

NEW YORK STATE BAR ASSOCIATION

State Bar News

Is this land your land?: CAPS debates eminent domain

By Peter Gerardo

In the immediate wake of the Supreme Court's decision in *Kelo v. City of New London*, many state legislatures, as well as the U.S. Congress, reacted by passing bills that narrowly defined eminent domain's scope to the creation of public works and utilities – not to further economic development of distressed areas. Today – for good or ill – the political pendulum is swinging the other way, said panelists speaking before the Committee on Attorneys in Public Service.

'Swift' legislative action

"I was asked by a reporter the day after the *Kelo* decision what I thought of it," said Prof. John Nolon, Pace University School of Law. I said, 'There is no news here. Nothing important has happened jurisprudentially.' Perhaps I was [technically] right about that, but I couldn't have been more wrong. The reaction of

state legislatures was swift and severe. Over 30 of them reformed their laws."

Not long after the decision, "I went to Nashville to speak to the national conference of state legislators ... and I was to debate Mike Richardson, who was the majority leader of the Georgia legislature. Georgia had just passed one of these statutes that said eminent domain [can] only be used for public works, public projects, or public utilities. I met him a half hour before the debate and asked, 'What do you think of your statute?'

"He said, 'It stinks.'

"Then, why did you pass it?'

"Well, there was a train coming down the track and we had a choice – we either got run over or we got out of the way.'"

Kelo becomes 'rallying cry'

Said Charlene M. Indelicato, Attorney for Westchester County: "People have used *Kelo* as a rallying cry for this libertarian idea that my



Celebrating Diversity reception – Hosted by the Committee on Minorities in the Profession, is always a popular and well-attended event. (Photo: Brittani Nass)

property is my property and nobody should have it, which is much the idea of my mother. I was a new attorney in the City of New Rochelle. I went to her house, where she'd just built a deck. I said, 'That's a very nice deck. How did you get the permits?'

"I don't need any permits! This is my land – my land! I paid for it, I do it.'"

How to define 'blight'

One of the most contentious issues was how to define "blight" before condemning property for urban renewal. When one audience member asked

Michael Rikon (Goldstein, Goldstein, Rikon & Gottlieb), for his definition, Rikon said, "What would you like it to mean? Blight is in the eye of the beholder."

Other panelists included: Lisa Bova-Hiatt, New York City Department of Law; Henry DeCotis, New York State Department of Law; and Jon N. Santemma, Jaspan, Schlesinger and Hoffman, LLP.

The panel discussion was co-sponsored by the Task Force on Eminent Domain and the Real Property Law Section, Committee on Condemnation, Certiorari and Real Estate Taxation. ♦