

Whose Hand to Hold?
How Administrators Understand Eminent Domain and
Where They Turn for Guidance

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Abstract

Controversies surrounding issues related to eminent domain remain in the forefront of academic and public debate, largely attributed to the United States Supreme Court's landmark 2005 ruling on the subject. Much of the academic discourse on eminent domain centers on constitutional dimensions of public use and just compensation or procedural components of transaction costs and regulation v. flexibility. Noticeably absent from the scholarly conversation, however, is the study of how public administrators actually involved in the process of eminent domain understand relevant issues. This silence has resulted in significant gaps between the study of the purpose and mechanics of eminent domain. How these public administrators understand eminent domain and where they search for guidance are significant questions that may inform and extend existing research on eminent domain. Particularly important to this research are the ways in which administrators' professionalism affects their administrative discretion in the implementation of a legal case, *Kelo*. Relying on survey and elite interview analysis with public administrators in the state of Connecticut, the birthplace of the *Kelo* case, this research seeks to answer the following four questions: How do administrators understand eminent domain, where do they turn for guidance, how do they interpret and understand takings law post-*Kelo*, and how do they understand "public" post-*Kelo*? This study finds support that administrators are generally unaccepting of eminent domain when used under the *Kelo* conditions, that they favor a notion of public use incorporating some degree of use by the public, and that they are most likely to turn to statutory and constitutional resources for eminent domain guidance. Further, the interviews were particularly useful in developing a four-part typology of administrators' understanding of eminent domain.

Dedication

To my mom, for all of her love and support, in the hopes that she might actually read something I've written. Yes, mom, this is your personal invitation.

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Chapter 1: Introduction

Arguably the most significant amendment of the United States Constitution, the Fifth Amendment guarantees individuals' rights to due process of law, protects against self-incrimination, and prohibits double jeopardy. Considerably overlooked in the field of public administration, however, are the final two lines: "nor shall private property be taken for public use, without just compensation." Though utterly important to the founders of our constitutional republic, the Takings Clause of the Constitution has managed to fall between the cracks in the scholarship of our applied field.¹

Statement of the Problem

Given the involvement of high-stakes rights of private property protection and advancement of the public good, eminent domain presents significant opportunities for scholarly inquiry in the field of public administration. The United States Supreme Court's landmark ruling in *Kelo et al. v. City of New London et al.* (545 U.S. 469 [2005]) has resurrected issues surrounding the evolving meaning of "public" in takings, the broadened public use as public purpose doctrine, and the practice of legislative deference. Key to the *Kelo* decision was the Court's adherence to precedent regarding the constitutionality of economic development takings for some degree of private benefit. The result is a flurry of legislative activity among the states to revise or enact stricter eminent domain statutes. In a post-*Kelo* environment, public administrators are faced with implementing ambiguous or conflicting takings legislation.² Thus,

¹ A search of the Social Science Citation Index of "eminent domain," conducted in November 2008, returned 99 articles; only one was in public administration literature and was published in 2000, pre-*Kelo*. The majority of articles (51) were published in law reviews, followed by urban studies and planning journals (15) and political science (6). Less than one-third of all articles were published in 2005 or later. Subsequent searches have identified two additional public administration articles.

² To be sure, I use the terms "eminent domain" and "takings" inter-changeably and should not be confused with regulatory takings (e.g., the government regulates the use of a property to the degree that equates to eminent domain,

the Court's deference to legislatures in many cases has transformed the practice of implementation into a deference to public administrators (Olejarski, 2008a).

Research Questions and Theoretical Foundations

Significant research questions then emerge: How is eminent domain understood by administrators, and where do they turn for guidance? Given the paucity of post-*Kelo* public administration literature and the deference to public administrators, in the long run, in implementing takings legislation and the process of eminent domain, my research seeks to answer these questions. The focus of this research, then, is to study the processes through which administrators actually involved in the process of eminent domain understand the concept and through which they search for guidance in implementing a legal case, or *Kelo*. Embedded in this case study is a study of the effect of administrators' knowledge and experience on their understanding and search for guidance during the implementation of eminent domain.

To study how administrators understand eminent domain and where they turn for guidance, in the absence of existing literature, requires a theoretical grounding in the role of administrative discretion and professionalism in implementing a legal case, which I have termed here "discretion in action." An acknowledgement of the role that discretion and professionalism assume in this process is necessitated by gaps in scholarship; academics have studied the procedural and constitutional questions surrounding eminent domain, but not the questions I pose here.³ In addition to researching how administrators understand eminent domain and where they turn for guidance, my research also seeks understanding of administrators' interpretations of

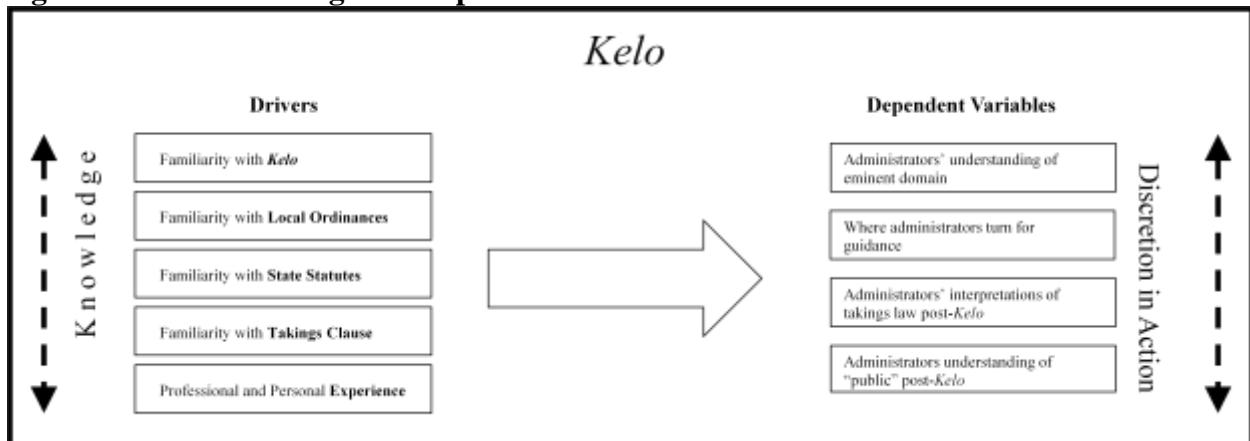
without actually using the power of eminent domain) or inverse condemnations (e.g., the property owner sues the government for compensation, such as when part of the property was taken by eminent domain, but the property owner argues that the partial taking is equal to taking the entire property).

³ See fn 1 above and Figure 2 below.

takings law post-*Kelo* and administrators' understanding of "public" post-*Kelo*. Therefore, the four research questions that my research seeks to answer include: How do administrators understand eminent domain, where do they turn for eminent domain guidance, how do administrators interpret and understand takings law post-*Kelo*, and how do they understand the meaning of "public" in a post-*Kelo* environment.

What I have characterized as knowledge and experience drivers have emerged as themes from the scholarship on administrative discretion, professionalism, and implementation, as well as public service motivation, complementarity of politics and administration, public good and public interest, and public administration and governance. Conceptually, these drivers are knowledge and experience (i.e., professionalism) variables operationalized as administrators' familiarity with *Kelo* and eminent domain, familiarity with local and state ordinances and statutes affecting eminent domain, familiarity with the Takings Clause of the US Constitution, and professional and personal experience with eminent domain. Figure 1 below shows the relationships between the drivers, or knowledge and experience, and the postulation that these drivers are related to administrators' understanding and search for guidance, or discretion in action, in the context of *Kelo* as the intervention.

Figure 1: Research Design Conceptualized



Setting the Scene: Key Supreme Court Rulings pre-Kelo

Though largely intuitive, particularly in the absence of significant research on the contestability of eminent domain, “eminent domain” should invoke ideas of blighted properties and urban renewal, or the traditionally accepted uses of takings such as building schools and other infrastructure, widening roads, or constructing a park.⁴ The contemporary use of eminent domain, however, frequently invokes notions of governmental distrust and an emphasis on the business good, rather than the public good. For Knapp (2008), concern for eminent domain abuse is a reflection of a broader accountability problem, or a call for the responsible use of public resources through a legitimate political process. This review of relevant precedents provides a glimpse at the ways in which eminent domain doctrines have evolved in the Court. In 1954, the Supreme Court upheld the traditional conceptions of eminent domain in *Berman v. Parker*.⁵ Here, the Court ruled that eminent domain was a justifiable state action for Washington, D.C. to advance economic redevelopment in its blighted communities. The poor condition of the blighted properties is evident: 60 percent lacked bathrooms, 58 percent had outside toilets, 84 percent lacked central heating, and 64 percent were beyond repair. In addition to the Court’s heavy reliance on this case in its most recent takings case, this landmark decision was the first time the Court ruled that urban renewal served the public good under its broad interpretation of the Takings Clause (Bixby, 1987; Cypher & Forgey, 2003; Staley & Blair, 2005; Wilder & Stigter, 1989). The *Berman* decision was the first time the Court equated the state’s power of eminent domain with its police power to maintain health, safety, and morality (Bixby, 1987). That the Court incorporated the takings power with the powers of the state to

⁴ Lopez and Totah (2007) note that *Kelo* was more controversial than any other case decided in the Court’s 2004-2005 term.

⁵ *Berman et al., Executors v. Parker et al.*, 348 U.S. 26 (1954).

inherently maintain order and govern behavior is significant; the state's ability to advance the public good through redevelopment is considered equally important to its ability to provide security and to promote the general welfare of its citizens.

Further, *Berman* is a clear example of the Court's practice of deference to state legislatures in takings cases where public use is at issue. Justice Douglas's opinion for the Court stated, "The role of the judiciary in determining whether that power [eminent domain] is being exercised for a public purpose is an extremely narrow one" (as cited in Bixby, 1987, p. 624). The Court's deference to state legislatures resulted in a call for a more active process of judicial review in takings cases to protect individuals from the political pressures that are prominent in such cases (Esposito, 1996; Wilder & Stigter, 1989), which is what the framers were trying to safeguard against when they wrote the Constitution. As Publius notes in *Federalist 71*, the public must be protected against its own whims and passions by those who have been chosen to protect and promote the public good.

The Supreme Court's practice of deference to states' legislatures continued to be a core issue in the takings cases it heard. Thirty years after *Berman*, the Supreme Court heard its next takings case in *Midkiff*. Property ownership had become so severely concentrated throughout Hawaii that the state legislature feared it would lead to market failure. The figures are astonishing: Almost 49 percent of the land was owned by the state and federal governments, and an additional 47 percent was owned by 72 private individuals. To diversify property ownership, the state legislature passed a land reform act that enabled renters of single-family homes to ask the housing authority to condemn the property; renters could then purchase the property from the authority. *Midkiff* cited *Berman* extensively and ruled that Hawaii Housing Authority's Land

Reform Act of 1967 was an appropriate use of eminent domain (Bixby, 1987; Wilder & Stigter, 1989).

Bolstering the precedents set in *Berman*, the Court's ruling in *Midkiff* was based largely on the Hawaiian legislature's assurances that the taking constituted a public good. While the individual properties were being sold for private development, the state argued that the overall affect of diversifying property ownership met the public use requirement of the Takings Clause. Justice O'Connor's opinion for the Court in *Midkiff* reinforced the *Berman* ruling that the judiciary's role in reviewing state legislative actions in takings cases was a narrow one and that the public use requirement is "coterminous" with the state's police power (as cited in Bixby, 1987, p. 631). The *Midkiff* decision also served to reaffirm the historically broad interpretation of public use. O'Connor acknowledged that although the state's actions may, at first glance, appear to favor private gain, it may have additional public benefits. She stated, "What in its immediate aspect is only a private transaction may...be raised by its class or character to a public affair" (as cited in Bixby, 1987, p. 633). More extreme advocates for judicial review in takings cases argue that the Court's legislative deference and equivalence with police power, which were confirmed in *Hawaii v. Midkiff*, essentially have eliminated the public use limitation of the Fifth Amendment (Bixby, 1987; Esposto, 1996; Staley & Blair, 2005).⁶

The Kelo Decision

An overview of the decision.

Unlike the unanimous decisions in *Berman* and *Midkiff*, the Supreme Court was divided 5-4 in the 2005 *Kelo* decision. This four-opinion decision warrants a particularly in-depth discussion because it is based largely on the Court's precedents set forth in *Berman* and *Midkiff*,

⁶ *Hawaii Housing Authority et al. v. Midkiff et al.*, 467 U.S. 229 (1984).

and it provides the most recent guidance on takings for public administrators. Justice Stevens delivered the opinion of the Court and was joined by Justices Kennedy, Souter, Ginsburg, and Breyer, with Kennedy filing a concurring opinion. Justice O'Connor filed a dissenting opinion, and Chief Justice Rehnquist and Justices Scalia and Thomas joined; Thomas also filed a dissenting opinion.

The petitioners in *Kelo* were not necessarily asking the Court to decide on an entirely new issue but, rather, to reexamine the eminent domain doctrines established in *Berman* and *Midkiff*. Most notably, the petitioners sought to have the Court evaluate the constitutionality of takings for economic development with a “new bright-line rule” that would disqualify such a purpose (p. 484).⁷ Further, the Court again addressed the broad v. narrow interpretation of public use in the Takings Clause, as well as whether the city’s redevelopment plan served the public purpose.

In 1990, a state agency designated the city of New London, CT a distressed municipality as a result of economic decline in past decades. In 1996, the federal government closed a naval warfare center that had employed over 1,500 people in the city. Then, in 1998, the city’s unemployment rate was twice that of the state, and its population reached a low level equal to that in 1920. The city, and particularly its Fort Trumbull neighborhood, became the focus of economic redevelopment efforts. In early 1998, the state approved a bond for over \$5 million in support of the New London Development Corporation (NLDC) for redevelopment planning and a \$10 million bond to build a park in the area.

The key to the city’s economic redevelopment was that Pfizer, Inc., a pharmaceutical company, announced it would build a \$300 million research facility in the area next to Fort Trumbull, which would increase tax revenues and stimulate job growth. Later that year, the

⁷ All page citations and quotations are taken from *Kelo* unless otherwise noted.

NLDC received approval from the state and began focusing on 90 acres in the Fort Trumbull area. This 90-acre area included 115 privately-owned properties and 32 acres of vacant land where the naval center previously existed. The area was divided into seven parcels, and the proposed redevelopment uses included the Pfizer facility, a park, a marina, 80 new residences, a museum, retail stores, and parking.

The Court’s enduring policies of deference and broad interpretation.

The city and the NLDC collaborated to design the redevelopment plan with the Pfizer facility as the focal point to stimulate the economy through tax revenue and new jobs. The plan also incorporated recreational facilities, such as the marina, park, and museum. It should be noted that the purposes of the redevelopment plan were described by the Court in the order listed in this article, with Pfizer’s economic benefits first, followed by benefits to which the public would have direct access.

This is the issue at the heart of the case because the city, and in turn the Court, are once again granting a great degree of deference to state and local legislative actions and their interpretations of public use. The city and NLDC interpreted public use in the broadest sense of the term by listing the benefits gained by building the Pfizer facility ahead of the direct public use of the recreational facilities. The fact that the Court accepted the redevelopment plan’s purpose without further examination is not surprising, giving its historical practice of deference. Hegyi (1979, p. 442) describes this as the judiciary’s preservation of the “integrity of the legal process” rather than a promotion of a particular “social philosophy.” The Court’s narrow role of judicial review in takings cases therefore extends to ensuring that the procedural aspects of the taking are constitutional and defers to the legislature on issues regarding purpose.

Citing both *Berman* and *Midkiff*, the Court’s opinion conclusively solidified its practice of legislative deference and its broad interpretation of public use as public purpose. Justice Stevens’s opinion stated, “Without exception, our cases have defined that concept [public use] broadly, reflecting our longstanding policy of deference to legislative judgments in this field” (p. 480). Stevens acknowledged that the redevelopment plan did not seek to open all of the land taken under eminent domain to the public, but cited the difficulties in enforcing the narrow interpretation of public use, such as how much of the public should have access to the land and at what price. He bolstered his argument in favor of the broad interpretation due to the diverse and ever-changing redevelopment needs of communities.

Does economic development serve the public purpose, or more precisely, as the Constitution says, the public use?

In adhering to its practice of legislative deference, the Court cited a Connecticut municipal redevelopment statute, which states that the taking of developed land for economic development satisfies the public use requirement and is to be determined by the legislature (§8-186 *et seq.*). The state statute, combined with the *Berman* ruling that economic development does serve the public purpose, is, in essence the extent of the Court’s direct ruling on whether economic development served the public purpose in *Kelo*. As it did in *Midkiff*, the Court focused its evaluation on the broader issue of the purpose of the taking, not its “mechanics” (p. 499). Stevens’s opinion stated, “Those who govern the City were not confronted with the need to remove blight in the Fort Trumbull area, but their determination that the area was sufficiently distressed to justify a program of economic rejuvenation is entitled to our deference” (p. 483). The Court acknowledged the city’s right to improve the economic conditions of the Fort Trumbull area. Coupling the state statute granting it the right to use eminent domain for

economic development takings with the Court’s narrow role in reviewing takings cases, the Court ruled that the plan “unquestionably” served the public purpose and the takings satisfied the public use requirement of the Takings Clause (p. 484).

A higher standard for takings cases?

The petitioners in *Kelo* urged the Court to institute a higher standard of judicial review in economic development takings cases in light of the difficulty that arises from differentiating between public and private takings. The Court dismissed the petitioners’ claims and argued that economic development has traditionally been a governmental function and cited the importance of the states’ rights and abilities to advance it. Further, the Court held that while the lines between public and private takings may be blurred and that the state’s actions in favor of the public purpose may benefit private parties, as long as the public benefits from the economic development, the taking is constitutional. Perhaps in an effort to reconcile his constitutional judgment with his policy judgment, as Dorf (2005) and Main (2005) note, Stevens all but encouraged states to enact stricter legislative actions, stating, “We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power” (p. 489).

Justice Kennedy’s concurring opinion clarified the degree to which the public and private parties involved in the taking should benefit when he reiterated the incidental benefit principle. Kennedy explicitly stated that takings where the public benefit is only incidental are “forbidden” by the public use requirement of the Takings Clause (p. 490). He continued to say that when accusations are made that takings were implemented in strong favor of the private parties involved, the Court has a responsibility to examine the case closely. This closer examination,

however, should be conducted under the presumption that the taking was for public use and that the government's actions were reasonable.

Here, the petitioners' argument was two-fold: Their property was not blighted, and the proposed development on their property was not for the public use, in the narrow interpretation of the term excluding economic development. The Court responded that it was not feasible to examine economic development takings on an individual basis. Although not all of the land in the taking was blighted, that the community was declared distressed and the redevelopment plan sought to revitalize the community was sufficient. Stevens stated, "Just as we decline to second-guess the City's considered judgments about the efficacy of its development plan, we also decline to second-guess the City's determinations as to what land it needs to acquire to effectuate the project" (p. 488).

Because the Court found the city's redevelopment plan to be comprehensive and the petitioners' legal rights had been protected, heightening the review would cause an unnecessary and unfeasible burden on the implementation of the redevelopment efforts. Essentially, the petitioners were asking the Court to require a direct, visible public benefit for each individual property that was taken. Not only did the Court view the petitioners' new bright-line review as imposing unreasonable time constraints on the state, but it also disqualified the argument on the basis of the existing statute that protected the state's use of eminent domain, therefore invalidating additional, individual assurances.

An opportunity lost.

The majority opinion in *Kelo*, therefore, emphasizes the public use as public purpose doctrine, incidental benefits, and legislative deference. Heavily reliant on precedent, the Court was reluctant to take advantage of the opportunity presented in *Kelo* to initiate a higher standard

of judicial review for takings cases. The reason I assert that *Kelo* was an opportunity lost is because I believe that the standards that have served the Court well in ruling on issues of eminent domain no longer meet the needs of public administrators who are the ones who must implement takings language. Epstein (1982, p. 355) maintains that the ever-expanding parameters on which the Court relies in takings cases, or the “open-ended nature of its inquiries,” is responsible for “block[ing] the development of a rigorous theory with which to harmonize the cases.” The loss of the traditional understanding of public use in takings in light of the increased prevalence of eminent domain and the expanded public purpose concept accompanies the drive for economic redevelopment and urban renewal and sprawl. The scarcity of land as a resource for states to take in efforts to advance the public good is increasing. In my opinion, some form of standards or guidelines for public administrators is needed to enable them to manage responsibly issues surrounding eminent domain.

The dissenting opinions.

Recall that Justice O’Connor delivered the dissenting opinion for the Court, and she was joined by Chief Justice Rehnquist and Justices Scalia and Thomas. O’Connor’s dissent embraced the idea that after the *Kelo* decision, private property would be unsafe from takings for private development, as it could be condemned in a taking simply because the state identified an alternative use that would be more beneficial to the public or a range of parties. O’Connor equated the *Kelo* decision to “Effectively delet[ing] the words ‘for public use’ from the Takings Clause of the Fifth Amendment” (p. 494). She argued that because nearly all private property could potentially generate some form of public benefit, the Court’s decision to extend its practice of legislative deference without an additional heightened judicial review eliminated any constraints on governmental takings. Scholarly literature has echoed O’Connor’s concerns

(Christensen, 2005; Main, 2005). Calling a takings analysis that disregards the public use requirement a “distortion of the Fifth Amendment” is Fawcett (1986, p. 514); Coyne (1985) argues that the nullification of this limitation amounts to a disregard for the individual rights that the amendment was designed to protect. Other scholars view O’Connor’s departure from her ruling in *Midkiff* as contradictory; Mihaly’s (2007, p. 38) response to the justices’ stricter interpretation of public use is, “At best, the dissents’ bright-line definition of public use is no longer a line at all, but a muddle inapplicable to most new, mixed-use urban development situations.”

O’Connor distinguished between the perceived and actual reasons for the petitioners’ suit against the city in order to clarify the basis for her opinion. It was not that the petitioners were opposed to the redevelopment efforts or holding out for higher compensation; they were opposed to the lack of a direct public benefit, or the public use required in the Constitution. A key problem addressed in the dissenters’ argument was the idea that, after *Kelo*, private property could be taken merely because someone else, another private owner, could be more productive or beneficial with it in the eyes of the government.

O’Connor favored establishing some mechanism to evaluate private property in economic development takings individually. Citing *Berman*, she argued that because all of the properties were blighted, the public benefit was clear. In *Kelo*, however, this was not the case. Although O’Connor failed to provide an alternative solution, she was cautious of the government’s expanded power to condemn unblighted private property purely for economic development.

The dissent gave much more attention to the specific details of the city’s redevelopment plan than did the majority opinion. Two of the seven parcels of land scheduled for redevelopment were occupied by the petitioners. In one parcel, the three existing homes were to

be condemned, but the existing Italian Dramatic Club would remain; future plans for this parcel were vague and slated for office space as the market developed. Future plans for the other parcel where petitioners resided were more ambiguous, as it was listed as “park support” (p. 495). The dissent cited oral arguments during which the city conceded that the area could potentially be used for parking, a use the dissent argued did not meet the public use requirement of the Takings Clause.

Recall that in the *Midkiff* opinion, O’Connor stated that the state’s power to invoke eminent domain was coterminous with that of its police power. In her *Kelo* dissent, she argued that the coterminousness of the two terms sometimes lacks constitutional muster that requires additional consideration. She explains that in *Midkiff*, the takings were both within the police power and for the public purpose and therefore did not put the coterminous language to the constitutional test. Moreover, in *Midkiff*, O’Connor advocated for the judiciary to play a narrow role in reviewing takings cases, therefore adhering to the Court’s practice of legislative deference. In response to the Court’s recommendation that states enact stricter eminent domain legislation, O’Connor sharply remarked:

This is an abdication of our responsibility. States play many important functions in our system of dual sovereignty, but compensating for our refusal to enforce properly the Federal Constitution (and a provision meant to curtail state action, no less) is not among them. (p. 504)

While acknowledging the role the states play in identifying limits on economic development takings, she encouraged the Court to fulfill its duty of judicial review and to uphold the Constitution.

Justice Thomas concurred with O’Connor’s dissent and echoed her arguments that the Court’s deference to the legislature resulted in an abdication of its judicial responsibility to protect individual Constitutional rights. He filed an additional dissent that recommended more

extreme measures in curtailing the Court's broad interpretation of public use as public purpose to protect private property rights. Thomas argued for a strict adherence to the public use requirement of the Takings Clause, and, in turn, a reexamination of the Court's historical rulings on public use cases, stating that the Court should "consider returning to the original meaning of the Public Use Clause: that the government may take property only if it actually uses or gives the public a legal right to use the property" (p. 521).

Thomas viewed the public use and just compensation requirements of the Takings Clause to constrain strictly governmental uses of eminent domain, citing the remainder of the Constitution. The basis for Thomas's argument was that had the framers intended public use to be interpreted as public purpose, they would have expressly stated that. He concluded that the Court's rulings in favor of a broader interpretation than the Constitution explicitly states should be reconsidered because they were out of context with the intentions of the framers.

Kelo: From the Perspective of Those Involved

In interviews with administrators in Connecticut to understand eminent domain in a post-*Kelo* environment, a number of administrators explained that context is incredibly significant to their decision-making process. An important part of the context of this case is the perspective of those closest to the situation. With the assistance of one of the significant community members involved in the *Kelo* case, Kathleen Mitchell, I was able to interview her; Amy Visciglia (formerly Hallquist) and Steve Hallquist, the two grassroots opposition leaders; Doug Schwartz, the neighborhood mailman (who was described as coming in and making a sandwich, whether the resident was home or not, and then leaving the mail; it was a tight-knit community); and the lead plaintiff in the case, Susette Kelo, and her husband, Timmy LeBlanc. Most interesting about my interviews with the people involved in the case is how similar their chief complaints

are about the ways in which the situation was handled to descriptions of the issues needing most attention by the administrators I interviewed. .

Transparency of the eminent domain process overall and, more specifically, the public hearings involved, are the two key issues raised by the administrators that I interviewed and the people directly involved in the *Kelo* takings. Here, the state funneled funds to the New London Development Corporation (NLDC) via the city of New London. As Kathleen explained, “The state wouldn’t give the city council the money [for the development] if they were going to manage it, so they had no choice but to reactive the NLDC because the state wouldn’t trust the city council with the money.” Timmy added, “The state wouldn’t trust them [the city] period.” Kathleen expressed major concerns over this arrangement because the NLDC was made up almost entirely of people from other municipalities who were “making decisions for New London residents.” She continued, “We couldn’t vote them out of office.” Timmy stated, “They [the NLDC] were all involved with politics, and they were just trying to make a dollar off New London’s pocket. They didn’t care what happened to the normal mom and pop.” Steve described it as “a confluence of personalities.”

Susette, Kathleen, and Timmy all expressed serious concerns about the NLDC’s tactics during the process of acquiring the properties needed for the development. Susette stated, “Nobody [in the neighborhood] wanted to move.” To one family, Kathleen explained, “The NLDC was kind enough to allow them lifetime use of their house, so you know what they did? They dug up everything around it so it was just standing there.” “Like a moat,” Susette added. “And then they really couldn’t stay there...because there was nothing to hold back the [rain] water and the basement was flooding,” said Kathleen. Susette described a similar experience for another property owner, “They did the same thing to [another plaintiff]. They dug out all around

[his] house, and they put Jersey barriers [concrete barriers frequently used as highway medians] up against his house....His house was full of water.” Susette continued to describe the ways in which the NLDC tried to intimidate property owners by calling social services on elderly residents, saying they were unfit to care for themselves, and calling the agency on another family, saying that the property was unfit for the child living in the home. Timmy and Susette also described NLDC officials driving through the neighborhood on a daily basis to intimidate property owners.

Susette noted, “What they did to us was wrong. It was wrong then, and it’s still wrong now.” “When all was said and done, it was pretty disgusting. It was just about as low as you could get,” said Kathleen. Timmy added, “These NLDC people...these are very unscrupulous...very un-American people.” Susette concluded, “Nobody in this country should have to live like we lived. Nobody. Like animals, like the wolves were at our doors for ten years. This is America, nobody should have to live that way.”

According to both Amy and Doug, the takings were funded through three state statutes, those focusing on urban rehabilitation bonds, blight, and economic development. Most problematic, according to Amy, was that New London never designated the neighborhood as blighted, a requirement of the statute. She noted, “They [the city of New London] never designated it a blighted area....We are a distressed community, but ‘blighting’ is something that has a statutory definition. That was their fatal error.” This, she explained, is what led to the community’s mobilization of opposition efforts.

Related to the lack of blight designation is the empirical support provided by the city with regard to the neighborhood’s poor condition. Recall in the discussion of the *Kelo* case that the Court cited the neighborhood’s unemployment rate as being twice that of the state and that the

population of the city declined to levels of the 1920s. Amy disputes the city's calculations, as cited in the case, particularly the high unemployment rate. She explained that the city included the naval center's closing, which resulted in a loss of about 1,500 jobs, in the unemployment rate, therefore inflating the number. Amy stated, "The little businesses that were there didn't lose employees....It was an in-tact neighborhood" and continued describing many of the specific neighborhood businesses that remained open and successful.

Finally, both Doug and Amy explained that the NLDC began acquiring properties before the municipal development plan had received final approval from the New London city council. Final approval of the plan required a public hearing, which leads to the discussion of the lack of transparency of the hearing process in the case. When the city first began announcements regarding the municipal development plan, residents were generally supportive of the idea of improving the neighborhood. Amy stated, "I had a great hope for New London. I was excited." Eager to become involved, both Amy and her husband, Steve, attended "public hearings" about the plan. She described the consensus at these "hearings" as being, "We really like this plan. I mean, who doesn't like trees and people and streetscapes and lattes. Croissants, for heaven sakes!" She added, "And we'd say, 'This is great, this is good stuff, but please save the neighborhood.'" During these "hearings," Amy noted that a man would approach community members after they spoke to ask their name and where they lived. She later found out that this man was a lawyer for the NLDC.

As it turned out, these public hearings were not hearings at all but were merely public meetings. Amy explained, "They [the NLDC] would say 'We're having a public meeting, we're having a public hearing,' and next thing you know, we're all calling them 'public hearings.' Those meetings, they weren't public hearings because public hearings have to have public

officials there. They were there, but they weren't official." She continued to explain that these meetings were not official hearings because the NLDC was running the meetings, rather than the city council.

There was only one true public hearing, held at the Planning and Zoning Commission meeting, on the day the city council voted to approve the plan. At this meeting, Amy explained, while the NLDC was presenting their case to advocate for approval of the municipal development plan, and, subsequently, acquiring the properties needed for development, the NLDC said, "We had six community meetings, and of those community meetings, 2700 people stood up, or however many the number was, and said they liked the plan." This is why the NLDC lawyer asked community members for their names and addresses after their comments at the public meetings.

This meeting, Amy noted, lasted about ten hours. She explained, "The real fight started, but what we didn't know, sadly, was that the real place where we could insert ourselves in the process was over. We thought the fight was just getting warmed up, but it was a done deal." She continued, "No one broke the law, but no one informed us of what the law was of the process we were in."

Organization

To unfold the pertinent dimensions of the case described above, contextual background must be established. Chapter 2, therefore, outlines first the history of eminent domain and its evolution as an administrative tool and provides the context for the present research in the form of an analysis of existing constitutional and procedural literature on eminent domain. The analysis of these two streams of literature highlights present gaps, as well as the ways in which my research seeks to inform better both streams. Finally, relevant public administration

literature is analyzed to establish the theoretical foundations of this research in administrative discretion, professionalism, and the implementation of a legal case, as well as in supporting literature.

Chapter 3 builds on the conceptualization of this research and elaborates on its operationalization. After discussing the research questions in greater detail, this chapter outlines the overall approach and design of the study, as well as the process for selecting study participants. Discussed in explicit detail are the methods involved in collecting and analyzing data from the survey instrument and elite interviews. Limitations of the present research are then detailed.

In Chapters 4, 5 and 6, I provide the results of the survey and interview analysis. Chapter 4 explores administrators' understanding of eminent domain and their search for guidance in terms of a comprehensive, descriptive picture of the characteristics of administrators who participated in the survey and their understanding and search for guidance. Chapters 5 and 6 delve deeper into the relationships between the knowledge and experience drivers and the dimensions of discretion in action. It is here, in Chapters 5 and 6, where insight is provided into how administrators understand eminent domain and the processes involved in their search for guidance.

Finally, Chapter 7 serves to discuss the theoretical and practical findings of this research with regard to administrators' understanding and search for guidance. In addition to relating these findings to the two streams of literature, the constitutional and procedural streams, as well as to the literature on administrative discretion, professionalism, and the implementation of a legal case, this chapter discusses broader implications, such as the development of a typology of administrators' understanding. As a very significant finding of the study, this typology

incorporates survey and interview results in the construction of four categories of understanding that are inclusive of political and legal authority to use eminent domain.

Chapter 2: Literature Analysis

Given the normative concerns of my research questions, a review of the framers' values of private property rights and the public good is the point of departure for my literature analysis. Following is a brief history of eminent domain, which serves to highlight its evolution as an administrative tool. After a discussion of how eminent domain has been broadly treated in scholarship, two streams of literature, constitutional and procedural, are discussed in order to bring forth the research that is most relevant to my inquiry, as well as to underscore the gaps that my research seeks to fill. Finally, an analysis of public administration literature that has provided the theoretical foundations to the present research is included.

The Takings Clause in The Federalist Papers

That the taking be for public use and that private property shall not be taken without just compensation are the two requirements for eminent domain, as expressed in the Takings Clause of the Fifth Amendment of the Constitution. A brief description of the framers values in *The Federalist Papers* facilitates a deeper understanding of the meaning of the Takings Clause, which then provides the foundational context for contemporary uses of eminent domain in a normative-constitutional context. As Stoebuck (1972) asserts in his seminal work, the real value of eminent domain principles lies in their historical and theoretical development.

The framers valued private property rights over the public good when they crafted the Takings Clause of the Constitution, but the relationship between the two concepts is mutually dependent and reinforcing (Olejarski, 2007). The complex nature of this relationship is clarified with an examination of the discourse preceding the ratification of the Constitution.⁸ In

⁸ The authors of *The Federalist Papers* chose to write under the pseudonym "Publius," which is how I will refer to them through the text, rather than identifying them as Madison, Hamilton, or Jay.

Federalist 10, Publius was trying to secure a balance between protecting the public good and private property rights in a large republic.⁹ Publius reveals his thoughtful argument that, while factions, or majority interests, are the greatest disease of republican governments, a large republican form of government is the only cure for the disease. He argues that removing the causes of factions, such as destroying liberty or instituting equality of passions and interests, is far worse than the existence of factions, and he therefore believes that republican government must instead control the effects of factions. Factions threaten the protection of the public good because, Publius cautions, decisions are often made that disregard justice and the interests of the minority. Further, factions are the result of the inequalities in private property ownership and the varying interests between individuals who have property and those who do not.

In opposing the equality of passions, Publius argues that the purpose of government is to protect the inequalities that exist in the capacity for private property ownership in the republic because it is that very inequality that brings about the diversity of opinions. Publius's argument is complex: factions are caused by the inequalities that exist within the population, and a republic must protect those inequalities in order to ensure diversity in the representatives who are chosen; it is the diversity, in turn, which controls the effects of factions. He asserts, "The diversity in the faculties of men from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. The protection of these faculties is the first object of Government" (p. 58).

Federalist 51 carries on Publius's discussion of factions in a larger republic, arguing that such forms of government are more capable of governing themselves with the interests of the public good in mind. Again, he states that a large republic in America will foster a diversity of

⁹ All of the following citations are from the 1961 edition of *The Federalist*, J. E. Cook (Ed.). Cleveland, OH: Meridian Books.

private interests and ideas through its factions but that diversity will decrease the potential for a majority that is not aligned with the public good. Part of the private interest is upholding the public interest; “that the private interest of every individual, may be a sentinel over the public rights” (p. 349). Of particular significance is Publius’s contention that the public good will always be upheld as a result of the representatives’ dependence on the will of the people. They must act in favor of the public good to remain in office, thereby prohibiting the emergence of a majority on unjust principles.

The framers of the Constitution valued the individual right to private property over the public good, but the value they placed on each principle is one of mutual-dependence. Private property rights can only be protected if the public good is guarded and advanced, therefore fostering individuals’ capabilities to own private property. The way to ensure the public good is through the protection of property rights, which protects the inequalities of individuals’ capabilities that lead to a diverse representation that will protect the public good. The genius of this complex relationship between the protection of individual property rights and the public good is abundantly clear in *Federalist 10*. Once again, Publius asserts, “The diversity in the faculties of men from which the rights of property originate, is not less an insuperable obstacle to a uniformity of interests. *The protection of these faculties is the first object of Government*” (p. 58; italics added). He adds, “To secure the public good, and private rights...is then the *great object to which our enquiries are directed...*” (p. 61; italics added). Here, one value does not definitively trump the other. Rather, it is the framers’ expression that diverse capabilities in individuals that lead to inequalities in private property ownership make the presence of a majority interest quite difficult to achieve, and to protect that diversity means protecting the

public good. The framers' vision of the government's purpose was to protect simultaneously private property rights and the public good, one of which cannot be protected without the other.

Eminent Domain in a Historical Context

"Eminent domain" was first used in the 17th century by Protestant moralist and legal scholar Hugo Grotius who understood it to mean that individual property belonged to the state and that the state had the right to take that property in the name of the public good (Bauer, 2003; Bixby, 1987; Cypher & Forgey, 2003; Harrington, 2002). Modern interpretations of the term remain similar; the government has the power to force individuals to turn over private property to the government for public use (Bixby, 1987; Cypher & Forgey, 2003; Staley & Blair, 2005; Wilcox, 1967). In its earliest applications dating back to the 19th century, the government used eminent domain primarily for land development, including the construction of roads, railroads, irrigation systems, and mills. With westward expansion and the industrial revolution, takings increased, as did the number of legal disputes (Bixby, 1987; Staley & Blair, 2005; Wilder & Stigter, 1989).

Two opposing views of the meaning of the public use requirement of the Takings Clause developed as a result of the increase in suits against governmental takings: those favoring a broad interpretation and those favoring a narrow interpretation. Courts during the 1800s narrowly applied eminent domain to cases where the public had direct access to the redevelopment (Bixby, 1987; Harrington, 2002; Staley & Blair, 2005; Wilder & Stigter, 1989). Despite the precise nature of the framers' language in limiting eminent domain to public *use* in the Takings Clause of the Constitution (i.e., "nor shall private property be taken for public use, without just compensation), the Supreme Court's use of discretion accounts for the broader interpretations of public use as public *purpose* or benefit in the 20th century. Because the Court

has continued to interpret public use as public purpose, despite the changing context under which eminent domain proceedings are initiated, the standard in takings cases has been broadened to the extent that the public use limitation in the Constitution appears all but forgotten. As Fawcett (1986, pp. 514-515) aptly notes, “The scope of the Fifth Amendment has expanded until it has no apparent boundary.”

Advocates of both interpretations of public use agreed that eminent domain should not be used for direct private gain. Two exceptions emerged, however, as the focus in takings cases began to shift toward who would receive the benefits in addition to its purpose. The first, the “indispensability” exception, requires that the project must be indispensable to the state’s advancement of public welfare and that eminent domain must be indispensable to the project (Wilder & Stigter, 1989, p. 58). Second, the “indirect benefit” exception requires that private gain be secondary to the public good, which thereby prevents incidental public benefits (Bixby, 1987, p. 623; Wilder & Stigter, 1989, p. 58).

Eminent Domain Literature, Broadly Treated

The body of existing scholarship on eminent domain is dominated by law reviews, distantly followed by urban affairs and planning and political science research.¹⁰ Constitutional questions surrounding public use and just compensation dominate the literature. Other scholars have taken a broader constitutional approach to takings. The urban affairs literature, however, emphasizes issues such as transaction costs and property valuation. Also prevalent is the study of the legislative environment, with several scholars studying institutional or legislative shifts after *Kelo* and several other landmark eminent domain rulings (i.e., *Berman v. Parker* and *Hawaii v. Midkiff*). In response to *Kelo*, a few scholars have addressed the public’s response. Finally, a number of scholars have provided models or practical guides related to a broader

¹⁰ See Appendix A for a comprehensive list of eminent domain scholarship divided by theme.

conception of eminent domain. Table 1 below shows the number of articles for each of the themes discussed above.

Table 1: Eminent Domain Literature Themes

ADDRESSES KELO	29
HISTORICAL CONTEXT	42
PUBLIC USE	26
JUST COMPENSATION	38
BROADER CONSTITUTIONAL	31
PROPERTY VALUATION	22
TRANSACTION COSTS	9
INSTITUTIONAL OR LEGISLATIVE SHIFT	8
LEGISLATIVE DEFERENCE OR HEIGHTENED REVIEW	19
PUBLIC OUTCRY	11
MODEL OR PRACTICAL GUIDE	19

An Intersection of Two Streams of Literature

From the broad body of existing literature covering the dimensions of eminent domain, two streams have emerged as the most relevant to my research. The constitutional stream, most prevalent in law reviews, focuses largely on issues of public use and just compensation and seeks to answer questions involving when and why eminent domain should be used. The procedural stream, frequently exemplified by urban affairs literature, offers a more mechanical approach with an emphasis on transaction costs and the regulation v. flexibility debate; this stream studies how eminent domain should be used. These two streams of literature are particularly relevant to my research because they address constitutional and procedural dimensions, both of which

should be given consideration in scholarship and in practice. The difficulty lies in the minimal overlap between the two streams, a bridge my research seeks to overcome. Deciding whether to initiate eminent domain proceedings involves constitutional and procedural and economic issues. Exploring what takings mean to administrators and where they turn for guidance may help us better understand how these considerations are incorporated into the decision-making process.

In her *Kelo* dissent, Justice O'Connor argues that the public use requirement of the Takings Clause was effectively eliminated with the Court's ruling. Scholars have echoed O'Connor's sentiments that the lack of a heightened standard of judicial review eliminated governmental limits on its takings power (Bell & Parchomovsky, 2007; Christensen, 2005; Main, 2005). Though economic development has been considered to meet the public use requirement for takings (e.g., for blight removal) since the 1950s with the Supreme Court's ruling in *Berman*, *Kelo* brought such takings for private gain into the spotlight. Han (2008), however, disputes economic development as a viable public use, contending that urban revitalization is public use, whereas economic development fails to qualify. As a result, scholars have argued that economic development takings should be banned if they are not for public use (Cohen, 2006) and that takings in general should be unconstitutional if they are for private development (Boudreaux, 2005). Conversely, Salkin and Lucero (2005) support economic development takings for private gain because of the value that public-private partnerships offer in achieving the public purpose. Melton (1996) similarly argues that the public use requirement is too strict of a limitation for takings because public benefit is more aligned with the original intent of the requirement. In response to scholars asserting that takings requirements protect the marginalized population (Boudreaux, 2005; Goodin, 2007; Mushkatel & Nakhleh, 1978), Farjad (2007) strongly favors

economic development takings and supports the broader interpretation of public use as being inclusive of increased tax revenues, employment opportunities, and community redevelopment.

The Court's decision in *Kelo* was a collision of two of its landmark takings cases, *Berman* and *Midkiff*. *Berman* was the first time the Court ruled that economic development takings were constitutional; in *Midkiff*, private gain was permitted to overshadow the public use requirement. *Kelo* has presented the field of public administration with a number of opportunities. Important for my research is the way in which public administrators interpret and operationalize the changing character and boundaries of publicness. The public use as public purpose doctrine, coupled with the Court's narrow role of judicial review of the mechanics of takings, underscores the importance of identifying how public administrators understand eminent domain. Given the contemporary broad interpretation of public use, my research takes advantage of the opportunity to study how administrators define public, theoretically and practically, and where they turn for guidance, and to learn what that means for eminent domain.

Table 2a: Intersection of Two Streams Applied

CONSTITUTIONAL LITERATURE- PUBLIC USE	
<i>Broad interpretation of public use as public purpose</i>	<i>Narrow review of the mechanics of takings</i>
Study Contributions:	
	Administrators' understanding of eminent domain
	Where administrators turn for eminent domain guidance
	Administrators' understanding of "public"

With the erosion of the public use requirement of the Takings Clause, scholars have argued that the just compensation requirement offers the only remaining protection for private property (Bell & Parchomovsky, 2007); the clause, therefore, serves as an incentive to limit government takings (Bell & Parchomovsky, 2006, 2007; Esposto, 1996; Fawcett, 1986; Fee,

2006; Gallagher, 2005; Harrington, 2002) and to avoid a strong, centralized government (Harrington, 2002). Still, other scholars disagree that the just compensation requirement provides adequate protections, noting that the market-value approach fails to consider the subjective value to property owners (Durham, 1985; Farjad, 2007; Lehabi & Licht, 2007; Myers, 1977; Odabashian, 2002; Zeiner, 2007).

The Supreme Court has ruled that just compensation is equal to fair market value, which it defines as “what a willing buyer would pay in cash to a willing seller at the time of the taking” (Cohen, 2006, p. 537 and also Bell & Parchomovsky, 2007; Garnett, 2006; Serkin, 2007). This definition is troubling for a number of reasons. As Zeiner (2006, p. 531) notes, “Just compensation [as currently formulated] is not intended to cover every loss that a condemnee may suffer.” Scholars have suggested that the interpretation of just compensation is broadening beyond fair market value to include relocation assistance (Mihaly, 2007; Serkin, 2007) and a “percentage kicker” for homeowners or “loss of goodwill” for business owners (Serkin, 2007, p. 908). In response to the problem of just compensation, scholars have proposed alternative models, such as Bell and Parchomovsky’s (2007) self-assessment, Kelly’s (2006) and Benson’s (2005) private-sector secret buying agents, Clauretie, Kuhn, and Schwer’s (2004) over-appraisal findings, and Garnett’s (2006) pre-condemnation bargaining.

Because just compensation is one of only two requirements in the Takings Clause, it is important to understand how administrators understand and interpret just compensation. This is particularly relevant in light of scholars’ focus on alternatives to the market-value approach and the role of the subjective value to property owners. By learning how administrators understand the requirement and where they turn for guidance, the field of public administration can begin to

evaluate these alternative models by identifying relevant criteria, which may then be used to strengthen the models, create benchmarks, and share information on potential strategies.

Table 2b: Intersection of Two Streams Applied

CONSTITUTIONAL LITERATURE- JUST COMPENSATION	
<i>Just compensation as key requirement with erosion of public use requirement</i>	<i>Alternative compensation models</i>
Study Contributions:	
Where administrators turn for eminent domain guidance	
Administrators' interpretations of takings law	

Reviewing similar issues, literature in the procedural stream emphasizes the transaction costs associated with initiating eminent domain proceedings, particularly with regard to just compensation and holdouts. A government's power to exercise eminent domain prevents holdouts from disrupting economic redevelopment efforts in such cases. While a holdout may be able to slow the condemnation process, as Mihaly (2007, p. 27) notes, "The legal availability of condemnation ensures that the sale will occur at something approaching market value."¹¹ Frequently, eminent domain proceedings are initiated specifically to circumvent holdouts (Benson, 2005; Kelly, 2006).

In other words, property owners who choose not to sell their property to the government for just compensation are able to slow, but not stop, the process. Once the government initiates eminent domain proceedings, the property will be taken. This process, however, results in significant transaction costs for the government, such as procedural due process litigation costs. While eminent domain can be useful for increasing property tax revenues and for minimizing litigation-based redevelopment delays (Cypher and Forgey, 2003), the associated transaction costs are then transferred to the public. Esposto (1996) notes that these additional costs incurred

¹¹ See also Garnett (2006).

by the government can serve to limit takings. Conversely, Neimann and Shapiro (2008) maintain that property owners should be paid just compensation above market value because of the increases in efficiency and equity.

The inefficiency of transaction costs resulting from eminent domain litigation is counter-productive to governments' goal of advancing the public good with takings. By passing along the additional costs, the public is affected by increased taxes and decreased governmental trust. My research seeks to study how administrators' understand the just compensation requirement and the subsequent impact on transaction costs. It also incorporates the study of how transaction costs may be minimized by using pre-condemnation strategies and how a balance may be struck between the governmental goals of economic efficiency and advancing the public good with eminent domain.

Table 2c: Intersection of Two Streams Applied

PROCEDURAL LITERATURE- TRANSACTION COSTS	
<i>Inefficiency of transaction costs</i>	<i>Balancing governmental goals</i>
Study Contributions:	
Where administrators turn for eminent domain guidance	
Administrators' interpretations of takings law	

Significant to the *Kelo* decision was the Supreme Court's continued practice of legislative deference. The Court's self-identified narrow role of judicial scrutiny in takings negates a heightened standard of review that extends beyond the purpose of the taking. In response to the decision, scholars have debated at length whether review should be judicial or legislative, which amounts to the appropriate degree of regulation at the expense of governments' flexibility to advance the public good through eminent domain. Serkin (2007) argues that local governments should be responsible for determining the degree of private property protection; protection

should be based upon a balance between the costs and benefits of the taking. Both Lopez and Totah (2007) and Calfee (2006) discuss the institutional shifts post-*Kelo*; the former assert that local governments' restrictions have been reined in as a result of the case, and the latter holds that localities need flexibility without the second-guessing of the judiciary. To this end, Han (2008) maintains that local governments should consider the property owner's perspective because of their accountability to the public. Knapp (2008) favors local flexibility but calls for legislation requiring increased governmental accountability. Garnett (2006) builds upon this notion with a theory of dual review in that the courts should require governments to use a means-ends scrutiny to limit their power of eminent domain without eliminating flexibility. Farjad (2007) similarly suggests procedural, rather than legislative, reforms. Christensen (2005) contends that legislatures should be granted deference but that courts should apply a higher standard of review when the public benefit is alleged to be only indirect. Alternatively, Wilder and Stigter (1989) rely more heavily on judicial scrutiny to avoid governments' inappropriate use of eminent domain; Fawcett (1986) extends the heightened judicial scrutiny argument by calling for a public-use test, to be administered by the judiciary, in order to limit the public's compensation and the government's use of eminent domain.

The Supreme Court's deference to state legislatures in *Kelo* becomes by default a deference to public administrators because they are charged with implementing vague and sometimes conflicting eminent domain legislation and subsequently with initiating eminent domain proceedings (Olejarski, 2008b). How administrators understand eminent domain and where they turn for guidance is key to our understanding of the issues that have emerged regarding the flexibility required to advance the public good and protect private property rights when using eminent domain.

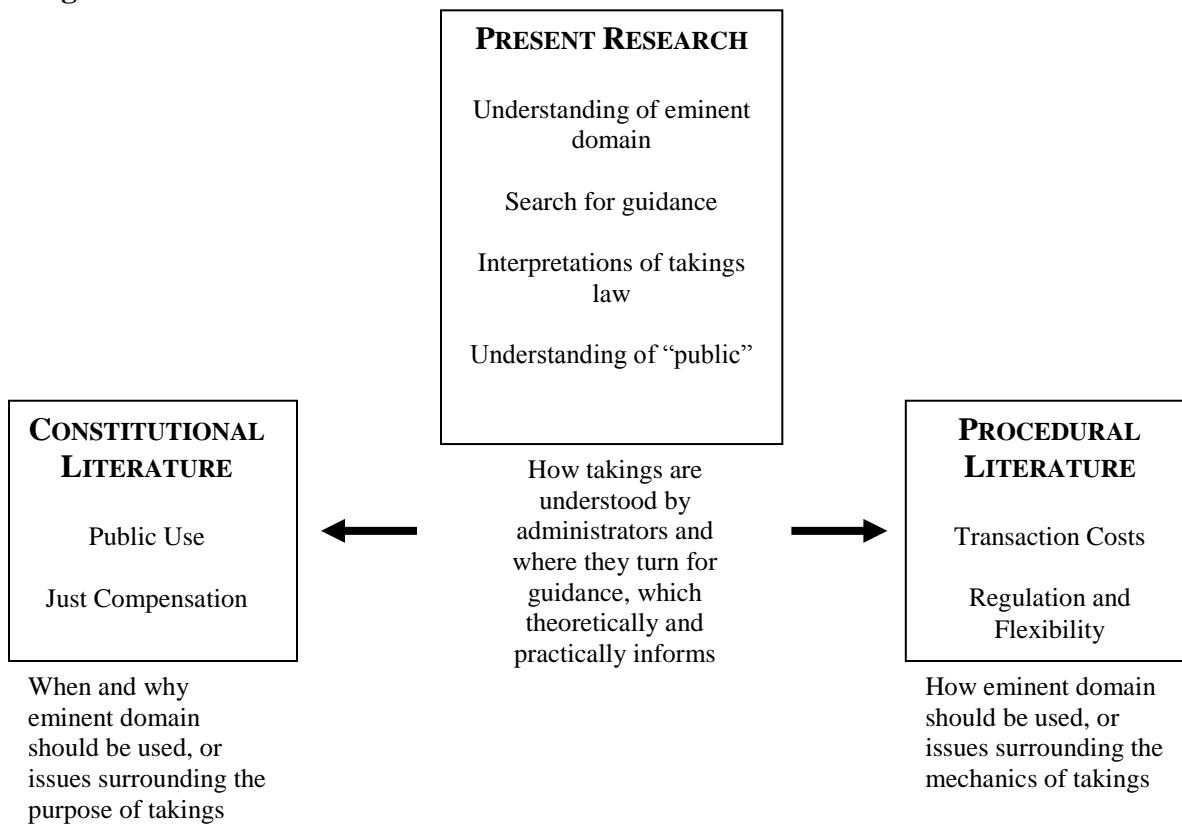
Table 2d: Intersection of Two Streams Applied

PROCEDURAL LITERATURE- REGULATION AND FLEXIBILITY	
<i>Deference to administrators</i>	<i>Implementation of eminent domain</i>
Study Contributions:	
Administrators' understanding of eminent domain	
Where administrators turn for eminent domain guidance	

The gaps between these two streams of constitutional and procedural literature leaves significant questions unanswered, such as how administrators understand eminent domain, where they search for guidance, how they interpret takings law post-*Kelo*, and how they understand “public” post-*Kelo*. By seeking to fill these gaps, my research can theoretically and practically inform the work of public administrators by exploring the foundations on which to answer the questions left unresolved by these two streams.

Figure 2 below provides a graphical illustration of the intersection of the constitutional and procedural literature.

Figure 2: Intersection of Literature Streams



Theoretical Foundations

Though empirical in operationalization, the conceptualization of this research is informed by normative scholarship in public administration. Most significantly foundational are works on administrative discretion, professionalism, and the implementation of a legal case, all of which have guided the development of my research questions. In a more supporting capacity is the scholarship on public service motivation, complementarity of politics and administration, public good and public interest, and public administration and governance.

Each of these bodies of scholarship have contributed to the development of my research questions surrounding how administrators actually involved in the process of eminent domain understand the concept, their search for guidance, their interpretations and understanding of takings law post-*Kelo*, and their understanding of the meaning of “public” in the context of eminent domain post-*Kelo*. The following discussions serve to highlight the most significant elements of the literature in terms of informing the present research. Moreover, the literature will be analyzed with regard to how the works complement one another in the conceptualization of my research questions and the development, or operationalization, of my research questions and survey and interview questions. That is to say that the purpose of this discussion is to bring forth the ideas and themes that have emerged from the literature that necessitate my pursuit in the present research.

Administrative discretion.

Rohr’s (1989) meaning of administrative discretion is particularly important for the present research because of its process-centric nature. In his seminal work, *Ethics for Bureaucrats*, Rohr emphasizes the process of decision-making, or how administrators’ discretionary activity involves their role to “advise, report, respond, initiate, inform, question,

caution, complain, applaud, encourage, rebuke, promote, retard, and mediate” (pp. 36-37). Through all of these activities of administrative discretion, administrators govern. As such, my research on administrators’ implementation of a legal case must be framed in light of their discretion.

Further, Simon’s (1997) seminal work on administrative behavior is particularly relevant for the present study because of his fact-value distinction contribution to the literature. Here, Simon differentiates between the types of judgments made by administrators and legislators, which is key to my study and the duality of deference in *Kelo* (i.e., the Court’s deference to legislators is a subsequent deference to administrators). In Simon’s framework, the fundamental difference is that, while legislators make fact-based judgments, administrators’ decisions are ethical, or value-based.¹² Similarly, Behn (1998) argues that administrators have an obligation to overcome executive and legislative fallacies. This, then, obligates public administrators to use their discretion to exercise leadership, make decisions, and provide clarification to ambiguous statutes during their implementation. Foster (1981) broadens these approaches by distinguishing between moral and legal decisions, arguing that administrators’ discretionary authority is central to the decision-making process; moral decisions are value-based and should be made on the basis of the content and context of a particular situation.¹³ For Foster, administrative discretion is fundamental to public service legitimacy. But much of the assumption of the public and of some

¹² Simon (1997, pp. 61, 66) maintains, “In practice, the separation between the ethical and the factual elements in judgment can usually be carried only a short distance....the legislative body must of necessity make many factual judgments...the administrative agency must of necessity make many value judgments....”

¹³Likewise, in the context of eminent domain, Cypher and Forgey (2003) find that administrators’ due diligence prior to implementing eminent domain proceedings has some bearing on the success of the usage.

of the literature is greater obligation of the legislator and the “bounded” discretion of the administrator.¹⁴

Role of administrative discretion in informing the present research.

Scholarship on administrative discretion significantly informed the development of my research questions and the operationalization of my research design (i.e., survey and interview questions). In light of the role of discretion in administrators’ decision-making, this research seeks to study the ways in which administrators’ understanding and search for guidance are affected by discretion. In other words, the present research attempts to study how administrators use their discretion in the implementation of eminent domain.

Central to this body of literature is administrators’ use of discretion to make decisions, to exercise leadership, and to assume an active role in the process. The particular context of a given situation plays a crucial role in the decision-making process and contributes to administrators’ decision-making. Therefore, this research connects to the discretion scholarship by studying how administrators actually involved in the process of eminent domain understand the concept and how they use their discretion to make decisions. In Figure 1 above, my four research questions have been transformed into dependent variables characterized as discretion in action. This is operationalized in the survey questions surrounding administrators’ understanding and search for guidance during the process, as well as in the interview questions. The interview questions are intended to provide a deeper insight into the role of discretion and include questions such as factors contributing to administrators’ understanding, political v. legal authority to use eminent domain, and how administrators make decisions on issues related to eminent domain. In sum, the discretion literature has informed this research predominantly in

¹⁴ Certainly, the body of scholarship on administrative discretion is much broader than that which is discussed here.

terms of studying the role of administrative discretion in the decision-making process of administrators actually involved in the implementation of eminent domain.¹⁵

Professionalism.

Green, Keller, and Wamsley (1993) build upon the discretion literature in their scholarship calling for a professionalization of public administration. The professionalization of the field, they contend, should be normatively grounded and should reject notions of neutrality in favor of an acknowledgement of administrators' political judgment. Chandler (1983), in favoring a professional code of ethics, asserts that such a professional code based on ontological ethics calls upon administrators to act ethically because it encourages them to participate in the decision-making process. Here, public administrators' morality encompasses private and community decisions.

For Cook (1998), when public administrators participate in the policy-making process, they are assuming their constitutive role. This, then, creates a tension with administrators' instrumental role of carrying out the law during the implementation process. Also important for the present study is Cook's (1992) assertion that, for administrators' constitutive role of being active participants, their power is derived in part from their expertise. Like Cook and Chandler, Foster (1981) advocates a proactive public administrator who builds trust through knowledge and perceived competence. Hart (1984) tempers the proactive, participatory administrator with his obligation to prudence.

Role of professionalism in informing the present research.

Professionalism literature assumed a significant role in informing the present research in terms of my research questions and the operationalization of my research design (i.e., survey and

¹⁵ See Tables 4a and 4b for the operationalization of the research design, as well as Appendix B for survey questions and Appendix C for interview questions.

interview questions). Given the need for professionalism during the decision-making process, this research seeks to study the role of professionalism in administrators' understanding and search for guidance. The present research, therefore, attempts to study how professionalism affects administrators' discretion in the implementation of eminent domain.

For the professionalism literature, administrators are active participants in the development and implementation of the decision-making process because of their expertise and competence. This research builds upon the scholarship on professionalism by studying how professionalism affects discretion and, subsequently, administrators' decision-making during the process of implementing eminent domain. In this research, drivers presumed to affect administrators' discretion in action are characterized as knowledge and experience, as shown in Figure 1 above.¹⁶ Based on the literature, I have identified administrators' familiarity with relevant eminent domain materials (i.e., *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause of the US Constitution), as well as several related knowledge and experience drivers, as a reflection of administrators' professionalism. These knowledge and experience drivers, or professionalism, are operationalized in both the survey and interview questions.¹⁷

Implementation of a legal case.

Garofalo's (2008) "Hamilsonianism" public administrator embodies much of the discretion and professionalism literature, calling for administrators to interpret and apply their

¹⁶ Support for the relationship between professionalism and knowledge and experience is found in Svensson's (2006) empirical study of the concept of professionalism. Interpreted at the individual, as opposed to the organizational, level, Svensson finds strong links between professionalism and competence and experience: "Professionalism was regarded as contextual competence rather than as a general capability. Practical knowledge, experience and familiarity, and the utilization of practical knowledge, are stressed over theoretical knowledge and formal education" (p. 590).

¹⁷ See Tables 4a and 4b for the operationalization of the research design, as well as Appendix B for survey questions and Appendix C for interview questions.

expertise during the implementation process through knowledge and trust. Though legal compliance is crucial to policy-making and implementation, it should be combined in action with ethical judgment and discretion. For Eubanks (2004), administrators' role is summed up as being responsible for overseeing and ensuring good faith implementation. How administrators should go about accomplishing all of this is addressed by Hunter's (2004) requirement to address the relevant factors of the case they are implementing and Mawdsley's (2000) suggestion to seek professional development.

Particularly relevant to implementation of constitutional principles are the scholarship of Gooden (2004) and Bamberger (2008). The former describes administrators' role as including to assess, clarify, and problem-solve during the process of implementation. Bamberger contents that the key is accountable deliberation on the balancing of regulatory goals and norms of implementing constitutional dimensions.

Role of implementation of a legal case in informing the present research.

Scholarship on the implementation of a legal case significantly informed the research questions and operationalization (i.e., survey and interview questions) of the present research. In light of the *Kelo* case and its subsequent impact on eminent domain, this research seeks to study the role of administrative discretion and professionalism in the implementation of eminent domain post-*Kelo*. This research, then, attempts to study how professionalism affects discretion in the implementation of a legal case, *Kelo*.

The most relevant components of the literature on implementation of a legal case involve administrators' ensuring good faith efforts of legal compliance balanced by the use of their discretion in their decision-making process. For the present research, I seek to study the process involved between administrators' professionalism and discretion in the implementation of a legal

case, or *Kelo*. As shown in Figure 1 above, the focus of this research is the relationship between the knowledge and experience drivers (i.e., professionalism, or administrators' familiarity and related drivers) and the dimensions of the dependent variables (i.e., discretion in action, or administrators understanding and search for guidance). These relationships are studied in the context of implementing a legal case, or *Kelo* as the intervention. In addition to incorporating survey and interview questions that build on the professionalism and discretion literature, I have identified questions related to the implementation literature and administrators' role during the process.¹⁸

How the literature on administrative discretion, professionalism, and the implementation of a legal case fills the gap in the intersection of two streams.

As Figure 2 above shows, existing literature on eminent domain in the constitutional and procedural streams has left significant gaps unanswered, such as how administrators actually involved in the process of eminent domain understand the concept, as well as their search for guidance. By building on the scholarship of administrative discretion, professionalism, and implementation of a legal case, the present research attempts to begin to fill these gaps. This research, as shown in Figure 1 above, seeks to study how administrators' knowledge and experience (i.e., professionalism) affects their understanding and search for guidance (i.e., discretion in action) in the context of implementing a legal case, *Kelo*.

Table 3 below shows how the scholarship on discretion, professionalism, and implementation has contributed to the development of this study's drivers (i.e., knowledge and experience, or professionalism). By incorporating aspects from these three bodies of scholarship, I have identified the ways in which these aspects have been operationalized via the

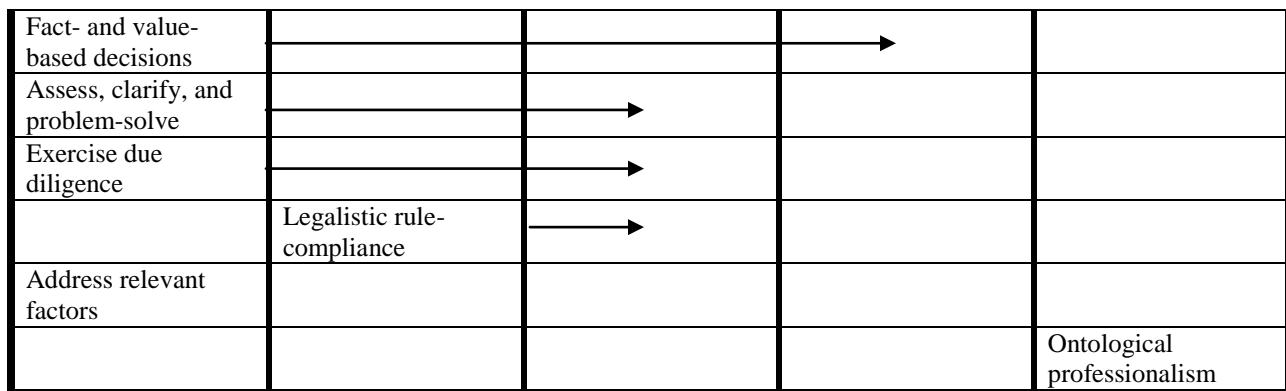
¹⁸ See Tables 4a and 4b for the operationalization of the research design, as well as Appendix B for survey questions and Appendix C for interview questions.

study's survey instrument. In other words, I have drawn from the literature on discretion, professionalism, and implementation to develop specific drivers that I believe are related to administrators' discretion in action in the implementation of a legal case, as shown in Figure 1 above.¹⁹

Table 3: Drivers as Emerging from Scholarship and Relationships to be Examined

Scholarship <i>Drivers</i>	RELATIONSHIPS TO BE EXAMINED				
	Familiarity with Local Eminent Domain Ordinance(s)	Familiarity with State Eminent Domain Statutes(s)	Familiarity with Takings Clause	Professional and Personal Experience with Eminent Domain	
Familiarity with <i>Kelo</i>					
Constitutive role derived from expertise				→	
Tension/duality of instrumental and constitutive role				→	
Perceived competence in education, training, and experience				→	
Integrity of process; provide insight				→	
Oversee and ensure				→	
Accountable deliberation on balance				→	
Content and context				→	
Professional development				→	
Expertise through knowledge and trust; "Hamiltonianism"				→	
Obligation to prudence and proponent of regime values				→	
Discretion as a process				→	
Provide clarification					

¹⁹ See also Tables 4a and 4b below, which shows the relationship between my research questions; dependent, independent, and control variables; indicators; and survey questions. Appendix B includes survey questions.



Supporting Literature

In addition to the literature on administrative discretion, professionalism, and the implementation of a legal case, this research is informed by scholarship on a variety of other subjects. These include public service motivation, the complementarity of politics and administration, public good and public interest, and public administration and governance. Supporting literature will be discussed briefly in the following sections.

Public service motivation.

Literature on administrators' public service motivation was used in the development of the survey instrument and is based on the work of Perry (1996, 1997) and Perry and Wise (1990). Perry and Wise note that public service motivation has "historically been called the public service ethic" (p. 370), so I thought it important to include a question on the survey tool that asked survey participants about their motivations for a career in public service. Over the years, Perry and Perry and Wise's research has evolved in terms of developing measures of public service motives.

As such, this research has been translated into the survey tool as a hybrid of sorts, incorporating public service motives from each of these three works. The survey question, therefore, offered survey participants with the following non-mutually exclusive options for their motivations for a career in public service: concern for the welfare of the community,

consider public service a civic duty, desire to serve the public interest, financial security, opportunity to champion public issues, and participation in the process of program or policy formulation. Participants were also given an open-ended “other” option.²⁰

Role of public service motivation in informing the present research.

Given the normative theoretical foundations of this research and the link between public service motivation and ethics, this research incorporates into the overall framework the study of the role of public service motivation in discretion and professionalism in the implementation of a legal case. Public service motivation does not assume a central role in this research. Including data on administrators’ motivation, however, does provide a more comprehensive picture of their understanding and search for guidance.

Complementarity of politics and administration.

According to Svara (1999a, p. 678), complementarity of politics and administration “holds that the relationship between elected officials and administrators is characterized by interdependency, extensive interaction, distinct but overlapping roles, and political supremacy and administrative subordination.” In this relationship of elected officials and administrators at the level of local government, the two “coexist with reciprocity of influence in both policy making and administration” (p. 678). Svara’s work is particularly relevant to the present research in that I have opted to define broadly “administrators” to include both elected officials and administrators as study participants.²¹

Through decades of study on the subject, Svara (1985, 1999a, 1999b, 2001) has found that, while the roles and actions of elected officials and administrators are not entirely blended,

²⁰ See results in Chapter 4.

²¹ See discussion in Chapter 5 that confirms Svara’s work with regard to administrators who participated in the interview phase of this research.

they substantially extend beyond what the politics-administration dichotomy suggests. In the policy-making process, elected officials and administrators engage in a “shared responsibility” (1999b, p. 50). This is best exemplified in Svara’s (2001) zone of complementarity. Here, administrators enjoy a high degree of independence, while elected officials maintain a fairly high degree of control. The reciprocal nature of the relationship between elected officials and administrators exists in that elected officials “respect administrative competence and commitment” and that “administrators are committed to accountability and responsiveness” (p. 179).

Role of complementarity of politics and administration in informing the present research.

In the present research, I have broadly defined “administrator” to include both professional public administrators and elected officials. As such, both categories have been targeted for inclusion in the study’s survey and interview pool. This scholarship is particularly relevant to this research because of the emphasis on administrators and elected officials working together in the development and implementation of eminent domain policies, or exercising their administrative discretion and professionalism. To study how administrators understand eminent domain and their search for guidance during the process, I have included questions surrounding this notion of complementarity of politics and administration in the interview questions.²²

Public good and public interest.

Few scholars have emphasized distinctions between public good and public interest, and the presence of such literature lacks prevalence, particularly in the field of public administration.²³ Much of the literature on the public interest appears to view the public good as

²² See Appendix C for interview questions.

²³ Literature in public administration appears to focus more on the study of the public interest, whereas political scientists seemingly emphasize the public good. I would be well-advised to note that the number of scholarly

being encompassed in the public interest.²⁴ Goodsell (1990) describes the public interest as being more subjectively-based, compared with the more objective nature of the public good. In other words, the public interest is generally viewed as producing much more encompassing outcomes, compared with the specific, objective, benefits of the public good (i.e., roads, parks, schools). Writing the public interest chapter in the *Handbook of Administrative Ethics*, Morgan (2001, p. 152) sees the public good as being “derivative from” the public interest, rather than “constitutive of” it. Like Goodsell, Douglass (1980) views the public good as generally incorporated into the concept of the public interest.

Goodsell’s approach to the differences between public good and public interest stresses the inclusion of both objective benefits and desired, subjective outcomes of public policy in the concept of public interest. The public good, from his perspective, neglects the broader interests of those whom the policy is bound to affect. Acting on behalf of the citizens in the public interest allows public administrators to make policy decisions with an awareness of their “cognitively perceived or affectively desired outcomes” (Goodsell, 1990, p. 101). Actions in the pursuit of the public good, conversely, limit public administrators’ awareness to factual, intended outcomes.

Aligned with Spicer and Terry’s (1993) “Constitutional School” of public administration, Morgan draws heavily on Rohr’s work and the ratifying debate of 1787-1788 to discern the evolution of public good to public interest. Relying on Rohr, Morgan notes that the framers of

journal articles written on the public interest more than doubled that which was written on the public good. The search (conducted using the Social Science Citation Index in March 2008) limited results to those in public administration and political science published in the United States; 221 articles were returned for public good, compared with 468 for public interest.

²⁴ See, for example, Goodsell, C. T. (1990). Public administration and the public interest. In G. L. Wamsley, C. T. Goodsell, J. A. Rohr, C. M. Stivers, O. F. White, & J. F. Wolf, *Refounding public administration* (pp. 96-113). Newbury Park, CA: Sage Publications, Inc.

the Constitution favored the use of public or common good and general welfare, as opposed to public interest. Like Goodsell, Morgan credits the distinction to the objectivity inherent in the public good. Morgan adopts the framers' view that the public interest may be achieved through a culmination of private interests and that the diversity of private interests in a large republic prohibited tyranny by minimizing the presence and strength of factions. For Morgan (2001, p. 153), the public good was the collective good having a "universal moral status."

Douglass's work on public good and public interest is the creative coupling of Goodsell's and Morgan's research. All three scholars emphasize the objectivity of public good, compared with the subjectivity present when public interest is invoked. Central to both Goodsell's and Douglass's frameworks is an awareness of all the citizens who will be affected by a given policy decision. The impact and benefits must be assessed for the public broadly considered. The point of departure for Goodsell and Douglass is whether it is the public good or the public interest that provides this broad-based impact assessment. For Goodsell, it is the public interest, because full consideration for the public benefits may only be achieved through an incorporation of the public's desires. In opposition to Goodsell, Douglass views the public good as providing that attention to the desires and the objective benefits. A decision made for the public good, Douglass (1980, p. 104) writes, was not "*thought* or *felt* to be beneficial...it was not merely that [it] corresponded to the wishes or desires of the persons in question; they actually *were* beneficial."

Douglass (1980, p. 105), like Morgan, views the public good as being more than a collection of private interests, arguing that it should be treated as a "higher good than that of the individual." The reciprocal nature of the public good is maintained by its ability to enable individuals to live better, to improve the quality of life at the individual level, while

simultaneously contributing to the sustainability of society. Echoing the framers' values, Publius maintains in *Federalist 51* that part of the private interest is upholding the public good. Public good evolved into public interest, Douglass asserts, as society became more concerned with material benefits and the subsequent individualistic notion of public good, which he attributes directly to increased demands for private property protections.

Role of public good and public interest in informing the present research.

Scholarship on the public good and the public interest has informed the present research questions, especially in terms of administrators' understanding of takings law post-*Kelo*. This body of literature shows the difficulties associated with distinguishing between the two phrases, as well as how inextricably linked they are to one another. Because this research studies how administrators involved in the implementation of eminent domain policies understand the concept, it is important to include a study of how they understand public good and public interest, as well as several other key phrases in takings legislation (i.e., public use, public purpose, just compensation, and blight). As such, administrators' interpretations and understanding of public good and public interest has been incorporated into the operationalization of the survey and interview questions.

Public administration and governance.

Finally, literature that may be broadly characterized as the study of public administration and governance shaped the conceptualization of the present research. From Wilson to Wamsley, this body of scholarship pulls from theoretical and empirical findings in the field of public administration and political science, to a lesser degree, those discussions most relevant to administrators' role in the governance process. As Wilson (1887, p. 198) aptly noted more than

a century ago, “Administration is the most obvious part of government; it is government in action.”

Related is Wamsley, Goodsell, Rohr, White, and Wolf’s (1992, p. 68) governance as “the administration of public affairs in a political context.” Rather than focusing on whether public administration should assume a role in governance, they advocate the study of what that role should be. The solution, they assert, is three-fold: the agential perspective, the constitutional governance process, and a consideration of the broadest possible public interest. Administrators’ understanding of their role in the process, Wamsley and colleagues contend, will continue to be problematic absent public servants’ perspective of public service as a calling.

For Lynn, Heinrich, and Hill (2000), their conception of governance is quite similar to that of the Blacksburg perspective. Governance, they maintain, is the process of achieving controls, direction, and coordination of individuals and organizations. Significantly important to the Lynn et al. framework is the role of administrators’ formal and informal authority in the governance process. Meier (1997) asserts a similar notion in advocating a normative institutional role for public administrators. He argues that bureaucracy contributes most to the policy process when it is given clear goals, adequate resources, and autonomy.

Rather than public administrators “groping along” (Behn, 1995, p. 212) through the governance process, the godfather of public administration contends that a theory of democratic administration must be “post-bureaucratic” (Waldo, 1952, p. 103), or one that legitimizes authority in both public administration and society. For Waldo, efforts to wrestle with the role of authority and discretion in the governance process are negated by the fact that authority pervades society (i.e., democracy in Waldo’s framework), and, as a result, bureaucratic authority is legitimized through society. While the means of achieving balance between bureaucracy and

democracy in the governance process may remain a bit blurry in public administration, the ends, according to Gaus (1936), remain clear: public administrators must be responsible to professional standards and the public interest.

While Wamsley et al. and similar frameworks question what public administrators' role should be like in the governance process, Behn (1995) poses questions related to how administrators may best participate in the process. Most closely related to the present research are Behn's questions surrounding how public administrators may motivate both public servants and the public to work toward a public purpose, as well as how administrators may produce results given the "excess of procedural rules" (p. 315).

These procedural rules, or the rule of law, assume a central role in the theoretical foundations of this research. Wamsley, Goodsell, Rohr, Stivers, White, and Wolf (1990) contend that public administration must share in the governance process with citizens under the constitutional framework envisioned by the framers because it is the people alone who are sovereign; administrators' authority is constitutionally-derived (Cook, 1992). Further, the Blacksburg perspective calls for public administration to be normatively grounded in the Constitution and law; this point is echoed by Cook (1998) in reference to public administration's "instrumental role." Even for Lynn (1998), a proponent of NPM, rule of law is the fundamental distinguishing attribute of public administration.

Rule of law is conceptualized similarly in the normative-constitutionalist literature, upon which this research heavily relies for its theoretical foundations. For example, Rohr's (1989) holy trinity of regime values of freedom, property, and equality continue to serve as the foundational principles of the rule of law in the field of public administration. Green's (1992) enduring values of society as an indicator of the public good, Long's (1988, p. 341) "principle

dimensions” to assess policies in terms of improving citizens’ lives, and the presence of Box’s (1992) substantive values in his trustee public administrator provide support for this assertion.²⁵

Responding to claims that bureaucracy may be inflexible and unresponsive is Goodsell’s (2004) argument in favor of bureaucracy as innovative and grounded in a public-values approach to the public interest. Indeed, instead of placing blame on bureaucracy, public administration as a field must rethink the form of administration that can best serve our needs. To respond to society’s increased democratic needs, argues Krislov (1974), public administration should focus predominantly on being representative of and responsive to society via representative bureaucracy. Wamsley (1996) echoes this sentiment, calling for public administration to focus on the three Rs of responsiveness, representativeness, and responsibility, rather than the three Es of economy, efficiency, and effectiveness.

According to Haque (2001), the publicness of public service is being diminished by the emphasis on business practices of economy, efficiency, and competition and neglect of public-values of equality, fairness, due process, and the public interest. He continues to argue that the nature of the role of the public sector is shifting toward a more passive role, rather than active engagement in socio-economic activities. Public accountability is problematic for Haque because of the decreasing transparency due to public-private partnerships. Moe (2001) agrees, noting that hybrid organizations have increased in prevalence to the point of being called quasi-governmental organizations; the key problem presented is to whom these organizations are accountable. As Moe notes, accountability is troubling for constitutionalists because of distinctions between the public and private sectors as a matter founded in law.

²⁵ To be sure, scholars of public administration have not come to a consensus on the issue of the field’s founding being normatively grounded in the Constitution. See, for example, Lynn’s (2001) arguments in favor of a public management, rather than law, grounding. Proponents of NPM in particular tend to agree with Lynn’s conception of the field’s grounding (Moe, 1994).

Role of public administration and governance in informing the present research.

Scholarship characterized as public administration and governance has informed the present research in terms of the development of my research questions. This literature is inherently linked to that on administrative discretion in particular, with a focus on administrators' role in the process. In studying how administrators understand eminent domain and their search for guidance, consideration must be given to how administrators balance bureaucracy and democracy and being responsible and responsive in the decision-making process. The role of the rule of law is significantly important because of this research's context in the implementation of a legal case, or *Kelo* as the intervention. These issues were emphasized during the interview phase of the present research.²⁶

Further, literature in the broad characterization of public administration and governance also addresses the changing character of publicness, or the evolution of the meaning of "public." The main controversy in *Kelo* was the distinction between public and private gain in takings. A study of administrators understanding and search for guidance, therefore, should include a focus on how administrators understand "public" in the context of eminent domain in a post-*Kelo* environment. Such was operationalized during both the survey and interview phases of this research by incorporating questions surrounding administrators' understanding of public and the ways in which the case has influenced their understanding.²⁷

²⁶ See Appendix C for interview questions.

²⁷ See Appendix B for survey questions and Appendix C for interview questions.

How the supporting literature fills the gap in the intersection of two streams and complements literature on administrative discretion, professionalism, and the implementation of a legal case.

The present research is heavily reliant on the literature on administrative discretion, professionalism, and the implementation of a legal case in identifying ways in which to study how administrators actually involved in the process of eminent domain understand the concept, as well as their search for guidance. Recall this conceptualization in Figure 1 above. Supporting literature on public service motivation, complementarity of politics and administration, public good and interest, and public administration and governance were also quite useful in crafting the research questions and developing the survey and interview questions.

When this supporting literature is considered, a number of themes emerge that serve to complement those identified in the scholarship on discretion, professionalism, and implementation. Particularly important is administrators' role in balancing bureaucracy and democracy in the process, or the balance of being responsible and responsive. This speaks to many of the concerns in the procedural literature stream, as shown in Figure 2 above, about the regulation and flexibility debate, in addition to subsequent concerns related to transaction costs associated with takings, in implementing eminent domain. Inclusion of this supporting literature complements the literature on discretion, professionalism, and implementation by expanding the focus of administrators' role in the decision-making process. Also key is that administrators' role in the decision-making process includes ethical, or value-based, decisions based on the context of a specific situation in light of procedural requirements, or the rule of law. Here, this is critical to the present research because it seeks to study how administrators' professionalism (i.e.,

knowledge and experience drivers) relates to their understanding and search for guidance (i.e., discretion in action dimensions of the dependent variables) in the implementation of a legal case.

Also important are concerns regarding the changing nature of publicness, a long-lasting concern in the field of public administration. The inherent value of the supporting literature is that it facilitates the study of how administrators involved in the process of eminent domain understand “public” and “private” in the context of eminent domain. Related is the inclusion of literature regarding public good and public interest. Studying how administrators understand public and private, as well as their interpretations and understanding of key takings language (i.e., public use, good, interest, and purpose, as well as just compensation and blight) speaks to the concerns of the constitutional literature, as shown in Figure 2 above.

The supporting literature complements the predominant theoretical foundations of this research (i.e., discretion, professionalism, and implementation) by facilitating a more comprehensive study of how administrators understand eminent domain, their search for eminent domain guidance, their interpretations of takings language post-*Kelo*, and their understanding of “public” in the context of eminent domain. By transforming these conceptual ideas into the operationalization of the survey instrument and interview questions, this study seeks to begin filling gaps in the constitutional and procedural literature, or the intersection of two streams. This, then, informs both streams of literature with regard for how administrators actually involved in the process of eminent domain understand it and extends the study of eminent domain beyond the purpose and mechanics of takings to the process of implementing eminent domain.

Chapter 3: Methodology

After establishing the gaps between constitutional and procedural literature on eminent domain and the importance of attention to administrative discretion, professionalism, and the implementation of a legal case, as well as the supporting literature, two significant research questions emerge: How do administrators understand eminent domain, and where do they turn for guidance? Related are two additional research questions that this study seeks to answer: How do administrators interpret and understand takings law post-*Kelo* and how do they understand the meaning of “public” in a post-*Kelo* environment? Though much scholarship has been written about subjects associated with the process of eminent domain, such as public use, just compensation, transaction costs, and regulation and flexibility, neglected in the body of existing literature is an empirical study of the process of eminent domain that considers the role of administrators involved in the process.

The present research, therefore, attempts to fill the gap left by the constitutional and procedural literature, or the intersection of two streams, as shown in Figure 2 above. This research studies how professionalism (i.e., knowledge and experience drivers) relates to administrators understanding and search for guidance (i.e., discretion in action dimensions of the dependent variables) in the context of the implementation of a legal case. Refer to Figure 1 above for the relationship between the drivers and dependent variables in the context of *Kelo* as the intervention.

Research Questions

Existing empirical investigation into issues surrounding eminent domain is as limited as it is dated. The closest approximation to the present study is the result of Cypher and Forgey’s (2003) work on the efficiency, effectiveness, and equity of eminent domain in which city

managers were surveyed. Their findings, however, focus heavily on the procedural aspects of eminent domain with regard to raising property values and minimizing litigation-based project delays. Related is Munch's (1976) work on disparities in property valuation and just compensation. More recent is Sharp and Haider-Markel's (2008) support for the grass-roots nature of eminent domain politics in legislative action post-*Kelo*.

Approach and Design

Given the “need for general understanding” about how administrators understand eminent domain and search for guidance, an instrumental single-state case study is the present research design (Stake, 1995, p. 3). The instrumental case study is most appropriate for the advancement of understanding of a particular issue that may be generalizable. Further, as Yin (2003) contends, questions of “how” are explanatory and lend themselves to the case study methodology because they are “operational links,” as is the case with administrators’ implementation of eminent domain (p. 6). Descriptive inference and in-depth understanding, according to Gerring (2004), are characteristics of case study research and are significantly emphasized in this research.

The aim of my research is to explore the relationships among administrators’ knowledge and experience (i.e., professionalism) and their understanding of eminent domain, the concept of public, takings’ law, and sources of guidance in implementation of eminent domain in the state where *Kelo* originated (i.e., discretion in action). At the broadest level, I will seek to gain, therefore, a better understanding of the influence of a legal intervention, here the intervention, *Kelo*, on the process of implementing the law, particularly in terms of administrators’ understanding of the law and the issues in a legal case, *Kelo*. Of particular interest are administrators’ understanding and search for guidance during this process.

As the birthplace of the Supreme Court's landmark ruling in *Kelo*, Connecticut will be the data-collection target. Because public administrators in Connecticut were closest to the case, the rationale for choosing this state is that Connecticut administrators' presumed familiarity with the issues in *Kelo* will enable us to gain insight into how administrators understand eminent domain and where they turn for guidance. Rather than broadening the case selection to additional states or randomly sampling administrators throughout the state, this research targeted all public administrators throughout the state who are presumed to be involved in the process of eminent domain (i.e., the department or board or commission with which they are involved) in the hopes of receiving the most comprehensive set of responses. Embedded in this case study is a variance study to identify the ways in which dimensions of discretion in action (e.g., administrators' understanding) may vary due to the effect of certain knowledge and experience drivers (e.g., professionalism). Broadly targeting administrators in a self-contained geographic boundary facilitates greater comparison within the sample when administrative structures (i.e., municipalities and judicial districts and the lack of a county level of government), statutes (i.e., relevant eminent domain statutes), and proximity (i.e., closeness to *Kelo*) remain consistent.

While it will likely prove useful to comparatively study a state at the opposite end of the spectrum in the future, studying a state most likely to have a greater grasp of takings should lend beginning insight into public administrators' understanding of the law and implementation of the *Kelo*. By understanding how administrators in the most knowledgeable position perceive and interpret takings, we can slowly begin to build our body of scholarly inquiry on where administrators seek guidance and the relationships among experience and conceptual understanding. A next step could be a comparative one involving situations in which we would suspect that less-familiar administrators may face other challenges.

In order to explore the research questions, the research design employs both quantitative and qualitative primary data collection via pre-test interviews, pilot-testing, survey deployment, and elite interviews. There are three phases to the study: informal pre-test interviews and survey pilot testing, survey deployment, and elite interviewing. During the first phase, I spoke with an administrator in Connecticut several times to discuss the purpose of my research and the ways in which the project would be operationalized. This administrator has provided strong guidance through the development and implementation of this research. The first phase of the project also included a small pilot-testing of the survey to inform better instrument preparation.

Survey deployment is the second phase of the research. The primary data-collection method is the survey instrument, which was developed by tying each dependent variable (i.e., the research questions) to indicators (i.e., the operationalization of discretion in action) to specific survey questions. Moreover, each driver (i.e., those which emerged from the literature on administrative discretion, professionalism, and implementation of a legal case) is tied to indicators (i.e., the operationalization of knowledge and experience), which are then tied to specific survey questions. See Tables 4a and 4b below for the operationalization of the research design and the relationships between the research questions, dependent and driver variables, indicators, and survey questions. Also, see Appendix B for the survey questions.

Table 4a: Research Design Operationalized

		KNOWLEDGE AND EXPERIENCE											
Drivers/ Control Variables		Familiarity with Kelo		Familiarity with Local Eminent Domain Ordinance(s)		Familiarity with State Eminent Domain Statutes(s)		Familiarity with Takings Clause		Professional and Personal Experience with Eminent Domain		Demographics and Employment Characteristics	
Indicators	Survey Question	Degree of familiarity with <i>Kelo</i>	11a	Degree of familiarity with local ordinance(s)	11b	Degree of familiarity with state statutes(s)	11c	Degree of familiarity with Takings Clause	11d	Frequency of professional experience	18a	Level of government	1
	Number of times read <i>Kelo</i>	12a	Number of times read local ordinance(s)	12b	Number of times read state statutes(s)	12c	Number of times read Takings Clause	12d	Frequency of personal experience	18b	Name of government	37	
	Required to read <i>Kelo</i>	13a	Required to read local ordinance(s)	13b	Required to read state statutes(s)	13c	Required to read Takings Clause	13d	Contracting out	19, 20	Gained employment	2	
	Following <i>Kelo</i> in local and national newspapers and media	15					Applicability of Takings Clause	17			F/T or P/T Employment	3	
	Familiarity with precedent cases in <i>Kelo</i>	16					Department of government	4					
							Job duties	5					
							Time living in CT	6a					
							Time in current position	6b					

						Time total government employment	6c
						Educational background and attainment	7, 8
						Formal eminent domain training	9
						Public service motivation	10
						Gender, age, and ethnicity	38, 39, 40
						Interest in interview	41

Table 4b: Research Design Operationalized

		DISCRETION IN ACTION							
Research Question		HOW IS EMINENT DOMAIN UNDERSTOOD BY ADMINISTRATORS?		WHERE DO ADMINISTRATORS TURN TO FOR EMINENT DOMAIN GUIDANCE?		HOW DO ADMINISTRATORS INTERPRET TAKINGS LAW POST-KELO?		HOW DO ADMINISTRATORS UNDERSTAND “PUBLIC” POST-KELO?	
Dependent Variables		Administrators’ understanding of eminent domain		Where administrators turn for eminent domain guidance		Administrators’ interpretations of takings law post-Kelo		Administrators’ understanding of “public” post-Kelo	
Indicators	Survey Question	Impact on local use of eminent domain	21	Reliance on <i>Kelo</i> case	14a	Interpretation of “public use”	29a, 30	Understanding of “public” post- <i>Kelo</i>	35a, 36

	Perceived impact on number of takings	22a, 23a	Reliance on local ordinance(s)	14b	Interpretation of “public purpose”	29b, 30	Understanding of “private” post- <i>Kelo</i>	35b, 36
	Impact on pre-condemnation strategies	22b, 23b, 24	Reliance on state statutes(s)	14c	Interpretation of “public good”	29c, 30		
	Contracting out	21c, 22c	Reliance on Takings Clause	14d	Interpretation of “public interest”	29d, 30		
	Consideration for local media	22d, 23d	Reliance on soup to nuts	27a-ff, 28	Interpretation of “just compensation”	29e, 30		
	Consideration for national media	22e, 23e			Interpretation of “blight”	29f, 30		
	Agreement with eminent domain	25a			Importance of public use as a requirement	31a, 32		
	Agreement with <i>Kelo</i>	25b			Importance of public purpose as a requirement	31b, 32		
	Eminent domain for private development	25c			Importance of public good as a requirement	31c, 32		
	Eminent domain for economic development	25d			Importance of public interest as a requirement	31d, 32		
	Understand eminent domain	26a			Importance of just compensation as a requirement	31e, 32		
	Understand <i>Kelo</i> case	26b			Importance of blight as a requirement	31f, 32		
					Relationships between public use, purpose, good, and interest	33, 34		

At the most general level, the presence of *Kelo* in this state is the intervention. At a more specific level, *Kelo*'s influence is measured through what are often called the “drivers”: the familiarity, or experience with and knowledge of, *Kelo* and the state and local takings laws. The relationship of these drivers, then, to administrators' understanding of takings and sources of guidance are the focus of the study. In other words, my study will focus on the effects of a significant court case, *Kelo*, to achieve a descriptive understanding of issues surrounding “how” and “why” administrators’ knowledge and professional and personal characteristics may affect their understanding and search for guidance in the issues surrounding eminent domain.

As I study the overall process, I seek to understand better how *Kelo*, the intervention, affects the administrators’ understanding of eminent domain, where administrators turn for eminent domain guidance, how administrators interpret takings law post-*Kelo*, and how administrators’ understanding of “public” is influenced by *Kelo*. One aspect of *Kelo*’s influence is to be understood through measuring the administrators’ familiarity with *Kelo*, familiarity with local eminent domain ordinances, familiarity with state eminent domain statutes, familiarity with the Takings Clause of the Constitution, and professional and personal experience with eminent domain. Additionally, I will descriptively examine administrators’ characteristics associated with demographic information, tenure with department, employment responsibilities, educational attainment, formal training, and motives for a public service career.²⁸

Finally, elite interviews were conducted during the third phase of the research. Though frequently the subject of misconceptions regarding the socio-economic status of the interview subjects, elite interviewing is concerned with the relationship between the interviewee and the

²⁸ Variables related to administrators’ motives for a career in public service are adapted from the work of James Perry on public service motivation. In following Perry’s work, I focus on the rational, normative, and affective motives (Perry& Wise, 1990) and the sub-dimensions that evolved from earlier works (Perry, 1996, 1997).

subject. As Leech (2002, p. 663) notes, “Elite interviewing can be used whenever it is appropriate to treat a respondent as an expert about the topic at hand.” The snowballing technique, which Marshall and Rossman (2006) value for building upon connections, was employed to broaden the interview pool. These interviews were highly informal, with the goal being to increase subjects’ candor and provide in-depth information. See Appendix C for a list of interview questions, though non-exhaustive.

Selecting Study Participants: Administrative Structure of Connecticut Government

The administrative, or governance, structure of the state of Connecticut differs from many other states in that there is no county level of government. Counties do exist for the purposes of geographical boundaries, but they do not possess governmental authority over the state’s municipalities. There are 169 municipalities in Connecticut, and these municipalities use five primary forms of government, as shown in Table 5 below.

In the Board of Selectmen-Town Meeting form of government, the board, typically three members and led by a First Selectman, serves in an administrative capacity and is responsible for carrying out the municipality’s policies and ordinances. Legislative power rests with the Town Meeting, which is comprised of all registered voters in the municipality who are able to vote on issues during town meetings. The Board of Selectmen-Representative Town Meeting (RTM) form of government only differs in that, because of the municipality’s larger population, the members of the RTM are elected to represent members of the municipality’s districts.

The Council-Manager form of government elects a City or Town council of varying size, dependent on the population, which then appoints the City or Town Manager. Administrative responsibilities, such as enforcing local laws and ordinances, fall under the purview of the Manager; legislative activities are the responsibility of the Council. Under the Mayor-Council

form of government, the Mayor acts as the administrative or executive for the municipality, with the Council fulfilling legislative duties as the governing body. The Mayor-Board of Aldermen form of government functions similarly, with the Mayor as executive and the Board of Aldermen as legislative body.

Within these five forms of municipal government, however, exists subtle differences that add to the complexity of local government. While a municipality may employ a Council-Manager form of government, there may also be a Mayor to assume ceremonial responsibilities or chair the Council meetings. Some municipalities may opt to include a Deputy Mayor or have a Chairman of the Council.

Table 5: Connecticut Municipal Forms of Government

BOARD OF SELECTMEN-TOWN MEETING	103
COUNCIL-MANAGER	30
MAYOR-COUNCIL	24
BOARD OF SELECTMEN-REPRESENTATIVE TOWN MEETING (RTM)	5
MAYOR-BOARD OF ALDERMEN	4
OTHER	3

Adapted from the Connecticut Economic Resource Center, Inc.'s "Town Profiles"

Various boards, commissions, and committees also play a role in Connecticut municipal government. The authority of these organizations varies according to the municipality, but some do possess decision-making authority, while others are advisory in nature. Fairly standard members of the governance structure include: Boards of Education, Finance, and appeals for Zoning and Assessments; Commissions of Planning, Zoning, Parks and Recreation, as well as a number of social services commissions for youth and the elderly; and finally committees, which

are generally tailored to a municipalities particular needs (e.g., police department or school buildings, community development, etc.).

Judicial districts, of which there are 13 in the state of Connecticut, exist in order to divide the state geographically for trial-court purposes. Trial court, or the Superior Court, hears cases divided among civil, criminal, family, and juvenile issues. Because of the absence of a county-level of government in the state, judicial districts were included in this research.

Process of Eminent Domain

In order to begin to provide insight as to how administrators understand eminent domain and their search for guidance, it is important to have a knowledge of the process of eminent domain. During the interviews, administrators were asked to describe the process of eminent domain in their municipality or judicial district. In particular, two judicial district officials and one zoning board of appeals chairman were especially helpful in outlining the process.

A development project potentially involving the use of eminent domain is generally initiated by a municipal department (e.g., Public Works or Engineering), a municipal commission (e.g., Landuse or School Building), a municipal agency (e.g., Development or Redevelopment), or, in some instances, a private developer. Whatever department, commission, agency, or developer initiates the project consults with the relevant landuse commissions in the municipality to facilitate a thorough review of the project. The developed plan is also reviewed by the Zoning Commission and the Zoning Board of Appeals to be sure that using eminent domain is avoided at all costs. Most important during this part of the process is ensuring that what land the plan requires includes a “reasonable use of the property,” according to the chairman. Here, the plan is re-worked to identify alternative land when feasible so as to not use eminent domain if there are other properties available (i.e., land the municipality currently owns,

fewer residential properties, etc.). Zoning grants permits to develop on the proposed land or approves variances, which are changes to zoning requirements on properties. Essentially, this allows what was previously considered an illegal use of the property to be permitted due to the particular circumstances of the development plan (i.e., land may be re-zoned to move the plan to an alternative location to preserve the initial parcels of land identified by the plan).

After the plan has been reviewed by all relevant stakeholders, open community hearings are held “to educate and inform,” in the words of one administrator, the public about the proposed project. Then, after public discussion, the selectmen, alderman, manager, or mayor, or the administrative body of the municipality, authorizes the acquisition of the property needed for the development plan. This is done in consultation with the municipal attorney or external legal firm and an external real estate appraiser to appraise the value of the properties needed for the project. Again, there are more public hearings to discuss the value of properties necessary for the implementation of the development plan.

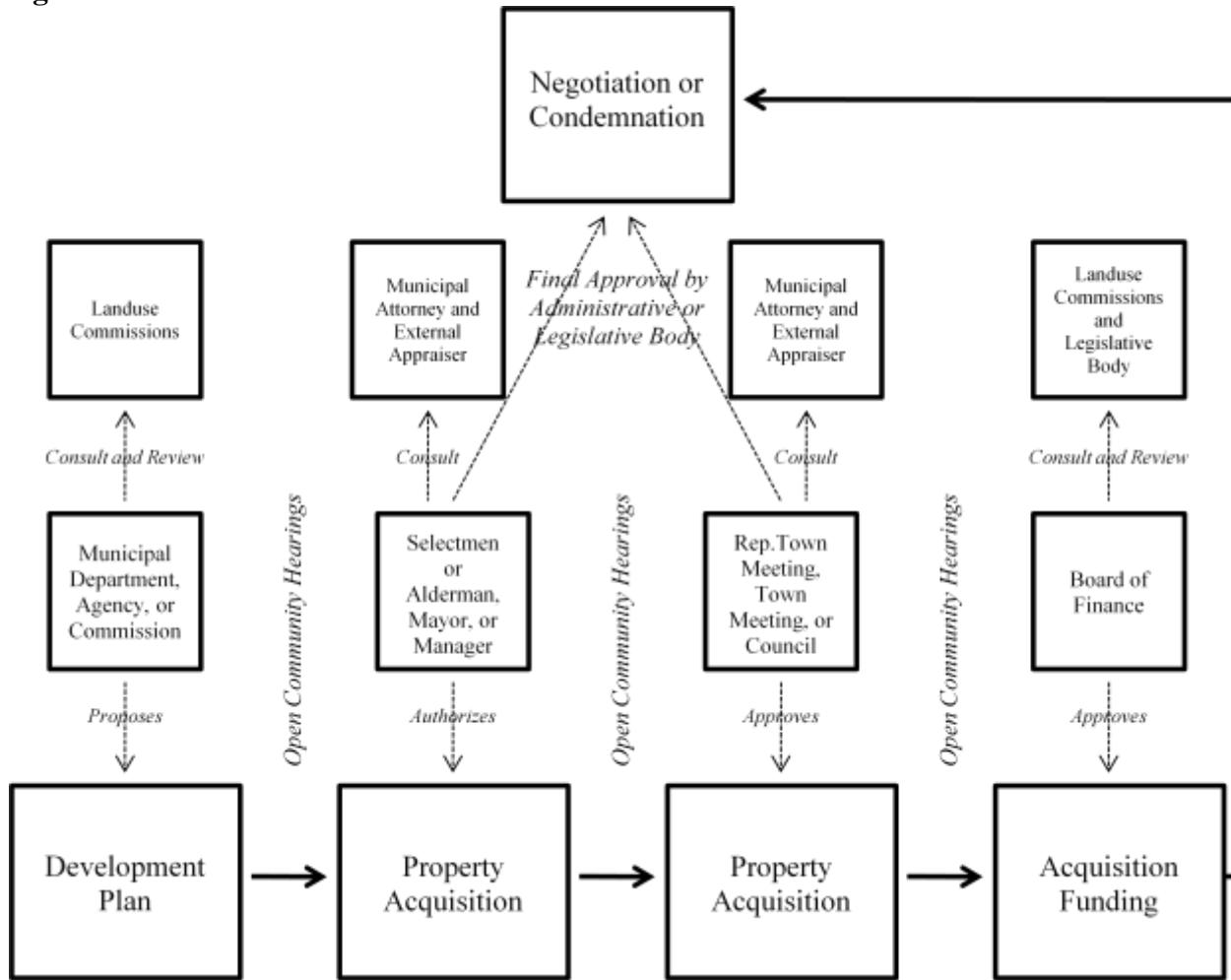
Following is the authorization by the representative town meeting, town meeting, or town council, or the legislative body of the municipality, to acquire the property. Once again, the representatives consult with the attorney and appraiser regarding the value of the properties. Though largely dependent upon local ordinances, authorization of property acquisition may involve a referendum on which the town would vote. For example, in one municipality, any funding requests over 1 percent of the total municipal budget must be approved via referendum; anything under the threshold may be approved by the Boards of Selectmen and Finance. At this stage in the process, the Board of Finance holds public hearings and consults with the legislative body and the relevant landuse commissions regarding funding the property acquisition.

Final approval rests with either the legislative or the administrative body of the municipality, depending on local ordinances. Administrators who participated in the interviews responded about equally that the final approval was under the purview of the legislative and administrative bodies. According to the zoning board of appeals chairman, the legislative body is unlikely to grant final approval without the support of the landuse commissions. Before final approval is granted, however, is the time during which pre-condemnation negotiations and other strategies are employed. If these fail to be successful, condemnation by the municipality's power of eminent domain is the result. Generally, the attorney is predominantly involved in the negotiation process and is often accompanied by the First Selectman, Mayor, Manager, or commission members.

When eminent domain must be used for property acquisition, the judicial district of which the municipality is a part becomes involved. The chief clerk of the judicial district is responsible for signing a certificate of taking to acquire the property, according to one such retired administrator. This chief clerk continued to explain that the title to the property is then turned over to the municipality. Further, the property owner may appeal the compensation of the taking but not the taking itself. According to administrators who participated in the interviews, Connecticut state statutes are somewhat unusual in this regard. When asked to elaborate on why the state limits property owners' appeals to the compensation of a taking, the deputy chief clerk explained, "Because initially the Connecticut legislature decided that taking property for public use was important enough to not give that option to a property owner." The chief clerk continued, "Nobody ever raised that issue because probably it was never considered....This [the *Kelo* case] was very unusual. Ninety-nine percent of the cases were clearly for public use." See Figure 3 below for a visual depiction of the eminent domain process. Also, though this will be

addressed in greater detail in a latter section, it should be noted that participants of the survey and interviews are a reflection of the departments and roles involved in the process of eminent domain as described in the figure below.

Figure 3: Eminent Domain Process



Data Collection

In the state of Connecticut, local governments and the state can initiate eminent domain proceedings. Because there is no county-level of government in the state, there are 13 judicial districts that are responsible for managing condemnation records for localities, of which there are 169 throughout the state. In order to study the research questions surrounding administrators' understanding and search for guidance, my unit of analysis is the administrators' understanding

and interpretation of takings and the concept of public as influence by *Kelo* and their descriptions of where administrators turn for eminent domain guidance.

Given the emphasis on understanding the interactions and processes during which administrators implement eminent domain, I identify “administrators” quite broadly. In the context of this study, administrators are the almost exhaustive hierarchy of those involved with eminent domain. Exclusions are limited to those with no foreseeable decision-making authority with regard to implementing eminent domain, such as administrative/executive assistants and clerk-typists. To be clear, consideration was given to administrators with both formal and informal decision-making authority, and, as such, targeted subjects included department heads, or those with supervisory responsibilities, as well as subordinate employees. Therefore, the individuals targeted for inclusion in the study range from administrators at the municipal level through those in the state-level judicial districts. Targeted survey respondents include administrators listed in Table 6 below.

Table 6: Targeted Survey Respondents

<i>Level of Government</i>	MUNICIPALITY	JUDICIAL DISTRICT
	Assessor	Chief clerk
	Attorney	Deputy chief clerk
	Building	Caseflow coordinator
	Economic development	
	Manager	
	Mayor	
	Planning	
	Representative town meeting	
	Town clerk	
	Town council	
	Zoning	
	Board of alderman	
	Board of assessment appeals	
	Board of selectmen	
	Housing authority	
	Planning commission	
	Zoning board of appeals	

As previously indicated, there are 169 municipalities in the state of Connecticut. Using state website that listed and provided a direct link to each municipality's website, I visited and explored every municipal website that was available.²⁹ From the initial 169 municipalities, 154 had working websites.³⁰ As I explored each website, I transferred the email addresses for the targeted survey respondents listed in Table 6 above into one central document.³¹ For municipalities in which email addresses were unavailable on the website, I called the municipality directly for the information. With the exception of one municipality that only had one email address for the entire staff, I have collected email addresses for every municipality possible, or 153 municipalities in the state of Connecticut.³²

The process for collecting email addresses for the 13 judicial districts was, fortunately, less painstaking than for the municipalities. From the same state website that I used for the municipal search, I obtained a copy of the judicial district directory, which included the names of the targeted respondents in each of the judicial districts. Also located on this state site is a judicial branch staff phone directory that allowed me to type in the targeted respondent's name to receive the individual's email address. I then transferred each email address into the same

²⁹ The listing of towns and cities in Connecticut is available at www.ct.gov.

³⁰ The search was conducted between the end of April and the beginning of June in 2009.

³¹ In most cases, the email addresses were copied and pasted directly into a Word document. In a number of instances, however, particularly in the beginning of the collection process, I typed the email address into the Word document. Every effort was made to be sure that the most direct email address was obtained because I wanted to be sure that there was only one email address per respondent. For example, if a website listed the email address for the tax assessor as "assessor@townct.gov," but other email addresses on the website followed the same format/naming convention (e.g., j.doe@townct.gov for John Doe), the naming convention took precedent. The rationale behind this is the hope that the survey would be more likely to reach the targeted respondent, rather than an administrative assistant. The potential for typos errors and incorrect or expired email addresses will affect the response rate, but this will be accounted for because the listserv that I have set up to deploy the survey automatically generates an email response to me in such events. Therefore, I will be able to subtract the number of these instances from the initial total list of respondents to obtain the actual number of administrators in Connecticut who received the survey.

³² This particular municipality's email address was excluded because it was intended to be an informational linkage to the residents of the community, and it was impossible to control the recipient of the survey.

central document as that of the municipal contacts, though the two sets were separated in order to tabulate the initial list of total targeted respondents.³³ From the initial 13 judicial districts, I was able to collect email addresses for each targeted respondent in all of the judicial districts.

The number of targeted respondents at the municipal level was 2,822, followed by 41 at the judicial district level, for a grand total of 2,863 targeted respondents. After consultation with several computing-related departments at Virginia Tech, I set up a listserv in order to manage the survey deployment.³⁴ This listserv was only used to deploy the survey, for two follow-up emails to remind targeted respondents and to advise them of the survey closing date, and to share this dissertation with participants. The manner in which I collected municipal email addresses expectedly resulted in a number of unusable addresses (e.g., no email address existed, the targeted respondent was no longer at that email address, etc.). The Virginia Tech listserv, however, allowed me to calculate the number of targeted respondents who actually received my survey via email through the process of sending returned mail notifications. Therefore, 738, or 25.8%, targeted respondents were subtracted from the initial list for a total number of targeted respondents of 2,125. The response rate, therefore, was 6.68%, or 142 survey respondents.

Most impressive was the response regarding my request that survey participants complete an “interview interest” question at the end of the survey. Here, the rationale behind voluntary interviews was two-fold. Presumably, survey respondents who express an interest in participating in a follow-up interview are knowledgeable enough about issues surrounding eminent domain to engage in an interview. Since the purpose of the interviews was to build on the information gained from the survey responses and to clarify, expand, explain, etc. on the

³³ I was able to copy and paste all email addresses directly into a Word document.

³⁴ Individuals who are experts in Virginia Tech’s email, listserv, and survey capabilities all recommended that I create a listserv, as opposed to deploying the survey via regular email, because of the mass number of emails that would be sent at one time and the university servers’ capabilities.

results of the analysis, interview subjects' level of knowledge is crucial. Further, rather than identifying potential interview subjects through some sort of sampling mechanism and then cold-calling them, I thought this approach was better suited for the audience of this research project. By allowing subjects sufficient time to read through the survey and get a feel for the type of information I was interested in enabled them to make an informed decision about whether or not to participate in an interview. From the 142 total survey participants, 17, or 11.97%, participated in an interview with me.

The survey was open for three weeks, so I contacted all of the potential interview participants via email following the survey's close in order to schedule times during which to conduct the interview. I visited Connecticut during the week of August 17th through August 21st to conduct the interviews. Despite geographical constraints and the subsequent difficulties associated with traveling between interview locations, which were conducted at the interview subject's municipality or judicial district or another public location of the interview participant's convenience, I was able to interview all 17 administrators. In addition, I used the snowballing technique, when the opportunity presented itself, to broaden the interview pool. This resulted in two additional interview participants, one at the municipal level and one judicial district official, for a total of 19 interview participants.

Participants in the interview process.

Interview participants included a broad range of public administrators, both professional administrators and elected officials. Administrators participating in the interviews included: two councilmen, two Representative Town Meeting (RTM) officials, a RTM landuse chair, three selectmen, a first selectman, the chair of the zoning board of appeals, a town manager, a development director, a director of planning, an assistant director of planning, an assistant

planner, the executive director of an urban redevelopment commission, the corporation counsel for the urban redevelopment commission, an assessor, and a chief clerk and deputy chief clerk of a judicial district.³⁵

More broadly in terms of the study's sample of participants, it is important to discuss how the survey and interview participants relate to the overall targeted respondents. In other words, how the pool of survey and interview participants reflects the initial list of targeted departments. Survey participants are a reflection of the individual departments that were initially targeted for inclusion in the study, as shown in Table 6 above. Chapter 4 will discuss the departments represented by survey respondents in more detail. Here, it is sufficient to note that all targeted departments were represented by survey participants except the boards of assessment appeals and ethics, as well as the housing authority and planning commission. This is a bit misleading, however, because survey respondents were also given a response option of "other." Neither the board of assessment appeals or ethics assume a role in the process of eminent domain, as shown in Figure 3 above. More important is that a number of survey participants who responded with the "other" option indicated that they are involved with both housing and planning. These responses generally indicated that a survey participant is involved with a broader board or commission that handles issues related to planning, zoning, housing, development, etc. Therefore, the sample of survey respondents is a reflection of those departments involved in the process of eminent domain, as shown in Figure 3 above, the departments that were initially targeted for inclusion in the study.

A similar situation exists for the sample of interview participants. Departments involved in the process of eminent domain in which I did not interview administrators include: mayor and

³⁵ A count of this list of interview participants adds up to 20 because one administrator is elected in one municipality and employed by another; another administrator is in a similar situation, but the department in which he is employed is not relevant to eminent domain.

alderman, though I did interview a town manager and selectmen; zoning, though I interviewed the chairman of the zoning board of appeals; and housing authority and planning commission, though I did interview a number of administrators who identified their employment responsibilities as being inclusive of housing, as well as several involved in the planning department. Therefore, the sample of interview participants is a reflection of those departments involved in the process of eminent domain, as shown in Figure 3 above.

Absent in the study are administrators involved in the board of finance, which is responsible for approving the funding of the acquisition of property in the process of eminent domain. Members of the board of finance were not initially targeted as study participants because I was unaware of their role in the process. During the interviews, however, I attempted to mitigate this absence by learning their role in the process of eminent domain, which is limited to approval of funding after the municipal development plan and subsequent property acquisitions have been approved by all of the other stakeholders involved in the process, as shown in Figure 3 above.

Interview procedures.

All interviews were tape-recorded to allow for a more conversational flow during the interviews. Each interview participant reviewed and signed the consent form either via email for phone interviews. Four were conducted over the phone to accommodate vacation schedules, and the remaining were in-person interviews conducted in the field. Though recorded, the interviews were not formally transcribed. Each interview lasted approximately one hour, with several interviews lasting around ninety minutes.³⁶

Employing the elite interviewing technique was particularly well-suited for my research. I was prepared, as Leech (2002) notes, to treat the interview subjects as experts in the area of

³⁶ See Appendix C for sample interview questions.

eminent domain, which requires a significant sharing of power during the interview. By relying heavily on survey respondents' interest in participating in an interview, I was able to interview subjects who were knowledgeable about eminent domain and willing to talk about their experiences with it. The highly informal nature of the elite interviews also contributed greatly to the information I obtained during the interview. Aberbach and Rockman (2002, p. 674) highlight the value of "conversational flow" with open-ended questions that allow the subject enough latitude to provide deeper responses. Further, they note, "Elites especially, but other highly educated people as well, do not like being put in the straightjacket of close-ended questions. They prefer to articulate their views, explaining why they think what they think" (p. 674). This rationale is key for the type of information I was seeking during the interviews, which leads to the most important factor when considering the applicability of elite interviewing to this research.

Before one interview began, a development director expressed her relief in the format of the interviews and noted that she was afraid she would "have to study" to prepare! As I explained to the participants the way I hoped to conduct each interview, they generally appeared to be put at ease and quite comfortable with the proposed format. One exception was the judicial district interview, in which both participants noted that they did better with more close-ended questions, which I then tried to accommodate.

The survey and elite interviews together add a much thicker description, and each complements the other. As Goldstein (2002, p. 669) asserts, "Elite interviews can and should also be used to provide much needed context or color...." Given that I hope to produce normative prescriptions with this research, I did not want such efforts to be overshadowed by statistical findings. The focus of this research is to gain a better understanding of administrators'

understanding of eminent domain and search for guidance; the absence of qualitative research could have undermined the nature of my research. Certainly, many of the questions on the survey instrument were normatively grounded and asked respondents about values and beliefs, but I wanted to be sure that the survey results truly captured what I was trying to study.

As expected, the interviews were very informative, frequently extending beyond clarification or explanation of the survey results. Administrators who participated in the interviews were extremely forthcoming and spoke with candor. They were generally very knowledgeable about eminent domain and related issues. Interview participants were able to provide specific examples of issues related to eminent domain in their municipality, as well as neighboring municipalities, and offered substantial insight into how the decisions were made. Further, many administrators spoke more broadly about issues affecting local government in the context of eminent domain, often providing information that I did not even know to ask. This was particularly useful in helping me identify potential interview questions as I continued conducting the interviews.

While the basic purpose of the interviews was to follow-up on the results of the survey analysis, it is very important to note that the findings of this study are dependent on both the survey and the interview results. To say that the interviews were intended to provide context and thicker description should not be understood to imply that the interviews were not heavily relied upon. On the contrary, the interviews provided substantial insight that could not have been acquired from the survey alone. An overview of the interview questions is included in Appendix C. While some of these questions were clearly intended to follow-up or clarify the survey results, the interviews served to expand the findings of this study to include contributing factors to administrators' understanding, political and legal authority to employ eminent domain, the

role of public support in development projects, and facilitating an understanding of the process of eminent domain.

A Note About the Survey and Interview Participants

This section detailing the methodology of my research is very explicit about how and why I made the decisions I did concerning my operationalization of my search to understand how administrators understand eminent domain. It would not, however, be complete without further details about the character and spirit of the administrators who participated in the survey and the interviews. When the survey was first deployed, I received numerous emails from administrators offering recommendations for books, other eminent domain cases, and websites to review, as well as countless well-wishes for a successful research project. In the midst of what can only be described as “dissertation-gate” (i.e., a catastrophic server configuration error with the listserv), administrators still continued to be supportive of my project, even completing the survey and volunteering to participate in an interview while receiving dozens of emails back and forth.

During the process of scheduling interviews, administrators were incredibly flexible with their time, which contributed to my ability to interview every single administrator who responded to my request. Even rush-hour traffic on Interstate 95, family emergencies, and unplanned vacations did not derail one interview. To say that these administrators were flexible and supportive hardly seems to do justice to their kindness.

A last-minute addition to the interview consent form allowed administrators to be identified by name in publications if they chose. I made this alteration in the hopes of interviewing some of the key people involved in *Kelo*. Most administrators agreed to provide their names because it would “help me out,” as one representative town meeting official said.

One administrator drove me to visit the Long Island Sound during our interview, another kept me company on the phone for almost an hour while I sat in traffic, and a number of them offered to feed my caffeine habit. Others brought additional administrators into the interview with whom they thought I would be interested in speaking. One representative town meeting official even volunteered to take me on a tour of the Fort Trumbull neighborhood. One judicial district official even gave me the home address of the two community grassroots opposition leaders who spear-headed efforts against the takings in *Kelo*.

The efforts of these last two administrators helped to inform my research, beyond the scope of this dissertation, in ways I could not have imagined. As I headed to New London for my tour of the *Kelo* site, I arrived much earlier than planned. Perhaps it was the temperature going to my head (it was the hottest week Connecticut had seen in years), but I decided to knock on the door of the grassroots opposition leaders. Amy Hallquist opened the door and said, “I heard about you, come on in.” I had been communicating via email with Kathleen Mitchell, the backbone of the opposition efforts and chief architect of virtually every word Susette Kelo has spoken on the subject of eminent domain. She let Amy and her husband, Steve, know that I was coming.

Amy and I spoke for over 90 minutes when I realized that I was late to meet June Evered for my tour of the neighborhood. She invited me to come back later that evening to finish. When I arrived, after briefly speaking with her and her husband, she put me on the phone with Kathleen, who then told me to come over—and to bring coffee filters! At the risk of making a long story that much longer, suffice it to say that I spent four very informative hours on Kathleen’s front porch chatting with her; Susette Kelo; Susette’s husband, Timmy LeBlanc; and Doug Schwartz, the mailman during the ten-year battle.

Earlier in the day, during my tour of the area, June and I went to visit the famous “little pink house,” which has since been located to another lot in the city. I had the good fortune to be there just as Avner Gregory, the man who owned the lot and paid to have the house relocated, arrived home. He invited us in, told the story of how the house came to be relocated, and even gave me a piece of the original little pink house that has come to symbolize eminent domain.³⁷

Data Analysis

As previously noted, the survey results are the primary data source for my research. Data for the drivers (i.e., knowledge and experience) and dependent variables (i.e., discretion in action) were exported from the Virginia Tech survey tool to Excel. While in Excel, the data were cleaned (e.g., recoding values and removing language from numerical responses) before the final export into SPSS, the software tool used for data analysis. Given the exploratory nature of this research, frequencies and descriptive statistics were used to understand how the intervention of *Kelo* has affected the dependent variables. Where possible, robust statistics, such as the median and the interquartile range, were used to assess the variance in administrators’ responses with regard to their understanding of takings and search for guidance.³⁸

Next, I used cross-tabulations using chi-square and its related P-value in order to determine whether any statistically significant relationships existed between the drivers (i.e., knowledge and experience) and the dependent variables (i.e., discretion in action).³⁹ If such a relationship existed, I used a variety of measures of association to provide further support for the strength or range in strength of the relationship. Most important here is that the measures of

³⁷ As Avner explained during our interview, there were three requirements to which he had to agree in order to have the little pink house relocated: that it remain pink, that there be a plaque in front of the house to identify it as the “Kelo” house, and that the house remain on the site for 99 years.

³⁸ See Chapter 4 for data analysis and findings.

³⁹ Refer to Tables 4a and 4b for a listing of the drivers and dependent variables.

association were generally asymmetrical proportionate reduction in error (PRE) statistics (i.e., indicating causality, as well as how well does knowing the value of the driver help to predict the dependent variable). When testing statistical significance with crosstabs and chi-square, it is important to follow-up with a range of these measures of association because they help to better interpret the significance of a relationship. By evaluating the strength of the relationship, I was able to understand and report the importance of the relationship (i.e., a relationship may be statistically significant but relatively weak or likely to occur by chance).⁴⁰

The elite interviews served as the secondary data source (i.e., they were secondary in the sense that they could not be conducted until after the survey results were analyzed, not to imply that they were of any less value). Though interviews were recorded, they were not formally transcribed. The purpose of the interviews was to follow-up on the survey results and to add a thicker description to the findings of this study. As previously discussed, the interviews were incredibly useful in providing deeper insight into the survey results and in expanding the findings of this research to include issues that could not be appropriately incorporated into the survey (i.e., political v. legal authority, the role of public support, the process of eminent domain). Comments made during the interviews, therefore, are included throughout the following chapters and serve to provide a much more comprehensive perspective on the findings of this study.

Limitations

As with any research project, there are a number of limitations associated with the design and methodology of my research, particularly with regard to issues of validity, reliability, generalizability, and survey response rate. It is necessary, therefore, to address these limitations prior to discussing the findings of this study. During my preparation for this study, I made every feasible effort to minimize concerns over the limitations.

⁴⁰ See Chapters 5 and 6 for data analysis and findings.

In one sense, construct validity is the greatest limitation that I have attempted to overcome in the design and implementation of this research. Construct validity refers to the degree to which the indicators are related to the theoretical considerations on which the operationalization of the indicators is based. In other words, construct validity is concerned with the conceptualization to operationalization of the research. Recall Figure 1, Table 3, and Tables 4a and 4b, which show the conceptualization of the research design, the relationships to be examined as they have emerged from the literature, and the operationalization of the research design. Therefore, while I was unable to design the primary data source, the survey, from existing, previously tested instruments, I have developed the questions based on the literature on administrative discretion, professionalism, and the implementation of a legal case. Though every effort was made to ensure that the indicators provided the broadest possible reflection of the relevant theoretical constructs, the paucity of existing empirical studies on eminent domain and the absence of research on administrators' understanding make it difficult to assess the construct validity of my research. On the other hand, however, conducting research that has not been done before presents a unique opportunity, despite the potential for construct validity that is not as high as it might be had existing research design tools been considered.

Related to construct validity is the content validity of this research. Again, given the lack of previous research on which to build the foundations of the present study, the content validity is difficult to assess. Content validity involves the degree to which the research considers relevant dimensions of a particular concept, which I have attempted to accomplish with the exploratory nature of this study. Questions selected for inclusion in the survey asked respondents about their understanding, level of knowledge, perceptions, as well as behavioral

actions. The diversity of indicators included in this research appears to result in a fairly high degree of content validity.

Reliability is also a minor concern with regard to the ability to reproduce this study. Because the survey instrument was the primary data source for my research, attempts may be made to reproduce the survey. Though slight adjustments would need to be made to reflect the administrative structure of another state's government, the survey tool was designed with future comparative research in mind. With regard to the interviews, however, the degree of reliability is much lower. While similar interview questions were asked about the findings of the survey analysis, the interviews were focused largely on the topics and issues that the interview subjects' wanted to discuss. More importantly, that the initial interview questions were based on the survey results makes reproducing the interviews difficult; comparative studies would likely have differing results, thus likely shifting the focus of the interview to be dependent on that state's administrators' understanding and search for guidance. Finally, another interviewer may interpret comments made during the interviews differently. My minimal experience in survey research, as well as lacking experience in conducting interviews, should also be considered as a limitation.

Perhaps the most significant limitation of the present research is the issue of minimal generalizability. From the outset, the single-state case study research design that I employed limited the generalizability of results to a broader population of administrators. Moreover, the relatively small number of survey and interview response heightens the need to be somewhat cautious with regard to the representativeness of the included administrators' beliefs and experiences. The findings of my research, therefore, are generally limited to administrative decisions surrounding eminent domain. The broader implications of my research, however, are

expanded to include the political-legal environment surrounding administrative discretion in the decision-making process. Yin (2003) refers to this as analytic generalizability, which involves theory-development from the findings, rather than a strong reliance on statistical generalizability. This, then, is quite appropriate for the present research, given both the exploratory nature of the design and the subsequent attempts to establish foundations for future research. At this point on the continuum of eminent domain scholarly inquiry, the focus remains on theoretically and practically bridging the gaps between the constitutional and procedural literature. By studying how administrators understand eminent domain and their search for guidance, better-informed research may be conducted from the foundations this research has provided.

Finally, the small survey response rate presents a limitation to this research. Identification of potential survey participants emphasized the inclusion of public administrators in positions most likely to be involved in the decision-making process surrounding eminent domain issues, as shown in Figure 3 above. Every effort was made to target administrators employed by departments, or as elected officials on relevant boards and commissions, that would have knowledge of eminent domain. Because this research is exploratory and a first step to a fertile research agenda, the targeting of study participants took a broad approach. This was the major trade-off in designing and conducting the present research: a narrowly defined list of departments was targeted across a broad geographic boundary.

With this research, however, my goal was to obtain responses of quality, rather than quantity. Most important was receiving survey responses from and participating in interviews with administrators actually involved in the process of eminent domain. As previously discussed, both the survey and interview pool was a reflection of the initial list of departments targeted for inclusion in this study. Moreover, as the survey results will show, administrators

who participated in the survey and interview are generally employed in supervisory capacities with decision-making authority. Further, more than half of the survey respondents have been employed by the government for over a decade. Therefore, while the small response rate presents a limitation to this research in terms of a small percentage of respondents participating in the survey, the caliber of responses substantially strengthens the findings based on the level of administrators' involvement with eminent domain. That being said, though the response rate may be viewed as a limitation, in many ways, it is also a strength of this research in that I was able to obtain fewer but much more informed responses. Coupled with the 19 administrators that I interviewed, I have been able to obtain information into administrators' understanding and search for guidance through very informed administrators who are actually involved in the process of eminent domain.

Chapter 4: Exploring Administrators' Understanding and Search for Guidance

Before delving deeply into the relationships between the knowledge and experience drivers and the dimensions of the dependent variables of discretion in action, it is necessary to provide first a comprehensive, descriptive picture of the characteristics of the administrators who participated in the survey and their understanding and search for eminent domain guidance. Therefore, this chapter will focus on an analysis of the frequencies and other descriptive statistics in this exploratory research endeavor. This analysis will be divided between the knowledge and experience drivers, as well as each dimension of the dependent variables (i.e., administrators' understanding of eminent domain, their search for guidance, their interpretations of takings law post-*Kelo*, and their understanding of "public" post-*Kelo*).⁴¹

Analysis of the frequencies and percentages of administrators' demographic characteristics is fairly straightforward and includes data for each of the variables. Descriptive statistics for the knowledge and experience drivers and the discretion in action dimensions of the dependent variables is a bit more complicated and warrants additional discussion. Variable types limit the types of statistics that may be used in the analysis. This study includes both nominal and ordinal variables. For nominal-level variables, the mode may be used in the analysis. The mode is the most common response from the total data set of response values. For ordinal-level variables, which have order to their values, the median may be used. The median is a measure of central tendency that provides insight into the center of the variable's values by sequencing all of the values from lowest to highest, with the median being the value in the center.

⁴¹ See Appendix B for the survey questions and Tables 4a and 4b for the relationship between the drivers and the dimensions of the dependent variables to the indicators and survey questions.

The mean is a statistical measure of central tendency for use with interval-level data. It is often called the arithmetic mean and produces the average of the variable's values. Although none of the variables in this study are interval-level, for the descriptive statistics only, I am treating the ordinal-level variables as interval-level data in order to provide a more nuanced understanding of the characteristics of the drivers and the dimensions of the dependent variables by including the mean in the descriptive analysis. The key difference between ordinal and interval variables is that there is a rank order to ordinal variables, for example, strongly agree and agree, but the value between the responses may not be equal. With data that is interval-level, the difference between each value is understood to be equal. Order only is key for ordinal-level data, and equal distance between values is characteristic of interval-level data. That being said, because the response option scales provided on the survey instrument were visually linear (1 through 6), I believe I am able to treat the ordinal-level data as interval-level for the purposes of descriptive analyses.⁴²

Given differences in the insight provided by each of these statistical measures (i.e., median, mode, and mean), exploratory research necessitates an analysis of all of them comprehensively. Therefore, each measure's value has been produced for all of the drivers and dimensions of the dependent variable where appropriate. The median and mode may be used for ordinal-level variables, but the mode may only be used for nominal-level variables. The mean is included for the ordinal-level variables only to capture more of the meaning.

Demographic Characteristics

The following analysis provides a comprehensive, descriptive picture of the characteristics of administrators who participated in the survey with regard to their demographic characteristics. These characteristics include administrators' demographic information, public

⁴² See Appendix B for survey questions showing the linear presentation of the scale of response options.

service motivation, educational background, and employment characteristics. These data are shown in Table 7 below.

Table 7: Frequencies and Percentages of Demographic Characteristics

KNOWLEDGE AND EXPERIENCE		
Driver	Frequency	Percent
<i>Level of government (Q #1; n=142)</i>		
Municipality	135	95.1
Judicial District	3	2.1
Other	4	2.8
<i>Gained employment (Q #2; n=142)</i>		
Appointed	51	35.9
Career civil servant	28	19.7
Elected	53	37.3
Other	10	7.0
<i>Employment status (Q #3; n=139)</i>		
Full-time	103	72.5
Part-time	36	25.4
<i>Department employed (Q #4; n=142)</i>		
Assessor	23	16.2
Attorney	4	2.8
Building	4	2.8
Economic development	4	2.8
Manager	12	8.5
Mayor	5	3.5
Planning	12	8.5
Representative town meeting	9	6.3
Town clerk	12	8.5
Town council	14	9.9
Zoning	3	2.1
Board of aldermen	3	2.1
Board of assessment appeals	0	0.0
Board of ethics	0	0.0
Board of selectmen	16	11.3
Housing authority	0	0.0
Planning commission	0	0.0
Zoning board of appeals	1	0.7
Judicial district clerk's office	3	2.1
Other	10	7.0

Landuse Redevelopment ⁴³	5 2	3.5 1.4
<i>Employment responsibilities</i> (Q #5; n=12)		
Administrative	94	66.0
Budgeting or financial management	82	58.0
Community outreach	56	39.0
Conduct research	39	27.0
Contracts	48	34.0
Department head	63	44.0
Develop programs	38	27.0
Economic development	45	32.0
Evaluate programs	41	29.0
Grants	46	32.0
Human resources	28	20.0
Implement programs	49	35.0
Legal	28	20.0
Legislative work	47	33.0
Lobby	20	14.0
Manage programs	52	37.0
Planning	54	38.0
Policy or program analyst	27	19.0
Supervisory responsibilities	72	51.0
Other	23	16.0
<i>Tenure living in CT</i> (Q #6; n=142)		
Less than 6 months	1	0.7
6 months to 1 year	0	0.0
2 to 3 years	0	0.0
4 to 5 years	1	0.7
6 to 10 years	6	4.2
More than 10 years	134	94.4
<i>Tenure holding current position</i> (Q #6; n=142)		
Less than 6 months	2	1.4
6 months to 1 year	9	6.3
2 to 3 years	32	22.5
4 to 5 years	25	17.6
6 to 10 years	28	19.7
More than 10 years	46	32.4
<i>Tenure government employment</i> (Q #6; n=130)		
Less than 6 months	1	0.7
6 months to 1 year	2	1.4
2 to 3 years	8	5.6
4 to 5 years	13	9.2
6 to 10 years	23	16.2
More than 10 years	83	58.5
<i>Education attained</i>		

⁴³ The categories of “landuse” and “redevelopment” were not given as response options on the survey but were added during the data cleaning stage as a result of respondents’ identification in the “other” option.

(Q #7; n=141)	HS diploma/equivalency Associate's degree Bachelor's degree Master's degree Doctoral degree	11 20 42 48 20	7.7 14.1 29.6 33.8 14.1
<i>Currently degree-seeking</i> (Q #7; n=17)	HS diploma/equivalency Associate's degree Bachelor's degree Master's degree Doctoral degree	1 3 6 5 2	0.7 2.1 4.2 3.5 1.4
<i>Non-degree coursework</i> (Q #; n=17)	Associate's degree Bachelor's degree Master's degree Doctoral degree	4 3 6 4	2.8 2.1 4.2 2.8
<i>Public service motivation</i> (Q #10; n=142)	Welfare of community Civic duty of public service Serve the public interest Financial security Champion public causes Program/policy formation process Other	85 65 102 31 44 65 18	60.0 46.0 72.0 22.0 31.0 46.0 13.0
<i>Gender</i> (Q #38; n=131)	Male Female	79 52	56.0 37.0
<i>Age</i> (Q #39; n=131)	18 to 24 25 to 34 35 to 44 45 to 54 55 to 64 65 and above	1 11 22 45 36 16	1.0 8.0 1.05 32.0 25.0 11.0
<i>Ethnicity</i> (Q #40; n=125)	White Black Hispanic Asian Other	119 2 3 0 1	83.8 1.4 2.1 0.0 0.7

Gender, age, and ethnicity.

More than half of administrators participating in the survey are male (56.0%), with 37.0 percent of respondents being female. Further, over half of the survey respondents are middle-

aged, with 32.0 percent in the 45 to 54 cohort and 25.0 percent in the 55 to 64 cohort. Fewer than ten percent of administrators reported being under the age of 35. With regard to survey respondents' ethnicity, a majority identified themselves as white (83.8%), followed by Hispanic (2.1%), black (1.4%), and other (0.7%). It should be noted that these questions surrounding gender, age, and ethnicity were explicitly optional on the survey.

Level of government, gained employment, employment status, department employed, and employment responsibilities.

Nearly every survey respondent (95.1%) is employed at the municipal level, and most are appointed (35.9%) or elected (37.3%) and serve in full-time employment (72.5%). Most survey participants are employed as municipal assessors (16.2%), followed by selectmen (11.3%); councilmen (9.9%); manager, planning, and clerk (all 8.5%); and representative town meeting (6.3%). A majority of administrators who participated in the survey described themselves as having administrative responsibilities (66.0%) in their current position, followed by budgeting or financial management (58.0%), community outreach (39.0%), planning (38.0%), and management of programs (37.0%). Forty-four percent of survey respondents report being the department head, and 51 percent responded that they exercised supervisory responsibilities in their current position. Thus, these responses include a high percentage of survey respondents with significant responsibility.

Tenure living in Connecticut, holding current position, and government employment.

More than half (58.5%) of the administrators who participated in the survey reported being employed by the government in any capacity for more than ten years. Moreover, 32.4 percent responded that they have been employed in their current position for more than ten years, compared with 7.7 percent who have held their current position for one year or less. Finally, an

overwhelming percentage (94.4%) of survey respondents reported that they have lived in Connecticut for more than ten years. Demographic characteristics thus far reveal that administrators who participated in the survey are generally in a position of decision-making authority, given that over half reported having supervisory responsibilities. Further, given that more than half of the survey participants have been employed by the government for more than ten years and that almost all of them have lived in Connecticut for that amount of time, these administrators should be quite knowledgeable about local government in their municipalities, as well as the broader context of Connecticut government. The characteristics of survey participants, with particular regard for their supervisory responsibilities and length of government employed are an indication that, although the survey response rate was small, the type of administrators who participated in the survey is the type of administrator whose responses I was seeking. Further, as previously discussed, these administrators reflect positions throughout the process of implementing eminent domain in that departments involved in the process are represented by the survey participants.

Education attained.

The administrators who participated in this survey also appear to be highly educated, with 77.5 percent having earned a bachelor's (29.6%), master's (33.8%), or doctoral (14.4%) degree. Master's degree fields of study are quite wide-ranging and include, in order of frequency, public administration, business administration, urban and regional development, community planning, geography, political science, real estate, and marketing. Less common master's degrees include psychology, biology, architecture, and counseling. Doctoral degrees were predominantly juris doctor, followed by economics or political economy, management, education administration, and geography.

Open-ended survey responses regarding administrators' professional training related to eminent domain reveal a number of different sources. Administrators reported participating in professional development workshops and seminars, both tailored to eminent domain and part of a larger agenda. In addition, administrators received training in public policy-related coursework, as well as that required to be a certified municipal assessor, municipal clerk, and paralegal. Administrators also described professional training by Connecticut professional organizations and law schools for planning and zoning administrators. More informally, administrators reported having conversations with municipal attorneys and self-guided training.

Public service motivation.

When asked about their motivation for a career in public service, 72.0 percent of administrators reported to serve the public interest, followed by the welfare of the community (60.0%), and civic duty of public service or program or policy formulation process (both at 46.0%). These response options were not mutually-exclusive. Responses from administrators who chose the "other" option included "preservation of liberty," having a history of public servants in the family, concern over a particular issue, "interest in the way landuse policies shape the community," Jack Kennedy, and that public service was "not boring."

Knowledge and Experience

The following analysis provides a comprehensive, descriptive picture of the characteristics of administrators who participated in the survey with regard to their knowledge and experience. These characteristics include administrators' familiarity with relevant eminent domain materials, eminent domain experience, and contracting with private firms. These data are shown in Table 8 below.⁴⁴

⁴⁴ The value for the driver regarding administrators' knowledge of contracting with private firms was re-coded so that the value indicating a response of "don't know" would not artificially inflate the value of the mean.

Table 8: Descriptive Statistics of Drivers⁴⁵

KNOWLEDGE AND EXPERIENCE						
Driver	Response Option Percentages ⁴⁶		Median	Mode	Mean	
<i>Familiarity</i> (Q #11; n=140, 139, 140, 141)	<i>Kelo</i>	<i>Not familiar</i> 14	<i>Very familiar</i> 54	5	6	4.36
Local ordinance(s)		22	48	4	6	4.04
State statute(s)		26	39	4	6	3.81
Takings Clause		37	31	4	2	3.43
<i>Read (How many times)</i> (Q #12; n=141, 138, 140, 140)	<i>Kelo</i>	<i>Never to once</i> 72	<i>More than 4 times</i> 8	n/a for nominal-level data	1	n/a for nominal-level data
Local ordinance(s)		52	21		0	
State statute(s)		51	19		0	
Takings Clause		61	17		0	
<i>Required to read</i> (Q #13; n=10, 137, 139, 139)	<i>Kelo</i>	<i>Yes</i> 10	<i>No</i> 89	n/a for nominal-level data	1	n/a for nominal-level data
Local ordinance(s)		28	68		1	
State statute(s)		27	70		1	
Takings Clause		10	88		1	
<i>Followed Kelo</i> (Q #15; n=139, 139, 139, 138, 138)		<i>Not closely</i>	<i>Very closely</i>			
Local news		25	35	4	6	3.79
National news		49	19	2	1	2.82
Local media		40	28	3	2	3.31
National media		51	18	3	1	2.82
<i>Familiarity with precedents in Kelo</i> (Q #16; n=139)		<i>Not familiar</i> 62	<i>Very familiar</i> 12	2	1	2.40
<i>Applicability of Takings Clause to eminent domain</i> (Q #17; n=128)		<i>Not applicable</i> 23	<i>Very applicable</i> 38	4	6	3.96
<i>Eminent domain experience</i> (Q #18; n=142, 138)		<i>Not frequently</i> 68	<i>Very frequently</i> 10	2	1	2.27
Professionally		93	0	1	1	1.17
<i>Contracting out with private firms</i> (Q #19; n=137)		<i>Not frequently</i> 69	<i>Very frequently</i> 4	1	1	1.81

⁴⁵ Range of possible responses for each question include: Q #11=1 (not at all) to 6 (very familiar); Q #12=0 (never), 1 (once), 2 (2 to 3 times), 4 (4 to 5 times), and 5 (more than 5 times); Q #13=1 (no) and 2 (yes); Q #15=1 (not at all) to 6 (very closely); Q #16=1 (not at all) to 6 (very familiar); Q #17=1 (not at all) to 6 (very applicable); Q #18=1 (not at all) to 6 (very frequently); and Q #19=1 (not at all) to 6 (very frequently), as well as 7 (don't know).

⁴⁶ These percentages are based on the total number of survey responses for each question. The left column includes response options of 1 to 2 to show the lowest agreement, significance, etc., and the right column includes response options of 5 to 6 to show the highest agreement, significance, etc.

Familiarity with Kelo, local ordinances, state statutes, and the Takings Clause.

An examination of all three statistical measures described above (i.e., median, mode, and mean) reveals that the administrators who participated in the survey are most familiar with *Kelo*, followed by local ordinances and state statutes affecting eminent domain and the Takings Clause of the US Constitution. Fifty-four percent of total survey respondents reported being very familiar with *Kelo*, followed by 48 percent for local ordinances and 39 percent for state statutes. Further, the modal value (the most frequent answer) for administrators' familiarity with each of these three indicators is 6 (very familiar), compared with 2 for the Takings Clause. This shows that the most common response regarding administrators' familiarity with *Kelo* and local ordinances and state statutes affecting eminent domain was very familiar, and that the most common response regarding familiarity with the Takings Clause lacked substantial familiarity. Values for the mean are consistent with values of 4.36 for the case, 4.04 for local ordinances, and 3.81 for state statutes.

Frequency of reading, and being required to read, Kelo, local ordinances, state statutes, and the Takings Clause.

Administrators who participated in the survey responded that they had read local ordinances (21%) and state statutes (19%) the most frequently at more than four times, followed closely by the Takings Clause (17%). Inclusion of response percentages is particularly helpful in interpreting nominal-level data because of the limitations on statistical measures. Here, the modal value for *Kelo* is 1, indicating that administrators most frequently reported reading the case once. This is compared with the modal value of 0 for local ordinances and state statutes affecting eminent domain and the Takings Clause, which indicates that administrators most frequently responded that they had never read any of these eminent domain-related materials.

Viewing the values of the mode holistically with the response option percentages, however, indicates that about one-fifth of administrators have read the materials quite frequently (i.e., more than 4 times). A similar driver, whether administrators were required to read these materials, shows that administrators were generally not required to read them. The percentages of administrators' responses for this indicator show, however, that they were most frequently required to read local ordinances (28%) and state statutes (27%) affecting eminent domain.

Followed Kelo in local and national news and media.

Both the median and mean show that administrators followed the *Kelo* case quite closely in the local news, with a median value of 4 and a mean value of 3.79. Local news is followed by the local media (median of 3 and mean of 3.31). Further evidence of administrators' following the case more closely in the local news and media, as compared with the national level, are the modal values of 6 for local news and 2 for local media; the modal values for national outlets are both 1. These statistical values correspond with the percentages associated with administrators' responses, which show 35 percent following *Kelo* very closely in the local news and 28 percent in the local media.

Familiarity with precedent cases in Kelo, applicability of the Takings Clause, eminent domain experience, and contracting out with private firms.

All three statistical measures show that administrators were generally unfamiliar with the precedent cases in *Kelo* (median value of 2, modal value of 1, and mean value of 2.40). Only 12 percent of administrators reported being very familiar with the precedents. These descriptive statistics also indicate that administrators responded that the Takings Clause is quite applicable to eminent domain in their locality. This is similar to the results above that indicate administrators' familiarity with the Takings Clause is fairly familiar, with a median value of 4

and a mean value of 3.43. Here, with regard to the applicability of the Takings Clause, the median is 4, and the mean value is quite similar to that of familiarity, with a value of 3.96. Consistent with the statistical measures, 38 percent of administrators responded that the Takings Clause was very applicable. Administrators reported minimal professional experience with eminent domain, as evidenced by a median value of 2, a modal value of 1, and a mean value of 2.27. Administrators reported having even less personal experience with eminent domain and contracting out with private firms on issues related to eminent domain, as the values for both statistical measures are 1 (mean value is 1.17 and 1.81). Further support is provided by the percentages of administrators' response options, indicating only 10% very frequently engaged in professional experience with eminent domain, 0% for personal experience, and 4% for contracting out with private firms.

How Administrators Understand Eminent Domain

The following analysis provides a comprehensive, descriptive picture of the characteristics of administrators who participated in the survey with regard to how they understand eminent domain. These characteristics include administrators' understanding of *Kelo*'s impact and change on a number of aspects related to eminent domain, agreement with eminent domain in a number of contexts, and their understanding of eminent domain and *Kelo*. These data are shown in Table 9a below.⁴⁷

⁴⁷ The value for the dimensions of the dependent variable regarding administrators' understanding of *Kelo*'s impact broadly, *Kelo*'s impact on the dimensions, and the ways in which *Kelo* changed the dimensions was re-coded so that the value indicating a response of "don't know" would not artificially inflate the value of the mean.

Table 9a: Descriptive Statistics of How Administrators Understand Eminent Domain⁴⁸

DISCRETION IN ACTION: HOW ADMINISTRATORS UNDERSTAND EMINENT DOMAIN					
Dependent Variable	Response Option Percentages ⁴⁹		Median	Mode	Mean
Kelo's impact on eminent domain (Q #21; n=138)	Not significantly 52	Very significantly 18	2	1	2.61
Kelo's impact (Q #22; n=139, 139, 139, 139, 138)	Not significantly 62	Very significantly 12	1	1	1.96
Number of takings	56	12	1	1	2.16
Pre-condemnation strategies	64	6	1	1	1.65
Contracting out	60	11	1	1	1.95
Consideration of local media	67	2	1	1	1.52
Kelo changed (Q #23; n=139, 137, 138, 137, 139)	No noticeable change 75	Decreased; Increased 10; 1 5; 11 1; 4 0; 9 0; 2	n/a for nominal-level data	1 1 1 1 1	n/a for nominal-level data
Number of takings	61	10; 1 5; 11 1; 4 0; 9 0; 2			
Pre-condemnation strategies	67				
Contracting out	67				
Consideration of local media	73				
Agree (Q #25; n=137, 133, 137, 135)	Not agree 31	Strongly agree 29	3	2	3.50
ED in general	51	16	2	1	2.65
Kelo	76	2	1	1	1.80
ED for private development	45	15	3	1	2.80
ED for economic development					
Understand (Q #26; n=139, 139)	Not well 7	Very well 56	5	6	4.58
Eminent domain	17	44	4	5	4.03
Kelo					

Kelo's impact and change on number of takings, pre-condemnation strategies, contracting out, and consideration of local and national media.

Administrators who participated in the survey reported that Kelo had a moderate impact on eminent domain in general in their locality, with support provided by a mean value of 2.61

⁴⁸ Range of possible responses for each question include: Q #21=1 (not at all) to 6 (very significantly), as well as 7 (don't know); Q # 22=1 (not at all) to 6 (very significantly), as well as 7 (don't know); Q #23=1 (no noticeable change), 2 (decreased), 3(increased), and 4 (don't know); Q #25=1 (not at all) to 6 (strongly agree); and Q #26=1 (not at all) to 6 (very well).

⁴⁹ These percentages are based on the total number of survey responses for each question. The left column includes response options of 1 to 2 to show the lowest agreement, significance, etc., and the right column includes response options of 5 to 6 to show the highest agreement, significance, etc.

and a median value of 2. Moreover, 18 percent of administrators responded that the case had a very significant impact on eminent domain in general in their locality, compared with 52% who responded that the impact of the case was minimal at best. Most administrators did not perceive *Kelo*'s impact on eminent domain in their locality as being significant, which is indicated by the modal value of 1. With regard to specific examples of *Kelo*'s impact, the values of the median and mode of 1 for each dimension of the dependent variable (i.e., *Kelo*'s impact on number of takings, pre-condemnation strategies, etc.) indicate that the case generally had no impact. An examination of the mean values, however, shows that there was, in fact, some impact, particularly with regard to the use of pre-condemnation strategies (mean of 2.16), followed by number of takings (mean of 1.96) and consideration of the local media (mean of 1.95). Percentages of administrators' responses correspond to these mean values, showing that 12% reported very significant impact on both the number of takings and the use of pre-condemnation strategies, followed very closely by consideration of local media (11%). Coupled with the other statistical measures, this indicates that *Kelo*'s impact was not far-reaching but that its impact was significant in the localities it did affect.

A similar driver regarding the ways in which *Kelo* changed these same dimensions (i.e., number of takings, pre-condemnation strategies, etc.) shows that the case generally resulted in no noticeable change. Administrators' response percentages supports the previous findings of little impact overall regarding *Kelo*'s impact, specifically on the number of takings, the use of pre-condemnation strategies, and consideration of the local media. Here, 10% of administrators reported that the number of takings decreased while 11% reported that the use of pre-condemnation strategies increased, as did consideration of the local media for 9% of administrators.

Agreement with eminent domain in general, Kelo, and eminent domain for private and economic development.

Administrators participating in the survey appear to most strongly agree with eminent domain in general, with a median value of 3 and a mean value of 3.50 (out of a possible high of 6), and to not agree at all with eminent domain for private development, as evidenced by median and modal values of 1 and a mean value of 1.80. Agreement with *Kelo* and eminent domain for economic development produce similar results; the mean values for each are 2.65 and 2.80 with modal values of 2 and 3. The low modal values for each of the four dimensions of agreement (e.g., eminent domain in general, *Kelo*, and eminent domain for private and economic development) show that administrators most frequently responded that they lacked agreement with all dimensions, which indicates quite a polarization of responses. This means that administrators were most likely to respond in overall lack of agreement, but those who agreed did so strongly, as evidenced by the higher values of the mean in comparison with the mode. Also important to highlight is that 76 percent of administrators who participated in the survey do not agree or do so only minimally with eminent domain for private development, the key controversy in the *Kelo* case.

Understanding of eminent domain and Kelo.

Administrators reported high levels of understanding of both eminent domain and *Kelo*, as evidenced by the statistical measures and the response option percentages. Values for the median, mode, and mean are quite consistent, particularly for understanding eminent domain; these values show that administrators reported understanding eminent domain very well (median value of 5, modal value of 6, and mean value of 4.58) and *Kelo* very well (median value of 4, modal value of 5, and mean value of 4.03). These values do indicate that administrators reported

understanding eminent domain a bit better than *Kelo*. More support is provided by the response that 56% of administrators responded that they understand eminent domain very well and 44% understand the *Kelo* case.

Where Administrators Turn for Eminent Domain Guidance

The following analysis provides a comprehensive, descriptive picture of the characteristics of administrators who participated in the survey with regard to their search for eminent domain guidance. These characteristics include administrators' references to relevant eminent domain materials, as well as where they turn for guidance. These data are shown in Table 9b below.

Table 9b: Descriptive Statistics of Where Administrators Turn for Eminent Domain Guidance⁵⁰

DISCRETION IN ACTION: WHERE ADMINISTRATORS TURN FOR EMINENT DOMAIN GUIDANCE					
Dependent Variable	Response Option Percentages ⁵¹		Median	Mode	Mean
<i>Refer</i> (Q #14; n=132, 133, 133, 133)	<i>Not often</i>	<i>Very often</i>			
Kelo	73	8	1	1	1.86
Local ordinance(s)	62	19	1	1	2.42
State statute(s)	61	18	2	1	2.46
Takings Clause	76	7	1	1	1.80
<i>Turn for guidance</i> (Q #27; n range=125-135)	<i>Not likely</i>	<i>Very likely</i>			
Academic journal articles	58	16	2	1	2.51
Law review articles	47	19	3	1	2.80
Local ED ordinance(s)	20	54	5	6	4.30
State ED statute(s)	7	69	6	6	4.96
US Constitution	36	30	3	1	3.40
US Supreme Court decisions	29	36	4	6	3.73
State Constitution	29	38	4	6	3.79
State Supreme Court decisions	18	49	5	6	4.22
Professional experience	48	26	2	1	2.90
Personal experience	74	10	1	1	1.87
Direct supervisor	62	15	1	1	2.22
Peers or colleagues	26	32	3	3	3.60
Municipal administrator	33	31	3	6	3.48
JD administrator	61	14	2	1	2.29
State administrator	48	16	2	1	2.71
Municipal elected official	34	30	3	6	3.42
State elected official	39	24	3	1	3.18
Property owner's perspective	22	42	4	6	3.97
Family or friends	66	10	2	1	2.13
Community organizations	46	14	2	1	2.70
Interest groups	54	13	2	1	2.48
Professional conferences	40	22	3	1	2.98
Professional organizations	32	26	3	1	3.24
Local newspapers	58	9	2	1	2.33
National newspapers	65	7	1	1	2.05
Local media	66	9	2	1	2.13

⁵⁰ Range of possible responses for each question include: Q #14=1 (not at all) to 6 (very often) and Q #27=1 (not at all) to 6 (very likely).

⁵¹ These percentages are based on the total number of survey responses for each question. The left column includes response options of 1 to 2 to show the lowest agreement, significance, etc., and the right column includes response options of 5 to 6 to show the highest agreement, significance, etc.

National media	73	4	1	1	1.82
Neighboring municipalities	27	22	3	3	3.31
Neighboring JDs	51	11	2	1	2.44
Neighboring states	62	8	2	1	2.15
Colleges or universities	63	11	2	1	2.23

Refer to Kelo, local ordinances, state statutes, and the Takings Clause.

Administrators most often turn to local ordinances and state statutes affecting eminent domain when they are in need of clarification or information when dealing with an issue related to eminent domain. This is evidenced by administrators' response option percentages indicating "very often," with 19% for local ordinances and 18% for state statutes, as well as the mean values of 2.42 and 2.46 for each. The statistical measures show that administrators report referring to each source for information just about as often as the other, with only minimal differences in the mean values (1.86 for *Kelo* and 1.80 for the Takings Clause) and median and modal values of 1 for all but state statutes, which has a median value of 2.

Turn for eminent domain guidance.

Administrators' search for eminent domain is quite complex, as they appear to either be very likely or not at all likely to turn to each source for guidance in what may best be described as the "soup to nuts" survey question. Because the modal values for nearly every dimension of the dependent variable is either a 1, not at all likely, or a 6, indicating very likely the median is the most useful statistical measure in this situation, to be complemented by the values of the mean.

Values for the median indicate that administrators responding to the survey were very likely to turn to state statutes affecting eminent domain (4.96), followed by local ordinances (4.30) and state Supreme Court decisions (4.22). Additional sources of guidance to which

administrators were likely to turn include the property owner's perspective (3.97), the state Constitution (3.79), and US Supreme Court decisions (3.73).

Administrators reported that they were not at all likely to turn to previous personal experience with eminent domain (1.87), their direct supervisor (2.22), and national newspapers (2.05) and media (1.82). Slightly more likely sources of guidance include academic journal articles (2.51), previous professional experience with eminent domain (2.90), administrator in the judicial district (2.29) or state (2.71), family or friends (2.13), community organizations (2.70), interest groups (2.48), local newspapers (2.33) and media (2.13), neighboring judicial districts (2.44) or municipalities (1.82), and colleges or universities (2.23). Finally, sources that administrators reported being moderately likely to turn include law review articles (2.80), US Constitution (3.40), peers or colleagues (3.60), municipal administrator (3.48) or elected official (3.42), state elected official (3.18), professional conferences (2.98) and organizations (3.24), and neighboring municipalities (3.31).

Administrators' Interpretations of Takings Law post-Kelo

The following analysis provides a comprehensive, descriptive picture of the characteristics of administrators who participated in the survey with regard to their interpretations and understanding of takings law post-*Kelo*. These characteristics include administrators' interpretations of relevant eminent domain phrases, as well as their agreement with similarities among the phrases. These data are shown in Table 9c below.⁵²

⁵² The survey also included a series of questions that asked administrators to rank public use, public purpose, public good, public interest, just compensation, and blight in order of most important to least important when considering requirements for the use of eminent domain. The confines of the Virginia Tech survey tool prohibited me from forcing respondents to assign each ranking to only one option. Despite my best efforts to provide clear instructions for this particular question, survey respondents assigned each ranking to multiple options, therefore rendering the responses of no use. The following survey question asked administrators to provide open-ended comments on their responses; these responses are incorporated into relevant discussions in Chapter 6.

Table 9c: Descriptive Statistics of Administrators' Interpretations of Takings Law post-Kelo⁵³

DISCRETION IN ACTION: ADMINISTRATORS' INTERPRETATIONS OF TAKINGS LAW POST-KELO					
Dependent Variable	Response Option Percentages ⁵⁴		Median	Mode	Mean
<i>Definition</i> (Q #29; n=130, 126, 130, 129, 131, 130)	<i>Not well</i>	<i>Very well</i>			
Public use	8	61	5	6	4.69
Public purpose	13	46	5	5 and 6	4.30
Public good	15	40	4	4	4.09
Public interest	11	41	4	4	4.19
Just compensation	19	50	5	6	4.23
Blight	10	51	5	6	4.48
<i>Agree similarities</i> (Q #33; n=122, 122)	<i>Not agree</i>	<i>Strongly agree</i>			
Use/Good and Purpose/Interest	37	20	3	2	3.07
Use/Interest and Purpose/Good	29	29	3	2	3.50

Interpretations of definitions of public use, public purpose, public good, public interest, just compensation, and blight.

Administrators who participated in the survey were asked how well provided definitions of the phrases “public use,” “public purpose,” “public good,” “public interest,” “just compensation,” and “blight” adequately covered their experiences surrounding the terms. These definitions were annotated from *Ballentine's Law Dictionary* (3rd edition); this was the only legal dictionary that included definitions for all six of the phrases.⁵⁵ According to survey participants' responses, definitions of public use, blight, just compensation, and public purpose were the most accurate. This is evidenced by the percentage of administrators' responding that each definition covered their experiences surrounding the terms; 61% for public use, 51% for blight, 50% for

⁵³ Range of possible responses for each question include: Q #29=1 (not at all) to 6 (very well) and Q #33=1 (not at all) to 6 (strongly agree).

⁵⁴ These percentages are based on the total number of survey responses for each question. The left column includes response options of 1 to 2 to show the lowest agreement, significance, etc., and the right column includes response options of 5 to 6 to show the highest agreement, significance, etc.

⁵⁵ These definitions were located via LexisNexis Academic. See survey questions in Appendix B for definitions provided to survey participants.

just compensation, and 46% for public purpose. The modal values show that administrators' most frequently agreed with the accuracy of these four terms because the mode is 6 for each, indicating that the term adequately covered their experiences very well. Similarly, the median value for each of the four terms is 5, which indicates very high accuracy. The nuanced differences in the values of the mean for each also provides more detailed insight into which definitions were most accurate. Public use is the definition with the highest levels of accuracy, with a value of 4.69, therefore indicating that administrators reported this definition as covering their experiences very well. Further, examining the statistical measures shows that public good and public interest were least accurate, though they were still more accurate than not (i.e., a median and modal value of 4 indicates that the definition of the term accurately covers administrators' experiences).

Agreement with similarities among public use, public purpose, public good, and public interest.

Finally, administrators were asked to respond to a question involving similarities between the phrases "public use," "public purpose," "public good," and "public interest." At first glance, the statistical measures appear to indicate that there is little difference (median value of 3 and modal value for 2 for each) between whether administrators more strongly agree that public use/interest and public purpose/good are more similar than are public use/good and public purpose/interest. The values of the mean for each dimension, however, indicate that administrators more strongly agreed with the first statement (i.e., similarities between public use and interest). Here, the mean for agreement with use/interest and purpose/good (as compared with use/good and purpose/interest) is slightly higher, with a value of 3.50, which indicates moderately strong agreement.

Administrators' Understanding of "Public" post-Kelo

The following analysis provides a comprehensive, descriptive picture of the characteristics of administrators who participated in the survey with regard to their understanding of "public" in a post-*Kelo* environment. These characteristics include administrators' understanding of "public" and "private" since *Kelo*. These data are shown in Table 9d below.

Table 9d: Descriptive Statistics of Administrators' Understanding of "Public" post-Kelo⁵⁶

DISCRETION IN ACTION: ADMINISTRATORS' UNDERSTANDING OF "PUBLIC" POST-KELO					
Dependent Variable	Response Option Percentages ⁵⁷		Median	Mode	Mean
Kelo's influence (Q #35; n=126, 128) "Public" in ED "Private" in ED	Not significantly 27 25	Very significantly 29 29	3 3	3 3	3.48 3.46

Kelo's influence on understanding of "public" and "private."

Administrators seem equally divided in their understanding of whether *Kelo* has significantly (29%) or not significantly (27%) affected their understanding of "public" post-*Kelo*. Similarly, they are divided on whether *Kelo* affected their understanding of "private" (29%) or not (25%). The statistical measures are nearly identical for each of the two dimensions of the dependent variable, even the values of the mean for each (3.48 for public and 3.46 for private). The values for these dimensions do, more importantly, indicate that the case had a moderately significant influence on administrators' understanding of public and private in the context of eminent domain. The percentages of administrators' responding that *Kelo* significantly influenced their understanding of public (29%) and private (29%) are the same and provide no

⁵⁶ Range of possible responses for each question include: Q #351 (not at all) to 6 (very significantly).

⁵⁷ These percentages are based on the total number of survey responses for each question. The left column includes response options of 1 to 2 to show the lowest agreement, significance, etc., and the right column includes response options of 5 to 6 to show the highest agreement, significance, etc.

additional insight, such as whether the case influenced administrators' understanding of one more than the other.

Highlights of the Descriptive Findings

The purpose of this chapter was to provide a descriptive analysis of the knowledge and experience drivers (i.e., professionalism) and the dimensions of the dependent variables of administrators' understanding, search for guidance, interpretations of takings law post-*Kelo*, and understanding of "public" post-*Kelo* (i.e., discretion in action). The demographic characteristics of administrators participating in the survey reveal that these administrators were generally in a position of decision-making authority and are seasoned employees of the government. Further, almost all administrators have lived in the state of Connecticut for over ten years, indicating that they are quite experienced, both in terms of government employment and living in the state (i.e., knowledgeable about local government and the context of state government more broadly). This is particularly important, given the small response rate of the survey. Moreover, the demographic information shows that administrators who participated in the survey are a reflection of the process of eminent domain in that the departments involved in the process are represented in the survey participants.

Descriptive findings also show that administrators who participated in this survey are familiar with *Kelo*, as well as local and state ordinances affecting eminent domain; these findings also indicate that administrators' responses most frequently reported being very familiar with each. Analyzing *Kelo*'s impact on the number of takings and the use of pre-condemnation strategies provided a good deal of insight in that administrators reported that the case resulted in a decrease in the number of takings and an increase in the use of pre-condemnation strategies. Administrators also reported that *Kelo* generally had minimal impact on the number of takings,

pre-condemnation strategies, use of contracting out, and administrators' consideration of local and national media. Related is that administrators reported being overwhelmingly unsupportive of eminent domain for private development, a key controversy in the *Kelo* case. It should also be noted that administrators reported high levels of understanding of both eminent domain and the case.

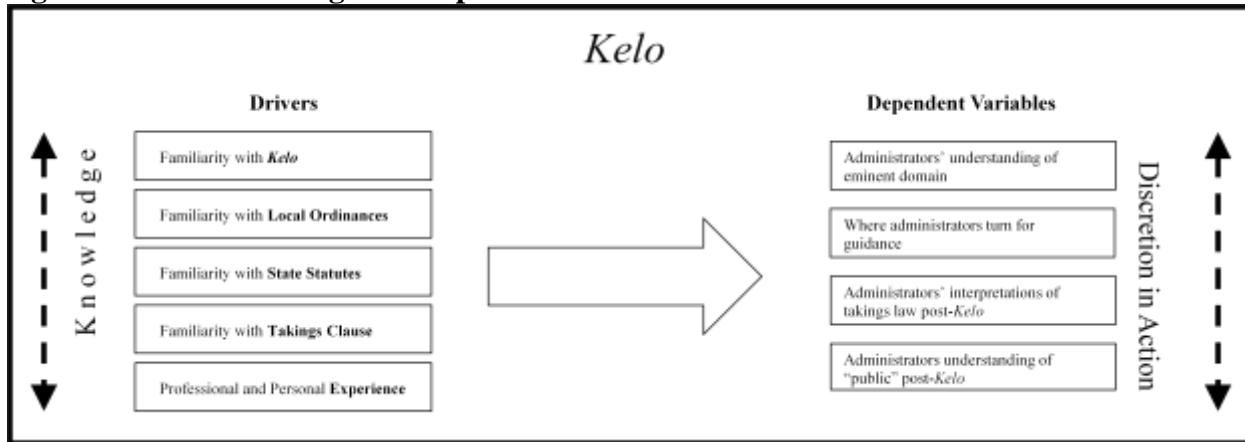
During times in which administrators who participated in this survey needed clarification or information on an issue related to eminent domain, they reported turning to local ordinances and state statutes affecting eminent domain most often. More broadly, in terms of where these administrators are most likely to turn for eminent domain guidance, the reported being most likely to turn to professional resources, such as local ordinances, state statutes, state and US Supreme Court decisions, and the state Constitution. Also prevalent is the perspective of the property owner.

Finally, these descriptive analyses have provided some insight into administrators' interpretations and understanding of relevant eminent domain terms. Administrators who participated in the survey reported agreement with the definitions provided for public use, blight, just compensation, and public use. Most important here is that the definition provided for public use involves some degree of use by the public. Also, administrators reported moderately strong agreement with similarities between public use and public interest, as compared with weaker agreement with similarities between public use and public good.

Chapter 5:
Whose Hand DO Administrators Hold?
How do Administrators Understand Eminent Domain, and Where do Administrators Turn for
Guidance?

After having descriptively explored the drivers (i.e., knowledge and experience) and dependent variables (i.e., discretion in action) in the previous chapter, the following analysis provides insight into the relationships among these variables. The focus of this chapter is answering the following research questions: How do administrators understand eminent domain, and where do they turn for guidance? This analysis will explore the ways in which administrators' understanding and search for guidance are influenced by their knowledge and experience with eminent domain. This analysis is organized in the following manner: a summary table and related discussion of the relationships between the dependent variable and the drivers is included, which is then followed by more detailed analysis of the dimensions of the dependent variable and their relationships with the drivers. Figure 1 is replicated below to highlight the conceptualization of the relationships.

Figure 1: Research Design Conceptualized



Explanation of Statistical Measures Used

Before beginning the analysis of the relationships between the knowledge and experience drivers and the discretion in action dependent variables, it is important to provide foundational

explanations of the types of statistical measures employed, as well as how these measures help to understand better the associations between the drivers and dependent variables. What types of variables are included in the cross-tab statistical analysis dictates the types of measures of association that may be used to test the strength of any association or relationship. Nominal-level variables have no order or rank to their values; for example, a nominal-level variable is gender or ethnicity. Ordinal-level variables differ because of the presence of order (i.e., the difference between two values has meaning). For example, an ordinal-level variable means that the responses are ranked, which means that we are able to say that a respondent agreed strongly, agreed, or disagreed with a particular statement. Moreover, there are also different types of statistical measures of association; the use of each of these is dependent on whether the variables are nominal or ordinal.⁵⁸

Asymmetrical measures of association provide an indication of the directional strength of a relationship, which provides support for causality, or that the driver is influencing the independent variable to some percent. In other words, these asymmetrical measures of association show how much you can improve the prediction of a dependent variable, such as the amount of agreement a respondent has with using eminent domain for economic development, for example, by knowing the respondent's knowledge of a driver, such as his or her familiarity with *Kelo*. For ordinal variables (e.g. administrators' familiarity with *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause in the tables below), this asymmetrical measure of association is Somers' d and is included on the tables listed below as "D." Therefore, this is the most appropriate measure used in this study; its value shows the percent influence that the driver has on the dependent variable indicator. For nominal variables

⁵⁸ Pollock (2005) discusses in detail the measures of association that may be used on nominal- and ordinal-level variables; his guidelines were particularly useful in determining which measures of association were appropriate, as well as how to most accurately interpret their values.

(e.g., whether a survey respondent was required to read *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause in the tables below), Lambda, the Uncertainty Coefficient, and Goodman-Kruskal tau are asymmetrical measures of association and indicate the range of percent that the driver influences the dependent variable indicator. These are included on the tables as “ λ ,” “ τ ,” and “UC.” In the event that none of these asymmetrical measures of association were statistically significant, Cramer’s V (“V”) and the Contingency Coefficient (“C”) were used, both of which are symmetrical measures of association. That is to say that these symmetrical measures of association simply show that the two variables are associated, but they do not show which variable influences the other.

Symmetrical measures of association provide an indication of the overall strength of a relationship, which lacks the ability to provide support for causality. All that these measures are able to tell us is the range of how strong the relationship is. For ordinal variables, these symmetrical measures are Kendall’s tau-b and Kendall’s tau-c, or “ τ_b ” and “ τ_c ” on the tables below; Gamma (“ γ ”) is another symmetrical measure of association used in the tables for ordinal-level variables. When used in conjunction with Somers’ d, they provide further support for the strength of the relationship.

Finally, all of the statistical measures of association described above, except for V and C, are proportionate reduction in error (PRE) statistics. This means that knowing the value of these statistics for the drivers, or the range of their values, helps to reduce the error in predicting the value of the dependent variable indicator. Simply put, ordinal-level relationships facilitate the use of the strongest statistical measures and are predominately relied upon in this study; nominal-level relationships are generally used to provide additional statistical support for the existence of ordinal-level relationships. Further, the most important measure is Somers’ d because it provides

an indication of how strongly the driver influences the dependent variable indicator, followed by the nominal-level measures.

Explanation of Statistical Table Organization and Structure

In Chapters 5 and 6, for each of the dependent variables, there is a corresponding table that includes the indicators for that variable (i.e., dimensions of each dependent variable), the relationship between each of the drivers and the dependent variable, the chi-square p-value (i.e., the percent that the relationship is likely to occur by chance; also called the statistical significance or confidence level), the measures of association values (i.e., the range of the strength of the relationship), and the confidence levels of the measures of association used. In other words, the first column called “Relationship with driver indicator” provides the name of the driver (e.g., familiarity with *Kelo*, read *Kelo*, eminent domain experience professionally). The second column, called “Range of strength of relationship and statistical significance (measures of association values and confidence levels),” includes the specific measures of association used to test the strength of the relationship between the driver (included in the previous column) and the dimension of the dependent variable (i.e., *Kelo*’s impact on eminent domain, *Kelo*’s impact on the number of takings). The numbers associated with each measure of association are the values for each measure, and their confidence levels are shown with asterisks; these numbers have already been converted to percentages to facilitate an easier understanding of the range of the strength of the relationship between the drivers and the dimensions of the dependent variable. Here, these values show the strength of the relationship between the driver and dimension of the dependent variable. Pollock (2005) provides a helpful guide for interpreting the strength of a PRE statistic. For relationships in which the percentage of the statistical measure of association is less than 10 percent, the relationship is weak; relationships

between 11 and 20 percent are moderate; relationships between 21 and 30 percent are moderately strong; and relationships greater than 30 percent are strong. He also notes that PRE statistical measures of association indicating a relationship greater than 50 percent are uncommon in social science data, particularly for individual-level survey data.

In the third column called “Percent relationship likely to occur by chance (chi-square p-value),” the confidence level of the relationship itself is included. This is most commonly described as the percent that the relationship between the driver and dimension of the dependent variable is likely to occur by chance. These numbers have also been converted to percentages. Therefore, the range of strength of relationship and statistical significance (i.e., the second column) tells us how strong the relationship is, in terms of how well knowing the value of the driver improves prediction of the value of the dimension of the dependent variable or provides support for the presence of a causal relationship between the two variables. The chi-square p-value (i.e., the third column), however, simply tells us how likely the relationship is to occur by chance; because this does not provide further information on the nature of the relationship, such as the strength of the relationship, it is complemented by the measures of association. The forth column, which is called “Total number of survey respondents,” provides the number of survey respondents included in each relationship between the driver and the dimension of the dependent variable. Immediately before the first table, I will provide a walk-through of sorts for one relationship to model to familiarize the reader with the somewhat unconventional structure of the tables included in Chapters 5 and 6.⁵⁹

⁵⁹ Only statistically significant relationships are included in the abbreviated versions of tables in-text. Every relationship between each of the dependent variable indicators and each of the drivers is included in the relevant Appendix. The full scope of the relationships between the drivers and the dependent variables necessitates including relationships that are not statistically significant or resulted in false positives. This shows the importance of augmenting statistical analysis with a range of measures of association. A relationship that may appear to be significant may, in actuality, be weak to the point of being substantively insignificant, or a bit of both. Empty cells on the table indicate a non-significant relationship.

How Administrators Understand Eminent Domain

The following analysis describes findings of this research with regard to how administrators understand eminent domain. Therefore, relationships between the knowledge and experience drivers (i.e., professionalism) and the dimensions of the dependent variable of administrators understanding (i.e., discretion in action) are discussed. These dimensions include: *Kelo*'s impact on eminent domain in general; *Kelo*'s impact on the number of takings, pre-condemnation strategies, contracting out with private firms, and consideration of local and national media; ways in which *Kelo* changed the number of takings, pre-condemnation strategies, contracting out with private firms, and consideration of local and national media; agreement with eminent domain in general, *Kelo*, and eminent domain for private and economic development; and understanding of eminent domain and *Kelo*. This discussion is inclusive of the survey results, survey open-ended responses, and elite interview responses.

Summary of relationships between variables in how administrators understand eminent domain.

Administrators' familiarity with *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause, as well as their professional experience with eminent domain, provide the strongest relationships with how they understand eminent domain.⁶⁰ A summary table of these relationships is provided in Table 10a below.

⁶⁰ After the initial statistical analysis of the relationships between the knowledge and experience drivers (i.e., professionalism) and the dimensions of three of the four dependent variables (i.e., discretion in action), administrators' familiarity and professional experience with eminent domain emerged as providing the strongest insight. Therefore, summary tables showing these relationships are included and discussed for three of the dependent variables (i.e., administrators' understanding of eminent domain, their search for guidance, and their understanding of "public" post-*Kelo*).

Table 10a: Summary Table of Relationships Between Variables in How Administrators Understand Eminent Domain⁶¹

DISCRETION IN ACTION: HOW ADMINISTRATORS UNDERSTAND EMINENT DOMAIN					
Driver	Familiarity with <i>Kelo</i> (Q #11)	Familiarity with Local Ordinance(s) (Q #11)	Familiarity with State Statute(s) (Q #11)	Familiarity with Takings Clause (Q #11)	Professional Experience with Eminent Domain (Q #81)
Dependent Variable					
<i>Kelo</i> 's impact on eminent domain (Q #21)					16.8%**
<i>Kelo</i> 's impact on number of takings (Q #22)					17.1%**
<i>Kelo</i> 's impact on pre-condemnation strategies (Q #22)					16.6%**
<i>Kelo</i> 's impact on contracting out (Q #22)	-19.6%**	-15.3%**			
<i>Kelo</i> 's impact on consideration of local media (Q #22)	-15.6%**				15.3%*
<i>Kelo</i> 's impact on consideration of national media (Q #22)	-18.7%**				
Agree with eminent domain in general (Q #25)	26.0%***		25.9%***		27.6%***
Agree with <i>Kelo</i> (Q #25)	17.2%**		20.8%**		
Agree with eminent domain for private development (Q #25)			14.1%**		
Agree with eminent domain for economic development (Q #25)	18.8%**		34.8%***	24.1%***	32.5%***
Understand eminent domain (Q #26)	38.0%***	34.9%***	42.0%***	38.0%***	38.8%***
Understand <i>Kelo</i> (Q #26)	60.2%***	25.1%***	38.9%***	43.2%***	38.8%***

⁶¹ The statistical measure of association employed is Somers' d. This measure was used because it is an asymmetrical measure of association, as well as a proportionate reduction in error (PRE) statistic, which means that it provides support for a causal relationship in addition to helping to reduce the error in predicting the value of the dependent variable dimension. Asterisks are used to indicate the significance levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

Looking across the table in terms of the drivers' relationship with the dependent variables, we can see that administrators' familiarity with *Kelo* is most strongly related to their understanding of the case and their understanding of eminent domain, as would be expected. In these strong relationships, support for causality is provided in terms of familiarity with *Kelo* appearing to influence understanding by 60.2 percent for understanding *Kelo* and 38.0 percent for understanding eminent domain. Further, administrators' familiarity with the case appears to influence their agreement with eminent domain in general (26.0%), the case (17.2%), and eminent domain for economic development (18.8%). These relationships between administrators' familiarity with *Kelo* and their agreement with eminent domain are moderately strong, though the relationship between familiarity with the case and agreement with eminent domain in general is moderately strong. There are moderately strong negative relationships between administrators' familiarity and *Kelo*'s impact on contracting out with private firms (-19.6%) and consideration of local (-15.6%) and national media (-18.7%). These relationships indicate that more familiar administrators reported *Kelo*'s impact on these dimensions of the dependent variable as being less significant.

Moving across the table to administrators' familiarity with local ordinances affecting eminent domain, the table shows that this driver is most strongly related to administrators' agreement with eminent domain for economic development and their understanding of eminent domain. Here, familiarity with local ordinances appears to influence understanding by 34.9 percent, a strong relationship. A somewhat weaker relationship exists with administrators' understanding of *Kelo*, with an influence of 25.1 percent. As with administrators' familiarity with *Kelo* and administrators' understanding of the case's impact on contracting out, there appears to be a moderately strong negative relationship (-15.3%) between familiarity with local

ordinances. Administrators' familiarity with state statutes affecting eminent domain is most strongly related to their understanding of eminent domain (42.0%) and understanding of the case (38.9%), both statistically strong relationships. This driver of administrators' familiarity with state statutes also appears to influence administrators' agreement with eminent domain for economic development by 34.8 percent, eminent domain in general by 25.9 percent, and agreement with *Kelo* by 20.8 percent, moderately strong to strong relationships, and agreement with eminent domain for private development by 14.1 percent, a moderate relationship. Administrators' familiarity with the Takings Clause produces much stronger results, influencing administrators' understanding of the case by 43.2 percent, understanding of eminent domain by 38.0 percent, and, though a moderately strong relationship, agreement with eminent domain for economic development by 24.1 percent.

Administrators' previous professional experience with eminent domain reveals a number of strong relationships that provide support for causality. The strongest relationships are with administrators' understanding of eminent domain and *Kelo*, all strong relationships of 38.8 percent, and agreement with eminent domain for economic development (32.5%). This driver of administrators' professional eminent domain experience also appears to have a moderately strong influence on administrators' agreement with eminent domain in general by 27.6 percent. Weaker relationships exist with administrators' reporting of the significance of *Kelo*'s impact on the number of takings (17.1%), impact on eminent domain (16.8%), impact on pre-condemnation strategies (16.6%), and, finally, impact on administrators' consideration of the local media (15.3%).

Kelo's impact on eminent domain.

See Table 11a below for the statistical significance and strength of relationships between how administrators understand eminent domain, with regard to *Kelo*'s impact on eminent domain in general in their locality, and the knowledge and experience drivers; Appendix D1 includes the full results of the statistical analysis, which includes notations for relationships producing false positives and non-statistically significant relationships.

In an effort to facilitate an easier understanding of the tables included in Chapters 5 and 6, the following is a brief walk-through of one relationship included in Table 11a below. In this example, I will review the relationship between *Kelo*'s impact on eminent domain in general in their locality (i.e., the dimension of the dependent variable of how administrators understand eminent domain) and administrators' professional experience with eminent domain (i.e., the driver). In this relationship, 135 administrators responded to the survey questions involved. The measures of association used in this ordinal-level relationship show that the strength of the relationship between how significantly administrators responded that *Kelo* impacted eminent domain in their locality and their professional experience with eminent domain ranges from 11.6 percent and 23.6 percent. These are the values for the Kendall's tau-c (τ_c) and Gamma (γ) measures of association, both of which are symmetrical; the asterisks indicate that both measures of association are statistically significant. This tells us that there is a moderate relationship between the two variables, and that knowing how much professional experience an administrator had with eminent domain helps to improve prediction of their response regarding *Kelo*'s impact between 11.6 and 23.6 percent. Most important here is the value of 16.8 percent for the Somers' d (D) measure of association. This value provides moderate support for causality between the variables, or that administrators' professional experience appears to influence their

understanding of *Kelo*'s impact on eminent domain in their locality by almost 17 percent.

Finally, the chi-square p-value of 0.0 shows that the relationship between these two variables is very unlikely to occur by chance at all.

Table 11a: Statistical Significance and Strength of Relationships Between Drivers and *Kelo*'s Impact on Eminent Domain (Abbreviated)⁶²

DISCRETION IN ACTION: HOW ADMINISTRATORS UNDERSTAND EMINENT DOMAIN			
RELATIONSHIP WITH DRIVER INDICATOR	RANGE OF STRENGTH OF RELATIONSHIP AND STATISTICAL SIGNIFICANCE (MEASURES OF ASSOCIATION VALUES AND CONFIDENCE LEVELS) ⁶³	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE) ⁶⁴	TOTAL NUMBER OF SURVEY RESPONDENTS
<i>Kelo's Impact on Eminent Domain (Q #21)</i>			
Read <i>Kelo</i>	$\tau=4.1^{***}$; $UC=7.0^{***}$	0.6	n=138 (Q #12)
Local ordinance(s)	$\tau=6.4^{***}$; $UC=7.5^{***}$	0.1	n=135
State statute(s)	$\tau=3.0^*$; $UC=5.6^{**}$	1.8	n=137
Required to read <i>Kelo</i>	$\tau=3.5^{***}$; $UC=4.4^{***}$	0.5	n=137 (Q #13)
Local ordinance(s)	$\tau=6.1^{***}$; $UC=6.6^{***}$	0.0	n=134
State statute(s)	$\tau=4.9^{***}$; $UC=7.0^{***}$	0.0	n=136
Takings Clause	$\tau=2.2^{**}$; $UC=4.0^{**}$	2.3	n=136
+ED experience professionally	$\tau_c=11.6^{**}$; $\gamma=23.6^*$; $D=16.8^{**}$	0.0	n=138 (Q #18)
+Contracting out with private firms	$\tau_b=18.0^{***}$; $\gamma=43.1^{***}$; $D=31.4^{***}$	0.0	n=135 (Q #19)

⁶² A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

⁶³ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (D for ordinal-level variables; λ , τ , and UC for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; V and C for nominal-level variables) were used; these provide no support for causality. Asterisks are used to indicate the confidence levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

⁶⁴ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

Looking at the table, the only two drivers that show a moderate to moderately strong relationship with the dependent variable dimension of administrators' understanding of *Kelo*'s impact on eminent domain in general in their locality are administrators' knowledge of frequency of contracting out with private firms (Somers' d [D] value of 16.8%) and administrators' previous professional experience with eminent domain (Somers' d [D] value of 31.4%). Although only the measures of association are shown here, the percentages calculated to compute these measures show that administrators with substantial experience with eminent domain were most likely (66.7%) to respond that *Kelo* had a significant impact on eminent domain; administrators who responded that they had little to no professional experience (60.9%) reported *Kelo*'s impact as being minimal to none at all.⁶⁵ Administrators who reported that their locality frequently contracted out with private firms on issues related to eminent domain were most likely (66.7%) to respond that *Kelo* had a significant impact on eminent domain in their locality; administrators who responded that their locality contracted out rarely or not at all (60.8%) reported the case's impact as being minimal to none at all.

None of the other drivers produced strong associations with the dependent variable of administrators' understanding of *Kelo*'s impact on eminent domain in general. These drivers do, however, show that there are positive relationships with the dimensions of the dependent variable and provide support that there may be a causal relationship. Administrators' understanding of *Kelo*'s impact on eminent domain in general in their locality was very weakly related to whether the administrator read or was required to read *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause. The survey results show that administrators who read the local ordinances four or more times were most likely (41.9%) to respond that *Kelo* had a

⁶⁵ All percentages included in Chapters 5 and 6 refer to the results of the cross-tab analysis unless otherwise noted. These tables are available for review.

significant impact on eminent domain. On the other hand, administrators who had only read these ordinances never or once were most likely to respond that *Kelo* had little to no impact (65.7%). Similar relationships exist between how frequently administrators read *Kelo* and state statutes, as well as whether or not they were required to read these materials related to eminent domain.

Implications.

Frequency of administrators' knowledge of contracting out with private firms and their professional experience with eminent domain are the strongest indicators of how administrators viewed *Kelo*'s overall impact on eminent domain. Knowing an administrator's level of professional experience helps predict their response regarding the impact on eminent domain by 16.8 percent, as evidenced by the Somers' d (*D*) value, which shows a moderate relationship, as well as provides support for causal association between these two variables because of the use of the asymmetrical causal statistical measure of association. Administrators responses regarding the frequency of contracting out with private firms helps to predict their response by 31.4 percent, quite a strong relationship, shown by the Somers' d (*D*) value. Knowing how frequently an administrator read *Kelo*, local ordinances, state statutes, and the Takings Clause and whether or not he or she was required to do so helps predict how they viewed *Kelo*'s impact on eminent domain because of the use of proportionate reduction in error (PRE) statistics. These latter two drivers (i.e., having read or being required to read) are limited to weaker asymmetrical statistical measures of association; their predictive value is very weak and ranges from 2.2 (Goodman and Kruskal's tau [τ] value for required to read driver) to 7.5 (Uncertainty Coefficient [*UC*] value for read driver) percent.

Broader implications.

A strong relationship exists between administrators' knowledge of frequency of contracting out with private firms, and a moderate relationship exists with professional experience with eminent domain and the way they view *Kelo*'s impact on eminent domain in general in their locality. That administrators with more experience responded that *Kelo* had a more significant impact on eminent domain appears to support the contention that administrators with greater professional exposure to eminent domain are more knowledgeable about *Kelo*'s impact. This is also likely related to administrators' knowledge of frequency of contracting out with private firms on issues related to eminent domain. Perhaps this is because these administrators are privy to more information related to their prior experiences than less-experienced administrators and are, therefore, more aware of conditions related to eminent domain that may escape administrators without prior eminent domain experience. This is also supported by the relationship between administrators' reading and being required to read *Kelo*, local ordinances, state statutes, and the Takings Clause. Administrators who responded that *Kelo* significantly impacted eminent domain also responded that there had been a decrease in the number of takings, which will be discussed in more detail in the following sections. Therefore, it appears that *Kelo*'s impact on eminent domain in these municipalities is largely in the form of a reduction of takings. This fits with administrators' open-ended comments throughout the survey, which indicated a general disdain with eminent domain under the *Kelo* conditions, as well as the survey analysis and subsequent discussion indicating administrators' lack of agreement with the case, as shown in Table 9a in Chapter 4.

Kelo's impact on the number of takings, pre-condemnation strategies, contracting out with private firms, and consideration of local and national media.

See Table 11b below for the statistical significance and strength of relationships between how administrators understand eminent domain, with regard to *Kelo*'s impact on the number of takings, pre-condemnation strategies, contracting out with private firms, and consideration of local and national media, and the knowledge and experience drivers; Appendix D1 includes the full results of the statistical analysis, which includes notations for relationships producing false positives and non-statistically significant relationships.

Table 11b: Statistical Significance and Strength of Relationships Between Drivers and *Kelo*'s Impact on the Number of Takings, Pre-Condemnation Strategies, Contracting Out with Private Firms, and Consideration of Local and National Media (Abbreviated)⁶⁶

DISCRETION IN ACTION: HOW ADMINISTRATORS UNDERSTAND EMINENT DOMAIN			
RELATIONSHIP WITH DRIVER INDICATOR	RANGE OF STRENGTH OF RELATIONSHIP AND STATISTICAL SIGNIFICANCE (MEASURES OF ASSOCIATION VALUES AND CONFIDENCE LEVELS) ⁶⁷	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE) ⁶⁸	TOTAL NUMBER OF SURVEY RESPONDENTS
<i>Kelo's Impact on Number of Takings (Q #22)</i>			
Read <i>Kelo</i>	$\tau=2.7*$; $UC=5.8**$	5.6	n=139 (Q #12)
Local ordinance(s)	$\tau=5.8***$; $UC=13.2***$	0.0	n=136
State statute(s)	$\tau=3.9**$; $UC=9.1***$	0.0	n=138

⁶⁶ A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

⁶⁷ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (D for ordinal-level variables; λ , τ , and UC for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; V and C for nominal-level variables) were used; these provide no support for causality. Asterisks are used to indicate the confidence levels of the relationships: * significant at 0.1, ** significant at 0.05, *** significant at 0.01.

⁶⁸ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

Required to read Kelo	$\tau=1.8^*$; $UC=4.1^{**}$	5.2	n=138 (Q #13)
Local ordinance(s)	$\tau=3.8^{***}$; $UC=8.1^{***}$	0.0	n=137
State statute(s)	$\tau=2.8^{**}$; $UC=5.7^{***}$	0.1	n=136
Takings Clause	$UC=3.1^{**}$	9.3	n=137
+ED experience professionally	$\tau_c=11.6^{**}$; $\gamma=26.9^*$; $D=17.1^{**}$	0.0	n=139 (Q #18)
+Contracting out with private firms	$\tau_b=38.5^{***}$; $\gamma=59.6^{***}$; $D=41.8^{***}$	0.0	n=135 (Q #19)
Kelo's Impact on Pre-condemnation Strategies (Q #22)			
Read Kelo	$\tau=3.1^*$; $UC=5.0^{**}$	4.0	n=139 (Q #12)
Local ordinance(s)	$\tau=6.0^{***}$; $UC=11.2^{***}$	0.0	n=136
State statute(s)	$\tau=3.8^{**}$; $UC=6.9^{***}$	0.3	n=138
Takings Clause	$UC=4.5^*$	8.2	n=138
Required to read Kelo	$\tau=2.9^{**}$; $UC=4.4^{***}$	0.9	n=138 (Q #13)
Local ordinance(s)	$\tau=4.1^{***}$; $UC=7.3^{***}$	0.0	n=135
State statute(s)	$\tau=3.1^{**}$; $UC=5.1^{***}$	0.1	n=137
Takings Clause	$UC=3.6^{**}$	3.6	n=137
+ED experience professionally	$\tau_c=11.3^{***}$; $\gamma=23.9^*$, $D=16.6^{**}$	0.0	n=139 (Q #18)
+Contracting out with private firms	$\tau_b=39.0^{***}$; $\gamma=57.8^{***}$; $D=43.4^{***}$	0.0	n=135 (Q #19)
Kelo's Impact on Contracting Out (Q #22)			
+Familiarity with Kelo	$\tau_c=-16.7^{***}$; $\gamma=-36.2^{***}$; $D=-19.6^{***}$	4.0	n=138 (Q #11)
Local ordinance(s)	$\tau_c=-13.5^{**}$; $\gamma=-29.3^{***}$; $D=-15.3^{**}$	1.8	n=138
Read Kelo	3.6^{**} ; $UC=9.3^{***}$	0.3	n=139 (Q #12)
Local ordinance(s)	$UC=8.9^{***}$	0.2	n=136
State statute(s)	$UC=7.5^{**}$	0.8	n=138
Required to read local ordinance(s)	$\tau=3.5^{**}$; $UC=8.0^{***}$	0.0	n=135 (Q #13)
State statute(s)	$\tau=1.8^*$; $UC=**$	0.8	137
+Followed Kelo local news	$\tau_c=-14.8^{**}$; $\gamma=-29.7^{***}$; $D=-15.2^{**}$	8.7	n=137 (Q #15)
+Contracting out with private firms	$\tau_b=40.9^{***}$; $\gamma=-61.5^{***}$; $D=42.7^{***}$	0.0	n=135 (Q #19)
Kelo's Impact on Consideration of Local Media (Q #22)			
+Familiarity with Kelo	$\tau_c=-13.3^{**}$; $\gamma=-27.4^{***}$; $D=-15.6^{**}$	6.3	n=138 (Q #11)
Read local ordinance(s)	$\tau=3.3^*$; $UC=8.8^{***}$	0.0	n=136 (Q #12)
State statute(s)	$V=22.2^*$; $C=30.0^*$	0.9	n=138
+ED experience professionally	$\tau_c=10.4^*$; $\gamma=24.1^*$; $D=15.3^*$	0.2	n=139 (Q #18)

+Contracting out with private firms	$\tau_b=33.9***; \gamma=53.0***; D=37.1***$	0.0	n=135 (Q #19)
Kelo's Impact on Consideration of National Media (Q #22)			
+Familiarity with Kelo	$\tau_c=-16.0; \gamma=-36.5; D=-18.7***$	5.2	n=137 (Q #11)
Read local ordinance(s)	UC=6.3	9.8	n=135 (Q #12)
Required to read local ordinance(s)	UC=4.8**	0.9	n=134 (Q #13)
+Contracting out with private firms	$\tau_b=33.3***; \gamma=53.9***; D=33.9***$	0.1	n=135 (Q #19)

In this table, we see that *Kelo*'s impact on the number of takings is most strongly related to administrators' knowledge of frequency of contracting out with private firms on issues related to eminent domain (41.8%), quite a strong association, and their previous professional experience with eminent domain (17.1%), a moderate relationship, both Somers' d (*D*) values. Administrators who responded that their locality frequently contracted out with private firms were most likely to report that *Kelo* significantly impacted the number of takings in their locality (50.0%); administrators responding with infrequent or no contracting out were most likely to report that the case had little to no impact (76.3%). The strong relationship with contracting out is likely inflated a bit by the administrators who responded that they did not have knowledge about the frequency of contracting out, as these administrators were most likely to respond that they did not know how significantly *Kelo* had impacted the number of takings (66.7%). Of administrators who responded that they had frequent professional experience with eminent domain, 33.3 percent responded that *Kelo* significantly impacted the number of takings in their municipality; 71.3 percent of administrators with little to no experience reported the case's impact as little to none.

Relationships between the drivers regarding how frequently administrators had read or were required to read *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause generally produced weak associations. These associations do show that the

relationships are positive and provide support for some degree of a causal relationship. Most administrators (63.2%) responded that *Kelo* had little to no impact on the number of takings, but of those who responded that the case had a significant impact, 93.8 percent read local ordinances more than twice and 88.2 percent for state statutes; 27.5 were required to read local ordinances and 26.5 percent for state statutes.

Similar relationships exist with regard to *Kelo*'s impact on the use of pre-condemnation strategies. Here, contracting out has a Somers' d (*D*) value of 43.4%, indicating a strong relationship, for contracting out with private firms, and trends regarding administrators' responses indicating their lack of knowledge of the frequency of contracting out likely inflated the relationship (66.7 % of "don't know" responses of frequency of contracting out also responded with "don't know" for *Kelo*'s impact on the use of pre-condemnation strategies). Administrators' professional experience shows a moderate relationship with administrators' knowledge of the use of pre-condemnation strategies and has a Somers' d (*D*) value of 16.6% percent, showing a moderate relationship. Once again, the other drivers produced weak associations.

The strongest relationship with administrators' understanding of *Kelo*'s impact on contracting out with private firms is with the driver of administrators' knowledge of frequency of contracting out, evidenced by a Somers' d (*D*) value of 42.7 percent, strong and not surprising given the inherent relation between the driver and dependent variable dimension. Administrators who reported frequent contracting out in their locality were most likely to report that *Kelo* significantly impacted the frequency of contracting out (66.7%); the opposite is true as well, with 80.4 percent of administrators reporting infrequent or no contracting out were most likely to report the impact of the case on contracting out as being minimal or non-existent. Again,

responses of “don’t know” regarding the frequency of contracting out were most likely to report not knowing how *Kelo* had impacted contracting out (66.7%).

In this relationship with administrators’ understanding of *Kelo* impact on contracting out on issues relating to eminent domain, drivers regarding administrators’ familiarity produced moderate relationships. Administrators who were most familiar with *Kelo* and local eminent domain ordinances were most likely to respond that the case had little to no impact their use of contracting with private firms on issues related to eminent domain. This is shown in the table with the Somers’ d (*D*) value of -19.6 percent for familiarity with *Kelo* and -15.3 percent for familiarity with local ordinances, both moderate relationships. In fact, 74.3 percent of administrators who responded as being very familiar with *Kelo* and 70.1 percent with local ordinances reported little impact. Trends continued with regard to administrators’ frequency of reading or being required to read *Kelo* and local ordinances as with the previous dependent variable indicators, though the associations remain weak. Also interesting is that the more closely administrators reported following the case in the local news, the less likely they were to report that *Kelo* significantly impacted their use of contacting out (shown by the Somers’ d [*D*] value of -15.2%, a moderate relationship); 75.5 percent of respondents indicating that they followed the local news coverage very closely reported little to no impact. Additionally, administrators who responded that they contracted out more frequently were most likely to respond that *Kelo* significantly impacted their contracting out and visa versa.

For administrators’ consideration of the local media post- *Kelo*, the strongest relationship is with the contracting out driver, as shown by the Somers’ d (*D*) value of 37.1%, indicating a strong association. Administrators who reported knowledge of frequent contracting out also reported *Kelo* has having a significant impact on their consideration of the local media (33.3%);

for the opposite, 75.3 percent reporting low to no contracting out also reported minimal to no impact on their consideration of the local media. Further, 55.6 percent of administrators who did not know about the frequency of contracting also reported not knowing how significantly the case impacted their consideration.

The self-reported most familiar with *Kelo* administrators were less likely to respond that the case significantly impacted their consideration of the local media; moderate negative relationship is shown by the Somers' d (*D*) value of -15.6 percent. 68.9 percent of those who were very familiar with *Kelo* responded that the case had little to no impact, compared with 13.5 percent who responded that it significantly impacted their consideration. Administrators with the most professional experience reported that the case significantly impacted their consideration (33.3%), compared with 71.3 percent of administrators with little to no experience who reported minimal impact. Administrators who were most familiar with the case were most likely to respond that it had little to no impact on their consideration of the national media; 76.7 percent of very familiar administrators responded with little to no impact, compared with 4.1 percent who responded with significant impact.

Implications.

Administrators' knowledge of frequency of contracting out with private firms on issues related to eminent domain, familiarity with *Kelo* and local ordinances, and the frequency of their professional experience with eminent domain are the strongest indicators of how they responded regarding *Kelo*'s impact on the number of takings, the use of pre-condemnation strategies, the contracting out with private firms on issues relating to eminent domain, and the consideration of local and national media. An administrators' level of familiarity helps predict their responses surrounding *Kelo*'s impact on contracting out between -15.3 % and -19.6 %, which are the

Somers' d (D) value for familiarity with *Kelo* and local ordinances drivers and shows the presence of a moderate negative relationship. Causality between administrators' familiarity and the way they view *Kelo*'s impact is also possible because of the use of an asymmetrical statistical measure of association.

Similar to the relationship between administrators' professional experience and their understanding of *Kelo*'s broad impact on eminent domain is that of professional experience and *Kelo*'s impact on the number of takings, the use of pre-condemnation strategies, and consideration of the local media. Here, knowing how much professional experience an administrator has had with eminent domain helps predict their response on *Kelo*'s impact on the number of takings by 17.1 percent (Somers' d [D] value for professional eminent domain experience driver); there appears to be a moderate causal association between administrators' having more experience and responding that *Kelo* had a significant impact on the number of takings. Further, administrators with more experience responded that *Kelo* had a significant impact on the use of pre-condemnation strategies and their consideration of the local media; level of experience improves prediction of responses regarding *Kelo*'s impact by 16.6 (Somers' d [D] value for professional eminent domain experience driver's relationship with impact on use of pre-condemnation strategies) and 15.3 (Somers' d [D] value for professional eminent domain experience driver's relationship with impact on consideration of local media) percent for each. Both of these show moderate associations.

With regard to post-*Kelo* impact on the use of pre-condemnation strategies, the open-ended survey responses provided a good deal of insight with regard to the steps administrators who participated in this study are taking before initiating eminent domain proceedings. On one hand, these strategies included not taking a residential home "under any circumstance,"

implementing a “more rigorous blight ordinance,” negotiating partnership strategies with property owners, reducing the number of properties necessary for projects, expanded compensation packages (e.g., beyond market value or relocation assistance), and increased discussion. Alternatively, though in the minority, several administrators described a heightened emphasis on “increase to tax base,” “extensive use of partial takings,” and using “takings that do not require a premium over market value” (i.e., this survey participant noted that redevelopment takings require compensation of 110 percent of market value).

Administrators’ level of familiarity is inversely, or negatively, related to the way in which *Kelo* has impacted contracting out and considering local and national media. The more familiar that administrators reported being, the less likely they were to respond that *Kelo* had an impact. Given that the majority (69 %) of administrators responded that their municipality contracted out with private firms never to very infrequently, these findings provide support for the assertion that *Kelo* has not caused an increase in the contracting of private firms and that issues related to eminent domain continue to be handled by the municipalities directly.⁶⁹

Open-ended survey responses indicated that administrators’ would be most likely to contract out with private legal, redevelopment or economic development, or real estate development firms. Administrators noted that legal firms would be retained to assist with the drafting of local ordinances, litigation, clarifying relevant laws, and preparing for eminent domain proceedings. Other external firms may be hired to conduct a study about a potential project, develop a long-range development plan, provide direction to the elected body, provide support for the need for the taking, or to defer the use of eminent domain. Outside real estate firms were frequently noted as being hired to assist with property valuation or assessment, as noted in both the survey and interviews.

⁶⁹ See Table 8 in Chapter 4.

Though using weaker statistics, there is some support of the relationship between administrators who were required to read or read frequently *Kelo*, local ordinances, and state statutes and their responses regarding *Kelo*'s impact on the number of takings, the use of pre-condemnation strategies, consideration of the local media, and contracting out. These, however, produce weak associations.

Broader implications.

With regard to administrators' consideration of local and national media in light of *Kelo*'s impact, the findings suggest that administrators who were most familiar with the case did not significantly increase or decrease their attention to the local and national media as a result of the case. This is particularly interesting, given the highly controversial nature of the case and its coverage in the media. Perhaps this is the result of some degree of cognitive dissonance and a desire to minimize exposure to negatively-charged information conflicting with the administrator's beliefs regarding the case or to maintain the status quo. This is supported by the interviews, during which administrators noted that they did not believe something like *Kelo* could happen in their municipality or that they did not believe it would be such a landmark case. Administrators with more professional eminent domain experience, however, were more likely to respond that *Kelo* significantly impacted their consideration of the local media. This suggests that administrators with substantial professional experience changed their viewing of the case through the media as a result of the case, whereas those who lacked experience but reported a high degree of familiarity did not.

When the type of impact *Kelo* had on administrators' consideration of the media is included in the analysis, the complexity of this relationship becomes clear. Though administrators with more professional experiences significantly changed their consideration of

the media and administrators with self-reported high degrees of familiarity did not, both categories of administrators reported an increase in their consideration of the media. Whereas increased professional experience is related to significant increases in media attention, a strong degree of self-reported familiarity is related to a non-significant increase. This leads to the likely conclusion that administrators with more previous professional experience with eminent domain are much more likely to seek out further information from the media. When asked about this during the interview, a planning administrator with substantial professional experience with eminent domain noted that “most people didn’t care until it [the *Kelo* case] got to the Supreme Court,” and a selectman, also with professional experience, stated that no one thought it would be a landmark case, sentiments echoed by a number of interview participants. Administrators’ overall impressions of the case as it made its way up to the highest court in the land were filled with surprise that the case continued to progress in the manner that it did. Moreover, administrators generally viewed the case as being such an outlier that they believed something like that would never happen in their municipalities.

Similarly, administrators with more professional eminent domain experience responded that *Kelo* significantly impacted their municipality’s use of pre-condemnation strategies; those with little to no experience reported that *Kelo* had little to no impact. Combined with the fact that 11 percent of survey respondents indicated that they had increased the use of pre-condemnation strategies after *Kelo*, as shown in Table 9a in Chapter 4, this suggests that post-*Kelo*, municipalities are engaging the use of pre-condemnation strategies to avoid using eminent domain more frequently. This finding was the most strongly supported among interview participants overall, despite their level of agreement with eminent domain. Responses ranged from a planner’s “negotiate, don’t take,” a zoning board of appeals chairman’s statement that

their role is to be “master planners...to work and redesign plans to avoid using eminent domain,” a town manager’s need to “justify that no other alternative” exists but to use eminent domain, and a selectman’s need for an “absolute emergency” to use eminent domain. During an interview with a landuse attorney and a redevelopment director, they described an increase in the use of partial takings or land swaps. In their experience with takings, 80 percent result in “friendly purchases,” with only about 1 percent of the remaining 20 percent actually going to trial. One development director explained that the municipality tries to use tax liens or foreclosures to take properties instead of using eminent domain.

Based on the interview participants’ responses, the two largest pre-condemnation strategies employed by Connecticut administrators are using zoning variances, special permits, and alternative development plans, as well as pre-condemnation negotiations with property owners over the amount of compensation to be provided for the taking of private property. The latter was discussed far more during the interviews. One town manager described this as “pay[ing] for goodwill before [using] eminent domain.” The chair of a landuse commission described the success of pre-condemnation negotiations as being largely dependent on whether the parties involved on the part of the government “know how to negotiate” and that eminent domain would only be used if “someone [was] being unreasonable” or “hold[ing] up progress,” according to a selectman who also holds an administrative appointment in a second municipality. One administrator who is a councilman in one municipality and a planner in another described eminent domain as a “right” that governments do not always have to use.

The perspective shared by most administrators who participated in the interviews was that pre-condemnation negotiations amount to a balancing of the cost to the public, with regard to just compensation, and the cost to the property owner for the loss during the taking.

Described frequently was the actual negotiation process, which involves outlining to the property owner that the government is willing to pay a certain amount in just compensation, but that if the case were to be litigated, the additional costs to the community would be another certain amount. Rather than pay these additional costs in litigation, the administrators explained that they would prefer to pass along the additional funds to the property owner in the compensation package. Under this framework, not only is the property owner more fairly compensated, but the community at large is also more supportive of the project requiring the taking because they know that the property owners have been compensated in such a manner, instead of the municipality spending the resources on litigation. As one development director asked, “How do you do a public good at a reasonable price?”

As explained by an assessor, pre-condemnation negotiations generally require five appraisals from the government and the property owner. All appraisals must conform to the standards set forth by Uniform Standards of Professional Appraisal Practice, which “guards against pre-determined valu[ations].” These appraisals then serve as the basis for the compensation package offered to the property owner. A representative town meeting official noted that “fair market-value and fair market-worth are two separate things.” Key to the negotiation strategy is designing a compensation package that approaches, if not meets, the worth of the property to the owner to avoid using eminent domain.

Overall, administrators’ prior professional experience strengthened by whether or not they were required to read and how frequently they have read *Kelo* and local ordinances and state statutes, is a useful indicator in examining their understanding of *Kelo*’s impact. In addition to providing some of the strongest support for the presence of causal relationships between these drivers and administrators’ understanding of eminent domain, with regard to *Kelo*’s impact,

professional experience facilitates the employment of the most appropriate asymmetrical measures. This allows conclusions to be drawn with a higher degree of confidence, therefore gaining deeper insight into how administrators understand eminent domain.

Kelo changed the number of takings, pre-condemnation strategies, contracting out with private firms, and consideration of local and national media.

See Table 11c below for the statistical significance and strength of relationships between how administrators understand eminent domain, with regard to the ways in which *Kelo* changed the number of takings, pre-condemnation strategies, contracting out with private firms, and consideration of local and national media, and the knowledge and experience drivers; Appendix D1 includes the full results of the statistical analysis, which includes notations for relationships producing false positives and non-statistically significant relationships.

Table 11c: Statistical Significance and Strength of Relationships Between Drivers and *Kelo* Changed the Number of Takings, Pre-Condemnation Strategies, Contracting Out with Private Firms, and Consideration of Local and National Media (Abbreviated)⁷⁰

DISCRETION IN ACTION: HOW ADMINISTRATORS UNDERSTAND EMINENT DOMAIN			
RELATIONSHIP WITH DRIVER INDICATOR	RANGE OF STRENGTH OF RELATIONSHIP AND STATISTICAL SIGNIFICANCE (MEASURES OF ASSOCIATION VALUES AND CONFIDENCE LEVELS)⁷¹	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE)⁷²	TOTAL NUMBER OF SURVEY RESPONDENTS
<i>Kelo</i> Changed Number of Takings (Q #23)			
Familiarity with <i>Kelo</i>	$\tau=6.0^{**}$; $UC=10.2^{***}$	0.8	n=138 (Q #11)
Local ordinance(s)	$UC=12.2^{***}$	3.3	n=137
State statute(s)	$\tau=4.5^*$; $UC=11.9^{***}$	0.6	n=138
Takings Clause	$UC=7.1^*$	3.4	n=139
Read <i>Kelo</i>	$\tau=3.2^*$; $UC=9.7^{***}$	0.1	n=139 (Q #12)
Local ordinance(s)	$\tau=3.4^*$; $UC=9.1^{***}$	0.4	n=136
State statute(s)	$\tau=3.5^*$; $UC=10.0^{***}$	0.2	n=138
Required to read <i>Kelo</i>	$\tau=2.0^*$; $UC=6.1^{***}$	0.4	n=138 (Q #13)
Local ordinance(s)	$\tau=2.6^{**}$; $UC=6.6^{***}$	0.2	n=135
State statute(s)	$\tau=2.5^{**}$; $UC=7.4^*$	0.2	n=137
Followed <i>Kelo</i> local news	$\tau=5.8^{***}$; $UC=8.9^{**}$	4.8	n=137 (Q #15)
ED experience professionally	$\tau=5.4^{**}$; $UC=11.4^{***}$	0.1	n=139 (Q #18)
Contracting out with private firms	$\tau=29.6^{***}$; $UC=32.8^{***}$	0.0	n=135 (Q #19)
<i>Kelo</i> Changed Pre-condemnation Strategies (Q #23)			

⁷⁰ A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

⁷¹ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (D for ordinal-level variables; λ , τ , and UC for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; V and C for nominal-level variables) were used; these provide no support for causality. Asterisks are used to indicate the confidence levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

⁷² Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

Familiarity with Kelo	$\tau=7.2***; UC=11.9***$	0.0	n=136 (Q #11)
Local ordinance(s)	$\tau=4.8**; UC=12.1***$	0.3	n=135
State statute(s)	$\tau=6.5***; UC=14.8***$	0.0	n=136
Takings Clause	$UC=6.7**$	4.6	n=137
Read Kelo	$\tau=5.1***; UC=9.5***$	0.1	n=137 (Q #12)
Local ordinance(s)	$\tau=4.2**; UC=7.8***$	0.2	n=134
State statute(s)	$\tau=2.9*; UC=5.9**$	1.6	n=136
Takings Clause	$\tau=2.9*; UC=5.8**$	0.4	n=136
Required to read Kelo	$\tau=4.3***; UC=7.1***$	0.0	n=136 (Q #13)
Local ordinance(s)	$\tau=2.7**; UC=4.5***$	0.4	n=134
State statute(s)	$\tau=1.9*; UC=3.3**$	2.1	n=135
Takings Clause	$\tau=1.7*; UC=3.8**$	5.9	n=135
Followed Kelo local news	$\tau=4.8**$	6.3	n=135 (Q #15)
Local media	$\tau=5.8**; UC=8.7***$	2.2	n=134
Familiarity with precedents	$\tau=4.0*; UC=8.1***$	0.5	n=135 (Q #16)
ED experience professionally	$\tau=8.9***; UC=13.1***$	0.0	n=137 (Q #18)
Contracting out with private firms	$UC=19.9; \tau=20.1***$	0.0	n=133 (Q #19)

Kelo Changed Contracting Out (Q #23)

Familiarity with Kelo	$\tau=6.9**; UC=9.6***$	2.0	n=138 (Q #11)
Local ordinance(s)	$\tau=4.4*; UC=8.6**$	7.0	n=137
State statute(s)	$UC=8.8**$	5.2	n=138
Takings Clause	$UC=7.8**$	7.1	n=139
Read Kelo	$UC=4.9*$	7.3	n=139 (Q #12)
Required to read local ordinance(s)	$C=20.9*; V=21.1*$	9.3	n=135 (Q #13)
Takings Clause	$\tau=3.2**; UC=7.4*$	9.8	n=137
Followed Kelo local news	$\tau=6.0**; UC=7.4*$	7.3	n=137 (Q #15)
Familiarity with precedents	$UC=7.3**$	5.3	n=137 (Q #16)
ED experience professionally	$UC=7.3**$	1.8	n=139 (Q #18)
Contracting out with private firms	$UC=22.3***; \tau=22.9***; \lambda=24.4*$	0.0	n=135 (Q #19)

Kelo Changed Consideration of Local Media (Q #23)

Familiarity with Kelo	$\tau=6.1**; UC=8.0**$	0.9	n=136 (Q #11)
Local ordinance(s)	$UC=7.4**$	4.1	n=135
State statute(s)	$UC=8.8***$	0.9	n=136

Read state statute(s)	<i>UC</i> =4.2*	5.9	n=136 (<i>Q</i> #12)
Required to read local ordinance(s)	<i>UC</i> =2.5*	5.5	n=133 (<i>Q</i> #13)
Takings Clause	<i>UC</i> =3.8**	5.1	n=135
Followed <i>Kelo</i> local news	τ =6.6***; <i>UC</i> =9.1***	0.5	n=135 (<i>Q</i> #15)
National news	τ =5.4*; <i>UC</i> =6.9*	7.0	n=135
Local media	<i>UC</i> =5.9*	5.7	n=134
National media	<i>UC</i> =6.0*	4.6	n=135
Familiarity with precedents	τ =4.1*; <i>UC</i> =7.0**	1.5	n=135 (<i>Q</i> #16)
ED experience professionally	<i>UC</i> =6.1*	2.4	n=137 (<i>Q</i> #18)
Personally	<i>C</i> =19.2**; <i>V</i> =26.2***	4.7	n=133
Contracting out with private firms	<i>UC</i> =15.9***; τ =18.1	0.0	n=134 (<i>Q</i> #19)
<i>Kelo</i> Changed Consideration of National Media (<i>Q</i> #23)			
Familiarity with <i>Kelo</i>	τ =8.2***; <i>UC</i> =9.2**	2.0	n=138 (<i>Q</i> #11)
Required to read Takings Clause	τ =3.5**; <i>UC</i> =5.0**	7.3	n=137 (<i>Q</i> #13)
Followed <i>Kelo</i> local news	τ =8.6***; <i>UC</i> =8.9**	2.1	n=137 (<i>Q</i> #15)
National news	<i>UC</i> =7.7*	9.5	n=137
Familiarity with precedents	τ =5.2*; <i>UC</i> =7.8**	2.9	n=137 (<i>Q</i> #16)
ED experience personally	<i>UC</i> =7.7***	0.1	n=139 (<i>Q</i> #18)
Contracting out with private firms	<i>UC</i> =16.8***; τ =19.5***	0.7	n=135 (<i>Q</i> #19)

Relationships among the dimensions of the dependent variable with regard to the ways in which administrators understand post-*Kelo* changes to the number of takings, use of pre-condemnation strategies, contracting out with private firms on issues related to eminent domain, and consideration of local and national media are all nominal-level. These relationships are, therefore, limited to weaker statistical measures of association and resulted in weaker associations between the drivers and dimensions of the dependent variables. The driver of administrators' knowledge of frequency of contracting out with private firms resulted in the strongest relationships with administrators' understanding of the ways *Kelo* has changed these dimensions of the dependent variable. All of these relationships, however, are statistically

weaker than those discussed in previous analyses. As in previous discussions, administrators reporting knowledge of frequently contracting out were most likely to respond that *Kelo* significantly impacted these dimensions (i.e., number of takings, use of pre-condemnation strategies, contracting out, and consideration of local and national media); administrators reporting knowledge of infrequent contracting also reported minimal to no post-*Kelo* impact. Responses indicating that administrators did not know about their localities contracting out also reported that they did not know about how significantly *Kelo* had changed the number of takings, use of pre-condemnation strategies, etc.

The relationship between the professional experience and administrators' understanding of post-*Kelo* changes produced weak to moderate associations, as shown by the Somers' d (D) values for the drivers. The more professional experience that an administrator had, the less likely he was to respond with the "don't know" option and to choose "increased," "decreased," or "no noticeable change." In terms of *Kelo*'s change on the number of takings, 94.4 percent of "don't know" responses had little to no professional experience. Moreover, 64.2 percent of reported decreases were by administrators with more experience, compared with 35.7 percent of administrators with little to none. Similarly, 6.7 percent of reported increases were by experienced administrators; non-experienced administrators reported no increase. Finally, the "no noticeable change" option was also far more common in administrators lacking substantial experience.

The percent of responses indicating either increases or decreases in changes in the number of takings post-*Kelo* remained generally consistent when considering the influences on administrators' responses by their familiarity, frequency of reading, and being required to read drivers; these relationships were particularly consistent for the frequency and requirement

drivers. Though administrators who were more familiar, had read more frequently, or were required to read these materials were overall more likely to respond with an informed “increase” or “decrease,” the same cannot be said for their frequency of “no noticeable change” responses. This conflicts with administrators’ professional experience in that there were higher percentages of respondents with more self-reported familiarity who chose the “no noticeable change” option. Finally, the relationships of all three familiarity dimensions and administrators’ changed consideration of the local media post-*Kelo* show that the more familiar administrators were more likely to increase their consideration for local media, yet these relationships are not very strong.

Implications.

All of the relationships between the ways in which *Kelo* has changed these eminent domain dimensions (i.e., number of takings, pre-condemnation strategies, etc.) and the knowledge and experience drivers use weaker statistical measures because they are nominal-level variables. Therefore, while support is provided that these relationships do exist, the strength of these individual relationships is not as strong as in previous analyses. That there is such consistency in terms of the drivers’ apparent influence on the dependent variable dimensions provides additional support. Knowing how frequently an administrator has read or was required to read *Kelo* and local ordinances and state statutes affecting eminent domain, administrators’ self-reported familiarity, and previous professional experience helps to predict their responses on *Kelo*’s changes to the number of takings, the use of pre-condemnation strategies, consideration of the local media, and contracting out and consideration of the national media to lesser degrees. Again, asymmetrical statistical measures of association were used to test the influence of the drivers on the dependent variables, so there is some appearance of causality, though it is generally weak.

Broader implications.

Again, administrators' level of professional experience with eminent domain provides support for some of the strongest indicators of their understanding of how *Kelo* changed the number of takings, the use of pre-condemnation strategies, contracting out, and consideration of the local media. The more professional experience an administrator had, the less likely he was to respond that he did not know how *Kelo* had changed these eminent domain dependent variables. Moreover, as the level of experience increased, so did the likelihood of a response indicating an increase or decrease among these dimensions. Finally, the response indicating no noticeable change was far more common in administrators with little to no experience.

Administrators' familiarity with *Kelo* and local ordinances and state statutes appears to be an overall weaker indicator of their understanding of eminent domain in the context of *Kelo*'s changes to these physical dimensions. When examining the affect of administrators' self-reported level of familiarity with *Kelo*, local ordinances, state statutes, and the Takings Clause, the results often conflict with the findings that examine the influence of whether or not administrators were required to read and how frequently they read the case and ordinances/statutes. With both of these drivers (i.e., frequency of reading and whether required to read), administrators who have higher degrees of reading or who were required to read the materials are more likely to respond that the number of takings and other dimensions had increased or decreased. The number of responses indicating no noticeable change in the number of takings and associated variables since *Kelo* simultaneously decreases as administrators have read the case and ordinances/statutes more frequently or were required to read them. Further, the number of responses indicating that the administrator did not know how *Kelo* had changed these variables takings also decreases with increased reading or requirement.

With the familiarity drivers, however, the number of responses indicating no noticeable change is much higher as administrators' level of familiarity increases. The familiarity drivers are generally consistent in terms of administrators' responding in an informed manner of increased or decreased. The "no noticeable change" option may be viewed as an informed response, but it lends itself to being of less substantive value in some respects because it appears that administrators overwhelmingly chose this option, regardless of familiarity, being required to read, or frequency of reading. It may be the case that there has not been much noticeable change in terms of increasing or decreasing. This does not appear to be the case, however, because it is only in the familiarity drivers that more well-read or administrators who were required to read chose this option more than the less-read or those who were not required to read.

These factors provide support for the contention that a relationships exist between how well-read administrators are, in terms of frequency of reading and being required to read relevant materials, and their understanding of the ways in which *Kelo* has changed these dimensions of eminent domain. Because the number of informed responses indicating either a decrease or increase increases parallel to administrators' level of reading, the case may be made that the more well-read on eminent domain administrators are, the more accurate their responses are likely to be. Conversely, administrators who have only read these materials one time at most or were not required to read them have a lesser degree of awareness with regard to the ways in which *Kelo* has changed the number of takings and related variables.

When considering the relationship between administrators' familiarity and their consideration of the media and that these findings differ from the other relevant drivers in that relationship (e.g., frequency of reading, required to read, professional experience), this provides further evidence that the familiarity drivers alone are not the strongest indicator of

administrators' understanding in the context of awareness of action-oriented changes, such as the number of takings, etc. This is likely due to the fact that administrators' familiarity is self-reported, which is why I instituted the read and required to read questions as checks on the familiarity drivers. Therefore, it becomes evident that the familiarity drivers should be used in conjunction with other drivers to gain a more holistic perspective of administrators' understanding of eminent domain. To be clear, it is not that the familiarity drivers are unreliable but rather that they appear to be somewhat inflated when compared to other drivers. As with any empirical analysis, it is best to employ multiple measures.

A key finding regarding administrators' understanding has been uncovered, however, as a result of some of the disparities between these three categories of drivers. These findings provide evidence to support the idea that administrators generally inflate their level of familiarity with eminent domain and associated drivers. While this may be the result of socially-desirable responses to the particular questions, I believe it is also likely that administrators' self-reported familiarity is the result of a number of contributing factors. During the interviews, I attempted to explain further this situation. Interview participants revealed that their familiarity was informed by self-guided study and research (i.e., books, the internet, prior municipal experiences).

Although the relationships between administrators' understanding in the context of *Kelo*'s change on the number of takings, the use of pre-condemnation strategies, contracting out, and the consideration of local and national media and the driver variables are the result of weaker statistical measures, their consistency provides support for their existence. This provides support that administrators' knowledge and experience does influence their understanding of eminent domain. Considering all of the relationships from a broad perspective, it appears as though administrators who have more professional experience with eminent domain, have read

frequently or were required to read *Kelo* and local ordinances and state statutes, or were self-described as quite familiar with these drivers have a strong understanding of these eminent domain dimensions.

What is of some concern, however, is the lack of understanding of the ways in which *Kelo* has changed these eminent domain dimensions by administrators who have only read the related materials once at most, do not describe themselves as familiar with eminent domain, and who lack substantial professional experience with eminent domain. It appears, therefore, that there is quite a dichotomous relationship between administrators' understanding of the ways in which *Kelo* has changed eminent domain in their locality. Administrators reporting high levels of the drivers also reported with more informed with post-*Kelo* changes; the opposite is true with respect to low-level driver responses.

Agreement with eminent domain in general.

See Table 11d below for the statistical significance and strength of relationships between how administrators understand eminent domain, with regard to agreement with eminent domain in general, and the knowledge and experience drivers; Appendix D1 includes the full results of the statistical analysis, which includes notations for relationships producing false positives and non-statistically significant relationships.

Table 11d: Statistical Significance and Strength of Relationships Between Drivers and Agreement with Eminent Domain in General (Abbreviated)⁷³

DISCRETION IN ACTION: HOW ADMINISTRATORS UNDERSTAND EMINENT DOMAIN			
RELATIONSHIP WITH DRIVER INDICATOR	RANGE OF STRENGTH OF RELATIONSHIP AND STATISTICAL SIGNIFICANCE (MEASURES OF ASSOCIATION VALUES AND CONFIDENCE LEVELS) ⁷⁴	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE) ⁷⁵	TOTAL NUMBER OF SURVEY RESPONDENTS
Agree with Eminent Domain in General (Q #25)			
+Familiarity with <i>Kelo</i>	$\tau_b=24.2***; \gamma=34.7***; D=26.0***$	3.2	n=137 (Q #11)
State statute(s)	$\tau_b=25.7***; \gamma=34.7***; D=25.9***$	2.9	n=136
+Followed <i>Kelo</i> local news	$\tau_b=24.7***; \gamma=33.2***; D=24.7***$	6.0	n=136 (Q #15)
National news	$\tau_c=16.5**; \gamma=24.9**; D=18.5**$	6.0	n=136
+Familiarity with precedents	$\tau_b=17.9**; \gamma=27.4**; D=20.5**$	7.0	n=135 (Q #16)
+ED experience professionally	$\tau_b=23.4***; \gamma=37.1***; D=27.6***$	0.3	n=137 (Q #18)

The previous questions and relationships were largely designed to lay the foundation for deeper analysis of how administrators understand eminent domain, such as whether they agree with eminent domain in a number of contexts and what drivers contribute to their agreement and understanding. Relationships between administrators' agreement with eminent domain in general and the drivers produced moderate associations, as evidenced by the Somers' d (*D*)

⁷³ A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

⁷⁴ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (*D* for ordinal-level variables; λ , τ , and *UC* for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; *V* and *C* for nominal-level variables) were used; these provide no support for causality. Asterisks are used to indicate the confidence levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

⁷⁵ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

values ranging from 18.5 percent for the followed *Kelo* in the national news driver to 27.6 percent for the professional experience driver.

The more familiar that administrators were with *Kelo* and relevant state statutes, the more likely they were to agree with eminent domain in general; 44.0 percent of administrators very familiar with the case strongly agreed, as did 45.5 percent very familiar with state statutes. Similar relationships exist between how closely administrators reported following the case in the local and national news, as well as for their level of familiarity with the precedent cases in *Kelo*. Most polarizing is the relationship between previous professional experience and administrators' agreement with eminent domain in general. Here, 80.0 percent of experienced administrators agree with eminent domain, compared with 20.0 percent who disagree. The only other dependent variable that has a relationship with professional experience is eminent domain for economic development.

Implications.

Moderately strong positive relationships that suggest causality exists between the knowledge and experience drivers and administrators' understanding of eminent domain with regard to whether or not they agree with it in general, as well as what factors contribute the strongest to this agreement. This ordinal-level data allows for the use of stronger asymmetrical statistical measures of association to test the strength of the relationships, the predictive value of the relationship (i.e., how well knowing the value of the driver helps to predict the value of the dependent variable through proportionate reduction in error statistics) and to identify potential causal relationships through asymmetrical statistical measures of association.

Administrators' level of previous professional experience with eminent domain is the strongest indicator of how strongly they agree with eminent domain in general. At a confidence

level of over 99 percent, knowing how much professional experience an administrator has had with eminent domain helps to predict whether he will agree with eminent domain by 27.6 percent (Somers' d value [D] for eminent domain experience driver); because an asymmetrical statistical measure was used, this provides support for that administrators' level of professional experience may influence, in a causal nature, his agreement with eminent domain. The strength of this relationship ranges from 23.4 to 37.1 percent (the Kendall's tau-b [τ_b] and Gamma [γ] values for eminent domain experience driver), indicating a moderate to strong positive relationship and the ability of the level of professional experience to predict administrators' agreement with eminent domain.

Self-reported familiarity with *Kelo* and with state eminent domain statutes also appears to influence administrators' agreement with eminent domain by 26.0 (Somers' d [D] value for familiarity with *Kelo* driver) and 25.9 (Somers' d [D] value for familiarity with state statutes driver) percent, both moderately strong associations. Unique to agreement with eminent domain in general, compared with agreement for private and economic development and the case, is the influence of following *Kelo* in the local and national news at 24.7 (Somers' d [D] value for followed *Kelo* driver) and 18.5 (Somers' d [D] value for followed *Kelo* driver) percent. Administrators' familiarity with the precedent cases in *Kelo* also appears to influence their agreement with eminent domain by 20.5 percent, as shown by the Somers' d [D] value for the familiarity with precedents driver, all moderate to moderately strong associations.

Because the relationship of following the case in the local and national news and familiarity with precedents have lower confidence levels of 6.0-7.0 percent, as shown by their chi-square p-values, their effect on administrators' agreement with eminent domain is less certain. The local news appears to be the strongest influence of the three, given the 99-percent

confidence levels of the statistical measures of association (i.e., the chi-square p-values refer to the significance of the presence of a relationship, whereas the confidence levels of the measures of association refer to confidence in the strength of the relationship). This means that while the association between the driver and the dependent variable is likely to occur by association 94 percent of the time, this relationship between administrators' agreement with eminent domain in general and how closely they followed the case in the local news is moderately strong.

Agreement with Kelo.

See Table 11e below for the statistical significance and strength of relationships between how administrators understand eminent domain, with regard to agreement with *Kelo*, and the knowledge and experience drivers; Appendix D1 includes the full results of the statistical analysis, which includes notations for relationships producing false positives and non-statistically significant relationships.

Table 11e: Statistical Significance and Strength of Relationships Between Drivers and Agreement with *Kelo* (Abbreviated)⁷⁶

DISCRETION IN ACTION: HOW ADMINISTRATORS UNDERSTAND EMINENT DOMAIN			
RELATIONSHIP WITH DRIVER INDICATOR	RANGE OF STRENGTH OF RELATIONSHIP AND STATISTICAL SIGNIFICANCE (MEASURES OF ASSOCIATION VALUES AND CONFIDENCE LEVELS) ⁷⁷	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE) ⁷⁸	TOTAL NUMBER OF SURVEY RESPONDENTS
Agree with <i>Kelo</i> (Q #25)			
+Familiarity with <i>Kelo</i>	$\tau_b=17.1^{**}$; $\gamma=27.6^{**}$; $D=17.2^{**}$	6.2	n=133 (Q #11)
State statute(s)	$\tau_b=22.2^{***}$; $\gamma=33.2^{***}$; $D=20.8^{***}$	8.1	n=132
Read <i>Kelo</i>	$\tau=3.4^{**}$; $UC=4.3^{*}$	3.9	n=133 (Q #12)
State statute(s)	$\tau=4.6^{***}$; $UC=4.9^{**}$	1.1	n=133
Required to read state statute(s)	$UC=2.8^{**}$; $\tau=3.3^{***}$	3.4	n=131 (Q #13)

Relationships between administrators' agreement with *Kelo* and the familiarity drivers produced moderate associations, as evidenced by the Somers' d (D) values ranging from 17.2 percent for the familiarity with *Kelo* driver to 20.8 percent for the familiarity with state statutes driver. Administrators who reported being most familiar with *Kelo* are the most likely to agree with the case; 25.3 percent of administrators very familiar with the case strongly agreed. More interesting, however, is that 52.0 percent of those same very familiar administrators did not agree

⁷⁶ A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

⁷⁷ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (D for ordinal-level variables; λ , τ , and UC for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; V and C for nominal-level variables) were used; these provide no support for causality. Asterisks are used to indicate the confidence levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

⁷⁸ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

with the case. Overall, 51.0 percent of total respondents do not agree with the case or do so minimally, as shown in Table 9a in Chapter 4. The relationship between how familiar an administrator is and how strongly he agrees with eminent domain in general and with *Kelo* is very similar. It differs in that, regarding agreement with eminent domain in general, very familiar administrators overwhelmingly agreed, yet for level of agreement with *Kelo*, very familiar administrators were the most likely respondents to agree with the case, but they disagreed with it more often.

Administrators more familiar with state statutes affecting eminent domain were also most likely to agree with *Kelo*; 25.9 percent of very familiar administrators agreed with the case. Like the relationship above between familiarity with the case and agreement with it, administrators more familiar with state statutes also disagreed with the case. Here, 42.6 percent of respondents who described themselves as being quite familiar did not agree with *Kelo*; 54.5 percent of total respondents reported the same.

Implications.

Here, administrator's familiarity with *Kelo* and state eminent domain statutes are the strongest predictors of whether the administrator agrees with the case. The relationships of both of these drivers, however, are weaker than the relationships previously discussed with regard to administrators' agreement with eminent domain in general. The confidence levels (i.e., chi-square p-values) are 93.8 percent for familiarity with the case and 91.9 percent for familiarity with state statutes, meaning that the relationship could occur by chance that percent of the time. Using the asymmetrical PRE statistics does show that knowing an administrators' level of familiarity with each helps to predict their level of agreement between 17.1 and 27.6 (Kendall's tau-b [τ_b] and Gamma [γ] values for familiarity with *Kelo* driver) and 22.2 and 33.2 (Kendall's

tau-b [τ_b] and Gamma [γ] values for familiarity with state statutes driver) percent for each. Moreover, the causal asymmetrical statistic shows that familiarity with *Kelo* and with state statutes appears to influence agreement with *Kelo* 17.2 (Somers' d [D] value for familiarity with *Kelo* driver) and 20.8 (Somers' d [D] value for familiarity with state statutes driver) percent of the time, both moderate associations. Given the stronger predictive value and potential for causal association, it appears that familiarity with state statutes it is a generally stronger relationship than familiarity with *Kelo*. Further support is provided by the presence of weaker, nominal-level relationships with whether administrators were required to read and how frequently they have read state statutes.

Agreement with eminent domain for private development.

See Table 11f below for the statistical significance and strength of relationships between how administrators understand eminent domain, with regard to agreement with eminent domain for private development, and the knowledge and experience drivers; Appendix D1 includes the full results of the statistical analysis, which includes notations for relationships producing false positives and non-statistically significant relationships.

Table 11f: Statistical Significance and Strength of Relationships Between Drivers and Agreement with Eminent Domain for Private Development (Abbreviated)⁷⁹

DISCRETION IN ACTION: HOW ADMINISTRATORS UNDERSTAND EMINENT DOMAIN			
RELATIONSHIP WITH DRIVER INDICATOR	RANGE OF STRENGTH OF RELATIONSHIP AND STATISTICAL SIGNIFICANCE (MEASURES OF ASSOCIATION VALUES AND CONFIDENCE LEVELS) ⁸⁰	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE) ⁸¹	TOTAL NUMBER OF SURVEY RESPONDENTS
Agree with Eminent Domain for Private Development (Q #25)			
+Familiarity with state statute(s)	$\tau_b=19.9^{***}$; $\gamma=39.2^{***}$; $D=14.1^{***}$	5.7	n=136 (Q #11)
Read state statute(s)	$\tau=4.0^{**}$	6.0	n=136 (Q #12)
Required to read local ordinance(s)	$\tau=2.8^{**}$	8.8	n=133 (Q #13)
State statute(s)	$UC=3.8^*$; $\tau=4.0^{***}$	5.1	n=135
Takings Clause	$\tau=3.0^{**}$; $UC=4.3^{**}$	4.1	n=135

Relationships between administrators' agreement with eminent domain for private development and the drivers generally produced very weak associations, as evidenced by the values hovering around the 3 to 4 percent range. Familiarity with state statutes is the exception, resulting in a moderate relationship, shown by the Somers' d (D) value of 14.1 percent.

The more familiar that administrators were with state eminent domain statutes, the more likely they were to agree with eminent domain for private development. This is indicated by a

⁷⁹ A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

⁸⁰ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (D for ordinal-level variables; λ , τ , and UC for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; V and C for nominal-level variables) were used; these provide no support for causality. Asterisks are used to indicate the confidence levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

⁸¹ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

gradual trend of increasing familiarity and increasing agreement. More significantly, however, is the finding that 72.2 percent of these familiar administrators did not agree with eminent domain for private development at all or did so minimally and that, as shown in Table 9a in Chapter 4, 76.0 percent of total respondents reported minimal to no agreement with eminent domain for private development.

Implications.

Administrators' familiarity with state eminent domain statutes is the strongest indication of their level of agreement with eminent domain for private development. Occurring 5.7 percent of the time by chance, as evidenced by the chi-square p-value, knowing administrators' familiarity with state statutes reduces the error in predicting their agreement with private development takings between 19.9 and 39.2 percent, as shown by the Kendall's tau-b (τ_b) and Gamma (γ) values for the driver. This is a moderately strong relationship, with the driver of familiarity likely influencing the dependent variable of agreement 14.1 percent. This relationship is also supported by the weaker associations with the required to read and frequency of reading indicators.

Agreement with eminent domain for economic development.

See Table 11g below for the statistical significance and strength of relationships between how administrators understand eminent domain, with regard to agreement with eminent domain for economic development, and the knowledge and experience drivers; Appendix D1 includes the full results of the statistical analysis, which includes notations for relationships producing false positives and non-statistically significant relationships.

Table 11g: Statistical Significance and Strength of Relationships Between Drivers and Agreement with Eminent Domain for Economic Development (Abbreviated)⁸²

DISCRETION IN ACTION: HOW ADMINISTRATORS UNDERSTAND EMINENT DOMAIN			
RELATIONSHIP WITH DRIVER INDICATOR	RANGE OF STRENGTH OF RELATIONSHIP AND STATISTICAL SIGNIFICANCE (MEASURES OF ASSOCIATION VALUES AND CONFIDENCE LEVELS) ⁸³	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE) ⁸⁴	TOTAL NUMBER OF SURVEY RESPONDENTS
Agree with Eminent Domain for Economic Development (Q #25)			
+Familiarity with <i>Kelo</i>	$\tau_b=18.1^{**}$; $\gamma=27.8^{**}$; $D=18.8^{**}$	6.7	n=135 (Q #11)
State statute(s)	$\tau_b=35.7^{***}$; $\gamma=49.9^{***}$; $D=34.8^{***}$	0.0	n=134
Takings Clause	$\tau_b=24.6^{***}$; $\gamma=34.6^{***}$; $D=24.1^{***}$	3.2	n=135
Read <i>Kelo</i>	$\tau=2.7^*$	8.9	n=135 (Q #12)
State statute(s)	$UC=3.6^*$; $\tau=3.7^{**}$	4.9	n=134
Required to read <i>Kelo</i>	$\tau=2.2^{**}$; $UC=2.3^*$	3.6	n=134 (Q #13)
State statute(s)	$UC=2.7^{**}$; $\tau=3.0^{**}$	2.5	n=133
+Familiarity with precedents	$\tau_b=23.8^{***}$; $\gamma=36.0^{***}$; $D=26.2^{***}$	0.2	n=133 (Q #16)
+ED experience professionally	$\tau_b=28.3^{***}$; $\gamma=43.5^{***}$; $D=32.5^{***}$	0.3	n=135 (Q #18)

Relationships between administrators' agreement with eminent domain for economic development and the drivers produced moderate to moderately strong associations. Administrators' familiarity with state statutes and their previous professional experience with

⁸² A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

⁸³ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (*D* for ordinal-level variables; λ , τ , and *UC* for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; *V* and *C* for nominal-level variables) were used; these provide no support for causality. Asterisks are used to indicate the confidence levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

⁸⁴ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

eminent domain are the strongest relationships, evidenced by the Somers' d (*D*) values of 34.8 and 32.5 percent. The other familiarity drivers resulted in moderate relationships, as did familiarity with the precedent cases in *Kelo*.

Administrators' level of agreement with eminent domain for economic development is similar to that for agreement with eminent domain in general, yet it is a bit weaker because more "more familiar" administrators disagree with eminent domain for economic development than with it in general. The more familiar an administrator is with *Kelo*, the more likely he is to agree with eminent domain for economic development; 25.7 percent of more familiar administrators strongly agree, and 41.9 percent disagree or agree minimally. Familiarity with state statutes results in a similar relationship, with 33.3 percent of more familiar administrators strongly agreeing and 24.1 percent disagreeing or minimally agreeing. For the Takings Clause, 31.1 percent of more familiar administrators strongly agree, whereas 35.6 generally disagree; strong agreement responses were given by 47.1 percent of administrators most familiar with the precedent cases in *Kelo*, compared with 29.4 percent who indicated lack of agreement. Professional eminent domain experience is also strongly related to administrators' level of agreement with eminent domain for economic development in that 50.0 percent with high levels of experience strongly agree, and 21.4 percent of administrators lacking substantial experience disagree or agree minimally.

Implications.

Administrators' level of previous professional experience with eminent domain and their familiarity with state statutes are the strongest indicators of their level of agreement with eminent domain for economic development. The causal statistical measure of association shows that these drivers may influence agreement by 32.5 (Somers' d [*D*] value for eminent domain

experience driver) and 34.8 (Somers' d [D] value for familiarity with state statutes driver) percent; both of these relationships are significant at the 99 percent confidence level, meaning that they are strong and likely to occur by chance only 1 percent of the time, as shown by the chi-square p-values for each. Knowing an administrator's previous professional experience and familiarity with state statutes helps reduce the error in predicting their agreement with eminent domain for economic development by 28.3 and 43.5 (Kendall's tau-b [τ_b] and Gamma [γ] values for eminent domain experience driver) percent and 35.7 and 49.9 (Kendall's tau-b [τ_b] and Gamma [γ] values for the familiarity with state statutes driver) percent. Moderately strong causal relationships also appear to exist between administrators' familiarity with the *Kelo* precedent cases and the Takings Clause, followed by familiarity with *Kelo*, as shown by the Somers' d (D) values of 26.2, 24.1, and 18.8 percent.

Broader implications.

The findings regarding the relationships between administrators' knowledge and experience, as reflected in the various drivers associated with familiarity and previous professional experience, and discretion in action in the form of agreement with eminent domain in general, *Kelo*, and eminent domain for private and economic development (i.e., four eminent domain dimensions) have revealed numerous strong associations and causal links. Overall, administrators with the highest degree of familiarity or the most previous professional experience with eminent domain are the most likely to strongly agree with each of the four eminent domain dimensions.

This means that those administrators with more experience or familiarity are more likely to agree than those with minimal familiarity or lacking experience. This does not, however, mean that the administrators with high familiarity and frequent experience always agree,

particularly with eminent domain for private development and the *Kelo* case itself. By examining the strength of the causal relationships between the drivers and the dependent variable dimensions, it becomes evident that the more controversial dimensions of private development and *Kelo* have lower influential value. For example, with administrators' agreement with eminent domain for private development and *Kelo*, an administrators' level of familiarity with state eminent domain statutes only appears to influence their agreement with private development by 14.1 (Somers' d [D] value for familiarity with state statutes in relationship with agreement with eminent domain for private development) and their agreement with *Kelo* by 20.8 (Somers' d [D] value for familiarity with state statutes in relationship with agreement with *Kelo*) percent. Compared with the likely influence this same driver has on eminent domain in general at 25.9 (Somers' d [D] value for familiarity with state statutes in relationship with agreement with eminent domain in general) percent and eminent domain for economic development at 34.8 (Somers' d [D] value for familiarity with state statutes in relationship with agreement with eminent domain for economic development) percent, we can see that familiarity with state statutes appears to assume a much stronger influential role with these latter two dimensions. The confidence levels, or the likelihood that the relationship will occur by chance, is also substantially higher for private development (chi-square p-value of 5.7) and *Kelo* (chi-square p-value of 8.1) than for eminent domain in general (chi-square p-value of 2.9) and for economic development (chi-square p-value of 0.0). Augmenting the strength of these relationships between the drivers and eminent domain in general and for economic development is administrators' previous professional experience with eminent domain. Only associated with these two dependent variable dimensions, professional experience appears to influence agreement in some of the strongest causal relationships. This is shown by the Somers' d [D]

value of 27.6 percent for eminent domain in general and 32.5 percent for eminent domain for economic development, showing moderately strong to strong associations.

Considering the data discussed in Chapter 4 with regard to administrators' overall levels of agreement with eminent domain in general, *Kelo*, and eminent domain for private and economic development, significant findings continue to emerge. Survey respondents indicated the strongest agreement with eminent domain in general, followed by economic development, *Kelo*, and private development, with little to no agreement for the latter. This blends to provide support for the assertion that administrators generally agree with eminent domain overall, as well as for economic development, and that those administrators who have the highest levels of professional experience or familiarity with relevant eminent domain statutes overwhelmingly support these uses in particular.

With regard to administrators' understanding of eminent domain, as reflected in their level of agreement with these dimensions, these findings suggest that administrators with professional experience and a self-reported familiarity understand that eminent domain is a powerful tool that is to be used cautiously and responsibly. They have distinguished eminent domain for private development, the key controversy in *Kelo*, as being a use of the power of eminent domain, or right, as several interview participants noted, with which they generally disagree. Focusing on administrators with high degrees of familiarity provides further support in that 72.2 percent of these administrators do not agree or do so minimally with eminent domain for private development.

Administrators' understanding of and subsequent agreement with eminent domain in general and for economic and private development proved to be the most divisive topic addressed during the interviews. Figure 4 below shows a typology of administrators'

understanding of eminent domain. During the interviews, two major issues associated with the use of eminent domain emerged: administrators' concern for political fallout and lack of public support and administrators' concern for bettering the community via the use of eminent domain.

This four-part typology of administrators' understanding of eminent domain is the result of quite an organic process. I was hoping to uncover an understanding of issues relating to political fallout and lack of public support, or political v. legal authority to use eminent domain, during the interview phase of this research. I asked administrators participating in the interview questions surrounding how they would respond to a municipal development plan involving minimal public support, what factors would contribute to their final decision, and how they would go about the process of learning more about the project and the perspectives of the stakeholders involved.⁸⁵ As I continued interviewing administrators, themes began to emerge regarding these issues, which I continued pursuing throughout the interview phase of the project. Though my intention was not to develop such a typology, the themes ultimately led to the development of one through this iterative process.

Figure 4, therefore, includes the categorization of four types of administrators based on their understanding of eminent domain in the context of political fallout and a broad community welfare. Factors also contributing to these two dimensions include the type of municipality (i.e., urban or rural) and subsequent economic conditions affecting the community, as well as historical uses of eminent domain at the municipal, state, and federal levels. These four categories include responders, place-makers, changers-as-needed, and content administrators. Place-makers are by far the rarest category of administrators' understanding of eminent domain, and changers-as-needed are more common.

⁸⁵ See Appendix C for interview questions.

Administrators who are categorized as place-makers make decisions regarding the use of eminent domain based predominantly on a high degree of concern for the bettering of the community and a relatively low degree of concern for political fallout and lack of public support for development projects. Place-makers are generally found in urban communities with a scarcity of available land to develop. Administrators in these municipalities typically engage quite frequently in the use of eminent domain or pre-condemnation negotiations. These administrators are more aggressive, not in the pejorative sense, in seeking out development opportunities and use creative strategies, such as partial takings and private funding sources, to develop projects that will benefit the broader community. Particularly important to place-makers is the need to actively involve the public in the process, relying on community hearings to build support. In the absence of such support, place-makers reported that they would still be likely to initiate a development plan that could potentially involve the use of eminent domain if they believed it would improve the community. One place-maker called this “shaping the community in the public interest.” Because place-makers have a strong history of community involvement and transparency, the public is generally more supportive of plans they bring forth. Further, because they use outside-the-box strategies and negotiations, they are able to provide more compensation, both monetary and alternative solutions, therefore lending more public support.

Administrators who may be categorized as responders have both a high degree of concern for political fallout and lack of public support and concern for bettering the community via the use of eminent domain. Like place-makers, responders are typically found in urban communities, therefore increasing the need to use eminent domain or pre-condemnation negotiations to acquire properties necessary for development plans. Responders use eminent domain frequently, but not to the extent of place-makers. This is due to their heightened concern

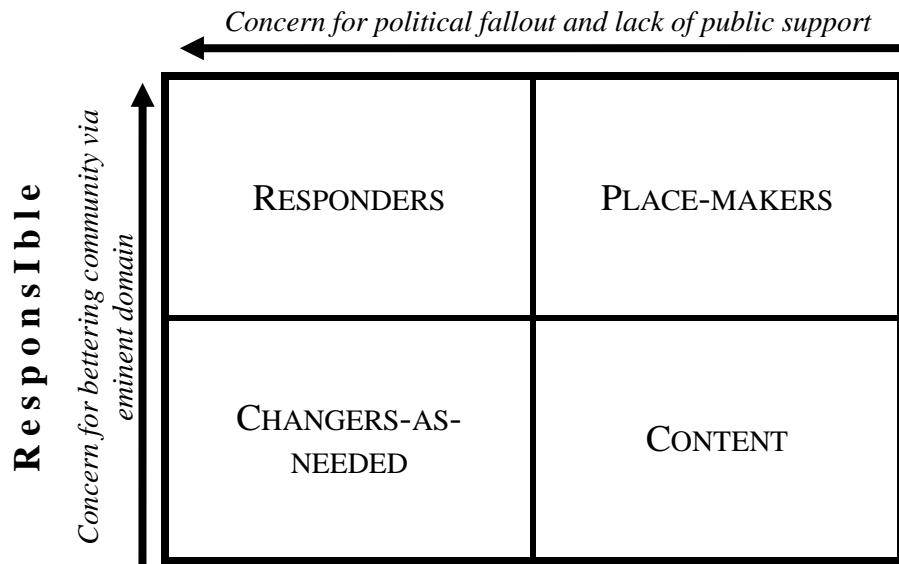
for political fallout and lacking public support for such projects. Key to the responder category of administrators is that they respond to the will of the public, both in terms of initiating projects and in deciding not to continue with a project that lacks support. Unlike place-makers' municipalities, responders' municipalities have a history of eminent domain that affects contemporary development projects. Several responders referred to redevelopment during the 1950s and 60s as "negro removal" because of the frequent toll on marginalized, minority populations. As a result, eminent domain still remains a difficult subject, as the public and administrators have a long memory of state and federal redevelopment projects of the past. Because responders engage in eminent domain and pre-condemnation negotiations resulting from strong public support for a particular development project, they are more limited than place-makers in their ability to provide creative compensation packages (i.e., fewer private funding resources). Still, however, responders do make creative attempts when public support allows.

Administrators in the changer-as-needed category make decisions related to the potential use of eminent domain based on a high degree of concern for political fallout and lack of public support and a low degree of concern for bettering the community. These administrators are generally found in more rural communities with a good amount of available land to develop. Here, these administrators are much more concerned with political fallout and lacking public support for reasons similar to responders. Changers-as-needed, however, are part of communities with an even stronger fear of state and federal eminent domain intervention, resulting from redevelopment projects, brownfields contamination sites, and highway construction (i.e., Interstate 95). Many of these administrators and their communities remain resentful, not in an irrational manner, of the ways in which highways were constructed, and the

subsequent affects on communities, in prior decades and are unlikely to engage in projects that could potentially involve the use of eminent domain. The changers-as-needed are quite similar to responders, yet they differ in the degree to which they are concerned with political fallout, with the former being much more extreme. As a result, this concern trumps a concern to better the community, so these administrators rarely engage in the use of eminent domain or pre-condemnation negotiations. The conditions under which they would do so would involve overwhelming public support and would almost never include private development. Affects of past eminent domain-related issues have shaped these administrators and their communities to value strongly individual rights and private property protections. This situation leads changers-as-needed to engage in development plans much more passively than any other category and generally do so when an opportunity presents itself, rather than seeking out opportunities.

Finally, administrators that may be categorized as being content have low degrees of concern for political fallout and lacking public support and concern for bettering the community. These administrators are typically found in rural communities, and content administrators' municipalities generally have substantial land available to develop or government-owned land. One content administrator noted that the municipality had upwards of 50 percent of the land available. Content administrators rarely engage in development projects, whether they could potentially involve the use of eminent domain or not. While they are concerned about political fallout to some degree, the municipality's lack of historically using eminent domain and a history absent state or federal intervention has not affected their community in the ways of the other categories. Further, content administrators and their communities are generally, well, content with the state of their municipality and do not seek out opportunities for change.

Figure 4: A Typology of Administrators' Understanding of Eminent
R e s p o n s i v e



Given that the major controversy in *Kelo* was the governments' taking of private property to turn over to another private owner for development, these findings suggest that property owners, public administrators, and academics concerned with the erosion of the public use requirement of the Takings Clause should find some solace in knowing that administrators charged with implementing eminent domain policies generally do not agree with eminent domain for private development. When they do employ their power of eminent domain for private development, however, they do so with a strong regard for the welfare of the community.

This means that further efforts to study eminent domain would be well-advised to employ the case-study methodology. Much has been learned about the ways in which administrators understand eminent domain in this study. Since administrators who responded to the survey generally indicated a low level of professional experience with eminent domain, disseminating the findings of case-study research may be able to serve as a substitute for the lack of this real-world experience or to bolster minimal experience.

Because the administrators who participated in this study were closest to *Kelo* and reported high levels of familiarity with the case and following it in the local news, they were in quite a knowledgeable position to evaluate the case. As administrators in other states did not have the advantage of being highly exposed to relevant information, they likely lack a heightened awareness of the key issues and lessons learned by the case. Scholarly inquiries in the form of case studies may help to increase other administrators' awareness and understanding, as well as to learn subsequently from the perspectives and behaviors of administrators with eminent domain experience.

Understanding of eminent domain.

See Table 11h below for the statistical significance and strength of relationships between how administrators understand eminent domain, with regard to understanding of eminent domain, and the knowledge and experience drivers; Appendix D1 includes the full results of the statistical analysis, which includes notations for relationships producing false positives and non-statistically significant relationships.

Table 11h: Statistical Significance and Strength of Relationships Between Drivers and Understanding of Eminent Domain (Abbreviated)⁸⁶

DISCRETION IN ACTION: HOW ADMINISTRATORS UNDERSTAND EMINENT DOMAIN			
RELATIONSHIP WITH DRIVER INDICATOR	RANGE OF STRENGTH OF RELATIONSHIP AND STATISTICAL SIGNIFICANCE (MEASURES OF ASSOCIATION VALUES AND CONFIDENCE LEVELS) ⁸⁷	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE) ⁸⁸	TOTAL NUMBER OF SURVEY RESPONDENTS
Understand Eminent Domain (Q #26)			
+Familiarity with <i>Kelo</i>	$\tau_c=31.9***; \gamma=54.7***; D=38.0***$	0.0	n=138 (Q #11)
Local ordinance(s)	$\tau_c=30.9***; \gamma=51.3***; D=34.9***$	0.0	n=136
State statute(s)	$\tau_c=40.1***; \gamma=62.2***; D=42.0***$	0.0	n=138
Takings Clause	$\tau_c=36.1***; \gamma=59.2***; D=38.0***$	0.0	n=139
Read <i>Kelo</i>	$\tau=4.5***; UC=5.6**$	7.9	n=139 (Q #12)
Local ordinance(s)	$\tau=4.6***; UC=5.8**$	2.5	n=136
State statute(s)	$\tau=6.6***; UC=9.0***$	0.1	n=138
Takings Clause	$\tau=5.4***; UC=7.6***$	1.1	n=138
Required to read <i>Kelo</i>	$\tau=4.7***; UC=5.3****$	5.3	n=138 (Q #13)
State statute(s)	$\tau=7.0***; UC=7.9***$	0.0	n=137
Takings Clause	$\tau=4.8***; UC=5.4****$	4.7	n=137
+Followed <i>Kelo</i> local news	$\tau_c=27.1***; \gamma=42.8***; D=27.8***$	0.1	n=138 (Q #15)
National news	$\tau_b=23.6***; \gamma=36.8***; D=22.5***$	0.0	n=138
Local media	$\tau_c=18.5***; \gamma=32.1***; D=19.7***$	4.1	n=137
National media	$\tau_c=20.7***; \gamma=39.9***; D=23.9***$	3.4	n=137
+Familiarity with precedents	$\tau_c=21.9***; \gamma=51.2***; D=29.6***$	10.0	n=137 (Q #16)

⁸⁶ A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

⁸⁷ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (*D* for ordinal-level variables; λ , τ , and *UC* for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; *V* and *C* for nominal-level variables) were used; these provide no support for causality. Asterisks are used to indicate the confidence levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

⁸⁸ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

+Applicability of Takings Clause	$\tau_c=23.8^{***}; \gamma=41.0^{***}; D=25.5^{***}$	8.1	n=126 (Q #17)
+ED experience professionally	$\tau_c=26.7^{***}; \gamma=69.7^{***}; D=38.8^{***}$	0.3	n=139 (Q #18)

Relationships between administrators' understanding of eminent and the familiarity drivers produced strong associations, as shown by the Somers' d (D) values of 42.0 percent for familiarity with state statutes, 38.0 percent for familiarity with *Kelo* and the Takings Clause, and 34.9 percent for familiarity with local ordinances. Administrators' previous professional experience with eminent domain also resulted in a strong association, shown by the Somers' d (D) value of 38.8 percent. How closely administrators reported following the case in the local news and media produced moderately strong relationships. Though the other drivers, particularly how frequently administrators read or were required to read relevant eminent domain materials (i.e., *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause), consistently produced relationships, they are very weak. This provides support for the existence of positive, perhaps causal, relationships that cannot be strongly established at this point.

Consistently across all four familiarity drivers (i.e., *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause), administrators responding that they were most familiar understand eminent domain very well. Administrators' high levels of understanding of eminent domain very well is most strongly related to familiarity with state statutes (89.1%), *Kelo* (75.0%), the Takings Clause (86.7%), and local ordinances (77.6%). Moreover, total respondents reporting understanding eminent domain very well include 57.2 percent for familiarity with state statutes, 75.0 percent with *Kelo*, 56.8 percent with the Takings Clause, and 56.6 percent with local ordinances.

With regard to the relationships between administrators' understanding of eminent domain and how closely they followed *Kelo* in the news and media, those who followed more

closely were most likely to respond that they understand eminent domain very well. National news is the exception, with a slight difference in that administrators reporting high levels of understanding eminent domain either followed the news very closely or not at all. Those who followed the news very closely were still the most likely to report understanding eminent domain very well.

Administrators' professional experience as it relates to their level of understanding of eminent domain is quite interesting and somewhat surprising. Administrators with more professional experience were the most likely to report understanding eminent domain very well; 93.0 percent of very experienced administrators reported understanding eminent domain very well. Administrators with little to no professional experience, however, also reported high levels of understanding eminent domain, with 43.0 percent. Of the 56.8 percent of responses indicating understanding eminent domain very well, 32.9 percent have substantial experience, while 67.0 lack experience.

Implications.

Administrators' level of familiarity with *Kelo*, local ordinances, state statutes, and the Takings Clause all provide strong support that these drivers influence the degree to which administrators understand eminent domain. Familiarity with state statutes is the strongest of these relationships, reducing the error in predicting understanding between 40.1 and 62.2 percent (Kendall's tau-c [τ_c] and Gamma [γ] values for familiarity driver) with further causal support of the driver's influence on understanding by 42.0 percent (Somers' d [D] value for familiarity driver); all of this is at the 100-percent confidence level (chi-square p-values of 0.0 for all four drivers), showing quite a strong association. With regard to following *Kelo* in the local and national news and media, the local news presents the strongest relationship; how closely

administrators followed the case appears to influence their understanding 27.8 percent (Somers' d [D] value for followed *Kelo* driver), a moderately strong relationship, and helps to predict their response between 27.1 and 42.8 percent (Kendall's tau-c [τ_c] and Gamma [γ] values for followed *Kelo* driver). These findings are also supported by the weaker nominal-level drivers regarding the frequency of reading and being required to read the materials.

Even more interesting is the influence of administrators' previous professional experience with eminent domain on their level of understanding of eminent domain. At a 99-percent confidence level, indicated by the chi-square p-value of 0.3, professional experience appears to influence administrators understanding of eminent domain by 38.8 percent (Somers' d [D] value for eminent domain experience driver), a strong association. Given the dichotomous nature of experience and understanding, this is an indication of just how complex issues associated with eminent domain are. That twice as many administrators responded that they understand eminent domain very well and have little to no professional experience is a significant finding of this study. According to a town manager who participated in an interview, administrators report understanding eminent domain so well "because it's such a highly controversial activity....It has such a high visibility factor...people live and die off of it politically, administratively, and otherwise."

Understanding of Kelo.

See Table 11i below for the statistical significance and strength of relationships between how administrators understand eminent domain, with regard to understanding of *Kelo*, and the knowledge and experience drivers; Appendix D1 includes the full results of the statistical analysis, which includes notations for relationships producing false positives and non-statistically significant relationships.

Table 11i: Statistical Significance and Strength of Relationships Between Drivers and Understanding of *Kelo* (Abbreviated)⁸⁹

DISCRETION IN ACTION: HOW ADMINISTRATORS UNDERSTAND EMINENT DOMAIN			
RELATIONSHIP WITH DRIVER INDICATOR	RANGE OF STRENGTH OF RELATIONSHIP AND STATISTICAL SIGNIFICANCE (MEASURES OF ASSOCIATION VALUES AND CONFIDENCE LEVELS) ⁹⁰	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE) ⁹¹	TOTAL NUMBER OF SURVEY RESPONDENTS
Understand <i>Kelo</i> (Q #26)			
+Familiarity with <i>Kelo</i>	$\tau_b=57.1***; \gamma=74.8***; D=60.2***$	0.0	n=138 (Q #11)
Local ordinance(s)	$\tau_b=24.5***; \gamma=34.3***; D=25.1***$	0.3	n=136
State statute(s)	$\tau_b=39.6***; \gamma=52.5***; D=38.9***$	0.0	n=138
Takings Clause	$\tau_b=43.7***; \gamma=58.2***; D=43.2***$	0.0	n=139
Read <i>Kelo</i>	$UC=6.5***; \tau=6.7***$	0.3	n=139 (Q #12)
State statute(s)	$\tau=3.4**; UC=4.0**$	3.9	n=138
Takings Clause	$\tau=7.4***; UC=9.4***$	0.0	n=138
+Followed <i>Kelo</i> local news	$\tau_b=48.4***; \gamma=62.9***; D=47.3***$	0.0	n=138 (Q #15)
National news	$\tau_c=26.6***; \gamma=42.0***; D=29.7***$	0.0	n=138
Local media	$\tau_b=3.8***; \gamma=44.4***; D=31.5***$	0.1	n=137
National media	$\tau_b=37.1***; \gamma=54.0***; D=38.6***$	0.0	n=137
+Familiarity with precedents	$\tau_b=30.6***; \gamma=49.8***; D=34.2***$	0.3	n=137 (Q #16)
+Applicability of Takings Clause	$\tau_b=35.9***; \gamma=48.6***; D=35.5***$	0.1	n=126 (Q #17)
+ED experience professionally	$\tau_b=35.7***; \gamma=69.7***; D=38.8***$	2.2	n=139 (Q #18)

⁸⁹ A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

⁹⁰ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (*D* for ordinal-level variables; λ , τ , and *UC* for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; *V* and *C* for nominal-level variables) were used; these provide no support for causality. Asterisks are used to indicate the confidence levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

⁹¹ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

Relationships between administrators' understanding of *Kelo* and the drivers surrounding familiarity and how closely administrators reported following the case in the local and national news and media produced strong associations. To be expected is the relationship between administrators' familiarity with the case and their understanding, shown by the Somers' d (*D*) value of 60.2 percent; the other familiarity drivers also produced strong relationships. Following the case in the local news, again, not unexpected, produced a Somers' d (*D*) value of 47.3 percent. Administrators' previous professional experience with eminent domain resulted in a strong relationship, evidenced by the Somers' d (*D*) value of 38.8 percent. Once again, how frequently administrators read the relevant eminent domain materials (i.e., *Kelo*, local ordinances, state statutes, and the Takings Clause) resulted in very weak relationships.

As with administrators' understanding of eminent domain, their understanding of *Kelo* is generally consistent across the four familiarity drivers (i.e., *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause). These relationships are strongest with *Kelo* (68.4%), not surprisingly, followed by the Takings Clause (80.0%), state statutes (70.9%), and local ordinances (56.7%). Total respondents reporting understanding the case very well include 44.2 percent for familiarity with the case, 44.6 percent with the Takings Clause, 44.9 percent with state statutes, and 44.1 percent with local ordinances. Overall, these relationships are a bit weaker than those with administrators' understanding of eminent domain. Again, the relationships between the drivers involving following the case in the news and media are similar, including the difference concerning administrators who followed the case very closely in the national news. Relationships between familiarity with the precedents in *Kelo* and applicability of the Takings Clause are much stronger with regard to administrators' understanding of *Kelo*. The more familiar an administrator is with each of these drivers, the

more likely he is to understand the case very well. Professional experience assumes a similar role here as well; 66.7 percent of administrators with substantial experience reported understanding *Kelo* very well, compared with 37.6 percent with minimal experience. Again, of the 44.6 percent of responses indicating high levels of understanding the case, 30.6 percent have more experience, while 69.3 percent have little to no professional experience with eminent domain.

Implications.

As with administrators' understanding of eminent domain, their level of familiarity with *Kelo*, local ordinances, state statutes, and the Takings clause all strongly influence administrators' understanding of the case. Familiarity with *Kelo* is the strongest relationship, likely influencing understanding of the case 60.2 percent (Somers' d [D] value for familiarity driver) and helping to predict administrators' response between 57.1 and 74.8 percent (Kendall's tau-b [τ_b] and Gamma[γ] values for familiarity driver). More substantively, state statutes and the Takings Clause appear to have strong influences on administrators' understanding of *Kelo* at 38.9 (Somers' d [D] value for familiarity with state statutes driver) and 43.2 percent (Somers' d [D] value for familiarity with Takings Clause driver), both strong associations. The apparent influence of familiarity with local ordinances was the weakest relationship for administrators understanding of *Kelo* but still moderately strong with 25.1 percent (Somers' d [D] value for familiarity with local ordinances driver). How closely administrators' followed the case in the local and national news and media results in similar findings to those of understanding eminent domain. Following the local news has the strongest relationship, much stronger than its relationship with understanding eminent domain, with an apparent 47.3 percent (Somers' d [D] value for followed *Kelo* driver) influence on understanding *Kelo*, showing a strong association.

Moreover, administrators' previous professional experience also appears to influence their understanding of *Kelo* by 38.8 percent (Somers' d [D] value for eminent domain experience driver), a strong association, and helps to predict their level of understanding between 35.7 and 69.7 percent (Kendall's tau-b [τ_b] and Gamma [γ] values for eminent domain experience drivers) at a confidence level of about 98 percent (chi-square p-value of 2.2). Again, the percentage of responses indicating a high level of understanding of *Kelo* for respondents with little to no professional eminent domain experience was more than double that for administrators with frequent professional experience.

Broader implications.

Evaluating administrators' self-reported level of understanding of eminent domain and *Kelo* must be exercised cautiously in order to minimize socially desirable responses and inflated results. This was alleviated to the extent possible in the survey by including these questions in the latter half of the instrument to enable administrators participating in the survey to consider their understanding as they responded to the variety of previous questions. Further, comparing the overall results of administrators' responses with regard to their understanding, familiarity, following the case in the news and media, frequency of reading, and being required to read in Chapter 4, allows me to have a better understanding of how they assess their own level of understanding. For example, administrators reported generally high levels of understanding of eminent domain and *Kelo*, as well as high levels of familiarity and following the case; however, they also reported generally low levels of professional experience, having read or being required to read the case, and relevant ordinances and statutes, and the Takings Clause.

These findings have several implications. First, administrators' familiarity and understanding is likely affected by some degree of inflation coupled with a much stronger

reliance on self-guided efforts to increase familiarity. Support is provided for this assertion in the lower levels of professional experience and other knowledge and experience drivers. Some degree of these lower levels is due to the fact that they are predominantly nominal-level variables and subject to weaker statistical measures. Second, despite being public administrators in the home-state of *Kelo*, they have, according to the survey results, limited exposure to the actual case, local ordinances, state statutes, and the Takings Clause of the US Constitution. The interviews provided a good deal of insight to clarify these somewhat misleading survey results. Interviews revealed that administrators generally did not follow the case from the beginning but sought further information once the case approached the US Supreme Court. Therefore, once it became evident that *Kelo* presented something with which administrators should be concerned or aware, they took action.

Interviews with administrators provided a good deal of insight into administrators' heightened familiarity in light of the absence of substantial exposure to relevant materials (i.e., local ordinances and state statutes affecting eminent domain). Because a number of interview participants described minimal interest in the case during the early stages, it appears that much of their familiarity results from the case's arrival to the Supreme Court. With regard to their familiarity with eminent domain more broadly, however, the interviews revealed that they were familiar with other instances of eminent domain in neighboring municipalities throughout the state. Further, though the survey results show that administrators generally lacked substantial professional experience with eminent domain, administrators who participated in the interviews responded that they had experience with the process leading up to eminent domain (i.e., pre-condemnation strategies to avoid using eminent domain), in addition to direct experience with eminent domain. Perhaps some of the misleading survey results are due to the confines of the

survey instrument used; future research would do well to consider broadening the language to include pre-condemnation negotiations and discussions of potentially using eminent domain.

In response to questions regarding heightened familiarity and minimal exposure to reading or being required to read local ordinances and state statutes affecting eminent domain, interview participants explained that they increase their exposure on an as-needed basis. When an administrators' municipality, or a neighboring municipality, was faced with an issue related to eminent domain, the administrators reported seeking out the relevant ordinances and statutes for more information. During the interviews, administrators often referred to such issues as the impetus for their search for guidance and subsequent familiarity and understanding of eminent domain. In addition, administrators responded that their familiarity and understanding were shaped by resources external to the municipality, such as books, newspaper articles, the media, the internet, professional organizations, and other experiences they had with municipal boards, commissions, and committees.

Post-*Kelo*, a number of administrators who participated in the interviews were responsible for crafting local ordinances. One representative town meeting official explained that the municipality sought out the post-*Kelo* eminent domain ordinance of a neighboring community for more information. Another landuse commission administrator reported searching for academic and non-academic articles on the internet for clarification on the key issues of the case.

Therefore, though administrators who participated in this study were generally not required to read local ordinances and state statutes affecting eminent domain and reported minimal frequency of reading these documents, their familiarity was shaped and informed by broader resources. This helps to explain the heightened familiarity with issues associated with

eminent domain, as well as to strengthen the significance of the familiarity-based relationships. The variety of resources involved, however, makes it difficult to pinpoint which are the largest contributors to administrators' familiarity.

From these results, then, findings emerge that suggest that administrators' understanding of eminent domain is most strongly influenced by their familiarity with state eminent domain statutes, as well as the case, the Takings Clause, and local ordinances. Following the case coverage in the news and media influences their understanding as well, but to a lesser degree. Similar findings exist for administrators' understanding of *Kelo*, yet the role of all four news-related dimensions is much greater.

Insight into how well administrators understand eminent domain as it relates to their previous professional experience is quite a significant finding. Certainly, the survey results indicate that the more frequently an administrator engages in eminent domain professionally, the more likely he is to understand it very well. Speaking to the complexity of issues related to eminent domain, however, is the fact that administrators with little to no professional eminent domain experience also responded that they understood eminent domain very well.

This relationship was quite dichotomous, with high percentages of administrators' understanding eminent domain very well at either end of the professional experience continuum (i.e., 93.0 percent of experienced administrators understand eminent domain very well, and 43.0 percent of little to no experience also understand it very well). From the interviews, this finding appears to be related to administrators' familiarity with eminent domain. Although administrators may not have substantial professional experience with eminent domain, many interview participants described experience with the takings process. This experience was in the context of discussing the possibility of using eminent domain for a particular project or in the

pre-condemnation process. Further, the use or potential use of eminent domain in other municipalities throughout the state frequently prompted administrators' to seek out more information about the relevant issues in order to have a better understanding.

Another possible explanation of the finding is the way in which administrators understand their understanding of eminent domain. The interviews revealed that administrators were, overall, quite knowledgeable about issues related to eminent domain and often had strong opinions. Administrators who had substantial professional eminent domain experience, however, possessed a different level of understanding. As one planner described it, there are different types of understanding in terms of "the process...the concept...[and] from a completely legal perspective." Implicit in the typology of administrators' understanding in Figure 4 above is the role of administrators' professional experience with eminent domain. Administrators categorized as place-makers and responders had more substantial professional experience and expressed more understanding about the balance between being concerned with political fallout and lacking public support and being concerned with bettering the community through development projects that could potentially involve the use of eminent domain.

Where Administrators Turn for Eminent Domain Guidance

The following analysis describes findings of this research with regard to where administrators turn for eminent domain guidance. Therefore, relationships between the knowledge and experience drivers (i.e., professionalism) and the dimensions of the dependent variable of administrators' search for guidance (i.e., discretion in action) are discussed. These dimensions include: refer to *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause of the US Constitution, as well as where administrators are most likely to

turn for eminent domain guidance. This discussion is inclusive of the survey results, survey open-ended responses, and elite interview responses.

Summary of relationships between variables in where administrators turn for eminent domain guidance.

Administrators' familiarity with *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause, as well as their professional experience with eminent domain, provide the strongest relationships with their search for eminent domain guidance.⁹² A summary table of these relationships is provided in Table 10b below.

⁹² After the initial statistical analysis of the relationships between the knowledge and experience drivers (i.e., professionalism) and the dimensions of all four dependent variables (i.e., discretion in action), administrators' familiarity and professional experience with eminent domain emerged as providing the strongest insight. Therefore, summary tables showing these relationships are included and discussed for each of the four dependent variables (i.e., administrators' understanding of eminent domain, their search for guidance, their interpretations' of takings law post-*Kelo*, and their understanding of "public" post-*Kelo*).

Table 10b: Summary Table of Relationships Between Variables in Where Administrators Turn for Eminent Domain Guidance⁹³

DISCRETION IN ACTION: WHERE ADMINISTRATORS TURN FOR EMINENT DOMAIN GUIDANCE					
Driver	Familiarity with <i>Kelo</i> (Q #11)	Familiarity with Local Ordinance(s) (Q #11)	Familiarity with State Statute(s) (Q #11)	Familiarity with Takings Clause (Q #11)	Professional Experience with Eminent Domain (Q #18)
Dependent Variable					
Refer to <i>Kelo</i> (Q #14)	28.0%***	27.0%***	24.6%***	22.6%***	29.7%***
Refer to local ordinances (Q #14)		35.3%***	29.8%***	22.1%***	39.4%***
Refer to state statutes (Q #14)	28.0%***	34.6%***	44.9%***	32.6%***	56.1%***
Refer to Takings Clause (Q #14)		19.9%***	24.7%***	26.1%***	21.1%***

⁹³ The statistical measure of association employed is Somers' d. This measure was used because it is an asymmetrical measure of association, as well as a proportionate reduction in error (PRE) statistic, which means that it provides support for a causal relationship in addition to helping to reduce the error in predicting the value of the dependent variable dimension. Asterisks are used to indicate the significance levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

Looking across the table in terms of the drivers' relationships with the dependent variables, we can see that administrators' familiarity with *Kelo* appears to influence how often they refer to the case and state statutes affecting eminent domain, both by 28.0 percent, showing moderately strong associations. Familiarity with local ordinances affecting eminent domain produces moderately strong to strong relationships with administrators' reference to all four dimensions of the dependent variable, as does administrators' familiarity with state statutes (Somers' d [D] values ranging from 19.6 % to 35.3%). Most interesting here is that the strongest relationships exist between familiarity and reference along the same relevant sources of information. That is to say that administrators' familiarity with local ordinances is most strongly related to their reference to local ordinances (35.3%) and that familiarity with state statutes is most strongly related to administrators' reference to state statutes (44.9%). Familiarity with the Takings Clause appears to be related to each of the four dimensions of the dependent variable, likely influencing reference to state statutes by 32.6 percent, the Takings Clause by 26.1 percent, the case by 22.6 percent, and local ordinances by 22.1 percent.

Administrators' previous professional experience with eminent domain also produces strong relationships with regard to administrators' reference to the case, local ordinances and state statutes affecting eminent domain, and the Takings Clause. Here, administrators' experience is most strongly related to how often they refer to state statutes, providing strong support for a causal relationship with 56.1 percent. Relationships with reference to local ordinances (39.4%) and reference to the case (29.7%) are also strong, followed by a somewhat weaker relationship with reference to the Takings Clause (21.1%).

Refer to Kelo, local ordinances, state statutes, and the Takings Clause.

See Table 12 below for the statistical significance and strength of relationships between where administrators turn for eminent domain guidance, with regard to refer to *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause of the US Constitution, and the knowledge and experience drivers; Appendix D2 includes the full results of the statistical analysis, which includes notations for relationships producing false positives and non-statistically significant relationships.

Table 12: Statistical Significance and Strength of Relationships Between Drivers and Refer to *Kelo*, Local Ordinances, State Statutes, and the Takings Clause (Abbreviated)⁹⁴

DISCRETION IN ACTION: WHERE ADMINISTRATORS TURN FOR EMINENT DOMAIN GUIDANCE			
RELATIONSHIP WITH DRIVER INDICATOR	RANGE OF STRENGTH OF RELATIONSHIP AND STATISTICAL SIGNIFICANCE (MEASURES OF ASSOCIATION VALUES AND CONFIDENCE LEVELS) ⁹⁵	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE) ⁹⁶	TOTAL NUMBER OF SURVEY RESPONDENTS
Refer to <i>Kelo</i> (Q #14)			
+Familiarity with <i>Kelo</i>	$\tau_b=36.7***; \gamma=85.4***; D=28.0***$	0.5	n=131 (Q #11)
Local ordinance(s)	$\tau_b=36.4***; \gamma=78.5***; D=27.0***$	0.1	n=130
State statute(s)	$\tau_b=34.0***; \gamma=67.1***; D=24.6***$	0.1	n=131
Takings Clause	$\tau_b=31.2***; \gamma=26.9***; D=22.6***$	0.1	n=132
Read <i>Kelo</i> (Q #12)			
Local ordinance(s)	$UC=10.3***; \tau=10.7***$	0.1	n=132 (Q #12)
State statute(s)	$UC=9.2***; \tau=9.3***$	0.3	n=130
Takings Clause	$\tau=9.0***; UC=10.5***$	0.1	n=131
Required to read <i>Kelo</i>	$\tau=2.8**; UC=3.7*$	3.2	n=131 (Q #13)
Local ordinance(s)	$\tau=6.0***; UC=6.2**$	0.5	n=128
State statute(s)	$\tau=4.5***; UC=5.3**$	0.1	n=130
+Followed <i>Kelo</i> local news (Q #15)			
Local media	$\tau_b=30.9***; \gamma=59.8***; D=21.8***$	0.9	n=131 (Q #15)
Local media	$\tau_b=23.5***; \gamma=43.7***; D=17.3***$	3.4	n=130
+Familiarity with precedents (Q #16)			
+ED experience professionally	$\tau_b=43.3***; \gamma=70.9***; D=35.0***$	0.0	n=130 (Q #16)
+ED experience professionally (Q #18)			
+ED experience professionally	$\tau_b=35.3***; \gamma=60.3***; D=29.7***$	0.3	n=132 (Q #18)

⁹⁴ A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

⁹⁵ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (*D* for ordinal-level variables; λ , τ , and *UC* for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; *V* and *C* for nominal-level variables) were used; these provide no support for causality. Asterisks are used to indicate the confidence levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

⁹⁶ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

+Contracting out with private firms	$\tau_c=12.7***; \gamma=40.6**; D=20.4***$	0.1	n=128 (Q #19)
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Refer to Local Ordinance(s) (Q #14)

+Familiarity with local ordinance(s)	$\tau_b=40.4***; \gamma=69.7***; D=35.3***$	0.0	n=131 (Q #11)
State statute(s)	$\tau_b=35.5***; \gamma=58.3***; D=29.8***$	0.2	n=132
Takings Clause	$\tau_b=26.2***; \gamma=41.7***; D=22.1***$	0.2	n=133
Read Kelo	<i>UC=7.1***; $\tau=8.2***$</i>	0.5	n=133 (Q #12)
Local ordinance(s)	<i>UC=16.4***; $\tau=19.4***; \lambda=20.5*$</i>	0.0	n=131
State statute(s)	<i>UC=8.3***; $\tau=8.4***$</i>	0.1	n=132
Required to read Kelo	<i>UC=4.4***; $\tau=4.6***$</i>	1.6	n=132 (Q #13)
Local ordinance(s)	<i>UC=20.6***; $\tau=22.6***$</i>	0.0	n=129
State statute(s)	<i>UC=8.8***; $\tau=11.0***$</i>	0.0	n=131
Takings Clause	<i>UC=6.1***; $\tau=6.1***$</i>	0.2	n=131
+Followed Kelo local news	$\tau_b=20.7***; \gamma=34.1***; D=17.1***$	4.8	n=132 (Q #15)
National media	$\tau_b=18.0***; \gamma=29.8***; D=16.0***$	4.7	n=132
+Familiarity with precedents	$\tau_b=33.7***; \gamma=54.5***; D=31.9***$	0.2	n=131 (Q #16)
+ED experience professionally	$\tau_b=40.2***; \gamma=63.2***; D=39.4***$	0.0	n=133 (Q #18)
+Contracting out with private firms	$\tau_c=15.0***; \gamma=39.6**; D=24.2***$	0.1	n=129 (Q #19)

Refer to State Statute(s) (Q #14)

+Familiarity with Kelo	$\tau_b=30.9***; \gamma=55.7***; D=28.0***$	1.2	n=132 (Q #11)
Local ordinance(s)	$\tau_b=39.1***; \gamma=68.1***; D=34.6***$	0.0	n=131
State statute(s)	$\tau_b=52.5***; \gamma=81.4***; D=44.9***$	0.0	n=132
Takings Clause	$\tau_b=38.1***; \gamma=57.8***; D=3.6***$	0.1	n=133
Read Kelo	<i>UC=10.7***; $\tau=12.6***; \lambda=13.0*$</i>	0.0	n=133 (Q #13)
Local ordinance(s)	<i>UC=19.9***; $\tau=21.3***; \lambda=20.0**$</i>	0.0	n=131
State statute(s)	<i>UC=17.8***; $\tau=21.7***; \lambda=23.9**$</i>	0.0	n=132
Takings Clause	<i>UC=8.0***; $\tau=9.5***$</i>	0.3	n=132
Required to read Kelo	<i>UC=5.2***; $\tau=6.6***$</i>	0.5	n=132 (Q #13)
Local ordinance(s)	<i>UC=11.1***; $\tau=11.5***$</i>	0.0	n=129
State statute(s)	<i>UC=14.5***; $\tau=17.7***$</i>	0.0	n=131
Takings Clause	<i>UC=3.7***; $\tau=5.1***$</i>	1.6	n=131
+Followed Kelo local news	$\tau_b=20.2***; \gamma=32.8***; D=17.0***$	5.9	n=132 (Q #15)
+Familiarity with precedents	$\tau_b=39.2***; \gamma=60.1***; D=37.9***$	0.0	n=131 (Q #16)
+Applicability of Takings Clause	$\tau_b=23.8***; \gamma=38.4***; D=20.9***$	7.1	n=122 (Q #17)
+ED experience professionally	$\tau_b=56.3***; \gamma=78.4***; D=56.1***$	0.0	n=133 (Q #18)

Refer to Takings Clause (Q #14)			
+Familiarity with local ordinance(s)	$\tau_b=28.7***; \gamma=68.2***; D=19.9***$	5.1	n=131 (Q #11)
State statute(s)	$\tau_b=36.5***; \gamma=77.8***; D=24.7***$	0.0	n=132
Takings Clause	$\tau_b=38.4***; \gamma=73.2***; D=26.1***$	0.3	n=133
Read Kelo	$\tau=8.5***; UC=11.1***$	0.0	n=133 (Q #12)
Local ordinance(s)	$\tau=8.9***; UC=13.6***$	0.2	n=131
State statute(s)	$\tau=9.2***; UC=15.0***$	0.1	n=132
Takings Clause	$\tau=20.4***; UC=25.5***$	0.0	n=132
Required to read local ordinance(s)	$\tau=3.6***; UC=6.6***$	0.5	n=129 (Q #13)
State statute(s)	$\tau=3.7***; UC=5.8**$	1.1	n=131
Takings Clause	$UC=4.5**; \tau=4.9***$	4.0	n=131
+Followed <i>Kelo</i> local news	$\tau_b=23.5***; \gamma=47.0***; D=15.8***$	4.8	n=132 (Q #15)
+Familiarity with precedents	$\tau_b=44.1***; \gamma=73.0***; D=34.1***$	0.0	n=131 (Q #16)
+Applicability of Takings Clause	$\tau_b=30.4***; \gamma=63.6***; D=21.5***$	0.9	n=122 (Q #16)
+ED experience professionally	$\tau_b=26.8***; \gamma=50.9***; D=21.1***$	0.9	n=133 (Q #18)

Administrators' familiarity with *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause, as well as previous professional eminent domain experience and familiarity with the precedent cases in *Kelo* resulted in moderately strong to strong relationships with how often administrators reported referring to the case, local ordinances, state statutes, and the Takings Clause. Again, the nominal-level drivers (i.e., how frequently administrators read or were required to read) resulted in generally weak statistical associations that hint at causality yet are too weak to provide substantial support.

Administrators' reference to *Kelo*, local ordinances and state eminent domain statutes, and the Takings Clause is consistently and apparently strongly influenced by their level of familiarity with each. Total administrators participating in the survey were most likely to refer to local ordinances for guidance (19.0%), state statutes (18.0%), *Kelo* (8.0%), and the Takings Clause (7.0%), as shown in Table 9b in Chapter 4. The administrators most familiar with each of the drivers were more likely to turn to the associated dimension of the dependent variable (i.e.,

Kelo, local ordinances, state statutes, and the Takings Clause). Administrators most familiar with local ordinances were more likely to refer to them for guidance (35.9%) and state statutes (38.5%), most familiar with state statutes referred to them (46.2%), and most familiar with the Takings Clause refer to it (17.1%). Administrators most familiar with *Kelo* produced more mixed results, referring more often to state statutes (19.6%), the Takings Clause (17.5%), the case (15.7%), and local ordinances (14.3%). These relationships were generally supported by the frequency of reading or required to read drivers.

How closely administrators reported following the case in the local news is the only of this category of driver to have a relationship with all four dimensions of the dependent variable. Of the total participants in the survey, 35.0 percent followed the case very closely in the local news, followed by 28.0 percent following the national media, 19.0 percent for the national news, and 18.0 percent for the national media, as shown in Table 8 in Chapter 4. Administrators' familiarity with the precedents in *Kelo* also indicated strong relationships with all of the dimensions; however, only 12.0 percent of total participants were very familiar, compared with 62.0 percent who were quite unfamiliar, also shown in Table 8 in Chapter 4. Administrators who were most familiar with the precedents were more likely to refer often to local ordinances (58.8%), state statutes (47.1%), *Kelo* (35.3%), and the Takings Clause (23.5%). Also, how applicable administrators thought the Takings Clause was to eminent domain in their locality produced strong relationships across the board; the strongest relationship was with administrators more likely to refer to state statutes (35.3%), local ordinances (31.4%), the Takings Clause (19.6%), and *Kelo* (18.0%). Moreover, as shown in Table 8 in Chapter 4, 38.0 percent of total respondents reported that the Takings clause was very applicable, compared with 23.0 percent who responding with little to no applicability. Professional experience with eminent domain

produced very strong relationships with how often administrators referred to each of the dimensions in that administrators with substantial professional experience were more likely to refer to state statutes (66.7%), local ordinances (60.0%), *Kelo* (33.3%), and the Takings Clause (20.0%).

Implications.

Administrators' professional experience with eminent domain and their level of familiarity with the precedent cases in *Kelo* provide the strongest likely influences on where administrators turn for eminent domain guidance in terms of how often they refer to the case, local ordinances and state statutes affecting eminent domain, and the Takings Clause. Each of these drivers consistently appears to influence administrators' search for guidance on the four dimensions of the dependent variable (i.e., refer to *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause).

The frequency of professional eminent domain experience appears to influence how often administrators refer to state statutes for clarification or information when dealing with an issue related to eminent domain by 56.1 percent (Somers' d [D] value for eminent domain experience driver), quite a strong association; the relationship between experience and reference to state statutes is unlikely to occur by chance (chi-square p-value of 0.0). Professional experience also appears to influence reference to local ordinances by 39.4 percent (Somers' d [D] value for eminent domain experience driver) and referring to *Kelo* by 29.7 percent (Somers' d [D] value for eminent domain experience driver); both of these relationships are unlikely to occur by chance (chi-square p-values of 0.0 and 0.3). This indicates that strong positive relationships, likely of the causal nature, exist among administrators' professional experience and how often they refer to relevant eminent domain materials in their search for guidance.

Familiarity with the precedent cases also shows strong relationships with these dimensions of the dependent variable. As with professional experience, familiarity with precedents has the strongest causal relationship with administrators' reference to state statutes, predicting how often they are to turn to statutes for guidance between 39.2 and 60.1 percent (Kendall's tau-b [τ_b] and Gamma [γ] values for familiarity with precedents driver); this driver appears to influence the dependent dimension by 37.9 percent (Somers' d [D] value for familiarity with precedents driver). Possible causality of the relationship is 35.0 percent for *Kelo* (Somers' d [D] value for familiarity with precedents driver), 34.1 percent for the Takings Clause (Somers' d [D] value for familiarity with precedents driver), and 31.9 percent for local ordinances (Somers' d [D] value for familiarity with precedents driver), all strong relationships.

More significant is the apparent level of influence that an administrators' familiarity with *Kelo*, local ordinances, state statutes, and the Takings Clause has on how likely that administrator is to refer to it for guidance on eminent domain. Familiarity with *Kelo* appears to influence administrators' likelihood to refer to it by 28.0 percent (Somers' d [D] value for familiarity with *Kelo* driver), familiarity with local ordinances appears to influence reference to them by 35.3 percent (Somers' d [D] value for familiarity with local ordinances driver), familiarity with state statutes appears to influence reference to them by 44.9 percent (Somers' d [D] value for familiarity with state statutes driver), and familiarity with the Takings Clause appears to influence referring to it by 26.1 percent (Somers' d [D] value for familiarity with Takings Clause driver). For each of these dimensions of the dependent variable, the associated driver produces the strongest causal relationship.

Broader implications.

How often administrators turn to *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause is largely influenced by their familiarity with each, as well as how frequently they have read or were required to read each. Thus, administrators who are most familiar, have read most frequently, and were required to read state statutes, for example, are most likely to refer often to state statutes for guidance on issues dealing with eminent domain. The same holds for local ordinances and the Takings Clause.

For each of these three dimensions of the dependent variable of administrators' reference in their search for guidance, using the strongest statistical measures, the three most influential relationships are the associated driver, administrators' previous professional experience, and their level of familiarity with the precedent cases in *Kelo*. It appears, therefore, that administrators are most likely to seek guidance, in the confines of this relationship analysis, from sources with which they are most familiar. Further support is provided in that the same relationships exist regarding how frequently administrators have read and whether they were required to read the relevant eminent domain resources.

These findings present significant implications for the study of administrators search for guidance in the context of eminent domain. That administrators consistently turn to the resources with which they are most familiar, augmented by the strong influence their familiarity and frequency or requirement of reading, provides evidence that they are heavily reliant on quite limited resources. Perhaps this is an issue of bounded rationality or path dependence. Administrators "know what they know," and they do not appear to make substantial efforts to seek strong guidance from outside resources. Coupled with the interview findings regarding administrators' familiarity and external contributing factors, it appears that, although

administrators' familiarity is shaped by external factors, their search for guidance and reliance on resources of utility is quite limited to those resources with which they are most familiar.

Considering the previous findings regarding administrators' understanding and search for guidance, it appears that administrators are experiencing what may be best described as a form of tunnel vision. It seems as though this is the result of a strong reliance on eminent domain resources with which administrators are most familiar, minimal exposure to external coverage of key controversies in the case, and the absence of substantial professional experience with eminent domain. But what is the underlying cause of this tunnel vision? As many administrators explained during the interviews, the power of eminent domain generally lacked controversy before *Kelo*. A selectman noted that the public lacked a "general awareness" of eminent domain pre-*Kelo*. An official on the representative town meeting stated that the public is "apathetic unless it affects their life" and that "people don't research anything" unless there is an immediate need. One administrator who has worked in planning since the 1960s stated, "The average citizen didn't know what the city was doing" with regard to using eminent domain for economic and private development pre-*Kelo*. He added, "Politically, it can't happen anymore because of *Kelo*." This sentiment was echoed by a retired chief clerk in a judicial district, who added, "At least the *Kelo* case pretty much put an end to that."

Further, administrators generally agreed that the case just brought a new potential use for the power to the forefront, therefore causing heightened concern among property owners and public administrators alike. A town manager stated that private development was not thought of as an eminent domain use before the case and that it "earned legitimacy" afterward because it "opened [administrators] eyes" to the prospect but that it has been "blacklisted as a tool." On the other hand, a landuse attorney and redevelopment director described eminent domain for

economic and private development as “just another tool in self-determination against ‘generica.’”

According to a deputy chief clerk, administrators should not be “short-sighted” in thinking that what happened in *Kelo* could not happen in their municipalities, stating “Sometimes there are powers and forces...an extremely wealthy developer that comes in.”

Administrators are now facing new challenges with the use of eminent domain and encountering increased “distrust,” according to one planner, and lacking support from the outset. Many interview participants described the value of building preemptive support for projects that could potentially use eminent domain. During the interviews, a number of administrators explained that the key problem with the *Kelo* situation was the city’s handling of the eminent domain process. This was largely due to the lack of informing the public where they could become involved in the process. Whether administrators agreed or disagreed with eminent domain generally and for economic or private development more specifically, they overwhelmingly supported what several interview participants referred to as a “transparent” process.

Transparency of the process of eminent domain was particularly important for interview participants with regard to public hearings. The landuse attorney and redevelopment director stressed the need for a “deliberative and transparent...open and participatory hearing process,” as their municipality frequently employs eminent domain and pre-condemnation strategies for economic and community development. A chairman of the zoning board of appeals described the process as being problematic when the public is unsure where to “insert themselves” into the process. A councilman/planning administrator described the role of public hearings as being “to inform and educate” the community about the proposed development project.

According to the interview participants, transparency is so crucial to the process of using eminent domain, whether for a more traditional use or for economic or private development, because of the power it assumes in helping to build public support. As one development director noted, municipalities should do what is good for “the neighborhood as a whole.” A representative town meeting official asserted that “the deal has to be broadly acceptable” and that the government must have “deference to the neighborhoods.” Public involvement in the process should, according to the interview participants, be done in good faith, rather than merely to meet statutory requirements. The administrator who has been involved in planning since the 1960s explained that municipalities often get new ideas from the public and can and should incorporate them into the development plan and that “vision planning” should be done to show the public “what can be done.” Building on this notion is a selectman who noted that any project must be “politically sell-able” and continued to describe the importance of the public’s role in the process by asking, “What makes commissions think their ideas are any better than the property owners?”

This leads to one of the more significant and broadly generalizable findings of this study with regard to political v. legal authority. With minor exceptions, administrators who participated in these interviews were overwhelmingly clear that political authority trumps legal authority, as shown in Figure 4 above of the typology of administrators understanding. These exceptions relate predominantly to administrators’ understanding and interpretation of public use, public purpose, public good, and public interest and will be addressed in more detail.

“The town is the people,” said one selectman, so the government should agree with the political will of the community. Administrators should try to build support for the project that could potentially require the use of eminent domain, or pre-condemnation negotiation strategies, by “try[ing] to sell the project,” according to a landuse chair; “building consensus” before the

project moves forward, maintained a planner; or incorporating the “intent of the neighborhood,” said another planner.

When asked how the government would handle a situation in which the public was not supportive of the plan, nearly all administrators responded that the plan would not progress. Responses offered as to why the plan would be stopped ranged from political fallout, lack of approval for funding, and that residents of the neighborhood “should have more say” than the municipality because they know what is best for their community, according to a development director. The more frequent response, however, surrounded issues associated with political fallout for a decision against the political will of the community.

Administrators who participated in the interview expressed a strong understanding that their role was to serve the public and to make decisions aligned with the will of the public. Fear of not being re-elected was certainly a contributing factor for elected officials, but the sentiment generally appeared to be secondary to the notion of public service. The idea of political and legal authority was broadly described by the chairman of the zoning board of appeals as serving as “theoretical checks and balances” on municipal government and service to the public. One selectman noted that he “would go along with his constituents” unless the use of eminent domain was “absolutely necessary,” which he equated to issues of public safety, such as road-widening. A representative town meeting official stated that absent public use, which he defined as a “complete use by the public,” “individual rights are above the rights of the general public,” thus requiring the protection of private property. A selectman echoed this sentiment, noting that it is not “any municipality’s business to favor one constituency over another constituency in eminent domain.” Another representative town meeting official noted that “if the political will wasn’t there,” the project would be stopped; he continued to explain that in the representative town

meeting style of government, it is “difficult for stupid things to get far” because of the many administrators and opinions involved. The other representative town meeting official countered that this form of government has its downsides because “good ideas don’t get through [either] because there are too many opinions.”

Though administrators who were interviewed overwhelmingly reported that they would follow the will of the public with regard to political v. legal authority, a handful of administrators advocated a different approach. Reminiscent of the framers of the Constitution, these administrators’ perspective on implementing eminent domain against the will of the people was that doing so was the more responsible action. Here, the broader theme, as expressed by this group of administrators, is that some circumstances require administrators to act against the public will for the public interest.

During the interview with the landuse attorney and the redevelopment director, they explained that a majority of development projects potentially involving eminent domain, about 80 percent, result in successful pre-condemnation negotiations and strategies. In instances when this is not the result, however, this municipality advocates the use of eminent domain because “it’s good for businesses, residents, and the city.” In perhaps the most articulate explanation of how a municipality is able to defy the political will of the public in the employment of its eminent domain power, these administrators described the process as “place-making,” or “creating a sense of place.” These administrators explained that their municipality is faced with the question of “How do you get redevelopment to happen without private funds, absent city funds?” Their response is the creative use of public-private development partnerships.

Public-private development partnerships present the opportunity to advance the public good through economic development and redevelopment while using private, as opposed to

municipal funding. According to the redevelopment director, “It’s a great energy to harness while serving a larger public good.” Though the private developer’s involvement in the process is self-interest, using those funds creates greater benefits to the community as a whole. These public benefits are not limited to increased tax revenue and job growth, as was the case in *Kelo*. These administrators described a number of projects that incorporated tangible benefits to the public, such as transit-oriented development projects to bring more residents, visitors, and investments into the city; the moving of existing businesses to premium locations to help their business grow; using partial takings to allow property owners to remain in their current location, while receiving compensation packages based on the redeveloped community; and even something as outside-the-box as moving an auto-repair business to a parking garage located at the center of the transit-oriented development project. As these administrators explained the process, it is significant to involve the public in the process to identify their wants and needs for the community. By incorporating these plans into the overall development plan, the public is more supportive because they were involved in the process and understand how it will benefit their community.

These creative uses of development projects were echoed by the development director of another municipality. Though this administrator responded that she would not continue with a plan that the community did not support, she described the ways in which the development projects seek to incorporate broader public benefits. One example she offered was that instead of building condominiums, the redevelopment plan included duplexes with garages. By offering the same amenities that residents expect in the suburbs, the plan was able to keep existing residents and lure additional people to live and invest in the community.

Though reluctant to make a decision against the public will, one councilman noted that “elected officials shouldn’t make decisions in a vacuum.” He continued, however, that “the public isn’t looking at it at the level I am.” He proposes a balancing test between serving the public interest and protecting private property, and if that balance is met, he would support a development plan involving eminent domain.

Further, the administrator involved in planning since the 1960s strongly supported following the public will and stressed the importance of the public’s participation in the process. He aptly noted, “It doesn’t always matter if the public doesn’t agree.” Here, his perspective is based off of nearly forty years’ experience in planning and having been directly involved in the redevelopment efforts of the 1950s and 60s that are frequently referred to as “negro removal” because of the effects on minority neighborhoods. “Cities burned,” he stated, which “led to distrust” in municipal development efforts. But if the proposed plan involves economic or private development and meets with the “intent of the neighborhood” design, he would support the plan.

Where administrators are most likely to turn for eminent domain guidance and implications.

The following analysis of where administrators turn during their search for eminent domain guidance differs from previous analyses. Rather than discussing the statistical strength of a relationship or the influence of the driver on the dependent variable, this analysis focuses on how likely administrators are to turn to each particular resource for guidance. Given the broad nature of the resources included and the overwhelming lack of knowledge on the subject, discussing where administrators are likely to turn instead of what influences their choosing that particular resource for guidance is more appropriate. See Table 13 below for where

administrators are likely to turn for eminent domain guidance. The results of the statistical measures are included in Appendix D2 if the reader is so inclined to review them.

Table 13: Where Administrators are Most Likely to Turn for Guidance

WHERE ARE ADMINISTRATORS MOST LIKELY TO TURN FOR EMINENT DOMAIN GUIDANCE?		
Dependent Variable (Q #27)	Percent Very Likely	Percent Very Unlikely
State ED statute(s)	69	7
Local ED ordinance(s)	54	20
State Supreme Court decisions	49	18
Property owner's perspective	42	22
State Constitution	38	29
US Supreme Court decisions	36	29
Peers or colleagues	32	26
Municipal administrator	31	33
Municipal elected official	30	34
US Constitution	30	36
Professional experience	26	48
Professional organizations	26	32
State elected official	24	39
Professional conferences	22	40
Neighboring municipalities	22	27
Law review articles	19	47
State administrator	16	48
Academic journal articles	16	58
Direct supervisor	15	62
JD administrator	14	61
Community organizations	14	46
Interest groups	13	54
Neighboring JDs	11	51
Colleges or universities	11	63
Personal experience	10	74
Family or friends	10	66
Local newspapers	9	58
Local media	9	66
Neighboring states	8	62
National newspapers	7	65
National media	4	73

Administrators who participated in this study were most likely to turn to state statutes affecting eminent domain for guidance (69.0%), followed by local ordinances (54.0%), state Supreme Court decisions (49.0%), property owner's perspective (42.0%), state Constitution (38.0%), and US Supreme Court decisions (36.0%). That the four dimensions of the reference

dependent variable are all included as administrators' most likely sources to turn to for guidance provides further support of the strength of those relationships. Moreover, it is important for future empirical studies of eminent domain to have evidence supporting their strength as indicators. From a more normative perspective, it is a major finding of this study that the property owner's perspective is so highly-valued by administrators in their search for guidance. Also, it is not only considered in the same ranks as these other resources, but also that it is so high on the list, higher than the state Constitution and US Supreme court decisions even. Plus, it's good news for John Rohr's *Ethics for Bureaucrats* that administrators rely so heavily on US Supreme Court decisions.

Administrators responded that they were twice as likely to turn to peers or colleagues (32.0%) than they were to turn to their direct supervisor (15%). This finding speaks strongly to the role of administrative discretion in the process of implementing eminent domain that administrators are so much more likely to turn to administrators with similar levels of experience and responsibilities, rather than those with a supervisory capacity. These administrators appear to be exercising strongly their informal authority!

Turning equally to municipal administrators (31.0%) and municipal elected officials (31.0%) in their search for guidance is likely because of the role of the town attorney in the process of implementing eminent domain. Though it was my intent that town attorney be included under the umbrella of "municipal administrator," many administrators noted the absence of this role in the response options. The equality of reliance on administrators and elected officials provides further support for the lack of a politics-administration dichotomy at the local-government level and the more appropriate all-hands-on-deck environment. One interview participant, a town manager, described the relationship between elected officials and

“professional administrators” as being one of reliance. Because elected officials are generally part-time, they rely heavily on administrators for guidance. He also noted, however, the strong presence of political agendas in the process, particularly in situations involving partisan legislative bodies.

Following is administrators’ likelihood to turn to their previous professional experience (26.0%) for eminent domain guidance. This is interesting because professional experience has strongly and consistently influenced dimensions of the dependent variables throughout this study, yet they appear to rely more on their peers or colleagues and municipal administrators and elected officials. This is likely due to the minimal professional experience of the administrators who participated in this study, so a smaller pool of participants would have the professional experience on which to rely. Also, one town manager explained that he and his staff try to “get ahead” of issues before they become significant, so it appears that for some issues, previous experience would not provide the most appropriate guidance.

Administrators responded that they were very likely to turn to neighboring municipalities (22.0%), which provides support for the need to conduct case-based research to offer guidelines, lessons learned, or benchmarks. About the same percentage of administrators reported that they were very likely to turn to professional organizations (26.0%) and professional conferences (22.0%). Evidence of the value of networking among professionals, this also speaks to academics’ perhaps making it a higher priority to disseminate research findings via professional conferences.

Finally, the administrators who participated in this research responded that they were about equally likely to turn to academic journal articles (16.0%), law review articles (19.0%), community organizations (14.0%), and interest groups (13.0%). If practitioners of public

administration are relying similarly on academic publications as they are on community organizations and interest groups for eminent domain, what does this tell us? Administrators are as likely to turn to the ivory tower as they are to the grassroots. A town manager described this relationship as “tempering authoritative information in a practical setting.”

Broader implications.

The soup to nuts examination of where administrators turn for eminent domain guidance provided incredible insights into their search for guidance in the process of eminent domain. These findings have resulted in several major findings and significant implications for practitioners and academics of administration. First, the dependent variables (i.e., *Kelo*, local ordinances, state statutes, and the Takings Clause) of where administrators most often refer when in need of clarification or information in dealing with issues related to eminent domain all appeared in the top responses of how likely administrators are to turn to them for guidance. This provides very strong support about my arguments regarding administrators’ eminent domain tunnel vision. Inclusion of the property owner’s perspective with these types of variables is a welcome surprise and is strongly tied to individual rights’ arguments made by administrators who participated in the interviews.

Second, administrators are twice as likely to turn to peers or colleagues in their search for eminent domain guidance than they are to turn to their direct supervisor. They are also equally likely to turn to municipal elected officials as they are to turn to municipal administrators. These findings present significant theoretically implications for the scholarship on hierarchical governance, administrative discretion, and the politics-administration dichotomy. Although the findings are only generalizable to a limited extent, they do provide insight into how administrators at different levels interact with one another. Further, they show support for the

absence, or minimization, at the very least, for the existence of the politics-administration dichotomy at the local government level. Decisions surrounding where an administrator will turn for guidance are a strong exercise of administrative discretion. The administrators who participated in this study have shown that top-down decision-making occurs less frequently than does bottom-up and that distinctions between career civil servants and elected or appointed officials as sources of guidance are virtually non-existent.

With regard to administrators' being more likely to turn to peers or colleagues than to their direct supervisor during their search for eminent domain guidance, this appears to be due to the level of professional experience of peers and colleagues, compared with direct supervisors. The former have more highly specialized skills, whereas supervisors have broader training and responsibilities. As one planner explained, technical questions would be directed to the planning commission of the municipality because of their targeted expertise in the area. During the interviews, administrators overwhelmingly supported the notion that there is no strict politics-administration dichotomy at the local level. Described as "working hand-in-hand" and "everybody's gotta work with everybody else," administrators who participated in this study reported few boundaries between elected officials and what one town manager called "professional administrators" regarding the blending of duties.

The general sentiment with regard to the relationship between elected officials and administrators at the local level is that it is reciprocal and "service-oriented," according to a planner. As several administrators explained, this relationship is the result of two primary factors. First, administrators know that their role is to implement the decisions of the elected officials, but both are comfortable in seeking and providing guidance on specific issues, sometimes whether such guidance is requested or not, as one administrator/selectman explained.

Second, if elected officials act in an irresponsible manner, or as “a maverick,” according to one selectman, they will not be re-elected. Coupled with the low turnover of administrators, even at the department-head level, this gives administrators a “we’ll be here long after you’re gone” perspective to some extent.

Third, administrators’ reliance on professional organizations and conferences during their search for guidance has implications of theoretical and practical import. Theoretically, the network literature could benefit from the insight provided by the findings of this study in that administrators view these networking opportunities about equal to their previous professional experiences. Given the consistent influence that administrators’ level of professional eminent domain experience has had on the dependent variables thus far, the value of professional networking becomes quite evident. Add to the discussion that administrators are more likely to rely on their peers, colleagues, and municipal administrators and elected officials than they are on their own professional experience. The role of professional experience and networking in administrators search for eminent domain guidance is filled with complexities.

Practically, administrators’ reliance on professional organizations and conferences provides insight into how academics may work more collaboratively with practitioners. Disseminating information through professional conferences is valued in academia, but it appears to play second fiddle to academic publications. The results of this study indicate that perhaps we should consider increasing our efforts to share the findings of our research with practitioners at conferences. A landuse attorney even specifically noted during the interview that a greater academic presence would be welcomed. Moreover, a number of administrators described a strong reliance on the Connecticut Council of Municipalities, as well as several other professional organizations, such as the International Right of Way Association and the American

Planning Association, of which one of the interview participants was a founding member of the Connecticut chapter. When asked to elaborate on their strong reliance on professional organizations, administrators who participated in the interview explained that the organizations provide much-needed practical guidance on particular situations.

Finally, the question of whether practitioners of public administration actually turn to academia for guidance is answered, at least in the context of eminent domain. While 16.0 percent of administrators responded that they were very likely to turn to academic journal articles in their search for guidance, 58.0 percent responded that it was quite unlikely that they would rely on our published research. As an applied field, public administration should take these findings seriously. Granted, academia has been making headway in this regard, but the administrators in this study have reported that it is not enough.

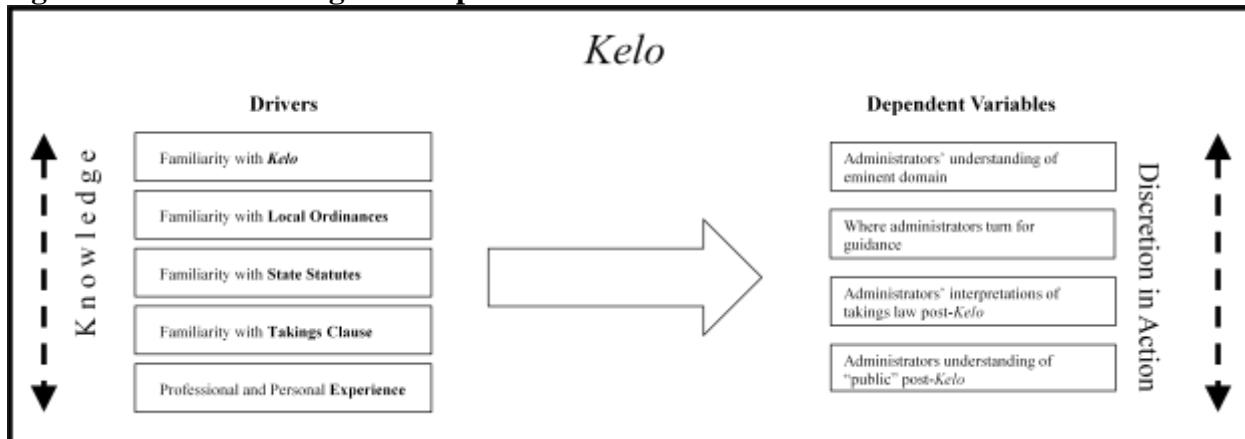
During the interviews, administrators responded that academic journals would be more useful, and that they would subsequently be more likely to turn to them for guidance, if they provided practical guidance. A frequent theme expressed by administrators during the interviews was how context-specific eminent domain is. When asked how academics could do a better job of making our research more relevant to their work, a number of administrators responded that case-studies would be particularly helpful. One town manager noted that “case studies bring in the gray areas...the politics...the intuitive areas” of the process of eminent domain and other complex issues. A councilman/planner described case studies as telling the “human story” and helping administrators “read between the lines.” A representative town meeting official stated that the value of academic journals could be heightened if it explored the “individual impact.” These findings are consistent with the recent trends in the field of public administration, particularly in light of the recent ASPA taskforce on the applied nature of the

MPA degree. Even more support is provided for the need to conduct case-study research on eminent domain is the paucity of empirical research on the subject in scholarship in general.

Chapter 6:
How do Administrators Interpret Takings Law post-*Kelo*, and How do Administrators
Understand “Public” post-*Kelo*?

After having descriptively explored the drivers (i.e., knowledge and experience) and dependent variables (i.e., discretion in action) in Chapter 4, the following analysis provides deeper insight into the relationships among these variables. The focus of this chapter is answering the following research questions: How do administrators interpret takings law post-*Kelo*, and how do administrators understand “public” post-*Kelo*? This analysis will explore the ways in which administrators’ interpretations and understanding of takings law and understanding of “public” are influenced by their knowledge and experience with eminent domain. This analysis is organized in the following manner: a summary table and related discussion of the relationships between the dependent variable and the drivers is included, which is then followed by more detailed analysis of the dimensions of the dependent variable and their relationships with the drivers.⁹⁷ Figure 1 is replicated below to highlight the conceptualization of these relationships.

Figure 1: Research Design Conceptualized



⁹⁷ No summary table is provided for the dependent variable regarding administrators’ interpretations of takings law post-*Kelo* because the relationships were absent significant relationships within the confines of the summary table.

Explanation of Statistical Measures Used

Before beginning the analysis of the relationships between the knowledge and experience drivers and the discretion in action dependent variables, it is important to provide foundational explanations of the types of statistical measures employed, as well as how these measures help to understand better the associations between the drivers and dependent variables. What types of variables are included in the cross-tab statistical analysis dictates the types of measures of association that may be used to test the strength of any association or relationship. Nominal-level variables have no order or rank to their values; for example, a nominal-level variable is gender or ethnicity. Ordinal-level variables differ because of the presence of order (i.e., the difference between two values has meaning). For example, an ordinal-level variable means that the responses are ranked, which means that we are able to say that a respondent agreed strongly, agreed, or disagreed with a particular statement. Moreover, there are also different types of statistical measures of association; the use of each of these is dependent on whether the variables are nominal or ordinal.⁹⁸

Asymmetrical measures of association provide an indication of the directional strength of a relationship, which provides support for causality, or that the driver is influencing the independent variable to some percent. In other words, these asymmetrical measures of association show how much you can improve the prediction of a dependent variable, such as the amount of agreement a respondent has with using eminent domain for economic development, for example, by knowing the respondent's knowledge of a driver, such as his or her familiarity with *Kelo*. For ordinal variables (e.g. administrators' familiarity with *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause in the tables below), this

⁹⁸ Pollock (2005) discusses in detail the measures of association that may be used on nominal- and ordinal-level variables; his guidelines were particularly useful in determining which measures of association were appropriate, as well as how to most accurately interpret their values.

asymmetrical measure of association is Somers' d and is included on the tables listed below as "D." Therefore, this is the most appropriate measure used in this study; its value shows the percent influence that the driver has on the dependent variable indicator. For nominal variables (e.g., whether a survey respondent was required to read *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause in the tables below), Lambda, the Uncertainty Coefficient, and Goodman-Kruskal tau are asymmetrical measures of association and indicate the range of percent that the driver influences the dependent variable indicator. These are included on the tables as " λ ," " τ ," and "UC." In the event that none of these asymmetrical measures of association were statistically significant, Cramer's V ("V") and the Contingency Coefficient ("C") were used, both of which are symmetrical measures of association. That is to say that these symmetrical measures of association simply show that the two variables are associated, but they do not show which variable influences the other.

Symmetrical measures of association provide an indication of the overall strength of a relationship, which lacks the ability to provide support for causality. All that these measures are able to tell us is the range of how strong the relationship is. For ordinal variables, these symmetrical measures are Kendall's tau-b and Kendall's tau-c, or " τ_b " and " τ_c " on the tables below; Gamma (" γ ") is another symmetrical measure of association used in the tables for ordinal-level variables. When used in conjunction with Somers' d, they provide further support for the strength of the relationship.

Finally, all of the statistical measures of association described above, except for V and C, are proportionate reduction in error (PRE) statistics. This means that knowing the value of these statistics for the drivers, or the range of their values, helps to reduce the error in predicting the value of the dependent variable indicator. Simply put, ordinal-level relationships facilitate the

use of the strongest statistical measures and are predominately relied upon in this study; nominal-level relationships are generally used to provide additional statistical support for the existence of ordinal-level relationships. Further, the most important measure is Somers' d because it provides an indication of how strongly the driver influences the dependent variable indicator, followed by the nominal-level measures.

Explanation of Statistical Table Organization and Structure

In Chapters 5 and 6, for each of the dependent variables, there is a corresponding table that includes the indicators for that variable (i.e., dimensions of each dependent variable), the relationship between each of the drivers and the dependent variable, the chi-square p-value (i.e., the percent that the relationship is likely to occur by chance; also called the statistical significance or confidence level), the measures of association values (i.e., the range of the strength of the relationship), and the confidence levels of the measures of association used. In other words, the first column called “Relationship with driver indicator” provides the name of the driver (e.g., familiarity with Kelo, read *Kelo*, eminent domain experience professionally). The second column, called “Range of strength of relationship and statistical significance (measures of association values and confidence levels),” includes the specific measures of association used to test the strength of the relationship between the driver (included in the previous column) and the dimension of the dependent variable (i.e., *Kelo*’s impact on eminent domain, *Kelo*’s impact on the number of takings). The numbers associated with each measure of association are the values for each measure, and their confidence levels are shown with asterisks; these numbers have already been converted to percentages to facilitate an easier understanding of the range of the strength of the relationship between the drivers and the dimensions of the dependent variable. Here, these values show the strength of the relationship between the driver

and dimension of the dependent variable. Pollock (2005) provides a helpful guide for interpreting the strength of a PRE statistic. For relationships in which the percentage of the statistical measure of association is less than 10 percent, the relationship is weak; relationships between 11 and 20 percent are moderate; relationships between 21 and 30 percent are moderately strong; and relationships greater than 30 percent are strong. He also notes that PRE statistical measures of association indicating a relationship greater than 50 percent are uncommon in social science data, particularly for individual-level survey data.

In the third column called “Percent relationship likely to occur by chance (chi-square p-value),” the confidence level of the relationship itself is included. This is most commonly described as the percent that the relationship between the driver and dimension of the dependent variable is likely to occur by chance. These numbers have also been converted to percentages. Therefore, the range of strength of relationship and statistical significance (i.e., the second column) tells us how strong the relationship is, in terms of how well knowing the value of the driver improves prediction of the value of the dimension of the dependent variable or provides support for the presence of a causal relationship between the two variables. The chi-square p-value (i.e., the third column), however, simply tells us how likely the relationship is to occur by chance; because this does not provide further information on the nature of the relationship, such as the strength of the relationship, it is complemented by the measures of association. The forth column, which is called “Total number of survey respondents,” provides the number of survey respondents included in each relationship between the driver and the dimension of the dependent variable.⁹⁹

⁹⁹ Only statistically significant relationships are included in the abbreviated versions of tables in-text. Every relationship between each of the dependent variable indicators and each of the drivers is included in the relevant Appendix. The full scope of the relationships between the drivers and the dependent variables necessitates including relationships that are not statistically significant or resulted in false positives. This shows the importance of

Administrators' Interpretations of Takings Law post-Kelo

The following analysis describes the findings of this research with regard to administrators' interpretations of takings law post-*Kelo*. Therefore, the relationships between the knowledge and experience drivers (i.e., professionalism) and the dimension of the dependent variable of administrators' interpretations (i.e., discretion in action) are discussed. These dimensions include: definition of public use, public purpose, public good, public interest, just compensation, and blight; agreement that public use is most similar to public good and that public purpose is most similar to public interest; and agreement that public use is most similar to public interest and that public purpose is most similar to public good. This discussion is inclusive of the survey results, survey open-ended responses, and elite interview responses.

Interpretations of definitions of public use, public purpose, public good, public interest, just compensation, and blight.

See Table 14a below for the statistical significance and strength of relationships between how administrators interpret takings law post-*Kelo*, with regard to definitions of public use, public purpose, public good, public interest, just compensation, and blight, and the knowledge and experience drivers; Appendix D3 includes the full results of the statistical analysis, which includes notations for relationships producing false positives and non-statistically significant relationships.

augmenting statistical analysis with a range of measures of association. A relationship that may appear to be significant may, in actuality, be weak to the point of being substantively insignificant, or a bit of both. Empty cells on the table indicate a non-significant relationship.

Table 14a: Statistical Significance and Strength of Relationships Between Drivers and Interpretations of Definitions of Public Use, Public Purpose, Public Good, Public Interest, Just Compensation, and Blight (Abbreviated)¹⁰⁰

DISCRETION IN ACTION: ADMINISTRATORS' INTERPRETATIONS OF TAKINGS LAW POST-KELO			
RELATIONSHIP WITH DRIVER INDICATOR	RANGE OF STRENGTH OF RELATIONSHIP AND STATISTICAL SIGNIFICANCE (<i>MEASURES OF ASSOCIATION VALUES AND CONFIDENCE LEVELS</i>)¹⁰¹)	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (<i>CHI-SQUARE P-VALUE</i>)¹⁰²	TOTAL NUMBER OF SURVEY RESPONDENTS
Definition of “Public Use” (Q #29)			
Definition of “Public Purpose” (Q #29)			
Definition of “Public Good” (Q #29)			
Definition of “Public Interest” (Q #29)			
+Applicability of Takings Clause	$\tau_b=13.2^*$; $\gamma=18.6^*$; $D=13.1^*$	1.0	n=119 (Q #17)
Definition of “Just Compensation” (Q #29)			
Definition of “Blight” (Q #29)			
Read Kelo	UC=6.1***	2.6	n=130 (Q #12)

¹⁰⁰ A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

¹⁰¹ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (*D* for ordinal-level variables; λ , τ , and *UC* for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; *V* and *C* for nominal-level variables) were used; these provide no support for causality. Asterisks are used to indicate the confidence levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

¹⁰² Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

Administrators' were provided definitions for six eminent domain-related phrases and asked to respond to how well each definition adequately covered their experiences with the phrase. These definitions were annotated from *Ballentine's Law Dictionary* (3rd edition); this was the only legal dictionary that included definitions for all six of the phrases.¹⁰³ According to Table 9c in Chapter 4, administrators participating in this study reported that the definition provided for public use most adequately covered their experiences, with 61.0 percent of administrators responding that the definition covered their experiences very well; 8.0 percent responded that it did so minimally or not at all. For public purpose, 46.0 percent of administrators responded that the definition was most accurate, compared with 13.0 percent at the opposite end of the continuum. With the public good definition, 40.0 percent of administrators responded that it was quite accurate; 15.0 percent responded that it was not. Similarly, 41.0 percent responded that the public interest definition was accurate, and 11.0 percent reported that it was not.¹⁰⁴ Administrators who responded that the Takings Clause was more applicable were more likely to respond that the definition was quite accurate (56.6%).¹⁰⁵ As shown in Table 9c in Chapter 4, for blight and just compensation, 51.0 and 50.0 percent of administrators agreed with the accuracy of the definitions, compared with 10.0 and 19.0 percent with minimal or no agreement. Administrators who read *Kelo* more frequently were more likely to respond that the definition adequately covered their experiences, but this was a very weak relationship.

¹⁰³ These definitions were located via LexisNexis Academic. See survey questions in Appendix B for definitions provided to survey participants.

¹⁰⁴ These percentages are shown in Table 9c in Chapter 4.

¹⁰⁵ All percentages included in Chapters 5 and 6 refer to the results of the cross-tab analysis unless otherwise noted. These tables are available for review.

Implications.

Overall, the drivers had no relationships with the dimensions of the dependent variables with regard to administrators' interpretations of public use, good, interest, and purpose, as well as just compensation and blight. Only administrators' responses regarding the applicability of the Takings Clause had a significant relationship with their interpretation of public interest. Here, how applicable administrators' reported the Takings Clause being to eminent domain in their locality appears to influence their interpretation of public interest by 13.1 percent (Somers' d [D] value for applicability of Takings Clause driver), a moderate relationship. The chi-square p-value of 1.0 indicates that the relationship is likely to occur by chance only 1 percent of the time. Knowing how applicable administrators find the Takings Clause helps to predict their interpretation of public interest between 13.2 and 18.6 percent (Kendall's tau-b [τ_b] and Gamma [γ] values for applicability of Takings Clause driver); the confidence levels of these measures of association, however, are much lower and may occur by chance up to 90 percent of the time. This is to say that confidence in the existence of a relationship between the variables is higher than confidence in the strength of the relationship. How frequently administrators reported reading *Kelo* appears to influence their interpretation of blight, but this relationship is very weak by 6.1 percent (Uncertainty Coefficient [UC] value for read *Kelo* driver). Further, the data in this relationship are nominal-level, so analysis is limited to weaker statistical measures.

Many administrators who participated in the survey and interview noted the difficulties associated with distinguishing between such nuanced phrases as public use, good, purpose, and interest. One landuse chair responded that there was no "bright-line test" for knowing the difference. A survey participant responded, "The importance of the definitions is the ways in which they relate to the specifics of the issue," a sentiment echoed by a number of

administrators. The problem, as one administrator aptly explained, is that distinctions are not objective, but they should not be subjective, either. During the process of interviewing a number of administrators, the general response to questions surrounding these phrases was that they acknowledge that there are distinctions, but because they are so difficult to make and are largely dependent on the particulars of a given situation, the administrators do not further investigate the distinctions unless they need to because of an immediate issue.

Broader implications.

Administrators' responded that the definition provided for public use most adequately covered their experiences surrounding the term, followed by blight, just compensation, public purpose, public interest, and public good. Further, the definition for just compensation included the highest percentage of administrators who responded that it covered their experiences with the term poorly or not at all. The just compensation definition resulted in far more open-ended survey responses of the six definitions, with the remaining definitions receiving only a handful of comments overall.

Consistent with previous discussions of administrators' interpretation and understanding of these key takings law terms were the open-ended comments noting the difficult of distinguishing between public use and public purpose, that public interest was difficult to understand, and things of that nature. For just compensation, however, administrators who responded to the survey's open-ended question generally supported a compensation packaged that extends beyond the fair-market value of the property being taken. This may include relocation assistance or moving expenses, a consideration that the taking is not voluntary, and should be "weighted to the individual property affected." To be sure, administrators are not advocating what one respondent described as "lavish compensation," but that property owners

should be more fully compensated than simply the market value of the property. Administrators who participated in the interviews echoed these sentiments, describing compensation packages that include many of these considerations, as previously discussed.

Between the survey's open-ended responses and the interviews, several significant findings have emerged with regard to administrators' interpretations of takings law post-*Kelo*. First, as a landuse chair described it, there is a balancing or weighing of two public goods, one of maintaining the public good in preserving an existing community and one of advancing the public good for the broader community. A number of administrators addressed this balancing test during the interviews, especially in terms of using eminent domain for economic development purposes. As one planner explained, both in the survey and during the interview, during the 1950s and 60s, eminent domain was used by municipal governments "ostensibly to eliminate urban blight." The result was the destruction of "viable" urban neighborhoods. He continued by stating that previous development projects that emphasized the "bottom-line screwed up the whole redevelopment process."

The problem of using eminent domain in this manner continues today, with some economic development projects clearing out entire neighborhoods "without linking projects to the existing urban fabric," as one survey respondent noted. Rather than rehabilitating existing neighborhoods, municipal plans redevelop entire communities. Administrators who participated in the interviews addressed the value of preserving communities by involving them in the development process to incorporate their ideas and to maintain the "intent of the neighborhood," both from the perspective of the community members and the municipal government.

This is not limited to distressed or blighted communities but also includes historic neighborhoods with a rich cultural history that administrators agreed should be preserved by

incorporating it into the development plan. Two examples offered by administrators during the interviews are particularly relevant here. One development director described a recent plan that involved the removal of older, unsuccessful businesses in order to bring a grocery store to the community. Despite the strong presence of private benefit associated with the taking, the community needed and wanted a grocery store and supported the redevelopment plan. In another example, a planner described the process of getting a CVS pharmacy store to locate in the central downtown district. The neighborhood was designed to promote foot traffic, so CVS was required to include parking in the back of the store, a plan that the community supported. Further, the landuse attorney and development director stressed the importance of incorporating existing businesses into the development plan; in the municipality's long history of redevelopment and eminent domain, nearly every business affected has relocated to another part of the municipality (with the financial support of the municipality). When businesses are a part of the community and are successful, the community at large benefits from having them remain a part of the community. As a landuse chair stated, it is important to "fight for community values" when developing plans and building public support for the project.

Second is the presence of a public need for public use or public purpose in the form of economic development that is based on the particularly circumstances of the community. The "need" for a development plan involving the use of eminent domain appears to be related to the circumstances of a community, largely in terms of available land. In more rural municipalities that have land available to develop, administrators responded that they would be hard-pressed to identify any need to take private property, given the abundance of open land. In more urban municipalities, however, the scarcity of land is more likely to necessitate the use of redevelopment, economic development, and eminent domain. As one survey respondent

described the process, “Economic development is critical to a city’s survival and the use of eminent domain is critical to older, developed, land-poor cities that need to ‘redevelop’ rather than build on new virgin lands.” Given the varying needs of rural and urban communities, the perspectives of their administrators are largely informed by the circumstances surrounding the municipality’s available resources.

Finally, the complex nature of administrators’ overwhelming support for a definition of public use that incorporates some degree of direct public use. Administrators who participated in the survey broadly supported a definition of public use that allows the public to have direct use of the developed or redeveloped land. What administrators disagree on, however, is what constitutes a public use. Though administrators generally identified roads as being a traditional public use, one first selectman questioned whether there was actually a need for road construction under the public use requirement. In response to those who assert that roads are a public use, she maintained what she described as a more “organic” approach. Why do roads need to be wider, more direct? she wondered, continuing that things are more “interesting” when they are not so well-planned. “That’s not how things grow well,” she concluded. Another administrator, who is a development director, characterized roads as being a public purpose, limiting public uses to schools and possibly parks. With regard to roads and railroads, one representative town meeting official described public use as “complete public use” and continued to assert that both roads and railroads for transportation met the burden of public use. Particularly with transportation development projects, administrators’ interpretation and understanding of what constitutes a public use remains blurry, despite efforts to clarify during the interviews.

Agreement with similarities among public use, public purpose, public good, and public interest.

See Table 14b below for the statistical significance and strength of relationships between how administrators interpret takings law post-*Kelo*, with regard to agreement of similarities between public use, public purpose, public good, and public interest, and the knowledge and experience drivers; Appendix D3 includes the full results of the statistical analysis, which includes notations for relationships producing false positives and non-statistically significant relationships.

Table 14b: Statistical Significance and Strength of Relationships Between Drivers and Agreement with Similarities Among Public Use, Public Purpose, Public Good, and Public Interest (Abbreviated)¹⁰⁶

DISCRETION IN ACTION: ADMINISTRATORS' INTERPRETATIONS OF TAKINGS LAW POST-KELO			
RELATIONSHIP WITH DRIVER INDICATOR	RANGE OF STRENGTH OF RELATIONSHIP AND STATISTICAL SIGNIFICANCE (<i>MEASURES OF ASSOCIATION VALUES AND CONFIDENCE LEVELS</i>)¹⁰⁷)	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (<i>CHI-SQUARE P-VALUE</i>)¹⁰⁸	TOTAL NUMBER OF SURVEY RESPONDENTS
Agree that “Public Use” is Most Similar to “Public Good” and that “Public Purpose” is Most Similar to “Public Interest” (Q #33)			
Read Kelo	<i>UC</i> =4.0*; τ =4.4**	5.5	n=122 (Q #12)
Required to read Takings Clause	τ =2.3**; <i>UC</i> =3.1**	3.1	n=120 (Q #13)
+Followed Kelo local news	τ_b =-13.5*; γ =-18.6*; <i>D</i> =-13.2*	2.6	n=121 (Q #15)
Agree that “Public Use” is Most Similar to “Public Interest” and that “Public Purpose” is Most Similar to “Public Good” (Q #33)			
Read Kelo	τ =3.2*; <i>UC</i> =5.1**	8.1	n=122 (Q #12)
Required to read local ordinance(s)	τ =2.8**; <i>UC</i> =3.9***	0.4	n=118 (Q #13)
State statute(s)	<i>UC</i> =2.3*	4.4	n=120
Takings Clause	<i>C</i> =23.2*; <i>V</i> =23.9*	6.8	n=120

Administrators participating in the survey were asked whether they agreed that public use and public good (and consequently public purpose and public interest) were most similar or

¹⁰⁶ A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

¹⁰⁷ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (*D* for ordinal-level variables; λ , τ , and *UC* for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; *V* and *C* for nominal-level variables) were used; these provide no support for causality. Asterisks are used to indicate the confidence levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

¹⁰⁸ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

whether they agreed that public use and public interest (and public purpose and public good) were most similar. As shown in Table 9c in Chapter 4, of the total administrators participating in the survey, 37.0 percent agreed only minimally or not at all with the first statement, and 20.0 percent agreed strongly. For the second statement, also shown in Table 9c, responses were more similar in terms of agreement, with 29.0 percent with minimal or no agreement, and 29.0 percent strongly agreeing. In both statements, 14.0 percent of total respondents did not respond.

Administrators who read *Kelo* more frequently were more likely to agree that use and good (and purpose and interest) were most similar, but not by much and absent strong agreement. A similar relationship exists with administrators required to read the Takings clause. Finally, administrators who reported following the case more closely in the local news were less likely to agree, with 8.9 percent strongly agreeing and 44.4 percent with little to no agreement. Administrators who read the case more frequently were more likely to agree that use and interest (and purpose and good) were most similar, but this relationship only extended to administrators who responded that they had read the case two to three times and not the most frequent readers. Those who were required to read local eminent domain ordinances were more likely to agree with the statement.

Implications.

Relationships between the drivers and the dimensions of the dependent variables regarding whether administrators agreed that public use and public good were most similar, and subsequently, that public purpose and public interest were most similar or whether public use and public interest were most similar, as well as public purpose and public good were generally weak and at low confidence levels. For administrators agreeing that use was most similar to good (and purpose was most similar to interest), there appears to be a strong negative

relationship to how closely the administrators reported following *Kelo* in the local news, with the driver appearing to moderately influence the dependent variable dimension by 13.2 percent in the negative (Somers' d value [D] for followed *Kelo* driver). Here, the confidence level of the strength of the relationship is a bit lower than most others included in the study and is only confident at the 90-percent interval. The existence of the relationship, however, is likely to occur by chance only 2.6 percent of the time, as evidenced by the chi-square p-value. The apparent influence of how frequently administrators' reported reading *Kelo* and whether they were required to read the Takings Clause is quite weak, as are the confidence levels of the measures of association.

For administrators agreeing that use was most similar to interest (and purpose was most similar to good), whether administrators responded that they were required to read local ordinances affecting eminent domain appears to be the strongest influence. Here, knowing whether an administrator was required to read local ordinances helps predict their agreement between 2.8 and 3.9 percent (Goodman and Kruskal's tau [τ] and Uncertainty Coefficient [UC] values for read *Kelo* driver). This relationship uses weaker statistical measures, but the confidence levels of Goodman and Kruskal's tau [τ] and Uncertainty Coefficient [UC] are quite high, and the relationship is likely to occur by chance less than 1 percent of the time (chi-square p-value of 0.4). It appears that being required to read the Takings Clause is moderately related to administrators' agreement (Contingency Coefficient [C] value of 23.2 and Cramer's V [V] value of 23.9 for required to read Takings Clause driver), but it is likely to occur by chance 6.8 percent of the time (chi-square value of 6.8), and the Contingency Coefficient [C] and Cramer's V [V] measures of association are statistically weak measures. Moreover, these two particular measures of association are not PRE, nor are they asymmetrical; which simply tells us that they

are association and provides no indication of directionality or possibility of causality. Weak relationships also exist with the frequency of reading the case and being required to read state statutes.

Open-ended survey responses provided a great deal of insight with regard to administrators' interpretations of how these phrases are related to one another. Most significantly, a number of administrators described the phrases as being "used more or less interchangeably by us lay people," "all relatively the same," and "one in the same." Moreover, these administrators also discussed the complexity of the phrases when put into practical use, noting that distinctions are more "nuanced" and important in the context of particular situations. One administrator stated, "I very much believe that these need to be better defined within government."

Broader implications.

Administrators who participated in this research appear to interpret public use as being most similar to public interest, as well as to interpret public purpose as being most similar to public good (rather than use and good and purpose and interest). In many ways, these findings have yielded far more questions than answers. Intuitively, I believed that public use and public good were most similar, and previous theoretical research on the subject appeared to provide some degree of support these claims based on the literature's interpretations of the phrases (see Olejarski, 2008b). Because none of the drivers significantly influenced these two dimensions of the dependent variable, it is difficult to assess substantial influences on administrators' interpretation and understanding of this relationship of takings law post-*Kelo*. On one hand, the questions were a bit confusing with all of the "publics," as a couple of survey participants noted. The same percentage of respondents who strongly agreed with this statement (29.0%) agreed

minimally or not at all (29.0%), as shown in Table 9c in Chapter 4. Combined with the alternative question's findings that 37.0 percent agreed minimally or not at all and only 20.0 percent strongly agreed, this provides further support that administrators generally interpret public use and public interest, as well as public purpose and public good, to be most similar.¹⁰⁹

Attempts were made to provide further explanation and clarification about the relationship between public use and public interest during interviews with Connecticut administrators. From the interviews, it appears that the more significant distinction is between public good and public interest, both of which are subject to more subjective interpretations, as shown by the survey results. As shown in Table 9c in Chapter 4, both public use and public purpose were more adequate in covering administrators' previous experiences with the phrases, at 61.0 and 46.0 percent. Yet the definitions for public good and public interest were lower, at 40.0 and 41.0 percent. Although administrators who participated in this research have varying interpretations of what constitutes a public use or purpose, as previously discussed, the general sense is that public purpose is more aligned with economic development or redevelopment and that public use is something tangible, such as roads, sewers, schools, and parks. In particular, these examples were frequently referenced in the open-ended survey responses.

With regard to public good and public interest, public interest appears to have broader implications when employed in a project that could potentially use eminent domain. As one development director noted, "You chose your words based on a project," meaning that distinctions between the phrases are critical during the phase of building public support for a project. Several administrators described public good as being something on a more individual level, whereas public interest signifies larger benefits to the community as a whole. To explain this distinction, one assessor noted, "What might be perceived as the public good might not

¹⁰⁹ See Table 9c in Chapter 4.

always be in the public interest.” As an example, this administrator explained how there was a public garden that residents of the municipality, largely residents of apartments, had maintained for about ten years. This garden was located in a public park on the boundary next to the baseball field. The “baseball people” wanted to move the garden to another location in the park to make way for additional parking for the baseball facilities. The “garden people,” however, were strongly opposed and quickly mobilized opposition forces. In the end, the garden prevailed. Here, additional parking for the baseball facilities was more in the public good than maintaining the location of the garden, but it was not in the broader public interest, as expressed by the community. According to the assessor, “It’s all a numbers game...it’s the squeaky wheel.” Because of the mobilization of the “garden people,” the municipality decided not to move the garden.

This example does well to demonstrate distinctions between public good and public interest because it highlights what many administrators described as the importance of the context of specific situations that could potentially involve the use of eminent domain. Administrators should be both responsible and responsive to the public will, and reminiscent of the framers’ values, sometimes administrators must be more responsible than responsive. This means that some situations require administrators to act in a manner inconsistent with the public will if those actions will serve a broader public interest. As one selectman aptly noted, “Objectively, people don’t always do what’s in their interest as a group.” Building on the findings regarding legal v. political authority, this presents significant findings in that administrators who participated in this study are generally more responsive to the public will. Administrators who described substantial experience with or knowledge of eminent domain explained that, while they would strongly consider the will of the public or lacking public

support for a particular project, they would likely support the project if it served a broader public interest. Even one selectman who expressed very strong anti-eminent domain sentiments stated, “You can’t be anti-business.”

Administrators’ Understanding of “Public” post-Kelo

The following analysis describes the findings of this research with regard to administrators’ understanding of “public” and “private” post-*Kelo*. Therefore, the relationships between the knowledge and experience drivers (i.e., professionalism) and the dimensions of the dependent variable of *Kelo*’s influence on administrators’ understanding (i.e., discretion in action) are discussed. These dimensions include: *Kelo*’s influence on the meaning of “public” in the context of eminent domain and *Kelo*’s influence on the meaning of “private” in the context of eminent domain. This discussion is inclusive of the survey results, survey open-ended responses, and elite interviews.

Summary of relationships between variables in administrators’ understanding of “public” post-Kelo.

Administrators’ familiarity with *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause, as well as their professional experience with eminent domain, proved to provide the strongest relationships with how they understand “public” post-*Kelo*.¹¹⁰ A summary table of these relationships is provided in Table 10c below.

¹¹⁰ After the initial statistical analysis of the relationships between the knowledge and experience drivers (i.e., professionalism) and the dimensions of three of the four dependent variables (i.e., discretion in action), administrators’ familiarity and professional experience with eminent domain emerged as providing the strongest insight. Therefore, summary tables showing these relationships are included and discussed for three of the dependent variables (i.e., administrators’ understanding of eminent domain, their search for guidance, and their understanding of “public” post-*Kelo*).

Table 10c: Summary Table of Relationships Between Variables in Administrators' Understanding of "Public" post-Kelo¹¹¹

DISCRETION IN ACTION: ADMINISTRATORS' UNDERSTANDING OF "PUBLIC" POST-KELO					
Driver	Familiarity with <i>Kelo</i> (Q #11)	Familiarity with Local Ordinance(s) (Q #11)	Familiarity with State Statute(s) (Q #11)	Familiarity with Takings Clause (Q #11)	Professional Experience with Eminent Domain (Q #18)
Dependent Variable					
<i>Kelo</i> 's influence on meaning of "public" (Q #35)	22.8% **	22.4% **	23.6% **		
<i>Kelo</i> 's influence on meaning of "private" (Q #35)	23.6% **	24.5% **	24.8% ***		15.4% *

¹¹¹ The statistical measure of association employed is Somers' d. This measure was used because it is an asymmetrical measure of association, as well as a proportionate reduction in error (PRE) statistic, which means that it provides support for a causal relationship in addition to helping to reduce the error in predicting the value of the dependent variable dimension. Asterisks are used to indicate the significance levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

Looking across the table in terms of the drivers' relationships with the dependent variables, we can see that administrators' familiarity with the case and local ordinances and state statutes affecting eminent domain produced similar relationships in terms of how *Kelo* appears to have influenced their understanding of the meaning of "public" and "private" in the context of eminent domain. The familiarity drivers appear to have a stronger relationship with administrators' understanding of the meaning of private than with public, but only slightly. Familiarity with *Kelo* appears to influence administrators' understanding of private by 23.6 percent, compared with 22.8 percent for public, both moderately strong associations. The likely influence of familiarity with local ordinances on private is 24.5 percent, compared with 22.4 percent for public; and state statutes on private is 24.8 percent and 23.6 percent for public, all moderately strong relationships. Previous professional experience with eminent domain only provides support for a causal relationship with administrators' understanding of private, with an apparent influence of 15.4 percent, showing a moderate relationship.

Kelo's influence on understanding of "public" and "private."

See Table 15 below for the statistical significance and strength of relationships between how administrators understand public and private in the context of eminent domain, with regard to *Kelo*'s influence on the meaning of each, and the knowledge and experience drivers; Appendix D4 includes the full results of the statistical analysis, which includes notations for relationships producing false positives and non-statistically significant relationships.

Table 15: Statistical Significance and Strength of Relationships Between Drivers and *Kelo*'s Influence on Understanding of “Public” and “Private” (Abbreviated)¹¹²

DISCRETION IN ACTION: ADMINISTRATORS' UNDERSTANDING OF “PUBLIC” POST- <i>KELO</i>			
RELATIONSHIP WITH DRIVER INDICATOR	RANGE OF STRENGTH OF RELATIONSHIP AND STATISTICAL SIGNIFICANCE (MEASURES OF ASSOCIATION VALUES AND CONFIDENCE LEVELS) ¹¹³	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE) ¹¹⁴	TOTAL NUMBER OF SURVEY RESPONDENTS
<i>Kelo's Influence on Meaning of “Public” in Eminent Domain (Q #35)</i>			
+Familiarity with <i>Kelo</i>	$\tau_b=21.0***; \gamma=30.3***; D=22.8***$	0.3	n=126 (Q #11)
Local ordinance(s)	$\tau_b=21.3***; \gamma=29.7***; D=22.4***$	2.4	n=123
State statute(s)	$\tau_b=23.2***; \gamma=31.1***; D=23.6***$	0.6	n=125
Read local ordinance(s)	$\tau=4.0**; UC=4.1**$	4.5	n=123 (Q #12)
State statute(s)	$\tau=2.9*; UC=3.5*$	9.6	n=125
Required to read <i>Kelo</i>	$UC=2.3*; \tau=2.7**$	3.5	n=125 (Q #13)
Local ordinance(s)	$UC=3.0**; \tau=3.3***$	2.2	n=122
State statute(s)	$UC=2.9***; \tau=3.3**$	1.7	n=124
+Followed <i>Kelo</i> local news	$\tau_b=20.3***; \gamma=27.4***; D=20.4***$	3.4	n=125 (Q #15)
National news	$\tau_c=25.3***; \gamma=37.9***; D=28.2***$	9.1	n=125
National media	$\tau_b=33.4***; \gamma=46.4***; D=35.4***$	0.0	n=124
+Familiarity with precedents	$\tau_b=19.0**; \gamma=28.7**; D=21.2**$	9.9	n=125 (Q #16)
<i>Kelo's Influence on Meaning of “Private” in Eminent Domain (Q #35)</i>			
+Familiarity with <i>Kelo</i>	$\tau_b=21.8***; \gamma=31.3***; D=23.6***$	0.4	n=128 (Q #11)
Local ordinance(s)	$\tau_b=23.2***; \gamma=32.6***; D=24.5***$	8.0	n=125

¹¹² A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

¹¹³ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (*D* for ordinal-level variables; λ , τ , and *UC* for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; *V* and *C* for nominal-level variables) were used; these provide no support for causality. Asterisks are used to indicate the confidence levels of the relationships: * significant at 0.1, **significant at 0.05, *** significant at 0.01.

¹¹⁴ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

State statute(s)	$\tau_b=24.4^{***}; \gamma=32.6^{***}, D=24.8^{***}$	0.2	n=127
Read <i>Kelo</i>	$UC=3.8^*; \tau=4.2^{**}$	3.8	n=128 (Q #12)
State statute(s)	$\tau=4.3; UC=4.9^{***}$	1.9	n=127
Required to read <i>Kelo</i>	$UC=2.5^*; \tau=2.9^{***}$	2.2	n=127 (Q #13)
Local ordinance(s)	$UC=2.3^*; \tau=2.4^{**}$	6.0	n=124
State statute(s)	$UC=3.5^{***}; \tau=3.9^{***}$	0.6	n=126
+Followed <i>Kelo</i> local news	$\tau_b=22.0^{***}; \gamma=29.4^{***}, D=22.1^{***}$	2.7	n=127 (Q #15)
National news	$\tau_c=25.7^{***}; \gamma=37.8^{***}, D=28.4^{***}$	2.9	n=127
National media	$\tau_b=32.3^{***}; \gamma=44.9^{***}, D=34.2^{***}$	0.0	n=126
+Familiarity with precedents	$\tau_b=14.0^*; \gamma=21.3^*; D=15.7^*$	8.3	n=126 (Q #16)
+ED experience professionally	$\tau_b=13.1^*; \gamma=20.9^*; D=15.4^*$	9.2	n=128 (Q #18)

Administrators' understanding of the meaning of "public" and "private" post-*Kelo* is most strongly related to the familiarity drivers, as well as the drivers surrounding how closely administrators reporting following *Kelo* in the local and national news and media. For both sets of drivers, their association with the dimensions of the dependent variable produced moderately strong to strong relationships. The drivers regarding administrators' having read or being required to read *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause resulted in much weaker associations.

Administrators who participated in this research reported that *Kelo* generally had a significant influence on their understanding of "public" and "private" in the context of eminent domain. As shown in Table 9d in Chapter 4, of total respondents to the survey, 29.0 percent reported that the case had a significant influence on their understanding of public and of private; 27.0 percent reported that the case had little to no influence on their understanding of public, and 25.0 percent respond with little to no influence on their understanding of private. Administrators who were most familiar with *Kelo* (42.3%), local ordinances (47.5%), and state statutes (54.7%) were most likely to respond that the case had a significant influence on their understanding of public in the context of eminent domain. Likewise, administrators who were most familiar with

Kelo (40.8%), local ordinances (44.4%), and state statutes (52.0%) were most likely to respond that the case significantly influenced their understanding of private in the context of eminent domain.

Further, administrators responses regarding how closely they followed the case in the local and national news and media was significantly related to the influence on their understanding. Administrators who reported following *Kelo* very closely in the local news (43.8%), national news (52.0%), and national media (52.0) were more likely to respond that the case had a significant influence on their understanding of public. Administrators who reported following the case very closely in the local news (43.8%), national news (52.0%), and national media (52.0) were more likely to respond that the case significantly influenced their understanding of private.

Implications.

Kelo's influence on administrators understanding of "public" and "private" in the context of eminent domain was most strongly related to how closely they reported following the case in the national media and national news, followed by local media. For both dimensions of the dependent variable, how closely administrators followed the case in the national media strongly influenced their understanding by 35.4 and 34.2 percent (Somers' d [D] values for followed *Kelo* in national media driver); both of these relationships are unlikely to occur by chance (chi-square p-value of 0.0 for both). Administrators' familiarity with state statutes affecting eminent domain also produced very strong potentially causal relationships with their understanding of public and private in the context of eminent domain, appearing to influence public by 23.6 percent and private by 24.8 percent (Somers' d [D] values for familiarity with state statutes driver), showing

moderately strong associations; both relationships show strong confidence levels of almost 100 percent (chi-square p-value of 0.6 and 0.2).

It appears that there are similar and consistent influences on how administrators described *Kelo*'s influence on their understanding of public and private in the context of eminent domain. Drivers associated with the following of the case in the news and media, as well as how familiar administrators reported being with the case and local ordinances and state statutes affecting eminent domain, strongly influenced their understanding. These findings were generally supported by the frequency of administrators' reading or being required to read these relevant materials. Administrators' previous professional experience with eminent domain only produced a relationship with their understanding of private, appearing to influence moderately their understanding by 15.4 percent (Somers' d [D] value for eminent domain experience driver).

Administrators who responded to open-ended questions generally lacked support for the decision in *Kelo*, though more supporters of the Court's ruling in the case responded to this question than to many others. These administrators noted that the case "correctly reaffirmed economic development as a legitimate public interest" and "states have taken a poor and politically expedient route of dealing with this issue." Several administrators who disagreed with the ruling maintained that the decision "extended eminent domain into areas never used before and certainly not where the framers of the Constitution intended" and that the influence of the case on understandings of public and private is that it "influenced [the administrator's] belief in the Constitution as written and in [the administrator's] awareness of people attempting to change its original meaning." Other comments included administrators stating that the case has "made public policy administrators and elected officials think twice before trying to take property by eminent domain" and "following the case and reading the opinions (majority and minority) made

a very good exercise.” Also important were responses noting that the quasi-public agency, the New London Development Corporation (NLDC), was given far too much power and that the New London project should have incorporated more properties into the project, rather than taking them.

Broader implications.

The most significant finding with regard to drivers influencing administrators understanding of “public” and “private” in the context of eminent domain is the role of previous professional experience. This is consistent with the study’s previous findings about administrators’ prior experience assuming an influential role in the process of implementing eminent domain. Further, as a number of interview participants explained, one of *Kelo*’s greatest influences on eminent domain and administrators’ understanding is that it “opened their eyes” to a new use of the power. The broader implications of this finding are related to the previously mentioned finding that administrators who participated in this study overwhelming disapprove of eminent domain for private development. It appears, then, that, while *Kelo* resulted in an increased awareness of using eminent domain for private benefit, administrators are unlikely to take advantage of this expanded use of the power.

Also significant is the influence that following *Kelo* has had on administrators understanding of public and private. Though frequently supporting relationships, how closely administrators reported following the case has not resulted in many strong relationships with the dependent variables. Here, however, how closely administrators reported following the case produced the strongest relationships with their understanding. This certainly helps explain some of the other insight revealed throughout this study with regard to administrators understanding. Although following the case lacked substantial contributions to the more specific dimensions of

dependent variables, the overall influence of this driver on administrators understanding is much broader. Because of the controversial nature of the case, administrators who participated in the interviews frequently described the importance of being informed on the circumstances surrounding *Kelo*.

Therefore, it appears that administrators understanding of more particular dimensions of the dependent variables, such as *Kelo*'s impact and changes and administrators' agreement and understanding were more strongly influenced by specific drivers, such as previous professional experience, familiarity, and frequency of reading or required to read. Their broader understanding of public and private, however, were strongly influenced by how closely they followed the case in the local and national media.

This finding provides further support for the aforementioned findings about administrators' strong use of administrative discretion in the implementation of eminent domain. Administrators are using their discretion in terms of where they are most likely to turn for guidance and how likely they are to refer to the case, local ordinances, state statutes, and the Takings clause, as well as other dimensions related to professionalism. When it comes down to understanding eminent domain and seeking guidance on relevant issues, administrators who participated in this study have primarily reported doing so in a manner consistent with the drivers that emerged from the literature on administrative discretion, professionalism, and implementing a legal case. Moreover, they are also using their discretion in a secondary manner to seek a better understanding through broader resources in the news and media. In other words, administrators who participated in this study turn largely to professional resources in their understanding and search for eminent domain guidance and supplement these resources with the added value of attention to the media.

During the interviews, administrators explained *Kelo*'s influence on their understanding of "public" and "private" in the context of eminent domain as being in the form of a heightened awareness. As one selectman stated, "Eminent domain is always going to be there...it's not going to meet its death." While eminent domain is not used frequently, as administrators explained in the survey and during the interviews, it is often discussed and is more likely to result in pre-condemnation strategies and negotiations. The changing character of publicness post-*Kelo* appears, from the interviews, to be the result of a heightened awareness of the need to guard private property rights from projects involving only an indirect public benefit that is secondary to private gain.

Because administrators described *Kelo*'s influence as opening their eyes to a new use of eminent domain, though it had always been there, their understanding of public has been largely shaped by their new understanding of private. As one representative town meeting official described, "Eminent domain shouldn't be considered if the money goes into private pockets." It appears, therefore, that administrators' understanding of public remains largely unchanged; rather, it is their understanding of the need to provide greater protections for publicness in light of the increased potential for private gain.

Chapter 7: Conclusions

This research sought to answer questions surrounding administrators' understanding of eminent domain, their search for guidance, their interpretations' of takings law post-*Kelo*, and their understanding of "public" post-*Kelo*. Central to the study is the relationship between administrators' knowledge and experience (i.e., professionalism) and their discretion in action (i.e., understanding and search for guidance) in the context of the implementation of a legal case, *Kelo*. The previous chapters have revealed a number of significant findings with regard to administrators' understanding and search for guidance and the role of knowledge and experience in that process. In the following discussion, I will highlight key findings of the study and the ways in which this research has contributed to the literature on the constitutional and procedural aspects of eminent domain, or what I have characterized as the intersection of two streams. The chapter concludes with a brief discussion of the ways this research relates to the theoretical foundations of the study, or administrative discretion, professionalism, and the implementation of a legal case. Potential areas for future research are also identified.

Summary of Key Findings

The preceding analyses of the relationships between administrators knowledge and experience (i.e., professionalism) and administrators' understanding, search for guidance, interpretations of takings law, and understanding of "public" (i.e., discretion in action) have revealed a number of significant theoretical and practical findings. From a broad perspective, the findings of this research show that administrators' knowledge and experience is strongly related to their discretion in action in the implementation of a legal case, or *Kelo*. Based largely on the interviews, I have developed a typology of administrators' understanding of eminent domain that includes four categories: place-makers, responders, changers-as-needed, and content

administrators. As one of the most significant findings of the study, this typology provides substantial insight into the process involved in administrators actually involved with eminent domain and the ways in which they employ their discretion when making decisions related to eminent domain.

Related to this typology are findings regarding administrators' agreement with eminent domain in general, as well as for economic and private development. Administrators with substantial professional experience with eminent domain overwhelmingly agree with it, similarly experienced administrators generally support eminent domain for economic development, and administrators overall are overwhelmingly unsupportive of eminent domain for private development. The complexity of eminent domain is evident in some degree of administrators over-estimating their understanding of eminent domain; in other words, administrators, both with substantial professional experience and those lacking such experience, report understanding it very well.

With regard to administrators' search for eminent domain guidance, this research indicates that they are most likely to turn to resources with which they are most familiar when in need of guidance. Support for this assertion is provided in two major findings. First, administrators' familiarity with relevant local ordinances and state statutes affecting eminent domain strongly influences their reference to each for guidance. Second, administrators reported being most likely to turn to these sources for guidance.

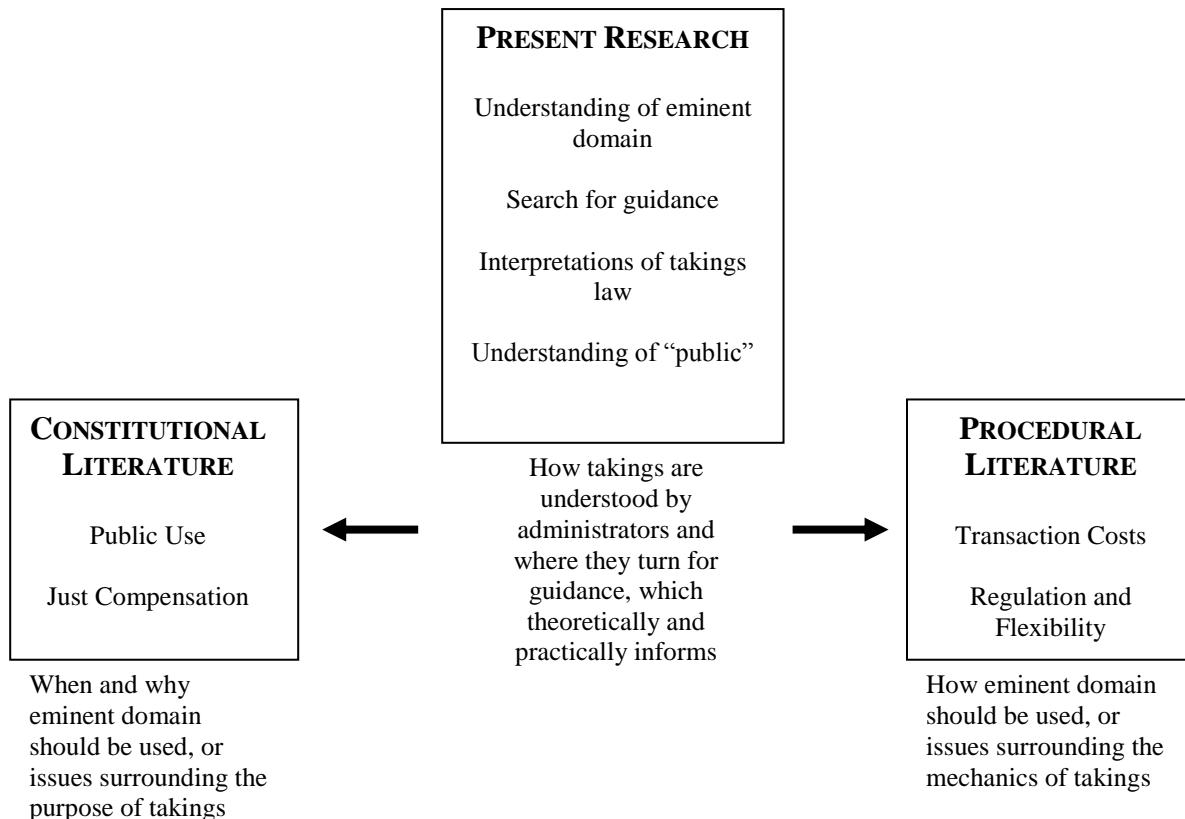
Administrators' interpretation and understanding of related eminent domain language (i.e., public use, public purpose, public good, public interest, just compensation, and blight) indicates an overwhelming support for a definition of public use that incorporates some degree of use by the public. Related findings also show that there is a strong relationship between public

use and public interest. Finally, administrators reported that *Kelo* significantly influenced their understanding of “public” and “private” in the context of eminent domain.

Theoretical Conclusions: Filling Gaps in Constitutional and Procedural Literature

Necessitated by gaps in the existing literature on eminent domain in the streams of constitutional and procedural scholarship, this research sought to inform theoretically and practically both the purpose and the mechanics of takings. To do so, this research was designed in such a manner as to study how the administrators actually involved in the process of eminent domain understand the concept, as well as the process involved in their search for guidance and their interpretations of takings law and understanding of “public.” Figure 2, which shows how this research intersects these two streams of the literature, is replicated below. The following analysis, then, explores the ways in which the findings of this research may inform research on public use and just compensation (i.e., primary concerns of the constitutional stream) and transaction costs and regulation v. flexibility (i.e., primary concerns of the procedural stream). In order to relate the findings back to the purposes of the present research, the research questions relevant to the concerns of the two streams of literature are replicated below for each section.

Figure 2: Intersection of Literature Streams



How administrators understand eminent domain.

The findings of this research are particularly important for this study's aims to gain deeper insight into how administrators understand eminent domain. Consistently, administrators' familiarity with *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause have produced strong associations and causal relationships with administrators' understanding of the ways in which the case impacted eminent domain, changed eminent domain dimensions, and affected their level of agreement and understanding. Previous professional experience has also shown to be strongly related to these indicators of the dependent variable of administrators' understanding of eminent domain. Although associations with the drivers of frequency of reading or being required to read were weaker as the result of the type of statistical measures that can be used, they were generally consistent as well.

How, then, may these findings inform the constitutional and procedural literature on eminent domain? Tables 2a and 2d, replicated below, identify the ways in which my research on administrators' understanding of eminent domain informs the constitutional literature with particular regard for broad issues concerning public use and, more narrowly, expansions of public use to include private benefits and reviews to the mechanics, or the process, of takings.

Table 2a: Intersection of Two Streams Applied

CONSTITUTIONAL LITERATURE- PUBLIC USE	
<i>Broad interpretation of public use as public purpose</i>	<i>Narrow review of the mechanics of takings</i>
Study Contributions:	
Administrators' understanding of eminent domain	
Where administrators turn for eminent domain guidance	
Administrators' understanding of "public"	

The findings of this study that surround administrators' general lack of agreement for takings for private development, as well as their support of eminent domain in general and takings for economic development, are especially relevant. The concerns echoed in this body of literature, namely that narrow judicial review and erosion of public use result in insufficient protections for property owners, may be somewhat alleviated by the findings of this study. Though judicial review of takings remains narrow, the public administrators who participated in this research overwhelmingly disagreed with eminent domain for private development.

Whether or not takings for private development should be made unconstitutional then is somewhat alleviated by administrators' orientations. The focus here shifts toward how to educate and inform administrators to better understand the problems associated with such takings instead. Granted, the findings of this study have limited generalizability, but the overwhelming disdain for private takings warrants some degree of re-direction in our scholarly inquiry.

Debating the constitutionality of private takings does little to accomplish the true concerns over narrow judicial review and expanding interpretations of public use to include private development. Aligned with this constitutional-public use stream of literature is the finding that administrators support eminent domain for economic development almost as strongly as they support eminent domain in general, but still do not favor eminent domain for private development. From the interviews, I believe that administrators consider economic development takings as encompassing a broader sense of community, compared with the narrow profits of private organizations associated with private takings.

Table 2d: Intersection of Two Streams Applied

PROCEDURAL LITERATURE- REGULATION AND FLEXIBILITY	
<i>Deference to administrators</i>	<i>Implementation of eminent domain</i>
	Study Contributions:
	Administrators' understanding of eminent domain
	Where administrators turn for eminent domain guidance

Related are the contributions of my findings to the procedural literature that focuses on regulation and flexibility with regard to the deference afforded administrators in implementing eminent domain. Major concerns of this stream of literature include the appropriate degree of local government's flexibility in using eminent domain and issues of transparency and accountability. As one interview participant noted, the state of Connecticut had substantial eminent domain protections in place at the time of the case, but the execution lacked good faith efforts (i.e., public hearings on key issues skirted the timeliness in which the public was given notice to participate). Moreover, several administrators described efforts to balance the costs and the benefits of the taking; if the public did not want to pay for the property, it should not be taken.

This sense was strongly tied to the transparency of the takings process overall. During the interviews, a number of administrators described the value and importance of building support within the community for the project that could potentially involve the use of eminent domain before the use of eminent domain was even put on the table. What really appears to be lacking from this body of literature is the fact that municipalities only, generally speaking, use eminent domain as a last resort. This study contributes the knowledge that the overall consensus is that administrators understand the severity of using the power, or right, as one interview participant called it, of eminent domain. They report that the decisions are not made without serious considerations of the need for the particular project and the properties likely to be taken.

Where administrators turn for eminent domain guidance.

The findings of this study have in many ways provided much-needed insight into administrators' search for eminent domain guidance. Strong causal relationships exist between how familiar administrators are with relevant eminent domain materials (i.e., *Kelo*, local ordinances and state statutes affecting eminent domain, and the Takings Clause) and where they turn for guidance. Overall, administrators are most likely to refer to the materials with which they are most familiar, which is supported by the strength of the simultaneous relationships with how frequently administrators have read or whether they were required to read them. Although this is generally a good sign that administrators are seeking guidance from significantly important documents, it is also cause for concern. In what I have described as administrators' eminent domain tunnel vision, the findings of this study suggest that administrators do not rely on the breadth of resources available to them during their search for guidance.

As with administrators' understanding of eminent domain, the frequency of previous professional experience is strongly influential on how often administrators are to these same

dimensions (i.e., reference to state statutes and local ordinances affecting eminent domain, *Kelo*, and the Takings Clause) of the dependent variable of administrators' search for eminent domain guidance. These associations have provided some of the strongest causal relationships in the entire study, with professional experience influencing reference to state statutes 56.1 percent at a 100-percent confidence level. The strength of professional experience's influence on the dependent variables of administrators' understanding and search for guidance has been frequent and incredibly high.

The findings of this study inform the constitutional and procedural literature on eminent domain in a number of ways. In Tables 2a and 2d, replicated above, and 2b and 2c, replicated below, I highlight the ways in which this research on administrators' search for eminent domain guidance relates to these two literature streams.

Debates in the constitutional literature on the public use requirement center on what types of takings should be allowed and the role of narrow judicial review. Questions surrounding takings for private or economic development have been addressed by administrators' understanding of eminent domain. Findings on administrators' search for guidance reveal that, though judicial review of takings is narrow, administrators do rely heavily on state and federal Supreme Court decisions for guidance. Therefore, while formal judicial review is absent, administrators reported that they are very likely to turn to the judiciary (e.g., state and federal Supreme Court decisions) for guidance on eminent domain, thus somewhat minimizing the literature's concerns over the lack of judicial review.

Table 2b: Intersection of Two Streams Applied

CONSTITUTIONAL LITERATURE- JUST COMPENSATION	
<i>Just compensation as key requirement with erosion of public use requirement</i>	<i>Alternative compensation models</i>
Study Contributions:	
Where administrators turn for eminent domain guidance	
Administrators' interpretations of takings law	

Constitutional literature on just compensation is largely concerned with its role as the only remaining protection for property owners, as well as the utility of alternative compensation models. Administrators who participated in the survey and interviews did not report the use of any specific alternative compensation models, but they frequently discussed the use of pre-condemnation strategies as related to just compensation. Because administrators generally use the power of eminent domain as a last resort, negotiations with property owners play a major role in the process of implementing eminent domain. As several explained, once eminent domain proceedings are initiated, the government's hands are tied, and they must pay the property owner just compensation. When property owners are willing to negotiate beforehand, the government pays above market value for the property, as well as provides relocation assistance and additional forms of compensation. One councilman even described a scenario in which an "unreasonable" relative of the home owner refused to settle and forced the government's hand; the administrator expressed serious regret at having to use eminent domain because the reduced compensation for the property owner was limited by law.

Table 2c: Intersection of Two Streams Applied

PROCEDURAL LITERATURE- TRANSACTION COSTS	
<i>Inefficiency of transaction costs</i>	<i>Balancing governmental goals</i>
Study Contributions:	
Where administrators turn for eminent domain guidance	
Administrators' interpretations of takings law	

Procedural literature on transaction costs associated with initiating eminent domain proceedings involves the balancing of governmental goals and the inefficiency of the costs. Survey responses and interviews were particularly informative to the concerns of this body of literature. Here, scholars assert that property owners should be paid just compensation above market value and that avoiding the use of eminent domain, in favor of pre-condemnation strategies, minimizes the transaction costs passed on to the public. Administrators participating in this research generally indicated that using eminent domain should be avoided where possible, with several different administrators, including a councilman and a land use committee member, describing situations involving “unreasonable” property owners as the cause for eminent domain. This fits with the concerns expressed in the literature that holdouts can slow the process, but that they are unable to stop it.

Prior to initiating eminent domain proceedings, administrators advocate the use of negotiations between municipal attorneys, external real estate firms, and elected officials and the property owners. Properties required for the project are assessed, and compensation is determined; this involves the aforementioned compensation package. The government then balances the costs and benefits of the taking, as well as whether or not the public wants to pay for the property. The decision to initiate eminent domain proceedings involves the balancing of the governmental goals to advance the public good, or to “shape itself in the public interest,” as one

redevelopment administrator aptly noted, while maintaining the “fabric” of the existing community, in the words of a planner.

Finally, procedural literature on regulation and flexibility debates include the deference to administrators in implementing eminent domain and whether the judiciary or legislature should provide oversight and to what degree. These issues have been largely addressed by the findings on administrators’ understanding, but further insight may be provided from their search for guidance as well. Administrators reported a strong reliance on the judiciary and the legislature when seeking eminent domain guidance. As was the case with the narrow role of judicial review, it matters more that administrators are seeking out both of these sources for guidance than which body of government is providing the review.

Administrators in this research reported a strong exercise of their discretion in terms of where they turn for guidance on eminent domain. As such, establishing formal review is less important in an environment of heightened discretion and informal authority. Administrators are generally unlikely to turn to hierarchical sources such as their direct supervisor for guidance and more likely to turn to peers, colleagues, administrators and elected officials in their government, and professional networks. This tells us that more important than debating the establishment of some formal standard of review is the notion of better informing the resources to which they do turn, such as peers and professional networks and other administrators. Evidence that administrators are turning to resources like ordinances and statutes, constitutions, and case law but not as likely to turn to these professional dimensions of conferences, organizations, etc. indicates that educating and developing these areas as resources should be a focus of future efforts.

Administrators' interpretations of takings Law post-Kelo.

The most significant finding about administrators' interpretations of takings law post-*Kelo* is that for administrators who participated in this study, public use means "use by the public." More than any of the other five definitions provided in the survey, the definition for public use, which begins with the language "use by the public...," most adequately covers their experiences with the phrase. It is clear from the surveys that the public use requirement of the Takings Clause requires some form of public use in the interpretations of administrators participating in this study. This is not to say, however, that all of the public must have direct use of the property taken for eminent domain, but rather that some portion of the public, or a public/quasi-public agency acting on its behalf, must have a right to its use.

While the findings of this study are limited to administrators in the state of Connecticut, the overwhelming agreement that public use requires some degree of use by the public is significant. This finding is consistent with the study's previous findings with regard to eminent domain being used as a last resort, the importance of building public support, and the value of pre-condemnation strategies to negotiate just compensation packages. Tables 2b and 2c, replicated above, describe the ways in which this research may inform constitutional and procedural eminent domain literature. Here, the chief concern of the constitutional literature on just compensation is that erosions in the public use requirement have left the just compensation requirement to be the only remaining protection for property owners, hence increasing the import of alternative compensation packages. Though the public use requirement may have been eroded by courts and legislatures into a broader public benefit or purpose, those administrators who must actually implement eminent domain proceedings believe there is a need for "use by the public." Given their healthy exercise of administrative discretion, in the confines of this study, it

appears that the Court's expanded interpretations of public use has not opened the eminent domain floodgates quite as wide as has been feared, indicating that *Kelo* has not changed the attitudes of public administrators with regard to using eminent domain more frequently.

Interview participants had particularly valuable insight in this regard. When asked whether eminent domain had always been such a controversial issue, or whether it had heightened post-*Kelo*, results were mixed. A landuse chair and a councilman asserted that the public was generally accepting of eminent domain and that *Kelo* had revealed a new use that administrators were unaware they had, thus prompting public outcry. On the other hand, a town manager stated that eminent domain had always been "blacklisted" and a "cultural no-no" as a municipal tool, though acknowledging that *Kelo* "earned legitimacy" for expanded takings. While differences persisted in terms of the disdain for eminent domain before *Kelo*, most administrators who were interviewed described being very cautious about using eminent domain for any reason. Local ordinances or charters are in place that require public hearings "to inform and to educate" the public, as well as mapped-out procedures for takings when the funding is the result of state or federal grants. For the administrators who participated in this research, eminent domain is a last resort, which requires a "justification that no alternative exists," and involves a balancing of governmental needs and the rights of property owners and the community.

Related is the import of these findings to the procedural literature on transaction costs, which is concerned about the inefficiency of just compensation costs and balancing governmental goals of advancing the public good and protecting private property rights. What is particularly relevant is administrators' agreement with the definition of just compensation provided in the survey. This definition comprehensively described just compensation as being just to both the property owner and the public having to pay for it. This fits well with the

balancing of government goals and previous findings about the public being willing to pay for the compensation package. Administrators who participated in this study generally interpreted just compensation as being primarily a legal requirement dictated by statutes, ordinances, and the courts. Therefore, once eminent domain proceedings were initiated, administrators' hands are tied with regard to the amount of compensation they may offer, as it is limited to market value. From the perspective of passing along transaction costs to the public from initiating eminent domain proceedings, the issue is really more about balancing goals than it is about transaction costs. To be sure, eminent domain proceedings are costly, but the administrators who participated in this research expressed greater concern over justly compensating property owners for the taking and their loss. The emphasis is on "paying for goodwill," as one administrator described it, rather than market value.

Administrators' understanding of "public" post-Kelo.

Table 2a, replicated above, identifies the ways in which this research may inform the constitutional public use literature with regard to administrators' understanding of "public." Major concerns of this stream center on broader interpretations of public use. Though these concerns have been previously addressed in great detail, the present findings regarding *Kelo*'s influence on administrators understanding of "public" and "private" in the context of eminent domain shed new light. In addition to the fact that administrators who participated in this research generally responded that the case influenced their understanding of public and private, the open-ended survey responses provide evidence that they are more supportive of traditional uses for eminent domain, rather than expanded uses offered by the *Kelo* case. Overall, administrators responded that they were unlikely to take advantage of broader uses for eminent domain now that the case had brought them to light.

That administrators' understanding of "public" and "private" in the context of eminent domain have been significantly influenced by *Kelo* is a very strong finding of this study. Further, when the aforementioned findings of this research are considered, it becomes quite evident that administrators who participated in this research are not taking advantage of the expanded uses of the power of eminent domain. They overwhelmingly disapprove of eminent domain for private development, as well as strongly support a notion of public use that requires some degree of use by the public. These results provide very strong support for the contention that eminent domain has not "run amok," as many scholars, property owners, and public administrators have feared.

Final Conclusions: Connection with Administrative Discretion, Professionalism, and Implementation of a Legal Case Literature

Administrators who participated in this study have reported a strong exercise of their administrative discretion in a manner that is generally supported by the literature on discretion, professionalism, and the implementation of a legal case. Because administrators who must implement eminent domain are afforded a great degree of deference in initiating such proceedings, it is important that their understanding of relevant issues encompasses multiple perspectives and considerations. When necessitated by a particular situation, these administrators seek guidance on eminent domain from professionally appropriate resources, such as local ordinances and state statutes affecting eminent domain, state and federal Constitutions and Supreme Court decisions, and a strong consideration for the perspective of property owners.

Concern remains, however, that administrators are only marginally seeking out further understanding and guidance when an issue related to eminent domain presents an immediate need, thus the tunnel vision they appear to be experiencing. Strong reliance on limited resources,

albeit professional foci supported by the literature, prohibits administrators from taking full advantage of the resources at their disposal. As evidenced by the typology on administrators' understanding, there is a general sense that eminent domain should be avoided at all costs by seeking alternative development plans and pre-condemnation negotiations and strategies. But, as one selectman aptly noted, "Eminent domain isn't going to meet its death."

This scholarship calls for public administrators to use their discretion in a manner involving an active, rather than passive, role in the implementation process based on expertise, competence, and good-faith efforts. Given these findings in light of the discretion, professionalism, and implementation literature, administrators would be well-advised to consider broadening the scope of their search for eminent domain guidance. Doing so may result in an enhanced understanding of issues related to eminent domain. Such might be broadly described as deeper insight into the balance between responsibility and responsiveness.

The erosion of the public use requirement and narrow role of review of takings do not appear to be such grave concerns as the relevant eminent domain literature suggests. Administrators who participated in this research support narrow interpretations of public use and generally do not require strong review by the judiciary or legislatures to keep their use of the power, or right, of eminent domain in check because they turn to these resources for guidance absent any formal requirement. Moreover, administrators participating in this research take seriously the just compensation requirement and frequently reported using alternative compensation models to pay appropriately property owners involved in takings. Related is administrators' use of pre-condemnation strategies to achieve a compensation that is just to both property owners and the public who must pay the compensation.

But is being responsible enough to ensure that administrators are fulfilling their role to serve the public interest? What role should responsiveness assume in the process? How might the two be balanced? The typology of administrators' understanding (i.e., place-makers, responders, changers-as-needed, and content administrators) shows administrators' attempts at balancing being responsible and responsive. Few administrators, namely the place-makers, expressed an ability, or willingness, to forgo responsiveness in the interest of being responsible. This speaks to the difficulties associated with the political v. legal authority of eminent domain and administrators' use of discretion and professionalism when faced with circumstances involving implementation in this context. In other words, this typology offers insight into the balance that administrators attempt to strike between improving the community via eminent domain, or being responsible, and responding to the public will, or responsiveness. The contributions of the typology also address broader issues of the use of administrative discretion in making decisions surrounding this balancing act.

The findings of this research indicate that administrators generally do balance the needs of the government, the property owners, and the public; it is a balancing of multiple public goods. As one administrator described it during our interview, eminent domain is a useful tool for communities to employ when "shaping themselves in the public interest." This notion truly speaks to what is simultaneously a power and a duty of administrators with regard to eminent domain. What is most important to take away from the findings of this research is that administrators do genuinely take seriously their role in public service, whether as a professional administrator or an elected official, both generally speaking and specifically in the context of eminent domain.

Future Research

Based on this research, two areas in particular have emerged as potential foci of future research, a comparative study of administrators' understanding and search for guidance and a more narrowly focused study of the importance of eminent domain requirements to administrators. The research design employed by the present research focused on public administrators in the state of Connecticut because it was the birthplace of *Kelo*, so assumptions were made regarding these administrators' likely heightened knowledge about the case, given their exposure to relevant information and geographic proximity. Now that we have begun to build our body of knowledge surrounding how administrators actually involved in the process of eminent domain understand the concept, it would be useful to study empirically administrators in other states for comparison. Further, the survey instrument used in the present research included a ranking question regarding the importance to administrators of eminent domain requirements of public use, public purpose, public good, public interest, just compensation, and blight. The confines of the Virginia Tech survey tool did not allow for inclusion of a mechanism to force survey respondents to rank the requirements, rendering the responses unusable in the data analysis; the follow-up open-ended question responses were, however, used in this study. Future empirical inquiry into administrators' understanding of eminent domain would do well to include such a question in the study to have a stronger understanding of the importance placed on these requirements by administrators.

Continuing this research is of the utmost importance for the theory and practice of public administration. The context of eminent domain presents a remarkable lens through which to study the relevance of constitutionalism to the level of local government, an uncommon occasion in the field. Further, the empirical study of administrators' understanding of eminent domain and

their search for guidance in the process provides public administration with opportunities to respond to fundamental questions surrounding administrative discretion in the implementation of policy.

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Appendix A: Eminent Domain Literature Themes

ADDRESSES KELO	HISTORICAL CONTEXT	PUBLIC USE	JUST COMPENSATION	BROADER CONSTITUTIONAL	PROPERTY VALUATION	TRANSACTION COSTS	INSTITUTIONAL OR LEGISLATIVE SHIFT	LEGISLATIVE DEFERENCE OR HEIGHTENED REVIEW	PUBLIC OUTCRY	MODEL OR PRACTICAL GUIDE
Bell & Parchomovsky (2006)	Ackerman & Yanich (1982)	Benedict (2000)	Bell & Parchomovsky (2001)	Ackerman & Yanich (1982)	Bauer (2003)	Bell & Parchomovsky (2003)	Calfee (2006)	Boudreaux (2005)	Benson (2008)	Accordino & Johnson (2000)
Bell & Parchomovsky (2007)	Adkisson (2002)	Bixby (1987)	Bell & Parchomovsky (2006)	Adkisson (2002)	Bell & Parchomovsky (2003)	Clauretie, Kuhn, & Schwer (2004)	Campbell (1977)	Calfee (2006)	Calfee (2006)	Bell & Parchomovsky (2001)
Blomley (2007)	Bell & Parchomovsky (2001)	Blomley (2007)	Bell & Parchomovsky (2007)	Bauer (2003)	Bell & Parchomovsky (2007)	Cox (2000)	Garnett (2007)	Christensen (2005)	Christensen (2005)	Bell & Parchomovsky (2006)
Cohen (2006)	Bixby (1987)	Christensen (2005)	Benedict (2000)	Bell & Parchomovsky (2001)	Bockrath (1974)	Cypher (2001)	Goodin (2007)	Coyne (1985)	Dorf (2005)	Beydoun & Pearlman (2001)
Cooper, Knotts, & Brennan (2008)	Blomley (2007)	Cohen (2006)	Benson (2005)	Benson (2008)	Clauretie, Kuhn, & Schwer (2004)	Cypher & Forgey (2003)	Lopez & Totah (2007)	Durham (1985)	Han (2008)	Clauretie, Kuhn, & Schwer (2004)
Dorf (2005)	Bockrath (1974)	Coyne (1985)	Blomley (2007)	Bixby (1987)	Cox (2000)	Esposto (1996)	Pena (2005)	Fawcett (1986)	Knapp (2008)	Cypher (2001)
Farjad (2007)	Campbell (1977)	Durham (1985)	Claeys (2003)	Blomley (2007)	Cypher (2001)	Gallagher (2005)	Sharp & Haider-Markel (2008)	Fee (2007)	Lerman (2008)	Cypher & Forgey (2003)
Fee (2007)	Christensen (2005)	Epstein (1982)	Clarke (1975)	Boudreaux (2005)	Cypher & Forgey (2003)	Miceli & Sirmans (2007)	Somin (2007)	Garnett (2003)	Lopez & Totah (2007)	Dahlstrom (1999)
Garnett (2007)	Claeys (2003)	Farjad (2007)	Cox (2000)	Claeys (2003)	Dunkelman (1986)	Munch (1976)		Garnett (2007)	Mahoney (2005)	Kendall & Ryan (1995)
Goodin (2007)	Clarke (1975)	Fawcett (1986)	Dunkelman (1986)	Cypher (2001)	Durham (1985)			Knapp (2008)	Main (2005)	Lehavi & Licht (2007)
Han (2008)	Cox (2000)	Fee (2007)	Durham (1985)	Farjad (2007)	Gallagher (2005)			Lehavi (2008)	Sharp & Haider-Markel (2008)	Margolis (1990)

Kelly (2006)	Coyne (1985)	Garnett (2003)	Esposito (1996)	Gallagher (2005)	Garnett (2006)			Mahoney (205)			Miceli & Minkler (1995)
Knapp (2008)	Cypher (2001)	Han (2008)	Epstein (1982)	Garnett (2003)	Goldberg, Merrill, & Unumb (1987)			Mansnerus (1983)			Munch (1976)
Lehavi (2008)	Durham (1985)	Harrington (2002)	Farjad (2007)	Garnett (2006)	Heller & Hills (2008)			Marles (1979)			Mushkatel & Nakhleh (1978)
Lehavi & Licht (2007)	Epstein (1982)	Kelly (2006)	Fawcett (1986)	Garnett (2007)	Margolis (1990)			Mihaly (2007)			Neimann & Shapiro (2008)
Lerman (2008)	Fawcett (1986)	Kennedy & Rosentraub (2000)	Fee (2007)	Goldberg, Merrill, & Unumb (1987)	Miceli & Minkler (1995)			Myers (1977)			Reilly (1992)
Lopez & Totah (2007)	Garnett (2007)	Knapp (2008)	Gallagher (2005)	Harrington (2002)	Moomaw (2001)			Reed (2008)			Sharp & Haider-Markel (2008)
Mahoney (2005)	Han (2008)	Mansnerus (1983)	Garnett (2006)	Hegyi (1979)	Munch (1976)			Serkin (2007)			Smith (2000)
Main (2005)	Hegyi (1979)	Marles (1979)	Goldberg, Merrill, & Unumb (1987)	Kelley (1976)	Neimann & Shapiro (2008)			Wilder & Stigter (1989)			Wilder & Stigter (1989)
Mathues (2006)	Kanner (1975)	Melton (1996)	Harrington (2002)	Kendall & Ryan (1995)	Reed (2008)						
Miceli & Sirmans (2007)	Kelley (1976)	Millspaugh (1982)	Kanner (1975)	Kennedy & Rosentraub (2000)	Reilly (1992)						
Reed (2008)	Knapp (2008)	Salkin & Lucero (2005)	Lehavi & Licht (2007)	Lerman (2008)	Zeiner (2007)						

Salkin & Lucero (2005)	Lehavi (2008)	Sandefur (2005)	Margolis (1990)	Moomaw (2001)					
Sandefur (2005)	Lehavi & Licht (2007)	Schultz (2006)	Marles (1979)	Mufson (1985)					
Schultz (2006)	Mahoney (2005)	Staley & Blair (2005)	Miceli & Minkler (1995)	Odabashian (2002)					
Serkin (2007)	Mansnerus (1983)	Stoebuck (1972)	Mihaly (2007)	Oswald (1995)					
Sharp & Haider-Markel (2008)	Melton (1996)		Moomaw (2001)	Salkin & Lucero (2005)					
Somin (2007)	Mihaly (2007)		Munch (1976)	Scheiber (1975a)					
Zeiner (2007)	Moomaw (2001)		Myers (1977)	Scheiber (1975b)					
	Mufson (1985)		Neimann & Shapiro (2008)	Wilder & Stigter (1989)					
	Mushkatel & Nakhleh (1978)		Odabashian (2002)	Zeiner (2007)					
	Odabashian (2002)		Oswald (1995)						
	Oswald (1995)		Parrino (1977)						
	Reed (2008)		Reed (2008)						
	Sandefur (2005)		Reilly (1992)						

Scheiber (1975a)		Serkin (2007)							
Scheiber (1975b)		Stoebuck (1972)							
Schultz (2006)		Trefzger & Colwell (1996)							
Staley & Blair (2005)									
Stoebuck (1972)									
Wilcox (1967)									
Zeiner (2007)									

Appendix B: Survey Questions

- | | Municipality | Judicial district | Other |
|--|--------------|-------------------|-------|
| 1. Which level of government best describes your current employment? | | | |
| 2. Which best describes the way in which you gained your current employment? | | | |
| a. Appointed | | | |
| b. Career civil servant | | | |
| c. Elected | | | |
| d. Other | | | |
| 3. Are you employed full-time or part-time? | | | |
| a. Full-time | | | |
| b. Part-time | | | |
| 4. In which department are you currently employed? | | | |
| a. Assessor | | | |
| b. Attorney | | | |
| c. Building | | | |
| d. Economic development | | | |
| e. Manager | | | |
| f. Mayor | | | |
| g. Planning | | | |
| h. Representative town meeting | | | |
| i. Town clerk | | | |
| j. Town council | | | |
| k. Zoning | | | |
| l. Board of alderman | | | |
| m. Board of assessment appeals | | | |
| n. Board of ethics | | | |
| o. Board of selectmen | | | |
| p. Housing authority | | | |
| q. Planning commission | | | |
| r. Zoning board of appeals | | | |
| s. Judicial district clerk's office | | | |
| t. Other: | | | |

5. Which of the following below describe your responsibilities in your current employment? *Check all that apply.*

- a. Administrative _____
- b. Budgeting or financial management _____
- c. Community outreach _____
- d. Conduct research _____
- e. Contracts _____

- f. Department head _____
- g. Develop programs _____
- h. Economic development _____
- i. Evaluate programs _____
- j. Grants _____

- k. Human resources _____
- l. Implement programs _____
- m. Legal _____
- n. Legislative work _____
- o. Lobby _____

- p. Manage programs _____
- q. Planning _____
- r. Policy or program analyst _____
- s. Supervisory responsibilities _____
- t. Other (*list as many as necessary*): _____

6. How long have you:

- a. Lived in Connecticut: < 6 months 6 months-1 year 2-3 years 4-5 years 6-10 years > 10 Years
- b. Held your current position: < 6 months 6 months-1 year 2-3 years 4-5 years 6-10 years > 10 Years
- c. Been employed by the government in any capacity: < 6 months 6 months-1 year 2-3 years 4-5 years 6-10 years > 10 Years

7. How would you describe your educational background in each of the following below?

- a. Highest level of education you have attained: HS diploma/equiv. Associate's Bachelor's Master's Doctoral
- b. Currently working on any degree: HS diploma/equiv. Associate's Bachelor's Master's Doctoral
- c. Completed non-degree-seeking coursework at the level of: Associate's Bachelor's Master's Doctoral

8. If you hold, are currently working on, or have completed non-degree-seeking coursework in a master's or doctoral degree, please list your field of study for each.
- Master's:
 - Doctoral:
9. If you have participated in any formal professional training related to eminent domain for your current position, please describe.
10. Please describe what motivated you for a career in public service. *Check all that apply.*
- Concern for the welfare of the community _____
 - Consider public service a civic duty _____
 - Desire to service the public interest _____
 - Financial security _____
 - Opportunity to champion public causes _____
 - Participation in the process of program or policy formation _____
 - Other (*list as many as necessary*): _____

11. How familiar are you with each of the following below? *Please respond on a scale of 1 to 6 (1=not at all; 6=very familiar).*

	<i>Not at all</i>			<i>Very familiar</i>		
	1	2	3	4	5	6
a. U.S. Supreme Court's ruling in <i>Kelo v. City of New London</i> :	1	2	3	4	5	6
b. Local ordinance(s) affecting eminent domain:	1	2	3	4	5	6
c. State statutes(s) affecting eminent domain:	1	2	3	4	5	6
d. Takings Clause of the 5 th Amendment of the U.S. Constitution :	1	2	3	4	5	6

12. How many times have you read each of the following below?

a. <i>Kelo</i> case:	Never	Once	2 to 3	4 to 5	More than 5
b. Local ordinance(s) affecting eminent domain:	Never	Once	2 to 3	4 to 5	More than 5
c. State statutes(s) affecting eminent domain:	Never	Once	2 to 3	4 to 5	More than 5
d. Takings Clause of the 5 th Amendment of the U.S. Constitution:	Never	Once	2 to 3	4 to 5	More than 5

13. Were you required to read each of the following below as part of your job responsibilities?

a. <i>Kelo</i> case:	Yes	No
b. Local ordinance(s) affecting eminent domain:	Yes	No
c. State statutes(s) affecting eminent domain:	Yes	No
d. Takings Clause of the 5 th Amendment of the U.S. Constitution:	Yes	No

14. How often do you refer to each of the following below for clarification or information when dealing with an issue related to eminent domain?
Please respond on a scale of 1 to 6 (1=not at all; 6=very often).

	<i>Not at all</i>			<i>Very often</i>		
	1	2	3	4	5	6
a. <i>Kelo</i> case:						
b. Local ordinance(s) affecting eminent domain:	1	2	3	4	5	6
c. State statute(s) affecting eminent domain:	1	2	3	4	5	6
d. Takings Clause of the 5 th Amendment of the U.S. Constitution:	1	2	3	4	5	6

15. How closely did you follow the *Kelo* case in each of the following below? *Please respond on a scale of 1 to 6 (1=not at all; 6=very closely).*

	<i>Not at all</i>			<i>Very closely</i>		
	1	2	3	4	5	6
a. Local newspapers:						
b. National newspapers:	1	2	3	4	5	6
c. Local media (excluding newspapers):	1	2	3	4	5	6
d. National media (excluding newspapers):	1	2	3	4	5	6

16. How familiar are you with the precedent cases discussed in the *Kelo* case? *Please respond on a scale of 1 to 6 (1=not at all; 6=very familiar).*

	<i>Not at all</i>			<i>Very familiar</i>		
	1	2	3	4	5	6

17. How applicable do you think the Takings Clause of the 5th Amendment of the U.S. Constitution is to eminent domain in your municipality or judicial district? *Please respond on a scale of 1 to 6 (1=not at all; 6=very applicable).*

	<i>Not at all</i>			<i>Very applicable</i>		
	1	2	3	4	5	6

18. How frequently have you been involved with eminent domain in each of the following below? *Please respond on a scale of 1 to 6 (1=not at all; 6=very frequently).*

	<i>Not at all</i>			<i>Very frequently</i>		
	1	2	3	4	5	6
a. Professionally:						
b. Personally:	1	2	3	4	5	6

19. How frequently does your municipality or judicial district contract with private firms on issues related to eminent domain? *Please respond on a scale of 1 to 6 (1=not at all; 6=very frequently).*

	<i>Not at all</i>			<i>Very frequently</i>			<i>Don't know</i>
	1	2	3	4	5	6	7

20. It would be very helpful if you could please describe the conditions under which your municipality or judicial district would likely contract with private firms on issues related to eminent domain (if applicable). *This information would be very helpful, but you may leave it blank if you wish.*

21. In general, how significantly has the *Kelo* case impacted the use of eminent domain in your municipality or judicial district? *Please respond on a scale of 1 to 6 (1=not at all; 6=very significantly).*

Not at all				Very significantly		Don't know
1	2	3	4	5	6	7

22. Based on your perception, in general, how significantly has the *Kelo* case impacted each of the following below in your municipality or judicial district? *Please respond on a scale of 1 to 6 (1=not at all; 6=very significantly).*

	Not at all				Very significantly		Don't know
	1	2	3	4	5	6	7
a. Number of takings:	1	2	3	4	5	6	7
b. Use of pre-condemnation strategies:	1	2	3	4	5	6	7
c. Contracting with private firms:	1	2	3	4	5	6	7
d. Amount of consideration you afford the local media:	1	2	3	4	5	6	7
e. Amount of consideration you afford the national media:	1	2	3	4	5	6	7

23. Based on your perception, in general, how have each of the following below changed in your municipality or judicial district since the *Kelo* case?

a. Number of takings:	No noticeable change	Decreased	Increased	Don't know
b. Use of pre-condemnation strategies:	No noticeable change	Decreased	Increased	Don't know
c. Contracting with private firms:	No noticeable change	Decreased	Increased	Don't know
d. Amount of consideration you afford the local media:	No noticeable change	Decreased	Increased	Don't know
e. Amount of consideration you afford the national media:	No noticeable change	Decreased	Increased	Don't know

24. It would be very helpful if you could please describe any pre-condemnation strategies that your municipality or judicial district uses more frequently since the *Kelo* case (if applicable). *This information would be very helpful, but you may leave it blank if you wish.*

25. How strongly do you agree with each of the following below? *Please respond on a scale of 1 to 6 (1=not at all; 6=strongly agree).*

	Not at all				Strongly agree	
	1	2	3	4	5	6
a. Use of eminent domain in general:	1	2	3	4	5	6
b. <i>Kelo</i> case:	1	2	3	4	5	6
c. Use of eminent domain for private development:	1	2	3	4	5	6
d. Use of eminent domain for economic development:	1	2	3	4	5	6

26. How well do you understand each of the following below? *Please respond on a scale of 1 to 6 (1=not at all; 6= very well).*

	<i>Not at all</i>			<i>Very well</i>		
a. Eminent domain:	1	2	3	4	5	6
b. <i>Kelo</i> case:	1	2	3	4	5	6

27. The following is a very detailed question, and I appreciate your efforts at answering it as thoroughly as possible. When you are in need of guidance on an issue related to eminent domain, how likely are you to turn to each of the following below for guidance? *Please respond on a scale of 1 to 6 (1=not at all; 6=very likely for each item a through ff).*

	<i>Not at all</i>			<i>Very likely</i>		
a. Academic journal articles (excluding law review articles):	1	2	3	4	5	6
b. Law review articles:	1	2	3	4	5	6
c. Local eminent domain ordinance(s):	1	2	3	4	5	6
d. State eminent domain statutes(s):	1	2	3	4	5	6
e. United States Constitution:	1	2	3	4	5	6
f. United States Supreme Court decisions:	1	2	3	4	5	6
g. State Constitution:	1	2	3	4	5	6
h. State court decisions:	1	2	3	4	5	6
i. Your previous professional experience:	1	2	3	4	5	6
j. Your previous personal experience:	1	2	3	4	5	6
k. Your direct supervisor:	1	2	3	4	5	6
l. Your peers or colleagues:	1	2	3	4	5	6
m. Administrator in your municipality:	1	2	3	4	5	6
n. Administrator in your judicial district:	1	2	3	4	5	6
o. Administrator in your state:	1	2	3	4	5	6
p. Elected official in your municipality:	1	2	3	4	5	6
q. Elected official in your state:	1	2	3	4	5	6
r. Property owner's perspective:	1	2	3	4	5	6
s. Family or friends:	1	2	3	4	5	6
t. Community organizations:	1	2	3	4	5	6
u. Interest groups:	1	2	3	4	5	6
v. Professional conferences:	1	2	3	4	5	6

w. Professional organizations:	1	2	3	4	5	6
x. Local newspapers:	1	2	3	4	5	6
y. National newspapers:	1	2	3	4	5	6
z. Local media (excluding newspapers):	1	2	3	4	5	6
aa. National media (excluding newspapers):	1	2	3	4	5	6
bb. Neighboring municipalities:	1	2	3	4	5	6
cc. Neighboring judicial districts:	1	2	3	4	5	6
dd. Neighboring states:	1	2	3	4	5	6
ee. Colleges or universities:	1	2	3	4	5	6
ff. Other (<i>list as many as necessary</i>):_____	1	2	3	4	5	6

28. Do you have any comments about your answers in Question 27 above? *This information would be very helpful, but you may leave it blank if you wish.*

29. How well does each of the following general definitions below adequately cover your experiences surrounding the terms? *Please respond on a scale of 1 to 6 (1=not at all; 6=very well).*

	<i>Not at all</i>			<i>Very well</i>		
a. “Public use” is generally described as “Use by the public involving a right on the part of the public, or some portion of it, or some public or quasi-public agency on behalf of the public”:	1	2	3	4	5	6
b. “Public purpose” is generally described as “A use of public property for any purpose must be an exclusive use by the public, open to all the people on a basis of equality to such extent as the capacity of the property admits, or an exclusive use by some public or quasi-public agency on behalf of the public”:	1	2	3	4	5	6
c. “Public good” is generally described as “A variety of interests... the primary social interests of safety, order, and morals”:	1	2	3	4	5	6
d. “Public interest” is generally described as “Matters of general right or interest...more than an interest on the part of many members of the public from the standpoint of an individual”:	1	2	3	4	5	6
e. “Just compensation” is generally described as “A compensation which is just, not merely to the individual whose property is taken, but to the public which is to pay for it”:	1	2	3	4	5	6

- f. “Blight” is generally described as “Deterioration of an area or building usually because of lack of maintenance or because of the presence of some external factor causing property values to decline”: 1 2 3 4 5 6
30. Do you have any comments about your answers in Question 29 above? *This information would be very helpful, but you may leave it blank if you wish.*
31. When you consider requirements for the use of eminent domain, which of the following are most important? *Please respond by RANKING each of the following below on a scale of 1 to 6 (1=least important; 6=most important). Please assign each number to only one choice below.*
- a. Public use _____
 - b. Public purpose _____
 - c. Public good _____
 - d. Public interest _____
 - e. Just compensation _____
 - f. Blight _____
32. Do you have any comments about your answers in Question 31 above? *This information would be very helpful, but you may leave it blank if you wish.*
33. How strongly do you agree with each of the following below? *Please respond on a scale of 1 to 6 (1=not at all; 6=strongly agree).*
- | | | |
|--|-------------------|-----------------------|
| | <i>Not at all</i> | <i>Strongly agree</i> |
|--|-------------------|-----------------------|
- a. “Public use” is most similar to “public good,” and “public purpose” is most similar to “public interest”: 1 2 3 4 5 6
 - b. “Public use” is most similar to “public interest,” and “public purpose” is most similar to “public good”: 1 2 3 4 5 6
34. Do you have any comments about your answers in Question 33 above? *This information would be very helpful, but you may leave it blank if you wish.*
35. How significantly has the *Kelo* case influenced each of the following below? *Please respond on a scale of 1 to 6 (1=not at all; 6=very significantly).*
- | | | |
|--|-------------------|---------------------------|
| | <i>Not at all</i> | <i>Very significantly</i> |
|--|-------------------|---------------------------|
- a. Your understanding of “public” in the context of eminent domain: 1 2 3 4 5 6
 - b. Your understanding of “private” in the context of eminent domain: 1 2 3 4 5 6

36. Do you have any comments about your answers in Question 35 above? *This information would be very helpful, but you may leave it blank if you wish.*

This information would be helpful, but you may leave it blank if you wish.

37. Please state the name of the municipality or judicial district in which you are currently employed.

38. What is your gender? Male Female

39. What is your age? 18-24 25-34 35-44 45-54 55-64 65 and above

40. With what ethnic background do you identify? White Black Hispanic Asian Other: _____

41. OPTIONAL INTERVIEW REQUEST QUESTION: If you are interested in participating in an interview with me, please include the following contact information. By completing this interview request question, you are agreeing that you have read the above information about my study and are consenting to participate in the interview part of the study.

- a. Name:
- b. Title:
- c. Municipality or judicial district:
- d. Email address:
- e. Phone number:

Appendix C: Sample Interview Questions

1. Could you describe the process of eminent domain in your municipality or judicial district?
2. Was eminent domain a controversial issue in your municipality or judicial district before *Kelo*?
3. How has *Kelo* influenced your understanding of “public” and “private” in the context of eminent domain? Alternatively, why hasn’t it?
4. In your experience, is there a difference between elected officials and public administrators at the local level?
5. What contributes to your understanding of eminent domain?
6. Where do you refer for clarification or information on issues related to eminent domain?
7. Could you describe the process of deciding to use eminent domain in your municipality or judicial district? What are the key issues?
8. What contributes to your familiarity with eminent domain (i.e., local ordinances, state statutes, the *Kelo* case, the Takings Clause, or alternative factors)?
9. What is the greatest factor in your understanding of eminent domain?
10. How would you proceed with a project that could potentially involve the use of eminent domain if the public were not supportive of the plan?
11. Elaborate on definitions of public use/good/purpose/interest?
12. Elaborate on agreement/disagreement with eminent domain for private development?
13. Why are you more likely to turn to peers and colleagues than your direct supervisor for guidance on issues related to eminent domain?
14. Elaborate on turning to academic journals, community organizations, property owner’s perspective, etc. for guidance on issues related to eminent domain?
15. Elaborate on strong reliance on local ordinances and state statutes when seeking guidance on eminent domain?
16. How are you so familiar with local ordinances and state statutes?
17. Elaborate on similarity between public use/interest and public good/purpose (or alternative).
18. Could you describe some of the pre-condemnation strategies used by your municipality?
19. Elaborate on your professional experience with eminent domain?
20. Could you describe the role of the judicial district in eminent domain?

Appendix D1: Statistical Significance and Strength of Relationships Between Drivers and How Administrators Understand Eminent Domain¹¹⁵

DISCRETION IN ACTION: HOW ADMINISTRATORS UNDERSTAND EMINENT DOMAIN				
DEPENDENT VARIABLE INDICATOR	RELATIONSHIP WITH DRIVER INDICATOR	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE) ¹¹⁶	RANGE OF STRENGTH OF RELATIONSHIP (MEASURES OF ASSOCIATION VALUES) ¹¹⁷	MEASURES OF ASSOCIATION USED AND STATISTICAL SIGNIFICANCE (CONFIDENCE LEVELS) ¹¹⁸
Kelo's Impact on Eminent Domain				
	+Familiarity with Kelo	<i>False positive</i>		
	Local ordinance(s)	<i>False positive</i>		
	State statute(s)	<i>False positive</i>		
	Takings Clause	<i>False positive</i>		
	Read Kelo	0.6	4.1-7.0%	$\tau=.011$; $UC=.001$
	Local ordinance(s)	0.1	6.4-7.5%	$\tau=.001$; $UC=.002$
	State statute(s)	1.8	3.0-5.6%	$\tau=.057$; $UC=.018$
	Takings Clause			
	Required to read Kelo	0.5	3.5-4.4	$\tau=.003$; $UC=.004$
	Local ordinance(s)	0.0	6.1-6.6	$\tau=.000$; $UC=.001$
	State statute(s)	0.0	4.9-7.0	$\tau=.000$; $UC=.000$
	Takings Clause	2.3	2.2-4.0	$\tau=.030$; $UC=.007$
	+Followed Kelo local news			
	National news			
	Local media	<i>False positive</i>		
	National media			
	+Familiarity with precedents			

¹¹⁵ A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

¹¹⁶ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

¹¹⁷ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (D for ordinal-level variables; λ , τ , and UC for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; V and C for nominal-level variables) were used; these provide no support for causality.

¹¹⁸ Value indicates the confidence level of the measures of association used to analyze the statistical significance of the relationship between the driver and the dimension of the dependent variable.

	+Applicability of Takings Clause			
	+ED experience professionally	0.0	11.6-23.6/16.8	$\tau_c=.044; \gamma=.063; D=.044$
	Personally			

	+Contracting out with private firms	0.0	18.0-43.1/31.4	$\tau_b=.000; \gamma=.002; D=.000$
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Kelo's Impact on Number of Takings

	+Familiarity with Kelo			
	Local ordinance(s)	<i>False positive</i>		
	State statute(s)	<i>False positive</i>		
	Takings Clause			
	Read Kelo	5.6	2.7-5.8	$\tau=.097; UC=.029$
	Local ordinance(s)	0.0	5.8-13.2	$\tau=.003; UC=.000$
	State statute(s)	0.0	3.9-9.1	$\tau=.026; UC=.001$
	Takings Clause			
	Required to read Kelo	5.2	1.8-4.1	$\tau=.062; UC=.014$
	Local ordinance(s)	0.0	3.8-8.1	$\tau=.006; UC=.001$
	State statute(s)	0.1	2.8-5.7	$\tau=.017; UC=.003$
	Takings Clause	9.3	3.1	$UC=.049$
	+Followed Kelo local news			
	National news			
	Local media			
	National media	<i>False positive</i>		
	+Familiarity with precedents	<i>False positive</i>		
	+Applicability of Takings Clause			
	+ED experience professionally	0.0	11.6-26.9/17.1	$\tau_c=.032; \gamma=.061; D=.032$
	Personally			
	+Contracting out with private firms	0.0	38.5-59.6/41.8	$\tau_b=.000; \gamma=.001; D=.000$

Kelo's Impact on Pre-condemnation Strategies

	+Familiarity with Kelo	<i>False positive</i>		
	Local ordinance(s)	<i>False positive</i>		
	State statute(s)	<i>False positive</i>		
	Takings Clause	<i>False positive</i>		
	Read Kelo	4.0	3.1-5.0	$\tau=.060; UC=.047$
	Local ordinance(s)	0.0	6.0-11.2	$\tau=.002; UC=.000$
	State statute(s)	0.3	3.8-6.9	$\tau=.025; UC=.005$
	Takings Clause	8.2	4.5	$UC=.096$
	Required to read Kelo	0.9	2.9-4.4	$\tau=.014; UC=.005$

	Local ordinance(s)	0.0	4.1-7.3	$\tau=.000; UC=.000$
	State statute(s)	0.1	3.1-5.1	$\tau=.012; UC=.004$
	Takings Clause	3.6	3.6	$UC=.013$
	+Followed <i>Kelo</i> local news			
	National news			
	Local media			
	National media			
	+Familiarity with precedents	<i>False positive</i>		
	+Applicability of Takings Clause	<i>False positive</i>		
	+ED experience professionally	0.0	11.3-23.9/16.6	$\tau_c=.041; \gamma=.074; D=.041$
	Personally			
	+Contracting out with private firms	0.0	38.0-57.8/43.4	$\tau_b=.000; \gamma=.000; D=.000$

Kelo's Impact on Contracting Out

	+Familiarity with <i>Kelo</i>	4.0	-16.7- -36.2/-19.6	$\tau_c=.004; \gamma=.006; D=.004$
	Local ordinance(s)	1.8	-13.5- -29.3/-15.3	$\tau_c=.023; \gamma=.024; D=.023$
	State statute(s)	<i>False positive</i>		
	Takings Clause			
	Read <i>Kelo</i>	0.3	3.6-9.3	$\tau=.046; UC=.001$
	Local ordinance(s)	0.2	8.9	$UC=.003$
	State statute(s)	0.8	7.5	$UC=.015$
	Takings Clause			
	Required to read <i>Kelo</i>			
	Local ordinance(s)	0.0	3.5-8.0	$\tau=.014; UC=.000$
	State statute(s)	0.8	1.8-4.9	$\tau=.089; UC=.015$
	Takings Clause			
	+Followed <i>Kelo</i> local news	8.7	-14.8- -29.7/-15.2	$\tau_c=.019; \gamma=.019; D=.019$
	National news			
	Local media			
	National media	<i>False positive</i>		
	+Familiarity with precedents	<i>False positive</i>		
	+Applicability of Takings Clause			
	+ED experience professionally	<i>False positive</i>		
	Personally			
	+Contracting out with private firms	0.0	40.9-61.5/42.7	$\tau_b=.000; \gamma=.001; D=.000$

Kelo's Impact on Consideration of Local Media

	+Familiarity with <i>Kelo</i>	6.3	-13.3- -27.4/-15.6	$\tau_c=.026; \gamma=.030; D=.026$
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	Local ordinance(s)	<i>False positive</i>		
	State statute(s)	<i>false positive</i>		
	Takings Clause			
	Read Kelo			
	Local ordinance(s)	0.0	3.3-8.8	$\tau=.056; UC=.002$
	State statute(s)	0.9	22.2-30.0	$V=.090; C=.090$
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)	0.2	2.9-5.2	$\tau=.016; UC=.006$
	State statute(s)	9.3	23.2-23.9	$V=.093; C=.093$
	Takings Clause			
	+Followed Kelo local news			
	National news			
	Local media	<i>False positive</i>		
	National media	<i>False positive</i>		
	+Familiarity with precedents	<i>False positive</i>		
	+Applicability of Takings Clause			
	+ED experience professionally	0.2	10.4-24.1/15.3	$\tau_c=.055; y=.095; D=.055$
	Personally			
	+Contracting out with private firms	0.0	33.9-53.0/37.1	$\tau_b=.000; y=.000; D=.000$

Kelo's Impact on Consideration of National Media				
	+Familiarity with Kelo	5.2	-16.0- -36.5/-18.7	$\tau_c=.005; y=.008; D=.005$
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo			
	Local ordinance(s)	9.8	6.3	$UC=.068$
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)	0.9	4.8	$UC=.020$
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news			
	National news			
	Local media			
	National media	<i>False positive</i>		
	+Familiarity with precedents	<i>False positive</i>		

	+Applicability of Takings Clause			
	+ED experience professionally	<i>False positive</i>		
	Personally			
	+Contracting out with private firms	0.1	33.3-53.9/33.9	$\tau_b=.000; \gamma=.002; D=.000$
<i>Kelo Changed Number of Takings</i>				
	Familiarity with Kelo	0.8	6-10.2	$\tau=.015; UC=.009$
	Local ordinance(s)	3.3	12.2	$UC=.002$
	State statute(s)	0.6	4.5-11.9	$\tau=.060; UC=.003$
	Takings Clause	3.4	7.1	$UC=.097$
	Read Kelo	0.1	3.2-9.7	$\tau=.064 UC=.002$
	Local ordinance(s)	0.4	3.4-9.1	$\tau=.056; UC=.004$
	State statute(s)	0.2	3.5-10.0	$\tau=.051; UC=.002$
	Takings Clause			
	Required to read Kelo	0.4	2.0-6.1	$\tau=.064; UC=.003$
	Local ordinance(s)	0.2	2.6-6.6	$\tau=.029; UC=.004$
	State statute(s)	0.2	2.5-7.4	$\tau=.039; UC=.003$
	Takings Clause			
	Followed Kelo local news	4.8	5.8-8.9	$\tau=.018; UC=.036$
	National news			
	Local media			
	National media			
	Familiarity with precedents			
	Applicability of Takings Clause			
	ED experience professionally	0.1	5.4-11.4	$\tau=.024; UC=.002$
	Personally			
	Contracting out with private firms	0.0	29.6-32.8	$\tau=.000; UC=.000$
<i>Kelo Changed Pre-condemnation Strategies</i>				
	Familiarity with Kelo	0.0	7.2-11.9	$\tau=.003; UC=.000$
	Local ordinance(s)	0.3	4.8-12.1	$\tau=.040; UC=.000$
	State statute(s)	0.0	6.5-14.8	$\tau=.007; UC=.000$
	Takings Clause	4.6	6.7	$UC=.044$
	Read Kelo	0.1	5.1-9.5	$\tau=.008; UC=.000$
	Local ordinance(s)	0.2	4.2-7.8	$\tau=.024; UC=.003$
	State statute(s)	1.6	2.9-5.9	$\tau=.082; UC=.020$
	Takings Clause	0.4	2.9-5.8	$\tau=.084; UC=.018$
	Required to read Kelo	0.0	4.3-7.1	$\tau=.004; UC=.000$
	Local ordinance(s)	0.4	2.7-4.5	$\tau=.024; UC=.009$

	State statute(s)	2.1	1.9-3.3	$\tau=.070; UC=.037$
	Takings Clause	5.9	1.7-3.8	$\tau=.074; UC=.015$
	Followed Kelo local news	6.3	4.8	$\tau=.041$
	National news			
	Local media	2.2	5.8-8.7	$\tau=.016; UC=.007$
	National media			
	Familiarity with precedents	0.5	4.0-8.1	$\tau=.085; UC=.010$
	Applicability of Takings Clause			
	ED experience professionally	0.0	8.9-13.1	$\tau=.001; UC=.000$
	Personally			
	Contracting out with private firms	0.0	19.9-20.1	$UC=.000; \tau=.000$

Kelo Changed Contracting Out

	Familiarity with Kelo	2.0	6.9-9.6	$\tau=.011; UC=.008$
	Local ordinance(s)	7.0	4.4-8.6	$\tau=.085; UC=.020$
	State statute(s)	5.2	8.8	$UC=.017$
	Takings Clause	7.1	7.8	$UC=.040$
	Read Kelo	7.3	4.9	$UC=.086$
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)	9.3	20.9-21.4	$C=.093; V=.093$
	State statute(s)			
	Takings Clause	9.8	3.2-4.4	$\tau=.023; UC=.028$
	Followed Kelo local news	7.3	6.0-7.4	$\tau=.025; UC=.069$
	National news			
	Local media			
	National media			
	Familiarity with precedents	5.3	7.3	$UC=.050$
	Applicability of Takings Clause			
	ED experience professionally	1.8	7.3	$UC=.048$
	Personally			
	Contracting out with private firms	0.0	22.3-24.4	$\lambda=.064; \tau=.000; UC=.000$

Kelo Changed Consideration of Local Media

	Familiarity with Kelo	0.9	6.1-8.0	$\tau=.018; UC=.013$
	Local ordinance(s)	4.1	7.4	$UC=.022$

	State statute(s)	0.9	8.8	<i>UC=.007</i>
	Takings Clause			
	Read Kelo			
	Local ordinance(s)			
	State statute(s)	5.9	4.2	<i>UC=.073</i>
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)	5.5	2.5	<i>UC=.067</i>
	State statute(s)			
	Takings Clause	5.1	3.8	<i>UC=.016</i>
	Followed Kelo local news	0.5	6.6-9.1	$\tau=.010$; <i>UC=.004</i>
	National news	7.0	5.4-6.9	$\tau=.073$; <i>UC=.063</i>
	Local media	5.7	5.9	<i>UC=.066</i>
	National media	4.6	6.0	<i>UC=.053</i>
	Familiarity with precedents	1.5	4.1-7.0	$\tau=.094$; <i>UC=.026</i>
	Applicability of Takings Clause			
	ED experience professionally	2.4	6.1	<i>UC=.059</i>
	Personally	4.7	19.2-26.2	<i>C=.047; V=.047</i>
	Contracting out with private firms	0.0	15.9-18.1	<i>UC=000; \tau=.000</i>

***Kelo* Changed Consideration of National Media**

	Familiarity with Kelo	2.0	8.2-9.2	$\tau=.006$; <i>UC=.015</i>
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo	<i>False positive</i>		
	Local ordinance(s)			
	State statute(s)			
	Takings Clause	7.3	3.5-5.0	$\tau=.034$; <i>UC=.019</i>
	Followed Kelo local news	2.1	8.6-8.9	$\tau=.005$; <i>UC=.015</i>
	National news	9.5	7.7	<i>UC=.072</i>
	Local media			
	National media			
	Familiarity with precedents	2.9	5.2-7.8	$\tau=.055$; <i>UC=.031</i>
	Applicability of Takings Clause			

	ED experience professionally			
	Personally	0.1	7.7	$UC=.005$
	Contracting out with private firms	0.7	16.8-19.5	$UC=.000; \tau=.000$

Agree with Eminent Domain in General

	+Familiarity with Kelo	3.2	24.2-34.7/26.0	$\tau_b=.001; \gamma=.001; D=.001$
	Local ordinance(s)			
	State statute(s)	2.9	25.7-34.7/25.9	$\tau_b=.001; \gamma=.001; D=.001$
	Takings Clause			
	Read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news	6.0	24.7-33.2/24.7	$\tau_b=.001; \gamma=.001; D=.001$
	National news	6.0	16.5-24.9/18.5	$\tau_c=.015; \gamma=.015; D=.015$
	Local media			
	National media			
	+Familiarity with precedents	7.0	17.9-27.4/20.5	$\tau_b=.018; \gamma=.018; D=.018$
	+Applicability of Takings Clause			
	+ED experience professionally	0.3	23.4-37.1/27.6	$\tau_b=.001; \gamma=.001; D=.001$
	Personally			
	+Contracting out with private firms			

Agree with Kelo

	+Familiarity with Kelo	6.2	17.1-27.6/17.2	$\tau_b=.026; \gamma=.022; D=.026$
	Local ordinance(s)			
	State statute(s)	8.1	22.2-33.2/20.8	$\tau_b=.004; \gamma=.004; D=.004$
	Takings Clause			
	Read Kelo	3.9	3.4-4.3	$\tau=.045; UC=.057$
	Local ordinance(s)			
	State statute(s)	1.1	4.6-4.9	$\tau=.009; UC=.028$
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)	3.4	2.8-3.3	$UC=.047; \tau=.010$

	Takings Clause			
	+Followed <i>Kelo</i> local news	<i>False positive</i>		
	National news			
	Local media			
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms	<i>False positive</i>		
Agree with Eminent Domain for Private Development				
	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)	5.7	19.9-39.2/14.1	$\tau_b=.009; y=.008; D=.009$
	Takings Clause			
	Read <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)	6.0	4.0	$\tau=.033$
	Takings Clause			
	Required to read <i>Kelo</i>			
	Local ordinance(s)	8.8	2.8	$\tau=.028$
	State statute(s)	5.1	3.8-4.0	$UC=.095; \tau=.006$
	Takings Clause	4.1	3.0-4.3	$\tau=.027; UC=.026$
	+Followed <i>Kelo</i> local news			
	National news			
	Local media			
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms	<i>False positive</i>		
Agree with Eminent Domain for Economic Development				
	+Familiarity with <i>Kelo</i>	6.7	18.1-27.8/18.8	$\tau_b=.015; y=.014; D=.015$
	Local ordinance(s)			
	State statute(s)	0.0	35.7-49.9/34.8	$\tau_b=.000; y=.000; D=.000$

	Takings Clause	3.2	24.6-34.6/24.1	$\tau_b=.001; y=.001; D=.001$
	Read Kelo	8.9	2.7	$\tau=.092$
	Local ordinance(s)			
	State statute(s)	4.9	3.6-3.7	$UC=.074; \tau=.023$
	Takings Clause			
	Required to read Kelo	3.6	2.2-2.3	$\tau=.038; UC=.079$
	Local ordinance(s)			
	State statute(s)	2.5	2.7-3.0	$UC=.032; \tau=.011$
	Takings Clause			
	+Followed Kelo local news			
	National news			
	Local media			
	National media			
	+Familiarity with precedents	0.2	23.8-36.0/26.2	$\tau_b=.002; y=.003; D=.002$
	+Applicability of Takings Clause			
	+ED experience professionally	0.3	28.3-43.5/32.5	$\tau_b=.000; y=.000; D=.000$
	Personally			
	+Contracting out with private firms	<i>False positive</i>		
Understand eminent domain				
	+Familiarity with Kelo	0.0	31.9-54.7/38.0	$\tau_c=.000; y=.000; D=.000$
	Local ordinance(s)	0.0	30.9-51.3/34.9	$\tau_c=.000; y=.000; D=.000$
	State statute(s)	0.0	40.1-62.2/42.0	$\tau_c=.000; y=.000; D=.000$
	Takings Clause	0.0	36.1-59.2/38.0	$\tau_c=.000; y=.000; D=.000$
	Read Kelo	7.9	4.5-5.6	$\tau=.011; UC=.017$
	Local ordinance(s)	2.5	4.6-5.8	$\tau=.010; UC=.022$
	State statute(s)	0.1	6.6-9.0	$\tau=.001; UC=.001$
	Takings Clause	1.1	5.4-7.6	$\tau=.004; UC=.002$
	Required to read Kelo	5.3	4.7-5.3	$\tau=.002; UC=.001$
	Local ordinance(s)			
	State statute(s)	0.0	7.0-7.9	$\tau=.000; UC=.000$
	Takings Clause	4.7	4.8-5.4	$\tau=.001; UC=.001$
	+Followed Kelo local news	0.1	27.1-42.8/27.8	$\tau_c=.000; y=.000; D=.000$
	National news	0.0	23.6-36.8/22.5	$\tau_b=.002; y=.002; D=.002$
	Local media	4.1	18.5-32.1/19.7	$\tau_c=.005; y=.005; D=.005$
	National media	3.4	20.7-39.9/23.9	$\tau_c=.001; y=.001; D=.001$
	+Familiarity with precedents	10.0	21.9-51.2/29.6	$\tau_c=.000; y=.000; D=.000$
	+Applicability of Takings Clause	8.1	23.8-41.0/25.5	$\tau_c=.000; y=.000; D=.000$
	+ED experience professionally	2.2	26.7-69.7/38.8	$\tau_c=.000; y=.000; D=.000$

	Personally			
	+Contracting out with private firms			
Understand Kelo				
	+Familiarity with Kelo	0.0	57.1-74.8/60.2	$\tau_b=.000; \gamma=.000; D=.000$
	Local ordinance(s)	0.3	24.5-34.3/25.1	$\tau_b=.000; \gamma=.000; D=.000$
	State statute(s)	0.0	39.6-52.5/38.9	$\tau_b=.000; \gamma=.000; D=.000$
	Takings Clause	0.0	43.7-58.2/43.2	$\tau_b=.000; \gamma=.000; D=.000$
	Read Kelo	0.3	6.5-6.7	$UC=.001; \tau=.000$
	Local ordinance(s)			
	State statute(s)	3.9	3.4-4.0	$\tau=.035; UC=.038$
	Takings Clause	0.0	7.4-9.4	$\tau=.000; UC=.000$
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news	0.0	48.4-62.9/47.3	$\tau_b=.000; \gamma=.000; D=.000$
	National news	0.0	26.6-42.0/29.7	$\tau_c=.000; \gamma=.000; D=.000$
	Local media	0.1	31.8-44.4/31.5	$\tau_b=.000; \gamma=.000; D=.000$
	National media	0.0	37.1-54.0/38.6	$\tau_b=.000; \gamma=.000; D=.000$
	+Familiarity with precedents	0.3	30.6-49.8/34.2	$\tau_b=.000; \gamma=.000; D=.000$
	+Applicability of Takings Clause	0.1	35.9-35.5	$\tau_b=.000; \gamma=.000; D=.000$
	+ED experience professionally	2.2	35.7-69.7/38.8	$\tau_b=.000; \gamma=.000; D=.000$
	Personally			
	+Contracting out with private firms			

Appendix D2: Statistical Significance and Strength of Relationships Between Drivers and Where Administrators Turn for Eminent Domain Guidance¹¹⁹

DISCRETION IN ACTION: WHERE ADMINISTRATORS TURN FOR EMINENT DOMAIN GUIDANCE				
DEPENDENT VARIABLE INDICATOR	RELATIONSHIP WITH DRIVER INDICATOR	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE) ¹²⁰	RANGE OF STRENGTH OF RELATIONSHIP (MEASURES OF ASSOCIATION VALUES) ¹²¹	MEASURES OF ASSOCIATION USED AND STATISTICAL SIGNIFICANCE (CONFIDENCE LEVELS) ¹²²
Refer to Kelo				
	+Familiarity with <i>Kelo</i>	0.5	36.7-85.4/28.0	$\tau_b=.000; \gamma=.000; D=.000$
	Local ordinance(s)	0.1	36.4-78.5/27.0	$\tau_b=.000; \gamma=.000; D=.000$
	State statute(s)	0.1	34.0-67.1/24.6	$\tau_b=.000; \gamma=.000; D=.000$
	Takings Clause	0.1	31.2-26.9/22.6	$\tau_b=.000; \gamma=.000; D=.000$
	Read <i>Kelo</i>	0.1	10.3-10.7	$UC=.002; \tau=.000$
	Local ordinance(s)	0.3	9.2-9.3	$UC=.010; \tau=.000$
	State statute(s)	0.1	9.0-10.5	$\tau=.000; UC=.004$
	Takings Clause	4.1	4.7	$\tau=.000$
	Required to read <i>Kelo</i>	3.2	2.8-3.7	$\tau=.025; UC=.067$
	Local ordinance(s)	0.5	6.0-6.2	$\tau=.001; UC=.014$
	State statute(s)	0.1	4.5-5.3	$\tau=.004; UC=.024$
	Takings Clause			
	+Followed <i>Kelo</i> local news	0.9	30.9-59.8/21.8	$\tau_b=.000; \gamma=.000; D=.000$
	National news			
	Local media	3.4	23.5-43.7/17.3	$\tau_b=.002; \gamma=.003; D=.002$
	National media			
	+Familiarity with precedents	0.0	43.3-70.9/35.0	$\tau_b=.000; \gamma=.000; D=.000$

¹¹⁹ A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

¹²⁰ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

¹²¹ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (*D* for ordinal-level variables; λ , τ , and *UC* for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; *V* and *C* for nominal-level variables) were used; these provide no support for causality.

¹²² Value indicates the confidence level of the measures of association used to analyze the statistical significance of the relationship between the driver and the dimension of the dependent variable.

	+Applicability of Takings Clause			
	+ED experience professionally	0.3	35.3-60.3/29.7	$\tau_b=.000; \gamma=.001; D=.000$
	Personally			

	+Contracting out with private firms	0.1	12.7-40.6/20.4	$\tau_c=.006; \gamma=.039; D=.006$
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Refer to Local Ordinance(s)

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)	0.0	40.4-69.7/35.3	$\tau_b=.000; \gamma=.000; D=.000$
	State statute(s)	0.2	35.5-58.3/29.8	$\tau_b=.000; \gamma=.000; D=.000$
	Takings Clause	0.2	26.2-41.7/22.1	$\tau_b=.001; \gamma=.001; D=.001$
	Read <i>Kelo</i>	0.5	7.1-8.2	$UC=.006; \tau=.001$
	Local ordinance(s)	0.0	16.4-20.5	$\lambda=.057; \tau=.000; UC=.000$
	State statute(s)	0.1	8.3-8.4	$UC=.003; \tau=.001$
	Takings Clause			
	Required to read <i>Kelo</i>	1.6	4.4-4.6	$UC=.010; \tau=.004$
	Local ordinance(s)	0.0	20.6-22.6	$UC=.000; \tau=.000$
	State statute(s)	0.0	8.8-11.0	$UC=.000; \tau=.000$
	Takings Clause	0.2	6.1	$UC=.001; \tau=.001$
	+Followed <i>Kelo</i> local news	4.8	20.7-34.1/17.1	$\tau_b=.007; \gamma=.006; D=.007$
	National news			
	Local media			
	National media	4.7	18.0-29.8/16.0	$\tau_b=.017; \gamma=.024; D=.021$
	+Familiarity with precedents	0.2	33.7-54.5/31.9	$\tau_b=.000; \gamma=.000; D=.000$
	+Applicability of Takings Clause			
	+ED experience professionally	0.0	40.2-63.2/39.4	$\tau_b=.000; \gamma=.000; D=.000$
	Personally			
	+Contracting out with private firms	0.1	15.0-39.6/24.2	$\tau_c=.004; \gamma=.016; D=.04$

Refer to State Statute(s)

	+Familiarity with <i>Kelo</i>	1.2	30.9-55.7/28.0	$\tau_b=.001; \gamma=.001; D=.001$
	Local ordinance(s)	0.0	39.1-68.1/34.6	$\tau_b=.000; \gamma=.000; D=.000$
	State statute(s)	0.0	52.5-81.4/44.9	$\tau_b=.000; \gamma=.000; D=.000$
	Takings Clause	0.1	38.1-57.8/32.6	$\tau_b=.000; \gamma=.000; D=.000$
	Read <i>Kelo</i>	0.0	10.7-13.0	$UC=.000; \tau=.000; \lambda=.054$
	Local ordinance(s)	0.0	19.9-21.3	$UC=.000; \lambda=.036; \tau=.000$
	State statute(s)	0.0	17.8-23.9	$UC=.000; \tau=.000; \lambda=.014$
	Takings Clause	0.3	8.0-9.5	$UC=.003; \tau=.000$
	Required to read <i>Kelo</i>	0.5	5.2-6.6	$UC=.003; \tau=.001$

	Local ordinance(s)	0.0	11.1-1.5	<i>UC=.000; τ=.000</i>
	State statute(s)	0.0	14.5-17.7	<i>UC=.000; τ=.000</i>
	Takings Clause	1.6	3.7-5.1	<i>UC=.020; τ=.002</i>
	+Followed <i>Kelo</i> local news	5.9	20.2-32.8/17.0	<i>τ_b=.007; γ=.006; D=.007</i>
	National news			
	Local media	<i>False positive</i>		
	National media			
	+Familiarity with precedents	0.0	39.2-60.1/37.9	<i>τ_b=.000; γ=.000; D=.000</i>
	+Applicability of Takings Clause	7.1	23.8-38.4/20.9	<i>τ_b=.003; γ=.002; D=.003</i>
	+ED experience professionally	0.0	56.3-78.4/56.1	<i>τ_b=.000; γ=.000; D=.000</i>
	Personally			
	+Contracting out with private firms	<i>False positive</i>		

Refer to Takings Clause

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)	5.1	28.7-68.2/19.9	<i>τ_b=.000; γ=.000; D=.000</i>
	State statute(s)	0.0	36.5-77.8/24.7	<i>τ_b=.000; γ=.000; D=.000</i>
	Takings Clause	0.3	38.4-73.2/26.1	<i>τ_b=.000; γ=.000; D=.000</i>
	Read <i>Kelo</i>	0.0	8.5-11.1	<i>τ=.001; UC=.001</i>
	Local ordinance(s)	0.2	8.9-13.6	<i>τ=.000; UC=.001</i>
	State statute(s)	0.1	9.2-15.0	<i>τ=.000; UC=.000</i>
	Takings Clause	0.0	20.4-25.5	<i>τ=.000; UC=.000</i>
	Required to read <i>Kelo</i>			
	Local ordinance(s)	0.5	3.6-6.6	<i>τ=.001; UC=.001</i>
	State statute(s)	1.1	3.7-5.8	<i>τ=.008; UC=.027</i>
	Takings Clause	4.0	4.5-4.9	<i>UC=.030; τ=.006</i>
	+Followed <i>Kelo</i> local news	4.8	23.5-47.0/15.8	<i>τ_b=.002; γ=.002; D=.002</i>
	National news			
	Local media			
	National media			
	+Familiarity with precedents	0.0	44.1-73.0/34.1	<i>τ_b=.000; γ=.000; D=.000</i>
	+Applicability of Takings Clause	0.9	30.4-63.6/21.5	<i>τ_b=.000; γ=.000; D=.000</i>
	+ED experience professionally	0.9	26.8-50.9/21.2	<i>τ_b=.001; γ=.010; D=.001</i>
	Personally	<i>False positive</i>		
	+Contracting out with private firms	<i>False positive</i>		

Turn to Academic Journal Articles for Guidance

+Familiarity with *Kelo*

	Local ordinance(s)		
	State statute(s)		
	Takings Clause	7.7	$\tau_b=.005; \gamma=.005; D=.003$
	Read Kelo	1.2	$\tau=.024; UC=.030$
	Local ordinance(s)		
	State statute(s)		
	Takings Clause	0.4	$\tau=.003; UC=.005$
	Required to read Kelo		
	Local ordinance(s)		
	State statute(s)		
	Takings Clause		
	+Followed Kelo local news		
	National news		
	Local media	3.9	22.2-33.7/20.1 $\tau_b=.003; \gamma=.004; D=.003$
	National media	2.7	25.2-37.5/23.7 $\tau_b=.001; \gamma=.002; D=.001$
	+Familiarity with precedents	1.4	$\tau_b=.017; \gamma=.028; D=.017$
	+Applicability of Takings Clause		
	+ED experience professionally		
	Personally		
	+Contracting out with private firms		

Turn to Law Review Articles for Guidance

	+Familiarity with Kelo	<i>False positive</i>	
	Local ordinance(s)		
	State statute(s)		
	Takings Clause	5.3	23.2-33.1/22.3 $\tau_b=.001; \gamma=.002; D=.001$
	Read Kelo		
	Local ordinance(s)	8.5	3.6-3.7 $\tau=.039; UC=.098$
	State statute(s)		
	Takings Clause		
	Required to read Kelo		
	Local ordinance(s)	1.5	3.2 $\tau=.011; UC=.024$
	State statute(s)		
	Takings Clause		
	+Followed Kelo local news	<i>False positive</i>	
	National news	6.0	18.5-30.0/20.6 $\tau_c=.006; \gamma=.009; D=.006$
	Local media	1.6	18.1-25.8/17.3 $\tau_b=.013; \gamma=.014; D=.016$
	National media	1.2	26.1-37.3/26.2 $\tau_b=.001; \gamma=.001; D=.001$
	+Familiarity with precedents	0.1	$\tau_b=.000; \gamma=.000; D=.000$

	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			

	+Contracting out with private firms	<i>False positive</i>		
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Turn to Local Eminent Domain Ordinance(s) for Guidance

	+Familiarity with Kelo	<i>False positive</i>		
	Local ordinance(s)	2.6	18.4-28.2/17.5	$\tau_b=.017; \gamma=.019; D=.017$
	State statute(s)	<i>False positive</i>		
	Takings Clause			

	Read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			

	Required to read Kelo			
	Local ordinance(s)	1.1	3.9-4.7	$\tau=.005; UC=.004$
	State statute(s)			
	Takings Clause			

	+Followed Kelo local news			
	National news			
	Local media	4.1	14.6-22.1/13.7	$\tau_b=.052; \gamma=.049; D=.052$
	National media			

	+Familiarity with precedents	<i>False positive</i>		
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			

	+Contracting out with private firms			
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Turn to State Eminent Domain Statute(s) for Guidance

	+Familiarity with Kelo			
	Local ordinance(s)			
	State statute(s)	<i>False positive</i>		
	Takings Clause			

	Read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			

	Required to read Kelo			
	Local ordinance(s)			

	State statute(s)			
	Takings Clause			
	+Followed <i>Kelo</i> local news			
	National news			
	Local media			
	National media			
	+Familiarity with precedents	<i>False positive</i>		
	+Applicability of Takings Clause	6.9	19.1-31.6/15.7	$\tau_b=.016; \gamma=.019; D=.016$
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			

Turn to United States Constitution for Guidance

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read <i>Kelo</i>	5.4	21.3-28.9	$V=.048; C=.048$
	Local ordinance(s)			
	State statute(s)			
	Takings Clause	0.6	5.2-14.5	$UC=.012; \tau=.003; \lambda=.037$
	Required to read <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed <i>Kelo</i> local news			
	National news			
	Local media			
	National media			
	+Familiarity with precedents	4.5	17.8-27.1/20.0	$\tau_b=.020; \gamma=.025; D=.020$
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			

Turn to United States Supreme Court Decisions for Guidance

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)			

	State statute(s)			
	Takings Clause			
	Read Kelo	6.4	2.9	$\tau=.077$
	Local ordinance(s)	3.5	4.0-4.2	$UC=.037; \tau=.013$
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news			
	National news			
	Local media			
	National media			
	+Familiarity with precedents	2.8	24.3-36.9/27.5	$\tau_b=.001; \gamma=.002; D=.001$
	+Applicability of Takings Clause	9.3	18.9-26.2/19.0	$\tau_b=.014; \gamma=.014; D=.014$
	+ED experience professionally			
	Personally	9.9	8.5-100.0	$\tau_c=.006; \gamma=.004; D=.006$
	+Contracting out with private firms			

Turn to State Constitution for Guidance

	+Familiarity with Kelo			
	Local ordinance(s)	<i>False positive</i>		
	State statute(s)			
	Takings Clause			
	Read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news			
	National news			
	Local media			
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause			

+ED experience professionally			
Personally			
+Contracting out with private firms			

Turn to State Supreme Court Decisions for Guidance

+Familiarity with <i>Kelo</i>			
Local ordinance(s)			
State statute(s)	7.8	25.6-36.2/24.3	$\tau_b=.000; y=.001; D=.000$
Takings Clause	1.3	26.3-37.6/25.1	$\tau_b=.000; y=.000; D=.000$
Read <i>Kelo</i>			
Local ordinance(s)	0.7	4.9-6.4	$\tau=.008; UC=.005$
State statute(s)			
Takings Clause	6.2	4.2-4.6	$UC=.053; \tau=.010$
Required to read <i>Kelo</i>			
Local ordinance(s)	9.1	2.3-2.6	$UC=.081; \tau=.025$
State statute(s)	8.4	2.2-2.4	$UC=.057; \tau=.040$
Takings Clause			
+Followed <i>Kelo</i> local news			
National news	<i>False positive</i>		
Local media			
National media			
+Familiarity with precedents	8.8	24.0-40.5/25.9	$\tau_b=.002; y=.002; D=.002$
+Applicability of Takings Clause			
+ED experience professionally	6.7	14.7-25.8/16.5	$\tau_b=.059; y=.054; D=.059$
Personally			
+Contracting out with private firms			

Turn to Professional Experience for Guidance

+Familiarity with <i>Kelo</i>	1.7	30.7-48.6/30.8	$\tau_b=.000; y=.000; D=.000$
Local ordinance(s)	8.0	23.9-36.6/23.2	$\tau_b=.001; y=.001; D=.001$
State statute(s)	0.0	39.4-56.6/37.1	$\tau_b=.000; y=.000; D=.000$
Takings Clause	0.0	39.7-55.3/37.4	$\tau_b=.000; y=.000; D=.000$
Read <i>Kelo</i>			
Local ordinance(s)	4.2	4.3-7.7	$UC=.053; \tau=.008; \lambda=.092$
State statute(s)	3.2	4.2-4.8	$UC=.070; \tau=.012$
Takings Clause	0.0	9.4-17.2	$UC=.000; \tau=.000; \lambda=.010$
	1.9	5.0-5.5	$UC=.027; \tau=.005$
Required to read <i>Kelo</i>			
Local ordinance(s)	2.9	2.8	$UC=.044$
State statute(s)			
	0.2	5.1-6.4	$UC=.003; \tau=.000$

	Takings Clause	4.7	24.2-25.0	C=.047; V=.047
	+Followed <i>Kelo</i> local news	4.3	28.6-41.0/26.6	$\tau_b=.000; \gamma=.000; D=.000$
	National news			
	Local media			
	National media			
	+Familiarity with precedents	0.1	28.3-42.9/30.1	$\tau_b=.000; \gamma=.001; D=.000$
	+Applicability of Takings Clause	1.1	31.3-45.4/30.3	$\tau_b=.000; \gamma=.000; D=.000$
	+ED experience professionally	0.0	43.3-64.0/48.0	$\tau_b=.000; \gamma=.000; D=.000$
	Personally			
	+Contracting out with private firms	<i>False positive</i>		

Turn to Personal Experience for Guidance

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)	<i>False positive</i>		
	State statute(s)			
	Takings Clause	<i>False positive</i>		
	Read <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed <i>Kelo</i> local news			
	National news			
	Local media	5.6	17.9-34.3/12.7	$\tau_b=.022; \gamma=.027; D=.022$
	National media	2.3	21.0-39.3/15.6	$\tau_b=.009; \gamma=.017; D=.009$
	+Familiarity with precedents	<i>False positive</i>		
	+Applicability of Takings Clause	3.3	20.0-40.7/14.4	$\tau_b=.012; \gamma=.009; D=.012$
	+ED experience professionally			
	Personally			
	+Contracting out with private firms	<i>False positive</i>		

Turn to Direct Supervisor for Guidance

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			

	Takings Clause			
	Read Kelo	9.7	20.3-27.6	V=.097; C=.097
	Local ordinance(s)			
	State statute(s)	5.0	3.1-5.8	$\tau=.096$; UC=.051
	Takings Clause	7.4	5.3	UC=.066
	Required to read Kelo	<i>False positive</i>		
	Local ordinance(s)			
	State statute(s)	<i>False positive</i>		
	Takings Clause	<i>False positive</i>		
	+Followed Kelo local news	<i>False positive</i>		
	National news			
	Local media			
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally	<i>False positive</i>		
	Personally			
	+Contracting out with private firms	<i>False positive</i>		
Turn to Peers or Colleagues for Guidance				
	+Familiarity with Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo			
	Local ordinance(s)	3.4	3.6-4.1	$\tau=.031$; UC=.032
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)	5.2	2.0-2.3	$\tau=.054$; UC=.047
	State statute(s)	0.2	3.7-4.6	$\tau=.003$; UC=.002
	Takings Clause	0.3	2.6-3.8	$\tau=.015$; UC=.005
	+Followed Kelo local news			
	National news			
	Local media			
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause	7.0	22.1-30.4/22.6	$\tau_b=.004$; $\gamma=.004$; D=.004
	+ED experience professionally			

	Personally			
	+Contracting out with private firms			

Turn to Municipal Administrator for Guidance

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)	7.6	3.6	<i>UC</i> =.075
	Takings Clause			
	Required to read <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)	3.8	1.7-3.2	$\tau=.096$; <i>UC</i> =.017
	Takings Clause			
	+Followed <i>Kelo</i> local news			
	National news			
	Local media			
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms	9.5	12.1-26.9/19.5	$\tau_c=.046$; $\gamma=.046$; <i>D</i> =.046

Turn to Judicial District Administrator for Guidance

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read <i>Kelo</i>	2.3	5.0-5.6	$\tau=.015$; <i>UC</i> =.053
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)	5.4	24.3-25.0	<i>C</i> =.054; <i>V</i> =.054
	Takings Clause			

	+Followed Kelo local news			
	National news	9.2	21.5-44.6/24.7	$\tau_c=.000; \gamma=.001; D=.000$
	Local media			
	National media	3.2	25.1-40.4/21.8	$\tau_b=.002; \gamma=.005; D=.002$
	+Familiarity with precedents	1.3	17.3-28.9/15.8	$\tau_b=.034; \gamma=.064; D=.034$
	+Applicability of Takings Clause	<i>False positive</i>		
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			

Turn to State Administrator for Guidance

	+Familiarity with Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo			
	Local ordinance(s)	7.2	3.9	$\tau=.033$
	State statute(s)			
	Takings Clause	1.2	3.1-4.4	$\tau=.080; UC=.057$
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause	8.2	2.5	<i>UC=.087</i>
	+Followed Kelo local news			
	National news	8.0	15.8-26.9/17.8	$\tau_c=.018; \gamma=.021; D=.018$
	Local media			
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally	4.9	7.3-68.4/55.5	$\tau_c=.009; \gamma=.042; D=.009$
	+Contracting out with private firms			

Turn to Municipal Elected Official for Guidance

	+Familiarity with Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			

	Read Kelo	5.6	3.6-12.2	$UC=.080; \tau=.017; \lambda=.030$
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news			
	National news			
	Local media			
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			

Turn to State Elected Official for Guidance

	+Familiarity with Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news			
	National news			
	Local media			
	National media	<i>False positive</i>		
	+Familiarity with precedents			
	+Applicability of Takings Clause	9.1	13.6-20.7/15.2	$\tau_b=.080; \gamma=.091; D=.080$
	+ED experience professionally			
	Personally			

	+Contracting out with private firms			
Turn to Property Owner's Perspective for Guidance				
	+Familiarity with Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news	4.7	19.9-27.3/19.4	$\tau_b=.007; \gamma=.007; D=.007$
	National news			
	Local media			
	National media	<i>False positive</i>		
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			
Turn to Family or Friends for Guidance				
	+Familiarity with Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)	9.3	1.8-4.4	$\tau=.091; UC=.031$
	Takings Clause			
	+Followed Kelo local news			

	National news			
	Local media	<i>False positive</i>		
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause	<i>False positive</i>		
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			

Turn to Community Organizations for Guidance

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause	7.4	24.2-34.5/23.1	$\tau_b=.002; y=.002; D=.002$
	Read Kelo	<i>False positive</i>		
	Local ordinance(s)	1.7	3.3-4.9	$\tau=.062; UC=.032$
	State statute(s)	0.1	4.5-6.4	$\tau=.014; UC=.005$
	Takings Clause	1.1	3.9-5.2	$\tau=.031; UC=.023$
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)	7.8	22.4-23.0	$C=.078; V=.078$
	Takings Clause			
	+Followed <i>Kelo</i> local news			
	National news			
	Local media	1.5	20.7-30.1/19.8	$\tau_b=.007; y=.007; D=.007$
	National media			
	+Familiarity with precedents	1.0	28.7-43.7/30.8	$\tau_b=.000; y=.001; D=.000$
	+Applicability of Takings Clause	2.1	13.7-20.0/13.1	$\tau_b=.088; y=.087; D=.088$
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			

Turn to Interest Groups for Guidance

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo			

	Local ordinance(s)		
	State statute(s)	9.7	20.3-27.6 <i>V=.097; C=.097</i>
	Takings Clause	7.8	4.5 <i>UC=.084</i>
	Required to read <i>Kelo</i>		
	Local ordinance(s)	8.9	2.0 <i>τ=.076</i>
	State statute(s)	2.4	3.3-3.5 <i>UC=.037; τ=.011</i>
	Takings Clause		
	+Followed <i>Kelo</i> local news		
	National news		
	Local media		
	National media		
	+Familiarity with precedents		
	+Applicability of Takings Clause		
	+ED experience professionally		
	Personally		
	+Contracting out with private firms		
Turn to Professional Conferences for Guidance			
	+Familiarity with <i>Kelo</i>		
	Local ordinance(s)		
	State statute(s)		
	Takings Clause		
	Read <i>Kelo</i>		
	Local ordinance(s)		
	State statute(s)		
	Takings Clause		
	Required to read <i>Kelo</i>		
	Local ordinance(s)		
	State statute(s)		
	Takings Clause		
	+Followed <i>Kelo</i> local news		
	National news		
	Local media		
	National media		
	+Familiarity with precedents		
	+Applicability of Takings Clause	<i>False positive</i>	
	+ED experience professionally		
	Personally		

	+Contracting out with private firms			
Turn to Professional Organizations for Guidance				
	+Familiarity with Kelo	5.2	17.4-25.2/18.5	$\tau_b=.020; \gamma=.020; D=.020$
	Local ordinance(s)			
	State statute(s)	6.0	16.7-22.9/16.9	$\tau_b=.026; \gamma=.025; D=.026$
	Takings Clause	4.0	20.0-27.2/20.3	$\tau_b=.008; \gamma=.008; D=.008$
	Read Kelo			
	Local ordinance(s)			
	State statute(s)	1.5	3.9-5.4	$\tau=.023; UC=.015$
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)	7.6	2.2-2.4	$\tau=.042; UC=.083$
	State statute(s)	2.7	2.2-2.9	$\tau=.038; UC=.037$
	Takings Clause			
	+Followed Kelo local news	6.5	16.5-22.2/16.5	$\tau_b=.029; \gamma=.029; D=.029$
	National news			
	Local media	2.5	23.3-31.8/23.8	$\tau_b=.002; \gamma=.002; D=.002$
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			
Turn to Local Newspapers for Guidance				
	+Familiarity with Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news			
	National news	0.3	22.0-41.6/24.6	$\tau_c=.001; \gamma=.001; D=.000$

	Local media	20.	29.3-45.5/25.5	$\tau_b=.000; \gamma=.000; D=.000$
	National media	0.0	29.2-45.5/26.6	$\tau_b=.000; \gamma=.001; D=.000$
	+Familiarity with precedents	1.5	20.9-33.8/20.2	$\tau_b=.008; \gamma=.014; D=.008$
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			

Turn to National Newspapers for Guidance

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)	7.4	5.8	<i>UC=.057</i>
	Takings Clause			
	Required to read <i>Kelo</i>	1.3	2.5-4.6	$\tau=.034; UC=.011$
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed <i>Kelo</i> local news			
	National news	3.8	22.6-50.2/25.5	$\tau_c=.000; \gamma=.001; D=.000$
	Local media	7.1	13.1-23.5/10.5	$\tau_b=.099; \gamma=.095; D=.099$
	National media	0.4	29.1-48.2/24.5	$\tau_b=.000; \gamma=.001; D=.000$
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally	<i>False positive</i>		
	Personally	<i>False positive</i>		
	+Contracting out with private firms			

Turn to Local Media for Guidance

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read <i>Kelo</i>			
	Local ordinance(s)			

	State statute(s)			
	Takings Clause			
	Required to read Kelo	6.2	2.6	$\tau=.046$
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news	7.4	19.8-35.1/15.4	$\tau_b=.011; \gamma=.010; D=.011$
	National news	4.3	17.5-41.6/19.7	$\tau_c=.002; \gamma=.004; D=.002$
	Local media			
	National media	0.4	28.0-47.3/23.0	$\tau_b=.000; \gamma=.001; D=.000$
	+Familiarity with precedents	5.9	20.7-35.9/18.2	$\tau_b=.011; \gamma=.023; D=.011$
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally	<i>False positive</i>		
	+Contracting out with private firms			

Turn to National Media for Guidance

	+Familiarity with Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo	3.9	5.5	$\tau=.013$
	Local ordinance(s)	<i>False positive</i>		
	State statute(s)			
	Takings Clause			
	Required to read Kelo	0.7	2.2-6.2	$\tau=.047; UC=.007$
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news			
	National news	0.8	17.2-53.0/19.5	$\tau_c=.001; \gamma=.003; D=.001$
	Local media	2.0	21.8-45.5/14.4	$\tau_b=.008; \gamma=.009; D=.008$
	National media	0.4	35.8-65.1/25.2	$\tau_b=.000; \gamma=.001; D=.000$
	+Familiarity with precedents	<i>False positive</i>		
	+Applicability of Takings Clause	<i>False positive</i>		
	+ED experience professionally	<i>False positive</i>		
	Personally			
	+Contracting out with private firms			

Turn to Neighboring Municipalities for Guidance

	+Familiarity with Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause	<i>False positive</i>		
	Read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause	2.3	3.4-4.	$\tau=.043$; $UC=.029$
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news			
	National news			
	Local media	<i>False positive</i>		
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			

Turn to Neighboring Judicial Districts for Guidance

	+Familiarity with Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo	<i>False positive</i>		
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)	1.8	2.3-3.2	$\tau=.046$; $UC=.039$
	Takings Clause			
	+Followed Kelo local news			
	National news			
	Local media			

	National media			
+Familiarity with precedents	0.0	23.8-35.8/24.7	$\tau_b=.002; \gamma=.006; D=.002$	
+Applicability of Takings Clause	4.5	-16.6- -23.9/-15.7	$\tau_b=.036; \gamma=.040 D=.036$	
+ED experience professionally				
Personally				
+Contracting out with private firms				

Turn to Neighboring States for Guidance

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)	<i>False positive</i>		
	State statute(s)			
	Takings Clause			
	 Read Kelo	4.5	5.3	<i>UC=.075</i>
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	 Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	 +Followed Kelo local news			
	National news			
	Local media	<i>False positive</i>		
	National media			
	 +Familiarity with precedents	2.8	18.5-31.5/17.0	$\tau_b=.019; \gamma=.036; D=.019$
	 +Applicability of Takings Clause			
	 +ED experience professionally			
	Personally			
	 +Contracting out with private firms			

Turn to Colleges or Universities for Guidance

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)	<i>False positive</i>		
	State statute(s)			
	Takings Clause			
	 Read Kelo			
	Local ordinance(s)			
	State statute(s)			

	Takings Clause			
	Required to read <i>Kelo</i>	8.7	2.9	<i>UC</i> =.080
	Local ordinance(s)	2.7	4.2	<i>UC</i> =.025
	State statute(s)			
	Takings Clause			
	+Followed <i>Kelo</i> local news			
	National news			
	Local media	2.4	22.7-37.0/18.9	$\tau_b=.004; \gamma=.006; D=.004$
	National media	<i>False positive</i>		
	+Familiarity with precedents	3.9	23.3-39.8/21.2	$\tau_b=.002; \gamma=.007; D=.002$
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			

Appendix D3: Statistical Significance and Strength of Relationships Between Drivers and Administrators' Interpretations of Takings Law post-Kelo¹²³

DISCRETION IN ACTION: ADMINISTRATORS' INTERPRETATIONS OF TAKINGS LAW POST-KELO				
DEPENDENT VARIABLE INDICATOR	RELATIONSHIP WITH DRIVER INDICATOR	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE)¹²⁴	RANGE OF STRENGTH OF RELATIONSHIP (MEASURES OF ASSOCIATION VALUES)¹²⁵	MEASURES OF ASSOCIATION USED AND STATISTICAL SIGNIFICANCE (CONFIDENCE LEVELS)¹²⁶
Definition of "Public Use"				
	+Familiarity with Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news			
	National news			
	Local media			
	National media			
	+Familiarity with precedents			

¹²³ A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

¹²⁴ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

¹²⁵ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (*D* for ordinal-level variables; λ , τ , and *UC* for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; *V* and *C* for nominal-level variables) were used; these provide no support for causality.

¹²⁶ Value indicates the confidence level of the measures of association used to analyze the statistical significance of the relationship between the driver and the dimension of the dependent variable.

	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			

	+Contracting out with private firms			
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Definition of “Public Purpose”

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed <i>Kelo</i> local news			
	National news	<i>False positive</i>		
	Local media	<i>False positive</i>		
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally	<i>False positive</i>		
	Personally			
	+Contracting out with private firms			

Definition of “Public Good”

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo			

	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed <i>Kelo</i> local news			
	National news			
	Local media			
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			

Definition of “Public Interest”

	+Familiarity with <i>Kelo</i>	<i>False positive</i>		
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed <i>Kelo</i> local news			
	National news			
	Local media			
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause	1.0	13.2-18.6/13.1	$\tau_b=.093; \gamma=.100; D=.093$
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			

Definition of “Just Compensation”

	+Familiarity with <i>Kelo</i>	<i>False positive</i>		
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	Local ordinance(s)	<i>False positive</i>		
	State statute(s)	<i>False positive</i>		
	Takings Clause			
	Read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news	<i>False positive</i>		
	National news			
	Local media	<i>False positive</i>		
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			
Definition of “Blight”				
	+Familiarity with Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Read Kelo	2.6	6.1	<i>UC=.08</i>
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	+Followed Kelo local news			
	National news			
	Local media	<i>False positive</i>		
	National media			
	+Familiarity with precedents	<i>False positive</i>		

	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			

**Agree that “Public Use” is Most Similar to “Public Good”
and that “Public Purpose” is Most Similar to “Public Interest”**

	+Familiarity with <i>Kelo</i>	<i>False positive</i>		
	Local ordinance(s)			
	State statute(s)	<i>False positive</i>		
	Takings Clause			
	Read <i>Kelo</i>	5.5	4.0-4.4	<i>UC=.074; τ=.018</i>
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			
	Required to read <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)			
	Takings Clause	3.1	2.3-3.1	<i>τ=.049; UC=.038</i>
	+Followed <i>Kelo</i> local news	2.6	-13.5- -18.6/-13.2	<i>τ_b=.081; γ=.081; D=.081</i>
	National news			
	Local media	<i>False positive</i>		
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			

**Agree that “Public Use” is Most Similar to “Public Interest”
and that “Public Purpose” is Most Similar to “Public Good”**

	+Familiarity with <i>Kelo</i>			
	Local ordinance(s)			
	State statute(s)	<i>False positive</i>		
	Takings Clause			
	Read <i>Kelo</i>	8.1	3.2-5.1	<i>τ=.077; UC=.017</i>
	Local ordinance(s)			
	State statute(s)			
	Takings Clause			

	Required to read <i>Kelo</i>			
	Local ordinance(s)	0.4	2.8-3.9	$\tau=.025$; $UC=.009$
	State statute(s)	4.4	2.3	$UC=.070$
	Takings Clause	6.8	23.2-23.9	$C=.068$; $V=.068$
	+Followed <i>Kelo</i> local news			
	National news			
	Local media			
	National media			
	+Familiarity with precedents			
	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			

Appendix D4: Statistical Significance and Strength of Relationships Between Drivers and Administrators' Understanding of "Public" post-Kelo¹²⁷

DISCRETION IN ACTION: ADMINISTRATORS' UNDERSTANDING OF "PUBLIC" POST-KELO				
DEPENDENT VARIABLE INDICATOR	RELATIONSHIP WITH DRIVER INDICATOR	PERCENT RELATIONSHIP LIKELY TO OCCUR BY CHANCE (CHI-SQUARE P-VALUE)¹²⁸	RANGE OF STRENGTH OF RELATIONSHIP (MEASURES OF ASSOCIATION VALUES)¹²⁹	MEASURES OF ASSOCIATION USED AND STATISTICAL SIGNIFICANCE (CONFIDENCE LEVELS)¹³⁰
Kelo's Influence on Meaning of "Public" in Eminent Domain				
	+Familiarity with Kelo	0.3	21.0-30.3/22.8	$\tau_b=.005; \gamma=.006; D=.005$
	Local ordinance(s)	2.4	21.3-29.7/22.4	$\tau_b=.006; \gamma=.007; D=.006$
	State statute(s)	0.6	23.2-31.1/23.6	$\tau_b=.002; \gamma=.002; D=.002$
	Takings Clause			
	Read Kelo			
	Local ordinance(s)	4.5	4.0-4.1	$\tau=.025; UC=.049$
	State statute(s)	9.6	2.9-3.5	$\tau=.093; UC=.080$
	Takings Clause			
	Required to read Kelo			
	Local ordinance(s)	3.5	2.3-2.7	$UC=.073; \tau=.018$
	State statute(s)	2.2	3.0-3.3	$UC=.021; \tau=.008$
	Takings Clause			
	Followed Kelo local news			
	National news	9.1	20.3-27.4/20.4	$\tau_b=.007; \gamma=.008; D=.007$
	Local media			
	National media	0.0	25.3-37.9/28.2	$\tau_c=.001; \gamma=.001; D=.001$
	+Familiarity with precedents	9.9	33.4-46.4/35.4	$\tau_b=.000; \gamma=.000; D=.000$
				$\tau_b=.015; \gamma=.014; D=.015$

¹²⁷ A plus sign (+) indicates that the relationship between the driver and the dimension of the dependent variable is ordinal-level.

¹²⁸ Value indicates the percent that the relationship between the driver and the dimension of the dependent variable is likely to occur by chance.

¹²⁹ Values indicate the range of how strong the relationship is between the driver and the dimension of the dependent variable. Where possible, asymmetrical measures of association (*D* for ordinal-level variables; λ , τ , and *UC* for nominal-level variables) were used to provide support for causality, or that the driver influences the dependent variable. In the event that none of these asymmetrical measures of association were statistically significant, symmetrical measures of association (τ_b , τ_c , and γ for ordinal-level variables; *V* and *C* for nominal-level variables) were used; these provide no support for causality.

¹³⁰ Value indicates the confidence level of the measures of association used to analyze the statistical significance of the relationship between the driver and the dimension of the dependent variable.

	+Applicability of Takings Clause			
	+ED experience professionally			
	Personally			
	+Contracting out with private firms			
Kelo's Influence on Meaning of "Private" in Eminent Domain				
	+Familiarity with <i>Kelo</i>	0.4	21.8-31.3/23.6	$\tau_b=.004; \gamma=.004; D=.004$
	Local ordinance(s)	8.0	23.2-32.6/24.5	$\tau_b=.003; \gamma=.003; D=.003$
	State statute(s)	0.2	24.4-32.6/24.8	$\tau_b=.001; \gamma=.001; D=.001$
	Takings Clause			
	Read <i>Kelo</i>	3.8	3.8-4.2	$UC=.060; \tau=.014$
	Local ordinance(s)			
	State statute(s)	1.9	4.3-4.9	$\tau=.013; UC=.014$
	Takings Clause			
	Required to read <i>Kelo</i>	2.2	2.5-2.9	$UC=.055; \tau=.010$
	Local ordinance(s)	6.0	2.3-2.4	$UC=.057; \tau=.028$
	State statute(s)	0.6	3.5-3.9	$UC=.010; \tau=.002$
	Takings Clause			
	+Followed <i>Kelo</i> local news	2.7	22.0-29.4/22.1	$\tau_b=.003; \gamma=.003; D=.003$
	National news	2.9	25.7-37.8/28.4	$\tau_c=.000; \gamma=.000; D=.000$
	Local media			
	National media	0.0	32.3-44.9/34.2	$\tau_b=.000; \gamma=.000; D=.000$
	+Familiarity with precedents	8.3	14.0-21.3/15.7	$\tau_b=.069; \gamma=.067; D=.069$
	+Applicability of Takings Clause			
	+ED experience professionally	9.2	13.1-20.9/15.4	$\tau_b=.088; \gamma=.085; D=.088$
	Personally			
	+Contracting out with private firms			