2021 Law School Access to Justice Conference
Fighting Systemic Racism: Law School and Community Partnerships

1C. Community Economic Development and Systemic Racism

David Craft: Thank you. Todd, would you like to take it away?

Todd Arena: Absolutely, thanks to everyone who's joined us today.

So, we'll be discussing community economic development as a form of legal practice area that responds to systemic racial injustice through–and I'll be discussing it from an access to justice lens.

To start I'll–you know, answering the question of what community economic development as a legal practice area is, we have to start by acknowledging that it is a response to a specific set of historical developments.

Racial discrimination is a core component of today's inequality of opportunity and outcome. Racism limits the ability of many families, especially African American and Latino families, to build wealth through homeownership.

Racism and austerity result in highly unequal public education opportunities, and economic and racial segregation allow powerful majorities to ignore needs concentrated in low-income communities. Having fled diverse urban centers, inner ring suburbs, and rural communities, middle-income and wealthy Americans can direct public funds, including a significant portion of local tax contributions, to public and private goods consumed exclusively in higher income communities while ignoring intense need in the now under-resourced areas they fled from.

To restate, the so-called "white flight" results in interest divergence: allowing middle-class and wealthy Americans to direct public resources to goods that serve their needs, but not the needs of low-income people. This is precisely the context that led to the historical development of community economic development, or CED, which to this day is defined by the goal of serving communities suffering the brunt of that interest divergence.

To bring this into the context of today's conference, CED seeks to break down the limitations our socioeconomic and governmental structures place on economic opportunity and outcomes. It seeks to expand access to public resources that enable low-income families to thrive and low-income families and communities to build wealth. Inherent in this is an expanded understanding of what constitutes access to justice, one that is based in a broad conception of not only justice but also access.

CED practitioners tend to come from a transactional background, building into our work not just a focus on the accessibility and responsiveness of the court system, but also of other legally constituted societal institutions, such as markets and governmental agencies. CED practice tends to center around real estate, tax, regulatory and licensing systems, and, most frequently, the statutes that enabled business entities to be chartered, among many, many other legal practice areas.

So, with that sort of introductory and functional definition, I think that should lay the groundwork pretty well, so I'll just turn it back over to our moderator.

David Craft: Great. Thank you, Todd, for that introduction. I think next we'll go into some stories from CED practitioners throughout the state, as well as outside of the state, explaining what their CED clinic work entails and how it addresses issues and systemic racism. Anika would you like to go first and maybe introduce yourself?

Anika Singh Lemar: Absolutely. Thanks, Todd. Thanks, David.

I'm coming to you all from the end of the Metro North line to New Haven, where I teach the Community and Economic Development Clinic at Yale Law School. Thanks, everybody, for having me today and extending your definition of "New York" to encompass commuting distance here in Connecticut.

So, I teach the Community and Economic Development Clinic at Yale that's been around for about 30 years. The clinic was born, really, out of interest from both faculty and students here in using legal services to access remedies to systemic injustices of the type that Todd just described, and also in an effort to promote access to justice for organized groups of people—for community organizations seeking to bring resources to their community—and understanding that access to justice can mean a broad array of things, and not just access to courts for individuals but access to legal services for groups of entities.

So, my students and I today provide transactional legal services to clients across the spectrum, seeking to promote economic opportunity and mobility. They include affordable housing developers, community development financial institutions, farms, farmers markets, fair housing advocates, neighborhood associations; and what we're looking to do is to expand access to financial services, bring various types of resources, such as arts institutions, grocery stores, and housing, to chronically under-resourced communities. We're looking to break down barriers to affordable housing development in high opportunity communities, so we do quite a lot of advocacy and also transactional lawyering around building affordable housing in wealthy suburbs. We seek to promote access to healthy foods on behalf of our clients and facilitate entrepreneurship among low-income people interested in entrepreneurship.

So, I'm going to dig into one example among all those kinds of work, which is our work with low-income entrepreneurs. We structure our low-income entrepreneurship work by working with intermediary nonprofit organizations that are themselves working with entrepreneurs, and part of the reason we do that is it because it allows us to kind of multiply our impact.

We collaborate with nonprofit organizations that are looking to decrease operational barriers for start-up businesses, and typically we're working in industries that are dominated by women and people of color and immigrants. Good examples are food-based businesses and home-based childcare. So, for example, on the childcare side we work with a coalition of home-based childcare providers that was founded here in New Haven, but has since, in the last couple of years, expanded to New York City, as well, on both the organization's transactional needs (for example, setting up a revolving loan fund for home-based childcare providers to purchase educational materials), but also systemic change.

So, we're working on advocacy to change state law, for example, to reduce barriers to entry for licensed providers. We're currently working on a bill in Hartford, here in Connecticut, that would reduce the ability or eliminate the ability of local zoning officials, for example, to put home-based childcare providers out of business—which they do routinely and infuriatingly.

We also work with a local food nonprofit whose primary mission is operating food farmers markets in many of New Haven’s neighborhoods, but that also works with immigrants and refugees to operate and start food-based businesses. So, we'll provide training on various legal requirements to those start-up entities (federal law, state law, local law), but then we'll also take on direct representation of the businesses themselves to establish entities, or revise operating agreements, or seek various forms of licensing (for example, permission to operate a food truck), etc. So, what does that all have to do with racial justice?

The ways in which these small businesses are affected by the regulatory state is, at all points in time, informed by these low-income entrepreneurs’ ability to access a lawyer, which is itself informed by structural injustice. And I’ll give you an example from the family daycare context. We have a couple of clients, right now, all of whom are immigrants of color who are seeking local regulatory approvals to have their home-based childcares—and this relates to the statute that we're trying to pass at the state level to remove the local regulatory authority, because what ends up happening is, they end up being on the receiving end of oftentimes explicit, but also oftentimes implicit, racial bias.

One of the childcare providers that our clients work with, for example, was turned down a couple years ago for a local zoning approval, despite her state license, when some of her neighbors basically implied that she was incapable of watching small children because it was a really, really complicated thing—and how could she possibly be expected to understand the complexities of operating a licensed childcare business? Meanwhile, she had an early childhood certification that most childcare providers actually don't, but it was pretty clear that what her neighbors are talking about was the fact that she was a Haitian, African-American immigrant, and not anything about her actual ability to do the job. So, part of what we're trying to do is decrease those barriers so that they're less easily weaponized by neighbors and the like.

That's sort of an introduction to what we do, and I'll turn it back over to our moderator.

David Craft: Well, thank you for that, and we really appreciate it. Just a reminder, again, if people have questions feel free to put them in a chat. If anything you're hearing from any of the presenters is sticking out to you, feel free to put it in. We would love to get to hear your input and be able to respond to some of your questions at the end. In terms of our next presenter: again, just please introduce yourself prior to going into your piece. Lynnise Pantin, if you'd like to go ahead.

Lynnise Pantin: Great, thank you. Thanks, Anika and Todd. Hi, everyone, and thank you for having me. I'm Lynnise Pantin, I teach the Entrepreneurship and Community Development Clinic at Columbia Law School.

I wanted to add a little bit to Todd's definition of Community Economic Development, and to say that one component of Community Economic Development is wealth creation through entrepreneurship and small business development. I think Anika alluded to that in her talk, but just to be clear: entrepreneurship and economic justice are intertwined, as entrepreneurship has the potential to facilitate new business, create jobs, and foster innovation within communities.

And, while entrepreneurship can be a wealth-building strategy, it can also be prohibitive, right, if the entrepreneur doesn't have access to resources to create and grow a business.

So, there are barriers to entry related to access to capital, access to mentoring, and access to legal services. And access to attorneys is a major issue for many of the types of clients served by the clinic.

Our clients have legal needs, but they can't pay for legal services, and there are very few organizations and law firms in the city that will consider entrepreneurs and start-ups as a traditional pro bono legal matter. So, these barriers have historically caused under-representation of low-income communities, women, and people of color in entrepreneurial activity, and it prevents the prospect of wealth creation, which has implications for economic inequality and economic justice.

So, this theme of expanding access to entrepreneurial opportunity for low-income entrepreneurs and people of color is central to the mission of the clinic that I work with. My students support low-income entrepreneurs and minority entrepreneurs in creating and expanding their business ideas through individual, direct client representation.

And the clinic primarily represents entrepreneurs and business owners in our local community in Harlem, which is Columbia’s backyard. I describe the clinic is a transactional clinic that engages in two distinct types of work for underserved entrepreneurs: the first type is individual client representation, which is the majority of the work that we do, and the second is community impact work.

For direct client work, students represent small businesses and start-ups in the community, and they represent those organizations on all sort of legal matters from start to an exit.

But I really want to focus on some of the community impact work that the clinic has done in the past, and that’s ongoing as we're sort of spotlighting more on the community economic work the clinic is doing.

So, in partnership with a Small Business Development Center on Columbia's campus, my students have developed a legal toolkit for small businesses operating during the pandemic. The online tool kit included resources to operate a business during COVID, as well as templates to renegotiate existing contract terms with vendors, investors, and lenders.

Students also worked in partnership with the Small Business Development Center to create a page on our clinic website that served as a repository for legal and financial resources for small businesses, related to COVID-19. So, the web page included information about the Cares Act, an FAQ about the PPP process, and other available loans and grants throughout the city and state, as well as access to private capital and employment law matters (for example, in the pandemic) and other benefits and support to small businesses.

Another past community impact project with the clinic was that students joined forced with one of our local legal partners in the creation of what we call the Pop-Up Legal Clinic for participants in the New York City Housing Authority Food Business Pathways Program. Participants in the program were currently living in public housing and they were receiving, at the time, free business training to start and grow their food-related business, which they operate out of their homes.

So, students met with the program participants to answer questions about formalizing their business, and to help them draft operating agreements and template catering contracts. In that same evening, during the Pop-Up Clinic, students formed single-member limited liability companies online on behalf of the participants, so, at the end of the evening, the participants walked away with sample agreements, template catering contracts, and they had also officially formed their limited liability company.

So, the last project that I do want to make sure that I describe is a pro bono project that is not explicitly part of the clinic, but it's something that I've been working on with other members of the law school, our social justice initiatives program, and our pro bono program—we've been collaborating, as part of the Law School's anti-racism efforts. The Law School has been interested in increasing institutional engagement with the Harlem community, and so the Law School has been collaborating with community partners to have law students, under supervision of attorneys, provide estate planning and other transactional services, such as health care proxies and benefits documents, to its low-income elderly members in churches and senior citizen centers.

So, this type of pro bono project is one that I think I wanted to highlight, because I think it's something that could potentially be replicated as an example of CED work that can be done at firms and other institutions on a pro bono basis. So, thank you. David, I'll turn it back over to you.

David Craft: Thank you Lynnise, I really appreciate it. All right, our next presenter is Michael Haber.

Mike Haber: Hi everyone. I'm Mike Haber, I run the CED Clinic at Hofstra Law School on Long Island.

We cover a lot of the same kinds of cases as other CED clinics, representing some small businesses and social enterprises. We work a lot with worker cooperatives, community-based nonprofits, and affordable housing developers.

You know, in a lot of ways, our clients are the glue that holds together low-income communities and communities of color, filling in gaps in the market or the government. They'll provide for our communities: doing education, training workers, developing affordable housing, providing affordable childcare, doing violence prevention and gang action interruption services in places that are, you know, often kind of forgotten and off the map.

At Hofstra, our CED clinic has, in recent years, also started to move in a direction of representing social movement-connected groups, not just organizations that are helping out with real, important community-based problems, but also connecting in between communities and working toward demands for bigger and bolder solutions to address the problems that have plagued these communities for decades. In particular, the problem is connected to systemic racial injustice, in the moments that Professor Archer called a moment of racial reckoning.

That doesn't mean that our clients are always projects that are chiefly about street protests or community organizing, or lobbying, or other activities that may fit narrow definitions of activism, although that's part of it.

What I mean by movement-connected groups is that to ignore our clients' ties to social movements would be to lose sight of the animating vision for why they're doing this work.

So, to give just a couple quick examples of the kinds of clients that I put in this category: we helped to structure relationships between a coalition of groups that are fighting for, doing grassroots advocacy and organizing in support of, a vision of defunding the police. We're doing real estate finance for a group that is developing land upstate into a weekend retreat space for black LGBTQ activists who are often desperate for a facility that can be a place for both self-care and for strategic conversations. We're working on a (c)(3)/(c)(4) PAC relationship between related organizations that are organizing in Central America immigrant communities.

We do regular real estate transactions, on behalf of a black-led community land trust. We're negotiating a lease-to-own relationship on behalf of collective black organic farmers, who see their work as related to the idea of reparations, land reparations. In the past year, we've helped to renegotiate—as commercial lease markets have been all over the place—helped to renegotiate commercial leases for an LGBTQ social movement space and for a radical feminist bookstore.

So, I'd like to give a little bit of a more detailed description of one area where I've done a lot of work during the pandemic, and that is, with mutual aid groups. So, my friend and sometimes collaborator Seattle Law Professor Dean Spade, in his really worth-reading book *Mutual Aid: Building Solidarity Through This Crisis (And The Next)*, he defines mutual aid projects as comprised of three elements.

First, they work to meet basic needs, while they simultaneously build shared political understandings about why people do not already have those needs met. Second, they mobilize people, encourage community solidarity, and help build and expand social movements. And third, they're collective participatory projects, they don't rely on managers, or what Dean calls "saviors," to lead or direct their programs.

So, during the pandemic in New York, we've seen mutual aid groups popping up all across the state. Because the groups are planning to be short term projects, and are philosophically inclined to avoid the sort of formalities and perhaps hierarchy that comes with 501(c)(3) status, we counseled dozens of groups around the state and have written a legal guide book that talks about using liability waivers and indemnification and community safety policies to try to shield themselves and their members from liability, using tools to receive donations while minimizing tax liability, IRS rules on operating a disaster relief for emergency hardship funds, and so on.

So, I just conclude by noting that there's lots of opportunity in all of our projects for participation and assistance from the private bar. I am always in desperate need of experts in partnership taxation—and there's lots of people nodding their heads, obviously—and securities, and IP, and other areas where there's a lot of sophistication that firms have that, speaking for myself, is something where I love support.

I also note that, in the initial panel question ("what lessons for law school partnerships with communities?"), you know that's what our CED clinics and a lot of our clinics do all day, every day. So, I know many law school clinicians are maybe not giving that much status or support, but if you're serious about these issues, it means involving us, and giving us resources to do our work well. To build on Professor Rodriguez's point in our earlier session: if we're serious about this, that means supporting and funding and expanding the resources that we're already doing, the work we're already doing in communities, and I think that means really prioritizing clinical education and the work that we're doing.

So, I'll turn it back to David.

David Craft: Great, thank you Mike. So, Todd, would you like to go next? I know you didn't introduce yourself initially, so feel free.

Todd Arena: Yeah, I was going to apologize for that, for not introducing myself earlier. Todd Arena, he/him, I'm the senior staff attorney at Albany Law School, along with David, Community Economic Development Clinic.

We're a relatively young CED clinic, having only been founded in 2016, just sort of an exciting development for our region, you know, New York State's capital. But you know, it’s sort of been a sleepy, sort of overlooked area in our assessment and so we're very excited to be here and to be doing this work in you know, as Mike said, sort of historically overlooked areas.

You know, our CED clinic covers, most of the areas that all the other panelists have mentioned, not necessarily all of them, but I wanted to take the opportunity to sort of mention one emerging area that we're particularly focused on: community control of resources.

So, we start from the premise that every person, every community, is their own expert in what their own needs are. And, expanding from that, we believe that, with enough resources, they are also their own experts on how to meet those needs.

And, as you can probably surmise some from what my fellow panelists have already said, that lens informs a lot of CED work, and maybe the majority, based on what we what we're discussing here today. It’s particularly centered in maybe a relatively new—I don't know if that's entirely accurate—but an evolving practice area within CED that is variously referred to as: community wealth-building, community capital, or, more expansively, community control of resources. Personally, I prefer the latter two: community capital or community control of resources, because, as Lynnise outlined very powerfully, a lot, if not the majority, of traditional CED work could be fairly characterized as community wealth building. That's one of the main structural issues that this practice area is founded on and continues to struggle against, you know, the wealth gap and those sorts of inequalities, especially with the racialized component that is so powerful in this country.

So, the practice area I’m describing—community capital, community control of resources—is concerned not just with democratization of wealth-building through micro investing or crowd investing, which is a much more popularly highlighted in media aspect of a lot of current developments in many areas that I’m sure everyone here is familiar with.

So, what this practice area does is it goes beyond just that sort of "crowd-investing wealth, democratization of investment" popular frame and focuses more generally with putting communities themselves in control of where dollars are invested within their communities.

I'll talk a little bit more about that using examples in a second, but just to sort of highlight what I mean: so much of the legal work in this practice area tends to revolve around securities law, especially Blue Sky laws such as, in the case of New York State, the Martin Act.

And one particularly interesting and relatively new example—and I say relatively because I believe was late 80s/early 90s so it's not super new, but in the current moment we're seeing more interest in this across the nation and in many communities—that example being the sponsorship and launch of so-called community investment funds, which tend to be nonprofit loan funds sponsored by a tax exempt 501(c)(3) organization with the goal of achieving: one, democratization of investing and two, community control.

Only one minute remaining, so I will skip the two examples that I had. I'll post them in the chat because both of them are explicit about centering the investment needs of historically divested black, indigenous, and people of color communities.

David Craft: I think Todd, you can go ahead and touch upon those examples. I think we have enough time.

Todd Arena: Okay. So those two examples of community investment funds come from California and Massachusetts; a little far afield, but we borrow from wherever we can, of course.

In California, the East Bay Permanent Real Estate Cooperative, and in Massachusetts it's the Boston Ujima Project. There are many others, I just highlight those because they've actually gotten a lot of media attention and so, Googling those, the participants should be able to get some good information background.

But the important thing is that these are community investment funds that are launched in this structure that I earlier said, and what makes them gold examples in my mind, is that they seek to transfer decision-making over where investment funds flow to the communities targeted for investment themselves. The argument, and the hope is that this is a way of sort of overcoming the contradiction that often arises when you have investment flows coming back to historically divested communities, which is gentrification, and which leads to displacement of those communities. Yes, the place itself will maybe receive investment, but the people that were living there prior to the investment might not benefit from it.

Putting those people in a decision-making role, you know, will hopefully alleviate those issues. So that's why, for me, it seems like these are probably the gold standard of what “access to justice” looks like in the community control of resources space, because they seek the reestablishment and direct exercise of agency by communities historically targeted for divestment and uneven development.

But those are just to two examples, there are many forms that community wealth-building can take, and many forms that community capital and community control of resources can take, and each community has to make its own determinations as to what this should look like for them.

Here in Albany, our clinic, along with our close community partners, are currently taking the lead in building the case for community-controlled resources by starting with an innovative and successful first project developed by Mercy Corps in Portland, Oregon: the community investment trust or CIT model.

This model makes community wealth-building possible for non-accredited investors for as little as $10 a month. This type of project, as I’m sure the corporate attorneys in the audience will have already spotted, requires an extensive securities law review and regulatory engagement.

So just to conclude briefly, I'll note that this securities law overlay, as Mike also mentioned in a lot of his work, creates a golden opportunity for members of the Business Council to provide pro bono assistance and deep partnership with various law school CED clinics and other CED practitioners. From an access to justice perspective, this sharing of highly specialized legal expertise with CED shops, who cannot usually afford, as Mike said, to become specialists, in many areas (especially federal securities and Blue Sky laws), is one of the key supports that the private bar can provide to CED clinics, and especially community control of resources practice groups. Others include complex commercial real estate, complex tax, IP, ERISA specializations, just to note a few. And with that, thank you for giving me the extra time, and I'll turn it back to you, David.

And I guess we're probably at the point of opening up to Q & A.

David Craft: Yeah, great. Thank you so much, I appreciate all the presenters for kind of giving a little bit of background on their particular CED clinic and some systemic issues they address.

So, we have here a question from Bill.

So, this question relates to the theft of the community wealth from communities. He's currently litigating real estate fraud cases, on behalf of Brooklyn homeowners who have lost hundreds of thousands of dollars of equity wealth. As he's investigating the case, he's discovering that real estate fraud is rampant in rapidly gentrified communities of color in New York City. He's wondering if anyone is working on the connections between real estate fraud and structural racism.

Anika Singh Lemar: We're not specifically—well, I think the question really gets at a lot of the interconnectedness between CED and other forms of practice. Bill, I recall cases along these lines back when I did live in New York and was working in the consumer protection area at an organization that's now called Take Root Justice (was then the Community Development Project at the Urban Justice Center).

And these are obviously long-standing problems that relate, in part, to the lack of access to lawyers, and the like, that result in people believing they're signing on to a certain kind of deal and mistakenly—worse than mistakenly, really being defrauded into—signing on to a different kind of deal.

I can't say that we're doing anything specifically on that particular issue in my Community Development Clinic right now, but we do work from time to time with our Foreclosure Defense Clinic and our Eviction Defense Clinic in situations where there's really been wrongdoing and the right answer might be litigation or seeking some kind of regulatory relief, if not a litigation kind of relief.

But there's a lot of connective tissue tying community development practice to consumer protection practice (which is the at least the career trajectory I've taken, just from working in community consumer protections to working in community development), and also between community development and other kinds of access to justice issues—most notably, I think, fair housing and civil rights issues.

David Craft: Thank you.

Mike Haber: I don't have a lot of firsthand, I haven't done a lot of firsthand work on this—although, like Anika, in my past life as a legal services lawyer in Brooklyn where I practiced in East New York that certainly was a central part of our work. But I also just wanted to shout out Janis Sarra and Cheryl Wade's book, *Predatory Lending and the Destruction of the African-American Dream*, which does a deep dive into these issues on the mid-zeros foreclosure crisis.

David Craft: Okay great. Thank you, Mike. We have another question from Tanya. She asks: do your clinics use lending patterns or similar software to analyze redlining, reverse redlining, or CRA discrimination?

By the way, Mike, might want to check your audio, it goes in and out.

Do any of your clinics do anything in regards to matters of redlining, CRA matters? Todd, I don't know if you want to talk about what you're doing right now with the Albany County Legislator on some banking law matters? But if anyone else has any other recommendations…

Todd Arena: Go ahead, Anika.

Anika Singh Lemar: So again, we're privileged at Yale that one of the co-teachers of our Foreclosure Defense Clinic, which is in our Housing Clinic, is at the Connecticut Fair Housing Center, which has done a good amount of litigation work around lending issues, including the use of algorithms and that kind of digital redlining that happens today. And we're glad to have their expertise here, again, not specifically housed in our Community Development Clinic, but I do quite a lot of work with our Housing Clinic.

In terms of the historic redlining, it actually comes into play in our practice because we do quite a lot of advocacy and trying to remedy systemic housing discrimination, both historic and contemporary. So, I’d say that in that work, in our efforts to do systemic change through land use and zoning boards, the state legislature, and the courts, we do, we are the rare community development clinic that sometimes find ourselves in court because of our land use and zoning practice.

We are quite expert particularly in Connecticut history of redlining and again, like I said, current, modern day redlining, whether it's through these algorithms or other even more nefarious tools. Because so much of our desire and motivation is to ensure that those patterns of segregation that exist today are undone, it requires us, in our public speaking and in our presentations to those audiences of hopefully change makers and policymakers, to understand how we got here.

Todd Arena: I’ll just jump in quickly.

Just first off to say, I wasn't familiar with that specific resource. I’ve sometimes used the NCRC map that they have, and ANHD is a great resource for that in New York City, but it's specific to New York City. So, thank you for highlighting that.

It's definitely an issue. You know, we sort of have been working from a place of more anecdotal data collection from our clients, but it's very easy to sort of visually see just by walking the overlap between the 1940 Hulk maps and then, you know, the buildings with big red x's on them, and the recurrent patterns of settlement and resettlement that are instructive examples of land theft and, you know, blocking of wealth generation.

We're working with a local county legislator who represents a historically redlined community—the south end of Albany—in response to overwhelming demand by his constituency and advocacy and activism by them. Looking at policy solutions at a local level, it's very difficult in the way the law, especially around banking law, has developed, especially in the last 30 years. There's a lot of barriers to solutions. So solutions should really, you know—there needs to be at the federal level, in my view, and just from a preemption law analysis, like...a lot of things that we could do are blocked because of, you know, the long term trajectory of precedent in this country, sort of led by the federal banking institutions which have had increasingly conservative views of preemption law and other sorts of areas, curtailing the local consumer financial protection, as well as community control of efforts through regulated institutions, at least.

So, you know, there's a lot there, I probably went way wonky into banking law but, you know, we just have to keep pushing on all fronts, I think, because it's an incredibly pernicious issue.

You know, also an inside/outside strategy I think is incredibly important to Mike's point about movement lawyering and being based in movements and communities that are organizing for their own survival and thriving.

David Craft: Great. Thank you, Todd. Appreciate it.

So Cherelle has a question. And thank you guys for putting your questions in chat, if you have any more feel free to keep posting them. We have plenty of time.

So Cherelle’s question is: what, if any, difference do you all find between the community economic development needs, and the approaches to addressing those needs, of downstate and upstate New York? So, feel free, any and all, to answer.

Todd Arena: If no one else is chomping at the bit I will go first, because I actually recently moved from New York City to the Albany Capital Region. So, not through my professional work, but through pro bono work, I was involved in CED practice, especially cooperative financial institutions like credit unions and their trade associations.

And what I think is the central sort of structural difference that I’ve noticed that is different, is New York City and many of the urban coastal regions, larger urban cores, are dealing with issues that relate to community displacement, gentrification, that come from high levels of investment, including speculative investment that drives up property values, that creates a lot of pressure on low-income and working-class communities who simply can't afford the rent, they can't afford to buy, and there’s a whole host of issues around that.

We upstate and across, when you move out of downstate, there's still the same, you know, in a broad sense it's still the issues of affordability and being blocked from affording rent. But one of the issues that's different is that we're sort of, and it seems to have been changing—I mean this is always a fluid situation, and the exodus of remote workers from New York City, to the Hudson Valley and other areas have jacked, have skyrocketed prices for rent and housing throughout Hudson Valley and even into the Capital Region to some extent, to a lesser extent than Hudson Valley—but the general baseline is actually continued divestment patterns in the areas that we're looking at, so that you haven't necessarily seen the same intensity of investment, including speculative investment.

I mean there is some, but we're still dealing with property values being below rehab value. So, the ability to get a loan to rehab, rehabilitate, to return quality historic housing units to use is just, the market just can't solve that because the cost is above what the market says is the price for that property, so you can't take out a loan, you know, in a sufficient amount to actually bring it up to, you know, to that value—the “appraisal gap,” if anyone's curious about what this is called in practice.

So that's one area in which the difference between, you know—and, of course, in every area it's uneven and some areas will have really high property values and some will have low, but generally that's one of the main structural differences, is moving from a high property value to a low property value, the main thing that communities are still asking for is they just want more money, but under their control in order to invest in these underutilized high quality housing, that could be high quality housing, I mean, if it just was not subject to…

So just to finish that point, to answer the [inaudible] follow up question.

So, one of the things that's interesting about the appraisal gap is: some of the solution is looking to outside investors. That's where I think something like Boston Ujima or East Bay Permanent Real Estate Cooperative is interesting; they're not necessarily in the sort of like appraisal gap, maybe. You know, I don't think Oakland is there, by the time that PREP was formed.

But the interesting thing is, it's like you create an investment fund where the democratic governance is in the hands of the community that needs the investment. Outside investors can easily you know—with the approvals that are set up for both of these funds through federal, through the SEC, outside investors can help close those gaps. But it’s unlike a traditional outside investor investing in your community, since it's an accountable investment and it's directed by the community that is seeking the resources themselves.

So, I think that's precisely why we're highlighting these examples, because they can be a potential appraisal gap solution that sidesteps a lot of the contradictions that traditionally come when you have outside investors investing in communities that that they don't have an organic connection to, other than that investment.

I was going to say something else, but since I – oh - the other thing that I think is different moving to upstate is just the dearth of—you know, we're a CED clinic that was formed in 2016. There was a low-income tax clinic that we're, you know, genealogically related to, but unlike Brooklyn Corporation A or Fordham CED clinic or these decades-old CED clinics, as well as the other support infrastructure, there hasn't been the same consistency in community and resources. Well, not well-resourced, I don't want to say that there's sufficient resources for all the community-based organizations in New York City or other areas, but just—it's less so here, which makes it harder. There's less, the institutions that did exist, I'm realizing by talking to longtime community organizers, were either destroyed or abandoned through the 80s and 90s, and the sort of changes that came in those eras. And so a lot of times it feels like there just isn't as much there and the ones that are still here are sort of, you know, anemic compared to maybe their glory days of the 60s and 70s, when they were at their sort of zenith.

And so that's something different. Again, I'm not saying you down in New York City have everything you need. Obviously that is not the case, but it, you know, it does seem to be—and this is, could I could be wrong, and I could just be speaking for myself here—but it does seem to be that there is a more dense cluster of community-based organizations that have a history or a base that is not as reflected up here, and I think that sort of goes to my point about like, you know, Capital Region seeming like it's sort of overlooked.

One thing that I've heard from local community activists and organizers is that that I think gets at this idea is like, since this is the capital of the state and there's so much Political (capitol "P") activity, it ends up sucking up a lot of the energy away from sort of more community-based stuff.

So that's a long response to those questions and so I'll stop talking.

David Craft: Great. Thank you, Todd. Does anybody else have any questions you don't have to put in the chat—if you like, you can raise your hand and I'll call on you. You can unmute if you'd like. We have roughly five minutes left or so.

Okay, I don't see anybody raising their hand.

Well yes, Yuki.

By the way Yuki is an entrepreneur. So, Nikki asks: are there any investment regulations to increase the community capital for low-income neighborhoods? Does anyone want to address that and then I'll get to Todd's question? Thank you for raising your hand.

Todd Arena: Just like at the base level, the regulation that addresses this is the Community Reinvestment Act.

It's been—we could, and I have, had entire like hour-long or two-hour long courses describing the potentials and limitations of Fair Lending and Community Reinvestment Act. But I'll just note that that is the main thing.

The main issue is that the way that capital-raising is regulated in this country is through restrictions, just because historically every time we sort of loosened restrictions on capital-raising, massive fraud occurs through, you know, like things like Wolf of Wall Street—they're raising penny stocks for "mom and pop" small businesses, but really they were just like scamming people. That's a frequent occurrence and that's a real issue.

But what that means is that any small business that's looking to raise capital runs into all these barriers to raising capital, and compliance with all those rules is very expensive, or at least incredibly scary because there's criminal liability attached to it, potentially, and things like that. And so it pushes people into this zone where it's a challenge, it's a barrier that compounds the already-existing barriers to access to capital that face low-income and especially Black, Indigenous, and Latinx communities, amongst many others.

Anika Singh Lemar: I'll just add really quickly that one possible entry point here for lawyers who are interested in this field is working with institutions that do lending in low-income communities. The clinic that I teach, prior to my getting here (so I can't take credit for the work), about 15 years ago contested the demutualization of New Haven's last locally owned, locally controlled bank, which was a mutual savings bank, and settled that—again, community development clinic willing to go to court or at least enter into adversarial processes—resulted in a $25 million settlement that then seeded a local community development financial institution, the CDFI Bank, that the clinic shepherded through the regulatory process.

The Bank was chartered—one of two banks across the country—chartered in 2010, which was a tough time to get a bank chartered in the aftermath of the Great Recession. So, there are a lot of avenues into this work, and we continue to work with that institution. I serve on the board of that bank to this day.

David Craft: Great, thank you. I don't know if there's any other panelists that have anything to say. If not, I'll let Tanya ask her question. Great.

Tanya Dwyer: Hi, everyone.

So, my question is whether you've seen a pattern that CED funding is increasingly difficult on for marginalized and BIPOC communities. I'm thinking about my work in the Hudson Valley, and I don't see that banks are meeting their lending requirements in BIPOC communities. I don't know if that's just anecdotal or if it's really happening, and how to keep them accountable for it.

And my main question is, the American Rescue Plan Act is our second bite of the apple for marginalized communities, so I wonder if any of you are thinking about trying to get that money for workforce housing projects or portable housing projects.

Anika Singh Lemar: That is my 12 o'clock call, so unfortunately these things are—my noon call today is with a group of housing advocates across the state, and our primary agenda item is thinking about the American Rescue Plan funding and what the priorities ought to be for housing advocates in the state. You know, one pattern that we've seen, and I don't know if this is true elsewhere, is that because of the speed of some of this programming, the opportunity for input into how money gets spent is limited. My own bias is that can be for better or for worse, because at least here in Connecticut I'm accustomed to a lot of community control going the wrong way and really consolidating wealth and inequality.

But sorry it's sort of a non-answer to your question, but it's a good question and definitely top of mind for me and our work.

Mike Haber: Yeah, I'm in a similar position to Anika, in that I have clients that are starting to engage on this question. And the problem that that we have is that a lot of our clients are smaller—in the case of our clients (black-led affordable housing developers), they're starting from a much—there's a much higher learning curve, they don't have the resources that their competitors in the market have, and that's something of a barrier in all sorts of ways. You know, our services are pro bono, but they need an architect, and they need an accountant, and they have very little money to get off the ground with that kind of work. And for larger affordable housing developers, you know, they have the money in the bank to move things forward in, you know, a more efficient way and that's a structural problem that's hard to overcome.

Todd Arena: I just want to say something quickly about the first part of the question, which I'm trying to pull up something for you—just a graph showing the level of…never mind, I can't find it in time.

But no, absolutely. I mean, there's well-documented evidence at this point that banking concentration and the shift of lending from regulated institutions to non-bank financial corporations (Quicken Loans, things like that), has—you know, the overall impact of all of these trends, including a pullback on enforcement at the federal level of the CRA (ratings, inflation, and things like), the overall impact has been sort of a gutting of the effectiveness. And there were limitations on the CRA at the beginning, but even given that, things have gotten so much worse.

And so you're absolutely correct in terms of, there's support for that proposition at the national level, there's every reason to suspect that would be true at the local level where you're at. And there's like, you know, as Vanessa pointed out, there's many reports that are starting to come out about this stuff and there's data there. If you want to talk more about it, I'll put my info in here as well. But absolutely. I would be surprised if they were meeting your needs.

Tanya Dwyer: Thank you.

David Craft: Great. Thank you, Todd. Thank you to the panelists for answering all the questions.

Again, if you found any of this information useful or if you want to connect with any panelists further, hopefully their bios should be in the program description, but they've also provided their contact information in the chat, so you can always follow up with them. But thank you to everyone for attending this discussion, looks like we're coming up on our time.

But hopefully this gave you a little bit more insight into CED work and how it does address access to justice for, you know, communities of color in regards to addressing systemic issues, especially for economic empowerment and wealth-building. So, yeah, thank you all and hope you enjoy the rest of your conference. Take care.