

LITTLE PINK HOUSE

A True Story of Defiance and Courage



Jeff Benedict & Scott Bullock

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Introduction

Before there were Tea Parties, there was Kelo. Susette Kelo's name turned into a movement. Her loss of her property was the final straw for Americans in 2005. When they heard about the Kelo decision, homeowners and small businesses across this country *refused* to accept the idea that a well-connected developer could turn city hall into a real estate broker and force a hardworking, honest, middle-aged nurse to leave her home for the economic benefits accruing to a large pharmaceutical company and the political benefits accruing to a soon-to-be jailed governor.

Just as Howard Beale, in the movie *Network*, impassionedly galvanized the nation with his rant, "I'm mad as hell, and I'm not going to take it anymore," the Kelo decision united more than eighty-five percent of Americans against the Supreme Court's holding. Homeowners and organizations from the National Federation of Independent Businesses to the NAACP united to say "no more" to city planners and corporate developers who had taken over 10,000 homes nationwide based on thin economic projections and promises of more jobs and higher tax revenues; projections which often were packaged in slick consulting studies, all seeming to come out of the same word processor.

More often than not, those studies were filled with the same modern *planning-speak* about the importance of "redevelopment and revitalization" in a "public transport centric manner" to create a "gateway community" with "upscale amenities" and "large anchors" designed under "smart growth tools" to ensure "sustainability" and conducted under the auspices of a "public-private partnership."

Well, Susette Kelo personified the opposition to all of that gobbledygook and Americans knew that those words just meant two things for them: that corporate welfare now extended to land grabs, and like Susette Kelo, they, too, could lose their homes. Susette's story has transformed the esoteric and mostly forgotten legal concept of eminent domain to a main street battle cry against over-reaching government. Her story reverberates today.

No one has told Susette Kelo's story better than our first speaker, Jeff Benedict in *Little Pink House*. A native of Connecticut, Jeff is an award winning journalist and a best selling author of nine books. His books have been the basis for features on *60 Minutes*, *20/20*, *Dateline*, HBO's *Real Sports*, and the Discovery channel. He's been a contributing writer to *Sports Illustrated*, the *Hartford Current*, and the *Los Angeles Times*. He's a professor at Southern Virginia University, where he teaches advanced writing. He holds a law degree, a master's degree



in political science, and an undergraduate degree in history.

Our second speaker is my Institute for Justice colleague Scott Bullock. Scott was the first person hired at IJ in 1991 by its founders. Today, he is a senior attorney at the firm. Scott received his law degree from the University of Pittsburgh, and he holds a B.A. in economics and philosophy from Grove City College. In addition to arguing the Kelo case before the United States Supreme Court, he has been involved in a number of cases challenging the use of eminent domain for private development, including litigation that saved a beachfront neighborhood in Long Branch, New Jersey, a small record label in Nashville, Tennessee, and the home of a family in Canton, Mississippi.

This is not Scott's first trip to Minnesota. He worked with me to defend the City of Minneapolis' deregulation of the taxi industry. That deregulation has created over 150 new jobs and increased taxi services to previously underserved parts of our fair city.

Please join me in welcoming Jeff Benedict and then Scott Bullock.

Lee McGrath
Executive Director
Institute for Justice
Minnesota Chapter
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Jeff Benedict: I'm grateful to the three organizations that brought Scott and me here. Scott and I have been to a lot of places together, and it's been a real pleasure getting to know him even more than I did while writing *Little Pink House*. He's a great guy, and he works for a great institution that's doing really good things.

I don't usually say much about my law practice years because I don't really consider myself an attorney. In my first year of law school, I made the decision to go into publishing as opposed to practicing law and didn't even take the bar exam after law school.

I made the foolish mistake of taking the bar exam six or seven years later without a bar review course while writing a book and trying to raise four kids. So it was a little crazy. I did practice for just a little while, but book writing has been my job and my passion for the last 13 or 14 years. Typically, I'm on the hunt for stories that can sustain a narrative of 300 to 400 pages.

This case had it. That was clear the first time I met Susette Kelo. I was born in New London, Connecticut, so I know this town really well. The hospital I was born in is five minutes from the neighborhood where this all happened. I lived in the next town in the midst of all this stuff.

One day, I drove to Susette's house to approach her, just a few months after the case had been decided by the Supreme Court. You know the end of the story, and I knew the end of the story before I got there. I was really interested in the beginning of the story, fascinated by the question that I always get asked, "How in the world could the Supreme Court decide this case this way?" I think it's because—not to be glib—the Supreme Court doesn't have the luxury of knowing the back story to these cases. They know what's in the documents presented to them, and, by then, the real story is a long ways from there.

I went looking for that story, and here's what I found: Susette Kelo, I was told by her adversaries when I started this project, was motivated by one of two factors. Number one, she was a greedy woman who knew that if she held out longer than everybody else, she'd get more money for her property; and, number two, she was a woman who was motivated by the glare of the spotlight, something that she'd never had, and when she got her 15 minutes of fame, she found it attractive, so she stayed in it as long as she could. They're plausible arguments, I guess, if you don't know any better.

So I went to meet Susette. When I knocked on her door, I had this pitch that I prepared—if I couldn't get Susette Kelo, I couldn't write the Kelo story, so I was pretty rehearsed when I knocked on the door of her pink house. I've knocked on a lot of doors

from Kobe Bryant's to governors' in trouble with the law, so I'm used to approaching strangers who don't want to be interviewed. I didn't know what Susette's reaction would be.

She opened the door, and I said, "Hi. My name is Jeff Benedict. I'm a writer."

I was about to tell her what I wanted to do, and she interrupted me quite rudely and said, "I know who you are!"

"Okay," I said. "That could be trouble, or it could be good, depending on what you think of things I've written."

She said, "What took you so long?"

I thought, "I'm in!"

She opened the door and invited me in. It was probably the easiest in I've ever had. Three hours later, I was still in. I listened to a lot of things from her. I didn't record our interview that day. I usually record everything. I didn't that day, because this was more an informational session for me to find out if Susette had what it took to do a book. There was a lot riding on this.

I concluded at the end of the three hours that she had the things I needed. She had a pretty good memory. She was truthful. She was fairly open. She was unpretentious. When I asked her if she was a keeper, she said yes. She had eight boxes of documents and letters, and those are important things for a guy like me. I asked her if she kept a diary. Would she let me read it? She wasn't a big diary keeper, but she had some journal entries, and she agreed to let me see them.

So I said to her at the end, "You let me in your house pretty easily here today. The question is, will you let me in your life for the next couple of years? In order for me to do what I do, I'm going to get in there pretty deep, and we'll need to get into some things that you probably never have gotten into with anybody before, maybe not even with your

lawyers. I want to know all of it. The stories you've probably never wanted anybody to know about you, I want to know all those things. I may not need to write all those things, but I need to know all those things. No surprises."

She agreed and off we went.

Very early on, I interviewed the real estate agent who sold her the house, because I was trying to get at this answer: What was her motivation?

The realtor was an interesting guy. The first time I interviewed him, he was kind of embarrassed, and he said, "Well, actually, I'd never sold a house before. I had just changed careers and just got my license to sell real estate, and this was my first sale. Because I was the low guy on the totem pole, I'm in the office on a weekend in the summer when the phone rings and this woman says, 'This is Susette Kelo. I'd like to look at the house on 8 East Street in New London.' I didn't even know where that was. I grabbed the listing. I looked at the sheet while I had her on hold. I could see this house was a wreck. It'd been on the market a long time. Its value had been dropping. I got back on the phone. 'When would you like to see it?' She said, 'How about today?' I said, 'Let me give me you directions.' She said, 'I'm here right now standing out front.' I said, 'Wow.'"

So the realtor jumped in the car and drove over there. He made an observation that caught my attention right away. He said the tops of Susette's feet were bleeding.

I immediately stopped him and said, "What are you talking about?"

He said, "Well, it was summertime. It was hot. She had on shorts, so her legs and feet were exposed. She had sandals on, no socks. The house was obscured by a lot of briars and stuff. It hadn't been accessed in a long time. She'd brought over some hand clippers and started cutting a pathway to the door before I got there, and she cut the tops of her feet. I pointed that out to her, and it didn't even faze her. She didn't even bother wiping it off.



We got the padlock off the door, and we got inside. I went down into the basement, and I found a dirt floor with a boulder that took up half the basement. This is a disaster. I've got to talk her out of buying this house. I came back upstairs, and she's still in the living room. She hasn't left it. That's the first room you enter. She never left the room. She opened these curtains that looked like they hadn't been opened in years. It let in a lot of sunlight. You could see the Thames River where it hits the Long Island Sound. It was a pretty spectacular view. I was focused on everything that was wrong with this house. She was focused on one thing: the view. She made an offer on the house that day."

Question: Was this a woman who was motivated by greed, or was this a woman who was hungry for something she'd never had? I concluded this was a woman who was hungry, and I wanted to find out why was she so hungry. Why was she hungry enough to fight for eight years to hold onto this house?

What I found out was that when she was born, her father left her before she got his name. So she started her path in life being raised by a single mother, who was a waitress in a diner, who had a bunch of kids and no money, and who lived in rural Maine. The kids ran around with socks on their hands for mittens and ate inadequately and were not getting educated properly. That's how Susette's life started. Then, at 16, life really started, because she got pregnant. She decided to keep the baby. She had the baby. By 25, she had five babies. She was married to a guy who was not really a performing husband. She was basically raising five boys and taking care of a guy. They got a divorce. Thus, she was a single mom with five kids. She didn't get to go to college. She didn't get a career. She was denied a lot of experiences that other adults have. By the time she was in her early 40s, she was remarried. The kids had kind of grown up, and the last kid graduated from high school.

At 42, she looked around and said, "This marriage doesn't have any sizzle. I need to start over. I want to do something different."

She was a medic, and she drove an ambulance truck. One day she was driving through New London, and she saw this house with a "for sale" sign dangling next to it. It was the kind of house that nobody wants. If you're a single mom and a medic, it's the only kind of house you can afford. So she bought it, and she fixed it up with her own hands and with the help of some friends. She finally got to the point where she could move in. In one of her very rare diary entries, which she let me read and which was written on the first night she slept in the house, long after she'd bought it, while she was sitting on the porch in a rocking chair *totally* alone in the dark listening to the water, she wrote about how it was the happiest time of her life, alone with her house.

That's one part of the story.

The other part of the story is that there was another woman, Claire Gaudiani, who was as far away from Susette as the North Pole is from the South Pole. She was a Ph.D. and a college president. She was politically connected. She had degrees in foreign languages. She was very smart and politically savvy. She was sexy. She had everything going in her life. She was the biggest fund raiser in the history of Connecticut College.

She was sitting there one day, and the governor's office called and wanted to meet with her. Why did they want to meet with her? Because the governor had decided he wanted to do a big urban renewal plan in New London, and he was a Republican and city hall in New London was Democratic. They hated him, and he hated them. He was looking for a route around them to do a big urban renewal plan. The key to that was this nonprofit development corporation in New London that had been dormant for two decades, and they were looking for someone to run it. But they wanted someone to run it who they could control. She was the one, they thought, because she had chutzpah, she was connected, and she got things done. The city officials who were Democrats trusted her because they were all men, and they liked her legs.

They thought this was going to work. So the governor appointed her. She accepted the position. She became president of the development corporation. This was a woman who had never built a house, and, now, she was going to do a \$300 million redevelopment in an urban area.

She was given this piece of property to start with. It was 24 acres on the waterfront. It was right at the mouth of the Thames River; it was a block away from Susette's house. The problem with it was, it was badly contaminated with environmental pollutants in the ground. The pollutants had been there for years; that's why the city couldn't give it away. She got this piece as her starting point.

She was a smart lady, so she said, "We need to get a Fortune 500 Company to come to that property."

She recruited the president of Pfizer to join her board as a volunteer with his task being, "Tell us how we can market this to somebody like you." Really, what she wanted, was him.

He went to the property with her. When he got there, before he saw anything, he smelled something. It smelled like a toilet bowl. Well, there was a sewer plant next door. It wasn't properly capped. Of course, all these poor people who lived down there had been smelling this for years, but nobody cared. It's a lower-middle-class neighborhood. But, yes, that smelled pretty ripe. That was the neighbor. An adjacent site with tires and oil in the ground and the metal everywhere was a scrap metal yard, about seven acres of property. That was next to the sewer plant. Then, there was this monstrosity that was an old fort that Benedict Arnold burned down in the Revolution. Nobody had fixed it up since. So these were the neighbors.

He said, "No one is going to buy this place. No Fortune 500 Company is going to come here. There's too much liability. Look what's around you. It's a non-starter."

Claire said, "What if the state was willing to truck 24 acres of earth out of here and bring 24 acres of

new earth in and remediate the whole site and do it on their dime, and, then, give the property away for a dollar?"

"Well, that would obviously help," he said.

"What if they went over and with state funding they put upgrades on the sewer plant and capped it and got rid of the smell and made it look modern, and you wouldn't even know it's there?"

"That would be good."

"What if the state bought out the scrap metal guy, erased that ugly site, got all that junk out of there, and gave you that land, too? That's another seven acres, and it abuts yours. You'd get 24 plus seven; that's 31."

"That's good."

"The park over here, we could turn into a tourist attraction, make it a state park. The state could pay to refurbish the whole fort. You could have parking lots, waterfront access, tourists would come, school kids on buses."

"Well, if the state did *all* of that, then maybe there would be something to talk about."

So a couple weeks later, they were in the governor's office, and they were talking. Now, they were not talking about some other corporation out there; they were talking about Pfizer, *his* corporation coming there, and a deal was struck. Then, this deal was taken to the board of directors at Pfizer in New York. They came back with a counterproposal.

"If you'll do all those things, we'll come to New London and build our Global Research and Development headquarters, but there's one more thing. There's one more thing that we have to have, or we won't come."

"What is it?"



“Well, there’s 90 acres of additional land next door to all this stuff. We don’t want it for ourselves, but we’d like that land to look different than it looks now. It’s got mixed-use zoning. It’s got industrial stuff. It’s got warehouses. Some of them look like they’re falling down. It’s got bars and diners. It’s got businesses, and it’s got homes. We want to erase it. We want new things there. In fact, here’s *exactly* what we want: We’d like a five-star high-rise hotel. We’ll guarantee 50 percent occupancy. We’d like a health club and spa. We’d like biomedical research space. We’d like business space, and we’d like new, upscale housing—the kind that doctors and scholars who work for us and visit us would want to live in, long term or temporary. If you can promise us that, then we’re in.”

The governor signed a confidential document, a memorandum that said they would deliver all of that. Pfizer said “yes,” voted, and made an announcement. It was on the front page of the paper. Susette went to the gas station in the morning to get milk, and she saw the headline, “Pfizer’s Coming to New London. New London’s Ship Has Come In.”

A couple days later, a realtor knocked at the door and said she wanted to buy an option on Susette’s property.

Susette said, “I don’t want to sell my property. I just got here.”

A week later, the realtor came back with a better offer.

Susette said, “Get the hell off my land. I told you the first time, I don’t want to sell my property. If you come back, I’ll throw you off my porch.”

Then, she got a letter from Claire, and this was the introduction of the divorced nurse and the college president.

The letter said, “When you move, we will make it as convenient for you as possible,” and told her a list of things that they would do in the moving process.

That’s when Susette called the mayor and asked, “Should I be concerned about this letter, this development, this Pfizer thing?”

“Yes, you should.”

The mayor came to her house, sat at the same table I sat at, and indoctrinated this woman on how to get politically active and save her house. He gave her a checklist: “Number one: You need to form a neighborhood coalition—get everybody organized. Go door to door and get everybody to sign petitions. Bring the petitions to city hall. Present them in a public meeting to the mayor and the city council. Tell us why you don’t want to leave. Then, you’ve got to contact your state reps. You’ve got to start writing letters to the editor.”

She said, “Hold it! Hold it.”

She didn’t reveal all the stuff that I’ve told you about her background, but just enough to say, “I came here to be private and start over, not to do all this stuff. I don’t even know how to do this stuff.”

The mayor said, “Do you want to save your house?”

“Well, yes, of course,” she said, “I want to save my house. That’s why we’re talking.”

“Well, then, you’re going to go door to door, because this is the way. If you do that, this will be the fight from hell, and you’ll become the poster child for eminent domain.”

That’s what he said in 1998—no idea that this thing was going to go off the rails and end up in Washington, D.C., in front of nine justices. That’s how it started.

There was this great contest between these two women after very different things. One woman had two mansions, lived in one and visited the other. One woman had a tiny little house and was trying to hold onto it, clawing her way, trying to figure out how, and the other woman was up night and day figuring out how to take it away. They both

thought what they were doing was right. They were on a collision course.

There was a day when Susette was in the neighborhood. The city had now acquired about half the properties in the neighborhood through fear and other tactics, and because they owned the titles, they were free to do what they wanted with these properties. But even though there were a lot of people like Susette still living there, they decided to knock these houses down on a regular old day when people were going to work, grabbing their lunches, and hustling around. In came the bulldozers. There was a bulldozer up the block from Susette's house. The guy was in the yard, and he was ready to take a bite out of a house. It was going to be the first knockdown in the Fort Trumbull neighborhood.

The mayor drove through the neighborhood that morning. They'd had a prayer circle that morning praying for the neighborhood. All these local activists would gather every day and they'd do this. It was a ritual. Well, this day, they drove through the neighborhood, and the mayor's wife noticed the bulldozer. She'd had it.

She told him, "Pull the car over. I'm getting out. Enough is enough. I'm going to go sit in front of that bulldozer. You're going to go home and get my crochet needle and my blanket. My hands are shaking, and I need something to do with them."

The mayor ran home and got the stuff. His wife went and sat on the front steps. When the mayor came back, he saw the guy from his office who issues the permits for demolition, the guy who promised he would tell before any permits were issued, and the guy hadn't told him.

The mayor got out of the car and walked to that guy and said, "Damn you for not telling me!"

Then, he walked by that guy and sat down next to his wife.

"Here's your blanket."

He sat down, and there they were in front of a big bulldozer.

A 300-pound woman, who was a local activist in the community and coached Susette on how to become an activist, joined them. Susette wanted to join them, too, but her neighbors grabbed her, literally, and physically stopped her, and said, "You can't go there today."

They knew what was going to happen.

The guy on the bulldozer—a big, husky, Italian tough guy named Chico Barberi—pulled out his cell phone. He called the police.

He said, "I've got a guy on the front steps, and he won't get off!"

The police came down there. It took them five minutes to get there. They didn't know it was the mayor, because Chico didn't know the mayor.

The police said, "Oh, you've got to be kidding me. It's Lloyd Beachy, the mayor. We work for this guy."

They went up to Lloyd and said, "Lloyd, come on. You've got to come off the steps here."

Lloyd said, "We're not coming off the steps."

"Lloyd, come on. You know these guys have permits. This is legal. They can do it. You guys have to move."

Lloyd's position was, "It's not about whether it's legal; it's about whether it's moral. It's about whether it's right. This isn't right! And we *know* it's not right."

He said, "So we're not leaving."

Now there was a crowd. The whole neighborhood was out there.

The police said, "Lloyd, if you don't come off the



steps, we're going to have to arrest you in front of all these people."

"I guess you're going to have to arrest us."

They got the handcuffs out and they cuffed the mayor and his wife. The police carried the couple to the car. They came back to get the 300-pound lady.

She said, "I'll walk!"

And she did. She walked and got in the car.

She told me: "I'm sitting in the car. I'm looking at the mayor and his wife behind me. It was that day that I knew we weren't fighting city hall anymore. This was a lot bigger than city hall. It was way beyond what we thought. I knew that day, we weren't going to win. We weren't going to win."

The police took them away, and Chico turned his engine on and in about 15 minutes, he took down a house that probably took a year to build a century ago. Gone. Then the next one. And then the next one. He worked his way down to the house right next to Susette's house, which was about eight feet from her house. There was just an alley between them. When Chico went to bite into that house, Susette lost it. She came out with a broom to ward off a bulldozer. She had *completely* lost her wits. She was out there in the path of destruction, and everybody was yelling at Chico to stop it. Chico couldn't hear, because the machine was so loud. He knew she was there, but he didn't care, and he started taking down the house. Glass was flying. It got in all of her red hair and everything else.

Finally, her neighbor, a guy named Billy Van Winkle who would become a plaintiff with her in the Institute for Justice case, got her off the steps. He grabbed her and threw her in a car, and he took her out and got her drunk. Susette gave up drinking a long time ago because her 17-year-old son got hit head-on by a drunk driver. That's why she became a medic. She didn't drink, but she drank that night, and she drank, and she drank, and she drank. Then, she went home, and she went to bed.

When she woke up in the morning, she looked out the window. Her street was gone. East Street was empty, except for her house on one end and another house way up at the other end. Everything in between was gone.

Then she heard a knock at the door. Who was it? It was Chico. Chico was standing there with a box of scented soaps. He presented her this package, and he apologized.

He said, "I'll never knock your house down."

To tell you the kind of woman Susette is, she invited Chico into the house and made him a cup of coffee. I'll never forget the day Chico told me they threw their arms around each other and he said, "There was no way after that that I could ever knock that house down."

These are the things that happened in the story of the *Little Pink House*. It's a great story that led to this epic litigation that has had an impact on property law across the country. By the end of the story, when the Institute for Justice got there, a lot had changed. The president of Pfizer, who wanted this to happen so badly, was no longer at Pfizer. The governor, who was the mastermind behind the development plan, was in prison. The woman from Connecticut College, who was the spearhead of the development agency, was ousted after 70 percent of the tenured faculty at Connecticut College demanded that she be fired over this. So these three pillars of power from politics, business, and academia were out, and this woman, this nurse, was still there.

There was a day at the end, after the Institute for Justice had argued their case when you might have started to think maybe they were winning, because the people were still there. Now, the whole country was watching. They'd been there six months, and time was ticking away.

The new governor sent an emissary with money, lots of money, "Find a way to buy these people out."

The other plaintiffs had all sold. Susette wouldn't be bought.

The governor said, "The money is on the table till midnight. After midnight, the money is off the table, and you're going to be left to your own devices, between you and the city."

When that happened, Sean Hannity and Fox News set up a satellite truck outside the house. They put Susette on national TV on the night of the deadline. I was there that night. Susette was in front of the house, and I was there, and *nobody* else was there, because everybody else had left!

They did the interview: "What are you going to do at midnight, Miss Kelo?"

"I want to keep my house."

"We'll be watching."

They shut the lights off, and they took down the equipment.

The two camera guys from the truck came across the street to Susette, and they shook her hand and said, "We're with you, Miss Kelo. We're with you."

So they drove off, and Susette was going to walk into her house. It was a foggy, muggy night—summertime in Connecticut.

She turned to me and said, "Jeff, what do you think I should do?"

I said, "I can't really tell you. I'm here to write about what you do. I can't advise you. I'm not your lawyer."

In her great way, she said, "Yes, but what do you think I should do?"

I said, "Susette, listen, I can't tell you what I think you should do, but I'll tell what I think. What I think is the governor of Connecticut doesn't have the stomach to sit there while you get dragged out

of your house by marshals and watch *NBC Nightly News* as protestors surround this neighborhood and turn it into what could be a riot. That's never going to happen. She won't let it happen. So I think if you want to stay here, you could probably stay here until you die. But the other thing I think is, if you look around, everything you wanted to stay here for is now gone. All these new people you met who felt like family to you—that's why this place was so special—they're gone. This place looks like Beirut. You're going to live here on an island. So it's really a matter of what you want."

Then I went home and got in my comfortable house and tucked into my bed and went to sleep with no fear of eminent domain. I got up in the morning, and I called Scott, and I called Susette, and I said, "What are you guys going to do?"

That's the kind of thing that happened in this story. It's amazing what these people went through.

I'm going to turn it over to Scott here. He's the guy who was in the trenches and, but for him, Susette probably would have petered out long before this thing ever got to a courtroom.

Scott Bullock: One of the similarities between the work that Jeff does in putting together a compelling book and the work that the Institute for Justice does is that we look for a lot of the same things. That's one of the reasons why we got involved in the *Kelo* case. It's because it had the three essential elements of any good public interest case.

First, it had a cutting-edge legal issue; a legal question that had been neglected in the law but one that was in desperate need of litigation. When I was in law school studying the Takings Clause in the Constitution, we spent about five minutes on the public use provision of the Fifth Amendment. The professor said, "Oh, it used to mean something, but, now, courts have interpreted this clause so broadly that it, essentially, doesn't mean anything. Public use can mean whatever the legislature says it means, and we don't need to talk about it anymore."



We got involved in this issue because we saw the power being abused, and we knew it was in desperate need of public interest attention. So it had this cutting-edge legal issue where the law was totally stacked against the property owners.

We got involved in a case like *Kelo* back in the mid 1990s when we represented a woman sort of like an elderly version of Susette Kelo. She was a woman who owned a home along the beachfront in Atlantic City. She'd lived there a long time. She was a widow, and she wanted to keep it. We thought this might be an excellent case for us to litigate. This issue had been long neglected in the law: the public use clause of the Constitution. So we agreed to represent Mrs. Coking in that case, *Casino Reinvestment Development Authority v. Coking*.

We also had a sympathetic plaintiff, which is the second element of any good public interest case. That's one of the things we look for. When I met Susette Kelo, like Jeff did, in her little pink house along the Thames River in New London, I knew that this was a special person. This was a woman who wasn't interested in fame or just getting a better price for her property. She was willing to stand up and do the right thing. She was in this for the principle of the matter, and she believed passionately in the issue. We had that in *Susette Kelo* in 2000 and we had that in Mrs. Coking in 1996, when we first got involved in this issue.

The last thing that every good public interest case needs, in addition to a cutting-edge legal issue and a sympathetic plaintiff, to add to the drama whether it's a public interest case or a book, is an evil villain.

You can read Jeff's account of the folks in New London who, I think, constitute some of the worst villains; those who justify what they're doing in the name of the public good. They say what they're doing is for the betterment of the public. When Claire Gaudiani was justifying her actions to a church congregation—she was always great for quotations to the media—she compared the work

that she did in New London to the work of Martin Luther King Jr. and Jesus.

She also said to a reporter, "Anything that's working in this country, works because someone left skin on the sidewalk."

That was her justification for what she was doing in Fort Trumbull.

When we represented Mrs. Coking in Atlantic City, it would have been hard to find a better villain than the one we had in that case. Mrs. Coking was having her home taken by the Casino Reinvestment Development Authority to give to a casino so it could put in a parking lot for limousines. But it wasn't just *any* casino. The casino was owned by none other than *The Donald* himself. It's hard to find a better villain than Donald Trump.

We won that case. It was really the first time in decades that someone won a case on public use grounds. Once we won that case, we were inundated with requests from across the country from folks who were in similar situations. We realized this isn't just an issue in Atlantic City or Canton, Mississippi, or Stockton, California. This is a nationwide problem. So we very carefully selected cases and put together a program to litigate this in courts of law, and, just as importantly, in the court of public opinion. This all culminated in the *Kelo* decision itself.

Let me just talk very briefly about *Kelo* and then about what happened in its aftermath. One of the questions I get all the time is: How did the court make this decision? How did they do this? It seems so illogical. It seems so, frankly, un-American that a vast majority of people were outraged about this and wanted something done.

I think it's fair to say that what the majority did was not look at the text of the Constitution. They did not look at what the public use provision actually means. They focused on the last 50 years of precedent. Since the 1950s, the Supreme Court had given a broad reading of the public use clause really to mean public purpose. What the majority

said in *Kelo* was if the public use clause means public *purpose*, then why don't we extend that to mean public *benefit*? What are the so-called public benefits in the *Kelo* case? Tax revenue, more jobs, and improved economic development. That is what the court focused on, not on the first principles of the Constitution and its language, but on this broad precedent. The justices said New London needed more taxes, more jobs, and an improved economy, and that these were now going to be considered public uses under the Fifth Amendment.

Well, the real danger of that precedent is that it's really a vision of eminent domain without any sort of limitation. Every home would produce more tax revenue and certainly more jobs if it were a business. Every larger business, at least in theory, produces more jobs and more taxes than smaller businesses, and certainly more than homes. So it really is a justification for the use of eminent domain without any type of outer limit, and it gives broad authority to the government to take property if they put together a plan that calls for greater taxes and more job growth. As the Supreme Court noted in *Kelo*, and as we pointed out, all they have to do is project what the tax revenue increases will be and what the job growth will be. Who couldn't put together a better plan for your property than what you are making of it? That's the real danger of the *Kelo* decision.

I think it is fair to say that the *Kelo* decision is the most universally despised Supreme Court decision in modern history. When I say universally despised, I mean the polling on this is off the charts, and it cuts across the usual divides you see in the country today. It doesn't matter what political party you're in, what ethnic group you're a member of, or where you live in the country: People are overwhelmingly opposed to this decision and want something done about it.

One of the best examples of that was in Congress, where the first person on the floor of the U.S. Senate to denounce the *Kelo* decision was Sen. John Cornyn, a good friend of former President Bush and a conservative Republican. The first person to do so

on the floor of the House was Rep. Maxine Waters of Los Angeles, a liberal Democrat.

People on opposite sides of the political spectrum are equally outraged about *Kelo* and are demanding something be done about it.

Thankfully, we've seen what is really an unprecedented backlash against a Supreme Court decision. So far, four state Supreme Courts have rejected the *Kelo* decision under their own state constitutions, which is the exact opposite of what usually happens, where after the Supreme Court issues an opinion, state Supreme Courts follow along. The state Supreme Courts under their own state constitutions are going in the opposite direction. Forty-three states have reformed their eminent domain laws. Due to the good works of people here in Minnesota, this state has reformed its eminent domain laws, as well. About half of the state reforms provide strong protections against eminent domain abuse. The other half still need work, but what they now have is certainly an improvement over what they had before *Kelo*.

The climate of public opinion has changed, too. Eminent domain abuse had flown under the radar screens for decades. Developers and city officials had been able to get away with things. Now, just about every reasonably well-informed person in the country knows about the issue. Property owners who are faced with this situation can say, "Hey! What's happening here is exactly what happened to that woman in Connecticut! We've got to stop this." So it's become much more difficult for city officials and mayors and planners and developers to get these projects through.

Let me close real briefly with what has happened in New London. Not surprisingly, after the decision was handed down, the New London government refused to compromise. They forced all the people out of their homes. The folks who lived there who were devoted to their neighborhood and did not want to take the money and run. They stuck together throughout this entire case until they were out of legal options. All have now moved out of the City of New London. They all live in other

areas and do not want to live in a city that would disrespect their rights and their neighbors' rights to such a great degree.

I am pleased to say that the Little Pink House has been saved. It was moved about a mile away from where it was originally. It's now owned by one of the strong supporters of the property owners. He lives in it, made it a house of his own. It's really become this historic home. Like Paul Revere's house in Boston, or Betsy Ross's house in Philadelphia, it's a house that transformed the nation for the better. If you're ever in that area, I encourage you to go by and see it. The person who owns it now did a wonderful job of restoring it and really making it look like the great home it always was.

What's happened in Fort Trumbull? After all of this controversy, after forcing out over 80 families, after spending over \$80 million in state money to acquire the property and to pay the New London Development Corporation's salaries? *Absolutely nothing.*

That's really one of the sad legacies of these types of projects, which not only abuse eminent domain but rely on massive corporate welfare. Oftentimes, they fail to live up to expectations. The promised job growth and the promised tax revenues never materialize, or don't materialize to the extent they were originally promised, or as in New London, they are total disasters. That is a lesson that I hope will get through to folks who have supported these types of projects. You can do economic development while still protecting the rights of people like Susette Kelo.

Now, the Fort Trumbull property is a vacant brown field with no new development, no new taxes, and no new jobs. The development deals fell through. Pfizer and the other developers have walked away from what they originally said they were going to do. And the place now is becoming a bird sanctuary. Folks from throughout southeastern Connecticut are going to this area to watch birds.

After their remarks, Messrs. Benedict and Bullock answered questions from the audience.

Mitch Pearlstein: That was terrific. But what's new with Susette Kelo these days?

Bullock: Susette Kelo lives across the river in Groton, Connecticut, a town that after the *Kelo* decision passed an ordinance prohibiting the use of eminent domain for private development. She bought another house by the water, and she's now in a place that won't abuse her rights in the future and is doing well.

Gen Olson: Did Pfizer not want to live with what might be the outcome if they were to take advantage of this evil deed?

Bullock: I think that was a part of it. Certainly, the fact that the economy has crashed since that time played a role in it. But I think the major factor is it was just a bad plan. It was a politically motivated plan that was put together by folks who were trying to appease a certain corporate citizen. For instance, there's no market for high-end office space in New London, Connecticut. The city has a huge vacancy rate for it. Once Pfizer pulled out of its commitment to the hotel and moved elsewhere, there's no market for a luxury hotel in New London, so it was just a development plan that was put together by politicians and folks in the planning business and wasn't market driven. The fact that the state totally subsidized it and there were no developers who actually had skin in the game, as they say, meant that the city could move on with this development, go to the very end, and not compromise, and, as a result, they've paid the price.

Benedict: Just to be clear, Pfizer is there. They did build their \$300 million facility. That was built with their own money. They didn't use government money. They did get the land for free, and they got other benefits. Their building was up and going before the lawsuit was even filed. They're in, and they've been there. What's been unfortunate from their perspective is now, instead of looking at what they considered tenement housing, they now look

at no housing. They look at brown field, like Scott described, which is pretty ugly, but they're stuck with it. [Note: In November 2009, Pfizer announced that it was closing its New London facility entirely by 2011 and leaving the city.]

Pearlstein: As a writer and a lawyer, were you surprised by the intellectual reaction, the political reaction, the visceral reaction, as well as at what the states have done subsequently?

Bullock: I have to say that I was not. I was surprised maybe by the extent of it, but I knew how strongly people felt about this. This is the old cocktail party test, where you test this out on people who aren't part of your circles and that sort of thing. You tell them what you're working on, and the reaction by people has inevitably been: "You can't do that in America. You're kidding me. You're talking about taking someone's home and giving it to a condo developer? That happens in China. That doesn't happen in the United States." I said: "If there's a way to get this message out to everybody throughout the country, there's going to be a huge reaction." I always thought if we could raise awareness of it, the backlash would ensue. It's been really encouraging to see it to the extent that it actually occurred.

Alan Shilepsky: I've always had mixed feelings about eminent domain, and I think sometimes it is necessary, especially with linear facilities like gas and oil pipelines and highways. I'm wondering how a prohibition on eminent domain would affect the construction of necessary facilities. Now, we even have talked about privatizing highways. If there was a strong prohibition on eminent domain, couldn't a holdout keep some of these facilities from being built?

Bullock: It's a good question. Even Justice Clarence Thomas—he wrote a separate dissent that really looked at this from an original understanding of the Constitution—recognized that the Constitution does contemplate eminent domain. The position in the *Kelo* dissent was not that eminent domain could never be used, but it should be confined to *true* public uses, like roads, reservoirs, public

buildings. Justice Thomas even noted that things like utility lines and railroads, things that are not publicly owned in the sense that there's private involvement in them, are very strictly controlled by public entities: The rates are set, everybody has to have access to the railroads and utility lines, and that sort of thing. So that would still be justified under even the dissenting opinion in *Kelo*.

Doug Tice: Review for us how much the court has changed since this decision was made, and where do you think the court is now on property rights issues with Justice Sonia Sotomayor and other new justices since then?

Bullock: The two justices who left the court, Chief Justice Rehnquist and Justice O'Connor, were in the dissent. Sandra Day O'Connor in particular, who wrote one of the dissents, is no longer on the court. Immediately, there would be no change, because the folks who were in the majority are still on the court. But we're confident that at some point *Kelo* will be overturned, as it's not one of these decisions that's long for the history books.

It was one of the last opinions that Justice O'Connor wrote. It was a very passionate dissent. Justice O'Connor was a justice who always was known for her very moderate and sometimes hairsplitting types of opinions. This was not that at all. This was a very passionate, very fiery dissent that the country responded to and for which she will be remembered.

It's always impossible to get into the minds of the justices, and I don't pretend to try to speak for them. But perhaps one of the reasons she wrote the way she did is because she had been a state legislator. She knew how state legislators operate and how, perhaps, city councils operate. I don't know whether the other justices of the Supreme Court have ever even been to a city council meeting. Their views of the process seemed to be very pristine, almost this civics-book type of approach to how decisions are made at the local level. I think she rightfully was a lot more skeptical about that process and saw how easily power can be abused at the local level. I



think that's perhaps one of the reasons why she felt so strongly about this, in addition to the fact that she felt that she was right on the law, too.

Pearlstein: I would suspect the fact that she's from the West also had something to do with it.

Gentlemen, on behalf of the Minnesota outposts of the Institute for Justice and the Federalist Society as well as American Experiment, this truly has been excellent. Thank you. ■

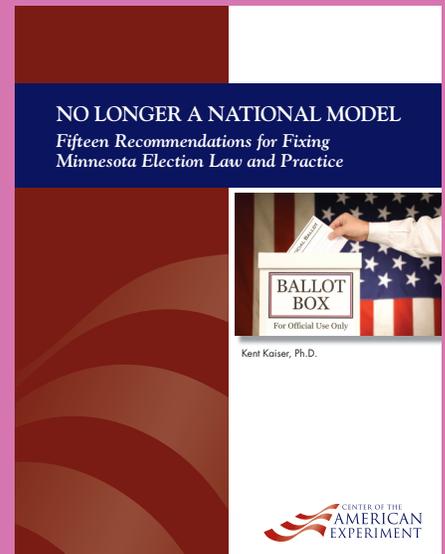
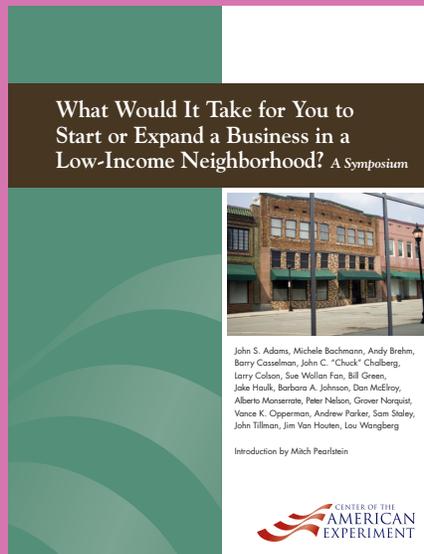
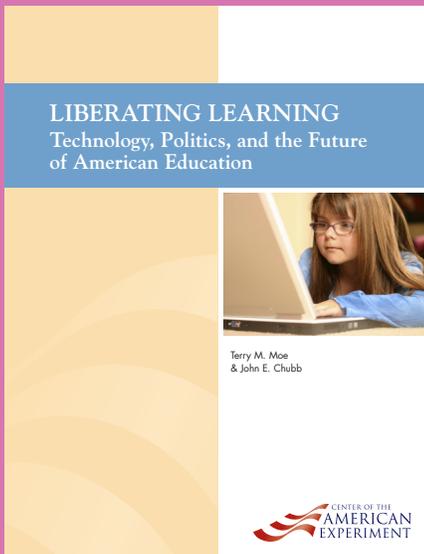


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