

AN IMPERATIVE REDEFINITION OF “COMMUNITY”:  
INCORPORATING REENTRY LAWYERS TO INCREASE  
THE EFFICACY OF COMMUNITY ECONOMIC  
DEVELOPMENT INITIATIVES

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*Life without economic subordination is recognized around the world as a fundamental human right.<sup>1</sup> When individuals are economically impoverished, they are more likely to not only offend, but also repeatedly offend, because poverty compounded with the imposed civil disabilities of a criminal conviction further socially isolate and minimize their life options.<sup>2</sup> This factual inference is not only illustrated through the experiences of my family members, but is also supported by empirical data and theoretical scholarship. Because of this correlation between poverty and criminal offenses, one reason to advocate for alleviating economic subordination is to decrease criminal activity. Practitioners of community economic development (CED) and reentry lawyers<sup>3</sup> are two dynamic groups of individuals who are working within predominantly inner-city communities*

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1. The International Covenant on Economic, Social and Cultural Rights (ICESCR), G.A. Res. 2200, U.N. GAOR, 21st Sess., Supp. No. 16 at 49, U.N. Doc. A/6316 (1966), reprinted in 993 U.N.T.S. 3 (entered into force Jan. 3, 1976), available at [http://www.unhchr.ch/html/menu3/b/a\\_cescr.htm](http://www.unhchr.ch/html/menu3/b/a_cescr.htm), which the United States has signed but failed to ratify, recognizes the “right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” Susan R. Jones, *Dr. Martin Luther King, Jr.’s Legacy: An Economic Justice Imperative*, 19 WASH. U. J.L. & POL’Y 39, 46 (2005) (citing ICESCR art. 11(1)).

2. See generally Joan Petersilia, *When Prisoners Return to Communities: Political, Economic, and Social Consequences*, 65 FED. PROBATION 3 (2001).

3. The term reentry is defined as the “process of leaving prison [or jail] and returning to society” with the ultimate goal of reintegration. JEREMY TRAVIS ET AL., *THE URBAN INST., FROM PRISON TO HOME: THE DIMENSIONS AND CONSEQUENCES OF PRISONER REENTRY* 1 (2001) (See “Reentry Defined” for a discussion on the differences between “reentry” and “reintegration” into society.). The term reentry population is defined as the population of formerly incarcerated individuals reentering society after release from prison or jail. Reentry lawyers are antistatutory lawyers who possess knowledge and experience working within criminally charged, incarcerated, formerly incarcerated, and reentry populations. The term reentry lawyer is first defined in this Comment.

*of color to increase economic and social opportunities. This Comment argues that CED practitioners and reentry lawyers should collaborate to achieve healthy communities and neighborhoods. The reciprocal benefits that result from this collaboration make it imperative that reentry lawyers are active participants to improve the efficacy of CED initiatives.*

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## INTRODUCTION

My Uncle Carl<sup>4</sup> was not born economically impoverished but was soon led into a life of poverty after a series of unhealthy decisions, a twenty-year heroin addiction, criminal convictions, and the civil disabilities<sup>5</sup> that accompanied his convictions, limiting his reintegration into conventional society. He was born in 1936, the beloved baby of a blue collar, African American family in St. Louis, Missouri. My family experienced the racial subordination that was formally entrenched within the daily life of St. Louis<sup>6</sup> and, as a

4. The name has been changed to preserve anonymity.

5. Civil disabilities, also termed collateral consequences, are the sanctions imposed on the legal status of an individual as the result of a federal or state criminal conviction, making the person ineligible for a variety of government rights, such as voting, and benefit programs, such as public housing. See *infra* Part IV.A for a more detailed discussion.

6. The racial politics of St. Louis helped give rise to the factual background of the infamous Dred Scott case. See *Dred Scott v. Sandford*, 60 U.S. 393 (1856). Although St. Louis was an industrial city that had long offered blacks opportunities that they could not obtain in the South, it remained a city where racial segregation was enforced through legal and social avenues. The racial housing covenants in St. Louis gave rise to *Shelley v. Kraemer*. See *Shelley v. Kraemer*, 334 U.S. 1, 4–5 (1948). St. Louis

result, Uncle Carl grew up in a socioeconomically mixed community of African Americans. Black professionals, blue-collar workers, and the impoverished all cohabited, exposing Uncle Carl to a wide variety of life paths. But at a young age, Uncle Carl started what would become a lifetime of involvement with the wrong crowd. When he was fifteen, to avoid the charges against him in Missouri's racially oppressive juvenile court system, Uncle Carl's mother sent him to California where his sister—my grandmother—had already established a family.

Uncle Carl returned to Missouri in his twenties where one of his family members introduced him to heroin. My father marks this time as the single most defining moment in my uncle's life. Uncle Carl's addiction to heroin spanned the next twenty years and was interrupted only when he was serving time in prison. Because heroin is an expensive addiction, my uncle regularly burglarized and stole to supplement his blue-collar salary.<sup>7</sup> During this period, Uncle Carl served time in prison for drug possession, parole violations, burglary, and other forms of hustling.<sup>8</sup> My father describes Uncle Carl as a true "veteran of the war on drugs" but not as a hardened criminal.<sup>9</sup> That description is consistent with all my memories and my current impression of my uncle. My sister describes Uncle Carl as a warm, friendly, and generous man. "We got along great. I never saw him high on drugs and never thought I shouldn't be alone with him. He was giving . . . [but he] was also a scam artist," she recalls.<sup>10</sup>

Perhaps most tragic about my uncle's story is that throughout his life there were repeated glimpses of him healthy and stable. My father attributes

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today remains racially segregated and has the thirteenth greatest disparity between whites and blacks out of 318 U.S. cities. See CensusScope, Segregation: Dissimilarity Indices, [http://www.censusscope.org/us/rank\\_dissimilarity\\_white\\_black.html](http://www.censusscope.org/us/rank_dissimilarity_white_black.html) (last visited Mar. 23, 2008) (based on Census 2000 data).

7. The longer one uses heroin, the more expensive the addiction becomes because of the increasing need for greater amounts to achieve the desired high. "With regular heroin use, tolerance to the drug develops. [T]he abuser must use more heroin . . . [and as] higher doses of the drug are used over time, physical dependence and addiction to the drug develop. Within a few hours after the last administration of heroin, withdrawal . . . can produce effects such as drug craving, restlessness, muscle and bone pain, and vomiting." OFFICE OF NAT'L DRUG CONTROL POL'Y, DRUG FACTS: HEROIN, available at <http://www.whitehousedrugpolicy.gov/drugfact/heroin/index.html> (last visited July 15, 2008).

8. A pattern of repeated incarceration is common among individuals such as Uncle Carl. See, e.g., Petersilia, *supra* note 2, at 4 (stating that "[f]ully two-thirds of all those released on parole will be rearrested within three years").

9. My father's belief is grounded in the fact that African Americans disproportionately receive prison sentences for drug-related offenses. See generally Michael Pinard & Anthony C. Thompson, *Offender Reentry and the Collateral Consequences of Criminal Convictions: An Introduction*, 30 N.Y.U. REV. L. & SOC. CHANGE 585, 594 (2006) ("Overwhelmingly, commentators and statistics demonstrate that the primary recipients of prison sentences during the height of the war on drugs and the war on crime have been African Americans.").

10. Personal interview (Nov. 2007).

these glimpses to periods when Uncle Carl had room, board, and a steady income. For example, when Uncle Carl moved to California in his forties to live with his niece and nurse her over the last years of her life. During this time, when my uncle was informally employed with room and board, he was drug-free and an active member of our family. But after his niece's death, my uncle fell back on his hustling experience and soon reignited his relationship with the criminal justice system, finding himself in and out of California prisons for the next ten years.

While in prison, Uncle Carl developed his remarkable talent for painting and drawing. As far back as I can remember, he would sell his artwork on street corners to earn extra money. He was also an industrious man. At one point, he was making a steady living at the swap meet selling items he had repaired or refurbished. His successes with the business inspired him to open his own second-hand store. He might have achieved his dream, but before the store opened, Uncle Carl was picked up on a parole violation and sent back to prison.<sup>11</sup> The entire inventory for his second-hand store was stolen while he was in prison.

My uncle is now living in a state convalescent home in Oakland, California. After a series of near-death experiences and surviving a five-month coma, he battles the effects of chronic liver disease, which he developed as a result of his perpetual substance abuse.<sup>12</sup> My uncle continues in his sincere desire to be as self-sufficient as possible. On a corner in Oakland between a bank and a Starbucks, Uncle Carl has negotiated with both businesses to allow him to sell his paintings during the workweek.<sup>13</sup> Unfortunately, my uncle's story does not end here. A few weeks ago, he shared with me his plans to leave the convalescent home because he is restless

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11. In California, technical parole violations account for approximately 39 percent of all prison returns. See JOAN PETERSILIA, UNDERSTANDING CALIFORNIA CORRECTION 73 (2006). Technical violations, also termed administrative returns, range from failure to take a scheduled drug test to improper social affiliation. Although most technical violations are criminal in nature, for example allegations of robbery, parolees are frequently returned to prison without proof beyond a reasonable doubt that they actually participated in new criminal activity because parole hearings have a "standard of proof . . . [that] . . . is civil rather than criminal." *Id.* at 73.

12. Similar to Uncle Carl, at least 70 percent of California prisoners suffer from substance addictions. Untreated substance addictions can result in long-term, public health issues, which further limit an individual's ability for self-sufficiency and employment opportunities. For example, "[c]hronic [heroin] users may develop collapsed veins, infection of the heart lining and valves, abscesses, and liver disease." See generally OFFICE OF NAT'L DRUG CONTROL POL'Y, *supra* note 7. These health challenges are an additional characteristic that is disproportionately associated with an individual's status as formerly incarcerated and needs to be addressed to achieve successful reintegration.

13. Because transactional legal services were not available to him, my uncle demonstrated his lay lawyering skills based on ingenuity. For additional examples and a discussion of lay lawyering, see Gerald P. López, *Lay Lawyering*, 32 UCLA L. REV. 1 (1984).

under its restrictions. "I'm not dead yet," he chuckled. "You know what I'm saying?"<sup>14</sup> The prospect of Uncle Carl living on his own makes me fear that he will have yet another lapse after what appears to be stability in his life.

My uncle is a reality—a living human being—in Oakland, California. He is by no means an anomaly within black communities or within the greater U.S. population of formerly incarcerated individuals.<sup>15</sup> In fact, there are massive numbers of Uncle Carls in impoverished black and Latino communities across the country.<sup>16</sup> Most incarcerated individuals are released and reenter their communities.<sup>17</sup> Of those individuals reentering, a majority, like my uncle, will recidivate into prison within three years of their release.<sup>18</sup> Over the last thirty years, community economic development (CED) has evolved as a field of practice to alleviate poverty in inner-city communities, where many formerly incarcerated individuals reside. When lawyers and organizers within urban communities contemplate the possibility of CED, we cannot ignore the particular needs of individuals like Uncle Carl and the effects of mass incarceration on the overall urban environment. There is a distinct relationship with the criminal justice system that is an intrinsic characteristic of impoverished communities of color<sup>19</sup> and, thus, alleviating the effects of the criminal justice system in our communities is an essential component of our collective advancement.<sup>20</sup> Although he is poor, unemployed,

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14. Personal interview with my uncle (Dec. 2007).

15. See generally MARC MAUER, *RACE TO INCARCERATE* 130–56 (2d ed. 2006) (documenting the disproportionate representation of blacks in the U.S. criminal justice system).

16. See Loïc Wacquant, *Deadly Symbiosis: When Ghetto and Prison Meet and Mesh*, 3 PUNISHMENT & SOC'Y 95, 96 (2001) ("[F]or the first time in national history, African Americans make up a majority of those walking through prison gates every year . . . [T]he ethnic composition of U.S. inmate population has reversed, turning over from 70 percent white at the mid-century point to nearly 70 percent black and Latino today, although ethnic patterns of criminal activity have not been fundamentally altered . . .").

17. U.S. Dep't of Just., Reentry, <http://www.reentry.gov> (last visited Mar. 23, 2008) ("Nearly 650,000 people are released from state and federal prison yearly and arrive on the doorsteps of communities nationwide."); see also Petersilia, *supra* note 2, at 3 ("[A] parolee must generally be released to the county where he last resided before going to prison. Since offenders overwhelming come from poor, culturally isolated, inner-city neighborhoods, that is where they return.").

18. BUREAU OF JUST. STAT., U.S. DEP'T OF JUST., REENTRY TRENDS IN THE U.S. (2002), <http://ojp.usdoj.gov/bjs/reentry/recidivism.htm> (citing a recidivism study of prisoners released in 1994 estimating "that within three years, 51.8% of prisoners released during the year were back in prison either because of a new crime . . . or because of a technical violation of their parole").

19. See Devon W. Carbado, *Racial Naturalization*, 57 AM. Q. 633, 633–36 (2005) (explaining the particular relationship between Black Americans and the criminal justice system through author's own encounters with law enforcement).

20. Dorothy E. Roberts, *The Social and Moral Cost of Mass Incarceration in African American Communities*, 56 STAN. L. REV. 1271, 1276 (2004). Roberts characterizes the "distinctive features of African American incarceration—the sheer numbers in prison, the high rate of imprisonment, and its spatial concentration"—as combining "to make imprisonment a normal way of life in [poor

homeless, living in an urban neighborhood and desiring self-sufficiency, the complexity of Uncle Carl's economic situation is not fully represented in CED legal scholarship because the implications of his legal status as an ex-offender are insufficiently addressed.

Uncle Carl's life illustrates that the intersection of poverty, institutional racism, and the legal consequences of a first offense creates a particularly vulnerable population of oppressed individuals living in inner-city communities. They are in desperate search of human services that will anticipate and preempt consequences threatening the livelihood of entire communities if left on their own. Practitioners working within impoverished neighborhoods of color must understand reentry and recidivism as a current crisis within our communities, families, and lives.<sup>21</sup> This is particularly necessary for CED practitioners because neither social nor economic development will be fully accomplished in inner-city neighborhoods without mitigating the effects of the criminal justice system in these communities of color. This Comment argues that CED scholarship must begin to incorporate reentry lawyers as a means of institutionalizing the voice of reentry populations to strengthen the efficacy of CED initiatives in communities of color. This Comment illustrates how reentry lawyers are not only poised to understand the impact of the criminal justice system on poor, inner-city neighborhoods, but also to possess the legal skills and assets as lawyers necessary to negotiate legal strategies, expunge criminal records, and recruit additional legal expertise to help CED initiatives make a long-term change in improvised communities.

Part I of this Comment explores the historical and contemporary role of CED in addressing the economic marginalization of urban communities. In Part II, I define the term reentry lawyer and establish that the majority of reentry lawyering occurs in inner-city communities that are fertile ground for CED. Part I begins by examining the reciprocal benefits that both CED practitioners and reentry lawyers gain through collaboration. I then argue that CED practitioners would acquire access to formerly and currently incarcerated community members, whose perspectives on how to promote healthier communities is an underexplored resource that should be incorporated in community revitalization efforts. Conversely, reentry lawyers would

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neighborhoods].” *Id.* at 1276–77. Moreover, African American “incarceration has become a systemic aspect of community members’ family affairs, economic prospects, political engagement, social norms, and childhood expectations for the future.” *Id.* at 1277.

21. *Id.* at 1276 (referring to the analysis in Jeffrey Fagan, Valerie West & Jan Holland, *Reciprocal Effects of Crime and Incarceration in New York City Neighborhoods* 5 (Columbia Law Sch. Pub. Law & Legal Theory Working Paper Group, Working Paper No. 03-54, 2003) available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=392120](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=392120), showing “that incarceration is persistently concentrated in . . . [the] . . . poorest neighborhoods”).

increase their ability to access and to leverage community knowledge to better advocate for reentry populations. Part IV identifies the unique assets reentry lawyers possess, which are specific functions of their role as lawyers that would facilitate CED. I conclude that we must continue to expand the conversation about incorporating reentry lawyers into CED to achieve our shared goal of alleviating subordinations within impoverished, inner-city communities.

### I. THE CURRENT STATUS AND SHORTCOMINGS OF COMMUNITY ECONOMIC DEVELOPMENT

“America’s greatest problem and contradiction is that it harbors 35 million poor at a time when its resources are so vast that the existence of poverty is an anachronism.”

—Dr. Martin Luther King, Jr.<sup>22</sup>

Uncle Carl was in his thirties, living in a black inner-city neighborhood, regularly unemployed, and committing crimes of poverty to support his heroin addiction when Martin Luther King, Jr. made this statement at the 1966 Southern Christian Leadership Conference. Then, my uncle was one of the thirty-five million poor that Dr. King referenced. Today, he is one of the approximately 77,000 people living below the poverty line in Oakland, California,<sup>23</sup> and the thirty-seven million impoverished nationwide.<sup>24</sup> While Dr. King’s vision of poverty reduction is still unrealized, the need for strategies that will reduce poverty and create healthy communities is evermore imperative within communities of color. Over the past fifty years, the economic opportunities available to urban communities have drastically changed. Inner-city communities have experienced the permanent disappearance of industrial and manufacturing jobs.<sup>25</sup> In New York City, for example,

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22. DAVID J. GARROW, BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE 533 (1986). Dr. Martin Luther King, Jr. was arrested and served jail time at least four times during his life. On the night of his assassination, there was civil unrest in more than 130 cities across the United States leading to over 20,000 arrests nationwide.

23. The total population of Oakland, California is 399,477 with 19.4 percent of the population living below the poverty line. DataPlace, Area Overview: Oakland, California, [http://www.dataplace.org/area\\_overview/index.html?place=x75724](http://www.dataplace.org/area_overview/index.html?place=x75724) (last visited Mar. 24, 2008).

24. See Nicholas D. Kristof, Op-Ed., *The Larger Shame*, N.Y. TIMES, Sept. 6 2005, at A27 (“The U.S. Census Bureau reported a few days ago that the poverty rate rose again last year, with 1.1 million more Americans living in poverty in 2004 than a year earlier. After declining sharply under Bill Clinton, the number of poor people has now risen 17 percent under Mr. Bush.”).

25. Jones, *supra* note 1, at 53.

approximately fifty percent of black men are currently unemployed.<sup>26</sup> Inner-city neighborhoods that are classified not only as poor, but also racialized black or Latino, suffer an extreme form of marginalization that “is perhaps the most dangerous form of oppression because it subjects an entire category of people to severe material deprivation, or possibly extermination, because it banishes them from productive participation in social life.”<sup>27</sup>

CED recognizes the subordination of poor communities and is a catalyst to empower these communities through the development of local social infrastructures and economies. “Although there are many variations [of CED in practice], the definition of CED embraces” three core principles: (1) emphasizing “efforts to develop housing, jobs, or business opportunities for low-income people”; (2) allowing nonprofit organizations to play a lead organizing role in CED efforts; and (3) establishing accountability “to residentially defined communities.”<sup>28</sup> Based on the successes of global economic development efforts after World War II,<sup>29</sup> CED emerged as a cognizable field during the 1960s as a response to the need to combine economic justice with civil rights.<sup>30</sup> CED practitioners recognize that there is currently no easy way for poor people to escape their economic marginalization because “the jobs available to inner-city poor people tend to reinforce poverty with inadequate pay and benefits, part-time or contingent employment terms, and no career ladder to better conditions.”<sup>31</sup> CED strives to break this monotonous cycle by directly addressing the economic and social crises of poverty through a “community-oriented and community-controlled development strategy”<sup>32</sup> that utilizes the resources and priorities of residents of low-income

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26. MARK LEVITAN, CMTY. SERVS. SOC'Y, A CRISIS OF BLACK MALE EMPLOYMENT: UNEMPLOYMENT AND JOBlessness IN NEW YORK CITY, 2003, at 1 (2004), available at [http://www.cssny.org/pubs/special/2004\\_02labormarket.pdf](http://www.cssny.org/pubs/special/2004_02labormarket.pdf) (“Perhaps the greatest uncertainty about New York’s labor market is whether a return to growth will alleviate the crisis of joblessness facing the city’s black men, barely half of whom were employed in 2003.”).

27. Audrey G. McFarlane, *Race, Space, and Place: The Geography of Economic Development*, 36 SAN DIEGO L. REV. 295, 341 (1999).

28. WILLIAM H. SIMON, THE COMMUNITY ECONOMIC DEVELOPMENT MOVEMENT: LAW, BUSINESS, AND THE NEW SOCIAL POLICY 3 (2001).

29. McFarlane, *supra* note 27, at 301–02.

30. Laurie A. Morin, *Legal Services Attorneys as Partners in Community Economic Development: Creating Wealth for Poor Communities Through Cooperative Economics*, 5 D.C. L. REV. 125, 130 (2000). But see Scott L. Cummings, *Community Economic Development as Progressive Politics: Toward a Grassroots Movement for Economic Justice*, 54 STAN. L. REV. 399, 410–13 (2001) (linking the genesis of CED with reconstruction efforts in the South after the Civil War).

31. Morin, *supra* note 30, at 126 (quoting Peter R. Pitegoff, *Urban Revitalization and Community Finance: An Introduction*, 27 U. MICH. J.L. REFORM 613, 618 (1994)).

32. *Id.* at 130 (quoting Brian Glick & Matthew J. Rossman, *Neighborhood Legal Services as House Counsel to Community-Based Efforts to Achieve Economic Justice: The East Brooklyn Experience*, 23 N.Y.U. REV. L. & SOC. CHANGE 105, 107 (1997)).



communities.<sup>33</sup> CED strategies develop capacity for economic activity that will strengthen the social institutions of the community and promote structural changes.<sup>34</sup>

CED is distinguished from traditional forms of private sector economic development because CED is characterized by a long-term focus within targeted areas to promote revitalization, while traditional private sector economic development is characterized by private development corporations that exist for only one or two projects.<sup>35</sup> At its best, CED functions to support a multitude of ongoing projects that are connected to a common plan and common goals for community stability.<sup>36</sup> The local community is the client and is intended to drive the decisionmaking. Meanwhile, neighborhood-based nonprofit organizations and community development corporations work to put the community's decisions in motion.

Throughout the evolution of the CED movement, lawyers have participated in CED initiatives and corporations.<sup>37</sup> Traditionally, legal representation focused primarily on affordable housing.<sup>38</sup> However, legal participation in CED "has expanded to [help facilitate] the creation of microenterprises and worker-owned cooperatives, sector employment intervention, child care, health care, the creation of community development banks and credit unions, environmental justice, [formation of nonprofit organizations, community benefit agreements] and combating predatory lending."<sup>39</sup> Because of the increased breadth of practice, successful CED practice requires a broad range of complex and sophisticated lawyering skills.

All of the aforementioned forms of legal advocacy are vital to help ensure that CED initiatives are successful, but they fall short in that they do not address challenges of reentry prevalent within inner-city neighborhoods. This Comment argues that the role of lawyers in CED must also incorporate

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33. One CED success story is the Dudley Street Neighborhood Initiative in the Roxbury section of Boston. A little over a decade ago, the Dudley Street community was a "dumping ground for the metropolitan area's human and industrial waste." Franz Lehman, *Rebirth in Boston: Dudley Street's Community-Organizing Success Story*, <http://www.tenant.net/Tengroup/Metcounc/May96/holdingg.html> (last visited July 15, 2008). Today, it has been converted into a thriving, self-respecting, and well-integrated community, an "oasis" within the industrial areas near Boston Harbor. *Id.* For more information see Dudley Street Neighborhood Initiative, <http://www.dsni.org> (last visited Mar. 24, 2008).

34. Morin, *supra* note 30, at 130.

35. MIHAÏLO TEMALI, *THE COMMUNITY ECONOMIC DEVELOPMENT HANDBOOK: STRATEGIES AND TOOLS TO REVITALIZE YOUR NEIGHBORHOOD* 9 (2002).

36. *Id.*

37. Jones, *supra* note 1, at 53.

38. *Id.*

39. *Id.*; see also Susan R. Jones, *Pro Bono in Action: Revitalizing Cities With the Help of Lawyers*, *BUS. L. TODAY*, Jan.-Feb. 2004, at 64, 64 (discussing pro bono opportunities for corporate lawyers and their impact in the area of community economic development).

reentry lawyering as a necessary component to strengthen the efficacy of CED. Because CED most commonly occurs in communities where a significant portion of residents are currently incarcerated or transitioning back into the community after incarceration, the professional experience that reentry lawyers possess uniquely prepares them to address serious barriers to achieving CED goals.

## II. IDENTIFYING REENTRY LAWYERS AND THE GEOGRAPHY OF THEIR PRACTICE

The term reentry lawyer is not used in any previous legal or reentry literature. Therefore, it is necessary that I begin this conversation with an explanation of how I define the term. Reentry lawyer is used in this Comment to identify antistatutory attorneys possessing the particular knowledge, efforts, and networks to assist individuals who were, are, or may become incarcerated. Lawyers who participate at each level of the criminal justice system have the capacity to be reentry lawyers. Prosecution and defense lawyers are often regarded as only sending people to prison or defending those with criminal charges, but both prosecutors and defense lawyers are increasingly recognized for taking a more active role in anticipating the needs of individuals once they are released, and for helping to direct those individuals to reentry services.<sup>40</sup> There are also contingents of lawyers who advocate for prisoner rights,<sup>41</sup> and who are working to transform public policy issues within a criminal justice system that functions to deprive incarcerated individuals of basic human rights.

Many reentry attorneys work explicitly with individuals who are reentering society after incarceration. These lawyers work on initiatives aimed at helping “ex-offenders and their families deal with a range of economic, health, social, and political problems.”<sup>42</sup> These reentry lawyers also “develop[ ] community education programs, cultivat[e] a consortium of reentry services providers and researchers, provid[e] consultation to (and recruit[ ] pro bono advocates to help represent) ex-offenders and their families, and undertak[e]

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40. See generally Patricia L. Fanflik & David R. Troutman, *Putting Them Away and Helping Them Out: The Prosecutor's Role in Offender Reentry*, 41 APR PROSECUTOR 26 (2007); Michael Pinard, *Broadening the Holistic Mindset: Incorporating Collateral Consequences and Reentry Into Criminal Defense Lawyering*, 31 FORDHAM URB. L.J. 1067 (2004).

41. See *Plata v. Schwarzenegger*, No. C01-1351 TEH, 2005 WL 2932253 (N.D. Cal. Oct. 3, 2005); see also Andy Furillo, *Inmate Rights Lawyers Are a Burden, Sillen Says*, SACRAMENTO BEE, May 11, 2007, at A4.

42. Gerald P. López, *Shaping Community Problem Solving Around Community Knowledge*, 79 N.Y.U. L. REV. 59, 77 (2004).

empirical studies to generate knowledge of effective reentry policies and practices.”<sup>43</sup> These lawyers hold clinics within communities to assist individuals seeking pardons, expungement, or the sealing of adult felony convictions and criminal records.<sup>44</sup> They provide legal counseling to help individuals with criminal convictions maneuver the legal barriers of civil disabilities.

Reentry lawyers are not limited to practicing attorneys. Legal scholars who write on the practices and consequences of incarceration are also reentry lawyers under my definition.<sup>45</sup> In addition, reentry lawyers include those law school professors who inspire and encourage their students to become practitioners who will question the oppressions within the criminal justice system and care enough about the individuals affected to make a difference. In short, I define reentry lawyers to be an expansive network of attorneys who are regularly grappling with the realities of the criminal justice system and are using problem-solving skills to address the needs of the individuals and communities that the system subordinates.

The majority of the communities where reentry lawyering is focused are also communities that are qualified for, or undergoing, CED initiatives. “Returning prisoners are concentrated in a few states, a few core urban counties within those states, and a few neighborhoods within those counties . . . The majority of prisoners are released into counties that contain the central cities of metropolitan areas.”<sup>46</sup> In other words, the majority of formerly incarcerated individuals is released into, and resides within, inner-city communities otherwise known as the ghetto, el barrio, or the hood.<sup>47</sup> The characteristics of neighborhoods where a majority of the formerly incarcerated are reentering have high poverty levels, significant ethnic

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43. *Id.*

44. For examples of lawyers and law students tackling issues specific to reentry see Homeboy Industries, <http://www.homeboy-industries.org> (last visited Mar. 24, 2008), and UCLA Law, Combatting Employment Discrimination: The Prisoner Re-Entry Initiative 2006–2008, <http://www.law.ucla.edu/home/index.asp?page=2281> (last visited Mar. 24, 2008).

45. For a sample of legal scholarship that addresses incarceration issues and the public policies of the criminal justice system, see Roberts, *supra* note 20; Regina Austin, “The Black Community,” *Its Lawbreakers, and a Politics of Identification*, 65 S. CAL. L. REV. 1769 (1992); Regina Austin, “Step on a Crack, Break Your Mother’s Back”: Poor Moms, Myths of Authority, and Drug-Related Evictions From Public Housing, 14 YALE J.L. & FEMINISM 273 (2002) [hereinafter Austin, *Step on a Crack*]; Paul Butler, *Much Respect: Toward a Hip-Hop Theory of Punishment*, 56 STAN. L. REV. 983 (2004).

46. TRAVIS ET AL., *supra* note 3, at 40–41.

47. See generally G. THOMAS KINGSLEY & NANCY G. LA VIGNE, INFORMATION AND THE CHALLENGE OF PRISONER REENTRY (2004), available at <http://www.urban.org/url.cfm?ID=900756> (“Over the past decade, a rising number of released prisoners are returning disproportionately to major metropolitan cities and to just a few neighborhoods within these cities. These communities are often among the least able to provide the support necessary for successful reintegration because they lack social and economic infrastructures that would facilitate reintegration.”).

compositions, and residential instability.<sup>48</sup> The cycle of inner-city incarceration reproduces itself, which further legitimizes a criminal justice system that disproportionately charges and incarcerates individuals of color. There is a tipping point beyond which communities and neighborhoods can no longer sustain the informal social control necessary to regulate and correct dangerous behavior.<sup>49</sup> As social control breaks down,<sup>50</sup> disorder and incivilities increase, resulting in an out-migration of the economically privileged leaving the impoverished behind.<sup>51</sup> Crime and violence increase, law enforcement surveillance increases, and there is a high rate of individuals who are charged with criminal offenses.<sup>52</sup>

The characteristics found in communities with high rates of prisoner reentry are consistent with those of CED communities. Most CED neighborhoods have high poverty levels, communities that are socially isolated from, but geographically close to, a metropolitan area, crimes of poverty, a disproportionately high percentage of people of color (particularly black and Latino), and heavy policing. Furthermore, there is an absence of a private sector resulting in a large percentage of individuals who are not employed in the formal economy. Each Empowerment Zone,<sup>53</sup> for example, must “be characterized by unemployment or severe economic conditions due to plant or military base closings, and [must] meet criteria of general distress, such as a ‘high incidence of crime, narcotics use, homelessness, abandoned housing, and deteriorated infrastructure or substantial population decline.’”<sup>54</sup>

Although many of these characteristics of CED prime neighborhoods and high concentrations of ex-offenders are facially race neutral, they have highly racialized implications. As a result of de jure segregation in this country, business, housing, and employment practices actively participated in creating racialized neighborhoods that in many forms still exist today.

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48. Petersilia, *supra* note 2, at 4.

49. *Id.*

50. See Austin, *Step on a Crack*, *supra* note 45, for a robust discussion on how federal criminal conviction policies and laws erode poor mothers’ attempts to deploy cultural and social mechanisms of control over their children.

51. Petersilia, *supra* note 2, at 4.

52. *Id.*

53. Empowerment Zones are impoverished neighborhoods designated by the U.S. government as eligible for private investment incentives, such as corporate income tax credits, to encourage economic growth and revitalization within those neighborhoods. See SIMON, *supra* note 28, at 14–19 (explaining how the Empowerment Zones Program is considered part of the CED movement because of the emphasis on community impute and stakeholder participation in these neighborhood development efforts).

54. McFarlane, *supra* note 27, at 329 (internal citation omitted) (quoting 24 C.F.R. § 597.102(c) (1997)).

Neighborhoods that were racialized as black, or of color, under de jure segregation were specifically designed to be impoverished, overcrowded, underresourced, and unprotected communities.<sup>55</sup> It is no wonder that current CED initiatives occur within not only poor communities, but also inner-city communities of color. In fact, the original eight cities for the Empowerment Zones Program all contained overwhelmingly majority black and Latino neighborhoods.<sup>56</sup> Again, these are the same characteristics of the communities that the formerly incarcerated are reentering upon release.

It is not merely within the same communities, but often the exact same individuals whom reentry lawyers and CED practitioners seek to serve. The demographics of the formerly incarcerated are in many ways the exact target populations for many CED initiatives.<sup>57</sup> Individuals released from prison remain largely uneducated, unskilled, unemployed, and usually without solid family support systems to which are added the burdens of a prison record.<sup>58</sup>

[T]he oppression faced by ghetto communities that have been racialized black and classified poor is that they are regarded as *deviant and inferior*, often are subjected to programs that are beneficial to others and less beneficial to them, and, most seriously of all, abandoned to suffer from a marginalization that threatens to permanently cut them off from the rest of society.<sup>59</sup>

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55. *Id.*

56. The original eight cities are Atlanta, Baltimore, Chicago, Detroit, Philadelphia/Camden, New York City (specifically Harlem and the South Bronx), Cleveland, and Los Angeles. All of the original Empowerment Zones were former leading cities in America's Manufacturing Belt, more recently referred to as the Rustbelt. See McFarlane, *supra* note 27, at 329.

[A]nalysis conducted using data on Ohio state prisoners . . . shows that two-thirds of the county's prisoners and most of the block groups with high rates of incarceration come from Cleveland. Concentrations are such that well under 1 percent of the block groups in the county account for approximately 20 percent of the county's prisoners. In such "high-rate" block groups, somewhere between 8 and 15 percent of the young black male are incarcerated on a given day. Similar conclusions can be drawn from a study in Baltimore, where 15 percent of the neighborhoods accounted for 56 percent of the prison releases.

TRAVIS ET AL., *supra* note 3, at 42 (footnote omitted).

57. Pinard & Thompson, *supra* note 9, at 594 ("[The] high rate of incarceration has placed added stresses on low-income communities of color. The loss of young men who are potential wage earners and supports for families has a detrimental effect on the social organization of poor communities while the offender is in prison. After the offender is released, the problems of lack of employment and lack of meaningful connection with the community can persist.").

58. Petersilia, *supra* note 2, at 4.

59. McFarlane, *supra* note 27, at 343 (emphasis added).

### III. INCORPORATING REENTRY LAWYERS TO REDEFINE COMMUNITY AND INCREASE PRACTITIONER EFFICACY

“Dreams and reality are opposites. Action synthesizes them.”

—Assata Shakur<sup>60</sup>

Assata Shakur’s famous words are a reminder that our good intentions as public interest practitioners are in themselves insufficient to alleviate the reality of subordination in the communities within which we work. In the context of CED, an action necessary to synthesize the dream of developing healthy communities with reality is the purposeful incorporation of reentry lawyers in CED initiatives. A primary reason that reentry lawyers are indispensable in the work of CED is that reentry lawyers can represent the concerns and impart the knowledge of their formerly and currently incarcerated clients given their professional experiences working with reentry populations from the neighborhoods they represent.

Typically, CED practitioners begin their work within a neighborhood by conducting a community assessment of the economic situation. CED corporations and organizations undertake a number of studies before “committing scarce resources or making long-term economic commitments. General data collection that measures such things as demographics (e.g. population, residence, age, income, education), health[,] . . . familial needs,” housing, employment, and business interests are generally helpful to a CED initiative.<sup>61</sup> After a CED organization possesses a clear sense of the current economic conditions and demographics of the neighborhood, the next step is to create a vision for the community based on the set of issues that the community decides to tackle.<sup>62</sup> This process entails envisioning a detailed picture of what the community will look like in five to ten years. An essential factor in this fundamental step is to involve as many community members as possible in creating this vision so that the CED projects are responsive to community needs. This process is often coupled with feedback mechanisms to inform CED leaders about how the development strategy is resonating with the community, which necessitates a comprehensive understanding of who the

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60. ASSATA SHAKUR, ASSATA: AN AUTOBIOGRAPHY 260 (1987). Shakur was incarcerated in federal maximum security prisons from 1973 to 1979 when she escaped prison and subsequently fled to Cuba for political asylum.

61. See Lorie M. Graham, *An Interdisciplinary Approach to American Indian Economic Development*, 80 N.D. L. REV. 597, 616–17 (2004).

62. TEMALI, *supra* note 35, at 9.

community members are.<sup>63</sup> For many inner-city neighborhoods of color, a significant portion of the community is either currently incarcerated or has the statistical likelihood of going to prison. For the CED initiatives within these neighborhoods, obtaining the voices of all the community's constituency will mean moving beyond community planning sessions held locally within the neighborhood, to conducting outreach within prisons and jails to gather input from inmates who are from the community and will likely return to it upon release.

Reentry lawyers possess the experiential knowledge and social networks to connect CED practitioners to incarcerated and formerly incarcerated populations that traditional CED outreach would otherwise miss. Reentry lawyers maintain communication and connection to their clients while they are incarcerated and understand the unique barriers that their clients face upon reentry to society. This knowledge uniquely positions reentry lawyers to serve as conduits between the community and the reentry population who are able to gain insight from their incarcerated and reentering clients. There are few people better informed about the circumstances and decisions that lead to incarceration than those who are in prison or jail, or who have been released from prison or jail. Their knowledge, especially accessible to reentry lawyers, contain lessons learned that are worthy to be incorporated into the planning and strategies for a community's development.<sup>64</sup>

The practice of incorporating community voices in CED serves another function in addition to fact gathering. One of the goals of CED is to empower individuals within the community to see themselves as active participants in determining the future of their surroundings and environment. This method of empowerment through self-government is particularly meaningful for those who have a criminal record and who have consequently lost the right to vote. Collateral consequences of criminal convictions civilly and socially "relegate ex-offenders to the margins of legitimate society,"<sup>65</sup> preventing the formerly incarcerated from participating in the most basic exercise of democracy. It is estimated that thirteen percent of African American males nationally are ineligible to vote as a result of a felony conviction.<sup>66</sup> For many of the formerly incarcerated, CED participation is the

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63. *Id.*

64. López, *supra* note 42, at 65 ("It is not in any way contradictory . . . to insist that those who live and work in [inner-city] communities possess extraordinary knowledge that we should tap and share, and simultaneously to maintain that the very same people still do not know huge amounts that they would find powerfully helpful.")

65. Pinard & Thompson, *supra* note 9, at 590.

66. Petersilia, *supra* note 2, at 6. The democratic marginalization of African American men has global effects that reach far beyond the individual or their community. It has been calculated

only mechanism available to them to help plan and to design the future of their communities. Having the right to vote, and thus a voice in the governance of your community, your state, and your country, is fundamental to American citizenship. When individuals lose this privilege because of a criminal record, they have also lost an important element of their citizenship: social status.<sup>67</sup> Therefore, losing the right to vote does more than cut off their political voice, it also socially segregates them from their community members.

Incorporating the voices of the incarcerated and formerly incarcerated in CED can play an important role in breaking down the political and social barriers created by criminal convictions. Because many ex-offenders are stripped of rights that are considered essential to democracy, their ability—through a reentry lawyer—to incorporate their voice into the democratic process of community building is particularly revolutionary. In other words, the civil disabilities that preempt reintegration into society are mitigated when reentry lawyers represent their clients' perspectives in conversations about the design and implementation of the future of the community.

The benefits of collaboration between reentry lawyers and CED practitioners are reciprocal. This collaboration would also improve the problem-solving skills and resources of reentry lawyers, further enhancing the quality of advocacy for incarcerated and formerly incarcerated individuals. Not only will reentry lawyers gain community information that is reliable and up-to-date, but they will also learn tools for effective communication with community stakeholders through their participation in CED. Unlike CED practitioners, lawyers are often characterized by their inability to communicate with their clients and leverage the resources of the communities within which they work. Far too often, legal representation is attorney driven, and clients prefer to defer difficult decisionmaking to their attorney.<sup>68</sup> Through their participation in CED, reentry lawyers will witness and be involved in the collaborative aspects of CED. If reentry lawyers are

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that if felons in Florida had been able to vote in the 2000 presidential election, Al Gore would be President. See, e.g., *A Stigma That Never Fades*, THE ECONOMIST, Aug. 10, 2002, at 25, 27 (estimating that one in six black men cannot vote in Virginia and Kentucky and that those convicted of a felony would vote overwhelmingly for Democrats); Abby Goodnough, *Disenfranchised Florida Felons Struggle to Regain Their Rights*, N.Y. TIMES, Mar. 28, 2004, available at <http://query.nytimes.com/gst/fullpage.html?res=9A0CEFD81130F93BA15750C0A9629C8B63>.

67. See SEYLA BENHABIB, THE RIGHTS OF OTHERS: ALIENS, RESIDENTS AND CITIZENS 50–51 (2004) (discussing Hannah Arendt's famous characterization of citizenship as "the right to have rights" (citation omitted)).

68. See generally GERALD P. LÓPEZ, REBELLIOUS LAWYERING: ONE CHICANO'S VISION OF PROGRESSIVE LAW PRACTICE (1992); Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 YALE L.J. 470 (1976).



exposed to and included in the process of CED, then they will learn strategies for rebellious lawyering.<sup>69</sup>

Rebellious lawyers are those lawyers who work with, not just on behalf of, subordinated people.<sup>70</sup> In his book, López explains that “rebellious’ lawyers work face-to-face with their client, recognizing the dignity and power of those they try to help.”<sup>71</sup> These lawyers “open themselves to being educated by the subordinated and their allies about the traditions and experiences of subordinated life.”<sup>72</sup> A fundamental characteristic of rebellious lawyering is that these lawyers know how to collaborate effectively with other professionals to provide the most comprehensive problem-solving approaches for their clients.<sup>73</sup> The essence of rebellious lawyering can be learned and observed in the principles and practices of CED. Reentry lawyers who have a commitment to rebellious lawyering will provide better legal advocacy to one of the most marginalized populations within poor, inner-city neighborhoods. This collaborative approach to reentry services is necessary because research shows that reentry work is most effective when it is coordinated through multiple agencies and tied to larger community strategies.<sup>74</sup> Thus, if reentry lawyers and their work are involved in the process of CED, it will also improve the effectiveness and success of the reentry services they offer to formerly incarcerated populations.

#### IV. ADDITIONAL ASSETS REENTRY LAWYERS POSSESS THAT FACILITATE CED GOALS

##### A. Reentry Lawyers Can Anticipate the Legal Issues That May Prevent CED Projects From Reaching Their Potential

Reentry lawyers are intimately familiar with the collateral consequences,<sup>75</sup> also known as civil disabilities, of criminal convictions and can ensure that these invisible legal barriers do not prevent a CED initiative

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69. See LÓPEZ, *supra* note 68.

70. Gerald P. López, *Reconceiving Civil Rights Practice: Seven Weeks in the Life of a Rebellious Collaboration*, 77 GEO. L.J. 1603, 1608 (1989).

71. Morin, *supra* note 30, at 168 (internal quotation marks omitted).

72. *Id.*

73. *Id.*

74. DANIEL P. MEARS & JEREMY TRAVIS, THE URBAN INST., THE DIMENSIONS, PATHWAYS, AND CONSEQUENCES OF YOUTH REENTRY 31 (2004).

75. The irony of the term collateral consequences is that these consequences have an incredibly material impact on a person's ability to reintegrate into society after incarceration. The term itself is indicative of the misinformation around this topic.

from reaching a significant portion of the individuals it is intended to serve. “[C]ollateral consequences exist at the federal and state levels, and are considered to be the indirect . . . consequences that flow from a criminal conviction.”<sup>76</sup> Civil disabilities “encompass a wide array of sanctions . . . that attach to, but are legally separate from, the criminal sentence.”<sup>77</sup> Civil disabilities include permanent or temporary ineligibility for federal assistance programs such as “welfare benefits, educational grants, public housing, voting, handgun licenses and military service”<sup>78</sup> and even jury duty. Civil disabilities also include employment prohibitions and the deportation of non-U.S. citizens. “[T]he last two decades have witnessed [the] dramatic expansion” of civil disabilities imposed on the formerly incarcerated.<sup>79</sup> Although much attention goes to the civil disabilities of felony convictions, collateral consequences attach to misdemeanor convictions as well.<sup>80</sup>

Individuals reentering their communities after criminal convictions are often unaware of the new civil disabilities that impede their ability to reintegrate because they sometimes attach to a conviction without warning.<sup>81</sup> Even judges do not fully understand the impact of the civil disabilities that are associated with a conviction or guilty plea.<sup>82</sup> “[C]ourt rules do not require that the trial judge[, prosecution] or defense attorneys explain the collateral consequences of a plea to the defendant.”<sup>83</sup> Most lawyers do not know how to navigate civil disabilities because they are a construction of federal and state laws within both civil and criminal statutes. For these reasons, civil disabilities have been characterized as an invisible web of punishment.<sup>84</sup> Experienced reentry lawyers, however, are distinct in that they possess the legal understanding of the laws affecting the formerly and currently incarcerated, and they are equipped with the legal training to help clients maneuver through this system of civil disabilities. Reentry lawyers could demand that CED

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76. Pinard & Thompson, *supra* note 9, at 585–86 (footnote omitted).

77. *Id.* at 586.

78. *Id.* at 586–87 (footnote omitted).

79. *Id.* at 587; see also Steven Raphael, *The Socioeconomic Status of Black Males: The Increasing Importance of Incarceration I* (Mar. 2004) (unpublished manuscript), available at <http://socrates.berkeley.edu/~raphael/the%20socioeconomic%20status%20of%20black%20males%20march2004.pdf> (concluding that these collateral consequences are “an increasing[ly] important . . . [contributor to] racial inequality in the United States”).

80. Pinard & Thompson, *supra* note 9, at 589.

81. *Id.* at 590.

82. *Id.* at 590.

83. *Id.* at 591.

84. See generally MARGARET COLGATE LOVE, *RELIEF FROM THE COLLATERAL CONSEQUENCES OF A CRIMINAL CONVICTION: A STATE-BY-STATE RESOURCE GUIDE* (2006).

practitioners also identify what civil disabilities affect the target population and how best to anticipate and to mitigate these disabilities through CED planning.

Formerly incarcerated individuals, for example, make up a significant portion of almost any urban homeless population. California officials report that ten percent of the state's parolees remain homeless, but in urban areas such as San Francisco and Los Angeles, the rate reaches thirty to fifty percent.<sup>85</sup> Thus, a CED initiative that intends to increase the available housing options in the neighborhood, a typical goal of CED, would need to consider the housing needs of the reentry population in that community. Reentry lawyers know that in 1988, Congress adopted a one-strike eviction policy from federal public housing for individuals who have a criminal conviction, and this information is vital to the development of housing options in a community. Private property owners often inquire into an applicant's background and regularly deny housing to anyone with a criminal record. Hence, the inability to live in federal public housing drastically limits the housing options for a person with a criminal record.

Civil disabilities not only prohibit the formally incarcerated from living in federal public housing, but also limit their family members if the family decides they want to live together. Individuals who reside in public housing are forced to sign agreements that ex-offender family members cannot only not live with them, and also will not visit the public housing unit.<sup>86</sup> Thus, families that receive federal public support have the option to break up or remain together without the often necessary benefits of federal public housing.

When the CED initiative is designing housing options, one of the conversations will have to be around balancing government housing with private housing developments that contractually agree not to discriminate against individuals or family members with convictions. Without such a conversation, there is less of a chance of eliminating homelessness in that urban neighborhood. The CED initiative may be successful in creating new housing developments but not in impacting the homeless population in the community or reuniting families with their loved ones.

The most common goal of CED initiatives is to generate economic resources and employment opportunities within a neighborhood. Formerly incarcerated individuals have a particularly difficult experience finding a job because the civil disabilities that attach to their criminal convictions include employment prohibitions. In California, an individual with a criminal conviction cannot obtain employment working in real estate, nursing, or physical

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85. Petersilia, *supra* note 2, at 6.

86. Austin, *Step on a Crack*, *supra* note 45, at 274.

therapy.<sup>87</sup> As in the case of California, employment prohibitions attach to a criminal conviction or guilty plea as a function of the individual's status as an ex-offender and are not narrowly tailored exclusions that correspond to the specific offense.<sup>88</sup> For example, "[a] number of states permanently bar ex-offenders from all forms of public employment" regardless of the offense.<sup>89</sup> Nationwide licensing boards for professional careers typically define good moral character to exclude those with a criminal conviction.<sup>90</sup> Licensing is a requirement for professions like bartenders, nurses, barbers, plumbers, and cosmetologists. At the same time, the formerly incarcerated are in the greatest need for employment opportunities. It is reported that approximately seventy percent of the currently incarcerated individuals in California prisons were not employed at the time of their offense.<sup>91</sup> Thus, potential offenders and the formerly incarcerated are within the target population that job creation initiatives are intended to assist. Reentry lawyers can help a CED organization identify which employment options civil disabilities do not prohibit and assist with expungement clinics to clear criminal records to facilitate employability.

Of course, all civil disabilities are linked together making for an even more dramatic situation than depicted in this Comment. For example, an inability to find housing makes it almost impossible to secure employment; a lack of employment makes it difficult to convince a family court judge that you are fit to regain custody of your children.<sup>92</sup> Unemployment is also one of the leading factors in substance abuse, making it more likely that a parolee will violate parole requirements. All of these civil disabilities are interlinked obstacles that need to be addressed in their totality. If a CED initiative is unaware of how these civil disabilities come together to create a particularly vulnerable population within the community, then the initiative has missed the opportunity to brainstorm effective strategies to alleviate poverty within the neighborhood. At each level in shaping the composite CED vision,

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87. Pinard & Thompson, *supra* note 9, at 596.

88. *Id.*

89. *Id.*

90. *Id.* at 597.

91. Joan Petersilia, Strategic Reform: Implementing Evidence-Based Programs for California Offenders 10 (2005), available at [http://ucicorrections.seweb.uci.edu/pdf/present\\_2005\\_07\\_12\\_xerox.pdf](http://ucicorrections.seweb.uci.edu/pdf/present_2005_07_12_xerox.pdf) (PowerPoint presentation).

92. Without exploring this topic in detail, it is necessary to note that reentry lawyers are an asset in family reunification efforts and dependency court issues. More than half of incarcerated men are parents of children under eighteen years of age. About eighty percent of female inmates are mothers with, on average, two dependent children under the age of ten. See Petersilia, *supra* note 2, at 5. A major issue for women post-incarceration is reuniting with their children who were placed in foster care. Family reunification is a powerful goal for healthy communities.

reentry lawyers are necessary to help inform and to develop creative solutions to poverty reduction and to promote a healthy community.

B. Reentry Lawyers Can Research and Strategize Around Policy Developments That Specifically Affect CED Initiatives

Reentry lawyers can conduct legal and policy research to help a community determine legal strategies to combat or to promote prison and reentry policies that would directly influence the success of CED initiatives. In California, for example, reentry lawyers can help neighborhoods weigh the pros and cons of the impending secured reentry facilities. Governor Arnold Schwarzenegger's proposed solution in response to the growing California state prison population is to fund up to ten secured reentry facilities with five hundred beds each in communities where inmates are preparing to be released.<sup>93</sup> The facilities would be secured, with no in-and-out privileges, and staffed by California Department of Corrections and Rehabilitation (CDCR) officers. During the last year of their prison sentences, inmates would be transferred to these facilities, located in the neighborhoods of their last residence before incarceration, to receive services designed to facilitate transition to the community and to reduce the risk of further criminal activity. The state's goal for these secured reentry facilities is to enhance "the level and quality of supervision over released parolees" within the local community.<sup>94</sup> "Assembly Bill 900, which the Governor signed in May 2007, authorizes \$750 million to finance local jail facilities and requires the [CDCR] to develop reentry facilities throughout the state for 16,000 inmates."<sup>95</sup> The Bill provides that reentry facilities will only be constructed in cities or counties that request to have them. Because California parolees, like parolees across the nation, tend to be concentrated in impoverished neighborhoods of color with serious housing, educational, employment, family, and health needs, the primary location for these secured reentry facilities are neighborhoods fertile for CED.

Neighborhoods in California will need to consider the possible effects of a secured reentry facility on their CED initiatives. Neighborhood members

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93. Jeffrey Lin & Susan Turner, *Considering Secure Reentry Centers in California* 3 (Ctr. for Evidence-Based Corrections Working Paper 2007), available at <http://ucicorrections.seweb.uci.edu/pdf/ConsideringSecureReentryCentersinCalifornia.pdf>.

94. *Id.*

95. See Public Safety and Offender Rehabilitation Services Act, A.B. 900, 2007 Leg., Reg. Sess. (Cal. 2007); see also Judie Marks, *Support for Reentry Facility May Help County Get New Jail*, LEDGER DISPATCH, Aug. 31, 2007, available at <http://www.ledger-dispatch.com/news/newsview.asp?c=224247>.

might be particularly interested in having the facility built in their community to increase the physical proximity to their incarcerated family members and friends, to diversify resources available to inmates such as substance abuse treatment and work-ready programs, and to promote an effective system of parole accountability.<sup>96</sup> But neighborhoods might also have serious concerns about the state's enthusiasm to place these facilities inside communities that are already overexposed and desensitized to prison life. With the secured reentry facilities also comes the state's promise to increase parolee supervision and police surveillance.<sup>97</sup> In a criminal justice system where a significant portion of recidivism is attributed to technical or administrative parole violations, the increased parolee supervision and police surveillance may accelerate the rate of recidivism. A neighborhood considering a secured reentry facility would also need to consider the effect of prison exposure on children within the community. Research suggests increased exposure to prison influences children to be more violent and more likely to commit an offense.<sup>98</sup> Reentry lawyers would be among the first to learn of political initiatives like the secured reentry facilities and could facilitate the process of informing community members about the effects of bringing a facility into the community. After a neighborhood has decided that they do or do not want a secured reentry facility, reentry lawyers can help neighborhood members strategize around the legal and political resources available either to promote or to prevent the construction of the facility within the neighborhood.

Reentry practices also impact the financial and political strength of a community when a significant portion of it is incarcerated. Reentry lawyers can assist a community to find legal recourse to improve the effects of these practices and to promote more government support inside their neighborhood. For example, the Census Bureau's practice is to count bodies where they are located at the time of the survey. This has a devastating impact on low-income, inner-city communities, because prisons are located outside of these communities frequently in rural areas.<sup>99</sup> "[T]he Census Bureau's decision to count prisoners as residents of the communities in which prisons were located mean[s] that low-income communities" lose financial resources in the form of state and federal aid that are tied to census figures.<sup>100</sup> In the 2000

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96. There already exist examples of successful reentry and halfway homes located in poor, inner-city communities. See Tarzana Treatment Center: Integrated Behavioral Healthcare, <http://www.tarzanatc.org> (last visited Mar. 25, 2008); A New Way of Life Reentry Project, <http://www.anewwayoflife.org> (last visited Mar. 25, 2008).

97. Lin & Turner, *supra* note 93, at 8.

98. See Roberts, *supra* note 20.

99. Pinard & Thompson, *supra* note 9, at 602.

100. *Id.* at 601.

Census, this loss in population numbers diminished the financial health of communities that rely on federal “job training programs, school funding, national school lunch programs, Medicaid, and community development programs” by failing to recognize that large populations of the incarcerated will soon return to these communities.<sup>101</sup> Changing the Census Bureau counting practices would increase the financial and political strength<sup>102</sup> of a neighborhood and have a significant impact on CED initiatives because of the increased federal and state benefits available to those in the community.

Reentry lawyers can help neighborhoods plan legislative campaigns and legal strategies to challenge, among other practices, how Census Bureau counting affects state and local public assistance programs. CED approaches economic and social development opportunities by building on the assets rather than the deficits of the community. Reentry lawyers can advocate to help communities reclaim the assets within their incarcerated populations.<sup>103</sup>

#### C. The Social Networks of Reentry Lawyers Can Increase the Quality of Legal Services Accessible Within a Community

As attorneys admitted to the state bar, reentry lawyers have social and professional networks with other attorneys who work in diverse practice areas. CED neighborhoods are desperate for quality legal representation in every facet of law. The legal services available within many inner-city, low-income communities are fragmented and incomplete.<sup>104</sup> Incorporating reentry lawyers as partners in CED initiatives will increase the legal service resources accessible to the community because reentry lawyers have the social capital of their professional networks to facilitate relationships with other legal service providers.

The idea of a community where people are employed, where economies are sustainable, where the environment is healthy, and where families are reconnected evokes a diversity of legal needs. Comprehensive approaches to lawyering are necessary and a variety of legal practice areas are implicated to reach this goal of community revitalization. Immigration lawyers, family

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101. *Id.* at 602 (referencing PETER WAGNER, PRISON POLICY INITIATIVE, DETAINING FOR DOLLARS: FEDERAL AID FOLLOWS INNER-CITY PRISONERS TO RURAL TOWN COFFERS 1 (2002)).

102. *See id.* at 602 (providing examples of how prison population counting has a significant impact on electoral counting that dilutes the political voice of inner-city communities).

103. López, *supra* note 42, at 64 (“Those who live in these neighborhoods know too little about how federal, state, and local governments make budget decisions about economic development and how, if at all, everyday folks like themselves can influence the process and choices.”).

104. Morin, *supra* note 30, at 161 (“In order to ensure effective delivery of legal services, legal service providers must develop an integrated, comprehensive, and collaborative . . . system of delivery.”).

lawyers, public benefit lawyers, and special education lawyers are a sample of the legal services that successful CED efforts will need as resources. Reentry lawyers will understand this vision of community as a result of working with individuals reentering from prison who are attempting to reclaim their full lives and who are not merely satisfied to be outside of prison.

### CONCLUSION

This Comment illustrates that not only will CED be more effective in facilitating prisoner reentry, but also that CED cannot be fully effective without incorporating the legal issues of reentry. Removing and anticipating the legal barriers to reentry makes the goals of CED realistic and achievable in communities where entire families are affected by the impacts of mass incarceration.<sup>105</sup> Reentry lawyers should, therefore, view their knowledge and connections as integral to effective CED efforts within the communities they serve, and CED practitioners must leverage reentry lawyers who possess resources that are invaluable in creating a healthy community. Although the focus of this Comment highlights the characteristics of CED that suggest empowerment and democratic involvement, it also acknowledges that economic development is a relatively conservative principle in the regime of antistatist work. Arguably, CED “seeks only that change which is in harmony with a set of existing rules and relationships”<sup>106</sup> designed to maintain the larger status quo that functions to oppress poor individuals of color.<sup>107</sup> This Comment does not address the lack of reentry lawyers or that the current groups of reentry lawyers are overworked and understaffed. There is fertile ground for discussion on how to cultivate more reentry lawyers to address the growing population of incarcerated individuals. For these reasons, continued conversations on effective collaborations between reentry lawyers and CED initiatives are necessary.

Collaboration between reentry lawyers and CED practitioners will not solve all problems facing the intersection of poverty, institutional racism, and possession of a criminal record, but the benefits will nonetheless drastically improve prospects for the formerly incarcerated and strengthen their overall communities. Too often reentry work focuses on preparing the individual

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105. The idea for this Comment was inspired by Saúl Sarabia, Director of the Critical Race Studies Program, in conversation discussing the topic of reentry and CED.

106. McFarlane, *supra* note 27, at 300.

107. See Cummings, *supra* note 30, at 447–65 (arguing that conventional CED should deemphasize its market-based approach because market-based CED does not adequately redress poverty, has a lack of political engagement, and may facilitate gentrification).



who is being released from prison or jail to come back to the community.<sup>108</sup> Incorporating reentry lawyers into CED planning and implementation is a necessary step to prepare communities to reintegrate formerly incarcerated individuals. This collaboration will inevitably create healthier communities by helping to reduce characteristics of recidivism, first offenses, and economic marginalization. It is my sincere regret that a CED initiative informed with reentry lawyering has not intervened in the life of Uncle Carl.<sup>109</sup> But I am confident that Uncle Carl's experiences will continue to inspire my vision of collaborative problem solving and innovative lawyering to motivate my work within inner-city communities of color.

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108. Jeremy Travis, *But They All Come Back: Rethinking Prisoner Reentry*, SENTENCING & CORRECTIONS: ISSUES FOR THE 21ST CENTURY, May 2000, at 1, 2 ("The overarching goal of reentry, in my view, is to have returned to our midst an individual who has discharged his legal obligation to society by serving his sentence *and* has demonstrated an ability to live by society's rules.").

109. Uncle Carl was evicted from his state convalescent home and asked to leave on Sunday, December 30, 2007. He is once again homeless.