

# Liberty & LAW

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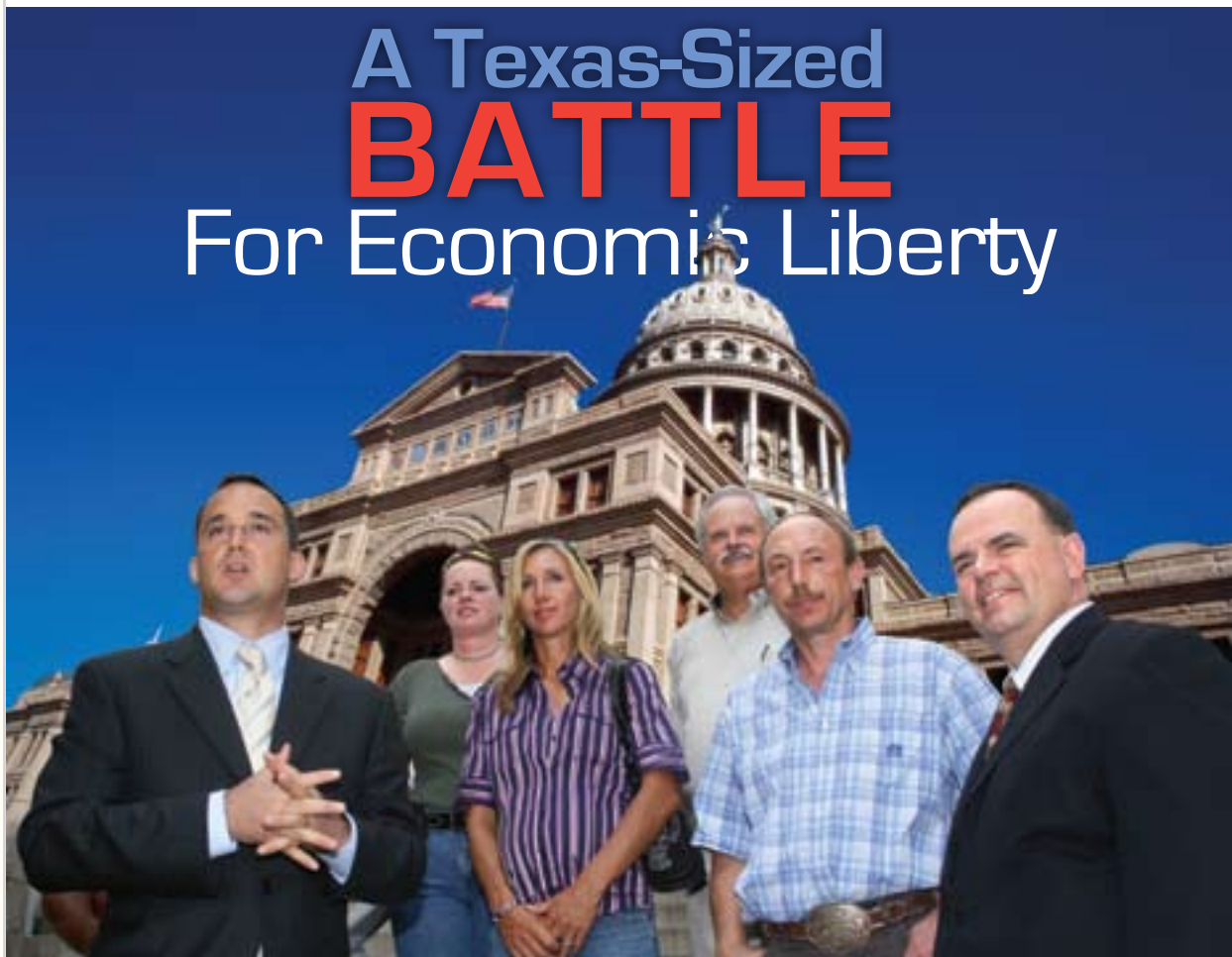
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### By Lee McGrath

The Institute for Justice is yet again chomping at the bit to sue a veterinary licensing board that needs its power bridled.

One year ago, IJ's Minnesota Chapter filed suit to vindicate the economic liberty of horse tooth “floaters”—those who file horses' teeth for a living—when the state board tried to shut them down. (We expect a ruling in that case any day.) And just this past summer, IJ sued another veterinary board—that one in Texas—that was abusing its power and denying

equine dental practitioners their right to earn an honest living in their trade free from arbitrary, unreasonable or monopolistic government regulations.

On August 28, IJ filed suit against the Texas State Board of Veterinary Medical Examiners on behalf of four equine dental practitioners and two horse owners who buy dental services. In the suit, IJ asked the Travis County District Court in Austin to strike down, under the Texas Constitution, a law decreeing that only government-licensed veterinarians may work on hors-

**Economic Liberty** continued on page 9

# IJ-WA Builds Victory on Victory: *Liberating Speech in Lynnwood*

By Michael Bindas

They say that from little bagels, mighty futons grow. Okay, maybe they don't say that, but they should. In the Evergreen State, where acorns and oaks are scarce, IJ Washington Chapter's (IJ-WA) year-old Blazing Bagels victory (in which we struck down a city's ban on portable signs for all but politicians and realtors) has borne a mighty free speech victory for the Futon Factory, a family-owned futon store in Lynnwood, Wash.

On August 14, the Futon Factory won its challenge to a Lynnwood ordinance that banned the use of off-premises, portable signs to advertise small businesses. In a stipulated judgment holding the ban unconstitutional, the Snohomish County Superior Court relied extensively on precedent established in *Ballen v. City of Redmond*, the 2006 case in which IJ-WA and Blazing Bagels owner Dennis Ballen defeated a similar ban in Redmond, Wash.

The Futon Factory win is an important victory for Washington's small business community. It is also a great example of IJ's ability to build on its successes to advance the cause of liberty.

Futon Factory's ordeal began in 2003. To inform potential customers about the store, owners John DeRaspe, his sister, Monica, and her husband, David Bolles, hired a sign-holder to stand with a portable sign on a nearby street in Lynnwood's commercial district.

The idea worked and business was great, but that is when trouble began. The city started threatening Futon Factory with fines for violating regulations that ban off-premises, portable signs for small businesses, but permit them for other purposes, such as the sale of real estate.



IJ-WA client and Futon Factory co-owner **John DeRaspe** shows his support for free speech with a sign that the Futon Factory is now free to display in Lynnwood, Wash.

Rather than buckled under the city's pressure, the store added the message "Futon Factory Believes in Free Speech" to its sign. Shortly thereafter, the city cited the store for violating the sign ban.

Futon Factory would not back down. John, Monica and David know how important advertising is to the success of small businesses like theirs, and they are committed to the principle that small businesses should have the same free speech rights as anyone else. So rather than give in, they enlisted the IJ-WA to take up their fight.

In July 2004, IJ-WA and the Futon Factory filed a civil rights action challenging Lynnwood's

sign ban. The argument was simple: the First Amendment prohibits government from discriminating based on the content of speech; government doesn't get to pick who gets to speak and what they get to say.

During the course of the lawsuit, Futon Factory got some welcome news. In September 2006, the 9th U.S. Circuit Court of Appeals ruled for Blazing Bagels in its challenge to Redmond's sign ban. The 9th Circuit held that government cannot ban portable signs for small businesses while allowing them for bigger players, such as the real estate industry.

Faced with the 9th Circuit's holding, Lynnwood realized its regulations could not stand. The city therefore agreed to a judgment acknowledging the sign ban's unconstitutionality. That judgment, which the Snohomish County Superior Court approved in August, makes clear the role that one IJ-WA victory played in securing another. It strikes down Lynnwood's

ban specifically because "*Ballen* holds that such a 'discriminatory, content-based prohibition' is 'more extensive than is necessary to serve' the City's interests."

Just as Futon Factory's win builds upon precedent established in *Ballen*, IJ-WA will build upon it until free speech rights are secured for all Washingtonians. We are confident that from these early successes, even mightier things will grow. ♦

**Michael Bindas** is an IJ Washington Chapter staff attorney.





# Sports Illustrated Features IJ Case

By Chip Mellor

Media coverage of IJ cases and events doesn't just happen. It comes from a carefully and consistently implemented approach applying proven techniques. We personalize, humanize and dramatize every case to enable the media and the public to appreciate the importance of the principles we seek to vindicate in a particular case and how those principles affect countless others.

Like everything we do at IJ, this is a team effort with a great deal of preparation up front. After the team drafts a mission statement that includes communication goals, members take action. Attorneys write litigation backgrounders distilling the case for lay audiences. Strategic communication objectives are crafted, op-eds are drafted and website designs are created. We then launch the case with a news conference. And that's just the

beginning. The entrepreneurial approach that characterizes IJ translates into tenacious efforts to generate media interest and appreciation for each case. That is why we are able to secure a high volume of media coverage. And that is why it is not unusual for us to receive favorable treatment in marquee national media outlets. Lawyers, communication staff, web designers and other team members are all expected to look for and create opportunities to generate coverage.

Our recent challenge to eminent domain abuse in National City, Calif., demonstrates how IJ succeeds in the court of public opinion. We represent the Community Youth Athletic Center, a successful nonprofit boxing club for at-risk youth. We announced our challenge with a news conference and rally outside the gym. The media, both local and national, received a news release and a kit containing detailed, accessible background information, all written for reporters on a deadline. IJ phoned all local media and targeted national media with

personalized pitches explaining why their specific outlet should care about this case. We wrote and placed an op-ed in the *San Diego Union-Tribune* explaining the importance of our fight. We received a gratifying response.

But we did not stop there. As a key part of our strategy, we decided to pitch *Sports Illustrated*, which, it is safe to say, had never covered eminent domain before. Vice President for Communications John Kramer pounded the phones trying to reach any of about a dozen editors at the magazine, knowing that it was crucial to secure a one-on-one opportunity to make a pitch and explain how special and important the story was. Associate Editor Trisha Blackmar passed the story on to renowned sports columnist Rick Reilly, who in turn received our media kit and supplemental materials. Reilly visited the gym and interviewed our clients.

In an effort to quash the story, however, National City's mayor wrongly claimed to Reilly and other journalists that eminent domain hadn't been threatened; the story seemed poised to slip away. But IJ attorneys Dana Berliner and Jeff Rows, along with Kramer, quickly responded to Reilly and the *San Diego Union-Tribune* editorial page

providing letters sent by the city and the developer threatening the gym with ouster under the threat of eminent domain. This took teamwork from our IJ team and our clients. One misstep or false note would have destroyed everything. Reilly stuck with the story, comfortable that there was a genuine conflict that had to be written about *now*. The result was an inside back-cover feature that rightfully called the mayor's credibility into question and underscored the importance of what our clients and IJ are trying to achieve.

The *Sports Illustrated* feature brought the fight against eminent domain to millions of readers previously unfamiliar with it. We were grateful for the alacrity with which the author and the magazine covered the story. But this is just the beginning of the coverage of National City and eminent domain. Applying "The IJ Way" to our communications strategy will continue to yield exciting results. Keep your eyes open and you'll see favorable coverage of IJ and our clients in many more unexpected places. ♦

Chip Mellor is IJ's president and general counsel.



# Law Student Trains & Inspires

By Krissy Keys

In July, the Institute for Justice held its 16th annual law student conference at George Washington University in the nation's capital. IJ welcomed 36 attendees from 24 law schools, including summer clerks from our headquarters and state chapter offices and even a practicing attorney from Sweden. The annual conference is not only attended by law students, but it also has become a fun refresher for both new and veteran IJ staff members.

Participants enjoyed a three-day crash course in public interest law "The IJ Way." Presentations from law professors Doug Kmiec of Pepperdine University and Todd Zywicki of George Mason University, Roger Pilon of the Cato Institute, attorney Robert Kry (a past IJ and U.S. Supreme Court clerk and law student conference alumnus), IJ attorneys, staff and clients gave attendees an exciting look at public interest law from a free market perspective. Attendees participated in lectures on IJ's four litigation pillars (property rights, economic liberty, school choice and free speech), media and outreach tactics, cutting-edge constitutional theories, legal policy, entrepreneurship and public choice theory. They also participated in a workshop putting what they learned to use. The IJ client roundtable, a favorite among attendees, reminded us of the importance of putting a human face on each case.

Michigan Supreme Court Justice Stephen J. Markman delivered Saturday night's keynote address,

# Conference

## Liberty's Advocates

### IJ Clerks & Interns



Our clerks and interns for the summer of 2007 provided excellent legal research for IJ. They are, from left to right, **Aaron Reese**-University of Illinois, **Jacob Gutwillig**-Princeton University, **Rob Johnson**-Harvard Law School, **Erin Smith**-Wake Forest University School of Law, **Kate Huleatt**-West Virginia University, **Allen Unzelman**-Pacific Lutheran University, **Alison Schmauch**-Emory Law School, **James Burnham**-University of Chicago Law School, **Ezra Hood**-George Mason University School of Law, **Sarah Ribstein**-Duke Law School, **Arpan Sura**-William & Mary School of Law, **Nick Sarwark**-American University Washington School of Law, **Noreen Johnson**-University of Minnesota Law School, and **Lauren Wiggins**-University of California, Davis, School of Law.



Pepperdine University Law School Professor **Doug Kmiec** has taught at the annual Law Student Conferences since its inception providing students with insights into cutting-edge constitutional theories.

discussing the proper role of the judiciary in shaping legal policy nationwide.

After the weekend-long public interest law boot camp, the law students became members of our Human Action Network. HAN is a network comprised of past IJ clerks and interns and alumni of our various training conferences, who volunteer with IJ to help further the cause of liberty throughout the country. Members of HAN support IJ by identifying and researching potential cases, serving as local counsel, authoring amicus briefs and even litigating cases. As in years past, we expect to see many of the new HAN members take prestigious clerk-

ships with state and federal courts. Many HAN members often go on to have influential careers in public interest law, private practice or academia.

IJ's annual law student conference is an important first step in many of the attendees' involvement in public interest law and often lays the foundation for a career-long relationship with the Institute for Justice and our continued fight for freedom.◆

**Krissy Keys** is IJ's assistant outreach coordinator.





## IJ CLINIC HELPS PERFECT PEACE FIND A PERFECT HOME

By Beth Milnikel

After years of waiting, hoping, dreaming, planning and praying, Denise Nicholes and Julie Welborn have opened the doors to Perfect Peace Café & Bakery. When customers walk through those doors, they not only enter a friendly, bright, clean eatery, but also a new era for a beleaguered block in Chicago's Auburn-Gresham neighborhood.

The block where Denise and Julie rented space was a series of empty storefronts in a neighborhood that residents and block clubs have been slowly reclaiming from gangs. With true entrepreneurial vision, Julie and Denise saw a host of opportunities there: an opportunity to serve customers who did not have many local options for good food; an opportunity

to rent and renovate two storefronts in their price range; an opportunity to combine Julie's managerial experience with Denise's culinary training; and an opportunity to initiate a positive change in the neighborhood where they go to church.

In March 2006, when they came to the IJ Clinic on Entrepreneurship for help negotiating the lease, Julie and Denise planned to open Perfect Peace in June of that year. But setbacks and delays began to multiply. The contractor with whom they applied for building permits blew by deadlines and doubled his original estimate. The entrepreneurs had to raise additional capital, and the IJ Clinic helped them create loan agreements with investors. The IJ Clinic also began to walk them through all the permits they would need to operate the restau-

rant legally and the regulations they would have to follow for workplace safety and payroll taxes. As with all of our clients who seek to grow businesses within the inner city, we provided these services for free.

Denise and Julie never lost sight of their dream for a high-quality, inviting cafe in Auburn-Gresham. To survive the delays financially, they began to cater. To save money, they rented space in a commercial kitchen from 2 to 4 a.m. Kathy Lee, a student working in the IJ Clinic, remembers one of her first meetings with the pair: "We were in a tiny conference room reviewing a web of health and safety regulations when Denise brought in a box brimming with treats." When Kathy got to sample the goods—admittedly, a perk of representing a bakery—she thought, "This doesn't taste like three in



“PERFECT PEACE IS A SHINING EXAMPLE OF THE DIFFERENCE INDIVIDUAL ENTREPRENEURS CAN MAKE IN THEIR COMMUNITIES.”



the morning.” She marvelled, “To me, that is part of the magic of Perfect Peace—the bright storefront and immaculate food don’t betray the hard work and long hours that went into bringing the business to the community.”

Perfect Peace opened this July, more than one year after the founders had planned, but the customers are lining up for lunch and desserts, and custom orders for cakes are increasing. Customers are amazed that Julie and Denise invested so much time, effort and money into their neighborhood. Neighbors thank them for sweeping the front stoop, keeping a clean bathroom, and putting in a big, airy plate glass window instead of bullet-proof windows and gates. And that’s before they even taste the red velvet cake!

Perfect Peace is a shining example of the difference individual entrepreneurs can make in their communities. Having endured a long wait to open, and now working 15-hour days, Denise and Julie have practiced perfect perseverance and perfect patience to give their customers Perfect Peace. ♦

**Beth Milnikel** directs the Institute for Justice Clinic on Entrepreneurship at the University of Chicago Law School.



Top, IJ client **Julie Welborn** meets with IJ Clinic Assistant Director **Praveen Kosuri**, while law students **Kathy Lee** and **Marylynn Hunt-Dorta** meet with client **Denise Nicholes** during the build-out of the Perfect Peace Bakery. Below, IJ Clinic Director **Beth Milnikel** meets with **Nicholes, Welborn** and IJ Clinic Summer Fellow **Matthew Stanton**.

# It doesn't take an expert to tell you a government-imposed cartel is bad. Or does it?

## *IJ Pioneers Educate "Public Choice Theory" As Cutting-Edge Tool*

By Clark Neily

Nearly alone among the states, Maryland demands that anyone who owns a funeral home be a fully licensed funeral director. This is like saying you have to be a licensed pilot to own an airline.

Besides the fact that the rest of the country seems to get along fine allowing "outside" ownership of funeral homes, the idea that Maryland's law might not be entirely public-spirited is further confirmed by the exceptions the law allows. For example, spouses and executors of a deceased funeral directors estate may own funeral homes even though they have no training or experience. Or, if you happen to have about \$250,000 to burn, you can try to buy one of 58 specially grandfathered corporate funeral homes from its current owner, much like a taxi medallion in New York City.

Of course, it is no mystery what this law is really about. By erecting protectionist barriers to entry into the funeral industry, Maryland increases profits for state-licensed morticians at the expense of consumers and would-be competitors. This dynamic—a demonstration of "public choice theory"—exists in nearly every IJ economic liberty case. It is particularly blatant in the Maryland funeral home case, and, as such, provides a great chance to tell a court the story of public choice economics through our litigation in hopes of striking down this nakedly protectionist scheme.

Enter George Mason University Law School Professor Todd Zywicki.

We knew Todd had first-hand knowledge about this issue because in 2004, as head of the Federal Trade Commission's free-market-oriented Office of Policy Planning, he signed a letter expressing the FTC's view that the elimination of Maryland's funeral home ownership restrictions would benefit consumers by promoting competition. We also knew Todd as a first-rate mind and one of the leading authorities on public choice theory among legal academics.



George Mason law professor **Todd Zywicki** shares his thoughts on public choice theory with participants at this year's IJ law student conference. **Zywicki** also aided IJ's battle against Maryland's funeral home cartel by serving as an expert.

So we approached him about the possibility of serving as an expert witness in the case, where his role would be to evaluate the law and explain whether it appeared genuinely public-spirited, as the state's lawyers argued, or more consistent with the special-interest-promoting predictions of public choice theory, as we claimed.

Plowing through several thick binders of pleadings, depositions and discovery materials, Todd quickly sized up Maryland's law and described it as "an effort to create governmentally imposed barriers to entry in the funeral home industry and thereby to transfer wealth to a discrete, well-organized

interest group at the expense of consumers of funeral home services and the public at large." From there, Todd went through the law and the record evidence, showing point by point how Maryland's funeral home ownership law tracked perfectly the insights of public choice economics. This included demonstrating how special interests influence legislatures and "capture" regulatory agencies to promote their own anti-competitive interests in the guise of consumer protection and public welfare laws that are anything but.

Todd's expert report, which we submitted to the U.S. District Court for the District of Maryland in support of our pending summary judgment motion, is the most powerful explanation of public choice economics we have ever seen in litigation. It provided us with tremendous support for the argument, which we make in all of our economic liberty cases, that the kind of blind, unquestioning deference to economic regulations that is currently in vogue among so many judges is not only constitutionally suspect, but intellectually and factually unjustifiable as well. This effort is yet another example of IJ's cutting-edge litigation tactics that break the mold of how such cases are advanced in the courts of law.

With Professor Zywicki's expertise, the Institute for Justice will help this court and other courts across the nation better understand the vital role they play as a check on abusive and self-serving government power. ♦



**Clark Neily** is an IJ senior attorney.

**By erecting protectionist barriers to entry into the funeral industry, Maryland increases profits for state-licensed morticians at the expense of consumers and would-be competitors. This dynamic—a demonstration of "public choice theory"—exists in nearly every IJ economic liberty case.**



**Economic Liberty** continued from page 1 es' teeth, despite the fact that floating horse teeth is a procedure that most veterinarians have never performed and for which they have no training.

In late February 2007, the State Board sent cease-and-desist letters to various equine dental practitioners, including the four IJ represents in the current court challenge, but our clients refused to be bucked out of their trade. As opposition mounted to the State Board's action, the Board canceled a public meeting to receive input from horse owners who were outraged by the new policy. The Board then announced it would commence legal proceedings in September against equine dental practitioners who refused to stop working, threatening them with fines of up to \$5,000 per day and even jail time for refusing to give up their vocations. IJ's suit, filed days before the state was to act, is a pre-emptive strike to keep these entrepreneurs free and in business.

IJ's clients believe strongly that horse owners, not bureaucrats, know best how to care for their horses, including their horses' teeth, and they are willing to defend that principle in court.

Among these is Carl Mitz, a third-generation horseman who lives near Austin. He has treated the teeth of more than 100,000 horses and is recognized as the nation's premier dental practitioner for miniature horses. Dena Corbin of Fort Worth is the president of North Texas Equine Dentistry and has provided dental services to 15,000 standard and miniature horses. Randy Riedinger founded and operates an equine dentistry school west of Fort Worth that has trained more than 120 practitioners, including a number of veterinarians. Randy doesn't just teach; he is a practitioner too, and he has floated the teeth of 40,000 horses. Brady George studied at Randy's school and has serviced the teeth of more than 2,500 horses.

IJ also represents two of Carl Mitz's clients, Gary Barnes and Tony Greaves, who have



Top, IJ client and miniature horse breeder **Carl Mitz** shares a visual aid at the launch of our lawsuit. Below, IJ client **Gary Barnes**, left, is a miniature horse dental practitioner. He was joined at our press conference announcing our lawsuit by 11-time world barrel racing champion **Charmayne James**, center, and IJ Client **Dena Corbin**, right.

ranches in Texas with miniature horses. Both consider Carl's services vital to the well-being of their horses and their businesses, which involve breeding and selling miniature horses to customers around the world. As Barnes explains, "I've never met a veterinarian adequate in equine dentistry, and both my father and grandfather were veterinarians." Greaves is one of the nation's largest breeders of miniature horses, which have won multiple national championships. Likewise, he has never found a veterinarian capable of meeting the dental needs of his 300-head herd. In fact, before he found Mitz, Greaves would regularly fly a nonveterinarian equine dental practitioner all the way

from Brazil to take care of his horses' teeth.

Barnes and Greaves' unsatisfactory experiences with veterinarians are no surprise. Veterinarians typically do not learn to treat horses' teeth in school, and equine dentistry is almost never tested on the national licensing exam. Nonetheless, the Texas State Board absurdly and arbitrarily requires a veterinary degree in order to float horses' teeth.

Equally absurd is that Texas' licensing act does not apply to dental work done by the owner of the horse or his employee. This means that an owner's untrained, inexperienced ranch hand may legally float horses' teeth, but highly skilled practitioners like Carl, Dena, Randy and Brady may not.

As in Minnesota, the obvious explanation for Texas' persecution of equine dental practitioners is economic protectionism. Rather than looking out for the best interests of horses and horse owners, the Board is protecting the financial interests of veterinarians, who are using their political power to corral competition through government force in a number of states. Indeed, one member of the Texas Veterinary Board has even expressed the view that equine dental practitioners are "chipping away" at the veterinary monopoly and must be stopped through regula-

tion.

But such regulations are a lose-lose-lose for entrepreneurs, owners and horses. They put people with hands-on training and skills out of work, while forcing horse owners to pay more for lower quality care. Texans deserve better, and so do their horses. The Institute for Justice is committed to restoring a little more liberty to the Lone Star State. ♦

**Lee McGrath** is executive director of IJ's Minnesota Chapter.



## IJ Publications Earn Top Honors

The Association of Marketing and Communication Professionals gives out the Hermes Creative Award, at the platinum and gold levels, for companies whose talent exceeds a high standard of excellence and whose work serves as a benchmark for the industry. Even among the 3,500 submissions to the Association, the Institute for Justice earned a number of honors for its publications.

These awards are for design, writing and concept. The teamwork and professionalism the IJ staff continually bring to bear is why IJ publications consistently win such recognition. Here are the results:

### Platinum Award

Four Pillars Society (planned giving brochure)  
Hands Off My Home (eminent domain poster)



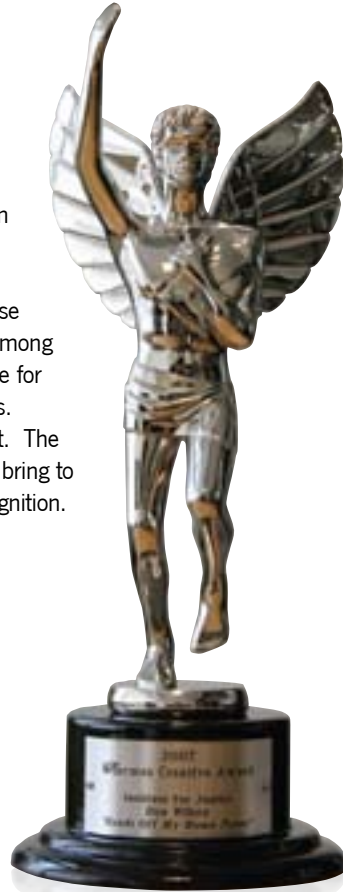
### Gold Award

Liberty & Law (newsletter)  
Opening the Floodgates (eminent domain report)



### Honorable Mention

School Choice and State Constitutions: A Guide to Designing School Choice Programs (school choice report)



## Super Lawyers

### Washington Chapter Director Bill Maurer Named Super Lawyer

*Washington Law & Politics* magazine named IJ Washington Chapter Executive Director William Maurer a “Super Lawyer,” based on a survey of more than 17,000 active lawyers



across the state. Each year the publication announces the list, which comprises the top 5 percent of Washington attorneys in more than 60 practice areas. Bill recently argued two cases in front of the Washington Supreme Court and is litigating several important First Amendment cases for IJ. Bill joins IJ’s other state chapter executive directors (Tim Keller in Arizona and Lee McGrath in Minnesota) in receiving recognition by statewide publications for their outstanding legal work. *Washington Law & Politics* also named the Institute for Justice Washington Chapter’s lawsuit challenging the government’s effort to use campaign finance laws to quash the speech of political opponents as a lawsuit of the year. ♦

Volume 16 Issue 5

**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 destinies as free and responsible members of society. IJ 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, IJ trains law students, lawyers and policy activists in the tactics of public interest litigation.

Through these activities, IJ 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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# Quotable Quotes

**ABC**  
**WKOW-TV Madison, WI**



**IJ Staff Attorney Bob McNamara on Wisconsin’s mandatory markup law for gas:** “Restrictions on price competition—like those that Wisconsin has—simply make no sense.”

**FOX News National**  
**Special Report with Brit Hume**

**IJ Senior Attorney Steve Simpson on IJ’s Parker North clients, who are being sued under Colorado’s campaign finance laws for speaking about their neighborhood’s proposed annexation:** “These people were blindsided. They thought what they were doing was as American as voting. They heard about this issue and they decided to speak out against it.”



**The New York Times**

“New Jersey and New York are among the worst states in the country for eminent domain abuses—New Jersey is really awful,” said Dana Berliner, a senior lawyer at the Institute for Justice in Arlington, Va., which represents residential and business owners facing condemnation. “What’s interesting is that New York, New Jersey and Connecticut are some of the few states that have not managed to pass any decent legislation.”

We know that entrepreneurs make cities and towns wonderful places to live.

We worked with the IJ Clinic on Entrepreneurship  
to turn our dream of opening a café  
into a reality for a down-and-out neighborhood.

We believe everyone should have a place  
of Perfect Peace to enjoy life's sweetness.

*We are IJ.*



*Denise Nicholes and Julie Welborn  
Chicago, Illinois*

[www.IJ.org](http://www.IJ.org)

*Institute for Justice  
Clinic on Entrepreneurship*

**“The Arlington, Va.-  
based Institute for  
Justice has success-  
fully challenged...  
licensing laws in  
court and done a  
great deal to  
vindicate the right to  
earn an honest  
living.”**

*—Wall Street Journal*



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