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Michael Berger Honored With 2014 Brigham-Kanner Prize

By David F. Morrill

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Property rights expert Michael M. Berger is the proud owner of a new, special piece of property—the 2014 Brigham-Kanner Property Rights Prize. The prize, named in recognition of Toby Prince Brigham and Gideon Kanner for their lifetime contributions to private property rights, recognizes scholarly or professional achievements that affirm the importance of property rights to individual liberty.

Berger was honored at a dinner in the historic Sir Christopher Wren Building on Oct. 30 inaugurating the Eleventh Annual Brigham-Kanner Property Rights Conference* at William & Mary Law School. The conference included panels on the role of the advocate in defining property, the resurgence of property principles under the Fourth Amendment, balancing private property and community rights, and property rights in developing and transitional democracies.

Berger is one of the top eminent domain and land use lawyers in the United States. His appellate practice at Manatt, Phelps & Phillips has involved condemnation, due process, and equal protection.

In remarks made at the awards dinner, Conference Co-Chairman Joseph T. Waldo, a 1978 graduate of the Law School, and founding partner of Waldo & Lyle in Norfolk, Va., spoke of how Berger follows in the footsteps of no less than John Marshall, the legendary Chief Justice of the Supreme Court and one of George Wythe's first students at William & Mary Law School.

"[Marshall] was more than a Supreme Court Justice. He was a patriot who believed in property rights, and he was a great litigator and practitioner of the law," Waldo said. "And that is appropriate tonight as we honor a practitioner of law as a recipient of this prize for the first time."

Lynda Butler, William & Mary's Chancellor Professor of Law and director of the Property Rights Project, told the audience that the prize is awarded each year to "someone who has made significant contributions to our understanding of property and of its role in society. The recipient is someone who has thought deeply about



property's relationship with individual liberty and to our political, economic, and social systems."

Butler said that prior recipients have included some of the nation's leading property rights scholars and jurists.

"This year's recipient, Michael Berger, is the first practicing lawyer to receive the prize," she said. "He is one of the top eminent domain and land use attorneys in the nation, and has advocated as a lawyer and as a scholar for the protection of property rights."

Butler described how even when Berger is not directly involved in a case, he frequently advocates for property owners through amicus briefs and venues outside the courtroom.

"He is a frequent contributor to several California newspaper columns and has published a number of scholarly articles," Butler said. "Through his articles and columns he has shared his perspective on the state of regulatory takings law, always informed by the experiences of his clients."

In brief remarks, Berger said he was deeply honored to accept the award for his professional work. But he admitted the prize also holds special personal meaning. Not only has Toby Brigham been a friend of his for many years, but Gideon Kanner was his first law partner.

Prior recipients include Professor Frank I. Michelman, Harvard Law School (2004), Professor Richard A. Epstein, University of Chicago Law School (2005), Professor James W. Ely, Jr., Vanderbilt Law School (2006), Professor Margaret Jane Radin, University of Michigan Law School (2007), Professor Robert C. Ellickson, Yale University (2008), Professor Richard E. Pipes, Harvard University (2009), Professor Carol Rose, University of Arizona (2010), Retired Associate Justice of the United States Supreme Court Sandra Day O'Connor (2011), Professor James E. Krier, University of Michigan (2012), and Professor Thomas W. Merrill, Columbia Law School (2013).

Four of the recipients—Epstein, Ely, Krier, and Merrill—were in attendance and recognized as Berger joined their ranks.

"I am humbled and honored to be in their company," he told the audience.



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*Volume Three of the *Brigham-Kanner Property Rights Conference Journal* has recently been published by The William & Mary Property Rights Project.