INSTITUTE FOR JUSTICE’S

Strategic Research Program

A Powerful Combination: Storytelling and Comprehensive Data
INTRODUCTION

The Institute for Justice (IJ) is a nonprofit public-interest law firm located in Arlington, Va., in the United States. It describes itself on its website as “the national law firm for liberty litigating to limit the size and scope of government power and to ensure that all Americans have the right to control their own destinies as free and responsible members of society.”

The organization was founded by William H. “Chip” Mellor and Clint Bolick in 1991, and has grown to a staff size of 95 employees, including 43 attorneys, and an annual budget of roughly $20 million. The organization focuses on suing governments and, at the time of this writing in early 2016, it had 43 active cases in 24 states. IJ operates from its headquarters near Washington, D.C., and also maintains offices in six other locations throughout the country. Today, the firm is led by Scott Bullock, who joined IJ at its founding, with Mellor serving as chairman of the board of directors. Bullock has a law degree from the University of Pittsburgh and a B.A. in economics from Grove City College.

IJ categorizes its work around four “pillars of freedom”: economic liberty, school choice, free speech, and property rights. It boasts a 70 percent success rate in winning cases, typically representing individuals such as small business owners, parents of school-aged children, and property owners.

Beginning in 2006, IJ formed what it calls the Strategic Research Program, a department designed to provide original and rigorous social science research to support IJ’s litigation efforts.

Dick Carpenter and Lisa Knepper, directors of strategic research, lead the Strategic Research Program. Carpenter has a background in social science research and education (including higher education and K–12), having earned his Ph.D. from the University of Colorado. Before joining the Strategic Research Program, Knepper was director of communications for IJ. She is a graduate of the Ohio State University, where she majored in economics and political science. Also on the Strategic Research Program team are a senior research analyst, two research analysts, and a research editor, for a total of six in the department, five of whom work at IJ’s headquarters.

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1 IJ defines a win as a favorable court ruling, a favorable settlement, or a legislative reform in response to a lawsuit.
I n the 1990s, IJ started litigating cases related to eminent domain, which is the governmental power to take private land or other property for public use. IJ represented property owners whose land was being taken by the government for private use, under the justification that the takings had a public purpose (e.g., redevelopment, attracting jobs to the area, increasing the tax base, etc.). The media attention received by those cases triggered a steady stream of phone calls to IJ from property owners around the country who claimed they were also victims of eminent domain abuse.

Public opinion is an important part of IJ’s strategy, in part because it maintains that judges, like most people, are aware of issues in the public eye. A critical piece of IJ’s public-interest mission involves shifting public opinion in favor of more freedom-friendly policies. To do that, IJ knows that it’s important to tell the stories of the specific individuals who are affected by the destructive policies it fights in each of its cases. Audiences are more likely to become passionate about an issue and engage with it when it has a human face, and IJ’s clients provide natural subjects.

In the case of eminent domain at that time, though, the IJ team knew that individual stories alone would not earn them the level of coverage they needed. “We knew that to raise the profile of this issue, we needed to demonstrate this was a national problem,” explained Knepper. “It wasn’t enough, though, to say we were getting a lot of phone calls; we needed to put a number to it.”

Mellor turned to Dana Berliner, then a senior attorney for the firm. Today, Berliner is senior vice president and litigation director. Berliner and a small team spent more than a year searching for any instances of eminent domain use for private development, sourcing news accounts and court records around the country. The result was a landmark publication, *Public Power, Private Gain*, released in April 2003. It documented

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**LISA KNEPPER, STRATEGIC RESEARCH PROGRAM**
more than 10,000 cases of properties threatened by eminent domain abuse in a five-year period.

This shocking number led to a major story on the CBS News program 60 Minutes, a level of exposure that Knepper believes increased the likelihood that one of IJ’s now-famous cases, Kelo v. City of New London, would reach the U.S. Supreme Court. The court ruled against IJ’s clients, including Susette Kelo, in 2005, but Justice O’Connor cited Public Power, Private Gain in her dissenting opinion, pointing to specific cases that IJ had documented to show how no property is safe under the court’s rationale.

The case had two silver linings. First, it triggered a national outcry that raised awareness about the issue of eminent domain to an unprecedented level. Second the court suggested in its majority opinion that individual state governments could tighten the laws governing the use of eminent domain in their states. IJ immediately began to lead a major coalition effort to reform state laws around the country, with much success.

By pairing individual emotionally engaging stories with robust, nationwide data, IJ brought the issue of eminent domain to popular understanding. The isolated stories could no longer be dismissed as anomalies, and the numbers were humanized with the faces of real clients affected, so IJ’s target audiences paid attention and became engaged.

Mellor realized this was a winning combination, and sought to institutionalize it within IJ. He created the Strategic Research Program in 2006 and, knowing that communications would be central to the development of all research products, he asked Lisa Knepper to transition from her role as director of communications to be part of the Strategic Research Program’s leadership team. IJ then hired Dick Carpenter to work alongside Knepper.

The research team’s first project focused on economic liberty. Shortly after that, they turned their attention toward a property rights issue that was
then largely unknown outside of the law enforcement and legal communities — civil asset forfeiture. IJ describes civil asset forfeiture as:

- a mechanism by which law enforcement agencies can seize and keep property on the mere suspicion that it is connected to a crime. In contrast to criminal forfeiture, where property is taken only after a criminal conviction, civil forfeiture allows law enforcement to take property from innocent people who have never been formally accused of a crime, let alone convicted of one.²

At the time, IJ had just begun to address the issue of civil asset forfeiture, filing an amicus brief in one case and litigating another. Bullock had lost a case in New Jersey representing a former sheriff whose car was taken, but he had also raised the profile of the case by telling the story of Carol Thomas of Millville, N.J., whose teenaged son had been arrested on a drug charge while driving her car without permission. Bullock managed to get her car back, but the systemic practice of forfeiture was upheld. The experience helped to crystallize the key problems with most forfeiture laws:

- the financial incentive for police to abuse their power; and
- the reverse burden of proof property owners must meet to get their assets back.

Essentially, property owners are denied basic due process rights and are deemed guilty until they prove their innocence. IJ knew its goal was to see civil asset forfeiture eliminated, and for revenue from criminal asset forfeiture to be rerouted to a neutral fund that would eliminate the strong incentive for policing agencies to abuse their power.

In 2007, Carpenter and Knepper met with Bullock, then a senior attorney, to address this question: What could IJ do to lay a foundation for future forfeiture efforts, illustrate the extent of the problem, and shine a light on civil asset forfeiture? The team could point to examples of news stories covering individual cases of civil asset forfeiture, but without comprehensive data it was hard to argue there was a systemic problem.

After conducting a literature review, the team set out to test whether variations in state laws correlated with the use and abuse of civil asset forfeiture. It soon became clear, though, that obtaining the data would be difficult and, in many states, impossible because of poor record keeping. Even in states where reporting was required, it was sometimes simply ignored.

Here the team turned to three external researchers that they discovered during the literature review

process. Marian Williams, Jefferson Holcomb, and Tomislav Kovandzic, each had a Ph.D. and had all published on the topic. They suggested that the team also look into the issue of equitable sharing, a practice whereby states can turn to the federal government to adopt a forfeiture case or work jointly to seize assets. Police departments in states that have stronger protections for property owners can use this loophole to keep up to 80 percent of the revenue from the forfeiture. Not only did this revelation improve upon the initial research question that IJ had planned to pursue, but it also solved the data problem: all equitable sharing activity by the states is recorded in a central database at the Department of Justice.

For the next three years, the Strategic Research Program team, including the external researchers they hired, collected all the data available from states and the Department of Justice, using Freedom of Information requests when necessary. This effort yielded tens of thousands of documents, all of which needed to be coded and organized in spreadsheets by IJ’s team.

In March 2010, the team published *Policing for Profit*, the first national report with comprehensive data on just how common and how lucrative civil asset forfeiture can be for government agencies. For example, the report revealed that in 2008, for the first time, the Department of Justice held more than $1 billion from civil asset forfeiture. It also confirmed that equitable sharing incentivized agencies in states with stricter laws to turn to the federal government more frequently.

The report itself did not immediately attract a lot of attention, in part because the issue was so little known. Moreover, “The national report can’t do it all,” Carpenter explained. “Judges and reporters want to contextualize the problem in their state.” So, while IJ’s litigation teams found new clients and began filing suits, the Strategic Research Program team got busy creating specific state reports to supplement the national study.

“But the national [report] was so important; no one had taken the time to describe the problem, and so [the national report] made clear there was a

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**DICK CARPENTER, STRATEGIC RESEARCH PROGRAM**
serious problem,” Carpenter continued. “And then the state reports confirmed that, in places where our litigation was happening, it was also a problem there. The judge couldn’t say, ‘well, that may be an issue at the national level, but here in our state things are different.’"

Here is where persistence pays off, Knepper points out. The media began to take notice. “Because we had legal information on every state, and we had the federal data, it gave every state a news hook,” she said. It also gave national journalists a complete story to dig into.

In August 2013, the New Yorker magazine published a compelling, long-form article about civil forfeiture by staff writer Sarah Stillman, quoting IJ’s legislative counsel Lee McGrath. Michael Sallah, then of the Washington Post, had covered specific cases of forfeiture when he worked for the Miami Herald (to which he has since returned), so he was familiar with the issue. After reading Policing for Profit, he reached out to the IJ team to learn more. He subsequently published, with co-writers, a widely read six-part series on asset forfeiture in the Post beginning in September 2014. The Post’s series summary uses this description:

In recent years, thousands of people have had cash confiscated by police without being charged with crimes. The Post looks at the police culture behind the seizures and the people who were forced to fight the government to get their money back.

IJ was cited as a key source. In May 2015, journalist Conor Friedersdorf wrote a piece for The Atlantic titled “The Injustice of Civil Asset Forfeiture,” which linked directly to Policing for Profit.

This blitz of media coverage was the tipping point in elevating the topic across the country. “We weren’t just spending 10 minutes on the phone with reporters here and there,” Carpenter said. “We were spending hours and hours meeting with reporters, walking them through the data and helping them understand the extent of this problem.”

By elevating the issue and providing attorneys with intellectual ammunition, the Strategic Research Program team had made litigation a more effective tool for achieving justice and reform. For example, IJ won a judgment in Georgia that required state agencies to comply with reporting laws.

The team also helped to trigger reform efforts at all levels of government. In January 2015, U.S. Attorney General Eric Holder announced
that the Department of Justice (DOJ) would curb some of its civil asset forfeiture practices, particularly one type of equitable sharing. IJ accessed the DOJ database to assess the implications of this policy change, and discovered most current seizures would be unaffected. In response to this type of criticism, the DOJ issued additional guidelines to provide stricter definitions for eligibility, but IJ remains vigilant in its efforts to further limit government abuse.

In November 2015, IJ released the second edition of *Policing for Profit* and it continues to take on new cases and new research angles. For example, one of its clients in Michigan saw all of his business capital seized from his bank because the deposit amounts consistently fell below a threshold that would require federal reporting. When done intentionally to avoid reporting, this practice is called “structuring” and can make federal agents suspicious of your activities. IJ’s client, however, was not intentionally structuring, which government officials could have discerned if they had engaged in a simple investigation. In response, IJ has issued a new report, *Seize First, Ask Questions Later*, demonstrating an ongoing commitment to respond in a timely manner to new developments.
The model of the Strategic Research Program team has proven effective at elevating issues and illustrating key concepts that are relevant to IJ’s litigation efforts. By designing research to meet specific communications and litigation goals, without sacrificing quality (research projects are often painstaking and lengthy in duration), the Strategic Research Program team is able to define its framework for making decisions.

ON COLLABORATION
Carpenter describes the research development process as collaborative. Within the Strategic Research Program team, Knepper provides early editing and production leadership. Beyond the Strategic Research Program team, Carpenter estimates that, on average, draft research is shared with IJ’s communications team at least six weeks before publication. The integrity of the research methodology is never on the table, but the communications team does provide additional ideas for how best to explain the findings, which stories best illustrate the issue, and which language will be both accurate but also clear and accessible to IJ’s audience. This feedback influences the final text.

Most research is related to litigation, so the Strategic Research Program team works with IJ’s attorneys early in the process to brainstorm critical arguments, anticipate counterarguments, and identify potential gaps in knowledge about an issue among judges, reporters, and the public.

IJ’s teams work within what they call business units. Those include strategic research, litigation, legislation, communications, and activism. Knepper described a fluid and collaborative process across business units to advance specific issues or projects. Input and coordination is critical, and although IJ relies to some degree on managerial oversight, it more predominately cultivates a good-faith effort that is usually cited as a credit to the organization’s culture. “Not only is everyone expected to pitch in and help out, but people really want to,” Knepper said. “I think they’ve seen it work and they know that we are most effective when we are working together.” She added that although IJ does not operate in an overly hierarchical way, the example has to start from the top and the quality of the culture has to be carefully maintained through the hiring process.

ON IDENTIFYING YOUR AUDIENCE
Knepper defines the IJ audience broadly as any reasonably informed, average American. IJ also operates an activism arm, and the Strategic Research Program team wants all active citizens to engage the research with ease. Internally,
Carpenter said, they call it the “Mom Test.” If your explanation of the problem and the solution won’t make sense to your mom, keep working on it. Jargon or overly academic writing should be reserved for journals, not popular or even professional audiences.

ON OBTAINING GOVERNMENT DATA
Carpenter recommends that someone on every public policy organization’s team become an expert in Freedom of Information Act laws, or the equivalent in other countries where such laws exist. He said that this not only optimizes efforts to obtain government information, but it will confer credibility with judges and other government agencies, particularly in the face of lackluster cooperation or hostility.

ON MESSAGING
Carpenter said it can be counter-productive to focus on vilifying individuals in the government. This may lead to the erroneous conclusion that simply replacing the people in charge will solve the problem. Instead, he said that IJ’s message focuses on changing the rules — change incentives, change behavior.

Knepper emphasized the importance of including the stories of real people in messaging. Most audiences are more likely to engage if they can identify a specific victim, which triggers a stronger emotional response than statistics alone. Those stories are included, with imagery, in research reports and paired with data showing that the story is not an isolated incident. That is a powerful combination. Both are critical to success; one enhances the other.

ON MEASUREMENT
IJ as an organization focuses on winning lawsuits, but it also seeks favorable settlements and desirable legislative reform. The communications department carefully monitors media coverage and the Strategic Research Program team has begun to look specifically at media coverage that references or relies on their research. They also monitor whether their research played a meaningful role in a judge’s decision. The Strategic Research Program team has a secondary goal of inspiring more research in their chosen focus areas, and part of their strategy to achieve this is to publish academic versions of their research in journals.
DISCUSSION QUESTIONS

- Is the IJ relationship between research and communications optimal? What advantages or disadvantages can you see?

- Sometimes, IJ spends years on research projects. It also persists over lengthy time horizons to promote research in the media. How does your organization make decisions about allocating resources in this way? What are the tradeoffs? Do those tradeoffs change depending on staff size and budget?

- IJ conducts litigation and then develops research topics that strategically advance those litigation efforts. How do you select topics for research? Even if your organization does not initiate litigation, how do you identify desirable outcomes to help frame your decision-making?

- How do you balance hierarchy with collaboration in your office in order to optimize outcomes? Do you think about your organizational culture when you make a new hire?

- What are the individual stories you can tell about the people affected by the issues that your organization tackles? Is this part of your organization’s model for research and communications?