



SYMPOSIUM

Lessons from Baltimore and Washington, D.C.: Working with Community-Based Organizations to Build Capacity and Fight for Economic Justice

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The following articles, written by legal educators, are based on a joint presentation, *Lessons from Baltimore and Washington, D.C.: Working with Community-Based Organizations to Build Capacity and Fight for Economic Justice*, at the Association of American Law Schools Conference on Clinical Legal Education, April 30–May 3, 2016, in Baltimore. The conference location is emblematic of many challenges in America—from the criminalization of poverty to the racial justice cries of the Black Lives Movement following the Baltimore Uprisings in the aftermath of the death of Freddie Gray, an unarmed Black man in Baltimore who suffered a fatal spine injury while in police custody in April 2015.

The conference theme, “Clinics and Communities: Exploring Community Engagement Through Clinical Education,” was a platform for examining “the role of law and lawyers in aggravating or alleviating suffering, and in collaborating on legal efforts to build communities’ strengths and address harms experienced by those who seek their assistance.”¹ Featuring the work of CED and transactional clinical law professors, the following articles capture their tireless work with law students and the communities and individuals they represent in partnerships with community-based institutions. The goal of this work is to redress economic inequality, fight

1. Association of American Law Schools Section on Clinical Legal Education, 39th Annual Conference on Clinical Legal Education, Conference Brochure, https://www.aals.org/wp-content/uploads/2016/02/Clinical2016_Brochure-2.29.pdf.

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for racial justice, build capacity, create system reforms, and contribute to innovative legislation within low-income communities.

In *Building Community, Still Thirsty for Justice: Supporting Community Development Efforts in Baltimore*, Renee Hatcher and Jaime Lee discuss how the University of Baltimore School of Law Community Development Clinic provides legal services and legal education to Baltimore residents by supporting equitable development, community controlled affordable housing, and access to affordable water.

Building Economic and Racial Equity in D.C. Through Cooperative Businesses by Eva Seidelman with Louise Howells of the David A. Clarke School of Law Community Development Law Clinic explores how worker and economic empowerment cooperatives can promote systems change.

My contribution to this symposium, *Representing Returning Citizen Entrepreneurs in the Nation's Capital*, considers the ways lawyers can support entrepreneurship for citizens returning to society after periods of incarceration and analyzes a multi-year Action Research Project in Clinical Legal Education at The George Washington University Law School Small Business and Community Economic Development Clinic.

Etienne Toussaint's article, *Incarceration to Incorporation: Economic Empowerment for Returning Citizens Through Social Impact Bonds* builds on the Clinic's work and considers how social impact bonds contribute to market-based CED strategies by channeling private sector investments into needed areas such as reducing returning citizen recidivism.

On the whole, these articles are illustrative of the important work of CED and transactional clinic not only in the Baltimore-Washington area, but also across America. My hope is that they will inspire others to action.

Building Community, Still Thirsty for Justice: Supporting Community Development Efforts in Baltimore

Renee Hatcher and Jaime Lee

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I. Introduction

Baltimore is a city of many challenges, but it possesses true community-based strength. The city’s residents and community organizations are its greatest assets. This article highlights some of the community’s work and how the Community Development Clinic at the University of Baltimore School of Law (CDC) supports this work through its experiential learning curriculum.

The challenges facing Baltimore’s communities (systemic disinvestment, structural racism, vacant buildings, unemployment, and the criminalization of poverty, to name a few) existed long before the national media coverage and uprising surrounding the death of Freddie Gray, an unarmed Black man who suffered a fatal spinal injury while in Baltimore police custody in April 2015.¹ In the days that followed Gray’s death, thousands of Baltimoreans took to the streets to protest state-sanctioned violence in low-income Black neighborhoods across the city.

1. Janell Ross, *Why you should know what happened in Freddie Gray’s life—long before his death*, WASH. POST, Dec. 19, 2015.

Professor Renee Hatcher (rhatcher@ubalt.com) is the Clinical Teaching Fellow for the Community Development Clinic at the University of Baltimore School of Law. Her current research focuses on new legal strategies to build power and create equitable development practices in communities of color. Professor Jaime Lee (jlee@ubalt.com) is the Director of the Community Development Clinic and an Assistant Professor at the University of Baltimore School of Law. Her recent articles focus on the subversion of legal structures intended to support those in poverty.

After the Baltimore Uprising,² and in the spirit of the city's long history of community organizing, new community-based groups formed and existing organizations created wide-tent coalitions to collectively advance their organizing efforts.³ These groups have fostered public discourse not only about police violence, but also about the economic violence that poses an everyday threat to individual and community safety and security, such as the lack of access to basic human needs—food, water, and housing.⁴

Broadly speaking, Baltimore's community groups take a two-pronged organizing approach towards community transformation: (1) holding police, elected officials, and public agencies accountable for the state-sanctioned physical and economic violence in low-income, primarily Black, neighborhoods; and (2) building independent community-controlled institutions to provide for the needs of Baltimore's abandoned and ignored communities.

This approach is evident in the numerous mayoral candidate forums hosted by grass-roots organizations this year—some specifically about housing, the needs of returning citizens, and community development—as well as the efforts of organizations developing new community land trusts, working toward food sovereignty, and starting worker-owned cooperatives to provide meaningful employment for residents.

II. University of Baltimore School of Law Community Development Clinic

What role can law school clinics play in these efforts? Many of Baltimore's community organizations and community-based enterprises are in need of legal services from time to time, yet cannot afford to retain private counsel or access legal services. The University of Baltimore School of Law's Community Development Clinic (CDC) is privileged to assist in filling this need.

2. Evan Serpick, *Why we should call recent Baltimore events an "uprising"*, BALTSUN, Sept. 24, 2015, <http://www.baltimoresun.com/news/opinion/oped/bs-ed-baltimore-uprising-20150924-story.html>; Shawn Gude, *Why Baltimore Rebelled*, JACOBIN, Apr. 28, 2015, <https://www.jacobinmag.com/2015/04/baltimore-freddie-gray-unrest-protests/>; Simon McCormack, *What's Happening in Baltimore Didn't Just Start with Freddie Gray*, HUFFINGTON POST, Apr. 29, 2015, http://www.huffingtonpost.com/2015/04/28/freddie-gray-baltimore-history_n_7161962.html.

3. For example, the Baltimore Action Legal Team (BALT), the Black Church Food Security Network, and Baltimore United for Change (BUC) were founded in the wake of the Baltimore Uprising.

4. Dorcas Gilmore, *Baltimore After the Uprising: 3 Trends Building a Fairer, Safer, Stronger Economy*, YES MAG., Nov. 10, 2015, <http://www.yesmagazine.org/new-economy/baltimore-after-the-uprising-3-trends-building-a-fairer-safer-stronger-economy-20151110>.

For twenty years, CDC has provided free legal support to Baltimore-area organizations that work to transform the city's neighborhoods and community conditions. CDC's clients are nonprofits, small businesses, social enterprises, groups promoting affordable housing and equitable development, cooperatives, coalitions, and other locally based organizations in underserved neighborhoods. They include free health clinics, worker and consumer cooperatives, minority-owned businesses, farmers' markets in urban food deserts, churches engaged in urban agriculture, and community-based schools.

CDC is part of UB's nationally recognized clinical program. Upper-level law students serve as "first-chair" attorneys and work directly with clients, with the guidance of a faculty member and peers, under a special court rule that permits students to practice law in a clinical setting. UB students represent clients in structuring and forming nonprofit organizations, corporations, partnerships and LLCs; counsel boards and staff about their legal duties and best practices in running a nonprofit or small business; help organizations apply for tax exemption or 501(c)(3) status; and draft and review contracts.

In addition, to serving in traditional client-attorney relationships, CDC students also engage in community education and advocacy projects to affect systemic change. Recent examples of the CDC's advocacy and community education work are described in more detail below.

III. Advocating for Equitable Development and Community-Controlled Affordable Housing

During the past two years, CDC students assisted with preparing a recent report, *Community + Land + Trust: Tools for Development Without Displacement*, on inequitable real estate practices and community-based alternatives. Published by the Baltimore Housing Roundtable and funded in part by the UB Foundation Fund for Excellence,⁵ the report is the work of a coalition that includes United Workers, housing advocates, the Public Justice Center, and the community development clinics at the University of Maryland and University of Baltimore law schools; it is part of a larger effort to demand \$40 million in annual city funds to transform some of Baltimore's vacant housing into community-owned and community-developed affordable housing (20/20 Campaign). CDC student attorneys attended coalition meetings, conducted research and wrote memos, and helped to prepare "plain English" versions of housing policy issues for community education purposes.

One recent victory of the affordable housing coalition is securing a voter referendum in November 2016 to create an affordable housing

5. Baltimore Housing Roundtable, *Community + Land + Trust: Tools for Development Without Displacement*, https://d3n8a8pro7vhmx.cloudfront.net/unitedworkers/pages/239/attachments/original/1453986068/C_L_T_web.pdf?1453986068.

trust fund in Baltimore city. The trust fund would provide loans or grants for the planning, production, maintenance and expansion of affordable quality housing for low and extremely-low income families in Baltimore.⁶

IV. Still Thirsty for Justice: Advocating for Water Access and Affordability

In the spring semester of 2016, CDC students also engaged in two unique advocacy projects related to water affordability in Baltimore.

Every year, many thousands of Maryland homeowners are placed at risk of foreclosure through the state's privatized foreclosure system. Many are elderly and disproportionately African-American and have spent their lifetimes successfully paying off their homes, yet are losing those homes due to unpaid water bills and other city charges of as little as \$750.

CDC students used their legal skills to assist with free legal advice clinics and to represent homeowners at administrative agency meetings to dispute incorrect water bills and prevent homeowners from losing their homes to real estate speculators and others. The CDC student attorneys' work is helping to prevent homeowners from being stripped of the American Dream and also to prevent homes from being placed into the hands of real estate speculators, many of whom then leave the homes empty or in limbo, further contributing to the decline of Baltimore's neighborhoods.

In March 2015, the City of Baltimore announced plans to shutoff water service to 25,000 households, affecting 60,000 to 75,000 people, who were \$250 or more behind on their water bill.⁷ Approximately 600 households per week experienced a water shutoff last spring, simply because a disproportionate number of poor, Black families were unable to afford their outstanding bills. According to a report by Food & Water Watch, water service in Baltimore is unaffordable for one-third of all Baltimore households.⁸ The collateral consequences of a water shutoff are severe. Families are exposed to serious health risks, can be evicted, and children can be removed by the state. CDC students have been working on a "right to water" project, conducting research, interviewing directly affected residents, and gathering information for a human rights complaint. As a part

6. Colin Campbell, *Baltimore will vote on affordable housing trust fund in November*, BALT. SUN, Aug. 29, 2016, <http://www.baltimoresun.com/news/maryland/baltimore-city/politics/bs-md-ci-housing-charter-amendment-20160829-story.html>.

7. Cheryl Conner, *Baltimore City to send water turnoff notices to 25,000 delinquent customers*, ABC NEWS (Mar. 27, 2015), <http://www.abc2news.com/news/region/baltimore-city/baltimore-city-to-send-water-turnoff-notice-to-25000-delinquent-customers>.

8. Food and Water Watch, *Baltimore Must Stop Household Water Shutoffs: An Analysis of Key Facts, Figures, and Trends* (Apr. 23, 2015), https://www.foodandwaterwatch.org/sites/default/files/baltimore_water_shutoff_analysis.pdf.

of the project, the CDC has participated in a civil society fact-finding meeting with the UN Working Group of Experts on People of African Descent and submitted written testimony to the Inter-American Commission of Human Rights in a hearing on the right to water in the United States.

Unfortunately, in the midst of the current water affordability crisis, the Baltimore Board of Estimates recently voted to increase water rates by 33% over the next three years.⁹ As a result, CDC is continuing to work with a broad coalition to advocate for an income-based water affordability plan.

V. Building Capacity through Community Legal Education

Another service that CDC students provide is in-person free legal education on topics of interest to community groups. Past topics have included cooperatives (a form of business that puts workers in power); laws regulating the sale of urban farm produce and home-made foods; tax rules regarding nonprofits that must support themselves through for-profit activities; and Maryland's benefit corporations law, which supports companies that wish to combine profit and social benefits.

CDC students have also shared their legal knowledge with the public by publishing nearly twenty articles on various aspects of non-profit and small business law in the online encyclopedia known as the People's Law Library, which is consulted by approximately 60,000 people each month. The People's Law Library is a branch of the Maryland Judiciary that provides free legal education to the public. Articles explain what at-home child care providers should include in their contracts with clients, how non-profit start-ups can save time and money by legally partnering with more established organizations, and how community development corporations work.

VI. Looking to the Future

Baltimore's community-based organizations continue to work towards a better future for its residents. Every day, Baltimore's organizations develop creative solutions, provide important services to residents, and advance structural policy changes. CDC is dedicated to providing legal and advocacy support to these organizations, as we collectively build a more just and equitable city.

9. Joseph Erbentraut, *Baltimore's Water Rates Just Went Up. Poor Residents Will Pay the Price*, HUFFINGTON POST, Aug. 31, 2016, http://www.huffingtonpost.com/entry/baltimore-water-rates_us_57c72a64e4b0e60d31dcd476.

Building Economic and Racial Equity in D.C. Through Cooperative Businesses

Eva Seidelman with Louise Howells

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I. Introduction

The Community Development Law Clinic (CDLC) at the UDC David A. Clarke School of Law (UDC-DCSL), the District of Columbia’s public and public-interest focused law school, seeks to change structural economic and racial inequities within the District by representing low-wealth resident-led organizational clients that seek ownership and control over local housing, business, and community assets. The Clinic’s client base has always included some housing cooperatives, and those clients, with few exceptions, have succeeded in shifting an important capital asset into the hands of their low-wealth residents. A few years ago, working with a small group of activists, the Clinic began to explore cooperative business models as a means to address wealth disparities in D.C.’s low wealth communities, largely communities of color.¹

1. Seidelman had the opportunity to build on these fledgling efforts with the mentorship and support of UDC-DCSL Community Development Law Clinic Director Louise Howells and with assistance from J.D. students.

Eva Seidelman, Esq. (evaseidelman@gmail.com) was recently a Fellow and Instructor in the Community Development Law Clinic and completed a Master of Laws program in Clinical Education, Social Justice and Systems Change, with an emphasis in Community Development at the University of the District of Columbia David A. Clarke School of Law (UDC-DCSL). She is a member of Cooperation DC, a project of ONE DC.

The Clinic's focus on cooperative and publicly owned institutions fits well within USC-DCSL's LL.M. program in Clinical Education, Social Justice and Systems Change.² Furthermore, bringing commercial, worker, and economic empowerment cooperatives into the Clinic not only provides an important service to the community but also creates a rich learning experience for students enrolled in the Clinic.

II. Inequality and Economic Development in the District of Columbia

Income inequality in the District of Columbia has remained one of the highest among large U.S. cities for nearly a decade, and new data shows that incomes are falling for already low-income households.^{3,4} Inequality is exacerbated by the unusually high income of DC's wealthiest residents as compared to other large U.S. cities.⁵ Furthermore, D.C. is arguably the nation's second most expensive city for renters, particularly families.⁶ This crisis in income, housing, and wealth has disproportionately impacted low-income Black and Latino residents and immigrant communities.

Amid this crisis, the D.C. government has engaged in a traditional economic development strategy, which favors taxpayer subsidized developments that benefit large unaccountable companies with absentee owners over local, small business development and living wage jobs.⁷ Given

2. As an LL.M. candidate and Fellow in the CDLC, Seidelman pursued a systems change oriented approach to community economic development through a project aimed at supporting worker-owned and other cooperative businesses in the District. Her project, inclusive of Clinic clients, has brought concentrated energy to the examination of cooperatives and similar ownership models that might be better suited for a just and sustainable economy.

3. Peter Tufts, *A City Breaking Apart: The Incomes of DC's Poorest Residents Are Falling, While Economic Growth Is Benefiting Better-Off Residents*, D.C. Fiscal Policy Inst. (Feb. 25, 2015), <http://www.dcfpi.org/wp-content/uploads/2016/02/2-24-16-Income-Inequality-Paper.pdf> ("Average income for the poorest fifth of DC residents fell to \$9,300 in 2014 from \$10,800 in 2007.").

4. *Id.* ("The average household income of the top 5 percent of DC residents was 52 times the income of the bottom 20 percent in 2014. That is the fifth highest gap among the 50 largest U.S. cities. This income gap has remained statistically unchanged since 2007.").

5. *Id.* ("DC's high-income households are among the wealthiest in the nation. The average household income of the top 5 percent of District residents is \$487,000, the third highest among large U.S. cities.").

6. Megan Bolton, MPP et al., *Out of Reach*, NATIONAL LOW INCOME HOUSING COALITION (2015), http://nlihc.org/sites/default/files/oor/OOR_2015_FULL.pdf (In 2015, D.C. had a housing wage of \$28/hour, the wage necessary to afford a two-bedroom apartment at fair market rent, while the minimum wage was \$9.50/hour through June 2015 and rose to \$10.50/hour in July 2015).

7. Greg LeRoy et al., *Shortchanging Small Business: How Big Businesses Dominate State Economic Development Incentives*, GOOD JOBS FIRST (Oct. 2015), <http://www.good>

D.C.'s income and wealth inequality issues, it is not surprising that Good Jobs First report ranked D.C. last (51 out of 51) in its state-by-state analysis, *Money for Something: Job Creation and Job Quality Standards in State Economic Development Subsidy Programs*,⁸ since D.C. has practically no wage or job performance requirements for the employers it subsidizes. Furthermore, many of the city's job training programs have, in large part, failed to provide decent jobs to meaningful numbers of D.C.'s neediest, most impoverished residents, particularly African American returning citizens.⁹

III. Cooperatives as a Systems Change Approach to Economic Empowerment

D.C.'s economy has grown exponentially over the last decade as it pursues traditional, top-down economic development strategies. For the wealthiest D.C. residents and dominant economic agents, the city's economic system is working quite well, despite growing inequality. However, the system is clearly broken for the city's poorest residents. Thus, changing existing business paradigms to empower low-wealth communities is imperative. Grassroots community organizations, and the CDLC through the law school's systems change approach, have realized the need to look beyond marginal initiatives such as job training programs and incremental wage increases within inherently inequitable business models. Changing business structures requires, among other shifts, a reduction in economic extraction and rent seeking, the practice of increasing wealth through exploitation of people and the environment.

According to Nobel Prize winning economist Joseph Stiglitz:

The word "rent" was originally used, and still is, to describe what someone received for the use of a piece of his land—it's the return obtained by virtue of ownership, and not because of anything one actually does or produces. This stands in contrast to "wages," for example, which connotes compensation

jobsfirst.org/sites/default/files/docs/pdf/shortchanging.pdf (Employers with more than 100 employees were awarded 90 percent of economic development incentive program dollars, indicating a significant bias against small businesses. An analysis of more than 4,200 economic development incentive awards in fourteen states found that large companies received dominant shares, ranging between 80 percent and 96 percent of their dollar values. The deals, worth more than \$3.2 billion, were granted in recent years by programs that appeared to be equally accessible to small and large companies).

8. Philip Matera et al., *Money for Something: Job Creation and Job Quality Standards in State Economic Development Subsidy Programs* (Dec. 2011).

9. *Trained to Death and Still Jobless: A Case Study of D.C.'s First Source Law, Economic Development Policies, and the Marriott Marquis Jobs Training Program* (Organizing Neighborhood Equity (ONE DC) & Kalmanovitz Ctr. for Lab. & the Working Poor at Georgetown (Univ.) (June 19, 2015), https://d3n8a8pro7vhm.cloudfront.net/onedctrac/pages/332/attachments/original/1434655058/ONE_DC-MarriottReport-1.pdf?1434655058).

for the labor that workers provide. . . . The magnitude of “rent seeking” in our economy, while hard to quantify, is clearly enormous.¹⁰

Business ethics expert Marjorie Kelly describes the need for businesses and the economy at-large to shift from “extractive” to “generative” models that promote social missions and equity.¹¹ Furthermore, there is consensus within certain dissidents of the current system that low-wealth people must own and control the social and economic assets within the communities in which they work and live. Cooperatives provide the ideal business form to enable community-controlled assets.

A worker cooperative is a democratic enterprise that is owned and governed by its employees or those who provide labor to the business.¹² As such, worker-owned cooperatives can provide low-wealth people with a means to control economic assets in such a way that inherently reduces inequality and rent-seeking. Cooperatives of small businesses and/or independent contractors (economic empowerment cooperatives), such as production and marketing cooperatives, also empower the low-wealth owners of those enterprises and, ideally, their workers. Cooperatives are different than traditional shareholder-owned businesses in two primary ways: they typically distribute profits on the basis of “patronage,” including business or work contributed to the organization; and decisions are made on the principle of “one-member, one-vote,” as opposed to voting on the basis of financial interest.

Worker cooperative development has become an increasingly popular community wealth building, economic empowerment, and racial justice strategy nationwide. There are examples of low-wage workers in New York City who have seen their hourly wages more than double within a few years after forming worker cooperatives.¹³ Other cooperatives have

10. Joseph Stiglitz & Linda Bilmes, *The Price of Inequality*, VANITY FAIR (May 2012), <http://www.vanityfair.com/news/2012/05/joseph-stiglitz-the-price-on-inequality>.

11. Marjorie Kelly, *Living Enterprise as the Foundation of a Generative Economy*, in FRITJOF CAPRA & PIER LUIGI LUISI, *THE SYSTEMS VIEW OF LIFE: A UNIFYING VISION* (2014), <http://www.marjoriekelly.com/living-enterprise-as-the-foundation-of-a-generative-economy/> (“While extractive ownership involves governance by markets, with control by capital markets on autopilot, generative designs have mission-controlled governance, with control by those focused on social mission. While extractive investments involve casino finance, alternative approaches involve stakeholder finance, where capital becomes a partner rather than a master.”).

12. In some cases, they are owned by partners or members who perform labor or independent contractors who are not categorized as employees. See *Employment Law*, Co-opLaw.org, http://www.co-oplaw.org/topics-2/employment-law/#Who_is_NOT_an_Employee.

13. Eleanor J. Bader, *Sunset Park Women’s Cooperative Says Si Se Puede*, BROOKLYN RAIL, Sept. 3, 2010, <http://www.brooklynrail.org/2010/09/local/sunset-park-womens-cooperative-says-si-se-puede>. See also Priya Baskaran, *Introduction to*

trained marginalized workers and placed them in stable jobs that give them ownership and control over their working conditions.¹⁴ Given such successes, there has been a resurgence of support for the cooperative business model among communities and institutions nationwide¹⁵ and internationally.¹⁶ Nearly 30,000 cooperatives employ over 2 million people in the United States. Of those, there are almost 300 worker cooperatives employing close to 7,000 worker-owners, according to the Democracy at Work Institute.¹⁷

In recent years, a number of D.C. grassroots organizations and community leaders with community development, racial and economic justice, and business backgrounds have started to build a fledgling movement to empower low-wealth communities of color through cooperative businesses. Cooperation DC, a new project of Organizing Neighborhood Equity (ONE DC),¹⁸ has largely spearheaded D.C.'s worker cooperative movement, seeking to generate support, resources, and technical assistance for worker cooperatives, with a focus on low-income communities of color. The momentum has grown out of frustrations with current development models and recent successes with worker cooperatives in cities nationwide, particularly in urban centers like New York City.

The recent momentum is not new for the D.C. metropolitan region; in fact, it is a revival of the District's historic tradition of cooperative economics, particularly within the African American community, as

Worker Cooperatives and Their Role in the Changing Economy, J. AFF. HOUSING & CMTY. DEV. L. 355 (2015).

14. Cooperative Homecare Associates in New York City (www.chcany.org) and Evergreen Cooperative Corporation in Cleveland (www.evgo.com) are two examples of large-scale worker-owned cooperatives that were formed to create stable, high-quality jobs for marginalized unemployed, underemployed, or exploited workers.

15. New York City is the most notable example of the rapid expansion of worker cooperatives. Given the past success of the Worker Cooperative Business Development Initiative, the Council of the City of New York and the Mayor agreed to allocate \$2.1 million to expand the initiative in the FY2016 budget. See N.Y.C. City Council, Press Release, Speaker Mark-Viverito, Mayor De Blasio and City Council Announce FY2016 Budget Agreement to Add More NYPD Officers in the Beat, Establish a Citywide Bail Fund and Create Year Round Youth Employment (June 22, 2015), <http://council.nyc.gov/html/pr/062215budget.shtml>.

16. Cooperatives play an essential role in equitable international development. The United Nations has promoted the model in various ways, including the creation of an International Day of Cooperatives through its Department of Economic and Social Affairs. See www.un.org/development/desa/cooperatives/.

17. Democracy at Work Institute, *State of the Sector* (2015), http://institute.usworker.coop/sites/default/files/resources/State_of_the_sector_0.pdf.

18. Cooperation D.C., Organizing Neighborhood Equity (ONE DC), www.onedonline.org/cooperation_dc.

documented by scholars Dr. Jessica Gordon Nembhard¹⁹ and Dr. Joanna Bockman.²⁰ The legacy has largely remained in the housing cooperative sector: the District is home to more than 100 housing cooperatives,²¹ the vast majority of which serve low- and moderate- income families, particularly as a result of D.C.'s unique right-of-first refusal law, the Tenant Opportunity to Purchase Act.²² Communities with housing cooperative experience have been instrumental in reviving the District's tradition of worker, producer, and consumer cooperatives.

Local advocates have galvanized support for worker cooperatives as they point to current examples of worker cooperative successes both elsewhere and at home. Brighter Days²³ is a worker-owned, collectively managed D.C. dog walking company that, since its founding in 2006, has been D.C.'s most well-reviewed dog care company in terms of customer service.²⁴ In 2015, entry-level worker-owners earned an annual salary of \$35,000 for less than forty hour work weeks, had access to health insurance, and received six weeks of paid vacation.²⁵ In contrast, employees at other D.C. dog walking companies earn less per hour and have no opportunity for paid vacation or benefits because a large percentage of the companies' income is allocated to management and non-worker company owners rather than to employees.²⁶

In addition to Brighter Days, several D.C. cooperatives are in the early stages of development, including a health food eco-catering company owned by two women of color who plan to add additional worker-owners with growth, a largely low-wealth Latina women-owned childcare center, and multi-stakeholder taxi-cooperative.

19. JESSICA GORDON NEMBHARD, *COLLECTIVE COURAGE: A HISTORY OF AFRICAN-AMERICAN COOPERATIVE ECONOMIC THOUGHT AND PRACTICE* (Penn. State Univ. Press 2014).

20. Johanna Bockman, *Home Rule from Below: The Cooperative Movement in Washington, D.C.* in *CAPITAL DILEMMA: GROWTH AND INEQUALITY IN WASHINGTON, D.C.* (Derek Hyra & Sabhiya Prince eds. 2016).

21. Amanda Huron, *Creating a Commons in the Capital: The Emergence of Limited-Equity Housing Cooperatives in Washington, D.C.*, 26:2 *WASH. HIST.* 65 (2014), <http://static1.squarespace.com/static/51d8a4b2e4b0108eefe0b85a/t/54f9d705e4b0db83c308c56f/1425659653571/huron+washington+history+2014.pdf>.

22. D.C. CODE § 42-3404.

23. *Brighter Days*, www.brighterdayscollective.com.

24. Yelp, Brighter Days Dog Walking, <https://www.yelp.ca/biz/brighter-days-dog-walking-washington-2> (last accessed July 2, 2016).

25. July 30, 2015 email advertisement from Brighter Days member to CoopDC listserv.

26. Seidelman was employed by a dog walking company in 2010 that did not offer benefits or adequate income for its employees. The company kept a large share of the service charge paid by the customer. After speaking to employees of similar companies, she learned that what she had experienced was standard industry practice.

IV. Counseling Cooperatives in D.C.

A. Counseling Cooperatives in the Clinic

The CDLC has a history of counseling affordable housing cooperatives in D.C. but it recently expanded representation to cooperatives that seek to create decent jobs, encourage capital ownership, and promote workplace democracy. Cooperative representation has provided a rich and valuable pedagogical experience for students. Students are exposed to, and develop skills in, various business law practice areas, including complex business structures, and they learn the mediation skills required to represent multiple stakeholders prone to internal conflict and facilitate progress among several stakeholders. The following sections will discuss two cooperatives—a taxi cooperative and a worker-owned childcare center—that seek to empower low-wage workers and business owners. Each has a unique purpose and ownership model. The Clinic assisted the taxi cooperative during its start-up phase and plans to start working formally with the childcare cooperative founding members in the fall of 2016.

B. D.C. Taxi Cooperative

In the winter of 2014, the Clinic was approached by a group interested in reviving D.C.'s struggling taxicab industry and providing much-needed wealth and income to its taxi drivers.²⁷ The initiative arose as the livelihoods of the drivers, largely immigrant and Black, have been decimated by on-demand ride app companies such as Uber.

Although Uber considers itself part of the “sharing economy,” its drivers have no ability to share in the company's \$50 billion estimated net worth.²⁸ It is safe to say that the Silicon Valley based company's private shareholders live outside of the District and therefore contribute little to the wealth of District residents. Although tens of thousands of Uber drivers, deemed independent contractors, operate in the District, the company has not generated substantial income or wealth for its drivers who earn an average net hourly wage of less than \$10²⁹ after expenses (not counting the cost of their cars), which is less than D.C.'s \$11.50 minimum wage. Uber and Lyft also face a competitive advantage since they are largely exempt from the extensive regulations that apply to taxicabs, partly as a result of extensive lobbying, although they largely operate within the same market as taxis. Within D.C. alone, Uber has likely generated significant profits for its shareholders as part of its exploitative “rent-seeking” system

27. 31 DCMR § 1613.2.

28. Paul R. La Monica, *Uber May Now Be Worth \$50 Billion*, CNN MONEY, May 11, 2015, <http://money.cnn.com/2015/05/11/investing/uber-50-billion-valuation/>.

29. *How Much Do Uber Drivers Really Make?*, UBER DRIVER DIARIES, Feb. 1, 2016, <http://uberdriverdiaries.com/how-much-do-uber-drivers-really-make/>.

of extracting commissions from its drivers, who are excluded from ownership rights and privileges.

D.C. has far more taxicabs per consumer than most other jurisdictions, creating a particularly difficult market for drivers who face competition from Uber and Lyft. D.C.'s taxi industry also differs from other metropolitan areas in that most drivers own their vehicles.³⁰ Although many taxicab owner-operators have formed worker-owned companies, close to one hundred separate taxicab companies³¹ in the District and thousands of cabs contribute to an oversaturated market. While taxi drivers, particularly those who own their own vehicles, earn a larger share of the per-ride charges paid by consumers than Uber drivers, they have been reduced to picking up less than two rides per hour on average, according to informally reported estimates. In order to compete for the small pool of consumers who do not use digital dispatch/ride sharing apps, D.C. taxi drivers often work twelve to fourteen hours a day, seven days a week³² to make ends meet in a city with a skyrocketing cost of living. The increased presence of on-demand ride apps, the density of taxi vehicles in the taxi market, and the lack of a common ride-sharing app for taxi drivers, among other factors, have all contributed to taxi drivers' loss of income and taxi industry owners' loss of wealth.

In order to revive the industry and improve the lives of taxi drivers, a group of small taxicab businesses, many of which are owned by drivers, and independent drivers realized the need to develop a joint digital dispatch app that would operate similarly to Uber and Lyft.³³ Within its mission to regulate and support the taxicab industry, the D.C. Taxicab Commission (DCTC) promulgated regulations that would require it to develop and help market a "universal" digital dispatch app that will be accessible to all taxi drivers.³⁴ In a creative move, the DCTC required that the app be licensed to and operated by a "co-op" company that must be owned, managed, and operated for the mutual benefit of its members, i.e., stakeholders in the D.C. taxicab industry.³⁵ Ideally, the company and the app will

30. Marc Fisher, Ian Shapir & Annys Shin, *D.C.'s Cabbies Fear Being Pushed Out of Taxi Business*, WASH. POST, July 17, 2012, https://www.washingtonpost.com/local/dcs-cabbies-fear-being-pushed-out-of-taxi-business/2012/07/17/gJQArTg5rW_story.html.

31. List of D.C. Taxi Cab Companies, D.C. Taxicab Comm'n, http://dctaxi.dc.gov/sites/default/files/dc/sites/dc%20taxi/page_content/attachments/Copy%20of%20Copy%20of%20Taxicab%20Company%20Document-1jt%20%282%29.pdf

32. *Supra* note 18.

33. Martin Di Caro, *Coming for You Uber! DC Cab Companies Are Closer to Launching E-Hailing App*, WAMU 88.5, Oct. 30, 2015, http://wamu.org/news/15/10/30/take_that_uber_dc_cab_companies_getting_closer_to_launching_e_hailing_app.

34. 31 DCMR § 1612.

35. 31 DCMR § 1613.

generate income and wealth for taxi industry drivers and company owners, while improving customer service for consumers.

The Clinic had the opportunity to assist taxi industry stakeholders at the start-up phase of the co-op. Students had a rich pedagogical experience researching local business entity law and engaging in the drafting of complex bylaws that considered interests of drivers, small business members, and investors. They also solicited input and built consensus from stakeholders around bylaws provisions and engaged with DCTC officials to interpret and clarify regulations while educating prospective co-op members about the regulations. Furthermore, they had the opportunity to investigate anti-trust and securities law implications of multi-stakeholder cooperative ownership.

Clinic students were able to witness and reflect on the challenges associated with a project that required competitors to cooperate to further their joint economic interests. Taxicab owners were accustomed to a fiercely competitive market system in which they prioritized their own particular business's short-term interests, inadvertently at the expense of the industry's long-term survival. But given market forces, acting together became the only means by which to save their companies and the industry and improve drivers' lives. The project also demonstrated the need for a community-based technical assistance and conflict mediation organization that would bring the various stakeholders together to promote their values and create new systems while managing power dynamics. Furthermore, students realized the importance of developing organizational structures that would equitably build wealth for members by balancing the interests of investors with capital-poor workers.

C. D.C. Childcare Cooperative

From 2006 to 2010, a racially, ethnically, and economically diverse group of residents of the Norwood at 1417 N Street NW, a seven-story eighty-four unit rent-controlled building in D.C.'s rapidly gentrifying Logan Circle neighborhood, engaged in a protracted organizing campaign to fight rent increases in the face of uninhabitable conditions and landlord neglect. The majority of the building's residents are low-wealth immigrant families, primarily from Central America. Strong leadership, creative organizing strategies, litigation, and perseverance enabled the residents to successfully purchase the building in 2011 under D.C.'s strong right-of-first refusal law, the Tenant Opportunity to Purchase Act. With subsidized loans from the D.C. Department of Housing and Community Development and other partners, the Norwood Tenant Association converted the building to an affordable housing cooperative known as 1417 N Street NW Cooperative (N. St. Cooperative), owned by its residents.³⁶ The Cooperative has successfully completed the renovation phase and residents are now enjoying much

36. See *Norwood: An Affordable Cooperative*, www.norwoodtenants.org.

improved housing conditions and amenities at an affordable rate. Most importantly, they have survived displacement due to gentrification and have remained in their homes and helped their community.

Because many of the N. St. Cooperative's Central American women have become empowered leaders and owners, they looked to the creation of an affordable childcare center within the building to serve resident families and the families within the surrounding community. While a challenging industry, there is need for affordable childcare, particularly within certain niches of the local market. In 2013, there were 26,500 children in D.C. younger than three, an increase of 26 percent over 2010, according to a study, but there were only enough licensed day-care centers and home-based programs to serve a quarter of those children.³⁷ Furthermore, D.C. has some of the least affordable childcare in the country and affordable childcare is especially inaccessible to low- and moderate-income families.³⁸

Familiar with the benefits of the cooperative model, the N. St. Cooperative members decided to form a worker-owned cooperative childcare center that would ideally employ building residents and licensed childcare providers who seek dignified work and business ownership. The childcare cooperative will draw on experiences from childcare providers such as Las Semillitas in D.C. and Childspace, a worker-owned cooperative and nonprofit affordable childcare center in Philadelphia.

As of May 2016, a group of approximately ten women have regularly met for a number of months to understand cooperative decision making and discuss the childcare cooperative's business plan, as a result of the organizing efforts of N. St. Cooperative's Board President, Silvia Salazar, and with the help of students in the Social Enterprise Masters program at American University and Cooperation D.C., a project of Organizing Neighborhood Equity (ONE DC). The childcare cooperative is looking to find its niche by staying open evenings and nights because of the significant need for affordable overnight childcare accessible to restaurant workers, health care workers, and others.

The founding members of the childcare cooperative have engaged substantially and enthusiastically in the cooperative business planning process. The combination of the N. St. Cooperative's cooperative expertise and the outside childcare providers' childcare business expertise has led to a complimentary mix of talents. Additionally, more than a dozen

37. Michael Allison Chandler, *Baby Boom in D.C. Creates Acute Need for More and Better Childcare*, WASH. POST, Nov. 14, 2015, https://www.washingtonpost.com/local/education/baby-boom-in-dc-creates-acute-need-for-more-and-better-childcare/2015/11/14/05f07432-8b0a-11e5-9a07-453018f9a0ec_story.html.

38. Soumya Bhat, *Getting D.C. Back to Work Also Means Making Childcare More Affordable* (D.C. Fiscal Pol'y Inst. Sept. 11, 2012), <http://www.dcfpi.org/getting-dc-back-to-work-also-means-making-child-care-more-affordable>.

community supporters with expertise in organizing, cooperative businesses, and philanthropy have attended meetings to show support. The childcare cooperative will need to raise substantial funds but founding members and supporters are hopeful that goals will be met, given preliminary interest from local community development banks and local foundations.

The CDLC looks forward to providing legal assistance to the cooperative in the fall of 2016. Because the cooperative may decide to utilize D.C.'s new equity crowdfunding regulations to raise up to \$2 million from hundreds of small equity investments, its members will require counseling on securities law.³⁹ Furthermore, the cooperative may also form a worker-owned management company as a limited liability company or limited cooperative association in which worker-owners will make decisions on the basis of one-member, one vote and have equal ownership interests in the company in order to facilitate wealth building. The Clinic anticipates advising the cooperative on tax exemption, entity choice and structure, governance, and related matters.

V. Creating a Supportive Infrastructure Moving Forward

Transitioning to a generative economy, inclusive of cooperative businesses that empower workers to own and control their economic livelihoods, is essential for social and racial justice, both nationally and internationally. However, examples of D.C.'s nascent cooperative businesses demonstrate that growing a cooperative movement requires an appropriately supportive local infrastructure. Growing a supportive ecosystem will involve building cooperative business development capacity and obtaining technical assistance from lawyers, business developers, accountants, and funders. In conjunction with the LL.M. systems change program, the CDLC has developed legal resources pertaining to D.C. cooperative law and other relevant issue areas and coordinated an extensive training for local lawyers, law students, and others interested in supporting local cooperatives. Similarly, Cooperation DC, a project of Organizing Neighborhood Equity (ONE DC),⁴⁰ worked with the Democracy at Work Institute⁴¹ to host a series of training sessions and events to build local knowledge of cooperative development. This capacity building must be ongoing.

More importantly, the movement will need financial institutions and other non-traditional investors to specifically fund cooperative development. This may necessitate altering paradigms within current business financing to recognize social mission as much as or subordinate to financial return. D.C. is moving toward creating these institutions and models.

39. 26 DCMR § 250.

40. *See* note 18.

41. Democracy at Work Institute, www.institute.coop.

New equity crowdfunding regulations will enable small, community investors to more easily invest in cooperatives; a potential start-up loan fund will partner with the Working World,⁴² a non-profit financial institution dedicated to funding worker cooperatives; and a movement to create a public bank will ideally be owned and financed by the D.C. government and circulate profits from D.C. revenue back into essential community economic development projects like cooperatives. Furthermore, these projects will need funding and other policy support from the D.C. government and local philanthropists. The strength of D.C.'s cooperative movement may be successful only if it can develop an amenable foundation among local institutions that will be patient and support its slow growth.

42. The Working World, www.theworkingworld.org/us/.

Representing Returning Citizen Entrepreneurs in the Nation’s Capital

Susan R. Jones

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We live in a time of extraordinary change—change that’s reshaping the way we live, the way we work, our planet, our place in the world. . . . It’s change that can broaden opportunity, or widen inequality. And, whether we like it or not, the pace of this change will only accelerate.”¹

—President Barack Obama, State of the Union Address, January 2016

1. President Barack Obama, State of the Union Address (Jan. 13, 2016), <https://www.whitehouse.gov/the-press-office/2016/01/12/remarks-president-barack-obama-%E2%80%93-prepared-delivery-state-union-address>.

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I. Introduction

D.C. Code Section 24-1301(5) defines returning citizens as “persons who are residents of the District who were previously incarcerated.”² This terminology, designed to be non-stigmatizing in the aftermath of punishments and debts paid to society, recognizes the need for returning citizens to re-integrate into their communities, get on with their lives, and become productive members of society. The world that returning citizens confront, however, is besieged by a rapidly changing economy, low wage jobs, high rates of joblessness, a decline in middle class jobs, limited opportunities for economic mobility, and the rise of automation and technology.³

[T]he manufacturing businesses that once offered decent paying jobs and an opportunity for mobility for people with limited skills have largely moved overseas, and a significant share of new jobs created in recent years offer extremely low wages, no benefits and little opportunity for upward mobility. In this economic environment, those who previously shunned the idea of starting a business in favor of the safer route of getting a job might view entrepreneurship in a whole new light.⁴

Indeed, the term “necessity entrepreneurship” has been used to capture this form of entrepreneurship. To be clear, while entrepreneurship can be a pathway out of poverty,⁵ some observers caution that it “should never be the primary route to economic empowerment for low-income individuals.”⁶ Business failure rates are high.⁷ Entrepreneurship requires hard work, drive, and determination.⁸

On the other hand, owning a small business builds wealth. The Association for Enterprise Opportunity (AEO), a nonprofit organization that creates economic opportunity for underserved entrepreneurs, reports that there are 28.5 million U.S. businesses; 25.1 million, or 88 percent, of these are microbusinesses operating with five or fewer employees.⁹ The

2. D.C. CODE ANN. § 24:1301(5).

3. See Kahlah Laney et al., *Launching Low-Income Entrepreneurs* 3 (Ctr. for Urban Future Apr. 2013), <https://nycfuture.org/pdf/Launching-Low-Income-Entrepreneurs.pdf> [hereinafter *Launching Low Income Entrepreneurs*].

4. See *id.* at 7.

5. See *id.* at 3.

6. See *id.* at 10.

7. Small Business Facts, *Do Economic or Industry Factors Affect Business Survival?*, <https://www.sba.gov/sites/default/files/Business-Survival.pdf> (last visited Aug. 17, 2016).

8. SBA Learning Center, *Checklist for Young Entrepreneurs: An Essential Guide to Starting Your Own Business*, www.sba.gov/sites/default/files/Checklist (last visited Aug. 17, 2016).

9. ASS'N FOR ENTER. OPPORTUNITY, http://www.aeworks.org/pdf/states/Microbusiness_State_Factsheet-DC.pdf (last visited May 15, 2016).

median net worth for a nonbusiness owner is \$85,000,¹⁰ and for a business owner, it is \$211,000.¹¹ The median net worth for an African-American business owner is \$77,000 but only \$10,000 for a non-business owner, while the median net worth for a Latino business owner is \$37,000 but only \$9,000 for a non-business owner.¹² The District of Columbia has 64,355 businesses and 53,586 of these, or 83 percent, are microbusinesses.¹³

The promise of entrepreneurship in the face of current economic realities calls for policy makers, economic development officials, workforce development providers, academics, lawyers, and others to strategically support and promote self-employment through entrepreneurship as a workforce development strategy for returning citizens.¹⁴ Transactional and CED lawyers can help by (1) providing pro bono legal assistance to new and emerging nonprofit organizations, such as Mission Launch, which works directly with returning citizens, governments, and communities to “cause system level change designed to expedite self-sufficiency”¹⁵; (2) representing returning citizen entrepreneurs with respect to transactional legal matters, such as creating corporations and limited liability companies, drafting and reviewing contracts, reviewing intellectual property matters, such as copyrights and trademarks, and obtaining occupational and professional licenses; and (3) supporting law school clinical programs engaged in providing transactional legal services to returning citizens.

Scholars have recognized the opportunities and possible roles that collegiate schools of business can have in creating and supporting reentry programs for returning citizens. Indeed, teams of business students, supported by faculty and alumni, can help returning citizens in class and through fieldwork consulting programs. That work, within the discipline of social entrepreneurship, can yield positive public relations benefits and introduce new funding opportunities for the school.¹⁶ There are similar opportunities for law school entrepreneurship programs, and a few

10. See *Number of Microbusinesses: District of Columbia*, ASS’N FOR ENTER. OPPORTUNITY, http://www.aeoworks.org/pdf/states/Microbusiness_State_Factsheet-DC.pdf (last visited May 15, 2016) (“Net worth is defined as the total value of all real and financial assets, including equity in the home, other property, vehicles, businesses and other financial assets.”).

11. See *id.*

12. See *id.*

13. See *id.*

14. See *Launching Low-Income Entrepreneurs*, *supra* note 3.

15. MISSION: LAUNCH, <http://www.mission-launch.org> (last visited May 13, 2016).

16. Matthew C. Sonfield, *Entrepreneurship and Prisoner Re-Entry: A Role for Collegiate Schools of Business*, 4 SMALL BUS. INST. J. 66, 78–81 (2009) [hereinafter Sonfield, *Entrepreneurship and Prisoner Re-Entry*].

such programs are emerging.¹⁷ Indeed, The George Washington University Law School Small Business and Community Economic Development Clinic (SBCED Clinic or Clinic)¹⁸ in Washington, D.C., provides legal representation to the nonprofit organizations that support returning citizens as well as direct representation to returning citizens.

II. Case Study of an Action Research Project on Entrepreneurship for Returning Citizens

*It's no surprise that a number of formerly incarcerated individuals turn to entrepreneurship. Many of those who served time in prison are enterprising and open to taking risks. Perhaps most importantly, the formerly incarcerated typically encounter serious barriers to securing fulltime gainful employment upon release and often view self-employment as the least arduous path to economic self-sufficiency.*¹⁹

In 2010, the SBCED Clinic initiated an *Action Research Project in Clinical Legal Education on Entrepreneurship for Returning Citizens* (Entrepreneurship for Returning Citizens Project or Project) to complement the Clinic's robust pro bono business and community economic development (CED) law practice. In the Clinic, teams of second- and third- year student attorneys, working under law faculty supervision, represent small and micro-businesses, nonprofit organizations, social enterprises, artists, and creative entrepreneurs. In addition, the student attorneys counsel and advise emerging and existing start-ups on corporate, tax, regulatory, contracts, and intellectual property law matters. Like many law school clinics in a wide range of doctrinal areas, the Clinic has a social justice mission.

Action research "refers to a cluster of applied research methods, namely, participatory research, collaborative inquiry, action learning, and community-based research."²⁰ It is a pedagogical approach to educating students while helping communities.²¹

17. Stanford Law School's pro bono effort, Project ReMade, is an entrepreneurial training program organized by law students. See *Stanford Students Help Formerly Incarcerated People Become Entrepreneurs*, STANFORD LAW SCHOOL, <https://law.stanford.edu/levin-center/pro-bono-program/#slsnav-pro-bono-projects-by-skills-categories>. There are approximately forty law schools with re-entry or clean slate clinics but there is no evidence they specifically assist returning citizen entrepreneurs. The list is on file with the author.

18. The George Washington University Law School Small Business and Community Economic Development Clinic is the oldest small business clinic in the United States. See Susan R. Jones & Jacqueline Lainez, *Enriching the Law School Curriculum: The Rise of Transactional Clinics in U.S. Law Schools*, 43 WASH. U. J.L. & POL'Y 85, 95 (2013).

19. See *Launching Low-Income Entrepreneurs*, *supra* note 3, at 27.

20. See Susan R. Jones & Shirley J. Jones, *Innovative Approaches to Public Service Through Institutionalized Action Research: Reflections from Law and Social Work*, 33 U. ARK. LITTLE ROCK L. REV. 377, 384 (2011) [hereinafter Jones, *Innovative Approaches*].

21. See *id.* at 384-90.

The Project rests on a change theory ideology called *positive deviance*, which is premised on the notion that every community has individuals or groups “whose uncommon behaviors and strategies enable them to find better solutions to problems than their peers, while having access to the same resources and facing similar or worse challenges.”²² Positive deviants leverage tangible community success and amplify proven strategies instead of simply rehashing well-articulated problems. The Entrepreneurship for Returning Citizens Project is also deeply rooted in addressing re-entry for returning citizens through a CED lens that offers a broader, systems-changing approach, as opposed to a criminal justice perspective. The Project was informed by the path-breaking work of several former clients, namely, the Free Minds Book Club and Writing Workshop, which was founded by resilient social entrepreneurs who pioneered a weekly book club in the D.C. Jail to awaken incarcerated youth to their own potential.²³ Free Minds has become an award winning re-entry program that also encourages entrepreneurship for those uniquely suited to it.²⁴ Another former client, Life Asset Inc., a non-predatory financial resource center for poor, low, and moderate income persons, aims to “help alleviate poverty in Washington, D.C., through affordable financial products, services, and education, thereby promoting self-help and self-respect and expanding social and economic opportunities for lower income residents.”²⁵ Modeled on the world renowned Grameen Bank, founded by economist and Nobel Peace Prize winner, Mumammad Yunus, Life Asset has trained more than 1,500 entrepreneurs and made 215 business loans averaging \$1,050 each. Ninety-seven percent of the microbusinesses supported by Life Asset are still in business after two years of operation.²⁶

Concerns about the over-incarceration of black and brown men and women and the American carceral state are well documented.²⁷ Sixty thousand people in the nation’s capital, or 10 percent of D.C. residents, have criminal records, and each year more than 8,000 individuals return to D.C. from disparate penal institutions.²⁸ The largest percentage of returning citizens is African-American men twenty-one to thirty years of

22. *Id.* at 406–09.

23. See FREE MINDS: BOOK CLUB & WRITING WORKSHOP, <http://freemindsbookclub.org> (last visited May 13, 2016).

24. See *id.*

25. Email from Markus Larsson to Susan Jones dated June 20, 2016 (on file with author). See also Life Asset, <http://www.lifeasset.org> (last visited May 13, 2016).

26. See *id.*

27. See, e.g., MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* 15 (rev. ed. 2012).

28. See Clinton Yates, *Returning citizens are still one of D.C.’s most marginalized and motivated groups*, WASH. POST (Jan. 16, 2015), <http://www.washingtonpost.com/news/local/wp/2015/01/16/returning-citizens-are-still-one-of-d-c-s-most-marginalized-and-motivated-groups/>.

age.²⁹ An October 2014 D.C. Department of Corrections report found that 37 percent of young men in custody had no education, high school diploma, or GED.³⁰

On the national landscape, the U.S. Department of Justice made history in October 2015 by announcing the largest discharge of inmates from federal prisons in America. Prompted by an effort to reduce overcrowding and provide much needed relief to drug offenders who have been incarcerated over the past four decades, the government released approximately 6,000 individuals from federal prisons across the United States.³¹ Among them are D.C. residents made up of men and women from various backgrounds who have all been given one powerful thing: a second chance at life.

Positive deviance shuns emphasis on gloomy statistics but respects the power of data and metrics.³² The Entrepreneurship for Returning Citizens Project focuses on learning from the positive deviants: those organizations and entrepreneurs who make it, persevere, and excel in spite of their circumstances.

A. Entrepreneurship for Returning Citizens—Building the Case

*We have nothing but talent and people who can operate businesses and do it well. . . . The impediment [is] transitioning them from the underground economy to legitimate business.*³³

* * *

I want to expand the narrative of who goes to prison. . . . prisons are a microcosm of the U.S.

—Teresa Hodge, *Mission Launch*³⁴

Washington, D.C., is a pioneer with respect to support services for returning citizens and an exemplar for “a city taking on prisoner re-entry as a basic municipal service.”³⁵ This is especially true in the aftermath of the 1997 National Capital Revitalization and Self-Government Improvement

29. *See id.*

30. *See id.*

31. Erik Eckholm, *Thousands Start Life Anew with Early Prison Releases*, N.Y. TIMES (Nov. 1, 2015), http://www.nytimes.com/2015/11/02/us/with-early-release-thousands-of-inmates-are-adjusting-to-freedom.html?_r=0.

32. Jones, *Innovative Approaches*, *supra* note 20, at 406–09.

33. *Launching Low Income Entrepreneurs*, *supra* note 3, at 12 (discussing the “side-hustles” common in many low-income neighborhoods: “barbers cutting hair in their living rooms, people baking cakes for neighborhood birthdays, teens deejaying parties, moms operating informal child care centers, men washing windows of local businesses,” and other examples of microbusinesses).

34. *See* Comm. on Business, Consumer and Regulatory Affairs (testimony of Teresa Hodge, Director, *Mission Launch*).

35. Jessica Kourkounis, *Will D.C. Be the First U.S. City to Escape the Prison Trap?*, NEXT CITY (Sept. 28, 2015), <https://nextcity.org/features/view/dc-escape-prison->

Act,³⁶ which required “the District to turn over its 5,400 offenders to the federal Bureau of Prisons.”³⁷ According to D.C. congressional delegate Eleanor Holmes Norton, the District of Columbia gladly relinquished its parole and probation responsibilities to the federal government because it was carrying a state prison function that no city provides.³⁸

The Mayor’s Office of Returning Citizen Affairs (ORCA) was created in 2008 and served 4,644 people in 2015. D.C. is one of the few jurisdictions that restore voting rights upon completion of a prison sentence; ORCA registered 640 people to vote in 2015, but its other efforts have been criticized. “ORCA only receives 0.2 percent of the D.C. Department of Corrections’ \$151 million budget” . . . [and] operates on less than \$400,000 annually.”³⁹ Perhaps partially due to its limited budget, a D.C. Office of the Inspector General report found that in spite of ORCA’s efforts to help, it lacked the capacity to work with other organizations and provide meaningful reentry assistance to returning citizens.⁴⁰

Washington D.C.’s focus on entrepreneurship for returning citizens is based on a few core local realities. First, many D.C. residents face chronic unemployment and under employment; unemployment in Wards 7 and 8, low-income areas of D.C., is reported to be as high as 13.5 percent and 16.6 percent, respectively.⁴¹ The unemployment rate, hovering at 60 percent, is much higher for returning citizens.⁴² Second, advances in technology have changed the landscape of traditional employment, making

trap-reentry-office-of-returning-citizens-affairs [hereinafter Kourkounis, *Escape the Prison Trap*].

36. National Capital Revitalization and Self-Government Improvement Act of 1977, Pub. Law No. 105-33, 105th Cong. (1997).

37. Kourkounis, *Escape the Prison Trap*, *supra* note 35, at 4.

38. *Id.*

39. *Id.* at 5.

40. Jeffery Anderson, *IG Report: Returning Citizens Office Lacks “Fundamental Ability” to Help Ex-Offenders*, WASH. CITY PAPER (Sept. 20, 2015), <http://www.washingtoncitypaper.com/news/city-desk/blog/13069972/ig-report-returning-citizens-office-lacks-fundamental-ability-to-help-ex-offenders>. It is noteworthy that a December 2015 report titled, *A Data Needs Assessment for the Mayor’s Office on Returning Citizen Affairs (MORCA): Identifying, Collecting, and Connecting Key Data for D.C.’s Returning Citizens*, identified the data MORCA would need to improve client services. The report, which is available at orca.dc.gov., was written by graduate students Brian Cognato, Daniel Greene, Jeff Raderstrong, and Josh Sagers from The George Washington University Trachtenberg School of Public Policy and Public Administration, working under the supervision of Dr. Joan Dudik-Gayoso.

41. Department of Employment Services, *Unemployment for D.C. Wards 2015*, <http://does.dc.gov/page/unemployment-data-dc-wards> (last visited May 15, 2016).

42. RE-ENTRY NETWORK FOR RETURNING CITIZENS, <https://thereentrynetworkdc.wordpress.com/> (last visited May 15, 2016).

self-employment through entrepreneurship an important component of workforce development.⁴³ Third, entrepreneurship is especially important for returning citizens in D.C. who have been incarcerated in jurisdictions outside of the city and may lack the necessary social capital to obtain gainful employment.⁴⁴ Fourth, supported by shared workspaces, business incubators and accelerators, microbusiness training and loan programs, and community development financial institutions, entrepreneurship in D.C. is rapidly advancing, necessitating special efforts to include returning citizens in the entrepreneurial eco-system. Fifth, as noted earlier, self-employment through entrepreneurship is a form of necessity entrepreneurship for some returning citizens. Sixth, entrepreneurship is a tool of empowerment for persons lacking formal education; research shows that two in five returning citizens lack a high school diploma.⁴⁵

B. Project Activities and Stages

Since its inception in 2010, the Entrepreneurship for Returning Citizens Project has had ten significant activities and stages. *Stage One* was an analysis of workforce development and self-employment through entrepreneurship as a key component of broader workforce development strategies.⁴⁶ In 2010 and 2011, students studied well-performing nonprofit organizations engaged in providing jobs for returning citizens with a goal of identifying the “positive deviants,” i.e., those doing better than the majority, among them.⁴⁷ The findings from that study were set forth in a workforce development report.⁴⁸

In *Stage Two*, clinical faculty from George Washington University, American University Washington College of Law, and University of Maryland participated in an *Entrepreneurship and Reentry Forum* sponsored by the U.S. Probation Office and the District of Columbia Workforce Development Program in partnership with American University Washington College of Law.⁴⁹ The goal of that Forum was to explore the ways that

43. See generally *Launching Low Income Entrepreneurs*, *supra* note 3.

44. See generally CHRIS RABB, *INVISIBLE CAPITAL: HOW UNSEEN FORCES SHAPE ENTREPRENEURIAL OPPORTUNITY* (2010).

45. Council for State Governments Justice Center, *NRRC Facts & Trends*, <https://csgjusticecenter.org/nrrc/facts-and-trends/> (last visited May 15, 2016).

46. The Project was influenced by Professor Jones’s scholarship on microbusiness and CED. See ROGER A. CLAY JR. & SUSAN R. JONES, *BUILDING HEALTHY COMMUNITIES: A GUIDE TO COMMUNITY ECONOMIC DEVELOPMENT FOR LAWYERS, ADVOCATES AND POLICYMAKERS* (2010); SUSAN R. JONES, *LEGAL GUIDE TO MICROENTERPRISE DEVELOPMENT* (2004).

47. Jones, *Innovative Approaches*, *supra* note 20, at 403–04 (analyzing and discussing early stages of the Action Research for Returning Citizens Project).

48. *Perspectives on Workforce Development in the District of Columbia* (2011) (on file with author).

49. The panel, which took place in October 2013, was organized by Professor Brenda Smith (American University Washington College of Law) and included

clinical programs could contribute to reentry and how transactional clinics could support entrepreneurship for returning citizens.

This effort resulted in *Stage Three*: direct representation of returning citizen entrepreneurs. After discussing opportunities available through pro bono legal clinics at the Forum, the SBCED Clinic received several requests for legal assistance from returning citizens who were exploring, starting, or growing legal businesses. For instance, the Clinic represented a returning citizen who, in an effort to be reinstated as a federal construction contractor, sought legal advice on business formation and federal contracting laws regarding debarment and responsibility.⁵⁰

After months of planning meetings, *Stage Four* involved the Clinic's participation in Major Projects Lab: Ward 8, a summit on job creation in D.C.⁵¹ This was a city-wide workforce development effort sponsored by the George Washington University School of Business and the Washington Economic Partnership during which the Clinic proposed a virtual law firm to support entrepreneurship for returning citizens.⁵² Students contributed to this effort with valuable research from their interviews with well-performing nonprofit organizations serving returning citizens and other research.⁵³

In *Stage Five*, which took place between 2014 and 2016, law students researched the ethical issues involved in the creation of a virtual law practice and drafted and edited a white paper proposing a virtual law pro bono initiative to assist returning citizen entrepreneurs.⁵⁴ In *Stage Six*, the Clinic participated in a "Rebuilding Reentry Coalition Hackathon" hosted by Mission Launch and others.⁵⁵ Broadly defined, hackathons are collaborative events where people, often using technology, come together to creatively solve problems. Lasting anywhere from a day to a

Professor Susan Jones (George Washington University Law School) and Professor Michael Pinard (University of Maryland Francis King Carey School of Law).

50. See generally JOHN CIBINIC, JR., RALPH C. NASH, JR. & CHRISTOPHER R. YUKINS, FORMATION OF GOVERNMENT CONTRACTS 467 (4th ed. 2011).

51. George Washington University and Washington, D.C. Economic Partnership (WDCEP), *Major Project Lab: Ward 8* (Sept. 20, 2011), <https://gwtoday.gwu.edu/gw-hosts-job-creation-summit> (summit on job creation in the District of Columbia).

52. Claire Duggan & Laura Donnelly-Smith, *GW Hosts Job Creation Summit*, GW MAG., http://www.gwu.edu/~magazine/2012_la_w_winter/dept_lawbriefs.html (quoting Susan R. Jones, Remarks at Major Projects Lab: Ward 8 (Sept. 20, 2011)) (last visited June 30, 2016).

53. Perspectives on Workforce Development in the District of Columbia (2011) (on file with author).

54. Returning Citizens, Creating Entrepreneurs: A Proposal for a Returning Citizens Virtual Legal Support Initiative (Mar. 2015) (on file with author) [hereinafter Returning Citizens, Creating Entrepreneurs].

55. Rebuilding Reentry Coalition Hackathon, Washington D.C. (Nov. 1, 2015).

week, hackathons “innovate on a theme or improve on an existing project.”⁵⁶ The participants may be computer programmers, developers, visionaries, marketers, and project stakeholders.⁵⁷ Hackathons are significant because they are designed to provide technological solutions to pressing social problems. At the same time, organizing a hackathon raises many legal issues pertaining to participation agreements and ownership of technology jointly created during a hackathon. Clinic students researched a range of legal issues for hackathon organizers.

In *Stage Seven*, after a series of meetings with the D.C. Office of Court Supervision and Offender Services (C-SOSA), the office responsible for probation and parole, about how the Clinic could assist with the District’s reentry efforts, the Clinic hosted a *Returning Citizens and Entrepreneurship Convening* at the George Washington University Law School in November 2015, which gathered key leaders, thinkers, and innovators in the reentry field. The Convening was attended by returning citizens, representatives of the D.C. Reentry Task Force, government officials from C-SOSA and the U.S. Small Business Administration, and reentry advocates.

In part as a result of the Convening, *Stage Eight* resulted in faculty testimony before the D.C. City Council on B21-463, Incarceration to Incorporation Entrepreneurship Program Act of 2015 (IIEP bill).⁵⁸ Students conducted legal research on key components of the bill and drafted testimony. In the months leading up to the City Council hearing, SBCED Clinic faculty participated in meetings of the D.C. Reentry Task Force Working Group, which is a diverse group of entrepreneurs, academics, reentry professionals, and returning citizens, to study, share comments, and mobilize testimony on the IIEP bill. The working group submitted recommendations to the Committee on Business, Consumer and Regulatory Affairs and engaged in an advocacy campaign to encourage passage of the IIEP bill.⁵⁹ On June 23, 2016, the Committee favorably recommended its approval by the Council of the District of Columbia and the bill was passed and moved forward subject to appropriation.⁶⁰ Recognizing that

56. Melissa Phipps, *Collaboration Meets Competition: The Power of the Hackathon*, GENERAL ASSEMBLY BLOG (July 8, 2014), <https://generalassemb.ly/blog/collaboration-meets-competition-power-hackathon/>.

57. *Id.*

58. Testimony is available at http://208.58.1.36:8080/DCC/January2016/01_28_16_Biz.mp4 (last visited June 13, 2016).

59. See generally #DC463 Campaign, <http://www.dc463.info/dc463-campaign/> (last visited May 14, 2015) (providing information about the Campaign to support Bill 21-463, Incarceration to Incorporation Entrepreneurship Program Act of 2015).

60. Council of the District of Columbia Committee on Business, Consumer, and Regulatory Affairs Draft Committee Report to Members of the Council of the District of Columbia from Councilmember Vincent B. Orange, Sr., Chairperson, Committee on Business, Consumer, and Regulatory Affairs, favorably recommending

many returning citizens have bona fide entrepreneurial ambitions and limited options for gainful employment, this bill offers entrepreneurship training, resources and funding to support entrepreneurship for returning citizens.

This new law has not yet been funded, however, and returning citizen entrepreneurs, with or without the support of the law, will need pro bono legal assistance to support their businesses. Returning citizen entrepreneurs are not unlike other SBCED Clinic clients seeking legal business structures in the form of limited liability companies, benefit corporations, and other business structures for new or emerging businesses; help with business licenses, permits and taxes, contracts and intellectual property; and specialized legal research.

In *Stage Nine*, Clinic students conducted extensive research and drafted a *Returning Citizens' Legal and Business Entrepreneurship Tool Kit*, which provides a broad range of resources for returning citizens. *Stage Ten* involves reflection, storytelling, and scholarship to memorialize the six-year project. This article is a manifestation of that process.

II. Second Chances—Legislative Proposals and Policy Initiative

*The work of redemption reflects our values. . . . Our government has a responsibility to help prisoners return as contributing members of their community.*⁶¹

—President Barack Obama

* * *

*Investing in ex-convicts is not only morally right, it's economically smart.*⁶²

—Robert E. Rubin

When President Obama signed into law the Second Chance Act,⁶³ he acknowledged the deprivations associated with high rates of recidivism: tax burdens on Americans, loss of labor force productivity, and especially loss to family members—fathers and mothers, sons and daughters, and spouses. Research shows there is a slow but growing bipartisan support for “entrepreneurship and self-employment as a viable alternative to

approval of Bill 21-463, Incarceration to Incorporation Entrepreneurship Program Act of 2015. Kevin Smith, *D.C. Council Passes Entrepreneurship Program for Returning Citizens . . . But It's Not Funded*, Aug. 1, 2016, available at <http://www.grassrootsdc.org/2016/08/d-c-council-passes-entrepreneurship-program-returning-citizens-not-funded/> (last visited Sept. 16, 2016) (“Dating back to 2001, the council has approved 42 legislative measures that have not funded to date, and six (6) partially funded.”).

61. Sonfield, *Entrepreneurship and Prisoner Re-Entry*, *supra* note 16.

62. Robert E. Rubin, *How to Help Former Inmates Thrive*, N.Y. TIMES (June 3, 2016), http://www.nytimes.com/2016/06/03/opinion/how-to-make-mass-incarceration-end-for-good.html?_r=0.

63. Second Chance Act of 2007, Pub. L. No. 110-199, § 213, 122 Stat 658 (2008).

post-prison employment and as a means to reduce recidivism.”⁶⁴ For example, an “empirical testing of the *entrepreneurial propensity* of prison inmates” found that they “seemed quite ‘business-savvy’ with a surprising understanding of the nuances of marketing, finance etc.”⁶⁵ The test results showed that “the inmates scored higher . . . [on the test] than did comparable groups of ‘normative entrepreneurs,’ ‘slow-growth-entrepreneurs,’ and ‘manager-scientists,’ thus indicating that some prison inmates possess high levels of entrepreneurial aptitude.”⁶⁶ The empirical testing report concludes:

These results may not be that surprising. About 35% of all prison inmates have been convicted of drug trafficking crimes . . . It is not unusual for a local drug dealing operation to have \$100,000 in sales per week, a 90% profit margin, and 90% repeat business. . . . Drug dealers, and their employees, often display the same entrepreneurial and managerial skills as successful owners and employees of legitimate business operations. If entrepreneurial “propensity” or aptitude” is an attribute that some people possess to a greater degree than do others, and if a portion of our nation’s prison inmates possess this attribute, then *entrepreneurial* or self-employment training for soon-to-be-released inmates and recently-released ex-convicts would be a potentially viable component of our nation’s social policy efforts, and might result in a lowering of recidivism rates with resultant benefits for society.⁶⁷

A. *District of Columbia Incarceration to Incorporation Entrepreneurship Program Act of 2015*

As explained in more depth in the fourth article of this symposium by Professor Etienne C. Toussaint,⁶⁸ D.C. Council Member Vincent Orange introduced the IIEP bill on November 3, 2015.⁶⁹ The goal of the bill is to broaden opportunities for returning citizens by creating a sorely needed business development program. The proposed program, which would be administered by the D.C. Department of Employment Services (DOES) and the D.C. Department of Small and Local Business Development (DSLBD), would promote economic self-sufficiency for returning citizens, including investments in businesses owned by returning citizens, a fast track GED program, business training and workshops, and grants and scholarships for classes at the University of the District of Columbia and the University of the District of Columbia Community College, as well as an IIEP fund to be administered by the Office of the Deputy Mayor for

64. Sonfield, *Entrepreneurship and Prisoner Re-Entry*, supra note 16, at 66.

65. *Id.* at 68–69.

66. *Id.*

67. *Id.* at 70.

68. See C. Toussaint, *Incarceration to Incorporation: Economic Empowerment for Returning Citizens Through Social Impact Bonds*, 25:1 J. AFFORDABLE HOUSING & CMTY. DEV. L. 61 (2016).

69. See also *Returning Citizens, Creating Entrepreneurs*, supra note 54.

Greater Economic Opportunity. The bill calls for an IIEP fund balance of \$10 million from multiple sources, such as D.C. government appropriations, public and private donations, and other funds. As noted earlier, entrepreneurship for returning citizens is not a panacea and will not be a viable opportunity for *every* person, but given how hard it is for returning citizens to find employment, the IIEP bill helps to significantly broaden their opportunities.

There are models of successful D.C. based businesses that are owned and operated by returning citizens. A few noteworthy local examples include Clean Decisions, a professional-grade cleaning company for kitchens and food trucks,⁷⁰ and Flikshop, a smartphone app that allows users to send photos and messages to incarcerated loved ones on a 99-cent post card.⁷¹

On a national level, a pre-release program called the Last Mile in San Quentin, a technology accelerator, “prepares incarcerated individuals for successful reentry through business and technology training.”⁷² The program allows incarcerated persons to pitch business ideas to investors before their release from prison and provides broader context for the possibilities for returning citizens.⁷³

The SBCED Clinic represents clients such as the ones just mentioned who have certain striking and defining qualities, including a strong need for achievement; internal drive and perseverance; a tolerance for ambiguity and uncertainty; resourcefulness; and a powerful passion to change the world with their ideas, services, and the persons they employ. This common entrepreneurial thread is the same spirit found within the hearts of many within America’s prison systems. It is this same spirit that we as a community need to ignite by fortifying and engaging individuals equipped with this inherent skill set to pursue creating businesses that will stimulate growth and promote greater success among other D.C. residents.

There is no more suitable place to propose this legislation than in our nation’s capital. The creation of ORCA demonstrates D.C.’s leadership vision in the re-entry field and IIEP bill supports successful reentry by giving returning citizens the chance to infuse their communities with both human and monetary capital, increasing the tax base, and celebrating the talents of individuals with the capacity to effectuate positive change.

70. See CLEAN DECISION, <http://www.cleandecisions.com>.

71. See FLIKSHOP, <http://www.flikshop.com>.

72. THE LAST MILE, <http://www.thelastmile.org> (last visited June 15, 2016).

73. See Contessa Gayles, *From maximum security prison to tech entrepreneur*, CNN TECH (July 31, 2014 10:10 AM), <http://money.cnn.com/2014/07/31/technology/innovationnation/flikshop-prison-app/>.

B. U.S. Small Business Administration Permits Loans to Returning Citizens

Effective July 15, 2015, the U.S. Small Business Administration (SBA) issued new rules allowing SBA microlenders to make loans to returning citizens on parole or probation.⁷⁴ The SBA microloan program provides loans up to \$50,000 to help finance small businesses. This is an important rule change because many returning citizens are unable to secure above minimum wage jobs. These microloans, dispensed through SBA approved intermediaries, average \$13,000.⁷⁵

Another SBA improvement is a “streamlined policy to improve access to small dollar loans,” thereby expanding access to capital for minority entrepreneurs.⁷⁶ Indeed, a recent report found that while “businesses owned by people of color are playing an important part in restoring the health of the American economy after the Great Recession (December 2007 through June 2009), . . . African American men were the only group to have a decline in the number of their businesses in the period 2007 through 2012.”⁷⁷

As previously noted, black men between the ages of 21 to 30 are the highest percentage of returning citizens. The report concludes:

Although the number of minority-owned businesses is increasing dramatically, America is currently forgoing an estimated 1.1 million businesses owned by people of color because of past and present discrimination in American society. These missing businesses could produce an estimated 9 million more jobs and boost our national income by \$300 billion. Thus, expanding entrepreneurship among people of color is an essential strategy for moving the country toward full employment for all.⁷⁸

C. Social Impact Bonds and Justice Reinvestment Initiative

Advocates of the IIEP bill are thoughtfully considering funding sources for this proposed legislation. Impact investing funding streams and Justice Reinvestment Initiative (JRI) are two innovative possibilities. Social impact bonds (SIBs), discussed in more depth in Professor Toussaint’s article,⁷⁹ are a form of innovative financing, designed to help state and local

74. Microloan Program Expanded Eligibility and Other Program Changes, 13 C.F.R. pt. 120 (2015).

75. See 13 C.F.R. pt. 120.

76. U.S. Small Business Administration, *National Small Business Week: My Brother’s Keeper Millennial Entrepreneurs Initiative & Underserved Communities* (May 2016), <https://www.sba.gov/sites/default/files/NSBW-Factsheet-Millennial-Entrepreneurs-Underserved.pdf> [hereinafter *My Brother’s Keeper*].

77. Algernon Austin, *The Color of Entrepreneurship: Why the Racial Gap Among Firms Costs the U.S. Billions* (Ctr. for Global Pol’y Sols. Apr. 20, 2016), <http://globalpolicysolutions.org/report/color-entrepreneurship-racial-gap-among-firms-costs-u-s-billions/>.

78. *Id.*

79. Toussaint, *Incarceration to Incorporation*, supra note 69.

governments fund social programs, that creates public-private partnerships involving government, nonprofit organizations, and private investors.⁸⁰ Premised on evidenced-based cost savings metrics, investors are “repaid only if and when social outcomes are achieved.”⁸¹ State and local governments have used SIBs in areas such as health care, education, poverty reduction, and the criminal justice system. SIBs in the criminal justice arena have been aimed at recidivism reduction; employment, including self-employment, is a key factor in reducing recidivism.

The Justice Reinvestment Initiative is a creative cost-saving, data-driven approach to criminal justice reform. According to the Urban Institute, “[l]eaders in 24 states and 17 localities have implemented JRI.”⁸² Like SIBs, JRI strives for achieved cost savings but seeks to reinvest the savings “in new or expanded evidence-based practices.”⁸³ In the aftermath of D.C. Act 20-565, Legalization of Possession of Minimal Amounts of Marijuana for Personal Use Initiative of 2014, commonly called Initiative 71, which took effect February 26, 2015, reports show “marijuana arrests decreased by 85 percent from 2014 to 2015” and that marijuana “arrests fell from 1,840 in 2014 to just 32 in 2015.”⁸⁴ A JRI approach suggests that it may be possible to quantify and redirect the cost savings of policing due to fewer arrests.⁸⁵

III. Conclusion

A Ewing Marion Kauffman Foundation-funded monograph, *Venturing Beyond the Gates: Facilitating Successful Reentry with Entrepreneurship*, points

80. See Rockefeller Foundation, *Social Impact Bonds: Overview*, <https://www.rockefellerfoundation.org/our-work/initiatives/social-impact-bonds/> (last visited June 11, 2016).

81. *Id.*

82. Elizabeth Davies, Samantha Harvell & Lindsey Cramer, *The Justice Reinvestment Initiative: Thinking Local for State Justice Reinvestment* (Urban Inst. 2015), <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/2000158-The-Justice-Reinvestment-Initiative.pdf>; see also Bureau of Justice Assistance, *Justice Reinvestment Initiative*, <https://www.bja.gov/programs/justicereinvestment/index.html> (last visited June 13, 2016).

83. *Id.*

84. Drug Policy Alliance, Press Release, Friday: One Year Anniversary of Marijuana Legalization in Washington, D.C. (Feb. 24, 2016), <http://www.drugpolicy.org/news/2016/02/friday-one-year-anniversary-marijuana-legalization-washington-dc>; see also Andrew Giambrone, *A Year After Marijuana Legalization, Arrests Are Dramatically Down*, WASH. CITY PAPER (Nov. 10, 2015), <http://www.washingtoncitypaper.com/news/city-desk/blog/13070116/a-year-after-marijuana-legalization-arrests-are-dramatically-down>.

85. See H. Comm. on Business, Consumer, and Regulatory Affairs, http://208.58.1.36:8080/DCC/January2016/01_28_16_Biz.mp4 (last visited June 13, 2016) (statement of Edwina Dorch, Professor, Criminal Justice Department, University of the District of Columbia).

out that the “promotion of entrepreneurship as a reentry strategy is in an embryonic stage.”⁸⁶ The monograph concludes:

The time is ripe to establish funding streams, create pilot projects and develop the infrastructure necessary to identify, evaluate and share promising practices. We must take advantage of the opportunities to pool our collective knowledge and resources, capitalize on the talents and skills of individuals leaving prison and empower them to become agents of change in their lives and contribute to the vibrancy and health of our communities.⁸⁷

Indeed, in the District of Columbia and across America, a robust and complex entrepreneurial eco-system has emerged. Today’s entrepreneurial culture, driven by millennial⁸⁸ and next generation entrepreneurs, social entrepreneurs, business incubators and accelerators, shared work spaces, and new venture competitions in college campuses and beyond, have all changed the way America views entrepreneurship. Returning citizens comprise approximately 10 percent of the city’s population; to be inclusive, D.C.’s entrepreneurial ecosystem must properly include them. To be sure, entrepreneurship education and support are important components of reforming America’s carceral system, which is disproportionately comprised of men and women of color.

Law school clinic programs can contribute to CED by representing nonprofit organizations and social enterprises, such as Mission Launch and Life Asset, that help returning citizens. Legal clinics can also represent businesses and worker cooperatives owned by returning citizens, especially those businesses that employ returning citizens.

86. NICOLE LINDAHL, *VENTURING BEYOND THE GATES: FACILITATING SUCCESSFUL REENTRY WITH ENTREPRENEURSHIP* 82 (2007).

87. *Id.* at 83.

88. The SBA launched a number of initiatives for millennials including, My Brother’s Keeper Millennial Entrepreneurs Initiative, Millennial Entrepreneurs College Road Show and Millennial Entrepreneurs College Road Show. See *My Brother’s Keeper*, *supra* note 77.

Incarceration to Incorporation: Economic Empowerment for Returning Citizens Through Social Impact Bonds

Etienne C. Toussaint

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Black rage is founded on blatant denial
Squeezed economics, subsistence survival,
Deafening silence and social control.
Black rage is founded on wounds in the soul!

—Lauryn Hill, *Black Rage (Sketch)* (2014)¹

1. David Drake, *Lauryn Hill “Black Rage (Sketch)”*, PITCHFORK (Aug. 24, 2014), <http://pitchfork.com/reviews/tracks/17064-lauryn-hill-black-rage-sketch/>. Throughout this essay, I utilize the terms “Black” and “African American” interchangeably to refer to Americans of African descent. Building upon a rich body of legal scholarship that touches on issues of race and racism, I capitalize “Black” throughout this essay because “Blacks, like Asians, Latinos and other ‘minorities,’ constitute a specific cultural group, and as such, require denotation as a proper noun.” Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331, 1332 n.2 (1988).

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I. Introduction

On a crisp New Year's Eve in December 2015, fiery words sprung from the lips of hundreds of frustrated protestors gathered near the Gallery Place-Chinatown Metro station in downtown Washington, D.C. "This is more important than partying," one woman shouted.² Others quickly followed with their own passionate declarations as Black Lives Matter activists and a diverse body of outraged community members, young and old, marched in unison down the street. Their collective cries of disapproval called attention to the growing number of police misconduct cases and the rising tension between law enforcement agents and communities of color that have taken American cities by storm.³ Picket signs and bullhorns filled the nighttime sky as the protestors expressed their disdain

2. *Black Lives Matter Protesters March Through DC*, NBC WASH. (Dec. 31, 2015), <http://www.nbcwashington.com/news/local/Protesters-Plan-DC-Rally-Over-Police-Misconduct-Cases-363906071.html>.

3. In the summer of 2013, after the acquittal of George Zimmerman in the shooting and murder of African-American male, Trayvon Martin, a new Black liberation movement was birthed with the use of the social media hashtag #BlackLivesMatter by Alicia Garza, Patrisse Cullors, and Opal Tometi. By August 2014, Black Lives Matter (BLM) had evolved into a vibrant activist movement, gaining international acclaim after organizing massive street demonstrations following the deaths of Michael Brown in Ferguson, Missouri, and Eric Garner in New York City. BLM members seek to affirm the lives of Black men and women who, on a daily basis, experience the negative impacts of institutionalized white supremacy and structural racism in America. The movement has primarily focused on decrying the extrajudicial killings of Black people by law enforcement officers and racial injustices perpetuated by the criminal justice system (e.g., racial profiling, police brutality, mass incarceration, etc.). See generally Khury Petersen-Smith, *Black Lives Matter: A New Movement Takes Shape*, 96 INT'L SOCIALIST REV. 2015, <http://isreview.org/issue/96/black-lives-matter> (describing the history of Black Lives Matter and providing useful context for the future of the activist movement).

Since the movement's formation, BLM activists have organized over one thousand demonstrations against the deaths of numerous Black people killed by police officers, such as Tamir Rice in Cleveland; Walter Scott in North Charleston, South Carolina; Sandra Bland in Waller County, Texas; and Freddie Gray in Baltimore. The movement has sparked conversation about the tense relationship between law enforcement and communities of color across America. See, e.g., Conor Friedersdorf, *The Brutality of Police Culture in Baltimore*, ATLANTIC (Apr. 22, 2015), <http://www.theatlantic.com/politics/archive/2015/04/the-brutality-of-police-culture-in-baltimore/391158/> (noting that "as in Ferguson, where residents suffered through years of misconduct so egregious that most Americans could scarcely conceive of what was going on, the people of Baltimore are policed by an entity that perpetrates stunning abuses"); Maria Alvarez, *Invoking King's Memory, de Blasio, Sharpton Try to Mend Fences with NYPD*, NEWSDAY (Jan. 19, 2015), <http://www.newsday.com/news/new-york/invoking-king-s-memory-de-blasio-sharpton-try-to-mend-fences-with-nypd-1.9823321> (noting "Mayor Bill de Blasio and the Rev. Al Sharpton . . . promised their commitment to social justice

over America's criminal justice system. Other community members watched silently from afar, confused at the anger and frustration raining down on their city. Perhaps our country's failure to indict the police officers involved in the shooting of twelve-year old Tamir Rice who waived a toy gun in the wrong park in Cleveland or those officers involved in the unexplained death of 28-year old Sandra Bland after a routine traffic stop in Waller County, Texas, may explain why some Washingtonians resolved that the year 2015 was not one to be celebrated with colorful streamers, pointed party hats, or bubbly champagne.⁴

As an increasing number of citizens in urban and rural communities across America take to the streets in protest to demand justice for victims of police brutality,⁵ lawmakers are calling for much-needed reform to our country's criminal justice system.⁶ And, while the media primarily highlight the troubled lives of the Black bodies that have flooded our streets with the painful stories of their untimely death,⁷ the zealous protesters who wade through the aftermath following every instance of "law

while respecting the NYPD as they vowed to mend fences between police and the community.")

4. See Timothy Williams & Mitch Smith, *Cleveland Officer Will Not Face Charges in Tamir Rice Shooting Death*, N.Y. TIMES (Dec. 28, 2015), <http://www.nytimes.com/2015/12/29/us/tamir-rice-police-shooting-cleveland.html>; see also Dana Ford & Ed Payne, *Grand jury decides against indictments in Sandra Bland's death*, CNN (Dec. 23, 2015), <http://www.cnn.com/2015/12/21/us/sandra-bland-no-indictments/>.

5. For example, see, e.g., Benji Hart, *Baltimore's violent protesters are right: Smashing police cars is a legitimate political strategy*, SALON (Apr. 28, 2015), http://www.salon.com/2015/04/28/baltimores_violent_protesters_are_right_smashing_police_cars_is_a_legitimate_political_strategy/; Sara Burnette, *Black Lives Matter Protests Meet Black Friday Shoppers*, CHRISTIAN SCI. MONITOR (Nov. 28, 2015), <http://www.csmonitor.com/USA/Society/2015/1128/Black-Lives-Matter-protests-meet-Black-Friday-shoppers>; CNN Wire, *Black Lives Matter Protests Stop Traffic in L.A., Chicago, San Francisco and Minneapolis*, KTLA 5 MORNING NEWS (Dec. 24, 2015), <http://ktla.com/2015/12/24/black-lives-matter-protests-stop-traffic-in-l-a-chicago-san-francisco-and-minneapolis/>.

6. As recently as February 2016. See, e.g., Jordain Carney & Lydia Wheeler, *Senators locked in negotiations over criminal justice reform*, THE HILL (Feb. 9, 2016), <http://thehill.com/regulation/legislation/268840-senators-locked-in-negotiations-over-criminal-justice-reform> (noting "[l]awmakers are said to be considering cutting a section from the [criminal justice reform] bill that would have reduced mandatory minimum sentences for armed career criminals from 15 to 10 years, with that standard applied retroactively to people already in prison").

7. For an example of how the media portrayed the death of Michael Brown, see, e.g., *Tracking the Events in the Wake of Michael Brown's Shooting*, N.Y. TIMES (Nov. 24, 2014), http://www.nytimes.com/interactive/2014/11/09/us/10ferguson-michael-brown-shooting-grand-jury-darren-wilson.html#/#time354_10512 (noting "[s]ome witnesses later said that Mr. Brown appeared to be surrendering with his hands in the air as he was hit with the fatal gunshots. Others say that Mr. Brown was

enforcement gone wrong” are fueled by concerns that sink far deeper than the loss of unrealized potential. Communities are not only advocating for the mending of fractured relationships between citizens and local police officers,⁸ but also for the healing of a broken carceral system that too often hinders economic justice. Not only does America’s criminal justice system overwhelmingly target young Black men in low-income communities as the primary perpetrators of criminal activity, but it also routinely relegates them to second-class citizenship upon their release from prison.⁹

Formerly incarcerated individuals in America—appropriately called “returning citizens” but more frequently labeled “ex-felons”—are shackled with the stigma of their prison record long after serving time behind bars,¹⁰ a stigma that impairs their civil rights¹¹ and limits their prospects for economic prosperity in the job market. Many social justice advocates recognize that mass incarceration has done more harm than good in addressing drug abuse and crime in communities of color where the cycle of poverty churns unrelentingly.¹² Further, they argue that lasting social

moving toward the officer when he was killed. What is not in dispute is that Mr. Brown was unarmed. His body would lie in the street for four hours.”).

8. See, e.g., William Powell, *The Roots of Violence in Ferguson*, ATLANTIC (Aug. 16, 2014), <http://www.theatlantic.com/national/archive/2014/08/racial-tension-in-ferguson-isnt-over/378625/> (noting that when residents gathered with other protesters for a peace march days after the shooting of Michael Brown by a police officer, “[m]any in the crowd wore goggles or painters’ masks, concerned about another round of tear gas”).

9. See George Will, *America’s Broken Criminal-Justice System Is in Desperate Need of Reform*, NAT’L REV. (Oct. 24, 2015), <http://www.nationalreview.com/article/426017/americas-broken-criminal-justice-system-desperate-need-reform-george-will> (describing an article by Alex Kozinski that cites “disturbing indications that a non-trivial number of prosecutors—and sometimes entire prosecutorial offices—engage in misconduct.”).

10. DEVAH PAGER, MARKED: RACE, CRIME, AND FINDING WORK IN AN ERA OF MASS INCARCERATION (2007); see also MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2010) (explaining that mass incarceration has become “a stunningly comprehensive and well-disguised system of racialized social control that functions in a manner strikingly similar to Jim Crow” for African Americans).

11. See generally Etienne C. Toussaint, *The Silenced Minority: On Selma, Voting Rights, and the Clinton You Never Heard About*, EMPOWER MAG. (Mar. 9, 2016), <http://www.empowermagazine.com/silenced-minority-selma-voting-rights-clinton-never-heard/>.

12. See, e.g., MARY PATTILLO, IMPRISONING AMERICA: THE SOCIAL EFFECTS OF MASS INCARCERATION (2004) (noting “[a]lthough young minority men with little schooling had relatively high rates of incarceration, before the 1980s the penal system was not a dominant presence in disadvantaged neighborhoods. Criminal behavior, as officially recognized by the police, was much more unusual than poverty. The utter marginality of prisons and other carceral institutions shaped criminological and penological understanding of punishment.”); see also Ta-Nehisi Coates, *The*

change and long-term income equality cannot be achieved without advancing economic justice.¹³ The U.S. government has heeded their call by shrinking overcrowded prisons and reducing excessively long prison sentences.¹⁴ Nevertheless, concerns about recidivism persist, and the cycle of poverty among the formerly incarcerated continues. Indeed, more than one-third of federal inmates return to prison within five years of their release, often after struggling to secure employment due to the stigma of their criminal record and the lack of employment opportunities in their home communities.¹⁵ Although the facts speak for themselves, scholars agree that the politics of race that drive criminal justice reform are inextricably linked to the movement for economic justice that steer historically marginalized communities deeper and deeper into inequality.¹⁶

The George Washington Law School Small Business and Community Economic Development Clinic (SBCED Clinic), under the leadership of Professor Susan R. Jones, has played a leading role in advancing economic empowerment for returning citizens in Washington, D.C. In addition to

Black Family in the Age of Mass Incarceration, ATLANTIC (Oct. 2015), <http://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246/> (revealing, in stark terms, “Our carceral state banishes American citizens to a gray wasteland far beyond the promises and protections the government grants its other citizens. Banishment continues long after one’s actual time behind bars has ended, making housing and employment hard to secure.”).

13. Laurie Hauber, *Promoting Economic Justice Through Transactional Community-Centered Lawyering*, 27 ST. LOUIS U. PUB. L. REV. 3, 1 (2007).

14. Notably, on October 30, 2015, following a recent decision by the U.S. Sentencing Commission to reduce federal guideline sentences for many nonviolent drug offenses, the U.S. Justice Department began the process of releasing approximately 6,000 federal prisoners. For more information, see Sari Horwitz, *Justice Department Set to Free 6,000 Prisoners, Largest One-Time Release*, WASH. POST (Oct. 6, 2015), https://www.washingtonpost.com/world/national-security/justice-department-about-to-free-6000-prisoners-largest-one-time-release/2015/10/06/961f4c9a-6ba2-11e5-aa5b-f78a98956699_story.html.

15. Matthew R. Durose, Alexia D. Cooper & Howard N. Snyder, *Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010*, BUREAU OF JUST. STAT. SPECIAL REP. (Apr. 2014), <http://www.bjs.gov/content/pub/pdf/rprts05p0510.pdf>.

16. See Susan R. Jones, *Dr. Martin Luther King, Jr.’s Legacy: An Economic Justice Imperative*, 19 WASH. U. J. L. & POL’Y 39, 44 (2005) (“It is my position that economic justice must be advanced independently and as a critical part of social justice, racial justice and human rights.”); Gary Chartier, *Civil Rights and Economic Democracy*, 40 WASHBURN L.J. 267 (2000) (“At root, civil rights struggles have consistently touched on questions, not only social and cultural, but also economic, questions about the organization and distribution of economic power and material good.”); see also Hauber, *supra* note 13, at 1–9; Peter Edelman, *Welfare and the Politics of Race: Same Tune, New Lyrics?*, 11 GEO. J. ON POVERTY L. & POL’Y 389 (2004).

providing pro bono legal services to returning citizen entrepreneurs, the SBCED Clinic has been engaged in an action research project during the past several years that actively supports entrepreneurship for returning citizens.¹⁷ Most recently, the clinic faculty and student attorneys conducted policy research on legislation in the District of Columbia that promotes economic justice for returning citizens, the product of which resulted in public testimony before the Washington D.C., Council in January 2016.¹⁸ During the spring 2016 academic semester, the clinic faculty and student attorneys explored various social finance innovations that could support proposed legislative economic empowerment initiatives for returning citizens. This essay highlights the potential for an emerging social finance tool—the social impact bond—to help finance newly proposed legislation in Washington, D.C., targeting returning citizens.

Part I of this article discusses the D.C. Incarceration to Incorporation Entrepreneurship Program Act of 2015, an innovative bill that seeks to economically empower the District's most vulnerable citizens. Part II briefly traces the history of the social impact bond in the United States and positions the financial tool within an evolving history of community economic development that currently emphasizes market-based initiatives. Part III offers a critique of the social impact bond as a vehicle to fund criminal justice reforms, identifying benefits of the financial tool while discussing key challenges that may hinder its future success. The

17. The George Washington Law School SBCED Clinic "Action Research Project for Returning Citizens" has gone through several stages of development during the past few years, including: (1) the creation of a workforce development report investigating issues for marginalized population in D.C.; (2) faculty participation in an Entrepreneurship and Reentry Forum with the U.S. Probation Office under the D.C. Workforce Development Program in October 2013; (3) direct requests for legal assistance from returning citizens; (4) creation of a white paper proposing a virtual law pro bono initiative at a city-wide George Washington University sponsored workforce development workshop; (5) faculty participation in a "Rebuilding Reentry Hackathon" in October 2015; (6) hosting of a "Returning Citizens and Entrepreneurship Convening" at George Washington Law School in November 2015; (7) clinic participation in the "D.C. Reentry Task Force" and faculty public testimony on the District of Columbia Incarceration to Incorporation Entrepreneurship Program Act of 2015 in January 2016; (8) creation of a draft "Returning Citizen's Legal and Business Entrepreneurship Toolkit" during the spring and summer of 2016; and (9) intentional reflection and storytelling. For more information, see Susan R. Jones, *Representing Returning Citizen Entrepreneurs*, 25-1 J. AFFORDABLE HOUS. & CMTY. DEV. L. **page no.** (2016).

18. Professor Susan R. Jones and Visiting Professor and Friedman Fellow Etienne C. Toussaint testified on January 28, 2016, before the D.C. Council on B21-0463 - District of Columbia Incarceration to Incorporation Entrepreneurship Program Act of 2015. See Public Hearing on B21-0463, Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia (Jan. 28, 2016), <http://lims.dccouncil.us/Download/34815/B21-0463-HearingRecord1.pdf>.

essay concludes by urging social justice advocates to consider the social impact bond, while also noting the importance of incorporating strategies and strategic partnerships that will ultimately empower communities at the grassroots level.

II. The D.C. Incarceration to Incorporation Entrepreneurship Program Act of 2015

In the nation's capital, an estimated 60,000 people, approximately ten percent of the city's current population, have a criminal record.¹⁹ Additionally, more than 8,000 people return to the city each year from prisons across the country.²⁰ These returning citizens, predominantly young Black men between the ages of 21 and 30, face tremendous challenges as they transition into their old neighborhoods and seek access to employment opportunities.²¹ In an October 2014 report by the District of Columbia Department of Corrections, 37 percent of these young men self-reported their education level as "none."²² The Council for Court Excellence found that 77 percent of Washington, D.C., offenders who return home from prison received no employment assistance while incarcerated, and only one-third of those surveyed stated that assistance was available to them after their release.²³ Additionally, approximately 80 percent of those surveyed said that they were asked "all the time" about their criminal records when

19. Brian Englehardt, *The Effect of Employment Frictions on Crime: Theory and Estimation*, 28:3 J. OF LAB. ECON. 677-718 (2010).

20. See Richard Freeman, *Can We Close the Revolving Door?: Recidivism vs. Employment of Ex-Offenders in the U.S.* (N.Y. Univ. Law Sch. Urban Inst. Reentry Roundtable May 19-20, 2003), http://www.urban.org/uploadedpdf/410857_freeman.pdf.

21. See Justin Wolfers, David Leonhardt & Kevin Quealy, *1.5 Million Missing Black Men*, N.Y. TIMES (Apr. 20, 2015), http://www.nytimes.com/interactive/2015/04/20/upshot/missing-black-men.html?_r=5&abt=0002&abg=0 (revealing "African American men have long been more likely to be locked up and more likely to die young, but the scale of the combined toll is nonetheless jarring. It is a measure of the deep disparities that continue to afflict black men—disparities being debated after a recent spate of killings by the police—and the gender gap is itself a further cause of social ills, leaving many communities without enough men to be fathers and husbands.").

22. See Clinton Yates, *"Returning Citizens" Are Still One of D.C.'s Most Marginalized and Motivated Groups*, WASH. POST (Jan. 16, 2015), <https://www.washingtonpost.com/news/local/wp/2015/01/16/returning-citizens-are-still-one-of-d-c-s-most-marginalized-and-motivated-groups/> (explaining that the young Black men being interviewed reported not having a GED or a high school diploma).

23. DC Prisoner Reentry Initiative, *Unlocking Employment Opportunity for Previously Incarcerated Persons in the District of Columbia* (Council for Court Excellence 2011).

looking for a job.²⁴ Although the D.C. Mayor's Office on Returning Citizen Affairs (MORCA) has launched various initiatives for returning citizens targeting these challenges,²⁵ MORCA operates with a limited budget and has received criticism for failing to achieve its laudable goals.²⁶

These challenges are not new. At the national, state and local levels, our government has historically employed a variety of community economic development (CED) policy measures to combat the concentrated poverty that plagues low-income communities of color and frustrates the economic prospects of individuals with criminal records. Yet, as the racial wealth gap in America widens,²⁷ and as our country's incarceration rate remains among the highest in the world, both non-profit initiatives and government-sponsored social service programs continue to offer insufficient

24. *Id.*

25. The D.C. Mayor's Office on Returning Citizen Affairs, developed under former Mayor Vincent Gray to "provide zealous advocacy, high-quality services and products, up-to-date, useful information for the empowerment of previously incarcerated persons," has launched various initiatives to address the challenges facing returning citizens in the district. On September 14, 2015, current D.C. Mayor Muriel Bowser announced two new training and professional development programs for D.C. returning citizens: (1) the DC Jail Work Readiness Program, a partnership between the Department of Corrections (DOC) and the Department of Employment Services that will provide male inmates at the D.C. Central Detention Facility with six weeks of pre-release workforce training and development; and (2) an initiative between Events DC and the Congress Heights Community Training & Development Corporation that will provide female returning citizens with a fourteen-week program teaching professional skills, such as etiquette, conflict management, and digital literacy. See generally *Mayor Bowser Announces New Programs to Support the District's Returning Citizens*, Executive Office of the Mayor (Sept. 14, 2015), <http://mayor.dc.gov/release/mayor-bowser-announces-new-programs-support-districts-returning-citizens> ("A major component of Mayor Bowser's Safer, Stronger plan is recommitting ourselves to building pathways to the middle class. The Mayor is championing a mix of legislation and programs that will provide returning citizens with work readiness skills and experience.").

26. See, e.g., Jeffrey Anderson, *IG Report: Returning Citizens Office Lacks 'Fundamental' Ability to Help Ex-Offenders*, WASH. CITY PAPER (Sept. 30, 2015), <http://www.washingtoncitypaper.com/blogs/citydesk/2015/09/30/ig-report-returning-citizens-office-lacks-fundamental-ability-to-help-ex-offenders/> (noting "OIG inspectors found that, while MORCA staff worked diligently to directly serve returning citizens, it lacked fundamental organizational mechanisms and resources to inform them about available resources and collaborate with other entities on critical job readiness, life skills, and family reunification services").

27. See Tanzina Vega, *Minorities Fall Further Behind Whites in Wealth During Economic Recovery*, N.Y. TIMES (Dec. 12, 2014), http://www.nytimes.com/2014/12/13/us/pew-research-finds-growing-net-worth-gap.html?_r=0 (citing a report by the Pew Research Center, noting that "the median net worth of white households in 2013 was \$141,900, about 13 times that of black households at \$11,000").

solutions to tackle these societal challenges.²⁸ Further, state and local governments across the country have struggled to finance existing social service programs, much less bring successful models to scale and finance new innovations.²⁹

Among a growing number of other jurisdictions across the country, Washington, D.C., has begun to explore new public policy solutions that can address the shortcomings in America's criminal justice system while helping returning citizens seeking access to economic opportunities when they return home. Specifically, a new initiative promoting entrepreneurship for returning citizens provides a platform for returning citizens to achieve economic justice and reveals the potential for decreasing recidivism.³⁰ Convincing stakeholders in both the public and private sector of the viability of this model, as well as identifying how it can address entrenched issues of racial and economic justice, will be an important step in economically empowering these citizens.

On January 28, 2016, the District of Columbia Council Committee on Business, Consumer, and Regulatory Affairs responded to the demands of frustrated Washingtonians³¹ by holding hearings on B21-463, the District of Columbia Incarceration to Incorporation Entrepreneurship Program Act

28. See Stephanis Bibas, *The Truth About Mass Incarceration*, NAT'L REV. (Sept. 21, 2015), <http://www.nationalreview.com/article/424059/mass-incarceration-prison-reform> (noting "[m]ost prisoners are eventually released, and we do almost nothing to help them reenter society, simply providing a bus ticket and perhaps \$20").

29. See, e.g., Julie Bosman, *One State's Struggle to Make Ends Meet: Why Illinois Is Without a Budget*, N.Y. TIMES (Oct. 26, 2015), <http://www.nytimes.com/2015/10/27/us/illinois-budget-stalemate-rauner-and-democrats-divided.html> (describing Illinois' budget challenges, noting "[s]ocial service organizations that have contracts with the state, and the low-income populations they serve, may be suffering the most. Some nonprofits have not received money from the state since July 1 and say they have been forced to deplete their cash reserves and scale back services. Mark Mathews, the executive director of the Child Abuse Council in Moline, which provides counseling and visits homes of troubled families, said he had eliminated two staff positions and reduced one program's caseload by 40 percent.").

30. See *infra* Part I. Research demonstrates that employment opportunities with higher wages can reduced the likelihood of re-offense among returning citizens and ultimately lower the rate of incarceration. See Michelle N. Rodriguez & Maurice Emsellem, *65 Million "Need Not Apply:" The Case for Reforming Criminal Background Checks for Employment*, NAT'L EMP. LAW PROJ. (Mar. 2011), http://www.nelp.org/content/uploads/2015/03/65_Million_Need_Not_Apply.pdf.

Additionally, studies have revealed that reducing the unemployment period among returning citizens by as little as three months can decrease recidivism by five percent. See JEREMY TRAVIS, *BUT THEY ALL COME BACK: FACING THE CHALLENGES OF PRISONER REENTRY* (Urb. Inst. Press 2005).

31. For a discussion of the issues inspiring this frustration, see *supra* notes 2-5.

of 2015 (Incarceration to Incorporation Bill), an innovative bill that seeks to economically empower the District's most vulnerable citizens.³² Through the creation of a business development program administered by the D.C. Department of Employee Services (DOES) and the D.C. Department of Small and Local Business Development (DSLBD) that targets formerly incarcerated D.C. residents, this legislation promises to help "educate, train, and assist returning citizens, in becoming self-sufficient entrepreneurs and civically engaged residents."³³

The Incarceration to Incorporation Bill requires DOES and DSLBD to establish the Incarceration to Incorporation Entrepreneurship Program (IIEP), which:

(1) invests in for-profit and non-profit businesses owned, operated, or managed by returning citizens; (2) provides a fast-track GED program; (3) provides classes to improve math, reading, and writing abilities; (4) provides business training including accounting, finance, administration, business planning, budgeting, marketing; (5) provides business-themed educational workshops and seminars; (6) provides scholarships and/or grants for returning citizens to enroll in business classes at the University of the District of Columbia ("UDC") and the University of the District of Columbia Community College ("UDCCC"); and (7) establish an IIEP Fund.³⁴

The IIEP Fund will be administered by the Office of the Deputy Mayor for Greater Economic Opportunity.³⁵ Additionally, the Incarceration to Incorporation Bill calls for the IIEP Fund to maintain a balance of \$10 million, to be generated from D.C. government appropriations, public and private donations, and sponsored funds.³⁶ Given funding challenges to

32. Introduced by Councilmember Vincent Orange on November 3, 2015, and co-sponsored by Councilmember Yvette Alexander, the bill presents an opportunity for returning citizens in Washington, D.C., to learn about and utilize entrepreneurship as an economic empowerment tool, critically important in an economic climate marked by persistent employment challenges for Washingtonians with criminal records. After a public hearing on January 28, 2016, the bill underwent a committee mark-up on June 23, 2016, and received a unanimous affirmative vote from the Committee on Business, Consumer, and Regulatory Affairs after a final reading on July 12, 2016. B21-0463 was transmitted to the mayor of the District of Columbia on August 4, 2016, for a response due on August 18, 2016. For more information, see B21-0463, District of Columbia Incarceration to Incorporation Entrepreneurship Program Act of 2015, Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia (Nov. 3, 2015), <http://lims.dccouncil.us/Legislation/B21-0463>.

33. *Id.* at 1.

34. *Id.*

35. Interestingly, and perhaps in response to harsh criticism of the D.C. Office on Returning Citizens Affairs, the Incarceration to Incorporation Bill did not include a management role for the district's primary governmental reentry organization. *See id.*

36. *Id.* at 2.

meet the existing social service needs for marginalized communities in Washington, D.C.,³⁷ policy makers recognize that this program will require innovative financing mechanisms.³⁸ Such funding streams would benefit from the growing pool of investment capital available in the private sector, particularly from the impact investing community. Impact investments prioritize social and environmental investments that are “intended to create positive impact beyond financial return.”³⁹

The Incarceration to Incorporation Bill offers a unique platform for Washington, D.C., to both invest in the lives of returning citizens struggling to find employment and empower communities seething with frustration over unequal economic opportunities. As civil rights activist and philosophy professor Dr. Cornel West has eloquently pointed out, marginalized communities across America “have a righteous indignation at injustice”⁴⁰ that has become emblematic of this millennial generation⁴¹

37. See Wes Rivers & Claire Zippel, *While DC Continues to Recover from Recession, Communities of Color Continue to Face Challenges*, DC FISCAL POL’Y INST. (Sept. 18, 2015), <http://www.dcfpi.org/while-dc-continues-to-recover-from-recession-communities-of-color-continue-to-face-challenges> (explaining that 26 percent of Black people in Washington, D.C., lived below the poverty line in 2014).

38. The Incarceration to Incorporation Bill anticipates a diversity of funding streams, including appropriated funds, donations from the public, donations from private entities, and funds provided through a sponsorship agreement. See B21-0463, *supra* note 32, at 2.

39. See J.P Morgan Global Research & The Rockefeller Found., *Impact Investments: An Emerging Asset Class* 14 (Nov. 29, 2010), <https://theiig.org/assets/documents/Impact%20Investments%20an%20Emerging%20Asset%20Class2.pdf>. A 2015 survey of 158 investors revealed that the global impact investing market committed more than \$15 billion to impact investments in 2015 and planned to increase capital committed by 16% in 2016. See Abhilash Mudaliar et al., *2016 Annual Impact Investor Survey*, J.P. Morgan & the Global Impact Investing Network (May 2016). While the market shows continued growth, it represents a small portion of total assets under management worldwide, which is expected to exceed \$100 trillion by 2020. See Michael Liersch, *Millennials and Money*, Private Banking & Inv. Grp., Bank of America Merrill Lynch (2013).

40. Cornel West, “*Living and Loving Out Loud*” Interview, NPR TALK OF THE NATION, Oct. 29, 2009, transcript available at <http://www.npr.org/templates/story/story.php?storyId=114287606> (stating “I still have a righteous indignation at injustice, no matter what form it takes. It could be homophobia, it could be white supremacy, male supremacy, imperial arrogance, class subordination or whatever.”)

41. See D. Watkins, *In Baltimore, We’re All Freddie Gray*, N.Y. TIMES (Apr. 28, 2015), http://www.nytimes.com/2015/04/29/opinion/in-baltimore-were-all-freddie-gray.html?_r=0 (declaring “[b]ut it’s not only about Freddie Gray. Like him, I grew up in Baltimore, and I and everyone I know have similar stories, even if they happened to end a little differently. To us, the Baltimore Police Department is a group of terrorists, funded by our tax dollars, who beat on

and reminiscent of a not too distant civil rights movement.⁴² However, opinions remain divided on how best to provide beneficial social services for needy citizens while promoting economic growth and development in evolving communities. How does a local government sustainably fund a program like the IIEP? Perspectives are mixed, in part due to differing opinions on who is to blame for poverty. While some scholars believe that low-income communities of color are responsible for their inability to break the cycle of poverty in their neighborhoods, others point to a history of institutionalized racism that has stifled opportunity for marginalized peoples.⁴³ These ideologies have shaped the landscape of CED initiatives, policies, and tools used by the public and philanthropic sectors to spark social transformation. However, foundations and philanthropists have historically lacked the necessary capital to scale proven programs and provide non-profit service providers with much-needed multiyear support to create lasting change.⁴⁴ Funding innovative social service programs that address the range of challenges plaguing our communities requires creative solutions that can overcome government funding constraints.

people in our community daily, almost never having to explain or pay for their actions.”).

42. See ALDON D. MORRIS, *THE ORIGINS OF THE CIVIL RIGHTS MOVEMENT 195* (1984) (“Nineteen sixty was the year when thousands of Southern black students at black colleges joined forces with “old movement warriors” and tremendously increased the power of the developing civil rights movement.”).

43. Compare Wesley Lowery, *Paul Ryan, Poverty, Dog Whistles, and Electoral Politics*, WASH. POST (Mar. 18, 2014), <https://www.washingtonpost.com/news/the-fix/wp/2014/03/18/paul-ryan-poverty-dog-whistles-and-racism/> (quoting Congressman Paul Ryan (R-WI), “We have got this tailspin of culture, in our inner cities in particular, of men not working and just generations of men not even thinking about working or learning the value and the culture of work, and so there is a real culture problem here that has to be dealt with.”) with Ta-Nehisi Coates, *The Secret Lives of Inner-City Black Males*, ATLANTIC (Mar. 18, 2014), <http://www.theatlantic.com/politics/archive/2014/03/the-secret-lives-of-inner-city-black-males/284454/> (declaring “Certainly there are cultural differences as you scale the income ladder. Living in abundance, not fearing for your children’s safety, and having decent food around will have its effect. But is the culture of West Baltimore actually less virtuous than the culture of Wall Street? I’ve seen no such evidence. Yet that is the implicit message accepted by Paul Ryan, and the message is bipartisan.”).

44. See Emily Gustafsson-Wright et al., *The Potential and Limitations of Impact Bonds: Lessons from the First Five Years of Experience Worldwide* at 1 (Brookings Inst. 2015), <http://www.brookings.edu/~media/Research/Files/Reports/2015/07/social-impact-bonds-potential-limitations/Impact-Bondsweb.pdf?la=en> (noting, for example, “Low levels of education and the prevalence of malaria result from the inability of governments to equitably deliver high-quality services in the education and health sectors. This inability may arise from lack of resources, ineffective use of such resources, or both.”).

This, coupled with a now dominant CED ideology that favors market-based strategies over grassroots political activism,⁴⁵ has resulted in a focus on innovations that expand opportunities for the private sector to invest in low-income communities to drive community development.

Recent efforts by foundations, corporations, and governments across the globe highlight the ability to leverage private investment capital to finance social service programs through “pay-for-success” contracts. Specifically, a type of pay-for-success contract called the “social impact bond” has been heralded as a new financial vehicle that can help local governments attract capital from the private sector to finance important social service programs.⁴⁶ In the United States, President Barack Obama’s administration has demonstrated a tangible interest in the social impact bond,⁴⁷ and various states have also begun to consider its potential for financing their social service programs, particularly in the criminal justice arena. As Washington, D.C., explores the implementation of the Incarceration to Incorporation Bill, a deeper analysis of the social impact bond model and its potential for funding criminal justice programs should be considered.

III. Can Social Impact Bonds Finance Criminal Justice Reform?

Social impact bonds (SIBs) add to a rich history of market-based CED strategies in the United States that seek to address social inequities by creating new channels for the private sector to make strategic investments into marginalized communities.⁴⁸ Unlike traditional bonds or debt instruments,

45. See *infra*, note 48.

46. See V. Kasturi Rangan & Lisa A. Chase, *The Payoff of Pay-for-Success*, STANFORD SOC. INNOVATION REV. (Fall 2015), http://ssir.org/up_for_debate/article/the_payoff_of_pay_for_success (explaining that social impact bonds have been “widely touted as a clever way to fill the funding gap plaguing social programs by attracting a tranche of the trillions of dollars in private return-seeking capital”).

47. In February 2011, President Barack Obama’s proposed fiscal year 2012 budget included up to \$100 million to support pilot pay-for-success programs targeting issues like recidivism, workforce training, and homelessness. In fiscal year 2013, a similar request was made for the slightly increased amount of \$109 million. Although neither of the budget proposals were supported in Congress, in the 2014 fiscal year budget proposal, the Obama administration requested nearly \$500 million to support these programs, which included a proposed \$300 million fund designed to encourage state and local governments to develop Social Impact Bonds and to be administered by the Treasury Department. See Sonal Shah & Kristina Costa, *Social Impact Bonds: White House Budget Drives Pay for Success and Social Impact Bonds Forward*, CTR. FOR AM. PROGRESS (Apr. 23, 2013), <https://www.americanprogress.org/issues/economy/news/2013/04/23/61163/white-house-budget-drives-pay-for-success-and-social-impact-bonds-forward/>.

48. During the 1990s, CED evolved into a market-based poverty alleviation strategy that stood in opposition to the welfare policies and entitlement programs born out of the civil rights movement. As consensus formed around the idea that increasing for-profit opportunities in geographically isolated low-income neighborhoods

SIBs work by creating public/private partnerships between state or local governments, private foundations, non-profit organizations, and private investors.⁴⁹ These entities collaborate to inject private-sector capital into traditionally public-sector activities. Non-profit service providers are funded through privately invested funds, and private investors are repaid with government cost savings after evidence-based outcome metrics have been achieved by the SIB program.⁵⁰ If the outcome metrics outlined in the social impact bond are not met, the government typically does not have to pay for the services delivered.⁵¹ This financing model is a powerful tool for state and local governments to reduce long-term costs while prioritizing the outcomes of their social programs,⁵² as well as an opportunity for philanthropies and private investors to help increase the pool of funding available for innovative social service programs that target challenging issues like recidivism and unemployment.

The first SIB in the United States was launched by New York City in 2012 to help reduce juvenile recidivism at the Rikers Island Correctional Facility (Rikers Island SIB).⁵³ In the Rikers Island SIB, Goldman Sachs

could produce social transformation and economic empowerment, government policy followed. At the national level, initiatives such as the Empowerment Zones Program and New Markets Tax Credit sought to stimulate investment in low-income neighborhoods and promote economic development. The privatization of social welfare policy led to increased support for CED financing strategies, such as real estate investment trusts, microfinance, and community development trusts, that channeled private sector capital into low-income neighborhoods. For a discussion of the history and impact of market-based CED in the United States, see Scott L. Cummings, *Community Economic Development as Progressive Politics: Towards a Grassroots Movement for Economic Justice*, 54 STANFORD L. REV. 3, 399–493 (2001).

49. See Gustafsson-Wright, *supra* note 44, at 4.

50. *Id.*

51. *Id.* at 6.

52. SIBs differ from traditional performance-based government contracting, where payments are typically triggered by performance “outputs” like the number of individuals reached through a social service program, rather than performance “outcomes,” which focus more on tangible changes in the lives of the target population. See Deborah Burand, *Globalizing Social Finance: How Social Impact Bonds and Social Impact Performance Guarantees can Scale Development*, 9 N. Y. U. J. L. & BUS. 447, 464 (2013).

53. See Eduardo Porter, *Wall St. Money Meets Social Policy at Rikers Island*, N.Y. TIMES (July 28, 2015), http://www.nytimes.com/2015/07/29/business/economy/wall-st-money-meets-social-policy-at-rikers-island.html?_r=0; see also Kristina Costa, *Social Impact Bonds: New York City and Massachusetts to Launch the First Social Impact Bond Programs in the United States*, CTR. FOR AM. PROGRESS (Nov. 5, 2012), <https://www.americanprogress.org/issues/economy/news/2012/11/05/43834/new-york-city-and-massachusetts-to-launch-the-first-social-impact-bond-programs-in-the-united-states/> (explaining “In New York City, juvenile offenders between the ages of 16 and 18 serve their sentences in the adult corrections system. Recidivism is very high among these youth—nearly 50 percent of young offenders

invested \$9.6 million to support a social service program for approximately 3,000 adolescent males to receive cognitive behavioral therapy before and during their transition out of prison.⁵⁴ In 2013, New York State created a SIB valued at \$13.5 million that aimed to reduce adult recidivism by providing job training for recently incarcerated adults through a non-profit called the Center for Employment Opportunities (CEO SIB).⁵⁵ The CEO SIB in New York, which targeted 2,000 recently incarcerated adults, was funded through an investment from Bank of America-Merrill Lynch.⁵⁶ An increasing number of other jurisdictions across America have also begun exploring social impact bonds as a funding tool for CED, particularly in the criminal justice arena where the reduction of prison beds can lead to verifiable cost savings to the government. For example, in 2014, the State of Massachusetts contracted with non-profit service provider Roca and announced a \$21.3 million, seven-year social impact bond aimed at reducing the recidivism rate within the state by 40 percent by working with 929 young adult males.⁵⁷

SIBs are a new innovation and have faced criticism.⁵⁸ The financing model was only recently pioneered in the United Kingdom in September

return to Rikers Island within a year of their release. Currently, adolescents incarcerated on Rikers do not receive consistent services to prevent re-offending”).

54. See Shah, *supra* note 47.

55. See Alana Semuels, *A New Investment Opportunity: Helping Ex-Convicts*, ATLANTIC (Dec. 21, 2015), <http://www.theatlantic.com/business/archive/2015/12/reducing-recidivism/421323/> (explaining that the social impact bond investment would fund an expansion of the workplace training provided by the Center for Employment Opportunities for individuals leaving prison).

56. *Id.*

57. See Ben Hecht, *Massachusetts Pay for Success Initiative Advances Government, Private Sector, and Philanthropic Investment in Human Capital*, HUFFINGTON POST (Apr. 13, 2014), http://www.huffingtonpost.com/ben-hecht/massachusetts-pay-for-suc_b_4761124.html (explaining that the investment would “allow Roca, a non-profit that for 25 years has delivered an evidence-based high impact intervention that has reduced incarceration rates among high-risk individuals . . . to tackle the problem of juvenile recidivism, but also to train participants in job readiness, education readiness, and life skills.”).

58. Scholars have argued that SIBs may lead to the privatization of important social objectives that should be managed by the public sector. See Dexter Whitfield, *Alternative to Private Finance of the Welfare State; A Global Analysis of the Social Impact Bond, Pay-for-Success and Development Bond Projects*, Australian Workplace Innovation and Social Research Centre (Univ. of Adelaide 2015) (arguing that SIBS “increase the rate of commodification, marketization and privatization processes”); see also Rick Cohen, *Social Impact Bonds Not Well Received at Senate Budget Hearing*, NONPROFIT Q. (May 7, 2014), <https://nonprofitquarterly.org/2014/05/07/social-impact-bonds-not-well-received-at-senate-budget-hearing/> (quoting Senator Angus King (I-ME) as stating, “I think this is an admission that government can’t do what it’s supposed to do. . . . This just strikes me as . . . it’s a fancy way of contracting

2010 with a social service program focused on reducing recidivism at the Peterborough Prison.⁵⁹ As a result, although the structure has the potential to provide long-term capital investments for social service programs with the capacity to scale, to truly advance innovation, there is a critical need for accelerated learning that quickly translates lessons learned into best practices.⁶⁰ Moreover, not every SIB program will reap financial rewards for private investors, especially those that are being used to fund program ideas that have yet to be proven. Notably, the Rikers Island SIB was recently terminated in July 2015 after failing to meet its recidivism goals, resulting in a \$1.2 million loss in outcome payments for Goldman Sachs.⁶¹ However, because a myriad of factors impact juvenile recidivism, it is unclear whether one can truly measure success over the span of only a few years of program implementation. Perhaps the lesson to be learned from the “failure” of the Rikers Island SIB program is that the best strategy to reduce juvenile recidivism may be one that not only includes one-on-one counseling, but also incorporates robust community-centered CED initiatives that address the economic opportunities available to returning citizens outside prison walls.⁶² Incarcerated men and women may need fewer social service programs premised on a cognitive behavioral therapy

out. And as I say, I don't believe government contracts very well . . . and the government is always going to be outfoxed on the contracts, in my experience.”).

59. For more information on the history of SIBs, see generally *From Potential to Action: Bringing Social Impact Bonds to the US* (McKinsey & Co. May 2012), http://mckinseysociety.com/downloads/reports/Social-Innovation/McKinsey_Social_Impact_Bonds_Report.pdf; see also Burand, *supra* note 52, at 452–67.

60. See Jeffrey B. Liebman, *Social Impact Bonds: A Promising New Financing Model to Accelerate Social Innovation and Improve Government Performance*, CTR. FOR AM. PROGRESS (Feb. 2011), https://cdn.americanprogress.org/wp-content/uploads/issues/2011/02/pdf/social_impact_bonds.pdf (arguing “if long-duration contracts or payments that include the future value of learning are not feasible, social impact bonds will likely be limited to interventions that have already demonstrated significant net benefits in rigorous impact studies and proved themselves scalable”).

61. Goldman Sachs suffered only a \$1.2 million loss from its \$9.6 million investment. Its overall loss was reduced because of a partial guarantee provided by Bloomberg Philanthropies. See Burand, *supra* note 52, at 458. For an overview of the Rikers Island SIB evaluation by the Vera Institute of Justice, see *Impact Evaluation of the Adolescent Behavioral Learning Experience (ABLE) Program at Rikers Island*, Vera Institute of Justice (Vera Inst. of Just. July 2015), <http://www.vera.org/sites/default/files/resources/downloads/adolescent-behavioral-learning-experience-evaluation-rikers-island-summary-2.pdf>.

62. Indeed, such a model would be more similar to the approach taken at the criminal justice SIB at the Peterborough Prison in the United Kingdom, which created a voluntary rehabilitation program called “One Service” that provided individualized housing, education, vocational training, and health care services to incarcerated individuals as they transitioned out of prison. See Emma Disley et al., *Lessons Learned from the Planning and Early Implementation of the Social Impact Bond*

model that pathologizes their criminality⁶³ and more comprehensive CED initiatives grounded in an economic justice framework that seeks to enrich their future employment prospects and drive economic mobility.⁶⁴ In fact, scholars have argued that the true driver of recidivism may not be poor decision making by supposedly “irresponsible” citizens in our land of opportunity, but rather limited choices for frustrated individuals living in neighborhoods riddled with concentrated poverty.⁶⁵ This is an important insight for policymakers in Washington, D.C., in their consideration of how to implement the Incarceration to Incorporation Entrepreneurship Program. Returning citizens need greater access to economic empowerment opportunities as much as they need greater access to skill training.

Nevertheless, these early criminal justice initiatives funded through SIBs have proven immensely valuable. SIBs provide state and local governments with important lessons on how to vet social service providers and effectively measure the success of social service programs, while also illuminating best practices for public/private partnerships. Moreover, investment banks like Goldman Sachs have not stopped investing in SIBs.⁶⁶ In fact, Goldman Sachs recently became the first successful SIB investor in the United States by financing a SIB to help pay preschool

at HMP Peterborough (Rand Europe 2011), http://www.rand.org/pubs/technical_reports/TR1166.html.

63. The model used in the Rikers Island SIB employed moral reconnection therapy with the incarcerated youth, a form of cognitive behavioral therapy that focuses on improving social skills, personal responsibility, and decision making. See Shah, *supra* note 47.

64. See Jarrett Murphy, *Did Rikers Policy Experiment Look at the Right Policies?*, CITY LIMITS (July 7, 2015), <http://citylimits.org/2015/07/07/did-rikers-policy-experiment-look-at-the-right-policies/> (questioning “[i]s the main driver of youth recidivism a lack of social skills, a deficiency of personal responsibility or an epidemic of poor decision-making? . . . Is a youth who is homeless really able to make decisions that keep him out of the criminal justice system?”).

65. See Trymaine Lee, *Recidivism Hard to Shake for Ex-Offenders Returning Home to Dim Prospects*, HUFFINGTON POST (June 10, 2012), http://www.huffingtonpost.com/2012/06/09/recidivism-harlem-convicts_n_1578935.html (noting “[i]n the case of East Harlem, also known as El Barrio or Spanish Harlem, analysts blame the area’s high incarceration and recidivism rates on the continuing plague of poverty, a concentration of public housing complexes, major disparities in the quality of education and a long history of gangs and drug culture”).

66. Goldman Sachs has expressed a commitment to the SIB model. In August 2012, CEO and Chairman Lloyd Blankfein observed, “We believe this investment paves the way for a new type of instrument that enables the public sector to leverage upfront funding from the private sector.” Press Release, N.Y.C. Office of the Mayor, Mayor Bloomberg, Deputy Mayor Gibbs and Corrections Commissioner Schirio Announce Nation’s First Social Impact Bond Program (Aug. 2, 2012), http://www.nyc.gov/portal/site/nycgov/menuitem.c0935b9a57bb4ef3daf2f1c701c789a0/index.jsp?pageID=mayor_press_release&catID=1194&doc_name=

costs for special needs students in Utah.⁶⁷ After a year in preschool, the one hundred students participating in the program did not require additional educational assistance, enabling the State of Utah to repay Goldman Sachs with state educational cost savings.

IV. Opportunities for the Future of SIBs in the United States

The benefits of social impact bonds for the future of social service programs have garnered much interest among social justice advocates and impact investors. First, SIBs expand the pool of available capital for social service programs, especially important during an era of government austerity at both the state and local levels.⁶⁸ Not only does this method of financing enable governments to tap into the growing pool of capital in the impact investing community, but it also provides a platform to scale proven evidence-based social service programs and drive innovation.⁶⁹

Second, government-sponsored social service programs are historically remedial in nature, targeting social problems as they arise or after they have materialized in communities. This practice mitigates the impact of political and financial risk.⁷⁰ However, these political strategies often fail to situate the key drivers of crime in low-income communities within the context of our country's history of institutional racism. Rather than address the structural aspects of poverty that often promote criminal behavior, they offer re-development that fails to provide meaningful economic opportunities for longstanding residents.⁷¹ In contrast, SIBs allow state and local governments to prioritize preventive and forward-thinking programs, which benefit the public through future government cost savings while also shifting the financial risks of innovation to the private sector.⁷² Of course, jurisdictions that are

<http://www.nyc.gov/html/om/html/2012b/pr285-12.html&cc=unused1978&rc=1194&ndi=1>.

67. See Nathaniel Popper, *For Goldman, Success in Social Impact Bond That Aids Schoolchildren*, N.Y. TIMES (Oct. 7, 2015), <http://www.nytimes.com/2015/10/08/business/for-goldman-success-in-social-impact-bond-that-aids-schoolchildren.html> ("For people studying social impact investing, the results in Utah are exciting—even more so given the children's success. Among the 110 students who had been expected to need special education had they not attended preschool, only one actually required it this year.").

68. See Peter Gosselin, *Here's How You Add 2.4 Million Jobs to the Economy*, BLOOMBERG (May 28, 2015), <http://www.bloomberg.com/news/articles/2015-05-28/government-austerity-exacts-toll-on-u-s-jobs-wages-and-growth> ("The nation's retreat from tax cuts and spending increases to promote the recovery has been a bipartisan affair. Democratic President Barack Obama and Republican House Speaker John Boehner agreed in 2011 to apply the fiscal brakes by negotiating \$1 trillion in spending cutbacks over 10 years and a process to impose more.").

69. See McKinsey & Co., *supra* note 59; see also Burand, *supra* note 52, at 463.

70. See McKinsey & Co., *supra* note 59; see also Burand, *supra* note 52, at 463.

71. See Hauber, *supra* note 13, at 8.

72. See Gustafsson-Wright, *supra* note 44, at 38.

structuring SIBs must recognize that the problems of social and economic inequality in America do not lie solely within the hands of marginalized individuals struggling to find employment and improve their well-being, but also in the tools that are within their grasp as they wrestle with a criminal and economic justice system that does not always meet their needs.⁷³ As a result, a SIB investing in a social service program targeting recidivism—such as a theoretical SIB in Washington, D.C., funding the IIEP—must be grounded in an equitable CED model that advances economic justice through an authentic engagement with the community.

Third, due to the complexity of the SIB model and the focus on assessing outcome metrics, SIBs promote the efficient allocation of public resources and provoke a shift in government culture with respect to the procurement and provision of critical government social services.⁷⁴ Through public/private partnerships, both state and local governments learn to better quantify the costs of addressing social inequities, and non-profit service providers learn to better quantify the benefits of their social service interventions, all of which drive enhanced performance management for social services.⁷⁵ In addition, successful non-profit service providers that identify workable solutions to critical challenges are rewarded with investments that help them scale.

Despite these benefits, the future implementation of SIBs in the United States face several challenges. First, SIBs are very complex transactions with high transaction costs, requiring significant legal and financial expertise, institutional expertise, and detailed negotiation among key stakeholders. Deal structuring can take hundreds of hours of financial analysis and legal drafting, as well as require extensive due diligence on the appropriate metrics to measure success, the relevant strategies to engage with constituents, and the best tools for impact evaluation.⁷⁶ The conventional SIB ecosystem includes at least seven stakeholders, and each stakeholder brings certain skills to the table and faces unique challenges.⁷⁷ Additionally,

73. See, e.g., Jennifer Forbes, *Using Economic Development Programs as Tools for Urban Revitalization: A Comparison of Empowerment Zones and New Markets Tax Credits*, 2006 U. ILL. L. REV. 177 (2006).

74. See John K. Roman et al., *Five Steps to Pay for Success: Implementing Pay for Success Projects in the Juvenile and Criminal Justice Systems* (URB. INST. June 2014), at 14, <http://www.urban.org/sites/default/files/alfresco/publication-pdfs/413148-Five-Steps-to-Pay-for-Success-Implementing-Pay-for-Success-Projects-in-the-Juvenile-and-Criminal-Justice-Systems.PDF>.

75. See Gustafsson-Wright, *supra* note 44, at 43.

76. For example, the Peterborough SIB in the United Kingdom required 2.5 person years of resources and more than 300 hours of legal advice (provided pro bono). See Burand, *supra* note 52, at 479, n.73; see also Roman, *supra* note 74, at 14.

77. These stakeholders include constituents, investors, non-profit service providers, the intermediary, the independent assessor, the evaluation advisor, and the government. See McKinsey & Co., *supra* note 59, at 14–15; see also Burand,

the balance of risk and reward is difficult to navigate because local governments may not always be able to pay a financial return that is proportional to the risks taken by impact investors.⁷⁸

Second, although SIBs have received great reception in the United Kingdom, they are not widespread in the United States. It is also unclear whether the impact investing community in the United States will invest in social service programs that truly drive innovation or will simply focus on the “tried and true” service providers that offer a lower risk of failure. As the private sector takes a more active role in selecting social service providers, the high level of sophistication required to negotiate SIB deals may squeeze out smaller, less-resourced non-profits from these funding opportunities. Furthermore, insisting on a model solely premised on government cost savings might unnecessarily rule out innovative programs that are hard to quantify but still yield valuable social benefits.⁷⁹ Many local and state governments will simply not know how to adequately price some SIB programs. If governments are pressured to renegotiate terms in the middle of a SIB implementation because program costs outweigh the benefits, they face the risk of private investors “shutting down” the deal, which ultimately hurts the recipients of these critical social services.

To combat these risks, some private investors have required credit enhancements in the form of partial guarantees from the philanthropic community,⁸⁰ while other SIBs have prioritized “proven” social service programs to reduce the risk of program failure. It remains unclear whether private investors can overcome the appropriations risk from governments that may choose to withdraw from negotiated commitments after changes in administration leadership. Some governments have attempted to use legislation to address this challenge.⁸¹ Still, SIBs in the United States will always maintain a degree of political risk because state and local procurement rules often hinder collaborative negotiation between governments and certain stakeholders, slowing negotiation and limiting the feasibility of closing transactions.⁸²

supra note 52, at 467–80 (explaining the broad range of risks facing the various stakeholders involved in SIB deals).

78. See Gordon L. Berlin, *Learning from Experience: A Guide to Social Impact Bond Investing* at 8–9, MDRC (Mar. 2016), http://www.mdrc.org/sites/default/files/Learning_from_Experience_SIB.pdf.

79. See McKinsey & Co., *supra* note 59, at 37 (noting “[r]epaying investors from realized cash savings may require aggregating SIB benefits across multiple agencies and programs as well as different levels of government. This could prove challenging.”).

80. See text accompanying *supra* note 59.

81. See Burand, *supra* note 52, at 477 (“In 2012 Massachusetts passed legislation to establish a sinking fund to finance payments owed by the state on certain qualifying pay-for-success contracts.”).

82. See Berlin, *supra* note 78, at 14.

Finally, SIB models must overcome a dominant market-based CED ideology that scholars argue fails to adequately address the root causes of criminal activity and poverty.⁸³ Indeed, the presumption that an infusion of external capital can adequately address community-centered challenges may divert attention from the political dimensions of CED and poverty, while also favoring local incrementalism over broad-based structural reform.⁸⁴ Addressing the systemic drivers of poverty and racial injustice in marginalized communities, which often can trigger criminal behavior, is a critical component of CED. Unfortunately, too many CED strategies fail to empower residents in a meaningful way and provide opportunities for them to directly benefit from redevelopment initiatives in their own neighborhoods. At the conclusion of social service programs, are communities left more politically engaged and prepared to challenge the institutional structures that perpetuate cyclical poverty? And perhaps most important of all, has anyone asked community-based organizations and community-centered coalitions whether they would also like to invest in and profit from the SIBs targeting social challenges in their very own neighborhoods? This will be a critical consideration for the implementation of the IIEP in Washington, D.C. Indeed, a sole focus on SIB models that include only evidence-based metrics for program evaluation and large, institutional impact investors could lead to a reliance on oversimplified program models that obscure the true scope of the costs, benefits, and savings to local communities. SIB programs targeting recidivism must be certain to avoid pathologizing criminality by placing blame solely on the mindset of incarcerated individuals⁸⁵ and instead seek to empower entire communities struggling to overcome poverty.

Looking forward, scholars are beginning to identify alternative SIB models that address the myriad of concerns facing the financial model's success. The successful SIB not only capitalizes on the funding provided by eager impact investors, but also integrates a more equitable CED model that forges new multiracial coalitions, links community-based initiatives to broad-based structural reform, and advances economic justice through community accountability and ownership. Innovations such as the micro-SIB model,⁸⁶ equity crowdfunding platforms, and the impact

83. See generally Cummings, *supra* note 48; see also Hauber, *supra* note 13, at 7–9.

84. See Cummings, *supra* note 48 at 442 (noting that “there has been a powerful tendency to treat the local neighborhood as a discrete economic unit in need of rebuilding”).

85. See Roman, *supra* note 74, at 2 (noting “[as] currently constituted, the juvenile justice and adult criminal justice systems focus on remediation rather than prevention, if they are therapeutically oriented at all”).

86. See Ean Garrett et al., *The Micro Social Impact Bond: A Framework for 21st Century Social Innovation*, INFINITE 8 INST. L3C (Sept. 2015), https://issuu.com/infinite8institute/docs/themicrosibwhitepaper_final_.

bond fund model,⁸⁷ which has been primarily used in the United Kingdom, offer a promising pathway for the future of this financial tool.

Further, pro bono legal service programs like the Small Business & Community Economic Development Clinic at the George Washington Law School can help facilitate the business development goals of returning citizens and the policy goals of social justice advocates. Students at the SBCED Clinic have helped advance small business development by creating small businesses and worker cooperatives, forming non-profit organizations, conducting business negotiations, creating corporate subsidiaries, obtaining federal tax exemptions, registering trademarks, and supporting community organizers and community groups to achieve economic justice through advocacy.⁸⁸ The SBCED Clinic has also empowered returning citizens by advancing important policy measures, from the publication of white papers discussing economic justice initiatives to hosting public forums with key stakeholders to discuss innovations in criminal justice reform.⁸⁹ With respect to the Incarceration to Incorporation Bill, the SBCED Clinic could play a helpful role in negotiating and drafting important legal documents for a social impact bond deal, as well as help facilitate the participation of important community-based entities, such as community development financial institutions and business incubators focused on the returning citizens community. All of these activities help law students develop critical lawyering skills, while also supporting innovations that advance economic justice and embody the core public service mission of clinical legal education.

Returning citizens do not have to do it alone. Developing strategic partnerships between the public and private sector, while also involving the academic community through law school clinics, can facilitate community-driven economic justice initiatives that not only forge and fortify new and existing multiracial coalitions, but also develop a broader network of stakeholders who are invested in advancing economic justice. Ultimately, by working together, we can help level access to economic opportunities and impact the structural determinants of poverty that trigger criminal activity.

V. Conclusion

The Incarceration to Incorporation Entrepreneurship Bill can utilize the social impact bond model, alongside other funding streams, to help finance the IIEP Fund. Recidivism is a social problem that can be objectively measured and will result in identifiable cost savings to the Washington, D.C., government, factors that have proven to be critical to the success

87. See Gustafsson-Wright, *supra* note 44, at 9 (the impact bond fund model facilitates multiple outcome payment contracts around the same social issue).

88. See Jones, *supra* note 16, at 53.

89. See text accompanying *supra* note 17; see also Jones, *supra* note 17.

of social impact bonds.⁹⁰ Moreover, in a world of limited employment prospects for returning citizens, entrepreneurship can be a viable pathway to the middle class, an important theme of D.C. Mayor Muriel Browser's administration.⁹¹ However, Washington, D.C., must be certain that this market-based CED financial tool integrates an economic justice approach to community empowerment. As highlighted in the Rikers Island SIB, a social service program that focuses almost exclusively on the behavior of incarcerated individuals may lead to failure.

For too many Americans, a prison record feels like a revocation of citizenship and all of its associated benefits. But in the words of President Barack Obama, "In America, we believe in redemption . . . We believe that when people make mistakes, they deserve the opportunity to remake their lives."⁹² The Incarceration to Incorporation Entrepreneurship Bill is not simply about individuals who made mistakes and served their time behind bars. This initiative is not simply about mothers and fathers, and sisters and brothers who need our help. This is about residents of Washington D.C., and citizens of these United States. This is about driving innovation and leveraging every available funding platform to eliminate recidivism for good. This is about ending the debate over retribution and shifting our focus towards economic democracy.⁹³ In a country where over 35 percent of the prison population is Black,⁹⁴ it's about time that Washington D.C. stands up, fights back, and proudly declares that Black Lives Matter. Let's do something to empower returning citizens and welcome them home.

90. See Berlin, *supra* note 78.

91. See generally Executive Office of the Mayor, *supra* note 25.

92. Barack Obama, *Barack Obama: Why We Must Rethink Solitary Confinement*, WASH. POST (Jan. 25, 2016), https://www.washingtonpost.com/opinions/barack-obama-why-we-must-rethink-solitary-confinement/2016/01/25/29a361f2-c384-11e5-8965-0607e0e265ce_story.html.

93. Economic justice was a critical building block of the vision of democracy our country was founded upon and an important component of the civil rights movement. As Gary Chartier explains, "If democracy means self-government, then our progress toward democracy will be incomplete until all people are able meaningfully to influence the structures and processes that shape their environments and constrain their choices." See Chartier, *supra* note 16, at 274.

94. African Americans comprise approximately 35 percent of jail inmates and 37 percent of prison inmates as of 2014. See Todd D. Minton & Zhen Zeng, *Jail Inmates at Midyear 2014*, U.S. Department of Justice (2014), <http://www.bjs.gov/content/pub/pdf/jim14.pdf>.