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Promoting Social and Economic Justice Through Interdisciplinary Work in Transactional Law

Susan R. Jones*

INTRODUCTION

This Article explores the importance of interdisciplinary collaboration in small business within the context of community economic development (CED). Business advisors stress the importance of early legal assistance to entrepreneurs and the need for help with business planning, marketing, financing, advertising, and exploitation of the business' intellectual property. In spite of the reality that entrepreneurs require intervention from multiple professionals, many law schools devote insufficient time to teaching across disciplines. Given the recent rise in small business clinical programs, it is appropriate to consider how interdisciplinary efforts in transactional law can be organized and sustained. Moreover, market forces press today's lawyers to change the way they do business. One manifestation of this is the ethical discussion of multidisciplinary and multijurisdictional practice. Through the experience of the George Washington University Small Business Clinic (GWUSBC), one of the oldest in the United States, I hope to shed some light on the opportunities and challenges associated with cross-disciplinary work.

Part I of this Article surveys microenterprise and small business development with emphasis on minority and women entrepreneurs. Part II examines the need for legal assistance to microentrepreneurs and other small businesses. Part III describes the rise of small business clinical programs and discusses GWUSBC as a model. Part

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IV discusses George Washington University's (GW's) experience in interdisciplinary transactional practice and the pedagogical value of working with professionals in other disciplines.¹ Part V explains recent developments in business law pro bono. Part VI discusses new initiatives in community development. Part VII examines transactional interdisciplinary practice within the context of the market driven ethical discussion of multidisciplinary and multijurisdictional practice. Part VIII discusses incentives and impediments to transactional interdisciplinary collaboration. Part IX presents the conclusion.

I. MICROENTERPRISE AND SMALL BUSINESS DEVELOPMENT

Small business² creation is an essential part of CED, a strategy for developing low-income communities.³ There are many different CED

1. The experience of the GW Intra-University Consortium in Business, Law and Engineering is used as a platform to examine the various systems required to sustain interdisciplinary collaborative transactional work. Case profiles illuminate the opportunities.

2. The Small Business Administration defines a "small business" as one that has fewer than 500 employees. 13 C.F.R. § 107.750(b)(2) (2003). The definition of a small business may also be determined by other factors such as industry, number of employees, and gross revenues. Small businesses employed 51% of the private work force in 1998-1999, and they produced 67.4% of 2.59 million net new jobs created. OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION, *SMALL BUSINESS BY THE NUMBERS: ANSWERS TO FREQUENTLY ASKED QUESTIONS*, available at <http://www.sba.gov/advo/stats/sbfaq.pdf> (last updated May 2003).

3. Community economic development is a strategy that includes a wide range of economic activities and programs. The concept of "economic development" emerged in response to tenacious poverty and the need for jobs, affordable housing, and other essentials for human existence. Central to the notion of "community development" is the ability of people living in the same community to work together to solve common problems. Community development is described as being broader than economic development because it includes community building and highlights improvement of community life beyond that which is purely economic. Thus, the concept of community and economic development is inter- and intra-dependent. NATIONAL ECONOMIC DEVELOPMENT AND LAW CENTER, *I A LAWYER'S MANUAL ON COMMUNITY-BASED ECONOMIC DEVELOPMENT 1-3* (1974) [hereinafter NEDLC, *LAWYERS MANUAL*]; see also Scott L. Cummings, *Community Economic Development as Progressive Politics: Towards a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399 (2001); Rachel D. Godsil & James S. Freeman, *Jobs, Trees, and Autonomy: The Convergence of the Environmental Justice Movement and Community Economic Development*, 5 MD. J. CONTEMP. LEGAL ISSUES 25, 30 (1994); John Little, The National Economic Development and Law Center, *Practicing Community Corporate Law*, 23 CLEARINGHOUSE REV. 889 (Nov. 1989); Frank Pommersheim, *Economic Development in Indian Country, What Are the Questions?*, 12 AM. INDIAN L. REV. 195, 202 (1987); Anthony D. Taibi, *Banking, Finance, and Community Economic Empowerment: Structural Economic Theory, Procedural Civil Rights and*

approaches. Microenterprise⁴ development is one model in which small loans (\$500 to \$35,000), peer support, business training, and/or technical assistance are made available to persons starting very small businesses.⁵ They are lifestyle businesses in which the “owner is

Substantive Racial Justice, 107 HARV. L. REV. 1463 (1994) (examining the economic structures that produce substantive injustices and supporting the need for a populist community empowerment economics and public policy discourse); WILLIAM H. SIMON, *THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS, AND THE NEW SOCIAL POLICY* (2002).

Although the terms “low-income” and “poor” are sometimes used synonymously in this Article, low-income communities are very rich in non-monetary resources.

Poverty is generally thought of as material deprivation. However, the operational definition of poverty currently used in the United States is restricted to money income. Poverty is defined by the federal government as a range of income thresholds adjusted for the size of the family, the age of the householder, and the number of children under age 18 in the family. The absolute money-income thresholds are updated yearly on the basis of the Consumer Price Index. NATIONAL ASSOCIATION OF SOCIAL WORKERS, *ENCYCLOPEDIA OF SOCIAL WORK 1867* (Richard L. Edwards et al. eds., 19th ed. 1995). In 2001 there were 32.9 million poor people (11.7% of the total population living in the United States). See Bernadette D. Proctor & Joseph Dalaker, U.S. Census Bureau, *Current Population Reports, P60-219, Poverty in the United States: 2001* (2002), available at <http://www.census.gov/prod/2002pubs/p60-219.pdf> (last visited Nov. 17, 2003).

4. A “microenterprise” is defined as “a sole proprietorship, partnership or family business that has fewer than five employees, does not generally have access to the commercial banking sector and can initially utilize a loan of under \$ 25,000.” MICROENTERPRISE FUND FOR INNOVATION, EFFECTIVENESS, LEARNING AND DISSEMINATION (FIELD), *THE ASSOCIATION FOR ENTERPRISE OPPORTUNITY, 2002 DIRECTORY OF U.S. MICROENTERPRISE PROGRAMS* xii (Britton A. Walker & Amy Kays Blair eds., 2002) [hereinafter 2002 U.S. MICROENTERPRISE DIRECTORY]. A microenterprise has also been defined as a business, often home-based, comprised of 1-5 people, with less than \$5,000 in start-up capital. Lewis D. Solomon, *Microenterprise: Human Reconstruction in America's Inner Cities*, 15 HARV. J.L. & PUB. POL'Y 191, 192 (1992). AEO and the microenterprise development industry have defined a microenterprise as a business with five or less employees, which requires \$35,000 or less in startup capital, and which does not have access to the traditional commercial banking sector. Association for Enterprise Opportunity, “About Microenterprise,” available at www.microenterpriseworks.org/about/whatis.htm (last visited Nov. 7, 2003).

5. Microenterprise programs provide microloans (very small loans from \$500 to \$35,000) or access to them through relationships with banks and community development institutions such as credit unions and community development banks. They also provide training and technical assistance primarily to low-income persons and other targeted populations, such as minorities, women, public housing tenants, dislocated workers, or immigrant and Native American communities. Microenterprise programs are usually organized as nonprofit, tax-exempt corporations. In addition to providing loans, business training and technical support, a primary goal of microenterprise development programs is the success of microenterprise participants, measured by positive personal outcomes such as improved self-esteem, exercising control over one's life and household income, taking advantage of educational opportunities or alternative employment, and the overall ability to exercise personal and economic choices. See Susan R. Jones, *A Legal Guide to Microenterprise Development*:

primarily focused on providing employment for himself and his immediate family.”⁶ These microbusinesses supplement employment by creating “second jobs,” and also provide models of microentrepreneurship for family, neighbors and friends. The need for neighborhood small businesses as part of a larger CED initiative is well recognized. The current emphasis on small business development by low- to moderate-income people is supported by recent public policy encouraging economic self-sufficiency. The most significant illustration of this encouragement is welfare reform. At the same time, low-income people have had to rely on underground jobs and the informal-sector economy to survive.⁷

Small businesses have been neglected as resources for community revitalization, yet they are the backbone of the U.S. economy. Small businesses “employ half of the private-sector work force and create two-thirds of all new jobs.”⁸ A new study, *Estimation of Small Business Wealth*, issued by the U.S. Small Business Administration (SBA), Office of Advocacy, finds that small business wealth accounted for 43% of total business wealth in the United States in 2000.⁹

Because small business development as an income creation strategy for low- to moderate-income people is gaining federal and

Battling Poverty Through Self-Employment, A.B.A. COMMISSION ON HOMELESSNESS & POVERTY (1998).

Most microenterprise programs were started in the mid to late 1980s. See PEGGY CLARK & AMY J. KAYS, *ENABLING ENTREPRENEURSHIP: MICROENTERPRISE DEVELOPMENT IN THE UNITED STATES* (Nov. 1995) (presenting findings of a five-year study of microlending), available at www.fieldus.org/publications/Enabling.pdf (last visited Nov. 17, 2003); SUSAN R. JONES, *A LEGAL GUIDE TO MICROENTERPRISE DEVELOPMENT: BATTLING POVERTY THROUGH SELF-EMPLOYMENT* (2d ed. forthcoming 2004); *HARD LABOR: WOMEN AND WORK IN THE POST-WELFARE ERA* 85 (Joel F. Handler & Lucie White eds., 1999) (describing policy initiatives such as Individual Development Accounts (IDAs) that provide matching funds from philanthropic organizations for business development) [hereinafter *HARD LABOR*].

6. NATIONAL COMMISSION ON ENTREPRENEURSHIP, *ENTREPRENEURSHIP, A CANDIDATE'S GUIDE 5*, available at http://www.ncce.org/research/4249_NCOE_GUIDE.pdf (last visited Oct. 14, 2003).

7. *HARD LABOR*, *supra* note 5, at 76, 121 (describing a study by Kathryn Edin on welfare recipient reliance on informal economy).

8. *Senate Leaders' Belief in Small Business Runs Deep*, *SMALL BUS. ADVOC.*, Oct. 2002, at 1, 5.

9. Joel Popkin and Company, *Estimation of Small Business Wealth 33* (produced under contract to the Office of Advocacy, U.S. Small Business Administration), available at <http://www.sba.gov/aduo/research/rs217tot.pdf> (last visited Oct. 14, 2003).

state support, and because these programs often encourage participation by women and people of color, it is useful to review the statistics on minority and female business ownership. Furthermore, a statistical review contextualizes the work of small business clinical programs with a social justice mission.

A. Minority Business Ownership

According to the SBA, the number of minority-owned firms and their contributions to the U.S. economy has been increasing rapidly.¹⁰ Minority business owners more than doubled their share of all firms from 1982 to 1997, and increased shares of employment and receipts.¹¹

Minorities made up about 30.9% of the total U.S. population in 2000 but owned just 14.6% of all U.S. businesses in 1997. Blacks and Hispanics were underrepresented in the minority business population: Hispanic Americans counted for about 12.5% of the population in 2000, but owned only 5.8% of U.S. firms in 1997, while Blacks or African Americans constituted 12.3% of the U.S. population but only 4.0% of business owners. Asians and Native Americans, on the other hand, had business representation equal to or broader than their numbers in the population would suggest: American Indians and Alaska Natives composed 0.9% of the population and 0.9% of business owners, while Asians and Pacific Islanders constituted 3.6% of the population and 4.4% of [business owners].¹²

“Of minority-owned businesses 39.5% were Hispanic-owned, 30.0% are Asian owned, 27.1% Black-owned, and 6.5% American Indian-owned.”¹³

10. OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION, MINORITIES IN BUSINESS, 2001, at 1 (Nov. 2001), available at www.sba.gov/advo/stats/min01.pdf.

11. *Id.*

12. *Id.* at 7-8.

13. *Id.* at 2.

“One reason for minority-owned firm growth is simply the rate of minority population growth.”¹⁴ Nevertheless, “at least some of the increase may also be credited to long-term efforts to encourage minority business growth through various initiatives at all levels of government.”¹⁵

Regarding the size of minority-owned firms, most could be classified as microenterprises because they have no employees. Businesses with no employees included “89% of Black-owned businesses, 83% of American Indian- and Alaska Native- owned, 82% of Hispanic-owned, and 68% of Asian- and Pacific-Islander-owned firms.”¹⁶

B. Women in Business

“Women-owned businesses make up the fastest-growing segment of the small business economy.”¹⁷ While the number of women-owned businesses has increased considerably in recent years, women’s share of business income remains relatively small. Compared to men, women have some distance to go to reach equality in the share, number, and size of businesses they own, as well as in the economic returns to their businesses.¹⁸

According to the most recent data in the Census Bureau’s Survey of Women-Owned Business Enterprises (SWOBE), women-owned businesses represented 26.0% of all 20.8 million non-farm businesses in the United States in 1997. Women owned 5.4 million non-farm businesses in 1997, of which 847,000 were employer firms, employing 7.1 million employees. Women-owned firms generated \$818.7 billion (4.4%) of business revenues. In addition to the 5.4 million businesses owned by women, there were 3.6 million firms

14. *Id.* at 18.

15. *Id.*

16. *Id.* at 14.

17. *Senate Leaders’ Belief in Small Business Runs Deep*, *supra* note 8, at 5.

18. OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION, WOMEN IN BUSINESS, 2001 at 22 (Oct. 2001), available at www.sba.gov/advo/stats/wib01.pdf.

owned equally by men and women that employed 8.3 million workers and generated \$943.9 billion in revenue.¹⁹

Regarding firm size:

Of the 5.4 million women-owned businesses, only 15.6% were employer firms in 1997, compared with 25.4% of all firms. Very small businesses with fewer than 5 employees represented more than 60.0% of women-owned firms with paid employees, but generated only 16.5% of the revenues, and employed 13.0% of the labor force. As measured by receipts, women-owned businesses were also mostly very small ventures.²⁰

“The 1998 Survey of Small Business Finances (SSBF), which has a representative sample of 5.3 million U.S. small firms with fewer than 500 employees, indicates that compared with businesses owned by men, women-owned businesses are more likely to be small and under five years old.”²¹

II. THE NEED FOR BUSINESS LEGAL ASSISTANCE

All business owners need early legal intervention. But, microentrepreneurs are generally not familiar with business law, and because many lack start-up capital and cannot access credit, they cannot afford legal assistance.²² Most people capitalize small businesses with savings, loans from friends and family, credit cards, and home equity. The need is exacerbated for low- and moderate-

19. *Id.* at 9.

20. *Id.* at 17.

21. *Id.*

22. Throughout this Article, the nonprofit organizations that support entrepreneurship and other CED efforts are referred to as small businesses because: (1) nonprofit organizations are subject to many laws affecting small businesses such as zoning and employment, and (2) nonprofit organizations must be operated as small businesses in order to function efficiently.

The principal distinction between a for-profit business and a nonprofit organization is the “use” of profits derived by the organization. A for-profit business is operated for the benefit of its owners, to generate gross earning and turn net earning (also called inurement) over to the owners, for example, in the payment of dividends to shareholders in a corporation. A nonprofit organization can pay reasonable compensation to employees, but it is not allowed to engage in private inurement. The net profits must be retained or used for the purposes for which the group is organized. BRUCE R. HOPKINS, *THE NONPROFIT LAW DICTIONARY* (1996).

income entrepreneurs. Until recently, with the rise of business law pro bono programs and legal services in CED, lawyers for low-income people have traditionally been litigators who handle public entitlements, criminal, family, and housing law matters. For some time, pro bono small business assistance was an oxymoron.²³ Increasingly, small business and CED work is viewed as the new public interest law.²⁴

Providing support for self-employment through microenterprises and microlending²⁵ is essential to urban recovery and for creating “sustained”²⁶ change in low-income neighborhoods.²⁷ Some of the many reasons for the urgent need to create and support programs and policies that facilitate economic self-sufficiency for low-income people include poverty and urban decay, inadequate educational systems, welfare reform, the global economy, and rapid advances in technology that replace human labor.²⁸ Because of technological advances and job layoffs due to corporate downsizing, self-

23. The SBA’s definition of “small business” includes large businesses grossing less than three million dollars. 13 C.F.R. § 107.750(b)(2) (2003).

24. See Don J. DeBenedictis, *Learning by Doing*, 76 A.B.A. J. 54, 56 (1990).

25. Microlending (also known as microcredit) involves providing small loans to microbusinesses. Often coupled with business training, credit repair, financial literacy, and other technical assistance, microlending (or providing access to microloans) is one aspect of the work of microenterprise development programs.

26. Merriam Webster’s Collegiate Dictionary defines sustain: “1. to give support or relief to. 2: to supply with sustenance . . . 6: to bear up under . . . 8. to support by adequate proof.” MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 1184 (10th ed. 1993). In this context it appropriately describes the capacity for permanent changes and self-sufficiency that the microenterprise development movement extols.

27. Researchers have identified “three major components to a federal investment strategy to revitalize cities.” Peter Dreier, *America’s Urban Crisis: Symptoms, Causes, Solutions*, 71 N.C. L. REV. 1351, 1386 (1993). First, create jobs and invest in the national infrastructure such as public transportation. *Id.* Second, improve America’s “human infrastructure and the productivity of its current and future workforce.” *Id.* Third, “invest in urban neighborhoods to improve the economic, physical, and social conditions of these communities.” *Id.* at 1386-87; see also Nicholas Lehmann, *Don’t Give Up Poverty Programs that Work; Selling Salsa, Banking in the Ghetto and 11 Other Strategies for Helping the Poor*, WASH. MONTHLY, June 1988, at 28.

28. See Fran Ansley, *Standing Rusty and Rolling Empty: Law, Poverty, and America’s Eroding Industrial Base*, 81 GEO. L.J. 1757, 1765-69 (1993); Ronald Grover, *The Economic Crisis of Urban America*, BUS. WK., May 18, 1992, at 38; Michael H. Schill, *Assessing The Role of Community Development Corporations in Inner City Economic Development*, 22 N.Y.U. REV. L. & SOC. CHANGE 753, 754-59 (1997); Paulette Thomas, *Credit Where Due? Small Businesses, Key to Urban Recovery, Are Starved for Capital*, WALL ST. J., June 11, 1992, at A1.

employment²⁹ has become an increasingly popular (and sometimes necessary) business alternative. Almost 10% of the U.S. workforce is self-employed.³⁰

The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA or Welfare Reform)³¹ created the most dramatic change in the treatment of disadvantaged Americans since the New Deal. Key provisions of the law place a five-year lifetime limit on welfare benefits for adults and requires that states have 50% of their single family caseload working at least thirty hours per week by 2002.³² Small business development and CED initiatives, emphasizing job creation through self-employment, are factored into many welfare-to-work efforts. One-half to two-thirds of microenterprise programs target welfare recipients for self-employment training.³³ Because small businesses already account for the bulk of new job growth, they will also absorb former welfare recipients as new work force entrants. Welfare reform has created

29. The U.S. Department of Labor defines self-employed persons as:

those who work for profit or fees ten hours or more a week in their own business, profession or trade, or who operate a farm. The business that a self-employed person is in may be called a microenterprise (or microbusiness) because it is very small in terms of the number of employees, sales, assets or other characteristics. Although the terms microenterprise and self-employment are used interchangeably, self-employment refers to the status of the business owner while microenterprise refers to a very small business.

2002 U.S. MICROENTERPRISE DIRECTORY, *supra* note 4, at xii.

30. See NATIONAL FEDERATION OF INDEPENDENT BUSINESSES, NFIB SMALL BUSINESS POLICY GUIDE 13 (Jan. 2003), *available at* www.nfib.com/PDFs/ResearchFoundation/NFIBPolicyGuide.pdf; see also OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION, SMALL BUSINESS ECONOMIC INDICATORS FOR 2001 (Feb. 2003), *available at* www.sba.gov/advo/stats/sbei01.pdf.

31. The Personal Responsibility and Work Opportunity Act of 1996, (PRWORA or Welfare Reform), Pub. L. No. 104-193, 110 Stat. 2105. PRWORA was signed into law by President Clinton on August 22, 1996. It replaced the Aid to Families with Dependent Children (AFDC) program with a block grant for states to provide cash assistance to needy families. See PRWORA 103, 110 Stat. at 2113.

32. See *id.* at 2129.

33. See RAY BOSHARA ET AL., REALIZING THE PROMISE OF MICROENTERPRISE DEVELOPMENT IN WELFARE REFORM (1997); CYNTHIA A. GUY ET AL., MANPOWER DEMONSTRATION RESEARCH CORPORATION, SELF-EMPLOYMENT FOR WELFARE RECIPIENTS: IMPLEMENTATION OF THE SEID PROGRAM (1991); 2002 U.S. MICROENTERPRISE DIRECTORY, *supra* note 4.

new opportunities ranging from job training to the creation of childcare facilities for new working mothers.

III. THE RISE OF SMALL BUSINESS CLINICS

The legal profession, largely through its ethical rules, has long recognized a duty to help persons unable to afford legal assistance. Small business and CED clinics represent an important and growing component to community development and the future of clinical legal education. The national political trend is shifting away from government entitlements and toward personal responsibility and economic self-sufficiency. This shift has encouraged the growth of more small business and CED clinics at law schools. Law school legal clinics provide needed legal services to low and moderate-income clients, while serving as teaching law firms for students.

Law school legal clinics emerged in the late 1960s during the Johnson Administration's "War on Poverty." Legal assistance for the poor represented an unprecedented "commitment to the ideal of equal justice."³⁴ Public interest lawyers who believed that the case method did not teach students the skills, judgments, and values needed for client representation and legal decision-making facilitated the clinical legal education movement.³⁵

Conveniently, the first legal clinics operated out of legal aid offices largely because they provided office space and clients, filled a public need, and did not compete with the private bar.³⁶ "Gradually, most clinics moved in-house under direct supervision of the schools."³⁷

34. See Edgar S. Cahn, *Reinventing Poverty Law*, 103 YALE L.J. 2133, 2135 (1995); see also Edgar S. Cahn & Jean C. Cahn, *The War on Poverty: A Civilian Perspective*, 73 YALE L.J. 1317 (1964); DeBenedictis, *supra* note 24.

35. See Stephanie B. Goldberg, *Bridging the Gap: Can Educators and Practitioners Agree on the Role of Law Schools in Shaping Professionals? Yes And No*, 76 A.B.A. J. 44-50 (Sept. 1990); Ann Juergens, *Teach Your Students Well: Valuing Clients in the Law School Clinic*, 2 CORNELL J.L. & PUB. POL'Y 339 (1993); Linda F. Smith, *The Judicial Clinic: Theory and Method in a Live Laboratory of Law*, 1993 UTAH L. REV. 429 (1993); Nina Tarr, *Current Issues in Clinical Legal Education*, 37 HOW. L.J. 31 (1993).

36. See DeBenedictis, *supra* note 24, at 55.

37. *Id.*

Legal clinics have changed and expanded both in subject area and in philosophy. Traditionally providing representation in family law, housing, criminal defense, and general civil law, legal clinics at some law schools have added new areas of representation to address societal needs in areas such as HIV and AIDS representation, elder law, domestic violence, tax, and intellectual property law.³⁸ The philosophy and pedagogy of clinical education has further evolved into an investigation about the role of lawyers in American society. A significant body of scholarship has been developed by a national community of clinical law professors who are bonded by the unique character of their work as teacher/practitioners and clinical legal scholars.³⁹ Today, clinical legal education is well established, and most law schools now have some type of clinical program.⁴⁰

The majority of transactional legal clinics that provide small business and housing development assistance for CED efforts emerged at law schools in the late 1970s and early 1980s.⁴¹ These decades were characterized by cutbacks in funding for legal services for low-income people, and a critique of the traditional model of public interest lawyering that focused on litigation. Litigation did not change the underlying poverty conditions in which low-income people lived. In this climate, CED emerged in law school clinics as an important community-building strategy, largely focused on affordable housing. CED also complemented legislative agendas, litigation strategies, and political avenues in the affordable housing arena.

As economic conditions for the indigent have worsened, individuated litigation has become too expensive while federal funding of legal services has restricted impact litigation on behalf of

38. Clinical Legal Educators Interactive Directory, at <http://cgi2.www.law.umich.edu/GCLE/Index.asp> (last visited May 21, 2003) [hereinafter Directory].

39. See Tarr, *supra* note 35, at 43-44.

40. See *id.* at 31.

41. In the early 1970s there were several early CED efforts in law school clinics such as Antioch School of Law. Interview with Michael Diamond, Associate Director, Georgetown University Law School Harrison Institute, Washington, D.C. (Sept. 11, 1996). It appears, however, that these were part of tenant organizing, housing representation efforts, and a larger anti-poverty strategy; they were not clearly definable as CED clinics, and there is limited information about these efforts in legal literature. *Id.*

low-income people.⁴² Clinicians and other legal services providers have found that representing groups with respect to long-term neighborhood development issues such as housing, consumer interest, community banking, and small business development has had a greater impact on sustained community change than just representing indigent individuals.⁴³ Cutbacks in Legal Services Corporation (LSC) funding have exacerbated the need for transactional, group-based assistance from law school clinics and the private bar. Presently there are about twenty-four law school legal clinics engaged in varying degrees of CED work.⁴⁴ There are approximately thirty small business and related clinics nationwide.⁴⁵

The genesis of transactional programs stems from two factors: the failure of the litigation paradigm to eradicate poverty and the need to broaden the clinical curriculum.⁴⁶ Other incentives for these programs are available funding, community needs, student interest and activism, faculty resources and creativity, and a reassessment of some of the goals of clinical legal education.⁴⁷

There are also a number of other probable reasons for the advent of small business clinic programs. First, the availability of grants

42. See 45 C.F.R. §§ 1609.1-1640.1 (1996).

43. See Margaret Martin Barry, *A Question of Mission: Catholic Law School's Domestic Violence Clinic*, 38 HOW. L.J. 135 (1994); Cahn, *Reinventing Poverty Law*, *supra* note 34, at 2135.

44. See Directory, *supra* note 38.

45. Small Business Opportunity Center, Northwestern University School of Law, *Small Business Resources On-Line*, at <http://www.law.northwestern.edu/sboc/map.cfm> (last visited Apr. 6, 2003). The George Washington University Small Business Clinic, which is used as a case study in this Article, is one of the earliest. According to an informal survey conducted by the Georgetown University Law School Harrison Institute, CED clinics and/or classes exist at University of Washington, John Marshall, St. Louis University, University of Baltimore, Washington and Lee, Santa Clara, Marquette, U.C. Berkeley (Boalt Hall), Syracuse, SUNY Buffalo, University of Michigan, George Washington, Pittsburg, Yale, Georgetown, and CUNY. The 1996 Directory of Clinical Teachers lists eight such programs, adding William and Mary and Tennessee to the list. Because of soft money grants, some programs are funded temporarily, resulting in fluctuation in the number of programs that exist at any given time. See Directory, *supra* note 38.

46. See Louise G. Trubek, *The Worst of Times . . . and the Best of Times: Lawyering for Poor Clients Today*, 22 FORDHAM URB. L.J. 1123, 1133 (1995).

47. See ADAM BERGER ET AL., HOMES FOR THE HOMELESS: A HANDBOOK FOR ACTION (1990); James S. Rubin & Robert A. Solomon, *Learning and Serving the Community: Yale Law's Housing Development Clinic*, 2 A.B.A. J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 15 (1992).

from the SBA to fund the programs provides a reason.⁴⁸ A second reason is private foundation funding.⁴⁹ Third, stemming from the Civil Rights movement, the emergence of small business loan programs to assist minority entrepreneurs, which has resulted in a viable client population, is a reason for the creation of small business clinics.⁵⁰ Fourth, numerous federal programs such as Empowerment Zones and Enterprise Communities,⁵¹ Community Development Financial Institutions,⁵² the Community Reinvestment Act,⁵³ SBA,⁵⁴

48. In 1977, the Small Business Development Center (SBDC) program was established on an experimental basis. The program became permanent with the enactment of The Small Business Development Center Act of 1979. See James J. Chrisman et al., *The Impact of SBDC Consulting Activities*, J. SMALL BUS. MGMT., July 1985, at 1-2.

49. See Patricia H. Lee & William H. Mellor, *Institute for Justice Clinic on Entrepreneurship: A Real World Model in Simulating Private Enterprise in the Inner City*, 5 J. SMALL & EMERGING BUS. L. 71 (2001); see also Institute for Justice Clinic on Entrepreneurship Homepage, at <http://clinic.ij.org> (last visited Sept. 25, 2003).

50. See MARK EDDY, CONG. RES. SERV. REP. FOR CONGRESS, REP. NO. 90-312 G.O.V. 1 FEDERAL PROGRAMS FOR MINORITY AND WOMEN-OWNED BUSINESSES (1990). In existence since 1968, the SBA's 8(a) program, which provides preferential treatment for government contracts to small and disadvantaged businesses, is perhaps the most well known. Maj. Thomas Jefferson Hasty, III, *Minority Business Enterprise Development and the Small Business Administration's 8(a) Program: Past, Present, and (Is there a) Future?*, 145 MIL. L. REV. 1, 2 (1994).

51. Title XX of the Social Security Act, Omnibus Budget Reconciliation Act of 1993 (OBRA), Pub. L. No. 103-66, 107 Stat. 312, 543 (codified at 26 U.S.C. §§ 1391-1394, 1396, and 1397 (1994)), made available one billion dollars for each Empowerment Zone and Enterprise Community (EZEC). One hundred million dollars in grants was available for each urban empowerment zone, forty million dollars was available for each rural empowerment zone, and approximately three million dollars was set aside for each enterprise community. For further analysis of EZEC see Audrey G. McFarlane, *Race, Space, and Place: The Geography of Economic Development* 36 SAN DIEGO L. REV. 295, 351 (1999) (concluding that the Empowerment Zones Program "threatens to harden these [racial/ethnic] boundaries beyond all hope of remedy because the program ignores current structural and historical policies that have shaped and configured our racialized landscape").

52. Community Development Financial Institutions (CDFIs), including community development banks, are commercial institutions with social and community conscience, designed to help economically distressed communities achieve enhanced economic stability and self-reliance by providing capital. Operating at a profit, CDFIs provide depository institution services such as savings and checking accounts, money market accounts, and individual retirement accounts (IRAs). Unlike commercial banks, however, CDFIs also provide support to community development activities by providing credit and loans to locally owned and operated businesses and affordable housing developers. See JOHN J. ACCORDINO, COMMUNITY-BASED DEVELOPMENT: AN IDEA WHOSE TIME HAS COME 21 (1997); Rochelle E. Lento, *Community Development Banking Strategy for Revitalizing Our Urban Communities*, 27 U. MICH. J.L. REFORM 773, 776 (1994) (describing community development banks, community development credit unions, and community development loan funds).

Community development credit unions are much like community development banks. They

and nonprofit microenterprise groups,⁵⁵ all of which provide loans or technical assistance to persons who traditionally have not had access to capital, have facilitated self-employment efforts. Fifth, welfare reform has heightened the discussion of self-employment.⁵⁶

also provide loans and credit to small businesses and loans for affordable housing purchasers. *See id.* at 776. Community development loan funds, also known as revolving loan funds, serve community economic development, housing, and business goals as well, but are fewer in number than community development credit unions. *See id.*

53. The Community Reinvestment Act (CRA) requires the federal bank regulatory agencies to encourage banks to meet the credit needs of low- and moderate-income people. Lisa Maslow, *Is the Community Reinvestment Act Worth Saving?*, 6 J. AFFORDABLE HOUSING 65, 66 (1996). This is accomplished by assessing a bank's lending record and taking that record into account when considering a bank's application to expand. Community residents can challenge a bank's application to expand on the grounds that it has failed to meet community credit needs, and the bank's application can be denied because of an inadequate CRA record. Observers estimate that the CRA has directed between \$4 billion and \$6 billion a year to low- and moderate-income communities. *Id.* New CRA regulations created three new performance tests, one of which requires banks to disclose information about their small business and community development loans. *Id.* at 70-74.

54. *See* 15 U.S.C. § 636(m) (2002). Implemented in 1992, the Microloan Program began as a pilot program of the SBA designed to make loans through intermediaries to very small businesses in low-income communities. The program also offers grant monies to qualifying entities that offer technical assistance in areas such as marketing and management. Loans under this program may be as high as \$35,000. The average loan, however, is \$7,500. Initially, loan funds were issued to forty-five intermediaries. The program was expanded by the Small Business Credit and Opportunity Enhancement Act of 1992, which enabled the SBA to make loan funds available to 110 intermediaries. OFFICE OF ADVOCACY, U.S. SMALL BUSINESS ADMINISTRATION, THE WHITE HOUSE CONFERENCE ON SMALL BUSINESS COMMISSION: ISSUES HANDBOOK, FOUNDATION FOR A NEW CENTURY 32 (1994) [hereinafter THE WHITE HOUSE CONFERENCE ISSUES HANDBOOK]. *See also* Community Development Block Grant (CDBG) Program Economic Development Guidelines, 24 C.F.R. § 570.1 (2003). HUD's goal is to provide an economic lift for distressed cities. *Id.* HUD has recently revised the CDBG Program to be a major contributor to providing jobs for low-income persons and assistance for microenterprises. *See* 42 U.S.C. §§ 5301-5321 (2002).

55. In the past ten years, microenterprise development programs, some of which are based on the group peer lending model of the Grameen Bank in Bangladesh, have gained much attention in the United States. Peer lending involves forming groups of borrowers who guarantee each others' loans and provide assistance to each others' businesses. The founder and managing director of the bank, Mohammad Yunus, is an economics professor considered to be the world's leading proponent of the "trickle up" model of development. He believes that access to credit can provide a lifeline to rescuing many people from poverty. Founded in 1983, the Grameen Bank lends over six million dollars a month to more than 690,000 members (presently 92% are women) in 14,000 villages throughout Bangladesh. *See* ALEX COUNTS, GIVE US CREDIT (1996); 2002 U.S. MICROENTERPRISE DIRECTORY, *supra* note 4; Robert Friedman & Puchka Sahay, *Six Steps Forward for Microenterprise Development*, ENTREPRENEURIAL ECON. REV. at 32 (1996).

56. Welfare reform is an expansive topic; and self-employment as an alternative to welfare is an emerging theme. There is significant debate about whether self-employment is a

*A. Small Business Clinics' Contribution to Skills Training and
Attorney Role Development*

Small business clinics contribute to skills training in ways similar to other civil law clinics. Students engage with live clients and apply lawyering skills. Interaction with real clients has always been a unique feature of the methods by which clinical legal education explores attorneys' roles (i.e., the nature of the attorney-client relationship as well as the responsibility of lawyers to eliminate injustice). Small business clinics also highlight the need for attorneys' roles to expand into areas of client education and interdisciplinary activism.

While all clinical programs teach interviewing and counseling skills, there are unique characteristics and learning opportunities in a small business and CED clinic. Although the process of gathering information in litigation and transactions is similar, the kind of information gathered differs. Transactional lawyers gather information for proposed deals, assess the feasibility of the transaction, taking into account legal, business, and practical considerations, and draft legal instruments to accomplish the business client's goals. In order to accomplish the client's goals, students must learn about the business from the client and other sources, including experts in other disciplines.⁵⁷

The transactional context raises questions for students about the attorney-client relationship different from those that often arise in traditional clinics. Traditional clinics have historically raised questions about the ability of clients to engage lawyers in an egalitarian way.

Students in small business clinics are sometimes challenged by the fact that clients have backgrounds and experiences consistent with or

viable option for welfare recipients. See Louise A. Howells, *The Dimensions of Microenterprise: A Critical Look at Microenterprise as a Tool to Alleviate Poverty*, 9 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 161 (2000) (criticizing microenterprise programs for welfare dependent women); HARD LABOR, *supra* note 5, at 85. The topic is outside of the scope of this Article. See generally Joel F. Handler, *Ending Welfare as We Know It—Wrong for Welfare, Wrong for Poverty*, 2 GEO. J. ON FIGHTING POVERTY 3 (1994).

57. See ROGER S. HAYDOCK ET AL., *LAWYERING PRACTICE AND PLANNING* 96-108 (1996).

similar to their own.⁵⁸ The student's ability or inability to identify with the clients raises interesting questions about the process of professional development.⁵⁹ For example, small business clients are often more knowledgeable than students about the business, and students are sometimes unsure about the practical application of choosing a specific legal entity, e.g., a limited liability company versus a corporation. Students have to learn not only the facts of the case, but must learn about the business from their clients.

In keeping with the social justice mission of many clinical programs,⁶⁰ students are exposed to the chasm created by economic differences. In working with economically disadvantaged clients, students have to assess their notions of poverty, class, access to legal services, who could or should start small businesses, and what it takes to be an entrepreneur.

To prepare law students for the future, law schools must devote more attention to small business development.⁶¹ There are two components of this preparation. The first prepares lawyers to be entrepreneurs in the business of law. The second prepares them to represent entrepreneurs.⁶² As clinicians and others in the legal

58. ADAM BERGER ET AL., HOMES FOR THE HOMELESS: A HANDBOOK FOR ACTION 2 (1990) (noting the similarity of experience between clients and students in the housing transactions clinic at Yale). The author believes that this may be based in part on the fact that middle- and upper-income students can better identify with a new entrepreneur in a small business clinic, for example, than a social security disability client in an entitlements clinic.

59. An in-depth exploration of these issues is outside the scope of this Article.

60. David Barnhizer, *The Justice Mission of American Law Schools*, 40 CLEV. ST. L. REV. 285 (1992) (describing active commitments to justice and acknowledging that the clinical movement began from a vision of a just society).

61. To this end, several law schools have created programs in entrepreneurship and the law. See Karl S. Okamoto, *Learning and Learning-to-Learn by Doing: Simulating Corporate Practice in Law School*, 45 J. LEGAL EDUC. 498 (1995). The Center for Law & Entrepreneurship at the University of Oregon (UO) School of Law prepares law students to represent and to be entrepreneurs by bringing law students and members of the northwest business community together. The center collaborates on a number of projects with the UO's Charles H. Lundquist College of Business. Columbia University Law School offers a class called "Deals: The Economic Structure of Transactions and Contracting," created by Ronald Gilson and Victor Goldberg (also known as the "Deals" class). The class explores the concept of the business lawyer's role in creating value through "transaction cost engineering." Through a combination of lecture and case study of real world deals, the class identifies recurring deal problems and examines how lawyers can manage business risks through negotiation and contractual solutions. See Victor Fleischer, *Deals: Bringing Corporate Transactions into the Law School Classroom*, 2002 COLUM. BUS. L. REV. 475, 487-90 (2002).

62. See Haydock, *supra* note 57. Reevaluation and reassessment of the business

community reflect on the future of clinical legal education and legal services for the indigent, small business and CED efforts will be significant contributors to social and economic justice.

Small business and CED clinics provide students with transactional legal skills that can translate into future professional opportunities in a corporate context. Pedagogically, for those students who are not interested in litigation careers, small business and CED clinics provide an alternative vision of work. In addition, CED clinics provide a model that the students can use to recognize and combat injustices throughout their careers as lawyers.

Moreover, as the discussion on business law pro bono in Part V explains, ethical rules are encouraging pro bono activity. For example, the state of Florida has a mandatory pro bono reporting requirement.⁶³ The Florida Bar reports, “[S]ince the inception of the mandatory pro bono reporting rule in 1994, pro bono participation by Florida attorneys has steadily increased.”⁶⁴ Thus far, it appears that Florida is the only state that has adopted a mandatory reporting requirement.

B. Benefits of Small Business Clinics to Clients and to Urban Revitalization

Every year a million new businesses are established.⁶⁵ There is no way to determine the exact number of entrepreneurs who seek early legal intervention. While entrepreneurs receive special attention in American business culture, business start-up law receives insufficient attention in the law school curriculum. This void encouraged Columbia University Professors Ronald Gilson and Victor Goldberg to create the “Deals” class.⁶⁶ Business start-up practice is fast

curriculum in light of the global economy and changing trends are beyond the scope of this Article. See Stephanie Francis Cahill, *Start-ups Need Lawyers, Too*, STUDENT L., Jan. 1997, at 3; Daniel S. Kleinberger, *Sorting Through the Soup: How do LLCs, LLPs, and LLPs Fit Within the Regulations and Legal Doctrines?*, BUS. L. TODAY, Nov./Dec. 2003, at 15.

63. FLA. BAR REG. R. 4-6.1(d) (2002).

64. *Annual Reports: Committees of the Florida Bar*, 75 FLA. BAR J. 38, 62 (2001).

65. See John M. Cunningham, *Helping Businesses Get Started: In Praise of an Unsung Legal Specialty*, BUS. L. TODAY, Nov/Dec. 1995, at 9-10.

66. See Fleischer, *supra* note 61, at 475.

becoming as distinct a specialization as tax or environmental law.⁶⁷ In addition to examining choice of entity issues and the legal and tax implications of the choices, lawyers for small businesses must be familiar with the laws and regulations of employment, real estate, environmental, intellectual property, contract, commercial, and estate planning, as well as laws relevant to particular lines of business.⁶⁸

Attorney intervention is needed for more than for-profit businesses. Nonprofit corporations, though they are not often thought of as small businesses, must be operated as small businesses. They are subject to most laws affecting small businesses, such as employment laws and employer tax withholdings from employee earnings, and they require substantial legal assistance.⁶⁹

Furthermore, there are several trends in charitable giving which impact CED lawyering for nonprofits.⁷⁰ One trend is Social Venture Philanthropy (SVP), a paradigm in charitable giving influenced by venture capital. Another trend is Social Entrepreneurism, “[a] provocative blend of social, philanthropic and business values,”⁷¹ that is an integration of social work, CED, and business development.⁷² A number of foundations are analyzing “the nonprofit capital market.”⁷³ The theory is that investments in nonprofits are still capital investments seeking social and economic returns, not purely financial rewards. This analysis requires that nonprofit capital investments be managed with the due diligence and strategic thinking applied in the for-profit world.

67. See Cunningham, *supra* note 65, at 9-10.

68. See Brian Glick & Matthew 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, 110, 118-20 (1997).

69. See *id.*

70. Susan R. Jones, *Representing the Poor and Homeless: Innovations in Advocacy: Tackling Homelessness Through Economic Self-Sufficiency*, 19 ST. LOUIS U. PUB. L. REV. 385, 409 (2000).

71. ROBERTS FOUND, HOMELESS ECONOMIC DEVELOPMENT FUND, NEW SOCIAL ENTREPRENEURS: THE SUCCESS, CHALLENGE AND LESSONS OF NON-PROFIT ENTERPRISE CREATION viii (1996) [hereinafter NEW SOCIAL ENTREPRENEURS].

72. At the start of the millennium, researchers analyzing the “golden age of philanthropy” contended that the multimillionaires of the booming technology industries are changing the way philanthropy is approached. See Karl Taro Greenfeld, *The New Philanthropy, A New Way of Giving*, TIME, July 24, 2000, at 48, 50. Cf. Jed Emerson, *In Brief: Giving, Study Shows Gifts by Entrepreneurs*, CHRON. PHILANTHROPY, Nov. 30, 2000.

73. Cf. *id.*

For the client populations, small business and CED clinics provide much needed legal representation and support for sustained change in urban communities. In addition to providing direct legal representation, law school small business and CED clinics can assist legal advocates and serve as valuable resources to other legal service providers.⁷⁴

Entrepreneurship is being fueled at many levels by various sources, including the microenterprise development industry and federally sponsored programs from HUD, SBA, and the Department of Treasury. Community-based intermediaries deliver these programs, which provide small loans and technical assistance for microbusinesses.

Future trends show that additional attention will be given to small business development because of corporate downsizing and outsourcing and because of rapidly advancing technologies that allow more people to work from home.⁷⁵

IV. THE GEORGE WASHINGTON SMALL BUSINESS CLINIC

The George Washington University Small Business Clinic, in Washington, D.C., was established in 1977. Cases are referred from many sources, such as the Washington D.C. Small Business Development Center at Howard University, Community Development Corporations (CDCs),⁷⁶ the SBA, Legal Services Corporation field offices, the D.C. Bar Community Economic Development Pro Bono Project, other law school clinics, former clients, and other legal service and community-based organizations. The GWUSBC has provided legal counseling, advice, and representation to entrepreneurs such as caterers, retail clothing stores,

74. See Leslie Newman & National Economic Development and Law Center, Law Schools and Community Economic Development (1993) (unpublished manuscript, on file with author).

75. The percentage of the workforce working at home full or part time has increased nationally to 33% in 1993. In Washington, D.C., between 1980 and 1990 the number almost doubled. See Peter Pae, *In Area Homes, Businesses Are Booming: Thousands Seek a Balance Between Work and Family*, WASH. POST, Oct. 24, 1993, at B1.

76. Community Development Corporations are nonprofit organizations established to marshal community resources, and stimulate revenue generating businesses in low-income communities.

restaurants, antique dealers and consignment shops, computer consultants, barbers, massage therapists, beauticians, book publishers, and other entrepreneurs, many of whom are low-income people or minorities.

The GWUSBC was first funded as part of the SBA's Small Business Development Center (SBDC) program.⁷⁷ The SBDC program started in 1977 as a pilot program and became permanent in 1980. The program provides counseling, training, and specialized support assistance to the small business community.⁷⁸ This national program is implemented at the state and local level through 1,000 subcenters and 56 SBDCs.⁷⁹ Clients raised an estimated \$33.3 million in capital as a direct result of assistance from the SBDCs.⁸⁰ The program's purpose is to provide technical assistance to improve the economic viability of small businesses in areas such as accounting, business planning, financing, and related start-up or expansion matters. The objective of the SBDC program is to leverage federal funds with state, academic, and private sector resources to strengthen the small business community, contribute to the economic growth of the communities served, create a broader based delivery system to the small business community, and make assistance available to more small businesses than is possible with federal funds.⁸¹

SBDCs receive funding from the SBA in the form of annual grants.⁸² The GW Clinic served as a subcenter and provided legal assistance in such areas as determining the choice of legal entity or the best legal structure.⁸³ These legal structures include corporations, partnerships, limited liability companies, and sole proprietorships.

77. Susan R. Jones, *Small Business and Community Economic Development: Transactional Lawyering for Social Change and Economic Justice*, CLINICAL L. REV. 195, 208 (1997).

78. See Small Business Development Center Act, 15 U.S.C. § 648 (2003).

79. Association of Small Business Development Centers, at <http://www.asbdc-us.org>.

80. James J. Chrisman, Economic Impact of Small Business Development Center Counseling Activities in the United States: 2000-2001, at <http://206.207.18.37/SBM/National%2DSBDC%20Results.htm> (last visited Oct. 17, 2003) (surveying SBDC clients who receive at least five hours of counseling).

81. See THE WHITE HOUSE CONFERENCE ISSUES HANDBOOK, *supra* note 54.

82. See 15 U.S.C. § 648(a)(1) (2002).

83. One of the challenges of being a subcenter of the SBDC program is the program's need for subcenters to handle a significant number of cases. This requirement is antithetical to the educational mission of law school clinics.

The GW Clinic also assists clients with other legal business-start-up issues including licensing, contracts, tax, employment, trademark, and copyright law.

Although some of the GW Clinic's clients are low-income, others are working or middle class.⁸⁴ Typically, a new entrepreneur seeks counseling about the appropriate choice of legal entity, the tax consequences of the available choices or other information about licenses and permits that may be needed to operate the business. Other information sought by new entrepreneurs relate to contracts, insurance, and protecting the company's intellectual property, such as its name and logo, or copyright protection for works of original authorship fixed in a tangible medium. These microentrepreneurs cannot afford to pay for legal assistance in the start-up phase. They would have probably foregone legal help or engaged in legal self-help.⁸⁵ Similarly, the organizers of nonprofit organizations generally request legal help with incorporating, obtaining federal and state tax exemption, and obtaining licenses to engage in fund raising solicitations. By providing assistance with business structures and other legal issues affecting small businesses, the GW Clinic provides assistance that is essential to the business' survival.

The GW Clinic presently provides representation in three areas: (1) for-profit small businesses; (2) community economic development; and (3) for-profit artists and nonprofit arts organizations, many of which further the goals of CED.

A. Project Models

In order to highlight how transactional lawyering can benefit microbusiness development while engaging in interdisciplinary collaboration and providing rich educational experiences for students, this section provides a sampling of client profiles. These profiles also

84. See CLARK & KAYS, *supra* note 5; 2002 U.S. MICROENTERPRISE DIRECTORY, *supra* note 4, at ix (noting that while most clients of microenterprise programs are poor, the programs serve clients with a range of income levels).

85. Available capital for a new business is generally spent on equipment, inventory, marketing, and related start-up costs. The clinic carefully selects clients based on a review of their business plan and legal needs.

illuminate how such clients contribute to social change and economic justice in communities served by law school clinics.

1. SiNGA—Thread of Life

“We keep telling the kids if they can dream it, they can have it, but the community does not provide the resources and necessary experiences to make it a reality.”⁸⁶

George Washington University pioneered the interdisciplinary arena by creating an intra-university consortium of faculty in business, law, and engineering to facilitate CED initiatives.⁸⁷ The first project involved a GWUSBC client, SiNGA, Inc., a nonprofit job-training program in the technologically-advanced fashion industry founded by Ms. Jacqueline Hart.⁸⁸ SiNGA, which means “thread of life” in a language of The Democratic Republic of the Congo, East Africa, formerly known as Zaire, is a clothing manufacturing, merchandising, and entrepreneurial training program that provides hands-on experience for students, inner-city at-risk youth, and economically and emotionally disadvantaged people who are interested in the fashion industry as employees or entrepreneurs.⁸⁹

SiNGA was created based on the recognition that people love doing what interests them, and that persons alienated from society, such as high school dropouts and the unemployed, have hidden talents and strengths that need to be nurtured.⁹⁰

Initially designed as a two year training course, SiNGA offers opportunities for networking and participation in the cottage

86. SiNGA Business Plan (quoting Jaqueline Hart, SiNGA founder) (reprinted with permission and on file with author).

87. Susan R. Jones, *Clinical Legal Practice as a Vehicle for Justice: Enabling Community Economic Development at The George Washington University Law School*, 1998 INT’L ASS’N FOR BUS. & SOC’Y 103, 105 (1998).

88. Susan R. Jones, *The Case of SiNGA: Assessing a Four-Year Intervention*, 1999 INT’L ASS’N FOR BUS. & SOC’Y 115, 116 (1999).

89. Joel W. Cook & Lee Burke, *An Alliance of University Faculty to Facilitate the Development of Competitive Advantage in the Inner City: The Case of SiNGA*, 1998 INT’L ASS’N FOR BUS. & SOC’Y 109-10 (1998).

90. See Linda Wheeler, *Preserving Riches of Black Life: Efforts Underway to Save D.C.’s Shaw Neighborhood*, WASH. POST, July 16, 1996, at B1, for a profile of the exemplary efforts of the Shaw community residents to revitalize the area.

industry,⁹¹ for self-employment, and for gaining marketable job skills. While teaching students the academic, technical, and skill components of sewing, cutting fabric, designing apparel, and marketing finished products, SiNGA also will foster the development of positive attitudes, self-esteem, and professional protocol. SiNGA emphasizes the importance of higher education, discourages early teen pregnancy, highlights the need for interdisciplinary job skills, emphasizes basic math, reading, writing and verbal skills, and encourages creativity, sales ability, and initiative.⁹²

SiNGA will satisfy an identified need for community-based apparel production and a management-training program that offers professional options for hands-on experience in the multifaceted, technically advanced fashion industry.

The collaboration brought together the author (Director of the GWUSBC), Professors Joel Cook⁹³ and Lee Burke of the GW School of Business and Public Management, and Professor Michael Duffey of the GW Engineering School. While each of the lead faculty had some experience with “live” cases or client-based course projects, only the law school had a well-developed tradition of clinical practice.⁹⁴

a. Phase I

SiNGA began as a client of the GWUSBC. When SiNGA consulted the GW Clinic, it already had filed its articles of incorporation. After an interview, however, student-lawyers determined that SiNGA needed bylaws, organization minutes, and federal and state tax exemption, as well as a license to solicit funds. For several semesters during 1995-1997, law students under the guidance of Prof. Jones, worked with Ms. Hart to obtain 501(c)3

91. A “cottage industry” is an industry whose labor force consists of family units or individuals working at home with their own equipment. MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 262 (10th ed. 1993).

92. Because of funding challenges, SiNGA has modified its programs to complement existing job training programs. For example, it is currently focusing on training in marketing.

93. Professor Cook is currently Associate Dean for Undergraduate Programs of the School of Business and Public Management at The George Washington University.

94. Cook & Burke, *supra* note 89, at 110.

status for federal tax purposes and for filing all appropriate legal documentation for SiNGA's operation in the District of Columbia. The GW Clinic students explained the legal implications of its fiduciary responsibilities are the regulatory and tax issues associated with non-profit fund raising.⁹⁵

b. Phase II

During the summer of 1997, the author and Ms. Hart learned of a case study by Prof. Cook on D.C. economic development and of subsequent research on the garment industry performed by students in Prof. Cook's MBA strategy class in the fall of 1996.⁹⁶ The case study identified the Washington D.C. garment industry as an economic sector with expansion potential.⁹⁷ Ms. Hart contacted Prof. Cook, and they met with Prof. Burke to discuss SiNGA. Of particular interest was SiNGA's plan to serve not only as a training institute but also as the center of a cooperative cluster of small-scale designers and manufacturers operating in the District.⁹⁸

In the fall of 1997, Prof. Cook assigned four groups of MBA students to study various business models for small-scale custom clothing manufacturing and make presentations to Ms. Hart. The MBA students identified four business models and examined the viability of the "market case" for SiNGA students upon graduation.⁹⁹ To address the recognized need for technological support, Ms. Hart was referred to Prof. Duffey, who was interested in the application of high technology to support small-scale manufacturing in the District. Prof. Duffey was looking for "live" client projects for his class on design-for-manufacturing.¹⁰⁰

95. *Id.*

96. *Id.* at 109-10.

97. *Id.*

98. *Id.* at 110.

99. *Id.*

100. *Id.*

c. Phase III

Professors Cook and Duffey and the author met during the fall of 1997 to discuss the potential for a collaboration involving SiNGA in three GW graduate courses. In the spring of 1998, the collaborative experiment began.¹⁰¹ Student teams enrolled in law, business, and engineering courses, where they conducted faculty-directed, client-focused research and produced consulting deliverables to SiNGA.¹⁰²

Prof. Duffey hosted two joint sessions for students and faculty from all three courses. During these joint sessions, Ms. Hart, the chair of SiNGA's board of directors, students, and faculty discussed the SiNGA concept, presented research and reports, and answered student questions. Students in each discipline separately made final presentations to Ms. Hart and the SiNGA board chair.¹⁰³

i. The Small Business Legal Clinic

The law students in the Small Business Clinic were engaged in continuing legal work on D.C. regulatory issues affecting SiNGA, including business regulations, proprietary school license requirements, and federal tax issues.¹⁰⁴ In addition to the traditional legal work, clinic students also investigated network-building opportunities available to SiNGA.¹⁰⁵ Law students evaluated the feasibility of federal programs supporting technology-based enterprise, as well as employment oriented programs for welfare-to-work, school-to-work, and Enterprise Community.¹⁰⁶ Law students also made contacts with D.C.-based employment, enterprise, and economic development programs, as well as with other non-profit community groups, fashion industry and labor organizations, and metro-area corporations to explore partnership and funding opportunities.¹⁰⁷

101. *Id.*

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

ii. The MBA Consulting Program

MBA graduate students in consulting practice focused primarily on three tasks: (1) conducting a market study mapping the existing garment and fashion industry in D.C., (2) developing a comprehensive directory of potential funding sources for SiNGA, and (3) developing an operating budget for SiNGA's apparel, textile, and manufacturing school.¹⁰⁸

The market study required field research and telephone surveys to identify existing participants in the design and fabrication of fashion apparel products. Furthermore, field research was designed to ascertain participants' interest in collaborating with the proposed garment/fashion cooperative.¹⁰⁹ A second goal of the market study was identification of potential clients who might contract to buy products fabricated by students in the course of their training, and to identify existing retail outlets for SiNGA graduates' fashion and apparel products.¹¹⁰

The business team also delivered a comprehensive sourcebook of funding options and funding requirements. The options included corporate, trade association, foundation, and government organizations that offer grants or contracts for which SiNGA might be an eligible recipient. Another aspect of this task involved obtaining annual schedules of grant and contract application dates and requirements, as well as copies of the current year requests for proposals to be used by SiNGA for ongoing fund raising.¹¹¹

A third task of the business team was to develop a start-up, first-year, and four-year capital and operating budget for SiNGA's apparel training school. The budget spreadsheet was designed to be usable by the client and to accommodate "what if" scenario building; it also served as a baseline pro forma financial statement. Included in this third deliverable were start-up costs for opening the school, annual operating costs, equipment expenditures anticipated for full-scale operations, and other training-related expenses.¹¹²

108. Jones, *supra* note 88, at 116.

109. Cook & Burke, *supra* note 89, at 111.

110. *Id.*

111. *Id.*

112. *Id.*

iii. The Engineering School—Production Design

Graduate students from the School of Engineering and Applied Science focused on four main tasks: (1) factory design and workflow; (2) technology assessment; (3) purchasing and scheduling; and (4) human resource planning.¹¹³

Two student teams addressed technical issues involving workflow design for the manufacturing operation, and cost and performance reviews of alternative vendors of CAD/CAM equipment for design, pattern making and cutting. Two other teams analyzed alternative factory floor layouts, and generated a computer-based simulation to model the factory floor and work process flows. One team provided project management to integrate the disparate engineering tasks. Two teams addressed materials and purchasing issues, and created a start-up human resource plan. The last two teams outlined an initial plan for the microenterprise cooperative, and developed a SiNGA website.¹¹⁴

The intra-university consortium of faculty in business, law and engineering's work to facilitate CED was influenced by the National Business School Network (NBSN) of the Initiative for a Competitive Inner City (ICIC),¹¹⁵ which acknowledges the importance of America's graduate schools in fostering inner-city development.¹¹⁶

"[ICIC] is a national not-for-profit organization founded in June 1994 by Harvard Business School Professor Michael E. Porter."¹¹⁷ ICIC's mission is to build healthy economies in America's inner cities that create jobs, income, and wealth for local residents.¹¹⁸ "The NBSN engages America's urban graduate business schools to foster

113. *Id.*

114. *Id.*

115. Monica R. Dean, *An Inner-City Business Development Strategy for Washington, D.C.-Based Graduate Business Schools*, 1999 INT'L ASS'N FOR BUS. & SOC'Y 108 (1999).

116. *Id.*

117. Initiative for a Competitive Inner City (ICIC), About Us, at <http://www.icic.org/about/about.asp> (last visited Sept. 26, 2003) (on file with the Washington University Journal of Law & Policy).

118. *Id.*

inner-city business development and serve inner-city-based companies.”¹¹⁹

ICIC believes that the competitive advantage of urban graduate business schools is the knowledge of how enterprises succeed in a market-based system. These schools possess the vital skills and resources for economic revitalization; therefore these institutions should play a prominent role in the economic development of their surrounding communities. Such a relationship not only benefits the school’s community but also creates important relationships with the local government and the corporate sector, and it makes the schools more competitive in attracting faculty.¹²⁰

In 1998, the Washington, D.C. Department of Housing and Community Development (DHCD) asked NBSN to participate in the creation of an economic development strategy for Washington, D.C. As the economic development arm of the District of Columbia, DHCD was tasked with developing a strategic economic development plan for the nation’s capital within the context of six engines of economic growth, termed the city’s “Industry Networks,” consisting of education, business services, information technology, media, hospitality, and biotechnology.¹²¹ NBSN supported the education industry network and developed an inner-city business development strategy for area graduate business schools, including: American University, George Washington University, Georgetown University, Howard University, and Southeastern University.¹²²

The objective was to design ways for the business schools to support the action plans that emerged from the Industry Networks and other job creation aspects of the strategic economic development plan. In particular, this strategy would help link small businesses, minority entrepreneurs, and community-based companies from low- and moderate-income

119. Dean, *supra* note 115, at 108.

120. *Id.* at 108-09; *see also* Leveraging Colleges and Universities for Urban Economic Revitalization: An Action Agenda, *available at* <http://www.icic.org/Documents/U1Final.pdf>.

121. Dean, *supra* note 115, at 108.

122. *Id.*

neighborhoods to the regional engines of economic dynamism.¹²³

NBSN benchmarked the schools' current involvement in inner-city business development activities and made recommendations for future opportunities to develop inner-city business focused curricula, research, field-based learning, and executive education. The project created a research and development team for DHCD that would not have been available without large amounts of capital.¹²⁴ NBSN stated that collaborators must build relationships with a wide array of business organizations, nonprofits, and faith-based groups.¹²⁵ NBSN concluded that there is a need for sustained funding for university-community initiatives¹²⁶ and an evaluative mechanism to assess their impact from both an educational and client perspective.¹²⁷ Courses employing action research and service learning, such as student field study, writing cases on inner-city companies for incorporation into existing entrepreneurship courses, and training and other outreach efforts to inner-city business owners and their companies, can encourage such partnerships.¹²⁸

NBSN's recommendations were well received by the graduate business schools and key stakeholders. The Universities/Educational/Research Institution Industry Network has implemented several of NBSN's recommendations, and more schools have joined the Network.¹²⁹

d. Lessons Learned

The dynamic of interdisciplinary collaboration is influenced by many factors: the type of client, nature of the project, communication among faculty, students, and client, etc. Each of the four faculty in this collaboration was deeply committed to economic development and the potential of the client in this case study. These were critical

123. *Id.* at 109.

124. *Id.* at 108.

125. *Id.* at 110, 113.

126. *Id.* at 114.

127. *Id.*

128. *Id.* at 109-10.

129. *Id.* at 114.

factors in the success of the alliance. In the end, the GW faculty collaboration resulted in a research and development arm for SiNGA that would have been cost prohibitive.

In the context of a small-business interdisciplinary collaboration, consideration must be given to the differences in representing a for-profit business versus a nonprofit organization. For example, because the SiNGA project involved a nonprofit group, the interdisciplinary collaboration should consider the composition of the board of directors in the same way the management team would be analyzed in a for-profit enterprise. To this end, the capacity of the nonprofit volunteer board and other volunteers is critical. In evaluating the capacity of the nonprofit board, and even recommending new members, it may be necessary to involve additional expertise from academic centers that study philanthropy¹³⁰ and external resources through groups such as the National Association of Nonprofit Boards. A volunteer fundraiser and a proposal writer would have helped to complete our intervention team.

Nonprofit organizations are viable case studies because of the importance of nonprofit groups in civil society. The nonprofit sector of the U.S. economy is often referred to as the third sector, the other two being for-profit and government.¹³¹ Nonprofit organizations are essential for urban development, and they create jobs.¹³²

Faculty collaborators should have relationships with a wide array of business organizations to identify appropriate clients. Examples of

130. Schools with such centers include CUNY, Duke University, Grand Valley State University, and Indiana University (among others). For a complete list, see the National Center for Charitable Statistics, Academic Centers Concerning the Study of Philanthropy, at <http://www.nccs.urban.org/links.htm> (last visited Sept. 26, 2003).

131. Internal Revenue Service data show that there are 1.1 million tax-exempt organizations in the U.S., 750 of these are public benefit service organizations with operating expenditures of approximately \$443 billion. More than 45,000 new organizations become tax-exempt each year. For example, in Washington, D.C., there are 6,319 tax-exempt nonprofit groups doing strictly educational and charitable work. A study of the nonprofit sector by the Regional Association of Grant Makers shows that the nation's capital is home to more than 772 grass-roots groups whose missions range from delivering meals to home-bound AIDS patients to building low-income housing. These groups receive about one-third of their money from the government, contribute approximately \$76.2 million to the economy (taking into account paid and volunteer labor), and have an annual payroll of \$800,000. Tracy Thompson, *Survey Finds D.C. is Rich in Small Non-Profit Groups: Economic Impact Significant, Grantmakers Say*, WASH. POST, July 21, 1995, at A02.

132. Jones, *supra* note 88, at 117.

such organizations in the metropolitan Washington, D.C. area are the D.C. Chamber of Commerce (and its Neighborhood Business Partners/BusinessLinc Program, which matches neighborhood businesses with its members for business mentoring and networking), the Small Business Development Centers in D.C. and in Maryland and Virginia suburbs, community development corporations (many of which operate microloan programs), other nonprofit microloan programs, the SBA's Service Corps of Retired Executives (SCORE), faith based organizations, and business incubators.

Community economic development takes a long time. Faculty, students, and clients need to make a commitment to the project, and identify how much time they can commit and communicate this to the client.

While nonprofit groups are viable interdisciplinary projects, faculty collaborators must candidly assess whether a for-profit enterprise more closely fits the business school case study model. Some collaborative efforts are riskier than others. Business school consulting practicum and small business management courses in which students assist local businesses in specific areas of concern generally do not work with start-up companies; they prefer enterprises that have existed for three to five years. Some of the most needy businesses and groups (such as SiNGA) have not had the requisite incubation time. Indeed, legal intervention is required at the start-up stage. Without it the group could not begin effectively. Particularly for non-law student collaborators, working with early stage nonprofits requires them to depart from the traditional consulting practicum models involving an established enterprise. Future interdisciplinary collaborations should consider whether it is possible to develop a template for working with start-up companies.¹³³

In evaluating the SiNGA project from the Business School's perspective, Prof. Burke observes:

The key lesson on working with clients is to start with the end in mind. Clients, particularly entrepreneurs whose knowledge

133. This template would include indicators for growth and development and strategic planning for the board of directors.

base is lodged in their technology or industry, can be incredibly unknowledgeable about doing business, business planning and especially starting a business.

This is even more likely to be the case with entrepreneurs in the not-for-profit sector. Similarly, never underestimate what you know. Catalog and identify what you know early in the process then be sure that you transfer this knowledge to your clients.¹³⁴

Given this construct, a lesson from the SiNGA project is to identify ways to avoid “client dependence” and seek opportunities to “graduate” to other support services while developing the internal capacity of the organization. After working with SiNGA for five years, the company graduated to other pro bono services available through the D.C. Bar Community Economic Development Pro Bono Project. In assessing the need for CED legal assistance, the D.C. Bar found:

While the communities of the District of Columbia face many challenges, the city is blessed with an outstanding legal community as well as a cadre of accomplished nonprofit community development organizations that have been confronting these challenges on the front line for over a decade. Through the Community Economic Development Pro Bono Project the D.C. Bar seeks to marry these two important resources to accelerate the revitalization of the city’s distressed neighborhoods. . . . [S]ignificant legal as well as business and development expertise is needed . . . [h]eretofore the Bar’s pro bono programs have not provided an opportunity for corporate and transactional attorneys to directly deploy their legal expertise in the service of the city’s lower income and distressed communities.¹³⁵

The D.C. Bar CED Project seeks to mobilize this relatively untapped resource in the service of neighborhood and community

134. Cook & Burke, *supra* note 89, at 111.

135. D.C. Bar Pro Bono Program, Community Economic Development Pro Bono Project, at http://www.dcbbar.org/for-lawyers/pro_bono/what_we_do/cd.cfm (on file with author).

transformation. Because of this new program, SiNGA has received legal assistance from two national law firms. There should be a similar evaluation by other collaborators for graduation from services provided by the student group.

The level of coordination needed to sustain the project requires a commitment of additional resources either from university, public, or private sources. Federal agencies such as the U.S. Department of Housing and Urban Development (HUD), the Office of University Partnerships, and the Community Outreach Partnerships Centers Program (COPC) help colleges and universities revitalize distressed, low-income neighborhoods near their campuses by providing job training, counseling, economic development, crime prevention, and housing assistance to community residents. The COPC program provides three-year grants of up to \$400,000 to encourage institutions of higher education to join in partnerships with local communities. The Office of University Partnerships published *Law School Involvement in Community Development: A Study of Current Initiatives and Approaches*.¹³⁶ This type of guide needs to be updated and should include interdisciplinary efforts. Moreover, HUD, as a principle government agency concerned with community development, should undertake an ongoing review of academic collaborations that complement its efforts.

However, a review of interdisciplinary interventions to aide small businesses and support CED should not be limited to support from federal agencies. Interdisciplinary collaboration is also part of an important trend in academe: for service learning, community-based research, and action learning are key elements of education in a technologically advancing global society. Increasingly, universities encourage academic work across disciplines in the form of research support and recognition of community service.¹³⁷ The GW interdisciplinary team is a model for future initiatives. Indeed, this

136. See <http://www.oup.org/pubs/law/toc.html> (last visited Dec. 17, 2002).

137. Emily Barker, *Universities: Your New Best Friend*, INC., Nov. 1, 2002, at 66; Gregory L. Volz et al., *Higher Education and Community Lawyering: Common Ground, Consensus, and Collaboration for Economic Justice*, 2 WIS. L. REV. 505 (2002).

Volume marks the first comprehensive review of law school scholarship on interdisciplinary efforts.¹³⁸

The philanthropic community can help CED efforts by funding initiatives to assist interdisciplinary and intra-university collaboration, the evaluation of best practices, and the impact on students' education.

Because SiNGA is an unusual job creation nonprofit, its evolution has been particularly slow. It has taken some time to convince funding sources that it is a viable component of the job training arena in a city that looks for quick fixes in economic sectors considered "full-proof employers" such as hotels and restaurants. Also, the current economic climate has not been kind to non-profit groups.

In conclusion, by partnering student and faculty resources in law, business, and engineering, the project created a research and development team addressing issues that ranged from trademark registration and business models to social cost analysis, production feasibility, and manufacturing operations.

The GW faculty collaboration resulted in a research and development laboratory for SiNGA that would not have been available without significant financing. Furthermore, the project has been cited as an example of a social justice collaborative—an innovative practice using lawyers and nonlawyers.¹³⁹ It also demonstrated the benefits of the live case study or live client model for impact based experiential learning.

2. Another Model—Joint Projects: The Small Business Support Project

Recognizing the tremendous faculty commitment required by the GW intra-university consortium in business, law and engineering, it

138. The May 1999 American Association of Law Schools Workshop on Clinical Legal Education marked the inaugural meeting of the Interdisciplinary Clinical Education Committee, which gathered information about interdisciplinary activities by law schools nationally. While several transactional law school clinics collaborate with other university departments such as architecture, business, medicine, anthropology, and urban planning, little scholarship documents the efforts to support entrepreneurship.

139. Louise G. Trubek & Jennifer J. Farnham, *How to Create and Sustain a Successful Social Justice Collaborative* 7 (2001), available at <http://www.law.wisc.edu/pal/Soc%20Justice%20book.pdf> (last visited Nov. 21, 2003).

is important to recognize an alternative approach to interdisciplinary collaboration: the joint project model. The Small Business Support Project, like the consortium, emerged as an interdisciplinary collaboration with the GW School of Business and Public Management¹⁴⁰ in recognition of the limits of law in assisting emerging and economically disadvantaged small businesses. Seven small business clinic students were teamed with pairs of graduate business school students to work on selected cases. The primary goals of this project were to: (1) expand law students' understanding of the needs of entrepreneurs, (2) to involve students in a strategic interdisciplinary collaborative learning effort, (3) to increase the SBC's client service delivery by linking clients with MBA students as well as the specialized resources of GW's business school, and (4) to facilitate mutual intellectual exchange.

A client of the project, a small copying and duplication business (Copy Center), illustrates the benefits of such a joint project. A large-chain copy store competitor moved into the area and threatened Copy Center. The law students counseled the client, conducted legal research on existing partnership issues, advised the client on alternatives to the partnership structure, reviewed the commercial lease and service contracts, and advised the client on regulatory compliance. The graduate business students developed a business plan and marketing strategies.

The law and graduate business students met several times during the semester to confer with each other and meet with the client. At the end of the semester, the graduate business students made oral presentations to the client; the law students attended the presentations. Given the confidential nature of legal counseling, legal discussions took place in individual meetings with the clients.

This joint effort resulted in benefits to the client, including a business plan, a new logo, and marketing assistance that helped the

140. This project was undertaken with Dr. Charles N. Toftoy, Director of the Entrepreneurship/Small Business Program and the Council for the Advancement of Small-Business (CASB) at The George Washington University. CASB's mission is to strengthen the D.C. metropolitan area's small business community by providing hands-on tactical assistance to entrepreneurs on their most urgent needs. This mission is accomplished through student consulting teams and specialized research projects. CASB also engages in global outreach projects.

client redirect the business to untapped local markets, such as neighborhood churches. In addition to business assistance, the legal assistance with lease and contract review, and a revaluation of its legal structure from a partnership to a legal liability entity, contributed to the survival of this small enterprise.

B. Case Studies: Lessons from the GWUSBC Experience

1. The Neighborhood Business Corridor Restaurant: Can this Business be Saved? Send Me a Small Business SWAT Team, Please!

Ms. W is a middle-aged immigrant from a West African country who became a naturalized U.S. citizen. She poured her life savings, \$30,000, into an ethnic restaurant in a neighborhood business strip on a central business avenue. She purchased the real estate and the business from the previous owner, who operated a carryout restaurant at the location. With the assistance of a nonlawyer business advisor, she created a limited liability company, obtained a certificate of occupancy, an employer identification number, a restaurant license, a zoning permit, and an alcohol beverage control license. Ms. W is determined and committed. What she does best is cook and welcome her patrons. The food is good and people who are introduced to the restaurant want to come back. She is a surrogate mother to many.

Since its inception, the business has been erratic. Sometimes there are small groups of diners: former Peace Corps members or international agency types. Patrons from her place of birth and neighboring African countries stop by. Occasionally there are catering jobs from local embassies. The restaurant appears to have more take-away customers than dine-in patrons. Ms. W, an excellent chef, does not really know how to track the flow of business.

A former retail boutique client for whom the clinic reviewed a commercial lease referred Ms. W to the GWUSBC. While dining one evening in the restaurant, that business owner learned from Ms. W that the restaurateur had been served a Complaint to Foreclosure Right of Redemption. While Ms. W had managed to pay a note to the previous owner, who holds the note privately, she did not keep up with the real estate payments. She owed over \$12,000 in taxes,

interest, and penalties. D.C. law allows real property to be sold for delinquent taxes. The property may be redeemed by paying all outstanding taxes, costs, and expenses.¹⁴¹

It was the beginning of the semester; the court date was set. Two law students were assigned to the case. Ms. W had no way to secure the \$12,000. She had filed for bankruptcy several years ago. We called the community development banker where Ms. W banks and were told that under the circumstances no commercial bank would deem her credit worthy. She had not paid sales taxes. We asked for business records; there were none. The good news: there appears to be equity in the restaurant building.

We asked for proof of income and expenses. We received bags and files of restaurant order receipts, cash register tapes, and receipts for food and restaurant expenses. Time was of the essence. With the help of an undergraduate work-study student majoring in business law and the eight other students in the clinic, we organized what we had been given and requested help from other colleagues. We reviewed options with Ms. W. Where could we find the money? The “3 f’s”—friends, family, and fools¹⁴² were simply not a possible source, but, if we could organize the business records, a microlending organization might be able to assist.

The clinic called Ms. K, a business advisor, who directs the local urban business development center, a part of the SBDC at another university. We asked her to consult with Ms. W. Ms. K used her resource list of consultants to identify a pro bono accountant, Mr. U. We conducted a team meeting (lawyers, accountant, and business advisor). We organized the business records and delivered them to Mr. U. Given the looming court date and the immediacy of the real estate foreclosure, we also sought the assistance of pro bono real estate counsel.

A former clinic student, now a partner in a large law firm (LL), offered the firm’s pro bono services. The mortgage holder, in an effort to preserve its position, paid the real estate taxes and threatened

141. D.C. Code §§ 47-1301 to 47-1321, 47-1340 to 47-1355, 47-1360 to 47-1361 (2001).

142. See Mitchell Bloom et al., *Symposium on Bioinformatics and Intellectual Property Law: Patenting and Financing Bioinformatics Inventions*, 8 B.U. J. SCI. & TECH. L. 157, 158 (2002) (discussing sources of capital).

foreclosure through legal counsel. LL negotiated with counsel for the mortgage holder (MH). MH would be willing to renegotiate the entire note (approximately \$65,000) with the real estate taxes (\$12,000), but he wanted evidence of changed circumstances—evidence that Ms. W would not end up in this situation again.

What has changed? First, legal intervention served as the catalyst for accounting and business services. Second, GW business students consulted with the entrepreneur on bookkeeping and management. Third, the city councilmember for the ward in which the restaurant is located put clinic law students in touch with the business development resource center responsible for the area. The restaurant is in a DCHD district that has façade improvement dollars but, of course, this potential improvement will take a while.

The case raised a long list of questions: Because women owned enterprises are now fast growing in America, could the women's business development center help? Does the restaurant association have a business mentor program? The Greater Washington Area Board of Trade has a Community Business Partnership Program. Could it provide an appropriate mentor? Could the restaurant use a "friends" committee for a fund raising event? Who would organize this effort? Would Local Small and Disadvantaged Business Certification help boost business?¹⁴³ What were the options? Where could we go? Could this business be saved?

For financing options we needed books and tax returns. With these we could determine whether the Community Development Financial Institution (CDFI) bank or a microlender would refinance the real estate. We examined private sources of financing at much higher interest rates—not the best option. If we could stabilize the business, we could consider exit strategies.

We identified and considered new income streams. Ms. W's restaurant serves a specialty drink we think is marketable. Is the

143. The Local, Small, Disadvantaged Business Enterprise (LSDBE) Certification Program is designed to build the capacity of local, small, and disadvantaged businesses; and to stimulate economic development in the District of Columbia. District-based small and disadvantaged businesses are eligible to participate in this set-aside program under the Equal Opportunity for Local, Small, or Disadvantaged Business Enterprises Act of 1998. D.C. Code Ann. §§ 2-217.03 to 2-217.07 (2001); Office of Local Business Development, at <http://www.olbd.washingtondc.gov> (last visited Sept. 26, 2003).

recipe subject to intellectual property trade secret protection? Will this contribute additional income? What business plan and system needs to be in place to make this a reality?

In assessing options, we conferred with the business development center for the commercial corridor. This proved to be a great resource. The director agreed to seek pro bono assistance from a bank partner to appraise the real estate. The restaurant also landed a very substantial contract to provide concession food vending at a major Washington, D.C. festival. The income stream from this multi-day event had the potential to allow the business to pay off debts and earn a profit.

A new law student assigned in a subsequent semester arranged for pro bono tax assistance for Ms. W. Past due income taxes were prepared or amended to show her business income and losses on Schedule C. The one-person LLC she created is taxed as a sole proprietorship. The law student assisted the pro bono real estate counsel in renegotiating the note and coordinated management intervention from the business school students. A goal for the semester was to insure that the client had the necessary documentation (including certification of federal and state tax compliance) to file for the Master Business License. This law required businesses that collect in excess of \$2,000 annual revenue to register with the city. Ironically, the law was repealed by the Washington, D.C. city council in June 2003.¹⁴⁴

The story of Ms. W makes clear that entrepreneurs need entrepreneurial networks.¹⁴⁵ Moreover, a number of clinical legal scholars have identified the special attributes of community lawyers and the importance of lawyers as problems solvers.¹⁴⁶

144. David Nakamura, *D.C. Repeals Unpopular Business Licensing Law*, WASH. POST, June 4, 2003 at B1.

145. National Commission on Entrepreneurship, *Building Entrepreneurial Networks*, Dec. 2001, at 2, available at http://www.ncoe.org/research/Networks_Report.pdf (on file with the Washington University Journal of Law & Policy).

146. See, e.g., Susan D. Bennett, *Little Engines that Could: Community Clients, Their Lawyers, and Training in the Arts of Democracy*, 2002 WIS. L. REV. 469 (2002); Michael Diamond, *Community Lawyering: Revisiting the Old Neighborhood*, 32 COLUM. HUM. RTS. L. REV. 67 (2000) (advancing a more activist role for lawyers working with community groups to increase long-term political power); Lawrence J. Fox, *Legal Services and the Organized Bar: A Reminiscence and a Renewed Call for Cooperation*, 17 YALE L. & POL'Y REV. 305 (1998);

The National Commission on Entrepreneurship observes:

If there's one thing that nearly all entrepreneurs want and need, it's the opportunity to network with their peers and share new ideas and war stories. This was as true in the old economy as it is in today's economy. After all, the Lion's Club and Rotary Club are not just about charity; they generate business contacts as well. The need for such networking is probably even greater today. More people are starting businesses or at least dreaming about doing so, and the number of existing small businesses is near all-time highs. These new or aspiring entrepreneurs can learn on the job, or they can learn from the best teachers of all: other entrepreneurs. Local entrepreneurship networks offer the most effective path for this kind of shared experience.

Networks aren't just good for individual businesses; they help promote regional economic growth as well. Regions with strong networks for entrepreneurs tend to have stronger track records in terms of new business starts and fast growing businesses. Communities seeking to encourage local entrepreneurship should consider policies and programs that help create and nurture support networks for entrepreneurs.¹⁴⁷

Ms. W's case highlights the need for interdisciplinary collaboration for a small business. Ideally, we should have sought immediate assistance from undergraduate business students with the organization of the books and not attended to this task ourselves. In addition to the management business assistance provided by graduate business students, Ms. W also needs help with advertising and marketing. The façade improvement process could require pro bono architectural help.¹⁴⁸ Moreover, with the help of business and legal

Michael J. Fox, *Some Rules for Community Lawyers*, 14 CLEARINGHOUSE REV. 1 (1980); Shin Imai, *A Counter-Pedagogy for Social Justice: Core Skills for Community-Based Lawyering*, 9 CLINICAL L. REV. 195 (2002); Daniel S. Shah, *Lawyering for Empowerment: Community Development and Social Change*, 6 CLINICAL L. REV. 217 (1999); Christine Zuni Cruz, *[On the] Road Back In: Community Lawyering in Indigenous Communities*, 5 CLINICAL L. REV. 557 (1999).

147. National Commission on Entrepreneurship, *supra* note 145, at i.

148. See Andy Pressman, *Architects Can Influence Policy and Contribute to the Public Good*, ARCHITECTURAL REC., May 2000, at 75 (encouraging architects to get involved in their

advisors, she will need to consider a long term business development strategy for her business.

2. Minority Entrepreneurs in Need of Venture Capital

Five African-American men founded New Venture, LLC (New Venture) to assist minority consultants in gaining access to Fortune 500 companies.¹⁴⁹ Much like a headhunter or a temporary staffing service, New Venture would provide information technology services to minority consultants and access to outsourcing opportunities in corporate America.

New Venture's founders had capital from sports figures who were subsequently cut from teams and unable to finance the company. They had access to a deal with a major corporation and were in need of \$250,000. Clearly, this is not a traditional pro bono case. After meeting with the CEO, the GWUSBC entered into a limited retainer to review the business plan, the limited liability company articles of organization and operating agreement, and contracts. In addition, we would research resources for venture capital. There was much that we could learn from this exercise and much we could provide the client. We arranged bi-monthly, follow-up conference calls with the CEO. The GWUSBC arranged a meeting with an angel investor who explained what would be required for New Venture to receive a loan.¹⁵⁰

A starting place for learning about community based venture capital is the Community Development Venture Capital Alliance, which promotes the use of venture capital as a tool to "create jobs, entrepreneurial capacity and wealth to advance the livelihoods of low-income people and the economies of distressed communities."¹⁵¹ Another area for investigation is whether New Markets Tax Credits could possibly benefit this enterprise.

communities and citing pro-bono work as one way to do so).

149. Not the real client's name.

150. See Bloom et al., *supra* note 142, at 158 (defining "angel investor").

151. See <http://www.cduca.org> (last visited Nov. 20, 2003).

V. CURRENT TRENDS IN BUSINESS LAW PRO BONO

A. *The Importance of Law to Small Business Development*

As noted earlier, new economy principles such as social venture philanthropy, social entrepreneurship, and social purpose business influence today's nonprofit CED groups. The CED field today is shaped by increased need for advanced legal services and enhanced strategic collaborations required by mature CBOs.¹⁵² Furthermore, lawyers must be aware of the social, political, and economic dimensions of community revitalization because "law alone cannot eliminate the oppressive effects of poverty and discrimination."¹⁵³

Lawyers are needed to interpret the legal issues in the new philanthropy and to lobby for legislative and policy changes that support CED aims. Transactional counsel is needed in corporate, tax, contracts, and intellectual property matters such as examining joint venture relationships between nonprofit and for-profit collaborators.

Some advocates suggest that tax law reforms are needed in areas such as unrelated business income tax to engage nonprofit organizations in successful economic development and job creation endeavors.¹⁵⁴ Lawyers have an important role to play in the transaction¹⁵⁵ and in public policies affecting CED such as smart growth and urban sprawl.¹⁵⁶ As the case profiles described earlier show, for-profit small businesses also require a wide range of legal assistance.

152. Diamond, *supra* note 146. As one scholar notes: "Legal counsel face a daunting task when asked to advise section 501(c)(3) tax-exempt entities . . . as to what economic development activity involving a for-profit entity is charitable." Gregory G. Maher, *Charitable Economic Development: It's Time the IRS Took Another Look*, 7 J. AFFORDABLE HOUSING & COMMUNITY DEV. L. 31, 33 (1997).

153. Diamond, *supra* note 146, at 67.

154. Maher, *supra* note 152, at 33.

155. David Dante Troutt, *Ghettos Made Easy: The Metamarket/Antimarket Dichotomy and the Legal Challenges of Inner-City Economic Development*, 35 HARV. C.R.-C.L. L. REV. 427, 504-05 (2000).

156. John Powell, *Achieving Racial Justice: What's Sprawl Got to Do With It?*, POVERTY & RACE, Sept.-Oct. 1999, at 3; John Powell, *How Sprawl Makes Us Poor*, ALBUQUERQUE TRIB., Mar. 22, 2000, at C1; Peter W. Salsich, Jr., *Solutions to the Affordable Housing Crisis: Perspectives on Privatization*, 28 J. MARSHALL L. REV. 263 (1995).

B. Business Law Pro Bono

Business law pro bono involves the provision of pro bono legal services by transactional lawyers who heretofore have been reluctant to engage in traditional pro bono activities that have been litigation based and outside their area of expertise.¹⁵⁷ There are a growing number of bar programs in community economic development that help fuel neighborhood revitalization through pro bono legal assistance.

James Baillie, former chair of the ABA Business Law Pro Bono Section observes:

Business law pro bono . . . is an idea whose time has come. Although it is not a new concept for business law pro bono services to be provided on an occasional basis, for the most part, the organized provision of these services is new. Recent years have seen a dramatic increase in the number of pro bono programs specifically devoted to providing business law services and, correspondingly, a dramatic increase in the amount and variety of those services by volunteer lawyers.¹⁵⁸

Business law pro bono services, which are rapidly gaining momentum, are very different from traditional litigation services.¹⁵⁹ They are typically offered to microbusinesses and nonprofit organizations unable to afford private legal fees. The emergence of business law pro bono opportunities is significant because they offer long-term benefits not only for individuals, but for communities as well.¹⁶⁰ The legal matters include leases, contracts, corporate, tax, regulatory compliance, and intellectual property. The estimated value of these services is \$25 million annually.¹⁶¹

157. James L. Baillie, *Fulfilling the Promise of Business Law Pro Bono*, 28 WM. MITCHELL L. REV. 1543, 1544 (2002).

158. *Id.*

159. Traditional litigation-oriented pro bono programs have focused on individuals who need help in court with landlord and tenant, divorce and juvenile law, and administrative law help with social security and immigration matters. *Id.* at 1548.

160. *Id.* at 1544.

161. *Id.* at 1545.

Now business lawyers are enthusiastically volunteering their services as planners, counselors, and dealmakers. The task of matching volunteers with appropriate clients can be formidable. The clients are not always easily identified. Business law pro bono programs serving as intermediaries work with community development corporations and other community based groups to identify microbusinesses and nonprofit groups with legal needs.¹⁶²

Although bar-based business law pro bono programs are relatively new, there were several early CED programs that provided business law pro bono services. The oldest were formed in 1969 and include Lawyers Alliance for New York, which matches volunteer lawyers with nonprofits that are working to improve the quality of life in low-income neighborhoods in New York City, and the National Economic Development and Law Center, which collaborates with community organizations, private foundations, corporations, and government agencies to build the human, social, and economic capacities of low-income communities and their residents.¹⁶³

A number of other groups have created CED projects too. Examples of these are: The Chicago Lawyers Committee for Civil Rights Under Law, created in 1985; Community Organizations Legal Assistance Project, Inc. in Indianapolis, created in 1992;¹⁶⁴ and the Lawyers Clearinghouse on Affordable Housing and Homelessness, formed in 1988; and Public Counsel, formed in 1994.¹⁶⁵ Some bar associations also started nonprofit panels. Examples of these are the Volunteer Lawyer Network in Minneapolis, started in the 1970s, and The Volunteer Legal Services Program of the Bar Association of San Francisco, started in 1987.¹⁶⁶

The commitment to business law pro bono was strengthened in 1993 when the ABA Business Law Section created a pro bono program called "A Business Commitment" (ABC), whose mission is to help lead a national effort to encourage the development of local

162. *Id.* at 1550.

163. *Id.*; National Economic Development and Law Center, at <http://www.nedlc.org/> (last visited Sept. 27, 2003).

164. *See* Community Organizations Legal Assistance Project, Inc. (COLAP), at <http://www.indybar.org/community.cfm> (last visited Sept. 27, 2003).

165. Baillie, *supra* note 157, at 1550-51.

166. *Id.* at 1551.

business law pro bono programs. In 1998, with a \$100,000 grant from the Ford Foundation, ABC helped to fund two large demonstration projects: The D.C. Bar Community Economic Development Pro Bono Project¹⁶⁷ and the Georgia ABC Project, supervised by the State Bar of Georgia and the Georgia Legal Services Program.¹⁶⁸

Under the auspices of the ABA Business Law Section, ABC produced the *ABC Manual: Starting and Operating a Business Law Pro Bono Project*, a primer and quarterly update of new information and programs. Happily, the number of programs has doubled since its initial publication in spring 2000. It is noteworthy that the manual contains a growing number of law school small business and CED programs.¹⁶⁹

During its meetings, the ABA Pro Bono Committee explores how business law services are delivered or showcases existing or new programs.¹⁷⁰ It also operates a list serve of more than 150 participants to facilitate continuing national dialogue among business law pro bono programs and their administrators. Since 1996, through its National Public Service Awards, the Section has recognized outstanding examples of business law pro bono services by individuals and law firms or corporate law departments.¹⁷¹

Program funding has also spurred the evolution of business law pro bono programs. Notably, Power of Attorney (POA), an organization dedicated to expanding the availability of pro bono services to the nonprofit sector, has issued multi-year grants for planning and program expansion. It has awarded \$ 1.1 million for the expansion of the programs in San Francisco, Los Angeles, Chicago, Detroit, and Washington, D.C.¹⁷² POA also facilitates national

167. The author is Vice-Chair of the D.C. Bar CED Pro Bono Project.

168. Baillie, *supra* note 157, at 1552.

169. *Id.* at 1553.

170. *Id.*

171. *Id.* at 1553-54.

172. Power of Attorney, Welcome to Power of Attorney, at <http://www.powerofattorney.org/> (last visited Sept. 27, 2003); Total \$ 1.1 Million in Grants Awarded to Five Organizations in First National Initiative to Expand Pro Bono Legal Services for Nonprofits; Power of Attorney Awards Multi-Year Grants to Law Groups in Chicago, Detroit, Los Angeles, San Francisco and Washington, D.C.; Effort Also Underway to Develop National Network of Leading Pro Bono Providers Across the U.S., PR NEWSWIRE, Apr. 12, 2001, at 1, LEXIS, News Library, News Group File.

meetings, bringing together representatives of established programs.¹⁷³

Technology has also furthered the cause. Probono.net is an online service that strives to use information technology to increase the amount and quality of legal services provided to low-income individuals and communities by the public interest/pro bono lawyers, and to create a virtual community of public interest lawyers. Pro bono Internet sites are now available in D.C., Minnesota, San Francisco, and Rochester, New York.¹⁷⁴

The aforementioned activities have been complemented by the ABA Section of Business Law's newly created Community Economic Development Committee.¹⁷⁵ The Committee's purpose is to share the expertise and resources of the Business Law Section (BLS) with lawyers whose primary practice or pro bono service is with low- to moderate-income entrepreneurs and community-based organizations that are working to revitalize rural and inner-city communities. The Committee provides an opportunity to share knowledge, develop policies about the emerging law of community economic development (such as New Markets Tax Credits), and support transactional lawyers involved in this area of the law. The Committee also works with other BLS entities, such as the Law Education Committee and Pro Bono, as well as other ABA entities, such as the Forum on Affordable Housing and Community Development Law and Commission on Homelessness and Poverty.

Since its inaugural meeting at the ABA annual meeting in August 2001, the CED Committee has held substantive programs on *Successful Business Strategies for Promoting Community Economic Development*, *Corporate Development of the Inner City: Competitive Opportunity, and Economic Growth* and *Rural Community Economic Development*. In commemoration of the 25th anniversary of the Community Reinvestment Act (CRA), the CED Committee and the ABA Commission on Homelessness and Poverty cosponsored a program reexamining the CRA, which requires banks to contribute to

173. Baillie, *supra* note 157, at 1545 n.2 (citing Jones, *supra* note 70, at 385-412).

174. Probono.net, at <http://www.probono.net/> (last visited Sept. 27, 2003).

175. See http://www.abanet.org/buslaw/comm_dev for more information about the CED Committee (meetings, leadership, how to join, etc.) (last visited Sept. 27, 2003).

the local communities in which they do business. The CED Committee and the ABA Forum on Affordable Housing and Community Economic Development have also planned a national CED conference for March 2004. Additionally, the ABA Commission on Homelessness and Poverty, Project and Policy Committee facilitated the second edition of *A Legal Guide to Microenterprise Development*.¹⁷⁶ This book offers guidance to lawyers who volunteer to represent microentrepreneurs and microenterprise development organizations that aid and encourage the development of small business.

1. Model Rule 6.1: Encouraging Business Law Pro Bono¹⁷⁷

Revisions of ethical codes (especially the adoption of Model Rule 6.1), call for mandatory pro bono service, and the ABA's Pro Bono Challenge has contributed to the momentum.¹⁷⁸ Model Rule 6.1

176. Susan R. Jones, *A Legal Guide to Microenterprise Development*, 2004 A.B.A. SEC. BUS. L. PUB (forthcoming).

177. Model Rule 6.1 regarding voluntary pro bono public service provides:

A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

(a) provide a substantial majority of the (50) hours of legal services without fee or expectation of fee to:

(1) persons of limited means; or

(2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means; and

(b) provide any additional services through:

(1) delivery of legal services at no fee or substantially reduced fee to individuals, groups or organizations seeking to secure or protect civil rights, civil liberties or public rights, or charitable, religious, civic, community, governmental and educational organizations in matters in furtherance of their organizational purposes, where the payment of standard legal fees would significantly deplete the organization's economic resources or would be otherwise inappropriate;

(2) delivery of legal services at a substantially reduced fee to persons of limited means; or

(3) participation in activities for improving the law, the legal system or the legal profession.

Model Rules of Prof'l Conduct R. 6.1 (1993).

178. Baillie, *supra* note 157, at 1556.

encourages fifty hours of pro bono service per year to low-income persons and the nonprofit and government entities that assist low-income persons. It also encourages pro bono or substantially reduced fees to individuals and groups where payment of standard legal fees would deplete an organization's resources.¹⁷⁹ Lawyers are further encouraged to voluntarily contribute financial support to organizations that provide legal services to persons of limited means.¹⁸⁰

A rationale for "imposing a service rule on lawyers is that lawyers have specific skills and training and [they] have a monopoly on the right to provide legal services."¹⁸¹ Accordingly, lawyers' relationship with the public is analogous to a "common carrier" to the community. The ethical rule is justified on the basis that lawyers' oaths, training, and traditions obligate them to provide legal services.¹⁸²

2. ABA Law Firm Pro Bono Challenge

In 1993, building on a moral and ethical construct, the ABA announced the Law Firm Pro Bono Challenge. Focused on the nation's 500 largest law firms, the Challenge encourages the adoption of a statement of principles, including the establishment of a written pro bono policy for a majority of both partners and associates. It encourages them to give 3-5% of the firm's billable hours to pro bono service.¹⁸³ Today, approximately 155 law firms participate in the Challenge.¹⁸⁴ Some law firms that did not join have developed their own programs with aspirations for pro bono service. Because business lawyers outnumber litigators, business lawyers must be involved in meeting the Challenge's goals.¹⁸⁵

179. "[B]usiness lawyers outnumber litigation lawyers, usually by two-to-one or three-to-one ratios." *Id.* at 1563.

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

184. *Id.*

185. *Id.*

3. State Laws Encouraging Pro Bono Service

California Business and Professional Code Section 6072 requires legal services contracts with the state that exceed \$50,000 to include a certification by the contracting law firm agreeing to make a good faith effort to provide a minimum number of pro bono legal service hours for the duration of the contract and during the year.¹⁸⁶ The yearly required pro bono service is the lesser of “(1) 30 multiplied by the number of full-time attorneys in the firm’s offices in the state, with the number of hours prorated on an actual day basis for any contract period of less than a full year or (2) 10% of its contract with the state.”¹⁸⁷ Failure to make a good faith effort is cause for nonrenewal of contract, and is also considered in determining future contract awards. Firm pro bono hours are set forth in a certification. Factors in the determination as to whether a firm made a good faith effort include: the actual number of pro bono hours logged by the firm; its efforts to obtain pro bono legal work from legal services programs and other relevant community groups; the firm’s history of pro bono service and other good faith evidence, such as a firm pro bono policy or a pro bono committee; the types, quantity, and nature of pro bono work; and whether there are extenuating circumstances for a firm’s failure to perform pro bono work at the time of the certification.¹⁸⁸

4. Other Supporters of Pro Bono

Other national organizations have taken up the pro bono challenge. For example, “The American Corporate Counsel Association (ACCA), with assistance of the Pro Bono Institute (which also administers the Law Firm Pro Bono Challenge . . .), has established a web site to support pro bono by corporate counsel,” which “provides information about pro bono opportunities for corporate lawyers and provides technical assistance to address

186. CAL. BUS. & PROF. CODE § 6072 (Deering 2003).

187. *Id.*

188. *Id.*

corporate counsel concerns about time commitments, the response of employees [sic] and malpractice claims and insurance.”¹⁸⁹

Advocates of business law pro bono highlight the importance of presenting new images of pro bono service that are different from litigation models. These are images of communities in need of revitalization with hard working people who have goals and aspirations similar to their own: the need for food, clothing, shelter, and drug free, healthy communities where people can live, play, and shop. Lawyers serve as dealmakers and counselors to individual groups engaged in community development. The legal work supports programs that lead to jobs, day care, health care, and affordable housing.¹⁹⁰

In the past, the organized bar has also expressed concern that pro bono services would compete with the private bar.¹⁹¹ Today, these concerns have subsided, and three factors have been identified for the provision of business law pro bono services: (1) whether the client can find and afford legal services in the marketplace; (2) the potential impact of the community development project; and (3) the likelihood of a successful partnership between the lawyer and client. Unlike the rigid guidelines for litigation-based pro bono, business law pro bono requires flexibility. Standards vary based on location and project.¹⁹²

While economic pressures challenge traditional pro bono programs, business law pro bono has grown. Pro bono is sure to give way to law firm income generation, yet at the same time pro bono is an important tool for recruiting law students; helps to train young associates; and can market the firms services and strengthen contacts in the business community.¹⁹³

189. Baillie, *supra* note 157, at 1555.

190. *Id.* at 1563-64.

191. With the growth of legal aid in the 1960s and 1970s, the private bar was initially hostile over competition for clients. This hostility has subsided in most jurisdictions as the private bar gained experience with legal aid programs and understood the income eligibility guidelines set by federally funded programs. *Id.* at 1564-65. Another concern is competition for volunteers and funding. *Id.* at 1565. This is being addressed by recruiting from a different pool of volunteers and alternate funding sources. *Id.* Indeed, the increase in business law pro bono has expanded volunteer talent as lawyers bring other volunteers into the fold. *Id.*

192. A substantial number of mature nonprofit organizations can afford private legal counsel. A majority of community development deals factor in market rate legal fees. *Id.* at 1566.

193. *Id.* at 1570-71.

VI. NEW INITIATIVES IN COMMUNITY ECONOMIC DEVELOPMENT: NEW MARKETS TAX CREDITS

“Access to capital and financial services is the key to economic growth both in advanced economies and in the developing world.”¹⁹⁴ The U.S. has one of the broadest and most efficient capital markets in the world.¹⁹⁵ Access to capital helps to drive business formation, fuel economic growth, create affordable housing, and allows consumers to purchase goods conveniently.¹⁹⁶ Despite the depth and breadth of U.S. credit markets, low- and moderate-income communities and minority borrowers have not enjoyed full access to those markets.¹⁹⁷ Lack of access to credit has impeded economic growth in these communities.¹⁹⁸

On December 21, 2000, President Clinton signed the Community Renewal Tax Relief Act of 2000.¹⁹⁹ In addition to expanding low-income housing tax credits by 40% over two years, the Act also created New Markets Tax Credit (NMTC), a tax benefit for investors supporting economic development.²⁰⁰ It “infus[es] up to \$15 billion of new capital into commercial projects in low-income census tracts.”²⁰¹ Observers believe that NMTC is a “significant departure from past economic development efforts” and more likely to succeed because it employs various nonprofit, for-profit, and public sector actors and creates a new system of delivering subsidized money through “community development entities” (CDEs).²⁰² CDEs have two primary functions. The first function is to identify businesses and projects that will benefit low-income communities and make funds

194. Michael S. Barr, *Access to Financial Services in the 21st Century: Five Opportunities for the Bush Administration and the 107th Congress*, 16 NOTRE DAME J.L. ETHICS & PUB. POL'Y 447, 447-48 (2002).

195. *Id.*

196. *Id.*

197. *Id.*

198. *Id.*

199. Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763.

200. *Id.* § 121, 114 Stat. at 2763A-605; Dimitri Pappas, *A New Approach to a Familiar Problem: The New Market Tax Credit*, 10 J. AFFORDABLE HOUS. & CMTY. DEV. L. 323, 323 (2001).

201. Gregory Maher, *At a Crossroad*, 90 NAT'L CIVIC REV. 199, 201 (2001); *see also* Pappas, *supra* note 200, at 323.

202. *Id.*

available.²⁰³ Second, CDEs must market these opportunities to investors as sound economic decisions.²⁰⁴ There is a multi-step “process to deliver federally subsidized funds to businesses or projects in [targeted] areas.”²⁰⁵ CDEs, for-profit entities, competitively apply to the U.S. Department of Treasury, Community Development Financial Institution Fund to receive an allocation of tax credits.²⁰⁶ CDE managers can sell investors the credits with an equity interest.²⁰⁷ The cash is used to make “qualified investments” in low-income communities.²⁰⁸

CDEs must meet the following three requirements to participate in the NMTC program: (1) the Treasury must certify the CDE; (2) the CDE’s primary mission must be to serve low-income communities or individuals; and (3) the CDE must give low-income individuals or communities representation on its governing or advisory boards.²⁰⁹ Community development financial institutions and small business investment corporations are automatically eligible, while institutions such as “community development corporations, community development venture capital funds, and community investment loan funds can create [for-profit] subsidiaries that are eligible.”²¹⁰

Investors receive two benefits: a tax credit and an opportunity to benefit from the qualified investment made by the CDE.²¹¹ Investors are required to invest for a minimum of seven years, and “they receive a tax credit worth [five] percent of their investment in years one through [three].”²¹² The credit increases to “[six] percent of their

203. *Id.* at 325.

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. *Id.*

210. *Id.* at 326; see also NATIONAL CONGRESS FOR COMMUNITY AND ECONOMIC DEVELOPMENT & REZNICK FEDDER AND SILVERMAN, *Getting Ready for the New Markets Tax Credit Program: How to Form a CDE*, in 1 NMTC SERIES 1, 3-6 (2002); NATIONAL CONGRESS FOR COMMUNITY AND ECONOMIC DEVELOPMENT & REZNICK FEDDER AND SILVERMAN, *Taking Advantage of the New Markets Tax Credit Program: Case Study Scenarios*, in 2 NMTC SERIES 1, 4-7 (2002); NOVOGRADAC & COMPANY, LLP, *New Markets Tax Credit*, at <http://www.novoco.com> (last visited Sept. 1, 2003) (on file with the Washington University Journal of Law & Policy).

211. Pappas, *supra* note 200, at 326.

212. *Id.*

investment for years four through seven.”²¹³ “Investors receive the value of their equity stake” at the end of year seven.²¹⁴ Qualified investments include: (1) direct loans and equity investments to “qualified businesses”; (2) loans or equity investments purchased from other CDEs; (3) technical assistance to businesses in low-income areas; and (4) loans and equity investments to other CDEs.²¹⁵ “[T]o qualify for the credit, a business must derive at least [fifty] percent of its income from the active conduct of its business in a low-income community.”²¹⁶ A low-income community is defined as one with a 20% census track poverty rate or where the median income is less than 80% of the median income of the metropolitan area.²¹⁷

NMTC is a new CED opportunity:

Allowing private-sector entities to apply for the credit may improve the program’s effectiveness, as private CDEs can potentially operate more efficiently than public-sector entities. While local governments, for the most part, only provide services within their own boundaries, a private CDE can expand to the size that allows it to operate most efficiently. The ability to expand creates incentives for the entity to try new strategies—if they work, it can use them in new markets, not just within jurisdictional boundaries.²¹⁸

By introducing competition and allowing new types of enterprises to compete, it is anticipated that NMTC will increase the range of CED strategies and the efficiency of service providers.²¹⁹

In March 2003 the CDFI branch of the U.S. Treasury Department selected 66 organizations to receive the first \$2.5 billion in tax credit allocations under the NMTC program. The application process required CDEs to submit business plans detailing exactly how and where the funds, if awarded, would be spent.²²⁰ While some CDEs

213. *Id.*

214. *Id.*

215. *Id.* at 327.

216. *Id.*

217. *Id.*

218. *Id.* at 329.

219. *Id.*

220. N. Linda Goldstein, *District to Reap Benefits from Recipients of First \$2.5 Billion in New Markets Tax Credits*, PIPELINE, April 2003 (a publication of the District of Columbia

have nationwide service areas, others will work in geographically defined areas. For example, CFBanc Corporation, an affiliate of Washington D.C.'s City First Bank, received a \$73 million allocation to provide flexible equity financing (senior or mezzanine debt) in urban retail, for-sale housing and office, industrial, mixed-use, and community facility projects.²²¹ CFBanc Corporation, through City First Bank of D.C. and a new real estate fund jointly managed with the Bernstein Companies, will focus on projects in Washington, D.C.²²²

Federal programs, such as the Community Renewal and New Markets Initiative of 2000 (New Markets),²²³ have the capacity to encourage entrepreneurship. CDEs will partner with nonprofit groups. They too are expected to operate using business principles, creating new initiatives in social entrepreneurship, social purpose business, and social venture philanthropy. Many community-based nonprofit organizations have created for-profit subsidiaries to spur business development in low-income communities.

Given these trends, there is an important role for business lawyers in this emerging field. Business attorneys can match clients who are unaware of business resources and tax credits with economic initiatives such as New Markets. Transactional law clinics engaged in cross discipline work can expose students to a myriad of relationships that will effectuate CED deals.

One scholar observes that "enhanced access to corporate and commercial lawyers . . . can make a positive difference in the quest for racial equity in the Century, and . . . law schools have a substantial role to play in facilitating that access."²²⁴ To accomplish this goal CED practitioners and advocates will be required to utilize more interdisciplinary strategic relationships.

Building Industry Association), available at http://www.goulstonstorr.com/newsstand/1229075_1.pdf.

221. *Id.*

222. *Id.*

223. Community Renewal Tax Relief Act of 2000, Pub. L. No. 106-554, 114 Stat. 2763A-587.

224. Alfred Dennis Mathewson, *Commercial and Corporate Lawyers 'N The Hood*, 21 U. ARK. LITTLE ROCK L. REV. 769, 769 (1999); see also Steven H. Hobbs, *Toward a Theory of Law and Entrepreneurship*, 26 CAP. U. L. REV. 241, 297-98 (1997).

VII. ETHICAL ISSUES IN BUSINESS LAW PRACTICE:
MULTIJURISDICTIONAL AND MULTIDISCIPLINARY PRACTICE

A. Multidisciplinary Practice

Experienced lawyers know that “law doesn’t exist in a vacuum.”²²⁵ Problems are not purely business or legal.²²⁶ The need for integrated services or “Enhanced Strategic Collaboration” is vital for economically disadvantaged small business owners as well as community based organizations, especially in this age of information, globalization, and high technology.²²⁷

The debate over multidisciplinary practices (MDPs), or a combination of accounting, consulting, and law firms, exemplifies the catch phrase “one-stop shopping” that has been assigned to this new method of professional service delivery and business problem solving.²²⁸ The rationale behind the approach is to combine multiple client needs under one roof. The concept emerged from the growth of corporate clients, the rapid globalization of financial markets, and the integration of services offered by some of the largest accounting and law firms. At the center of the MDP debate is resistance to reordering well-established economic interests within the profession.²²⁹ Corporate counsel must be both business counsel and legal consultant. Lawyers handle not only traditional legal issues, but also a broad range of financial, political, and employment matters. Accounting firms are also working outside the scope of traditional accounting services, such as auditing, and are moving into the legal area by facilitating the negotiation of settlements and consulting on intellectual property issues. While the average small businessperson

225. *The Long Arm of Law*, BRANDEIS BRIEF, Fall 2002, at 2.

226. Kathryn Lolita Yarbrough, *Multidisciplinary Practices: Are They Already Among Us?*, 53 ALA. L. REV. 639, 647 (2002).

227. Dina Schlossberg, *An Examination of Transactional Law Clinics and Interdisciplinary Education*, 11 WASH. U. J.L. & POL’Y 195, 209-10 (2003) (citing Susan R. Jones, *Current Issues in the Changing Roles and Practices of Community Economic Development Lawyers*, 2002 WIS. L. REV. 437, 441 (2002)).

228. Yarbrough, *supra* note 226, at 646.

229. Tia Breakley, Note, *Multidisciplinary Practices: Lawyers & Accountants Under One Roof?*, 2000 COLUM. BUS. L. REV. 275, 275-76 (2000); James W. Jones, *Focusing the MDP Debate: Historical and Practical Perspectives*, 72 TEMP. L. REV. 989, 995-96 (1999).

would not be able to afford the services of an MDP, consumers' need for "one stop shopping" has fueled the MDP debate. The theory is that clients will seek a range of services—financial investments, accounting, and legal—under one roof at lower cost, eliminating the need to shop for different professional services.²³⁰

MDPs are efficient and convenient, and they fulfill the needs of their clients, allowing clients to stay competitive in the global marketplace.²³¹ One MDP scholar observes: "The availability of 'one-stop shopping' for a comprehensive, cross-disciplinary approach to business problems is perhaps the biggest attraction of the multidisciplinary form of practice."²³² A client may not realize the effects that a legal decision may have on their tax status or vice versa.²³³ An MDP is better equipped to "adequately address problems that a client did not know existed. Also, individuals in different professions usually approach and resolve the same problem in different manners. This variety of perspective can be very beneficial to the client."²³⁴

According to the National Conference of Lawyers and Certified Public Accountants, there are many areas in which CPAs and attorneys can work together for "the best interests of their clients." These include "estate planning, tax matters, business insolvency matters, bankruptcy proceedings, legal actions involving accounting matters, establishing and terminating a business, business incorporations and liquidations, mergers, reorganizations, sales and purchases of a business, personal financial management, compensation

230. Breakley, *supra* note 229, at 275-76.

231. Yarbrough, *supra* note 226, at 647.

232. *Id.*

233. For example, the consequences of allowing a corporate charter to lapse could result in severe reinstatement penalties. In one matter handled by the GWUSBC, a corporation business owner had to decide whether to pay the penalties or dissolve the corporation and start a new limited liability company. In helping the entrepreneur evaluate his options, the GWUSBC consulted with his accountant who advised us that the corporation had carry over losses that could not be used if the corporation dissolved.

234. Yarbrough, *supra* note 226, at 647.

planning, labor matters, insurance losses and SEC registration.”²³⁵

The market demands that professional service firms expand their practice areas. There are many opportunities for attorneys and accountants to combine their knowledge and work together.

Furthermore, legal services lawyers have long advocated the need for MDP type holistic services for low-income clients.²³⁶ The ABA Commission on Multidisciplinary Practice heard testimony and received responses from numerous consumer groups in support of MDPs. For example, the Jefferson County Committee for Economic Opportunity, which provides services in Alabama, observed that low-to moderate-income individuals needed MDPs the most because of their documented inability to find affordable, quality legal services.²³⁷ A 1994 ABA Comprehensive Legal Needs Study found that in 1992, “forty-seven percent of low-income households reported at least one legal need; among moderate-income households the figure was [fifty-two] percent.”²³⁸ The report found that 71% of the situations faced by low-income households and 61% of the situations faced by moderate-income households did not find their way to the justice system.²³⁹

The most common course of action in dealing with a legal need for both low- and moderate-income households was to try to handle the situation on their own. While turning to the justice system was the second most frequent action for moderate-income households, the second most common approach for low-income households was to take no action at all.²⁴⁰ Low-income respondents often believed that legal assistance would not help and feared the costs, whereas moderate-income respondents tended to view the matter as not all that serious a problem and one they could deal with on their own.²⁴¹ MDPs can improve the perception of the legal community by

235. *Id.* at 647-48.

236. *See* Jones, *supra* note 227, at 448-49.

237. Yarbrough, *supra* note 226, at 648-49.

238. A.B.A., LEGAL NEEDS AND CIVIL JUSTICE: A SURVEY OF AMERICANS—MAJOR FINDINGS OF THE COMPREHENSIVE LEGAL NEEDS STUDY 3 (1994), available at <http://www.abanet.org/legalservices/downloads/sclaid/legalneedstudy.pdf>.

239. *Id.*

240. *Id.*

241. *Id.*

providing access to justice through multiple actors. Many small businesses forgo legal advice because of costs and the inability to integrate input from multiple advisors (e.g., business, tax, and law).²⁴²

The MDP debate also fueled a discussion within the legal services community about the best ways to deliver legal services²⁴³ and develop social justice collaboratives—interdisciplinary relationships involving lawyers characterized by “frequent ongoing interaction, commitment to the relationship, and trust,” and serving a clearly defined client group with a vision of how to meet the needs of the group.²⁴⁴ Within the context of CED, this service delivery method includes law school clinics.

Overall, support for MDP has been strong, especially among many prominent members of the ABA and members of the ABA Commission on Multidisciplinary Practice.²⁴⁵ Regardless of where the MDP debate leads in the future, clients will likely continue seeking the services of professionals who can work effectively to integrate legal and nonlegal concerns.²⁴⁶

The MDP debate raises a number of ethical concerns. The first centers on the lawyer’s professional ethical obligations to her client, and the ability to integrate these services with those of nonlawyers.²⁴⁷ The second concern is over how ethical conduct rules that govern lawyers affect nonlawyers.²⁴⁸ Core principles of a lawyer’s professional responsibility are the duties of loyalty to the client as expressed in rules against conflict of interest, of diligent and zealous

242. Yarbrough, *supra* note 226, at 651.

243. Because low- to moderate-income people are unable to afford private legal services, there are a number of mechanisms to enhance the limited resources of pro bono legal service delivery. The notion of “unbundling” legal services involves separating all of the various services lawyers provide such as consultations, drafting pleadings, court representation, and letter writing, and allowing the client or a nonlawyer to perform some of these tasks. Trubek & Farnham, *supra* note 139, at 228. Other services include do-it-yourself systems, advice hotlines, and community education. *Id.*; see also Bruce A. Green, *Foreword: Rationing Lawyers: Ethical and Professional Issues in the Delivery of Legal Services to Low-Income Clients*, 67 FORDHAM L. REV. 1713 (1999); Mary Helen McNeal, *Having One Oar or Being Without a Boat: Reflections on the Fordham Recommendations on Limited Legal Assistance*, 67 FORDHAM L. REV. 2617 (1999).

244. TRUBEK & FARNHAM, *supra* note 139, at 1, 13.

245. Schlossberg, *supra* note 227, at 208.

246. *Id.* at 207.

247. *Id.* at 208.

248. *Id.* at 222.

representation, and the confidentiality of information. Upholding these ethical duties in multidisciplinary practice and interdisciplinary clinical work creates concern. How do lawyers and accountants collaborate when they have different duties of loyalty and confidentiality to the client? Accountants have an ethical obligation to perform public oversight that transcends the client relationship, while lawyers are ethically obligated to be confidential advisors and zealous advocates of their clients.²⁴⁹ What are the ethical duties of MBA business advisors? Transactional legal clinics provide a laboratory for examination of ethical tensions.²⁵⁰

B. Multijurisdictional Practice

Another ethical issue impacting transactional work is multijurisdictional practice. The state-based licensing process for lawyers, which is over two centuries old, was enacted when American lawyers primarily represented clients in litigation. Generally, a lawyer may not represent clients before a state tribunal or otherwise practice law unless she is authorized (*pro hac vice*) or is admitted to practice law in the state. Since the depression era, states have recognized this restriction in the “unauthorized practice of law” (UPL).²⁵¹

For most of this nation’s history, individual state licensing of lawyers was not a matter of particular concern, because most clients’ legal matters were confined to a single state, and a lawyer’s familiarity with that state’s law was a qualification of particular importance. However, the wisdom of the traditional licensing and regulatory mechanisms (including, especially, the UPL laws) has been called into question in light of the changing nature of client’s legal needs and with them, the changing nature of law practice.²⁵²

249. *Id.* at 223. This tension is evident in the current debate over SEC rules governing the conduct of lawyers and auditors.

250. *Id.* at 208.

251. Bruce A. Green, *Assisting Clients with Multi-State and Interstate Legal Problems: The Need to Bring the Professional Regulation of Lawyers into the 21st Century*, 2000 A.B.A. CENTER FOR PROF. RESP. 1, 1-4, available at http://www.abanet.org/cpr/mjp_bruce_green_report.html.

252. *Id.* at 3.

Today, the practice of law is no longer confined to one state, and may involve complex transactions involving national and transnational legal issues, evincing the globalization of business and finance in recent years. Lawyer regulation has not kept pace with the evolution of legal practices and client needs. Moreover, while litigators can apply for permission to appear in state courts in jurisdictions in which they are not admitted, transactional lawyers cannot seek permission from a tribunal.²⁵³

Indeed the 1998 California Supreme Court decision, *Birbrower, Montalbano, Condon & Frank, P.C. v. Superior Court of Santa Clara*,²⁵⁴ raised growing concerns about state UPL laws. *Birbrower* held that a New York lawyer not licensed in California violated California's misdemeanor UPL provision by assisting a client in a California arbitration, precluding compensation for the legal work performed in California. After *Birbrower*, California provided for *pro hac vice* admission of out-of-state lawyers in arbitration proceedings, but this provision failed to fully resolve the legal and ethical questions raised by the case.²⁵⁵

In 2000 the ABA Center for Professional Responsibility convened a symposium on "Multijurisdictional Practice of Law" to examine the regulation of multistate and interstate law practice that recommended a Commission on Multijurisdictional Practice. The Commission adopted proposed amendments dated August 2002 to the ABA Model Rules of Professional Conduct 5.5: Unauthorized Practice of Law, including renaming the provision "Multijurisdictional Practice of Law," and providing a series of safe harbors. The rule allows transactional lawyers to provide temporary legal services in a jurisdiction if they are reasonably related to the lawyer's practice in the jurisdiction in which she is admitted to practice. The comment to the rule states:

[There is] no single test to determine whether a lawyer's services are provided on a 'temporary basis' . . . Services may be 'temporary' even though the lawyer provides services in

253. Charles W. Wolfram, *Sneaking Around in the Legal Profession: Interjurisdictional Unauthorized Practice of Law by Transactional Lawyers*, 36 S. TEX. L. REV. 665 (1995).

254. 949 P.2d 1 (Cal. 1998).

255. See Green, *supra* note 251.

this jurisdiction on a recurring basis, or for an extended period of time, as when the lawyer is representing a client in a single lengthy negotiation or litigation.²⁵⁶

Regarding the requirement that the services “arise out or be reasonably related to the lawyer’s practice in a jurisdiction in which the lawyer is admitted,” the comment provides that various factors may provide such evidence: (1) the client’s previous representation by the lawyer; (2) the client’s residence in-state or the client’s substantial contacts in the jurisdiction in which the lawyer is admitted; (3) the matter itself may involve other jurisdictions and have significant connection with the jurisdiction; (4) significant aspects of the lawyer’s work might be conducted in the state, or a significant aspect of the matter may be conducted in the state; (5) officers of a multinational corporation surveying potential business sites to assess the merits of each is an example of “a reasonable relationship”; and (6) a reasonable relationship may “draw on the lawyer’s recognized expertise developed through the regular practice of law on behalf of clients in matters involving a particular body of federal, nationally-uniform, foreign, or international law.”²⁵⁷

Transactional legal clinics provide opportunities for law students to analyze ethical codes and grapple with the concepts of federalism at the root of state ethics rules.

VIII. CREATING INTERDISCIPLINARY COLLABORATIONS: INCENTIVES AND IMPEDIMENTS

“One of the fundamental shortcomings of traditional lawyering, at least as taught in law school, is an inability to define problems in their broad and multidisciplinary respects.”²⁵⁸ “In an increasingly complex world, lawyers will need to expand their traditional approaches to problem solving if they are to be of real service to their

256. MODEL RULES OF PROF’L CONDUCT R. 5.5 cmt. 76 (2000); American Bar Association Commission on Multijurisdictional Practice, *Report 201B, Report to the House of Delegates, Rule 5.5: Unauthorized Practice of Law*.

257. *Id.* at 3-4.

258. Janet Weinstein, *Coming of Age: Recognizing the Importance of Interdisciplinary Education in Law Practice*, 74 WASH. L. REV. 319, 324 (1999).

clients.”²⁵⁹ Because people and their problems are not one-dimensional, “the role of law schools will be to train new lawyers to be creative problem solvers.”²⁶⁰

Although society cannot expect lawyers to have the knowledge or skills that would allow them to identify and solve each aspect of problems from a multi-dimensional perspective, “it can expect lawyers to know how to work with people who together have the knowledge and skills required to assist a client in this way.”²⁶¹

To accomplish the best results for clients, lawyers need to have access to resources and solutions beyond those they traditionally use. One important resource is the ability to collaborate with professionals from other disciplines so that their approaches to a particular problem can assist in creating a solution for the client.²⁶²

Yet there are barriers to achieving interdisciplinary collaboration, to which some scholars have suggested a few possible solutions.²⁶³

A. Impediments and Opportunities

1. Administrative/Financial Impediments

Administratively, within a university, schools and departments are often operated as quasi-independent institutions. Matters “such as faculty and student schedules, tuition allocation, location and time of the clinic seminar, defining grading criteria, credit hour award, and allocation of administrative responsibilities” can be difficult to reconcile.²⁶⁴

The success of the GW collaboration stems from committed faculty, *syzygy*,²⁶⁵ a compelling client/case study, and limited

259. *Id.* at 319.

260. *Id.*

261. *Id.* at 320.

262. *Id.* at 325.

263. *Id.* at 320.

264. Schlossberg, *supra* note 227, at 212. Administrative challenges are insufficient to deter the creation of transactional interdisciplinary clinics because there are a number of litigation clinics with this exact design. *Id.*

265. From the Greek *syn*, to join, and *zygon*, to yoke. The rare alignment of celestial

administrative involvement in the integration of courses. Other interdisciplinary models involve dual course credit, cross discipline readings, and joint faculty classes.²⁶⁶ In the GW collaboration, absent administrative support, three joint classes were held combining students in three schools. Sustaining any interdisciplinary effort requires administrative and financial resources.²⁶⁷

2. Cultural Impediments

Other impediments to interdisciplinary transactional clinics stem from differences in culture and training and are rooted in the context of the relationship between the disciplines. To illustrate: The majority of law school instruction is spent on developing the analytical skills associated with “thinking like a lawyer” and not on specific skills, such as counseling, negotiation and problem solving, or professional values central to the practice of law. In MBA and other graduate degree programs, the theoretical framework is supplemented with case studies and teamwork to facilitate the active practice of that profession.²⁶⁸

One observer notes that given the differences in the law and business education, interdisciplinary transactional clinics involving business schools may be less attractive to business school faculty and students because the business school curriculum emphasizes problem solving, experiential learning, and group interaction along with theory while the traditional law curriculum focuses on theory. A number of MBA schools require at least one year of practical

bodies, such as the sun, moon, and earth during an eclipse, influencing the earth’s gravitational system. MERRIAM-WEBSTER COLLEGIATE DICTIONARY 1198 (10th ed. 1993).

266. At the University of New Mexico School of Law, for example, Professors Norwood and Schwartz teach an online course in children’s health care policy and practice that includes a multidisciplinary clinical component through a cooperative arrangement with the Los Pasos Project of the University of New Mexico School of Medicine. The course description is available at http://lawschool.unm.edu/courses/descriptions/upperclass/children_health.htm (last visited Sept. 27, 2003) (on file with the Washington University Journal of Law & Policy); see also J. Michael Norwood’s faculty profile, at <http://lawschool.unm.edu/faculty/norwood/index.htm> (last visited Sept. 27, 2003) (on file with the Washington University Journal of Law & Policy).

267. No additional compensation was provided any of the professors, and no financial support has been provided to date for the project.

268. Schlossberg, *supra* note 227, at 216-17.

experience before entering the program; in law schools, a legal clinic may be the only integrated theory and skills course.²⁶⁹

The most significant part of the business school culture that serves as a disincentive to inter-departmental collaborations is the culture of theoretical scholarship as opposed to applied scholarship.²⁷⁰ Each discipline embodies a system of cultures, norms, and behaviors assumed relevant to master that profession. This requires learning the culture, language, and perspectives of a different discipline. This new learning can be a challenge to a successful interdisciplinary collaboration. Faculty and students indoctrinated in the theory and conceptual framework of their profession may be unwilling or unable to view a problem from a different professional perspective. To address this variable, successful programs must design a curriculum that emphasizes not only doctrinal knowledge but also group dynamics, respect for alternative problem-solving skills and perspectives, and mutual respect.²⁷¹

3. Ethical Impediments

Finally, ethical rules may create challenges for transactional interdisciplinary collaboration because the rules may affect nonlawyers differently. One method of addressing ethical issues in interdisciplinary clinics is to determine that all of the students enrolled in the clinic and all participating nonlawyer-professionals are part of the clinic law firm, and hence are bound by the same ethical obligations imposed on the law firm. Law students and non-law students must be taught the substantive ethical rules and the ability to issue-spot for the ethical consequences of communications or actions. Nonlawyers may perceive these ethical constraints to outweigh the benefit of collaboration.

Consequently, a second approach to legal ethical rule compliance involves defining and ranking the professional relationship goals prior to commencing the relationship, and memorializing conflict

269. *Id.* at 218.

270. *Id.*

271. *Id.* at 214-15.

resolution steps in writing. Protecting the legal standards of ethical conduct is paramount in transactional legal clinics.²⁷²

IX. CONCLUSION

By definition, business law transactional work is interdisciplinary. Depending on the exact nature of the project, transactional work requires professional collaborators in business, accounting, finance, engineering, computer science, etc. Because of the recent rise in small business clinical programs, it is appropriate to consider how interdisciplinary efforts in transactional law can be organized and sustained. Accordingly, using the experience of the George Washington University Small Business Clinic, one of the oldest in the country, as a case study, this Article explored the opportunities and challenges associated with cross disciplinary work.

Part I surveyed microenterprise and small business development with emphasis on women and minorities. Part II explored the need for legal assistance to entrepreneurs and other small businesses, and Part III described the rise of small business clinical program and the GWUSBC as a model. Part IV explained GW's experience in interdisciplinary transactional work and the pedagogical value of working with professionals in other disciplines. It focused on the GW Intra-University Consortium in Business, Law and Engineering as a platform for examining the various systems required to sustain interdisciplinary collaboration in transactional work. Part V discussed current developments in business law pro bono while Part VI examined transactional interdisciplinary practice within the context of the market-driven ethical discussion of multidisciplinary and multijurisdictional practice. Finally, Part VIII discussed incentives and impediments to transactional interdisciplinary collaboration.

272. *Id.* at 226.