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IJ-WA Defends Free Speech In Washington State

By Charity Osborn

The dire warnings of campaign finance reform opponents are now coming true.

Here in Washington state, talk radio hosts may be pressured into silence on important public issues because their speech is objectionable to the political establishment. To make matters worse, the pressure may come at the hands of financially and politically motivated local governments, delegating their prosecutorial power to an equally self-interested law firm.

The Institute for Justice Washington Chapter (IJ-WA) is defending against this unprecedented assault on free speech, free association and due process.

The trouble started when a group of citizens opposed to Washington's newly instituted 9 1/2-cent tax increase on gasoline formed NoNewGasTax.com (NNGT), a political action committee dedicated to putting the gas tax to a vote. Initiative 912 (I-912) proved popular with the public and it quickly became apparent that NNGT would succeed in gathering the 225,000 signatures it needed to accomplish its goal within a short 32-day time period.

NNGT's success can be attributed in part to the on-air coverage given I-912 by conservative radio talk show hosts John Carlson and Kirby

Free Speech continued on page 9

Castle Coalition Continues the Grassroots Battle Against Eminent Domain Abuse

By Steven Anderson

In true Institute for Justice fashion, within one week of the U.S. Supreme Court's dreadful *Kelo* decision, the Castle Coalition launched the Hands Off My Home campaign, an aggressive initiative to effect reform of eminent domain laws at the state and local level.

The importance of the campaign cannot be underestimated—the decision opened the floodgates to continued eminent domain abuse. Just hours after the case was decided, Freeport, Texas, made legal filings to condemn two seafood businesses in order to build a private marina. Less than three weeks after the announcement, the City of Sunset Hills, Mo., voted to condemn 85 homes and small businesses to build a \$165 million lifestyle center.

But the response across the country in opposition to the case and the abuse of eminent domain has been overwhelming—and the outcry is translating into action. While

Supreme Court decisions often divide the nation, every poll indicates nearly universal, nationwide outrage against the decision, uniting disparate groups interested in arresting this growth of government power. At last count, legislators from more than 30 states and the U.S. Congress were considering eminent domain reform bills. Alabama swiftly enacted more-restrictive condemnation laws, and though it still leaves a significant loophole for bogus blight designations, it's a good first step. Texas Governor Rick Perry soon thereafter signed similar legislation. Local governments from coast to coast are also moving to restrict their power, which is another positive sign.

The Castle Coalition has been active

at the state and federal level every step of the way. We held our annual Eminent Domain Activist Conference in early July, inviting home and small business owners to Washington, D.C., to learn tools and techniques necessary to save their property. Some are already beginning to organize at the state level, an important move for state-wide change. One of the top priorities for the Castle Coalition in the near future is to ensure we have state networks across the



Jim McCaffrey, The Evening Bulletin

Castle Coalition members and Ardmore residents and business owners, from left, **Dr. Eni Foo, Betty Foo, Sharon Eckstein** and **Scott Mahan** testify before Pennsylvania House Committee.

The Floodgates Are Open

Tax-Hungry Governments & Land-Hungry Developers Rejoice in Green Light from U.S. Supreme Court

In the wake of the U.S. Supreme Court's decision in *Kelo v. City of New London* upholding the use of eminent domain for private development, the floodgates are opening to abuse. Already, the ruling has emboldened governments and developers seeking to

take property from home and small business owners.

Dozens of examples from newspapers across the country show that the threat of condemnation to homes, small businesses, churches and other property from government-forced private development projects is being realized. These incidents are the tip of the iceberg.

Visit www.castlecoalition.org/floodgates for a compilation of these articles.

nation, and it's good to see some of this occurring spontaneously now.

We've been highly sought after by legislators and citizens alike for specific ideas on what state and local governments can do to make sure that what happened in New London does not happen anywhere else. We are *the* group to go to on eminent domain reform. Members of the Castle Coalition team have provided testimony in Connecticut, Illinois, New Hampshire, Missouri, Arkansas, Indiana and Pennsylvania already—and we expect to be engaged in legislative reform in many other states as representatives return to work at the beginning of next year. Congressional hearings began in earnest in September and these will hopefully result in bills that withhold funding from governments that use eminent domain for private development purposes.

Our website (www.castlecoalition.org) has become the central repository for information related to the *Kelo* case and eminent domain abuse. We've added a significant amount of content, including model legislation and current controversies, and much more will be coming in the future, along with a new look and additional features. As always, we continue to work at the grassroots level to stop government from taking private property for private gain.

Given the current climate, there is no better time to be a part of the Castle Coalition. As we grow in both size and scope over the next few months, we are confident that the success we've had in the past will continue—and we'll all be safe in our castles. ♦

Steven Anderson is coordinator of the Castle Coalition.



Taking Individual Liberty Coast to Coast

After a whirlwind of speaking engagements on school choice, property rights and economic liberty during the 2004-05 school year, Institute for Justice attorneys are off to the races again as law schools come back into session. Excitement is growing over IJ's Hands Off My Home project that is focusing the public outrage over the High Court's *Kelo* opinion and turning it into legislative victories.

Just this fall, IJ attorneys and staff will speak nationwide at more than 25 events hosted by the State Policy Network, Federalist Society student and lawyer chapters, and other like-minded organizations. Through these venues, Institute for Justice attorneys promote IJ cases, libertarian philosophy and public interest law, as well as our law student conference and clerkships. IJ attorneys were among the most-frequently requested speakers at the Federalist Society student chapters last year and expect to be this year as well.

To view a list of these and other IJ talks, please visit www.ij.org/speakers_events. If you are interested in hosting an IJ attorney to speak at your school or venue, please contact Elizabeth Moser, outreach coordinator, at emoser@ij.org. ♦

No Easy Answers Allowed

Two Summers of Uphill Battles for This IJ Clerk

By Emily Schleicher

Over the past two summers, I have had the good fortune to be counted among the dozen or so law students the Institute for Justice annually invites to work as summer clerks in the Washington, D.C. office. Hailing from the nation's top law schools, clerks spend the summer working closely with IJ attorneys on cutting-edge constitutional theories and the plethora of thorny procedural questions that arise at every stage of litigation.

We arrive having learned—either in the classroom or at law firms—to identify and advocate only safe, accepted solutions to legal questions. But such solutions are not IJ's dominion, and the training clerks receive is unique and invaluable as a result.

The clerks' job is to assist the attorneys in identifying ways to show the courts and the public that the law has gone terribly astray—and to show them the way to set things straight.

My experience with *Kelo v. City of New London* showed me what it means to do that job. Much of my first summer was devoted to conducting research for Senior Attorneys Dana Berliner and Scott Bullock, who were at the time busily working on the petition for certiorari in *Kelo*, in which we asked the U.S. Supreme Court to take up our appeal. When I returned to school that fall, I felt invested in the case and took every opportunity to discuss it and to challenge members of my law school community who felt certain that New London's actions were well within constitutional bounds. In February, I made the journey to D.C. to hear the oral argument, and I'm grateful that I was at IJ on the morning of June 23, when the Supreme Court handed down its 5-4 ruling despite the fact that it was against the *Kelo*

homeowners. There was, of course, disappointment and anger, but the incredible thing was witnessing IJ's reaction to the decision. The office leapt into action on all fronts, and by the time my second summer came to a close, the current of public opinion was set strongly against the decision, and now dozens of states and Congress had either passed or were considering legislation to prohibit takings for private development.

Only IJ could turn a dreadful Supreme Court opinion into a victory for property rights.

The most important lesson clerks learn in their time at IJ, however, is that law is important because it governs people's lives. This point became crystal clear during a client panel at the 2005 Law Student Conference. In their own words, IJ clients Juanita Swedenburg, Roberta Kitchen and Michael Cristofaro (see page 8) explained how and why they became embroiled in the fight for liberty. It was exciting to spend my summer working on cutting-



Emily Schleicher spent her past two summers fighting for freedom as an IJ law clerk.

edge constitutional issues. But this pales in comparison to the astounding realization that the handful of principled, passionate people for whom I have been working are nearly uniquely willing and able to protect lives and livelihoods against the destructive forces of excessive, unrestrained government. ♦

Emily Schleicher is a law student at NYU School of Law.

Beth Milnikel: The Entrepreneur's Entrepreneur



IJ Clinic Director **Beth Milnikel** and Clinic student **Shawna Doran** meet with client **Alex Morales**. **Beth Milnikel** not only instructs students through the Institute for Justice Clinic on Entrepreneurship, she directs the students' clinical work that helps grow small businesses in inner-city Chicago.



By Chip Mellor

Beth Milnikel, the director of the Institute for Justice Clinic on Entrepreneurship at the University of Chicago Law School, is the entrepreneur's entrepreneur. Each day, Beth oversees the operation of the nation's only legal clinic that provides free legal assistance exclusively to entrepreneurs seeking to create private-sector jobs. All the while, she masterfully guides the education of University of Chicago Law School students who, under her tutelage, learn to provide transactional legal services to budding business owners. Beth's straightforward, modest, honest approach has earned the respect of students, clients and other faculty alike.

Beth came into this job with a background in litigation and intellectual property with the law firm of Sidley Austin. She had to quickly master the substance of day-to-day transactional work required by the IJ Clinic's low- and moderate-income clients, a task that became critical when she became the IJ Clinic's acting director soon after joining us. During the course of the following year, she transformed the IJ Clinic class, which teaches dozens of students throughout the year, into one that is bigger, better and more exciting than ever. She's done this by working closely not only with the law school students, but also making a concerted outreach effort in the inner-city community that surrounds the University of Chicago.

Beth continues her work with an ever-conscientious effort, seeing each day as a learning experience not only for the students, but also for herself; this makes for a dynamic and exciting environment in which the real-life needs of clients are always met.

Beth received her J.D. *magna cum laude* from the University of Michigan Law School in 1999 and later clerked for the Honorable Bruce M. Selya on the U.S. Court of Appeals for the First Circuit. During her time at Michigan, she focused on intellectual property law, served as Managing Editor of the Michigan Law Review, and interned in the General Counsel's office of the Guggenheim Museum. As an undergraduate, Beth studied Comparative Literature at Yale University, graduating *magna cum laude* in 1996.

It takes a special talent to be able to relate to (and inspire) both high-powered law students at the University of Chicago Law School and the clients served by the IJ Clinic. Beth demonstrates every day that she has that talent. That means Clinic students will receive a uniquely rewarding education and it makes the future look very bright for the creation of new businesses in Chicago's South Side.◆

Chip Mellor is IJ's president and general counsel.



INSTITUTE FOR JUSTICE
1 4 Y E A R S
BRIGHT HISTORY
BRIGHTER FUTURE

By David Kennedy



New York van driver **Hector Ricketts**.



Chip Mellor with Denver taxicab entrepreneurs **Girma Molalegne** and **Leroy Jones**.



Virginia vintner **Juanita Swedenburg**.



Minnesota hairbraiders, from left, **Ejjayehu Beyene Asres**, **Lillian Awah Anderson** and **Saleemah Salahud-Din Shabazz**, along with **Veronica Mongeyen**, back right.

What difference has the Institute for Justice made in the fight for freedom over its first 14 years?

IJ set *the* first federal appeals court precedent striking down economic regulation *since the New Deal*. Think about that for a moment; for the first time since that second Roosevelt took the oath of office, the Institute for Justice became the first organization to successfully stand up to the federal court system's presumption in favor of the government in the economic realm and it turned that idea on its head.

New York City Council's veto of new free market van services designed to protect the public bus monopoly? Gone, thanks to IJ.

Once-closed taxi markets in Denver, Cincinnati and Indianapolis? Open, thanks to IJ.

Hectored hairbraiders in D.C., California,

Mississippi, Arizona, Washington State and Minnesota? Now freed from government harassment, thanks to IJ.

Property owners who faced the loss of their homes or small businesses by government force in New Jersey, Pennsylvania, Maryland, Ohio, Arizona, Mississippi and, of course, Connecticut so someone else could try to make more money off their land? All either spared this tragedy or continuing in Herculean fights to achieve that end, thanks to IJ.

Small businesses that sought to communicate truthful information to their customers about bonds or bagels or bungalows? Their First Amendment freedoms upheld thanks to IJ.

School choice programs in Milwaukee, Arizona, Illinois, Florida and Cleveland that give the "power to vote with their feet" to tens of thousands of previously ignored, low-income

parents? All defended to the fullest thanks to the advocates of the Institute for Justice.

Before IJ, none of this was considered possible. One could even say that the Institute for Justice has redefined what the word "possible" means in these contexts. "Possible" now means what you relentlessly pursue with principled advocacy and goodwill. That is "the IJ Way."

And the man who created and embodies that term—the IJ Way—is the organization's co-founder and its only president, Chip Mellor. As someone who really appreciates his Western roots, let me tell you, Chip's vision of and respect for individual liberty was nurtured by the landscape that lies between California and the Great Plains. That is where Chip came into his own and got started on the path to create an organization that helps each man



Lakewood, Ohio, homeowners **Jim & Joanne Saleet.**



Cleveland school choice clients **Toshika Bacon & Roberta Kitchen.**



Mesa, Ariz., brakeshop owner **Randy Bailey.**



Chicago furniture design entrepreneurs **Carmen & McKinley Wells.**

and woman achieve for themselves as much as their individual talents will earn rather than seeking government handouts or permission. He has launched an institute that protects the personal sphere that is defined by private property, economic liberty, free speech and the education of our children—a sphere that can remain healthy only if we keep the government confined by the limits set forth in the Constitution by our Founding Fathers. *This* is the goal of the Institute for Justice.

The Institute for Justice is so congenial and effective that it could draw in a 50-plus-year-old law student named Bob Levy—a man who had already made it in the business world but who wanted to learn how to fight for liberty in the legal arena—to become a clerk at the Institute for Justice and not only do that, but thereafter to join my colleagues on the Institute for Justice’s Board of Directors. IJ’s board is made up of terrifically committed individuals who combine strategic thinking, purposeful charity and vision to guide this dynamic group. Our board meetings, while occasionally intense, are a “chore” to which each one of us looks forward with eager anticipation.

None of IJ’s work would be possible without its talented assembly of attorneys and staff members who dedicate themselves to working for freedom not as a day-to-day job, but as a vocation. It is that contagious commitment to principle (as well as helping real-

world people free themselves from government entanglement) that keeps the turnover rate at the Institute so low and the enjoyment of the work so high.

IJ has grown from a modest organization of six individuals located in one office, to a tightly run organization seven times that size with state chapters in Arizona, Washington and Minnesota, as well as the Institute for Justice Clinic on Entrepreneurship located at the University of Chicago Law School—the nation’s only legal clinic that provides would-be entrepreneurs with free counsel to create exclusively *private-sector* jobs. Each of these satellite offices shares the mission and spirit of IJ’s headquarters—to vindicate individual liberty and preserve the rights of each of us to be a free and responsible member of civil society.

Thanks to generous and voluntary contributions of individuals and foundations from across the nation (IJ accepts no government funds), IJ has had the resources it needs to take on better-heeled foes including the powerful unions and corporations when they have co-opted government power for their own gain, as well, of course, as the deepest of all deep-pocketed adversaries—governments at the local, state and federal levels. Whereas all these entities work to expand government control over our lives, IJ is the only organization in the nation that works so effectively in court and the court of public

opinion to limit that power. And because of the principled philanthropy of IJ’s donors, each of the Institute for Justice’s clients, who could never afford to take on these fights themselves, are represented by the best advocates for freedom in the nation, and are represented free of charge.

Even in the face of inevitable setbacks, IJ has the institutional maturity to take losses in stride, study how it can improve, remain resolute, and never stray from its long-range goals. And after victories, the organization doesn’t waste time patting itself on the back; it has earned its stellar reputation because it knows what it wants to achieve next and it will work to that end with clarity of thinking and forceful expression of its worldview.

I have been fortunate to sit on a number of boards of directors in both the private and the non-profit sector. However, no other organization has left me with such a satisfying feeling that it is actually accomplishing so much of what it had set out to accomplish, while surrounded by such good people doing such good work for such good ends.

The Institute for Justice has a bright history. It has an even brighter future!◆

David Kennedy is chairman of the board of the Institute for Justice.





IJ Senior Attorney **Steve Simpson** shares his insights into the First Amendment with law students.

Changing the World One Student at a Time



Top, IJ President **Chip Mellor** instructs dozens of law students on what it takes to succeed in public interest law. IJ clients **Juanita Swedenburg** and **Roberta Kitchen** share their views of public interest law from a client's perspective.

Boasting a new venue and a new agenda, the Institute for Justice's 14th Annual Law Student Conference inspired and trained 40 new public interest law advocates for freedom.

Held at the Georgetown University Law Center in downtown D.C., the conference featured constitutional law scholars Randy Barnett, Doug Kmiec, Roger Pilon, and G. Marcus Cole, keynote speaker Judge Morris S. Arnold of the 8th U.S. Circuit Court of Appeals, and IJ attorneys and clients.

Students learned about topics rarely, if ever, covered in law school: public interest law, libertarian constitutional philosophy, media relations, outreach, as well as the Institute for Justice's four pillars—school choice, economic liberty, property rights and the First Amendment. They also participated in media and legal moot courts to hone their advocacy skills. But, perhaps the most mov-

ing new session of all came from IJ's clients. New London homeowner Mike Cristofaro, Virginia vintner Juanita Swedenburg and Cleveland school choice mom Roberta Kitchen shared their stories of IJ's Supreme Court battles to vindicate their rights. The session encapsulated public interest practice, strategy and tactics through IJ's focus: the human experience.

After attending IJ's law student conference, students become part of IJ's Human Action Network—a group of pro bono activists and attorneys committed to defending freedom through their day-to-day jobs or through pro bono work. HAN members help with IJ cases, research and media efforts. The 2005 class of HAN members is already engaged and assisting with Institute for Justice projects, and we look forward to a long, productive relationship with all the students from this year's conference. ♦

“The conference has provided me with the basic principles and tactics to practice public interest law. All the IJ lawyers were enthusiastic and persuasive.”

—2005 Law Student Conference Participant

IJ 2005 Law Student Conference Participants



IJ 2005 Summer Clerks

Our 2005 summer clerks and interns provided excellent legal research for IJ. They are from left to right, **Elizabeth Kruel-Star, William Baude, Jennifer Wright, Emily Schleicher, Daniel Blau, Laura Anne Dykes, James Thompson, Kathy E.D. Hunt, Emily Meyer, Kathleen Holtz, Erin B.D. Smith, Robert Stetson** and **Marc Allon**.

Free Speech continued from **page 1**

Wilbur, who championed the anti-tax initiative and urged their listeners to support it. Carlson and Wilbur's endorsements were so helpful that they attracted the attention of "Keep Washington Rolling," the political action group formed to oppose I-912.

During the signature-gathering phase of the initiative, the prosecuting attorneys of San Juan County and the cities of Seattle, Kent and Auburn delegated their prosecutorial authority to enforce Washington's "Fair Campaign Practices Act" to a member of Keep Washington Rolling that not by coincidence is a large Seattle-based law firm that is bond counsel to Washington State. The law firm then filed a lawsuit against NNGT, alleging, among other things, that Carlson and Wilbur's on-air discussions constituted "in-kind" contributions that should have been reported under Washington law. (An "in-kind" contribution is a non-monetary contribution, like printing services or equipment.)

The argument that on-air political discussions might constitute in-kind contributions is totally unprecedented. But that didn't stop a Thurston County judge from issuing an injunction ordering NNGT's disclosure of all such "contributions" from Carlson and Wilbur. NNGT must now waste a significant portion of its limited time and resources parsing through media mentions of I-912, affixing "values" and reporting them as "in-kind contributions" to the campaign.

NNGT recognized the constitutional implications of the situation and enlisted the help of the Institute for Justice Washington Chapter. On August 9, IJ-WA answered the lawsuit and filed counterclaims against the prosecutors on NNGT's behalf, alleging violations of free speech, free association and due process, and seeking to have the judge's order reversed.

The underlying lawsuit is not about the government's concern for campaign finance law, but rather is a veiled attempt to harass NNGT and get its supporters to be quiet. Had they been able to keep I-912 off the ballot, the county and cities that delegated their prosecutorial authority to the private law firm would have ensured the success of the State's plan to issue bonds, guaranteed by the gas tax revenues, to fund transportation projects in their respective jurisdictions. The law firm would have been guaranteed a windfall of legal fees for work associated with the planned bond sales. Such bald conflicts of interest in the outcome of the proceedings by the prosecutors

Free Speech continued on **page 10**

IJ-WA Defends the Constitution Against Corrupt Campaign Finance “Reform”

Free Speech continued from page 9 calls into question the integrity of the entire process and seriously implicates due process concerns.

Moreover, treating media discussions as “in-kind” contributions similar to financial contributions violates the free speech guarantees found in both the U.S. and the Washington constitutions. If the judge’s order stands, members of the media will be required to self-censor if they wish to avoid being labeled as campaign contributors and will no longer be able to fulfill their vital democratic role as watchdogs of the political establishment. They will not be free to associate with whichever groups they please for the advancement of their beliefs and ideas—an inseparable aspect of the liberty guaranteed by the 14th Amendment. In addition, they will quickly begin to bump up against any limits on the amounts one can contribute to political campaigns. The freedom of the press will be seriously compromised.

Opponents of campaign finance laws have long warned that such laws



Executive Director of the Institute for Justice Washington Chapter **William R. Maurer** at the launch of the case.

could quickly become a tool to shut down political speech with which the government disagrees. By pushing back at a flagrantly unconstitutional judicial order and prosecutorial abuse, IJ-WA is working hard to ensure that this instance of such misuse will be the last. ♦

Charity Osborn is a staff attorney with the Institute for Justice Washington Chapter.



IJ Senior Attorney **Scott Bullock** shares a moment with IJ client **Andrew Archie** at a party celebrating their victory over eminent domain abuse in Mississippi.

Farewell Andrew Archie

Andrew Archie, the gentle but determined patriarch of the Archie family we represented in our Mississippi eminent domain case, passed away on July 19, 2005, from pancreatic cancer. He had been hospitalized for a couple of weeks and was struggling mightily to get well enough to go back home to the land he loved. Unfortunately, he did not get to do that, but he did pass peacefully with family members around him. As you will recall, the State of Mississippi condemned land Mr. Archie had lived on since he was eight years old for a Nissan plant. But when IJ obtained a stay of condemnation from the Supreme Court of Mississippi, the State was forced to drop its eminent domain suits. Today, the Nissan plant has been built, but the Archie homes, including that of Andrew’s son, Lonzo and his wife, Matilda, remain where they have always been. ♦

About the publication

Liberty & Law is published bimonthly by the Institute for Justice, which, through strategic litigation, training, communication and outreach, advances a rule of law under which individuals can control their own destinies as free and responsible members of society. It litigates to secure economic liberty, school choice, private property rights, freedom of speech and other vital individual liberties, and to restore constitutional limits on the power of government. In addition, it trains law students, lawyers and policy activists in the tactics of public interest litigation to advance individual rights.

Through these activities, it challenges the ideology of the welfare state and illustrates and extends the benefits of freedom to those whose full enjoyment of liberty is denied by government.

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Anna Difario: “To think that they are going to throw me out of my home to put another house on it, to put someone that is wealthy into my spot. And where do I go? . . . I never thought that they would be able to take my home away from me. Never in a million years.”

Scott Bullock: “Eminent domain is one of the most awesome powers a government has at its disposal. The ability to take away your home, your business, your land, is about the most serious thing a government can do to you, next to perhaps putting you in jail.”



National Review

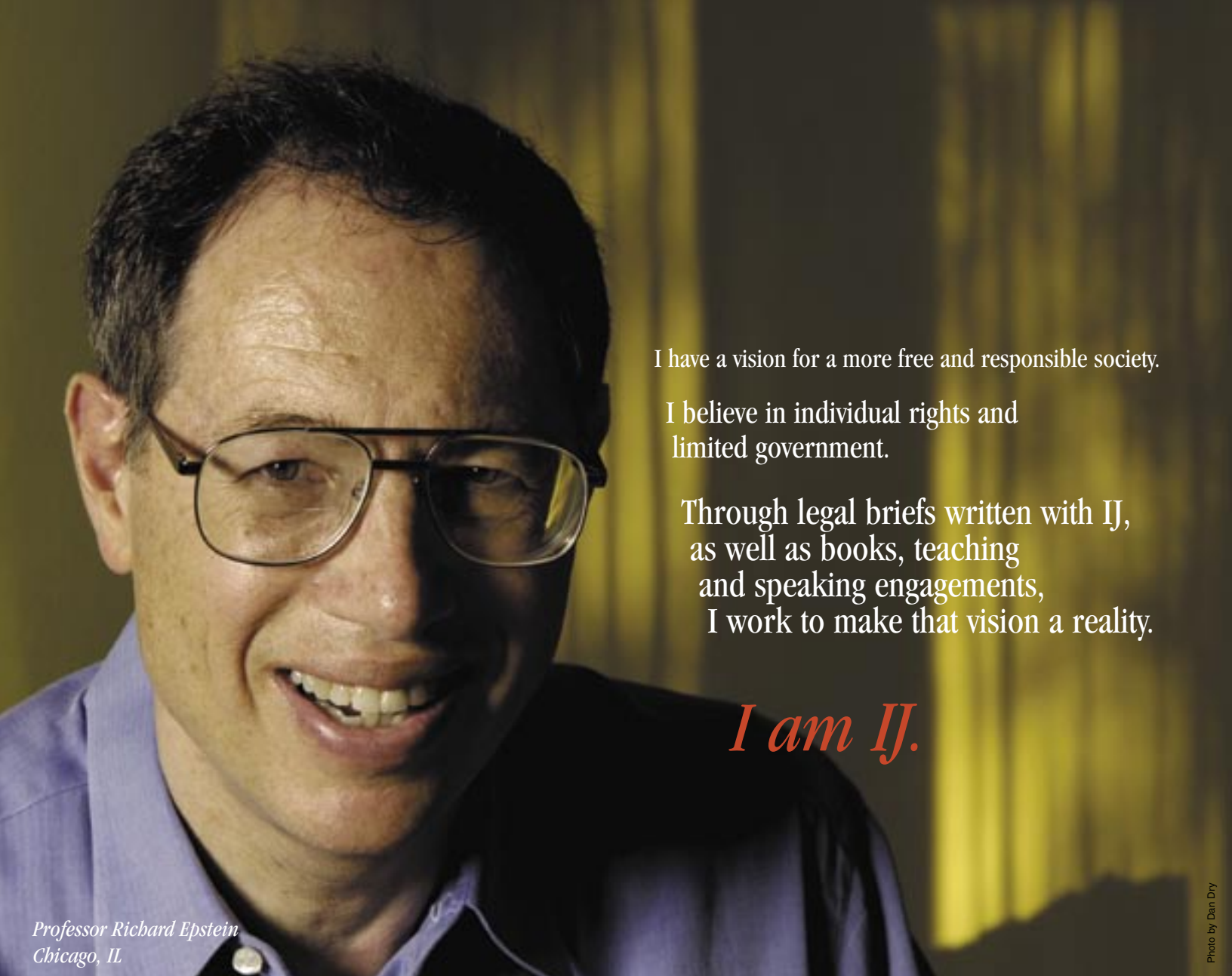
“[T]he Washington, D.C.-based Institute for Justice is leading the crusade against the abuse of eminent domain and maintains a website (www.castlecoalition.org) devoted to the cause.”

Orange County Register

“The Institute for Justice battles against nonsensical regulations nationwide that stifle free speech and limit commerce”

The Arizona Republic

“There’s a generally recognized right in law to earn a living. The [Institute for Justice] hopes to build on that to obtain some federal and state constitutional limits on government restrictions and barriers to engaging in honest commerce.”



I have a vision for a more free and responsible society.

I believe in individual rights and limited government.

Through legal briefs written with IJ, as well as books, teaching and speaking engagements, I work to make that vision a reality.

I am IJ.

*Professor Richard Epstein
Chicago, IL*

Photo by Dan Dry

www.IJ.org

*Institute for Justice
Public interest litigation*

“The Institute for Justice [is] a non-profit powerhouse in the battle against what it describes as eminent domain abuses”

—Hartford Courant



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