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### Nowhere to Run to, Nowhere to Hide

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# NOWHERE TO RUN TO, NOWHERE TO HIDE

PRAVEEN KOSURI & LYNNISE PANTIN\*

As the COVID-19 global pandemic ravaged the United States, exacerbating the country's existing racial disparities, Black and brown small business owners navigated unprecedented obstacles to stay afloat. Adding even more hardship and challenges, the United States also engaged in a nationwide racial reckoning in the wake of the murder of George Floyd resulting in wide-scale protests in the same neighborhoods that initially saw a disproportionate impact of COVID-19 and harming many of the same Black and brown business owners. These business owners had to operate in an environment in which they experienced recurring trauma, mental anguish and uncertainty, along with physical destruction of many of their businesses and communities. This essay looks at how the generation-defining events of 2020 and the first half of 2021 affected the landscape of operating a small business, particularly for Black small business owners in Philadelphia and New York, where the authors run transactional law clinics at the University of Pennsylvania Law School and Columbia Law School. It goes on to describe how the pandemic and George Floyd protests affected their clinic students, clients, and themselves. The essay analyzes the events of the last year and a half in the historical context of past events of economic disruption and racial unrest. It concludes that a lasting impact of the COVID-19 pandemic will be the recognition of systemic racism and inequity that has persisted in American society for over 150 years and how it stunts Black and brown entrepreneurship.

## INTRODUCTION

Starting and growing a business is hard under the best of circumstances. Starting and growing a business as a person of limited means is even harder. Starting and growing a business as a person of color. . . with a President who is a racist. . . and thinks immigrants are rapists

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and criminals. . . and implements policies that aid big businesses and billionaires at the expense of the 95% of businesses that drive the U.S. economy. . . seriously? It begs the question, why would anyone even try? But people do try, and many of those people are clients of transactional law clinics that advise and counsel them on all aspects of starting and growing a business.<sup>1</sup> Despite the probabilities and the challenges, many of those businesses succeed. They anchor their communities by providing needed goods and services but also jobs and economic vitality. They are the life blood of cities across America.

Events since March 2020 have radically altered the landscape of operating a small business. A global pandemic that required a total shutdown of the U.S. economy for three months and the implementation of severe limitations the rest of the year. . .the related economic anxiety stemming from lost revenue, layoffs, inability to pay rent, increasing costs, supply chain disruptions, shipping delays, and past due bills. . . the dam of social complacency by Black people in the face of continual abuse by the police, shattered by the murder of George Floyd. . . the moral outrage from that murder resulting in mental anguish and physical destruction of many urban businesses. . . more violence, this time against Asian-Americans who also own and operate many urban businesses. . . the unrelenting waves of COVID-19 illnesses and death that disproportionately struck Black and brown people in cities. . . and a Presidential election that was a referendum on what kind of America people wanted—one driven by hate, white nationalism, and fear, or one of hope, a promise of redressing structural inequities, and change to the status quo. This is what small businesses, especially minority-owned businesses, have had to navigate. For transactional law clinics that represent those businesses, the events of the past 18 months have torn open a host of issues that had been sewn into the fabric of American entrepreneurship while creating both new challenges and opportunities for how to confront them.

This essay explores how the COVID-19 pandemic, the economic recession (and the governmental response to it) that followed, the George Floyd protests,<sup>2</sup> and the 2020 election collectively impacted

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<sup>1</sup> We use the term “transactional law clinics” to reference primarily small business and entrepreneurship clinics, but nonetheless, acknowledge that the label is broader than that and includes community economic development, nonprofit, and intellectual property clinics. We also recognize that these categories are fluid and many transactional law clinics engage in multiple workstreams.

<sup>2</sup> In this essay, we refer to the protests that started in Minneapolis after the death of George Floyd and then spread throughout the United States in the weeks after his death, as the “George Floyd” protests. These protests were not directed or led by any one group in particular. One of the reasons cited for why there were so many protests is that the protests were backed and supported by the Black Lives Matter movement. Black Lives Matter did not necessarily organize every protest but did provide support and guidance to

minority-owned small business communities (which we refer to as “urban businesses” whose owners are “urban entrepreneurs”). The essay also reflects on our own experiences as transactional clinicians during this unprecedented time, how we responded, and what the events of the last 18 months mean moving forward. Praveen Kosuri teaches the Entrepreneurship Legal Clinic at the University of Pennsylvania Carey Law School (Penn Law ELC). It represents entrepreneurs and business owners in the Philadelphia region, many of which are minority-owned. Lynnise Pantin teaches the Entrepreneurship and Community Development Clinic at Columbia Law School (Columbia Law ECDC). The Columbia Law ECDC represents entrepreneurs and small business owners from underserved communities in the New York City area, primarily in Harlem. We share our perspectives of how, over the last 18 months, the events of the world affected our clients, students, and ourselves in myriad ways.

### I. WHAT HAPPENS WHEN THE WORLD STOPS?

On January 21, 2020, a Washington state man returned home from Wuhan, China and tested positive for COVID-19.<sup>3</sup> The first cases of COVID-19 had hit American shores. On March 6, 2020, Apple, Google, Facebook and virtually every business in San Francisco and Silicon Valley closed their offices and ordered their employees to work from home. One week later, on the other side of the continent, the University of Pennsylvania shuttered its campus to students who were on spring break, telling them not to return for fear that they would bring the virus back to campus and the community. Shortly after that, on March 20, 2020, Columbia University announced that all classes for the remainder of the semester would be conducted online and encouraged students to move out of undergraduate residence halls for the remainder of the semester. Penn and Columbia, like many universities, remained closed through the end of 2020 with only essential personnel allowed on campus. The ripple effects of these decisions were widespread and deep. They serve as microcosms of the effect of COVID-19 on small business communities across America’s urban centers—communities which are comprised predominantly of people of color.

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protesters. According to The New York Times, in the months following George Floyd’s murder, there were more than 4700 demonstrations across the United States, averaging 140 per day. See Larry Buchanan, Quoctrung Bui and Jugal K. Patel, *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. TIMES (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

<sup>3</sup> See Press Release, CDC, First Travel-related Case of 2019 Novel Coronavirus Detected in United States (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

Penn is the largest employer in the City of Philadelphia with 39,000 workers. Penn is situated in the University City neighborhood of West Philadelphia which derives its name because Penn and its adjacent neighbor Drexel University anchor the entire economic ecosystem. There are child-care centers, banks, dry cleaners, bodegas, pharmacies, restaurants, and over 100 food trucks and carts that populate and service the students, workers, and residents of West Philly. Most of those non-university jobs are not the type that you can perform virtually. Most of the workers are Black and brown, also the populations that were hit hardest by the virus. The cascading impact of COVID-19 on the entrepreneurs and businesses in urban areas like West Philly was devastating.<sup>4</sup>

#### A. Customers And Sales

Before the pandemic, many Black and brown owned small businesses were just hanging on. There was no cushion or reserve to absorb an economic shock. The number of Black- and Latinx-owned small businesses with profit margins of 15% or more was 11.1% and 9.7% respectively.<sup>5</sup> Those who had more than 14 days of cash on hand was 5.3% and 10.5%.<sup>6</sup> If the pandemic was like a recession, many urban businesses may have been driven out of business. In that case, business owners would shutter their business, sell their assets, and go find a job. Except that in this global pandemic there was no alternative employment for them. There was no one to buy their assets and no jobs to be had.

Business owners who had been doing well before the pandemic hit dipped into their savings to try and weather the storm. Every business needs customers. Without customers a business does not have sales and without sales, it does not have revenue. For a business, revenue is what pays for inventory, ingredients, supplies, equipment, employees, and rent. Without customers and sales, there is no business. The types of businesses that inhabit cities are staples of everyday life—at least pre-COVID-19 life. They track the routines and lives of people who go to work every day, including child-care centers, coffee

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<sup>4</sup> Ellie Silverman, *Signs of the Times of Black Ownership*, PHILA. INQUIRER, June 11, 2020 (“The coronavirus has inflamed glaring racial inequalities, including access to quality health care, housing, education, and work. Black and brown people are more likely to have low-wage essential jobs and a higher likelihood to suffer from chronic illnesses like diabetes, all increasing their risk to the deadly effects of the virus.”).

<sup>5</sup> Scott Calvert and Ruth Simon, *‘Everything Is Gone’: Looting Strikes a Second Blow to Reeling Businesses in Minority Neighborhoods*, WALL ST. J. (June 3, 2020), <https://www.wsj.com/articles/looting-is-second-blow-for-reeling-businesses-especially-in-minority-neighborhoods-11591214595>.

<sup>6</sup> *Id.*

shops, food carts, dry cleaners, hair salons, pharmacies, banks, and restaurants. When the entire nation stopped going to work, all those businesses lost their customers and virtually all of their revenue. In the initial weeks of stay-at-home orders, many small businesses were hoping that the pandemic restrictions would be short-lived. “Flatten the curve” was the public mantra, but no one really understood what that meant or how long it would take.

The stay-at-home orders were extended. Instead of lasting a few weeks, they were extended to a few months. Many community-based retail businesses did not have an online presence. The COVID-19 shutdowns sparked attempts to convert to online sales. Yoga studios and gyms looked to migrate classes and workouts to the web. For restaurants that relied on a stream of in-person diners, their focus became how to optimize carry-out and delivery services. Carry-out dining, however, could not make up for the loss of higher margin sales of beverages including alcohol, which severely affected profitability. Hair and nail salons that had no way to adapt to a virtual world, stayed closed. Even when they were allowed to re-open, the close physical proximity necessary to deliver their services kept many customers away. With no customers, no revenue, and depleted savings, small business owners were left with no choice but to lay off employees.

### *B. Employees*

The impact of COVID-19 on workers took many forms. Businesses come in all shapes and sizes, employing people with as much diversity and giving rise to varied relationships between employer and employee. For many urban entrepreneurs, their employees are their relatives, their neighbors, their friends. The business owner has a relationship that extends beyond the workplace. No business owner wants to lay off employees. In the best of times, it is a sign of trouble—either in the business or with the employee. During the pandemic any worker let go would almost certainly be unemployed for an indefinite period, through no fault of their own. Every displaced employee has responsibilities—a family, rent, loans, car payments, medical bills, tuition payments. The dominoes end with devastating effects on numerous lives.

“Between February and April 2020, U.S. unemployment increased from 3.5% to 14.7%.”<sup>7</sup> The impact in urban areas, however,

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<sup>7</sup> Catherine Fazio, Jorge Guzman, Yupeng Liu & Scott Stern, *How is Covid Changing the Geography of Entrepreneurship? Evidence from the Startup Cartography Project 1* (Nat'l Bureau of Econ. Research, Working Paper No. 28787, May 2021), [https://www.nber.org/system/files/working\\_papers/w28787/w28787.pdf](https://www.nber.org/system/files/working_papers/w28787/w28787.pdf)).

was even starker. In New York, for example, the unemployment rate spiked to more than 20%.<sup>8</sup> The disparities continue when you look at race. The gap between Black and white unemployment in June 2020 was the widest it had been in five years—5.3%.<sup>9</sup> Even at the end of 2020, with a bit of economic improvement, the disparity was significant with Black unemployment at 9.9% versus 5.8% for white unemployment.<sup>10</sup> Unfortunately (or maybe predictably) the Payroll Protection Program (PPP) rolled out as part of the CARES Act (discussed in Part II below) was an unreliable source of funding for Black and brown employers. For workers who were able to keep their jobs, many were low-paid, frontline workers, deemed essential, but treated as expendable.

Some industries were less affected by COVID-19. Residential home maintenance companies saw a spike in demand. Tradespeople were in demand and work plentiful. Bicycle stores also could not keep up with demand. Everyone who ever owned a bike pulled it out of storage and wanted to get it tuned up so that they could ride it. Though bike stores were busy, the workers were often tasked with working long hours in close quarters with others. Amazon also saw a spike in sales. People craved any home delivery service that minimized human contact. Amazon took out advertisements trying to recruit new workers for its warehouses and delivery services.<sup>11</sup> Though Amazon delivery allowed customers to avoid social contact and viral exposure, the same was not true for the Amazon employees fulfilling customer orders. Between March and September of 2020, nearly 20,000 Amazon employees tested positive with COVID-19.<sup>12</sup> All food delivery services saw a huge uptick in usage. Services like DoorDash, GrubHub, and UberEats were all hiring as were grocery delivery services like Instacart and Peapod. Those were gig economy jobs, however, that did not come with benefits or overtime. Often, they also required close contact with numerous people putting the worker at higher risk of contracting the virus.<sup>13</sup> Even the restaurants and stores

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Erika Hayasaki, *Amazon's Great Labor Awakening*, N.Y. TIMES MAG. (Feb. 18, 2021), <https://www.nytimes.com/2021/02/18/magazine/amazon-workers-employees-covid-19.html>.

<sup>12</sup> Sara Ashley O'Brien, *Amazon said nearly 20,000 workers got coronavirus*, CNN BUS. (Oct. 1, 2020), <https://www.cnn.com/2020/10/01/tech/amazon-covid-cases/index.html>.

<sup>13</sup> Patrick McGeehan, *They Risked Their Lives During Covid. They Still Don't Earn Minimum Wage*, N.Y. TIMES, <https://www.nytimes.com/2021/07/15/nyregion/nyc-gig-workers-pay.html> (last updated July 20, 2021); Jodi Kantor, Karen Weise and Grace Ashford, *The Amazon that Customers Don't See*, N.Y. TIMES (June 15, 2021), <https://www.nytimes.com/interactive/2021/06/15/us/amazon-workers.html> (“Workers of color fuel

using those services did not realize the full benefit as the fees associated with the services ate into the already-thin margins on their goods.

The first round of government stimulus checks was initiated as part of the CARES Act (described in Part II). The first checks arrived in mid-April 2020 and provided up to \$1,200 per person with an extra \$500 per dependent. These payments went to all taxpayers who made less than a specified amount of yearly income.<sup>14</sup> Also under the original CARES Act, unemployed workers filed for benefits under traditional state plans or through a federally administered Pandemic Unemployment Assistance (PUA) plan. PUA provided assistance to someone who was self-employed or who worked as a gig worker or independent contractor. The CARES Act also provided for bonus payments of up to \$300 per week to unemployment claimants through the end of July 2020.<sup>15</sup> These payments certainly provided some assistance to working families and displaced workers. However, they were a band-aid to a wound that was still oozing.

A primary hope was that schools could reopen in-person in the fall of 2020. As the school year drew closer, however, many districts made the last-minute decision to remain virtual to start the school year. The impact on working families was a scramble for childcare or complete reordering of work schedules to accommodate their children's virtual schooling. For essential workers who did not have the choice to work from home, this was devastatingly disruptive. It will likely be years before we truly know the impact of the 2020-21 school year on children and learning outcomes, but if we were to predict, it will only heighten the gap between rich and poor, white and non-white.

The U.S. began to see a surge in COVID-19 cases again in late October 2020. The original CARES Act stimulus was a distant speck in people's rear-view mirror. The rhetoric around COVID-19 had become even more political. The 2020 election was a referendum on many things, including the government's handling of the pandemic.

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Amazon's operations.”).

<sup>14</sup> \$99,000 for individuals or married filing separately; \$136,500 for head of household filers; and \$198,000 for married filing jointly. See *The CARES Act Stimulus Payments - Part I: Eligibility*, AM. COUNSELING ASS'N: ACA GOV'T AFFAIRS BLOG (Apr. 23, 2020), <https://www.counseling.org/news/aca-blogs/aca-government-affairs-blog/aca-government-affairs-blog/2020/04/23/the-cares-act-stimulus-payments---part-i-eligibility>

<sup>15</sup> Oscar Gonzalez, *\$300 bonus unemployment checks: How many are left? What you should know?*, CNET (Mar. 6, 2021), <https://www.cnet.com/personal-finance/300-bonus-unemployment-checks-how-many-are-left-what-you-should-know/>; *Unemployment Benefits with the CARES Act Bonus*, HOUSE REPUBLICAN POLICY COMM. <https://republicanpolicy.house.gov/sites/republicanpolicy.house.gov/files/documents/Unemployment%20Benefits%20with%20CARES%20Act%20Bonus%20v.%203.pdf> (last visited July 23, 2021).

After Trump's loss, Congress approved a second round of stimulus checks in late December 2020. This time checks were capped at \$600 per person with another \$600 per qualifying dependent child.<sup>16</sup>

By the end of May 2021, all stimulus relief was exhausted and unemployment benefits in most states returned to pre-pandemic norms. The unemployment rate continues to be 5.4% at the time of the writing of this essay.<sup>17</sup>

### C. Leases

For retail businesses, their location *is* their business. It is where customers know to find them, where they house their assets, how their community knows them. In the initial weeks of the pandemic, tenants relied on the good graces of their commercial landlords for understanding and flexibility.<sup>18</sup> Working in the tenants' favor was the unlikelihood of the landlord finding a replacement tenant who could replace its lost revenue. Landlords needed to weather the storm just like their business tenants. Landlords themselves are businesses. Some are giant entities with plentiful assets and a diversified portfolio of risk, but many others are small businesses relying on predictable monthly cash flows to stay solvent. The pandemic affected landlords as significantly as it affected their tenants. Without the revenue from rent to pay mortgages, taxes and insurance, landlords, many of them Black and brown, were at risk of losing their properties.<sup>19</sup>

The landlord-tenant dilemma is complex. The normal factors that would drive a landlord to evict were not in place during 2020. Non-payment of rent was not due to poor planning or poor performance, but rather a global pandemic that required extreme public health measures to curb. One client of the Penn Law ELC operated a café in the lobby of a downtown commercial hi-rise office building. Before the pandemic, the building and its lobby were full of people who worked in the building as well as those who could enter from the busy Center City street. Once the initial stay-at-home order was issued, the café's customer base disappeared. Once the order was lifted and the

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<sup>16</sup> Clifford Colby and Karisa Langlo, *How Much Was the First Stimulus Check? Your Tax Return May Need That Total*, CNET (Apr. 11, 2021), <https://www.cnet.com/personal-finance/how-much-was-the-first-stimulus-check-your-tax-return-2020-may-need-that-total/>.

<sup>17</sup> Press Release, Bureau of Labor Statistics, *The Employment Situation - July 2021*, (August 6, 2021), <https://www.bls.gov/news.release/pdf/empsit.pdf>.

<sup>18</sup> Peter Grant and Justin Lahart, *Amid Coronavirus Shutdowns, Landlords Often Determine Fate of Small Businesses*, WALL ST. J. (June 4, 2020), [https://www.wsj.com/articles/amid-coronavirus-shutdowns-landlords-often-determine-fate-of-small-businesses-11591224029?mod=searchresults\\_pos6&page=2](https://www.wsj.com/articles/amid-coronavirus-shutdowns-landlords-often-determine-fate-of-small-businesses-11591224029?mod=searchresults_pos6&page=2).

<sup>19</sup> Matthew Hagg, *New Threat to New York City: Commercial Rent Payments Plummet*, N.Y. TIMES, <https://www.nytimes.com/2020/05/21/nyregion/commercial-rent-NYC-coronavirus.html> (last updated Sept. 25, 2020).

café was given permission to resume operations, the café's customer base did not return. No one was coming to the office building for work and the landlord had closed the building to the public so no outsiders could enter. Despite none of this being the fault of the tenant, it was still obligated to pay rent.

To complicate matters further, commercial landlords will not rent to most small businesses, unless the lease comes with a personal guarantee from the small business owner themselves. Couple that with the fact that most commercial leases are longer in duration than the typical residential lease and have built-in rent escalation and acceleration clauses, and the result is significant debt that can transcend the business entity and attach to small business owners and their personal assets. This put many small business owners in jeopardy of personal bankruptcy. In just the first two months of the pandemic, fewer and fewer businesses were paying rent. One survey from Fifth Avenue businesses in New York revealed that only 17% of them had paid rent in May 2020, down from 53% in April.<sup>20</sup>

In Philadelphia, the court that handles commercial landlord-tenant disputes launched a program designed to facilitate negotiated settlements.<sup>21</sup> However, there was no mandate for landlords to participate and no way to enforce the court's will in any case. In December 2020, amid another surge of COVID-19 cases, Philadelphia's City Council passed a six-month moratorium on restaurant evictions.<sup>22</sup> The moratorium applied to non-chain restaurants with fewer than 100 employees and halted late payment fees. But it may have been too little too late as many restaurants had already closed, battered by the previous ten months of closures and reopenings, modifications and staffing issues. Some see a silver lining in this being that the next generation of operators will have a tremendous opportunity. Closing a coffee house, for example, leaves a completely outfitted space that is turnkey ready for the next occupant.<sup>23</sup> In New York, there is legislation in place that puts a moratorium on commercial evictions for commercial tenants that have endured COVID-related hardship. The legislation placed a moratorium on commercial foreclosure proceed-

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<sup>20</sup> Grant and Lahart, *supra* note 18 (stating that a survey of Fifth Ave. businesses in New York City revealed that 17% had paid rent in May, down from 53% in April).

<sup>21</sup> Max Marvin, *Rent Disputes and Broken Leases: How Philly Businesses and Landlords are Handling the COVID Crush*, WHYY: BILLY PENN (Dec. 8, 2020), <https://billypenn.com/2020/12/08/philadelphia-commercial-evictions-landlord-tenant-dispute-voltage-lounge-ocf-coffee/>.

<sup>22</sup> Isabela Baghdady, *New Philadelphia Law Protects Restaurants from Eviction Amid New COVID-19 Restrictions*, DAILY PENNSYLVANIAN (Dec. 10, 2020), <https://www.thedp.com/article/2020/12/philadelphia-covid-city-council-bill-restaurants-eviction>.

<sup>23</sup> Marvin, *supra* note 21.

ings until August 31, 2021.<sup>24</sup> As of the writing of this essay, the moratorium was extended until January 15, 2022.<sup>25</sup>

## II. THE CARES ACT

The federal government recognized that a total shutdown of the U.S. economy, which is driven by small businesses, was an extraordinary act that would have far reaching and devastating economic impact. Primary among those concerns was mass unemployment and the collateral effects of people with no money. At the end of March 2020, Congress passed the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

### A. Overview Of The PPP

According to the Small Business Administration's (the SBA) Office of Advocacy, in 2020, many businesses struggled during the COVID-19 pandemic and resulting economic nationwide shutdown.<sup>26</sup> The first year of the pandemic resulted in the permanent closure of roughly 200,000 U.S. establishments, a number that is above historical levels.<sup>27</sup> As the nation shut down in the spring of 2020, the federal government took action to try and stem the tide by aiding small businesses in a variety of ways. In March of 2020, Congress passed the CARES Act, authorizing the Paycheck Protection Program (PPP), which provided forgivable loans to businesses that kept workers on their payrolls.

#### 1. First Draw Loan

Congress had initially earmarked \$350 billion for the PPP. The loans under the PPP were federally insured, guaranteed by the SBA

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<sup>24</sup> Press Release, Press Office of Andrew Cuomo, Governor of New York, Governor Cuomo Signs Extension of the COVID-19 Emergency (May 4, 2021), <https://www.governor.ny.gov/news/governor-cuomo-signs-extension-covid-19-emergency-eviction-and-foreclosure-prevention-act-2020>.

<sup>25</sup> Press Release, Press Office of Kathy Hochul, Governor of New York, Governor Hochul Signs New Moratorium on Covid Related Residential and Commercial Evictions Law Effective until January 15, 2022 (September 2, 2021), <https://www.governor.ny.gov/news/governor-hochul-signs-new-moratorium-covid-related-residential-and-commercial-evictions-law>.

<sup>26</sup> 2020 *Small Business Profile*, U.S. SMALL BUS. ADMIN.: OFFICE OF ADVOCACY (May 20, 2020), <https://cdn.advocacy.sba.gov/wp-content/uploads/2020/06/04144224/-2020-Small-Business-Economic-Profile-US.pdf>.

<sup>27</sup> Leland D. Crane, Ryan A. Decker, Aaron Flaaen, Adrian Hamins-Puertolas and Christopher Kurz, *Business Exit During the COVID-19 Pandemic: Non-Traditional Measures in Historical Context* 4 (Wash. Bd. of Governors of the Fed. Reserve Sys., Finance and Economics Discussion Series 2020-089r1, 2021), <https://www.federalreserve.gov/econres/feds/files/2020089r1pap.pdf> (last visited July 23, 2021).

and administered by SBA-preferred lenders.<sup>28</sup> The lending program began on April 3, 2020, and the funds were to be dispersed within a three-week period. The program was scheduled to end on June 30, 2020. However, the PPP funds ran out in mid-April mere weeks after the program was launched.<sup>29</sup> Congress then passed a new bill replenishing the fund with an additional \$310 billion and the SBA was able to begin approving loans again on April 27, 2020. In July 2020, the Trump Administration signed a new law extending the deadline for applying for a PPP loan from June 30 to August 8.

## 2. *Second Draw Loan*

The SBA reopened the program in January 2021, after a review of the initial program and authorization of The Consolidated Appropriations Act (CAA), which included a provision that modified and extended the PPP.<sup>30</sup> PPP had allowed certain eligible borrowers that previously received a PPP loan to apply for a Second Draw PPP loan with the same general loan terms as their First Draw PPP loan. A borrower was generally eligible for a Second Draw PPP loan if the borrower: (1) previously received a First Draw PPP loan and will or has used the full amount only for authorized uses, (2) has no more than 300 employees; and (3) can demonstrate at least a 25% reduction in gross receipts between comparable quarters in 2019 and 2020.

There had been changes of rules through the length of the program, most recently in February 2021 under the Biden Administration. The program effectively ended in early May 2021 when the PPP ran out of funds ahead of expiring at the end of May.<sup>31</sup>

### *B. Who Was PPP Designed For?*

The PPP was essentially a revenue replacement program for businesses facilitated through forgivable loans. The program was administered by the SBA under its 7(a) lending program, the SBA's primary program to offer financial assistance to small businesses.<sup>32</sup> The goal of

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<sup>28</sup> Any existing SBA lender, federally insured deposit institution, or credit union were eligible to be lenders.

<sup>29</sup> David Lawder, *Biden to Revise Small Business PPP Loans to Reach Smaller, Minority Firms*, REUTERS (Feb. 22, 2021), <https://www.reuters.com/article/us-usa-biden-small-business/biden-to-revise-small-business-ppp-loans-to-reach-smaller-minority-firms-idUSKBN2AM0UP>.

<sup>30</sup> *Paycheck Protection Program First Draw Loans Overview*, DEP'T OF TREASURY, <https://home.treasury.gov/system/files/136/Top-line-Overview-of-First-Draw-PPP.pdf> (last visited July 23, 2021).

<sup>31</sup> Stacy Cowley, *The Paycheck Protection Program is Out of Money*, N.Y. TIMES (May 4, 2021), <https://www.nytimes.com/2021/05/04/business/pay-check-protection-program-closes.html?searchResultPosition=1>.

<sup>32</sup> *Types of 7(a) Loans*, U.S. SMALL BUS. ADMIN., <https://www.sba.gov/partners/lend->

the PPP program was to help small businesses meet their near-term expenses during the pandemic and provide an incentive through loan forgiveness to maintain employees on their payroll. The PPP allowed for those small businesses (generally businesses, nonprofit organizations, Tribal businesses, and veteran's organizations with 500 employees or less, sole proprietors, self-employed individuals, or independent contractors) who were in business on February 15, 2020, to take loans, which they could then use to defer the costs of keeping employees, adding employees, and paying certain other expenses. The loans were for a two-year term with an option to pay early at an interest rate of 1%. The loan could be requested for up to 8 weeks of payroll costs including benefits and funds could also be used to pay interest on mortgages, rent, and utilities. The maximum loan was \$10 million. Payments on the loans were deferred for 6 months. Importantly, businesses were eligible to have up to 100% of the loan forgiven subject to certain qualifications, requirements, and limitations. Initially, loans were fully forgivable if at least 75% were used for payroll.<sup>33</sup>

### C. Who Received PPP Assistance?

The SBA and U.S Treasury Department released data about how many loans were issued under the PPP. In a typical year, the SBA issues 1,000 loans. In the first 3 months of the PPP, the SBA issued 4.9 million loans.<sup>34</sup> Since its creation last year, the Paycheck Protection Program has disbursed a total of \$780 billion in forgivable loans to fund 10.7 million applications, according to the SBA's data.<sup>35</sup> In a July 6 Press Release issued by the SBA, Treasury Secretary Steven T. Mnuchin stated, "The average loan size is approximately \$100,000, demonstrating that the program is serving the smallest of businesses."<sup>36</sup> According to the SBA, the first round of the PPP supported the employment of 51 million American workers and over 80% of small business payroll across all 50 states and territories.<sup>37</sup> More than

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ers/7a-loan-program/types-7a-loans (last visited July 23, 2021).

<sup>33</sup> Robert Freedman, *PPP Loans Now Only Require 60% of Funds to be Used for Payroll*, CFO DIVE (June 5, 2020), <https://www.cfodive.com/news/paycheck-protection-program-loans-60-percent/579315/>. This condition was later lowered to 60% when Congress later changed the Program's rules. *Id.*

<sup>34</sup> Press Release, U.S. Small Bus. Admin., SBA and Treasury Announce Release of Paycheck Protection Program Loan Data (July 13, 2020), <https://www.sba.gov/article/2020/jul/13/sba-treasury-announce-release-paycheck-protection-program-loan-data>.

<sup>35</sup> *Paycheck Protection Program (PPP) Report Approvals through May 2, 2021*, U.S. SMALL BUS. ADMIN., [https://www.sba.gov/sites/default/files/2021-05/PPP\\_Report\\_Public\\_-210502-508.pdf](https://www.sba.gov/sites/default/files/2021-05/PPP_Report_Public_-210502-508.pdf) (last visited July 23, 2021).

<sup>36</sup> *Id.*

<sup>37</sup> Jovita Carranza, *Paycheck Protection Program (PPP): Guidance on Accessing Capital for Minority, Underserved, Veteran and Women-Owned Business Concerns*, U.S. SMALL

87% of loans have been for \$150,000 or less, with an average loan size of \$101,000. PPP loans have been broadly distributed across diverse areas of the economy, with 27% of the funds going to low- and moderate-income communities, which is in proportion to their percentage of the population.<sup>38</sup> More than 70% of PPP loans have been made to businesses with fewer than 10 employees.<sup>39</sup> Over \$80 billion, or 15% of the total PPP loan amount, has been disbursed to small businesses in rural communities. Small businesses in Historically Underutilized Business Zones (HUBZones) have received more than \$130 billion in PPP funding, accounting for more than 25% of all PPP loan dollars. In addition, more than 430 Community Development Financial Institutions (CDFIs) and Minority Depository Institutions (MDIs) across the country have made over 221,000 PPP loans for more than \$16.4 billion.<sup>40</sup> However, female and minority business owners were disproportionately left out of the relief effort.<sup>41</sup> Three key issues in lending created disparities in access to PPP loans. Those include the program's reliance on banks, the program's initial exclusion of businesses (or its owners) who were "presently involved in a bankruptcy" and the program's initial exclusion of sole proprietors and independent contractors—two of the most popular entity structures for minority-owned businesses.<sup>42</sup>

In early 2021, President Biden altered the rules of the PPP program in its final weeks to make business owners who employ only themselves eligible for more money.<sup>43</sup> The move was intended to address a clear racial and gender disparity in the relief effort. Female and minority owners, who are much more likely to run tiny businesses than larger ones, were disproportionately hobbled by an earlier rule that based the size of sole proprietors' loans on their annual profit.<sup>44</sup> Under the Biden Administration, the SBA also altered its rules for what it means to be "presently involved in a bankruptcy," clarifying that, despite the general rule that debtors "presently involved in a

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BUS. ADMIN. (Jan. 6, 2021), <https://www.sba.gov/sites/default/files/2021-01/Guidance%20on%20Accessing%20Capital%20for%20Underserved-508.pdf>.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> Stacy Cowley, *Minority Entrepreneurs Struggled to Get Small-Business Relief Loans*, N.Y. TIMES (Apr. 4, 2021), <https://www.nytimes.com/2021/04/04/business/ppp-loans-minority-businesses.html>.

<sup>42</sup> *Id.*

<sup>43</sup> Stacy Cowley and Jim Tankersley, *Biden Changes P.P.P. Rules to Help the Self-Employed*, N.Y. TIMES (Feb. 22, 2021), <https://www.nytimes.com/2021/02/22/business/smallbusiness/paycheck-protection-program-small-business-biden.html>

<sup>44</sup> Stacy Cowley and Jim Tankersley, *Biden Highlights Small-Business Help, as Problems Persist with Lending Program*, N.Y. TIMES (Mar. 16, 2021), <https://www.nytimes.com/2021/03/16/business/economy/biden-paycheck-protection-program.html>.

bankruptcy” are ineligible, debtors with confirmed reorganization plans are eligible.<sup>45</sup>

Companies with 300 or fewer employees who suffered a 25% drop in any quarter’s revenue from 2019 to 2020 were eligible for the second round of PPP. The second round of PPP loans included provisions to make access to relief more equitable. The new rules created a two-week exclusive period for certain very small businesses to receive loans. Additionally, the SBA specifically called upon CDFIs and MDIs, mission-driven financial institutions that focus on low-income, low-wealth and other neglected businesses to redouble their efforts to assist eligible borrowers in underserved and disadvantaged communities. In addition, at least \$15 billion was set aside for “First Draw” PPP loans to eligible borrowers with a maximum of 10 employees or for loans of \$250,000 or less to eligible borrowers in low- or moderate-income neighborhoods. To promote access for smaller lenders and their customers, the SBA only accepted loan applications from community financial institutions when the second round of the Program opened on January 11, 2021, ostensibly giving borrowers from disadvantaged communities a head start on the loan application process before the loans ran out. The second round of PPP opened to all participating lenders shortly thereafter.

Between March and May of 2020, more than 100,000 small businesses in the U.S. had shut down permanently, one study found.<sup>46</sup> Minority-owned small businesses have been the hardest hit. Between the onset of the outbreak in February and April 2020, the number of Black and Latinx-owned businesses nationwide fell by 41% and 32% respectively, compared to just 17% of white-owned businesses.<sup>47</sup> Analysis of counties across the U.S. shows a correlation between COVID-19 cases and Black business density.<sup>48</sup> Yet, there is research that shows that the PPP loans did not go to the businesses hardest hit by COVID-19.<sup>49</sup> For example, in New York, the epicenter of the

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<sup>45</sup> See *Paycheck Protection Loans: Frequently Asked Questions (FAQs)*, U.S. SMALL BUS. ADMIN. (April 6, 2021), <https://www.sba.gov/sites/default/files/2021-04/PPP%20FAQs%204.6.21%20FINAL-508.pdf>.

<sup>46</sup> Heather Long, *Small Business Use to Define America’s Economy. The Pandemic Could Change that Forever*, WASH. POST (May 12, 2020), <https://www.washingtonpost.com/business/2020/05/12/small-business-used-define-americas-economy-pandemic-could-end-that-forever/>.

<sup>47</sup> Robert W. Fairlie, *The Impact of COVID-19 on Small Business Owners: Evidence of Early Stage Losses from the April 2020 Current Population Survey* (Nat’l Bureau of Econ. Research, Working Paper No. 27309, 2020), <https://www.nber.org/papers/w27309.pdf>.

<sup>48</sup> Claire Kramer Mills and Jessica Battisto, *Double Jeopardy: COVID-19’s Concentrated Health and Wealth Effects in Black Communities*, FED. RESERVE BANK OF N.Y. (Aug. 2020), [https://www.newyorkfed.org/medialibrary/FedSmallBusiness/files/2020/DoubleJeopardy\\_COVID19andBlackOwnedBusinesses](https://www.newyorkfed.org/medialibrary/FedSmallBusiness/files/2020/DoubleJeopardy_COVID19andBlackOwnedBusinesses).

<sup>49</sup> Haoyang Liu and Desi Volker, *Where Have the Paycheck Protection Loans Gone so*

coronavirus in the United States at the time of the First Draw, less than 20% of small businesses had been approved to receive PPP loans. In contrast, more than 55% of small businesses in Nebraska expected PPP funding.<sup>50</sup>

#### *D. Who Actually Benefited From PPP Loans?*

As the pandemic continued past the one-year mark and the economy dropped into a recession, the PPP became the largest business bailout in American history, according to *The New York Times*.<sup>51</sup> Through the PPP, more than eight million companies received forgivable loans, totaling \$796 billion—nearly as much money as the federal government spent on its the three rounds of direct payments to taxpayers.<sup>52</sup>

There have been some negative press coverage and arguments made that certain companies were not deserving or did not need the PPP loans that they received. Many companies receiving negative press coverage and fearing audits and penalties returned \$30 billion in PPP funds, although arguably they received them legitimately under the guidelines.

At the time of the writing of this essay, there has not been enough available data to determine the impact of the PPP on the economy. There has been some data about the estimated economic impact of PPP on small business employment. One study examined business shutdowns (*i.e.*, hours worked “reduced to zero during the entire week”), declines in hours worked, and unemployment insurance claims and found no evidence of substantial effects of the PPP on these outcomes<sup>53</sup> However, another data set found that the “Paycheck Protection Program loans increased employment at small businesses by only 2%, implying a cost of \$377,000 per job saved.”<sup>54</sup>

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*Far*, FED. RESERVE BANK OF N.Y.: LIBERTY ST. ECON. (May 6, 2020), <https://libertystreeteconomics.newyorkfed.org/2020/05/where-have-the-paycheck-protection-loans-gone-so-far.html>.

<sup>50</sup> *Id.*

<sup>51</sup> Stacy Cowley, *The Small Business Administration’s Gaffes Are Now Her Job to Fix*, N.Y. TIMES (July 1, 2021), <https://www.nytimes.com/2021/05/25/business/Isabella-Casillas-Guzman-sba.html?searchResultPosition=3>.

<sup>52</sup> *Paycheck Protection Program (PPP) Report Approvals through May 23, 2021*, U.S. SMALL BUS. ADMIN., [https://www.sba.gov/sites/default/files/2021-05/PPP\\_Report\\_Public\\_210523-508.pdf](https://www.sba.gov/sites/default/files/2021-05/PPP_Report_Public_210523-508.pdf) (last visited July 23, 2021).

<sup>53</sup> See Joao Granja, Christos Makridis, Constantine Yannelis and Erick Zwick, *Did the Paycheck Protection Program Hit the Target?* (Apr. 25, 2020) (unpublished paper), <https://ssrn.com/abstract=3585258> (last visited July 23, 2021).

<sup>54</sup> See Raj Chetty, John N. Friedman, Nathaniel Hendren and Michael Stepner, *How did COVID-19 and Stabilization Policies Affect Spending and Employment? A New Real-Time Economic Tracker Based on Private Sector Data* (Nat’l Bureau of Econ. Research, Working Paper No. 27431, 2020), [https://www.nber.org/system/files/working\\_papers/w](https://www.nber.org/system/files/working_papers/w)

Initial evidence suggests that PPP assistance failed to meet the immense need of minority-owned small businesses as small businesses in underserved communities struggled to access the available loans in the early stages of the program.<sup>55</sup> There were significant disparities in access to loans within the 6 months of the program.<sup>56</sup> The New York Federal Reserve noted that PPP reached only 20% of eligible firms in states with highest densities of Black-owned firms.<sup>57</sup> The data shows that the effect of the disparities in access disappeared over time with the changes to the program.<sup>58</sup>

There could be several reasons for this disparity. One is the lack of flexibility, since the program was built around a single financial product, loans from bank lenders that could only be forgiven if a certain percentage of the loan is used on payroll. This lack of flexibility makes it difficult to address the diverse needs of small businesses. For example, restaurants—whose greatest expense during the pandemic has been rent, rather than labor—could not benefit from loan forgiveness because PPP loans were designed primarily for payroll expenditures and not for payment of rent. Administrative capacity likely proved another challenge. Smaller small businesses lacked the back-office support needed to meet the extensive financial documentation necessary (such as payroll records), as well as the lack of clarity around the application process.

Additionally, many minority-owned businesses lacked preexisting relationships with traditional lenders. These traditional lenders tended to work with their existing clients when it came to the PPP loans.<sup>59</sup> This had the effect of exacerbating preexisting racial disparities in access to capital. Lenders cited compliance with the Know Your Customer (“KYC”) requirements, which require banks to develop profiles of their clients to assess the risk of their involvement in money laundering, terrorism or other financial crimes as the reason

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27431/w27431.pdf.

<sup>55</sup> Yuka Hayashia, Anthony DeBarros and Amara Omeokwe, *PPP Money Abounded—but Some Got it Faster Than Others*, WALL ST. J. (Oct. 6, 2020), <https://www.wsj.com/articles/ppp-money-aboundedbut-some-got-it-faster-than-others-11601976601>.

<sup>56</sup> See Rachel Atkins, Lisa Cook and Robert Seamans, *Discrimination in Lending? Evidence from the Paycheck Protection Program* (May 31, 2021) (unpublished paper), <https://ssrn.com/abstract=3774992>.

<sup>57</sup> Mills and Battisto, *supra* note 48.

<sup>58</sup> *Id.*

<sup>59</sup> Emily Flitter and Stacy Cowley, *Banks Gave Richest Clients ‘Concierge Treatment’ for Pandemic Aid*, N.Y. TIMES (April 22, 2020), <https://www.nytimes.com/2020/04/22/business/sba-loans-ppp-coronavirus.html>; See also Ran Duchin, Xiumin Martin, Roni Michaely and Hanmeng Ivy Wang, *Concierge Treatment from Banks: Evidence from the Paycheck Protection Program* (February 21, 2021) (unpublished paper), <https://ssrn.com/abstract=3775276>.

why banks prioritized their existing clients to the detriment of minority-owned businesses. The fact that PPP support began in the form of loans, and therefore required taking on additional debt, was another part of the program's design that disadvantaged minority-owned small businesses. The program's singular focus on loans—and the overly narrow conditions under which such loans can be granted and forgiven—likely limited the reach and utility of the aid, since it puts minority small business owners at risk of overleveraging themselves. This is significant as minority small business owners have higher levels of debt than white small business owners.

It is unlikely that the PPP program saved small businesses in cities. There are indications of need for additional funding for small businesses. Very little is known about how small business owners fared personally, but evidence shows that small business owners experience disproportionate financial hardship.<sup>60</sup> Small business owners turn to personal credit like personally guaranteeing commercial leases and cosigning other loans.<sup>61</sup> Reports reveal that 35% of businesses that were active prior to the pandemic were still closed and most had been inactive for twenty weeks or longer as of May 2021.<sup>62</sup>

### III. THE GEORGE FLOYD PROTESTS AND THE 2020 ELECTION

The first three months of the pandemic, March through May 2020, were an unparalleled shock to the American economy. By the end of May, public health authorities began getting a handle on the virus and states started to lift some restrictions.<sup>63</sup> Businesses began to make necessary modifications to their businesses in order to stay open. But on the evening of May 25, 2020, in Minneapolis, Minnesota, George Floyd, a 46-year-old Black man who had gone to the local convenience store to buy cigarettes, was murdered by the police. The

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<sup>60</sup> Andrew F. Haughwout, Donghoon Lee, Joelle Scally and Wilbert van der Klaauw, *Small Business Owners Turn to Personal Credit*, FED. RESERVE BANK OF N.Y.: LIBERTY ST. ECON. (May 19, 2021), <https://libertystreeteconomics.newyorkfed.org/-2021/05/small-business-owners-turn-to-personal-credit.html>.

<sup>61</sup> *Id.* (“[C]oping strategies have likely helped businesses preserve cash flow and avoid delinquency and bankruptcy for their business and themselves personally. Whether these forbearances are simply forestalling future trouble for strained business owners, or if the post-pandemic economy will support the owners to catch up the lost months remains to be seen.”).

<sup>62</sup> David Dam, Sebastian Heise, Davide Melcangi and Will Schirmer, *Many Small Businesses in the Services Sector Are Unlikely to Reopen*, FED. RESERVE BANK OF N.Y.: LIBERTY ST. ECON. (May 19, 2021), <https://libertystreeteconomics.newyorkfed.org/2021/05/many-small-businesses-in-the-services-sector-are-unlikely-to-reopen.html>.

<sup>63</sup> Zeke Miller, Alan Suderman and Kevin Freking, *Trump Gives Governors 3-phase Plan to Reopen Economy*, ASSOCIATED PRESS (Apr. 16, 2020), <https://apnews.com/article/virus-outbreak-donald-trump-ap-top-news-politics-pandemics-420a38ec14101eab70e07be367ee6422>.

murder was captured on video and showed police officer Derek Chauvin kneeling on George Floyd's neck for nearly nine and half minutes as he lay face-down in the street, slowly killing him.<sup>64</sup> Initially, people in the community transformed the site where Floyd was killed into a memorial. As the day progressed, more and more people began to arrive to protest the killing of another Black man by the police.<sup>65</sup> Within a few days, protests had spread to cities across America often merging with the Black Lives Matter movement. As the protests spread, so did the outrage—outrage that sometimes manifested in looting and vandalism.<sup>66</sup>

### A. West Philadelphia

The neighborhoods where the looting and vandalism took place were often Black and brown neighborhoods and the businesses affected were Black- and brown-owned. One such neighborhood was West Philadelphia and specifically its 52nd Street corridor which has been the economic center of West Philly for more than 60 years. Ninety percent of 52nd Street store owners are immigrants or people of color.<sup>67</sup> Many of these store owners had spent decades navigating numerous challenges to the economic survival of the corridor and their businesses. There had been years of community planning, physical corridor improvements, and grant-funded façade improvements, all destroyed in a single day.<sup>68</sup> Along 52nd Street and many other commercial corridors that saw wide-spread looting, the police were not present to protect the businesses.<sup>69</sup> Instead, they often created boundaries around areas to quarantine the looting, destruction, and vandalism to certain geographic areas.<sup>70</sup> This left many business own-

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<sup>64</sup> Derrick Bryson Taylor, *George Floyd Protests: A Timeline*, N.Y. TIMES (Mar. 28, 2021), <https://www.nytimes.com/article/george-floyd-protests-time-line.html>.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> Laura Benshoff and Darryl C. Murphy, *Return to Main Street: Historic West Philly Corridor Fights to Keep its Identity*, WHY? (June 17, 2020), <https://why.org/articles/return-to-main-street-historic-west-philly-corridor-fights-to-keep-its-identity/>.

<sup>68</sup> Jabari Jones, *Now It's Time to Rebuild*, PHILA. CITIZEN (June 8, 2020), <https://thephiladelphiacitizen.org/rebuilding-west-philly-looting> (“[D]ecades of community planning, physical corridor improvements, and grant-funded storefronts were destroyed in a single day.”).

<sup>69</sup> Joseph N. DiStefano, Opinion, *Philly's Business Districts Are at a Turning Point: If There's No Support, the City 'Will be No Place to Invest'*, PHILA. INQUIRER (June 18, 2020), <https://www.inquirer.com/business/small-business/looters-protest-merchants-papi-store-20200618.html>.

<sup>70</sup> This is not unlike the Hamsterdam depiction in the television show *The Wire*, where the Police Commissioner creates a zone where criminal activity is allowed to take place without police interference. *The Wire: Hamsterdam* (HBO television broadcast October 10, 2004).

ers to fend for themselves. Many boarded up their windows with plywood hoping to keep looters out. Others spray-painted the plywood with signs indicating they were Black-owned and supported the protestors, hoping that would persuade the looters to pass them by. Still others stood guard at their businesses for days to ward off potential looters and vandals.<sup>71</sup> Despite the various attempts to stave off theft and destruction, many lost everything. The estimated damage and loss associated with the looting in West Philadelphia was \$9 million.<sup>72</sup>

Gercia Goldberg, an 83-year-old business owner of a jewelry shop that had been looted in early June 2020, expressed it this way, “Forty-eight years, then a pandemic, and now this. How are you supposed to survive?”<sup>73</sup> Businesses built over decades were destroyed in hours. Franklin Medrano, president of the Dominican American Chamber of Commerce said, “In the city, danger can come to a corner market at any moment. For grocers, this is nothing new. But between the virus and the protests, the uncertainty has intensified. We already had a medical pandemic. Now we have a social pandemic too.”<sup>74</sup> For many this was a sign to recoup what they could and get out. For others, there was no alternative. They had to stick it out and rebuild. Along 52nd Street, none of the businesses closed.<sup>75</sup>

One reason for the survival of small businesses along 52nd Street was the work of corridor manager, The Enterprise Center (TEC), a West Philly nonprofit, and client of the Penn Law ELC. TEC itself issued more than \$100,000 in grants and connected 47 businesses to more than \$685,000 in relief funding.<sup>76</sup> It also attempted to use the protests to unlock conversations about structural racism that went beyond policing and into all areas of life including business financing and

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<sup>71</sup> See Calvert and Simon, *supra* note 5; Riley Rogerson, Greg Metz and Julia Collins, *Black-Owned Businesses That Were Damaged and Looted — and How You Can Support Them*, PHILA. MAG. (June 9, 2020), <https://www.phillymag.com/news/2020/06/09/black-owned-businesses-damaged-looted/>.

<sup>72</sup> *Philadelphia Businesses Prepare for Potential Looting After Upcoming Derek Chauvin Trial Verdict*, NBC PHILA. (Apr 14, 2021), <https://www.nbcphiladelphia.com/news/local/philadelphia-business-es-prepare-for-potential-looting-after-upcoming-derek-chauvin-trial-verdict/2779285/>; Max Bennett, *Philly Businesses Preparing for Unrest Following Chauvin Verdict*, PATCH (Apr. 15, 2021), <https://patch.com/pennsylvania/philadelphia/philly-businesses-preparing-unrest-following-chauvin-verdict>.

<sup>73</sup> Vinny Vell and Stephanie Farr, *Protests, Looting Hit Suburbs*, PHILA. INQUIRER (June 2, 2020), <https://infoweb.newsbank.com/apps/news/document-view?p=AWNB&docref=news/17B58F8129D5AFB0&f=basic>.

<sup>74</sup> DiStefano, *supra* note 68.

<sup>75</sup> Darryl C. Murphy, *‘It’s Getting Better’: 52nd Street Looks to Recovery in 2021 after a Tumultuous Year*, WHYY (Jan. 3, 2021), <https://whyy.org/articles/its-getting-better-52nd-street-looks-to-recovery-in-2021-after-a-tumul-tuous-year/>.

<sup>76</sup> *Id.*

economic development.<sup>77</sup> One of its initiatives was to acquire properties from landlords who wanted to exit the city and make them available for purchase by consortiums of locally-owned businesses.<sup>78</sup>

The City of Philadelphia in conjunction with community partners put together several other relief programs in the aftermath of the riots. The Philadelphia Commerce Department made \$1.4 million available to businesses who suffered damage or inventory loss from vandalism or looting.<sup>79</sup> But some businesses had lost hundreds of thousands of dollars in inventory.<sup>80</sup> A community development corporation (CDC) created a \$3 million loan fund to help businesses restart.<sup>81</sup> Nonetheless, this was still a loan that needed to be repaid. A consortium of caring business people started a fund granting \$3,000 forgivable loans to minority-owned businesses that had been affected by the COVID-19 shutdowns or the riots.<sup>82</sup> Another group of young people who had grown up in West Philadelphia, some of whom had moved away, returned to help. They created an organization called Heal the Hood which buys goods from Black owned businesses to give to people in the community.<sup>83</sup>

One program addressed potential insurance claims by business owners for physical damage to their stores and loss of inventory due to the looting. A partnership between a Philadelphia City Councilperson, a young community organizer, and a Philadelphia Black lawyers association helped business owners review insurance policies, file claims, and review claims already submitted to ensure they were done properly. Pre-COVID-19, most businesses had insurance; the question was whether they had the right insurance, and if they did, were they current on their premiums? Many businesses paid their premiums monthly. When the world stopped, insurance fell behind other obligations like rent and payroll. If a business had not paid its premium in May or June 2020 and suffered harm from vandals or looters, it may have been without coverage. The Insurance Information Institute estimates that claims relating to the social unrest stemming from George

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<sup>77</sup> Benschhoff and Murphy, *supra* note 67.

<sup>78</sup> Jason Laughlin, *West Philly's historic black corridor looks to rebuild after unrest and pandemic*, PHILA. INQUIRER (Jun. 15, 2020), <https://www.inquirer.com/news/52nd-street-philadelphia-looting-revitalization-black-community-historic-west-philly-main-20200615.html>.

<sup>79</sup> Ayana Jones, *Here's All the Ways that Philly is Helping Small Businesses Recover from COVID-19 Losses*, PA. CAPITAL-STAR (June 22, 2020), <https://www.penncapitalstar.com/covid-19/heres-all-the-ways-that-philly-is-helping-small-businesses-recover-from-covid-19-losses/>.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> Laughlin, *supra* note 78.

Floyd's murder across 20 states between May 26 and June 6, 2020 could reach \$1 billion.<sup>84</sup>

### B. *New York*

Similar scenes took place all over America's cities including its largest, New York. In New York City, reactions to George Floyd's murder at the hands of police, drew eerily similar comparisons to Eric Garner a 43-year old Black man, who died after being put in a chokehold by a police officer because he was allegedly selling single cigarettes without permission, sparking a national outcry and demonstrations by the Black Lives Matter movement.<sup>85</sup> Protests and demonstrations over the murder of George Floyd took place in each of the five boroughs of New York City in the days following the news of his death. Many of the protests throughout the city were peaceful, but some experienced police violence and/or protester violence. Looting and rioting accompanied some of the protests. The New York Times described the demonstrations as "largely peaceful demonstrations [which] turned into jarring scenes of flaming debris, stampedes, and looted storefronts."<sup>86</sup> One notorious incident was that of a police vehicle being driven through a crowd of protestors; the event was captured on a video that went viral.<sup>87</sup>

New York City Mayor Bill de Blasio placed the city under a city-wide curfew from June 1 through June 7, the first citywide curfew since the Harlem Riots of 1943, which were ironically sparked by a police shooting of a Black man by a white police officer. Protesters who assembled after curfew, including the Mayor's own daughter, were arrested by the New York Police Department (NYPD).<sup>88</sup> Statues depicting slaveowners and colonizers throughout the city were vandalized and forcefully taken down. Street murals were painted throughout the city. Along the Fulton Street commercial corridor in the

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<sup>84</sup> *Facts + Statistics: Civil Disorders*, INS. INFO. INST., <https://www.iii.org/fact-statistic/facts-statistics-civil-disorders> (last visited Aug., 30, 2021); Jennifer A. Kingson, *Exclusive: \$1 Billion-plus Riot Damage is Most Expensive in Insurance History*, AXIOS (Sep. 16, 2020), <https://www.axios.com/riots-cost-property-damage-276c9bcc-a455-4067-b06a-66f9db4cea9c.html>.

<sup>85</sup> Joseph Goldstein and Nate Schweber, *Man's Death After Chokehold Raises Old Issue for the Police*, N.Y. TIMES (July 18, 2014), <https://www.nytimes.com/2014/07/19/nyregion/staten-island-man-dies-after-he-is-put-in-chokehold-during-arrest.html>.

<sup>86</sup> *N.Y.C. Protests Turn Violent*, N.Y. TIMES, (<https://www.nytimes.com/2020/05/31/nyregion/nyc-protests-george-floyd.html>) (last updated Jan. 19, 2021).

<sup>87</sup> Tara Law, *Footage of NYPD Vehicles Surging into Crowd of Protesters Sparks Further Outrage*, TIME MAG. (May 31, 2020), <https://time.com/5845631/nypd-protests-vehicles-protesters/>.

<sup>88</sup> *NYC Mayor Addresses Daughter's Arrest During George Floyd Protests*, WABC-TV N.Y.: EYEWITNESS NEWS ABC 7 (June 1, 2020), <https://abc7ny.com/6223912/>.

Bedford-Stuyvesant neighborhood of Brooklyn, where I (Lynnise) own a home, the words, “Black Lives Matter” were written in large yellow letters accompanied by the names of people killed by racial violence. On 5th Avenue in Manhattan, New York City elected officials painted a “Black Lives Matter” mural directly in front of Trump Tower.

The looting and vandalism that tracked the racial justice protests, were another blow to small businesses already struggling or shuttered due to the pandemic. Between May 29 and June 9, 2020, an estimated 450 businesses across New York City were vandalized and, in some cases, looted, according to the city’s Department of Small Business Services.<sup>89</sup> Mayor de Blasio’s administration created an emergency fund that gives grants of up to \$10,000 each to small businesses affected by looting, with those in the Bronx getting priority. The looting that tracked the protests occurred throughout the city, including at flagship stores, such as Nike and Macy’s, but the looting in the Bronx affected local, small business owners, many of whom identify as a minority and/or immigrant. The Bronx, the city’s poorest borough was hit the hardest by the coronavirus, as it had the highest rates of infections, hospitalizations, and deaths.<sup>90</sup> Looting in Chinatown added another layer of challenges for Asian small business owners who had already seen sales plummet early on in the pandemic due to the stigma associated with the coronavirus’ origins in China. Businesses in New York and cities across the country were hit three times, first by the pandemic, then by the economic downturn, and then by the vandalism and looting, which tracked the protests.<sup>91</sup> New York City created small business economic support programs, including a \$100 million loan fund, and a \$100 million rental assistance program focused on small businesses in low- and moderate-income communities.<sup>92</sup>

### C. *The Election of 2020*

The fall of 2020 brought with it additional uncertainty and tur-

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<sup>89</sup> Kate King, *Hundreds of New York City Business were Damaged, Looted in Recent Unrest*, WALL ST. J. (June 12, 2020), <https://www.wsj.com/articles/hundreds-of-new-york-city-businesses-were-damaged-looted-in-recent-unrest-11591993138>.

<sup>90</sup> Winnie Hu and Nate Schweber, *The Virus Closed His Bronx Jewelry Store. Then Looters Broke In.*, N.Y. TIMES (June 3, 2020), <https://www.nytimes.com/2020/06/03/nyregion/george-floyd-bronx-protests-looting.html>.

<sup>91</sup> King, *supra* note 89.

<sup>92</sup> Press Release, NYC Office of the Mayor, *Recovery for All of Us: City Announces Small Business Economic Support Programs* (Apr. 23, 2021), <https://www1.nyc.gov/office-of-the-mayor/news/300-21/recovery-all-us-city-announces-small-business-economic-support-programs>.

moil connected to increased political polarization stemming from demands made to address systemic racism and inequality. For urban businesses, separating the political turmoil from the daily battle for survival was impossible as businesses faced the challenges brought by political uncertainty. This uncertainty had a significant impact upon small businesses as the uncertainty threatened business continuity and success. Justice Ruth Bader Ginsburg died, creating a political imbalance on the U.S. Supreme Court. There was a worldwide surge of coronavirus cases as the U.S. headed into an election that felt at times a battle for the soul of the country. In October of 2020 in Philadelphia, there was another police shooting of a Black man, Walter Wallace, Jr., and with it additional unrest, protests, and destruction of property.<sup>93</sup>

There were also signs of optimism. Joe Biden and Kamala Harris defeated Donald Trump and Mike Pence in the general election. Harris became the first woman, South Asian, and Black American to hold the office of Vice President of the United States. The 2020 presidential election turned out more voters than any time in our nation's history, evidencing that the American people were activated to participate in our democracy. In December 2020, the Food and Drug Administration authorized Pfizer's and Moderna's COVID-19 vaccines for emergency use, representing a massive turning point in the trajectory of the pandemic. Georgia elected its first Black senator in Rafael Warnock and turned both of its Senate seats blue. On New Year's Eve and New Year's Day, Facebook and Twitter feeds were full of messages bidding good riddance to one of the most challenging years in more than a generation.

Just as plans were being made to rollout the vaccine across the country and many had hopes and a renewed sense of optimism for 2021, the new year would usher in new challenges and anxiety for this country. On January 6, 2021, before the Congressional vote count on the electoral college, based on his false claims that the 2020 election had been fraudulently won, supporters of President Trump stormed the U.S. Capitol and violently attacked the U.S. Congress in an attempt to overturn the election of President Biden. The riot disrupted the joint session of Congress that was assembled to count electoral votes and formalize President Biden's victory. The joint-session was postponed as many watched around the world as insurrectionists vandalized and trespassed on the Capitol for hours. Capitol Police officer

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<sup>93</sup> *Philadelphia Protests Police Shooting of Walter Wallace, Jr.*, PHILA. INQUIRER, <https://www.inquirer.com/news/philadelphia/live/philadelphia-protests-police-shooting-walter-wallace-jr-20201027.html> (last updated Oct. 28, 2020).

Brian Sicknick was killed during the siege.<sup>94</sup> 2021 was not providing the relief to a chaotic 2020 that everyone hoped it would.

The cumulative effect of an unprecedented global pandemic that threatened the health of every human on the planet, the complete shutdown of the U.S. economy and resulting economic hardships that caused mass unemployment and businesses to shutter, the move to remote education from elementary schools through universities, the restrictions on socializing and gathering, and the murder of George Floyd and the forced reckoning with America's racist foundations created a cocktail of unrelenting stress for most people living in America.

#### IV. SAME AS IT EVER WAS

The story of minority entrepreneurship in America is a series of navigating and overcoming structural impediments, overt and tacit racism, violence and destruction, and rage and frustration. In many ways, the events of the last 18 months are simply another chapter in an ongoing, and seemingly never ending, saga of Black, brown, and immigrant people trying to achieve equality—especially the destruction caused in Black communities after George Floyd's murder.

American history is replete with stories of successful Black enterprise and vibrant Black communities that thrived even in the face of structural racism and inequality. A common theme that runs through those storylines is the destruction of those communities by governmental policies, unequal access to healthcare, disparate impact during recessions, racist policing practices, or civil unrest. In many ways, the events of 2020 and early 2021 were just another chapter in a tome full of similar historical events.

Black- and minority-owned business is not a new phenomenon in the United States. In the late nineteenth and first half of the twentieth centuries, Black people created communities that were often segregated because white society wanted it that way. Because of Jim Crow laws, even everyday commerce was restricted for Black people. It wasn't that white store owners would not sell to Black customers. They usually would but would not grant them the same privileges as white customers. If a Black man wanted to buy a hat, he could go to the white hat store and buy a hat, but he could not try it on. And if he paid for it and took it home to try it on and it did not fit, he could not return it. Scenarios like that led Black entrepreneurs to create their own commercial ecosystems. As a result of the Great Migration when an estimated six million Black people migrated from the south be-

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<sup>94</sup> Jack Healy, *These Are the 5 People Who Died in the Capitol Riot*, N.Y. TIMES, (Jan. 11, 2021), <https://www.nytimes.com/2021/01/11/us/who-died-in-capitol-building-attack.html>.

tween 1916 and 1970, vibrant Black communities formed in cities like Chicago, Detroit, and New York, but also places like St. Louis, Memphis, and Tulsa.

Each city and region's story is unique but there are common themes that permeate Black entrepreneurial history. Beyond self-sustaining, segregated communities, Black and other minority entrepreneurs created their enterprises from scratch. There was no generational wealth to rely on to backstop a business. In the late 19th and early 20th centuries, external financing options would also have been severely limited for Black entrepreneurs. If a business were to start and fail, it usually meant a complete loss of any accrued wealth by the Black entrepreneur making it less likely that they could try again. Relatedly, though Black people were citizens with the technical right to vote, that right was often suppressed resulting in less political power than white people. The inability to consistently marshal their political strength to effectuate policies that would benefit Black communities and businesses left Black enterprises lagging those of white enterprises. Another theme that runs through Black entrepreneurial history is harassment and oppression by police or other governmental authorities as well as white citizens. Conflicts between police and Black communities gave rise to countless examples of civil unrest over the past 100 years, just as it did in the summer of 2020.<sup>95</sup>

The first half of the twentieth century saw civil unrest in Black communities manifest time and time again. The Tulsa Race Massacre took place 100 years ago, from May 31 to June 1, 1921, when one of the most successful Black entrepreneurial communities in history, the 35 square block neighborhood of Greenwood, Tulsa, also named "Black Wall Street," was burned to the ground by white people.<sup>96</sup> The rioters attacked not only commercial properties but residential homes as well. The economic loss has been estimated to have been as much as \$100 million in today's dollars. Though the official death toll of the massacre is 39, the Red Cross estimates as many as 300 people were killed in the two-day riot.<sup>97</sup>

Similar events took place in Chicago, Washington D.C.,<sup>98</sup> East St. Louis, Illinois and Rosewood, Florida throughout the 1920s. In most

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<sup>95</sup> See MICHELLE ALEXANDER & CORNELL WEST, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS* (10th Anniversary ed., New Press 2020).

<sup>96</sup> See Alex Albright, Jeremy A. Cook, James J. Feigenbaum, Laura Kincaide, Jason Long and Nathan Nunn, *After the Burning: The Economic Effects of the 1921 Tulsa Race Massacre* 1 (Nat'l Bureau of Econ. Research, Working Paper No. 28985, 2021), [https://www.nber.org/system/files/working\\_papers/w28985/w28985.pdf](https://www.nber.org/system/files/working_papers/w28985/w28985.pdf).

<sup>97</sup> *Id.*

<sup>98</sup> See CAMERON McWHIRTER, *RED SUMMER: THE SUMMER OF 1919 AND THE AWAKENING OF BLACK AMERICA* (2012).

of these events, white people perpetrated the violence and destruction on Black people and communities. In the 1960s, Black communities began to fight back against perceived injustices. One notable event occurred in the Watts neighborhood of Los Angeles in 1965. Marquette Frye, a 21-year-old Black man, was pulled over within one block of his house for drunk driving. The police attempted to arrest Frye whom they claimed resisted. Frye's brother, who was a passenger in the car, ran home to get their mother. When Frye's mother arrived at the scene, she scolded her son but the scene quickly escalated. Frye's mother was shoved and Marquette was hit with a police baton. Soon other community members were present. The officers were fighting with multiple people, allegedly kicking a pregnant woman and striking Marquette Frye repeatedly. The circumstances of Frye's arrest, the conditions of the Watts neighborhood, the relationship between the community and the police, and the hot weather on that day all combined to ignite a powder keg that had been smoldering for years. The result was six days of rioting, 600 buildings damaged, 200 of those destroyed and resulting in the equivalent of \$346 million in damage in today's dollars. Unlike the events of the early 20th century, Watts was a poor Black community and the destruction that took place was perpetrated by community residents themselves who were responding to chronic harassment by the police.<sup>99</sup> The similarities with the George Floyd protests 56 years later are disheartening.

Kenneth B. Clark, a Black psychologist, at the City College of New York, testified before the Kerner Commission, established by President Lyndon Johnson to investigate the causes of civil unrest in 1967. In researching the origins and causes of 50 years of racial unrest, he said:

I read that report . . . of the 1919 riot in Chicago, and it is as if I were reading the report of the investigating committee on the Harlem riot of '35, the report of the investigating committee on the Harlem riot of '43, the report of the McCone Commission on the Watts riot. I must again in candor say to you members of this Commission—it is a kind of Alice in Wonderland—with the same moving picture re-shown over and over again, the same analysis, the same recommendations, and the same inaction.<sup>100</sup>

Clark was referring to the investigative reports produced by mostly white actors in the aftermaths of race riots. Nothing had changed in nearly 50 years. Over the next 50 years it would be no different—

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<sup>99</sup> Denise DiPasquale and Edward Glaeser, *The Los Angeles Riot and the Economics of Urban Unrest*, 43 J. OF URB. ECON., 52, 53 (1998) (noting \$183 million in 1992 dollars converted to approximately \$346 million 2021 dollars).

<sup>100</sup> Jill Lepore, *The History of the "Riot" Report*, NEW YORKER (June 6, 2020), <https://www.newyorker.com/magazine/2020/06/22/the-history-of-the-riot-report>.

Miami in 1980, Los Angeles in 1992, Cincinnati in 2001, and Ferguson in 2014.

The George Floyd protests are the latest in a seemingly endless stream of civil unrest in Black communities. Unlike most of the unrest in the past, George Floyd's murder sparked protests and unrest across the country, not just in the locale where the injustice occurred. The George Floyd protests merged into the Black Lives Matter movement, a movement that pre-existed George Floyd's murder. Its focus is curbing police violence against Black people. The movement opened a broader conversation around systemic racism that pervades all aspects of life from housing to health care to employment to education to entrepreneurship. The question in 2021 is whether the movements sparked in the aftermath of George Floyd's death will change the trajectory of Black and brown communities in this country. For urban business owners, this is a palpable concern as these business owners have already weathered the storms that the past 18 months have brought in the form of economic anxiety, disappointment and rage from the last year and half's events.

## V. CLINIC IMPACT

There are over 100 transactional clinics across 200 accredited law schools. Virtually all of them represent businesses. Typically, the work involves the myriad needs that small businesses have—entity formation, governance, managing employees, protecting intellectual property, contract drafting and negotiation. A complex matter in a clinic might be the merger of two businesses or structuring a multi-layered organization. In some circumstances a clinic might aid a client in securing early-stage capital or advise about equity compensation structures. But in March 2020, that usual work ground to halt. The set of issues that students had agreed to take on for their clients in January were instantaneously mooted. In the initial weeks of shutdown orders, people were consumed by where they could get hand sanitizer and toilet paper, not how to lure potential investors or what entity to choose for their business. When George Floyd was murdered, Black businesses could not cabin the rage, disappointment and anxiety they felt along with much of American society.

Both of our clinics (in Philadelphia and New York) represent clients who were in the communities that were seeing the greatest COVID-19 impact and suffered the greatest impact from the George Floyd protests. It is no surprise that these events had a tremendous impact on our clinic clients, students, and ourselves.

### A. *Students*

In our clinics, students' personal needs are rarely put on par with client needs, but with the onset of the pandemic, they were equally significant. At Penn, students went away for spring break and were told not to return. At Columbia, there was a week of remote classes before spring break during which students were encouraged not to return to campus. Our students' lives had been up-ended as well. For many, not having the stability of the law school building was majorly disruptive. They relied on it to provide reliable and fast internet, quiet study space, access to books and resources, and social interaction with their friends, classmates, and professors.

Shelter in place exacerbated pre-existing inequities among students. At Penn and Columbia, the universities ordered students to vacate student housing with rare exception. Many law students who did not live in student housing opted to leave to be closer to friends and family, to save money by vacating their apartments, or to move to less congested areas. Students needed to find a new place to shelter that had reliable internet to attend classes virtually and a quiet space to study. For clinic students, there was the additional concern of confidentiality and privilege. Where could they have conversations without others hearing what they were saying? For some, they could return to comfortable settings with their families and be supported as they finished out the school year. For others without such family support, however, the disruption meant that they had to scramble for accommodations.

Students' computers became their gateway to life. They had spent the first half of clinic learning how to conduct face to face interviews and learning about body language and spatial cues. Suddenly, they had to learn how to use Zoom or some other video conferencing tool to communicate with their clients, classmates, and professors. Students also needed to rely on their computers to access their clinic files. At the same time, they had to worry about whether their clients had the requisite technology to communicate with them. The art of the old-fashioned telephone call had renewed vitality.

Law school is generally a stress-inducing place, but the spring of 2020, was an extraordinary source of stress and anxiety for students. Students worried about the status of their summer jobs and internships. Students worried about their living situations. They worried about their families and friends affected by the virus. For graduating students, there was the often-tacit anxiety of ending their law school careers isolated from their friends and peers as well as graduating into an uncertain world. Bar examination, job offer, and housing worries weighed on our third-year students' minds. The most stress-reducing

thing that most law schools did during the Spring 2020 semester was make all grading pass/fail.

The anticipation and preparation for the pandemic contained its own stress. It was like preparing for a hurricane that was bearing down on your location. You took all the precautions but then needed to wait and see whether the storm would track toward you and what its intensity would be when it got there. That wait and anticipation harbored vast amounts of stress. Unlike an actual hurricane, people could not call their friends and neighbors to help board up their houses. The isolation provided another layer of anxiety. A significant difference, however, was in a hurricane people have the option of evacuating. You can move out of the way of the storm. With COVID-19, there was nowhere to run to; nowhere to hide. A hurricane moves. COVID-19 lingers—still.

It is impossible to generalize the clinic student experience from Spring 2020. There is no situation to gauge it against in our students' lifetimes nor in our lifetimes. But the students in both the Penn Law ELC and Columbia Law ECDC exceeded our expectations. They were more productive than they had been before moving to virtual. They doubled-down on client service, realizing that helping others was one way to do something where so much was out of their control.

George Floyd's murder took place after the Spring 2020 semester ended, yet it catalyzed law school students, particularly student affinity groups, to make demands of their Deans and institutions to do more to combat racism and inequality. Law schools established ad-hoc committees focused on anti-racism and students created anonymous Instagram accounts to challenge conventional thinking.

When students returned to mostly virtually law school campuses in Fall 2020, the sentiment and atmosphere seemed different. The tragic murder of George Floyd had catalyzed the larger Black Lives Matter movement which had activated many students. They expected their institutions to respond. In September, Justice Ginsburg died, creating a politically driven rush to fill the vacant seat before the upcoming Presidential election. The election itself was fraught with tensions and polarization not seen in our students' lifetimes.

For many clinicians, including us, checking-in on the mental well-being of our students took a new form. Rarely would we stop our inquiry of "how are you doing" after the response of "fine." We probed more deeply to verify that our students were in fact fine. Often, they were not. They wore anxiety on their faces but were reticent to discuss their mental state. Sometimes the stress manifested itself in reactions to clinic work whether in responses to feedback or in the ability to generate work in a timely manner. The challenge for us

was that we were not necessarily in a better mental state than they were.

### *B. Faculty*

In the law school ecosystem, the law professor is at the top of the pyramid. Often, whatever an expert and scholarly professor says in class is taken as gospel. The events of 2020 and into 2021 flattened that structure. Professors were in no better position to predict what was going to happen with the virus or how to combat centuries of racism and inequality. In fact, the entire higher educational structure and the role that these institutions and professors by default played in maintaining and perpetuating systematic racism was indicted by the ideas sparked by the Black Lives Matter Movement. The Ivory Tower, however, could not shield faculty from either the storm of COVID-19 or the racial reckoning permeating throughout the nation.

#### *1. Praveen*

In the first days of the COVID-19 stay at home orders, it was very surreal—literally dreamlike. I taught class in person on Thursday, March 5, 2020. That evening, the West Coast began to shut down. My students left for spring break on Friday. Most made it out to wherever they were going. Some cancelled their trips. By the next Tuesday, March 10, we were in emergency meetings at the law school, discussing plans to move our entire curriculum online. On Friday, March 13 my kids' school closed. By March 17, we were in a fully virtual world. Everyone has their own story. The commonality is that it seemed like something from a sci-fi movie. How could this be happening? And not just in our individual locales, but across the globe? I kept thinking I'd wake up.

As the pandemic persisted and I kept seeing the impact on so many less fortunate than me, I felt tremendous gratefulness but also tremendous guilt. I had a job that didn't disappear and didn't seem at risk in the near term. We could pay our bills. We had food. We had robust internet connectivity to allow me, my wife, and two kids to be on Zoom at the same time. We had enough devices for everyone to use. We had space for all of us to spread out. We had a yard to take advantage of. We lived in a community where most people took masking and social distancing seriously.

Many of my students and clinic clients did not have the same fortune. One of my students moved four times between March and May 2020, searching for a place where he could find reliable internet, a quiet space to study and do his schoolwork, and where he could feed and shelter himself. Another of my students had graduated and

moved home to live with his family—parents and grandparents on both sides—while he studied for the bar exam. Other than him, they all contracted COVID-19. He had to care for them while they were ill and deal with the uncertainty of their prognosis. I had clients who abandoned their dreams of creating a new venture or shuttered an established enterprise after running out of cash. Many of my students, clients, and friends had at-risk family members that needed care and protection, all made infinitely more complicated during COVID-19. I came to know this very personally.

My father had been diagnosed with cancer in July 2019. He had started treatment in September 2019. By March 2020, his entire immune system had been wiped out by the cancer drugs. He and my mother lived in the Midwest, 900 miles away from me. Suddenly, I was physically cutoff from them. The weight of my father's care fell entirely on my mother who was also elderly. At the end of April, my Mom got sick at the same time my Dad was doing worse. My initial fear was that my Mom had COVID-19. The search for a COVID-19 test and subsequent wait for results was like awaiting a jury verdict. Thankfully, this time the verdict was not guilty. My sister, who lived in town, tried to manage both of our parents, but she was a doctor seeing patients and was high risk for contracting or transmitting the virus. In any conversation I had with any of them, the unstated message was clear—please come home to help.

This was in April 2020. There was so much unknown about the coronavirus and the U.S. was in full shutdown mode. The guidance from people like Dr. Fauci was to stay put—"shelter in place" or risk being exposed. The guilt I felt in that moment cannot be described, but it is a guilt that was felt by so many across the world faced with the same decision of whether to help your loved ones or protect yourself. If it were just me, that decision would have been easy. I would have been on the next plane. But it wasn't just me. I had a wife and two young kids. It felt irresponsible to disregard the guidance coming from the scientific community. Guilt and love, however, are powerful influencers. After agonizing over the decision, I ultimately did travel to my mother and father to help however I could. The journey brought its own stresses. It was before mask mandates in airports or on airplanes and before knowing how COVID-19 spread. I double masked, Clorox wiped everything around me, and didn't eat or drink anything during the journey. I managed to avoid contracting COVID-19, and my Mom and Dad rebounded a bit—enough that I felt comfortable leaving them to return to Philadelphia. Upon return, I had to quarantine from my wife and kids. Mentally, I was still with my parents in the Midwest. The overlay of COVID-19 on my parents' health was a complication

and stress felt by any person with older loved ones. It was made worse by the limitation on how anyone could assist their loved ones and protect them. No one under similar circumstances was operating at full strength; not my students, not my clients, not me. I was just taking things day by day as millions of others were.

Later in the fall, my Dad's health deteriorated. The cancer drugs were not working. In November 2020, my Dad was hospitalized and expected to die. He had no immune system in a hospital ICU with COVID-19 surging. It was the perfect storm. My decision was easier this time. I knew that I could not live with a lifetime of guilt of not being with my Dad at this juncture in his battle, so I went. COVID be damned. In November 2020, COVID-19 restrictions prevented visitors to a hospital. My mother and sister were doctors for the health system where my Dad was admitted, so through my privilege (and with lots of personal protective equipment), I was able to be with him. It was not lost on me that the hospital was full of patients who did not have that privilege and whose family members did not have the choice I had. I spent several days sitting with my father in his hospital room, trying to get him to eat, helping him sit up in bed, talking about mundane things. As COVID-19 surged, the hospital was slowly converting beds and wards into COVID-19 wings. The risk of my Dad getting COVID-19 in the hospital was very high but he had no choice. My choice was to not be there which didn't seem like a choice at all. After sitting with my Dad all day, I would turn to student work at night. The clinic was a refuge in many ways. It allowed me to focus on something other than my father and to appreciate that my students' and clients' lives could be equally tumultuous if not more so. The experience with my father also caused me to probe my students more than I had ever done in my teaching career about their mental health and personal wellbeing.

Somehow, my Dad got a little better and was moved out of the ICU, but he was mentally and physically spent. When I said goodbye to him in the hospital, I knew that it might be the last time I saw him. I travelled back to Philadelphia hoping that my Dad would be released and two days later he was. When he got home, he made us promise that we would not, under any circumstances, send him back to the hospital. He wanted to die at home. COVID-19 was in full surge in December 2020. My Dad had to travel to the hospital for his cancer treatment. Each trip he was tested for COVID-19. On Dec. 9, 2020, 18 months into his battle against cancer, and 9 months into the pandemic, my Dad tested positive for COVID-19. At that moment he was asymptomatic. Even though he was 84 and had no immune system, I thought—I hoped—that he might be lucky. On December 11, he started to show some symptoms. On Dec. 14, I spoke to my Dad on

Facetime. I asked him if I should come home. This time was different from the other conversations I had about coming home because this time he had COVID-19. He told me not to come and to take care of my kids. It was the last time I would speak with him. He died on December 19. His death certificate says he died from multiple myeloma. He didn't. He died from COVID-19.

Some version of that story has played out more than 636,000<sup>101</sup> times in the United States and over 4.5 million times worldwide in just the last 18 months.<sup>102</sup> The loss of those individuals and the gaping holes left behind in their loved ones is the true tragedy of COVID-19. Those individuals and loved ones are our students, clients, and colleagues and their families. On top of the loss, COVID-19 restricted closure—no opportunity to say goodbye, no physical contact, no gathering of loved ones, no funerals or memorials. The cumulative mental impact of all of that cannot be overstated. Suddenly, school and clinic seemed different in the value chain.

A central tenet of Buddhism is that life is suffering.<sup>103</sup> Though meant metaphysically, 2020 gave the principal literal meaning. The pandemic alone pollinated the world with plenty of suffering but add the mental anguish of witnessing another Black man being murdered in cold blood by the police over a pack of cigarettes, the unleashed anger in the form of protests and sometimes vandalism and looting, and the seemingly unabashed dismantling of our democracy and the amount of suffering in 2020 is untold.

When George Floyd was murdered, I deliberately did not watch any of the news coverage. I knew another Black man had been killed by the police, but I didn't know any of the details. On May 31, 2020, the aftermath of George Floyd's murder hit Philadelphia. There were protests some of which resulted in destruction and looting in West Philadelphia where I worked and where many of my collaborators and clients were. As professors, we are often looked to for answers. It's one thing to inhabit that role when the questions are related to the law or careers or the plethora of issues we see semester after semester. But sometimes we don't have answers. Sometimes we are just people, like our students, trying to comprehend, trying to explain. George Floyd's murder was one of those times. I had no answers.

After the violence in Philadelphia on May 31, 2020, I finally

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<sup>101</sup> Since the time we started working on this essay, approximately 30,000 more people have died of COVID-19 and continues to rise. See *COVID Data Tracker*, CDC, [https://covid.cdc.gov/covid-data-tracker/#trends\\_dailytrends\\_deaths](https://covid.cdc.gov/covid-data-tracker/#trends_dailytrends_deaths) (last visited Aug. 30, 2021) (tallying deaths between May 21, 2021 and Aug. 29, 2021).

<sup>102</sup> *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. TIMES, <https://www.nytimes.com/interactive/2021/us/covid-cases.html> (last updated Aug. 30, 2021).

<sup>103</sup> See HUSTON SMITH, *THE RELIGIONS OF MAN* (1958).

watched the video of George Floyd's murder. I felt anger. I felt tremendous sadness. The protests continued in Philadelphia over the next week or so. Amid the pandemic, I saw that some things were transcendent. I had to do more to fight systemic inequality and racism. My clinic colleagues had to do more. We, like many others, issued a statement in support of Black Lives Matter. Even in writing the statement, I thought that words are cheap. How do we translate them into action? How do we hold ourselves accountable?

As already recounted, in the fall of 2020, things did not get better. Justice Ginsburg's death and the resulting actions of the Republican-controlled Senate and Presidency to fill her seat made me feel more hopeless. The increased polarization of the country and the complete abdication of our elected leaders to perform their sworn duties made me angry. I live in Pennsylvania, a purple state, though I live in a blue bubble. I volunteered during the election trying to make sure I did everything possible to remove Donald Trump from office. When Joe Biden defeated Donald Trump in the Presidential election it felt more like relief than deliverance. After 4 years, I felt like I could breathe. With the announcement of vaccines, I really thought 2021 would be exponentially better than 2020. Then January 6 happened. Instead of optimism, I felt sadness. The United States seemed in undeniable decline.

## 2. *Lynnise*

The enduring memory that I have from the start of the pandemic once it hit the east coast is of the quiet and eerie calm in my neighborhood that was increasingly disrupted by the constant wailing of ambulance sirens. At the time, my family and I lived on 135th Street in Harlem, an area where there was always something happening on the block 18 floors below our feet. If it wasn't bachata, merengue, salsa, reggae or trap music playing, there was some loud car alarm or the necessary "eh yo!" from one of our neighbors or just the general noise and energy from hundreds of people walking to the subway or bus and going about their daily lives. Our apartment windows looked out over the Hudson River and provided views of the massive George Washington Bridge, which connects New York to New Jersey. Our windows also looked out over New York's Westside Highway where often our view was of brake lights and traffic during rush hour. But as the city followed the governor and mayor's shutdown orders, Westside Highway sat empty except for ambulances rushing up and down the highway 24/7 on the way to and from New York-Presbyterian/Columbia University Medical Center's Emergency Department. Those sirens broke the silence that had surrounded Harlem in the early days of the

pandemic.

I taught my last in-person class on March 9, 2020. I had a guest speaker attend and I remember that she and I awkwardly remarked that it might be a good idea not to shake hands or to keep our distance. On March 10, my children's school informed the families associated with Columbia University that our children would not be allowed to access the school because of the news that a Columbia student might have been exposed to New York's "Patient Zero," a lawyer known as one of the early confirmed cases of COVID-19 in New York, and their school wanted to stem community spread of the virus. My children were overjoyed to start their spring break a week early. I was overwhelmed with the thought of managing their care and thinking about how to move my clinic to online teaching and learning within days. Columbia Law School soon announced that we would move to virtual instruction after the return from spring break. At the time, I naively thought it would only be a few weeks' time before things would return to normal.

New York City is notorious for tiny apartments. People use their apartments generally to sleep and bathe, and most other activity happens outside of one's apartments, including eating and working. Shutdown and shelter in place orders meant that New Yorkers were now taking to their apartments for extensive periods. Our building was built in the seventies to prevent white flight to the suburbs. Our apartment was roomy by New York standards, but still small by other measures. Avoiding people and sheltering in place meant we were together for every conversation, and every activity as a family. We created an initial plan based on our shared work schedule. The master bedroom was our conference room, our living room/kitchen was our gym and playground. The kid's rooms would serve as their classrooms. It worked well on paper. Our son seemed to adapt well to being online. Classroom discussions were punctuated with chat room breaks with friends and Minecraft. Yet, assignments and the teacher's instructions for getting those items became increasingly confusing. Work was done and then not done which led to tears as well as long evenings going over missed work. For our daughter, a grade lower, developmentally appropriate classroom breaks meant she would guest star in my Zoom work meeting or she would need to be found again to resume her class. My husband and I also had to manage our kids' different classroom schedules and our own work schedules. Breaks were usually punctuated by the need to make lunch before the kid's classes or identify snacks. My husband and I took turns being the lunch lady, the IT guy and the teacher's assistant all at once. There was some solace in the evening as the entire building erupted with cheers, noise-

makers and the banging of pots and pans in the nightly ritual celebration and expression of support and gratitude for essential workers at the time of the 7pm shift change at New York City hospitals.

Work intensified for me. What was strange was the need to overcommunicate. I was stuck in a constant cycle of emails, texts, Zoom meetings, and WhatsApp chats. As a clinical professor, we get to know our students well over the course of a semester. From that perspective, it felt important to talk to my students and get a sense of their well-being, whether they were safe and what their plans were to remain safe. I was constantly talking to my students and our clients across multiple communication platforms—fielding their questions, supporting them in their client work, and checking in on their well-being as well as confirming that they had all the tools necessary to complete their clinic work. In addition, I was asked to take on additional service responsibilities like the faculty bootcamp committee, which came together to support our faculty's online teaching efforts and methodology, and the anti-racism steering committee, which was initiated by the Dean to serve as a hub to coordinate and support the law school's myriad forms of engagement with anti-racist work on a variety of levels (curriculum, learning and training by faculty, hiring, community engagement, and reckoning with the law school's history, among other issues).

Outside of work, personally, the summer of 2020 felt so heavy. John Lewis died. George Floyd was murdered. My husband and I had to have hard conversations with our children. "Hard" or "challenging" doesn't even begin to describe what it is like to raise Black children in a racist country. As parents, we experience the racism all over again because we see it through our children's eyes. We want to shield them from all the past wounds but that's an impossible task, if not a fool's errand. I remember the painful moment when we talked about George Floyd's death at dinner. Our kids had heard about it during virtual school and they wanted to know more from us. They wanted to know why. We sat at the dinner table and willfully peeled away some of the innocence they deserved to keep a little while longer. My memory of that night is watching my Black son holding his head and squeezing his eyes shut and asking us to explain because he just didn't understand why George Floyd would be treated as he was simply because of his Black skin. We had to tell our beautiful 10-year-old that America does not respect or care for the Black body. We told them it was unlikely true justice would come because of the ebb and flow of most of the previous movements. We offered our arms, our own bodies to them to protect them as we watched videos of the protest marches across the country.

The election brought on new stress and anxiety for myself and for those around me, including my students. The news of Justice Ginsberg's passing and the news of how the Republicans planned to fill her seat, despite taking a different position during the 2016 election left me without much hope for change. In the fall of 2020, the act of voting did somehow feel cathartic, even though I felt sure that Donald Trump's reelection was imminent. I thought of our children growing up in a sustained Trump presidency and I grew despondent. I felt relief wash over me when it was announced that Joe Biden and Kamala Harris had won the election. A few weeks later, when the vaccines were announced, I started to feel optimistic about the future. I was ready to put 2020 in the rearview mirror and start fresh with 2021. Then the insurrection brought me back down to reality. The failed coup crystalized for me that there were clear enemies of the state who would eliminate any progress for marginalized people because of their race, religion, or country of origin. We watched the coup on replay because it took some time to process not only what was happening, but also to process how law enforcement dealt with the insurrectionists.

### *C. Pedagogy*

#### *1. Impact Of The COVID-19 Pandemic*

There is no doubt that our clinics required a fair amount of adjustment due to the COVID-19 pandemic. In both the Penn Law ELC and the Columbia Law ECDC, we migrated our seminar curriculum straight to Zoom with few modifications as the pandemic began. Candidly, the goal was to get through the semester. Client needs were still at the forefront of our focus, and we tried to double our efforts to make sure we were lending all possible assistance to them. At Penn, as the ELC began to receive more questions from clients about COVID-19 related issues, we created a set of FAQs that covered topics like shutdown orders, force majeure clauses, and business interruption insurance. We also explained financial relief programs including the Cares Act and PPP. In addition to our pre-existing clients, we took on new ones needing help navigating their commercial leases in the wake of shutdown orders. At Columbia, ECD Clinic students worked on several projects as COVID-19 spread. We worked with the Columbia-Harlem Small Business Development Center (SBDC) to provide generalized information to small business owners to assist them with managing the crisis and their clients' related business response. In partnership with the SBDC, students developed a legal toolkit for small businesses operating during the crisis. The online toolkit included resources to renegotiate existing contract terms with vendors,

investors, and lenders. Students in the ECD Clinic also created a page on our clinic website that served as a repository for legal and financial resources for small businesses related to COVID-19. The webpage included information about the CARES Act, along with an FAQ about the PPP and other available loans and grants from the city and state, access to private capital, employment law matters in a pandemic, and access to other benefits and support to small businesses. We also took on several new clients who needed legal support as they pivoted their business model as a result of the crisis.

The summer of 2020 allowed for much greater planning for a virtual world. We had time to revamp our seminars, experiment with virtual teaching tools, and master Zoom. There were numerous conferences and seminars conducted to train us in how to conduct Zoom meetings, perform online polls, and use breakout rooms. Though each successive semester has gone better than the last, online teaching can never capture what is essential in clinic and lawyering.

The fall 2020 semester was different from the earlier spring in many ways, but one significant difference was that we began without any in-person foundation with our students. It is impossible to make a real human connection over a computer. When every interaction is scheduled and planned, the spontaneity and informal communications where you see one's true personality are lost. When we work so closely with our students in clinic, that knowledge and connection are so important. In the classroom, you cannot read body language. You cannot tell if a student is really understanding the lesson you are trying to impart. You cannot read eyes on Zoom the same way you can in the classroom.

We hope that we never have to teach clinic fully virtually again in our lifetimes. Already, the presumption is for a return to campuses in fall 2021 with mandated vaccines. Some have predicted a new normal—that life will not return to the way it was before the pandemic. Some have said that the pandemic is not over as evidenced by the Delta variant and have predicted that the pandemic may get worse before it gets better. Already in Philadelphia, the city has gone from removing its mask mandate for inoculated people indoors to implementing it again because of the Delta surge. It is still unclear how the pandemic ends. Time will tell. But in clinic and the classroom, the pandemic spurred a few potentially lasting developments. First, we were able to access and include guest speakers from anywhere in the world. This unlocked a pool of potential thought leaders who were inaccessible before. Second, many of us experimented with the flipped classroom. Though not something newly developed during the pandemic, it became more commonly used. Asynchronous material viewed outside

class time allowed for a different and more engaging use of in-class time. Third, some of us represented clients that we would not have normally taken because of proximity concerns. Virtual connectivity showed that maybe that was a false constraint.

## 2. *Impact Of George Floyd And Black Lives Matter*

The pandemic was a life altering event for mankind. With at least 4.5 million people dead because of COVID-19, more than 636,000 in the U.S. alone, one cannot overstate the magnitude or severity of the disease. Certainly, we are not on the other side of it yet as the Delta variant surge evidences. But if all we dealt with in 2020 was COVID-19, would we be writing this essay? Would there be an entire issue of the *Clinical Law Review* devoted to it? The longer lasting pedagogical change from the summer of 2020 is the direct result of the George Floyd protests, not COVID-19. The protests rekindled a reckoning about the history of Black people in America. It spurred many institutions and leaders to reexamine long-standing social and structural racism as it exists in every facet of American society. Since much of that systemic racism and inequality is baked into our legal systems and statutes, it is no surprise that law schools would take a closer look at their curricula to see how they can alter their education of tomorrow's lawyers.

Five Black law deans curated the Antiracist Clearinghouse Project through the Association of American Law Schools (AALS) "to focus our teaching, scholarship, service, activism, programming, and initiatives on strategies to eradicate racism."<sup>104</sup> Last summer, the Clinical Legal Education Association (CLEA) and AALS co-hosted a virtual clinical conference in which two of the three plenary sessions were "Facing New Suns: Futuristic Lawyering for Black Liberation" and "Black Lives Matter and the Future of Clinical Legal Education."<sup>105</sup> The theme for the 2021 AALS Annual Meeting was "Freedom, Equality, and the Common Good."<sup>106</sup> CLEA's 2021 New Clinicians' Conference featured a plenary session on "Racial Justice in the Classroom and in Practice."<sup>107</sup> From an institutional perspective as

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<sup>104</sup> Danielle M. Conway, Danielle Holley-Walker, Kimberly Mutcherson, Angela Onwuachi-Willig and Carla D. Pratt, *Law Deans Antiracist Clearinghouse Project*, ASS'N OF AM. LAW SCH., <https://www.aals.org/antiracist-clearinghouse/> (last visited July 23, 2021).

<sup>105</sup> *2020 AALS/CLEA Virtual Clinical Conference Materials*, CLINICAL LEGAL EDUC. ASS'N, <https://www.cleaweb.org/2020aalsclea> (last visited July 23, 2021).

<sup>106</sup> Presidential Address from Vincent D. Rougeau, President, American Association of Law Schools to American Association of Law Schools House of Representatives, <https://www.aals.org/about/publications/newsletters/aals-news-winter-2021/2021-aals-presidential-address/> (last visited July 23, 2021).

<sup>107</sup> *2021 CLEA Virtual New Clinicians Conference Schedule*, CLINICAL LEGAL EDUC. ASS'N, <https://www.cleaweb.org/NCC2021> (last visited July 23, 2021).

well as a clinical one, it appears that we reached a tipping point with regard to wholesale integration engaging with the topic of race across the curriculum.

In transactional clinics, issues of race and inequality manifest differently than in litigation-based clinics. We note here that there is an entire body of scholarship regarding the missions and pedagogical objectives of transactional law clinics that practice in the field of community economic development where race and justice is front and center. In referencing “transactional clinic” in this essay, we are referencing transactional clinics that practice in the area of business law or entrepreneurship law. In the context of these transactional law clinics, the clinic director may or may not have an explicit social justice mission. These clinics are quite popular and as popularity has grown, transactional clinical pedagogy has emerged, but the pedagogy has not necessarily developed a clear methodology for engaging with issues around race and justice. Arguably, the reason for that is that there has not been a linear connection between the work accomplished in these clinics and the larger social contexts within which transactional clinics operate. Because of the events of this past summer’s racial reckoning as well as interest from our students and clients, we see the need to explicitly teach about systemic racism and inequality. Whereas it was not necessarily introduced before, we now have a commitment to explicitly teach about systemic racism and inequality in our clinics. In the same way that the pandemic required our clients to pivot their businesses, the racial reckoning has pushed us as teachers to examine the way that race affects the work that we do in our clinic and has likely spurred a change in the pedagogy for transactional clinics.<sup>108</sup> This, however, is not an easy addition to our existing curricula. It is a work in progress and has involved a fair amount of trial and error. That will likely continue as we hone our lesson plans, but we think that these changes to the transactional clinical pedagogy and curriculum are one of the imprints of the effect of the last 18 months.

#### *D. Clients*

Entrepreneurs are resourceful by nature. They see the potential in things and ideas—the proverbial glass is half-full. In business school parlance, the “pivot” has become an entrepreneurial skill. Nothing will make you pivot like a pandemic. Each of our clinics has numerous examples of resiliency. Our clients are from the communi-

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<sup>108</sup> At the 2021 AALS Annual Meeting, the Transactional Law and Skills Section’s theme for their program focused on exploring recent and potential transactional innovations for promoting inclusion, such as issues of bias in corporate governance to inclusion riders in the entertainment industry.

ties we describe. They have lived through unchartered times and challenges no one ever anticipated. In their actions, we find inspiration.

Grant Blvd is a socially conscious fashion business located in West Philadelphia. It is owned and operated by Kimberly McGlonn, a Black woman who grew up in a very segregated Milwaukee, Wisconsin. Kimberly describes Grant Blvd best:

Grant Blvd is a response to slavery, to leased labor, to Jim Crow, to persistent economic injustice and marginalization. We need to completely reimagine our response to poverty and the criminalization of it, and we also have to radically change how we create pathways to self-sufficient living for Black & brown people who've been incarcerated. Our work to use fashion to create employment opportunities and points of exposure to the skills we all need to find long term peace isn't about supporting the othered "them" that've been incarcerated (mind you, too often due to poverty and trauma and untreated emotional or mental health struggles). It's about us, all of us, and it's about designing radically inclusive pathways that pursue the long-term plan of progressing our collective good, and let's not ever forget, the good of our planet. Grant Blvd is about intersectional design. Grant Blvd is about the only way forward. . . . And forward is the motion.<sup>109</sup>

Before COVID-19, Grant Blvd made unique apparel from recycled fabrics and clothing. It had a studio where it designed and manufactured its goods and a retail location where it sold its merchandise. Both its production and sales were halted by the Pennsylvania Governor's shelter in place order related to the pandemic. Literally days later, Kimberly switched her production to fashionable face masks. This was before it was known that COVID-19 spread through airborne particles and long before any mask mandates. In addition to selling them to her customers, she also donated masks to local health care professionals. As her attorneys, students in the Penn Law ELC were focused on the potential liability associated with selling masks in the context of a global health crisis. Would Grant Blvd have liability if someone bought a mask thinking it would protect them from the coronavirus but contracted it anyway? Was there a risk that customers would think Grant Blvd's masks were the same as medical grade masks? Could hospital employees sue Grant Blvd if the masks were found to be deficient for use in health care settings? Eighteen months later, our concerns seem laughable. Kimberly acted as entrepreneurs do—seeing a need and filling it; seeing the upside when others are consumed by the downside. Grant Blvd applied for and received some

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<sup>109</sup> Kimberly McGlonn, CEO & Founder of Grant Blvd, *Our Story*, <https://www.grantblvd.com/pages/our-story> (last visited July 23, 2021).

local grants that aided it through the pandemic but did not receive a PPP loan.

At the Columbia Law ECDC, one client exemplifies how our clients pivoted their businesses during the pandemic. A former 911 dispatcher who started a dessert catering company in Harlem had been a client of the clinic since the fall of 2019. As she leaned into her passion for baking and started her business, she asked the clinic for guidance around regulations and required licensure to sell packed goods. Pre-pandemic, she mostly sold her baked goods at farmers markets and NYC street fairs. Like many of the ECDC clients, the COVID-19 pandemic forced her to adapt to the current situation. She quickly pivoted to sell her baked goods online. She developed her company into an online direct-to-consumer business model. Her biggest challenge has been to keep up with the growth of her business and to find enough space to produce her products. Shipping has also been a major concern for her as the shipping carriers have been overwhelmed with the increase in packages across the country. In general, while the pandemic shuttered many small businesses, because of her pivot she was able to continue her business and even thrive during the pandemic.

#### CONCLUSION

The 18 months beginning with March 2020 through August 2021 will undoubtedly go down as one of the most tumultuous times in U.S. and world history for including a deadly pandemic, protests against systemic racism and inequality, an economic recession unlike any other in history, an unparalleled government response to it, a Presidential election that turned out more voters than any time in our country's history, an open insurrection on our lawmakers and democracy, and the fastest development of a vaccine (not to mention three) in history. These are all certainly generational events, but to what extent are they transformational?

As of this writing, 61% of Americans have received at least one dose of a vaccine for COVID-19. Yet only 39% of the world population has.<sup>110</sup> We are still in the midst of the pandemic. Commentators have oft analogized COVID-19 to the Spanish Flu pandemic that lasted three years and killed an estimated 20 to 50 million people worldwide including 675,000 Americans. The loss of life of over 636,000 Americans due to COVID-19 is staggering and has forever changed the lives of everyone who lost a loved one. We know that Black and brown families experienced a disproportionate amount of

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<sup>110</sup> *Bloomberg COVID-19 Tracker*, <https://www.bloomberg.com/graphics/covid-vaccine-tracker-global-distribution/> (last visited Aug. 30, 2021).

Fall 2021]

*Nowhere to Run to, Nowhere to Hide*

241

that loss. The long-term effects for millions of survivors are still an unknown. The impact of more than a year of social distancing, wearing masks, and varying bouts of virtual learning for our children is still unknown.

What we do know is that George Floyd's murder broke the dam of unspoken and incessant injustices perpetrated on Black and brown people for centuries. It is now incumbent on all of us as educators of the next generation to not only analyze and understand the systemic wrongs baked into our society but to begin to dismantle them. We learned that our democracy works, though maybe just barely. In that lesson we also understand how dangerously fragile it is. That drives us to do more to protect the rule of law and champion facts over fiction, action over rhetoric.

The work is just beginning and will continue for years. What does a recovery from a COVID-19 pandemic look like? How do minority small business owners recover and what do they need to meet the challenges posed by COVID-19, the recession, and the effects of the protests? What does a racially explicit transactional clinic look like? What do we take from it all? What does it all mean for the future? There is still so much uncertainty as we look ahead to the future. What we do know is that law school clinics rooted in their communities will continue to adapt and navigate various challenges in order to meet the needs of their clients. History tells us that our clients are resilient. The clients in the communities that we serve will continue to start and grow their businesses, navigating the landscape's complexities and pushing forward, despite the obstacles. We know that as educators we need to push ourselves to see and teach the full picture of the systemic impediments to starting a business and unpack the barriers and obstacles to success. We know that our students are ready to meet the challenges that lie ahead in a post-pandemic future.

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