

*Kelo v. City of New London: A Study of Property Rights, Separation of Powers, States Rights and the Constitution*<sup>1</sup>

John C. Becker  
Professor, Agricultural Economics and Law  
The Pennsylvania State University  
University Park, PA 16802

*Abstract*

Despite the attention it is given and the emotion it draws from what some fear is its application, the U.S. Supreme Court decision in *Kelo v. City of New London* is a decision about the authority of federal courts to review actions of state governments and state agencies that affect property interests. Government authority to “take” private property is clear, but the parameters of this authority are subject to interpretation. While the Constitution describes takings in simple terms, the meaning of the Constitutional pronouncement is less clear. When can a proposed “taking” involve a public use? Can the language of the Constitution be applied to a context that was never considered when the Constitution was adopted? How should courts, and people, struggle to apply Constitutional provisions to circumstances that could not have been considered when the Constitution was written? These questions raise issues about whether the Constitution is a source of absolute pronouncements that must adhere to the intent of its authors, or a document that evolves with social, economic and political change taking place within “American society.” Understanding the foundations that support the decision is a study in understanding the role of separation of power among the branches of government and states’ rights.

**Introduction:**

This paper will explain the 2005 Supreme Court’s majority and dissenting opinions in *Kelo v. City of New London*, one of the most important decisions on government authority over private lands in some time and discuss its implications. The decision has received widespread publicity and found its way into editorial columns across the country. In addition by the end of 2006, the decision prompted over 30 states to take some type of legislative action aimed at addressing issues raised in the decision. Much of the publicity fails to explain the foundation issues of both views expressed in the case. That approach is unfortunate for it portrays the decision in emotional rather than rational terms. For example, the dissenting opinion makes the statement that under the majority view, any property owner in America is at risk of being removed from her property if a better use of the land can be found that serves a public purpose that government favors. Is that a true statement?

**Background:**

In 1998, the city of New London, Connecticut faced an unemployment rate that was nearly double that of the State. Its population was at its lowest level since 1920. The State of Connecticut intended to reverse a decline in population in the city and a deteriorating economy. The City of New London, following state law, began an urban redevelopment project and granted approval to the New London Development Corporation (NLDC), a non-profit corporation, to prepare a multi-faceted plan, covering

approximately 90 acres of land, and including a variety of commercial, residential, recreational and tourist activities.

City council authorized the NLDC to submit its plans to state agencies for review. After obtaining state-level approval, the NLDC finalized an integrated development plan focused on 90 acres of land. The area comprises approximately 115 privately owned properties, as well as the 32 acres of land formerly occupied by a federal government facility, of which 18 acres became a state park. The land development plan was projected to create in excess of 1,000 jobs, increase tax and other revenues, and revitalize an economically distressed city.

NLDC purchased property from willing sellers and proposed to use eminent domain to acquire the remainder in exchange for just compensation. The city council also authorized the NLDC to purchase property or exercise eminent domain in the City's name. The NLDC successfully negotiated the purchase of most of the real estate in the 90-acre area, but its negotiations with Susette Kelo, and other owners, failed. In November 2000, the NLDC initiated condemnation proceedings which Susette Kelo and other property owners oppose. The use of eminent domain authority in this case is unwarranted in the owners' opinion. The owners raise the objection that the city's proposed disposition of property acquired by condemnation does not qualify as a "public use" within the meaning of the Takings Clause of the Fifth Amendment to the Constitution and therefore cannot proceed.

### **The Constitutional Dimension**

The Fifth Amendment to the United States Constitution states, "nor shall private property for taken for a public use without the payment of just compensation."<sup>2</sup> The Fourteenth Amendment to the Constitution ratified by the states in 1868 makes the bill of Rights applicable to the states stating, "nor shall any state deprive any person of life, liberty, or property, without due process of law..."

The last clause of the Fifth Amendment raises three important questions that have been litigated frequently. These terms are What is a "taking"? What is "public use"? and What is "just compensation"? Of these three the "public use" requirement is at the heart of the Kelo decision. In regard to Susette Kelo and the other New London property owners, a taking is readily identified by the government action directed toward acquiring physical possession and control of their privately owned land. In earlier cases, the question of whether a "taking" had occurred often turned on the degree to which the property owner was "dispossessed" of an ownership interest.<sup>3</sup> In later cases the issue turned to whether the government action was serving a specific public purpose or objective which might be sufficient to override the interests of the property owner.<sup>4</sup> In later years the issue turned to whether taking a relatively small amount of property would excuse government from its obligation to pay "just compensation."

State government regulatory involvement in land use matters added a variety of new issues concerning the meaning of the term "taking." State government authority is

generally described as the “police power”, the power to exercise government authority to protect public health, safety and welfare. Ordinarily “police power” action affecting a property owner is not considered a taking if the exercise of government action complies with state law requirements and has a substantial connection with a legitimate interest of government to protect and the means selected to protect it. This changed in 1922, however, when Justice Oliver Wendell Holmes in a historic Supreme Court decision<sup>5</sup> introduced the concept of a regulatory taking, stating that government regulation that goes “too far” in its impact on a private landowner could be viewed as a taking. This statement then begged the question, “When does government regulation go “too far”?”

In 1979, the Supreme Court decided a case<sup>6</sup> involving a property owner that wanted to make a commercial use of land in a historic district of New York City. Since the land was in the historic district, the landowner’s choice among development possibilities was limited to those that would retain the historic character of the building and the district. In the owner’s viewpoint, this prevented the owner from making a reasonable investment return on the property. The Court held that a four step analysis should be applied to cases where government regulation has not deprived a property owner of all economically beneficial uses, but has imposed a burden on the owner that is unduly oppressive and forces an property owner to bear a public burden that in all fairness and justice should be borne by the public as a whole.<sup>7</sup>

In a 1992 case<sup>8</sup> involving undeveloped beachfront property held for development, the Court held that if a regulation deprives a property owner of “all economically beneficial or productive use of land” the government action would result in the action being considered a taking in relation to the affected landowner. If government regulation prohibits some uses, but allows others which are profitable, the obligation to pay just compensation would not arise. If the restricted action would be considered a nuisance, then government would not have the obligation to pay just compensation as a nuisance activity would not in and of itself be something that the property owner could force the courts to allow be continued.

### **Is a “Public Purpose” Sufficient to be a “Public Use”? The Majority View**

The heart of the Kelo challenge is that the City of New London’s redevelopment plan for the 90 acre area did not have enough “public use” in it to authorize the exercise of eminent domain under federal constitutional principles. Two polar propositions are evident. On the one hand, since 1798 it has been accepted that the sovereign may not take the property of A for the sole purpose of transferring it to another private party B, even though A is paid just compensation.<sup>9</sup> On the other hand, it is equally clear that a State may transfer property from one private party to another if future “use by the public” is the purpose of the taking; the condemnation of land for a railroad with common-carrier duties is a familiar example.

State courts in the mid-19th century endorsed “use by the public” as the proper definition of public use, but that interpretation eroded over time. The “use by the public” test is difficult to administer (e.g., what proportion of the public need have access to the

property? at what price? At what time?), and it proved to be impractical given the diverse and always evolving needs of society. When the U.S. Supreme Court began applying the Fifth Amendment to the States at the close of the 19th century, it embraced the broader and more natural interpretation of public use as "public purpose."<sup>10</sup> Thus, in an 1896 case upholding a mining company's use of an aerial bucket line to transport ore over property it did not own, Justice Holmes stressed "the inadequacy of use by the general public as a universal test."<sup>11</sup> The Court has repeatedly and consistently rejected the "use by the public" test since.

Disposition of the property owners' objections therefore turns on the question whether the City's development plan serves a "public purpose." Supreme Court decisions have defined that concept broadly, deferring to legislative judgments in this field. Therefore, the majority Justices in the Kelo appeal viewed the decision as one of deferring to the judgment of the state legislatures in determining whether a public purpose satisfies the public use requirement,

In *Berman v. Parker*, a 1954 decision,<sup>12</sup> the Supreme Court upheld a redevelopment plan targeting a blighted area of Washington, D. C. Under the plan, the area would be condemned and part of it utilized for the construction of streets, schools, and other public facilities. The remainder of the land would be leased or sold to private parties for the purpose of redevelopment, including the construction of low-cost housing.

The owner of a department store located in the area challenged the condemnation, pointing out that his store was not itself blighted and arguing that the creation of a "better balanced, more attractive community" was not a valid public use. If the department store property was not "blighted" then the condemnation action had no authority to affect his land. Justice Douglas refused to evaluate this owner's claim in isolation, deferring instead to the legislative and agency judgment that the area "must be planned as a whole" for the plan to be successful. The Court explained that "community redevelopment programs need not, by force of the Constitution, be reviewed on a piecemeal basis--lot by lot, building by building."<sup>13</sup>

In *Hawaii Housing Authority v. Midkiff*<sup>14</sup>, the Supreme Court considered a Hawaii statute whereby fee title was taken from lessor/landowners and transferred to lessees in return for just compensation to reduce the concentration of land ownership. The Court unanimously upheld the statute and rejected the view that the states' action was "a naked attempt on the part of the state of Hawaii to take the property of A and transfer it to B solely for B's private use and benefit." the Supreme Court concluded that the State's purpose of eliminating the "social and economic evils of a land oligopoly" qualified as a valid public use. This court also rejected the contention that the mere fact that the State immediately transferred the properties to private individuals upon condemnation somehow diminished the public character of the taking.<sup>15</sup>

Therefore, prior Supreme Court decisions recognized that the needs of society varied in different parts of the Nation, just as they have evolved over time in response to changed circumstances. The earliest Supreme Court cases in particular

embodied a strong theme of federalism and recognized the respective roles of federal and state government authority, emphasizing the "great respect" that the Court owes to state legislatures and state courts in discerning local public needs.

The City of New London recognized there was no blight in the Fort Trumbull area, but it did determine that the area was sufficiently distressed to justify a program of economic rejuvenation. It is this determination that is entitled to the Court's deference. The City carefully formulated an economic development plan that it believes provides appreciable benefits to the community, including new jobs and increased tax revenue.

To resolve the challenges of Susette Kelo and other owners it is appropriate to address them not on a piecemeal basis, but in light of the entire plan. Promoting economic development is a traditional and long accepted function of government. There is, moreover, no principled way of distinguishing economic development from the other public purposes that Courts recognized.<sup>16</sup>

The Court affirmed the City's authority to take petitioners' properties, but also clarified that its opinion does nothing to preclude any State from placing further restrictions on its exercise of the takings power. The Supreme Court recognized that its authority, however, extends only to determining whether the City's proposed condemnations are for a "public use" within the meaning of the Fifth Amendment to the Federal Constitution. Because over a century of interpretation dictates an affirmative answer to that question, the Court decided to deny Susette Kelo and the other owners the relief to halt the condemnation.

### **The Dissents' Point of View Whether a "Public Purpose" is Sufficient to be a "Public Use"**

Four members of the Court<sup>17</sup> dissented from the majority's opinion in Kelo and began their opinion by citing the 1798 Supreme Court decision in *Carder v. Bull*:

"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 instances will 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."<sup>18</sup>

The dissent then went on to say,

"Today the Court abandons this long-held, basic limitation on government power. Under the banner of economic development, all private property is now vulnerable to being taken and transferred to another private owner, so

long as it might be upgraded, i.e., given to an owner who will use it in a way that the legislature deems more beneficial to the public in the process. To reason, as the Court does, that the incidental public benefits resulting from the subsequent ordinary use of private property render economic development takings "for public use" is to wash out any distinction between private and public use of property--and thereby effectively to delete the words "for public use" from the Takings Clause of the Fifth Amendment."

The dissenters view is fairly simple. While the government may take privately owned homes to build a road or a railroad or to eliminate a property use that harms the public, government cannot take their property for the private use of other owners simply because the new owners may make more productive use of the property.

When interpreting the Constitution, it should be presumed that every word has independent meaning, "that no word was unnecessarily used, or needlessly added." <sup>19</sup> Therefore, the Court read the Fifth Amendment's language to impose two distinct conditions on the exercise of eminent domain: "the taking must be for a 'public use' and 'just compensation' must be paid to the owner." Since "just compensation" was not at issue, the dissenters turned to an analysis of what is a "public use"? The public use requirement imposes a basic limitation to promote fairness and security by circumscribing the very scope of the eminent domain power.

The dissent also gave considerable deference to legislatures' determinations about what governmental activities will advantage the public. But if the political branches are the sole arbiters of the public-private distinction, then the Public Use Clause would amount to little of any significance. An external, judicial check on how the public use requirement is interpreted, however limited, is necessary if any constraint on government power is to retain any meaning.<sup>20</sup> The Kelo case returns the Court for the first time in over 20 years to the hard question of when a purportedly "public purpose" taking meets the public use requirement. In the dissent's opinion it presents an issue of first impression: Are economic development projects that do not involve blighted properties considered "takings" that meet constitutional requirements?

New London did not claim that Susette Kelo's well-maintained home is the source of any social harm and this raises the question of whether the absence of blighted conditions is a key factor in the decision. The City could not make that claim without adopting the argument that any single-family home might be razed to make way for an apartment building, or any church might later be replaced with a retail store, or small business thought to be a more lucrative land use.

The dissent accused the Court of significantly expanding the meaning of public use. In their view the majority decision holds that the sovereign may take private property currently put to ordinary private use, and give it over for new private use, so long as the new use is predicted to generate some secondary benefit for the public--such as increased tax revenue, more jobs, maybe even aesthetic pleasure. Nearly any lawful use of real

private property can be said to generate some incidental benefit to the public. If predicted positive side-effects are enough to render transfer from one private party to another constitutional, then the words "for public use" do not realistically exclude any takings, and do not restrain eminent domain power.

The dissent recognizes that the judiciary cannot get bogged down in predictive judgments about whether the public will actually be better off after a property transfer.<sup>21</sup> Adopting the majority suggestion that property owners should turn to the States, which may or may not choose to impose appropriate limits on economic development, is an abdication of judicial responsibility in the dissenters view.

Writing separately, Justice Thomas expressed his view that the Court replaces the Public Use Clause with a "[P]ublic [P]urpose" Clause, or the "Diverse and Always Evolving Needs of Society" Clause, a restriction that is satisfied, so long as the purpose is "legitimate" and the means "not irrational." In his opinion, this deferential shift in phraseology enables the Court to conclude, "against all common sense, that an urban-renewal project whose stated purpose is a vague promise of new jobs and increased tax revenue, but which is also suspiciously agreeable to the Pfizer Corporation, is for a "public use." If such "economic development" takings are a "public use," then any taking is, and the Court erased the Public Use Clause from our Constitution. Justice Thomas does not believe that the Supreme Court can eliminate liberties expressly enumerated in the Constitution. In his view, the Public Use Clause, originally understood, is a meaningful limit on the government's eminent domain power.

### **Observations on the Majority and Minority Opinions and the Public's Reaction:**

The majority in *Kelo* did not see this case as a case of first impression. The majority's reliance on *Berman*, in particular, indicates that the lack of a blighted property in the New London plan was not a critical decision point for them, despite the dissent's opposing view. The majority favorably considers the City of New London's compliance with a state designed redevelopment planning process. This action was not arbitrary or capricious, rather it was planned, deliberate and offered ample opportunity to consider what was being done. Should federal courts be bogged down reviewing redevelopment plans prepared to solve local problems that are far removed from the attention of the politically appointed Judges involved in hearing challenges to them? Would a local resident prefer a Judge in some other state to pass judgment on a plan prepared in her community by people she knows and can approach for answers to her questions? On the "public use" aspect of the City's plan, the fact that a state park was included in the plan was mentioned indirectly but not recognized as a significant factor in the majority's decision. The dissent bypassed that point entirely.

The dissent tries to build emotional energy around two points. First, the *Kelo* decision puts every property owner at risk of having her land taken by a condemnation action that serves a public purpose and chases speculative gains and outcomes. Second, allowing states to determine what is a public use is an abdication of judicial authority to review state law on constitutional matters that are recognized as questions of law. Justice

Thomas supports the position that the Constitution is to be interpreted according to the original intent of its drafters and the language they used.

With due respect to Constitutional language formed over 200 years ago, life in this country is constantly changing. If people are dissatisfied with Constitutional language or interpretation, the Amendment process offers them a remedy if they can convince the requisite number of elected officials and eligible voters to agree with them. Attempting to adopt a principle of Constitutional interpretation solely on the original intent of its drafters faces two critical problems: 1) How can a modern Court be certain it has discerned the drafter's actual intent in any constitutional provision; 2) When a Court confronts a situation which the drafters never experienced nor contemplated, the Court will be forced to make a subjective judgment about what the drafters would have done with this new situation had they experienced it in the 18<sup>th</sup> century. Whether a subjective judgment is one made on the basis of "original intent" or on other factors, the fact remains that the decision is a subjective decision using today's standards and influences and not those of 200 years ago. Forcing an original intent interpretation standard gives the Judicial branch greater power to bypass the Constitutional amendment process and disenfranchises voters in the amendment process.

The dissent's use of fear and anxiety to bolster its position is disappointing for it serves no apparent purpose or objective other than to agitate the public. When the dissent asks to re-visit the meaning given the "public use" requirement it give us no guidance or hint at what they think the rule ought to be. How far back do they wish us to go? 1798 when *Carder v. Bull* was decided? 1896 when *Fallbrook Irrigation v. Bradley* was decided? 1954 when *Berman v. Parker* was decided?

The public response to the *Kelo* decision has been significant. Of the opposing viewpoints expressed in the case it is likely that more people are aware of the dissent's point of view than are aware of the majority view. The wisdom of that state of affairs is open for debate. More than half of state legislatures have accepted the majority's challenge to revisit state law condemnation requirements, many on the issue of redefining the types of uses that will be considered "public uses" under state law. President Bush issued an Executive Order<sup>22</sup> barring federal agencies from seizing private property except for projects that benefit the public and not merely for the purpose of advancing the economic interest of private parties to be given ownership or use of the property taken. The makeup of the Supreme Court has also changed following the death of Chief Justice Rehnquist and the retirement of Justice O'Connor. As part of the dissenting Justices, I would speculate that Chief Justice Roberts and Justice Alito are of like mind on this issue with Justices Scalia and Thomas. The 5-4 division seems to remain in place for now.

### *Conclusions*

The *Kelo v. City of New London* decision offers this guidance to state and local governments confronted with land use challenges the solution to which eminent domain authority is being considered:

1) State action to promote or restrict the application of eminent domain authority in redevelopment projects is within state authority to determine. Once action is taken, courts will defer to it.

2) Although Courts may defer to state action on what is a “public use” for Fifth Amendment purposes, use of this authority to take private land for transfer to another private party will continue to be suspect for lack of public use arising from exercise of eminent domain.

3) Adopting a more literal interpretation of what satisfies the public use requirement has the potential to move the jurisprudence in this area back to the 19<sup>th</sup> century which will then be applied in a 21<sup>st</sup> century world.

Land use decisions at the local level will continue to view eminent domain as one of local government’s most potent tools. How that tool is exercised is an important matter to be decided locally, rather than in federal courts far removed from where the authority is applied. A key benefit of the Kelo decision under both the majority and minority view is that it awakened private citizens and public officials to an issue they must address. The public attention paid to this issue is likely to result in the dissent achieving its view without further litigation or undue delay. As an example of one branch of government recognizing the limits of its authority and another branch of government responding to the call to act, it is likely that all future decisions will address the degree of public use associated with the land use that results from exercise of eminent domain .

### *Post script*

After more than a year of further maneuvering, including a veiled threat to physically remove the protesting property owners from the redevelopment site, it was announced that Suzette Kelo and the only other protesting property owner came to an agreement with the City of New London.<sup>23</sup> Under the terms that were released Suzette Kelo’s home would be moved to a new location in the Fort Trumbull area once a suitable location is found. These same reports mention that this solution was proposed by Ms. Kelo herself and rejected early in the eminent domain process.<sup>24</sup>

---

<sup>1</sup> Kelo v. City of New London, 125 S.Ct. 2655, 162 L.Ed.2d 439, 2005 LEXIS 5011 (2005). Originally presented at the Interdisciplinary Environmental Association Colloquium, June, 2006 and revised in January, 2007.

<sup>2</sup> The Fifth Amendment provides:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life,

---

liberty, or property, without due process, of law; nor shall private property be taken for public use, without just compensation."

<sup>3</sup> *Pumpelly v. Green Bay Co.*, 80 U.S. 166, 20 L.Ed. 557, 13 Wall, 166 (1867)

<sup>4</sup> *Mugler v. Kansas*, 123 U.S. 623 (1887).

<sup>5</sup> *Pennsylvania Coal Company v. Mahon*, 260 U.S. 393 (1922)

<sup>6</sup> *Penn Central Transportation Company v. City of New York*, 438 U.S. 104, 124-125 (1978).

<sup>7</sup> *Id.* The four factors to be used include: 1) the economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with investment backed expectations; 2) the character of the government action, such as whether there is some amount of physical invasion associated with the action; 3) whether the regulation is reasonable related to the promotion of general welfare; and 4) whether the health, safety, morals and general welfare would be promoted by prohibiting the particular contemplated uses of land.

<sup>8</sup> *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, (1992).

<sup>9</sup> *Calder v. Bull*, 3 Dall. 386, 388 (1798).

<sup>10</sup> See, *Fallbrook Irrigation Dist. v. Bradley*, 164 U. S. 112, 158-164 (1896).

<sup>11</sup> See *Strickley v. Highland Boy Gold Mining Co.*, 200 U. S. 527, 531(1906).

<sup>12</sup> 348 U. S. 26(1954).

<sup>13</sup> *Id.* 348 U.S. 26, 33. "We do not sit to determine whether a particular housing project is or is not desirable. The concept of the public welfare is broad and inclusive... . The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled. ... It is not for us to reappraise them. If those who govern the District of Columbia decide that the Nation's Capital should be beautiful as well as sanitary, there is nothing in the Fifth Amendment that stands in the way."

<sup>14</sup> 467 U. S. 229 (1984).

<sup>15</sup> *Id.* "[I]t is only the taking's purpose, and not its mechanics," we explained, that matters in determining public use. 467 U.S. 229, 244.

<sup>16</sup> See e.g., *Strickley*, 200 U. S. 527; in *Berman*, we endorsed the purpose of transforming a blighted area into a "well-balanced" community through redevelopment, 348 U. S., at 33; in *Midkiff*, we upheld the interest in breaking up a land oligopoly that "created artificial deterrents to the normal functioning of the State's residential land market," 467 U. S., at 242; and in *Monsanto*, we accepted Congress' purpose of eliminating a "significant barrier to entry in the pesticide market," 467 U. S., at 1014 -1015. It would be incongruous to hold that the City's interest in the economic benefits to be derived from the development of the Fort Trumbull area has less of a public character than any of those other interests. Clearly, there is no basis for exempting economic development from our traditionally broad understanding of public purpose.

<sup>17</sup> Chief Justice Rehnquist, Justices Thomas, Scalia and O'Connor

<sup>18</sup> *Calder v. Bull*, 3 Dall. 386, 388 (1798).

<sup>19</sup> See *Wright v. United States*, 302 U. S. 583, 588 (1938).

<sup>20</sup> See *Cincinnati v. Vester*, 281 U. S. 439, 446 (1930) ("It is well established that ... the question [of] what is a public use is a judicial one").

<sup>21</sup> "Who among us can say she already makes the most productive or attractive possible use of her property? The specter of condemnation hangs over all property. 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!" dissent of Justice O'Connor.

<sup>22</sup> Executive Order 13406, June 23, 2006.

<sup>23</sup> *Eminent Domain Plaintiff Will Keep Her House: However, under a settlement between New London, Conn. and the suit's namesake, the structure will be moved.*, *Los Angeles Times*, July 1, 2006, p. 15,

<sup>24</sup> One Year later, Power to Seize Property Ripe for Abuse, *USA Today*, July 10, 2006, p.10A.