, or conducting class actions, for example, preclude the use of tools that could be particularly useful to achieving community-wide change.<sup>26</sup>

These resource constraints and restrictions are not insuperable. Community development work can open new funding opportunities. By effectively showing how legal services can contribute to community health and welfare, we can attract new funding to develop and implement longer-term projects that hold out the promise of broad-based improvements to individual and collective well-being while not abandoning individuals in crisis. And much community-based work is permissible within even the most restrictive funder-imposed limita-

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<sup>25</sup> See Houseman, *supra* note 10.

<sup>26</sup> For example, LSC-paid employees are prohibited from engaging in boycotts, demonstrations, picketing or strikes, 42 U.S.C. § 2996e(b)(5)(A) (2012); in “grassroots organizing,” 42 U.S.C. § 2996f(b)(7) (2012), 45 C.F.R. § 1612.9 (2016); and in legislative advocacy, 42 U.S.C. § 2996f(a)(5)(A) (2012), 45 C.F.R. § 1612.3 (2016).

tions. Programs can heighten public awareness and increase pressure to end a bad practice through media advocacy, strategic litigation or community and client education. Community-based partners or unrestricted law firms may be well-suited to engage in complementary “restricted” work.

## II. WORKING WITH COMMUNITY GROUPS AND STRIVING FOR IMPACT

The Community and Economic Development Clinic (CEDC) at the University of Michigan represents organizational clients working to improve the quality of life of community residents, primarily in transactional matters.<sup>27</sup> Almost since its inception as the Program in Legal Assistance to Urban Communities, the clinic has had a physical presence in Detroit. Students and faculty members meet with clients in Detroit, either in client offices or in University or clinic office space.<sup>28</sup>

Serving clients in Detroit is challenging in several ways. Students travel to Detroit (and neighboring communities) for client meetings, but Detroit is approximately 50 miles from the law school. It can be difficult to coordinate client schedules with student class and work schedules. The clinic office in Detroit is centrally located, but we work with clients throughout a city known for the lack of a good public transportation system.<sup>29</sup>

The economic, social and racial differences between the two cities, our clients and our students perhaps present even greater challenges.<sup>30</sup> The University of Michigan, originally founded in Detroit,

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<sup>27</sup> Jeffrey S. Lehman & Rochelle E. Lento, *Law School Support for Community-Based Economic Development in Low-Income Urban Neighborhoods*, 42 WASH. U. J. URB. & CONTEMP. L. 65, 72 (1992).

<sup>28</sup> At one point the clinic had its own office space in Detroit. The CEDC now works out of University space in the city also used by other colleges and programs that work in Detroit. See DETROIT CTR., UNIV. OF MICH., <http://detroitcenter.umich.edu/> (last visited Jan. 27, 2017).

<sup>29</sup> Detroit is a city of just under 700,000 residents (2015 estimates) living in approximately 139 square miles. The city has lost approximately half of its population since its height in the 1950 census. *QuickFacts Detroit City, Michigan*, U.S. CENSUS BUREAU, [www.census.gov/quickfacts/table/PST045215/2622000](http://www.census.gov/quickfacts/table/PST045215/2622000) (last visited Jan. 26, 2017).

<sup>30</sup> Over 80% of the population of Detroit is African American and close to 40% of the residents of the city live in poverty. *Id.* In contrast, Ann Arbor is a city of approximately 117,000 people and overwhelmingly White. *QuickFacts Ann Arbor City, Michigan*, U.S. CENSUS BUREAU, [www.census.gov/quickfacts/table/PST045215/2603000,2622000,00](http://www.census.gov/quickfacts/table/PST045215/2603000,2622000,00) (last visited Jan. 26, 2017). In 2015, Detroit was the most impoverished city in the country with a poverty rate of 39.3%. Karen Bouffard, *Census Bureau: Detroit Is Poorest City in the U.S.*, DETROIT NEWS, Sept. 17, 2015, <http://www.detroitnews.com/story/news/local/michigan/2015/09/16/census-us-uninsured-drops-income-stagnates/32499231/>. Median household income was \$25,074 in Detroit and \$60,337 in Ann Arbor. *Id.* 15.2% of Detroiters are unemployed, *Employment Status in Detroit, Michigan*, STAT. ATLAS, <http://statisticalatlas.com/>

moved to Ann Arbor shortly after being created.<sup>31</sup> The University is sometimes seen as a giant powerful monster using the community for its benefit and not giving much in return.<sup>32</sup> Most law students are initially familiar with Detroit only as a destination for sporting events, and many leave the region after law school.

#### A. *The Clients of the Community and Economic Development Clinic*

The CEDC represents a broad range of groups working on a range of issues. They differ in their stage of formation and development as a group and in the type of legal services they seek from the clinic. Most of these groups are small or medium-sized organizations. Some clients are grassroots groups such as block clubs and neighborhood-based groups. These groups are for the most part comprised of volunteers without paid staff. Other groups receive grants and have professional staff.

The clinic works with start-up clients looking to address issues in their communities. We also serve as counsel to established organizations. Our client groups are working to build and grow community assets and provide needed services in their communities. We work with some groups on discrete legal issues, for example negotiating a lease for new office space. For other groups, the clinic serves as informal general counsel. Our work for these clients is best characterized by Susan Bennett's term "long-haul lawyering."<sup>33</sup>

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place/Michigan/Detroit/Employment-Status (last visited Jan. 26, 2017), compared to 2.7% of Ann Arbor residents, *Economy at a Glance Ann Arbor, Michigan*, U.S. DEP'T OF LABOR, BUREAU OF LABOR STATISTICS, [https://data.bls.gov/timeseries/LAUMT261146000000004?amp%253bdata\\_tool=XGtable&output\\_view=data&include\\_graphs=true](https://data.bls.gov/timeseries/LAUMT261146000000004?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true) (last visited Jan. 31, 2017) (April 2016 data). More than one in five Detroit residents do not have a high school diploma, *Educational Attainment in Detroit, Michigan*, STAT. ATLAS, <http://statisticalatlas.com/place/Michigan/Detroit/Educational-Attainment> (last visited Jan. 26, 2017), while 94% of Ann Arbor residents are high school graduates, *Educational Attainment in the Ann Arbor Area, Michigan*, STAT. ATLAS, <http://statisticalatlas.com/metro-area/Michigan/Ann-Arbor/Educational-Attainment> (last visited Jan. 26, 2017).

<sup>31</sup> *A Brief History – The University of Michigan's Heritage: Two Centuries of Leadership*, MILLENNIUM PROJECT, UNIV. OF MICH. 1, 7, [http://um2017.org/2017\\_Website/U\\_of\\_M\\_History\\_files/Brief%20Michigan%20History.pdf](http://um2017.org/2017_Website/U_of_M_History_files/Brief%20Michigan%20History.pdf) (last visited Jan. 26, 2017).

<sup>32</sup> In a recent example, the clinic had been working with a group for several years. When it looked as if the business school might become involved to provide some expertise on a business question, the community group became very upset. The reaction of the group was that dealing with the clinic was okay but the business school was another story.

<sup>33</sup> Susan D. Bennett, *On Long-Haul Lawyering*, 25 FORDHAM URB. L.J. 771, 773 (1998).

### B. *Creating Economic Justice Through Strengthening Community Assets*

The clinic's clients that are working toward creating economic justice and equity through building and expanding community assets do not view the world from the perspective of deficits, but see the need to create institutions to facilitate community decision-making and participation in governance.<sup>34</sup> This work is particularly critical for some groups at a time when others may view Detroit as a blank slate waiting to be designed (and saved).<sup>35</sup> Several client groups are committed to creating forms of community ownership, including community ownership of assets, and economic opportunities where few exist. For example, the clinic has worked with groups interested in creating land trusts as a way to hold community power over the approximately one-quarter of the city land that is vacant,<sup>36</sup> as well as with groups creating various forms of cooperatives. We may characterize these groups as "rebellious" since they are trying to resist and defy the conventional notion of how to strengthen a city and support its residents.

Two separate groups, at different points of development and with distinct relationships with the clinic, serve as examples of the CEDC's work in strengthening community assets.

#### 1. *Creating Assets Through a Trusted Long-Term Relationship*

Just Food has been in existence for approximately ten years.<sup>37</sup> Just Food works to achieve food justice and food security. It carries out its work through the lenses of economic and racial equity. Over the years, the clinic's work for the group has involved a wide range of substantive areas of law, including land use, real estate, landlord-tenant, intellectual property, governance, taxation and risk management. More recently the clinic has worked with Just Food to create community-owned resources, including a cooperatively-owned grocery store and a producer cooperative for food businesses.

The CEDC has a long-standing relationship with the group, first working with it on a discrete matter not long after the group formed,

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<sup>34</sup> John L. McKnight & John P. Kretzmann, *Mapping Community Capacity*, in COMMUNITY ORGANIZING & COMMUNITY BUILDING FOR HEALTH 158-172 (Meredith Minkler ed., 2d ed. 2005).

<sup>35</sup> *Activists: Detroit Is So Much More than a Blank Slate*, MICH. PUB. RADIO (May 27, 2016); Kate Abbey-Lambertz, *11 Stereotypes Detroiters are Tired of Hearing*, HUFFINGTON POST (Mar. 5, 2015), [http://www.huffingtonpost.com/2015/03/05/detroit-stereotypes-misconceptions-blank-slate\\_n\\_6800606.html](http://www.huffingtonpost.com/2015/03/05/detroit-stereotypes-misconceptions-blank-slate_n_6800606.html).

<sup>36</sup> GARY SANDS & MARK SKIDMORE, LINCOLN INST. OF LAND POL'Y, DETROIT AND THE PROPERTY TAX: STRATEGIES TO IMPROVE AND ENHANCE REVENUE 10 (2015); John Gallagher, *The Good, the Bad, and the Vacant*, DETROIT FREE PRESS, Feb. 20, 2010, at 9A.

<sup>37</sup> Not the group's real name.

and evolving over time into the position of “house counsel.”<sup>38</sup> Sometimes, the group brings issues to the CEDC; as the relationship has developed, the CEDC has raised issues with the group, including, for example, questions of governance and intellectual property. At times, the CEDC has suggested regular meetings so that it may keep up with what is happening with the group’s projects. That relationship has allowed the clinic to speak for the group at times without discussing the clinic’s position first, knowing what is in the group’s best interest and knowing that the group would want the clinic to protect it.

The relationship between Just Food and the clinic has developed into a deep mutual respect for the differing perspectives the lawyer and community group may bring to the work of creating community assets. Members of the group sometimes tease the CEDC’s students and lawyers about our risk-averseness or cautiousness, such as when we suggest creating a particular structure with multiple entities in order to protect assets, or when we recommend memorializing an agreement in writing as opposed to trusting another party. But the group appreciates when the clinic points out something that may not have occurred to the group. At times, the clinic may wish the group had asked for permission instead of waiting to ask for forgiveness, since it is the CEDC that is often left in the position to craft the legal language to ask for forgiveness (and asking for permission may have taken less time).

## 2. *Building a Structure to Support the Organization’s Vision*

Obreros Unidos is a relatively new group, both as an entity and in terms of the development of its relationship as a client of the CEDC.<sup>39</sup> The group emerged from the positive resolution of a wage theft campaign. The group seeks to be a worker’s organization and has hopes to build a worker’s movement and support the creation of worker-owned enterprises.

The group incorporated on its own and sought the clinic’s assistance in seeking tax exemption and in answering several governance and structural questions. Though the group formed as a nonprofit, several members of the group have asked the clinic to help them revisit that decision and explore all its options. In our early work, the CEDC has advised the group about its legal requirements, such as the fiduciary duties of board members, the on-going responsibilities of a group once incorporated, and the possibilities (and limitations) of the various tax and entity forms. Obreros Unidos needs this information

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<sup>38</sup> Bennett, *supra* note 33, at 777 (citing *Glick & Rossman, supra* note 1, at 199-200).

<sup>39</sup> Not the group’s real name.

to enable it to decide if and how it wants to re-structure itself.

Working with a newly formed organizational client often involves designing a governance structure through which constituents can communicate their priorities and the client can communicate with its lawyer. Though *Obreros Unidos* has incorporated, it has neither drafted bylaws nor adopted membership criteria. This group is far from speaking with a unified voice when it comes to its mission and direction.<sup>40</sup> This has presented challenges as the client works through who its decision-makers are. The CEDC's work has involved hearing the diverse voices of the group's actual (and potential) membership in order to present the group with options consistent with its goals.

In working with *Obreros Unidos*, we have struggled with the question of the group's readiness for legal services.<sup>41</sup> The CEDC has taken the initiative to set some priorities and time lines for the group. The clinic decided that the group needed to understand its responsibilities before it could decide what it wanted to be. The group needs to decide who the initial decision makers will be before it can decide a process for making decisions: Who will decide the criteria for membership and for the board of directors? Who will approve the initial set of bylaws, before they are approved by the members? The clinic decided that it was unrealistic to expect the client to make decisions without the lawyers providing some framework and structure. These discussions are more challenging since the group has already formed a legal entity.

The clinic and *Obreros Unidos* have not developed a relationship of trust. Perhaps some of the limits the clinic has placed on the relationship may hinder that from happening. In the past, the CEDC has represented groups that did not move forward, could not make decisions, "failed" to form, or chose to dissolve. With *Obreros Unidos*, we believed we needed to create some structure. Was the timing right? We question whether another approach might help the group make those important decisions.

### *C. Rebellious Clients and Their Trusted Community Corporate Problem Solver*

Do clients working to create change and new institutions, and challenging traditional institutions and traditional ways of working, see lawyers as trusted problem solvers? As our practice is often trans-

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<sup>40</sup> Client-centeredness is definitely multiplied in this setting. The question for the clinic has been not just who gets to speak (to whom do we listen), but who gets to vote. Stephen Ellmann, *Client Centeredness Multiplied: Individual Autonomy and Collective Mobilization in Public Interest Lawyers' Representation of Groups*, 78 VA. L. REV. 1103 (1992).

<sup>41</sup> See Bennett, *supra* note 33, at 779.

actional, many community lawyers may see us as the “corporate” type. But the community development lawyer needs the same values and attributes as any other rebellious lawyer. The relationships require mutual respect, communication, balance, collaboration and compromise. Rebellious *clients* call on the lawyer to think more creatively about the way to fit the client’s goals into legal categories.

Community development lawyers help their clients work on institutional design.<sup>42</sup> Clients working toward creating a more just society demand that lawyers help them create alternative institutions, such as workers’ cooperatives, that are necessary for that change. Transactional lawyers for community organizations also often work in the background. The ideas frequently come from the client, and the lawyer works to implement the initiative. In the best of circumstances, clients see the lawyer as a partner and may seek the lawyer’s opinion regarding a business or community strategy that affects the legal strategy. At other times, the lawyer will not have the opportunity to observe the decision being made or even know that it is being made. The lawyer may have to ask why the decision was made a certain way as she is called upon to implement the decision that the group has made.

Relationships of trust with community organizations are generally built over time. Relationships of trust are built on mutual respect. Trust often requires humility.<sup>43</sup> The clinic’s interaction with Just Foods is an example of that relationship built over time and through communication and mutual respect for the expertise and perspective of each. Physical presence in the community may help a lawyer build trust with a community, but presence alone is not sufficient. Geographic, racial and social differences require that we be more vigilant about the lawyer’s understanding of the client goals.

As Susan Bennett has written, being “present” also requires deciding “when not to be.”<sup>44</sup> Deciding when not to be present may be challenging and may require a difficult conversation with the client. The question for community lawyers is what happens before that relationship of trust can be built? In those instances, we have a higher responsibility to communicate, to ask questions, to explain our questions and to accept the decisions of the community, however defined. In long-standing relationships of trust, we cannot take for granted the fact that we may not understand, and have to ask questions and debrief meetings to be certain that we truly understood and acted in keeping with the wishes of the group.

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<sup>42</sup> See GABRIEL METCALF, *DEMOCRATIC BY DESIGN: HOW CARSHARING, CO-OPS AND COMMUNITY LAND TRUSTS ARE REINVENTING AMERICA* 3 (2015).

<sup>43</sup> Humility is particularly important, perhaps, when we are working across differences.

<sup>44</sup> Bennett, *supra* note 33, at 779-80.

The community development lawyer can design a working relationship with the community only if she takes advantage of the community's knowledge, of her clients' superior knowledge of its industry and of her clients' superior knowledge of the community.<sup>45</sup> We may not characterize that knowledge as "lay practical knowledge," but the CED lawyer's client is often educating, and must educate, the lawyer about the client's work (whether job training, running a restaurant, managing a grocery store, organic agriculture). The lawyer must have that understanding to create the structures we are called upon to create, whether those structures are rebellious or not. The challenge for the lawyer working with rebellious clients is whether we have the creativity to create the structures necessary to fulfill the client's vision.

### III. THE CLINICAL LAW OFFICE AND THE CLIENT AS CO-TRUSTED LEGAL PROBLEM SOLVERS

The Community Development Law Clinic (CDLC) at the University of the District of Columbia School of Law is nestled among seven other practice areas in the School of Law's clinical program.<sup>46</sup> The CDLC's goal is to provide assistance to entities and entrepreneurs working to develop capital assets and resources in low wealth communities and to introduce students to a transactional and policy-oriented practice of law. Our clients include various types of enterprises with various legal problems.

The focus here is on our experience working with housing cooperatives (coops), who as tenants, exercised the right of first refusal to purchase their rental building under the District's Tenant Opportunity to Purchase Act ("TOPA").<sup>47</sup> The TOPA cases do not comprise the majority of our cases, but each TOPA case represents a considerable time investment and presents a broader range of issues for students than most other cases. Additionally, each case provides an opportunity to work with a board of directors as it undertakes to create, manage and protect the equity generated through a housing business and gives the students an experience akin to that of in-house corporate

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<sup>45</sup> LÓPEZ, *supra* note 13, at 48.

<sup>46</sup> As the District of Columbia's public law school, the School of Law has adopted the mission to enroll students of ethnic and racial backgrounds and other groups that have been under-represented in the bar and to operate a clinical law program committed to representing the legal needs of low-income persons. D.C. CODE § 38-1205.01 (LEXIS through 2016 legislation). All students take clinic as a graduation requirement. D.C. Mun. Regs. tit. 8A § 200.1 (1995), D.C. Mun. Regs. tit. 8A § 600.5 (1992).

<sup>47</sup> D.C. CODE §§ 42-3404.01-.13 (codifying the Tenant Opportunity to Purchase Act of 1980). Low wealth tenants tend to select the cooperative form of ownership, in part due to blanket financing available through the D.C. Department of Housing and Community Development.

counsel.<sup>48</sup>

The role that the lawyer plays in such cases is varied and extensive. Given the value of the asset at stake, tenants may need to exert their rights through litigation. CDLC does not normally litigate, but we have provided transactional advice during litigation, working in tandem with litigation counsel. The initial transactional assistance in a TOPA case may involve negotiating the terms of purchase, nailing down technical assistance contracts with development consultants, architects and management companies, counseling the client on governance and capital structures, drafting the organic documents, representing the coop in loan transactions and working on the real estate closing. However, initial formation work is only the beginning of our involvement. Once the coop is established, we provide continuing support, since the whole point of the massive endeavor of acquiring property and establishing a resident-owned housing business is to create a capital asset that will provide value into the future.

In addition to serving as exemplars for a standard business and real estate practice, the TOPA cases provide a back drop for discussing the legal profession's role in addressing economic disparity. The District of Columbia's low wealth housing coops are a concrete realization of a rebellious spirit that overtook the advocacy community in D.C. in the 1970s. At the time, the standard practice for activist lawyers centered on enforcing new-found protections under the Uniform Residential Landlord and Tenant Act (URLTA), which rejected the antiquated notion of the unilateral lease and added procedural protections.<sup>49</sup> URLTA put a noticeable dent in the power differential between rentiers and tenants.<sup>50</sup> However, its implementation was on a case-by-case basis, and its innovations were overly modest in the eyes of many advocates, lagging behind other countries where warranty of habitability, tenure guaranties and rent control had wide acceptance.<sup>51</sup>

Washington D.C., however, took broader steps. As noted above, a group of D.C. tenants and their lawyers at Neighborhood Legal Ser-

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<sup>48</sup> CDLC also has been working to support collective business models. See Eva Seidelman, *Building Economic and Racial Equity in D.C. Through Co-Operative Business*, 25 A.B.A. J. AFFORDABLE HOUSING & COMMUNITY DEV. L. (forthcoming 2016-17).

<sup>49</sup> The initial and revised versions of the Uniform Residential Landlord and Tenant Act (URLTA), adopted by the Uniform Law Commission (ULC) in 1972 and revised in 1974 and 2015 (RURLTA), are available at <http://www.uniformlaws.org/Acts.aspx>.

<sup>50</sup> A rentier is a "person who lives on income from property or securities." See *Rentier*, MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/rentier> (last visited Jan. 26, 2017).

<sup>51</sup> See Melissa T. Lonegrass, *A Second Chance for Innovation - Foreign Inspiration for the Revised Uniform Residential Uniform Landlord and Tenant Act*, 35 U. ARK. LITTLE ROCK L. REV. 905 (2013). For a discussion of pre-1950 rent control, see John W. Willis, *Short History of Rent Control Laws*, 36 CORNELL L. REV. 54 (1950).

vices Program established a warranty of habitability for rental properties in 1970.<sup>52</sup> In the following decade, housing advocates and legislators, capitalizing on the public's desire for reform, designed a series of measures to combat the loss of affordable housing. In addition to rent control and strict tenure protection,<sup>53</sup> the resulting statutory regime gave tenants the means to preserve their rental accommodations in two ways. The D.C. Rental Housing Conversion and Control Act established for tenants the right to control by vote whether or not their rental accommodation can be converted to cooperative or condominium ownership.<sup>54</sup> TOPA gave tenants the right to organize and exercise a right of first refusal when their rental accommodations are put on the market.<sup>55</sup>

The difference that TOPA made is striking. Although the stated purpose of the District's innovative law was to stem the tide of the loss of affordable rental housing,<sup>56</sup> the law creates a structural reversal of tenants' subordinated role. When tenants exercise the right of first refusal, the economic paradigm shifts: the rentier is erased from the picture and former tenants become owners of a valuable capital asset and managers and beneficiaries of the equity that is generated by the housing business. The tenants call all the shots, from determining the governance and capital structures of the business to the color of the vestibule's floor tile.

#### A. *Homespun Theory for Trusted Legal Problem Solvers*

In the clinic, we espouse a homespun theory of practice, learned over time from clients who have effective control of their environment. We encourage the students to think of themselves as legal architects who design the structures in which the clients will operate to the clients' specifications. After initial planning and the completion of the organizational documents, the students will continue to engage in an

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<sup>52</sup> *Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071 (D.C. Cir. 1970), *cert. denied*, 400 U.S. 925 (1970).

<sup>53</sup> D.C. CODE § 42-3501.02 (LEXIS through 2016 legislation) (codifying the Rental Housing Act of 1985, D.C. Law 6-10). For a study of D.C. rent control, see PETER TATIAN & ASHLEY WILLIAMS, NEIGHBORHOODINFO DC, A RENT CONTROL REPORT FOR THE DISTRICT OF COLUMBIA (2011), available at <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/412347-A-Rent-Control-Report-for-the-District-of-Columbia.pdf>.

<sup>54</sup> D.C. CODE § 42-3402.03.

<sup>55</sup> *Id.* §§ 42-3404.01-.14. A more controversial aspect of TOPA is that tenants can transfer their option to a third party or can accept a monetary settlement for relinquishing their rights. *Id.* § 42-3404.06. While this right provides tenants with financial leverage, it can frustrate the systemic goal of fostering on-going individual ownership and collective self-determination. Also, without adequate representation, tenants may become prey to developers, anxious to secure valuable real estate.

<sup>56</sup> *Id.* § 42-3401.02.

iterative process with the client, recognizing that things like bylaws and contractual relationships are works in progress. For most organizational clients, the successful growth, protection and management of assets will be an ongoing, underlying concern. So, irrespective of the immediate issue, we ask students to imagine a balance sheet for each client that they represent, whether for-profit or nonprofit, that includes assets and obligations of financial and non-financial social value.

Similar to the NLSP's views on practice, we view ourselves as adding our expertise just as we would for wealthier clients, so we do not simplify matters when counseling. We also acknowledge that legal counsel by itself is inevitably insufficient for the acquisition and management of a capital asset, and so, within the confines of the Rules of Professional Conduct, we act as part of a development team with financial consultants, project managers, architects and other organizations who provide training and guidance for organizations and their boards. Finally, we accept that we are merely the clients' lawyer, and we do not substitute our judgment for that of the clients, because, unlike the clients, we have imperfect information about what it is like to be them.

### *B. The Lawyer's Place Is in the Coop Boardroom*

Our lawyer-client relationship with coops is centered primarily in the board room where little if anything is cut-and-dried. A coop board is the manager and protector of the coop's tangible and intangible assets—its equity. The commensurate responsibility of stewardship that comes with the task is not a walk in the park. The individual coop members' shares embody an equity interest and an investment at risk, and as with shareholders generally, a member's interest is a function of the coop's total equity, so the member's financial stake rests in the entity as a whole.

Like other corporations, cooperatives are business enterprises, not charities, with shareholders that hold economic interests, and they must operate as viable economic entities for their members' benefit. But, at the same time, a coop does not exist to maximize profits. Rather, it exists to benefit its patrons, the persons who use the entity and benefit from its existence.<sup>57</sup> In fact, immediate financial returns

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<sup>57</sup> See, e.g., *id.* § 29-902(3) (defining “cooperative basis”); see also UNIFORM LIMITED COOPERATIVE ASSOCIATION ACT § 103 CMT. (UNIF. LAW COMM'N 2007), available at [http://www.uniformlaws.org/shared/docs/limited%20cooperative%20association/ULCAA\\_Final\\_2014\\_2015aug19.pdf](http://www.uniformlaws.org/shared/docs/limited%20cooperative%20association/ULCAA_Final_2014_2015aug19.pdf). The model act, adopted in seven states, provides a statutory alternative to the general cooperative form and allows for the creation of a non-patron investor class.

are unlikely. Housing coops rarely distribute monetary dividends, and significant returns on sales of shares are not necessarily expected and are sometimes restricted, as in limited equity coops. Consequently, the equity at risk is much more than a financial interest. For the coop member, the ongoing dividend will be the possession and control of the place she calls home and all of the associated aspects of her life that come with it.

For its part, the coop board is frequently faced with difficult decisions and polarizing goals that can pit financial and social concerns against members' individual interests.<sup>58</sup> A coop is a community that agrees to live by certain rules and financial arrangements, which arise contractually through its internal documents, and which govern everything from eligibility for membership to inheritance rights of the member's heirs, and things in between. The coop's adoption of certain rules may have legal consequences, others may have an impact on the social value ascribed to living cooperatively, and some may do both, such as rules restricting children from playing in common areas or rules restricting membership to persons without a criminal record.<sup>59</sup> As with other businesses, a coop's board will need the assistance of legal and other technical assistance advisors in working through the more difficult issues facing it.

### C. *The Board of Directors as a Trusted Problem Solver*

It is surprising how much time a coop board spends in interpreting its own rules and in acting like a small, very localized court, where the board's decisions can have a substantial impact on people's well-being. One of the more poignant examples is when a board must determine whether a member's conduct rises to a level where the membership should consider termination of the member's interest.<sup>60</sup> Coop boards typically do not act quickly on such matters and are apt to take

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<sup>58</sup> Decisions around "affordability," for example, can be difficult. Affordability varies in relation to individual financial circumstances. In setting prices and making expenditures, the coop board must sort through various levels of affordability, determine for whom the cooperative is to be affordable, and balance amenities and system upgrades in the interest of affordability, or vice versa.

<sup>59</sup> Eligibility requirements are particularly challenging. With regard to barring applicants with criminal records, see, e.g., U.S. DEP'T OF HOUS. & URBAN DEV., OFFICE OF GENERAL COUNSEL GUIDANCE ON APPLICATION OF FAIR HOUSING STANDARD TO THE USE OF CRIMINAL RECORDS BY PROVIDERS OF HOUSING AND REAL ESTATE-RELATED TRANSACTIONS (2016), available at [https://portal.hud.gov/hudportal/documents/hud-doc?id=HUD\\_OGCGuidAppFHASandCR.pdf](https://portal.hud.gov/hudportal/documents/hud-doc?id=HUD_OGCGuidAppFHASandCR.pdf). With regard to restrictive rules affecting families, see Tim Iglesias, *Clarifying the Federal Fair Housing Act's Exemption for Reasonable Occupancy Restrictions*, 31 FORDHAM URB. L.J. 1211 (2004).

<sup>60</sup> Under D.C. Law, termination of a coop member's interest is decided by the membership. D.C. CODE § 29-930.

into account personal circumstance that would not be relevant in a standard landlord/tenant action for possession, which means that not all cases will be dealt with in the same way.

Occasionally, one hears skepticism from other lawyers, government officials, law students and service providers, among others, about the ability of low wealth coops to govern themselves.<sup>61</sup> That skepticism is often misguided and comes from a failure to see coop boards of directors as fiduciaries who manage a unique community of interests, and who are not altogether different from other corporate boards.<sup>62</sup> It would come as no surprise to lawyers who work with the board of directors of any major corporation that boards develop informal decision making norms that are unique to their organizations and that evolve over time and reflect the culture of their organization.<sup>63</sup> The same is true for coops, if not more so.

As co-problem solver, our task is to provide guidance to the board in exercising its discretion and to help the board make objective, informed decisions that can withstand scrutiny. As we do, we must remember that the internal decisions of a self-ruled corporate entity need not mirror those that might be made by a court or other body for whom uniformity is of primary importance. Such decision-making can operate more freely in a general equity framework.

Equity, as a concept, remains important to the internal affairs of corporations.<sup>64</sup> Coop boards in particular regularly face nuanced

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<sup>61</sup> One sometimes hears concern over “charismatic” coop leadership. Although we have not experienced that phenomenon to any harmful degree, it would not be a problem unique to coop boards. See Rakesh Khurana, *The Curse of the Superstar CEO*, HARV. BUS. REV., Sept. 2002, available at <https://hbr.org/2002/09/the-curse-of-the-superstar-ceo#>.

<sup>62</sup> The limited research that exists suggests that limited equity coops in particular are successful in social management and in providing sustained affordability. See COAL. FOR NONPROFIT HOUS. & ECON. DEV., A STUDY OF LIMITED EQUITY COOPERATIVES IN THE DISTRICT OF COLUMBIA (2004), available at <https://dl.dropboxusercontent.com/u/95427853/Coop%20Study%20PDF.pdf>; KENNETH TEMKIN, BRETT THEODOS & DAVID PRICE, URBAN INST., SHARED EQUITY HOMEOWNERSHIP EVALUATION: CASE STUDY OF DOS PINOS HOUSING COOPERATIVE (2010), available at <http://www.urban.org/sites/default/files/al-fresco/publication-pdfs/412238-Shared-Equity-Homeownership-Evaluation-Case-Study-of-Dos-Pinos-Housing-Cooperative.pdf>; Gerald Sazama & Roger Willcox, *An Evaluation of Limited Equity Housing Cooperatives in the United States* (Univ. of Conn., Dep’t of Econ. Working Paper Series, Working Paper 1995-02), available at [http://digitalcommons.uconn.edu/econ\\_wpapers/199502](http://digitalcommons.uconn.edu/econ_wpapers/199502).

<sup>63</sup> See, e.g., Micahel Useem, *How Well-Run Boards Make Decisions*, HARV. BUS. REV., Nov. 2006, available at <https://hbr.org/2006/11/how-well-run-boards-make-decisions/ar/1>.

<sup>64</sup> One of the few courts of chancery remaining in the United States, the Delaware Court of Chancery, describes itself as the preeminent forum for determining disputes arising from the internal affairs of “thousands and thousands” of corporations and businesses. See *Court of Chancery - Who We Are*, DEL. CTS., <http://courts.delaware.gov/chancery/index.aspx> (last visited Jan. 26, 2017). “Providing a remedy despite procedural or practical problems remains a central feature of [the court].” William T. Quillen & Michael Hanrahan, *A Short History of the Court of Chancery*, in COURT OF CHANCERY OF THE STATE OF

problems that are not adequately resolved by reference to corporate documents. Many problems will require flexible approaches and decisions may appropriately be based on conscience and notions of hardship and fairness. Rather than being hostile to advice or irresponsible, board members who veer from the legal framework into other considerations may in fact be operating within the cooperative's cultural context. It is the "regnant" lawyer, who, looking only to the letter of the law and rules that govern the cooperative, advises uniformly strict adherence as the preferred course of action. In such case, "regnant" refers not to a dominating lawyer, but to a view of the law.

Students coming out of doctrinal courses will often take a regnant approach, which reflects their cursory study of modern corporate law, where legislative acts and trends in judicial decisions subsume equitable principals within legal remedies in a quest for uniformity and predictability.<sup>65</sup> Students for whom equitable principles are just additional elements tagged on to existing rules may fail fully to appreciate the separate nature and nuances of the fiduciary's obligations and discretionary authority.<sup>66</sup> However, their appreciation begins to grow once they start to engage with their clients' boards and see the extent of the responsibility with which the boards are entrusted.<sup>67</sup>

#### IV. LEARNING FROM LA LIMITADA: ONE CLINIC'S EXPERIENCE IN REPRESENTING A SECTOR OF IMMIGRANT ENTREPRENEURS

"La Limitada" is how some of our small business clients refer to a

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DELAWARE—1792-1992 (1992), available at <http://courts.delaware.gov/chancery/history.aspx>.

<sup>65</sup> See, e.g., Lawrence Mitchell, *The Death of Fiduciary Duty in Close Corporations*, 138 U. PA. L. REV. 1675 (1990) (discussing the judiciary's quiet abandonment of fiduciary principles and the replacement of fiduciary principles with remedies that focus on wrongful conduct). For a discussion of the role of maxims in jurisprudence and the short shrift given to equitable maxims in basic doctrinal courses, see Jeff Berryman, *Equities Maxims as a Concept in Canadian Jurisprudence*, 43 OTTAWA L. REV. 165 (2012).

<sup>66</sup> Although the business judgment rule limits the extent of liability, directors still have a duty to protect the entity from harm. For an introduction to directors' fiduciary duties, see Willima M. Lafferty, Lisa A. Schmidt & Donald J. Wolfe, Jr., *A Brief Introduction to the Fiduciary Duties of Directors Under Delaware Law*, 1156 PENN ST. L. REV. 837 (2012). Also, equitable principles still have considerable effect in matters of interests in property and things of idiosyncratic value. See RESTATEMENT (THIRD) OF RESTITUTION AND UNJUST ENRICHMENT § 60 (AM. LAW INST. 2011) (restitution via rights in identifiable property).

<sup>67</sup> Coop boards do not hold title to coop shares and are not technically trustees. However, coops are like trusts, with a history of preserving wealth for families; in modern times the trust has spread to the holding of property for the benefit of others, particularly with respect to charitable trusts and pensions. See JILL E. MARTIN, HANBURY & MARTIN: MODERN EQUITY 3-46 (17th ed. 2005) (discussing history and principles of modern equity).

“limited liability company.”<sup>68</sup> Over the past seven years, students in the Community and Economic Development Law Clinic (CEDLC) of the Washington College of Law have represented small business owners who sought to structure the management, finances and futures of their enterprises through “limitadas,” “cooperativas,” and tax exempt nonprofit corporations.<sup>69</sup> These enterprises formed a sector defined by a type of business—home-based child care—and by a demographic—Spanish-speaking women who had emigrated from Central and South America.

I cannot remember how this community of Latina child care providers found us. First there was one owner of a home-based child care business who needed to overcome regulatory barriers so that she could enroll more children. Then there was a group of owners of home-based child care programs who wanted to combine resources and expertise to open a free-standing child care center.<sup>70</sup> Later, some of the same business owners wanted to form a support organization for immigrant-owned child care businesses. Then another member of the same group worked with us for four months on expanding her business, and then for two years on preventing the loss of her home, and thus that business, to foreclosure.<sup>71</sup> Over time, our individual and organizational representation of Spanish-speaking entrepreneurs in child care grew organically, if unintentionally, to effect a “collective impact” on a community of geography, but more significantly of language, origin, culture and aspiration.<sup>72</sup>

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<sup>68</sup> “Limited liability company” also appears in Spanish as “sociedad de responsabilidad limitada.” WORDREFERENCE, <http://www.wordreference.com/es/translation.asp?tranword=limited%20liability%20company> (last visited Jan. 19, 2017), and as “compañía de responsabilidad limitada,” BAB.LA DICTIONARY, <http://en.bab.la/dictionary/english-spanish/limited-liability-company-llc> (last visited Jan. 19, 2017).

<sup>69</sup> See Darryl Maxwell, *Transactional Lawyers Continue to Support Economic Development in Washington, D.C.*, 22 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 3, 8-10 (2013) (highlighting issues which immigrant women face in the process of opening a home-based child care facility and describing the assistance provided to them by pro bono attorneys and CEDLC through the D.C. Bar’s Community Economic Development Project).

<sup>70</sup> The credit for our involvement in this society of entrepreneurs goes to Professor Jaime Lee, who during her year as a visitor with us, championed the efforts of one home-based child care provider through the zoning and licensing processes to secure an expanded home occupancy permit, and then guided a group of providers through structuring the “limitada,” the limited liability company, which supported a free-standing child care center.

<sup>71</sup> We filed to enjoin the foreclosure and negotiated our client’s way back to a mortgage with a reduced interest rate and payments she could afford.

<sup>72</sup> See, e.g., Praveen Kosuri, “Impact” in 3-D: *Maximizing Impact Through Transactional Clinics*, 18 CLIN. L. REV. 1, 31 (2011) (describing how the Entrepreneurship Legal Clinic’s representation of small individual neighborhood businesses generated a community-wide impact).

### A. Sector as a Proxy for Neighborhood

Our clients came to us at the confluence of several trends. First, for the last two decades, immigrants steadily and in numbers have found a home in the District of Columbia and its metro area.<sup>73</sup> In the tradition of newcomers before them, they have secured an economic foothold through the creation of small businesses, within a closed system of serving themselves as customers and financing themselves through family connections and, rarely, through specialized small business loans.<sup>74</sup> Second, at a point of rapidly increasing demand for flexible, safe child care,<sup>75</sup> the District made funding available to non-profits such as Mary's Center, a maternal and child health outpatient clinic, to assist immigrants in licensing their businesses to provide care for infants and for toddlers through kindergarten.<sup>76</sup> Our clients were graduates of Mary's Center's Licensing and Child Development Associates programs.

Serving this sector became a proxy for a neighborhood presence. The CEDLC operates from a law school campus, which operates at a distance from the clinic's clients. As it happened, serving home-based Latina child care providers became indistinguishable from serving a neighborhood and a business within a neighborhood. Most of our clients in this industry lived, and therefore worked, within one section of Ward 4, one of the eight council districts of the city. Neither the poorest nor the richest of the city's subdivisions, Ward 4 offered affordable housing stock (at least, in the early 2000s), much of it adapta-

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<sup>73</sup> *New Americans in Washington D.C.: The Political and Economic Power of Immigrants, Latinos, and Asians in Our Nation's Capital*, AM. IMMIGR. COUNCIL (Jan. 1, 2015), <https://www.americanimmigrationcouncil.org/research/new-americans-washington-dc> (illustrating that from 1990-2013, Latinos' share of the population of D.C. grew from 5.4 to 10.1%).

<sup>74</sup> ROBERT W. FAIRLIE, E.J. REEDY, ARNOBIO MORELIX & JOSHUA RUSSELL, EWING MARION KAUFFMAN FOUND., *THE KAUFFMAN INDEX: STARTUP ACTIVITY - NATIONAL TRENDS 13* (2015), available at [http://www.kauffman.org/~media/kauffman\\_org/research%20reports%20and%20covers/2015/05/kauffman\\_index\\_startup\\_activity\\_national\\_trends\\_2015.pdf](http://www.kauffman.org/~media/kauffman_org/research%20reports%20and%20covers/2015/05/kauffman_index_startup_activity_national_trends_2015.pdf) (noting that 28.5% of new entrepreneurs in the United States in 2014 were immigrants, compared with 13.3% in 1994); Barbara Bird & Michael Danielson, *Capital Start-Ups: What We Know and Need to Know about Latino Entrepreneurship in the DC-Metro Region* (Am. Univ. Ctr. for Latino & Latin Am. Studies, Working Paper No. 10, 2016), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2733807](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2733807) (noting that few of the immigrant-owned start-ups in this study received financing from banks).

<sup>75</sup> JUDY BERMAN, SOUMIYA BHAT & AMBER RIEKE, D.C. FISCAL POLICY INST. & D.C. APPLESEED, *SOLID FOOTING: REINFORCING THE EARLY CARE AND EDUCATION ECONOMY FOR INFANTS AND TODDLERS IN D.C. 1* (2016), available at [http://www.dcappleseed.com/wp-content/uploads/2016/03/Solid-Footing\\_Cost-of-ECE-Report\\_March-2016.pdf](http://www.dcappleseed.com/wp-content/uploads/2016/03/Solid-Footing_Cost-of-ECE-Report_March-2016.pdf).

<sup>76</sup> See *Child Care Licensing Program*, MARY'S CTR., <http://www.maryscenter.org/course/child-care-licensing-program> (last visited Jan. 19, 2017); *Child Development Associate Program*, MARY'S CTR., <http://www.maryscenter.org/course/child-development-associate> (last visited Jan. 19, 2017).

ble to child care businesses which D.C.'s residential zoning scheme permitted as of right.<sup>77</sup> The area was home to immigrants and to young professionals with new families. This combination of favorable circumstances and demand produced supply: Wards 4 and 7 contain the greatest number of home-based child care providers in the city.<sup>78</sup>

While a large minority of immigrant entrepreneurs consists of women,<sup>79</sup> we do not know if this is the case for the District of Columbia, or if immigrant women dominate the business of child care in the city.<sup>80</sup> Yet it is clear that a cadre of Latina businesswomen has created a mutually sustaining community, which, up to a point, can succeed on its own terms. Our clients' limited English proficiency is not a commercial detriment: parents want immersion in Spanish in the care provided for their English-speaking children. For new entrants, some of them teachers in their home countries, the home-based structure provides a feasible business opportunity. Licensing and zoning are straightforward for homes caring for up to nine children, and Mary's Center stands ready to run linguistic and logistical interference for its alumnae as they meet the baseline requirements.<sup>81</sup>

Our assistance would never have been necessary if our clients' businesses could have survived in this enclosed world. Most providers see increasing the numbers of children substantially as their only path to sustainability, as a business based on tuition from so few children is not sustainable. The costs of compliance with health and safety standards stretch budgets even when families are willing and able to pay

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<sup>77</sup> See *Neighborhood Planning: About Ward 4*, D.C. OFF. OF PLAN., <http://planning.dc.gov/page/about-ward-4> (last visited Aug. 21, 2016) (describing Ward 4, in the north central section of the city, as a "largely residential area"); D.C. Code Mun. Regs. tit. 11 § U250 (LexisNexis 2016) (allowing home occupations, including child development homes, as matter of right uses within the type of "R" single family houses which predominate in Ward 4).

<sup>78</sup> BERMAN ET AL., *supra* note 75, at 6.

<sup>79</sup> See SUSAN C. PEARCE, ELIZABETH J. CLIFFORD & REENA TANDON, *OUR AMERICAN IMMIGRANT ENTREPRENEURS: THE WOMEN* 2, 12-13 (2011), available at [https://www.americanimmigrationcouncil.org/sites/default/files/research/Women\\_Immigrant\\_Entrepreneurs\\_120811.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/Women_Immigrant_Entrepreneurs_120811.pdf) (indicating that, as of 2010, women constituted 40% of all immigrant entrepreneurs in the United States and describing a "multiplier effect" which female immigrants bring to their businesses).

<sup>80</sup> The most recent survey of child care in the District describes the providers' training and certifications, but states nothing about their demographics. See BERMAN ET AL., *supra* note 75, at 16.

<sup>81</sup> The Office of the State Superintendent of Education (OSSE) administers the health, safety and educational standards for child care, see D.C. Code Mun. Regs. tit. 29 § 357.1 (LexisNexis 2016) (providing for licensing for up to six to twelve children and two caregivers in an "expanded child development home"), and the Office of Zoning issues home occupancy permits, see D.C. Code Mun. Regs. tit. 11, § U251.1(b)(2) (LexisNexis 2016) (allowing home-based child care businesses for seven to nine students and up to three non-resident staff as a matter of right).

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market rate.<sup>82</sup> The financial burden increases when providers seek to offer care to recipients of TANF and to low wage workers through the city's child care voucher system. The city pays for vouchered care at 55-74% of market rates.<sup>83</sup> Yet in return, it demands certifications at enhanced standards of training and performance.<sup>84</sup> Even providers who are the most committed to assisting poor women are hard-pressed to cover expenses and sustain quality at these levels.<sup>85</sup>

We were asked to assist when the child care providers wanted to accommodate more children. They encounter high barriers to expansion: zoning hearings for a special exception for a home occupancy permit for more than nine children on site,<sup>86</sup> and steeply increased health and safety standards. They also encounter a monolingual monolith. Few if any instructions, regulations or forms, including the application for a basic business license or the application to the Board of Zoning Adjustment for a hearing on a special exception, are published in languages other than English.<sup>87</sup> We have represented clients at

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<sup>82</sup> See D.C. Code Mun. Regs. tit. 29 § 352.1(a-g) (LexisNexis 2016) (requiring that caregivers be at least eighteen years old, enroll in at least three child development related training courses and engage in no fewer than nine hours of required training per year; receive additional training and certification in First Aid, CPR, and SIDS; attend annual regulatory compliance review seminars; and undergo various physical examinations, among an assortment of additional requirements).

<sup>83</sup> BERMAN ET AL., *supra* note 75, at 2.

<sup>84</sup> CHILD TRENDS, DISTRICT OF COLUMBIA GOING FOR THE GOLD-TIERED RATE REIMBURSEMENT SYSTEM 19-20 (2010), available at [http://www.acf.hhs.gov/sites/default/files/ore/district\\_of\\_columbia.pdf](http://www.acf.hhs.gov/sites/default/files/ore/district_of_columbia.pdf) (outlining the gold, silver and bronze tiered reimbursement system, defining the requirements for each tier and confirming that a provider must be rated under the tier system in order to participate in the voucher program).

<sup>85</sup> See D.C. ACTION FOR CHILDREN, DATA SNAPSHOT: IMPROVING QUALITY CHILD CARE OPTIONS FOR ALL DC CHILDREN 2 (2012), available at [https://www.dcactionforchildren.org/sites/default/files/child%20care%20data%20snapshot\\_october%202012.pdf](https://www.dcactionforchildren.org/sites/default/files/child%20care%20data%20snapshot_october%202012.pdf) (noting that 80% of home-based providers in the subsidized child care system qualify only at the "bronze" level, which indicates compliance with minimum licensing standards).

<sup>86</sup> See D.C. Code Mun. Regs. tit. 11U § 251.1(b)(3) (LexisNexis 2016) (requiring an application through the Board of Zoning Adjustment for a special exception for a home occupancy permit for ten to twelve students in an expanded child development home).

<sup>87</sup> All D.C. agencies with public contact are required to provide "vital" documents in a language spoken by the fewer of 500 or 3% of their customers. D.C. CODE § 2-1933(a) (LEXIS through 2016 legislation). Of the three agencies that the owners of child care businesses must navigate, one, the Department of Consumer and Regulatory Affairs (DCRA), which administers basic business licensing, offers no translation of its basic documents in any language; of eight testers calling to check on the availability of telephonic services in languages other than English, five were hung up on. D.C. OFFICE OF HUMAN RIGHTS, 2015 LANGUAGE ACCESS PROGRAM ANNUAL COMPLIANCE REVIEW 34 (2016). The Office of Zoning offers overviews of concepts of zoning and of the zoning adjudication process in Spanish and other languages, but translates no regulations, including those addressing home occupancy, child care homes or centers. See *Tutorials*, D.C. OFF. OF ZONING, <http://dcoz.dc.gov/resources/tutorials.shtm> (last visited Oct. 1, 2016). OSSE's website offers no translation of instructions or documents. See *Licensing Process for Child Care Providers*, D.C. OFF. OF THE ST. SUPERINTENDENT OF EDUC., <http://osse.dc.gov/page/licensing-pro>

these hearings, and have assisted with legal structuring for free-standing child care centers, which can serve more children. Sometimes we have succeeded, sometimes we have failed and sometimes our clients have succeeded beyond and in spite of our interventions.

### B. *Earning the Trust of the Sector and of Its Members*

Working with small business owners who form their own society of language and trade practice requires special measures of accountability, best described as accessibility. Accessibility has many facets. One is flexibility. Any client may cancel a meeting at the last minute. Small business owners have complete control over their schedules, which means that they have no control: no lunch hours, no personal days, no sick days. If a delivery is late or an employee calls in sick, the meeting that took a week to schedule, with many back and forths through Language Line,<sup>88</sup> may disappear at the last minute, leaving frustrated students and a bill for the minimum two hours of an interpreter's time.

Another is communication. "Translation" at its most immediate requires a distillation of a technically complicated concept into plain language: from English to English, and then from English to Spanish and back again. Over the past ten years, our clinical program has emphasized the importance—indeed, the imperatives under civil rights law and codes of professional responsibility<sup>89</sup>—of making our services accessible to clients in their preferred language.<sup>90</sup> Students learn pro-

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cess-child-care-providers (last visited Oct. 1, 2016).

<sup>88</sup> See LANGUAGE LINE SOLUTIONS, <https://www.language.com/> (last visited Jan. 19, 2017) (company providing translation and telephonic interpretation services).

<sup>89</sup> See Exec. Order No. 13,166, 3 C.F.R. 289 (2001), reprinted in 42 U.S.C. § 2000d-1 (2012) (order dated Aug. 16, 2000, Improving Access to Services for Persons with Limited English Proficiency) (interpreting Title VI of the Civil Rights Act of 1964 as prohibiting discrimination against persons with limited English proficiency as an element of discrimination on the basis of national origin); see also Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency Policy Guidance, 65 Fed. Reg. 50,123 (Aug. 16, 2000) (providing guidance for federal agencies to insure that recipients of federal financial assistance make their services accessible to persons with limited English Proficiency); Muneer I. Ahmad, *Interpreting Communities: Lawyering Across Language Difference*, 54 UCLA L. REV. 999, 1019-1024, n.63 (2007) (noting that ethics bodies in California, Utah and New York have issued ethics opinions that address obligations under rules of professional conduct to make communications linguistically accessible); ABA STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, ABA STANDARDS FOR THE PROVISION OF CIVIL LEGAL AID, Standard 4.6, 169 (2006) (stating that civil legal services providers should provide access to services to low income persons in their primary language).

<sup>90</sup> As a legal services provider within a law school which receives federal financial assistance, the Clinical Program provides linguistically accessible services to clients as part of its obligation to refrain from national origin discrimination under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2012).

cedures for assuring the confidentiality and competency of interpreters and protocols for communicating with the client through them. It is difficult enough for students who are monolingual in English to explain to English-speaking clients the features of a structure through which members manage a business collectively, pay taxes individually and avoid liability personally. It is much harder when the act of explanation involves both linguistic and cultural translation.

As students learn, technical proficiency alone in observing the rules for interpretation cannot achieve meaningful communication with the client. Our clients are tired of dealing with an official system that does not make linguistic accessibility a priority. Even our consistent provision of an interpreter at meetings could not overcome that frustration. For instance, we discovered painfully over time that one client organization's hesitation over completing an application for federal tax exemption resulted not from the complexity of the task, but from our continued reliance on an interpreter at meetings of the group. As soon as we had bilingual students available to assign to the representation, the relief was audible, and the application was filed within a year.

We learned more about the challenges of providing culturally and linguistically competent representation in the course of assisting the individuals who "graduated" from operating their child care businesses out of their homes to owning a free-standing child development center. As they joined forces to create a new business, they faced issues common to all owners of small businesses who form entities as confirmation of their transition from personal to business relationships. It was as important for these as for any entrepreneurs to protect themselves from personal liability for the group's business decisions, or to account clearly for everyone's contributions and the organization's distribution of profits. But their linguistic and cultural challenges had sharpened both their sense of mutual solidarity and of protectiveness of their individual interests.

No one form of entity struck the right balance between inclusiveness and accountability: not the "limitada," with its fluidity of roles and de-emphasis of democratic process, nor the workers' "cooperativa," which in its pure form requires commitments of work hours from its members. To express this tension, the new child care center's organization took advantage of the flexibility that the structure of a limited liability company gives to tailor governance to the owners' needs.<sup>91</sup> Its operating agreement incorporates elements of a coopera-

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<sup>91</sup> See Miriam A. Cherry, *Decentering the Firm: The Limited Liability Company and Low Wage Immigrant Women Workers*, 39 U.C. DAVIS L. REV. 787 (2006) (proposing the limited liability company as a vehicle through which immigrant women may take control of

tive corporation, including a board of directors and elections, into a limited liability regime that structures voting according to contributions. In this instance, “translation” of relationships into a workable governance and ownership structure assumed importance equal to that of “translation” of English language legal concepts into the clients’ target language.

Representation of group clients composed of immigrants poses additional challenges. Stephen Ellmann’s admonitions about the attorney’s responsibility to support all voices in the client group count doubly when the client group consists of persons with varying levels of proficiency in English.<sup>92</sup> For the lawyer who is monolingual in English, an interpreter’s assistance is even more essential to lessen the danger of dominance of English speakers. Unequal citizenship status also can push some members of a “limitada” or “cooperativa” into the shadows of the business. As lack of status weighs heavily on the involvements of immigrants with all legal systems, so too must our clients be concerned about the vulnerability of their partners and businesses when partners without permanent status act as both owners and employees.<sup>93</sup>

Ultimately, this community perseveres with or without us. We represented a home-based provider at two zoning hearings to increase the number of children in her home care: successfully to twelve students, unsuccessfully to forty. While our client’s family engaged earnestly in the effort to expand the home-based center, it was a sideshow. As these hearings were pending, our client, her daughter and son in D.C. and her son in Honduras were building the real powerhouse: a one woman “limitada” that operates two free-standing bilingual child care centers. Each center has a capacity of 25-30 students, is full, and has a waiting list. With bilingual first generation family workers and carefully marshalled resources, our client transcended systems to reach her market. She learned well to keep her family close and her regulators at a distance—and to lean only lightly on her lawyers.

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their livelihoods and avoid the exploitation of unregulated low wage work).

<sup>92</sup> Ellmann, *supra* note 40, at 1151-52 (1992) (suggesting that, if a lawyer accepts the ordained leaders of a group as the group’s sole decisionmakers, she risks condoning undemocratic usurpation of the powers of the group).

<sup>93</sup> See Michael Mastman, *Undocumented Entrepreneurs: Are Business Owners “Employees” Under the Immigration Laws?*, 12 N.Y.U. J. LEGIS. & PUB. POL’Y 225 (2008) (discussing whether the Immigration Reform and Control Act of 1986 prohibits persons without documentation of citizenship or permanent status from owning businesses).

V. “TRUSTED NEIGHBORHOOD PROBLEM-SOLVER:” THE  
ELEMENTS AT THE HEART OF COMMUNITY  
DEVELOPMENT AS A REBELLIOUS  
JUSTICE PRACTICE

A. “Trusted”: Reliability and Accountability

Do clients working to create change and new institutions, and challenging traditional institutions and traditional ways of working, see CED lawyers as “trusted” problem solvers? Rebellious clients call on the lawyer to think more creatively about the way to fit the client’s goals into legal categories. Offering a constant, steady physical presence in the neighborhood may go a long way towards securing the trust of clients and their organizations, but it is not sufficient.

What fosters “trust”? Certainly one element of “trust” is “accountability.” Accountability forces the question, “accountability to whom?” As community and community development lawyers, we have chosen poor and underserved neighborhoods as our primary constituencies, with variations on the choice of strategies and clients through which we choose to serve the constituency.<sup>94</sup> Those strategies include serving organizational clients over the course of years as house counsel, as well as serving individuals in their short-term needs or in needs requiring a specific intervention that extends over time.

As advocates for constituents, we do not determine what and how we do our work in a vacuum. Whether through listening sessions or intentional communications with clients or other service providers over time, we learn about areas of greatest need and community members’ most pressing concerns, and try to meet them within our capacities and financial and programmatic constraints.<sup>95</sup> As noted above, López does not address the realities of staffing and sustaining a responsive community law office in the face of budget cuts and politically motivated restrictions on practice. These realities tempered all of NLSP’s “choices.” Law school clinics face their own constraints on resources and complications arising from their co-existing missions as educators and legal services providers. Legal educators constantly face a tension between the pedagogical benefits of placing the student in

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<sup>94</sup> See Alicia Alvarez, *Community Development Clinics: What Does Poverty Have to Do with Them?*, 34 *FORDHAM URB. L.J.* 1269, 1281-83 (2006) (recommending that community development lawyers select organizational clients based in part on their commitment to reducing poverty as part of the clients’ overall development strategy).

<sup>95</sup> See, e.g., MULLEN & PUMAR, *supra* note 22; see also Susan Bryant & Maria Arias, *Case Study: A Battered Women’s Rights Clinic: Designing a Clinical Program Which Encourages a Problem-Solving Vision of Lawyering that Empowers Clients and Community*, 42 *WASH. U. J. URB. & CONTEMP. L.* 207, 213-14 (1992) (outlining the involvement of the Clinic’s students in adopting an intake policy based on a needs assessment informed by interviews with clients and members of the clients’ community).

role as “student attorney,” the lawyer with the primary relationship with the client, and the obligation to provide consistently competent representation.<sup>96</sup>

B. “Neighborhood”: Is an Embedded Physical Presence a Prerequisite for Community Development and Community Lawyering?

An office’s embeddedness in the physical neighborhood where clients live fosters trust as it signifies a tangible commitment to continued engagement. López’s heroes—Helen, Amos and Sophie—traverse that space between inside and outside, giving undivided attention to their clients while they are in the room with them, and then making a point of reaching beyond their offices to attend community events and meetings.<sup>97</sup> NLSP has designed its ongoing physical presence as an anchor, a resource center and a base from which the outsider legal staff members can familiarize themselves with neighborhood institutions, make themselves familiar to neighborhood actors and, over time, create a reverse “hospitality zone” where the outsider lawyers welcome the insider residents into a safe space.<sup>98</sup> Student attorneys leave their campus in Ann Arbor to meet clients who differ from them in a city that is unfamiliar to them.<sup>99</sup>

López’s law offices are situated within the communities they serve. Not all legal services offices are. Their locations are influenced by fashions of practice, funding realities and choices to locate in com-

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<sup>96</sup> For a summary of early literature on “directiveness,” the concern over whether or when the clinical supervisor should insert herself in the client-law student relationship in order to assure competent representation to the client, see David Chavkin, *Am I My Client’s Lawyer?: Role Definition and the Clinical Supervisor*, 51 SMU L. REV. 1507 (1998).

<sup>97</sup> LÓPEZ, *supra* note 13, at 33-34, 143-45, 153-54 (noting some key strengths of Helen’s approach, including her energy that gets people to pay attention to what is going on in the office and with groups in the community; her attention to detail; and her detailed and thoughtful interactions with clients); *see id.* at 30-38, 48-52, 55-58, 60, 65-82 (describing Amos and Sophie as positive listeners who know the people in the community they serve and are willing to learn and delve into local culture).

<sup>98</sup> Nancy Cook, *Looking for Justice on a Two Way Street*, 20 WASH. U. J.L. & POL’Y 169, 188-90 (2006) (describing the “hospitality zone” as the space within neighborhood institutions through which residents welcome outsiders to learn about their communities).

<sup>99</sup> For other examples of law school clinical programs which have chosen to locate offices within their clients’ communities, see Juliet M. Brodie, *Little Cases on the Middle Ground: Teaching Social Justice Lawyering in Neighborhood-Based Community Lawyering Clinics*, 15 CLIN. L. REV. 333, 359-61 (2009) (highlighting the reasons for the Stanford Community Law Clinic’s physical location in a low-income neighborhood: accessibility to clients and provision of “an immediate and material context for the student lawyers”); Angela Harris, Margaretta Lin & Jeffrey Selbin, *From “The Art of War” to “Being Peace”:* *Mindfulness and Community Lawyering in a Neoliberal Age*, 95 CALIF. L. REV. 2073, 2094-98 (2007) (describing the history and the “direct impact” of grounding the East Bay Community Law Center in the community).

mercial real estate markets near local courts, government offices and administrative agencies, the sites of the conventional practice of law for poor people.<sup>100</sup> These considerations direct the location of the law office away from the clients and towards the convenience of the professionals. They also direct, or reflect the direction of, legal practice towards solutions in litigation and administrative hearings.

Community lawyering may not depend on a physical neighborhood office.<sup>101</sup> Many law school clinics, as is the case with UDC's Community Development Law Clinic and AU's Community and Economic Development Law Clinic, are tethered to their institutions at a distance from their clients. They have invented proxies for embeddedness, such as meeting with clients in the clients' homes, community rooms, libraries or recreation centers, or attending gatherings of the clients' allies and other institutional actors on their home turf. Their clients' "communities" span neighborhoods, with issues touching poor residents in all of them: unaffordable and uninhabitable housing, exploitative employment, lack of safe and stimulating child care and lack of access to credit. Physical presence alone does not guarantee effective community-based problem-solving, nor does effective, community-based problem-solving necessarily require brick-and-mortar presence.

### C. "Problem-Solver": The Lawyer Who Listens

One can distill from López's composite portraits of lawyers for low income clients two key weaknesses that define the "regnant" legal worker: she doesn't listen, and she doesn't bend. Hubris, stasis, defensiveness, the crush of too many clients and too little time, all contribute to a practice that fits problems into solutions and ignores the client and the client's community as resources.<sup>102</sup>

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<sup>100</sup> See, e.g., BRENNAN CTR. FOR JUSTICE, MAKING THE CASE: LEGAL SERVICES FOR THE POOR - A CLOSE LOOK THROUGH THE LENS OF THE MARYLAND LEGAL AID BUREAU 6 (1999), available at <http://www.brennancenter.org/sites/default/files/legacy/d/atj1.pdf> (describing efforts by local practitioners to block the construction of ten neighborhood offices in the early days of the Maryland Legal Aid Bureau); HOUSEMAN & PERLE, *supra* note 4, at 9, 12-13.

<sup>101</sup> Brenda Bratton Blom, Susan Brooks, Nancy L. Cook & Karen Tokarz, *Conversations on "Community Lawyering": The Newest (Oldest) Wave in Clinical Legal Education*, 28 WASH. U. J.L. & POL'Y 359, 367-68 (2008) (acknowledging the complexity of the definition of "community" in identifying "community clients," and warning of the pitfalls of identifying "community" with geography); see also Carmen Huertas-Noble, *Worker-Owned and Unionized Worker-Owned Cooperatives: Two Tools to Address Income Inequality*, 22 CLIN. L. REV. 325, 348-50, 352-57 (2016) (describing the CUNY School of Law's Community and Economic Development Clinic with its emphasis on enhancing the capacity of local worker-owned cooperatives through links to state, national, and international efforts to support these institutions).

<sup>102</sup> Cf. LÓPEZ, *supra* note 13, at 103-16 (describing Boz's familiarity with landlord-ten-

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NLSP's engagement in extensive listening sessions opened its lawyering up to the community's issues, beyond the lawyer's preconceptions of what the issues had to be. With issues spaciouly perceived, community lawyering and its community development specialty can look to solutions without predetermination of any one best strategy. "Problem-solving" follows "problem-framing," the definition of the problem that, at best, avoids locking in to any one path.<sup>103</sup> As noted above, the committed community lawyer must explore a full range of strategies to address her client's problems, and then seek out the advocates who are in a position to execute those strategies. The authors envision a practice which forecloses no one strategy just because the law office lacks the capacity to implement it.

CONCLUSION: THE EVOLUTION OF OUR CLIENTS INTO TRUSTED  
COMMUNITY PROBLEM-SOLVERS

*I don't consider myself to be a rebellious lawyer. I want rebellious clients.*<sup>104</sup>

Our attempts across practice areas and settings to establish ourselves as "trusted neighborhood/community problem solvers" lead to the same place: trusted community clients. We each look to our client communities to serve as "unit(s) of action in society," which is one organizer's definition of community that, for us, finds its expression in clients.<sup>105</sup> As we have discussed, those units may be the block, the individuals who live within the block, or the collectives whose members serve the block and beyond. Regardless of any geographic or functional definition, we have sought out "rebellious clients" who lead their lawyers.

The conviction that we could trust poor people to describe their critical needs powers NLSP's embeddedness in the Deanwood neighborhood and underscores the organization's commitment to an ongoing consultation. Coordinating services across public education, workforce development and individual representation, the office recognizes individual clients as engineers of their own strengthening, and as more than the sum of their needs.

Those of us who assist organizations have found that our clients

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ant process, which prompts her to perceive every issue within a housing court frame).

<sup>103</sup> Gary Blasi, *What Lawyers Know: Lawyering Expertise, Cognitive Science, and the Functions of Theory*, 45 J. LEGAL EDUC. 315, 344-45 (1995) (explaining how experts draw on their storehouse of experience in order to sort quickly through situations that they perceive to be routine, but spend more time in defining the structure of a problem for situations that present themselves as more ambiguous and complex).

<sup>104</sup> We attribute this statement to our co-author, Louise Howells.

<sup>105</sup> See Barry Checkoway, *Six Strategies of Community Change*, 30 COMMUNITY DEV. J. 2, 3 (1995) (defining "community" as "a unit of action in society").

contain worlds. We have described the directors of housing cooperative corporations as stewards and leaders, caretakers of both a precious community asset and a rare source of power in the marketplace for low income people. “Governance” is the set of rules which safeguard the trust which the immediate and greater communities place in these small but mighty corporate boards. The clients who form “limitadas” and other collective businesses teach us about the power and limitations of “entity formation.” That conventional task, the thing that transactional lawyers know how to do, can serve the clients’ purpose, clarify relationships within the organization and protect relationships with the outside world.<sup>106</sup>

Too often, the “formation” defines rather than serves the client. As we noted, the process of articulating the business relationship must occur outside the client-lawyer relationship. The lawyer may assist, but only the clients can determine their direction. That clients may not be “lawyer-ready” is not an assessment of their capacity, but of the status of their deliberations.

*Rebellious Lawyering* calls on us to be “client-ready.” Client-readiness twenty-five years later looks familiar: grounding in the physical or affiliative community, meetings, public education and empathetic individual representation were and are the vehicles that get us there. But the text did not contemplate the possibility that community members could use “the master’s tools” to claim pride of ownership. When we help clients conserve community assets and construct organizational clients with the power to effect change, we even more fully honor their capacity to stand as their own “trusted problem solver.”

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<sup>106</sup> See Rashmi Dyal-Chand & James V. Rowan, *Developing Capabilities, Not Entrepreneurs: A New Theory for Community Economic Development*, 42 HOFSTRA L. REV. 839, 896 (2014) (emphasizing the value of the creation of legal entities to lessen risk and increase flexibility in using entrepreneurship to combat poverty).