WHIP AND RIDE

The Hard-Charging Early Years of the Institute for Justice

by Melanie Hildreth

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WHAT IJ CLIENTS HAVE TO SAY:

For 10 years, D.C. fought to keep us out of business so it could protect a cosmetology cartel from competition. Then, in 1991, the Institute for Justice took us on as its very first clients. IJ gave definition to our struggle. We were fighting for "economic liberty." With those two words as our focus, IJ started a movement that we continue to advocate for now 35 years later, helping entry-level entrepreneurs nationwide break into business and free themselves from unjust government regulations.

Taalib-Din Uqdah and Pamela Ferrell,
Owners of Cornrows & Co., and IJ Clients

The Institute for Justice is a different kind of advocacy group. From the start, it fully incorporated parents as partners, amplifying their voice and real-world struggle to get access to a quality education for their kids. What kicked off in Milwaukee, with our Parental Choice Program, soon went nationwide thanks to IJ. Now, low-income and working-class families can select the school that best meets each student's needs. IJ led the way for school choice.

Zakiya Courtney,
Milwaukee School Choice Mom and IJ Client

Working with IJ was one of the most meaningful experiences of my life. It transformed me and fellow van operators into advocates for fairness and opportunity. IJ recognized the struggles of commuter van operators in America's largest city and joined with us to boldly challenge monopolies, public unions, and political interests that stood in our way. Today, the vans roll, and operators and riders are respected. Commuter vans operators now exercise their right to earn an honest living by putting people to work and taking people to work. As the late IJ President Chip Mellor often said, "We will win because we are right." And we did.

Hector Ricketts,
NYC Van Driver and IJ Client

From the very first day my neighbors and I met with IJ, they said they would never abandon us and that they would fight for our homes no matter how long it took. They never let us down during those stressful seven years, and I know they've done the same thing for thousands of other property owners across the country.

Susette Kelo,
Lead Plaintiff in *Kelo v. New London*

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WHIP AND RIDE

TABLE OF CONTENTS

Preface

By the time I arrived at the Institute for Justice in 2005, Chip Mellor's use of the phrase "whip and ride" to close staff meetings and project kick-offs had already become something that was more institutional memory than active practice. In fact, the first time I saw the words written down, they were on a T-shirt that a zealous young staffer had created for an all-office happy hour. (Chip was delighted by the initiative.)

But wherever it was deployed, I thought the phrase captured something important about the Institute for Justice. It was an illustration of the influence of the Mountain West that shaped Chip and, in turn, shaped IJ: a frontier impatience with hesitation, a bias toward action, and an expectation that every person in the room has a role to play and should pursue it vigorously.

It also conveys something else that mattered at IJ from the beginning: the idea that hard work and high stakes did not mean we had to be dour or depressed. To the contrary, Chip was emphatic that while the work should be treated with the utmost seriousness, we should be lighthearted with ourselves and with each other. This was an organization that was going to change the world and have fun doing it.

This book is an attempt to preserve what that phrase represents. It is a history of the events, decisions, and people that built IJ and the early risks, improbable fights, strategic discipline, and deliberate culture-building that made sustained success possible. It is also a record of adventures and lessons learned from the founding generation, told at a moment when those stories matter more than ever.

Chip passed away in October 2024, when I was about halfway through drafting the book. Fortunately, by then I had recorded more than twenty hours of interviews with him about IJ's early years and his own story. I also had the personal history and perspective that came from having worked closely with him for more than a decade as part of IJ's development team.

Whip and Ride

In honor of Chip's memory and as IJ celebrates its 35th anniversary, this is an opportune time to share memories from the early years in a form that can be used by future generations. The goal is not nostalgia or hagiography. It is to showcase key moments in IJ's early history and the formative choices—both good and bad—that made it what it is.

IJ's culture did not emerge by accident. It was shaped, reinforced, and transmitted through stories illustrating its values, its sense of possibility, and what it expects of every person who sets out to help it make America more free and just.

My hope is that this history will be part of that tradition, informing decision-making and inviting the next generation to put its own stamp on the work to come while holding fast to the principles that made IJ successful from the start. As Chip would say, the urgency of the need is itself a call to action. Whip and ride.

Melanie Hildreth
January 2026

Prologue

Chip Mellor had never been fired before.

At 15, he had lost his father, suddenly and unexpectedly.

At 18, just days before the infamous Kent State shooting, he had stood with anti-war protesters, facing off with the National Guard at Ohio State University.

At 24, he had walked away from a clear path to prosperity and comfort on the East Coast to start a new life, alone, 1,200 miles away from his family and friends.

At 27, he had stood in the desert in Utah and grappled with the fact that he wanted to change the world, but he had no job and less than $100 to his name.

Now, at 32, two weeks before his wedding, he had been fired. Not just unceremoniously, but dramatically and publicly.

Chip had returned from his lunch break to find his office cleared out and locked, his belongings in a box by the door, his assistant in tears, and his boss closed up inside his office, refusing to speak with him.

Tall and lean, with long hair, a handlebar mustache, a small-town background, and a degree from a third-tier law school, there were many ways Chip had not fit in with his connected, conservative colleagues. But when everything came to a head, he had thought their history of mutual respect—despite sometimes dramatic differences of philosophy—would ensure a graceful parting of ways.

As it turned out, it hadn't.

Which brought him to that cool October day in Denver, Colorado, sitting in the shade in his backyard in the late afternoon, rolling a beer bottle between his hands. Once again, he faced the future with a clear sense of where he wanted to be, but no idea how, exactly, he was going to get there.

"It was a good case," he said. "All the elements were there. It was a winning case."

His friend and former colleague, Clint Bolick, agreed.

Normally sunny and smiling, that afternoon Clint was devastated. Chip's firing felt like the end of the world to the young lawyer. He had left the office to meet Chip at his home without telling anyone, feeling reckless and angry, practically daring his bosses to fire him too.

"It was a good case," he said.

Though he didn't know yet exactly what he would do, Chip knew that whatever it was, it had to be somewhere else. He was leaving Denver.

Clint was going to stay on at their old job. Chip was his hero, his role model, and his friend. Although his dreams felt shattered at the moment, he had been a scrappy underdog dealing with bullies his whole life. He would fight on and try, against the odds, to finish the work they had started.

Chip needed to let the dust settle. He had come to Colorado to change the world, to get a law degree and put the principles he cared about—individual liberty and free enterprise, property rights and free speech—into practice. He was going to change the law and the culture to ensure that ordinary Americans could live their lives as they chose, not according to the whims or dictates of powerful people. He had only just begun to do that the way he knew it could be done, and now he was back to square one.

In the process, he had learned a few powerful—and painful—lessons.

His eyes stung as he looked over at Clint.

"This is wrong," he said. "And one day, we're going to do it right."

Clint nodded and lifted his beer. "We'll prove that there are people out there who believe in principles and ideas. We'll show them we can do it better."

They toasted the future.

I Want to Build a New Kind of Public Interest Law Firm

"You're on to something, and I support you, heart and soul. But you need seasoning."
– Dave Kennedy, President, Earhart Foundation

In April 1970, students at Ohio State University were consumed with political activism. They protested and demonstrated against the Vietnam War. They organized strikes and boycotted classes in response to the university's rejection of their demands to add black studies and women's studies programs. Thousands of students gathered to chant, picket university buildings, and face off against the National Guard, which Ohio's governor had called in to help manage the escalating conflict.

Tensions between students, school administrators, and law enforcement routinely erupted into outright riots. While the conflict never became deadly, as it would at nearby Kent State University, during one OSU demonstration in April protesters threw rocks, the National Guard fired tear gas, and more than 60 people were injured. Three hundred people were arrested. In May, the university administration declared a state of emergency and shut down the campus to try to quell ongoing unrest.

And William H. Mellor, III—"Chip"—was in the thick of it.

A Bucket of Red Paint

When he went to college in 1969, Chip was just becoming aware of the world outside of Piqua, Ohio, a town of about 20,000 residents near Dayton. Born in Knoxville, Tennessee, Chip lived in several towns in Massachusetts and in Winchester, Virginia, before his family moved to Piqua in 1962. His father, William H. Mellor, Jr., was in the textile business, traveling to struggling mills and working to turn them around.

When Chip was 15 years old, his dad unexpectedly suffered a fatal heart attack, sending the family reeling. His mother took a job as an assistant to the pastor at their church to make ends meet. A close friend of his father's stepped in to ensure that Chip and his brothers could go to college when they graduated high school, provided they went somewhere in Ohio. Chip chose Ohio State University, just over an hour from Piqua.

His family's experience—particularly a sense that his father had been treated poorly during his life—left Chip skeptical of authority and wary of systems that expected quiet compliance. It also reinforced a streak of independence that was already part of his temperament.

"By the time I went to college, I was developing a very naïve, idealistic interest in what was going on in the country," he said. "The civil rights movement, assassinations, and student protests and riots were pulling the country in different directions."

Although he had always had a strong sense of right and wrong, in the years before he left for college, Chip's experience of politics and current events began and ended at the school library, where he would occasionally read *The New York Times*. During his freshman year at OSU, he began attending anti-war meetings, and eventually he became involved in the demonstrations that were tearing his campus apart. His participation was premised on the assumption that the protests were an effective way to right a wrong in the world. Barring that, he figured he should at least be part of them because they were consistent with what he believed.

Neither, he later realized, were true.

One day, during a clash on The Oval—the main commons area on the OSU campus—Chip watched as the students near him dipped their hands in a bucket of red paint and raised them to charge forward toward the National Guard. One young man in particular caught his eye. He was among the first to the paint bucket, covering his hands and shouting encouragement to the crowd, urging them to join him. Then, as the students stepped forward and began to run toward the Guardsmen, the man disappeared.

"I realized he was an outside agitator," Chip said. "He just faded into the crowd as the confrontation erupted."

Chip turned to look at the National Guardsmen, most of whom weren't very far away, and many of whom were not much older than he was. As he examined them, observing their behavior as they faced down the protesters, he realized that they weren't a monolithic group either. Several looked uncomfortable with their role in the conflict. But as he watched, they too were pushed, egged on, and propelled forward by forces within their group.

"I had an epiphany that day," he said. "Both the Left, in the form of the student leadership and the outside groups getting involved in the movement, and the Right—from Richard Nixon down to the governor of Ohio to the police force—were after the same thing. They were both after power. And with that power they would make others do what they believed would benefit not necessarily the country—although some believed that I'm sure—but mostly themselves."

It was a very narrow, self-interested, and unprincipled way to seek change, and Chip realized in that moment that he couldn't be part of it.

The confrontations on campus also spoke to instincts that had been forming in Chip for years. Losing his father young had pushed him into responsibility earlier than most of his peers, and he had grown accustomed to the idea that when something needed to be done, someone had to step forward and do it. Often, in his own life, that person had been him.

That habit of taking responsibility shaped the way he responded to the political upheaval around him. If the existing movements were driven by power rather than principle, then the answer was not simply to join one side or the other—it was to figure out how real change might be made.

"My worldview prior to that time was that it was liberals against conservatives, and I was going to be a liberal," he said. "But that day it became very evident that wasn't a sufficient paradigm. And I began a personal quest to figure out what this all meant."

Encountering the Libertarian Canon

As libertarian political activist Jerome Tuccille noted in his 1971 satirical memoir, "It usually begins with Ayn Rand."

Like many college kids, Chip had read *Atlas Shrugged* and *The Fountainhead*. Although he never adopted her philosophy wholeheartedly, he was impressed with Rand's argument for the importance of having a positive, consistent philosophy of life. He was also inspired by her recognition that idealism is a potent force for liberty. As powerful as the villains in her stories were, Rand's heroes were even more vivid.

"The view that idealism could be such a driving, motivating, and exciting force for change was something that I recognized even at that point," he said. "Her heroes were motivated by idealism—by ideas, not power—and by the principles of free enterprise and individual liberty. That stuck with me, though it would be years before I really fleshed it out."

Rand was the gateway, and Chip quickly learned that there was a robust intellectual tradition and literary foundation that was defined by being pro-liberty. The principles of that tradition increasingly came to undergird his beliefs as well. He realized that it wasn't possible to divorce economic liberty and private property rights from the truly free individual.

"I came to see that societies where those rights were taken away inevitably led to people impoverished in monetary wealth and basic liberties," he said.

He read Friedrich Hayek and adopted his philosophy that ideas—not politicians and protests—are what really drive history. Being out on The Oval tussling with the National Guard was not going to provide the kind of lasting, positive, productive change that Chip was increasingly recognizing he wanted to instigate.

Similarly, Milton Friedman's writing, particularly his seminal work *Capitalism and Freedom*, provided a conceptual framework, definitions of key concepts, and powerful, lively descriptions of human behavior that helped Chip understand the dynamic he observed between special interests and political influence. It was a dynamic that, increasingly, he wanted to disrupt.

Friedman's work also touched directly on Chip's plans for his own future. Going into college, he had decided he wanted to be a teacher, and despite his evolving political philosophy, he persisted toward that goal. For his first student-teaching assignment, he was placed in a large public school in Columbus, Ohio. His seventh-grade classroom was a mix of white Appalachian and urban black students, existing in a kind of uneasy peace. For all the differences in their backgrounds, they had one overwhelming condition in common: poverty.

Over the course of the year, Chip grew discouraged by the prospect of changing the world as a teacher, especially in the public school system. He knew a good teacher could make an important difference for dozens or maybe even hundreds of individual students. But as time went on, his ambitions got bigger. Friedman's discussions of school choice, cartels, and monopolies put what he was seeing in a larger context. He realized he needed to change his course.

"These ideas of individual rights and free enterprise all began to coalesce as vital to my own belief system and my own concern about what needed to be done," he said. "I saw how much more empowering they were to individuals than anything I had thought I believed before."

He decided to go to law school to put these principles into action.

Going West (Part I)

When Chip's father died, his best friend, Dimitri Nicholas, a successful businessman from Piqua, had generously pledged to Chip's mother that he would put her three sons through college.

When Chip told him he was planning to continue his education and go to law school, Dimitri stepped forward again. He offered to make use of connections he had at New York University School of Law to facilitate Chip's admission. What's more, he had access to a brownstone on the Lower East Side where Chip could live essentially rent-free in exchange for taking on a handful of property management duties.

For someone who grew up in small-town, working-class Ohio at a time when simply going to college was both a significant undertaking and a significant expense, this was a life-changing offer. Accepting it would set Chip up in comfort in both the near and long terms, while providing the kind of connections and credentials that would be extraordinarily difficult for him to achieve otherwise. But it would also decisively put him on a certain path.

"When it came down to it, I knew what I wanted to do with my legal career, which is to change the world," he said. "And I wanted to change it in a particular way. If I went the route that Dimitri had offered, I'd be set for life. But I would also be his man forever."

Chip's fierce independence, coupled with his drive to change the world and his conviction that he needed to do it his own way, meant that the New York route wasn't a viable choice. He had to look for other options. He looked west.

The summer he graduated from college, before his student teaching job started, Chip had visited the Mountain West for the first time. He fell in love with sweeping landscapes and the wide-open skies. Now he had an opportunity to go back. The University of Colorado was cost-prohibitive, and it accepted very few out-of-state law students. The University of Denver, on the other hand, would take him, and it appeared to have an interesting clinical program. He applied, was accepted, fixed up a camper truck, and drove to Denver, where he didn't know a soul.

In 1974, the University of Denver was a popular choice for would-be lawyers who needed to pursue their degrees at night. Although Chip met other students who became good friends and had several solid professors, he found that the environment didn't suit his interests or his personality.

"My law school career was rebellious and lackluster," he said.

The main problem was that Chip didn't like most of the premises from which his classes were taught. The constitutional law class adopted the "living Constitution" philosophy that had developed after the Progressive Era—a philosophy that was decidedly biased toward permitting the government to create and expand its programs and power. A course on land use emphasized "land use planning" and took a detailed, technocratic approach to examining what governments should permit individuals to do with their property.

A class on bankruptcy finally made his frustration boil over. From day one, the instructor made it clear his focus would be on how people who owed others money could get out of their debts. It felt about as far from anything that Chip wanted to do as it was possible to get, but the class was required. Thanks partly to the persistent influence of Ayn Rand, Chip decided to become a conscientious objector. He didn't attend the course another day, and he only took the final exam so that the required credit would appear on his transcript. He got an F.

"I said to myself, 'That's not going to matter,'" he said. "And sure enough, it never has."

Only a few presentations on the law stood out to him in a positive way. One was a seminar led by a charismatic, colorful, and unorthodox local trial lawyer named Harlan Balaban. The information felt practical and useful, especially since Chip's early legal work and his interests were rooted in trial firms.

Finally, about halfway through his second year of feeling angry and disillusioned, Chip decided, "If I'm going to do this, I may as well just get it done." He made it his goal to blitz through the rest of law school as fast as he could and get to the bar exam, where he focused most of his energy and attention.

From the Factory Floor to the Courtroom

Once the bar exam was successfully behind him, Chip needed a break. He decided to go to the desert in Moab, Utah, for three weeks with a buddy from the area. He planned to turn his attention in earnest to getting a job when he returned, but before leaving town he dropped a resume at Harlan Balaban's office.

"I know you haven't posted anything indicating that you're hiring," he told the receptionist. "But if Harlan might be interested, I'd like an appointment to see if maybe there's an opportunity at some point."

The receptionist's perfunctory and dismissive response didn't give him much encouragement.

"When I left to go on this desert sojourn, I didn't have a job, I didn't have any prospects, and by the time I got back I had less than a hundred dollars to my name," he said. But he refused to let himself grow discouraged. "I was determined to find a way to make it work."

The fastest way to get honest money in Denver in the 1970s was to work as a day laborer for a local firm called Manpower, which would assign workers out as jobs became available. The work could be menial, but Chip wasn't in a position to be choosy. That's how he found himself on the night shift in a Nerf ball factory outside of Boulder.

Chip was assigned to the part of the operation where the foam was cut into various toy shapes.

"The air was filled with fuzz," he said. "Just everywhere. But I put my head down and did my job, which mostly consisted of hauling Nerf from one place to another and sweeping up Nerf fuzz."

After each shift, he drove an hour and a half to get home and collapsed into bed. Early one morning, the phone rang. Still covered head to toe in Nerf fuzz, Chip reached over and groggily answered. It was Harlan Balaban. He told Chip he was looking at his resume and found him interesting. He wanted to talk with him.

"That would be great," Chip replied. "When?"

"Here at my office in about an hour," Harlan said.

Chip shook himself awake, combed the Nerf out of his hair, put on his only suit, and drove into downtown Denver. He was hired on the spot and was in court the next day.

One of Harlan's firm's largest clients was a major Denver taxi company. The work brought a steady stream of tort cases—accidents, passenger injuries, the routine disputes that followed a business constantly on the road. Not long after he started, Chip's boss handed him a thin folder and told him to head downtown for a hearing.

This one was different. A new company had applied for a permit to operate taxis in the city, and their client intended to object. The assignment was simple: appear, state the objection, and preserve the company's position.

Chip read through the file, then walked back into his boss's office and set it on the desk.

"I'm not going to do that," he said.

His boss looked up, surprised. Chip didn't argue the law or the client's interest. The problem, as he saw it, was more fundamental. If someone wanted to start a business, why should an existing company be able to block them?

It was a small moment, easy to miss in the daily activity of a young lawyer's first job. But it marked a line that would come to define Chip's work—and, in time, the way he would try to change the world: the law should protect the right to earn a living, not be used to keep others out.

A Flyer for Property Rights

After about a year at Balaban's firm, it was becoming clear to Chip that the demands of private practice were such that opportunities to be a cause-oriented lawyer, especially at this stage in his career, would be rare. While he was learning a lot and gaining important practical experience, he was again feeling the drive to change the world, and it was making him itchy.

Recognizing that it was time to do something that would push his dream forward, he began to think about joining what was regionally called a "mountain practice." Being part of a mountain practice meant going to a ski town and doing legal work on real estate, wills, and divorces. The idea was to take on enough work to pay the bills, while allowing yourself time to pursue other interests. He applied for a job at a small practice in Crested Butte, a beautiful resort town about four hours west of Denver.

The same day he submitted his mountain practice application, he went to do research for his job with Balaban at the University of Denver Law School library. While there, he noticed a flyer on a bulletin board he had passed a thousand times over the years.

"It wasn't even a notice seeking an attorney," he said. "It was just an ad: 'Free enterprise, private property, individual liberty.'" It was posted by Mountain States Legal Foundation and gave the firm's name and address.

During all his years in law school, Chip had never seen anything like the Mountain States flyer. On the contrary, all the student groups in place at the time had shared a philosophy of left-wing activism: while those students had identified many of the same problems that Chip recognized, the solutions they were pursuing sought to expand government's presence, rather than to foster liberty or empower individuals to control their own lives. Mountain States was a dramatic outlier.

That night, he put his resume together. The next morning, he walked downtown to the office listed on the flyer and walked in.

"I don't know if you're hiring right now, but I'd welcome a chance to talk with the head of the organization about the prospect of working here in the future," he said.

The woman at the front desk looked at him skeptically, taking in his youth, long hair, and handlebar mustache, and said she'd deliver the resume. Then, out of an office just to the side of reception, a booming voice called out, "Well—send him in!"

"I guess you're going to see the boss right now," the receptionist said dryly.

James G. Watt had been president of Mountain States Legal Foundation since it was founded just a few years earlier by Joseph Coors, president of Coors Brewing Company. Part of President Reagan's "Kitchen Cabinet," Coors was an influential political presence, who had also helped found the Heritage Foundation and other conservative research and advocacy groups.

Mountain States was small, with only Watt, two attorneys, and a couple of support staff. Its founding vision was to provide a conservative counterpoint to liberal legal groups, which vastly outnumbered groups like Mountain States. It pursued that vision by litigating property rights and federal land management cases in the American West.

Mostly bald and with thick, prominent glasses, Watt was a politician with a law degree. But, despite major differences in personality and philosophy—the deeply religious Watt professed never to have heard of libertarians—he and Chip hit it off.

"We just started talking about things," Chip said. "And he was smart. He was his own worst enemy in some ways, but he was smart."

Ultimately, Watt offered Chip a job at Mountain States. The mountain practice in Crested Butte also invited him to join the firm.

"All of a sudden I have these two offers out of the blue—very different, but very much what I've been looking for," he said. "I thought about it long and hard, and I decided: I don't know enough about Mountain States to say quite where it will head, but it's the closest thing I've found to any opportunity to vindicate the principles I'm seeking to advance. Mountain practices will come along, but I don't know when another opportunity like this will come along."

He took the job at Mountain States.

Fusionism and the Conservative Public Interest Legal Movement

When Chip joined Mountain States Legal Foundation in 1980, he became part of what was loosely called "the movement." Comprised of a collection of formal and informal coalitions between economic libertarians, religious conservatives, and Cold Warriors, the movement came into being in the mid-20th century, united by the common enemy of global communism. Frank S. Meyer, who was one of the founding editors on William F. Buckley's influential conservative magazine *National Review*, coined the term "fusionism" to describe the effort to harmonize the competing—and at times oppositional—principles held by libertarians and conservatives.

Meyer's book on the topic, *In Defense of Freedom*, influenced Chip and, ultimately, made him believe that he could advance his vision of the Constitution at Mountain States, which was a decidedly conservative organization.

The conservative-libertarian alliance was productive but occasionally uneasy. Certain subjects remained contentious and—to maintain the peace—off-limits. But, thanks largely to the influence of *National Review* and the personal charisma of Buckley, for the most part the movement had enough shared goals at the time to make important marks on the legal, policy, and cultural landscapes.

A crucial part of this success was through the development of conservative and, eventually, libertarian think tanks, beginning with the American Enterprise Institute in 1938.

AEI grew out of the American Enterprise Association, which had been founded by New York businessmen. The ethos was inspired by the Chamber of Commerce, and the organization had a decidedly pro-business focus, releasing research that emphasized limited regulation.

In 1973, Ed Feulner—with support from Joseph Coors—founded the Heritage Foundation to engage in more explicit advocacy. The idea was, ironically, borne out of AEI research: Feulner and Paul Weyrich, who helped found Heritage as well as the anti-union Free Congress Foundation, developed the idea out of frustration with AEI's determination at the time to publish only scholarly research and to stay out of active policy debates.

The same year that Heritage came into being, a group of lawyers from the administration of then-California governor Ronald Reagan formed the Pacific Legal Foundation, the first of what would become a series of conservative public interest law firms. Between 1975 and 1978, PLF was joined by the Washington Legal Foundation, the Southeastern Legal Foundation, the Landmark Legal Foundation, and Mountain States Legal Foundation. Each of these groups was created as a response to what conservatives perceived as an explosion of lawsuits initiated by left-leaning lawyers and legal groups.

Meanwhile, new national and regional think tanks began to proliferate. In 1971, Sir Antony Fisher founded the International Institute for Economic Research as the global arm of his London-based Institute of Economic Affairs, which was influential in his native United Kingdom and instrumental in the rise of Margaret Thatcher. Through the International Institute for Economic Research, Fisher helped start the Fraser Institute in Vancouver, the Manhattan Institute in New York, the Pacific Research Institute in San Francisco, and the Atlas Economic Research Foundation in Washington, D.C. In 1977, Ed Crane, Murray Rothbard, and Charles Koch founded the Cato Institute in San Francisco as an explicitly libertarian think tank.

"All of this was a mighty, bubbling cauldron of intellectual ferment where there continued to be dissonance on some issues, but most of the players came together in this common form," Chip said. "That was the 'big tent' idea that Reagan had, and with his presidency, a lot of those warring factions were at least able to find common cause and detente, if not peace."

Even at peace, relationships within the coalition could be rocky. Around the time Chip started work at Mountain States, Ernest van den Haag wrote a scathing critique of libertarians, which *National Review* published as a cover story.

"He condemned libertarians of any shape, form, stripe, or manner as being soft on communism, big on anarchy, and just not trustworthy in the movement," Chip recalled. "It was a broadside attack on pretty much everything. In *National Review*, that was a big deal, and it threw cold water on a lot of things."

Chip had been talking about libertarianism with Watt and other coworkers.

"I'll never forget," he said. "From that moment on Jim Watt and the folks there just never quite looked at me the same way again."

Nevertheless, he didn't stop trying to nudge the organization in a more libertarian direction.

New Hires at Mountain States Legal Foundation

Not long after he was hired, Chip became the vice president at Mountain States and gained an influential role in its growth and direction.

In keeping with the model of so many of the early conservative think tanks and public interest legal groups at the time, Mountain States had defaulted to cases and positions that were largely focused on creating or maintaining a friendly regulatory and legal environment for businesses. Chip saw that approach as potentially problematic.

"Sometimes pro-business and pro-free-enterprise overlap," he said. "But sometimes they emphatically do not. And I was arguing that we needed to create a principled approach to establishing our litigation agenda and to do so in a way that deregulated with an eye towards free enterprise, not towards favoring one business over another."

He began hiring people who were, as he put it, "more simpatico" with that position, including a handful of young lawyers.

"I was never surreptitious or covert about it," he said. "I was very openly trying to be more libertarian."

One of his key recruits was Clint Bolick, a union welder's son and New Jersey native who had been enthralled by politics since elementary school. After his own father's death when he was 11 years old, Clint found warmth, inspiration, and a father figure in a man named Joseph Locascio. Locascio was Clint's city council representative and the lone Republican in a Democratic stronghold.

"I just called him up one day and asked if we could talk politics," Clint said. "And he taught me so much. He had these great sayings, like 'if you vote for the elephant or the donkey, that's what you get' and 'the majority is not silent, the government is deaf.' Looking back, I realize that he was a libertarian, but there really wasn't a word for it at that time."

Clint left New Jersey for California, where he worked on political campaigns, including Ronald Reagan's gubernatorial reelection campaign. While in law school at the University of California-Davis, he interned for the Pacific Legal Foundation, and when he graduated and saw a job opening at Mountain States, he applied.

"Despite my abysmal GPA—and it was truly abysmal—seeing 'Pacific Legal Foundation' on my resume was a really big thing for them, at the time," Clint said. "It turned out I was a rare commodity who had already manifested my genuine belief in these principles. So Chip decided to take a flyer on me, and he didn't ask me about my grades."

Clint joined two other young hires, Gale Norton and Alison Ling, who shared Chip and Clint's libertarian orientation. Gale was a friend who had graduated a year after Chip from the University of Denver Law School. She was a member of the Libertarian Party and was nearly selected as its national director in 1980.

Alison, like Chip, was a former Midwesterner. She left Michigan to go to school out west and quickly decided to make it home. As it happened, Alison had learned about Mountain States from a flyer on the same bulletin board that Chip had seen at the University of Denver Law School. She too had gone to law school driven by a desire to change the world, and she saw in public interest litigation the opportunity to do that.

Together, the group rounded out Mountain States' libertarian contingent. The organization was growing, and it was starting to feel like the kind of place where Chip could make a difference.

Then, in 1981, Jim Watt was nominated Secretary of the Interior. He was a controversial choice and, although he was ultimately confirmed, the process created a media firestorm, generating significant hostile coverage, both of Watt personally and of Mountain States.

Within a month, the organization's board of directors had replaced Watt with an accomplished attorney from a small, private firm in San Jose, California, named Roger Marzulla. Marzulla described himself as apolitical outside of a philosophical commitment to free enterprise, and he told *The New York Times* in 1982 that he was less interested in land and natural resources policy than a broader deregulatory agenda.

While this was well-received by Chip and his libertarian-leaning colleagues, the reception was less enthusiastic from the donors. The organization was funded largely by Western business interests, and

Marzulla struggled to win over Mountain States' board when it came to his agenda.

After 18 months on the job, he resigned. At 30 years old, Chip became acting president, a job he held for several months and one that gave him "all the responsibility and none of the authority" that he needed to run the organization, which now had nearly a dozen lawyers and a budget of about $2 million.

On its own, running Mountain States would have been a challenge, especially given the political environment when Chip took over. The pressure was compounded by the fact that he was preparing to launch a big new case. It was part of the kind of principled litigation agenda he had been trying to develop, and to which Marzulla had been receptive: a fight over whether the government should be able to give a business monopoly rights in the market.

The Denver Cable Monopoly

In the early 1980s, Denver was the cable television capital of the world, a position it had been working to earn for more than a decade. Several of the country's major cable companies had headquarters in the city, and Denver began planning for an extensive cable television system. While incredibly promising, cable technology was still in its infancy. The idea was to make Denver the showcase city for what the medium could do.

The city council solicited proposals to help it develop its vision and hired a consulting firm to provide direction. The consulting firm suggested that Denver offer an exclusive franchise, and the city council declared by resolution that it would operate its cable television network under one franchise with one management.

The city approached 53 companies, of which three submitted proposals. In February 1982, Denver awarded an exclusive, 15-year permit to construct, install, and operate a cable television system in Denver to Mile Hi Cablevision, owned by industry pioneer Bill Daniels.

Mile Hi proposed to offer cable customers in Denver up to 110 channels. Sweetening the deal, the proposal also presented the government with an override option, through which local officials could broadcast public safety information to every cable customer, regardless of the channel the customer was on. And it didn't hurt that Daniels, a former boxer, smart businessman, and powerful personality, had been the Republican gubernatorial candidate in Colorado in 1974.

The vision was bold and ambitious. It was intrusive in terms of the access it would give the company and the government to consumers' homes. It was also incredibly expensive. Advocates for the Mile Hi proposal argued that monopoly rights, the kind that the Denver city council had already granted itself the power to bestow, were the only way to make it happen.

From Chip's perspective, the whole deal was an example of the problem of government power, cartels, monopolies, and political influence.

"Cable television is a big enterprise, but it's not a monopoly," he said. "Already in those early days, there were opportunities from satellites and other cable companies that were able to provide service to willing customers, and there were plenty of willing customers who didn't want all these bells and whistles, or the government override option—they just wanted television with more channels."

He and two of the Mountain States libertarian contingent, Clint and Alison, began developing a public interest case to challenge the city's cable television monopoly grant.

Their argument hinged on the First Amendment claim featured in a line of cases culminating in 1976 with *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc*. In that case, the U.S. Supreme Court had held that the First Amendment protects not only the right of a speaker to speak but also the right of the audience to receive information and ideas. The decision established that consumers (the willing recipients of the speech) had standing to challenge a Virginia statute that prohibited pharmacists from advertising the prices of prescription drugs. It recognized their right to receive the speech that pharmacists (the willing providers) were ready to deliver.

Chip planned to argue that was exactly what was happening in Denver. Residents were being denied the opportunity to get cable service from the smaller cable companies that were ready to provide it.

Meanwhile, local journalists added color to the larger narrative. News stories began to appear, showcasing just how many strings were being pulled behind the scenes to make the deal happen, from gifts of company shares to secure the support of influential opinion leaders to offers of employment to spouses of city council members on key committees.

"In the course of developing the cable monopoly, this became almost a case study in how to win friends and influence people when it came to getting political support for what you wanted to do," Chip said.

It was a question of principle that would be extremely important as the technology developed, and it was a sympathetic story: on one side, customers who wanted a choice of services and small companies that wanted to be part of building the future of cable but that lacked the resources and political connections to ever have a real chance in Denver's bidding process; on the other side, a well-resourced, well-established, and well-connected business looking to lock in a government-sponsored monopoly. It was a David versus Goliath fight, and Chip was ready to jump in for the little guy.

The Board of Litigation and the Board of Directors

Getting the cable case—or any other case—off the ground at Mountain States Legal Foundation required board approval. In fact, the organization had two boards that needed to sign off before a lawsuit could proceed.

First, cases went to a Board of Litigation, which consisted entirely of lawyers. Then attorneys presented to the Board of Directors, which was comprised mostly of businessmen. Each Board included three important and influential people from each of the nine states where the organization operated.

“I went ahead and drew up the document for presentation, which laid out the pros, cons, legal theory, parties, and so on,” Chip said. “I was very clear from the start about why it was an important issue, not just to Denver, but to the country. The Board of Litigation unanimously approved.”

Then the case went to the Board of Directors, to whom Chip and the other staff attorneys ultimately answered. The reception there was different.

Many members of the Board saw no problem with the cable contract: the company had been part of a competitive bidding process and won. What was the issue? They viewed their support of Mountain States as an investment in a better climate for business. They couldn’t understand how this case would support that.

Although he had stepped aside as chairman in 1980, Joe Coors remained the board’s elder statesman, especially with respect to the contingent of members from Colorado. He was an impressive, patrician man, and he and Chip had always gotten along very well. But the Denver cable case put him in a difficult position.

As Jefferson Decker wrote in *The Other Rights Revolution*:

> The lawsuit put a philosophical concern above immediate opportunities for jobs and profit. It threatened to delay or even block an infrastructure project with broad support in the business community by bogging it down in a legal dispute. It challenged the paternalistic, business-knows-best political philosophy that was at the heart of the Coors Company’s “Project Confidence” essay contests, resistance to OSHA, and opposition to labor unions. In its place, it offered a critique of government planning—even of the “pro-business” variety—and a sincere conviction that free markets can sort out complicated problems of coordination on their own.

The case became a tipping point for Coors. Under Marzulla, Mountain States’ caseload had begun to shift, diversifying away from Watt's focus on energy, grazing, and public-lands issues. Coors' vision for the group had been a counterpoint to the Sierra Club. If this case proceeded, the organization he had founded would change into something he no longer recognized. What's more, he viewed Bill Daniels as a friend.

Ultimately, he told his fellow Board members, "I don't think this is a good idea, but I'm not going to veto it. If the vote is there, we'll do what the vote says. But I can't promise what my role in the organization would be going forward."

The response among the Board was mixed.

"I've learned a lot about board dynamics since then," Chip said. "And board dynamics are funny, especially when you get a board that big and cumbersome and with a lot of powerful people. There were those for whom Joe's response meant, 'Oh no, we can't do this.' And there were those for whom it became, 'We'll show him; we can get by without him.' And then there were those who just flat out agreed with what I was proposing."

One member of the Board of Directors, from the Wyoming contingent, was a man named David Kennedy. Dave had been the attorney general of Wyoming, and he was a strong supporter of the case and the philosophical direction in which it would move the organization. Although he was a quiet man, his opinions carried weight.

He developed a habit during his time as a Wyoming state legislator that proved very powerful as a board member.

"When a bill came up, he wouldn't say much until the very end," his wife Sally Kennedy recalled. "He would wait, and listen, and then at the very end he would summarize everything. And then people would vote based on the way he summarized it."

The Board of Directors voted to proceed with the case. But before making anything public, Chip went to talk with Coors one more time. He set up an appointment to meet him at his office at the Coors plant. They talked very candidly about the case.

"I said, 'Joe, I'm not in this to embarrass you. I'm not in this to make it an impossible situation for you. I think it's the right thing to do, and I think we should go ahead. But you do have the power to kill it. And if you kill it, I will not fight you,'" Chip said. "I wanted him to know that I wasn't looking to score any political points at his expense."

Coors responded by thanking him for coming.

"You go ahead and do what you think you have to do," he said. "I'll do what I think I have to."

"You're not killing it?" Chip asked.

"No," he replied.

Mountain States Legal Foundation v. City & County of Denver

The case launched on October 18, 1982, just months after the Denver city council had awarded Mile Hi Cablevision its 15-year monopoly. The next day, Joe Coors resigned from the Mountain States Legal Foundation Board of Directors.

"It was a maelstrom," Chip said. "I felt like I was in the center of the cyclone, because there was a faction of the Board that wanted me to be president, and at the same time I was facing a revolt on the development team."

Although small, Mountain States' fundraising team was diligent and capable, and they had benefitted from years of Jim Watt's conscientious approach to donor relations. During his tenure, Watt provided detailed meeting minutes and memos describing the short- and long-term thinking behind Mountain States' decisions to take or reject various cases, and he supplemented them with calls or letters to smooth out potential conflicts and ensure that no key supporters were blindsided.

When Marzulla took over, correspondence waned. By the time the cable case launched and Joe Coors resigned, donors were growing decidedly concerned about and unhappy with Mountain States.

This was especially troubling for the team because, during the 1970s and 1980s, there were only a handful of institutional funding sources for conservative-leaning groups, led by a group of six large foundations: Joe Coors' family philanthropy, the Adolph Coors Foundation; the John M. Olin Foundation; the

Lynde and Harry Bradley Foundation; the Scaife foundations; the Smith Richardson Foundation; and the Koch family foundations. Most of the men who founded or ran these organizations were decidedly conservative, and many shared the skepticism about libertarians that Chip had tried to overcome with Jim Watt. At the time, only Charles and David Koch, the scions of a Wichita-based petrochemical fortune, were explicitly funding libertarian causes—primarily the Cato Institute and the Institute for Humane Studies.

The paucity and interconnectedness of significant conservative donors meant that the loss of any one of the major conservative foundations was likely to cascade, which could create significant hardship for the young organization.

Meanwhile, the biggest law firm in Denver at the time, Holland and Hart, joined the case to represent the interests of the city council and the cable company. They immediately moved to have the case dismissed for lack of standing.

Recognizing that Chip and his litigation team—which consisted primarily of Clint and Alison—were at risk of getting in over their heads, Mountain States' boards called in reinforcements.

First, although the Board of Litigation believed the case was strong, they recognized that the attorneys at Mountain States were not seasoned First Amendment litigators. They hired a Denver attorney and First Amendment expert named Tom Cooper to vet their pleadings and provide feedback and advice.

They also brought in a nationally recognized public relations firm to do intensive media training with the core litigation team. Before this case, most of the media coverage of Mountain States had been overtly hostile, driven by animosity for Jim Watt, whom the mainstream press viewed as a right-wing anti-environmentalist. Watt, for his part, provoked them, leaning into the caricature. If the case were going to have a chance of a sympathetic hearing, the Board knew that they needed to do better with the media.

They commissioned the national public relations firm Hill and Knowlton to conduct a full communications and media relations training. Chip, Clint, and Alison learned how to develop talking points and statements to convey the most important aspects of the case. The PR firm taught them never to have more than three key points they wanted to make going into an interview, how to "block and bridge," and the importance of snagging the right "hooks" to advance their story.

The preparation paid off more than they could have anticipated. The case generated a flurry of media attention. Tony Mauro, a young journalist who would remain on the legal beat for decades, published an above-the-fold story in *USA Today*. The local papers did more digging into the relationships between the city council and the cable industry. *The Denver Post* did a lengthy, front-page article in the Sunday edition, again above the fold, with a picture of Chip and the Mountain States staff. *The New York Times* described the case as a "looming threat to the way cities award cable TV franchises."

"As far as the cable industry is concerned, this is the equivalent of the Dred Scott case," Bill Bradley, Denver's director of communications told *The New York Times* in December 1982. "This lawsuit raises a major set of issues, and I don't know anyone in the industry or the city who doesn't expect this case to go all the way to the Supreme Court."

The director of the telecommunications project at the National League of Cities concurred: "If Mountain States should win, they will strike at the very heart of a city's ability to determine what set of cable service best meets the needs of the community."

That was exactly what Chip, Clint, and Alison were setting out to do.

"Cable consumers are best served by letting the market operate freely," Chip told *The New York Times*.

New Leadership and a New Direction

For months, Mountain States was inundated with discovery documents—the opposition delivered file cabinets full of useless paperwork, overwhelming the small team. But they rallied and argued the motion to dismiss in a packed district courtroom in early 1983.

"The argument was pretty hostile," Clint said. "It turned out the judge was very good friends with a congressman who was deeply involved with the issue on the other side. I have no idea whether that had anything to do with it, but he was not dispositionally inclined to our position."

"It was intense," Chip said. "But we had the winning argument. It was only a motion to dismiss, and we stated a claim."

Despite the rough argument, they left the courtroom feeling optimistic. It was a hard road, but they were, as the Denver city spokesman had said, taking the first steps to the Supreme Court.

A few days later, Chip got a call from a member of the Board of Litigation in Denver.

"I wanted to give you a heads up," the other lawyer told him. "I got word from a court insider: you're going to lose."

All the power structures in the city—as well as countless interested parties outside it—wanted the deal to happen. The news broke like a wave over Chip's head: they'd never really had a chance, at least in the Denver courts. The most high-profile case of any public interest law firm at the time, the pointy end of the spear for libertarian legal theories, the subject of national attention, a case with everything riding on it—and it was over at the motion to dismiss.

He went to the bathroom and threw up.

"After that, I had to go back to the Board and tell them what happened," he said. "I told them why I thought we could win, and why I thought we should appeal."

From the Board's perspective, they didn't have much of a choice. They were deflated by the ruling, but throwing in the towel would have been an admission that the case had been a loser, without merit from the start. Without any enthusiasm, they agreed to appeal.

In the months since Marzulla's departure, the Mountain States Board of Directors had been looking for a replacement president. It couldn't coalesce around any of the major candidates and, ultimately, the chairman, David Flitner, proposed splitting the job in two: Flitner himself would handle management and fundraising.

Because he was not a lawyer, the Board would bring in someone new to direct the legal work. They settled on a former law school dean named Fred Fagg.

Fagg and Chip were like oil and water.

Alison, who had begun dating Chip during the case and was now engaged to him, began to see that she would be in an impossible position under Fagg's leadership. He was extremely amiable toward her, and she expected that it was just a matter of time before he tried to play her and Chip against each other over the Denver cable case. She gave her notice at Mountain States and took a job at the state attorney general's office.

"It was getting uncomfortable," Alison said. "It became clear that I had to get out."

Chip and Clint stayed on, stubbornly litigating against opponents that were staggeringly well-funded, especially by Mountain States' standards. As their work on the cable case appeal progressed, the relationship between Chip and Fagg continued to deteriorate. Increasingly, Fagg excluded Chip from important conversations and cut him out of decisions.

Finally, appeal filed, Chip went to Fagg directly.

"Fred, I want you to know that I realized that it's probably time for me to move on from here," he said. "I've taken this as far as I can go."

Chip understood that he had lost more than the case. Mountain States was at a crossroads, and there was no place for him on the path they were choosing. His plan was to leave as quietly and professionally as possible. He told Fagg that, in fact, he was going to start interviewing and would likely be gone within a matter of weeks.

Fagg thanked him for coming to talk to him.

"I appreciate what you're doing," he said.

Chip walked away from the conversation feeling that they had a gentleman's agreement to part ways amicably. He started to line up interviews.

Then, a couple of days later, he went out to lunch and returned to find the door to his office locked. He went to his assistant, who he could see had been crying.

"Do you have the key to this?" he asked. "I don't have the key to my own office. It's never been locked."

"Fred locked it, and he's taken the key," she replied.

That was when Chip realized he had been fired.

Although Fagg declined to talk about the timing or the reason for the abrupt nature of the firing, he later implied via surrogates that there was a sense of "deep dissatisfaction" with Chip among senior leadership.

Chip was flabbergasted, but there was nothing he could do that day. He had less than an hour to take his box of belongings from the office and get to the airport for one of the interviews he'd scheduled. He was flying to Wichita to meet with Charles Koch and other members of the Board of Directors for the Institute for Humane Studies, who were looking for a new president for the organization.

"I was pretty much in shock," Chip said. "Totally shell shocked. But I had to go through with this interview, and somehow or another, I did."

Chip liked and respected IHS and its mission, which was to identify up-and-coming scholars with an interest in free markets and libertarian ideas and to nurture them in ways that helped them gain tenure and intellectual influence. He appreciated the long-term, strategic thinking, which he thought the movement sorely needed. But the conversation during the interview helped him realize that, as highly as he thought of the mission, IHS was not a fit for him. His goal was to run a public interest law firm. When Charles Koch later called to offer him the job, Chip expressed his appreciation for the honor and for the organization, and he declined the position.

He returned home from Wichita and sat with Clint in his backyard, processing everything that happened. His experience at Mountain States made it more obvious to him than ever that there was a crucial gap in the public interest legal world—a gap that he could fill. His desire to create an organization that operated from a strategic, long-range, principled approach was stronger than ever.

But he couldn't stay in Denver.

"I needed to let the dust settle," Chip said. "In some circles, people loved me. I don't think anybody hated me. I was never vilified. But I think there were people who felt it was best I be taught a lesson."

He and Alison got married in October 1983, and Chip accepted a job in the Reagan Administration. The newlyweds packed and left for D.C.

The Center for Constitutional Litigation and Vindication of Individual Rights

Despite never previously being active in Republican politics, Chip was recruited to the Department of Energy, where he worked as a deputy general counsel.

His first task was to take on and dismantle the Crude Oil Entitlements Program, a multi-billion-dollar remnant of the oil and price controls of the 1970s. His supervisor gave him a two-inch stack of proposed regulations, filled with acronyms and jargon, proposing to end the program. Chip spent days wrestling with the materials before realizing that the task assigned to him was all wrong for what the new administration was trying to accomplish.

"It accepted as a premise the validity of this entire regulatory apparatus and tried to unwind it while leaving in place all the authority, all the edifice, and all of the presumptions that went with it," Chip said.

His boss gave him approval to start over, and he produced a six-page regulation that said, as Chip put it, "We did it, it was wrong then, it's wrong now, it's over."

He overcame opposition within the Department to get the regulation passed. When the beneficiaries of the program challenged it, the new rule was upheld unanimously in court.

"It was a lesson in how important it is to go to first principles, to not accept illegitimate premises, and to make the case on your own terms, not on somebody else's," he said.

As someone new to politics, Chip was a careful observer of the landscape in D.C., and he took two other lessons from his time in the administration.

"Number one, it's not your enemies who do you in, it's your friends," he said. "Number two, the bureaucracy is not the homogenous blob of evil that some libertarians or conservatives would describe. It's much more nuanced than that. But it is inert in ways that make it very hard to get things done."

Meanwhile, the idea of public interest law, done the right way, was always in the back of his mind.

Chip and Clint stayed in touch, as Clint doggedly did his best to litigate the cable case. Chip had left after filing the appeal, turning its fate over to the leadership at Mountain States. They could elect whether to continue it or to withdraw it. They chose an ambivalent third option, allowing Clint to work on it, but without institutional support and hamstrung at every step. Meanwhile, sensing the blood in the water, the other side redoubled its efforts.

"We were nominally proceeding with the case, but we were not diligently litigating it," Clint said. "The Board basically told me, 'You're not allowed to pursue this case. Don't put time into this. File the papers and don't spend an extra hour beyond the bare minimum.'"

Finally, in February 1985, the ruling came down from the 10th U.S. Circuit Court of Appeals: there was no need for oral argument. "We do consider plaintiffs' papers filed in this court as compelling evidence of their lack of willingness to fully contest the issues on appeal ... DISMISSED."

Clint left Mountain States and went to work at the Equal Employment Opportunity Commission, under its chairman, Clarence Thomas. Now both in D.C., he and Chip began to develop the ideas they had discussed that day in Chip's backyard after The Firing.

When Chip and Alison came to D.C., they swore to each other that they'd get back out west somehow. They set a goal of staying in the capital for two years.

"I didn't realize how insightful that goal would be until I got there," Chip said. "You do need to stay about two years before you even begin to figure out how this crazy Washington world works.

"But, after that, you rapidly start banking your outrage and playing into what you view as your ability to be 'effective,' which means accepting as normal things that you should never accept as normal when it comes to how the world works."

So, around the two-year mark, Chip began to develop a proposal to start a new law firm.

"I put it together with great earnestness of purpose and thought, and it had some cumbersome title like 'The Center for Constitutional Litigation and Vindication of Individual Rights' or some bland, stupid thing like that," he said.

It was a strategically consistent and principled approach to public interest law from a libertarian perspective, emphasizing property rights and economic liberty, "with a few other things like tort reform thrown in, which happened to be the flavor du jour that I succumbed to in an ill-advised moment."

Clint reviewed the document and added his thoughts. Once it was final, excited by what they had come up with, Chip decided to run the document by Dave Kennedy, whose kindness, sense of principle, and calm purpose had meant so much to both men at Mountain States.

By that time in 1985, Dave was running the Earhart Foundation in Ann Arbor, Michigan. He knew the world of constitutional law from his time at Mountain States, and he understood grantmaking from being at Earhart.

"Clint and I both thought the world of Dave," Chip said.

Dave gave the proposal careful consideration.

"I love both of you guys, and what you are trying to do needs to be done," he told them. "I support you heart and soul, but you're not ready. This proposal tries to do way too much. You two, with the best of intentions and boundless energy, could never accomplish what you're putting down here. You need more seasoning."

It was a hard but necessary reality check. Dave urged Chip to focus his mission, articulate it more clearly, and be candid about what he could realistically achieve with the resources he would have.

"Coming from anybody but Dave Kennedy, that could have been delivered as a nasty set down," Chip said. "Instead, from him, it became this super motivational challenge."

"Dave saw a lot of potential in Chip," Sally Kennedy, Dave's wife, said. "He thought that he and Clint were going to change the world."

For Chip, the question became how to get the seasoning that Dave had recommended, particularly the management and fundraising experience that he had highlighted as being especially important. Chip and Clint were lawyers, but they would also need to be able to run and fund their new venture. And as valuable as his time in D.C. had been, Chip knew the necessary experience wasn't going to come from the Reagan Administration.

Going West (Part II)

Chip and Alison continued to talk about what they would do next and how they would get back out west, toying with various options and ideas. Nothing they suggested to each other seemed quite right. Their two-year deadline was approaching, and they were stuck.

Then, not long after Chip's conversation with Dave Kennedy, his phone rang.

"I do ever so hate to bother you," said a man with a cheerful voice and British accent. "But I'm wondering if I might take a moment of your time to discuss a matter of what I believe to be mutual benefit."

The man on the line was Sir Antony Fisher, founder of a series of think tanks on both sides of the Atlantic. A Royal Air Force veteran who served in World War II, Fisher had considered going into politics in England to try and arrest the country's post-war move toward socialism. Then *The Road to Serfdom* and a conversation with its author, Friedrich Hayek, at the University of London changed his mind. Hayek convinced Fisher that direct political action was futile and that he should instead fight on the "battlefield of ideas."

Fisher described to Chip the opportunity he was calling about: he was part of a committee looking for a new president for the Pacific Research Institute in San Francisco, one of the think tanks he had founded, focused on scholarly research and book publications.

"It was, like Cato, an institution that I very much admired," Chip said. "But it was still a think tank. I wanted to do public interest law, and taking a sidetrack to run a think tank didn't really appeal to me."

That night, he described the call to Alison.

"When are you going to talk with them?" she asked.

"I told him no," Chip said.

"What?" Alison exclaimed. "A chance to go to San Francisco, and you're not even going to talk to him?"

"No," Chip said. "It's too late, I told him no."

Alison was exasperated. But, an optimist by nature, she quickly rebounded.

"OK," she said. "We'll think of something else."

A week or so later, the phone rang again. It was Fisher. The second call shouldn't have been a surprise: an entrepreneur at heart, Sir Antony didn't give up easily.

"I've been thinking about it," he said. "And I've talked it over with other board members. Your name keeps coming up, and I believe we could reach an accommodation that allows us both to achieve our goals."

During their first conversation, Chip had explained to Fisher his desire to build a new kind of public interest law firm, and his need for a long-range litigation blueprint. As he had reflected on his proposal and Dave Kennedy's advice, Chip had realized that, in addition to management and fundraising experience, he and Clint lacked a careful and detailed analysis of the state of the law, why it was bad for liberty, and where they wanted to take it. He knew he needed to do that before he could launch his next effort. Now, Fisher was offering to give him the opportunity to do it at Pacific Research Institute.

His earlier conversation with Alison in mind, Chip agreed to fly out to San Francisco to talk to PRI's board. At that point, the organization was focused largely on natural resources and the environment—issues very familiar to Chip after his time at

Mountain States and the Department of Energy—as well as free market economics, with maybe one or two books on the law. What Chip proposed was to graft his litigation blueprint onto this work.

Recognizing that there was no single person who had all the expertise he would need, he proposed developing three books covering three areas of the law: free speech and the First Amendment, property rights, and economic liberty. The work would be done under the umbrella of a new center within PRI, the Center for Applied Jurisprudence.

Fisher and the board agreed, and Chip and Alison left D.C. for San Francisco, right on time.

Phone Bills and Task Forces

Chip started at the Pacific Research Institute in 1986, and he got an immediate crash course in fundraising and administration.

While he and the PRI board had discussed the Institute's work and the prospective Center for Applied Jurisprudence in great detail, they hadn't spent any time reviewing the organization's finances. Chip quickly recognized just how significant that oversight was on his part.

Things had been tight at the organization long enough that management had begun borrowing from restricted grant funds to pay current expenses, making IOUs to repay the money when new grants came in. But there was never enough new money to put everything right.

"We were bankrupt," he said.

Fortunately, Alison had been able to transfer her job at the Department of the Interior to San Franscisco, which provided a steady source of income. Chip himself didn't get paid for nearly three months. It was all he could do to keep up with the payroll for the rest of the staff.

"I called every single donor on our database," he said. "Every single one, which was maybe a hundred people? I was calling people who had given us $10 at some function."

Meanwhile, the bills didn't stop. That meant Chip's calls included the companies that PRI owed money. He made calls asking to postpone payments, and calls requesting that bills be broken into smaller increments that the organization could actually afford to pay.

"At one point, I had to split a phone bill that was just over $100 into monthly payments because of our cash flow," he said. "But as painful as that experience was at the time, it girded me for much tougher decisions and choices down the road."

Some of Chip's calls prompted donations, and a PRI board member, Ev Berg, generously helped keep the organization afloat with his support. But the tide didn't really begin to turn until Chip landed a $100,000 general support donation from the Sarah Scaife Foundation.

"That was an imprimatur of approval," Chip said. "Dick Larry, who ran it then, was The Man in conservative fundraising at the time. Once he signed off, gradually others started to come on board within the movement."

Larry had a philosophy of "supporting the chef, not the kitchen," and Chip had passed the test.

One of the other funding challenges Chip faced was getting money for his new Center for Applied Jurisprudence. What he was looking to do was different enough from anything PRI had done before that there was no natural fit within the existing donor base.

Ultimately, he found the perfect donor in the Smith Richardson Foundation, built from the Vicks VapoRub fortune. Its leader, Michael Greve, approved a grant of $200,000, the largest Chip had ever gotten and enough to get his project rolling.

The first step to getting the Center for Applied Jurisprudence up and running was to bring together task forces of the leading libertarian, conservative, and even neoconservative scholars in their respective fields, some overlapping and some focused on only one issue.

He ran each task force based on the model of the Liberty Fund, an organization built to facilitate discussions of the important ideas of classical liberalism. One task force member was responsible for taking notes, and those notes would serve as the basis for a first draft of a book on the topic of discussion. After a year or 18 months, the author would circulate the manuscript, and the group would reconvene for discussion and criticism.

Chip tapped Clint to write the book on economic liberty. A young Washington, D.C.-based attorney who had recently served at the Federal Communications Commission named Jonathan W. Emord wrote about freedom, technology, and the First Amendment. And Chip asked his old Mountain States colleague Gale Norton to write on property rights. She finished her contribution shortly before becoming the first woman attorney general of Colorado and, later, the first woman Secretary of the Interior under George W. Bush.

"They were all young, enthusiastic, smart people," Chip said. "None of us were equipped to write a book alone, but it was remarkable, the insights and power of the ideas that we got from these groups. And it was cool to see how enthusiastically people bought in on them. I would cold call big, up-and-coming lawyers in the Justice Department or scholars in academia and tell them what I was up to. And they bought into it."

The approach led to what became a roster of superstars on the project, including Richard Epstein, Michael McConnell, Randy Barnett, Nathan Glazer, Chuck Cooper, and others. Chip supplemented his outreach with speeches and articles about the material the task forces were generating, building buzz about the problems they identified and their proposed solutions.

When task force members finished their books, Chip and his team worked to get them into law schools and on campuses around the country, exposing more new and aspiring attorneys to the idea that an alternative approach to public interest law was developing. Groundwork laid, by 1990, Chip knew it was time to take the plans off the drawing board and into the courtroom.

The Quest for Justice Begins

"I'm rooting for you, but I've got to tell you good luck because I think you'll need it. There are a lot of people in this town expecting you to fail."
– Dan Oliver, Chair, Federal Trade Commission

As he climbed out of the Farragut North Metro Station, 24-year-old Scott Bullock felt his skin grow clammy underneath his charcoal business suit. Although the day was cloudy, it was unseasonably hot for May, even by Washington, D.C., standards.

Scott had gotten an early start that morning. He took the Metro from his cheap motel on the outskirts of town into the city center, and he still had a 10-minute walk to his destination. He was going to need to hustle to make it on time. Though his appointment in town was a meet-and-greet, he still wanted to make a good impression.

By the time he arrived at the large, atrium-style lobby of the Vista International Hotel on Thomas Circle, he was winded. Scott had never been to the Vista before, but he was familiar with it. The building had gained a certain notoriety the previous year, when D.C. Mayor Marion Barry was arrested there on charges of possession of cocaine as part of a joint FBI and D.C. Police sting. Scott had been interning for Clint Bolick at the Landmark Center for Civil Rights that summer and had seen the story on the news regularly.

It was at Clint's recommendation that he was in town now. Scott and Clint had developed a strong, friendly relationship during his time as an intern. As Scott was leaving D.C. in the summer of 1990, heading back to Pittsburgh for his final year of law school, Clint had taken him out to lunch to talk about the future.

"He told me he was trying to form a new, libertarian public interest organization with an old friend of his, who he'd worked with many years ago at Mountain States," Scott said. "It was all still up in the air, but he said, 'I think this has real potential to get off the ground, and if it does, I'd love for you to come and work for us.'"

Clint's proposal sounded like exactly what Scott wanted to do, so he jumped at the opportunity when Clint urged him to come to D.C. the following spring to meet with Chip Mellor while he was in town. Scott felt confident he had a place in the new organization, and he was looking forward to getting to know the man who was working so hard to make it happen.

Once the two men had introduced themselves and settled in for a conversation in the Vista's lobby, it quickly became obvious that Chip's plan for the meeting was not what Scott had been expecting. He got straight down to business trying to get a read on the aspiring young lawyer who was likely to be his new firm's first hire.

"Immediately, Chip began hitting me with these deep questions," Scott said. "'What are the three most important things in your life?' 'Where do you see yourself in five years?'"

Chip's scrutiny and the thoughtful, probing questions made Scott realize that maybe the job wasn't quite the sure thing he'd been counting on. It also struck him powerfully just how little experience he had with real job interviews. He had landed his internships with Clint and, before that, with Roger Pilon at the Cato Institute, thanks to his initiative and friendly, relatively casual conversations about things like the books that influenced him and his interest in libertarian ideas.

The sudden stress of realizing that he was completely unprepared for a conversation that may have higher stakes than he'd anticipated hit him at the same time as the residual heat from his trip in near-90-degree weather.

"I started sweating profusely," he recalled. "Just sweat pouring down from this walk in the heat in a dark suit in May in D.C. and these questions I was not at all prepared for. Later I said to Clint, 'That was a pretty intense interview.'"

The difference in expectations going into the conversation wasn't lost on Chip.

"I initially thought he was a little bit big for his britches," he said.

But as time went on, Chip realized that he'd gotten the wrong first impression.

"What Scott had was this wonderful sense of confidence and zeal for the cause that made him very enthusiastic, and ultimately—when he became a lawyer—very effective," he said.

For what Chip and Clint were setting out to do, the kind of commitment and dedication Scott demonstrated would be crucially important. Chip signed off on the hire.

No Exit, No Alternatives, No Plan B

As intense as the interview was, anything Scott said that day could only have understated just how committed he was to the ideas that motivated Chip and Clint to found their new organization.

Growing up in Jeannette and Greensburg, Pennsylvania, small cities outside of Pittsburgh, Scott had always gravitated toward stories championing individual liberty and describing ordinary people challenging and overcoming the advantages held by those in power. Those felt like the stories that mattered, and they interested him much more than anything that was going on in his high school.

"Whatever I read, in school or in the news, I just had this instinctual feeling that people ought to be able to do what they want as long as they're not harming somebody else," he said.

For a teenage kid in the pre-internet 1980s, the best way to find new and non-mainstream music, movies, and books was through personal connections and the recommendations of friends and family. That was doubly true when it came to politics, philosophy, and economics.

Fortunately, Scott found a kindred spirit in an older cousin, Amandus Link, with whom he discussed his ideas at family gatherings over the years. Amandus told Scott about the Libertarian Party, and he regularly recommended books, pamphlets, newsletters, and cassette tape series about classical liberalism. Everything he read helped Scott put structure and an intellectual foundation to his instincts.

"I ate it up," Scott said. "It was so enlightening to me to learn that other people feel this way, and there's actually a rich tradition of people fighting for these types of principles."

He started reading Milton Friedman, Thomas Paine, Ayn Rand, and other writers whose ideas influenced libertarianism—many of the same authors that Chip encountered in his intellectual journey. As he got older, he added heavier material to his self-directed studies. Many of these books came from Laissez Faire, a mail-order shop based in New York City that served as the de facto bookstore for libertarians.

"The promotional copy for their books made them sound so interesting," he said. "It was like, 'My God, I have to get this three-volume book on Austrian economics written in the 1890s called *Capital and Interest*!'"

Although neither of Scott's parents had gone to college, it was important to them that he attend, and he ended up choosing a small school called Grove City College. It was relatively close to home, and it was one that his family could afford. But what sealed the deal for Scott was the fact that Hans Sennholz taught economics there.

Sennholz was a student of Ludwig von Mises, and during his 40-year career he taught or mentored many individuals who would go on to play important roles in the libertarian world, from George Pearson at the Charles Koch Foundation and Dick Larry at the Sarah Scaife Foundation to Larry Reed of the Foundation for Economic Education and Walter Grinder of the Institute for Humane Studies.

There were opportunities to engage with libertarian ideas outside of class, too, and Scott took advantage of seminars on classical liberal ideas run by the Institute for Humane Studies and the Cato Institute. Ultimately, a class on constitutional law taught by John Sparks, another former Sennholz student, convinced him that law school was a way to bring all the aspects of what he was learning—and what he wanted to do with it—together.

"It combined these principles of liberty with the ability to be more real world and put the ideas into effect, as opposed to just thinking and writing about them," Scott said.

Though his intent was to maintain his focus on libertarian ideas and how to put them into action, his mentor was disappointed with his choice.

"When I told Hans that I was going to go to law school he said to me in his inimitable Germanic way, 'Oh, my! Another thought leader lost to filing divorces and wills,'" Scott recalled.

Scott chose to attend law school at the University of Pittsburgh. It was respectable. It was affordable. And because he knew that he wanted to do something nontraditional once he graduated, it was important to him to avoid leaving school buried in debt. He set out to complete a law degree and pursue his interests in the libertarian world over the summer.

During his first year of law school, Scott read in *Reason* magazine about a lawyer named Clint Bolick and a case he filed while at the Landmark Center for Civil Rights on behalf of a man named Joseph "Ego" Brown.

An entrepreneur who started with a simple shoeshine stand and a dream to "spread the shine" throughout Washington, D.C., Ego opened his business when he left his career in the U.S. Navy. After all those years of spit-shined shoes, he knew exactly what the town needed.

"It's an image city," he said. "People care about their appearance, and they wear nice clothes, but they forget about their feet."

Starting at a barber shop near Howard University, by 1985 Ego had decided to step out on his own. He invested in a portable shoeshine stand, got a vending license from the District of Columbia, and set up shop at the corner of 19th and M Streets—just a few blocks away from the Vista Hotel.

Then he ran headlong into the kind of bureaucratic nightmare Ayn Rand might describe in her books. Just months into his new enterprise, Metro Police shut him down. The reason? A 1905 law forbidding "bootblack stands on public space." He returned to using space on private property, but his business struggled.

In 1988, Clint launched the Center for Civil Rights within the Landmark Legal Foundation by filing a case on Ego's behalf—and they won. In March 1989, a federal district court in D.C. ruled that, while the District could adopt "reasonable regulations," an outright prohibition on shoeshine stands was unconstitutional: "We would have to strain our imagination," Judge John H. Pratt wrote, "to justify prohibiting bootblacks from the use of public space while permitting access to virtually every other type of vendor."

This was exactly the kind of story that had always resonated with Scott, and what Clint and Ego had done was exactly what he wanted to do.

"I got really excited," Scott said. "I called Clint—because that's what you had to do, you just had to call people up directly—and he actually answered the phone because it was just him and one other attorney and an assistant there."

Scott and Clint hit it off right away, but Clint explained that he could only take on one law student for an internship, and the kind of litigation he was doing meant he could only consider candidates with more experience, in at least their second year of law school. Not wanting to leave the enthusiastic young man hanging, he told Scott that Cato had just founded a Center for Constitutional Studies and that he should contact its director, Roger Pilon.

"I called him up and again introduced myself: 'I just talked to Clint Bolick, could I be your intern,'" Scott said.

The direct approach worked, and Scott interned for Roger at Cato between his first and second years of law school. He made a point to keep in touch with Clint during his summer in D.C., and they met up a handful of times while he was in town. The following summer, he went to work for Clint, setting the stage for his role at Clint and Chip's new law firm.

"I never signed up for a job interview while I was in law school," Scott said. "I never stepped foot in the placement office. I had no exit, no alternatives, no plan B. If I'd failed, I couldn't go work at my parents' business or anything like that. I never pursued any other thing but this, without knowing quite what it was going to be. One way or another I was going to make it happen."

With the job offer from Chip in hand, finally, Scott had an answer to people who asked him what he was going to do with his law degree: he was going to work at a public interest law firm in Washington, D.C.

"They would say, 'Oh, yeah, what's its name?' And I said, 'I don't know,'" Scott said. "'Where's the office going to be?' 'They don't have offices yet.' Everyone must have thought, 'Scott and his imaginary job.'"

But the timing was serendipitous. He graduated law school shortly after his interview with Chip in May, sat for the bar exam in Pennsylvania in July, and moved to D.C. in August, ready to start work.

The Institute for Justice

Although Scott didn't know what it was, as a matter of fact, the new organization did have a name. In the process of developing his ideas in the years after his first enthusiastic proposal for Dave Kennedy, Chip had also refined the name for his organization: the Institute for Justice.

"Institute" to reflect the Hayekian idea, the one that Sir Antony Fisher had grabbed with both hands, that ideas, not politics and power, move the world. "Justice" to reclaim the word from the social justice Left and restore the concept of a rule of law under which individuals had rights that the government must respect—a word that could and should have powerful meaning in a libertarian context. In a crowded field of agencies, nonprofits, and corporations going by an alphabet soup of cumbersome acronyms, it would be simply "IJ."

By mid-1990, the books coming from his task forces at Pacific Research Institute's Center for Applied Jurisprudence were finished. Chip had in hand a freshly honed litigation blueprint for putting his vision into action. Meanwhile, with his cases at the Landmark Center for Civil Rights, Clint was doing a trial run for the kind of litigation they wanted to do, albeit in a smaller and less formal or deliberate way.

The key pieces were in place; the time for planning was over. Chip put together a new proposal, laying out his plan to open a public interest law firm and set in motion the systemic legal change he and Clint had sworn to create that day in his backyard in Denver.

"There came a point," he said, "where we just had to get started. Part of the DNA of IJ is to commit. Don't plan indefinitely. Don't talk indefinitely. Don't expect everything to be perfect. We just had to go for it."

They now had not only a vision but also a plan for the Institute for Justice. But it would take money to make it happen. Although Chip had joined the Pacific Research Institute with the explicit intention of eventually leaving to found a new public interest law firm, he wanted to do it the right way. That meant finding funding from sources that did not fund PRI.

He had successfully brought the organization out of its desperate straits, but it was still not flush with cash. He didn't want to take a chance that his new venture would compromise the security of an organization that had given him the opportunity to develop his ideas and come so close to achieving his long-term goals.

"Now I realize that the kind of person that could fund me would have so much money that it wouldn't really matter," he said. "But at the time, it didn't seem right to me."

Following that instinct was a core part of Chip's approach to fundraising. One of the most significant and hard-earned insights that he had developed during the lean years at PRI was the understanding that, as he put it, "it's not how much money you raise, it's how you raise the money." That philosophy would direct the way he interacted with donors for the rest of his career, and it was the ethos that he wanted to drive the Institute for Justice from the start.

He had witnessed firsthand a fatal flaw in many nonprofits, left and right, when fear, desperation, or uncontrolled ambition compelled them to "chase the money." In time, they would lose track of their mission, dissipate their credibility and, ultimately, corrupt their moral core. If IJ was going to do what he believed it could do, he could not fall victim to that trap.

Once again, he returned to the list of major funders of conservative and libertarian groups. The obvious fit—the one donor who was both explicitly libertarian and not also a supporter of the Pacific Research Institute at the time—was Charles Koch.

Making the Pitch

Chip and Charles had not had a substantive conversation since Chip had interviewed with him for the president job at the Institute for Humane Studies. But they had remained cordial, partly thanks to Chip's friendship with George Pearson, who was one of Charles' primary ambassadors to the three groups he was funding at the time: the Cato Institute, the Institute for Humane Studies, and Citizens for a Sound Economy.

From Chip's perspective, his new Institute for Justice would be an opportunity for Charles to be part of an organization that was different from but very much complementary to these other groups.

In the summer of 1990, he wrote a letter to George Pearson. It was only a few pages, outlining what he proposed to do and requesting a meeting with Charles to discuss a grant to make it happen. Then he waited. And waited.

George had always been very positive, encouraging, and responsive, so to hear nothing was troubling. Chip's calls and letters went unreturned. Then, right before Christmas, he received a brief, perfunctory rejection of his request: we've reviewed the proposal, we're not interested, but we wish you the best of luck.

The blow was crushing, especially after the years of groundwork Chip had laid, shoring up support from key scholars and attorneys and relentlessly building buzz around his idea. He couldn't give up, and he began trying to formulate a backup plan. Then, just weeks into the new year, a second letter from the Koch Foundation: we've given it more thought, and we'd like to set up a time for you to talk with Charles.

Unbeknownst to Chip, the Koch philanthropies were undergoing a reorganization that had kicked off right at the time he wrote to George Pearson. The resulting internal disruptions had led to both the abrupt rejection of his idea and then, later, to its resurrection.

Relieved and invigorated, Chip set up the meeting, and he and Clint flew to Wichita in April 1991. They made their presentation, and Charles considered it. He asked questions, and they talked through all the plans and blueprints, as well as their experience with litigation, public interest law, and movement think tanks.

Charles was intrigued by the idea and saw its potential. He had one final question: "Why should you be the ones to do it?"

"Charles, we have a knack for this," Chip said. "We just need an opportunity to show you."

Charles Koch agreed to fund the project for three years. After that, it would be up to Chip and Clint to make it work financially. And in each of the three years, he wanted IJ to come back to him and show measurable progress in executing the plans the men had created.

Chip agreed and went a step further.

"I told him I was deeply honored, and that my goal, my intent, was never to take all of the funding in any year that he so generously offered," he said.

His deep drive to be independent meant that, from the start, Chip knew he had to be able to sustain the organization without relying too much on any single donor.

"We would always be following a very clearly defined mission in a principled way," Chip said. "And I knew that if we did that, people would be excited about joining our work and supporting what we did on our terms, not making their support conditional on us doing what they wanted. Of course we would be responsive to any commitments we made, and we would report on our progress so they could see we were doing what we said we were going to do. But the idea was that we would be independent right from the start. And we were. And that proved to be absolutely vital as time went by."

Charles Koch's other two requirements for a grant proved similarly in line with what Chip and Clint were planning for IJ. After his experience starting the Cato Institute in California and then recognizing in 1981 that it needed to be in Washington, D.C., Charles felt strongly that this new organization needed to be based in D.C. from the start. Chip and Clint agreed.

Charles also wanted the fledgling group to try an approach to organizational management that he had pioneered to great success in his private businesses: market-based management. The philosophy emphasized decisions being made by people with a stake in the outcome and focused on creating and following mission statements for various activities. Chip, who would be IJ's president and primarily responsible for its management, agreed to give it a try.

"Given our size and the nature of nonprofit public interest law, the management approach ultimately didn't work for us," he said. "But the emphasis on mission statements was crucial. When we founded IJ, there were fewer than half a dozen of us. Only Clint and I had the remotest clue about what we were trying to do, and our ideas were still in the incipient, formative stage. We needed to sharpen our mission thinking, too."

Developing a mission that articulated the overall purpose, specific incremental goals, and resources required not only for the organization, but also for each case and major project turned out to be essential, especially in those early years. It would help Chip and Clint bring people together and to coalesce and motivate them around a common goal.

The exercise also contributed to Chip's ability to ensure that the team was, in fact, achieving what it had set out to do. It helped him define and collect the information he needed to report to Charles and, eventually, to other donors as well.

With the Koch seed funding secured, the countdown to opening the Institute for Justice began in earnest.

Chip's first order of business was making provisions for the future of the Pacific Research Institute. Now that the organization was on firm financial footing, he felt confident he could hand his position over to a new leader with a clear conscience. He began conversations with potential candidates. One woman, Sally C. Pipes, a health care policy expert then at the Fisher-founded Fraser Institute in Vancouver, stood out from the start. She became PRI's president in 1991 and remained in the position for more than 30 years.

Chip also needed to staff his own organization. With the hiring of Scott in May, he and Clint had their first staff attorney. He began scouting for administrative support and an office in Washington, D.C., while juggling all the other classic tasks of an entrepreneur—designing a logo, filing paperwork, negotiating a lease—and also coordinating a move across the country with Alison and their young son, Mitch.

The Quest for Justice

IJ opened on September 3, 1991. Chip and Clint officially launched the organization the following week with a speech at the Heritage Foundation, which had gained considerable influence in D.C. during the Reagan Administration thanks to its "Mandate for Leadership," a massive, 3,000-page publication that informed many of the Administration's policy goals.

Launching at Heritage was a way to ensure that all the key players in D.C. at the time—on both sides of the aisle—learned what IJ was setting out to do, and why.

In their remarks, entitled "The Quest for Justice: Natural Rights and the Future of Public Interest Law," Chip and Clint laid out their vision of public interest advocacy. The Institute for Justice would be devoted to individual rights, and it would pursue its goals through a long-term, philosophically and tactically consistent litigation program, based on natural rights and the Constitution.

Clint shared the stories of people like Ego Brown, as well as other clients he had represented at the Landmark Center for Civil Rights, noting that when the government denied these people's rights, every American was affected: "Each of us possesses fundamental rights that no government may take away. If any of us loses our rights, we all lose our rights."

Chip put their fight in the context of the political debate that was happening over the proper role of the judiciary, and described how framing the conversation simply as a debate between "judicial restraint" and "judicial activism" was insufficient:

> The theory of judicial restraint, that is, the notion that judges are to apply the written law and not attempt to create it, was the jurisprudential touchstone of the Reagan Administration. Conservatives vehemently opposed judicial activism that led to sweeping changes wrought by judges accountable to no one. Such egregious practices as expansive application of environmental laws and the creation of new welfare "rights" came to symbolize for conservatives all that was wrong with the way courts functioned under the influence of judicial activism. The debate became so polarized that allegiance to judicial restraint became a requirement for conservative legitimacy in certain circles. And it remains so today.
>
> Yet, as we observed this process, it was apparent to us that these two opposing approaches to jurisprudence lost sight of legitimate, indeed vital, concerns that did not fit neatly into the respective paradigms. While abhorring many results of liberal judicial activism, we believed that emphasis on judicial restraint as an end in itself gave insufficient hope for protecting crucial rights. And for those rights already emasculated by judicial edict, judicial restraint simply enshrines bad law.

The speech was calibrated with a largely conservative audience in mind. Chip quoted C.S. Lewis' *Mere Christianity* to emphasize that judicial restraint could ultimately cut against their values and leave crucial rights—including rights conservatives cared about—unprotected: "When you are on the wrong road, progress means doing an about-turn and walking back to the right road."

Chip also laid out a litigation agenda that he characterized as "broadly seeking to enable individuals to take control of their own destinies as free and responsible members of society, and to form voluntary communities based on common interests and aspirations." In his remarks, he named four specific areas in which IJ would operate: economic liberty, property rights, free speech, and educational choice.

These were areas where Chip and Clint had each already been working for years, from their work at Mountain States Legal Foundation to the task forces at Pacific Research Institute and the lawsuits that Clint filed while at the Landmark Center for Civil Rights.

"Choosing the topics was a matter of deciding what were the basic principles of a free society," Chip recalled. "Things that were recognized in the Constitution as deserving protection, even though they weren't being protected."

Economic liberty, the right to earn an honest living without arbitrary government interference, had always struck both men as being profoundly at the core of the American experience. It was also an area that lent itself to public interest law, because the situation was so dire and the fight against entrenched interests was so dramatic.

Protections for economic liberty were effectively destroyed by a series of U.S. Supreme Court decisions going back to the New Deal. As a result, economic rights received essentially no meaningful constitutional protection at all, and the courts allowed the government to use regulations and monopolies to run roughshod over individuals trying to earn a living.

Similarly, property rights are essential to the ability to live a free and independent life, and they are closely tied to economic liberty in making it possible for individuals to achieve success, accumulate wealth, and enjoy prosperity. And here again, the state of the law was terrible. At the federal, state, and local levels, private property rights received virtually no constitutional protection at all.

First Amendment law was more well developed—and more crowded with public interest groups—but their experience at

Mountain States had demonstrated to Chip and Clint that there were large and important swaths of the First Amendment that were neglected, just like economic liberty and property rights. And they knew firsthand from the fight over the Denver cable monopoly that free speech cases had the potential for just the kind of David versus Goliath narratives they had in mind.

School choice was the one area that Chip had not dedicated a task force to at the Pacific Research Institute, and it became part of IJ by serendipity. Both Clint and Chip had worked in public schools, and they'd had front row seats to how bad the system was and how desperately it needed reform. They had both been deeply influenced by Milton Friedman and the philosophy of school choice he had developed in his writing: if the state is going to fund education, money should follow the student, and parents should choose the education that best meets the needs of their children.

Furthermore, as it happened, just one year before the Institute for Justice opened its doors, Milwaukee, Wisconsin, created the nation's first school choice voucher program, the Milwaukee Parental Choice Program, bringing Friedman's ideas to life.

Clint was already starting to get involved in the brewing fight to protect the program from union opposition. Defending the principles and families involved felt like a natural fit for the fledgling organization, given parents' fundamental rights to direct the upbringing and education of their children.

In each area, the odds were steep. Most of the D.C. crowd that heard the speech, while they may have wished IJ well, weren't particularly optimistic about its chances of success. In fact, Dan Oliver, a friend of Chip's from his earlier stint in D.C. and now the head of the Federal Trade Commission, invited him out to lunch shortly after IJ launched. He summarized Washington's reaction to the new organization.

"I'm rooting for you, but I've got to tell you good luck because I think you'll need it," Dan told him. "There are a lot of people in this town expecting you to fail."

Chip was unfazed.

"Yes, we were—and we remain—up against the odds with every single case we take on," Chip said. "The precedent is solidly against us, and you cannot be deterred by that. And you cannot give in to cynicism. It's the refuge of cowards. Cynicism gives you an excuse to fail before you even start."

IJ: Day One

The day before beginning his job at the newly launched Institute for Justice—freshly settled into its office space at 1001 Pennsylvania Avenue NW—Scott walked from the group house in Southwest D.C. where he rented a room to the Jefferson Memorial.

"I thought that was an appropriate thing to do before starting this journey, to commune with Thomas Jefferson," he said.

This was his dream job. It was the reason he went to law school. But he was setting out to do something he didn't yet know how to do—be a lawyer—as one of three attorneys at a brand-new firm designed to take a new approach to public interest law.

"There was no other place I would rather be, but I also knew that I didn't really know very much," he said. "So that was kind of the challenge: I'm determined to make this work, but also I need to learn a lot about how you do litigation."

Scott wasn't the only one learning on the job. Although both Clint and Chip had done some litigation, in the past they had worked at places with a larger legal apparatus, including the federal government. At IJ, they didn't even have a paralegal. While they had a sense of how to direct a lawsuit, like Scott they were learning the practical aspects, from rules of civil procedure to local court rules, as they went.

"It took a few years, personally and institutionally, to get the systems where we didn't have to stop and think about each step," Scott said. "Remember that we were figuring out both the technical aspects of litigation as well as how we wanted to work in the media and build the case in the court of public opinion and combining all of that together."

Fortunately, their first case was on home turf in Washington, D.C., and their first client had come to them.

Clint's case on behalf of Ego Brown, the case that had drawn Scott's attention back in law school, also made an impact on a Washington, D.C., resident named Taalib-Din Abdul Uqdah and his wife, Pamela Ferrell.

While Scott had read about the lawsuit in the explicitly libertarian magazine *Reason*, many more people learned about it via ABC's *World News Tonight*. In 1989, everybody watched the nightly news. When Ego won his case, news anchor Peter Jennings profiled him, naming him the "Person of the Week" for overcoming a Jim Crow-era law prohibiting his sidewalk shoeshine service.

Uqdah learned about Ego and said to himself, "That's me."

D.C. Ties Hair Braiders Up in Knots

Uqdah and Pamela established their business, Cornrows & Co., in 1980 to offer natural, African-style hair services to clients across D.C. from their shop on 14th Street NW. They were so passionate about their craft that they also established a school to provide formal training and apprenticeships for hair braiders. Pamela personally trained some 250 braiders, many of whom went on to start their own businesses.

Cornrows & Co. was never cited for a health or safety violation, and neither the business nor its owners were ever the subject of a customer complaint. Nevertheless, from almost their first day in business, D.C.'s unelected Board of Cosmetology had harassed the couple over the District's cosmetology laws.

D.C.'s cosmetology code, which was ratified in 1938, covered a variety of chemical treatments, as well as hairstyles—from finger waves to pin curls—that lost popularity in the 1940s. It made no provisions for the kind of natural hair care and African-style braiding that Cornrows & Co. offered.

Yet for more than a decade, various D.C. officials had threatened to prosecute Uqdah and Pamela and shut down their business for lacking a cosmetology license.

Getting such a license was no small thing. It required at least 1,500 hours of training—with an additional 500 required for managers and yet another 500 hours for instructors—at a cost of thousands of dollars in tuition and more in forgone business.

Occupational licensing laws and regulations, which Milton Friedman covered at length in *Capitalism and Freedom*, had long been on Chip and Clint's radars. Friedman framed it this way:

> The overthrow of the medieval guild system was an indispensable step in the rise of freedom in the Western world ... [M]en could pursue whatever trade or occupation they wished without the by-your-leave of any governmental or quasi-governmental authority. In more recent decades, there has been a retrogression, an increasing tendency for particular occupations to be restricted to individuals licensed to practice them by the state.

In addition to the general curtailment of liberty and opportunity these regulations represented, licensing systems were ripe to be gamed by industry groups, special interests, and established practitioners, which benefited from higher prices and reduced competition.

Friedman went on to observe, "In practice, the considerations taken into account in determining who shall get a license often involve matters that, so far as a layman can see, have no relation whatsoever to professional competence."

This dynamic was emphatically true in Uqdah and Pamela's case: the state wanted them to get 2,500 hours of training—not a single hour of which dealt with African-style hair braiding.

Occupational licensing regimes like D.C.'s were a target of IJ's from the start. Clint had written about them in *Civil Rights at the Crossroads*, his book for Chip's Center for Applied Jurisprudence task force, and he had initiated legal challenges to them at the Landmark Center for Civil Rights. His case on behalf of Ego Brown was one of those challenges.

Although Uqdah saw himself in Ego, legally, his situation was different. In Ego's case, there were no licenses at all available for what he wanted to do—it was flatly forbidden. What Uqdah and Pamela faced were licensing requirements that were unnecessary, burdensome, and irrelevant. That meant that their situation presented a chance to build on Ego's case and break new ground.

Uqdah's case was an avenue for IJ to tackle one of the most important and challenging areas in their litigation blueprint. It also gave the attorneys an opportunity to institute the formula that Chip and Clint had begun developing back when they challenged the Denver cable monopoly.

The kind of public interest case they wanted to bring needed four things: a heroic, sympathetic client; an opponent willing to step into the role of evil villain; outrageous actions on behalf of the government; and relatively simple facts, such that ordinary people and non-lawyers could quickly grasp what was going on, and why it was wrong. These attributes would become the hallmarks of an IJ case, and Uqdah and Pamela brought all four.

The unelected, unaccountable bureaucrats of the D.C. government were harassing an honest small business, despite no evidence or even allegation of harm. And on their face, the facts—from the incredibly burdensome and poorly fitting regulations to the cost of compliance—were simple and outrageous.

Making the case even better was the fact that Uqdah was a charismatic presence and a powerful speaker. He and Pamela represented hardworking black entrepreneurs in a majority black city, just trying to get a business off the ground. When he talked about his situation, Uqdah was relatable and inspiring.

"I'm for social change," he told the *Washington City Paper* in October 1991. "That's what braiding is." He added that all he wanted was for hair braiders to have "a legitimate way to come out of the basement, to come off the back porch and start their own franchise."

He concluded with an unsubtle dig at the city that would have had most of the paper's readers nodding their heads: "Wouldn't it be nice for a change for Washington to be known as the braiding capital of the world, instead of the murder capital of the world?"

Uqdah v. D.C. Board of Cosmetology

When IJ opened in September 1991, Uqdah's case was already in the works. In addition to providing the small team with immediate direction and purpose, his participation in IJ from the start also made it possible to showcase one of the ways the organization would come to distinguish itself in D.C. and in the public interest legal world: it would put its clients and their stories front and center.

In fact, Uqdah attended IJ's opening reception at the Hay-Adams Hotel and made remarks about his experience in D.C. He described what it meant to him to be able to challenge the regulations that were making his life as an entrepreneur so difficult.

"IJ gave definition to our struggle," he said. "Prior to coming into contact with IJ, we knew that we were right, and the city was wrong. But we were never able to define that until we heard two words: economic liberty."

On November 1, 1991, Clint filed IJ's lawsuit on Uqdah and Pamela's behalf against the Board of Cosmetology in federal district court in D.C.

"We were looking for a decision protecting economic liberty in federal court," Scott said. "At the time, there were some decent decisions in state courts, but we decided to do this in federal court."

A federal court victory would be especially powerful, but the challenge was greater too, owing to the virtually unbroken string of precedent—from the New Deal onward—holding that the government wins in these types of cases.

The so-called rational basis standard of review, which governed how courts should approach an economic liberty case, dictated that any reasonably conceivable set of facts could be used to uphold restrictions on the right to earn a living. This was exactly the kind of challenge about which Dan Oliver had wished Chip luck.

Although IJ could point to the Ego Brown victory, the attorneys fully expected the government to distinguish it from Uqdah and Pamela's situation. After all, the kind of license they needed existed. It might be burdensome, but it wasn't impossible.

As Denver did in Mountain States' cable case—and as IJ would encounter in lawsuit after lawsuit over the years—the first move by the government in response to IJ's complaint was to move to dismiss the case, which was assigned to a judge named Stanley Sporkin. Before becoming a judge, Sporkin had served as the chief enforcement officer for the Securities and Exchange Commission and general counsel to the Central Intelligence Agency.

"He was kind of a character," Scott recalled.

When the attorneys in his courtroom were speaking, Sporkin had a habit of leaning back in his chair and staring up at the ceiling.

"Maybe he was thinking, or maybe he had a bad back," Scott said. "Either way, it was just one of these bizarre things where Clint was talking and the judge is there, leaning back perpendicular to the bench, and you don't know if he's listening, or if he passed out, or what happened to him."

Despite Sporkin's quirky courtroom posture, IJ's litigators left their first oral argument optimistic.

First, the judge had blocked a retaliatory cease-and-desist order the government had initiated against Cornrows & Co. after they filed their case. Then, during the hearing on the motion to dismiss, he appeared quite sympathetic to Uqdah and Pamela's situation, vigorously challenging the D.C. government over its assertions in the case.

Sporkin just couldn't believe that the District was attempting to shut the couple down when it was obvious they were operating a legitimate business that was clearly valued by their community.

At one point, baffled by the government's arguments, he barked, "Some world we live in. Someone trying to make a living and—it's like Russia, isn't it?"

"It's like Russia used to be," Clint replied.

IJ's first case was off to a strong start, and the courtroom momentum was buttressed by a flurry of positive media coverage.

There was Uqdah's profile in the *Washington City Paper* before the case even launched, along with a *Washington Business Journal* feature on Pamela. After the lawsuit was filed, it was covered by the *Legal Times*, *The Washington Times*, and other D.C. papers. Chip told Uqdah's story in opinion pieces in the *Las Vegas Review-Journal* and the *Orange County Register*. Most significantly, *The Wall Street Journal* highlighted Uqdah's case in an editorial headlined "The Other Civil-Rights Struggle."

Momentum was on their side.

This all made Judge Sporkin's decision, issued just weeks after the hearing, especially devastating. He wrote that Cornrows & Co. was a well-run business and reiterated his disbelief that the D.C. government seemed so intent on running it out of town. But he concluded that legal precedent tied his hands.

"The Court [is not permitted] to scrutinize social or economic legislation with a fine-toothed comb," he wrote.

"The district court opinion in *Uqdah* was just bam, right between the eyes," Chip said.

"He issued his decision, and it cites this whole litany of post-New Deal jurisprudence that says: rational basis," Scott said. "It's extremely deferential to the government. The law doesn't need to make sense. Even with his sympathies, he felt like he couldn't do anything about it. And he ruled against us."

There was no question that IJ would appeal the case. Everyone in the organization had known for years that the fight for economic liberty was going to be an uphill battle. They were in it for the long haul. This is what IJ existed to do, after all.

"Our approach was, unless there's a really good reason not to appeal, we're going to appeal it," Scott said. "We always try to win. In any way we can at whatever court we're at, we've got to push forward."

Beginning—and Maintaining—the Drumbeat

Meanwhile, Chip knew that IJ wouldn't be much of a law firm with only one case. The team needed multiple active projects in the works at any given time to ensure that they were never left twiddling their thumbs in a "wait and see what the court does" posture as an organization.

But, as Dave Kennedy had urged all those years ago, Chip also needed to be realistic about what he could accomplish with the resources he had. With only three attorneys, litigating multiple lawsuits across four different areas of the law would have been not only impractical but also foolish. It would be impossible to do that many cutting-edge cases well. IJ had to find opportunities to advance the ball in other ways.

"When resources are limited, you decide what the priority is and the rest will wait for another day," Scott said. "Keep the strategy in place, keep the goals there, but hold off on pursuing it until you have the real ability to sink your teeth into it and move forward on it, otherwise it would be too scattershot. That would not lend itself to effective litigation."

One area of opportunity and activity was school choice. Clint remained passionate about the topic, and he was integrally involved in defending the Milwaukee voucher program, a project he began working on during his time at the Landmark Center for Civil Rights. He continued representing Milwaukee parents while at IJ, and in 1992, IJ celebrated an early victory for the cause when the Wisconsin Supreme Court upheld the program.

"We expected that was going to open the floodgates for school choice," Clint said. "It did not."

So Clint turned his attention from active litigation to developing ways to leverage the debate on education reform and jumpstart interest in new choice programs.

Meanwhile, there were also important developments for property rights poised to happen at the U.S. Supreme Court. Right around the time IJ opened in September 1991, the Court accepted *certiorari* in *Lucas v. South Carolina Coastal Council*.

Lucas was a takings case that had the potential to begin to put guardrails for property owners around the incredible deference courts typically showed the government with respect to property rights.

At issue were David Lucas' two beachfront lots in Isle of Palms, South Carolina. He planned to build homes on the property but, before he could begin, the South Carolina Legislature passed a new law forbidding constriction on parcels like his. Lucas sued, stating that the ban on construction deprived him of all his property's economic value. This was a taking under the Constitution, he argued, entitling him to compensation.

Although issues of "regulatory takings" like the one at the heart of *Lucas* were not an area where IJ planned to focus in depth—the Pacific Legal Foundation already had a relatively robust practice dealing with these kinds of cases—*Lucas* would be a major statement on property rights. Being involved would allow IJ to begin to develop its own property rights arguments and to make a name for itself in the area at a time when important changes were potentially beginning to happen. Chip's long working relationship with University of Chicago law professor Richard Epstein, author of the seminal book *Takings*, offered a unique opportunity.

"We knew it would get the Court's attention if Epstein wrote a brief," Scott said. IJ partnered with him to submit an amicus brief in *Lucas*.

"What we were doing, across the board, boiled down to internal and external momentum," Chip said. "You have to keep the internal morale and internal esprit de corps focused on the fact that we are here to change the world and we are going to have fun doing it. But it's going to require hard work. In that sense, you're maintaining a can-do attitude within the organization. It isn't driven by one single thing or one single person or one issue."

"The second thing is that you have to maintain momentum on the outside," he added. "Even if, to an extent, that is just momentum by appearance."

That meant that, even if the caseload was light to start, activity within the Institute for Justice was heavy. Chip also began investigating taxicab licensing, building on work Clint had done in Houston. He and Clint traveled and gave speeches to groups of lawyers, prospective donors, and others. Clint participated in coalition meetings of think tanks and allied organizations in D.C. Scott attended and spoke at a hair braiders conference organized by Uqdah and Pamela and worked with them to rally support for their cause while working on the appeal of their legal case.

“All the time, we were creating a drumbeat that there were new guys on the block,” Chip said. “We were articulating a vision for the future of public interest law that is exciting and different, and we never stopped.”

A PR Man for Liberty

Pioneered by the NAACP Legal Defense and Educational Fund during its multi-decade battle to overturn *Plessy v. Ferguson*—a battle that culminated with the historic civil rights victory in *Brown v. Board of Education*—a strong public education and communications strategy had become crucial to any successful public interest litigation campaign. Chip and Clint had personally experienced just how important effective media relations were during their fight against Denver’s cable monopoly.

Taking those lessons and applying them at IJ was going to be especially important given IJ’s ambition to change the way that Americans viewed—and fought for—essential but unappreciated constitutional rights. The team needed to find a way to get people who had never thought about these issues before to care about what they were trying to do. And they needed to engage their allies in the movement and encourage them to approach the fight in a new and important way.

“Libertarians like to be pretty cerebral,” Scott said. “It’s not that they’re uncaring; that’s just the thing they like. That’s what motivates them and gets them excited. With IJ’s work, they loved that we were giving flesh and blood examples of the things that they agreed with. It was like, ‘I didn’t even know those people were out there. I just knew they must be.’”

Clint especially had taken media relations to heart and, during his years at the Landmark Center for Civil Rights, he aggressively built on the foundation of media training he’d gotten at Mountain States.

He also simply had a gift for communicating. His skills ranged from identifying the right outlet to pitch on his cases to finding a way to phrase his points that begged to be turned into a pull quote in a newspaper article. The coverage he secured for Ego Brown's case, which brought IJ its first attorney and its first client, was just one example of this talent in action.

His affinity for the media notwithstanding, Clint was also IJ's litigation director and actively involved in developing and executing IJ's litigation strategy. As the organization's slate of activity grew, it became obvious that the team needed reinforcements.

More than that, Chip felt that it was essential to begin consciously building the reputation of the Institute for Justice as an institution. To accomplish the ambitious, long-range goals they had set for themselves would be the work of decades and, ultimately, hundreds of people. They could not do that if they remained simply, as Chip put it, "the Chip and Clint show."

In the spring of 1992, not long after the D.C. district court ruled against them in the hair braiding case, IJ's office manager reached out to a headhunting firm. They put her in touch with a man named John Kramer—known to everyone simply as "Kramer"—who was currently working for a small public relations firm in D.C.

Kramer was an East Coaster who came into his own out west after moving to Las Cruces, New Mexico, as a teenager. There he attended high school, then college at New Mexico State University. After graduating, Kramer moved to New York for a job with IBM. But it was the position he took after IBM where he really cut his teeth and learned the skills that would help define his career.

"I took a job selling phones by phone," he said. "So I'm literally talking to somebody who, by the very nature of what we're doing, has the product I'm selling in their hand. And I've got to talk to them in such a way that would convince them to buy another one."

While this was the kind of job that some people would find impossible, Kramer thrived. He loved sales, and he developed a strategy for getting in the door. He worked through the yellow pages by type of office, from attorneys to realtors. He called cold, introducing himself and asking to speak with the person in charge of the phone system. Then the clock started.

"I know you're very busy," he would say, "but if you're thinking about buying a new phone system, I'd like to give you a 30-second nutshell on why you should purchase from us."

Most people were willing to give him 30 seconds, and by the time Kramer's pitch was over, both parties knew if there was some genuine interest in the product.

Kramer wrapped up that job, attended graduate school while working full time in public relations, and moved to the Washington, D.C., area to support his growing family. Working at a small PR firm, he modified the sales pitch he had used to sell telephones into an effective pitch for reporters.

He asked two questions. First, "are you on deadline?" to show respect for their situation and to be realistic about what kind of reception he might get. Second, "can I give you a 30-second nutshell on a story that I thought you specifically would have an interest in?"

"Any good reporter is going to give you 30 seconds," he said.

Although he believed that every client he worked with had something worthwhile to offer—he wouldn't have been comfortable selling for them otherwise—after a few years, Kramer was eager to stop bouncing between accounts. He wanted to work full time for one place. When he learned about IJ, he was hooked.

"These were great human stories that reporters would want to tell," he said. "It wasn't about helping a company earn a few more pennies on their stock price. It was something much more foundational and dramatic."

More than that, Kramer loved the idea of being a champion for people who needed help and were running out of hope. It was the exact opposite of being a hired-gun PR man. He would have an opportunity to lend a hand to people in their most desperate hours and to be on their team, as long as they needed it.

Kramer meshed well with Clint, with his ebullient personality and sense of humor, and he and Chip bonded over their love for the West and deep sense of mission. Although he endured a typically intense series of interviews with Chip—"he brought me back five times"—IJ officially hired him in June 1992.

Don't Let the Tail Wag the Dog

During their scrappy early years, everyone on the team was hustling to ensure that the Institute for Justice made a mark, and it was working. IJ was building its reputation.

In the process, they also learned that there could be a downside to momentum.

Going back to his law school days, Clint had a personal interest in affirmative action litigation and policy. His years in D.C. gave him an opportunity to flesh out that interest, first working with Clarence Thomas at the Equal Opportunity Employment Commission and then running the Center for Civil Rights at Landmark Legal Foundation.

While affirmative action was not something Chip and Clint had envisioned in IJ's legal blueprint, the way the organization was going to pursue its mission hadn't really solidified yet. And in the early 1990s, affirmative action was big news.

"By the time I arrived at IJ," Clint said, "I was already very heavily identified with opposing racial preferences. It was something I was very passionate about that IJ allowed me to do as a sideline."

"Affirmative action" came into being with a 1961 executive order by President John F. Kennedy, which required government contractors to take "affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin." In the ensuing decades, the practice expanded, evolved, and became embroiled in controversy. By the mid-1990s, states were beginning to ban race-based quotas.

In the early years of IJ, one of the ways the affirmative action debate played out was over the Clinton Administration's political appointees. Given his interest in the topic, Clint began offering comments and writing opinion pieces, each one generating more requests for comments and opinion pieces. People called, wondering about becoming potential clients in affirmative action cases. Although IJ never took the cases, Clint tried to be helpful and offer advice.

His commentary propelled IJ into the national spotlight when then-IJ board member Abigail Thernstrom brought to Clint's attention an appointee named Lani Guinier. Guinier had been a civil rights litigator at the NAACP Legal Defense Fund before becoming a scholar, and her writings on voting rights garnered widespread attention from the moment President Bill Clinton nominated her for assistant attorney general.

One of her more controversial arguments was the idea that the principle of "one person, one vote" was insufficient in a system where the majority could easily trample the rights of minorities. She was in favor of alternatives that gave more weight to minority interests, such as "cumulative voting," in which people would have a number of votes to distribute as they wished and might allow minority voters to increase their influence as a bloc.

"I read her writings, and I said, 'Oh my gosh, this person redefines radicalism,'" Clint said. He wrote a thoughtful and well-researched editorial for *The Wall Street Journal*, describing what he saw as a flawed and dangerous philosophy.

"My title was 'Clinton Turns Left on Civil Rights,' which I thought was really clever," he said. "But it wasn't nearly as incendiary as the title they assigned to it: 'Clinton's Quota Queens.'"

The issue blew up, and IJ's profile grew with it, especially when Clinton withdrew Guinier's nomination in June 1993. The president later indicated in a speech that his decision was largely driven by the intense scrutiny Clint's arguments against her had generated, and he called out the Institute for Justice by name.

"Pretty soon, affirmative action, rather than being a side interest that Clint was indulging in and doing a good job on, became a big, high-profile part of IJ, which it was never intended to be," Chip said.

Chip recognized what was happening as a classic example of mission creep. And in this case, it wasn't about chasing the money, as he had seen so many times before. It was the dark side of the power of momentum.

IJ was learning that commenting on various issues of the day and moving slightly into an area can mean gaining attention, publicity, and expertise. That in turn makes it easier to let those issues begin to take more time and attention. Every success generates more opportunities, and those opportunities lead to more occasions for attention. Once it started, the cycle fed on itself.

"It began to take a toll on Clint because it's a contentious issue," Chip said. "One day we sat down, and I asked him, 'Do you really like doing this?'"

"No," Clint answered. "It's an important issue, but no."

"What do you say we just quit?" Chip asked. "Today. This was never supposed to be part of our mission."

Clint agreed. "Let's do it."

"For me, it was about wanting to focus on school choice and not wanting to mix messages," Clint said. "And so many other capable organizations and leaders were emerging."

After that conversation, the Institute for Justice made it a policy not to comment on affirmative action. And they applied the lesson to other buzzy issues, from tort reform to term limits. The exercise took discipline, but it paid off by keeping the organization focused on its core goals and the areas of the law where it was uniquely positioned to make a difference.

As high profile as it had become, winding down IJ's activity on affirmative action turned out to be surprisingly simple. As Clint had observed, by the mid-1990s, there were several nonprofit legal and advocacy groups in Washington that were devoted solely or mostly to the issue. When reporters or clients called, staff referred them there.

Victory for Uqdah—and More

In contrast to popular controversies like affirmative action, which generated their own ongoing dramas and spun through the news cycle like a water wheel, elevating the issues IJ was working on was much more challenging. To improve their chances of getting reporters to pay attention, the team developed what Clint called the "ize" approach. Later, Kramer recast it as the punchier "get a 'PhD' in communications."

The "ize" or "PhD" approach stood for "personalize," "humanize," and "dramatize." From the start, IJ set out to tell dramatic stories with characters who were real people, not political actors or pawns. And to get the media to care about those stories, the person pitching them needed to personalize the presentation for the journalist or audience they were targeting.

They had an opportunity to do that on Kramer's second day in the office. On June 29, 1992, the U.S. Supreme Court ruling in *Lucas* came down. Although it was not nearly as sweeping as advocates had hoped, for the first time in decades, the court took a stand for property owners, ruling that when the government denies a property owner of "all economically beneficial uses" of his or her property, the owner is entitled to compensation.

Chip and Kramer rushed to do a press release. As they sat at his computer, Kramer asked Chip to describe the decision and why it was important as if he were explaining it to his mother, not to a group of attorneys. He typed up Chip's description and sent it out.

The next day, although IJ had only been part of the case in an amicus capacity, *The Washington Post* used one of Chip's comments as the featured pull quote in its story about the ruling: "The ... decision is another evolutionary step toward greater protection for property owners."

As they had hoped, their amicus brief had put IJ on the map for property rights, and the *Post* article prompted calls from other reporters seeking comments that would resonate with their non-lawyer readers.

"That was a model for how IJ would communicate," Kramer said. "It wasn't communicating like a law firm. It was communicating like a storyteller."

On the economic liberty front, with interest in Pamela and Uqdah's fight waning after their trial court loss, Kramer saw an opportunity to kickstart IJ's efforts by finding a way to reengage the media with the couple's story.

He reached out with a personalized pitch to a journalist named John Stossel. Stossel served as a correspondent on a news magazine called *20/20*, which ran one-hour, primetime episodes on ABC. Kramer arranged a lunch to introduce Stossel, who had a self-professed dislike of lawyers, to the Institute for Justice.

"We were not talking about the Institute for Justice as a law firm," Kramer said. "We were talking about IJ as a force to limit the power of government and expand individual liberty. We only sue the government, and our only goal in suing the government is to make it smaller. And he got it."

Kramer put Stossel in touch with Uqdah and Pamela and, unlike most attorneys, IJ let him talk to them freely, without interjecting, overriding, or even demanding to be present for the conversations.

"He could see that we weren't using our clients, we were helping our clients," Kramer said. "And our clients really appreciated it too."

Stossel said he'd finally found lawyers he liked.

His *20/20* segment on Cornrows & Co., entitled "Rules, Rules, Stupid Rules" aired in August 1992. Stossel had developed a formula for these kinds of topics, and he approached the D.C. regulations in his typical manner. First, he described what D.C. was doing. Then he sat down with various cosmetology board members to ask questions like, "Why do you require so many hours of training to learn how to shampoo somebody's hair? I do that every day in the shower." As he probed, the regulations sounded more and more ridiculous.

Stossel's aggressive, skeptical style made the D.C. government look thoroughly foolish. His reporting got the case an additional round of attention, including influential voices like—once again—*The Wall Street Journal* editorial board and *The Washington Post*'s syndicated columnist William Raspberry.

Around the same time, Clint appeared on *Tony Brown's Journal*, a popular PBS program focusing on black history and affairs with a large audience. Clint described the Jim Crow-era history of many of the laws that people like Uqdah faced. The conversation emphasized the bizarre nature of D.C.'s stubborn insistence on going after Cornrows & Co., especially since the D.C. City Council was comprised of mostly black representatives. It just didn't make sense why they were going after a safe, well-regarded, black-owned business serving so many of their constituents.

As Uqdah had seen himself in Ego, many viewers of Tony Brown's show saw themselves in Uqdah. Toward the end of the episode, Clint invited viewers who had experienced barriers to entrepreneurship to call IJ, and he provided the office phone number.

"Every time that show would air, we'd be bombarded with 50 phone calls on Monday," Scott recalled. "I realized we needed to develop a system to handle potential cases in a more effective way than me spending six hours of my day on the phone with potential clients."

It was clear that IJ's issues were striking a chord, and the public attention and disbelief were making it harder and harder for the D.C. government to maintain its hard-nosed posture toward the business. At the same time, Uqdah and Pamela, who lived in D.C. and were powerful advocates, were having conversations directly with lawmakers and regulators.

Finally, in December 1992, the District repealed its 1938 Cosmetology Act. The change meant that African-style hair braiders would be regulated only for health and safety, with basic sanitation requirements. The change in the law mooted IJ's appeal, but it unleashed a new wave of opportunity for braiders.

Uqdah and Pamela founded the American Hairbraiders & Natural Haircare Association. As a networking entrepreneur, Pamela knew other braiders around the country. There was a ready-built system of people trying to braid in need of a lawyer. Over the next two decades, IJ would file 14 cases and deregulate braiding in 33 states.

Even where there were no legal or policy fights, braiders needed a voice, and Uqdah became their advocate, telling Chip later, "I became a disciple for economic liberty."

"The most interesting part of this was from those two little words, 'economic liberty,'" Uqdah said. "A whole new world opened up for us. Once we were taught, we went out as teachers and became little IJs in empowering people to stand up for what they believe in."

"People would say, 'Wow, you have these incredibly charismatic advocates as clients,'" Chip recalled. "They asked how we taught them to say all that. But we didn't teach them. That's the whole point. The message has to come through in their own words. They don't have to be perfect. They just have to be perfectly committed to the principles that we're fighting for. If you find someone like that, then it's only a matter of time before they find their own voice."

This Is About the Kids

"People need to know about the passion behind this movement. It wasn't just a bunch of legislators or philanthropists sitting in a room saying this is what we're going to do. We couldn't have done it without the legislators. We couldn't have done it without the philanthropists. Everybody had a place at the table. But the legs of the table were the parents."
– Zakiya Courtney, Milwaukee parent

When the first rock hit the car, it took a second for Clint Bolick to realize what was happening.

He was sitting at a red light in Los Angeles on a sunny California afternoon, the engine of his rental car humming smoothly. He looked at his companion, a former colleague from the U.S. Department of Justice named Dirk Roggeveen. It was clear Dirk had no idea what was going on either.

Then Clint looked out his open window, across the street, and saw a group of Angelenos picking up rocks and hurling them at his vehicle. As he watched in disbelief, one of the men broke from the huddle and began to charge the car with a two-by-four.

As the man began pounding on his car, Clint hit the gas, running the red light and dodging oncoming traffic. He and Dirk decided to wait to call the police, and although they were shaken, they arrived at a nearby office complex in South Central L.A. for their April 29, 1992, meeting on time.

Earlier in the day, Clint had heard that a jury had acquitted three police officers in the savage beating of Rodney King.
Once inside the building, he realized that he had dramatically underestimated the potential fallout. Star Parker, a local activist who was serving as the host for their visit, gestured at the TV. The men watched in horror as the coverage turned to live footage of a truck driver being beaten just two intersections away.

Clint and Dirk were in L.A. to find parent clients for a new lawsuit they were putting together. They were going to put the Los

Angeles Unified School District on trial for failing to provide its students with an adequate education.

Star was already on board as a client, but Clint had wanted to ensure that IJ was representing parents and children from the school district. The case would hinge on legal questions and political realities, but at its heart, it was about the kids and their futures. Torn about whether to proceed with the meeting or cancel given the chaos outside, the group agreed to carry on.

"These parents braved danger to be with us," Clint said. "We weren't going to disappoint them."

A Voucher Revolution Starts—and Stops—in Milwaukee

Clint and Dirk would not have been in L.A. watching history unfold that day if it weren't for the failure of another school system 2,000 miles away.

In 1990, the grade point average for a typical graduate of the Milwaukee Public School system was 2.0. Of course, that assumed the student made it through senior year—only half of the kids going into Milwaukee Public Schools would graduate at all.

But as student performance and outcomes deteriorated, the city's powerful teachers' unions remained stridently opposed to reform. The only proposals they would entertain were those that pumped more money into a clearly broken machine.

Polly Williams, a Democratic state legislator and longtime civil rights activist, represented Milwaukee's north side, which housed some of the poorest neighborhoods in the city. Year after year, the public school system failed the families in her district. She knew that there were good schools in her community, but despite years of promises, the city's low-income black children remained trapped in dangerous, poorly performing schools, with no way out.

"So Williams mixed a dose of Milton Friedman and a dose of Malcom X and came up with the nation's first urban school choice plan," Clint wrote in *Voucher Wars*, his 2003 book about the early legal battles over school choice.

Polly Williams served as the catalyst for what was, at the time, a radical piece of legislation. The Milwaukee Parental Choice Program was a plan to use public money to help low-income families pay for private school tuition. The idea was simple but revolutionary: if a public school wasn't working for a family, the state would give that family a scholarship they could take to a participating private school.

In the process of implementing the program, Williams joined forces with an unlikely coalition, including conservative school reformers like Michael Joyce, president of the Milwaukee-based Lynde and Harry Bradley Foundation, and Wisconsin's Republican governor, Tommy Thompson. The group came from very different political worlds, but they shared the belief that parents should have the power to choose the best education for their children, regardless of their income or ZIP code.

Clint read about the program in *The Washington Times* in the spring of 1990, while he was working at the Landmark Center for Civil Rights in D.C. He immediately called Polly Williams.

"Congratulations on your pathbreaking legislative success," he said. "Are you ready for the lawsuit?"

"What lawsuit?" she replied.

Although most of the country had reacted to the new Milwaukee Parental Choice Program with complete disinterest, Clint knew that the teachers' unions would recognize its significance, and they would pounce. He was right.

"The program was so tiny in the scope of things, both in terms of the number of kids it affected and the amount of the voucher provided," Chip Mellor recalled. "But you would have thought a nuclear bomb had gone off. It was an explosion of massive proportions in the eyes of the teachers' unions. They saw it as a dire threat to everything, and they wanted to kill it in the crib."

The Wisconsin Education Association Council, the state's largest teachers' union, immediately filed a state court challenge, arguing that the program violated the Wisconsin Constitution. The specific provisions it cited would become familiar parts of school choice litigation in the years to come.

First, they challenged the way the bill was passed, asserting that it violated Wisconsin's "private or local bill" clause. These kinds of clauses are common state constitutional provisions dictating that legislation relating to a particular person or locality must be adopted as a free-standing bill. The idea is to prevent lawmakers from slipping targeted favors, exemptions, or burdens into larger bills where they might escape scrutiny, and to ensure that legislation affecting specific parties or regions receives focused debate and general transparency.

The lawsuit went on to charge that the program violated the Wisconsin Constitution's guarantee of a "uniform" public education, as well as its "public purpose" doctrine, which requires that any expenditure of public money serve a public purpose.

Meanwhile, the union joined forces with the state's superintendent of public instruction, Bert Grover, who imposed a flurry of rules and regulations on any private school that might sign up to participate in the program. As Clint liked to say, even though he had two Sesame Street names, Grover was no friend of children. His unsubtle goal was to drive private schools out of the program, leaving students who might get a scholarship with nowhere to go and giving opponents cover to claim that private schools had no interest in serving poor families.

"The challenge that their double-barreled strategy presented was overwhelming," Clint later wrote. "To get the program up and running, the parents, who were not organized, would have to successfully defend the program's constitutionality *and* challenge the regulations, with the state as its ally in the first instance and its adversary in the second."

Williams and her staff agreed to work with Clint to defend the program, and their team immediately began to organize parents and coordinate with local private schools. They wanted to get the program serving families as soon as possible and to identify parents who would be willing to be part of the litigation.

"It was crucial that their interests be represented in the courtroom," Clint said.

Zakiya Courtney became a key ally. After the experience her first two children had in Milwaukee Public Schools, Zakiya vowed to make sure her younger children got something better. To earn a tuition discount, she started working as a parent volunteer at Urban Day—one of the largest nonsectarian private schools in Milwaukee. She went on to become its executive director, and she spent years advocating for a better education for Milwaukee students. As a result, she experienced firsthand the unions' vicious commitment to the status quo.

Zakiya's first run-in with the unions came before the Milwaukee Parental Choice Program was even conceived, while she was in Madison with a friend to advocate for alternative school options more generally.

"We were in the Capitol, and the teachers' union's chief lobbyist—he was a big dude, too—got in my friend's personal space and pointed his finger at her face and said, 'Look, bitch. Don't think you're going to change anything here,'" Zakiya recalled. "I was shocked. She held her own, but I'll never forget it."

The parents filed a motion to intervene in the union's lawsuit as defendants. Clint also filed a complaint on their behalf against the state's demands of private schools looking to participate in the program. He began doing legal research on the best ways to counter the union's arguments while rallying more parents, allies, and education reform groups to come to the program's defense.

He also reached out to friends at *The Wall Street Journal* and U.S. Department of Education. He wanted to secure national coverage of the drama playing out in Milwaukee, as well as support for his arguments on the parents' behalf.

"This was one of those instances where the court of public opinion really came into the picture," Clint said.

He had long been friends with an editorial writer at *The Wall Street Journal* named John Fund, going back to when he was in law school and Fund was in journalism school. Clint briefed him on the legal battle for school choice, persuading Fund to write a series of editorials defending the Milwaukee program.

"He compared Bert Grover to Orval Faubus and George Wallace and other Southern segregationist governors barricading the schoolhouse doors in the South," Clint said.

The scathing critique helped neutralize Grover, who stopped his public attacks on the program and ultimately did not attend oral argument in the state trial court.

Crucially, though, Milwaukee families did show up.

As their day in court approached, Clint worked with the National Center for Neighborhood Enterprise to charter a bus that would take Milwaukee students to the argument in Madison. He designed red, white, and blue "School Choice" buttons for the parents and children who filled the courtroom to wear. On the day of the argument, the judge was visibly moved at the sight of all the children and parents. She also proved to be cordial and well-prepared, aggressively questioning both sides. She promised to issue a ruling as soon as possible. Clint returned to Washington, D.C., to wait.

The decision arrived less than two weeks later, in August 1990, and it was an unequivocal victory. The judge denied the union's request to halt the program and granted the parents' request that the state not enforce the most burdensome of the regulations the superintendent had wanted to enforce against participating schools.

The union immediately appealed on the constitutional questions. The case went before the state Court of Appeals in Wisconsin just as students were starting at their new schools in the fall of 1991. At oral argument, the judges focused on the "private or local bill" clause, digging into what Clint called "the minutiae of the complex tests concocted to determine whether legislation was an impermissible private or local bill."

The result was a loss for the parents. The court unanimously struck down the Milwaukee Parental Choice Program based on the private or local bill provision. The families appealed, and Clint prepared to take school choice before the state supreme court.

His brief to the Wisconsin Supreme Court started with a section that he called "background principles." He wanted to lay out the legal, constitutional, and moral principles that should inform the Court's deliberations, including parental autonomy, as recognized by the U.S. Supreme Court in *Pierce v. Society of Sisters*, and the promise of equal educational opportunities articulated in *Brown v. Board of Education*.

Once again, the judges questioned both sides intensely, drawing out the implications of a decision either way. When the argument ended, Clint had no idea which way the decision would go. On March 3, 1992, he got an answer: parents won by a 4-3 vote in a strong, substantive decision. One friendly justice concurred with the majority opinion, writing, "Let's give choice a chance!"

In Milwaukee, school choice got its chance. The stage was set for nationwide change—and nothing happened.

Free to Choose

Chip and Clint launched the Institute for Justice in September 1991, one month before the Wisconsin Supreme Court heard oral argument in the Milwaukee case. As part of his move to become Vice President of Litigation at IJ, Clint agreed to finish the Milwaukee school choice litigation under the auspices of the Landmark Center for Civil Rights. Landmark would be on point to represent Polly Williams in any future cases.

IJ could make that concession because its vision for school choice extended beyond Milwaukee. The young organization committed itself to defending school choice programs nationwide until the constitutional cloud over them was removed.

With school choice, IJ found itself on the front lines of yet another cutting-edge legal issue. But it had to approach school choice differently than it did property rights, economic liberty, and free speech.

For one thing, although the ideas of equality of opportunity and parental autonomy were principles that libertarians could enthusiastically support, school choice itself was, from the start, an issue that divided some of IJ's friends and supporters.

The ideas behind school choice stemmed from a 1955 essay entitled "The Role of Government in Education," by future Nobel laureate and libertarian hero Milton Friedman. He further developed the concept in *Free to Choose,* the seminal book he wrote with his wife Rose.

But some libertarians were skeptical. Many felt that the government should not be in the business of education at all. For others, the prospect of exposing private schools to unacceptable bureaucratic meddling was a risk not worth the benefits that school choice might offer.

For their part, Chip and Clint were persuaded by Friedman's arguments that empowering parents to choose schools—public or private—would break the monopoly of government-run schools and better serve diverse student needs.

It is reasonable to debate whether a minimal level of education is a public good, justifying government involvement or funding. But IJ was dedicated to operating in the real world, where it was obvious that the government was not going to put itself out of the education space anytime soon, and there was no realistic path to eliminating its presence all together.

At the same time, both Chip and Clint had firsthand experience teaching in inner-city public schools. They had seen with their own eyes that the monopoly of government-run schools was failing to live up to its charge to educate. Instead, it forced every child and family into a one-size-fits-all system that left many woefully unprepared for a productive and independent life.

Given these realities, introducing choice and competition to K-12 education through a scholarship program—or, as Friedman had called it, a "voucher"—seemed to be the most principled and practical way to ensure that all families, regardless of means, had the opportunity to educate their children according to their individual goals, values, and needs.

"School choice wasn't as pure in the eyes of some people as our other areas were, because it accepted certain premises about the public school system and taxpayer money that some libertarians didn't agree with," Chip said. "From the start it was an interesting area that was very important, but that required a very strong effort to bring our constituency with us and to help them understand why this was a defining battle for individual liberty, parental liberty and, ultimately, for the good of the kids."

With the Wisconsin Supreme Court decision affirming that these programs were not just morally and practically valuable but also constitutional, the stage was set for other localities to launch programs from the beachhead the case had established. As they waited for the dominos to fall, it became clear to IJ's attorneys that school choice put them in a different procedural and organizational posture than any of their other issues.

In every other pillar, IJ could initiate action. They could make things happen by finding a client and filing a lawsuit. Their big school choice victory, however, had come about because Polly Williams, a legislator, initiated and championed a school choice program. Now, as the high of the Wisconsin victory began to dissipate, IJ realized that the groundswell of new programs it had expected to see was not materializing.

Going on the Offensive

As Clint sat in IJ's new offices on Pennsylvania Avenue and thought about how to proceed, he turned to the provisions of virtually every state constitution guaranteeing an efficient, high-quality, or uniform public education to its citizens.

In the 1960s, the Left used those provisions to try to promote funding equity, arguing that because the public school system is supported by property taxes, affluent neighborhoods had more resources than poor ones. Clint decided to adapt those clauses to IJ's purposes. Rather than wait for new programs to defend, IJ would go on the offensive.

"Clint's idea was to file a similar kind of lawsuit, alleging that under any definition you choose to make or apply, public schools in places like Chicago and L.A. were failing to meet their constitutional requirements and that school choice was the remedy," Chip said. "Now there are principled arguments to make against that, but we thought it could shake things up in a way that would change the terms of the debate and be a catalyst for change."

The remedy Clint proposed was not more money for local school districts, but vouchers: a pro rata distribution of funds to the children who were deprived of educational opportunities.

"At first blush, our proposed remedy seemed radical, but that was only because jurisprudence in the educational area was topsy-turvy," Clint wrote later in *Voucher Wars*. "Truly radical and extreme remedies—forced busing, racial quotas, court-ordered tax increases, judicial control of school systems—were considered commonplace. But the most basic judicial remedy—monetary damages—had never been considered."

That was the idea that brought Clint to Los Angeles in the spring of 1992. Despite the riots and the historic events unfolding around him—or perhaps because of them—the parents that he met in Los Angeles and Chicago were eager to sign on to the lawsuit. They were enthusiastic about the prospect of securing an education for their kids that would give them the opportunity to chart their own courses.

As the offensive lawsuits in Chicago and Los Angeles geared up, it became obvious that Clint couldn't handle them alone. To help, IJ hired Richard "Dick" Komer in 1993 as a successor to Dirk Roggeveen. Dick worked on school choice cases for IJ part time while also taking care of his two young children, allowing his wife, a fellow attorney, to thrive in private practice with its sometimes-brutal hours.

Joining IJ was the second time Dick came to Clint's rescue. In the run up to oral argument in the trial court in Milwaukee, while he was working at the Department of Education, Dick produced—against incredible bureaucratic odds—a detailed, comprehensive, and ultimately devastating take down of the union's attempt to deploy the federal Individuals with Disabilities Education Act against the school choice program.

"The letter was magnificent," Clint said. "To this day I don't know how Dick managed to get all the necessary bureaucrats to sign off on it."

IJ's offensive litigation generated massive attention. *USA Today* trumpeted: "Inner City Parents Put Schools on Trial." John

Kramer secured an editorial board meeting for IJ with *The Washington Post*. The effort resulted in an editorial—not an op-ed—that noted that "it's impossible to counter what [people like Polly Williams and the attorneys at IJ] observe—that the public schools in the inner cities are separate and unequal places … It's also hard to refute the argument that attempted reforms have failed—reforms involving substantial infusions of money."

The editorial went on to observe that IJ had literally changed the terms of the debate on the issue of education reform, embracing the rhetoric of equal opportunity and empowerment and harnessing it in favor of school choice. Kramer continued to work on the *Post*, and within a few years it would go even further, changing its cautiously neutral editorial position to one in favor of school choice—a position it maintained for decades.

"These cases were very popular in the press because everybody agreed L.A. Unified and Chicago Public Schools sucked, and something had to be done," Dick said. "And both districts had been, of course, following the usual teachers' union remedy of pouring more and more money into the district with absolutely no impact on results. That made the press sympathetic toward those lawsuits."

"Unfortunately," he added, "the courts were not."

Although IJ survived the school district's motion to dismiss in an opening-round victory in Los Angeles, that decision was overturned by the appellate court in an unpublished opinion. In Chicago, the team lost in the trial court and the court of appeals.

"By the time we lost them, we realized a whole different approach was necessary," Dick said.

If You've Got a School Choice Program, You've Got a Lawyer

IJ's sound defeats in Chicago and L.A. made it clear that there was no future in trying to get the judiciary to put meat on their states' educational guarantees by ruling that the other branches of government had to create school choice programs to remedy the system's many failures. Liberal-leaning judges would side with the unions, and conservative-leaning judges would see this as unacceptable judicial activism.

IJ also realized that, despite the abysmal state of the public schools in major cities and the way school choice provided students with an immediate and life-changing alternative, a judicially mandated school choice program would be anathema to many of the organization's allies. It simply skirted too close to stretching the bounds of judicial authority beyond the proper role of the courts.

"In the early days, there was a willingness—certainly on Clint's part, and to some extent on my part as well, obviously—to feel our way along," Chip said. "We're trying things, and everything's unfolding step by step. For those first several years, we were learning as we went, both practical and institutional lessons. They would ultimately either become solidified and carried forward or we would learn not to do that and move on."

Following the offensive cases in which IJ sought judicial remedies for failing public schools, the school choice team pivoted to an explicitly defensive strategy, through which IJ would defend choice programs passed by a legislature. Clint adapted a personal injury attorney's late-night television commercial as IJ's school choice motto: "If you've got a school choice program, you've got a lawyer!"

The first program they were called to defend was in Puerto Rico, where the Democratic governor had pushed through the first modern school choice program to allow students to take their education dollars to religious schools as well as secular private schools.

Litigating in Puerto Rico from the mainland was a logistical nightmare. IJ had to hire a law firm in San Juan not only to act as local counsel, but also to translate their briefs and conduct arguments in Spanish, as no court business on the island was done in English. But, as Clint noted, "for the moment, it was the only school choice show, even if it wasn't exactly in town."

The hassle was made worse by the fact that the program, and IJ's defense of it, was doomed from the start in the highly partisan and politically charged Puerto Rican courts. The case ultimately cost IJ more than $200,000 to litigate—an exorbitant amount for the organization at the time.

With so few programs to defend at first, it made sense not to be too picky about cases. Each one was an opportunity to push the issue forward and develop a better understanding of the law and the political realities of getting programs passed.

IJ adopted a determinedly ecumenical approach to school choice programs—the organization supported school choice, full stop. That meant universal programs, where all families could participate, and means-tested programs, which were available only to those at or below certain income levels. It meant tax-credit programs, where donors to a scholarship fund got a refund on their taxes, and direct scholarship programs, where money allocated for education followed a child to the school of his or her choice.

"When we considered how tough the battle was to establish the baseline principle that it was permissible to empower parents to choose their children's schools—or that the government could include private schools among the range of educational options at all—I didn't feel that we could afford the luxury of intrafamilial squabbles over design features of school choice programs," Clint said. "Our opposition was powerful and united; we were not powerful and simply could not afford to be divided."

That general approach guided IJ's school choice litigation and legislative counseling for decades to come. However, the limitations of the pledge to defend *every* educational choice program became obvious within a few years.

A case study of the challenge was Southeast Delaware County, Pennsylvania. In the mid-1990s, the population of Southeast Delco, a suburb of Philadelphia, was booming, and the district was concerned that it wouldn't have the money to expand its high school, junior high, and elementary schools. The local school district decided to divert kids out of the public schools by creating a program that gave tax breaks to families who sent their children to private schools or to public schools outside the district.

"It was a local program, and the whole issue at the trial court and at the court of appeals was, 'Did they have the legislative authority to create such a program?'" Dick said. "The state could create such a program, but had it given the power to Southeast Delco?"

Although the city's attorney had advised the supervisors who set up the program that the school district did not have the authority to pass it, the local legislators were steadfast in their approach to trying to manage the influx of people into their town. The board members were actively involved throughout the litigation and enthusiastically attended IJ's first appearance in court.

"They were committed," Dick said. "Two of them sat behind me at oral argument, and while I was talking, one would come up with notes and drop them on the podium in front of me and then retire. I'm trying to shoo him away and make him stop, but he wanted to give me factoids that I should tell the judge."

The trial court concurred with the city's attorney and ruled that the district ultimately did not have the authority to create its own program.

The loss came down on a Friday, and Dick went to IJ's Monday litigation meeting to report on the outcome. He told the team that, in his opinion, the best next step would be to move on. But IJ had made an institutional commitment—"if you have a school choice program, you have a lawyer"—and the feeling was that commitment meant seeing the case through to the bitter end. So appeal they did.

Oral argument before the Pennsylvania Commonwealth Court, the state's court of appeals, was scheduled a few months later. When Dick told the litigation team he was heading to Philadelphia to argue *en banc* before all seven judges, Clint apologized for not being able to come watch the argument—it fell on a day he had promised to take his sons to the waterpark.

"To which I replied, 'So, while you're going down the slides, I'll be going down the tubes!'" Dick recalled.

The argument went as Dick had feared. Three of the judges grilled the National Education Association attorney ruthlessly but, ultimately, IJ lost 7-2. The most Dick could do was get the sympathetic judges not to join in the majority opinion. The litigation team agreed not to appeal to the Pennsylvania supreme court.

"Both the trial judge and those three judges, they wanted in the worst way to be able to uphold this thing, and they just couldn't do it," Dick said. "And that was the end of 'if you've got a school choice program, you've got a lawyer.' We couldn't go down the tubes like that again."

A Valley Forge Moment

The Southeast Delco case underscored the need for school choice programs to be carefully constructed from the outset—designed both to give supportive courts a clear basis for upholding them and to withstand rigorous scrutiny in jurisdictions where the judiciary might be openly hostile. Between 1991 and 1997, IJ litigated seven school choice cases—in California, Illinois, Maine, Ohio, Pennsylvania, Vermont, and Wisconsin.

By the spring of 1997, it was losing in all of them.

"We were working to be the lawyers for the school choice movement and serve the good of the cause," Chip said. "To do that, it became obvious we needed to get on the front end of these programs as they were being conceptualized and to do everything we could to help the people drafting them for the legislatures to bulletproof them from legal challenge."

Eventually, IJ drafted model legislation laying out the specific components that could, in one fashion or another, be put together in almost any state to create what the school choice team was confident was a defensible program. Sometimes the strategy worked beautifully. Sometimes political considerations meant having to accept a less than ideally constructed program in the interest of getting something passed.

"We have to go into the legislature on a different footing than our opponents, and that was particularly true in school choice," Chip said. "We have to go in and argue with the confidence of our convictions and the moral high ground. We need to persuade whoever we're trying to persuade that this is an important, indeed vital, program, and it's one that they can feel good about being behind. We cannot, do not, and will not ever send them money."

The teachers' unions, on the other hand, were an open checkbook, which gave them influence with both major political parties.

"That was very hard to overcome at times," Chip said. "So our goal was always to draft a defensible program, to ensure our advocates were very well trained, and to have the parents and children front and center."

Kramer regularly offered training to school choice parents and other activists about how to communicate their message more effectively. Central to that was ensuring the words and the urgency for choice came authentically from parents rather than merely repeating someone else's talking points.

Zakiya Courtney, the former executive director of Urban Day in Milwaukee, was by this time the head of a local advocacy group called Parents for School Choice. She organized parents to support expanding the Milwaukee Parental Choice Program to include more students and more schools, including religious schools.

"We would attend board meetings," she said. "We would attend legislative hearings. We would do whatever it is that we needed to do to show a parent presence. They had to know that this is over and beyond philosophies. This is our daily lives. We didn't have time for another five-year plan."

Before she got involved at Urban Day, Zakiya's oldest two children had gone to Milwaukee Public Schools. Her son had struggled dramatically, bouncing through 13 different schools in less than 12 years.

"His lack of a positive educational experience contributed to the fact that he made some really bad decisions in life, and ultimately he was killed at age 26," she said. "Four years in our lives as an adult, we might get a few more gray hairs or a lot more gray hairs. But four years in the life of a child? That can determine what their path is going to be in life. Are they headed to college? Are they going for a career? Are they going into the military? Are they getting married? Or are they going to jail? Or are they dead?"

These dramatic personal stakes and the strong relationships the team was building with parents, schools, and local allies and activists on the ground made the losses in court even more discouraging. The stakes were high, and even Clint, with his usually indefatigable optimism, was faltering.

"There was a time we had so many lawsuits going on simultaneously, it was unbelievable," Clint said. "And at one point, we had lost all of them. It was devastating, because it looked like we might actually lose the war."

In *Voucher Wars*, Clint likened the escalating series of losses in 1997 to General George Washington's brutal winter in Valley Forge—bleak, harsh, and a crucial test of perseverance.

In addition to the legal setbacks and the heartbreaking fact that the lives of real families were being upended each time a program was struck down or put on hold, Clint felt strongly that the clock was ticking if IJ was to win on school choice at the U.S. Supreme Court.

School choice cases could be brought under state law or federal law. State cases gave opponents a variety of options with which to contest the program: funding mechanisms, local control provisions, and education-specific constitutional guarantees. But for any program that included religious options—which was an essential component if a program was going to have any reach at all—the overriding legal issue was whether the program constituted unconstitutional state support for religion.

In many states, especially those with "Blaine Amendments," those provisions could be very restrictive. Named for Maine Senator James G. Blaine, who made his political career in the 19th century campaigning against the use of public funds for Catholic schools, most Blaine Amendments prohibited "aid" for the "benefit" of religious schools. That cast a wide net of potentially prohibited activity.

A favorite tool of the teachers' unions in school choice cases, Blaine Amendments grew out of the nativist and anti-Catholic sentiment of the era. Catholic immigrants, including many Irish Catholics, were a particular focus of suspicion, as Protestant majorities viewed Catholic schools as a threat to the Protestant character of public education, which commonly included Protestant prayer and Bible readings. When Catholic communities sought public funding for their own schools, the resulting backlash helped drive the adoption of Blaine-style restrictions.

At the federal level, the Establishment Clause of the First Amendment prohibits the government from establishing an official religion or favoring one faith over another. But the First Amendment also prohibits the government from "abridging the free exercise" of religion. Together, the Amendment reads as an instruction to remain neutral.

But by the mid-1990s, when it came to education, the implementation of the federal Constitution's religion clauses had led to a tangled mess of jurisprudence.

As Clint put it, "tax exemptions for religion were permissible, but tax benefits for religious school parents were not; secular textbooks and transportation were fine, but other secular aid was not; government school teachers could provide remedial instruction to religious school students, but only outside of religious school premises."

One case IJ leaned on heavily in its litigation was 1983's *Mueller v. Allen*, in which the Supreme Court upheld tax deductions for educational expenses, including private school tuition. The analytical framework it laid out held that the financial benefit to families was permissible because it was transmitted to religious institutions based solely on parental decisions, and the range of educational options included both public and private choices.

But that case had been decided in a narrow 5-4 decision. Now, with two justices approaching retirement and threatening the balance on the Court, it felt like a race against the clock to get a school choice case before them while the edge might still go to families.

Highs and Lows in Cleveland

A May 1, 1997, decision from the Ohio Court of Appeals, which struck down the Cleveland Scholarship and Tutoring Program, made Clint question whether the fight for school choice was winnable.

Passed in 1995 and championed by a long-time Democratic City Council representative named Fannie Lewis, Cleveland's program, like Milwaukee's, was designed to be a lifeline in a city with truly abysmal public schools.

Although a Cleveland public school student had a less than 1-in-14 chance of graduating on time with senior-level proficiency, that same student had a greater than 1-in-14 chance of being a victim of crime inside the schools *each year*. The mismanagement by local school officials was so shocking that a federal district court went so far as to transfer control of the school system away from the district and to the state of Ohio.

The Cleveland Scholarship and Tutoring Program was passed by the state legislature on a strict, party-line vote as part of the governor's budget bill, despite IJ's urging to pass it as a separate piece of legislation. It was another policy-drafting decision that would come back to haunt the litigation team in court.

The program, which was slated to start in the fall of 1996, would provide scholarships of approximately $2,250 to 1,500 low-income children entering kindergarten through third grade.

By the end of 1995, it had attracted the participation of more than 50 schools—most of them religious—and 6,550 applicants. The state's most influential newspapers, Cleveland's *Plain Dealer*, the *Cincinnati Enquirer*, and the *Columbus Dispatch*, were much more positive toward the program than Wisconsin's media had been, giving Kramer a leg up in his work in the court of public opinion.

The Ohio affiliates of the National Education Association and American Federation of Teachers filed their lawsuits in January 1996, joined by the American Civil Liberties Union, Americans United for Separation of Church and State, and People for the American Way, an anti-school choice coalition that would remain on the front lines opposing programs across the country for three decades.

The plaintiffs brought both state and federal establishment claims, along with a "private or local bill" challenge based on the way the program had been passed. Although Clint was most concerned about the technical piece of the challenge, the unions leaned hardest on the establishment of religion arguments. They called the parents "inconsequential conduits" in a "money laundering scheme" designed to funnel state money to religious schools.

"The unions' opening briefs set a new standard for stridency," Clint said.

As they had in Milwaukee, dozens of highly motivated parents and students piled into buses from Cleveland to Columbus for their day in court. Fannie Lewis organized the program's beneficiaries to attend a rally before the argument, and to join the crowd in the courtroom. Clint learned later that the parent presence had happened despite advocacy against it from the state's ambitious attorney general.

"He did not want to share the legal limelight, and exerted pressure on the local activists to resist our ideas for a rally at every turn," Clint said.

The incident was only one example of what would be the ongoing problem of managing the competing interests of the various factions within IJ's own side of the school choice debate. Despite the vicious and well-funded nature of the opposition, the team regularly found that some of its biggest challenges were not from the outside, but from within the movement itself.

"Sometimes our friends can be more obstructionist than our enemies," Clint wrote in *Voucher Wars*.

"As programs proliferated, expanded, and grew, as more states became involved, and as people began advocating for school choice, the 'family' became more fractious," Chip said. "Trying to keep our allies happy and unified and focused was no small undertaking."

IJ made a point to maintain its ecumenical and can-do spirit. As the years went by, that approach gave the organization more and more credibility with other advocacy groups, with legislators, with donors, and with parents.

"We were building a team," Clint said. "We were there from the beginning, not swooping in at the end and saying, 'Oh, we can do this even better.' If the team needed to have a meeting and needed someone to pay for 200 refreshments, IJ was there. Stuff that a lawyer wouldn't normally be doing, we did, and IJ grew to be universally trusted."

Ohio Becomes the Front Line

In July 1996, the state trial court in Ohio upheld Cleveland's program, focusing mostly on the federal Constitution, which the judge found to be the strictest standard with respect to religious establishment. The unions immediately appealed, and Clint argued before a three-judge panel in February 1997.

In May that year, the appeals court struck down the program on both Establishment Clause grounds and for violating the private or local bill provision. Fortunately, the Ohio Supreme Court stayed the decision, allowing the program to proceed while it considered the case.

While IJ waited for a decision from the Ohio Supreme Court, decisions in other school choice cases from courts across the nation were rolling in.

Maine and Vermont courts disappointed choice advocates by ruling that the government could prohibit parents from selecting religious schools as part of those states' tuitioning programs. Each program—mandated by both states' constitutions—gave tuition scholarships to families in towns that did not operate a public school, allowing the parents to use taxpayer funds to send their children to a private school or a public school in another district.

Meanwhile, a final victory in Wisconsin protected the Milwaukee Parental Choice Program, and Arizona upheld its tax-credit scholarship program in a decision that made the "insidious discriminatory intent" of Blaine Amendments part of the judicial record.

Although unhappy with the Maine and Vermont losses, Clint knew that the discrepancies in the way states were evaluating school choice programs dramatized the split in authority among lower courts. He hoped it would increase the chance that the U.S. Supreme Court would move soon to resolve the key Establishment Clause questions at issue.

The Ohio Supreme Court decision on the Cleveland program in May 1999 complicated the law further.

The court upheld the program under the First Amendment and the state's compelled support provision, with the majority writing that "whatever link between government and religion is created by the School Voucher Program is indirect, depending only on the 'genuinely independent and private choices' of individual parents, who act for themselves and their children, not for the government."

But the court struck the program down on the private or local bill issue because it had been enacted as part of the state budget, not as a standalone bill.

That meant that, if the program's allies in the Ohio Legislature could re-pass it as a separate bill, kids could remain at their new schools. Meanwhile, having lost on their key issue in the state courts, the only recourse left to the unions was to figure out how to circumvent the state supreme court decision and push review of the program to the U.S. Supreme Court.

Both sides succeeded: Ohio re-passed the Cleveland school choice program within weeks, before the end of the legislative session and in time to ensure that kids could remain in their schools come fall. And the unions took the unconventional step of filing a brand-new lawsuit against the same program it had already challenged and raising the same core issues it had already brought. But this time, the case was in federal court. IJ moved immediately to intervene.

A bold—and risky—part of the unions' strategy was to ask the federal district court to enjoin the program when it filed its case in late July. If successful, the injunction would mean kicking scholarship kids out of their schools just weeks before the start of a new school year. To IJ's astonishment, the court agreed to the injunction in a ruling issued only 18 hours before school was set to begin, throwing the lives of the families of nearly 4,000 children into chaos.

As IJ scrambled to regroup, Clint and Kramer took to the phones, calling reporters and editorial writers at the Ohio papers where they had worked so long to build relationships. During those conversations, Clint felt a shift in reporters' attitudes.

“Where before I usually had encountered detached objectivity at best or skepticism at worst, the sense was that the other side had gone too far,” he said.

In fact, the public outcry was so strong that the judge reversed most of his own injunction a few days later. Meanwhile, IJ and the Ohio Solicitor General agreed to try to appeal the injunction directly to the U.S. Supreme Court and bypass the 6th U.S. Circuit Court of Appeals.

The gambit worked: the Supreme Court lifted the rest of the injunction, 5-4. Although the district court struck the program down in full in December 1999, the injunction kept kids in their schools. Meanwhile, momentum was beginning to shift in a dramatic way.

The injunction battle unified and energized the school choice movement nationwide, prompting an outpouring of philanthropy and even vigils in solidarity with Cleveland parents.

As Clint reflected in *Voucher Wars*, the consequences for the union were dire:

> There’s an adage, be careful what you wish for because you might just get it. For the unions, the decision to seek an injunction against the Cleveland program was the gravest miscalculation in 12 years of litigation. By seeking to turn 4,000 children out of their schools on the eve of the school year, the unions abandoned any pretense that they cared about kids, and forever abdicated any moral claim. Not only that, they eventually lost the injunction, no doubt forming a lasting impression with the Supreme Court in the process. It was a strategic miscalculation of titanic significance.

The Split Deepens

As the Cleveland Scholarship and Tutoring Program went before the Sixth Circuit, Clint decided to forgo the typical approach of focusing on the legal standard and past cases in his brief. He knew the state would cover those in its defense of the program.

"By now, we had written dozens of school choice briefs," he said. "I was concerned that after a while they would become rote and predictable, even though we always wrote them from scratch."

Instead, he elected to emphasize factual analysis, from the crisis in Cleveland's public schools to the real-world effect of the program. His goal was to drive home the reality that the program existed to offer educational options to students who desperately needed them—not to endorse religion.

The crucial thing that IJ wanted the court to understand and accept was that the program was "facially neutral," that is, designed to award scholarships to qualifying families that they could use in one of any number of schools, religious and non-religious.

The "strategic overriding communications objectives"—or "SOCOs"—that Kramer developed for the case, and the way that he continually put the clients front and center in every public discussion of the program, were a huge part of making it clear that, as one SOCO put it, "this isn't about religion, it's about kids."

Unfortunately for IJ, although the litigation team had agreed to focus on facial neutrality, the strategy fell apart in oral argument at the Sixth Circuit. The solicitor general for Ohio—who was allocated most of the defendants' time in oral argument because a state program was at issue—abandoned the neutrality argument in favor of a broad and poorly executed discussion of school choice. Clint, Chip, and the rest of the team watched in horror as he alienated even judges that might have been allies.

"Both Clint and I felt sick," Chip said. "He got up and he did such a bad job—he just gave away the store."

"I was seething with anger," Clint wrote in *Voucher Wars*. "Court decisions are rarely won or lost in oral argument, but I was quite sure I had just witnessed the glaring exception to the rule."

His concern was warranted. In December 2000, the Sixth Circuit struck down the Cleveland program, 2-1. Although the clear final stop for the case was the U.S. Supreme Court, IJ and the state first appealed to the Sixth Circuit for review *en banc*, to exhaust all other avenues to resolve the case and keep kids in their schools.

Ultimately, the full Sixth Circuit declined to hear the case. That ruling created a split in authority between two important lower courts—the Sixth Circuit and the Ohio Supreme Court—which reached opposite conclusions regarding the very same program.

"The only forum in which a conflict of that type could be resolved was the U.S. Supreme Court," Clint said.

On September 25, 2001, the Court agreed to take the case.

The Super Bowl for School Choice

The U.S. Supreme Court accepts only one to two percent of the cases appealed to it each year. This made the news that the Cleveland school choice case, *Zelman v. Simmons-Harris*, would be part of the 2001–2002 term thrilling on its own merits.

It was also an institutional milestone for IJ—its first Supreme Court case. And it wasn't about a picayune constitutional technicality—this case would make history, with the potential to change the day-to-day lives of countless children, both immediately and for years to come.

Once IJ got the news that the case was going to the Supreme Court, the entire organization mobilized.

The idea was to launch a coordinated legal and public relations campaign aimed at convincing the Court that Cleveland's school voucher program was fundamentally about education, not religion. Every part of the effort—from legal arguments to media strategy—would be aligned with this core message.

On the legal front, in addition to preparing its own merits brief, IJ had a vision for a carefully choreographed amicus strategy. Dick Komer was on point to secure two key briefs—one from a group of mayors and another from law professors. These briefs would complement IJ's arguments and reflect the wide ideological and civic support for school choice. Dick recruited Professor Jesse Choper, a respected constitutional scholar, to author the law professors' brief, while the mayors' brief brought together city leaders across the political spectrum.

In the court of public opinion, Kramer and his new assistant, Lisa Andaloro (now Knepper), worked to shape national media coverage. They cultivated relationships with influential Supreme Court reporters and other media figures, encouraging them to visit Cleveland, meet the school choice families, and see the program in action.

Their goal was the same as it had been from day one: to tell the human story behind the case and ensure coverage focused not only on legal questions, but also on the stories of parents and children.

One of Kramer's consistent and overriding media relations strategies was to make reporters' jobs easier. He made supplying journalists with thorough and meticulously fact-checked background material, from parent profiles to a comprehensive list of applicable studies and research, part of his Supreme Court playbook.

IJ also prepared a massive public rally, partnering with allied organizations like the Milton and Rose Friedman Foundation for Educational Choice (now EdChoice), American Education Reform Foundation, and Children First America to form a broad coalition that would handle the outreach around yet another rally.

This time, they needed to bring the beneficiaries of the Ohio program—parents and children—to the steps of the Supreme Court in downtown Washington, D.C. The logistical challenges included managing buses, overnight accommodations, food, speakers, and an appropriate venue to gather near the Court, as well as the extra challenges of having hundreds of people, including reporters, outside for a winter court date. The aim was to saturate the news cycle with stories highlighting both the legal and human dimensions of the case.

In addition to the successful SOCOs they had been using to advance school choice for years, the team added a new one to the arsenal: "This is the most important education case since *Brown v. Board of Education*."

It was incredibly successful. As Clint told Linda Greenhouse for a piece entitled "Win the Debate, Not Just the Case" in *The New York Times*, "We wanted to make sure this was seen not as a case about religion but about education. If the court perceived it as a religion case, then we would be in serious trouble. If the court perceived it as an education case, we would win."

Greenhouse observed that the strategy worked: "the linkage ... appeared in newspapers and talk shows across the nation."

In IJ's own brief, Clint returned to the model he'd used successfully in the Wisconsin Supreme Court, beginning by laying out "four background principles" that IJ argued should guide the court's deliberations: parental liberty, equality of educational opportunity, federalism, and the free exercise of religion—which meant remaining neutral with respect to religion, neither favoring nor disfavoring religious options.

The case was argued before the Justices on February 20, 2002. IJ's posture as an intervener in a case between the state (the primary defender of the program) and the unions (the plaintiffs) meant that it was not entitled to time at oral argument. Clint, Dick, and others had worked tirelessly with the state's attorney, Judith French, to prepare the relatively green litigator for her big day. The state was sharing time with Ted Olson, the U.S. Solicitor General and an experienced advocate, who would argue on behalf of the federal government in favor of the program.

Although they had no argument time, both Dick and Clint were at the counsel table during the argument, which gave them an opportunity to observe the proceedings from close range and pass notes with their recommendations and insights to Olson and French during the argument.

In addition to statements of principle, IJ challenged the unions' assertion—which the Sixth Circuit had accepted—that the program established religion because the vast majority of the schools participating at the time were religious. IJ included five pages' worth of citations to social science that demonstrated that private schools—let alone religious schools—were only one of the many options that could provide a lifeline to children in a failing government school system.

"Ted Olson argued the case using IJ's brief far more than he used his own office's brief," Dick said. "He loved one of the charts that we had put in our brief, which showed the choices the students in Cleveland actually had—not just the voucher program, but also a charter school program, which is voluntary; a magnet school program, which is voluntary; and a transfer program, because they were a desegregating school district. So far from having no choice but a religious school, in fact, you had this panoply of choices if you were a Cleveland parent."

In her questions, Justice Sandra Day O'Connor, the swing vote in the case, seemed to indicate an inclination toward IJ's position: "If you want to look at what the parents' choices are, do you not have to look in reality at the whole program?"

Clint and the other attorneys for the program left the courtroom feeling optimistic. Making the day even brighter were the hundreds of parents from Cleveland and beyond who were gathered on the steps of the court wearing the same red, white, and blue "School Choice" buttons Clint had originally designed for the first school choice case in Milwaukee.

Photos of the exuberant Fannie Lewis holding up her arms in celebration after her program's day in court made newspapers nationwide—including Linda Greenhouse's report on the argument in *The New York Times*.

But, as Chip liked to say, "it's not in until it's in." IJ waited eagerly for the official ruling, and the Court kept them waiting: the *Zelman* decision was the last one released, on the last day of the term.

On Thursday, June 27, 2002, Clint, Chip, and Kramer went to the Court to get the decision as soon as it was handed down. CNN had arranged for Clint and a representative from Americans United for Separation of Church and State to wait outside the press room, so they would be the first to get the ruling and could give the network real-time reactions and commentary. As soon as everyone was in front of the cameras, the reporter handed over the paperwork.

"There were only two things I needed to know to start pontificating," Clint wrote in *Voucher Wars*. "Who authored the decision, and whether Justice O'Connor had joined the decision or separately concurred."

He quickly found the judicial breakdown: a 5-4 decision, written by Chief Justice Rehnquist with Justice O'Connor joining.

Clint beamed.

"This was the Super Bowl for school choice," he announced to the cameras. "And the kids won."

The Turning Point

"*Zelman* really was the turning point," Clint said. "The spigot turned on after that and we haven't, as a movement, had to look back."

Significant as it was, *Zelman* was not the end of the legal battle for school choice. Months before the Supreme Court agreed to hear the case—just two days after the Sixth Circuit ruled against Cleveland parents—Clint was on a panel in New York with Robert Chanin, then general counsel for the National Education Association.

Looking ahead to a possible Supreme Court decision, Clint told the crowd that school choice advocates would win no matter what the Court decided—either programs like Cleveland's would be declared constitutional as designed, or the movement would have clear guidance from the Court on what to do to make them constitutional.

When it was Chanin's turn, his response took Clint aback.

Chanin indicated that the unions didn't care all that much about the Establishment Clause. If they lost on that issue, they had a suite of options available and would "continue to challenge voucher and choice programs under state constitutions on whatever grounds are available to us—from lofty principles such as church-state separation, to 'Mickey Mouse' procedural issues like the single-subject rule."

His words were prophetic. IJ spent the decades after *Zelman* in the legal trenches in places like Arizona, where litigation continued nonstop in five different cases over four separate choice programs between 1997 and 2014. At the same time, the team worked tirelessly with allies to design expansive, constitutionally sound programs anywhere that might consider them.

As more programs began to come online in states like Alabama, Georgia, Indiana, and Louisiana, the school choice team tackled every kind of legal challenge Chanin had predicted. There were the sweeping, systemic constitutional challenges, mostly making use of Blaine Amendments. They also faced challenges emphasizing highly technical and state-specific issues like funding provisions and procedural nuances. What tied every case together for IJ was a steadfast focus—both inside and outside the organization—on the people school choice was designed to help. As it had been in Milwaukee and Ohio, that human emphasis was crucial to the movement's long-term success.

Heather Coffy, the lead client in IJ's defense of Indiana's Choice Scholarship Program, made a point to bring her children to every hearing, news conference, and briefing that she attended.

"I wanted them to know what this meant, and what it was going to do for all students," she said. "When we won, it was amazing. I remember my daughter saying, 'Mommy, my friend Olivia got into school with the thing that you fought for.' It was just the best victory."

Focusing on the real-world impact of the program, as well as her friendship with Dick and the other IJ staff working on her case, kept Heather's spirits up when the demands of being part of litigation on a contentious local issue might otherwise have become overwhelming.

One day especially stood out in her memory. Several IJ attorneys and communications staff flew out to Indiana to take photos and make a video to publicize her case. Rather than take her to a studio or meet at a school or park, they came to her home.

"Those personal touches mattered," she said. "It wasn't always court. It wasn't always litigation. It wasn't always the seriousness. Those touches of connection and the personal-level care that they showed coming into my home and visiting with my children—that sealed the deal. Those things that IJ did will never go away in my memory or in my children's memories."

"IJ listened to the stories of parents," Zakiya Courtney said. "They were trustworthy. We never felt they were coming in, trying to take over or take credit. Nowadays, I hear stories all the time from people talking about things that happened in Milwaukee. And I'm like, okay, I was here. I ain't never seen you before. But IJ was fantastic."

Over time, IJ developed a sophisticated understanding of the questions that needed to be addressed when designing programs to keep the "Mickey Mouse" issues from derailing a program, and the school choice team translated those insights into policymaking guides, hands-on trainings, and best practices.

Resolving the constitutional question posed by Blaine Amendments took two additional U.S. Supreme Court victories: *Espinoza v. Montana Department of Revenue* and *Carson v. Makin*, which reinforced the neutrality rule in school choice programs. In *Zelman*, the Court affirmed that school choice programs that included religious options did not violate the Establishment Clause. In *Espinoza* and *Carson*, it clarified that states could not prohibit those options without violating the Free Exercise Clause.

Dick Komer summed it up: "IJ has largely put itself out of the school choice business, because it's now all legal."

Reflecting on his advocacy for school choice, from his Valley Forge moments to the high of the *Zelman* victory, and the many parent meetings, rallies, press conferences, and speaking engagements he attended and organized, Clint argued that it all had to work together to make school choice work, and that it could not have worked together without IJ.

"We were not only involved in these lawsuits, but we were available to every single policymaker in the country who wanted to do school choice," Clint said. "We put a lot of resources into states where nothing ever materialized. But I think that massive investment absolutely paid off. There is simply no doubt in my mind that without IJ there, we wouldn't even be talking about school choice."

Let the Vans Roll

"I knew we were right. We weren't asking for welfare. We weren't asking for loans. We weren't asking for grants. We were creating an industry. We were creating a business—putting people in business, taking people to business."
– Hector Ricketts, IJ client

As Vincent Cummins waited outside the City Council chamber in New York City Hall on an oppressively humid day in August 1995, he told a reporter for the New York *Daily News* that for him, it was "D-Day." This was a hearing six years in the making. On the docket? A plan to place more commuter vans on the city's streets.

"We are very optimistic," he said. "The vote could go either way right now."

As president of Brooklyn Van Line, Vincent oversaw a 30-vehicle fleet of commuter van drivers, all of whom had been operating without the government's blessing for years.

As a result, they'd endured years of summonses, towing, and fines from traffic enforcement officials. Vincent himself was barely making a profit because his drivers received formal citations alleging a violation of commuter van regulations about three times a week. Each time authorities impounded one of his vehicles, he had to pay $650 to get it back.

Vincent's application for a license had been declined before. But this time he knew he was ready. He had recommendations from the Department of Transportation and from the Taxi and Limousine Commission. He had gathered more than 900 petitions from riders urging the Council to approve his application. He had garnered the support of three council members, including Una Clarke, who represented the 40th District in Brooklyn, which included long stretches of Flatbush Avenue and Empire Boulevard, two of Vincent's main routes. The final hurdle was the vote.

His application was denied.

"Sometimes I have a feeling there is a big force against us," he said. He had no idea how right he was.

Transportation Entrepreneurs for Freedom

Vincent wasn't alone in his struggle to legitimize his business. The City Council denied six other van companies along with him at the August hearing. In fact, the Council had not granted a single commuter van license since 1994, when jurisdiction over commuter vans was transferred from Albany to New York City.

The New York Metropolitan Transit Authority and the Transport Workers Union successfully used their sizable political clout in the city to ensure that their primary competitors—the "dollar" vans, which charged $0.50 less than the buses' $1.50—could not pose a serious threat. As a result, as many as 5,000 unlicensed vans operated around New York. And the vans that were lucky enough to get a license still faced onerous restrictions on where, when, and how they could pick up and drop off customers.

At IJ, Chip Mellor was well aware of the struggle transportation entrepreneurs like Vincent faced. In 1995, IJ was fresh from a case on behalf of four entrepreneurs who wanted to open a taxi company in Denver.

The lawsuit had been unsuccessful in court—the trial court upheld the existing system and the 10th U.S. Circuit Court of Appeals declined to hear IJ's appeal. But the case enabled IJ to spearhead legislative reforms that ended Denver's 50-year-old taxi monopoly and granted IJ's clients permits to start their companies.

Chip and Leroy Jones, the lead client in the Denver case and owner of the newly created Freedom Cabs, had parlayed the case's momentum into reforms in other cities. They'd gone to city councils in Cincinnati and Indianapolis, cities Chip had identified as having at least one ally in the mayor's office or on the council.

Everywhere they went, Chip talked about IJ's case in Denver and what the city had done to open the market. Leroy described what being able to start his company meant to him and his family.

Leroy's heartfelt testimony won over members who previously had been utterly uninterested in taxi regulation. In contrast to Chip's facts and Leroy's story, the tired rationales local unions and legacy taxi companies offered to justify their monopolies fell flat.

"The other side had nothing like what we did," Chip said. "And it was Leroy's testimony that got us over the goal line."

His experiences in Denver, Cincinnati, and Indianapolis reinforced to Chip the idea that getting a market open even in limited ways could create an undeniable catalyst, making it impossible to artificially limit the number of participants offering services in a city. The result would be an outsized impact and real-world justification for the kind of economic liberty reforms IJ was developing and promoting.

At the same time, although IJ had been able to get Freedom Cabs on the streets in Denver, Chip had not gotten the full appellate or trial court engagement that he was hoping for. He started looking for another context where the issue could play itself out. He knew that long-term success would hinge on building on the momentum from the places IJ had already unleashed transportation market forces.

New York City Is Killing Entrepreneurship

As president of the Pacific Research Institute, Chip had overseen sophisticated policy research in the form of books and studies. Deploying them effectively taught him one of the early lessons he would need to overcome the steep odds IJ faced: to succeed, it was essential that they buttress excellent legal work with testimony from experts documenting and exposing the problems inherent in the other side's approach.

"You can't beat something with nothing," he said. "And in our case, the other side will always have something: precedent and power. They will always have those two items going for them. And we can't beat that with just happy wishes."

Because what they were setting out to accomplish was so novel, almost every time IJ took on a new case or project, it was the first time it had ever been done. Knowing that, one of the attributes Chip wanted to build into the organization from the beginning was the habit of going into each effort armed with data.

"In each instance, we did the best we could at the time," he said. "And we advanced the ball markedly because we always learned more about the subject than anyone else would ever know."

The goal was to be as prepared as possible where they could be, giving the team the breathing room to adapt when things happened that they couldn't have anticipated. That flexibility would allow them to make the most of the opportunities IJ's efforts set in motion.

The first way Chip put that philosophy into action in a significant way was with what he called "city studies." He selected half a dozen cities around the country and sent an attorney to each one. The attorneys were expected to contact struggling entry-level entrepreneurs, research what they were experiencing, and document, for the first time ever, the range of regulatory obstacles confronting them. The would-be workers they met included people who sought to open enterprises like new taxicab companies, hairdressing salons, home businesses, or trash collection and recycling operations.

The resulting publications would put into context economic liberty concepts that were both vitally important and under-appreciated by most people. Moreover, they would offer solutions that weren't a call for even more government intervention. From the outset, a major goal of the project was to identify litigation that would target the obstacles and regulatory problems surfaced by the studies.

To ensure that the quality of the work was unimpeachable, Chip asked Howard Husock to oversee the project. Husock would go on to become vice president of research at the Manhattan Institute, an influential conservative think tank based in New York City, as well as editor of the organization's *City Journal* publication. At the time, he was a politically moderate academic, serving as Case Studies Director at Harvard University's John F. Kennedy

School of Government. He agreed to help, and he focused his own efforts on the situation in New York.

As the city studies progressed, IJ found that some places—like Charlotte, North Carolina—had room for improvement but were not, overall, terribly hostile to entrepreneurship. New York was another story.

Between the late 1980s and early 1990s, the New York City "formal" economy lost about 400,000 jobs. Meanwhile, the underground economy grew to encompass as much as 20 percent of the city's overall economic activity. The victims of the job-killing regulatory and enforcement regime were most often people of modest means, particularly immigrants and entrepreneurs just trying to get a start as food vendors, shop keepers, and service providers.

"New York City proved to be so corrupt and so hostile to anything approaching individual initiative without government intervention that they became a case study, literally, in how cities can kill entrepreneurship," Chip said.

Data from the New York study was the first to go public in early 1996. Husock presented the preliminary findings at a forum hosted by the Manhattan Institute in early December 1995, and he published an adapted version in the Winter 1996 issue of the *City Journal*.

But when it came to the IJ report itself, Husock grew increasingly uncomfortable with the emphasis on advocacy and reform that IJ brought to the project. It was incompatible with the more academic and descriptive approach he wanted to take given his position at the Kennedy School. He stepped back, and Chip took over the study, working with a law clerk to gather the remaining data and complete the project.

Ultimately, the firsthand experience helped Chip appreciate what it took to put the studies together. And the time he spent on the ground in New York to confirm what Husock had found, walking among colorful shops and bodegas in his business suit, reinforced in his mind the economic energy and vibrancy that could be unleashed if IJ succeeded.

From a City Study to a Case Launch

By mid-1996, the full IJ city study, "Is New York City Killing Entrepreneurship?", was ready to launch. The report was the first of its kind and specific to the challenges and opportunities in New York.

Study in hand, John Kramer went to work to foster interest in the court of public opinion, issuing a press advisory and targeting specific reporters at every one of the city's major media outlets. The goal was to get them excited enough to attend a press conference, where Chip would reveal and discuss the report's findings.

"He called everyone under the New York media sun," Chip said.

Meanwhile, Chip previewed the research for IJ's donors, from individuals based in New York to the J.M. Kaplan Fund and the Annie E. Casey Foundation, which had funded the city studies project. He wanted them to know the release was going to be big.

The press conference was scheduled for July 30, 1996, on the steps of New York City Hall. The imposing neoclassical building in lower Manhattan houses the mayor's office and the chambers of the New York City Council. It was the same place where Vincent Cummins had faced yet another denial of his application to operate his van business less than a year earlier.

The launch was, in Kramer's words, "spectacularly bad."

At first, no one showed up. Chip and Kramer stood on the steps, shifting their weight, chatting with each other, and trying not to look uncomfortable. About 15 minutes after the official start of the press conference, a freelance reporter for a local AM radio station, who monitored press activity around City Hall, came over with a Dictaphone. He took some brief comments from Chip, who by then was eager to leave.

"I was feeling pretty chagrined," Chip said. "As far as media attention went, it was basically the lowest of the low."

As they walked down the steps and began to look for a cab, Kramer looked at Chip with grim determination and said, "We'll be back."

"It put a chip on my shoulder to make sure I came through," Kramer recalled. "Chip was counting on me."

When he got back to IJ, Kramer picked up the phone and started again. A few days later, his persistence paid off. *The Wall Street Journal* featured the city study in an editorial entitled "An Honest Living." It highlighted key research from the study and recapped IJ's success in opening the markets for entrepreneurs in other cities.

The influence of *The Wall Street Journal* editorial page at the time is hard to overstate. For a five-year-old organization of fewer than 10 people that wanted to be taken seriously in New York, recognition from the outlet was a crucial foothold. The editorial also helped IJ begin to make the connection between the challenges facing people trying to succeed in individual occupations and the broader fight for economic liberty.

While Kramer worked on the media, Chip pivoted to litigation. In 1996, IJ was focused on two primary avenues for entry-level entrepreneurship: transportation and hair braiding. When the city study research highlighted the impossible challenges van operators faced in New York, Chip saw the potential for a quantum leap in transportation litigation.

The situation had all the elements that made for a strong IJ case: compelling clients trying to survive in a system that had become totally corrupt, rigged from top to bottom by the transit union, bus companies, and politicians. And it was all happening on a much bigger and more important stage than IJ had ever stepped onto before. New York City was a culturally and economically important place that was both a media and donor center. And although the legal limbo in which the van drivers operated was familiar to many New Yorkers, no one had ever put it in the context of broader barriers to entrepreneurship, as IJ did in the city study and as Chip intended to do through litigation.

To make that happen, though, IJ needed to identify people who could be persuasive spokespeople—and gauge their willingness to be part of a potential legal challenge.

Meeting the Drivers

Hector Ricketts, owner of Queens Van Plan and president of the Interborough Alliance for Community Transportation, functioned as the primary spokesman for New York's commuter van drivers. He had featured prominently in "Is New York City Killing Entrepreneurship?" thanks to regular local news coverage of the vans and their struggle for legitimacy during the early 1990s.

The commuter, or "jitney," van industry as it existed in New York City at the time had its origins in a major 1980 strike by public transportation workers. The city ground to a halt until entrepreneurial residents, primarily from the city's Caribbean communities, began to offer inexpensive van services.

The city government expected the vans to disappear when the transit strike ended, but van services proved so popular that they endured. Moreover, van drivers stepped in to fill major holes left by the city's public transit system again and again, from a paralyzing 1996 blizzard to a taxi strike that left travelers stranded at airports in 1998 to the chaotic days after 9/11.

Hector came to the industry in 1991, after losing an administrative position in a city hospital. To support his wife and three young children, he devoted his energy to developing and running Queens Van Plan, which grew to employ 53 men and women who made their living driving his vans.

In the process, he also became a community leader and an outspoken advocate for community-based transportation services. But despite years of safe service and having a license to operate his vans, he regularly found himself on the wrong side of city traffic enforcement for picking up or discharging riders too close to Metropolitan Transit Authority bus lines.

"You invest $30,000 in equipment and insurance and you have to run and hide," he said. "You're part of a $50 million industry and you're running like a crook."

With "Is New York City Killing Entrepreneurship?" launched, Chip wanted to meet with Hector, discuss the prospective lawsuit, and lay out what IJ could do to help him and the other drivers. He arranged a meeting in Hector's office at 229-25 Merrick Boulevard in Queens, one of about a dozen shops nestled together in a long, low, grey building under a single awning. Because Hector's business revolved around the vans and their routes, the office itself was rarely used, and the room's sparse decor mostly consisted of a desk and a word processor.

Earlier in his fight on behalf of the vans and their drivers, Hector had retained an attorney. Unsure what to expect from the meeting with Chip, Hector invited the other lawyer to attend. Chip was immediately wary. After meeting the other attorney, he was certain that the only thing he would bring to the case would be "distraction and headaches."

Chip had learned to trust his instincts in these kinds of situations, so he took Hector aside for a frank conversation.

"I told him, 'I know he's gotten you this far, and he deserves a lot of credit for that,'" Chip said. "'But from here on out it will have to be either him or us.'"

Hector paused to think about it, and he told Chip, "I want you."

From that moment, Hector was all-in as an IJ client. He would remain a consistent presence in the fight for van drivers and other New York entrepreneurs—and at IJ rallies, events, and legislative testimony—for more than a decade.

Eager to propel the prospective case forward, Hector called a meeting of more than a dozen van owners at a townhouse in Queens not far from his office. He had already identified a handful of drivers as having strong potential as clients, including Vincent Cummins of Brooklyn Van Line; Dennis Harry, owner of Rockaway Commuter Line; and Melvipher "Pat" Harvey, who had started Pat Carrier & Sons so women like her wouldn't have to walk home alone in the dark from remote bus and subway stops.

Chip and Kramer traveled to Queens for the initial meeting with Hector's group. As they approached their destination, they were distracted by the building immediately to the left. The door was padlocked shut and covered by police tape and a notice that it was "closed by the authority of the NYPD." The sight was a reminder that this was a neighborhood whose residents probably didn't see many lawyers. Those who did would associate them with crime and trouble. Chip and Kramer knew that establishing trust and rapport with the drivers would be essential.

They opened the door of the townhouse and were welcomed by a flood of Caribbean accents and an atmosphere of excitement and enthusiasm. During van rides he'd taken for the city study, Chip had enjoyed the steel drum music and Rastafarian decorations as nods to the drivers' backgrounds in Barbados, Jamaica, St. Kitts, and other Caribbean islands. But until that moment, he hadn't fully appreciated the strong sense of community among them.

For every person in the room, driving a commuter van was both a path out of poverty and an exercise in frustration and harassment from city authorities. One man pulled a handful of tickets out of his pocket, and he counted out the 14 summonses he'd received during a single traffic stop. Kramer was stunned.

"This is a guy who's trying to provide for his family and here's this cop writing him a ticket for everything he can find or make up," Kramer said. "And it had happened to every person in that room, too."

He and Chip left the meeting with a renewed sense of purpose and four clients: Hector, Vincent, Dennis, and Pat.

Ricketts v. New York City

IJ filed its complaint on February 11, 1997. The case launch couldn't have been more different from the city study launch just a few months before. As Kramer had promised, IJ was back on the steps of City Hall. This time, the press was there too.

Chip spoke to an array of more than half a dozen microphones and fielded questions from the city's major newspapers. To his left stood a group of drivers, formally dressed in suits and ties. The drivers looked on, nodding along as Chip described to reporters the "thoroughly befuddling, complicated, and ultimately futile regulatory maze" aspiring van drivers were expected to navigate to operate legally. His central point? The system was rigged against the drivers.

In contrast to the application process and the political system that ran it, IJ's message to everyone at the press conference was simple and clear.

"At a time when job creation is an overwhelming priority for the city of New York, van drivers ought to be welcome," Chip said. "After all, they don't just put people to work, they take people to work."

Media attention to the case built on longstanding local interest in the vans and, as Chip had predicted, IJ's track record in other cities' transportation markets. From the moment it was filed, the lawsuit also drew the attention of local politicians.

Una Clarke, Vincent's City Council representative and longtime ally, stood up at the press conference and argued that the vans were "an issue of economic survival of the community." An immigrant from Jamaica herself, Una was the first Caribbean-born woman elected to the New York City Council.

"It's probably our Caribbean spirit that gives us an opportunity to be able to speak our minds," she told reporters.

The case drew clear lines between the vans and their supporters and those defending the city-sanctioned monopoly of the Metropolitan Transit Authority and the Transport Workers Union. On the union's side stood a number of local politicians with ambitions for higher office—politicians who understood that advancing their careers meant maintaining union support.

Councilman Noach Dear, the chair of the Council's Committee on Transportation, who went on to become Commissioner of the Taxi and Limousine Commission, to run for Chuck Schumer's vacated state Senate seat, and, ultimately, to become a New York Supreme Court judge, made opposing the vans a cornerstone of his record on the City Council.

He told reporters, "Those illegals are going to be driven off the streets."

Another council member, Kathryn Freed—who would also later be appointed a New York Supreme Court judge—elaborated.

"They do run along bus and subway lines, and they do compete with the MTA," she said. "I don't want to see the vans compete with the MTA."

But by far the most influential of all the political observers to weigh in on the case was New York City mayor Rudy Giuliani.

Giuliani became mayor in 1994, the first Republican to take the office since 1966. He was elected as the city was grappling with high crime rates and a fiscal crisis. The policies he implemented to reform welfare, control spending, and reduce the city's large budget deficit led to frequent clashes with the unions.

Shortly after IJ launched its case on behalf of Hector and the other van drivers, Giuliani was slated to appear on "City Beat," a segment of a popular morning show on the local news station WBIS-TV New York. Immediately prior to his appearance, the show ran extended coverage of Vincent's futile attempts to get a license, the city's enforcement efforts against him, and IJ's case on his behalf. Before turning to the topic he was slated to discuss, Giuliani made a point to express support for the vans.

"I don't usually agree with pieces that are critical of the city," he said. "But I think they are right and in this particular case the city is wrong ... I think the point of the whole thing is correct—they're trying to stifle competition, rather than just being careful about who is driving vans."

He went on to say he planned to ask New York's corporation counsel, the chief legal officer for the city, about joining the lawsuit.

"To have him champion these guys, at that point in history, was a remarkable statement and that really gave us so much credibility in the New York media market," Kramer said.

With steady media coverage of the case, political interest in the driver's situation continued to grow. In the summer of 1997, that interest came to a head when Vincent once again applied to the City Council for a license. The hearing on his application was scheduled for the Council's meeting in late June.

For Vincent, the hearing was an opportunity for vindication after eight years of effort. For IJ, it became a rallying cry: if the market could open for Vincent and his now-40 vehicles, it could open for others as well. Once again, Vincent assembled the strongest application he could, gathering petitions from 938 residents and businesses arguing that his services were needed.

Vincent did not rely on the application alone. He also tried going straight to council members, hoping to bolster Una Clarke's support with other influential voices.

Among those he approached was one councilman he had reason to believe might be sympathetic. When he called to set up the meeting, the councilman's scheduler directed him not to a business office, but to a nondescript, mom-and-pop restaurant in Brooklyn. Vincent walked in for his 10 p.m. meeting and was directed up a set of stairs at the back of the building, which led to a room with several chairs. Every now and then, the door at the other end of the room would open and one of the people waiting with him would go in. At 3 a.m., it was finally Vincent's turn.

The councilman said he would consider voting in favor of Vincent's application, provided Vincent offer his own "show of support." For instance, the next time he ran for office, the man explained, Vincent would post signs on his vans in favor of his candidacy. He would contribute to the councilman's campaign fund. And if the councilman needed transportation, Vincent would provide it.

Vincent declined the deal.

In the end, the councilman's vote would not have mattered anyway. The New York City Council rejected Vincent's application by a margin of 46-2. But the vote set off a rapid-fire series of political maneuvers that gave IJ a firsthand education in how power operated in one of the most tightly controlled and politically entrenched transportation markets in the country.

Vetoes, Concessions, and the City Council Strikes Back

As IJ consulted with the drivers and worked to keep them in business while the lawsuit proceeded, a larger question emerged: how to defeat the unions and their political allies without playing politics or resorting to the kind of backroom deals the unions relied on. The answer to that challenge would go on to shape many of IJ's battles in the years ahead.

"If IJ had tried to match them toe to toe with corruption and money and power and all the stuff that they used to get their way, we would have not only corrupted our mission and our morals but failed in the long run," Chip said.

He had founded IJ based on idealism, not cynicism or realpolitik. As disappointing as it was, the trouncing of their efforts at the City Council was an opportunity to show that the commitment to those characteristics did not make IJ weak or naïve. It also made it vital to refuse to give up and to maintain a sense of optimism in the face of adversity.

"How do we counter that?" Chip said. "The way we countered it was to fight back and keep going."

It was becoming clear that much of the unions' audacity stemmed from the insularity of so rarely being challenged in a city like New York. They were almost never confronted from the moral high ground or by mobilized constituents. IJ brought both. To build the support necessary to keep the political fight alive, Chip and Kramer decided to make the most of Mayor Giuliani's interest in the case.

Giuliani would go on to be called "America's mayor" for his leadership of New York in the months following the September 11, 2001, attacks on the World Trade Center. Decades later, he became an advisor and attorney to Donald Trump, embroiling himself in a series of scandals that culminated in his arrest in 2023.

In 1997, his focus was challenging the power of the unions and improving the business climate and living standards in New York City. The van case presented an opportunity to do both. In Chip's mind, he was an ally that warranted cautious optimism. It was clear that his goals would always be tied to his own political fortunes, but his influence, handled properly, could give the vans a much-needed win.

When the City Council resolution denying Vincent's application came to him to sign in July, Giuliani held a press event.

Chip, Hector, and other supporters of the vans attended and spoke. The council members opposing the vans spoke. When the cameras turned to him, Giuliani thanked both sides for the "spirited debate" on the issue and reiterated his respect for the various parties. He talked briefly about the role that entrepreneurship plays in the American Dream, and he announced that he would veto the bill.

"The van industry is a tremendously viable and important movement," he told the drivers. "The Council is not doing the right thing for people who are trying to do their best for their families. I will continue to fight with you."

Although the City Council regularly overrode mayoral vetoes—especially Giuliani's—in this case, thanks to IJ, the popular pressure to support Vincent was significant. In the weeks after the veto, several council members negotiated with the administration. On August 4, 1997, they reached an agreement that allowed Vincent to open his business, becoming the first commuter van line in Brooklyn, albeit with 20 vans, rather than the 40 he had requested.

It was very much a partial victory, but in Chip's mind it did something particularly important: "It kept momentum and visibility going at a time when we were waiting for the next thing in the lawsuit to happen."

This was especially valuable because, as the months and years dragged on, the fight for legal legitimacy took a toll on Hector and the other drivers, many of whom were taking real, physical risks. Chip knew it was crucial that the clients understood the fight was personal for IJ too. Hector and the other drivers had been battling heroically years before IJ was on the scene, against impossible odds—IJ's role was to even those odds.

"They came to appreciate the relationship we had and that we weren't going to give up, just like they weren't going to give up," Chip said. "That earned their respect."

The agreement kept the vans in the headlines through late summer. But by October, as the press attention faded and the November elections approached, the City Council struck back. They voted 39 to 8 to impose a one-year moratorium on the issuance of any new van licenses.

The moratorium's sponsor was a man named Archie Spigner, whom the *New York Post* described as a councilman with "congressional ambitions [who] has been a faithful water carrier for the union." His justification for the measure was to allow the city to study which areas of New York were currently underserved by public transport.

Giuliani vetoed the measure on October 10, 1997.

"This is an outright attempt of dubious legality to destroy a viable and necessary industry," he said.

Unfortunately for the drivers, the fight was far from over.

Let the Vans Roll

This time there was no negotiating. The City Council put the issue on its agenda for October 29, and the goal was clear—override the veto and reinstate the moratorium.

In the months since IJ had filed its lawsuit, commuter vans had become a cause célèbre in New York. Kramer's dogged advocacy helped IJ and its clients earn editorial endorsements from every major newspaper in New York City, including *The New York Times* (both the paper and the magazine), *The Wall Street Journal*, the *New York Post*, and the *Daily News*, as well as outlets like *Carib News* and the *Weekly Gleaner*, which targeted the city's Caribbean communities.

The publicity transformed what had once seemed like a niche regulatory dispute into a broader political fight over entrepreneurship, transportation access, and the power of organized labor. That meant the vote on the moratorium presented an opportunity: if the drivers could demonstrate that they had both public sympathy and grassroots support, it would be harder for city officials to dismiss them as a fringe operation. It also created an opportunity to do two things IJ had not done before.

First, IJ would organize its own demonstration in a politically volatile setting. The organization had been actively involved in grassroots activism in the school choice context, but the principal organizing activity had always been done by local allies working with parents and politicians on the ground.

Second, IJ would tackle the unions head-on. In school choice, teachers' unions were a driving force opposing options for parents, but they usually put forward other organizations—particularly Americans United for Separation of Church and State and the ACLU—to conduct advocacy. In New York, Chip saw a powerful opportunity to put the unions out front and center as the villains in the van drivers' story.

The unions had no problem stepping into the role. As local Transport Workers Union leader Willie James told John Stossel on *20/20*, "Competition is fine, if it's done legally."

His colleague Bill Pelletier clarified: "If you want to go down to the bus route and wait for the bus, then you're going to have to wait for the bus. That's what the law says."

A City Hall rally on the day of the moratorium vote would offer the drivers a chance to answer that argument directly.

On the morning of the rally, a new IJ attorney stood with Chip and Hector on the steps of City Hall. Deborah Simpson had joined the organization only weeks earlier after leaving a New York law firm. She had first connected with IJ after reading a property-rights article Chip published in 1996 and had followed the van drivers' struggle through updates in IJ's *Liberty & Law* newsletter before deciding to reach out. Now, during her first weeks at IJ, she found herself at the center of the fight.

As the rally's start time approached and the steps of City Hall remained mostly empty, Deb watched Chip grow increasingly nervous about whether the demonstration would unfold the way he had envisioned. Hector reassured them that the drivers would arrive—they were just on "island time."

Sure enough, within ten minutes of the scheduled start, the drivers, many of whom were giving up a day's income to demonstrate, began to arrive from the outskirts of Brooklyn and Queens. It was worth the wait.

"It was a remarkable demonstration of the fact that the best advocates for their cause are the people themselves," Chip said.

The drivers had created signs proudly proclaiming why they were at the event. Many of the goals and principles on their signs became IJ's best SOCOs for the case and the headlines of press pieces covering the drivers' fight: "Work Not Welfare," "Let Us Work," and "Let the Vans Roll." They chanted, smiled, sang, and played steel drums.

"We were rocking and rolling," Chip said.

Then three school buses pulled up to the City Hall steps. Chip, Deb, and the drivers watched warily as the doors opened in sync, and burly public sector union members marched out, one after the other.

"They were an imposing lot," Chip said.

"They were there to do what the unions do in those circumstances," Deb said. "Bully and intimidate."

As the buses drove away, the union members lined themselves up shoulder to shoulder and stood with their fists in the air, chanting their own slogans: "What do we want? Power!" "What do we do? Take it!"

In response, the drivers amped up their rock and roll vibe. The volume and tension increased as police stepped in and created a walkway with a rail between the two groups.

"There's an iconic photo on the steps of City Hall," Deb said. "On one side are all of the union members with their fists raised, and on the other side are all of us from IJ and all the van drivers. And it is such a classic photo of David versus Goliath, and what we were up against in the belly of the beast in New York City."

Before the hearing began, several of the drivers took the bullhorn IJ provided in hand and shared their stories and their goals for their businesses. Una Clarke gave a brief and rousing speech. Even knowing the long odds they faced—a City Council where nearly every one of the 51 members was a New York Democrat with strong union ties—it was hard not to feel optimistic going into the chambers.

As the rally concluded and participants began to file into the building, Chip noticed that the union lawyers had arrived. One was big and imposing, and there seemed to be still more union muscle working its way into the meeting. The other was a mousey and unremarkable man with a goatee and glasses.

“He looked like Lenin and may as well have had a sign that said, ‘Unreformed Communist,’” Chip said.

When the doors to the Council chamber opened, the IJ contingent wanted to get into the meeting space quickly so they could pack the gallery. Instead, City Hall staff directed them to the balcony on the second level of the chambers overlooking the council members’ desks and the dais from which the presiding members would run the hearing.

As Chip looked down, he saw the chief lawyer buttonholing what looked like every single council member, laughing, slapping backs, and shaking hands. But there was nothing he or any of the others could do—they had no access to the space where the members were milling around waiting for the proceedings to start.

“I realized we were getting gamed, but I still had hope because we had Una down there,” Chip said.

In the City Council chambers, conversations quieted, and the members prepared to start the hearing on the veto override. Before anything was said, Una Clarke requested and received recognition from the chair, Peter F. Vallone.

She thanked Vallone for the opportunity to speak and said that although she wished she could be there for the discussion of this important matter, she had to testify before the U.S. Civil Rights Commission. Then she walked out of the room.

Chip and Hector looked at each other.

“The fix was in,” Chip said.

“It was a real gut punch,” Deb said. “She was with us for a year, and she was talking the talk right before the meeting. Then she ghosted us before ghosting was a thing.”

They endured the rest of the hearing, including a particularly impassioned performance from a councilman named Anthony Weiner, an ambitious young politician who defeated Noach Dear for Chuck Schumer’s state senate seat, but whose political career ended in scandal in 2011.

“We have zero tolerance in this city for so many things, let’s have zero tolerance for illegal van operators,” Weiner yelled, pounding on the table.

One after another, various council members stood and made comments supportive of the union and its goals. Then they voted 35 to 9 to override the veto. After the meeting, one erstwhile ally of the van drivers approached the team in tears.

"I wanted to vote for you, and I planned to vote for you," she said. "But my next step from here is a judgeship, and it was made very clear to me that if I ever want to sit on the bench I can't go against the union."

Although they left the hearing feeling beaten down once again, the drivers were well acquainted with the realities of New York politics.

For IJ, however, the hearing marked its first exposure to big-city corruption and patronage—and a stark introduction to how dishonest, backstabbing, and insider-driven the system could be.

"It was living down to the reputation," Kramer said.

As devastating as the result was, the vote to override was close—the 35 votes in favor were just one more than was needed to secure the moratorium. And if the IJ team had thought the pressure the unions brought earlier in the fight was intense, they witnessed even more in the moratorium fight, with Speaker Vallone himself joining the union representatives on the floor, pressuring members and swing votes to the union side and against the vans.

One councilman from the Bronx told *The New York Times* the next day that he had changed his vote from an abstention to a vote for the ban because of the pressure.

"I just went with the organization," he said. "The City Council had an agenda, and I just went along with the agenda."

"It was another lesson in urban guerrilla warfare from the city," Chip said.

Undeterred, IJ pledged to challenge the moratorium in court as well, and Chip filed an amended complaint doing just that in November 1997, less than a month after the vote.

Kafka and the New York Court System

As the machinations between the City Council and the Giuliani Administration were playing out, Chip met with the city's corporation counsel and with the leaders of the Taxi and Limousine Commission.

At Giuliani's instruction, they became friendly to IJ, a welcome change from the unresponsive stonewalling Chip had encountered before. They also became more receptive to the vans generally, approving applications and curtailing the most aggressive and arbitrary of the enforcement that had garnered drivers handfuls of tickets per stop.

But perhaps the most useful part of their cooperation was the information the agencies provided that IJ could use to support its legal challenge. The corruption and intractability at the City Council had made it clear just how important IJ's lawsuit was to getting justice for the van operators.

The case progressed through court into 1998, with both sides filing motions and cross-motions for summary judgment and responses to each other's activities. Finally, oral argument was set for September 16, 1998.

In stark contrast to the imposing nature of City Hall and the relative luxury and grandeur of the historic City Council chambers, the state trial court buildings had no prestige, stateliness, or even visual style to distinguish them from a Department of Motor Vehicles office or an average public-school building.

"We got to the courtroom, and it was so cluttered and so cramped and just a Kafkaesque, Soviet-style, bureaucratic nightmare," Chip said. "It was the worst of the legal profession."

Room 289 at 80 Center Street, a few blocks west of Chinatown in Manhattan, was littered with papers, industrial-caliber metal furniture, and crowds of people waiting listlessly for their cases to come before the judge who presided over the proceedings from behind a low metal desk.

Chip's mindset coming into court that day was serious: IJ was challenging city and state regulations that were keeping commuter vans—a much-needed service—out of the market. It had the support of the city's most important media outlets, the mayor's office, and the Taxi and Limousine Commission, a powerful city agency.

But as he observed the courtroom and the attorneys shuttling in and out of side rooms and jury rooms, cutting deals in a few minutes when he knew they would bill their clients for a full day in court, Chip was overwhelmed by the lack of seriousness of everyone else in the room.

It got worse when he got before the judge, Justice Louis B. York of the New York County Supreme Court, the state's trial court.

"The judge was so unengaged," he said. "Not in a judicial engagement way, like we would talk about it now. In an utter boredom way."

Nevertheless, Chip threw himself into the argument. He knew that, once IJ made its case, it would be undeniable that the system as it currently existed was rigged. It would never allow new entrants into the market.

The unreviewable discretion granted to each of the bodies that could reject applications made the process vans were forced to navigate "fraught with opportunities for irrational, arbitrary, and unaccountable decisions adverse to an applicant's interest, leaving the applicant entirely vulnerable to governmental whim or caprice," as he put it in IJ's complaint. Similarly, the limits to where and how the vans could operate were deliberately designed to be onerous and anti-competitive.

The result was to leave IJ's clients and other aspiring entrepreneurs with no practical way to operate legally in the city. Chip brought out a flow chart that Deb had painstakingly compiled, showing that the permitting process for vans was a cycle of endless wheel-spinning and that, once denied, applicants had no recourse but to start over. The clients were in the room, each one a living testament to the costs imposed by the current unjust system.

Despite the judge's lack of interest in the case, things progressed normally for the first part of the hearing. Then, partway through the proceedings, the court adjourned for a brief break. When they came back and prepared to resume, an aide came to the front of the courtroom and whispered to the judge, who looked up at Chip.

"Well, counsel, we seem to have a problem here," he said. "It appears we can't find the files."

“What do you mean, Your Honor?” Chip asked.

The judge replied that his staff could not locate the files IJ had submitted for the case. He observed that, probably, IJ had lost them.

Chip assured them that they hadn’t and pointed to the stack of papers he had with him at the table, an exact copy of which had been submitted to the court. Members of the judge’s staff looked at each other, tipped their heads, and shrugged, indicating that they had no idea where the materials might be.

For a few minutes, both sides argued that the other had made a misstep until the judge interjected.

“We can’t go forward without the files,” he said. “We’ll stand in recess until they can be located.”

Chip and Deb filed out of the courtroom in disbelief. Although the argument was for summary judgment, Chip wanted the case to be organized for trial. That meant assembling a document-intensive record of facts and supporting materials that had required Deb and IJ’s young paralegal, Gretchen Embrey, to oversee a team of law clerks—the biggest IJ had assembled for a case so far—who ultimately compiled files and documents that took up three feet of shelf space. Despite the disarray in the courtroom, it was hard to believe that they had truly gone missing from the court clerk’s office.

For weeks, IJ tried to shake the documents loose, filing motions to compel and requesting additional hearings with the judge. The efforts got nowhere.

Finally, J. Mark Lane, IJ’s local counsel in the case, offered to make the trip from his offices in Westchester County to Manhattan to talk to the court clerk and try to persuade the staff to provide some information. There would be no brown bags of cash or political favors on offer, just Lane’s charm and attempts at good faith.

It worked. After a few minutes, the woman at the desk shrugged and said, “Well, let’s go back and look.”

She and Lane walked through rows of files and found IJ’s papers tucked away in the back, on a shelf miles away from where they should have been stored. They re-shelved them, notified the parties, and the court scheduled a time to complete the hearing.

Chip rallied, returned to the cluttered courtroom, and maintained his enthusiasm through the remainder of the argument.

“We had them dead to rights,” he said. “The system was so rigged, and the corruption was so blatant, and we had documented it so well, I knew we had it.”

He was right. In March 1999, the court ruled for the drivers in several important ways. Most crucially, it held the City Council may not veto van operator licenses approved by the New York City Taxi and Limousine Commission. What’s more, the judge struck down two sections of the local law: one that automatically denied van applications that were not granted within 180 days, and another allowing regulators to deny licenses without stating a reason. It left in place the restrictions on where vans could operate, including the prohibition on picking up or discharging passengers on any street where public buses operate.

As IJ and its clients celebrated the victory and began plans to appeal the remaining provisions, Chip went back to Justice York one final time, this time for clarification. IJ’s amended complaint had listed five causes of action for the court to consider. In his opinion, the judge had failed to clearly address them all.

“The opinion was so sloppy, there were parts that made no sense,” Chip said.

He filed a motion for clarification so that the case would be as well-positioned as possible for appeal. As much as Justice York clearly wanted to brush the request aside, the omission was so glaring that he had to schedule a hearing.

Chip traveled back to Manhattan and respectfully pointed out the missing material, and the judge ordered him to hand over IJ’s copy of the order. He handwrote additional comments in the margin.

“Your Honor, I appreciate you clarifying this,” Chip said, “but I can’t quite read your writing.”

“It’s the best you’re going to get,” the judge responded.

The trial court phase of litigation was emphatically over.

With the amended ruling, such as it was, in hand, Chip turned his full attention to appealing the case. Deb and Gretchen gathered the materials for submission to the appellate court, only to be told, once again, that the trial court's copy of the records was gone.

Stunned that this happened a second time, they did some digging. As it turned out, in New York, the court system is unionized. The team knew that this time, the files were gone for good.

IJ needed to recreate the record from scratch. That meant that Gretchen had to go back to the state and city lawyers—neither of whom were delighted to see her—to rebuild the file and authenticate every document that had been in it. And to ensure that there was no chance it could be misplaced by a mail clerk, or encounter any other "mishaps," Gretchen flew the file to New York herself and hand delivered it, not leaving the city until she had a stipulation stamped by the county clerk's office affirming that it had received "a complete and accurate duplication of the original record."

An IJ Office in New York

Despite the unique challenges IJ had faced at each step, the case had come a long way from the city study launch Chip had prepped donors for in 1996. With each passing month, it enhanced IJ's reputation and Chip's stature by showing that the organization was ready for the big leagues.

"The longer we stayed in New York," Chip said. "The more traction we got."

Chip's ongoing focus on maintaining momentum applied not only to litigation, political reform, and media coverage, but also to securing and growing financial support for IJ.

Getting new and existing supporters enthused meant translating the stories about the case and clients New York donors were reading in *The Wall Street Journal* and *The New York Times* into personal relationships, and then closing the deal by asking people individually to buy in—not just on this case, but on IJ's broader mission. Chip knew several influential New York philanthropists through the school choice movement and broader education reform circles, and the two issues combined to open doors, especially with the ongoing enthusiasm for drivers in the media.

Among the donors following the litigation were a group of individuals from the financial community who were associated with the Manhattan Institute. They were optimistic about the reform agenda Giuliani promoted at the time, and they grew interested in the idea of a permanent IJ presence in New York City. From their perspective, this was a climate in which litigation could be a very effective tool to enhance the policy work that the Manhattan Institute was doing. Projects like going after rent control seemed to be especially promising targets.

They broached the idea with Chip. It was clear that money would be no object, which, for many leaders of small, start-up nonprofits, would make the opportunity a no-brainer. But the prospect of an IJ office in New York was not one that Chip had to think about for long.

"We could have doubled or tripled our organization in no time at all, but I just knew that we would soon have the tail wagging the dog and the mission would become New York-centric," he said. "And that was not what we'd set out to do."

He also knew that, along with the best of intentions, it was likely that the financial support necessary to make the idea work would come with certain expectations, including board membership.

Chip had founded IJ with a fierce determination to be independent. He had also worked hard to attract a board comprised entirely of people who would appreciate at a very deep level IJ's long-term mission and not be driven or distracted by other priorities. Compromising on that expectation would introduce a conflict at the heart of the organization.

Decision made, he had to tell the Wall Street titans no. As IJ grew, Chip periodically had to tell people with strong personalities things that they didn't want to hear—most often "no"—and he developed a particular knack for it. His approach came down to a few core principles.

First, he didn't let the ideas he knew were nonstarters get too far down the road. That spared him the challenge of trying to unravel plans that had started to develop. Within the first or second conversation, he would assure the person that he was honored and acknowledge any merits of what they suggested—in this case, the important role that the Manhattan Institute played in New York and the idea that litigation may one day be a valuable addition. But he went on to stress that the Institute for Justice had a very distinct mission, and the person's idea was not contemplated within that mission.

The second key thing was tone.

"You can't be obsequious and defensive," he said. "You have to be confident. But you also can't be smug and sanctimonious about it."

In New York, he tackled the conversation with the prospective donors as he would have with a peer, stressing that each party had their mission. They would obviously come into contact and, where possible, find ways to coordinate over the years. But he was clear that, despite that, there was not a formal merger to be made.

"These guys are bottom line guys," he said. "They appreciate straight talk and cutting to the chase."

The candid approach worked. IJ stayed focused on its core mission, and what's more, many of the donors involved in the New York office idea remained engaged with the organization. Some came to give very generously over time, supporting the van drivers and all of IJ's other clients.

Up on Appeal

Just under a year after the trial court decision, IJ was slated to go before New York's intermediate court to argue the issues it had appealed on behalf of the van drivers.

The Saturday before he was scheduled to appear in court, Chip took his family skiing in West Virginia. A veteran of Rocky Mountain slopes, he went to smaller East Coast ski resorts reluctantly and mostly for the sake of his young children. His reservations about the trip were affirmed when an out-of-control snowboarder crashed into him, fracturing his spine. The damaged vertebrae were near the base of his neck and caused him both significant pain and a hunch in his upper back.

Knowing he had to be in court in just a few days, Chip told Kramer and Deb about the accident so they could help him prepare. He didn't say anything to the other staff, the clients, or the media.

His doctor had grudgingly cleared him to travel to the hearing, with the stipulation that he couldn't lift anything heavier than five pounds. Deb flew back east from the new transportation case she was litigating in Las Vegas to meet him and carry his briefcase and other documents to the Madison Avenue courtroom for New York's Appellate Division, First Department.

"He could have bowed out and no one would have questioned it," Kramer said. "But Chip embodied that tough Western spirit. He knew he was the one in the best position to deliver at that argument, and he was going to do it."

Chip and Deb arrived at the courtroom promptly. J. Mark Lane, their local counsel, had reviewed the court's docket in advance and let them know that IJ was second or third in line. But when they arrived, the schedule showed a whopping 19 people on the docket for a single two-hour period. It made no sense. Then they watched as attorneys were called before the clerk of the court to state how much of the judge's time they would need.

"I need 30 seconds," the first attorney said.

"One minute, thank you."

"45 seconds."

Chip looked around incredulously—Lane either hadn't realized that was how the procedure went, or he had somehow neglected to mention it.

This was the appellate division of the New York state court system, and Chip had come armed with 30 minutes of material, minimum. He wrestled with how much he could condense his remarks and ultimately asked for 10 minutes.

The clerk gave him five minutes and put him last on the agenda.

Sitting in one of the utilitarian chairs in the unremarkable courtroom with a broken back, waiting for his five minutes to argue a case that had been five years in the making was a special kind of torture. The longer he had to sit, the more his back hurt. He hadn't taken any medication for the pain because he wanted a clear head for the presentation. By the time it was his turn to speak, he limped to the podium.

The argument turned out to be painful in more ways than one. He was asking for a fraction of the time that it would be reasonable to expect, but he still got pushback from the court for taking too long.

He started his remarks, and immediately one of the justices started attacking his position.

"She was startlingly hostile," he said. "They didn't even let me get into the merits other than to reject what I started to say, and then I had to sit back down."

He left without much hope that IJ would get a victory on the final count in the case, the restrictions on where and how the vans could pick up passengers. And indeed, in March 2001, the appeals court mailed its decision affirming the lower court's ruling to IJ's D.C. office, hand-addressed to William H. Mellor at the "Institute for Injustice."

It was the final expression of contempt from a court system that seemed determined to showcase that it was part of the rigged and corrupt enterprise IJ existed to overturn.

"But all that time, we kept the vans rolling," Chip said.

The moratorium had lifted, new van lines could open, and the process was improved. The drivers and their riders had new and better opportunities than they had been able to achieve in the previous 20 years of the vans' existence.

"We had survived a death of 1,000 cuts," Kramer said. "And by the time we were done, the dollar vans were recognized as heroes."

Learning to Be IJ

In New York, IJ saw firsthand the kind of cynically self-dealing, self-promotional, corrupt, and unjust political system that it would later see play out across the country in cities large and small. It would never again be quite as blatant or as proud, but it became familiar. And the organization now was prepared to deal with it.

"We had survived pretty much the worst you could imagine," Chip said. "There were a number of moments that just got so surreal that I felt like I was living in a Tom Wolfe novel, like *The Bonfire of the Vanities*. I'm in this world that exists, but no one knows about it unless I tell them."

"We learned to be IJ during that case," Kramer said. "The dedication to being genuine we committed to then was instrumental in forming the backbone and spirit of the organization."

At multiple points during the litigation, various parties approached Hector, Vincent, and other clients with offers. Chip and the others at IJ never knew the exact nature of the offers. They weren't threats, but they were clearly token gestures designed to make the whole problem go away for both sides. But none of the clients were interested. The decision for the case to continue was always, ultimately, up to them. If they had wanted to settle and insisted on it, IJ would have done it. Not even one ever did.

And for IJ, quitting was never on the table.

"Right from the start, starting with my conversations with Charles Koch, and from then on, I always told anyone who would listen, 'We're in it for the long term,'" Chip said. "IJ's agenda and IJ's perspective is that of the historian, not the day's headline. Every case we take on is with the intent of pursuing it to the final end, whatever that is."

Chip Mellor on a trip west during his college years in the 1970s.

Chip Mellor and Alison Ling in San Francisco after Chip joined the Pacific Research Institute in 1986.

Chip Mellor (center, holding papers), Alison Ling (center, front), and Clint Bolick (third from right) with staff at Mountain States Legal Foundation.

Chip Mellor (left) and Clint Bolick in the 1990s after the launch of IJ.

Staff at IJ's first office at 1001 Pennsylvania Ave.

A young Scott Bullock at work at 1001 Pennsylvania Ave.

Dave Kennedy (head of table) leads an early IJ board meeting as chairman.

Pamela Ferrell (left) and Taalib Din Uqdah inside Cornrows & Co., their Washington, D.C., braiding salon.

Bottom row, left to right: Chip Mellor and Hector Ricketts on the steps of New York City Hall at a rally supporting commuter vans.

Hector Ricketts (right) with other New York City commuter-van drivers.

Hector Ricketts with the Statue of Liberty became one of IJ's first "I am IJ" advertisements.

From left to right: Clint Bolick, Milton Friedman, and Chip Mellor meet to discuss the Institute for Justice.

Clint Bolick (with microphone) talks with reporters outside the U.S. Supreme Court after argument in *Zelman v. Simmons-Harris.*

Parents and children at an educational choice rally before argument in *Zelman v. Simmons-Harris.*

Roberta Kitchen (right) celebrates with a parent after IJ's U.S. Supreme Court victory in *Zelman v. Simmons-Harris.*

The Rev. Nathaniel Craigmiles inside his shop, Craigmiles Wilson Casket Supply, in Chattanooga, Tennessee.

From left to right: The Rev. Nathaniel Craigmiles, Steve Simpson, Tommy Wilson, and Chip Mellor in front of a federal courthouse in Tennessee.

Chip Mellor announces IJ's appellate victory in *Craigmiles v. Giles* with the Rev. Nathaniel Craigmiles, Tommy Wilson, and Angela Brent.

Vera Coking in front of her Atlantic City, New Jersey, home after IJ saved it from eminent domain abuse.

DAILY NEWS

50¢ http://www.mostnewyork.com NEW YORK'S HOMETOWN NEWSPAPER Tuesday, July 21, 1998

TRUMPED!

DONALD TRUMP

Judge says Donald can't seize elderly woman's home for casino expansion

VERA COKING, right, stands by her house next to Trump Plaza Hotel & Casino in Atlantic City.

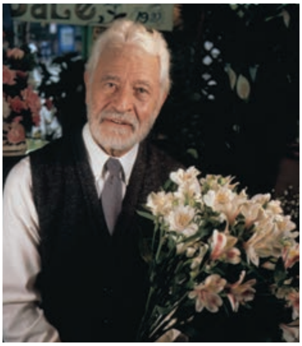
SEE PAGE 3

"Daily News" front page depicting Vera Coking and her Atlantic City, New Jersey, home with the Trump Casino looming in the background.

Scott Bullock (left) and Chip Mellor at a rally with property owners in Pittsburgh, Pennsylvania.

Dale Bullock (left, with poster) and Betty Bullock (right), Scott's parents, at a rally with property owners and their community supporters in Pittsburgh, Pennsylvania.

Billboard for campaign against eminent domain abuse in Pittsburgh, Pennsylvania.



George Harris at the Pittsburgh, Pennsylvania, flower shop he inherited from his father—and helped save from eminent domain.

Front row, from left to right: Lonzo Archie, Stephanie Parker-Weaver (aka Sister Hurricane), and Scott Bullock with the multigenerational Archie family and supporters on the Archie family property in Canton, Mississippi.

Lonzo and Matilda Archie at their home in Canton, Mississippi.

Mike Wallace hosts a “60 Minutes” segment on eminent domain abuse in 2004, featuring two IJ clients.

Susette Kelo in front of her New London, Connecticut, "little pink house," which became the subject of a book (and, later, a film).

John Kramer in IJ client Richard Beyer's home to prevent the city of New London, Connecticut, from demolishing it overnight.

Sketch of Scott Bullock (right) arguing *Kelo v. New London* at the U.S. Supreme Court.

People

Controversy

Battling to Save Her House

"People" article depicting Susette Kelo in front of her New London, Connecticut, home.

Nina Totenberg (left, in fur coat) interviews Susette Kelo (center), flanked by New London local counsel Scott Sawyer (left) and Scott Bullock (right), on the steps of the U.S. Supreme Court after argument in *Kelo v. New London.*

Poster for IJ's "Hands Off My Home" campaign.

Carl and Joy Gamble in front of their Norwood, Ohio, home.

Dana Berliner, Scott Bullock, and property owners and supporters in front of the state courthouse in Cincinnati, Ohio, during the trial in the Norwood eminent domain case.

Dana Berliner (front left) at a rally against eminent domain abuse before argument at the Ohio Supreme Court.

From left to right: Chip Mellor, Paul Gigot, John Stossel, and George F. Will discuss IJ's influence in the media at a 20th anniversary celebration in Washington, D.C.

From left to right: John Kramer, Steve Simpson, Dana Berliner, Chip Mellor, Scott Bullock, Deb Simpson, and Christina Walsh play legal gunslingers in a video celebrating IJ's 20th anniversary.

From left to right: Taalib-Din Uqdah, Pamela Ferrell, and Scott Bullock celebrate IJ's 20th anniversary.

From left to right: Chip Mellor with his wife, Alison, and children, Sarah and Mitch, at IJ's 20th anniversary celebration in Washington, D.C.

It's Just a Box

"One of his proudest accomplishments was a successful lawsuit … against the State of Tennessee for the right to sell caskets. This history-making case set precedent in the United States and will be cited by law students for years to come."
– The obituary of Nathaniel C. Craigmiles, 2015

By May 1999, IJ had litigated seven economic liberty cases, representing hair braiders in multiple states as well as taxi, van, and limo drivers. With each case, life was getting better for IJ's clients, but it was media outrage and legislative reform that were driving widespread change. The kind of resounding court victory necessary to turn the legal tide on economic liberty remained elusive.

Although IJ's young staff remained dedicated and enthusiastic, this lack of success began to test their assumptions. IJ's attorneys were idealists who, for the most part, hadn't experienced the grind of private practice. They were learning that the blatant injustices their clients faced, and the hard work they themselves put into any given case, were not sufficient to guarantee a victory.

Everyone who litigated an economic liberty case put their best into every lawsuit. And everyone who litigated an economic liberty case, at some point, lost. But accepting the idea that the purpose of these cases was to make a principled stand while heroically losing would be catastrophic for IJ's culture and its ability to achieve its mission.

Chip knew that if they were going to remove the constitutional cloud from economic liberty, IJ's staff had to keep believing it was possible. And to make it believable, IJ had to win one.

A Litigation Target in an Unexpected Industry

In 1994, the Federal Trade Commission declared that funeral homes must accept caskets purchased from outside sources. The rule was an amendment to a decade's worth of other consumer-protection regulations, collectively known as the Funeral Rule, aimed at governing the funeral industry. Together, these guidelines were designed to ensure that funeral providers offered at least a minimum amount of transparency and choice in the goods and services they offered customers, who were making purchases at a uniquely vulnerable time.

A secondary effect of the Funeral Rule was to create a new marketplace for funeral merchandise. Retail stores and even mail-order caskets and urns sold directly to consumers became increasingly commonplace in the years after the amendment was formalized.

In states like New York and Florida, casket retailers began offering goods at dramatically lower prices than funeral homes, demystifying and simplifying one aspect of the painful process of laying a loved one to rest. As the trend began to spread to other states, some would-be business-owners ran into a familiar obstacle: entrenched interests using government power to create monopoly protections for their profits.

The Funeral Rule dictated that a family could choose whatever casket they wanted. But in 12 states, regulatory agencies demanded that the only people permitted to sell those caskets were those with a government license.

It was the licensing hook that jumped out at Nelson Griswold when he read about Tennessee's prohibition on retail casket stores.

Griswold had attended an IJ policy activism conference in 1995, while serving as president of the Andrew Jackson Institute, a state-based think tank in Tennessee. The conference covered IJ's approach to economic liberty and how it proposed to defend economic rights. That philosophical framework made IJ the first place Griswold thought of when he read an article in the *Knoxville News-Sentinel* describing how a state regulatory agency had shut down a local business called The Casket Store for selling caskets directly to consumers.

The state ordered the proprietors of the store, a woman named Angela Brent and her father, Jerry Harwood, to stop selling caskets just one week after they opened their doors. The cease-and-desist letter detailed how they could be fined and even jailed if they continued selling funeral merchandise without first becoming licensed funeral directors.

The rules governing casket sales and their enforcement were overseen by a seven-member Board of Funeral Directors and Embalmers. Six of the seven board members were also licensed members of the profession. The original law establishing the Funeral Board was enacted in 1972, introduced by a state senator with strong ties to the industry. Aspiring funeral directors were required to dedicate two years to education and apprenticeship with a licensed funeral director. Violations of any of the rules laid down by the Funeral Board were criminal misdemeanors carrying possible jail time and hefty per-casket fines.

"I thought it would be a slam dunk for IJ," Griswold said. "It exemplified the all-too-usual restraint of trade by state regulatory agencies."

He emailed IJ to share the story and propose they take on the issue. Chip immediately saw potential. Like many of IJ's other cases, there was a clear and outrageous set of facts, with the funeral industry acting as a cartel using the power of the state to enforce arbitrary and unnecessary restrictions designed to keep competition out and prices high.

But this potential case also did something that IJ's previous economic liberty cases had not—it dealt with an issue that was truly universal.

"As great as the hair braiding cases were," Chip said, "not many people outside the black and Caribbean communities get their hair braided or really appreciate the cultural, artistic, and entrepreneurial significance of that occupation."

Meanwhile, while taxis were a vital part of life in certain cities, most people don't rely on them, and commuter vans were unique to New York.

"These were all great cases, but the occupations and the experiences of the entrepreneurs involved were all a little bit beyond the ken of your ordinary person—including judges and reporters," Chip said.

But he knew from bitter firsthand experience that, by the time people are middle aged, more often than not they have lost someone they loved. And, if they had experienced death in America, they would almost certainly have had interactions with a funeral director. Funeral directors arranged for the embalming or cremation and, ultimately, the burial or disposition of the body, as well as at least some parts of the memorial service.

After burying his own father at age 15, he had a decidedly unromantic view of the funeral industry.

"The funeral director, who obviously didn't really care that much about my mom, represented everything about funeral directors that came to be the stereotype in my mind," Chip said. "His modulated voice, his limp handshake, his coiffed hair."

That stereotypical funeral director—the type of person who would feign sympathy while focusing on his bottom line, or who would pounce on a harmless family business with a cease-and-desist letter before they had even been in operation for a month—would make a quintessential IJ villain.

"When IJ was developing the case, I remember Chip saying, 'The only thing you need to be if you are a funeral director is unctuous,'" Kramer said. "I had never heard the word before, but it perfectly described the members of the Funeral Board."

While Chip recognized that not everyone might have had his negative experience with funeral directors, he knew that anyone who had to deal with death would understand and appreciate the difficulty of picking out a casket. There is an overriding desire not to disrespect the deceased or other loved ones by doing the wrong thing. That grief and social pressure could easily be manipulated.

"I didn't know any of the numbers or statistics about the industry at that time," Chip said. "But I had a feeling for it because I had been through it several times, and I saw how grieving people were taken to the cleaners."

Death, Inc.

Chip assigned Gretchen, by now IJ's senior paralegal, and a young staff attorney named Miranda Perry, who had joined the organization a few months earlier, to begin developing the issue as a prospective case. Miranda had done a bit of work on a hair braiding case in California when she was first hired, but when she dove into Tennessee's casket cartel, she knew nothing about litigation. The case was going to require her to learn as she went.

"You have to understand, at that time there was no training," Miranda said. "No one even said, here's a book on how to run a case. I didn't know what I didn't know. So I just started doing a lot of research into the funeral industry and the requirements to become a funeral director."

The more she learned, the more she realized just how rife with exploitation and avarice the funeral industry was.

Until around 1900, American funerals were simple, taking place in the home with modest wooden caskets. The now-superfluous parlor room near the entrance to many large homes, designed for receiving guests, was put to special use when someone passed away. It was there that family members would display the body of the deceased and receive comfort from other mourners. Doors were sized to ensure that a casket could pass through.

Professional funeral directors evolved from the role usually played by friends, family, or religious leaders. Memorials and visitation moved out of the home and into specially created funeral homes. As in so many other occupations, funeral directors quickly learned that they could lock in a government-granted monopoly. That made death big business.

By the time IJ began investigating Tennessee's funeral director licensing law, the funeral industry brought in $25 billion, with the final bill for the loss of a loved one totaling nearly $8,000 on average.

For funerals that included burials, caskets typically accounted for one-third to one-half of the cost and ranged in price from a few hundred dollars to more than $20,000. They were available in a variety of materials, from particle board to hardwood to steel, bronze, or copper. Some were lined with silk or velvet, others had etching, inner-spring mattresses, and "protective sealers."

Regardless of the embellishments, one thing consumers purchasing a casket could count on was a markup. Caskets sold by funeral homes ran from twice as expensive to a whopping 600% over wholesale.

Protecting this lucrative market was a priority for Tennessee's Funeral Board.

Lisa Carlson, executive director of a nonprofit consumer group called the Funeral and Memorial Societies of America, told the *Knoxville News-Sentinel* that Tennessee only needed about half of its more than 400 funeral homes to serve the state's residents. The extraordinary markups on merchandise were necessary for all the existing businesses to survive.

"They're fighting over dead bodies in Tennessee, which is why the prospect of losing casket sales is very threatening," she said.

Meanwhile, when Miranda called Angela Brent to get her side of the story, she was struck by the woman's earnestness and sincerity.

"These were people who were truly just trying to help the people in their communities," Miranda said.

What the team discovered reinforced Chip's instincts about the potential case.

"Here's a case that is very simple when you boil it down to its essence," he said. "And I saw right away the casket is the key to it."

That's because regardless of the material, the lining, or the price, every casket is, ultimately, just a box.

"I thought, 'I can make this case work,'" Chip said. "I can tell this story, and I can present it to the court under the rational basis test, because the key to the whole licensing scheme was the caskets."

A New Mission for Unlikely Entrepreneurs

From time to time, Nathaniel Craigmiles described his personal transformation from the pulpit of his Chattanooga church. He had been addicted to drugs. He had done more than a decade of hard time—in state and federal prison—for distributing counterfeit currency. But he had converted to Christianity, reckoned with his past, and turned his life around. Caring for parishioners as pastor of Marble Top Missionary Baptist Church, which he had done since 1993, was his calling.

As the de facto leader of his family, Nathaniel had overseen the funerals of both his parents, his grandmother, and several members of his wife's family. When his mother-in-law passed away in 1998, he paid $3,200—for him, a small fortune—for a casket from a local funeral home. Just weeks later, he was shocked to see the same casket for sale at a New York retailer for only $800. He realized that, in all his years supporting family members through their grief, it had never occurred to him to price shop for a casket. He had always simply purchased them from the funeral home. Now he knew he had overpaid by an astronomical sum.

When he returned home, he began to research the industry. He was astonished at what he called "criminal" pricing practices. And as bad as these practices were for the general public, they were especially bad for his congregation.

While white Protestants increasingly favored cremation, Catholics, ethnic minorities, and black Americans continued to favor traditional funerals. Seeing the market changing, the funeral industry had begun targeting those groups, urging ever more lavish options. In a low-income, majority black part of Chattanooga, Nathaniel was now on the front lines as an advocate for the often outright impoverished members of his congregation, whom he assisted when a loved one died. Going forward, he had to assume that each of them was at risk of being exploited in their grief.

Seeing an opportunity to change that, Nathaniel found a business partner in one of his parishioners, Tommy Wilson. "Mr. Tommy," as Nathaniel called him, had spent nearly 40 years working at area funeral homes, including serving as a night-shift ambulance driver delivering bodies to their facilities. With a retail casket business, Nathaniel could provide a much-needed alternative to a community where premature death was all too common. Tommy could put his experience to work and supplement his income as a janitor at a local school.

Together, they opened Craigmiles Wilson Casket Supply. They would sell modest caskets at a modest markup—a few hundred dollars more than wholesale, just enough to help them cover their costs and earn a small profit. The store was within easy walking distance of no fewer than five beauty parlors, and they immediately got regular foot traffic from neighborhood residents stopping in to chat and see what the new business was all about.

"The area that we were in, they come in the door just to holler at you and say hello," Nathaniel said. "Women who get their hair fixed—nothing intended—are nosy. They want to come in there and see what is going on, so they come in. We had hundreds of inquisitive people coming in and trying to see what is going on."

Every visitor was an opportunity to showcase the dramatic difference between Craigmiles Wilson Casket Supply's prices and those at area funeral homes. They also tried to make the community aware of the risk of being wildly overcharged. But it was a slow start.

The men sold about two caskets a month for a few hundred dollars each, barely enough to cover their $800 monthly overhead. They started advertising and began to build a reputation for their care and concern for families, as well as the significant savings they offered.

In May, shortly after the state shut down The Casket Store, Nathaniel began receiving threatening calls.

"They said unless we shut down, something was going to happen," he said. "This is big money, and we are just little people."

Confident that he was in the right, Nathaniel blew off the calls. He didn't even mention them to Tommy, not wanting to cause him concern. When a man claiming to be Arthur J. Giles, the executive director of Tennessee's Funeral Board, called and told him to shut down, Nathaniel brushed him off as well.

"I told him I'd see him in court," he said.

The men had been in business for less than four months—and had donated almost half the caskets they sold in that time to indigent families in the neighborhood—when they received a formal and slightly huffy letter from Giles, ordering them to cease and desist operating their business.

"The delay in sending this cease-and-desist order to you is due to your lack of cooperation in providing a reliable address for certified mail delivery," he wrote. "I must advise you that the continued sale of caskets (or other funeral merchandise) without first obtaining the required license is a misdemeanor."

Nathaniel and Tommy's primary incomes as a preacher and a janitor could not cover the store's overhead with no sales. They had barely gotten started, and already Craigmiles Wilson Casket Supply was at existential risk.

"This means a collapse of our business," Nathaniel said of getting the letter. "We are on the verge of bankruptcy."

The action against Nathaniel and Tommy's business came two months after the state's enforcement against The Casket Store, and it was the spark IJ needed to launch its case. The Reverend Craigmiles and Tommy Wilson joined IJ's lawsuit as the lead plaintiffs, and Chip filed his complaint in the federal district court in Chattanooga on September 16, 1999.

The *Slaughter-House Cases*

The *Craigmiles* case followed what had become the standard IJ playbook: announcing the filing at a well-attended press conference on the courthouse steps made waves on local news outlets, which Kramer supplemented with a series of op-eds from Chip, Miranda, and the clients. *Forbes*, *The Wall Street Journal*, *Investor's Business Daily*, John Stossel on *20/20*, and other national outlets also picked up the story.

Fortunately for IJ, in this instance, the flurry of negative attention did nothing to soften the Funeral Board's determination to stand by their regulations. The government moved to dismiss the case, and litigation began in earnest.

As in all IJ's economic liberty cases, Chip's brief charged the government with four constitutional violations, each an infringement on rights protected by the Fourteenth Amendment.

First, the Tennessee Funeral Board's requirement that an individual must become a licensed funeral director in order to sell caskets violated IJ's clients' *substantive due process* rights by restricting their right to earn an honest living unnecessarily and arbitrarily. They had no means to right the wrong other than to sue.

Second, it violated *equal protection* by requiring retailers of funeral merchandise to comply with an arbitrary and irrelevant licensing scheme designed for funeral directors. The requirements were not rationally related to any public health, safety, or welfare concerns, and they treated two different professions as if they were the same.

At the same time, other people who sold other kinds of goods—including items for pet burials and ancillary funeral items like condolence cards—were not required to get a funeral director's license. This also violated equal protection.

Finally, the Funeral Board violated the *privileges or immunities* guarantee of the Fourteenth Amendment by forcing IJ's clients to obtain licenses unrelated to their occupation, subjecting them to fines and penalties, and threatening their business.

In a series of bold claims, given where the law on economic liberty was at the time, the final one was the most audacious.

The Fourteenth Amendment was passed shortly after the Civil War to protect the rights of newly emancipated slaves, including their economic liberty rights. These new citizens were increasingly finding their ability to earn a living gutted by southern governments that began to heavily regulate entry into trades and business to keep them out. Through the Fourteenth Amendment, the federal government emphasized that the economic liberty of all Americans was among the "privileges or immunities of citizenship" that states were prohibited from violating.

Then, in 1873, a sharply divided U.S. Supreme Court read the Privileges or Immunities Clause out of the Constitution through a series of cases known as the *Slaughter-House Cases*. These cases arose from a Louisiana law that granted a monopoly to a single slaughterhouse in New Orleans, requiring all butchers to use its facilities. Competing butchers sued, claiming the law violated their rights under the newly ratified Fourteenth Amendment.

The Supreme Court, in a 5-4 decision, ruled against the butchers, holding that the Privileges or Immunities Clause only protected rights associated with federal citizenship. In less than ten years, the Fourteenth Amendment's power to protect individuals from state actions was gutted.

The decision directly contributed to the failure of Reconstruction-era protections for black Americans. It also gave states virtually unchecked power to use regulations to protect all sorts of entrenched interests. Overturning the *Slaughter-House Cases* and restoring the Privileges or Immunities Clause to its proper role as the foremost constitutional protection for the right to earn an honest living was a long-term IJ goal.

As the *ABA Journal* later wrote, the timing of the casket case was "almost spooky": The same month that Nathaniel opened his casket store for business, the U.S. Supreme Court decided *Saenz v. Roe*, which applied the Privileges or Immunities Clause for the first time since 1873. The context was not particularly "IJ." The Court ruled that California needed to distribute welfare payments equally to new and existing residents of the state. To do otherwise, it held, would violate the newcomers' right to the same privileges and immunities enjoyed by other residents. Although they dissented from the majority in the case, Chief Justice William H. Rehnquist and Justice Clarence Thomas expressed an interest in rehabilitating the clause "in an appropriate case."

Craigmiles was perfectly positioned to seize this new opportunity, in a context that was much more in line with IJ's principles and with the Framers' original vision for the Fourteenth Amendment. As far as Chip was concerned, it was no accident that his case was ready to go just as the door cracked open on the Privileges or Immunities Clause for the first time in more than a century.

"One of the things I've always tried to instill in folks at IJ is the importance of making things happen and seizing the initiative," he said. "Never wait for the other side to set the agenda. Always be the one who takes the risk to start something and push it to a conclusion."

An Honest Man in a Corrupt Business

Chip knew that the basic simplicity of caskets was the key to winning *Craigmiles*. He also knew that IJ could not simply assert things about how the funeral industry worked and expect to sway a judge. The team needed an expert to provide the kind of specific, detailed, and real-world information that only an insider would know to support their arguments.

IJ had never used experts before, but Chip started looking around for someone close to the industry who might be interested in helping to reform it. He found a man named Charles "Chuck" Crawford.

"I thought, 'I'll just call him up and set up a meeting when I'm out there in Nashville,'" he said. "And it turned out that he was the honest man in this totally corrupt network of funeral directors throughout the state."

Crawford was a licensed funeral director who had been in the business for nearly 20 years. He had jumped through every hoop the Funeral Board held up: he had completed a degree in mortuary science, as well as an apprenticeship. He took and passed three different licensing exams. He now owned Mortuary Associates, Inc., a funeral establishment that provided burial, cremation, embalming, and transportation services in Nashville. He came to Chip's attention because he had been standing up and voicing opposition to the existing structure and incentives in the industry, including testifying at the Tennessee Legislature—against his personal interests—in favor of deregulating casket sales.

"He wasn't out to raise hell or make a big fuss, but he got attention. And he turned out to be fantastic," Chip said. "Here's a guy who knows his stuff, who masters what he needs to master for trial, and who is supremely credible."

IJ Goes to Trial

IJ's typical litigation strategy was to file a complaint on behalf of its clients outlining the constitutional violations against them, and then to request a motion for summary judgment. A motion for summary judgment is appropriate when there are no genuine disputes of material fact and one party is entitled to judgment as a matter of law.

IJ's requests to decide cases on summary judgment were virtually always approved by the court. Only once before, the previous year, in a free speech lawsuit against the Commodity Futures Trading Commission, had a case actually gone to trial. But in July 2000, Judge R. Allan Edgar denied IJ's motion for summary judgment. The trial was set for the second week in August, giving the team two weeks to prepare.

When they got the news, Miranda thought the fact that the case had proceeded to trial would work in IJ's favor. If they had an opportunity to lay out the information she'd learned in her research, it would be obvious how protectionist and internally contradictory the state's position was.

"Chip and I both found all this stuff about the funeral industry just fascinating, and we both had the impression that the judge did too," she said. "I remember thinking, 'I bet he's interested in this because his parents are of an age where he has had to deal with this or will have to deal with this soon.' And the fact that he didn't just accept the state's argument at face value, and he wanted to learn more, was a good sign for us."

Craigmiles v. Giles would be the first time in nearly 20 years that Chip had tried a case. He, Gretchen Embrey, and Miranda immediately threw themselves into trial tactics, refreshing their memories of—or learning for the first time—the applicable rules of civil procedure and rules of evidence, as well as strategies for objecting and general trial advocacy and presentation.

The importance of IJ's expert made the stakes high: Chip couldn't take the chance that any of Crawford's testimony would be excluded. The purpose of the trial was to establish the facts, and IJ needed to do that decisively.

"As I talked to Chuck Crawford, it became crystal clear that we could boil this down to a theme, one concept that simplified the case down to its essence," Chip said. "And that was, 'It's just a box.'"

He decided to do something unconventional. He tasked IJ's new production director, Don Wilson, with creating a life-size posterboard using a photo of a casket for the trial. A former skateboarder with a wry sense of humor—and a self-starter who had turned his love for skateboarding into a thriving business before getting into production and design—Don took the request in stride.

"A lot of IJ's early demonstratives were seriously overdone," Don said. "So much text. A lot of the early days were me trying to tell people, you're in a court where there's one visual. If there's all this text on it, no one's going to pay attention."

Don took a photo of a casket on film and scanned it to digitize it. Digital cameras, only recently available to the public, were low-resolution and well outside of IJ's budget. He enlarged it using desktop publishing software, loaded it on a CD-ROM, and took it to a printer. The vendor enlarged, printed, and laminated the image before gluing it to a foam core for display. Don returned to the printer to pick up his near-life-size photo of a casket and delivered it to the litigation team to be included in the trial materials and transported to Tennessee.

In the months leading up to the trial, Kelly Smith, the spokesman for the National Funeral Directors Association in Wisconsin, offered news outlets a diverse array of explanations for why casket retailers needed to get a funeral director's license:

- Unlicensed casket dealers may not know the special considerations required for burying a larger person.
- An unlicensed retailer might not know that certain types of caskets are meant for vaults and would be crushed if buried in the ground.
- The laws requiring a license to sell caskets had been on the books for 30 to 40 years.
- The level of service in a retail store might be less than that in a funeral home.

The government itself focused on a host of theoretical risks to consumers from undereducated casket salesmen. It assured the court those consumers were protected by Tennessee's licensing scheme.

If IJ could convince the court that "it's just a box," none of those justifications would matter. While the team needed to address the arguments the Funeral Board presented, Chip urged them to resist trying to imagine and account for every possible scenario. Getting hung up on the way the deck was stacked in the government's favor would paralyze them.

"One thing guaranteed to make an IJ attorney ineffective in economic liberty cases is to see the advantages the other side has because of precedent, to know the weaknesses in your own case, and then to argue yourself into a corner assuming perfect knowledge and perfect performance on the part of our opponents," he said. "In the real world that never happens, especially if you control the terms of the debate from the outset, which we did."

The day of the trial, Gretchen wheeled a dolly loaded with exhibits and supplemental materials into the courtroom, a historic, art deco building most famous for being the location of Jimmy Hoffa's 1964 jury tampering trial. She walked past the low wall separating the public seating from the working part of the courtroom and arranged four 3.5-inch thick "trial notebook" binders on the plaintiff table. The binders contained copies of various materials the attorneys might want to reference during the trial. Then she took her seat on a bench just behind Chip and Miranda, facing the judge, the witness stand, and, eventually, a large easel with a giant picture of a casket on it.

The clerk called the case and invited Chip to begin with his first witness. He brought Chuck Crawford to the stand. After extensively recapping Crawford's background, experience, and continuing education and involvement in the funeral industry, Chip asked the court for permission to bring him to the demonstrative exhibit—the casket photo.

"This illustration represents a typical casket," Crawford began. "Primarily, this is a container to house the body or, simply put, it's the box where the body is put. It has four basic component parts. One being the top. Then we have an interior which has a lining. The third component being the sides and bottom, which are referred to as the shell. Fourth, our handle system." He pointed to each on the illustration.

"Is there anything beyond those basics necessary for a casket to perform its intended purpose?" Chip asked.

"No," Crawford answered.

He walked through a few examples of materials that were available for each part—steel, bronze, or copper for the exterior, and various fabrics for the lining—but he stressed that the only thing that changed between the various options was the price.

"The other side was so flummoxed and didn't know what to do," Chip recalled. "They couldn't cross-examine him about that, because it is what it is. And they didn't ask the judge to have the exhibit taken down. For the entire two days of our trial, that eight-foot-long poster of the casket was just sitting there like a billboard."

His unconventional, keep-it-simple approach seemed to be paying off already.

Chip's direct questions for Crawford lasted all morning, then the court recessed for lunch. As he walked back toward the courtroom after grabbing a bite to eat, Chip saw Arthur Giles and three other members of the Funeral Board, all of whom were present at the trial as observers or witnesses. They were clustered around Crawford, and the conversation appeared to have taken a menacing turn.

"I went over and broke it up, and then Chuck told me what they had been talking about, and they had threatened him," Chip said. "They said his business was really going to suffer, and he better get with the program. I could tell that it was getting heated, but I could not believe the arrogance of that."

Fuming, Chip stalked back into the courtroom and sat down, waiting through the state's cross-examination. When the judge invited him to redirect, he asked Crawford about the conversation.

"The secretary of the state board asked if I was wearing a bulletproof vest," Crawford recounted.

“How did you interpret that?” Chip asked.

“Oh, probably that I could face some type of retribution for participation in this today,” he answered.

“No further questions,” Chip concluded pointedly.

IJ’s questioning of Lisa Carlson, the consumer expert, and Angela Brent, owner of The Casket Store, went without incident. The final witness for IJ was the Reverend Nathaniel Craigmiles. Chip gathered his resolve and approached the stand.

“The problem was that he had a total meltdown the day before trial,” Chip said. “When we did practice for depositions, he’d been fine, but this was court. We started practicing for that, and it was like he went from being this charismatic preacher to being an ex-con.”

As the team practiced for trial, Nathaniel struggled to give a straight answer to the questions Chip asked. He fidgeted; his eyes darted around the room. When answering examples of questions that he might get on cross-examination, he became paralyzed with fear, backpedaling and hedging even on simple “yes” answers that went in his favor.

“Every signal of body language he gave you was, ‘I’m not telling the truth,’” Chip said. “It was really terrifying to think that we have to go to court tomorrow with this guy.”

They had stayed up late, calming Nathaniel down and running through the basic lines of questioning over and over. But not once in the hours of preparation did Chip question the decision to make a former felon his lead client.

“The fact that he had this background, that he had paid his debt for it and was trying his hardest to overcome it, that he was trying to help others—we made no bones about that,” Chip said. “He made no bones about it. It was his redemption path.”

IJ had made him a client for a good reason, and Chip stood by it.

“Being an IJ attorney means you learn not to flinch,” he added. “You don’t flinch in the face of adversity. You don’t flinch in the face of doubt. You don’t flinch in the face of criticism from others who should know better. You maintain your steadfast commitment. You have courage, and you have the courage of your convictions.”

By the time he got on the stand, the Reverend Nathaniel Craigmiles had his courage back. He spoke for less than 20 minutes, including his examination and cross-examination, but he was credible and straightforward, simply a small businessman who wanted to help his community and a pastor concerned about his flock.

"He came through," Chip said.

The trial team adjourned to a conference room they had borrowed from their local counsel's law firm to review the day and to prepare for the next day.

Trial, Day Two

The second day of the trial, the state's witnesses took the stand. There were five, each one a funeral director or member of the Funeral Board. As they offered their remarks, it was clear they had prepared carefully.

One after another, they made the same points. They argued that there was so much to learn if one wanted to sell caskets. Without a license, it would be easy for unscrupulous actors to take advantage of people in a vulnerable position. Different religious communities may have specific requirements or preferences. They were not simply salesmen, they were psychologists, grief counselors, and more. Granted, Nathaniel was a pastor and had experience with supporting people through difficult moments, but others wanting to retail funeral merchandise might not.

"Every one of them was right out of my nightmares from my father's death, with these looks of smug satisfaction that were just disgusting," Chip said. "Except it was even worse, because they all had southern style pompadours and gaudy pinky rings."

Finally, Larry Meriwether took the stand. Meriwether had three degrees, including one in mortuary science, held offices in multiple funeral director associations and on the Funeral Board, and owned Foston Funeral Home in Clarksville. He also represented the black contingent of Tennessee's funeral home cartel.

More than three decades after the end of Jim Crow, the death industry in Chattanooga remained de facto segregated, with white-and black-owned funeral homes serving solely white and black families, respectively.

"Before IJ, I hadn't really traveled a lot of places, and certainly not the Deep South," Gretchen said. "But I remember having a conversation with Miranda at an Outback before the trial—because that was where you went—about how it still seemed very segregated. It surprised both of us."

Meriwether described his education at mortuary school at length: courses in embalming, microbiology, business law, accounting, sociology, and psychology. Training on funeral services and casket design. As he began to recount the story of one of the families he had served at his business, Chip finally objected.

"Your Honor, this is becoming a very narrative answer."

Chip was overruled, and Meriwether returned to his story, a bit flustered. He began to ramble as he talked about his interactions with customers.

"Before they enter the selection room, I show a video to my clients," he said.

Chip was startled. The state hadn't shared any videos in discovery. If this was an important part of the services a funeral director could provide, such that the state was going to discuss it at trial, IJ was supposed to have had the opportunity to see it.

"It is a video prepared by the Aurora Casket Company, and it is entitled 'The Selection Room,'" Meriwether continued. "It discusses the different types of caskets, the construction of them. It discusses the protected and non-protected nature of caskets, and it's about a seven-minute video. And after they've seen that, then we proceed to the selection room."

Chip's reaction transformed from startled to stunned. For two days, with witness after witness, the state had argued that two years of training—through schooling, apprenticeship, or both—were absolutely vital to successfully and ethically selling caskets.

"So in fact, everything that people need to know to have consumer protection and informed choices is available in a seven-minute video," Chip said. "Nobody gets an admission like that unexpectedly. It was just great."

He and Miranda stared straight ahead, not wanting to make eye contact and risk giving away how big a concession the state's witness had inadvertently made. Chip quickly sketched out his plan for cross-examination on the yellow notebook in front of him.

When the judge turned the floor over to him, Chip ran Meriwether back through the casket selection procedure at his facility, from showing clients the video to moving to the selection room. He confirmed that, if the customers had no further questions, the funeral director felt that he had given them everything they needed to make an informed decision.

"You've turned them loose to essentially make a choice based on the information which you've deemed necessary, and it's taken seven minutes?"

"Yes. That's what I give them."

"Seven minutes," Chip pressed. "Not two years of schooling, not two years of apprenticeship, not one year of schooling, but seven minutes?"

"They get the seven minutes, as well as the training and experience that I have," Meriwether responded.

Chip paused for a moment on the answer before wrapping up his questioning.

"Bam, we won the case," he said. "I knew it right then."

Judicial Engagement

Throughout the trial, Judge Edgar's demeanor and posture toward IJ and the state seemed to bear out Chip and Miranda's initial impression that he was interested in the topic and engaging with IJ's arguments, both as intellectual and moral questions. By closing arguments, Chip was feeling optimistic.

"It was clear to me partway through that the judge got it," Chip said.

When the judge invited him to offer his closing remarks, Chip reiterated IJ's ultimate goal in bringing the lawsuit: economic liberty.

"Your Honor, this case is about one of the most cherished American rights, the right to earn an honest living without arbitrary government interference," he said. "In this particular case, it's the right to sell caskets.

"The record in the court that we've presented in the trial, the summary judgment materials, and the arguments set forth herein provide a clear basis for ruling in favor of the plaintiffs, Your Honor," Chip concluded. "We ask that the court consider all of that and recognize the rights of the plaintiffs and vindicate them. We thank you for the day in court."

Rather than moving directly to the state for its closing arguments, as Chip expected, the judge asked a follow-up question.

"Any difference between the legal standard that the court would apply in a Privileges and Immunities Clause analysis versus an equal protection or due process analysis?" he asked.

Chip was floored. He had included the privileges or immunities claim in the briefs as a matter of principle and long-term strategy. He had not expected the court to explicitly engage with it, let alone bring it up at trial.

"He recognized that precedent bound his hands," Chip said. "But I got to have this wonderful dialogue back and forth with the judge about the *Slaughter-House Cases*, because he was genuinely curious about it."

A Nail in the Coffin of the Casket Monopoly

Less than two weeks after the trial, Judge Edgar issued his decision.

In a 16-page ruling, the court handed IJ a complete victory. Judge Edgar enjoined the state from enforcing the Tennessee Funeral Directors and Embalmers Act and the rules of the Funeral Board, and he ordered them to pay IJ's attorneys' fees. He held that requiring individuals who sell caskets from retail locations to obtain a funeral director's license violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment.

"The purpose of promoting public health and safety is not served by requiring two years of training to sell a box," he wrote.

He also discussed the *Slaughter-House Cases* in his decision, noting that while it "is not for this trial court to breathe new life into the Privileges and Immunities Clause 127 years after its demise," "it may be time, as Justice Thomas suggests ... to take another look at the Privileges and Immunities Clause and its place within the Fourteenth Amendment."

The win was electrifying for IJ.

"It was a big deal because now, when other people were going to do research about economic liberty cases, there was going to be something that they could cite," Miranda said. "And of course, now there was something that people at IJ could cite going forward."

"The ruling was a terrific vindication of the notion that you could go in and win on rational basis," Chip said.

Outside IJ, in the months that the litigation was playing out, Kramer had also won over the court of public opinion. The positive media coverage IJ had received since the case launched continued, including a nationally syndicated column by George Will—a widely read and extremely influential conservative commentator—before the trial.

The favorable feelings for IJ and its clients were so pronounced that when the Funeral Board announced in September 2000 that it would appeal the district court ruling, local papers editorialized against it, arguing that "the state should be ashamed the law ever got on the books in 1972."

For its part, IJ welcomed the move. If the issue of economic liberty was going to the court of appeals, it couldn't be better positioned than it was in *Craigmiles.*

As Chip prepared for the appeal, the Funeral Board continued to play its role as the villain in the drama. Following through on its members' threats of retribution for challenging the cartel, the Board attempted to overturn the court's decision allowing IJ's clients to stay in business while the appeal was pending.

They failed, and in April 2002 both sides made their cases before the apeals court. By December that year IJ had its decision: another victory. The 6th U.S. Circuit Court of Appeals affirmed the lower court's judgment completely.

Tennessee's justifications for the 1972 amendment adding the retail sale of caskets to the definition of funeral directing "come close to striking us with 'the force of a five-week-old, unrefrigerated dead fish,' a level of pungence almost required to invalidate a statute under rational basis review," the court held. "Only a handful of provisions have been invalidated for failing rational basis review. We hold that this case should be among this handful."

The court walked through and dispensed with each of the state's arguments, concluding, "Finding no rational relationship to any of the articulated purposes of the state, we are left with the more obvious illegitimate purpose to which licensure provision is very well tailored." Namely: economic protectionism.

"The decision was a big step forward in this whole campaign, which was to say that mere economic protectionism is not a legitimate ground for limiting economic liberty under the rational basis test," Chip said. "And we could work with that."

Although he stepped in occasionally to cover various litigation roles in the years after *Craigmiles*, the case was the last time Chip acted as the lead counsel in litigation. By the time the court of appeals decision came down, it was clear that the organization had grown to the point where he could no longer count on being able to set aside the large chunks of time necessary to be a frontline advocate.

But he had done what he'd set out to do with the case. His instinct—that the caskets were the key to winning, that the essence of the case could be boiled down to a single theme, and that the theme would matter—was correct. He tried to bring the insight, as well as the willingness to be unconventional when it would benefit a case, into as many new IJ cases as possible.

"In law school, lawyers are taught to deal with the complex world that we live in," Chip said. "And that complex world is beset by complex laws, complex statutes, complex decisions. As a result, they tend to complicate things in their thinking."

But, as he had in his first big policy fight when he was in the Reagan Administration nearly two decades before, Chip knew that to succeed, IJ needed to boil issues down and simplify them.

"If you overcomplicate it, pretty soon you're accepting the other side's premises," he said. "And that's not just true of lawyers—it's true of all aspects of what we were doing: communications and design, development, research, and activism."

"You have to have confident moral authority and the courage of your convictions and make your case as strongly as you possibly can," he said. "If we do that, we will win."

Hands Off My Home

"The bottom line is, this is morally wrong, what they're doing here. This is our home, and we're going to stay here. And I'm gonna fight them tooth and nail. I've just begun to fight."
– Jim Saleet, property owner, Lakewood, Ohio

When Dana Berliner first called the Institute for Justice to follow up on her job application, she was in an American Express office in Singapore.

A 1991 graduate of Yale Law School who had just finished a clerkship on the 5th U.S. Circuit Court of Appeals, Dana had made an unconventional move. She decided to take a small inheritance she'd received from a family member and honor a long-standing promise made to her best friend: to travel the world together.

The trip quickly became something more. It clarified what she didn't want—life at a big firm, wading through regulatory thickets and navigating corporate law—and reignited her longstanding idealism about individual rights and limited government.

"I really, really hated law school," Dana said. "I didn't like the approach. I didn't like that it didn't focus at all on rights. Even worse, rights didn't seem to be something anybody cared about. It was a very epistemologically unpleasant experience."

While her peers moved straight into high-powered jobs, Dana packed a backpack and boarded a plane, deliberately pulling herself out of what she called the "new-attorney track": going to an elite school, earning a spot on the law review, publishing something, landing a clerkship, and going to a top-ten law firm.

"Within a month of stepping off the track, I realized, 'That track sucks,'" she said.

While she was traveling, a friend from law school contacted her to tell her about a new public interest law firm just getting off the ground. It was called the Institute for Justice, and it was cofounded by a man he had once interned for named Clint Bolick. He thought it sounded like Dana's kind of place.

Dana tried to investigate, but not much surfaced. It was 1993. There was no website, no hiring brochure, and IJ had just four cases: school choice lawsuits in Chicago and Los Angeles, and two economic liberty cases—one on behalf of D.C. hair braider Taalib-Din Uqdah, and the other representing aspiring taxi drivers in Denver.

But she tracked down a colleague from her clerkship and persuaded him to dig up anything he could find. The more she learned, the more promising the lead seemed. The organization was founded to do rights-based litigation, and it had a start-up culture full of energy and opportunity.

"I dictated a cover letter to my parents and had them send it with my résumé," she said.

Dana made a habit of calling every few months from wherever she could find a payphone or an American Express office that allowed international calls. She and Scott Bullock would talk about what IJ was working on and what the organization hoped to do.

"Scott was famous for not taking calls," Dana said.

IJ was starting to receive constant inquiries from potential clients and had no system in place at the time to screen them. So Scott would have people leave a message and then call them back if the case seemed promising.

"But I was unreachable—there was no calling me back—so he actually had to take my calls, which he groused to me about later."

The more she learned, the more interested she became. So she kept in touch—often in unconventional ways. She mailed postcards from wherever she was: France, Indonesia, Greece. She found one with a picture of the scales of justice and sent it off. The theme of each was the same: *don't forget I exist.*

"I tried to convince them to hire me over the phone," she said. "Which did not work. I had to have a face-to-face interview."

After her world travels with her friend wrapped up, she boarded one more plane, to Washington, D.C., for what turned out to be multiple interviews. The first, with Chip Mellor, lasted more than three hours. Chip's intense approach to interviewing young attorneys hadn't changed much since the wide-ranging conversation that had startled Scott so much two years before. He asked thoughtful, in-depth questions, trying to figure out what Dana believed and how she thought.

"For instance, we had a long discussion of aesthetics and how it related to ethics," she said. "I was so exhausted by the end I went to Dick Komer's office and said, 'Oh my God, that was so hard.'"

She met with everyone else in the organization, too, from Clint and Dick to the office manager. Ultimately, Dana's persistence and IJ's openness to unconventional hires paid off, and she started work in January 1994.

IJ's First Property Rights Case

When Dana joined IJ, property rights was a pillar of the mission, but the organization had yet to launch its own property rights lawsuit. For the first few years, while it focused on economic liberty and school choice cases, IJ developed its property rights practice largely through amicus briefs, mostly filed at the U.S. Supreme Court and in partnership with Richard Epstein, as it had done so effectively in the *Lucas* case in 1992.

Dana filed IJ's first ground-up property rights case in 1994, on behalf of siblings and semi-retired farmers John and Josephine Bronczyk in Minnesota. Because much of the Bronczyks' property was below the high-water mark in the area, the Department of Natural Resources classified it as a wetland open to the public. When the family objected to the trespassing, the government insisted they had no right to bar people from their property.

"There are so many things that we would do differently now with that case," Dana said. "We would send a letter first, confirming that this meant the public could go on the land. And because there were no lawyers involved, the government would have said, 'Yes, that's right.'"

Instead, IJ moved directly to file a lawsuit, and the government immediately "clarified" its position, making so many concessions that the court ultimately found that there was no true controversy.

"That was my introduction to the fact that judges cannot add two statutes together, which has been true all throughout IJ's history," Dana said. "The chances of them understanding that this one fact means this, and then you take that thing and look to this other statute, and that means that, which brings you to this conclusion—judges get that less than 50 percent of the time."

It wasn't a sweeping victory, but IJ got what it wanted from the case. Although the court granted the DNR's motion to dismiss, the agency had made so many concessions that the Bronczyks were able to prevent people from accessing their property without permission. It also whetted Dana's appetite for property rights.

"The right to property leads to so much else," she said. "It seemed very fundamental to me. It is part of the right to earn a living, because you have the right to use yourself and your property to do things. Philosophically, if you think that people own their stuff and own themselves and have the right to do things as long as they don't injure another—that takes care of almost everything."

Unfortunately, the law had moved in the wrong direction on property rights for decades.

English common law, the basis for much of the United States' legal system, had mostly operated along natural rights principles, treating property ownership as a fundamental right derived from individual liberty. Under this tradition, the right to own, use, and dispose of property was considered essential to personal autonomy and a safeguard against arbitrary government power.

Common law courts were generally protective of property rights, requiring clear legal authority and due process before a person's property could be taken or interfered with. In particular, the power of the government to exercise "eminent domain"—that is, the power to take private property for public use—was limited. It could not take land for private benefit, and even public takings were constrained.

The American Founders embraced these principles, embedding them in the Constitution through provisions like the Takings Clause of the Fifth Amendment, which prohibits the government from taking private property for public use without just compensation.

For years, courts reinforced these principles, with Justice Samuel Chase writing in 1789 that "a law that takes property from A and gives it to B: It is against all reason and justice." A few years later, in 1795, Supreme Court Justice William Patterson called eminent domain "the despotic power."

But over time—particularly in the mid-20th century—courts began to loosen the protections that had once defined property rights. Judicial deference to government power expanded, and the careful limits that had long shielded individuals from government overreach started to erode.

By the 1990s, property owners facing condemnation or regulation found the deck stacked heavily in the government's favor, with courts more inclined to ratify official decisions than to scrutinize them closely.

"In every Supreme Court case I read, there would be the setup, the explanation of the history, and it would be absolutely crystal clear how that case should come out—and then they would rule the other way," Dana said.

For a Limo Parking Lot

It was two years after the Bronczyk case before IJ had another opportunity to represent a property rights client in court. But when the opportunity did come, it was clear from the outset it was going to be a game changer for the young organization.

The story came to Dana by way of an attorney named Colleen O'Brien, who saw an article in her local newspaper about a widow named Vera Coking in Atlantic City. Vera had been fighting off attempts by Atlantic City's Casino Reinvestment Development Authority to take her home for years. The reason the agency wanted her land? A developer and casino owner named Donald Trump wanted to build a limousine parking lot.

Both Dana and John Kramer saw immediately that Vera's story had every element IJ looked for in a case: a relatable, sympathetic client; government overreach that was both legally suspect and morally outrageous; and a simple set of facts that made the injustice instantly apparent to a lay audience.

“My goal was always to simplify the stories and to make them almost like Westerns,” Kramer said. “That means you have a good guy, you have a bad guy, and you have the cavalry coming in to fight for a noble cause. And you’re always working toward a positive resolution.”

The facts in Vera’s case were outrageous. The letter she received ordering her out of her home of 36 years was coldly efficient:

> YOU MAY BE REQUIRED TO MOVE WITHIN 90 DAYS AFTER YOU RECEIVE THIS NOTICE. IF YOU REMAIN IN POSSESSION OF THE PROPERTY AFTER THAT TIME, CRDA MAY BE ABLE TO HAVE YOU AND YOUR BELONGINGS REMOVED BY THE SHERIFF.

When the condemnation began in 1994, Vera opposed it in court with the help of a local lawyer named Glenn Zeitz. But construction continued while the case was pending, and by the time IJ got involved, the Trump Plaza Hotel and Casino was completed, with parking lots on three sides of her home. The only part of the project left: to raze her house and two other buildings on the block.

Dana picked up the phone, called Glenn Zeitz, and pitched IJ’s involvement.

Zeitz was a trial lawyer—a capable, passionate advocate who knew how to work a courtroom. But he wasn’t in the business of writing 40-page constitutional briefs. He welcomed the help with that aspect of the case, and IJ formally joined the lawsuit in December 1996. Its focus was on whether taking the property for a casino parking lot qualified as a public use under the Fifth Amendment of the U.S. Constitution.

“ ... For Public Use”

The Coking case showed in stark terms just how far courts had strayed from the common-law tradition that once protected property owners.

The Fifth Amendment promises that property may be taken only for "public use" and with "just compensation." But gradually, governments began to ignore limits on their eminent domain powers and, again and again, courts signed off, ratifying sweeping uses of eminent domain until the definition "public use" was stretched beyond recognition. What once meant roads, utilities, or other projects directly serving the public devolved into "public purpose," and eventually into any supposed "public benefit."

"Anything that a government might be allowed to do at all—storage, planting flowers—it can condemn property in order to do," Dana wrote in 1997. "And it does not need to show that it actually needs the property in question."

This drift culminated in the U.S. Supreme Court's 1984 decision in *Hawaii Housing Authority v. Midkiff*. The Court declared it would not question a legislature's determination of public use unless it was "palpably without reasonable foundation." That standard effectively gave governments carte blanche to take property for nearly any stated purpose—no matter how indirect or speculative—and then transfer it to another private party for profit.

On the ground, the condemnation process reflected that same deference. A developer could pitch a project, claim it would bring "public benefit," and even secure public subsidies to build it. Local boards would rubber-stamp the plan, authorize eminent domain, and transfer title—often with the developer covering the costs.

"The Coking case in Atlantic City asks the New Jersey courts to read three important words of its Constitution—the requirement that a taking be 'for public use'—and force local governments to comply," Dana wrote at the time. "Until there is a ruling that returns substantive meaning to these words, government entities will continue to try to take property for any reason at all."

Cronies in Government—or Good Public Servants?

As IJ got involved in the Coking case, Kramer took special care with the media strategy.

"The challenge was that it would be easy to just generate all this coverage on Trump," he said. "But that wasn't IJ's goal. What I always tried to bring it back to in the media was that he would be powerless to take Vera's home without the government doing his bidding for him. They were renting out this power."

Although the strategy was sophisticated, preparing Vera for a new level of media scrutiny was simple.

"When it came to telling that story, I said the same thing to Vera that I told all our clients, which is 'the only thing we're asking you to do is tell the truth,'" Kramer said. "'What the government's trying to do is bad enough. What you're trying to do is good enough. If we just tell the plain simple truth of what's happening here, we should win.' And that's what Vera did. She just told her story."

In June 1998, ABC News' *20/20* ran a piece called "The Trump Card," which featured Vera explaining that she wasn't simply holding out for money.

"I didn't want to sell because I was so close to the beach, and I loved that place," she said.

The Casino Reinvestment Development Authority declined to be part of the interview, but Donald Trump sat down with John Stossel—for a while, before eventually storming off the set.

Stossel pressed him on the point that Kramer had wanted to emphasize from the start—that the New Jersey government agencies were working hand in glove with Trump on the taking.

"It's you and your cronies in government working together," Stossel said.

Trump bristled at the word choice: "For you to call these people 'cronies' is very unfair. To call good public servants cronies."

Stossel pushed. "In the old days, big developers came in with thugs with clubs. Now you use lawyers. You go to court, and you force people out."

Trump brushed it off, noting that while other people might use thugs, he doesn't do business that way.

"If I wanted to use thugs, we wouldn't have any problems," he said. "It would all have been taken care of many years ago."

The casual reference to violence exposed a rough and tumble atmosphere that proved to be another kind of learning curve for IJ's young attorneys. The New Jersey—and especially the Atlantic City—style of litigation was loud, argumentative, and sometimes bullying.

Zeitz, who had built his practice representing alleged mob members in Philadelphia and New Jersey, relished it, even escalating a phone call with Kramer into a shouting match at one point in the litigation. And while IJ argued Vera's case in the court of public opinion, Zeitz made sure he was part of the story. As John Stossel noted in his *20/20* piece, "Glenn Zeitz is Coking's lawyer. He said we couldn't speak with Coking unless we interviewed him too."

"Zeitz took Trump's deposition in that case and actually got some really good information from him," Scott said. "It was a classic case of two brash, unreasonable guys going at one another in this deposition. It was something to behold."

In the end, the court ruled in Vera's favor—not by declaring the taking outright unconstitutional, but by noting that the state had failed to ensure a "reasonable likelihood of future public use."

"I wish the judge had said Trump's parking lot was not public use, but he didn't say that," Dana said. "What he said was the statute makes hotels a public use—so a parking lot for the hotel would be a public use. However, the contract between Trump Hotel and the condemning agency, the Casino Reinvestment Development Authority, did not limit what they were going to do with the property when they got it."

The contract simply gave the hotel the property, with no restrictions. There was nothing to prevent it being used for a casino at any time once the transfer of ownership happened. Not only was giving the property to the hotel with no restrictions not allowed by the statute, but the law explicitly forbade it.

It was a narrower win than IJ had hoped for, but it was a decisive one: Vera got to keep her home. The taking was blocked. And IJ had found the fight that would define its property rights work for the next decade.

The Floodgates Open

Vera Coking's case caught fire—in addition to the *20/20* piece, high profile outlets from *The New York Times* to *USA Today* covered the story.

"There were a lot of news articles about it, and we did op-eds too," Dana said. "It was a colorful case: elderly widow, limousine parking. Trump even then was a very colorful character that people had heard of."

But the strategy—making it clear that the case was about principles and went far beyond Donald Trump and Atlantic City—paid off. People across the country read Vera's story—and they saw themselves.

"I definitely did not know when we began doing Atlantic City that eminent domain for private development was a giant, nationwide problem," Dana said. "The fact that it was an issue all over the country became apparent quickly, because we started getting calls from everywhere. First it was more on the East Coast, but then it was just absolutely everywhere. That was the beginning of our understanding of the magnitude of the problem."

Dana and Scott took the lead on developing IJ's strategic response. As examples of abuse poured in through letters and IJ's potential-case line, they realized that eminent domain abuse typically happened through one of two avenues.

The most straightforward were takings purely for economic development, with the government seizing private property and turning it over to a developer or other private party who promised to put the property to "better" use. That usually meant creating jobs or generating more tax revenue.

The second kind of takings were done through the abuse of blight statutes, laws that allow governments to designate properties or areas as "blighted" and then condemn and seize those properties for redevelopment. Traditionally, blight designations meant that properties were dangerously unsafe or unsanitary. But, like the definition of public use, Dana and Scott found that the definition was expanding.

By 1996, property might be deemed blighted simply because the government decided it was economically underperforming. Worse, when it came to politically desirable parcels, local governments regularly used these statutes as a pretext to clear land for private development. Once an area was labeled "blighted," even if the properties were occupied, well-maintained, or historically significant, governments could condemn them and transfer the land to private developers for projects like shopping centers, stadiums, or luxury housing.

They soon got a prime example of the abuse of blight statutes right in Scott's old backyard.

The Marketplace at Fifth & Forbes

The plan had an official title: the Marketplace at Fifth & Forbes. The vision was to acquire and demolish as many as 62 buildings housing more than 120 businesses in Pittsburgh—one fifth of the downtown area—and replace them with an urban "super mall" built by a Chicago-based developer.

Pittsburgh Mayor Tom Murphy, the project's architect and cheerleader, pitched it as an opportunity to clear the city's downtown of "blight." In place of the old businesses, he promised national chain stores like The Gap, FAO Schwarz, and an AMC Multiplex Theater to lure suburban shoppers back into the city.

"Can you imagine what a disaster that would have been, given the fate of malls?" Scott said. "To destroy these unique, interesting, historical buildings and replace them with an urban shopping mall because he thought it was going to be the future of Pittsburgh."

As the plan developed, the city floated the idea of using eminent domain to take the properties, putting local business owners into a terrible bind. No official action had been taken, so there was—technically—nothing to fight. But the threat of condemnation hung over their heads, paralyzing them. What incentive did they have to invest in their businesses if their property was going to be seized? For businesses that had been in place for generations, what did the threat mean for their family legacies?

The ambiguity put IJ in an unusual position as well. With no legal filings to challenge, it didn't yet have a roadmap for how to proceed. But in the years since Vera Coking's case in Atlantic City wrapped, IJ had learned more about the ways that eminent domain was used and abused by government, as well as just how many people the problem affected. It was becoming clear that it was time to escalate the fight.

Scott learned about the Fifth and Forbes situation from keeping up with his hometown, and he gave an impassioned speech at a litigation meeting arguing for IJ's involvement. Although they didn't yet have the details for how everything was going to play out, or what specific claims were going to be made, he argued that IJ could simply say that they would represent the property owners, use the "outside the courtroom" tools of public interest law to vindicate their rights, and deal with the lawsuit itself once the city made its move.

"We were realizing at that time that condemnation was typically the last step in the process, and that the property owners were in so much limbo that they would begin to sell because they couldn't take the pressure anymore," Scott said. "We wanted to throw down the gauntlet and dare the mayor to condemn the property."

The approach meant taking a risk and being prepared to adjust course when the city made its next move. As much as IJ had learned in the four years since Atlantic City, there was simply no way to know exactly what they were getting into.

"Experimentation is still an important part of what makes any organization successful," Scott said. "As you get more sophisticated and as you grow, you learn what works and what doesn't, but you still have to take chances without knowing the outcome. We still do that now, even if it's not quite as seat-of-the-pants as it used to be. We did a lot of that in IJ's early days, and most of it worked out."

The Two-Pronged Campaign

Even before IJ officially joined the fight in Pittsburgh, it laid the groundwork for success by working with business owners who were already organizing. Bernie Lynch, the president of Pittsburgh's community development organization, called IJ as early as 1998 to make them aware of the situation and to ask for help and advice. She recalled Scott telling her that silence and acceptance would be the end of the neighborhood.

"He may not have said the following words exactly, but what I walked away from that conversation with was 'shout ... shout long, hard, and loud, and don't stop shouting until justice is served,'" she said.

With no lawsuit in sight, IJ's involvement meant taking the "shout" approach to the next level. Scott and Dana worked with Kramer to develop a two-pronged grassroots campaign to make Pittsburgh ground zero in the battle against eminent domain abuse.

First, the attorneys met with downtown business owners to identify potential spokespeople and assure everyone that IJ would represent them for free if the city moved to condemn their property. The aim was to ease the pressure and give owners hope they might be able to stay.

Meeting with the people whose livelihoods were threatened by the project made it clear to Scott that taking action in Pittsburgh was going to be worth the risk.

"We were fueled not only by the conviction that we were right on the principles, but by this attachment we had to our clients," Scott said. "One of them, George Harris, was an older man in his 70s who owned a flower shop, which he inherited from his father. He was such an old school, gentlemanly small businessperson who cared about his customers and wanted to do this job. And these were the type of people they're trying to kick out to build a mall by a Chicago developer."

Second, they would make it clear to the city officials that they wouldn't be able to simply bully people out of their property. Finding the most effective way to send that message meant getting creative.

IJ decided to announce its intent to stand with the property owners on March 1, 2000, with a rally in Market Square, a gathering place in downtown Pittsburgh. In the two days leading up to the event, Kramer arranged editorial board meetings for Chip, Scott, and Dana with the news and editorial staffs of Pittsburgh's two major newspapers, the *Post-Gazette* and the *Tribune-Review*. The *Post-Gazette* in particular had been supportive of the project and the mayor's promises about what it would bring to the city, and he wanted both papers to hear IJ's perspective.

The morning of the rally, Scott stood with Dana and Chip and about half a dozen people in the pouring rain in the open air of Market Square. Camera crews from each of the Pittsburgh television stations Kramer had persuaded to cover the event watched as the team struggled to get the sound system to work.

Twenty minutes before the scheduled start, Scott looked out at the crowd—which consisted of a few of the property owners and his parents—trying to figure out what the backup plan might look like if the rally was a bust.

"Then, like something out of a movie, about ten minutes before it began, the rain started to clear, the clouds parted, the sun came out, and more than 200 people came into Market Square, many of them carrying homemade protest signs," he said. "The sound system kicked in, and it all came together."

Chip opened the rally, announcing IJ's commitment to defend the property owners.

"We are here to serve notice that the day of the bully is over," he declared. The crowd cheered. "The city can no longer push around property owners and small businesses and get away with it."

Scott followed Chip's remarks, playing up his Pittsburgh accent and pointing out the irony of the mayor deriding IJ as outsiders when he had hand-picked a private developer from Chicago to take ownership of the properties.

Then Dana spoke. She talked about IJ's success the previous year, standing with two Pittsburgh businessmen when the city threatened to condemn their business, Pittsburgh Wool Company, for the Heinz Corporation. Heartfelt stories from property owners and the president of the Allegheny Institute for Public Policy, the state think tank that helped with on-the-ground organizing, rounded out the morning.

It was the first major rally IJ had done for property owners, and it was a resounding success. IJ followed it with op-eds from Dana and Scott in the *Tribune-Review* and the *Post-Gazette*, respectively, reiterating that redevelopment should not happen through threats and violations of constitutional rights. These pieces brought IJ's arguments directly to the public. They also trickled down to smaller outlets that pulled content from the major papers.

Taking IJ's PR to New Heights

As IJ looked for ways to keep the pressure on the mayor, Kramer went to Chip with a pitch "to take IJ's PR to new heights." He had done some digging and found that billboards were relatively inexpensive to rent. He asked Chip if he could try something different: he wanted to run a billboard campaign around the Fifth and Forbes project. Chip told him to make it happen.

"We needed something that was in the face of the mayor, and something that would rally the local folks and help stiffen the backbone of our clients," he said.

He rented ten billboards, each 12 feet high by 25 feet wide, and each situated on major thoroughfares around the city. He developed six different messages to appear in the ads. Two spotlighted possible new tenants of seized land: the luxury jewelry company Tiffany & Co. and a restaurant owned by retired NFL quarterback Dan Marino. The other four focused directly on Mayor Murphy, who had consistently refused to assure Pittsburgh property owners that their land would not be taken against their will through eminent domain.

"I just had fun and came up with different themes," Kramer said.

The billboards were a big hit with local media outlets, even those that were generally supportive of the project. They were impressed with the audacity. The most cited billboards were the ones targeting Marino ("Dan Marino: You were a Dolphin. Don't be a stealer. Take a pass on Fifth and Forbes.") and two targeting the mayor ("Mayor Murphy: Pittsburgh was built on steel. Not stealing." And "Murphy's Law: Take from Pittsburgh families. Give to a Chicago developer.")

Mayor Murphy and his pride in the Fifth and Forbes project were a key part of Kramer's strategy for the campaign. The billboards addressing him had giant photos accompanying the text.

"The mayor was a strong ego, to put it mildly, and he was really the driving force behind all of this," Kramer said. "We knew where he lived, and we knew where he had to go to work, which was City Hall. So we made sure to rent out a billboard on his drive to the office and one on his drive home. And we had 10-foot-tall photos of him on them. The message hit its mark."

Meanwhile, IJ attended city council meetings and hearings with state legislators to challenge the use of eminent domain for private development and explain the way that Pennsylvania's blight laws left property owners across the state vulnerable. The florist, George Harris, was an especially powerful spokesman. In the fall, IJ took out full-page ads featuring him and other business owners, announcing "We're Not for Sale."

"Mr. Harris would come to the city council meetings, and everybody would cry," Scott said. "People couldn't believe this guy—this pillar of the community, salt of the earth, gentleman businessperson—this is the guy whose property you're going to take? It was his father's, now it's his, and you're going to take it?"

The public pressure eventually became so strong that key businesses standing to benefit from the property seizures pulled out of the project. By November 2000, Mayor Murphy met with Fifth and Forbes business owners to officially declare the use of eminent domain off the table in any future discussions of renewing downtown Pittsburgh. It meant that the businesses had a future again. For IJ, it was a milestone and a template for how to win when the fight began outside the courtroom.

“The fact that Chip gave a green light to the whole thing from the get-go was typical of his nimbleness as a leader,” Kramer said. “He had trust in the whole team to do it and to do it well. We had never done something like that before. But Aristotle said you learn how to play a flute by playing a flute. And that defined so much of the early IJ days. But it all worked.”

Scott stayed in touch with the business owners, many of whom remained in business for years after the controversy. Those that moved on were replaced by other businesses in the same distinctive, historic buildings that had characterized downtown Pittsburgh for more than 100 years.

“Mr. Harris eventually retired and then he did pass away,” Scott said. “But after the fight he wrote me. He cut out my picture from the IJ newsletter and sent it with this note that said, ‘The man who saved Pittsburgh. The memory will not fade.’ It was one of those incredibly touching things that I still keep to this day.”

A Trip to Archie Cain Road

Dana and Scott celebrated the victory in Pittsburgh with a slew of new eminent domain cases—in Port Chester, New York; New London, Connecticut; Mesa, Arizona; and Madison County, Mississippi.

“The whole effort on eminent domain was tailor-made for what IJ wanted to do, which was put together human faces, cutting-edge cases, and the kind of media campaign that brought home to people how egregious and widespread this practice was,” Chip said. “As we moved along, we were able to continually build momentum on our own terms.”

Each story was outrageous. In Port Chester, Bill Brody learned that his property was being taken only after the 30-day window in which he was allowed to contest the taking had passed. That meant that he—and home and business owners like him in New York—received less due process than a kid being suspended from school.

In Connecticut, the city of New London had handed its eminent domain power to a private economic development corporation that immediately began condemning homes and businesses in a historic waterfront neighborhood as part of a plan to lure pharmaceutical giant Pfizer into the location.

In Arizona, Mesa native Randy Bailey was fighting the city's efforts to take his brake shop and hand it over to a hardware store that wanted the property to expand—and that had never bothered to negotiate with him directly.

And in Mississippi, the state was going to take property from black families who had lived there for generations to facilitate the construction of a Nissan Motor Company plant.

When Scott read about what was happening in Mississippi, he realized that, of all of IJ's cases, it was the one that was the most politically loaded. The deal was struck by the state legislature, which promised Nissan more than $290 million in subsidies and tax breaks, along with 1,300 acres of land. Highly influential politicians, including Mississippi Governor Ronnie Musgrove and U.S. Senator Trent Lott, were enthusiastically on board.

"They thought everyone would pat them on the back for getting this big development and spurring jobs," Scott said. "And they were willing to take the homes of these people who had lived on that land for many generations to do it."

The Archies were a tight-knit, multigenerational family who had lived on the same land for more than half a century in rural Mississippi, just north of Jackson. Their roots went back even further—before they were legally permitted to own property. Their road was literally named after them: Archie Cain Road. Family members lived in modest homes and trailers on property owned in common by the family. It was a rare, hard-won place of permanence, purchased in the 1940s by the first generation of Archies to hold title after emancipation. And now, in 2001, the state wanted to take it.

Scott called Lorenzo "Lonzo" Archie, whose family owned most of the land being threatened. He left a message introducing himself and offering to discuss the situation and IJ's assistance. He got a return call not from Lonzo or his wife Matilda but from "Sister Hurricane" Stephanie Parker-Weaver.

“She was friendly, but also a little suspicious and very protective of the Archies and the property owners who were fighting this,” Scott said. He offered to come down and meet with her and the Archies, and she agreed.

Stephanie was a civil rights activist, Jesse Jackson’s former Mississippi campaign manager, and the kind of local legend who could park in front of the airport in a no-parking zone, flash a medallion from the Southern Christian Leadership Conference, and assure the security guard that “she’d just be a minute.” They’d wave her through with a smile: “Okay, Steph. We’ll watch your car.”

Stephanie picked Scott up at the airport to drive him to the Archies’ property. True to form, she set the pace (later telling IJ’s president as he hustled through the airport, “Slow your ass down, Chip. We don’t walk that fast in the South.”), and she set the tone. She acted as liaison and gatekeeper, but once IJ’s intentions were clear, she became a staunch ally.

What mattered most to Scott was seeing the place firsthand.

“It’s what we’ll always do, and what I tell attorneys even to this day: don’t meet at a coffee shop,” he said. “Go to the properties and the homes of the people that are there, or the business that is being affected. It’s just so different when you’re sitting at someone’s table and they invite you in. You’re respecting their world and getting to know them and earning their trust. There’s just no substitute for that.”

On Archie Cain Road, he met Lonzo and Matilda, who lived in a modest ranch-style brick home. He met the family patriarch, Andrew Archie, a dignified man in failing health. And he met cousins, nieces, and nephews—people living in trailers on the land, people coming and going, all of them connected to the place and to each other.

Mississippi initiated condemnation proceedings in February 2001, and IJ announced that it was representing the family in March. Scott knew the process would move fast because Nissan wanted to get the project moving, and it was clear from the start that the government was letting the company call the shots. As the director of the Mississippi Development Authority would later admit to *The New York Times*, "It's not that Nissan is going to leave if we don't get that land. What's important is the message it would send to other companies if we are unable to do what we said we would do."

The case proceeded quickly, and the hearing that would decide the Archie family's fate was set for July—compressing what would normally be years of litigation on a complicated and fact-intensive issue into less than five months.

From the first complaint, whenever Scott filed a brief or other paperwork in the case, he sent it to Stephanie to print and share with the Archies and the other owners. With each new document, she would gather the family and other interested members of the community at the Archies' home and do dramatic readings, highlighting points she thought were especially incisive: "Listen to this!" or "Ooh, he fried their ass on that!"

Scott realized later that she was doing it not only because it was the kind of person she was and because she saw an opportunity to rally the community and keep everyone's spirits up, but also because many of the family members, particularly the older generation, couldn't read—especially not a 40-page legal document.

"It was emblematic of how bad the education system was and all the struggles the families had to endure," he said.

At the same time, Scott was leading a parallel case in New London on behalf of Susette Kelo and her neighbors, a case that was also fast-tracked and would go to trial just a month after the Archies'. It was the beginning of an intense ten-year period in which he and Dana would eat, drink, and breathe eminent domain cases.

"It became all-consuming," Scott said. "You have to let it, in a lot of ways, dominate your life. You're constantly thinking about how to build this juggernaut, and that means being mildly or even beyond mildly obsessed with it. You can't go into it thinking, 'Oh, this is an interesting issue, and I'm going to dip my toe into it.'"

Meanwhile, Dana was battling her way through the New York courts on behalf of Bill Brody in a procedural nightmare of a case that would last nearly ten years and ultimately require help from every single person working at IJ at the time.

"We had to do it all then because that window was going to pass, and I wouldn't do it differently," Dana said. "There was a wave and that was the moment to ride it. It was great. It was a ton of work. The cases were great. The clients were amazing. The legal issues were compelling. It was super fun, but it was crazy."

A Vigil and an 18-Hour Trial

The Mississippi case moved so fast that there was no time for discovery. Scott and Dana would eventually see that these tight timelines were par for the course in eminent domain cases—the private recipients of the property wanted to get their development projects moving sooner rather than later.

"We had to play the hand we were dealt," Scott said. "And that meant doing things that we wouldn't normally do. For instance, lawyers are not supposed to ask questions they don't know the answer to during a hearing. But that's what we had to do. We had to break the rules because of the situation we found ourselves in."

The day before the hearing, IJ hosted a candlelit vigil led by Martin Luther King III. King wore an IJ sticker that said "Stop Eminent Domain Abuse" and spoke about the sacredness of home and property. Stephanie spoke, along with Chip, Scott, and Dana. The Archies and their friends joined hands with civil rights leaders, community members, and churchgoers to sing "We Shall Overcome."

"The vigil was beautiful," Dana said. "There were so many people there, and the church was packed. It really gave me a sense of how much everyone cared. They were supporting the Archies, of course. But also, none of the people going through this knew it was a huge national issue, so every group of people we worked with felt that this horrible fate had befallen them. These were people standing up and saying, 'We don't want this to happen to us anymore.'"

It turned out that the litigation team would need all the energy and encouragement the vigil generated at the next day's hearing. When they walked into the courtroom at 8:30 that morning, the judge announced that he was going to start the proceedings immediately, and they were going to finish it that day—he didn't care how long it took.

The day proceeded at a grueling pace, with very few breaks. At eight in the evening, Andrew Archie, who was diabetic, collapsed. An ambulance had to be called, and he was carried out on a stretcher. When Scott and Dana protested that their client was gone, the judge insisted that other family members could testify on his behalf: move on.

"With the level of experience we later had, I think we certainly would have said, 'No, we're going to stop now. Our client went into shock and had to be taken to the hospital. His son can't testify, that's hearsay,'" Dana said. "Within five years we would have known to do that, but at the time we were just like, 'Okay, I guess that's what we have to do.'"

"It was the most absurd litigation experience I've ever been in," Scott said.

At 11 p.m., the court reporter protested that she needed a break, or she was going to faint.

When the hearing finally wrapped 18 hours later, at 2:30 a.m., and the IJ litigation team was gathering up their papers, Scott overheard a state official talking to the judge.

"Judge, we've got to get these contracts let by next week," he said.

The judge replied, "Don't worry, you'll have the opinion by then."

"It was not an encouraging sign," Scott said.

When the opinion came down, it was indeed against the Archies. But the judge seemed to feel sufficiently uncomfortable with his role in railroading the family that he opened his opinion with a quote from the Book of Common Prayer.

"It was basically, 'Forgive me for what I'm about to do,'" Scott said. "Like he felt like he had to do this, but he did feel guilty about it, and he wanted people to know that."

Waiting for Justice in Mississippi

At that point, Mississippi officials assumed the battle was nearly over. All that remained was determining compensation, so they began making the Archies offers. It was clear that the idea was to get to a number that would make the Archies fold so the litigation would go away and the project could proceed.

They started with lowball offers based only on the property's current appraised value, ignoring both the rezoning that made the land more valuable and its unique worth to the Nissan project.

In other words, the state priced the land as if it were ordinary rural acreage while trying to take it for a multi-million-dollar development—a tactic IJ would see repeatedly in eminent domain cases. Eventually, the offers escalated, reaching one million dollars, a huge sum for a rural Mississippi family of modest means.

Meanwhile, Stephanie, who had been a tireless ally of the Archies throughout the case, was losing faith—not in IJ, but in the prospect that the Archie family could vindicate their rights in the Mississippi justice system. She urged them to seriously consider the offer. Even IJ's local counsel, James Ross, was leaning toward settlement. For a moment, it seemed like the pressure might become too much.

Scott flew down to Mississippi for another meeting. He gathered again with Stephanie, Ross, and the family in the Archie family home. It was emotional. Tense. Not angry, but heavy with the weight of a decision that would define not just IJ's legal strategy, but the family's legacy.

"In a lot of ways, Stephanie was right about justice in Mississippi," Scott said. "But I was confident given the attention we were getting and the strength of the legal claims. I thought we had a real chance of winning, even in Mississippi. I told them, 'I think you ought to keep going and you ought to keep fighting.'"

The Archies listened to James Ross. They listened to Stephanie. Then they looked at Scott and said, "We agree. We're going to keep fighting."

Mississippi officials were stunned. They'd put a million dollars on the table, and the family had walked away. It couldn't have been more clear that, for the Archies, the fight had never been about holding out for more money.

"This is why public interest law is so different," Scott said. "Most attorneys look at the issue as 'what's the most money I can get for my clients?' But for the Archies and so many eminent domain clients, it was about pride and emotional connections that don't have monetary values. It was about respect, and they did not get that from the state."

The Mississippi Supreme Court Intervenes

At the same time the compensation offers were coming in, Scott and Dana were filing for an emergency stay from the Mississippi Supreme Court to prevent the compensation trials from going forward and to ensure that none of the families in the contested area were evicted from their property.

In September 2001, their work and the Archie family's steadfast commitment to the fight paid off. The Mississippi Supreme Court granted the stay, ordering the state to hold off on evictions and even compensation trials until the court could review the Archies' appeal and consider the constitutionality of what the state was doing.

When Scott called to deliver the news, the family was elated. Stephanie screamed. They had stood their ground, and they had won.

With the stay in place, the project timeline started slipping. The state and Nissan reevaluated their plans. They redesigned the project—something they'd sworn in court was impossible—and announced they no longer needed the Archie family's land. The condemnation actions were dropped.

"Even though at the trial they said, 'Oh, this is definitely necessary for the landscaping we want to do'—and all these ridiculous justifications they were making up on the spot—when we got the stay, miraculously the takings were no longer necessary," Scott said.

While the news was still fresh, Scott flew back down to Mississippi for a victory celebration. He told the family they could name the place, and they announced, "This is a celebration. We're going to Red Lobster." Virtually every member of the Archie family came, and they packed the restaurant with 40 or 50 people.

"It's really important to celebrate what you've achieved and to do that with the clients," Scott said. "It's a recognition of the true partnership you have with them. You're working hand in hand. They're putting their trust in you and you're doing everything you can for them. That's something you don't often get with the normal practice of law."

The Archies later joined IJ at a Partners Retreat for the organization's donors, where they spoke about their experience. They could recount the motions and the rulings as well as any lawyer. They'd lived it. They'd borne the brunt of the fight. And they'd kept their homes.

"After the case, the Archie family were really heroes to their whole community," Dana said. "They had stood up to the state, to a global corporation, and won. They hadn't caved."

Building the Case: Public Power, Private Gain

By the time the Archies were celebrating their victory, IJ was inundated with calls and letters from around the country, most describing similar abuses. But while the evidence of a nationwide problem mounted, it remained anecdotal.

"We were getting all these calls and doing more cases, but when we tried to get national media, they kept asking, 'How much of is this happening?'" Dana said. "And there was no measure of it at all—absolutely nothing."

As Kramer worked the phones with outlets like *60 Minutes*, *The New York Times*, and *CBS Evening News*, he ran into the same obstacle consistently. Reporters agreed the cases were compelling, but without national statistics the story remained fragmented, no matter how many examples piled up.

That bottleneck—along with a producer's blunt refusal to greenlight a *60 Minutes* segment until there were national figures—sparked the idea that became a report entitled *Public Power, Private Gain*. It was clear to the whole team that it was essential to figure out some way to quantify what was happening in states and municipalities across the country.

"We had to have an answer to that question," Chip said. "So I tasked Dana, who was one of our star litigators, with going through public records and media accounts across the country to identify documented instances where private property was taken by government for private use. And it turned out that we had just scratched the surface in our comprehension of how widespread this was."

Dana focused on media accounts by necessity—there was no systematic source of data. Cities overseeing redevelopment projects didn't track how eminent domain was used, and neither did the states. In a few places, courts recorded the total number of cases filed, but those lumped together every kind of taking, from schools and roads to the very projects IJ sought to challenge. There was no way to separate out condemnations for private development.

Worse still, looking only at filed cases dramatically understated the problem. As IJ had learned in Pittsburgh and elsewhere, the threat of condemnation was often enough to force people to sell. In many cases, no eminent domain action ever needed to be filed.

So Dana and a research assistant named Rob Wiles spent more than two years combing through everything they could find—public records, news stories, court filings, and government development plans. Their goal was to document every instance in a five-year period where the power of eminent domain was used or threatened for private development: not for schools or roads, but for someone else's bottom line.

The resulting publication, *Public Power, Private Gain*, catalogued more than 10,000 properties—homes, businesses, churches—threatened or taken through eminent domain for private use between 1998 and 2002. It was the first and only national report of its kind.

When *Public Power, Private Gain* was ready in April 2003, IJ pulled out all the stops to promote its findings. Kramer sent out 51 different press releases—one for each state, plus a national version—so every local reporter in the country could see how their own constituents were affected. Each release was rounded out with real-life examples.

They held the press conference at the National Press Club, and two reporters showed up. It was a gut punch.

"It was another example of some of our greatest successes starting with some of our biggest challenges or failures," Kramer said. "And it's not a failure until you let go or stop trying."

60 Seconds to Get *60 Minutes*

On the cab ride back to the office, Kramer turned to Dana and promised her: "We will get *60 Minutes* to cover this. I don't care what it takes."

That afternoon, he picked up the phone and called Don Hewitt—the legendary creator of *60 Minutes*. Hewitt's secretary listened to Kramer's pitch ("just 60 seconds") and told him she would see what she could do. About half an hour later, Kramer got a call back: Don Hewitt was on the line.

"I understand you have a story for me," he said.

"Yes, sir. And I can give it to you in 60 seconds," Kramer replied.

He summarized what Dana had found in *Public Power, Private Gain*. He explained that for the first time, they had national statistics documenting how dramatically eminent domain abuse had grown across the nation, and the numbers were big—more than 10,000 in just a five-year period. And the stories came with real-world human characters. These stories put a human face and drama on otherwise dry numbers.

A week later, Dana, Scott, and Kramer were sitting in the IJ conference room with Bob Anderson, the top producer for *60 Minutes* host Mike Wallace.

The resulting *60 Minutes* piece aired as the closing segment of the season premiere in June 2004. It featured Randy Bailey, the brake shop owner in Mesa, Arizona, and Jim and JoAnn Saleet, an elderly couple from the Cleveland suburb of Lakewood, Ohio, whom IJ represented. Lakewood was trying to use eminent domain to force the Saleets out of their home of decades to make way for more expensive condominiums. To do it, the city was arguing that the couple's well-maintained property was blighted.

As the mayor, Madeline Cain, explained to Mike Wallace, "The term 'blighted' is a statutory word. It really doesn't have a lot to do with whether or not your home is painted. The question is whether or not that area can be used for a higher and better use."

Because the city could define blight—statutorily, as the mayor put it—in Lakewood, a blighted home was any house that didn't have three bedrooms, two baths, an attached two-car garage, and central air.

"That's the criteria, and it's ridiculous," Jim Saleet retorted. "And, by the way, we got up at a meeting and told the mayor and all seven council members their houses are blighted, according to this criteria."

The *60 Minutes* piece featured interviews with Dana and Scott, and it showed Randy Bailey at his brake shop, explaining that he inherited the business from his father. He wanted to pass it to his son, but the city insisted it would be put to better use to facilitate the expansion of a nearby Ace Hardware.

"I'm standing in their way," Randy said. "I'm the thorn in their side."

The *60 Minutes* finale was an essential building block in the campaign against eminent domain abuse. It exposed the issue as a national crisis, and it validated everything IJ had been saying.

Property owners began to see change within weeks. All the members of the Lakewood city council, including the mayor, were voted out of office after the segment aired. With IJ's help, the residents' work to pass a referendum rejecting the redevelopment plan was successful. And a state appeals court ruled in Randy Bailey's favor, allowing him to keep his brake shop.

"More than any other piece," Kramer said, "it set the terms of the debate."

It was also the launchpad for an expansion of IJ's nascent approach to strategic research. *Public Power, Private Gain* became a blueprint: it was further proof that good data, wielded well, could reshape public understanding and policy on a national scale. It inspired a series of follow-up reports. It fueled grassroots campaigns. And when the U.S. Supreme Court later ruled against IJ in *Kelo v. New London*, the report became the backbone of the organization's pivot to the states.

Kelo v. New London

By mid-2004, IJ was litigating eminent domain cases all over the country, and several of them would have been excellent vehicles to bring the issue before the U.S. Supreme Court.

"We were building all this stuff in tandem, which was very cool," Chip said. "And at that point, we could pick and choose which cases to bring. The upside of it was that by the time *Kelo* came around, we had taken this obscure issue and made it national."

The New London case had wound its way through the Connecticut courts, with the property owners arguing that the takings violated both the U.S. and Connecticut constitutions because the property was being transferred from one private party to another without a clear public use.

The trial court issued a mixed ruling—blocking some of the takings, but allowing others. On appeal, the Connecticut Supreme Court upheld the city's plan in a narrow 4-3 decision, concluding that economic development qualified as a public use.

IJ appealed to the U.S. Supreme Court in August 2004. And although it had litigated the case from the start as though it could go to the Supreme Court, no one really expected the Court to take the issue up so soon. In 1954, in *Berman v. Parker*, the high court had upheld the use of eminent domain in Washington, D.C., to clear "blighted" neighborhoods, ruling that "public use" under the Fifth Amendment encompassed broad public purposes such as aesthetic and economic revitalization.

Three decades later, in *Hawaii Housing Authority v. Midkiff*, the Court approved Hawaii's effort to break up a concentrated land oligopoly by transferring property from landlords to tenants, again affirming that public use could be defined in sweeping social and economic terms.

"So in *Kelo*, here's a case 20 years later that's basically the same thing, and it was ominous because John Paul Stevens, who joined the opinion in *Midkiff*, was still on the court," Chip said.

When the Court agreed in September 2004 to hear Susette Kelo's case, the consensus in the legal community was that it would be an uphill battle. But IJ was determined to put together its best effort, and it mounted a huge campaign, with strategies encompassing everything from additional national media coverage to local demonstrations.

It was IJ's third time at the high court, and the case was as high-profile as the *Zelman* school choice case had been two years before. That fact was entirely attributable to the way that IJ had approached the issue from the start.

"To give you a sense of where we were from a media perspective when we started, I literally had to explain to a reporter from *The New York Times* what eminent domain was when I was pitching the Coking case," Kramer said.

"They didn't even teach eminent domain in my property class in law school," Dana said. "Then while all these cases were going on, I was fielding calls from lawyers in dozens of cases all over the country, talking about the legal questions and sorting through how to approach them."

Kramer pounded the phones in the week leading up to the argument from a hospital room, after undergoing an emergency appendectomy. Lisa Knepper, now a senior part of the communications team, built on the experience she'd gained in the run up to *Zelman* two years previously, helping drive attention and interest in the case and the issues at stake. As a result of their work, dozens of newspapers across the country editorialized for ending eminent domain abuse.

On the day of the argument, February 22, 2005, the marble expanse in front of the Supreme Court was crowded with reporters, cameras, and supporters of the homeowners. The courtroom was packed—members of the public who were not in line by 2 a.m. did not get in.

Susette, wearing a tweed suit in the same shade of pink as her house, walked with Scott and Dana into the courtroom, taking a seat in the public gallery. Scott opened the argument by telling the Justices that what was at stake was nothing less than whether the words "for public use" had any substantive meaning left in the Constitution.

The Justices pressed him with questions about whether struggling cities had any tools to revive themselves if they could not condemn property for economic development. Justice Sandra Day O'Connor asked the city's attorney pointedly whether the government could take a Motel 6 to put up a Ritz-Carlton. He answered "yes"—conceding the whole theme of IJ's case.

"From the wide variety of questions and issues the Justices raised, one could tell that the Court had not seriously considered the meaning of 'public use' in many years," Dana wrote at the time. "I won't attempt to guess how the Court will decide the case, but it was obvious the Justices were concerned about the consequences of their decision."

Susette and her neighbors walked out of the Court that day knowing they had brought everything they had to the fight. They'd made their case to the last people in a position to protect their homes. The decision was still months away, but the argument confirmed that the fight over "public use" had become a defining battle over the limits of government power.

Hands Off My Home

In June 2005, the Supreme Court issued its decision. It affirmed the Connecticut Supreme Court's ruling, holding that the city's redevelopment plan served a public "benefit" and therefore satisfied the public use requirement of the Fifth Amendment.

"We lost, but we lost five to four, and Sandra Day O'Connor flipped 180 degrees and wrote a stinging dissent that took all our arguments right to heart," Chip said. "It even cited *Public Power, Private Gain* in a footnote as an authority for how widespread the abuse was. We got everything but the victory."

The decision came down on a Thursday. Chip's first response was to find Scott and Dana to encourage them. In addition to the personal and professional disappointment he knew they would be feeling, their next step was to call the clients and share the news, which could be one of the most difficult parts of the job.

"Scott and Dana and I each chose different clients, to call and break the news to them, and you could hear the disappointment, but also the resolve," Kramer said.

One of the clients he called was homeowner Richard Beyer, whom Kramer had worked with especially closely, even camping out on his property overnight when the city threatened demolition.

"The first thing that he did was thank me for what I had done to save his home in the meantime," Kramer recalled.

As he re-read the decision, Chip began thinking about next steps. Justice John Paul Stevens authored the majority opinion in *Kelo*, and he made the concession that "nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power. Indeed, many States already impose 'public use' requirements that are stricter than the federal baseline."

Everyone at IJ was ready and willing to fight back, even with the setback in court. Chip and the team developed the idea for a nationwide campaign to overturn eminent domain abuse at the state level through litigation under state constitutions and through legislative and constitutional changes that would better protect property owners. Chip decided he wanted to announce it at the National Press Club the following Wednesday—just days away and less than one week after the Supreme Court had issued its opinion.

He convened a core group of staff in the conference room at IJ's office, then at 1717 Pennsylvania Avenue in downtown Washington, D.C. The whole team—which included Dana, Scott, Kramer, designer Don Wilson, a relatively new hire named Bert Gall, and others—was enthusiastically committed to the idea.

"The big question was, what would this look like?" Chip said. "We'd never done anything like this. Where will we get the money? Who will we staff on the project? We just had to figure it out, and I said we're going to work nonstop until we do."

When the team met that weekend, Chip pulled an eminent domain research assistant named Christina Walsh into the conversation. Young and relentless, Christina regularly spent weekends buried in files, often working late into the night.

"Some nights I'd research until 3 a.m. at home," she said. "I was just obsessed."

Seeing her at her desk, Chip casually waved her into the conference room. He announced that he was going to commit $3 million—an amount nearly equal to the organization's entire annual budget at the time—to the effort, which the group decided to call the Hands Off My Home campaign.

"I just sat on the edge and listened in awe. Like, 'What am I doing here? This is amazing,'" Christina said. "I remember that $3 million felt like a huge amount of money back then. And the feeling in the room was excitement and resolve and no defeatism at all."

As the plans for the campaign came together, Chip assigned Bert to run it. Christina became assistant coordinator for the Castle Coalition, a grassroots project IJ had launched in 2003 to fight eminent domain abuse outside the courtroom. She and Steven Anderson, the Castle Coalition director, worked alongside Bert, Scott, Dana, and others to develop legislative reforms and foster community activism. IJ had already created a general blueprint for helping communities where litigation wasn't the right fit, with Pittsburgh's Fifth and Forbes fight as the leading example. The idea now was to leverage public outrage to accomplish even more.

"For years we had been getting more calls than we could handle," Dana said. "And some of them were cases that weren't quite right for us at that point, especially early on. So instead, we helped them engage in activism against the various projects. And that's how the Castle Coalition and then the activism department came to be."

Meanwhile, Don was tasked with creating the graphics and materials that would carry the message into neighborhoods across the country. His work had become an indispensable part of IJ's identity, and the Hands Off My Home logo—a stark red backdrop with the silhouette of a giant hand looming over a small house—became iconic.

"Everyone thought I was like a magician, because everyone at IJ was a legally minded person," he said. "They work in words; they don't work in creative visual concepts."

Working on the campaign was personal for Don, because eminent domain had hit home in a literal way. Back in Indiana, his old skateboard shop, which his father had taken over, sat across from the South Bend airport. Just months after Don arrived at IJ, the airport announced plans to expand and designed a new road to cut directly through the building.

With help from Dana and Kramer, he published an op-ed in the *South Bend Tribune*, but the case wasn't quite "IJ" enough to take on. The condemnation ultimately went through but, as IJ would see many times in its campaign against eminent domain abuse, the project stalled out not long after the original owners were evicted.

Years later, Don revisited the site.

"Just an empty field," he said. "Nothing there except for an electrical box."

Harnessing the Backlash

The Hands Off My Home campaign expanded rapidly. IJ hosted national and regional conferences, training activists to organize rallies, work with local media, and pressure lawmakers. They partnered with groups across the philosophical spectrum—the NAACP, the Farm Bureau, the National Federation of Independent Business, and many more—to build broad coalitions.

"We'd bring one or two people from each hotspot, teach them how to go home and organize, and send them back," Christina said. "We were building it as we went."

It was messy, hands-on, and exhilarating: helping community groups design logos, draft press releases, and mobilize their neighbors. By the end of 2005, IJ had developed a sophisticated and effective dual mission for the Hands Off My Home campaign: fighting local eminent domain battles and driving a massive legislative push in the states. As the campaign evolved, the work became more refined, producing toolkits like the *Eminent Domain Abuse Survival Guide* and even a training DVD.

There was also strong national interest in reform. Two of the first calls IJ received after the *Kelo* ruling came down were from Maxine Waters, a Democrat from California, and John Cornyn, a Republican from Texas. The two lawmakers rarely found themselves on the same side of an issue, but here they issued a joint statement condemning the decision.

They weren't the only politicians interested in making a statement against the Court's ruling in *Kelo*. IJ's phones rang nonstop with requests from governors' offices, senators, and state legislators who wanted to act. Scott and Dana soon found themselves not just litigators but legislative strategists. Along with a handful of other IJ attorneys, they divided up the states and began the painstaking work of researching laws, drafting testimony, and advising lawmakers.

The nationwide interest propelled change—and it helped ensure that the funding for the project came in, too.

"Launching Hands Off My Home was an institutional decision," Chip said. "I was confident that I could raise the money, but if I didn't, it would mean the rest of the organization would take a hit. But I was ready to do that because I felt like this was one of those moments you had to grab and maximize, and the risk was worth it."

Because the campaign played out over several years, Chip was able to weave its costs and the funding for it into the organization's growing budget over time and in a way that didn't compromise the other work IJ was doing on economic liberty, school choice, or free speech.

"It became a dominant part of our litigation portfolio for a period of time because we had such great cases and were so successful," he said. "But it never became the tail that wagged the dog."

For Scott, the real turning point after *Kelo* was realizing that eminent domain had entered the public consciousness in a way it had never been before.

"In the early days, you always had to explain what eminent domain even was, why it mattered, and why it was controversial," he said. "But post-*Kelo*, people already knew it was a big issue. You could cut to the chase—they wanted to know what IJ was doing about it, or they had a specific example they wanted to talk through. That was true whether it was a donor or a reporter or just someone you might be talking to at a party."

Ohio Becomes a Tipping Point

The first major post-*Kelo* litigation success played out in Ohio. The Saleets in Lakewood—the stars of Mike Wallace's *60 Minutes* segment—won their fight for their homes outside of court in the months prior to the *Kelo* decision. The city's voters first rejected the development plan that would have taken the couple's neighborhood and then rescinded the blight designation that allowed the city to condemn the homes in the first place.

But another Ohio case, on the other side of the state in a Cincinnati suburb called Norwood, went to the Ohio Supreme Court less than six months after the Supreme Court handed down its decision in *Kelo*.

In January, Dana argued on behalf of IJ's clients Carl and Joy Gamble and other property owners before the Ohio Supreme Court, urging the judges to reject the U.S. Supreme Court's rationale in *Kelo* and provide greater protection for property owners under their state constitution.

Her closing remarks drove home the points that IJ had been making for years, which Justice O'Connor had reinforced so powerfully in her dissent. Under the current federal standard, no home was safe from seizure.

"As the members of this court drive home today, I ask you to think about which of the dozens of neighborhoods you pass would not be 'deteriorating' under Norwood's definition," Dana said. "Which of them have no diversity of ownership, no older buildings, no cul-de-sacs, no driveways people have to back out of. Those neighborhoods are full of people like Carl and Joy Gamble and unless this court rules in their favor today, all of those neighborhoods will be subject to condemnation for private development under Ohio's Constitution."

Six months later, in July 2006, the Ohio Supreme Court ruled unanimously in the Gambles' favor.

"It read like it had been written by us," Chip said. "It quoted every libertarian philosopher and thinker from John Locke to Richard Epstein. I said at the time, when I wrote the memo to the staff describing it, lawyers go their entire careers and never get a decision this rewarding."

Indeed, the Ohio Supreme Court had set the gold standard for constitutional protection of property rights. It struck down economic development as a standalone justification for takings and went further, ruling that vague terms like "deteriorating area"—invoked by Norwood to justify seizing the homes—were unconstitutional "standardless standards."

In the months leading up to the decision, the case produced a string of dramatic "IJ Moments." With demolition imminent and neon orange Xs painted on the Gambles' home, Bert Gall's emergency appeal to the Ohio Supreme Court won a stay of demolition in just 22 days—news that arrived on February 22, 2005, and was greeted with whoops of joy back at IJ's office, where staff and clients had just returned from oral argument in the *Kelo* case. At trial, Scott brought Joy Gamble to the stand, where her quiet testimony about 35 years in her home moved nearly everyone to tears, leaving the city's attorney to simply mumble "no questions" when invited to cross-examine her.

The victory not only saved the Gambles' home but also established vital protections for property owners across Ohio. As the court put it in the final sentence of the opinion: "Although the judiciary and legislature define the limits of state powers, such as eminent domain, the ultimate guardians of the people's rights, as evidenced by the appellants in these cases, are the people themselves."

The Aftermath

For five years after the *Kelo* decision came down, the Castle Coalition and IJ's litigators had their hands full harnessing the extraordinary backlash and translating it into concrete reforms.

By the time the dust settled, 42 states had passed new statutes, 12 had amended their constitutions, and 11 state supreme courts had rejected or sharply limited *Kelo*'s reach. The Castle Coalition saved more than 20,000 homes, small businesses, and other properties from eminent domain abuse.

Legislatures tightened the definition of public use, narrowed the concept of blight, gave owners rights of first refusal, shifted the burden of proof, and even imposed waiting periods before condemned land could be handed to private developers.

By 2010, the flood of cases had slowed, and eminent domain abuse became less common thanks to the glaring public spotlight and tightened financing for the kind of redevelopment projects that drove the problem. The Castle Coalition continued to work with communities where abuse persisted, and IJ remained alert for litigation opportunities that might bring *Kelo* back before the Supreme Court. But the fights were growing much more ad hoc.

"We will always have to continue to monitor it," Scott said. "It's like the Jefferson quote, 'the price of freedom is eternal vigilance.' There are absolutely still problem areas and problem pockets that we want to tackle. But eventually it comes down to making a hard-nosed assessment, and we decided we'd largely achieved what we set out to do in fighting private-to-private condemnations."

"When we went into eminent domain, the issue was uncharted territory for us," Chip said. "When we launched Hands Off My Home, we had never taken on a campaign of that magnitude. Suddenly, we had multiple cases going on that turned out to need attention pretty much simultaneously. Making it work was a matter of the dedication and devotion of the people on the front lines, and the dedication and devotion of the people behind the scenes."

In the years that followed, some of IJ's clients moved on and sold their homes and businesses. Others stayed. On Archie Cain Road, the trailers and the little brick house are still there, the family still waving at one another across the yard. In New London, IJ helped move Susette Kelo's little pink house across town, where it became a monument to her fight—even as the lot where it once stood remained empty, with Pfizer abandoning its plans and closing its research and development headquarters.

"One of the hallmarks of IJ—and I'm so proud of this—is, 'you just do what it takes,'" Chip said.

They hadn't won every case. But after a decade of work, no one at IJ had to explain what "eminent domain abuse" meant. Reporters, lawmakers, judges, and ordinary people all knew the words. "Hands off my home" had started as a rallying cry. It ended as a promise kept in courtrooms, statehouses, and neighborhoods across the country where people refused to be moved.

IJ Evolves

"The whole point of starting the Institute for Justice as a new organization, rather than simply cobbling it on to an existing organization or going to work for an existing organization, was to establish a long-term, strategic, principled approach to libertarian public interest law, something that did not exist."
– Chip Mellor

IJ celebrated its 20th Anniversary at the Willard Hotel in Washington, D.C., in September 2011. The two-day event, which included panel sessions and updates on the Institute's progress and plans, brought together clients, donors, and IJ's staff.

By that point, IJ had grown to employ 33 lawyers, whose work was supplemented by teams in legal support, strategic research, activism, development, communications, and administration. Its budget had reached $13 million. It had brought cases to the U.S. Supreme Court five times, on issues that spanned all four of its pillars, each one developed painstakingly from the ground up over multiple years. The organization had established a track record of success against long odds and a holistic approach to achieving its goals, routinely pairing courtroom victories with legislative and activism wins and earning 18 national awards for its communications work, from media relations to web design.

The event also marked the first time that Chip Mellor felt he could pause, exhale, and truly savor the moment.

"There were some absolutely stunning, memorable, great times during the first five or 10 years, but it was hard," Chip said. "It was hard because when you're starting from nothing, there's so much you have to prove—to yourself, and to others—to get it done. At that event, I felt like I caught my breath in a way I hadn't been able to do in 20 years."

The 20th Anniversary was a gathering of the people and an encapsulation of the energy that had brought IJ to that point. It was an all-hands moment to take stock of the lessons and the victories of the past as well as the potential for the future.

The celebration wrapped with a formal dinner and a video that opened with sweeping footage of the Mountain West, set to the theme music from the 1958 film *The Big Country*. In seven minutes, it marked key institutional milestones: IJ's first Supreme Court victory for school choice. Winning the New York van case. Taking on Donald Trump in Atlantic City. The first appellate court victory for economic liberty since the New Deal in *Craigmiles*. The *Kelo* decision and Hands Off My Home campaign. Long-tenured lawyers and staff—including Scott Bullock, Dana Berliner, John Kramer, Deb Simpson, and Christina Walsh—were cast as modern counterparts to the heroes in the western classic *The Magnificent Seven*: legal gunslingers taking on the fights that needed to be fought and defending ordinary people who were besieged by injustice and out of options.

The portrayal was not a retrospective victory lap. It was a case study, evidence of a durable and deeply moral model of change grounded in principled litigation, human stories, and lasting impact.

The video concluded with IJ clients from every era and pillar of litigation declaring on screen: "I am IJ." When the video ended, the lights stayed low, and a spotlight landed on JoAnn Saleet at a table in the front corner. She stood, and said, "I am IJ." Hector Ricketts followed. Then Susette Kelo, Taalib-Din Uqdah, Cleveland school choice mom Roberta Kitchen, and other clients, stretching back across IJ's first 20 years. The dinner ended with a standing ovation for the clients and their courage, and for each of the people in the room who had made their victories possible.

Passing the Torch

Not long after the 20th Anniversary, Chip began thinking about how to transfer leadership in a way that would ensure that IJ remained an institution driven by its vision, mission, and culture, rather than any specific person—even him.

"If IJ were to attain the influence and status that I hoped it could, it was vital that we do something different than most places in Washington," Chip said. "Far too many places in D.C. are built around the ego of particular people seeking fame and fortune. From the get-go, I wanted IJ to be a lasting institution for liberty and something other than the Chip and Clint show."

For many years, Kramer took as his primary responsibility helping to ensure that happened, with his emphasis on the "three magic words" (Institute for Justice) in any media piece. With his own impending retirement, Chip faced the next iteration of the idea.

Clint Bolick had left IJ in 2004 to focus exclusively on school choice advocacy as President of the Alliance for School Choice, but Chip's retirement would mark the departure of not only IJ's cofounder but also the person who had consciously shaped both the strategy and personality of the organization for decades.

He often described the job of an organization's president as "setting things in motion and fixing problems." That meant looking ahead to envision what IJ should be doing a year and a half or two years down the road and beginning to put that vision into action. As those plans unfolded, he closely monitored progress so he could address emerging problems and keep the organization on course.

Now the thing he was setting in motion was his own departure.

Leadership transitions, especially those from a founder to the second generation, are notoriously difficult to execute well. But Chip knew that it was absolutely crucial to the future of IJ that he do it right. He began drawing senior attorneys and other senior staff more closely into his decision-making. He tasked teams within IJ to think even more about the next major projects and initiatives the organization should tackle. And he began to prepare his successor: Scott Bullock.

"He was clearly setting the table for his departure in the years running up to when he made the announcement," Scott said. "But when he called me into his office and told me that he wanted me to take the reins and lead IJ, I was still surprised in the moment."

For 25 years, Scott had been deep in the trenches of litigation, taking on as many cases and projects as he could handle to move the mission forward. Preparing to be president of IJ meant stepping back from that relentless case development and execution and taking on different aspects of leadership.

Chip talked with Scott in late 2014 and made it clear that he wanted to approach the transition in a way that was thoughtful and phased—neither handing over responsibility all at once and then walking away nor hanging around for months or years after his official retirement to keep an eye on things.

They were going to take a year to prepare Scott personally, while also shoring up a deep bench of talent across the organization. The idea was to surround Scott with others who would provide support and stability, particularly in the first few years after Chip's departure and in areas where Scott had less direct experience, like administration and fundraising.

IJ Evolves

In February 2015, Chip stood before the staff for what had become an annual institutional tradition: the State of IJ.

Chip began giving State of IJ talks in early 2009, as the 2008 financial crisis was still unfolding and the world felt particularly chaotic and uncertain. Traveling the country to meet with IJ's donor base—many of whom were intimately familiar with the financial world and acutely aware of the systemic risk it currently faced—reinforced to Chip the sense that the status quo should never be taken for granted. Concerned that staff would be worried about the economic uncertainty and what it meant for them, he gathered everyone together to reassure them that IJ was strong and that they should stay focused on executing its mission.

As the organization continued to grow—to a staff of 95 by 2015—the State of IJ became a way for Chip to recenter the team on their core objectives each year, to review the successes and lessons learned from the previous year, and to preview his thinking about the future.

That February, Chip opened his remarks by reminding the staff that, while it was quite common for those inside IJ to talk about liberty in terms of constitutional principles and legal precedent, the work of the Institute for Justice is deadly serious business for its clients and so many others. Retaining that human focus and an emphasis on real-world consequences was essential to IJ's DNA.

He talked about the growth IJ had seen over the past decades and observed that, although it remained fundamentally the same place, it was an IJ that is always evolving:

> That evolution started on day one, and it comes from the talents of the people at IJ being applied to the opportunities and the challenges that arise in pursuing a consistent mission. That evolution has made us stronger, and it's made us what we are today.
>
> In the midst of that evolution, there are some constants.
>
> Most fundamental is the founding premise of IJ: that strategic public interest law offers a uniquely powerful way of effecting change and securing the American Dream. ...
>
> We must be disciplined, and we must be incremental. That doesn't mean piecemeal. Our founding premise is valid, because we know how to enhance our litigation with the vast array of increasingly sophisticated resources that we can bring to bear in every instance. Everything we do must be a part of that strategic approach that builds and builds. Irresistible, undeniable, and incremental.

He described victories from the past year alone, across each of IJ's pillars and across its businesses, from momentum on the Institute's longstanding work against occupational licensing with the release of the landmark *License to Work* report to incredible progress in the fight to end civil forfeiture. Chip emphasized that IJ had laid the foundation for future success, and that it was up to the next generation to build on that foundation:

> We know *what* to do, we know *how* to do it, and we have the talent and the resources to do it.
>
> We must be energetic in the pursuit of our mission every single day. We must never succumb to the somnambulant lethargy that pervades so many nonprofits. Nor should we be tempted by the frequent fire drills that drive the political world. We stay steady, we stay focused, but we stay vigorous.
>
> Now, we'll face setbacks sometimes. But we have something in our arsenal that is guaranteed to win if we just deploy it. That is persistence. ...
>
> Persistence is the best revenge. We can be beat, but we cannot be defeated unless we give up.

He urged the staff to maintain the dedication to excellence that pervaded everything IJ does, reminding them that each person there must demand nothing less than the best of themselves and of each other.

With the stage set, he announced that IJ's next evolution would start the following day. He would begin to transition out of his role as President, with Scott stepping in to take his place. Chip would take a new role as Chairman of the Board, a position he held from 2016 until his death in 2024.

Instilling the IJ Way

In his final State of IJ, Chip said that each person at the organization has a stake in its culture, as well as a responsibility for maintaining it: "That is the environment that enables us to do the impossible routinely, and to overcome odds and exceed expectations every day."

Chip stressed that the subtlety of culture is that it cannot be left to evolve spontaneously. It must be modeled and reinforced from the top. He later explained that this was why he spelled out what he called "The IJ Way" in such detail.

Staff who bought into the IJ Way would strive to embody five traits consistently in the way they produced work and the way they interacted with each other. They were to be principled, positive and open, resilient, entrepreneurial, and focused on operating in and producing results in the real world.

Because he did not believe culture could be transmitted and absorbed effectively through osmosis alone, Chip talked about the IJ Way in his "IJ History" training for new staff. He wrote about it in IJ's newsletter, *Liberty & Law*. Eventually, he created and distributed—both to staff and to donors—a trifold brochure describing and illustrating each characteristic in detail.

"If people don't know what's expected of them, they think that what they have to do is just be nice people," he said. "And different people's interpretations of 'nice' varies tremendously. That's not a culture. It's just a bunch of random people having their days, good or bad. The IJ Way—that we were entrepreneurial, principled, positive, open, resilient, real-world—all that I did specifically to try and boil down to everyone within IJ—not just the senior people, but everyone—a concept of what we wanted this organization to be."

Scott reiterated the IJ Way and what it meant at his own State of IJ remarks in February 2020, adding nuance that reflected his own ambitions for the organization. He talked in detail about what it meant to be entrepreneurial, team-based and transparent, real-world and strategic, positive and resilient, and principled in a practical, day-to-day way. He emphasized that these ideas cannot be just slogans. They are foundational to how the Institute operates day to day.

He also stressed the vital importance of remaining "scrupulously nonpartisan"—an enduring and essential characteristic of IJ that was one of its central strengths as it weathered hyper-political times:

> We challenge abuses by political figures no matter who they are or what team they're on. We hold strong and principled views on the Constitution and liberty, but we don't do the bidding of nor are we aligned with any political party or interest group. This has allowed us to work with individuals and groups from across the ideological spectrum, and it has gained us enormous credibility with judges regardless of who appointed the judge to the bench. Judges view IJ as a group that zealously represents our clients for the reasons we claim and with the talent and skills to make the most compelling arguments possible to advance our clients' interest and our mission. We must remain this way.

Like Chip, Scott knew that its culture was crucial to IJ's success, and he knew that he could not expect it to survive based on inference alone. And he, too, chose to spend time focusing on culture and explicitly instilling it at a moment of institutional evolution.

Growing and Expanding

Scott's approach to his first few years of leadership was to ensure a seamless transition that emphasized stability and continuity of mission.

"The temptation some people face when they take on leadership positions is to immediately start putting their stamp on something," he said. "They want to make changes just for the sake of showing 'I'm now in charge.' I think that is a very dangerous position, especially when an organization is in the good shape that IJ was in."

Scott wanted to recognize IJ's success and avoid introducing new projects or priorities that could be read as a drift from the mission or a departure from what was working. He also didn't want to unsettle people with the idea that even more change was immediately on the horizon.

Once it was clear that IJ remained strong and committed to its founding principles, he began to put his own imprint on the organization. IJ's next evolution would reflect not just his leadership, but the contributions of other people from across the organization.

"We had that period of stability," Scott said. "Then, based on discussions internally and with the board, I decided we needed to take on bigger targets and push the envelope in certain areas—including expanding into new areas that we might not be entirely familiar with."

There were issues like administrative law that were generating a lot of activity and interest, from legal scholars all the way up to the U.S. Supreme Court, that he wanted to explore. But at the time, IJ simply did not have the manpower to investigate those areas as well as to litigate ongoing cases and push forward existing issue areas. But that upfront investigation was essential to entering any new field in a strategic, long-term way and to deploying the full range of tools that had become standard in IJ's approach, from amicus briefs to strategic research to communications.

With those ambitions in mind, by 2020, Scott knew that IJ was going to go through a period of aggressive growth.

"I wanted to make sure that we didn't get into a risk-averse kind of posture because we had more people working for us and more people who were now relying upon IJ to feed their families," he said. "That's the temptation you have when things are good: don't rock the boat. But I didn't want us to stop pushing ourselves."

As chairman of the board, Chip agreed with that approach.

"In those early days, the challenges were overwhelming because they were new, and we'd never done them, and we were understaffed and had a tiny budget," Chip said. "Later, when we had so much more in the way of resources, it was still a challenge. But if you look at it the right way, that's the way it should be. Nothing should become routine. Nothing should become second nature or autopilot. It should always be about where you're pushing yourself. You're striving to find a new angle, a new way to present the case. It's a difference in scale but not a different thing."

Between its 25th and 35th anniversaries, IJ more than doubled in staff, budget, and the number of cases and projects, including launching new projects on government immunity and accountability, the Fourth Amendment, and zoning justice.

For Scott, that kind of growth was not a shift away from IJ's original identity. It was evidence that the organization's model was strong enough to expand into new, exciting, and timely areas while holding true to the principles that made it successful in the first place. What mattered was not simply taking on new issues, but doing so the way IJ had: strategically, patiently, and with the discipline to resist chasing whatever was fashionable or urgent in the moment.

The Next Generation

When they sat in Chip's backyard in Denver in 1983 pledging to create the kind of organization they wanted to work for, Chip and Clint envisioned a place that would pursue a long-term, strategic, and philosophically consistent approach to legal change. They were going to build an institution, not a monument. The idea was not that future generations would have something to inherit—it was that they would have something they would own and continue to build. IJ's approach met real needs in its earliest years, and it could do so now.

"One of my early concerns with talking about IJ's history was, 'How are people going to find relevance in 1990s New York City politics?'" Scott said. "But the point is that it's not the specifics of that moment. It's the inspiration of the idea that we took what was an incredibly challenging landscape and still got results. I want people to know that is something they can do today."

IJ's early cases demonstrate that bold, disciplined people can take on an entrenched system and win against odds that initially seem impossible.

The culture that Chip worked so hard to build was not designed for passive stewards. He created, and subsequent generations sustained, a place where people who wanted to change the world would want to work—a place for people willing to carry forward what works, discard what no longer does, and push into the next set of fights with the same combination of idealism, vigor, and courage that defined IJ's early years.

"I want people to be inspired to think about where they can take IJ in the next 20 or 30 years," Scott said. "We want to keep the values that IJ's always had and what we've always been about. But we rise to the opportunities that are presented to us. That is what has made the organization such a success."

When Chip told the staff to "whip and ride," he was calling on their drive and their potential to do the most with what they were given. The charge was simple in theory, but incredibly important in execution: don't over-talk it. Don't accept your opponent's premises. Don't wait for perfect conditions. Saddle up, take responsibility for the work in front of you, and drive it forward with grit and speed. It was both a challenge and a vote of confidence—an insistence that the mission was worth urgency, and that the people in the room were capable of doing something hard and prevailing.

The Institute for Justice was founded on that spirit and the conviction that ideas can move the world. Thirty-five years later, both the spirit and the conviction remain intact because they have been renewed, case by case and year by year, by people willing to put ideas into practice. The story of IJ's next era is theirs to write.

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About
Melanie Hildreth

Melanie Hildreth is a longtime writer and development leader at the Institute for Justice, where she has spent much of her career telling the stories of IJ's clients, cases, and work. During more than 16 years at IJ, she has served as Vice President for External Relations, edited *Liberty & Law*, and written and hosted podcasts and videos about IJ's work. She lives in West Virginia with her husband and children.

About
WHIP AND RIDE

In 1983, Chip Mellor was fired. He returned from lunch to find his office cleared out, his belongings in a box, and his boss refusing to speak with him. His friend and colleague Clint Bolick came to his house, ready to quit his own job in solidarity. In Chip's backyard, they made a promise: to build the kind of organization they had learned the hard way did not yet exist—one committed to a strategic, long-term, principled, and libertarian approach to public interest law.

Eight years later, they founded the Institute for Justice.

Whip and Ride recounts how that backyard promise became a national public interest law firm. It follows the real people behind IJ's defining cases: from D.C. hair braiders fighting to keep their business alive to an Atlantic City widow defending her home from eminent domain, and the young lawyers who believed cases like these were worth taking before anyone had proved they could be won.

For those who know what IJ stands for but not where it came from, this is that story.

IJ Institute for Justice

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