

TRIBUTE TO TOBY PRINCE BRIGHAM,
PROPERTY RIGHTS LAWYER AND VISIONARY¹



COMMENTATORS

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BUTLER. Good morning. It's so nice to have people attending the conference again and to have a big audience that is virtual as well. We're going to start with a remembrance of Toby Brigham, a giant in the field. Joe Waldo is going to give a short presentation, a very nice presentation, about Toby. Joe.

WALDO. Thank you, Lynda. Before I start, I wanted to thank—actually I wanted to salute—Lynda Butler, Andrew Brigham, and the committee that puts this conference together. Lynda, you all have done a wonderful job again. And then I want to say to Dean Spencer: Dean, we appreciate your enthusiasm for this program and your support. It means so much and thank you very much. Then I have to say that if Toby were here, I think, Vicki Been, he would be congratulating you and he would speak about how proud he would be about your service, and I wish Toby was here to see you win this prize and give your lecture today.

1. This is a transcript of the remarks delivered to the Brigham family and the audience at the opening of the 18th Annual Brigham-Kanner Property Rights Conference as a tribute to the life and legacy of Toby Prince Brigham (1934–2022).

Let me tell you about Toby Prince Brigham. Over eighteen years ago when we were forming this conference on property rights, we were trying to figure out how to make it successful. And it was decided that if it was going to be successful, it not only had to have the academy, but the practicing bar. And if the two came together each year for a national conference—sometimes it's been international in Beijing and at the World Court in the Hague—if it was going to be successful every year, then what it would need is the interchange between the academy and the practicing bar. So how did it get its name? Well, it was decided that the name and the namesakes would represent the academy and the practicing bar. So Gideon Kanner, who had focused his entire career on takings law and eminent domain at Loyola University Law School and was an emeritus professor, was chosen for the namesake of the academy. And Toby Prince Brigham, surely one of the greatest property rights attorneys in our nation, was chosen to represent the practicing bar. So that's how we came up with the Brigham-Kanner Property Rights Conference name.

Toby focused his entire life on three things: on his faith, on his family, and on property rights. Now I'm not going to talk about his faith today, except to say that this is Toby's and Kay's family church, Old Cutler Presbyterian Church—what a beautiful sanctuary. That church and that sanctuary would not be there without Toby Brigham's leadership. He and his wife Kay were instrumental in their faith and outreach to the community. They believed in serving others, and through their faith, they had outreach programs that served many, many people of all walks of life throughout Miami and in other places, too.

Toby was devoted to Kay his entire life. He loved Kay and was devoted dearly to her. I think a great example of that was the night before Toby passed away in March. The night before he passed away, he told his daughter Amy, who is here today, that when he passed away and he was gone, if Amy saw stars falling from the heavens, that was Toby pushing the angels out of the way to get to Kay. That was Toby: right up until the day he passed away, he was devoted to Kay. But I said it was his family, and I've got EFP's picture here. That's Toby's father on the left on horseback in the early 1920s. He was the first generation Brigham in the property

rights field. EFP is what they called him—EFP Brigham. So then you see the whole family there, and you see Edward and Amy (in the middle) and you see Andy (on the left) and Tim (on the right). And Toby took great interest in all the careers of all his children. I think he was very pleased that Amy and Andrew carried on that tradition of property rights as third generation property rights attorneys.

Now Toby was incredibly successful in his career with cases literally around the country. But as I think about Toby Brigham, there are so many words that would have described Toby. Let me mention just a few now: he was sincere, respectful, dignified, collegial, and humble. Toby was many more things than that, but he was certainly those. And with respect to respect: Toby had many very bitter cases where, for his clients, he was fighting what's called "the right to take" where they believed—property owners—that their property was being taken for a use that was not a public use and it wasn't legitimate. And it would be contentious in the courtroom, and his clients sometimes would have great animosity to the opposing attorney. And Toby would tell them and every lawyer and everybody else that you must have respect for the other side, and he would tell his clients, "They're just doing their job as they see it under the Constitution, just like I'm doing my job for you under the Constitution." That's the way Toby practiced. He didn't think it was just about dignity—it involved human dignity. If you didn't have respect, there couldn't be dignity, and Toby, no matter what a person's walk of life, no matter their situation, he believed in human dignity and that respect.

Collegiality. I always associate that trait with Toby. Toby and Gideon headed up the American Law Institute's longest running and one of its most successful programs ("Eminent Domain and Land Valuation Litigation"). Before a panel began, Toby typically started at the back of the conference room or in the hallway, and he would go up to somebody with that big smile and introduce himself, saying "I'm Toby Prince Brigham. Can you tell me where you're from?" And he would ask them all about why they were there and what they were doing. That was Toby. He was such a gracious and friendly person and genuinely interested in other people.

Humble. Well I told you about all those newspaper articles on the many, many, many stories of Toby's successes. Toby was a very successful lawyer. He won almost all his cases. But Toby was humble.

It was never about “me”—it was about the cause of what Toby said was property rights. And what was that? What was the cause of property rights that made Toby so sincere when he was in a courtroom and made him so believable? Because he was believable. He believed that property rights divided power, that owning property—whether it was your family’s home, your family’s business, whether it was your condo, or your apartment, or your tract, just a piece of land—invested you in our democracy. And the more people invested in our democracy, the safer our democracy would be. The American Bar Association says that their mission is to defend liberty and to protect and ensure justice—that’s what they’re all about. Well that was Toby’s mission because he believed that property rights were a civil right, a civil right often neglected. He believed that that civil right was what Jim Ely would write about in his book, *The Guardian of Every Other Right*. Without the right and protection of private property, we couldn’t have the other rights that we have—freedom of religion, freedom of speech. And all of those civil rights, they’re grounded also in property rights, and you cannot have one without the other. That’s what Toby believed sincerely and genuinely, and he practiced that his entire career.

Let me just give you a couple of examples of how Toby practiced law. He worked hard. He did so many things—it wasn’t just his sincere belief in the cause of the civil right of private property and its protection. He worked incredibly hard. Kay would say that it was nothing for Toby three weeks before trial to work in his office all night long, come home, take a shower, and go back to work the very next morning. That’s how hard he worked. But he was brilliant, as Gideon Kanner would say, in taking complex cases and complex causes and breaking them down so that a judge in a courtroom, where things are moving incredibly fast with a lot of moving parts and juries, would be able to make the case understandable. And how did he do that? Well, the famous Paramount Theatre case in Portland, Oregon, is an example.

Many years ago, two businessmen—one from New York City and one a member of the minority community of Portland—bought the old Portland Theatre. Their mission was to remake that theater into a beautiful theater and bring Broadway shows to Portland. And as their local attorney said, “Neither one of my clients were very respected in Portland.” Of course, that would not have bothered Toby

at all. And so this attorney called Miami, Florida and asked if Toby Prince Brigham would come to Portland because the City of Portland had decided it was a great idea to have that theater. They would condemn it and take it for the city. And that's what they did. They condemned these two men's project that was already underway, that they had thought up, and for which they had taken the risk. The whole situation just didn't seem fair, especially since the two appraisals for just compensation were millions of dollars apart. But Toby would tell you it wasn't about just compensation, it was about respect and dignity. Because when something is taken from you and you feel like you haven't been treated fairly, you tend not to respect that system. So Toby flies to Portland, Oregon and after the owners tell Toby their story, he replies that he has heard this story many times (City leaders taking an owner's idea and property). Then, as soon as Toby got out of the airport door and into a cab, the first question for the cab driver was "How does a Miami trial lawyer convince a jury here in Portland that my client is right, that they deserve justice?" And Toby wouldn't quit asking the cab driver questions: "Here are the facts of the case, what do I do?" And so on. They said he didn't give up when he got to the hotel: every night at dinner he asked the waiter or the waitress, or the cab driver the next morning, "What do you think?" You see what Toby did his whole career was get dozens and dozens of different perspectives because Toby listened to everybody. And he wanted to take in that information. Most of it wasn't helpful, but all he needed was a nugget here and a nugget there, and it helped him win cases. And Toby's appraiser's value, of course, was millions of dollars apart, but Toby won that case even though he was from Miami, Florida.

Another classic example: Toby had a case where the government had only taken a relatively small piece of land, but it was a big parcel. And in closing arguments, at the end of the case, the government's lawyer got up there and said, "Well, Mr. Brigham's client is entitled to just compensation for what we took. But that parcel was so big and we took so little, he should not get any damages for his client for what we didn't take." And Toby, of course, always in suit and tie, stepped in front of the jury and he held up his tie and he said, "If I just cut off the bottom of my tie, it's still damaged." And then Toby, when he had their attention, went on to explain how this

large piece of property—all but only a small piece had been taken—was damaged. Of course, that was another win for Toby.

So how do you describe the greatness of a person like Toby Brigham in just a few minutes? Impossible just hearing a few snippets about Toby's life. But Toby was remarkable. He helped literally thousands of property owners in Florida and others across the nation. Every time a lawyer wanted help, wanted assistance in learning about property rights, Toby was there for them. If you didn't get him on the phone right then, by that evening or night, you'd get a call. And Toby would take all the time that was necessary to help somebody in what he believed was the cause of property rights and of liberty and of dignity—human dignity. That's the way he practiced. He formed an organization, the Owners' Counsel of America, to raise the bar and the professionalism of property rights attorneys. In every turn somewhere in his career, he was doing other things besides being just a trial lawyer. And that's why he really was so special. So I would say today, in closing, to those who are listening here or around the nation: we all hope that when that day comes and we're gone, that we've made the world a little better place. But we can say for Toby Prince Brigham that not only did he make his community a better place, but his service to others—his entire life and his entire career—made, I think, this nation a better place. That's remembering Toby Prince Brigham. Thank you.

BUTLER. That was very nice, Joe. I loved hearing the snippets about Toby's life as a person and a practitioner. His life of service offered invaluable lessons to us all.