THE TRUTH ABOUT KELO

BY SCOTT BULLOCK

The wave of public anger that has swept the country is the voice of the American public—across geographic, political and ethnic divides—that want eminent domain for private profit to end.

In the article, "Perception v. Reality: Media Bias in the Reporting of Kelo," published in the May/June 2008 issue of Right of Way Magazine, John Brooks, a project manager for the New London Development Corporation (NLDC), the private, non-profit group that was supposed to implement the ill-fated development plan in New London, and William Busch, complain that if the public had known all the facts behind the New London case, then there would have been more support for the eviction of Susette Kelo and her neighbors to make way for private development projects. They also claim that my organization, the Institute for Justice, has single-handedly manipulated the public to turn against the use of eminent domain for private commercial development. This insinuation is flattering but, alas, untrue.

The fierce backlash inspired by the Kelo case demonstrates that a vast majority of Americans believe eminent domain should only be used for true public uses, not for the building of shopping malls, high-end condominiums and other manifestly private projects. That is why Kelo is perhaps the most universally despised Supreme Court decision in history. The wave of public anger that has swept the country is not the doing of the Institute for Justice. That is the unmistakable voice of the American public—across geographic, political and ethnic divides—that is calling for the end of eminent domain for private profit.

Ah, but the authors claim, the takings in New London weren't really for private development projects at all, but instead were necessary for infrastructure improvements, such as the widening of streets. Again, this is not true. First, it must be noted that the City and the NLDC proceeded under one section of Connecticut law-Chapter 132. They did not rely on statutes that permit the use of eminent domain for road improvements or even for the removal of blight. Rather, Chapter 132 permits the use of eminent domain to take any two or more parcels of property for any "commercial, financial or retail enterprise." It is one of the most sweeping authorizations for the use of eminent domain for private development projects in the country.

Despite relying only on Chapter 132 in its legal pleadings, the City and the NLDC also argued in the trial court that the Fort Trumbull homes had to be taken to widen roads and improve the infrastructure. Incredibly, the authors neglected to mention that the trial court heard evidence about this issue and completely rejected the NLDC's arguments. The court ruled that any needed road and infrastructure improvements could be accomplished without taking any of the homes. It is very difficult for property owners to win such "necessity" challenges to public improvement claims, but the NLDC's arguments were so weak, and the takings so unnecessary that the trial judge rejected them. That ruling was undisturbed throughout the appellate process.

It is clear from the article that the authors have utter contempt for the residents in the Fort Trumbull neighborhood who stood up to the abusive actions of the City and the NLDC. That is still no excuse to for misrepresenting their situation. The authors claim, for instance, that the residents did not pay property taxes on their homes during the six-year legal battle. They fail to mention that, when the condemnation actions were filed in 2000, title to those properties immediately transferred to the NLDC, which thus became the owner. Because they did not hold title to the properties, the former owners were under no legal obligation to pay the property taxes. Nevertheless, several of the property owners still paid taxes throughout much of the litigation process because they did not want to give any sanction to the notion that the NLDC owned their homes.

The authors also claim that most of the folks challenging the takings were not actual residents of Fort Trumbull and that the media created a misleading impression of a genuine neighborhood. Again, completely false. Susette Kelo had consistently lived in her home since she bought it in 1997 and up until she was forced to leave it in 2006. The Derys had lived in their homes for over 100 years. Both before this controversy and during most of it, Bill Von Winkle lived in one of the homes he owned in the Fort and rented out the others, which he had

renovated by hand. The Guretskys, until a move in 2005 after the Kelo decision was handed down, had lived in Fort Trumbull since the 1980s. Byron Athenian's home was technically in his mother's name but he was also a long-time resident of the Fort and always paid the mortgage and other expenses on the home. Members of the Cristofaro family had consistently lived in their family home since the 1970s. Only Rich Beyer, who owned two rental homes, did not live in Fort Trumbull. But he lovingly restored one of the old Victorians by hand and would have liked to do the same for the other one. The only reason why the owners settled after the Supreme Court decision is that they were forced to do so through threats of eviction and massive fees. If you ask any of them, you will find out that they would all have preferred to keep their homes. They were the type of people that troubled cities like New London should have cherished. Not surprisingly, all but one of the former homeowners has moved out of New London. Given how they were treated, who could blame them?

The authors also fail to mention that just about everyone, including even those who originally supported the plan, now admit that the property owners throughout this process were treated appallingly by the City and the NLDC. Property owners were threatened with eminent domain in the first letter they received from the real estate agents hired by the NLDC, and many elderly residents were intimidated into selling their homes. In one instance, the outrage over the actions of the NLDC against the Paqualini family—where the 90-year-old Walter Pasqualini went to his grave worried sick about the loss of his home—forced the NLDC to permit his wife and her sister to remain in their home for the rest of their lives.

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The entire Fort Trumbull debacle was entirely unnecessary. The residents owned a total of 1.54 acres of land in a 90-acre area and never opposed development on parcels owned by the NLDC. The existing houses could have been incorporated into the new development projects. Indeed, the plan itself called for a mixed-use development, including residences. If the NLDC simply had let these folks stay, it would have saved years of litigation and expense. In fact, the NLDC decided to keep the politically-connected Italian Dramatic Club, a male-only private club in Fort Trumbull, even though the plan does not call for a social club in the area. The same thing could have been done for the homeowners. Once again, the authors fail to mention these inconvenient facts.

In a postscript to the article, John Brooks cryptically claims that the case could have been settled if the City had not appealed to the Connecticut Supreme Court and just let the split decision from the trial court stand. (The trial court ruled in favor of the property owners who lived on so-called Parcel 4A of the plan and ruled against the property owners on Parcel 3.) What really happened is that the NLDC claimed it would not appeal the decision on Parcel 4A if the Institute for Justice did not appeal the decision on Parcel 3. We were willing to explore the possibility of moving the four homes from Parcel 3 over to 4A to create a housing village. The reason why this idea went nowhere is because the NLDC and the City refused to remove eminent domain from the development plan for Parcel 4A. The trial court ruled in favor of the homeowners on Parcel 4A because there were no development plans for the area and therefore impossible to determine whether the takings were for a public use or if they were necessary. If development plans were put into place, and eminent domain remained a part of the plan, the NLDC simply could have filed condemnation actions against the homes on Parcel 4A at any point in the future. Without removing eminent domain from the plan for Parcel 4A, the idea of dropping the appeal was a meaningless, empty gesture. Not surprisingly, the property owners rejected it.

Mr. Brooks also speculates that the reason why the Institute for Justice pressed forward with the New London case is because one donor gave us money to do so. It is ironic that, in an article supposedly about perceptions and myths, the author engages in sheer speculation without any facts to back up his argument. In any event, the fact is that no person or organization gave the Institute for Justice any money earmarked for use in the Fort Trumbull case. Rather, the hundreds of thousands of dollars needed to litigate this case came from thousands of donors, large and small, who believed in our work. We pressed forward with the New London case solely because it constituted one of the most outrageous examples of eminent domain abuse in the nation.

What is most perhaps astonishing about the article is that Mr. Brooks would spend his time writing it. He is the manager for the Fort Trumbull project, and despite the infusion of close to $80 million in taxpayer funds and the three years that have elapsed since the Kelo decision, there has been no new construction in the area whatsoever. The preferred developer for part of the site, Corcoran Jennison, just missed its latest deadline because it has not been able to secure financing for the project in spite of repeated efforts to do so. The project has been an unmitigated disaster. But rather than spend his time desperately trying to get any development to come to Fort Trumbull, Mr. Brooks instead chooses to attack the former property owners and their lawyers and spread misinformation about the Kelo case. I would suggest that, in the future, Mr. Brooks spend his time sending out requests for proposals. Connecticut taxpayers should expect no less.