

EIGHTEENTH ANNUAL BRIGHAM-KANNER PRIZE:
DINNER PRESENTATION AND
AWARD RECIPIENT SPEECH

AWARD RECIPIENT

Vicki Been, *Judge Edward Weinfeld Professor of Law at NYU School of Law, Affiliated Professor of Public Policy at the NYU Wagner Graduate School of Public Service, a faculty director of NYU's Furman Center for Real Estate and Urban Policy, and New York City's Deputy Mayor for Housing and Economic Development*

INTRODUCTION

Andrew Brigham, *Managing Partner, Brigham Property Rights Law Firm, PLLC*

Lynda L. Butler, *Chancellor Professor of Law, Emerita, and Director, Property Rights Project, William & Mary Law School*

A. Benjamin Spencer, *Dean and Trustee Professor, William & Mary Law School*

SPENCER. Welcome everyone to the 18th annual Brigham-Kanner Property Rights Conference. I am A. Benjamin Spencer, Dean of William & Mary Law School, and it is my pleasure to extend greetings to you from the university, from the Law School, and the William & Mary Property Rights Project. We're gathered this evening in William & Mary's Wren Building. It has a special place in legal history. The teaching of law in a university setting began here in 1779. The Wren Building was built around 1695, and, suffice to say, has persisted over centuries. So if you need an example of staying power, this is it.

Now the annual Brigham-Kanner Property Rights Conference is named in honor of Toby Prince Brigham, founding partner of Brigham Moore LLP, and Gideon Kanner, professor of law emeritus at Loyola Law School in Los Angeles. Mr. Brigham died earlier this year in Miami. A true legend in the law, he was esteemed by colleagues for the invaluable knowledge and skill he possessed and shared so generously.

A highlight of this conference is the presentation of the Brigham-Kanner Property Rights Prize. It goes to an individual whose work has advanced property rights and contributed to an awareness of property's role in the broader scheme of liberty. Later in the program,

we will honor Professor Vicki Been of New York University School of Law with this year's prize. Professor Been joins us here with her husband, Professor and Dean Emeritus Richard Revesz.

I am pleased that three of the conference's mainstays are also here with us tonight. The first is our alumnus Joe Waldo. We're also glad to welcome Joe's wife Ashby—she's here as well. Joe's mission in life has been to represent property owners and ensure that they are treated fairly by the government. As the new dean, I really wish I could clone Joe. Few people match Joe's enthusiasm for the law, and fewer have demonstrated such a sincere interest in providing opportunities for law students, and, I must add, in supporting the Law School. I really appreciate everything that you do for William & Mary Law School. And we also have Chancellor Professor of Law, *Emerita*, Lynda Butler, here tonight. Now I knew before I came to William & Mary of Lynda's reputation as a trailblazer. She is esteemed for her service to the bar and to the academy. Her contributions as a teacher, mentor, and colleague are unmatched. And then finally we have Andrew Prince Brigham. It is my pleasure to introduce Mr. Brigham who is joining us via Zoom this evening. He has the rare distinction of being a third generation trial lawyer and is the son of one of the conference's namesakes. He is a leading eminent domain and property rights attorney. The Property Rights Project and the Law School are deeply indebted to him for his work on behalf of the conference. Mr. Brigham.

BRIGHAM. Thank you, Ben. I appreciate the warm welcome. Good evening. It's certainly a privilege to represent the practicing bar and provide a few comments while bestowing the Brigham-Kanner Prize to its recipient this evening. The foundation for the Brigham-Kanner Property Rights Conference is, of course, deeply set in the legacy of the William & Mary Law School. Indeed, law professor George Wythe's ideal of a citizen lawyer was not only clearly evident in his most notable students, but can be seen today amongst those who in the fall come to the fount of this conference to drink of the virtue and the value of the civil right of private ownership. Both Wythe and his most famous citizen lawyer protégé, Thomas Jefferson, signed the Declaration of Independence. And while Jefferson, of course, penned the document, those signing for Virginia left the very top space for Wythe's signature showing great respect and honor to

their mentor and to their friend. We at times remember historical figures best for their thinking, how they thought, and what they thought. It is their thoughts in so many ways that live on. In regards to our Founding Fathers, we remember well their thinking, and perhaps because it was accompanied by such an exceeding need for immediate application: the birth of a nation, a fledgling republic, a new form of democracy, an entirely novel vision of a centralized federal government functioning alongside independent, sovereign states. Their thinking was not solely the fruit of their scholarship or their adept skills as lawyers or orators, but of their ideals concerning citizenry, a participatory government, the rule of the state balanced by the inherent sovereignty of the individual, and inspired liberty.

This evening I want to pause to give special thanks to another property rights champion, Rob Kinzer, a William & Mary alum whose generosity, early on, helped us begin our initial conferences here at William & Mary Law School. And yes tonight, Rob and Karen, thank you for underwriting our award ceremony this evening. It is altogether apropos for me to refer back to the naming of our Property Rights Conference. The conference was named after two individuals who epitomized the combined forceful ingenuity of scholar and lawyer in their own collaboration: Gideon Kanner and Toby Prince Brigham. As was mentioned, my dad passed in March of this year so this has been a year full of memories, and I'm looking forward to tomorrow when Joe Waldo will begin our conference with remarks about my father. And Gideon, thank you as well for what you've written about your friend, Toby.

With respect to Gideon and Toby, I can recall occasions from my youth when the professor from Los Angeles would come and stay with my family and work with the trial lawyer from Miami. I remember Gideon would rise early. He'd be there reading his paper, and he'd be contemplatively looking out at the Florida scenery next to our home—it included this beautiful Florida hammock with banyan and oak trees—and then my father would come down. And even as a young person just listening, the sparks would be flying. These two men shared a passion for ideas, for life, for law, for things that matter. And to be able to see what they were able to do together, working together, was quite something. You know, brilliant people don't always make room for other brilliant people, but the two of them—the scholar and the practitioner—made way for one

another to bring about great thinking together to share in building an argument, to see more deeply and broadly than they would have been able to see or think just on their own. And that's undoubtedly one of the great strengths of our conference: one of a kind, or maybe amongst a very few, that bring the academy together with the practicing bar. And once again, that fulfills in many ways the ideal of George Wythe, citizen lawyer.

Vicki Been—You yourself have excelled in the academy, particularly in the classroom and, of course, with the casebook you co-authored with Bob Ellickson. But you've expanded beyond the classroom with your empirical research and with your implementation of programs and reforms and affordable housing in one of our nation's largest urban landscapes, New York City. Notwithstanding her many accomplishments, Vicki, like my father, also stands out for her endearing warmth as a person and her bright infectious smile. We are glad to honor you this year with the Brigham-Kanner Prize. And now here is my dear friend, Lynda Butler, to bestow the award upon you. Thanks everyone.

BUTLER. That was beautiful, Andy. Thank you, and good evening to all of you. As Dean Spencer said, we are gathered in William & Mary's Wren Building, which is the oldest academic building in continuous use in the United States. It has been the site of some significant historical events. If these walls could talk, they would tell you that not only was this the first law school where the first legal education began, they would also tell you that the Wren Building was once referred to as the main building of the College because it included all the essentials: classrooms, library, of course a faculty room, kitchen, and housing for students and even for the College president. This Great Hall also served as a meeting place for the House of Burgesses, the beginning of the American democracy in the 1700s. The portraits on the walls in this Great Hall also tell the history of William & Mary. Besides the portraits of King William and Queen Mary behind me, and James Blair, in between, who was the College's founding president, you also see a mighty portrait of Queen Anne above the fireplace. She paid for the reconstruction of the Wren Building after the fire of 1705. And then across from me you see portraits of a number of our alumni graduates of various

programs of the College. I'm going to let you figure out who they include. See if you can recognize them.

The Brigham-Kanner Conference continues William & Mary's tradition of promoting a close dialogue between professors and their students (for our purposes, future lawyers). The Brigham-Kanner Prize is awarded annually to someone who has thought deeply about property's relationship to the human condition, and about the importance of property to fundamental rights and societal well-being. Prior recipients have included some of the nation's leading property scholars, a Supreme Court Justice, a nationally known practitioner, and a well-known Peruvian economist. This year's recipient, Vicki Been, stands firmly in this tradition of excellence. She is by all accounts an innovative scholar who does not shy away from difficult issues, testing positions and proposals in the field with empirical methods. As Panel One will discuss, her empirical analysis has stood the test of time, providing important lessons about the intersection of land use controls, environmental laws, and property rights. "Inspiring" is the word that has been most used to describe Vicki's contributions to the academy, to the bar, and to society—inspiring as a professional, as a colleague, and as a person.

Her publications display an impressive understanding of the complexity of property as an institution. She has produced numerous articles addressing a wide variety of complex topics, including the housing crisis, mortgage default, environmental justice, and, of course, takings. Her casebook, begun with Bob Ellickson, is widely considered to be one of the leading land use casebooks. And at the core of much of her scholarship is her use of New York City as her laboratory. Vicki's leadership of NYU's Furman Center in particular has shown others how to use their work and their research to, in the words of Carol Rose, "make a real difference in the world."

Her professional activities provide an inspiring model of how to serve. For years, Vicki has guided junior colleagues with much grace and encouragement. To a junior colleague, her style of mentorship is a welcomed and inspiring gift. And at the zenith of her career, when she could have glided a bit, just a bit, she instead accepted several significant appointments in the New York City administration. Now that's service.

Currently holding the Judge Edward Weinfeld Chair, Professor Been got her JD from NYU before clerking for the judge for whom her chair is named. She then went on to the U.S. Supreme Court, clerking for Justice Harry Blackmun. Vicki, it is clear that you have excelled at everything and are held in very high esteem. We are deeply honored that you are here to receive the Brigham-Kanner Prize. Please come forward and I will present to you this really heavy, beautiful crystal, which we will mail to you so you don't have to take it on the plane.

BEEN. Thanks so much to all of you. And thank you to Lynda. I was so thrilled and honored to get a call from Lynda asking me about this award. Lynda is somebody all of us know as a trailblazer and an incredible role model for so many in the academy. It's really humbling to hear your kind remarks because I think so highly of you and of William & Mary. Thank you, Dean, for having me and for bestowing this honor. I am humbled to be selected to join the incredibly talented group of scholars and practitioners and Justices who have received the Brigham-Kanner Property Rights Prize.

I've been blessed over the years to be at many, many of these conferences and to watch the incredible people before me get this award. And I've been blessed to work with so many of the smart, talented, creative, dedicated and compassionate people in this room. From collaborating with Bob Ellickson and then Chris Serkin and Rick Hills on our casebook, to drafting amicus briefs with John Echeverria, to sharing drafts with Bill Fischel and Julia Mahoney and so many others in the room, to hearing the stories of people like Toby and Gideon and Mike Berger and Joe Waldo and so many of the great litigators and practitioners in this field, it's been a privilege to learn from so many leaders in the property field. And, of course, there are the constant dinnertime talks, walks, and other companionship with my husband, Ricky Revesz, who is not only an amazing husband but, of course, is a leading scholar in his own right. It's such a joy to get to work with and to be married to him. We share two children, who also keep me on my toes by bringing property issues up regularly.

The journey to my interest in property and land use stems very directly from my childhood. I grew up in a very small town of 400—it got to 1000 during a boom in the uranium market one year, but

usually it was about 400—located in southwestern Colorado. So much of what I have studied over the years, and so much of what drives me in what I study and what I do, is what I saw in that town. The western slope of Colorado was, and still is, a hotbed of land use and property disputes. Not far from my hometown of Naturita was the site of an infamous war between cattle herders and sheep ranchers. During that war, allegedly, the cattle ranchers led hundreds of sheep over the cliff to their death to keep them from grazing on the land that the cattle owners wanted for their herds.

As I was growing up, many of our dinner time conversations were around land use disputes. There were disputes constantly between the ranchers and the uranium prospectors about who got to use the BLM land. There were constant disputes about the Union Carbide plant that processed uranium into vanadium in a nearby company town and later became one of the country's worst CERCLA cleanup sites. There were fights between Union Carbide and many of its employees, the federal, state, and local governments, and the environmentalists who were new arrivals to Telluride, a ski town that was just then getting started. I was fascinated by those fights and intrigued by the attachment to place and the views of liberty that they represented. I was absolutely consumed by why it is that people are so passionate about land, and wanted to know more about what drives that passion, and what causes these kinds of land use disputes. And at the same time, I was really horrified by the precariousness of many of Naturita's residents, almost all of whom, like my family, were quite poor. They were far from any services—we drove a hundred miles to go to a dentist or to see a doctor—and they were stuck in dangerous jobs and had really no access to education, to job training, or to a way out of those jobs.

My childhood was spent in the basement and back portion of a Quonset hut (which is like a tin can cut down the middle and stuck on a cement slab) that was my parents' auto repair garage and parts store. We all pitched in to survive the ups and downs of a small business. The experiences of working in my parents' shop, seeing my parents struggle to survive, and watching the role they had in the community, are seared in my consciousness forever. My father for a while was a lay justice of the peace. People who were facing foreclosure or eviction would come to him to try to get help and try to get a stay of the action. I remember seeing those families and their

desperation. But the even worse experiences were accompanying my father to the Navajo reservation nearby where he would go to either try to collect payments on the cars and pickups that he had sold to them on credit, or in the worst cases, to have to repossess the cars. I will never forget the feeling, when I was just ten or twelve, of seeing how critical it was to have a car or a pickup and to have stable housing, but also seeing how precarious people's situations were.

So in my early teens, I began to make connections between all of these things: the land use disputes that I was seeing, the harshness of the housing market, and the effect of poverty on people's access to opportunity. I read everything that I could find in the bookmobile (we didn't have a library, but a bookmobile came once a month from the town 100 miles away). I remember reading Oscar Newman's *Defensible Space* and though I had never seen public housing—I had never seen housing above two stories—I was fascinated by his description of how the design of the New York City Housing Authority contributed to crime and kept the residents from feeling a sense of ownership, a sense of pride in where they were. So I became absolutely consumed with how housing and neighborhoods can improve or harm people's lives.

I've had lots and lots and lots of good luck. Because there were many mouths to feed, and my mother and father were working around the clock in the parts store, I took over the family cooking when I was twelve. I was able to go to college because I won a cooking contest that then gave me a scholarship. I studied what was called "consumer science"—basically home economics from a consumer protection point of view—and journalism. Thankfully, my journalism professor encouraged me to actually send a story idea to Consumer Reports, which was exactly where I wanted to be, writing about housing and consumer issues. He saw something in me, and thanks to his encouragement, I was lucky to secure an internship at Consumer Reports. I moved to New York never having been east of the Mississippi or been in a real city, but I thought New York sounded just great, so I should give it a try. I went to the library, and I found that there was a residential hotel for women on 34th Street and Ninth Avenue that Macy's had provided for their sales girls. It was very safe, no men above the first floor, all of those things. I was able to come to New York precisely because of that kind of affordable, safe housing that also provided a community of similarly striving women

who I could be friends with. It's very fitting that I'm now trying to figure out how that hotel for women—which you can't build anymore in New York City because of the zoning rule—can be reinvented for the 21st century. So it comes full circle.

But all of this is, by way of saying, you can take the girl out of the country, but the values and desire to tackle the challenges that I saw in Naturita's land use and housing issues never left me. My mother eventually became mayor of the town. She beat back a recall petition over a land use and environmental justice fight, and she made the first improvements that the town had ever been able to build using federal or state money. I learned from her the importance of local government, the pathologies of local government, and the complexity of issues like environmental justice. I'm sure she never realized that she was planting the seeds of my preoccupation with making local governments work better and with using property rights to make people's lives better. But she was the genesis. And all of that history makes me just immensely grateful for this award and for all the lucky breaks and the generous people who helped me get from Naturita to New York City, which was a little bit of a leap.

I catch some grief from my progressive colleagues at City Hall, as well as from some of you, about my concern for property rights, my belief in public-private partnerships, my sometimes-quixotic quest to put policy and principle above politics, just as I catch grief from some of you about my involvement in policies like inclusionary housing. But one of the things that I've always treasured about this conference and this award is the tradition of people with very different perspectives coming together, listening to each other, learning from each other, and coming away as better advocates, better scholars, and better people. The quality of minds and the character of the people who have received this award in the past are really daunting. I am humbled to be asked to join that group, and I will do my level best to live up to the honor.

Toby Brigham, when he was alive, and Gideon Kanner taught me so much by example and through our conversations, and have challenged me to put myself in the shoes of the homeowners, the small business owners, the ranchers and farmers, and others for whom property rights are not just about their love of the land or their love of their home or their quest to get ahead, but also about respect and equality and fairness. And when I've heard Toby or Gideon or Mike

or Joe or others talk passionately about the injustices that they've seen, I've thought about the hard work of my neighbors in Naturita just trying to eke out a living. And I thought about the abuses. I thought about my town's efforts in my father's last days to take the portion of our property that my brother's trailer sat on. But the conversations in this conference also made me think harder about the ever-present need to strike a balance between protecting against abuse and arbitrariness or greed, on the one hand, and allowing society to learn from its mistakes, to remedy past injustices, and to give those who have been shut out of an opportunity a fair chance.

I will miss Toby and all that he taught me, and I look forward to learning still from so many of you in the room and on Zoom. As the past few years have shown, we have many, many problems to solve. I'm grateful to have gotten the chance to work with all of you in finding fair, equitable, and efficient solutions. I look forward to our discussions tomorrow and to returning to work again with you from NYU in January. My present job sometimes doesn't even let me return phone calls, but I look forward to being back where I can actually think and collaborate with all of you.

I also want to thank Toby's family and, of course, Gideon for inspiring this award, and for inspiring generations of scholars and practitioners. Thank you, Joe, for imagining the effect that this award and this conference could have, and thanks to Lynda, to all those who put this conference together and who are participating. I'm very, very humbled and appreciative for all that you've bestowed on me. Thank you.

SPENCER. Thank you, Professor Been, for sharing your story and how it ties into the person that you've become today and your inspiration for focusing on property rights, and reminding us all of why property rights are extremely important—humanizing it. It's really one of the bedrocks of liberty in our democracy, and that's why this conference and this award are so important to us.

This is just the beginning. We're going to have a full day of presentations and engagement tomorrow that we're very much looking forward to, so tonight's event has concluded. I want to thank you for joining us this evening. I want to extend my congratulations again to Professor Been and to the conference organizers.