

2006

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Recommended Citation

29 W. New Eng. L. Rev. 1 (2006)

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Volume 29
Issue 1
2006

**WESTERN NEW ENGLAND
LAW REVIEW**

**SYMPOSIUM:
ISSUES IN COMMUNITY
ECONOMIC DEVELOPMENT**

**FOREWORD: LAW, BUSINESS, AND
ECONOMIC DEVELOPMENT—CURRENT
ISSUES AND AGE-OLD BATTLES**

ERIC J. GOUVIN*

On March 24, 2006, the Western New England College School of Law and School of Business¹ jointly hosted the First Annual Academic Conference sponsored by the Western New England College Law and Business Center for Advancing Entrepreneurship. The Conference capped a year of exciting developments at the Law and Business Center, which is the College's contribution to the entrepreneurship infrastructure in the greater Springfield, Massachusetts, area.

Economists have understood for some time that small businesses are an important engine of economic development and vital-

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1. Western New England College School of Law is the only Massachusetts law school located outside the Greater Boston area that is fully accredited by the American Bar Association and the Association of American Law Schools. The School of Business at Western New England College is one of three business schools outside the Boston area to be accredited by the Association of Advancing Collegiate Schools of Business.

ity. Across the United States, 25 million small businesses employ more than half the country's workers, create approximately 75 percent of the nation's new jobs, and provide more than half of the private sector's economic output.² An important subset of the small business universe are businesses known as "microenterprises," that is, those employing fewer than five employees and requiring less than \$35,000 in start-up funds. These small firms play an important role in economic development, especially in low- to moderate-income communities. Program results and research provide solid evidence that the benefits of a microenterprise program as part of a "welfare to work" strategy outweigh the risks and costs of such programs.³ There are approximately two million microentrepreneurs in this country and many are in western Massachusetts.

The Springfield area has recognized the importance of small businesses to the economic health of the region. Local leaders from both the public and private sectors have devoted resources to encouraging entrepreneurship in the Pioneer Valley. The efforts have been paying off. Springfield is recognized as a good place to grow a business. In 2005, the Small Business Administration ranked Springfield 76 out of 394 communities nationwide on the basis of entrepreneurial activity.⁴ In another survey, Springfield was ranked first of 394 regions in the U.S. for average annual change in new firm creation.⁵

In 2003, the Pioneer Valley Planning Commission reported that small businesses had the highest growth rate among all business categories between 1986 and 2001. Interestingly, the smallest firms (one to four employees) increased even more dramatically while during the same period very large businesses (500-999 employees) decreased by 29.6 percent. The report drove home the significance of small business in the Pioneer Valley by concluding "that more and more employees in the region work for small businesses and a

2. Small Business Admin., Office of Advocacy, Frequently Asked Questions, <http://www.sba.gov/advo/stats/sbfaq.pdf> (last visited Nov. 11, 2006).

3. Salome Raheim & Jason J. Friedman, *Microenterprise Development in the Heartland: Self-Employment as a Self-Sufficiency Strategy for TANF Recipients in Iowa 1993-1998*, 1 J. MICROFINANCE 66, 68 (1999) (citing ROBERT E. FRIEDMAN, BRIAN GROSSMAN & PUCHKA SAHAY, *BUILDING ASSETS: SELF-EMPLOYMENT FOR WELFARE RECIPIENTS* (1995)).

4. Marcia Blomberg, *An Entrepreneurial Culture*, SUNDAY REPUBLICAN (Springfield, Mass.), July 10, 2005, at D01.

5. ADVANCED RESEARCH TECHNOLOGIES, *THE INNOVATIONS-ENTREPRENEURSHIP NEXUS: A NATIONAL ASSESSMENT OF ENTREPRENEURSHIP AND REGIONAL ECONOMIC GROWTH AND DEVELOPMENT* 3, 60 (2005).

greater share of the region's economic productivity is generated by these small businesses."⁶

Even though entrepreneurs in the Pioneer Valley are forming small businesses at a healthy rate, those businesses face an array of challenges. These challenges include issues that require specific legal and business expertise. While some entrepreneurs may have the skills or the resources to address these challenges themselves, many others, especially those new to the business world, do not have the knowledge to solve their problems themselves or the financing to retain professional expertise. To serve this need for accessible and affordable business and legal advice, Western New England College established the Law and Business Center for Advancing Entrepreneurship.

The Law and Business Center serves as a special resource for the region to help foster entrepreneurial efforts. The Center focuses on two primary objectives: (1) providing technical legal and business assistance for entrepreneurs (not including litigation); and (2) sponsoring informational and educational events focused on entrepreneurship and economic development. The combination of legal and business expertise makes the Center unique, giving it the ability to provide services unlike other business assistance organizations in the region.

The technical assistance aspect of the Center is best illustrated by the work of the Small Business Clinic. I organized the clinic in 2002 and offered it as a class for the first time in the spring of 2003. The idea was to help the businesses in the incubators at Springfield Technical Community College's Enterprise Center with legal issues that they might be encountering. After offering the class for the first time, however, it became clear that the clients had business problems that were at least as important as the legal problems they faced. For the spring 2004 semester, I collaborated with two professors from the School of Business—Dr. Harlan Spotts, Associate Professor of Marketing and Assistant Dean for Graduate Programs; and Dr. James McKeon, Professional Educator, formerly a senior vice president for corporate strategy and development at Massachusetts Mutual Life Insurance Company—and we co-listed the Small Business Clinic in the Law School and the Business School. In that semester and ever since, we have put together teams of J.D. students and M.B.A. students to help address the needs of our clients.

6. Pioneer Valley Planning Comm'n, *2003 Major Employers Inventory for the Pioneer Valley Region* (2003) (on file with *Western New England Law Review*).

Joseph Willis, the owner of the “Quick Fix Bar” provides an example of the type of work we perform for our clients. Joseph attended Chicopee Comprehensive High School and participated in the Young Entrepreneurial Scholars entrepreneurship class. He created the Quick Fix treat bar while in high school. He is now a tenant in the STCC Enterprise Center’s Student Business Incubator working to make his company a success. Law students in the Small Business Clinic worked with Joseph to provide legal advice about FDA food labeling requirements, local health requirements, and insurance issues. Business students provided advice for a strategic business plan, including marketing and cost control. Without the Small Business Clinic, Joseph would not have obtained these services. He did not have the resources necessary to obtain professional assistance. Although the Clinic cannot work with Joseph indefinitely, the goal is for him, and all of our clients, to become established enough to be the next generation of paying clients for the lawyers and business consultants in the greater Springfield area.

As well as being a resource for small businesses in the community, the Center is an outstanding learning resource for Western New England College students, both at the graduate and undergraduate levels. A vital component of the College’s mission is to help students develop into “proactive solution seekers in the rapidly changing global environment in which they work and live.”⁷ The hallmark of a Western New England College education is integrated professional and liberal learning through which students are given opportunities to apply theory to real-world issues, including through learning experiences outside of the classroom. The Law and Business Center for Advancing Entrepreneurship offers students an outstanding opportunity to apply, expand, and refine their knowledge and skills in business development.

In 2005, the Center received significant grants from a private charitable foundation, and from MassMutual Financial Group, the Lloyd G. Balfour Foundation, United Bank, and the Springfield Chamber of Commerce. With that funding the Center was able to hire a new professor who will be dedicated to running the clinic and expanding its services. The Center also hired a Director and an assistant to further develop its community outreach and educational offerings. The Center produces events at Western New England College focused on entrepreneurship and its links to economic de-

7. Western New England College, Mission Statement, <http://www1.wnec.edu/aboutus/index.cfm?selection=doc.584> (last visited Nov. 11, 2005).

velopment. The Center offers a series of informational workshops on topics of interest to entrepreneurs designed to help answer common questions. The Center also sponsors a speaker series where nationally recognized guest speakers with expertise in entrepreneurship and small businesses or economic development provide talks on issues of interest not only for students and faculty, but also for the community at large.

Finally, the Center also sponsors an annual academic conference. This symposium issue documents the proceedings at the first of these conferences. The conference is designed to feature legal and business scholars, policy makers, and businesspeople in a cross-disciplinary setting where they will talk to each other from their various perspectives about current issues in community economic development. The format includes panel discussions and a keynote speaker. One of the main goals of the conference is to get people who might not ordinarily cross paths to talk to each other.

The conference sought to bring together scholars, policy makers, practitioners, and people from the community to discuss some of the leading issues of the day. In keeping with the mission of the Law and Business Center, the conference sought to have the views of both legal thinkers and business thinkers presented on each of the issues. On March 24, 2006, approximately fifty people concerned about issues facing community economic development came to the Western New England College School of Law campus to discuss critical issues that affect us in these post-industrial times. This first conference on community economic development made a good start and laid the groundwork for future conferences.

Although issues of racial justice and diversity did not have separate panels dedicated to discussion of those topics, it is hard to have a conversation about the topics that were on the agenda without thinking in terms of race. As the discussion of the Community Reinvestment Act noted, at some point we all have to recognize that although we are talking in neutral terms about banks' obligations to reinvest in their communities, we really are talking about reinvesting in African-American neighborhoods. Similarly, when a panel addresses barriers to capital, one must entertain the notion that at least some of the problem is racially-linked. Through the diverse conference panels, we brought different perspectives to bear on the various issues. Using the "roundtable" format,⁸ we

8. In the roundtable format the moderator takes the first few minutes to introduce the topic and to briefly introduce each panelist. Each panelist has ten minutes or

were able to give voice to those perspectives and engage in a robust exchange of ideas.

The Conference panels focused on the following topics: (1) the Future of the Community Reinvestment Act; (2) Eminent Domain and Public Use Takings after *Kelo v. New London*; (3) The Impact of Professional Sports on the Local Economy; and (4) Barriers to Access to Financial Services for Disenfranchised Groups. While all of these topics are currently in the news, they all are also perennial issues that have been debated for a long time. So while the conference focused on “current issues” it just as well could have been focused on “age-old battles.” This issue of the *Western New England Law Review* collects the papers that were delivered that day. We’ve tried to present a range of viewpoints and we hope you, the reader, will find this collection provocative and useful.

I moderated the first panel, which examined “The Future of the Community Reinvestment Act.” My role as moderator arose at the last minute when the originally scheduled moderator, Professor Michael Malloy,⁹ graciously agreed to sit in on the panel in place of Professor Michael Barr,¹⁰ who could not travel due to an injury. The other panelists included Professor Cassandra Jones Havard,¹¹ Professor Keith Hylton,¹² and Mr. Andrew Olszowy.¹³ The idea behind the Community Reinvestment Act is laudable—to enhance lending in all the areas within a depository institution’s market—the strategies to achieve that goal are what bring out the differences in opinion. Although people have differing views of the law, everyone agrees this is one of the most politically charged banking laws

so to develop the points he or she wants to make for the session. For most of the presenters, the other panelists will have already seen each other’s papers, so they will be able to chime in with questions and comments while the presenter is making his or her points. The moderator can act as the traffic cop or as a catalyst, posing questions, generating arguments, involving the audience, and putting each panelist’s contributions into perspective relative to the session topic. If each speaker presents for 10-12 minutes and the sessions are scheduled for 75 minutes, the moderator should leave about 30-35 minutes for discussion among the presenters, questions and answers from the audience, and additional comments from the moderator. In the final two or three minutes, the moderator should summarize the discussion, identify the key points of agreement and contention, and end the session on time.

9. Distinguished Professor and Scholar, University of the Pacific, McGeorge School of Law.

10. Assistant Professor of Law, University of Michigan Law School.

11. Associate Professor of Law, University of Baltimore School of Law.

12. Paul J. Liacos Scholar in Law and Professor of Law, Boston University School of Law.

13. Managing Examiner for the Supervision and Regulation of Consumer Affairs Laws and Regulations, Federal Reserve Bank of Boston.

on the books. This was an especially good time to discuss the CRA because the federal banking regulators had within the past year revised their regulations for assessing CRA compliance by depository institutions.¹⁴

The discussion began with Mr. Olszowy explaining the position of the Federal Reserve Board on the matter. Community Reinvestment Act compliance is a high priority with the regulators, but so is maintaining profitable banks that are not saddled with unreasonable compliance costs. In his opinion, the changes brought about by the new regulations go a long way toward righting the balance, especially with regard to small banks. The position is somewhat at odds with a position taken by Professor Michael Barr in connection with a piece originally written for the Brookings Institution and reprinted here, which holds that the CRA has been effective in funneling reinvestment dollars back into communities and should be maintained, not cut back.

Professor Malloy's position is that the CRA needs updating, not so much in the specifics of the different types of regulatory tests that depository institutions must pass, but rather in the way in which we define the relevant market that a depository institution must serve. As the financial-services industry becomes increasingly consolidated and national in reach, Professor Malloy believes the CRA ought to adapt to track those changes. Professor Havard turned attention to one of the age-old issues that has tracked the CRA since its inception—how to take account of community voices in assessing financial institution compliance or in shaping the strategic plans of those institutions. Professor Havard offers some suggestions for how institutions might more effectively incorporate the voices of the community into their CRA Strategic Plans. Finally, Professor Hylton, who has sometimes been erroneously referred to as a “critic” of the CRA, offered a critique to make the CRA more effective. His analysis comes at the problem from a law-and-economics perspective and focuses on costs and incentives.

The second morning session, “Eminent Domain and Public Use Takings after *Kelo v. New London*,” focused on the controversial Supreme Court decision of *Kelo v. City of New London*.¹⁵ If any topic at the Conference was a “current issue” that was also an “age-old battle,” the *Kelo* decision was it. Growing out of the City

14. Community Reinvestment Act Regulations, 70 Fed. Reg. 44,256 (Aug. 2, 2005) (to be codified at 12 C.F.R. pt. 25, 12 C.F.R. pt. 228, and 12 C.F.R. pt. 345).

15. *Kelo v. City of New London*, 125 S. Ct. 2655 (2005).

of New London's efforts to revitalize its economic base by clearing a mixed-use neighborhood that had included a sewage treatment plant, some industrial uses, an uncontrolled hazardous-waste site, and Susette Kelo's home (among others) in order to permit a private developer to construct a facility that would have lured a large employer (Pfizer), this decision became a cause célèbre on talk radio across the United States. For the most part, the public debate missed the point that local governments have been taking property for centuries for public purposes. The *Kelo* case came to stand for the idea that "a man's home is no longer his castle."

The panel sought to bring the discussion to a higher level. It was moderated by Professor Jamison Colburn.¹⁶ The panel itself was supposed to include Professor Jonathan Macey,¹⁷ but an illness at the last minute prevented Professor Macey from attending the conference. The members of the panel who were able to make it included: Attorney Harry Carroll,¹⁸ Attorney Patricia H. Lee,¹⁹ and the Honorable Eddie A. Perez.²⁰ The panel was perhaps the most contentious of the day. Mr. Carroll provided a case study and a cost-benefit analysis of the actual facts on the ground in *Kelo*, deciding on balance that the benefit to the citizens of New London outweighed the less-than-desirable outcome for Ms. Kelo. Mayor Perez echoed the sentiment that responsible use of the eminent domain power can facilitate economic and community growth, especially in older cities, like Hartford, that are already "built out." Attorney Lee, who has worked for many years on the takings issue on the side of landowners, spoke passionately in favor of a narrower scope for the "public use" requirement of the eminent domain power.

In between the morning and afternoon sessions, Mr. Richard Walker,²¹ of the Federal Reserve Bank of Boston, gave a stimulating keynote address over lunch that looked at various successes in community economic development and made some general obser-

16. Associate Professor of Law, Western New England College School of Law.

17. Sam Harris Professor of Corporate Law, Corporate Finance, and Securities Law, Yale Law School.

18. Attorney at Law, former Legal Counsel to the City of Springfield, Massachusetts.

19. President and General Counsel, National Institute for Urban Entrepreneurship.

20. Mayor, City of Hartford, Connecticut.

21. Vice President and Community Affairs Officer, Federal Reserve Bank of Boston.

vations about the economy in the Pioneer Valley. That speech is also presented here.

In the afternoon, Professor Sharienne Walker²² moderated a panel on “The Impact of Professional Sports on the Local Economy.” The panelists included Russell F. Denver, Esq.,²³ Professor Michael Enz,²⁴ and Mr. Christos Nikolis.²⁵ The discussion was held in a question-and-answer format, with Professor Walker directing the discussion across a wide range of issues relating to professional sports and local economies. The impact on the City of Springfield from its American Hockey League team, the Springfield Falcons, provided many of the specific examples discussed.

The last panel of the day, “Barriers to Access to Financial Services for Disenfranchised Groups,” was originally to be moderated by Professor Patricia McCoy,²⁶ but at the last minute she agreed to sit on the panel as a participant when a scheduled panelist, Professor Kathleen Engel,²⁷ could not attend the conference due to illness. Luckily, Professor McCoy and Professor Engel have co-authored several important articles addressing the question of predatory lending. Dean Sam Stonefield²⁸ agreed to moderate the panel in Professor McCoy’s place.

The discussion ranged over quite a bit of territory. Professor McCoy talked about the problem of predatory lending and its impact on the ability of low-income people to build wealth through ownership of appreciating assets such as real estate. Ms. Margaret Henningsen²⁹ described innovative efforts her bank is using to give bank customers a “second chance” for access to the financial-services infrastructure. Her presentation was almost a call to arms to community leaders to bring changes to local financial institutions to be fairer to low- to moderate-income (LMI) customers. Mr. Chris Sykes³⁰ made a presentation demonstrating how important small

22. Associate Professor of Management, Western New England College School of Business.

23. President, Affiliated Chambers of Commerce of Greater Springfield, Inc.

24. Assistant Professor of Economics, Western New England College, School of Arts and Sciences.

25. Vice President, Sales and Marketing, American Hockey League.

26. Professor of Law, University of Connecticut School of Law.

27. Associate Professor of Law, Cleveland-Marshall College of Law, Cleveland State University.

28. Associate Dean for External Affairs and Professor of Law, Western New England College School of Law.

29. Co-founder, Legacy Bank, Milwaukee, Wisconsin.

30. Executive Director, Western Massachusetts Enterprise Fund, Inc.

businesses and microenterprises are to the economy and noting how the capital necessary to make those small businesses work is money well spent. Finally, Professor Leonard Baynes³¹ reminded the panel that “capital” means more than just money, and also encompasses access to the telecommunications infrastructure. In his paper, he notes the pernicious effects that our current uneven access to broadband Internet services has on communities with substantial low- to moderate-income citizens. By not having access to broadband, many minority-owned businesses lose sales opportunities and LMI consumers lose the chance to shop for the best prices online.

By the end of the day, it was clear we had a successful conference where ideas were exchanged, professional acquaintances were made, and issues were brought into sharp focus.

The Conference would not have been possible without the generous support of the funders mentioned earlier—a private foundation that desires to remain anonymous, MassMutual Financial Group, the Lloyd G. Balfour Foundation, United Bank, and the Springfield Chamber of Commerce—all of which have helped to fund the vision for the Law and Business Center for Advancing Entrepreneurship. In addition, the President and Provost of Western New England College, Dr. Anthony Caprio, and Dr. Jerry Hirsch, have been supportive of the efforts to realize the vision of the Law and Business Center, as have the Deans of the Schools of Law and Business, Arthur Gaudio, and Stanley Kowalski, respectively. The logistics of the event were expertly handled by Aimee Griffin Munnings, the Director of the Law and Business Center, and her assistant, Maegan Brooks. The planning committee, which identified the topic for the panels and choice of panelists, included: Aimee Griffin Munnings, Dr. Harlan Spotts, Dr. James McKeon, and myself.

Special thanks also to the staff of the Western New England Law Review, who have worked tirelessly to make this issue a reality. Finally, extra thanks to Dean Arthur Gaudio for providing the institutional support that permitted the Law Review to publish a project of this length and to ensure its wide distribution. I hope you find these articles as interesting and thought-provoking as I did.

31. Professor of Law and Director of the Ronald H. Brown Center for Civil Rights and Economic Development, St. John's University School of Law.