Integrative Lawyering: Navigating the Political Economy of Urban Redevelopment

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INTRODUCTION

Social justice movements have long attempted to influence the economic development of urban communities. Racial, ethnic, and class factions have chronically struggled over land, jobs, housing, and political power, particularly in cities. Studies of the development and decline of many cities—Camden, Oakland, Chicago, Detroit, and New Haven, for example—over the last half-century tell much the same story. The convergence of political and economic forces that built up cities across the country ultimately disintegrated, crippling many cities and leaving their inhabitants to fight over a racially and economically stratified turf that could not compete with the surrounding suburbs for critical resources.1 The Community Economic Development (CED)

1. See generally Howard Gillette, Jr., Camden After the Fall: Decline and Renewal in a Post-Industrial City (2005) (chronicling the history of, and examining the cumulative effects of, urban decline in a classic post-industrial city); Arnold R. Hirsch, Making the Second Ghetto: Race and Housing in Chicago, 1940-1960 (1998) (chronicling the strategies used by Chicago’s ethnic, political, and business interests in reaction to the great migration of southern blacks in the 1940s and describing how the violent reaction of an emergent “white” population combined with public policy to segregate the city); Douglas W. Rae, City: Urbanism and Its End (2003) (chronicling the rise and fall of New Haven, Connecticut, from its industrial heyday through its gradual and then precipitous decline, from the early 20th century to the present day); Robert O. Self, American Babylon: Race and the Struggle for Postwar Oakland (2003) (telling the story of the postwar rise and decline of cities through Oakland and its nearby suburbs by tracing both the history of civil rights and black power politics as well as the history of suburbanization and home-owner politics); Thomas J. Sugrue, The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit (1996) (explaining how Detroit and many other once prosperous industrial cities have become the sites of persistent racialized poverty, brought about by changes in the urban economy and labor market and by racial and class segregation). As Gillette poignantly characterizes this history:

1 The New Deal ties forged between disparate constituencies around entitlements to decent wages and a secure home came unraveled in the postwar years. Not only did the number of well-paying union jobs decline as industries migrated away from older urban areas, housing support to those in greatest need declined too, even as subsidies increased for those who already had significant resources to buy homes in preferred locations. Both policy elements assumed stark spatial dimensions. As jobs decentralized and as federally financed loans underwrote the rapid growth of the suburbs, what publicly assisted housing was available was directed at older cities, causing both controversy and, eventually, inadequate housing options for the African Americans and
movement arose out of the resulting struggle of urban residents, particularly those in distressed inner cities, to access public and private capital to build and operate essential community facilities and services. 2

Although its historical origins and orientations are different from those of the CED movement, the environmental justice movement similarly emerged from the struggle of socially and economically vulnerable populations to secure and improve the quality of the places where they lived, worked, and played. 3 Environmental justice advocates have long been fighting the widespread tendency of public officials to promote economic growth around the perimeter of socially and economically vulnerable communities and to impose harmful externalities of that growth—often toxic and hazardous land uses—on those communities. Dana Alston, a pioneer of the United States environmental justice movement, once stated that the centerpiece of environmental injustice across the world is that “[t]he people who benefit the most from technological and industrial development do not have to bear as much of the burden.” 4 To counter these inequities, environmental justice advocates question and closely scrutinize the type of land uses that communities of color and low-income communities are asked to accept, often in the name of economic development. Such scrutiny renders the environmental justice movement a natural ally of the CED movement. 5 This alliance seems even more appropriate in light of the other minority populations whose mobility remained strictly limited by racial or economic discrimination. . . . Despite the promise that all Americans could become full participants in a post-World War II ‘consumer republic,’ . . . the distribution of benefits in a robust market economy was extremely uneven. For those who made it to the suburbs, housing value came to be considered the key to security, and any changes that threatened to undercut that investment had to be resisted, including economic and racial diversity.

GILLETTE, supra note 1, at 4-5.


3. See LUKE W. COLE & SHEILA R. FOSTER, FROM THE GROUND Up: ENVIRONMENTAL RACISM AND THE RISE OF THE ENVIRONMENTAL JUSTICE MOVEMENT 19-33 (2001) (explaining that the environmental justice movement grew organically out of many local struggles and events and social movements, including the civil rights, anti-toxics, labor and environmental movements); see also Scott L. Cummings, Mobilization Lawyering: Community Economic Development in the Figueroa Corridor, in CAUSE LAWYERS AND SOCIAL MOVEMENTS 302, 303 (Austin Sarat & Stuart A. Scheingold eds., 2006) [hereinafter Cummings, Mobilization Lawyering] (noting that CED “is not connected with broad-based social movements” but instead is “parochial, seeking to preserve community boundaries and increase community control of resources,” and as such is not “designed to challenge the existing rules of the game”).


5. Rachel Godsil and James Freeman made this argument over a decade ago. See Rachel D. Godsil & James S. Freeman, Jobs, Trees, and Autonomy: The Convergence of the Environmental
emergence of an “accountable development” strand of activism within the CED movement.  

It is true that most environmental justice organizations work largely around reactive struggles against the environmentally unsustainable decisions others make that shape the character and decrease the quality of their surrounding communities. Lawyers working with environmental justice organizations must often operate from a reactive position, responding to a decision made largely without the affected community’s input. Because environmental justice campaigns take place within the very legal/regulatory context that results in the disproportionate siting of noxious and polluting facilities in communities of color, lawyers are crucial to the organizations. The lawyer-client relationships are almost always undertaken with appropriate caution, however. Following the groundbreaking work of Luke Cole, lawyers often carefully situate themselves as a complement to, rather than as a leading force behind, the environmental justice group’s ultimate strategy for increasing the community’s role in future land use and development decisions.

More recently, however, environmental justice groups have begun to turn their attention toward proactively developing, advocating, and securing policy shifts and new practices on the ground to (re)build their communities into ones that are both socially just and ecologically sustainable. Indeed, the emerging framework of “just sustainability” comes out of a fusion of newer sustainable development principles with more traditional environmental justice principles.

In his work, Julian Agyeman points to the development of a practice, or

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6. Environmental justice activists tend to have a social movement orientation employing direct action and seeking structural reforms as a way to alleviate many of the problems, including environmental degradation, that their communities endure. See COLE & FOSTER, supra note 3, at 33-34. The emerging advocacy within the CED movement for “accountable development” also focuses on “more confrontational forms of collective action, flowing out of the traditions of community organizing and social movement activism.” Cummings, Mobilization Lawyer ing supra note 3, at 303 (contrasting this recent focus with the traditional CED strategy of building “partnerships and distribut[ing] resources within the framework of the law as constituted” and fostering “a version of mobilization that tends to de-emphasize adversarial organizing in favor of collaboration with business and governmental partners.”); see also id. at 313 (stating that the emergence of an “accountable development” strand within CED practice has “sought to change city redevelopment practices through more confrontational grassroots campaigns aimed at increasing community participation in the planning process and forcing local developers and government officials to commit to redevelopment projects that are responsible to the needs of low-income residents”).


perhaps "praxis,"\(^9\) of just sustainability exemplified by the work of many environmental justice organizations around the country, including Boston’s Alternatives for Community and Environment (ACE) and Oakland’s Communities for a Better Environment (CBE), among others. These organizations employ direct, participatory, and collaborative strategies to address the range of environmental health, land use, housing, and transportation issues in their communities.\(^{10}\) In determining the kinds of land use, jobs, services, and housing that should accompany redevelopment, these groups not only reactively fight against unwanted development, but they also work affirmatively to build and create "the ability, opportunity, capacity, and wherewithal to chart their [communities'] own destiny."\(^{11}\)

The fusion of some of the concepts, strategies, goals, and practices of the environmental justice, community economic development, and sustainable development movements presents intriguing challenges for lawyers representing organizations at the intersection of these frameworks. The proactive role that many environmental justice groups increasingly assume complicates, or at least changes, the traditional role that lawyers have assumed in advocating for these organizations. Becoming proactive players now requires the organization to envision the type of development that will best serve its constituents and obtain the tools to implement that vision, including extracting community benefits from private developers who supply the development capital.

This shift from defending and reacting to creating and envisioning requires a more engaged organizational role for the lawyer. The lawyer is now expected to do more than translate the organization/community’s grievance into discreet legal frameworks and discourse—e.g., a civil rights violation, a nuisance, participatory right, etc. The lawyer now intervenes in negotiations from which the organization or community has been excluded.\(^{12}\) This new role requires a shifting, flexible mix of skills and a more dynamic interaction with

\(^9\) See, e.g., id. (borrowing the intragenerational justice and equity focus from environmental justice activism and the ecological planning aspects from sustainability development; the "just sustainability" model is exemplified by the work of organizations that proactively attend to constructing, advocating, and securing larger policy shifts and actions to (re)build their communities into ones that are both socially just and ecologically sustainable); see also Eric E. Yamamoto, Critical Race Praxis: Race Theory and Political Lawyering Practice in Post-Civil Rights America, 95 Mich. L. Rev. 821, 829-30 (1997) ("Critical race praxis combines critical, pragmatic, socio-legal analysis with political lawyering and community organizing to practice justice by and for racialized communities. Its central idea is that racial justice requires antisubordination practice. In addition to ideas and ideals, justice is something experienced through practice").

\(^{10}\) See Julian Agyeman & Briony Angus, The Role of Civic Environmentalism in the Pursuit of Sustainable Communities, 46 J. Envtl. Pol’y & Mgmt. 345, 345 (2003).

\(^{11}\) Agyeman, supra note 8, at 141 (quoting Bill Shutkin’s description of Alternatives for Community and Environment’s "theory of change" as an example of an articulation of just sustainability).

\(^{12}\) See, e.g., Cummings, Mobilization Lawyering, supra note 3, at 309.
INTEGRATIVE LAWYERING

the organization and its varied functions—policy, community education, lobbying, and organizing. This new role is what we call “integrative lawyering,” an emergent model of community lawyering that we identify and explore in the context of our experience working for and with an environmental justice organization, West Harlem Environmental Action (WE ACT) in New York City.

WE ACT has changed over time from ad hoc, pro bono legal representation to an ongoing multi-faceted collaboration with Fordham Law School faculty and students to now also employing an in-house attorney. Sheila Foster, an environmental justice scholar, came to Fordham in 2002 and began to serve as legal consultant and pro bono counsel in WE ACT’s campaign against the City’s uptown concentration of asthma-inducing diesel bus garages. She linked WE ACT with Brian Glick’s CED clinic at Fordham, which soon became the group’s transactional counsel. Since then, WE ACT also has received assistance from students and faculty in Fordham’s urban policy clinic, its advanced public interest seminar, and its new environmental justice externship program. Working with Fordham, the organization recently won a multi-year grant to add an in-house staff attorney. In its application, WE ACT advanced a model that integrates legal capacity directly into a community organization (rather than collaborating with independent legal organizations or counsel), so that legal research, analysis and action could inform and enhance all aspects of the group’s planning and action.

We argue that “integrative lawyering” has emerged at WE ACT, and at similar organizations working at the intersection of environmental justice and sustainable development, partly through the efforts of lawyers and community based organizations to intervene in, and respond to, the political and economic dynamics of contemporary urban development. We illustrate how these dynamics play out within the context of an ongoing and contested proposal by Columbia University in New York City to build a new campus in another major part of West Harlem, thereby threatening nearby communities with grave environmental, economic, social, and development consequences. WE ACT has been thrust into the center of this controversial development project and has consequently moved more deeply into the vortex of city development politics than ever before. WE ACT’s intense involvement in planning, developing, resourcing, and negotiating the community response to the University’s proposal exposes the limitations of relying exclusively on legal/regulatory tools to extract gains for community interests from the thick political economy of urban development. This experience also illuminates the demands placed on lawyers operating in this new context to fully and dynamically engage in and with the entire range of an organization’s multi-faceted efforts.

13. See id.
In Part II we sketch Columbia University’s proposed expansion in West Harlem, the contested issues surrounding the proposal, and WE ACT’s role as an emerging force in Harlem’s redevelopment and revitalization. We illustrate how WE ACT’s efforts to galvanize a multi-faceted response to Columbia’s proposals and to shape the overall trajectory of development in Harlem have moved it squarely and firmly into the realm of local development politics. This move, we argue, requires a set of strategies that will test not only the organization’s expertise but also its lawyers’ roles within the organization.

In Part III, we articulate a framework for understanding the political economy of urban development that WE ACT must navigate in organizing a community response to Columbia’s expansion plan. We argue in this section that the decentralization of political power and capital in urban development has significantly shifted the roles of public and private players in development deals. We demonstrate how the city/local government has become a weaker player in a more dispersed system of influence/power that drives urban development today, while communities now view themselves as potential players in the development “game.”

In Part IV, we delve more deeply into the political, economic, and legal dynamics surrounding Columbia’s expansion by identifying the various stakeholders, their interests, and the various points of convergence and divergence among them. We then detail the ways in which these players interact, compete, and collude through various stages of legal process and discourse at multiple levels of government. At each stage, we show how WE ACT has reexamined and redefined its lawyering strategies in response to the thick political economy in which contemporary development deals proceed in the shadow of the law.

In Part V, we argue that to be effective in navigating the political and economic forces illustrated in the WE ACT case study, community lawyers need to work “integratively” in two interconnected ways: “role integration” and “organizational integration.” At the level of role integration, WE ACT’s lawyers, like their client, need to integrate a broad range of practice areas, skills, and roles when seeking to build/enhance community efficacy. And at the level of organizational integration, they also need to ensure that their work is thoroughly integrated into the overall strategy, programs, and processes of the community based organization so that their lawyering ties closely with the organization’s efforts to build community capacity and power.15 We conclude this Part by identifying the ways that WE ACT’s legal team has been working with its organizers and other staff members to synthesize the organization’s legal, education, policy, and lobbying efforts toward the creation of new structures for community ownership of land, housing, and other facilities that

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15. By community efficacy, we mean the capacity and ability of those who have the least voice in the development process to develop and implement a shared vision of its future.
its constituents seek to gain from the expansion project. Although the Columbia expansion project is ongoing and remains contested, the model of integrative lawyering that is developing at WE ACT yields immediate lessons that transcend this particular dispute.

I

A MODERN TALE OF URBAN REDEVELOPMENT: THE COLUMBIA UNIVERSITY EXPANSION

In July 2003, Columbia announced its thirty-year plan to build an eighteen-acre science and arts complex in West Harlem just north of its historic Morningside Heights campus and two miles south of its uptown medical center. Columbia already had purchased nearly half of the site and expected to acquire the other half through private sales, or from City and State agencies that owned large parcels in the proposed footprint. Columbia’s announcement set in motion a complex, multi-level political-economic process and struggle that carried the potential to change not only the University and surrounding community but also an important community group, WE ACT, and the roles of its legal team.

A. The University

By July 2007, Columbia controlled all but a very few properties on the proposed expansion site. Its evolving plan for the new campus had expanded to include a new business school, student and staff housing, and an underground gym and pool. The move made very good sense for the University. Columbia


17. See Bagli, Columbia in a Growth Spurt, supra note 16.

18. See N.Y. CITY DEP’T OF CITY PLANNING, MANHATTANVILLE IN WEST HARMAN REZONING AND ACADEMIC MIXED-USE DEVELOPMENT DRAFT ENVIRONMENTAL IMPACT STATEMENT Ch. I at 42 (2007) [hereinafter COLUMBIA DRAFT EIS], available at http://nyc.gov/html/dcp/html/env_review/manhattanville.shtml (last visited Oct. 3, 2007) (stating that Subdistrict A of the planned campus would include classrooms, scientific research facilities including laboratories, housing for graduate students, faculty, and other employees, recreational facilities including a swimming and diving center and related support space); David J. Craig, Smart Growth, COLUM. MAG., June 2006, 8 at 12, available at http://www.neighbors.columbia.edu/pages/manplanning/pdf-files/columbia_mag_june06.pdf (last visited Oct. 3, 2007) (stating that the underground facility would contain pools, parking, and maintenance facilities); Columbia’s Move on West Harlem, N.Y. TIMES, Nov. 26, 2006, § 14, at 11 (reporting that the new campus would include the business school as well as new science labs and an art and culture center); Douglas Feiden, Columbia Launches Land-Grab Plan: Many in West Harlem Would Be Booted from their Homes, N.Y. DAILY NEWS, Feb. 25, 2007, at 20 (reporting that the new campus would include dormitories as well as, potentially, a pool and even a hotel). Columbia expects the project to take 25-30 years and cost at least $7 billion. See Daphne Eviatar, The Way We Live Now: 5-21-06: Dispute: The Manhattanville Project, N.Y. TIMES, May 21, 2006, § 6 (Mag.), at 632. The first phase of the project initially was to incorporate the School
is in constant competition with the other Ivy League schools as well as its downtown rival New York University. These universities compete for students, faculty, staff, funding, media attention, rankings, and much more.\(^\text{19}\) The other Ivy League and top national schools have far more space than Columbia,\(^\text{20}\) and Harvard University and the University of Pennsylvania, the two other big city Ivies, had recently completed major expansions.\(^\text{21}\) To remain competitive, Columbia had to keep up.

Expanding north into more of West Harlem was the obvious and only real option for such growth near the University’s existing facilities. Columbia and allied institutions already used the narrow strip adjoining the Hudson River and Riverside Park on its west. Any attempt to clear a major site in the densely residential neighborhoods of Central Harlem to the east or the Upper West Side to the south would involve huge political as well as financial costs. The University was very concerned to keep peace with nearby communities, especially Harlem. It would go to great lengths—short of not expanding—to avoid repeating the traumatic events of Spring 1968, when its plan to build a gymnasium on the hill separating Morningside Heights from Central Harlem sparked angry community protest and a widely publicized, week-long student occupation of main campus buildings.\(^\text{22}\)

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\(^\text{19}\) By Columbia’s calculations, Harvard, Yale, and Princeton each have more than double the square feet of space per student, according to planning documents. Jarrett Murphy, *History Lesson*, THE VILLAGE VOICE (N.Y.), May 24, 2006, at 14; see also Craig, supra note 18, at 10 (stating that “[a]mong the Ivies, CU has the fewest square feet per student, with just half that of its most space-constrained peer, Harvard”). Its rivals’ science research labs and performing arts venues, and their housing, gym and other facilities, are ever more lavish and up-to-date. See Bagli, *Columbia in a Growth Spurt*, supra note 16.

\(^\text{20}\) See Bagli, *Columbia Buys Sites*, supra note 16; see also Craig, supra note 18, at 10 (noting a general trend towards campus construction in the last decade).

\(^\text{21}\) See, e.g., Marcella Bombardieri, *Berklee Seeks to Build Dorm Tower and Theater*, THE BOSTON GLOBE, Dec. 5, 2006, at A1 (discussing the Harvard expansion into Allston); Steven Litt, *Ronayne’s at Square One with Circle*, CLEV. PLAIN DEALER, Dec. 27, 2005, at E1 (discussing the Penn expansion and the acclaim that the university received for that expansion).

\(^\text{22}\) The students protested both the gym and the University’s complicity in army research for the War on Vietnam. They were eventually removed when the university administration called in the New York City police. See Eviatar, supra note 18. Media around the world featured photos of students beaten and bloodied in the process. Students and their faculty supporters responded with a strike that shut down the university for the rest of the semester, and a new president was soon selected to run the university. See generally JERRY L. AVORN, UP AGAINST THE IVY WALL: A HISTORY OF THE COLUMBIA CRISIS (Robert Friedman ed., 1968) (providing a detailed account of the 1968 uprising and the resulting violence based on the first-hand experiences of students, faculty, administrators, local government representatives and members of the Harlem community). See also Eviatar, supra note 18 (“[T]he standoff ended in bloodshed: police stormed the buildings, beating and arresting students. Nearly 200 were injured.”); John Giuffo, *Big Plan on Campus*, THE VILLAGE VOICE (N.Y.), Aug. 6, 2003, at 62 (describing the violence of the police reaction and the paralysis of the university at the time).
The area of West Harlem targeted for expansion was only beginning to recover from a steep economic decline. Once a thriving port and business district with small factories, such as Studebaker Auto, dairies and other light industry and shops, it had fallen victim in the mid-twentieth century to the country's first wave of de-industrialization, as capital moved first to the suburbs and Southern states and then offshore to the global South in pursuit of cheaper land and labor. The area is currently under-developed, consisting for the most part of auto body shops, self-storage warehouses, meat-cutters, gas stations, fast-food outlets, social-service offices, a bus-maintenance garage, various odds and ends, and a valued supermarket that would not have to be displaced. Columbia's planners were able to outline a site which would offer adequate expansion while directly displacing at most one hundred forty households and a number of small businesses and service agencies.

Columbia had accumulated the capital to fund this expansion without government financing. It assembled a high-powered team to plan the new campus. The University hired a world-class architect, Renzo Piano, who developed an open, modern glass design concept, and paired him with the top firm of Skidmore Owings and Merrill as architect of record, responsible for construction drawings and administration. The University retained top law firms and had well-staffed in-house engineering and facilities departments and the funds to outsource any work that proved beyond the capacity of these departments. To manage relations with Harlem, City officials, and community groups, Columbia appointed as Executive Vice President for Government and Community Affairs Maxine Griffiths, an African American woman with deep roots in Harlem who had served on the City Planning Commission under the City's only Black mayor and who had more recently taught urban planning at the University of Pennsylvania.

23. See Timothy Williams, Land Dispute Pits Columbia vs. Residents in West Harlem, N.Y. TIMES, Nov. 20, 2006, at B1 (noting that the area has been dominated by industrial uses since the Industrial Revolution).

24. One hundred forty apartments is the figure used by expansion opponents. See www.StopColumbia.org. (last visited Oct. 3, 2007). Columbia claims it will directly eliminate only one hundred thirty two residential units. See COLUMBIA DRAFT EIS at 37. The small businesses were estimated to have about 1200 employees. See, e.g., Bob Roberts, Open University, CITY LIMITS, Dec. 2004, at 15, 16 available at www.citylimits.org/content/articles/viewarticle.cfm?article_id=3218 (last visited Oct. 3, 2007).

25. Except that in New York, charitable nonprofit corporations pay neither real property tax nor the "payments in lieu of taxes" required by many jurisdictions. See N.Y. REAL PROP. LAW §§ 420-a to 420-b (McKinney 2003).


27. Griffith had served as the executive director of the Philadelphia City Planning Com
B. The Community Group

Public officials and the media hailed Columbia's vision of an ultra-modern world-class university research center rising in place of the area's aging warehouses and car shops as a major advance. In Harlem, however, and in the uptown Dominican community that surrounds Columbia's medical center and has spread south toward the expansion site, residents met the news with a mixed response. Some local elected officials voiced cautious support, and some established social agencies accepted Columbia's plans along with its generous financial assistance. Other activists urged all out mobilization to stop Columbia. Still others advocated collective bargaining with the University to gain a binding contract that guarantees substantial benefits for local residents in exchange for their support of (or at least acquiescence in) an expansion that—in the view of those activists—they could not stop but only marginally reshape.

WE ACT entered into the center of this controversy as a leading proponent of the bargaining approach. Emerging in the early 1990s from struggles against the siting of one of the City's largest sewage treatment plants in this neighborhood, WE ACT had established its reputation by building community power to improve environmental protection, health policy, and quality of life in African American and Latino/a communities. Its main focus for many years had been the location of environmental hazards, especially the concentration in Northern Manhattan of asthma- and cancer-inducing diesel bus depots. It also led successful efforts to have New York State’s Department of Conservation adopt an agency-wide environmental justice policy. In the mission and secretary for strategic planning in that agency, Maxine Griffith Named Vice President for Government and Community Affairs, COLUM. NEWS, July 13, 2005, available at http://www.columbia.edu/cu/news/05/07/maxineGriffith.html (last visited Oct. 3, 2007). Before that, she served at the U.S. Department of Housing and Urban Development during the Clinton administration, initially as the regional representative for New York and New Jersey and later as HUD's assistant Deputy Secretary. Id. She also taught city planning and urban design at the University of Pennsylvania, Columbia, and New York University. Id. Griffith outsourced community outreach to a consulting firm headed by Bill Lynch, Deputy Mayor and chief of staff for the same Black former mayor. The ex-mayor himself, David Dinkins, taught at Columbia and authored a New York Times op-ed in support of the University’s proposed expansion. David N. Dinkins, Don’t Fear Columbia, N.Y. TIMES, May 27, 2007, §A, Editorial Page, available at http://select.nytimes.com/search/restricted/article?res=F40D17FF3C540C748EDAC0894DF404 482# (last visited Oct. 3, 2007).

28. See, e.g., Lois Weiss, Reach for the Skies—Harlem’s New Development is at Fever Pitch, N.Y. POST, Aug. 4, 2004, at 50 (discussing the positive impact of Columbia’s purchase of land in Manhattanville on the “otherwise dingy area”); see also Columbia’s Move on West Harlem, N.Y. TIMES, Nov. 26, 2006, §14, at 11.


process, WE ACT had grown to a full-time paid staff of fourteen and developed a sophisticated “inside-outside” strategy involving work with elected officials, foundations, and Columbia University public health researchers as well as community residents and activists. Gaining national and even global prominence, WE ACT began to expand its vision of environmental justice to encompass sustainable and equitable development. When the only remaining accessible section of Harlem’s Hudson River waterfront was slated in the late 1990s for development into high-end condos and hotels, WE ACT initiated a “community visioning” process and political campaign that saved the area for community recreational and educational use. It continued to lead community efforts to monitor and facilitate public development of the waterfront park, including piers into the Hudson and closing of an adjacent street.

WE ACT’s work around the waterfront park marked its first major foray beyond traditional public health environmental issues. On the one hand, conserving and expanding open space and public access to “nature” had long been within the ambit of environmental activism. And the community’s vision of the park included an environmental education center that addressed the ecology of both the Hudson River and the inner city. Still, the waterfront project marked a significant departure, positioning WE ACT for the first time as a central player in helping the community to shape affirmatively how its land should and should not be used, how public funds should be spent and how public accountability to the community should be structured. WE ACT’s involvement in the community struggle over Columbia’s expansion offered an opportunity to continue this work within the context of a project that involved much higher stakes and a host of issues not traditionally a part of the organization’s activism and leadership.

C. The Issues

The University’s plans raised a number of core environmental issues around which it had long been WE ACT’s responsibility to lead community education and advocacy. For example, thirty years of construction would spew a huge volume of dust and particulate matter into neighborhoods whose

http://www.dec.ny.gov/regulations/36951.html (last visited Oct. 3, 2007); see also WE ACT History, supra note 30 (discussing the successful effort to draft New York City’s Local Law 1 of 2004, a lead poisoning prevention bill).


33. WE ACT had been designated to develop and operate this center in a partnership with Columbia, which had to be deferred until the University expansion issues could be resolved. See WE ACT, Harlem on the River, supra note 32.
residents already suffered extraordinary concentrations of asthma and other respiratory ailments.\textsuperscript{34} The gas stations, block-long diesel bus maintenance garage, car shops, and similar ground-polluting uses scattered throughout the expansion footprint would require thorough remediation (which might, in turn, exacerbate air pollution).\textsuperscript{35} The University planned to build a major bio-research facility to experiment with “Level 3” substances, including contagious airborne viruses, such as SARS (as well as HIV/AIDS, which is not contagious and has killed thousands of Harlem residents), and many in the community distrusted its promise to eschew work with dreaded “Level 4” substances, such as Ebola and anthrax.\textsuperscript{36}

\textsuperscript{34} See Columbia Draft EIS, supra note 18 at Ch. 22 at 13 available at http://nyc.gov/html/dcp/pdf/env_review/manhattanville/22.pdf (last visited Oct. 3, 2007); Letter from Coalition to Preserve Community Steering Committee to New York Department of City Planning (Jan. 2, 2006) [hereinafter Coalition Response] (on file with author) available at http://www.stopcolumbia.org/content/view/34/64/ (last visited Oct. 3, 2007); West Harlem Environmental Action (WE ACT) for Environmental Justice, Official Written Comments on Columbia’s Proposed Manhattanville in West Harlem Zoning and Academic Mixed-Use Development Environmental Impact Statement Draft Scope of Work (Jan. 6, 2006), http://www.WEACT.org/columbia/Official_Written_Comments-06JAN06.pdf, at 65 (last visited Oct. 3, 2007) [hereinafter WE ACT, Official Written Comments], (stating that the expansion “will deter pedestrian use of the area because of the noise, odors, and dust that will be ever-present”); see also id. at 67-68 (discussing the air quality problems that construction will cause and citing studies about existing asthma rates in this part of the city and potential asthma-causing emissions that construction would entail).


\textsuperscript{36} See Columbia Draft EIS, supra note 18 at Ch. 22 at 23-32 available at http://nyc.gov/html/dcp/pdf/env_review/manhattanville/22.pdf (last visited Oct. 3, 2007); Eviatar, supra note 18 (discussing the fact that Columbia has obtained security clearance to experiment with highly dangerous substances, though the university claims that it has no intention of using those substances in on-campus research); Murphy, supra note 19 (discussing the types of viruses that may be involved in the Columbia labs that would be placed in West Harlem). The National Institutes of Health set these biosafety levels (BSLs) in order to both promote necessary medical research and to ensure that those laboratories conducting such research have adequate safety and security requirements. See The Need for Biosafety Laboratory Facilities, NAT’L INSTS. OF HEALTH, May 2006, http://www.niaid.nih.gov/factsheets/facilityconstruct_O6.htm (last visited Oct. 3, 2007). BSL-1 agents are “not generally associated with disease in healthy people” and require only minimal security measures. Id. BSL-2 agents are “associated with human disease” and require that lab access be limited, that biohazard warning signs be placed, and that other precautions be taken with work space, waste disposal, lab protection, physical containment devices, etc. Id. BSL-3 agents are “associated with human disease and cause illness by spreading through the air;” additionally, they “[c]ause diseases that may have serious or lethal consequences.” Id. They require controlled access, decontamination of waste and clothing, physical containment devices, protective clothing, respiratory protection, and certain technological features like air circulators. See id. BSL-4 agents “[a]re associated with human disease and cause illness by spreading through the air . . . or have an unknown cause of transmission;” they also “[c]ause diseases that are usually life-threatening.” Id. Laboratories that do research with these substances must have even more stringent safety procedures, like decontamination of all material, changing of clothing and showering upon leaving the laboratory, and technological safety measures like protective personnel suits and vacuum and decontamination systems. See id. In addition to the construction of the labs, Columbia planned to dig a seven-story underground
At a minimum, WE ACT would need to lead a community struggle over these issues. Insofar as environmental and public health risks depended on Columbia’s future decisions, WE ACT would fight for ongoing monitoring and full disclosure, with genuine opportunity for a community voice (if not a vote or veto). WE ACT also would need to address the obstacles that the proposed expansion posed to community access to the Hudson River waterfront park, which WE ACT and community residents had fought so hard to obtain, and to the community’s main food market, located near the Waterfront Park. Columbia’s new campus would stand between the waterfront park and market to its west, and the housing projects and other residential communities to its east. Without providing for easy, inviting access through the campus by foot, bicycle or bus, and friendly campus security guards, Columbia might effectively shut out local residents, leaving their park and market largely for the use of its students and staff.

The potential harms from Columbia’s expansion extended far beyond these traditional environmental and open space issues. Loss of affordable housing was a major concern. The expansion would demolish five apartment buildings that initially housed some one hundred thirty-two to one hundred forty low income households. While two of those buildings had been emptied temporarily for renovation, the other three were fully occupied. One had completed publicly-funded renovation and now housed formerly homeless families who received supportive services on site. Two others had been designated for publicly-funded renovation and transfer to resident co-operative ownership through the City’s Tenant Interim Lease (TIL) program. As of July 2007, however, the University was reportedly in private negotiation with the buildings’ public and nonprofit owners to purchase all of the sites and relocate the residents. Though it promised to find the tenants “comparable” housing nearby, these tenants were excluded from the negotiations and skeptical of the

factory – for deliveries, parking, heating and cooling, waste processing, storage, pool and gym – dangerously close to an earthquake fault line. See Eviatar, supra note 18. Some of Columbia’s planned buildings would be as high as twenty stories, blocking light and waterfront views from public housing projects to the East. See id. Heating, air conditioning, waste disposal and other engineering features could exacerbate pollution, greenhouse gas emissions and other environmental harms, or could minimize them through “green” design and construction. See WE ACT, Official Written Comments, supra note 24, at 60-61.

37. See sources at note 24, supra; Erin Durkin, Relocation Discussions: Residents Allege HPD Secrecy, Privacy Violations, COLUM. DAILY SPECTATOR, Mar. 2, 2006 [hereinafter Durkin, Relocation Discussions]; StopColumbia, supra note 29.

38. Interview with Donald Notice, Executive Director, West Harlem Group Assistance, a community-based nonprofit organization which owns the buildings, New York, New York, April 10, 2007.


40. See note 128 infra and accompanying text.

41. See Durkin, Relocation Discussions, supra note 37; StopColumbia, supra note 29.
outcome.⁴²

Beyond that, with much of Central Harlem already gentrifying, housing demand from Columbia students and staff, other middle-upper income people, and bio-tech businesses attracted by access to the University threatened substantial “secondary displacement” by driving nearby rents well beyond the means of the working poor Dominican and African American households living near the proposed expansion site.⁴³ Those who managed to stay, including several thousand public housing tenants east of the site, would face a new world in which high-end boutiques and rich, mainly white students would replace their neighbors, shops, and churches.

Only months after Columbia announced its plans, Riverside Park Community, an eleven hundred ninety-unit publicly-subsidized low and moderate-income apartment complex across the street from the expansion site, opted out of the subsidy program.⁴⁴ The affordable use restriction period attached to its construction subsidies had expired⁴⁵ and the for-profit corporate

⁴². Id.

⁴³. See Robin Pogrebin, A Man About Town, In Glass and Steel, N.Y. TIMES, Jan. 5, 2005, at E1; David Usborne, Welcome to Harlem, NYC; Ten Years Ago It Was the No-Hope Ghetto—Now Everybody Wants a Piece of It, THE INDEP. (London), Feb. 13, 2000, at 1. See also Julian Brash, Gentrification in Harlem? A Second Look (May 4, 2000) (unpublished M.S. thesis, Columbia University), available at http://eastharlempreservation.org/docs/brash.pdf (last visited Oct. 3, 2007) (discussing existing gentrification in Harlem and changing opinions about it over time). Secondary displacement involves housing that is lost as an indirect result of nearby development, most often through rising rent prices. WE ACT, Official Written Comments, supra note 24, at 82 (“An even more insidious effect of the expansion project is that it will spur a rash of land speculation and cause rent and housing prices in the area to skyrocket. This will result in a second and much more widespread wave of secondary displacement as current residents will be pushed more to the margins of the City because they can no longer afford their present home”).

⁴⁴. Tanveer Ali, Harlem Building Ends Low Rent Program, COLUM. DAILY SPECTATOR, Apr. 28, 2004. Though the owner denied that Columbia’s expansion motivated its decision to opt out, the tenants and local housing activists, as well as WE ACT and its legal team, thought the timing speaks for itself. See Deborah Brown, City Housing: Rising Rents, Federal Cuts, Local Innovation, COLUM. DAILY SPECTATOR, May 9, 2005.

⁴⁵. Tanveer Ali, 3333 Residents Still Wait Impatiently for Promised Rent Relief, COLUM. DAILY SPECTATOR, Sept. 8, 2005; see also N.Y. PRIV. HOUS. FIN. LAW § 11 (McKinney 2002). The Mitchell-Lama Housing Program is a New York State program created in 1955 with the goal of building affordable housing for middle-income people. See Mitchell-Lama Housing Program, N.Y. DIV. OF HOUS. & CMTY. RENEWAL, http://www.dhcr.state.ny.us/ohm/progs/mitchlam/ohmpgrm.htm (last visited Oct. 3, 2007) [hereinafter Mitchell-Lama Program]; see also N.Y PRIV. HOUS. FIN. LAW § 11. There have been 269 Mitchell-Lama developments (over 105,000 housing units) built since the inception of the program, but a number of them have withdrawn from the program under a buyout program that permits owners to withdraw after twenty years on prepayment of the mortgage (note that it may be thirty-five years in cases of some older developments). See Mitchell-Lama Program, supra. These housing developments are owned by private developers but supervised by city or state agencies. See Judith A. Calogero, Comm’r, N.Y. DIV. OF HOUS. & CMTY. RENEWAL, Mitchell-Lama Buyout Program, Aug. 22, 2005, available at http://www.osc.state.ny.us/ audits/allaudits/093005/04s5.pdf, at 1 (last visited Oct. 3, 2007). To encourage private parties to participate in the program, the state financed low-interest, long term mortgages that defrayed a number of the total development costs, and local governments granted property tax exemptions to encourage developers to participate. Id. Until the owners buy out, they
owner calculated that with Columbia’s arrival, market rents would yield greater profit than ongoing operating subsidies. Once the complex opted out, its tenants were no longer protected by New York State rent regulation. Some were able to hang on through federal subsidies that cover the gap between market rent and thirty percent of household income for tenants whose buildings were constructed with federal subsidies. But this politically contested rent voucher program is funded only year by year, and many tenants were ruled ineligible. Others were lured or forced out in favor of young professionals able to pay high, unregulated rents. Following well-established patterns of gentrification, building maintenance, amenities, and access to common spaces were manipulated to privilege the new tenants and punish the old. The must maintain affordable rent; if they buy out, they may raise rents as high as they would like. See id. at 1-2. The decline in affordable housing is related to the decline of available Mitchell-Lama housing in the city. See William C. Thompson, Jr., Comptroller, City of N.Y., Affordable Housing Crisis is Accelerating, May 25, 2006, available at http://www.comptroller.nyc.gov/enews/jun06.html (last visited Oct. 3, 2007) (discussing the decline in available Mitchell-Lama housing and making recommendations for the future of the project). The Mitchell-Lama program has been in the news quite a bit recently, especially because one well-known Mitchell-Lama development, known as Starrett City, was almost sold. See, e.g., Alexandra Marks, With ‘Affordable Housing’ Buildings for Sale, Tenants Worry, THE CHRISTIAN SCIENCE MONITOR (Boston, Mass.), Mar. 5, 2007, at 1; see also C.J. Hughes, Exit the Lawyers, Cue the Builders, N.Y. TIMES, Nov. 19, 2006, § 11, at 8 (discussing the approval of a renewal project that took over a Mitchell-Lama housing development); Janny Scott, In Governor’s Race, Group Pushes to Make Lower-Priced Housing a State Issue, N.Y. TIMES, Oct. 3, 2006, at B5 (discussing the New York City mayoral race and the discussions about affordable housing in that race, including Mitchell-Lama housing).

46. This dynamic was typical of the privately owned, publicly assisted affordable housing projects developed in the 1970s (in contrast to public housing built in the 1930s and 1940s, which remains publicly owned and operated). On the New York City implications, see Victor Bach, The Future of HUD-Subsidized Housing: The New York City Case, in HOUSING AND COMMUNITY DEVELOPMENT IN NEW YORK CITY: FACING THE FUTURE 143 (Michael H. Shill ed., 1999); see also What Might Happen to Section 8 Properties Under the New Law?, HOUSING AND COMMUNITY DEVELOPMENT, supra note 48 (2006).


50. This discussion is based on reports by project tenants and tenant leaders.
prospect of market profits from Columbia's announced expansion rapidly shattered the community and social capital built over thirty years of shared life.

Jobs and local small businesses were also at issue. A number of businesses and social agencies would be displaced. The University estimated that twelve hundred workers would be affected, but argued that many would remain employed at new locations and that the expansion would create far more jobs than it eliminated. Community activists, however, questioned how many and what types of new jobs would really be available to local residents.

Many of these issues had been addressed elsewhere through Community Benefits Agreements (CBAs). Pioneered in Los Angeles at the start of this century, CBAs stand outside the normal government process as private, legally binding contracts between community groups and developers. City officials often play important background roles in the bargaining process, and the City is sometimes made an additional party to strengthen capacity to monitor and enforce compliance. A CBA could pin down Columbia's promises and commit it to specific measures to mitigate secondary displacement and other harms from its expansion. Beyond that, a CBA could require the University to provide substantial funds, resources and staff for better schools, health centers, and other urgently needed community services and facilities. These could be viewed as compensation (or even reparation) for the University's annexation of an area that might otherwise have been developed to the greater benefit of the surrounding communities, especially since the area's prospects were beginning to pick up with the coming of the food market, two new restaurants and the waterfront park along with the economic development of nearby Central Harlem.

D. The Strategy

WE ACT understood the potential and limits of a CBA. On the one hand, the opportunity for a community coalition to contract directly with developers represents an important advance. Without a CBA, developers can make city
governments empty promises which local residents have no way to enforce.\textsuperscript{55} The CBA process encourages low-income and working class people to develop their own vision for their communities, moving beyond mainstream CED’s dependence on outside capital, which determines what types of facilities can be built and what services provided in low-income communities.\textsuperscript{56} CBA negotiations offer communities a constructive alternative to fighting to block a proposed project. Those fights rarely succeed, and even when they do, the community is only left back where it started, without the capital needed to implement its vision. On the other hand, a community can reap substantial gains only if it forms a broad-based negotiating coalition that has sufficient political clout to win real benefits and sufficient organizational capacity to enforce and use those benefits.\textsuperscript{57} Without these, a CBA serves only to co-opt protest and legitimate detrimental development without real benefit to community residents.\textsuperscript{58}

WE ACT’s goal was to empower the residents of the neighborhoods surrounding the expansion site, especially the racially-excluded and politically-marginalized, to gain some significant control over the use of local land and resources. However, WE ACT did not aspire to become a developer. Local nonprofit housing and economic development corporations could already do that effectively, and WE ACT well understood the pitfalls of going down that road.\textsuperscript{59} Like the Dudley Street Neighborhood Initiative (DSNI) in Boston and as in its own waterfront project, WE ACT would work to enable a process of democratic broad-based grassroots community planning and organizing to envision and win the best possible benefits agreement from Columbia.\textsuperscript{60}

\begin{itemize}
\item \textsuperscript{55} See Gross, supra note 52 and accompanying text.
\item \textsuperscript{56} See Cummings, Toward a Grassroots Movement, supra note 2; Gross, supra note 52, at 3.
\item \textsuperscript{57} See Gross, supra note 52, at 22-23; Cummings, Mobilization Lawyering, supra note 3, at 317 (discussing the importance of the unions coming together to present a united front in the Staples Center negotiations).
\item \textsuperscript{58} See infra note 165 (discussing the Bronx Terminal Market and Yankee Stadium projects).
\item \textsuperscript{59} Community groups that become developers have difficulty maintaining their activism since they come to depend on government and corporate financing, need to hire professional and technical staff rather than organizers and advocates, and often become alienated from local residents due to their roles as landlords, large-scale employers and creditors. They become players in, no longer oppose, and inadvertently lend legitimacy to, a political economy that subordinates and exploits community residents. See Randy Stoecker, The CDC Model of Urban Redevelopment: A Political Critique and an Alternative, 19 J. OF URBAN AFF. 1 (1997) (advocating separation of community organizing and planning from nonprofit housing and economic development); see also Cummings, Toward a Grassroots Movement, supra note 2, at 453-54; Daniel S. Shah, Lawyering for Empowerment: Community Development and Social Change, 6 CLINICAL L. REV. 217 (1999).
\item \textsuperscript{60} On DSNI, see Peter Medoff & Holly Sklar, Streets of Hope: The Fall and Rise of an Urban Neighborhood 254-87 (1994); Benjamin B. Quinones, Redevelopment Redefined: Revitalizing the Central City with Resident Control, 27 U. MICH. J.L. REFORM 689 (1994).
\end{itemize}
Accordingly, WE ACT aspired to catalyze a multi-faceted struggle that would enable residents to develop a vision for their community and extract funding and services from the University and local government to realize that vision. This effort would tax WE ACT’s limited resources and involve it in substantive terrain (housing, jobs, and schools) new to the organization as a whole, though not new to all of its staff. Taking a leading role in community responses to Columbia’s expansion appeared to be such a natural extension of WE ACT’s history and perspective, and such a necessity for its community, that no member of its staff or board of directors at any point suggested that it do otherwise. Nonetheless, this move, however organic and seemingly inevitable, would challenge WE ACT’s existing skill set and continue its transformation. It would accelerate the evolution of its roles in the community and its legal team’s roles in its work, and it would thrust WE ACT fully into the vortex of Harlem development policy and politics.

II
COMMUNITY ACTIVISM IN CONTEXT: THE POLITICAL ECONOMY OF URBAN DEVELOPMENT

WE ACT’s ascendancy as a key player in Harlem development has required that it appreciate both the particular issues raised by the Columbia development and the larger dynamics underlying development “deals” in revitalizing cities. As WE ACT understood from its earlier successes with the Waterfront development, no major urban development project is likely to succeed today without a winning political coalition. As has long been true of city politics, various local stakeholders compete and sometimes cooperate with city officials to influence development decisions in a sort of unbalanced pluralist dance. Thus, the alignment of particular constellations of public and private interests is essential to the success of almost any major urban development project.

Yet political power to influence development in central cities has become even more decentralized and diffuse as cities depend increasingly on securing external, private capital in competition with other local governments. This decentralization of political power and capital in urban development has significantly shifted the role of public (governmental) and private (nongovernmental) players in development deals. The city or local government, though still retaining its regulatory authority over land use, nevertheless has become a weaker player in a more crowded field of powerbrokers. Private developers, as well as the interests/stakeholders that they advance and challenge (or threaten), now have significantly expanded roles and influence in

determining the success or failure of major development projects. In large part, this shift is due to the advent of “neoliberalism,” which ushered in cutbacks of federal funds, reduced regulation, and catalyzed private and market-based solutions to urban redevelopment, among other things. This changed political economy is important not just to understanding the role that WE ACT was positioning itself to assume vis-à-vis the Columbia expansion, but also to understanding the multidimensionality of roles assumed by its lawyers, a theme to which we will turn shortly.

A. The Decentralization of Political Influence and Capital in Urban Development

At least since the 1970s urban development has become increasingly more decentralized—physically, economically, and politically—and specialized in its upward class transformation and economic conversion of cities. From roughly the 1930s to the 1970s, centralized, top-down management of redevelopment (government) funds characterized much of urban development in central cities. Fueled by the Works Progress Administration (WPA), highway program and “urban renewal” policies, federal funds often flowed directly through local planning and development agencies into local construction projects. Political influence was often centralized and concentrated in one or a few local public “powerbrokers,” like the infamous Robert Moses, who wielded enormous power on behalf of business and political interests to shape the development of inner cities and competing suburbs using federal funds allocated pursuant to urban renewal and related programs. The “federal aorta” of money that ran from Washington, D.C. into local redevelopment agencies financed local development, especially urban renewal, and enabled money to be spent in largely unaccountable ways. The centralization of

62. See generally SPACES OF NEOLIBERALISM: URBAN RESTRUCTURING IN NORTH AMERICA AND WESTERN EUROPE (Neil Brenner & Nik Theodore eds., 2002) (examining the role of neoliberal political projects since the 1970s in shaping the dynamics of urban change in North America and Europe, including the reproduction and intensification of uneven spatial development within and between cities).


64. See generally ROBERT A. CARO, THE POWER BROKER: ROBERT MOSES AND THE FALL OF NEW YORK (1974) (describing the rise and concentration of power to redevelop New York in the hands of Robert Moses); Rae, supra note 1, at 316 (describing the work of Ed Logue, who ran New Haven’s Redevelopment Agency during the Urban Renewal era and later headed New York State’s Urban Development Corporation and Boston’s redevelopment agency as “second only to Robert Moses” as a practitioner of urban transformation”); see also JOEL SCHWARTZ, THE NEW YORK APPROACH: ROBERT MOSES, URBAN LIBERALS AND REDEVELOPMENT OF THE INNER CITY (1993).

65. For example, as Douglas W. Rae writes, in the context of New Haven urban renewal: The IRS collected cash from taxpayers across America, Congress placed it at the disposal of the Housing and Home Finance Agency (HHFA), and later the Urban Renewal Administration, and the Redevelopment Agency of New Haven competed
power and resources in the hands of a largely unelected group of public officials led to the bulldozing of large parts of central cities to build public works, commercial/office centers, hotels, high-end housing, elite cultural/performing arts centers (e.g., Lincoln Center), and highways, many of which displaced working class communities and lower income families.

Urban renewal and its concentration of power in government bureaucracies run by local powerbrokers was enabled by the existence of broad local “progrowth” coalitions that operated to control (and isolate) political opposition to land clearance projects. These powerbrokers also operated within city governments that, perhaps ironically, could be characterized as democratically pluralistic in their susceptibility to influence by different groups of local residents. Robert A. Dahl argued in his influential study of New Haven during the mid-twentieth-century that political power and control in city government was widely dispersed among different interest/ethnic groups who competed to wield influence over city decisions. As with any pluralist system, however, those possessing the fewest resources to compete and influence decision makers tended to be the biggest losers. This was particularly true in the case of urban renewal projects, which indelibly fractured the urban landscape by race and class.

Urban development politics and economics have become even more decentralized and diffuse since the 1970s in no small part due to “the

with remarkable success for the resulting swag. The money came to that “local agency” under federal law, and not to the general fund of city government, which is to say it came to [Ed Logue, head of the city’s Redevelopment Agency] and his Redevelopment colleagues. Their projects and plans required approval from the Board of Aldermen, and some cooperation from any number of city agencies, but the Redevelopment budgets were virtually autonomous from city politics. The Kremlin (redevelopment) was financed largely by people who were not entitled to vote in New Haven, mostly on a funding formula which granted two-thirds of net project costs in federal dollars and then allowed the local agency to count many in-kind items toward the local third.

RAE, supra note 1, at 322.


67. DAHL, supra note 61, at 214. Shifting political constellations of different interests, he argued, created an “executive-centered” coalition that governed the city during this era. Id. at 214 (“The preferences of any group that could swing its weight at election time—teachers, citizens of the Hill, Negroes on Dixwell Avenue, or Notables—would weigh heavily in the calculations of the Mayor”). Dahl’s views were contested at the time and remain contested. See, e.g., CHARLES BLATTBERG, FROM PLURALIST TO PATRIOTIC POLITICS: PUTTING PRACTICE FIRST ch. 5 (2000); G. William Domhoff, Who Really Ruled in Dahl’s New Haven?, Sept. 2005, available at http://sociology.ucsc.edu/whorulesamerica/power/new_haven.html (last visited Oct. 3, 2007).

68. A retrospective look at New Haven and other central cities reveals clear winners and losers from the urban renewal era. Today, the New Haven metropolitan region, like many older urban regions, is prominently characterized by race and class inequalities that tend to reinforce one another. See RAE, supra note 1, at 420 (taking issue with Dahl’s argument that political/interest inequalities in New Haven have come to offset rather than reinforce and concluding that “there are reasons to doubt or even reject his generalizations as the subject of inquiry switches to the region as a whole,” particularly when one considers the clear disparities between New Haven and its surrounding, more affluent towns).
exhaustion of urban renewal as a form of urban entrepreneurship." As Paul Kantor has argued, this exhaustion is attributable to the weakening of local political coalitions that supported urban renewal and to urban renewal's economic obsolescence—i.e., the fact that it "largely fulfilled its mission of setting into motion the process of economic conversion" of cities. With the loss of federal funding and other public sources of redevelopment money, development in cities has now shifted away from large scale land clearing projects to more piecemeal redevelopment, designed to complete the upward economic conversion of cities. This effort requires cities and municipalities to compete for "footloose" investors and industries, who now have enormous power to control and shape redevelopment policies in cities.

B. The City as a Weak(er) Player

As cities grow increasingly dependent upon private capital and resources and stymied by competition with other municipalities for those resources, their leverage over developers has seriously declined, as has their ability to control their social and economic destiny. Private investors acquire tremendous

69. KANTOR, supra note 66, at 150.
70. Id. at 150-51 (noting that "[v]ast slum areas had been demolished, new commercial and residential opportunities on vacant downtown land were in place, and the process of social 'upgrading' in residential neighborhoods adjacent to renewal sites had begun").
71. As Paul Kantor has argued:
The economic dilemma facing most older central cities is no longer one of physical restructuring of their cores. It is one of inducing continued conversion of their economies at a time of shrinking tax bases, cuts in intergovernmental aid, and increasing competition from urban jurisdictions in suburbia. . . . In general, this has forced city governments to undertake more flexible, piecemeal strategies to induce capital investment in particular markets and businesses. Economic development policy mostly is one of selling the city by accommodating the demands of individual revenue-provider groups and businesses through varied public entrepreneurial techniques that provide incentives for them to invest in the locale. The "packaging" of more or less tailor-made business incentive programs is now the current development policy. . . . [T]hese packages can include tax abatements, loans, discounted land sales, new industrial parks, housing rehabilitation grants, and other forms of business subsidies.
Kantor, supra note 66, at 151-52; see also H.V. Savitch & Paul Kantor, Cities in the International Marketplace: The Political Economy of Urban Development in North America and Western Europe (2002) (arguing that local governments compete for private capital in the international marketplace and that they adopt policy strategies to influence the terms of their participation; the more bargaining advantages held by a city, the greater its ability to shape urban development).
72. See KANTOR, supra note 66, at 4-5 (arguing that "[a]lthough local political systems have become more open to community wishes, dependency on exterior economic forces increasingly has undermined [cities'] ability to act responsively on issues of economic and social development" and citing as an example that "New York City officials found it easier to give away millions to a wealthy corporation than to extend aid to the homeless"); see also Neil Smith, New Globalism, New Urbanism: Gentrification as Global Urban Strategy, in SPACES OF NEOLIBERALISM 80, supra note 62, at 95-96 ("Whereas urban renewal of in the 1950s, 1960s, and 1970s sought a full-scale remaking of the centers of many cities and galvanized many sectors of the urban economy in the process, it was highly regulated and economically and geographically limited by the fact that it was wholly dependent on public financing and therefore had to address issues of broad social necessity, such as social housing. In contrast, the earliest wave of
bargaining advantages or “rents,” including new sports stadiums, operating and tax subsidies, shares in parking garages, and concessions, which diminish the regulatory power, and ultimately the resources, of local governments. In this new political economic environment, the city is now a weaker player in a larger system of power that drives urban development. Consequently, much of the onus of attending to communities’ economic and social welfare has shifted to communities themselves.

This decrease in city power has been happening at a time when, ironically, the relationship between city government and the public has become, at least as a formal matter, increasingly open, participatory, and institutionalized. Public hearings, advisory committees, and devolution of land use planning discussion and analysis to smaller units of the urban polis have characterized this era of increased participation in local government. Nevertheless, the limits of this formal participatory governance are starkly obvious, particularly to those least able to participate in local government decisions because they lack social and economic influence. Even though more formal avenues exist for public
gentrification that followed urban renewal proceeded with considerable independence from the public sector. . . . What marks the latest phase of gentrification in many cities, therefore, is that a new amalgam of corporate and state powers and practices has been forged in a much more ambitious effort to gentrify the city than earlier ones.

73. New York City’s elaborate and expensive effort to keep the Yankees in town, including the over $200 million in state and city grants and huge tax exemptions, is only a recent example of this phenomenon. See KANTOR, supra note 66, at 115-16 (citing the example of some cities’ efforts to keep its sports stadiums and concluding that, although nearly all of the stadiums built since 1960 are publicly owned, the sports facilities that in fact are supposed to provide a source of revenue for cities are instead a taxpayer burden imposing heavy costs on cities); see also Raymond J. Keating, Op-Ed., Don’t Throw Our Money Down the Drain; The Politicians Say Stadiums Will Be Built with Private Funds, But the Public Will Still Get Soaked for Millions, NEWSDAY (N.Y.), June 17, 2005, at A51 (discussing the fact that taxpayers would cover over $200 million in infrastructure, and that an even higher amount would be given once the city took into account the tax-exempt bonds and lack of property taxes).

74. See, e.g., KANTOR, supra note 66, at 5 (arguing that “[t]he capability of city governments to democratically shape their economic and social development has seriously declined” as result of cities’ dependence on the market dynamics of private sector); RAE, supra note 1, at xviii (noting the shift away from democratic pluralism to “the end of urbanism” as entailing “the end of thinking about city government as a pivotal and more or less autonomous power system”).

75. See infra note 102 and accompanying text. In particular, community boards in New York “represent the city’s longest running effort to involve local communities directly in the government. People debate how successful the system of community boards has been, but through them, many neighborhoods have gained a voice in the decisions that affect them.” Seth Forman, Community Boards, GOTHAM GAZETTE N.Y. CITY NEWS & POL’Y (Sept. 20, 2000), available at http://www.gothamgazette.com/article//20000920/202/150 (last visited Oct. 3, 2007). At present, there are fifty-nine community boards throughout the city, which consist of unsalaried members who have some interest in the community. Id. Their responsibilities include: 1. Improving the delivery of city services; 2. Planning and reviewing land use in the community; 3. Making recommendations on the city’s budget” and 4. Consulting on the “placement of most municipal facilities in the community.” Id.

76. See generally Alejandro Esteban Camacho, Muster ing the Missing Voices: A Collaborative Model for Fostering Equality, Community Involvement, and Adaptive Planning in
participation, land use decisions primarily respond to individual development projects that often result from the local government striking a bargain with the individual property owner or developer.\(^7\)

Thus, while public modes of discourse surrounding overall urban land use and specific development projects have remained over time, a form of interest bargaining that reflects the larger political economy of urban development now supplements them. That is, development incentives have lined up such that affected communities now view themselves as potential players in, as opposed to passive recipients of, the “bargain” struck between developers and the city.

C. Negotiating Accountability

The emergence and increasing prominence of CBAs is a potent reflection of the changed political dynamic of urban development. As enforceable agreements between community groups and developers, CBAs “represent a fundamental break with the traditional posture of developers and public entities toward low-income communities affected by major projects.”\(^7\) Within a CBA framework, both developers and communities face incentives to participate and negotiate with one another: developers bargain directly with the community as a way to win its backing for the project or, at least, neutralize its opposition, and communities participate out of a desire to mitigate negative development impacts and maximize development benefits. There is an arguably redistributive aim to the community’s willingness to bargain directly with the developer. Projects that are in significant part subsidized by taxpayer funds are now going to finance affordable housing, jobs, environmental, and infrastructure amenities, and other “benefits,” thus returning some of that money to the public/community.

The power of the landmark Los Angeles CBAs stemmed primarily from the strength of the forces that came together to bargain with developers. Those coalitions united community groups with powerful, well-staffed, city-wide

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\(^7\) Land Use Decisions, 24 Stan. Envtl. L.J. 3, (2005) (discussing the reigning “bilateral, negotiated land use” model in which important local land use decisions are frequently made in closed-door negotiations that exclude many affected parties, further disenfranchising those with the least influence and fewest resources).

\(^7\) Liegeois & Carson, \textit{ supra} note 53, at 176.
progressive organizations, major unions, and strong national environmental organizations. Staff and leaders of these high-capacity organizations led the negotiations, in consultation with community activists.

As the CBA concept spread across the country, developers and politicians sought to capture and adapt it for their own ends. In 2006, developers of two major projects in the Bronx attempted to undercut community opposition by means of CBAs that would, in a labor setting, rightly be deemed “sweetheart contracts” with “company unions.” While winning very little for the communities, these agreements succeeded in providing cover for elected officials to get the projects approved, likely after cutting their own deals with the developers. For the Gateway Center at Bronx Terminal Market, local political leaders first handpicked the CBA negotiating coalition, excluding groups that might publicly criticize an inadequate CBA; when most of the handpicked groups rejected the developer’s paltry offer, the political leaders went ahead with a CBA signed only by the President of a publicly funded community college and two other groups controlled by the political leaders. The developer of the Yankee Stadium project did not even bother with this sham, instead simply announcing a unilateral “community benefits program.”


82. This paragraph is based on Cummings, Mobilization Lawyering, supra note 3.

83. See Robin Shulman & Diane Cardwell, Campaigning for City Hall: The Campaign: Weiner Attacks City’s Deal on Bronx Market, N.Y. TIMES, Aug. 25, 2005, at B8. Much of this is based on discussion with Gavin Kearney, who represented community groups that were pushed out of the CBA negotiations, and on his “Analysis of Areas of Disagreement between Final CBA and CBA Task Force Positions” regarding the Bronx Terminal Market project. Telephone Interview with Gavin Kearney, Staff Attorney, New York Lawyers for the Public Interest, in N.Y., N.Y. (Feb. 12, 2007). Memorandum from Gavin Kearney, Staff Attorney, New York Lawyers for the Public Interest (Feb. 2, 2006) (detailing the deficiencies of the Bronx Terminal Market CBA as compared with other CBAs around the country, specifically in the areas of living wage requirements, hiring and referral requirements and enforcement mechanisms) (on file with authors).

84. See Keating, supra note 73; Kearney, supra note 83.
Central Brooklyn communities divided more evenly over the Atlantic Yard project, which features a National Basketball Association (NBA) arena along with high-rise apartment and office buildings. Young white professional homeowners in or near the site fought hard to stop, or at least scale back, the development to protect their homes and neighborhoods. Residents of outlying Black working class neighborhoods, on the other hand, saw a major opportunity. They joined with ACORN (Association of Community Organizations for Reform Now), a well-staffed national organization also involved in the Los Angeles CBAs, and several churches and community boards to negotiate a CBA. The resulting CBA accepted eminent domain and large-scale development in exchange for hundreds of units of affordable housing (specifying rent levels to insure a mix, which included the very-low income), decent paying jobs (with training and priority for area residents), and small business aid and opportunities. The developer even agreed to open its books and pay $100,000 a year for an independent monitor deemed acceptable by the community groups.

These examples illustrate how the rise and utility of CBAs render the "game" of urban development highly textured and dependent not only upon the particular constellation of players in the place where development occurs but also upon the particular development project being contested. The costs and benefits of a project are often not fixed but depend upon the choices players make—choices that are shaped throughout the process of negotiation between the developer and the city, between the city and the interested public, among stakeholders and interests within that public, and between the developer and the interested public. How this game plays out is a crucial factor in determining the opportunities and challenges presented to its participants, including lawyers working on behalf of the various players.

III

LAWYERING IN CONTEXT: WE ACT’S INTERVENTION IN THE COLUMBIA UNIVERSITY EXPANSION

The struggle over Columbia’s proposed expansion reflects these evolving dynamics of the urban political economy. The initiating driving force was a non-governmental actor, Columbia University, which is not very different in its general role in the development process from any other private business or developer. Columbia brought its own substantial capital and an armada of
experts, technicians, and public relations specialists. Though the University was not seeking public subsidies or loans, it would need regulatory approval and other important cooperation from city and state government.\(^8\) At all levels, however, government was in a secondary, reactive position: it could mandate disclosure, set time lines, and ultimately vote the project up or down, but it had only limited capacity to shape the project.

The impacted communities, their organizations, and their leaders were fragmented across lines of race, nationality, class, geography, personal and institutional interest, and political ideology. Different community interests and groups sought to form coalitions to consolidate their power in order to influence the ultimate deal between Columbia and the City, and between themselves and Columbia. However, their combined resources and capacity were miniscule in comparison to those of the University. An array of elected officials and business and property owners also attempted to intervene in sporadic efforts to advance their own diverse interests. It was on this terrain that WE ACT struggled to forge a broad-based effort that would transform crisis into opportunity, enabling community residents to win significant benefits and emerge from the process with stronger organization and greater resources and leverage.

It was also on this terrain that WE ACT sought to employ its significant legal resources to intervene and leverage ongoing public regulatory and deliberative processes to win gains for community interests. These processes consisted largely of land use reviews but also encompassed “hard look” reviews by local and state officials and agencies.\(^9\) This “hard look” was ostensibly designed to study, catalog, and deliberate on the positive and negative impacts of development and change or mitigate those impacts as necessary. Thus, WE ACT’s legal team could theoretically play an important role in bringing these impacts to the attention of local and state decision-makers and in helping to persuade those decision-makers to act in the best interests of the community, an admittedly difficult task given the community’s fragmented response to this particular development. In other words, the legal team might have been able to enforce the community’s participation rights in whatever public processes were required for approving the developer’s project or to legally intervene by threatening lawsuits (or other forms of legal disruption)

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88. The University’s properties are exempt from municipal real estate tax under general legislation that applies to all nonprofit organizations in New York. Unlike many other jurisdictions, New York does not require nonprofit owners to make Payments in Lieu of Taxes (known as “PILOTs”). See supra text accompanying note 25.

89. See, e.g., Matter of Jackson v. N.Y. State Urban Dev. Corp., 67 N.Y.2d 400, 417 (stating that in SEQRA and CEQR proceedings, the court “may review the record to determine if the agency identified the relevant areas of environmental concern, took a ‘hard look’ at them, and made a ‘reasoned elaboration’ of the basis for its determination”).
that would compromise the deal between the developer and the government and ultimately force the developer to the negotiating table.\textsuperscript{90} Such legal "leveraging," in contrast to the institution-building approach of traditional CED lawyers, would give the community negotiating power that it otherwise would lack.\textsuperscript{91}

This legal "leveraging," however, proved quite tenuous and limited in this context. Notwithstanding the legal levers in the city and state decision-making processes, ultimately there was little that "traditional" lawyering, even community lawyering as we understand it in the literature, could accomplish to change the trajectory of this development deal. Rather, the larger political-economic dynamic swirling around the deal shaped whatever legal leverage points existed in the course of city and state review of the development plan.\textsuperscript{92} Accordingly, WE ACT employed legal tools and due diligence where possible, but the realities of the larger political-economic dynamic often reduced their effectiveness. Upon recognizing this dynamic, key players forced the negotiation process and ultimately redefined the ways in which lawyering might be effective in a thick political-economic context where development deals proceed in the shadow of, but not determined by, the law.

This Section maps the city, state, and community processes of negotiation and decision over Columbia's expansion. It analyzes efforts by WE ACT and its legal team to intervene in those processes. In order to provide a platform and "scorecard" for that discussion, we first identify the main players, their interests, and perspectives.

\textit{A. The Stakeholders}

In mapping the contours of the political struggle over Columbia's plan, WE ACT and its legal team identified a number of interests with an important, or potentially important, stake in the outcome. Understanding the constellation of stakeholders swirling around the Columbia development and the ways in which their interests might coalesce or compete with one another is an important precursor to understanding the ways that WE ACT's political and lawyering choices were shaped, pursued, and often frustrated. Among the relevant stakeholders, the City administration, the City Council, and possibly a New York State agency would all have to cooperate in and approve Columbia's expansion.\textsuperscript{93} Within West Harlem, the local community board, local elected

\textsuperscript{90} See Cummings, \textit{Mobilization Lawyering}, supra note 3, at 325 (describing the approach that accountable development lawyers take to the use of litigation, stating that "FCCEJ's success in bringing the developer to the negotiating table, for example, was premised in large part on the threat that it could, in fact, successfully litigate the environmental claims").

\textsuperscript{91} See \textit{id.} at 327-28 (describing the way in which this type of lawyering is redistributive in the sense that the community is able to extract far more concessions from the developer than it would otherwise be able to).

\textsuperscript{92} See \textit{infra} notes 96-126 and accompanying text.

\textsuperscript{93} See \textit{infra} Part IV.B.1-2 (discussing municipal and state processes).
officials, and an array of other community interests were mobilizing to intervene in the development process. The following section discusses each of these stakeholders in turn.

I. The Mayor and City Administration

Mayor Michael Bloomberg deals with development largely through his powerful Deputy Mayor for Development, Daniel Doctoroff. Doctoroff oversees the Department of City Planning (DCP) and other municipal agencies dealing with land use and development. He helps the Mayor pick the majority of the City Planning Commission (CPC), including its chair. 94

Columbia’s expansion fits well with Bloomberg and Doctoroff’s articulated vision for the City. 95 Both are very wealthy men with social and business links with Columbia’s top officials and trustees. 96 Both have given up on manufacturing as an engine of economic growth. 97 They are committed to increasing the City’s supply of affordable housing, 98 but almost exclusively in the outer boroughs. 99 They would exile the City’s working class and poor from...
Manhattan and reserve its more costly land for their world: corporate and financial offices, museums, universities, medical, bio-tech and related research facilities, cultural institutions, and high-end hotels restaurants and residences for the owning, professional and managerial classes.100

While Columbia could expect its plans to receive a generally warm reception from the City administration, their interests were not precisely aligned. The Mayor sought to ensure that the resentment of Columbia's expansion would not rub off on him in Harlem or in the uptown Dominican community.101 To that end, his administration would push for—and maybe help fashion and fund—a CBA calculated to secure social peace. DCP technocrats might also negotiate marginal improvements, and the CPC102 might impose some limited modifications, within parameters set by Bloomberg and Doctoroff.

2. The City Council

In addition to the mayor's office, the Columbia expansion plan also implicated the City Council. If the City Council views a project as essentially local, it routinely accedes to the wishes of the area's Council member. In this case, the member for West Harlem, Robert Jackson, had initially endorsed the expansion, but he pulled back in response to community unrest. In subsequent public discussion of Columbia's expansion, he urged the University and community to "reach a consensus" so he would not have "to vote on this particular matter."103 Though he seemed likely to take an interest in the public education provisions of a CBA given his background as an education activist,104 Jackson was under no pressure to appease community activists.

100. See Mahler, supra note 95 (asserting that the concentration of affordable housing in the boroughs "will no doubt accelerate Manhattan's evolution into an island of the wealthy").


102. See N.Y. CITY, N.Y., CITY CHARTER § 192(e) (2004) ("The city planning commission shall oversee implementation of laws that require environmental reviews of actions taken by the city. The commission shall establish by rule procedures for environmental reviews of proposed actions by the city where such reviews are required by law. Such rules shall include procedures for (1) selection of the city agency or agencies that will be responsible for determining whether an environmental impact statement is required in connection with a proposed action and for preparation and filing of any such statement required by law, (2) participation by the city in environmental reviews involving agencies other than city agencies, and (3) coordination of environmental review procedures with the land use review procedures set forth in this charter. The director of city planning and the commissioner of the department of environmental protection shall assign from the staffs of such departments an office of environmental coordination, which shall provide assistance to all city agencies in fulfilling their environmental review responsibilities").


104. Jackson had chaired the local school board and was co-founder and President of the Campaign for Fiscal Equity, which won major increases in New York City's share of New York State school funding. See Gail Robinson, The Last Word in School Funding? The GOTHAM
because he was ineligible for re-election under the City’s term limits provisions and was reportedly seeking to move to the State Assembly from a district that has very little overlap with community surrounding the expansion site.

If the Council, however, viewed Columbia’s expansion to be of City-wide significance, its response would depend upon the stance of the Council speaker and the intensity of pressure from the Mayor’s office. The Council had recently approved, over the vehement opposition of a local Council member (and other local elected officials), a proposal, heavily promoted by Bloomberg and Doctoroff, to level residential neighborhoods to build a Football/Olympic stadium and large, upscale office and apartment buildings on the west side of mid-town Manhattan. With West Harlem’s council member not even in opposition, there was no indication that the Council would resist Columbia’s plan to displace mainly low-end small businesses in order to build world-class research, educational, and cultural facilities. Still, major public protest in Harlem and uptown or strong opposition from Black and Latina/o Council members might lead the Council to seek some trade-offs or impose some modifications.

3. The State Government

Columbia also might need cooperation (mainly eminent domain) from the New York State Empire State Development Corporation (ESDC), governed by a board that is controlled by Governor Elliot Spitzer. As the
scion of a wealthy real estate family and a graduate of Princeton University and Harvard Law School, Spitzer would likely be friendly to Columbia's interests. At the same time, however, Spitzer had built his reputation on exposing and fighting corporate abuse and had campaigned as a strong proponent of affordable housing. Moreover, his Lieutenant Governor, David Patterson, had long served as State Senator from West and Central Harlem, where he had been a vocal critic of gentrification. While not likely to block expansion altogether, the State administration under Spitzer and Patterson might press Columbia to provide affordable housing and otherwise address the problem of secondary displacement.

ESDC action in support of Columbia's expansion might require approval from the State's Public Authorities Control Board (PACB), which includes a representative of the Governor, State Senate Majority Leader, and State Assembly Speaker and can act only with their unanimous agreement. It was the Speaker's refusal to approve State funding that stopped the Football/Olympic stadium project after the City Council, Mayor, and ESDC had all approved it. Since neither the considerations said to underlie that

chairman of the New York State science and technology foundation, and seven directors to be appointed by the governor with the advice and consent of the state senate. The governor is to choose the chairman and two others, who serve at his pleasure, and the four remaining are to serve terms of four years each from their appointment (and these directors may be removed by the governor only for cause). The governor may also appoint a president of the corporation with the advice and consent of the state senate who shall serve at the pleasure of the governor, and he has the power to "appoint a business advisory council for urban development, to advise and make recommendations to the corporation with respect to development policies and programs and to encourage maximum participation in projects of the corporation by the private sector of the economy." McKinney Unconsolidated Laws § 6254 (2000). The members of this council serve at the pleasure of the governor. See id. 109. See Errol A. Cockfield, Jr., Spitzer Inauguration Pledging Reform, NEWSDAY (N.Y.), Jan. 2, 2007, at A3 (describing Governor Spitzer's background).


111. See Osborne, supra note 43, at 1 (discussing gentrification in Harlem, and quoting David Patterson, state senator from Harlem, as saying, "If Harlem retains its name but comes to resemble the old Upper West Side, then who will have benefited? . . . Not the traditional residents of Harlem or the poor, because they will have been driven out. We will have created a new Harlem that will be a place for Wall Street executives to live").

112. Section 51 of the New York Public Authorities Law requires PACB "approval of the financing and construction of any project proposed by . . . [the] New York state urban development corporation [the Empire State Development Corporation]." N.Y. PUB. AUTH. L W § 51 (McKinney 2004). Columbia has indicated that it interprets Section 51 as requiring PACB approval for ESDC cooperation even though it seeks no state assistance in financing or construction of its expansion.

113. See Mike McIntire & Him Rutenberg, After Stadium Bid Fails, A Disheartened Bloomberg Worries for City, N.Y. TIMES, June 8, 2005 at B6.
veto\textsuperscript{114} nor any others seemed to apply in Columbia's case, there was no reason to anticipate trouble from the PACB.

4. Other Local Elected Officials

In addition to Robert Jackson, eight other elected officials represent some part of West Harlem. One of those, the recently elected Manhattan Borough President Scott Stringer, appoints Manhattan community boards (discussed below) and has a public hearing and advisory role in the City's land use review process.\textsuperscript{115} Although Stringer is a liberal Democrat friendly to WE ACT, he has no vote in the land review process and seemed to lack the political clout to make a significant impact on Columbia's plan.

Foremost among the local elected officials is Upper Manhattan's representative in the U.S. Congress, Charles Rangel. As Harlem's acknowledged political leader and chair of the House Ways and Means Committee,\textsuperscript{116} which controls funding important to Columbia and the City and State governments, Rangel wields great influence. Consequently, no one wants to cross him.

Soon after Columbia disclosed its plans, Rangel told community activists that he and Jackson would spearhead a community bargaining process with Columbia. At the first meeting between Columbia and community representatives, Rangel insisted that he and other Harlem elected officials have a major role in any negotiation between Columbia and the community.\textsuperscript{117} His and other officials' goals and plans, however, remained a mystery, though they did obtain seats on the Local Development Corporation (LDC) formed to negotiate a CBA and some provided the LDC with helpful staff support.\textsuperscript{118}

5. The Community Board

New York City established Community Boards as part of liberal efforts to address the upheavals of the 1960s through decentralization and opportunity for

\textsuperscript{114} Though Sheldon Silver, the state assembly speaker who ultimately jettisoned the West Side Stadium project, never explicitly gave reasons for his opposition, the media and others engaged in speculation. Some of the reasons included: want of funds for his own district, accommodation of local Democratic elected officials who vociferously opposed the project, and opposition from State employee unions who wanted greater oversight in the selection of private contractors for public projects. See Brian McGuire, Hamilton's Lessons for Pataki, THE N.Y. SUN, July 11, 2005, at 9; McIntire & Rutenberg, supra note 113; Henry J. Stern, Op-Ed., Governor Silver, THE N.Y. SUN, June 30, 2006, at 9 (attributing Mr. Silver's opposition to the stadium plan to the fact that the plan was strongly opposed by a constituent who owned Madison Square Garden and feared competition from the new stadium).

\textsuperscript{115} See N.Y. CITY, N.Y., CITY CHARTER § 197(c) (2004) (describing the role of the Manhattan Borough President in ULURP review).


\textsuperscript{117} Interview with Cecil Corbin-Mark, Director of Programs, WE ACT, who was present at the meeting, in N.Y., N.Y. (Aug. 4, 2006).

\textsuperscript{118} See infra note 186 and accompanying text (describing the composition of the LDC).
grassroots participation in municipal decision-making.\textsuperscript{119} Appointed by the Borough President in consultation with local City Council members,\textsuperscript{120} and provided with modest City-funded staff and office space, the fifty-member boards serve as the official voices of their communities. They have a formal advisory and public hearing role in the City’s land use regulatory process and the right to propose a local master plan with official advisory status if adopted by the City Planning Commission and City Council.\textsuperscript{121}

The City is divided into fifty-nine districts, each with a population of roughly one hundred thousand. Manhattan Community District 9, which encompasses Columbia’s expansion site, is more or less equally divided among African Americans on the east and northeast, Dominicans to the north, and Whites to the south, yielding an ethnically fragmented district with a divided and relatively weak community board.\textsuperscript{122} The Black population in District 9,

\textsuperscript{119.} Community boards were established by the New York City Charter. See \textit{N.Y. CITY, N.Y., CITY CHARTER} § 2800 (2004). There were three stages to the community board structure in New York City. The first began in 1969 with the community school district system, which involved minority leaders successfully passing a law that established local school boards to be elected by parents. See Forman, \textit{supra} note 75. The city then moved on to the Office of Neighborhood Government plan in the early 1970s, only to replace that structure with the present community board system in 1977. See id. One of the biggest changes that characterizes the modern community board structure is the institution of the Uniform Land Use Review Procedure (ULURP), which “mandate[s] a community board review and vote on all land use applications, including zoning actions, special permits, acquisition and disposition of city property, and urban renewal plans.” \textit{Id.}

\textsuperscript{120.} See \textit{N.Y. CITY, N.Y., CITY CHARTER} § 2800(a) (2004); Amy Widman, \textit{Replacing Politics With Democracy: A Proposal for Community Planning in New York City and Beyond}, 11 \textit{J.L. & POL’Y} 135, 144 (2002).

\textsuperscript{121.} See \textit{N.Y. CITY, N.Y., CITY CHARTER} § 197-a (2004). This is known as a “197-a Plan,” named after the city charter section that authorizes a community board to propose such a plan for adoption by the City Planning Commission and City Council as an advisory guideline for future development of the area. Community boards or others who propose any such plan “shall submit the plan together with a written recommendation to the city planning commission for determinations” after a public hearing. \textit{Id.} The City Planning Commission is then to determine whether it approves the plan and, if so, is to prepare the environmental analysis for the plan. See \textit{N.Y. CITY, N.Y., CITY CHARTER} § 197(b) (2004). Whenever a plan is proposed that would affect a particular community board, the plan must be referred to those community boards, and then a public hearing is to be held. See \textit{id.} § 197(c). The approval of the community boards, or lack thereof, does not actually regulate development—it is seen as a form of advisory opinion. See Widman, \textit{supra} note 120, at 144; Forman, \textit{supra} note 75.

\textsuperscript{122.} District 10, to its East, is overwhelmingly African American and Afro-Caribbean, with long established political and community leadership. See \textit{N.Y. CITY DEP’T OF CITY PLANNING, District Profiles}, http://nyc.gov/html/dep/pdf/lucds/mn10profile.pdf (last visited Oct. 3, 2007). District 7 to its South is home to a liberal white professional/managerial populace with its own leadership structures. See \textit{Id.} at http://nyc.gov/html/dep/pdf/lucds/mn7profile.pdf (last visited Oct. 3, 2007). In recent years, District 12 to the North has similarly consolidated as the center of the City’s newly arrived and expanding Dominican community. See \textit{Id.} at http://nyc.gov/html/dep/pdf/lucds/mn12profile.pdf (last visited Oct. 3, 2007). District 9 has evolved to contain each of these groups in roughly equal parts (though the rapidly increasing Dominican population is hard to measure given the lag in census data and the reluctance of those with questionable or non-existent immigration documents to make themselves known to federal census takers). See \textit{Id.} at http://nyc.gov/html/dep/pdf/lucds/mn9profile.pdf (last visited Oct. 3,
moreover, is split along class lines between low-income tenants in the public housing projects and well-off owners of high-end brownstones and river view condos.\textsuperscript{123} Over the years, the better off and more politically connected Black professional and business people have predominated on the Board, along with white property owners and the white graduate students concentrated in the southern end of the district near Columbia’s main campus. As of 2007, the Manhattan Community Board included only two representatives of the growing, mainly working poor Dominican community that is the most vulnerable to gentrification.\textsuperscript{124}

Despite its varied demographic base, District 9’s community board (CB9) had labored for years to put together its own unified master plan for the area.\textsuperscript{125} The West Harlem section of CB9’s plan calls for mixed light manufacturing, commercial and affordable residential use plus waterfront development, improved schools and services, a CBA with any outside developer, and no eminent domain.\textsuperscript{126} Pursuant to these guidelines, Columbia could expand piecemeal on the land and buildings it already owned, but would be unable to construct an integrated new campus with anywhere near the capacity and facilities it claimed to need. CB9 was committed to fighting for its vision of neighborhood development.

6. Other Community Players

In addition to the formal community voice channeled through the community board, an array of community groups within and around CB9 actively responded to Columbia’s planned expansion. For example, well-off, White commercial property owners formed the “West Harlem Business Group”
and retained a prominent liberal lawyer to stop Columbia from using eminent
domain. Largely White, anti-gentrification activists who had long battled with
the University over land use organized against this latest expansion through a
new "Coalition to Preserve Community." The remaining TIL tenants fought to
save their buildings or, at the very least, stay together nearby in other buildings
that they could cooperatively own through the same City program. Mirabel
Sisters, a progressive Dominican community organizing project, tried to
involve low-income residents north of the site. The uptown Dominican political
leadership, including Manhattan Community Board 12, the site of Columbia's
medical campus, offered to join forces to bargain with Columbia over its
expansion plans in both areas, but CB9 leaders rebuffed these offers.

B. Lawyering in the Shadow of Development Dynamics

Columbia, WE ACT and the other stakeholders and decision-makers
interacted, competed and colluded through three levels of simultaneous legal
process and discourse—municipal, state, and community. At the municipal
level, the expansion plan moved through the city government's environmental
and land use review processes. At the same time, Columbia initiated New York
State's processes for exercising its power of eminent domain. Alongside these
two formal legal procedures, the community and Columbia also prepared to
negotiate a CBA. What happened on one level could affect dynamics on other
levels. On all three levels, WE ACT struggled to deploy its newly enhanced
legal capacity, particularly its new in-house attorney, effectively within its
overall strategy. And throughout this process, its legal team harnessed both
traditional community lawyering efforts, discussed in this section, and new
modes of lawyering adapted to changing macro political-economic dynamics,
examined in Section V.

1. The Land Use Review Process

To move forward with even the first phase of its planned expansion,
Columbia needed the entire area to be re-zoned to allow increased density and
"academic mixed use." In New York City, re-zoning, like many other major
municipal land use decisions, requires approval through the City Charter's
Urban Land Use Review Procedure (ULURP).127 Before starting ULURP,
however, a proposal of any significant potential environmental impact must first move well along in the City Environmental Quality Review (CEQR) process. These interlinked procedures offer several opportunities for legal and community intervention.

Public hearings, with opportunity to submit written comments, occur at various junctures. These start early on with a DCP hearing in the community on the developer’s draft scope of its Environmental Impact Statement (EIS). Subsequent public hearings are held at several stages of ULURP, which starts when the City Planning Commission (CPC) certifies that the developer’s draft EIS is ready for public release (in that it includes adequate disclosure of risks from the project and adequate plans to mitigate those risks). The community board then has sixty days in which to hold hearings and render an advisory opinion. The process repeats, with shorter and longer time limits, at the Borough President’s office, the CPC, and the City Council. The Council and Mayor (who holds no hearings) have ultimate authority. Though much of the testimony and comments focus on the overall project plan, the vote is on the specific proposal triggering ULURP, here re-zoning, and both the CPC and the Council have authority to amend that proposal.

CB9 unsuccessfully sought to have the CPC approve its master plan for the community first and disqualify any part of Columbia’s plan that conflicted with the community board’s plan. Instead the Commission agreed to certify the two plans simultaneously, so that the community board’s plan would be taken into consideration, though not necessarily followed, by CPC and the City their recommendations, they must submit them to the CPC. See id. § 197-c(f). The Commission may then approve, approve with modifications, or disapprove the application. See id. § 197-c(h). The City Council and Mayor are empowered to make political decisions subject to no standards or review. If the City Council votes no, the proposal is rejected. If it votes yes and the Mayor vetoes, the Council can over-ride by a two-thirds majority. See id. § 197-d.


129. Kathryn C. Plunkett, Comment, Local Environmental Impact Review: Integrating Land Use and Environmental Planning Through Local Environmental Impact Reviews, 20 PACE ENVTL. L. REV. 211, 224-225 (2002). Although CEQR mandates only disclosure and does not obligate the developer to take or withhold any action, this “scoping session” can range more broadly since the EIS must cover not only physical and public health but also socioeconomic effects of the project, and set forth plans for mitigating all identified impacts. Id. at 225.


131. The Planning Commission also takes testimony and comments on the draft EIS and may order the EIS revised or expanded. See id. § 197-c(h).

132. See id. (explaining how the CPC can approve, approve with modifications, or disapprove); see id. § 197-d(e) (describing that the council can approve, approve with modifications, or disapprove); see id. § 197-d (stating that the council can override Mayor’s veto by 2/3 vote).
Council in their deliberations over Columbia's re-zoning proposal. If CB9's plan were approved, the City Planning Commission and City Council would have only to "consider" that plan before approving the University's plan under ULURP. See N.Y. CITY, N.Y., CITY CHARTER § 197-a (2004) (referring to a plan initiated by a community board as a "recommendation"); Forman, supra note 75 (noting that community board plans under § 197-a are only "advisory statements," though city agencies are obligated to consider them in their decision-making process). Columbia also agreed, in a largely symbolic gesture, to include in its EIS a comparison of the environmental impacts of the two plans.


136. Id.

137. See WE ACT, Official Written Comments, supra note 24.
Angeles developers feared that such litigation would delay municipal approval until after the expected election of a new mayor who did not support their project. In New York, neither the Mayor nor the City Council were up for re-election within the period for project approval; nor were they challenged by any potential candidate that opposed Columbia’s expansion. New York courts will not even entertain litigation until issuance of a final EIS, which comes in New York’s scheme only shortly before the ULURP process reaches its final phase at the City Council. Even then, the courts will not second guess approval of an EIS so long as the agency provides any reasonable basis for its conclusions.

For a long while, Columbia seemed impervious to delay. Unlike a for-profit developer, the University did not stand to lose significant money while it waited. Instead, it continued to announce new, huge donations and projects as it worked toward ULURP. It did, however, eventually push for ULURP to start, amidst rumors that some funders of the new campus were growing restive. If WE ACT found glaring errors or omissions in the EIS, or major procedural violations, litigation might help increase political leverage and buy time to complete CBA negotiations.

138. See Cummings, Mobilization Lawyering, supra note 3, at 318.
139. See Mayor’s Office of Operation, Office of Environmental Coordination, CEQR Technical Manual Appendix A §617.11(a) (on file with authors) available at http://www.nyc.gov/html/oec/html/ceqr/ceqrpub.shtml (last visited Oct. 3, 2007) (stating that the Final EIS must be issued with a Statement of Findings and available for consideration and comment for at least 10 days before CPC can make its ULURP decision); N.Y. City Dep’t of City Planning, Land Use Review Procedure, http://www.nyc.gov/html/dcp/html/luproc/ulpro.shtml#cper (last visited Oct. 3, 2007) (stating that CPC must approve, approve with modifications or disapprove the ULURP application within 60 days of the expiration of the Borough President’s review period); This means litigation may not be ripe until the CPC is nearly ready to approve the plan and send it to the City Council for review. The New York Supreme Court has held that one may not challenge a draft EIS and must wait until the final EIS has been promulgated. See Hell’s Kitchen Neighborhood Planning Ass’n v. N.Y. City Dep’t of City Planning, 800 N.Y.S.2d 347 (Sup. Ct. 2004) (holding that plaintiffs may not stay the administrative approval process by proving inadequacy of a draft EIS because the suit is not ripe and barred by a failure to exhaust administrative appeals, and that plaintiffs may challenge the process only after the final EIS is approved).
140. See, e.g., NRDC v. U.S. Army Corps of Eng’rs, 399 F. Supp. 2d 386, 399 (S.D.N.Y. 2005) (“When specialists express conflicting views, the court must defer to the agency’s reliance on its own qualified experts, ‘even if, as an original matter, a court might find contrary views more persuasive’”) (citations omitted); Akpan v. Koch, 75 N.Y.2d 561, 570 (1990) (quoting Matter of Jackson v New York State Urban Dev. Corp., 67 N.Y.2d, at 416) (“While judicial review must be meaningful, the courts may not substitute their judgment for that of the agency for it is not their role to ‘weigh the desirability of any action or [to] choose among alternatives.’”); Roosevelt Islanders for Responsible Southtown Dev. v. Roosevelt Island Operating Corp., 735 N.Y.S.2d 83, 96 (App. Div. 2001) (“differing conclusions reached by other experts concerning the potential adverse environmental impacts are insufficient to annul an agency’s determination”).
c) Lobbying for Administrative and Legislative Amendments

WE ACT and its legal team were under no illusion that community efforts could lead any level of City government to exercise ULURP power to block Columbia’s expansion by rejecting its re-zoning proposal. Columbia had built widespread support among City leaders and in the media, and it is influential in the City. Columbia’s new science labs, and the biotech businesses that would rise around them, offered economic growth of exactly the kind Bloomberg, Doctoroff, and the City’s business leaders sought. In October 2005, the Mayor announced that the City would open a new Columbia-supported math/science magnet school on the expansion site. While the community would struggle to open the school to more of its youth, and to gain access to Columbia’s resources for more of its local schools, the announced partnership reflected the extent to which the core of Columbia’s expansion was deemed a fait accompli long before the formal start of ULURP.

While neither the CPC nor the City Council would block Columbia’s rezoning proposal, a major community effort might persuade them to exercise their City Charter authority to “approve with modifications.” Under New York City’s interpretation of the US Supreme Court’s decision in Nollan v. California Coastal Commission, the City can impose only those requirements that can reasonably be viewed as addressing needs directly created by the project. But this allows a great deal of leeway. For example, the CPC or Council could reduce building height limits, prohibit certain types of bio-research, require enhanced public transit, and increase environmental and public health safeguards. Most significantly, the report that the City Law Department invokes to guide City action under Nollan expressly authorizes measures “needed to deal with ‘secondary displacement’” caused by a project.

WE ACT and its legal team worked closely with community residents and activists to formulate a platform of legally permissible modifications to press upon the CPC and City Council. They began to investigate inclusionary zoning as a means of combating secondary displacement. Under this approach, city government allows a developer to build more on a given footprint (by building higher and on more of the area) only if the developer sets aside for permanently affordable housing a percentage of the floor area it gains through this density

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143. N.Y. CITY, N.Y., CITY CHARTER §§ 197-c(h), 197-d(c) (2004).
146. Id. at 30.
Columbia's re-zoning proposal would more than triple the maximum density allowed under current zoning. An inclusionary zoning modification would grant that density increase to the University only if it created or funded in surrounding neighborhoods a substantial specified amount of new affordable housing.

WE ACT and its legal team also sought to modify Columbia's re-zoning proposal to include a special zoning district for the area immediately north and east of Columbia's new campus, as proposed by Manhattan Borough President Stringer. Stringer advocated new zoning rules in this special district, designed to reduce secondary residential displacement and other adverse impacts of the planned expansion. WE ACT and its legal team met with Stringer's staff in an effort to expand the boundaries of the proposed district and strengthen the proposed new zoning rules by barring any demolition or renovation that reduces the supply of affordable housing. They also sought to have the CPC and City Council adopt this enhanced proposal as a modification of Columbia's re-zoning proposal instead of moving it separately through ULURP at a later time (as planned by the Borough President).

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148. In this way, the re-zoning would increase vastly the market value of the land that Columbia purchased under current zoning, giving the University a substantial financial windfall. The density increase proposed by Columbia would exacerbate significantly many adverse impacts of its expansion, e.g., congestion, pollution, loss of light and river views, strain on transportation and sanitation.

149. Columbia could meet this requirement by buying and renovating existing housing or building new housing. It could fund acquisition by, or transfer ownership to, building residents (individually or collectively) or well-established nonprofit community-based housing providers in West Harlem, e.g., West Harlem Group Assistance, www.whga.org, and Harlem Congregations for Community Involvement, www.hcci.org. WE ACT calculates that if Columbia were to provide affordable housing equivalent to 20% of its increased floor area (a typical inclusionary zoning requirement), West Harlem would gain roughly 1,000 additional units of permanently affordable housing.


151. They also started looking into tax increment financing, widespread in California, by
d) Community Education, Organizing, Testifying and Lobbying

The main obstacle to CPC or City Council modification of Columbia’s plan was not legal authority but political will. The CPC commissioners were political appointees, though some had years left on their terms and histories that suggested potential for sympathy with the community’s needs. They and most City Council members harbored grander political ambitions leaving them loathe to step out of line. To have any chance of winning real gains in the ULURP processes, community residents would have to mobilize to wield political power. Such mobilization could enhance significantly their longer term capacity to protect and advance their interests on many fronts.

To this end WE ACT’s organizing, program and legal teams launched an ambitious program of community education, organizing and action. They encouraged and helped residents to take maximum advantage of opportunities for public participation in ULURP hearings. Well aware of the limits, and the co-optive potential, of such an approach absent broader action to exert power outside formal channels, they also proposed a “lobbying” campaign via postcards, faxes, emails, letters, personal visits, and—if need be—other potentially more media-attracting, creative and confrontational modes of dialogue.

The public hearing on the draft scope of Columbia’s EIS in mid-November 2005 offered the first official forum for the community to express its views on Columbia’s expansion plans. WE ACT devoted major legal resources to this event. The Fordham clinic prepared bi-lingual community handouts on the ULURP and CEQR procedures, CBAs, examples of what other universities had done for adjacent communities, and the main issues raised by Columbia’s plan, including housing, jobs, and the environment. WE ACT organizing staff set up pre-hearing workshops in the African-American and Dominican neighborhoods near the site, where Fordham law students helped residents understand the multi-level processes and prepare to testify at the hearing. More than eighty residents, plus local elected officials, WE ACT staff, other community activists and even some Columbia students offered testimony critical of the expansion plan. The hearing dragged on for hours, with Columbia and elected officials allowed to speak first, while residents who had waited patiently were allowed only three minutes apiece before being cut off curtly, and many had to leave before they had the opportunity to speak.

As ULURP hearings were thought to be approaching, and as they actually

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152. See Cole, Macho Law Brains, supra note 7, at 697-703.
approached in Summer 2007, WE ACT geared up again, as its in-house attorney, in close coordination with the group's organizing and program staff and the Fordham clinic, set up new community workshops and presentations for the Fordham students to prepare and lead. The goal was to deepen residents' understanding of the multi-level decision processes, to prepare them to intervene in ULURP through testimony, written comments, a postcard campaign, and other direct efforts to influence key decision makers, and to elicit their CBA suggestions and encourage their involvement in formulating the community's CBA platform.

2. The Politics of Eminent Domain

As Columbia moved slowly through the municipal land use review process, it simultaneously contracted with the State's Empire State Development Corporation (ESDC) to trigger the agency's eminent domain powers in support of the University's expansion. The University needed eminent domain to acquire any properties it could not purchase on the open market and also, under a quirk of New York law, to acquire full title to the area under the prospective site for a major part of its new campus. This process provided an additional opportunity for community participation and CB9 comment, at the separate public hearings ESDC must hold before approving the "general project plan" for any development that it assists. It also opened a second front of public discourse and struggle over the University's expansion plans.

Some months after Columbia contracted with the State agency, the Supreme Court of the United States upheld, in *Kelo v. City of New London*, the use of eminent domain to seize private property—whether or not


154. Columbia's draft EIS discusses the potential use of eminent domain to acquire the land from holdouts and the land under the streets for the underground part of their campus. See Columbia Draft EIS, supra note 18. Columbia can acquire the land under the streets from the city only if that land ceases to be used as a public space. See N.Y. CITY, N.Y., CITY CHARTER § 383 (2004) ("The rights of the city in and to its . . . streets, avenues, highways, . . . and all other public places are hereby declared to be inalienable; but upon the closing or discontinuance of any street, avenue, . . . or other public place, the property may be sold or otherwise disposed of as may be provided by law. . . . Nothing herein contained shall prevent the granting of franchises, permits, and licenses in respect to inalienable property."); N.Y. GEN. CITY LAW § 20(2) (McKinney 2003) ("Subject to the constitution and general laws of this state, every city is empowered . . . to acquire real and personal property within the limits of the city, for any public or municipal purpose, and to sell and convey the same, but the rights of a city in and to its waterfront, ferries, bridges, wharf property, land under water, public landings, wharves, docks, streets, avenues, parks, and all other public places, are hereby declared to be inalienable, except in the cases provided for by subdivision seven of this section.") (emphasis added).

155. See N.Y. EM. DOM. PROC. LAW § 201 (McKinney 2002) (describing the necessity of public hearings in the eminent domain process).

156. 545 U.S. 469 (2005).
“blighted”—for transfer to other private owners, so long as there is a rational basis for expecting the transfer to serve a public purpose. Kelo proved highly controversial and ignited a firestorm of popular opposition to eminent domain. Jurisdictions across the country enacted restrictive legislation or constitutional amendments against eminent domain. Although the Institute for Justice and other libertarian groups provided major financing and coordination for this well-organized effort, many progressive community activists and organizations joined in the call for restricted eminent domain as well.

In West Harlem, the few remaining holdout commercial property owners attempted to ride the wave of this rising resentment. Their West Harlem

157. See id. at 479-84.


Business Group (WHBG), led and financed by two non-resident White owners of multiple commercial buildings in the expansion site, mounted a major campaign to focus community struggle on opposing eminent domain. They retained a prominent liberal lawyer, Norman Siegel, who had headed the New York Civil Liberties Union and recently run an unsuccessful race to become the City's Public Advocate.161 Siegel eloquently framed the group's position as a populist opposition to Columbia's bullying, and the owners gathered support from the Coalition to Preserve Community and local tenants associations to insist that Columbia "take eminent domain off the table" as a pre-condition to any negotiations.

Under *Kelo*, Siegel and the WHBG had no chance of stopping Columbia's use of eminent domain in federal court.162 Nor did New York state courts offer any better prospect of success under the State constitution.163 The owners also could not expect to block Columbia politically. There was no post-*Kelo* groundswell of opposition in New York, and no major legislative effort to restrict eminent domain.164 Recent efforts in other parts of the City to stop the State from using eminent domain on behalf of private developers had fallen flat.165 The holdout properties were located such that Columbia could not build its new campus around them.166 The University's strong support among City

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162. For this project, Columbia invoked both the classic justification of "blight," see Berman v. Parker, 348 U.S. 26 (1954), and an expansive version of the alternative justification accepted in *Kelo*. Columbia's expansion offers not only economic development (within and near the site, and for the City as a whole), which satisfied the Court in *Kelo*, but also improvement of the City's cultural, education, intellectual and scientific life. The University's September 2006 draft submission to ESDC, obtained by the Columbia Spectator under the NYS Freedom of Information Law, makes both arguments: that the area is blighted and that Columbia's planned use is a "civic project." See *Manhattanville* in West Harlem: Land Use Improvement and Civic Project General Project Plan, Columbia University (Sept. 2006) (on file with authors); see also Erin Durkin & Anna Phillips, *Draft Plan Provides for Eminent Domain*, COLUM. DAILY SPECTATOR, Jan. 31, 2007, at A1.


164. See D'Orazio, *supra* note 163, at 1144 (describing the post-*Kelo* New York statute as "explicitly stat[ing] that urban renewal is a valid public purpose and use of land for which a municipality may extend its takings power"); Ross & Tolan, *supra* note 159, at 67.


166. See generally *supra* Part II (describing Columbia's expansion in the context of the
and State political, economic and cultural elites made it highly unlikely those leaders would seriously consider blocking Columbia’s expansion by withholding the State’s power of eminent domain.\textsuperscript{167}

Since the owners stood no chance of stopping Columbia, WE ACT and its legal team concluded they must have some other goal. Most likely the owners hoped that diverting community resentment into a fight against eminent domain would position them to get a much higher price from the University. Columbia almost certainly has set substantial money aside to mute community opposition and buy social peace. If WHBG manipulated the community into resisting eminent domain unconditionally, the University would lose its incentive to spend those funds on services and facilities. Its best bet would be to pay the funds directly to the owners in order to complete site acquisition and remove the main focus of community protest. In that event, the owners would have absconded with the community’s benefits fund.

Whatever the WHBG’s motives, WE ACT understood that conflating the interests of commercial owners entitled to eminent domain compensation with those of residential renters subject to displacement without eminent domain could only benefit the owners at the expense of the renters and the broader community. As an initial step in addressing this danger, WE ACT—while strongly opposing eminent domain abuse by the University—persuaded the local development corporation formed to negotiate with Columbia to reject the owners’ demand that the corporation require the University to forego any use of eminent domain before the corporation would discuss a broader agreement.\textsuperscript{168} This postponed the debate until a later point in the process. WE ACT hoped that by then Columbia would have cut a deal with the owners or offered the community sufficient benefits that the negotiating coalition was willing to refrain from fighting the University’s use of eminent domain to acquire commercial properties. WE ACT focused mainly on building community consensus and winning University buy-in on a valuable benefits package. It also worked to persuade the owners’ community allies that a focus on eminent domain would not advance their interests or goals. In both efforts, WE ACT’s legal team took a major role.

Tenant leaders in the two huge public housing projects just east of the expansion site were riled by rumors that Columbia was eying their buildings for further expansion. WE ACT’s legal team clarified that the public housing tenants’ situation differs dramatically from that of the tenants at Riverside Park Community.\textsuperscript{169} Riverside, like other 1970s’ affordable housing, is publicly

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\begin{itemize}
  \item \textsuperscript{167} See supra notes 95-100 and accompanying text.
  \item \textsuperscript{169} See supra notes 42-48 and accompanying text.
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subsidized but privately owned by a business corporation. Formed to maximize return to investors, the corporation switched to market-rate housing as soon as that become more profitable than low-moderate income housing operated with public subsidies. By contrast, public housing—a New Deal program from the 1930s—is run by a non-profit municipal housing authority, whose function and mission is to own and operate permanently affordable housing. The legal team was able to confirm that the New York City Housing Authority (NYCHA) considered the West Harlem projects among its core properties, which it would not sell so long it remained in the low-income housing business, and that it could not sell without notice to the tenants and an extended hearing process. They further explained to the tenant leaders that if the housing authority did not want to sell, Columbia was far too dependent on City approvals and support to even think of trying to force acquisition through eminent domain. Nor was there any likelihood the State ESDC would challenge City officials in this way.

WE ACT’s lawyers also did their best to convince the TIL tenants that they had nothing to gain from fighting eminent domain. These twenty one mainly Dominican working class families had worked very hard for several years to qualify to purchase their buildings, as a co-op, for a nominal price, under the City’s Tenant Interim Lease program. Unfortunately the buildings

170. See National Housing Act of 1937, 42 U.S.C. § 1437 (stating that it is the policy of the federal government to promote the general welfare by helping States address and remedy the lack of affordable housing available to low-income residents); N.Y. PUB. Hous. LAW § 401 (McKinney 1989) (constituting the New York City Housing Authority as a nonprofit public corporation); Rachell Blatt, Public Housing: The Controversy and the Contribution, in CRITICAL PERSPECTIVES ON HOUSING (Rachell Blatt, et. al., eds, 1986).

171. Telephone interview with Judith Goldiner, Senior Attorney, N.Y. City Legal Aid Society, and counsel to the City-wide federation of public housing tenants associations, N.Y., N.Y. (Apr. 12, 2005). Nor has the New York City Housing Authority been making use of the federal Hope VI program under which large numbers of public housing units are destroyed to create lower-density, mixed-income mixed-use projects. See Nigal Pindell, Is There Hope for Hope VI?: Community Economic Development and Localism, 35 CONN. L. REV. 385 (2003)

172. New York State does have legal authority to take municipal properties. See N.Y. GEN. MUN. LAW § 3 (McKinney 2007) (stating that the state must compensate municipal corporations for their land when they take it in exercising eminent domain).

173. The Tenant Interim Lease Program is designed to permit tenant associations to organize into cooperatives through which they purchase apartments in city-owned buildings for $250, so long as the associations meet certain requirements. See Rehabilitation: Tenant Interim Lease Purchase Program, N.Y. CITY DEPT. OF HOUS. PRES. & DEV., http://home2.nyc.gov/html/hpd/html/developers/til.shtml (last visited Oct. 3, 2007). The tenant groups purchase a liability insurance policy and then sign an 11-month lease with the Department of Housing Preservation and Development ("HPD"), and the HPD provides funding for major repairs, and, once the tenants learn to manage the buildings, they may purchase them. See Nancy A Brownstein, Comment, The Warranty of Habitability As Applied to New York City In Rem Housing: A Premature Promise, 50 BROOK. L. REV. 1103, 1109 n.38 (1984). The tenant association must demonstrate "the tenants' desire and ability to self-manage;” additionally, once the associations have been accepted, they must "maintain and manage the buildings in which they live.” N.Y. CITY DEPT. OF HOUS. PRES. & DEV., supra. The buildings are formerly abandoned tenements taken over by the City through real estate tax foreclosure, and therefore are known as
they expected to purchase are inside the expansion site and still owned by the City, which is negotiating their transfer to Columbia. Since the University’s excavation and construction will make the area un-liveable over the next thirty years, the tenants’ best outcome would be to move, at City or University expense, to comparable nearby buildings that they would be entitled to purchase through the same City program. Given that the main decision is the City’s, the tenants’ primary approach to winning this outcome has to be organizing pressure on City officials and winning a seat in the negotiations to determine their fate. WE ACT lawyers emphasized that fighting eminent domain would only divert the tenants’ limited time and resources and would not help them because the City did not need eminent domain to sell its own buildings. In July 2007, as CB9’s ULURP hearings on Columbia rezoning proposal approached, the University publicly renounced using eminent domain to take any residential buildings on the expansion site, while continue to negotiate acquiring the buildings from their public and nonprofit owners.

Separating the anti-gentrification activists of the Coalition to Preserve Community from the owners’ eminent domain campaign required a different approach. This “odd-couple” alliance reflected a tendency among some progressive activists across the country to support business and Libertarian-led campaigns against eminent domain. WE ACT and its lawyers understood the roots of that alliance in the history of abusive “urban renewal” that had leveled working-class communities of color in many cities. In New York, this resentment proved especially strong in response to Robert Moses and his successors, and was further aggravated in Harlem by Columbia’s infamous history of pushing tenants out to take over neighborhoods near its main campus. Still, WE ACT and its legal team strongly disagreed with efforts to focus community response to Columbia’s expansion on the issue of eminent domain. They argued that such an emphasis privileges and empowers landowners instead of residents. It demonizes a neutral legal tool and ignores the

“in rem” buildings. \(\text{Id; see generally Frank Braconi, In re in Rem: Innovation and Expediency in New York’s Housing Policy, in Housing and Community Development in New York City: Facing the Future 93 (Michael H. Shill ed., 1999)}\) (describing New York City’s In Rem housing program, which transfers ownership of residential properties obtained through in rem real estate tax foreclosure from the city to tenant co-ops, non-profit organizations and private, for-profit owners, and highlighting some of the challenges associated with the TIL program).

174. \(\text{See Durkin, Relocation Discussions, supra note 37.}\)

175. \(\text{It did carefully reserve its right to use eminent domain to gain ownership of commercial properties. Walker, Columbia Rules Out Evictions, supra note 103.}\)

176. \(\text{See Barbara Bezdek, To Attain “The Just Rewards of So Much Struggle”: Local-Resident Equity Participation in Urban Revitalization, 35 Hofstra L. Rev. 37, 61-63 (2006) and sources cited therein.}\)

177. \(\text{See CARO, supra note 64.}\)

positive uses of eminent domain; for example in Boston’s Roxbury section, a
democratically accountable community organization used eminent domain to
acquire absentee-owned land for development to benefit poor and working-
class residents.179 Moreover, blanket opposition to any use of eminent domain
serves to strengthen the well-financed, nationally coordinated, right-wing, neo-
liberal effort to weaken government, roll back the regulatory state, undo the
New Deal, and insulate private property from any public regulation or
control.180

The impact of these efforts at persuasion was unclear. While the public
housing and TIL tenant leaders sometimes seemed convinced, they also
remained loyal to the owners and hopeful that the expansion could be stopped.
The WE ACT lawyer and Fordham students were relative newcomers who had
no history with the tenants. Though the owners did not live in West Harlem,
they had long been present there. They provided leadership and resources in
opposition to Columbia, and offered a simple position that resonated with the
tenants’ understandable resentment of the University. While the legal team’s
talk might help over time, the CBA negotiations provided a far more effective
vehicle for weaning the tenant leaders from the owners’ misdirection. As the
community learned more about the benefits that Columbia could provide and
recognized that the University could not realistically be stopped, WE ACT
hoped it would become clear that the interests of the tenants and most of the
community would best be served by giving up opposition in exchange for
valuable facilities and services. It was to this task that WE ACT and its legal
team devoted their main energy.

3. Negotiating for a Community Benefits Agreement

Alongside the municipal and state processes, a third expansion decision
process unfolded within the community and between it and the University.
During the first phase of this third process, the community was determining
what it wanted from the University in terms of funds, services, facilities,
modification of expansion plans, and access to facilities on the new campus. In
the second phase, the community would negotiate with the University to
hammer out a binding contract by which it agreed to accept and possibly
support expansion in exchange for specific benefits. Given that there is no real

179. MEDOFF & SKLAR, supra note 60; See also a number of New Deal projects, including
early Robert Moses projects in New York such as public beaches (e.g., Jones Beach, Orchard
Beaches) and working class housing developments (e.g., Co-op City, Stuyvesant Town). See
CARO, supra note 64; Ross & Tolan, supra note 159, at 79 (discussing City of Hercules,
California, use of eminent domain against Wal-Mart to prevent “urban blight” from its planned
construction of a big box store on the site); Nicolai Ouroussoff, Complex, Contradictory Robert
180. See Elizabeth Martinez & Arnoldo Garcia, What is Neoliberalism? A Brief Definition
for Activists, CORPWATCH, http://www.corpwatch.org/article.php?id=376 (last visited Oct. 5,
2007) (defining neoliberalism); SPACES OF NEOLIBERALISM, supra note 62,
possibility of stopping the expansion, and only small hope of modifying it through ULURP, this process offered the community its main opportunity to protect and advance its interests.

Columbia was under intense pressure to enter into such a community benefits agreement. Deputy Mayor Doctoroff and other City leaders insisted on it. Columbia needed it to avert a public relations disaster comparable to 1968. The community’s primary leverage was the threat of angry Black and Latina/o protests on the national news and the internet. That could impose major costs on the University’s marketing efforts and drive prospective students, faculty and donors into the open arms of the University’s Ivy League and downtown competitors. It would tarnish severely the reputation of Columbia’s new president Lee Bollinger, a prominent liberal constitutional law teacher, best known for his role in defending affirmative action at the University of Michigan,181 who had staked his legacy on successful expansion. Controversial protests might even push the City Council to modify or stall Columbia’s plans.

Doctoroff moved behind the scenes to orchestrate bargaining between the University and the community. He allocated $250,000 in City funds to support community participation in CBA negotiations, and he could be expected to prod and assist the parties to reach an agreement which enabled Columbia to expand without major community protest. When the community took longer than expected to build the trust and capacity required for effective bargaining with Columbia, the Deputy Mayor slowed down the municipal review process in the hope that a CBA could be negotiated before the expansion plan reached the City Council.

The threshold question was who would speak for the community. WE ACT, in close communication with the groups that led the Los Angeles CBAs, moved early to involve a broad cross section of the community in discussion of what could be won, not only in urgently needed facilities and services, but in longer-term community capacity, control and ownership. With Boston’s Dudley Street Neighborhood Initiative182 and its own waterfront work as models, WE ACT called for a broad democratic visioning process which would bring grassroots residents together with experienced activists, nonprofit organizations, labor unions and progressive experts in a powerful coalition comparable to those forged in the Los Angeles CBA struggles. WE ACT attempted to open discussion with leaders of the uptown Dominican community—home of Columbia’s large medical campus—to join forces, so the two could negotiate more effectively with Columbia regarding its plans in both districts. WE ACT prepared to reach out to the unions that represent Columbia’s employees, hoping to harness the crucial clout and capacity that organized labor had brought to successful CBA coalitions in Los Angeles and

182. Medoff and Sklar, supra note 60.
Milwaukee. It sought potential allies among the broad range of groups meeting to form a city-wide coalition for accountable, equitable, and sustainable development. 183

Columbia and Doctoroff quickly moved to undermine WE ACT's efforts. Uneasy with the deeply democratic process and powerful coalition WE ACT envisioned, they insisted instead on negotiating only through CB9. This move proved shrewd. The community board looked official, legitimate and representative. Only insiders were aware of its political fragmentation and disarray, its lack of organizational capacity and resources, its parochialism and its virtual exclusion of the growing Dominican community north of the expansion site. WE ACT's leaders had stopped serving on the community board to focus on other activities. Seizing the opportunity to take center stage, CB9 leaders abandoned their prior waterfront alliance with WE ACT, accepted Columbia's invitation and proceeded to criticize WE ACT for failing to acknowledge CB9's primacy. They also rejected collaborative overtures from the uptown Dominican community board, refusing to include "outsiders" in the process.

CB9 obtained a persuasive legal opinion that it could not act effectively as a CBA coalition because, as an agency of the City, it did not have statutory authorization to negotiate with Columbia and lacked independent capacity to sue to enforce a contract. 184 It therefore formed a separate nonprofit tax exempt corporation, "D9 Local Development Corporation," to negotiate and contract with the university. 185 Creating a nonprofit corporation in New York takes only a week or two. The political struggle over how to structure the new LDC, who

183. This coalition, Re-Defining Economic Development or RED NY, was developed to "create a blueprint that offers a comprehensive and alternative vision of what development should look like in the Bloomberg era." Mark Winston Griffith, Redefining Economic Development, GOTHAM GAZETTE N.Y. CITY NEWS & POL'Y (Feb. 2006), available at http://www.gothamgazette.com/article/communitydevelopment/20060224/20/1771 (last visited Oct. 3, 2007); see also Redefining Economic Development NYC: Creating A Blueprint for New York City's Progressive Development Movement, JOBS WITH JUST. N.Y., http://www.nyjwj.org/red.html (last visited Oct. 3, 2007). Sponsoring organizations include Jobs with Justice New York, the Brennan Center for Justice, Good Jobs New York, and the Pratt Center for Community & Environmental Development. See id. The goal was to figure out how to get more public benefits from those developments that were being subsidized or incentivized by the city or state. Id. Jobs with Justice's lead organizer had recently arrived from Los Angeles, where she had played a central role in winning the first CBAs. See Urban America Takes a Stand on Wal-Mart, L.A. ALLIANCE FOR A NEW ECON., http://www.laane.org/walmart/pressbios.html (last visited Oct. 3, 2007) (including a biography of Adrianne Shropshire, current executive director of Jobs with Justice New York, that also identifies her with AGENDA (Action for Grassroots Empowerment and Neighborhood Development Alternatives) of Los Angeles).


185. A Local Development Corporation (LDC) is a special type of New York State nonprofit. N.Y. NOT-FOR-PROFIT CORP. LAW § 1411 (McKinney 2005). This section lays out the process that permits incorporation of not-for-profit corporations for public purposes and outlines the powers and functions of an LDC. See id.
would be represented and who would control, lasted more than a year.\textsuperscript{186}

Not surprisingly, the contradictions and weaknesses that undermined CB9 were largely exported into the LDC. As of July 2007, the bargaining group included only two members from the growing Dominican community. Only two of the African American members were low-income or working class. The LDC was fragmented and initially ineffectual. It had very few resources, minimal expertise and limited vision. Its legitimacy was contested vehemently in some sectors of the community, and even by some of its own members.\textsuperscript{187} Initially excluded from the process of structuring the LDC as well as from its board, WE ACT did not regain traction until summer 2006, when the local community-based organizations chose WE ACT’s director of programs, recently reappointed to CB9, to represent them on the LDC.

With the LDC still in disarray, WE ACT had to move quickly on a number of important fronts. It succeeded in having seats added to the LDC board for an education advocate, youth representative, TIL tenants’ leader, and arts and cultural worker. WE ACT tried hard to recruit the African American principal of an innovative local public school to take the education seat. It convinced the LDC to seek community input through a series of open meetings, and launched its own efforts to prepare local residents. WE ACT’s director of programs played an active role in an informal LDC steering committee, which included the CB9-appointed LDC chair and staff assigned to the LDC by the Borough President and the local State Assemblyperson.

WE ACT worked hard to enlist the active support of labor unions, well aware of the valuable political clout and organizational capacity they had contributed to other CBAs, especially in Los Angeles.\textsuperscript{188} This proved difficult due to key contextual differences. In Los Angeles, major unions needed community support to help them secure contracts with new employers at the new development.\textsuperscript{189} The unions representing Columbia employees, by contrast, already had contracts with the University and did not need community support to extend those agreements to jobs at the new campus. In Los Angeles a foundation of community-labor cooperation had been built over several decades.

\textsuperscript{186} CB9 eventually agreed on an LDC board of 13, later expanded to 17, and then to 26 to accommodate representatives of each elected official whose district includes any part of community district 9. See West Harlem Land Development Corporation Website, http://www.westharlemldc.org/Board_Members.html (last visited Oct. 3, 2007). The LDC board includes 2 representatives designated by CB9 itself. \textit{id.} The others are selected by various community groups and sectors, including 6 tenant/co-op groups ranging from low to middle income and 4 representatives of property, business or home owners. \textit{id.}

\textsuperscript{187} See Anna Philips, \textit{LDC Criticized at Public Forum}, \textit{COLUM. DAILY SPECTATOR}, March 28, 2007. (describing two LDC members’ participation in a protest against the LDC, especially its failure to make renunciation of eminent domain a pre-condition of negotiations with the University).

\textsuperscript{188} Cummings, \textit{Mobilization Lawyering}, supra note 3 at 320.

\textsuperscript{189} \textit{id.} at 317.
In New York, efforts to forge such cooperation were only just beginning, and activists of color remained bitterly skeptical of unions due to a long history of racial discrimination, especially in the building trades. As of mid-July 2007, WE ACT had been unable to open dialog with the unions representing Columbia employees, and the LDC had refused to reserve a seat for a union representative.

Keenly aware of the immense resource disparity between the University and the community, WE ACT worked with its legal team to find progressive experts who could work pro bono. It struggled to salvage the balance of the $250,000 Doctoroff had provided for LDC operations, nearly half of which had already been spent on a White, out-of-town “facilitator” who had no relevant experience and provided no apparent services. WE ACT helped convince Doctoroff to stall ULURP, won rejection of the owners’ demand that the LDC require Columbia to forswear eminent domain before the community would negotiate, and explored possible alliances with city-wide organizations. It also wrestled with the upshot of the LDC’s decision, just as WE ACT entered, to retain as its “pro bono” counsel a politically connected law firm, recruited by Doctoroff, that represents New York City’s major developers and had designed, on behalf of its developer client, the sham Bronx Terminal Market CBA.

WE ACT struggled to help the LDC take advantage of the firm’s expertise and contacts while averting the dangers posed by its political conflict of interest.

These were merely opening skirmishes. In July 2007, with ULURP already underway, the LDC was only beginning to assemble a team of experts, complete community consultation, formulate a CBA platform and negotiate with Columbia. Late in 2006 the LDC and University exchanged letters that indicated interest in addressing the same basic issues: housing, education, health, jobs, environment, etc., though not in the same manner or scope. By that time the LDC had organized itself into eleven working groups.

The environmental working group, led by WE ACT, met frequently and drew up a detailed list of “asks.” But most of the groups were slow in starting their work. The goal was to assess what the community most needs—within and beyond the expansion site—and what Columbia is in position to provide. The University’s major, world-class schools of education, medicine, and public

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190. Id. at 315.
192. See supra notes 83-84 and accompanying text.
193. See Jimmy Vielkind, How to Mediate Manhattanville: A New Negotiating Partner is Born, CITY LIMITS WKLY., Dec. 4, 2006, at 1 (discussing the formation of working groups for CB9). These groups included: housing; business and economic development; employment and jobs; education; historic preservation; community facilities/social services; arts and culture; environmental stewardship; transportation; research and laboratory activities; and green spaces. See West Harlem Local Development Corporation, http://www.westharlemldc.org/Community_Benefits_Agreemen.html (last visited Oct. 3, 2007).
health offer great potential for synergy. Columbia could provide funds and services in support of vastly expanded and improved public schools and community health centers, which would offer training opportunities for its graduate and professional students and burnish its public image. Similar synergy might develop around some environmental issues, in coordination with Columbia's extensive architecture, planning and environmental programs and centers.

The issue of housing presents the LDC with particularly intense crisis and opportunity. Left alone, Columbia's expansion would escalate the gentrification of West Harlem, rapidly pricing out poor and working-class residents, and leaving them unable to benefit from CBA gains. With a good CBA, the community could harness Columbia's resources to protect affordability, build thriving mixed-income, mixed-race communities and gain community ownership and control over land and buildings.

A good CBA could improve the lives of local residents, strengthen their capacity to win future battles and help build long-term structures for grassroots democratic participation. With much at stake, WE ACT was forced to strain its limited resources while maintaining its other important programs. It had to rely significantly on the lawyers and law students working with and within it. The lawyers and law students had the opportunity to forge new approaches to community lawyering in the heat of new forms of community struggle.

IV
INTEGRATIVE LAWYERING

WE ACT's role in the ongoing community response to Columbia's expansion project highlights both the limitations of traditional legal levers in the thick political economic context of urban development and the demands placed on community-based lawyers operating within this context to navigate the political and economic forces that shape contemporary urban development dynamics. Lawyers working with and for environmental justice advocacy organizations have grown accustomed to using existing legal frameworks in an attempt to strengthen the political power of groups and interests in the community. In this way, traditional environmental justice lawyering is interest-forcing, seeking to take advantage of the pluralist competition of interests by enhancing the power of vulnerable populations, particularly as against more entrenched, powerful interests. As in this case study, attorneys use the procedural tools embedded in land use laws, namely, the opportunity for public testimony and comment on proposed development projects, both to organize residents and to form coalitions of interests around the common goal

194. See Cole & Foster, supra note 3, at 121-30 (reviewing environmental justice lawyers' efforts at using civil rights and environmental law to transform land use decision making processes which have an adverse, disparate impact on low-income and racial minority communities).
of contesting the development and influencing public officials' ultimate decisions.\(^{195}\) Although this was not a viable strategy in the Columbia expansion case, attorneys also often use such tactics to delay the regulatory process in the hope that the developer will eventually back out or make concessions. As we have shown, this interest-forcing strategy has significant limitations in a political economic environment in which interest group influence on city decision makers has been significantly weakened, due to the increasing economic dependence of cities on pursuing and accommodating private capital, investors, and developers.\(^{196}\)

As the many facets of their evolving strategy illustrate, WE ACT and its legal team have been impelled to step outside of the legal regulatory framework and engage in pluralistic bargaining and negotiation both with other community stakeholders (especially around CBA demands and eminent domain issues) and with the developer, Columbia, itself. Both Columbia and the City appear to have aligned interests in preventing a public relations disaster from the development project. WE ACT and other community interests are attempting to leverage that threat in order gain further influence and control over development in West Harlem.

Thus, WE ACT and its legal team are in the process of shifting from a strategy primarily geared toward responding and reacting to Columbia's proposed plan to one designed to strengthen and leverage the capacity of the community (particularly those members who have the least voice and influence in the process) to become a "player" in its own development and revitalization. This shift will require more than crafting a political strategy aimed at influencing public decision makers, whose ability to control the social and economic destiny of their neighborhoods has significantly declined. Instead, WE ACT must change the dynamics of development by situating itself as a

\(^{195}\) Luke Cole advocated using the requirement for public participation in environmental and land use laws as a strategy very early on in environmental justice legal advocacy. He found early success with this strategy in Kettleman City, California, where he was able to convince a state court to require that the Environmental Impact Report be translated into Spanish so that the predominantly Spanish-speaking community could meaningfully participate in the public comment process. See Cole, Empowerment as the Key, supra note 7; see also Cole, Macho Law Brains, supra note 7, at 697-703 (describing and embracing the "power model" of environmental justice advocacy which views the public participation process as largely co-optive of community opposition but nevertheless useful "as a vehicle for organizing communities and a means to community empowerment").

\(^{196}\) Pluralism was never the ideal model to resolve highly contentious public issues, particularly those involving contested land use issues which almost always involve stark inequalities in economic power, knowledge and opportunities to shape the development plan among the stakeholders (particularly as between developers and affected, often low income, communities). Pluralist decision making processes almost always favor the developer due to the simple fact that opportunities for public participation most often come after the development proposal or plan has been crafted and preliminarily agreed upon by the developer and the local government. See Cole & Foster, supra note 3, at 106-14 (critiquing the pluralist model in the environmental justice context); see also Eileen Gauna, The Environmental Justice Misfit: Public Participation and the Paradigm Paradox, 17 Stan. Envtl. L.J. 3 (1998).
force to which both the city and private investors must be accountable. In this effort, WE ACT’s legal team could play a major role in helping to structure new accountable participatory community institutions which control land use through community land trusts and that have a major voice—if not a vote or veto—in West Harlem housing, education, health care, social service and environmental decisions. They could help design creative financial arrangements though which Columbia’s wealth leverages private and public funds for land trusts and local nonprofit housing developers to acquire, renovate and operate, affordable diverse residential options. They also could help draft the community’s CBA platform and negotiate an effective, enforceable agreement.

The shift from reacting to contemporary development dynamics to proactively reshaping them fundamentally transforms the relationship between community based organizations like WE ACT and its lawyers and legal expertise. To be effective in this transformative project requires that community based lawyers work “integratively” in two necessarily interconnected ways. In their work, the lawyers—like their clients—need to integrate flexibly and functionally a broad range of practice areas, skills and roles. And they need to make sure that all of their work is thoroughly integrated into the overall strategy, program and process of the organization so that their lawyering is closely tied to the organization’s efforts to build community capacity and power. Each form of integration shapes the other.

The first type of integration—role integration—is discussed extensively in the literature on community lawyering. At their best community lawyers flexibly integrate a wide array of roles to collaborate innovatively as partners with community groups. However, very rarely are these lawyers fully integrated into the community based organization’s decision-making and operations. This second type of integration—organizational integration—is largely absent from the community lawyering literature, which understandably focuses on small, informal grassroots groups. Analysis of this type of

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198. See infra notes 201-219 and accompanying text. Our concept of role integration is similar to Scott Cummings’ “tactical pragmatism,” infra note 220.

199. Most of the literature on community lawyering focuses on work with grassroots groups, often informal or newly forming, without substantial political or organizational experience, formal education, funds, capacity or resources. See, e.g., Michael Diamond, Community Lawyering: Revisiting the Old Neighborhood, 32 COLUM. HUM. RTS. L. REV. 67, 108-30 (2000); David Dominguez, Getting Beyond Yes to Collaborative Justice: The Role of
integration is especially important now as environmental and other social justice organizations increasingly begin to engage the complex process of urban development on behalf and in support of low-income communities and communities of color and as, like WE ACT, they approach a scale of operations which makes in-house counsel practically and economically feasible.

To decide whether and how such groups can integrate staff lawyers effectively, we need to examine similar processes both inside and outside of the environmental and social justice worlds. Corporate in-house counsel for major business and nonprofit entities may offer some helpful models for community-based organizations that need transactional lawyering to help develop and manage large-scale housing, healthcare and education projects. For WE ACT and its counterparts, however, a more fruitful source of models for fully integrated lawyering is the work of in-house counsel for labor unions, especially in periods of intense organizing and struggle. This Section will draw upon the literature on community lawyering, community economic development, and labor lawyering to examine the efforts of WE ACT's legal team in the struggle over Columbia's expansion and explore possibilities for

Negotiation in Community Lawyering, 12 GEO. J. ON POVERTY L. & POL'Y 55, 57-59 (2005); Gerald P. Lopez, Shaping Community Problem Solving Around Community Knowledge, 79 N.Y.U. L. REV. 59, 59-62 (2004); Lucie E. White, Collaborative Lawyering in the Field? On Mapping the Paths From Rhetoric to Practice, 1 CLINICAL L. REV. 157, 161 (1994) [hereinafter White, Collaborative Lawyering]; Lucie E. White, "Democracy" in Development Practice: Essays on a Fugitive Theme, 64 TENN. L. REV. 1073, 1077-78 (1997) [hereinafter, White, Democracy in Development Practice]. Of the few articles that discuss community lawyering for larger, stable, developed organizational clients, such as ACORN, most advocate and describe a very restricted role for the lawyer. Much like a plumber or repair person, she is brought in for a specific job—generally litigation, usually on defense—and then gets, or is moved, out of the way. See Steve Bachmann, Lawyers, Law, and Social Change, 13 N.Y.U. REV. L. & SOC. CHANGE I (1984-85); William P. Quigley, Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations, 21 OHIO N.U. L. REV. 455, 474 (1994) (quoting an organizer as saying that "the lawyer should be on tap, and not on top") (internal quotation marks omitted).

200. Indeed, community economic development practice does often pair more established, high-capacity organizations with lawyers who sometimes aspire to emulate corporate house counsel. For the most part, however, the lawyers provide technical assistance in complex real estate transactions involving intricate debt, equity and bond financing including a variety of federal and state tax credits. See Cummings, Mobilization Lawyering, supra note 3, at 309; Martha Minow, Lawyering for Human Dignity, 11 AM. U.J. GENDER SOC. POL'V & L. 143, 163 (2003). Much of the lawyering is provided by major firms pro bono or by smaller specialty private firms remunerated through project financing. See Thomas H. Morsch, Discovering Transactional Pro Bono, 72 UMKC L. REV. 423 (2003) (discussing the pro bono work that transactional lawyers do in the community economic development context). At least one legal services program, however, has developed a far more collaborative client-centered approach to CED lawyering, which is chronicled in a law review account by a long-time participant and co-author of this article. See 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, 158 (1997) (describing approach of Brooklyn Legal Services Corporation A, which aspires to provide client groups with "not only (almost) all traditional lawyering but also the full range of practical and strategic services which private sector corporations routinely expect of their counsel").
more deeply integrating legal capacity into (and across) the organizational structure and functioning of WE ACT and similar community-based groups.

A. Role Integration

Integration of an expansive set of roles is widely observed and advocated in accounts of community lawyering. Lucy White identifies three complimentary dimensions of such lawyering: advocacy to change the law, to transform values in dominant cultures and to change the consciousness of poor people and their lawyers. Michael Diamond calls for "activist lawyers" to help community clients design non-legal as well as legal strategies for building power, to present and advocate options and to help organize the groups and resources required to implement them. An account of one pioneering effort shows CED lawyers acting not only as transactional counsel but also "as tacticians and key members of management strategy teams, . . . interpreters, . . . lobbyists and propagandists, facilitators and negotiators." A recent article on the emerging accountable development strand of CED finds lawyers playing the roles of "broker, negotiator, drafter, counselor, advisor, researcher, [and] litigator."

These and other accounts reveal a rough, tentative taxonomy of expansive overlapping roles to be mastered and integrated by lawyers working in and with community based organizations like WE ACT. These include litigator and litigation analyst, transactional lawyer, political strategist,

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203. Glick & Rossman, supra note 200, at 119.
204. Liegeois & Carson, supra note 53, at 187.
205. In acting in this role, lawyers assess possible court or administrative actions, claims and defenses; their costs and their potential for achieving various ends (damages, injunction, law change, delay, public education, community empowerment, official exposure and embarrassment, discovery, government or corporate concessions, etc.); and either represent the organization or arrange and monitor such representation. See Cummings, Mobilization Lawyering, supra note 3, at 326-28. These elements fit into lawyering in White's first dimension as well as, to some degree, her second. See White, Collaborative Lawyering, supra note 199, at 157-58.
206. For example, helping to structure, memorialize, monitor and implement deals and projects; choosing, designing and maintaining legal entities; drafting and analyzing agreements; providing basic information on corporate, tax, contract, and real estate law; and providing regulatory counseling and representation. See Cummings, Mobilization Lawyering, supra note 3, at 27; Glick and Rossman, supra note 200; Gross, supra note 52, at 11-14.
207. For example, analyzing political and legal leverage points and ways to exploit them; helping map formal and informal decision processes; helping identify and mobilize sources of support; helping neutralize or weaken potential opposition; helping build alliances and resolve conflicts; and helping design, evaluate and adapt structures and processes for community power. See Gary Bellow, Steady Work: A Practitioner's Reflections on Political Lawyering, 31 Harv. C.R.-C.L. L. Rev. 297, 301, 306 (1996); Cummings, Mobilization Lawyering, supra note 3 at 325.
negotiator, community educator, broker, writer, lobbyist and staff member. These roles are intricately interdependent and mutually supportive.

Role integration requires that lawyers working for community based organizations learn how to move fluidly from one role to another, to combine roles, and to shift flexibly back and forth between background support and more public, prominent roles. In the community lawyering context, this role integration is often performed through collaborative partnerships between community based clients and outside lawyers. One illuminating example of this type of relationship is the clinic that CUNY Law School dedicates exclusively to working with the Welfare Rights Initiative (WRI) in New York City. WRI formed in the mid-1990s to help welfare recipients enrolled at CUNY stay in school despite the draconian work requirements imposed by federal welfare “reform.” The law clinic collaborates with WRI in a number of ways. It provides legal training and support for WRI’s lay advocates, staff and

208. For example, acting formally or behind the scenes; within the community; with potential allies and adversaries; and with public officials, developers, etc.; helping to formulate “win-win” approaches where possible; otherwise, to formulate demands, identify deal breakers, assess trade-offs, devise and evaluate bargaining tactics. See Dominguez, supra note 199, at 56

209. For example, helping grassroots community members to understand the decision processes, their participation rights, the players, stakes, possibilities and trade-offs; helping them prepare to exercise their rights (e.g., testimony at hearings, written comments) and to fight for additional opportunities to intervene; and learning their needs, experiences and ideas. This is White’s third dimension lawyering. See White, Collaborative Lawyering, supra note 199 and accompanying text. It requires lawyers who are “multi-lingual” not only in Spanish, English and other languages but also in their fluency in both community vernacular and legal, bureaucratic and business jargon.

210. For example, helping identify and involve sources of expertise, funds, access, information, and influence; and helping involve other community, city-wide, etc. groups and institutions. See Glick & Rossman, supra note 200, passim (1997); White, Collaborative Lawyering, supra note 199 at 166.

211. For example, conceptualizing, drafting, and editing legislative, regulatory, project, policy and funding proposals, testimony and written comments, position papers, reports, press releases, leaflets, agreements, etc. Liegeois & Carson, supra note 53 at 187; Cummings, Mobilization Lawyering, supra note 3 at 321.

212. For example, helping to influence law makers, and other decision makers and opinion leaders; helping plan, implement, evaluate and adapt strategy and tactics to gain influence; and help set up, prepare for, and conduct meetings with law makers. See Bellow, supra note 207 at 304-05; Cummings, Mobilization Lawyering, supra note 3 at 320 (discussing the role of lawyers in negotiating a CBA with Los Angeles city council members); Glick & Rossman, supra note 200 at 119.

213. For example, research, analysis, support, etc. for up-front advocacy, negotiation, lobbying, community education, etc., by other members of the organization’s team. See Glick & Rossman, supra note 200 at 119 (discussing lawyers roles as tacticians on management teams).


215. Although a young organization made up largely of current and former welfare recipients, WRI quickly developed—with support from social work faculty at CUNY’s Hunter College campus—substantial organizational capacity and a skilled full-time staff. See id. at 202-204 (describing the growth within the organization and its relationship to the affiliation with the CUNY clinic).
counselors; it is involved in the drafting of public education materials and position papers; it participates in joint community education and training sessions; and it helped to formulate, draft and negotiate a state legislative agenda.\(^{216}\) Its primary service involves representing at administrative hearings hundreds of individual students referred by WRI.\(^{217}\)

Although the clinic identifies itself at the “legal arm” of WRI, it is more accurately described as its “partner.” The two are separate organizations with a close, supportive, mutually beneficial, negotiated attorney-client relationship.\(^{218}\) The clinic operates within its own institutional and pedagogic restraints, and within the limits of student capacity and the academic calendar. It works mainly “with” rather than “for” WRI, and functions independently in its main work of representing recipients referred by WRI.\(^{219}\) While exemplary in many ways, including its use of integrative lawyering roles and mutual collaboration, the clinic-WRI relationship does not offer a model of lawyers’ full integration into organizational strategy, process and program.

**B. Organizational Integration**

Collaborative partnerships between community-based organizations and outside lawyers/firms operate most effectively for discrete legal issues and policy projects. They are less effective in contributing to the kind of complex, long-term political-legal-organizing work required to deal with the political economic roots of persistent patterns of race and class inequality.

Having a lawyer on staff is not necessarily consonant with deeply integrating a lawyer into the programs and processes of the organization. We would distinguish between physical integration and functional integration, a distinction that we think matters to the community efficacy goals of an organization. It is certainly possible for a lawyer (or group of lawyers) to be physically integrated into a community organization—i.e. on staff and in the office—but do work confined to discrete legal tasks performed, for the most

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216. See id. at 189-96. Ultimately, the legislature, while not passing all of the reforms suggested by WRI, passed legislation “that significantly expands welfare recipients’ access to higher education.” Id. at 195. Despite opposition by the City government under then-Mayor Rudy Giuliani the governor signed the bill after significant lobbying and organizing efforts by WRI. See id. at 195-96.

217. Though WRI controls referrals, each recipient thereafter becomes a clinic client and WRI participates no further in her case. See id. at 193 n.88.

218. Note that the Loffredo article, supra note 214, does not focus on the negotiated structure of the relationship between the clinic and WRI, nor does it discuss whether alternative arrangements had been proposed and rejected.

219. See Loffredo, supra note 214, at 191-93. Note that the clinic could ethically involve WRI more if the group’s role were specified in the retainer or engagement letter. See Jennifer Gordon, Suburban Sweatshops: The Fight for Immigrant Rights 199-200 (2005) (describing a retainer in which the Workplace Project agreed to provide legal support to a worker on a particular issue and, in return, the affected worker promised to participate actively in his or her own case).
part, separately from other dimensions of the organization’s program and activity. Her work might coalesce at some point with the other strategies and tactics employed by the organization (e.g. organizing a public hearing to review a land use plan) but neither the lawyering nor the other strategies are conceived in a functionally integrative fashion from the outset—the legal strategy is arrived at separately from the organizing, media, education and other strategies, rather than collectively through a meeting of the organization’s “minds” or its various operational components. On the other hand, lawyers who are not on an organization’s staff may—through conscious effort by all parties—achieve a significant degree of close functional collaboration. Our expectation is that struggles for community efficacy are strongest when legal capacity is integrated both physically and functionally.

1. Physical Integration

At the simplest level of integration is the in-house counsel model that corporations, universities, and other major businesses employ to manage discrete projects or litigation associated with the organization’s work and mission and to retain and supervise outside counsel. This model is designed to address legal questions, disputes, and issues that arise out of the legal problems of the organization or its constituents. It is a very “client-centered” model of lawyering in which the lawyer’s presence in the organization is less out of necessity than efficiency. An outside lawyer might just as easily handle these matters, but perhaps less seamlessly and with higher transaction costs arising because she is removed from the flow of information in the office. An inside lawyer is also available to address relatively minor legal matters, perhaps involving internal policy or unrealized litigation threats, that otherwise would remain unaddressed if an outside lawyer had to be retained. However, the in-house lawyer is not necessarily involved in broader management decisions and other internal operational functions.

220. This is evident in Fordham’s work with WE ACT even before the addition of in house counsel, in much of the CUNY Law-WRI collaboration, and in the work of Brooklyn Legal Services Corporation A’s community development unit. See Loffredo, *supra* note 214; Glick and Rossman, *supra* note 200. An especially impressive example of functional without physical integration is the work of Margo Feinberg, a labor lawyer in private practice who was retained to coordinate the legal arm of the multi-faceted community/labor struggle against Wal-Mart analyzed by Scott Cummings in this colloquium. Cummings, *Law in the Labor Movement’s Challenge to Wal-Mart: A Case Study of the Inglewood Site Fight*, 95 CALIF L. REV. 1952-54, 1965-72 (2007).

221. See Deborah A. DeMott, *The Discrete Roles of General Counsel*, 74 FORDHAM L. REV. 955, 955 (2005) (describing the evolution of the in-house counsel position and the amorphous roles these lawyers often play); Robert L. Nelson & Laura Beth Nielson, *Cops, Counsel and Entrepreneurs: Constructing the Role of Inside Counsel in Large Corporations*, 34 LAW & SOC’Y REV. 457, 462-68 (2000) (discussing three ideal types of in-house counsel: the cop, who is largely independent of the corporate environment and focuses almost exclusively on legal gatekeeping; the counselor, who provides advice on ethics, business decisions and situational concerns, in addition to purely legal matters; and the entrepreneur, who is deeply involved in business decisions and aggressively leverages legal strategies to increase business profits and
The in-house counsel model can be, and has been, duplicated within some community based organizations large enough to employ a lawyer to handle their internal legal matters, especially housing development corporations. Another model has been developed by some workplace and multi-issue community organizing projects to support their efforts to evolve into broad-based participatory membership organizations. In this model, staff lawyers function primarily to draw potential members to the organization by providing legal services to resolve their individual problems. These lawyers may offer services only to members, or at much lower fees to members. Or they may offer services contingent upon clients helping with the case and attending workshops designed to draw people into the organization. In the groups using this model that we are familiar with, the legal services caseload has been so great that the lawyers have little time or energy left for more than sporadic, episodic involvement in organizing and advocacy campaigns, even though the groups and their lawyers strongly aspire to such functional integration. In both cases, however, non-practicing attorneys in leadership positions within these groups provide functionally integrative lawyering in group campaigns.

Physical integration does not necessarily equate with completely stratified operational or decision making patterns in an organization. In most organizations, staff members share their goals, strategies, and progress with one another. Invariably they influence each other, even if unconsciously. Or there might be, of necessity, more collaborative work between different departments or experts on particular, complex projects. Purely physical integration, with no functional integration, is likely a heuristic useful in clarifying the poles of practice along a continuum, with some groups practicing and aspiring to a much higher, more consistent degree of functional integration than others.

2. Functional Integration

For models of functional integration useful to WE ACT and its counterparts, it is most fruitful to look at the work of in house counsel for labor
unions, especially during the unions’ formative organizing years. Unions are similar to environmental justice/accountable development groups like WE ACT in a number of important respects. Both types of groups organize, educate, mobilize, represent and work to empower a group of people at the bottom of the economic and political structure. Both frequently have to compete with rivals for the allegiance of that constituency. Both struggle defensively and proactively in a range of judicial, administrative, regulatory and legislative arenas. Both need the capacity to bargain effectively for their constituents with powerful, expertly-staffed, and well-resourced adversaries, and to monitor and enforce compliance with the resulting agreements.

Like community and CED lawyers, union-side labor lawyers must flexibly integrate an array of roles. They interpret laws and regulations, participate in collective bargaining and arbitration, advise on policy, strategy, rights and obligations, and help structure and administer the union’s internal decision making. They also contribute “considerable non-legal work in the economic, statistical and public relations fields . . . and help[ ] interpret the union to the public and to give society a better understanding of the aims, ideals, and operations of labor organizations.”224 Fortunately for our purposes, we now have available a number of accounts of lawyers’ work in and with labor unions during their formative years.225

The United Farm Workers (UFW) offers an especially propitious model, since it organized among very poor, politically marginalized people of color and it uniquely combined a social movement and a trade union in one organization. Jennifer Gordon’s recent comprehensive examination of the work of the legal department of the United Farm Workers in the 1960s and 1970s pays close attention to the issues that concern us here.226 Gordon’s article


226. See generally Gordon, Law, Lawyer, and Labor, supra note 225 (discussing the integrative lawyering strategies employed by the UFW to strengthen organizing efforts, build political power and create a framework of legally enforceable rights).
tracks the UFW’s early efforts to collaborate with California Rural Legal Assistance. CRLA was a likely partner as it was (and remains) among the most progressive and militant of the nation’s publicly-funded legal services programs. It expressed strong commitment to social change and the empowerment of low-income people. Nonetheless, Gordon explains, “this collaboration soon unraveled in the face of tension about goals and strategies. CRLA sought to make decisions about legal tactics that would lead to a victory in court. The Union, on the other hand, often preferred a course of action that was riskier in legal terms but that it judged more likely to advance its long-term organizing goals.”

CRLA was hampered by federal funding restrictions that left it unable to take the UFW as a direct client and forced it to assist the union through representing individual members of the UFW. But its conflicts with the UFW were deeply rooted in the two organizations’ differing institutional needs and occupational perspectives.

Recognizing that it needed a sophisticated legal strategist to function as part of its team and serve only its goals, in 1967 the UFW hired its own general counsel, Jerry Cohen, a young CRLA attorney active in the progressive student movements of the 1960s. Over the next thirteen years, working under the inspired and dynamic leadership of Cesar Chavez, Dolores Huerta and many other progressive organizers, Cohen and his staff became an integral arm of the UFW and contributed greatly to its successes. They cleared the way for the powerful nationwide boycott of grocery chains that sold non-union grapes. They successfully defended the union, its staff and members against arrests, evictions, injunctions and myriad other forms of retaliation. They pressured growers and regulatory agencies, obtained otherwise unavailable strategic data

228. The intensity of its challenge to corporate and state power made CRLA the prime target of then Governor Reagan’s attempts to shut down legal services. See Robert Hornstein, Daniel G. Atkins & Treena A. Kaye, The Politics of Equal Justice, 11 Am. U.J. Gender Soc. Pol’y & L. 1089, 1094 (2003). Gary Bellow, CRLA’s deputy director during this time, was for many years a prominent leader and national spokesperson for progressive political lawyering. He published prolifically, including a well-respected textbook. See Gary Bellow & Beatrice Moulton, The Lawyering Process: Materials for Clinical Instruction in Advocacy (1978). See also Bellow, supra note 207 passim (discussing Bellow’s distinguished career as a political lawyer).
230. See id.
231. See id. at 14-15.
232. This is a secondary boycott since the union asked consumers not only to boycott products grown or manufactured by an employer with which the union has a dispute, but also broadens the focus, for example, by asking consumers to boycott an entire store because that store sells the disputed product. Id. at 24-25. Secondary boycotts are banned under the National Labor Relations Act. See id. at 24. Although the NLRA does not cover farm workers, the UFW did represent nine workers in a commercial peanut shed who were covered. UFW lawyers created a new union and moved the nine workers into that union, freeing the UFW to mount what proved to be one of its most powerful weapons. See id. at 15.
on growers' operations, and helped build public support by exposing farm worker conditions and consumer health dangers from growers' illegal practices. They played a key role in drafting, negotiating, winning and enforcing a groundbreaking California state labor law, which enabled the UFW to hugely expand and win major victories. Throughout, the lawyers' work added significantly to the farm workers perceived and real capacity to fight back and win.

The lawyers' full integration into the UFW was central to this success. The lawyers were not organized separately into a public interest law firm, law school clinic or legal services program that worked in partnership with the UFW. Rather, they labored as part of the union's staff, as its "legal department." During the harvest season, they lived close to areas where organizing was most active and were constantly present or on call.

This structural arrangement laid the basis for a more functional, strategic integration. It enabled the union and its lawyers "to develop an approach to lawyering that put the achievement of organizing goals above the achievement of legal victories." The question was not what was legal or what could win in court, but what did the union need and how could the lawyers help. A losing lawsuit would be litigated if it could expose the growers' malfeasance, influence public opinion, obtain helpful data, pressure regulatory agencies, or provide farm workers with an empowering stage on which to tell their stories. A winning suit might well be settled or even dropped in exchange for concessions more valuable to the UFW. An illegal measure by government or growers might not be legally challenged at all, if some other approach—such as civil disobedience—might prove more effective at building union and farm worker power.

These and other decisions were not dictated to or by the lawyers. They emerged from dialogue and discussion in which the lawyers were fully engaged. As new lawyers grasped the UFW's approach to law and organizing, as they gained detailed practical knowledge of the union's methods and the farm workers' circumstances and built close working relationships with organizers and workers, they also became participants in determining UFW strategy and tactics. Cesar Chavez, the union's charismatic leader, came to consult Jerry Cohen routinely on so many aspects of union policy and strategy that UFW organizers, after watching the movie "The Godfather," referred to Cohen as Chavez's "consigliere." Few feared that the lawyers would or could dominate, publicly or internally, since at the time of the lawyers' arrival, the UFW was already a well-established organization with strong-minded, experienced leadership.

233. See id. at 28-35 (discussing the passage of the ALRA).
234. Id. at 16.
235. Id.
UFW membership surged in the late 1970s after the union won passage and implementation of California's ground-breaking Agricultural Labor Relations Act. This new terrain spurred major growth in the size and centrality of the union's legal department. It also brought into the UFW large numbers of workers who had not been involved in its earlier struggles and ultimately led to a complex, contested, and painful end to the union's legal department. Whatever lessons may emerge from the UFW's later problems, they in no way detract from the value of the union’s approach to law and organizing during the late 60s and early to mid-70s as a model of integrative lawyering. The UFW's approach offers an important example for WE ACT and similar community-based organizations struggling now for environmental justice and accountable development. There are also contemporary environmental justice organizations to which WE ACT can, and does, look for guidance on this type of functional integration.

C. Examples from Environmental Justice Practice

In recent years some environmental justice organizations have begun to move toward this form of organizational integration as they evolve strategically and structurally to better attend to present and future development struggles and to be proactive players in shaping their communities. It is curious that so

236. See Jennifer Gordon, A Movement in the Wake of a New Law: The United Farm Workers and the California Agricultural Labor Relations Act, in CAUSE LAWYERS AND SOCIAL MOVEMENTS 277, 286-86 (Austin Sarat & Stuart A. Scheingold eds., 2006) also available at SSRN: http://ssrn.com/abstract=733424 or DOI: 10.2139/ssrn.733424 Apparently threatened by his declining control, Chavez won approval from a divided union executive board to fire or drive out most of the lawyers and younger lead organizers, and the union collapsed at the peak of its growth. Conflicting explanations abound. Chavez blamed the new law and resulting shift in the UFW's center of gravity toward lawyers and legal action. Some leading UFW organizers attribute the collapse more to Chavez's "founder syndrome" and his difficulty sharing leadership and adapting to the union's new, more bureaucratic and legal circumstances. See Gordon, supra note 219.

237. Another model is provided by the work of Maurice Sugar, who served as general counsel to the United Auto Workers (UAW), from its formation in 1939 to the ouster of its progressive founding leaders in 1947. See JOHNSON, supra note 225, at 11, 14. The UAW was at that time the country’s largest union. Id. at 11. In that period, Sugar was an influential member of the union’s national leadership, with a voice in most key decisions. He served as negotiator and public advocate. He testified at legislative hearings, wrote in Detroit newspapers and was a popular public speaker. Id. at 52, 60, 168. He played a key role in drafting the UAW’s constitution and ensuring it was applied to protect internal democracy. Id. at 258-59. He was deeply involved in teaching workers their rights in ways that facilitated organizing. He set up and oversaw the union’s benefits programs and advised union locals on group insurance plans. Id. at 282.

238. These organizations include Alternatives for Community and Environment (ACE), Communities for a Better Environment (CBE), and the Center on Race, Poverty, and the Environment (CRPE). See Alternatives for Community and Environment, http://www.ace-ej.org/ (last visited Oct. 3, 2007); Communities for a Better Environment, http://www.cbecal.org/ (last visited Oct. 3, 2007); Center on Race, Poverty, and the Environment, http://www.crpe-ej.org/ (last visited Oct. 3, 2007). We base some of our analysis in this section on conversations with past and present staff at these three organizations.
many of the well established environmental justice organizations—Alternatives for Community and Environment (ACE), Communities for a Better Environment (CBE), and the Center on Race, Poverty, and the Environment (CRPE)—were founded by lawyers. Some functioned initially as primarily legal organizations, moving only gradually—often through their experience working with grassroots community groups—toward a multi-pronged, multi-disciplinary approach that integrates lawyering work with organizing, scientific research, and media strategies in support of and in partnership with grassroots community activists and organizations.

The dominant legal beginnings of each of these organizations does raise the question of how prominent of a role lawyers, and legal strategies, can and should play in shaping a community-based or broader social justice organization’s strategies and priorities. Lawyer domination has long been a concern animating the community lawyering literature.\(^2\)\(^3\)\(^9\) For the reasons stated below, however, we believe that the threat of lawyer domination can be effectively countered by the process of functional integration. That is, functional integration is characterized by a deliberative process whereby the constitutive parts of the organization, as well as its community constituents, collectively decide how legal strategies and expertise fit into its overall mission and best advance community efficacy efforts. This deliberative effort would be severely hampered in a community-based organization where lawyers are numerically dominant. Even if numerical, and also strategic, lawyer dominance was a concern in the early days of ACE, CBE, and CRPE, each of these organizations now operates in a very integrated fashion whereby their lawyers and legal work are integrated into educational and organizing strategies designed to support viable community organizations and help communities “take ownership” of the activities that shape their environments.\(^2\)\(^4\)\(^0\)

WE ACT’s evolution—from reliance on outside lawyers, to adding a

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240. As attorney Luke Cole, head of CRPE explained in one law review article about CRPE’s “power model” of working on behalf of communities battling unhealthy development: Because of its focus on building power, rather than using the system, the power model provides a less clear role for the attorney... However, the experience of the Center on Race, Poverty, and the Environment indicates that a lawyer can still provide valuable services to a client group within the parameters of the power model. First, the attorney may know of or have previously represented groups in other communities that have organized successful campaigns against similar projects. The attorney can direct his or her clients to these groups for assistance, or develop tactics based on the strategies used by those other groups. Second, the lawyer may be more familiar with the local power structure, and thus better able to identify how best to leverage decisionmakers. Finally, the attorney can counsel his or her clients about the legality of specific protests, demonstrations, and civil disobedience actions.

Cole, Macho Law Brains, supra note 7, at 702.
INTEGRATIVE LAWYERING

collaborative partnership with Fordham Law School faculty, and finally combining those with a full-time in-house staff attorney—approaches integration from the opposite direction. WE ACT is the first non-lawyer group we are aware of to attempt to integrate legal capacity into a strong, established, community-based policy/organizing/advocacy/research organization that previously outsourced its legal needs, although other such groups may also be engaged in this transition and many more are likely to consider doing so in the near future. Our expectation is that this historical sequence—typified by the UFW and earlier progressive labor unions—is especially effective in minimizing potential lawyer domination.241

In each of the environmental justice organizations, the lawyers still function mainly as in-house counsel would, i.e., by attending to discrete legal issues that arise as part of the organization's operations or out of the needs of groups that the organization supports, assists and partners with and by organizing and supervising outside legal support as needed.242 In this capacity, the lawyers practice role integration in addressing the myriad needs of the organization and its clients—including transactional, policy, litigation, negotiation, etc.—and are often in a reactive position largely out of the necessity of responding to development proposals, siting of particular facilities, and other specific threats to the group's constituents.

Increasingly, however, lawyers in environmental justice organizations operate as integrated parts of community-staff teams that might include organizers, scientists, policy experts, and others. These teams are designed to change the structure of decision making and accountability that subjects some communities to adverse development and planning decisions while benefitting others. Legal strategies thus become part and parcel of larger community-driven campaigns that are broadly participatory and transformative of the very legal, political, social and economic dynamics that have given rise to the community's vulnerability.

One way in which environmental justice organizations integrate their legal staff across their programs and operations is to work within multidisciplinary "campaign teams" consisting, most often, of an organizer, lawyer and other technical staff (such as a scientist).243 The focus of these campaign teams is

241. Some participants in the April 2007 Boalt Hall Law School symposium on the articles in this colloquium expressed concern that a previously non-lawyer group might tend to over-rely on its new legal capacity to the detriment of its overall effort. In theory, this is a risk to which an organization must be attentive. However, we see no evidence of this problem in the UFW experience or at WE ACT so far, and we believe and are hopeful that any such inclination easily can be overcome by politically astute and experienced organizational leaders and lawyers.

242. Sometimes, however, discrete legal issues can lead to a larger campaign, or effort, to change the political economic dynamics surrounding a source of harm in a vulnerable community.

243. The information in this paragraph has been culled from the authors' conversations with lawyers on the staff of three environmental justice organizations—CBE, CRPE, and ACE. See Telephone Interview with Adrienne Bloch, Staff Attorney, CBE, in N.Y., N.Y. (Feb. 2, 2007); Interview with Eugene B. Benson, Legal Counsel, ACE, in Boston, Mass. (Feb. 1, 2007);
determined through a deliberative process involving the organization’s staff and the relevant community or communities with which they work. The focus might involve a development threat to the community. It might be helping the community intervene effectively in the local government’s process of updating its general plan, the results of which will significantly impact the community and from which its voices have been historically excluded. Once the team identifies the campaign’s focus, it begins an ongoing dialogue among its members and between its members and the community to strategize and chart a course of action that will effectuate the community’s goals. The lawyer’s role within a particular campaign, and campaign team, is largely determined organically through the ongoing deliberative process and can call upon the variety of skills/roles that community lawyers are accustomed to utilizing.

What is important about the deliberative process between community representatives and the different facets of organizational expertise is not necessarily what role the lawyer assumes, but rather how that role is determined—through a process of deliberative integration. This integration will look slightly different at different times in different organizations. Some may use the previously discussed “campaign teams” and others less formal ways of integrating its multi-disciplinary expertise. But what each of these environmental justice groups ultimately have in common is their integration of organizational roles, strategies and expertise toward the goal of increasing community efficacy—i.e., maximizing the capacity and ability of socially and economically vulnerable communities (or populations) to develop a shared vision of their future and the means of achieving that vision. 244

We have not attempted a full survey of integrative lawyering within environmental justice and accountable development organizations, let alone in the broader realm of social justice groups. As more groups experiment with organizationally integrated legal capacity, a broader survey and analysis would be helpful. Data that could fruitfully be gathered and analyzed include not only the gains, limits and problems encountered (and how they are dealt with) but also the impact on the quality of the experience for the groups and lawyers of such factors as: whether organizational integration was physical, functional or both, whether the group was founded and is led by lawyers or non-lawyers, their ratio and positions in the group, the extent to which the group functions as a community organization or a resource for community groups, the size of the group and scale of its operations (staff, budget, etc.), the roles assumed by the staff attorneys, the background, training and political orientation they bring, their race, class and gender in comparison to those of the group’s staff and constituents, and the legal back-up and community available to the staff lawyers.

Telephone Interview with Carline Farrell, Managing Attorney, CRPE, in N.Y., N.Y. (Feb. 6, 2007).

244. See Albert Bandura, Self-Efficacy: The Exercise of Control (1997).
D. Bringing Integrative Strategies into WE ACT’s Columbia Expansion Campaign

To fill some of the shortcomings in their existing (and largely productive) relationship, WE ACT and Fordham sought funds for a full-time in-house staff attorney, to be based at WE ACT and fully integrated into its staff and work, so that legal research, analysis, and action could inform and enhance all aspects of the group’s planning and action. Fordham planned to stay as involved, if not more so, providing student, faculty and resource support, summer students and, hopefully, post-graduate public interest fellows. Their joint proposal won a nationwide funding competition for racial justice law and organizing projects and was the only proposal in the competition to place an attorney on the staff of a non-lawyer organization.

In Fall 2005, WE ACT’s in-house counsel began work and, while taking on assignments in a number of the organization’s program areas, immediately became steeped in strategic discussions and organizational choices over how best to incorporate community interests into the Columbia development plan. The attorney brought a profound understanding of WE ACT’s approach to law and organizing, having worked extensively as a law student for a leading West Coast proponent of a similar approach.\(^245\) As work around Columbia’s expansion ramped up, the new attorney and Fordham worked to iron out their respective roles and by Fall 2006, the new arrangement began to show its potential value in the context of community response to Columbia’s expansion.

The evolution of the in-house lawyer’s integration into the organization was uneven, yet, of necessity, swift, given the pace of the Columbia expansion project. Although WE ACT’s outside lawyers, including Fordham faculty and students, had been careful to work closely with all of WE ACT staff in coordinating legal strategy with other elements of the organization’s operation, there were inherent limitations to how enmeshed they could be, given their limited commitment of time and energy and their physical absence from the almost daily strategic discussions occurring at WE ACT. The Fordham CED Clinic, which had become WE ACT’s main lawyering partner in relation to the Columbia expansion as well as internal transactional matters, while deeply committed to functional integration, had additional limits. Students pass through the clinic, staying only one semester or at best a year, making it difficult to develop the trust and mutual understanding required for genuine integration. They take several courses simultaneously and often have law journal work, paid work or other responsibilities. They are not available during the summer or on break, and they spend their first weeks in the clinic preparing for field work and their last weeks focused on exams and papers for other classes. Above all, the clinic is a teaching as well as a service institution. The

\(^{245}\) See supra note 238 and accompanying text. As an added bonus, she was a biology Ph.D. who knew the underlying science and was skilled in breaking it down for a lay audience.
pace of work, the concern for helping students develop as lawyers, the need for students and faculty to participate in the law school community and meet their institutional obligations all serve to constrain their contribution to WE ACT and their ability to fully integrate into its work. The in-house attorney, on the other hand, has been able to function not only as a traditional legal advocate/strategist but also as a central participant in the organization’s overall program and strategy to develop community power and, ultimately, community accountability and ownership structures. Her presence enables WE ACT to make far more effective use of the resources available from Fordham.

1. The Evolution of Integrative Lawyering at WE ACT

At the most traditional advocacy level, while deeply involved in a range of program areas, WE ACT’s in-house attorney initially focused much of her time and energy on preparing the extensive, detailed comments that WE ACT submitted to the City Planning Commission in early 2006 criticizing Columbia’s draft scope of the EIS required for City approval of the zoning changes needed for its proposed expansion. As of Summer 2007 she was engaged in drafting a similar critique of Columbia’s draft EIS, coordinating preparation of WE ACT’s ULURP testimony, and preparing possible litigation challenging the University’s final EIS once that document is approved by the CPC. At the broadest level of advocacy, she is (along with Fordham faculty and students) actively engaged in a continuing dialogue with WE ACT’s organizing staff, and through them, as well as directly, with community stakeholders. The goal is both to educate the stakeholders about the ongoing legal and political processes in preparation for their testifying, negotiating and lobbying and to elicit from them ideas and information that can influence negotiation demands, policy, and project proposals.

The new attorney’s organizational integration enabled her to take the Fordham’s CED students’ community legal education work to a new level. The students had previously prepared bi-lingual handouts and presentations on decision processes, participation rights, community benefits agreements, and the programs that other major universities undertook when expanding into nearby communities. The new attorney worked with WE ACT’s organizing and program staff to develop a series of Fordham CED clinic workshops that were integrated more deeply into WE ACT’s overall efforts. A leader from each participating tenant association and community group met with the students and WE ACT staff to plan the sessions. The leaders brought activists from their groups to the subsequent workshops. At those sessions, Fordham law students helped residents to grasp the legal process, focus their grievances and

246. See WE ACT, Official Written Comments, supra note 24.
247. See Hell’s Kitchen Neighborhood Ass’n, supra note 140. The court noted in that case that if and when final approval is granted, petitioners may subject the process as a whole to judicial review. See id.
proposals, and prepare to testify at public hearings. Much of the emphasis was on helping the leaders and activists, in turn, to educate and mobilize their constituents. CBA discussions in the workshops elicited a rich array of proposed community benefits, especially in improving local public education.

In Spring 2007, clinic students began working with workshop participants on presentations and discussions at general tenant association meetings. Together they worked to recruit and prepare residents to testify at ULURP hearings and play other roles in lobbying City officials and developing community proposals for the CBA negotiations.

The in-house attorney was also central to WE ACT's effort to build a city-wide coalition and launch a legislative campaign for bio-research transparency, public participation and community oversight. WE ACT is attempting to forge a middle ground. On the one side, Columbia and other research institutions demand freedom from any oversight and complete secrecy despite major public funding. They are largely supported by City and State governments pushing for uncontrolled expansion in biotechnology as an engine of economic growth. On the other hand, the Coalition to Preserve Community and similar groups fan community paranoia and seek to ban any form of bio-research in urban areas, even HIV/AIDS laboratory research that poses negligible risks and offers enormous potential benefit to residents of Harlem and other neighborhoods where HIV/AIDS is widespread. WE ACT seeks a regime which would allow useful low-risk research with community access to full information and expert monitoring. Any potentially risky research would be subject to government approval after full disclosure and public discussion, possibly under a procedure similar to ULURP.

2. Lawyering for Community Efficacy

The next stage of integration is currently ongoing as the in-house lawyer and the Fordham clinic work to connect WE ACT's advocacy, education, policy and lobbying to the creation of new structures for community ownership of land, housing and community facilities. This is where the lawyering aspect of the organization's work fuses the most with its other goals and works to enhance community capacity and power. A major focus for WE ACT has been to identify, develop and promote solutions that address the ways in which its community has been rendered vulnerable to development practices that are not in its interests.

248. Columbia's proposal to include major biological research facilities in its West Harlem campus has alarmed the community. The university has said it will not research dangerous viruses such as anthrax or Ebola ("BSL-4") and will sign a CBA to that effect, but has not included such a restriction in its proposed re-zoning. The BSL-3 research that Columbia does plan requires a more nuanced community response since it covers not only lethal airborne viruses like SARS but also HIV/AIDS research which poses no risks and offers enormous potential benefit to Harlem residents. See supra note 36 and accompanying text.
In the context of its Columbia expansion work, WE ACT has struggled to develop and promote CBA proposals that would require the University to provide major financial, staff and resource support for improving West Harlem’s public schools and health clinics. These are consistently the primary needs voiced by community residents.\textsuperscript{249} WE ACT’s legal team had helped bring innovative local school administrators and activists together with WE ACT and outside experts experienced in helping community groups organize, reform, or self-operate and vastly improved public schools.\textsuperscript{250} They are working to identify similar consultants on healthcare, housing and other key CBA issues on which WE ACT lacks adequate in-house expertise.

WE ACT’s lawyers and law students are in constructive dialogue with its policy team and members of the community to learn about and develop the concept and mechanisms of community ownership as a means of developing a community asset base. WE ACT’s in-house lawyer has been essentially staffing the LDC environmental working group and drafted its detailed platform. In Winter 2007 Fordham students began to play similar roles, on behalf of WE ACT, within the LDC groups responsible for the key areas of housing, schools, jobs and healthcare ("community facilities and services").\textsuperscript{251} They were also looking into ways to use Columbia funds and City subsidies and services to underwrite tenant co-op purchase of the Riverside Park Community across the street from the expansion footprint\textsuperscript{252} so it could remain affordable to current residents.\textsuperscript{253} With a City Council decision on Columbia’s expansion expected early in 2008, the next months would test the community’s capacity to unite behind and fight for a CBA that wins important gains. WE ACT and its legal team were positioned to make a leading contribution. In the process, they would forge new modes of integrative lawyering that could help guide WE ACT and its counterparts over years and struggles to come.

\textsuperscript{249} Among the country’s leaders in training teachers, school administrators, doctors and public health professionals, Columbia has the capacity in-house to provide such benefits on a grand scale, including local asthma and AIDS clinics and reduced or no-tuition admission into the University for local students who do well in the schools it sponsors. Such benefits offer a win-win synergy in which the University gains practical educational opportunities for its graduate students in the course of helping the community. They are among the main benefits that other major urban universities have provided to neighboring communities during periods of expansion.


\textsuperscript{251} In its involvement in the LDC, and in educational presentations to tenant associations and community activists, the legal team is taking great care to be clear that its client is WE ACT and that it is not forming an attorney client relationship with any other group or individual. On the danger of inadvertently forming such a relationship, and similar legal ethical issues in community lawyering, see Shauna I. Marshall, Mission Impossible?: Ethical Community Lawyering, \textit{7 CLINICAL LAW REV.} 147 (2000).

\textsuperscript{252} See supra note 44 and accompanying text.