



Written by [Jack Kenny](#) on September 21, 2011

## Connecticut Judge Apologized to Kelo

Connecticut Supreme Court Justice Richard N. Palmer (left), part of a 4-3 majority in a controversial ruling that upheld the taking of the homes of several New London residents to make room for a private commercial development, apologized years later to the woman who led the fight against it. In a September 18 article in the Hartford Courant, Jeff Benedict, author of a book about the case, called Little Pink House, recalled witnessing the apology after a talk he gave on the subject at a dinner honoring the Connecticut Supreme Court at the New Haven Lawn Club in May 2010. Benedict was talking with Susette Kelo, the lead plaintiff in *Kelo v. New London*, when Judge Palmer approached.



"Had I known all of what you just told us, I would have voted differently," he said.

"I was speechless," Benedict recalled. "So was Susette. One more vote in her favor by the Connecticut Supreme Court would have changed history. The case probably would not have advanced to the U.S. Supreme Court, and Susette and her neighbors might still be in their homes." Then the judge took Kelo's hand and offered his apology.

"Tears trickled down her red cheeks," Benedict wrote. "It was the first time in the 12-year saga that anyone had uttered the words 'I'm sorry.'"

Susette Kelo lived in the Fort Trumbull area of the coastal city of New London, a part of the city designated for redevelopment by the New London Development Corporation. In February 1998, the giant pharmaceutical company Pfizer announced plans to build a \$300 million research facility on land adjacent to Fort Trumbull. Believing the facility would attract further development in the economically depressed area, the NLDC drew up plans for a research and industrial park, along with a hotel, a residential development and a state park, to cover 90 acres of land. The development agency submitted its plans to the City Council for approval and was given permission to acquire the land. The NLDC negotiated the purchase of most of the real estate, but Kelo and other homeowners refused to sell. When the development agency began condemnation proceedings, Kelo and her neighbors sued to stop them.

Kelo and the other plaintiffs lived on two of the parcels targeted for the development, one of which was designated for research and office space and for an existing Italian Dramatic Club. The other was labeled "park support." The redevelopment was promoted on the basis on an anticipated 3,000 or more new jobs and \$1.2 million a year in additional tax revenue. The controversy that reached both Connecticut's and the nation's highest courts revolved around the question of whether, in light of the promised benefits, the taking of the properties for a private developer constituted a "public use" in keeping with the Fifth Amendment of the U.S. Constitution: "...nor shall property be taken for public



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use without just compensation."

When the Connecticut high court upheld the takings, Kelo and her fellow plaintiffs took the case to the nation's Supreme Court. Justice John Paul Stevens, writing for the court's 5-4 majority in the 2005 decision, noted the project in its entirety included "a variety of commercial, residential and recreational uses" of the contested land. "Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the public use requirement of the Fifth Amendment," Stevens wrote in an opinion backed by Justices Kennedy, Souter, Ginsburg, and Breyer. The decision provoked a national outcry and no small amount of protest on the Court itself. Justice Sandra Day O'Connor offered a strongly worded dissent, joined by Chief Justice Rehnquist and Justices Scalia and Thomas. "The specter of condemnation hangs over all property," wrote O'Connor. "Nothing is to prevent the State from replacing any Motel 6 with a Ritz-Carlton, any home with a shopping mall, or any farm with a factory."

Benedict wanted to include the story about the apology as an epilogue to his book, but was constrained by an editor who did not want to publish what the judge had said in a private conversation. Contacted by the author, the judge later gave permission to use the anecdote, but wanted to be sure the context was explained. So what had Judge Palmer learned that would have changed his vote on the Kelo case if he had known it at the time?

"Those comments," he wrote the author, "were predicated on certain facts that we did not know (and could not have known) at the time of our decision and of which I was not fully aware until your talk — namely, that the city's development plan had never materialized and, as a result, years later, the land at issue remains barren and wholly undeveloped." He later added that he could not know of those facts "because they were not yet in existence."

Actually, the "land at issue" is not exactly barren anymore. To be sure, plans for the development and the thousands of jobs and millions of dollars in revenue have gone a-glimmering. But the city of New London did lately discover another use for the property. [It has been designated a site for dumping the debris from Tropical Storm Irene.](#)

No one can reasonably expect judges, legislators, or city council members to know the future and base decisions on facts "not yet in existence." But they often could do a better job of recognizing the developments of the past that remain, theoretically at least, in existence. They might do a better job of recognizing with more than lip service the principles embedded in the Constitution of the United States, which principles they have sworn to uphold. They might recall words penned not long after the Constitution was ratified, in an opinion authored by Justice Samuel Chase and quoted by O'Connor in her *Kelo* dissent:

An act of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority ... A few instanwill suffice to explain what I mean... . [A] law that takes property from A. and gives it to B: It is against all reason and justice, for a people to entrust a Legislature with such powers; and, therefore, it cannot be presumed that they have done it.

But to Judge Palmer it is apparently quite legitimate to take property from A and give to B, as long as B follows through on his plans to develop the property and bring to fruition all the promised public benefits. In an email to Benedict, he explained his apology to Susette Kelo.

"I do recall telling Susette I was sorry," he wrote. "But I was expressing my regret for what she had gone through. I would not want the reader to think that I was apologizing for my vote, which I was not



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doing."

Jeff Benedict's book, *Little Pink House*, is being [made into a movie](#), starring Brooke Shields, for Lifetime Television.



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