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Revisiting Baltimore's Failed Hail Mary

Gideon Kanner

Break out a bottle of the good stuff. It's time to celebrate the 25th anniversary of the Baltimore Colts' famous defeat of the city's attempt to condemn its NFL franchise. In 1984, Baltimore sought to keep the team from moving to Indianapolis. Unable to negotiate an agreement with the Colts to keep them in town, Baltimore tried to emulate the bizarre accomplishment of the city of Oakland, which had earlier persuaded the California Supreme Court that to take the Oakland Raiders' NFL franchise by eminent domain and convey it to another, more municipally favored person or entity who would promise to remain in Oakland, was not impermissible under the "public use" clause of the Constitution. *City of Oakland v. Oakland Raiders*, 32 Cal.3d 60 (1982).

At the time, no one really thought that the courts, not even California courts, would buy into such a *reductio ad absurdum* interpretation of eminent domain law, so the Raiders boldly marched into court and somehow persuaded the Court of Appeal that under California law, only condemnation of real property was allowed. But this absurdly restrictive view of the eminent domain power was promptly trumped by an absurdly expansive view of the California Supreme Court, which, for all practical purposes, disclaimed any ability to pass judgment on the constitutionality of the application of eminent domain statutes, and gave an interpretation that stretched reason beyond its breaking point. Thus, the California Supreme Court, the most activist court in the nation, abruptly declared itself unable to interpret the constitutional requirement of "public use" independently of the Legislature. But hey man, this is California, the place where - in the immortal words of the

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nation's land use dean, the late Richard Babcock - the courts have elevated government arrogance to an art form.

Anyway, Baltimore thought it could do the same thing with the Colts, but it didn't reckon with the fact that the Colts' management wasn't asleep and, having learned a valuable lesson from the Raiders fiasco, was ready for the city's move. Whereas the poor Raiders justifiably thought that no court would buy into the city's bizarre legal argument, the Colts knew better. So, as the Maryland Legislature was putting final touches in legislation that would permit the city to condemn the Colts' NFL franchise, the Colts got ready to split. And split they did. They made secret arrangements with the Mayflower moving company, and during the night of March 29, 1984, a fleet of moving vans appeared at the Colts' headquarters in Owings Mills, Md., loaded up and headed out. As the sun rose the next morning, the Colts were gone, lock stock and barrel, well on their way to Indianapolis, and safely out of the Maryland territorial limits.

By the time the enabling legislation was passed by the Maryland Legislature the following day, the Colts' franchise, the *res* that the city meant to condemn in its i*n rem* eminent domain proceeding, was beyond the Maryland state courts' jurisdictional reach. But being a sore loser, the city filed a condemnation action in the federal district court in Maryland, seeking to condemn the Colts' franchise anyway. Nothing doing, said the court, and it granted summary judgment against the city. *Mayor & City Council of Baltimore v. Indianapolis Colts*, 624 F.Supp. 278 (D.Md. 1985). The court reasoned that the property sought to be condemned was no longer within the legal jurisdiction of the state of Maryland from whose laws the city claimed to derive its power to take the Colts' franchise. Thus, the Baltimore Colts became the Indianapolis Colts, proving once again that the race is to the swift, and that being quick on your feet is not only a desirable attribute of football players but also of football team management.

And as for California, the Raiders eventually did move to Los Angeles after California courts came to their senses and held that whether or not the taking of an NFL franchise was a "public use," its condemnation by a city would be a violation of the Interstate Commerce Clause. *City of Oakland v. Oakland Raiders*, 174 Cal.App.3d 414. In yet another round of litigation, the courts awarded the Raiders' attorney Moses Lasky, fees of $2 million, plus $200,000 in costs. *City of*

Oakland v. Oakland Raiders, 203 Cal.App.3d 78 (1988). But in due course, the discipline of the market, not the courts, had the last word. After a few years in Los Angeles, the Raiders decided that the Oakland pastures were greener after all, and moved back to Oakland, where they continue playing until this day.

And so, after the dust settled, things came full circle, returning to the status quo ante, except that California law of eminent domain was enriched - if that word can be used here without doing violence to the English language - with five, count 'em, five - appellate opinions, and the Raiders' lawyers were enriched by that $2 million fee award. One might be tempted to observe that as far as the results are concerned, all this was in the nature of the Shakespearean bon mot - a tale told by an idiot, full of sound and fury, signifying nothing - except that the Raiders litigation provided much gainful employment to a multitude of lawyers whose earnings must surely count as more than nothing.

So raise a glass to the Baltimore, er, Indianapolis Colts and celebrate their deft demonstration that Ambrose Bierce was on to something when he defined litigation as a process that you enter as a pig and from which you emerge as a sausage.

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