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BOOK REVIEW

WHEN THE LAWYERS SLEPT: THE UNMAKING OF THE BROOKLYN DODGERS

Robert M. Jarvis†

I

INTRODUCTION

Since World War II, the movement of franchises from one city to another has become a regular part of professional sports;¹ in recent years, relocations have reached unprecedented levels.² Yet de-

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¹ The first modern professional sports team relocation probably occurred in 1903, when the National League Baltimore Orioles moved to the American League and became the New York Highlanders. The atrocious Highlanders eventually renamed themselves the Yankees, acquired Babe Ruth from the Boston Red Sox, and went on to become one of the most famous teams in professional sports history. After this shift only a handful of relocations occurred before World War II, mostly in the National Football League. Beginning in 1950, however, franchise shifts became increasingly popular, and nearly seventy took place during the next thirty years. Johnson, *Municipal Administration and the Sports Franchise Relocation Issue*, 43 PUB. ADMIN. REV. 519, 520 (1983).

² During the last decade, numerous sports teams have relocated. In the National Basketball Association, poor attendance forced the New Orleans Jazz to become the Utah Jazz, the New York Nets to move to New Jersey, the Kansas City Kings to switch to Sacramento, and the San Diego Clippers to regroup in Los Angeles. In the National Football League, more attractive stadiums lured the Oakland Raiders to Los Angeles, the Baltimore Colts to Indianapolis, the St. Louis Cardinals to Phoenix, and the New York Giants and New York Jets to New Jersey. In the National Hockey League, a combination of problems led the Atlanta Flames to Calgary and the Colorado Rockies to New Jersey, where they became the Devils. In addition to actual franchise shifts, there have been a number of threatened shifts. In Major League Baseball, the Chicago Cubs threatened to move to the suburbs if the city of Chicago refused to install lights in Wrigley Field. The Chicago White Sox held negotiations designed to bring them to a new stadium in St. Petersburg, thereby escaping from their crumbling stadium on the rundown South Side of Chicago. The San Francisco Giants have considered a number of new homes due to sagging attendance and the poor playing conditions at Candlestick Park. Meanwhile, the Cleveland Indians, Pittsburgh Pirates, and Seattle Mariners have all at one time or another suggested that they might move. In the National Football League, the Houston Oilers looked into moving to Jacksonville prior to deciding to stay in the Astrodome. The New Orleans Saints considered leaving Louisiana until the state granted millions of dollars of tax concessions. In the National Hockey League, the St. Louis Blues came very close to relocating to Saskatoon; only last minute intervention by league officials kept the team in St. Louis.

The current rash of attempted and successful relocations has produced a strong backlash among both fans and owners, the introduction of anti-relocation legislation in Congress, and a number of lawsuits. The wealth of literature which has grown up around the subject reviews these matters at length. See, e.g., Eisen, *Franchise Relocation in*

spite dozens of shifts and threatened shifts, no relocation has generated the level of passion, study, and controversy as the decision of the Brooklyn Dodgers to move to Los Angeles after the 1957 season. For many older Brooklynites, even those who have since moved away from the borough, the loss of the Dodgers is still a staple of conversation.³

Over the years, conventional wisdom has taught that the Dodgers moved to Los Angeles because of the greed of their owner, Walter O'Malley, who was dissatisfied with the team's revenues in Brooklyn and saw a chance to make greater profits on the West Coast. As a result, O'Malley's status as a traitor to the people of Brooklyn has become legendary.⁴ But in a new work entitled *The Dodgers Move West*,⁵ Neil J. Sullivan has gone back in time in an attempt to ferret out the truth about O'Malley's decision to move the Dodgers. The results of his painstaking research⁶ are startling.

According to Professor Sullivan, O'Malley initially opposed moving the Dodgers to Los Angeles, and eventually did so only with great reluctance. In Professor Sullivan's view, O'Malley would have kept the Dodgers in Brooklyn if he could have built a new stadium to replace the aging Ebbets Field.⁷

The author believes that the Dodgers ultimately moved to Los Angeles because O'Malley lacked sufficient funds to buy the land

Major League Baseball, 4 ENT. & SP. L.J. 19 (1987); Glick, *Professional Sports Franchise Movements and the Sherman Act: When and Where Teams Should be Able to Move*, 23 SANTA CLARA L. REV. 55 (1983); Lazaroff, *The Antitrust Implications of Franchise Relocation Restrictions in Professional Sports*, 53 FORDHAM L. REV. 157 (1984); Quirk, *An Economic Analysis of Team Movements in Professional Sports*, 38 LAW & CONTEMP. PROBS. 42 (1973); Roberts, *The Single Entity Status of Sports Leagues Under Section 1 of the Sherman Act: An Alternative View*, 60 TUL. L. REV. 562 (1986); Shropshire, *Opportunistic Sports Franchise Relocations: Can Punitive Damages in Actions Based Upon Contract Strike a Balance?*, 22 LOY. L.A.L. REV. 569 (1989); Weisbart, *League Control of Market Opportunities: A Perspective on Competition and Cooperation in the Sports Industry*, 1984 DUKE L.J. 1013; Comment, *Keeping the Home Team at Home*, 74 CALIF. L. REV. 1329 (1986); Note, *The Professional Sports Community Protection Act: Congress' Best Response to Raiders?*, 38 HASTINGS L.J. 345 (1987).

³ For a time, Brooklynites talked of bringing the Dodgers back to Brooklyn. Still later, some Dodger fans came to accept the New York Mets, a National League expansion team, as their team. Today, talk focuses on establishing a minor league team on Coney Island and naming it the Brooklyn Dodgers. Rangel, *State Proposes Baseball Stadium for Coney I.*, N.Y. Times, Dec. 5, 1986, at A1, col. 3.

⁴ See, e.g., P. GOLENBOCK, BUMS—ORAL HISTORY OF THE BROOKLYN DODGERS (1984); R. KAHN, THE BOYS OF SUMMER (1971); D. RICE, SEASONS PAST (1976).

⁵ N. SULLIVAN, THE DODGERS MOVE WEST (1987).

⁶ Although Walter O'Malley had died by the time the book was begun, Professor Sullivan was able to speak at length with O'Malley's son, Peter, who took over the club from his father. *Id.* at xi, 192. In addition, Professor Sullivan spoke with a number of Walter O'Malley's contemporaries, including Vin Scully, the team's long-time announcer; former New York City Mayor Robert Wagner; former Los Angeles Councilwoman Rosalind Wyman; and Congressman Edward Roybal. *Id.* at xi.

⁷ *Id.* at ix.

needed for the stadium. When O'Malley turned to New York City for help in acquiring the land through eminent domain proceedings, master builder Robert Moses, who was at the height of his power, rebuffed him. With no hope of building a new stadium in Brooklyn, and opposed to the idea of accepting a stadium built with public funds, O'Malley had no choice but to leave for Los Angeles, where the city fathers were willing to provide him with a large tract of land known as Chavez Ravine.⁸

II

THE BIRTH OF THE BROOKLYN DODGERS AND THE BUILDING OF EBBETS FIELD

Professional baseball first came to Brooklyn in 1884, when the American Association admitted a team from Brooklyn.⁹ Then just three years old, the American Association was attempting to compete with the more powerful National League which had been formed as the nation's first professional baseball league in 1876. The new Brooklyn team, known as the Trolley Dodgers, prospered, and in 1889 became the champions of the American Association.¹⁰ In the next year, the team switched leagues, joining the National League as the Brooklyn Bridegrooms.¹¹

In 1898, Charles Ebbets assumed the presidency of the Bridegrooms.¹² During the next few years the Bridegrooms, subsequently known as the Superbas, enjoyed great success, but after 1902 many of their star players retired and the team foundered.¹³ After nearly ten years of futility, however, Ebbets began to rebuild the team both on and off the field. He hired Wilbert Robinson away from the cross-town rival Giants and began cultivating a battery of future star players.¹⁴ More importantly, he began construction of a new stadium.

The plan to build a new stadium in Brooklyn first began to take shape in 1908.¹⁵ After much searching, he selected a desolate part of the borough known at various times as Pigtown, Goatville, Tin Can Alley and Crow Hill.¹⁶ The decision to build a new stadium in so bleak a place was a masterful piece of planning, for Pigtown had plenty of empty land which could support a new stadium.

⁸ *Id.* at viii.

⁹ *Id.* at 5.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 6.

¹³ *Id.*

¹⁴ *Id.* at 7.

¹⁵ *Id.* at 56.

¹⁶ *Id.* at 4.

During the next three years, Ebbets busied himself with the task of acquiring the parcels for his new stadium. This proved much harder to do than expected, for forty different owners held the land which Ebbets needed.¹⁷ In order to disguise his true purpose and thereby avoid a ruinous jump in land prices, Ebbets formed a dummy corporation to buy the needed parcels.¹⁸ Although the entire task was not completed until the end of 1911, Ebbets managed to keep the news of what he was doing away from much of the public and the press.¹⁹ As a result, the purchases, although time-consuming, went smoothly and without substantial price gouging.

With the land now in hand, Ebbets set about to build his stadium. Within a year, and after the expenditure of \$750,000 (at the time a remarkable sum of money), the stadium was ready.²⁰ When Ebbets Field opened on April 4, 1913, sports writers and fans heralded it as a magnificent stadium.²¹

III

THE NEED FOR A NEW STADIUM

During the next four decades, Ebbets Field served as the faithful home of the team now called the Brooklyn Dodgers. Dodger fans affectionately nicknamed their team the Bums, and in 1955 the Dodgers beat the New York Yankees to win their only World Series.²² But neither the success of the team nor the faithfulness of its fans could conceal the fact that time had taken its toll on the stadium.²³

By now, the team was under the control of Walter O'Malley, a hard-nosed businessman.²⁴ He realized that the stadium's small size, cramped conditions, and inhospitable surroundings made a new stadium imperative if the team were to continue its success.²⁵

¹⁷ *Id.* at 56.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 4.

²¹ *Id.*

²² *Id.* at 7-17, 58-67.

²³ *Id.* at 38-41.

²⁴ *Id.* at 29-32. O'Malley also was a lawyer. After graduating from the University of Pennsylvania, O'Malley obtained a law degree from Fordham Law School and then opened a corporate practice in Manhattan. *Id.* at 29. In 1941, the Dodgers appointed him club attorney. In 1944, O'Malley, together with Branch Rickey and John Smith, purchased a 75% interest in the club. *Id.* After years of bickering, O'Malley bought out Rickey in 1950 for the then astronomical sum of \$1,050,000 and thereby secured total ownership of the Dodgers. *Id.* at 30.

²⁵ *Id.* at 38-44. When Ebbets decided to build his stadium in Pigtown, the area was virtually uninhabited. In the years which followed, however, urban development converted Pigtown into Crown Heights, a fashionable neighborhood. Following World War II, Crown Heights began to suffer from urban blight and the flight of its middle class

Thus, O'Malley began the search for a suitable new home.

Because by this time others had developed the land around Ebbets Field to its full capacity, O'Malley rejected renovating Ebbets Field.²⁶ Instead, his attention turned to a plot of land at the Brooklyn terminal of the Long Island Rail Road at the corner of Atlantic and Flatbush Avenues, about a mile from Ebbets Field. The new site was accessible to fans via the Long Island Rail Road and two subway lines.²⁷

O'Malley liked the idea of building a new stadium at this new location and already had the necessary money. What he lacked was easy access to the land.²⁸ Recalling the difficulties that Ebbets encountered in acquiring land in Pigtown, O'Malley concluded that only the government, exercising its eminent domain powers,²⁹ could in a single stroke collect the necessary parcels of land and sell them to the Dodgers at a price that made economic sense.³⁰

inhabitants. By the 1950's, Crown Heights had become "an uninviting place in an increasingly unfamiliar neighborhood, and many former Brooklyn residents stopped attending games." *Id.* at 39.

²⁶ *Id.* at 41. Whether O'Malley ever considered seriously the idea of refurbishing Ebbets Field is an open question. As Professor Sullivan notes, "[p]erhaps O'Malley thought a serious upgrading of Ebbets Field would preclude the support he needed for a new stadium." *Id.* at 41. Professor Sullivan, however, is convinced that a new stadium was a necessity. In 1938, Larry MacPhail, then president of the Brooklyn Dodgers, renovated Ebbets Field at a cost of \$100,000. "The stadium was repainted, given new seats, renovated dugouts and clubhouses, and the field was groomed to eliminate rocks and divots that had plagued infielders for years." *Id.* at 11. A similar renovation, according to Professor Sullivan, would not work in the 1950's. Although other parks built at the same time as Ebbets Field, including Comiskey Park, Wrigley Field, Fenway Park, and Tiger Stadium, remain in use, see Berkow, *Baseball's Palaces of the Mind*, N.Y. Times, July 11, 1988, at 35, col. 1, Ebbets Field was, in Professor Sullivan's opinion, "beyond repair." N. SULLIVAN, *supra* note 5, at 41. "By the 1950s, . . . the old preserve had become obsolete. The most compelling evidence of that obsolescence is the fact that despite its small size and the perpetual drama of the pennant races of those years the park was hardly ever filled to capacity." *Id.* at 40.

²⁷ *Id.* at 44, 54.

²⁸ *Id.* at 44 ("[w]hat O'Malley needed from New York City officials was not money for the stadium but access to the site."). While O'Malley was willing to pay for the land, he needed "help from the city to acquire the necessary land at a reasonable price." *Id.* at 54.

²⁹ Eminent domain, of course, is the power of the state to acquire private land without first obtaining the owner's consent. In the United States, two checks on this power exist. First, the government may not take property except for a public purpose or use. Second, the owner must receive reasonable compensation. See generally J. SACKMAN, NICHOLS' THE LAW OF EMINENT DOMAIN (rev. 3d ed. 1973 & Supp. 1988).

³⁰ N. SULLIVAN, *supra* note 5, at 55-57:

The chances that in the 1950s Walter O'Malley could have formed a secret corporation and purchased land for a new stadium without the media and then the public finding out are too remote to be entertained seriously. Such a scenario would have brought a real estate boom to the Atlantic-Flatbush area.

Id. at 56.

On August 10, 1955 O'Malley wrote to the city to request that it condemn specific parcels under a postwar law known as the Housing Act of 1949.³¹ Title I of the law encouraged local governments to clear slums and reverse urban blight by providing them federal funds to help finance such projects.³² In order for the private sector to be eligible for federal funding for participating in the renewal, the projects had to have a "public purpose."³³ Accordingly, O'Malley proposed that in addition to building a new stadium for the Dodgers, he would have the area around Atlantic and Flatbush Avenues cleaned up, a new meat market built, and the old Long Island Rail Road terminal torn down and a new station erected.³⁴

O'Malley's proposal went to Robert Moses, the architect of many of New York City's present highways, tunnels, bridges, beaches, and parks and, at that time, the New York City administrator of Title I.³⁵ Within days, Moses rejected O'Malley's proposal and wrote: "I can only repeat what we have told you verbally and in writing, namely, that a new ball field for the Dodgers cannot be dressed up as a Title I project."³⁶

IV

THE LEGAL EFFECT OF TITLE I AND THE CORPORATION COUNSEL'S ALTERNATIVE PLAN

Robert Moses was wrong that New York City's condemnation and subsequent sale of land to the Dodgers would not fit within the strictures of Title I; moreover, he knew he was wrong.³⁷ Moses opposed building a new stadium at Atlantic and Flatbush Avenues he-

³¹ Pub. L. No. 81-171, 63 Stat. 413 (codified in scattered sections of 12 U.S.C. & 42 U.S.C.). President Truman pushed through the Act on July 15, 1949 as part of his "Fair Deal" legislation. The Act's goal was to stimulate residential housing construction in order to alleviate the post-war shortage of affordable housing for lower and middle-income families. In order to accomplish this goal, the Act provided federal assistance for local public housing, slum clearance, and farm housing projects. The Act's passage and purposes are discussed at length in Robinson & Robinson, *A New Era in Public Housing*, 1949 WIS. L. REV. 695, and in Comment, *The Housing Act of 1949—A Federal Program for Public Housing and Slum Clearance*, 44 ILL. L. REV. 685 (1949). For a discussion of the Act's role in national housing policy in the forty years since its passage, see McDougall, *Affordable Housing for the 1990's*, 20 U. MICH. J.L. REF. 727 (1987).

³² Ch. 338, §§ 101-10, 63 Stat. 413, 414-21. Title I officially was entitled, "Slum Clearance and Community Development and Redevelopment."

³³ N. SULLIVAN, *supra* note 5, at 47-48.

³⁴ *Id.* at 48.

³⁵ *Id.* at 49-51. Moses' life is the subject of a now famous biography. See R. CARO, *THE POWER BROKER* (1975).

³⁶ N. SULLIVAN, *supra* note 5, at 48.

³⁷ As Professor Sullivan states, "[w]hen Moses told Walter O'Malley that Title I of the Federal Housing Act would not permit the use of land for the construction of a baseball stadium, what he meant was that he did not wish the land used in that way." *Id.* at 50.

cause it conflicted with his plans to see New York City emerge as a modern metropolis connected by an intricate series of highways built around numerous public parks and beaches.³⁸ As a result, Moses instead suggested that New York build a new publicly financed and publicly owned stadium as part of a grand plan to develop Flushing Meadows.³⁹ O'Malley refused the offer of a public stadium.⁴⁰

From 1955 through 1957, Moses and O'Malley remained locked in constant battle, with Moses continuing to argue, in the face of numerous proposals, that the legal constraints of Title I made it impossible for the Dodgers to acquire the needed land through city efforts.⁴¹ No one challenged Moses' view,⁴² despite extensive media coverage⁴³ and the existence of seemingly adequate legal precedent.⁴⁴ Finally, New York City Corporation Counsel Pe-

³⁸ Moses was against the Atlantic-Flatbush proposal for three additional reasons. First, Moses was not overly concerned with Brooklyn. Second, Moses favored participatory recreation over spectatorship. Third, the renovation of the Atlantic-Flatbush area would have meant an improvement in the Long Island Rail Road's Atlantic Avenue depot. Any movement away from the automobile and towards mass transportation threatened Moses' own power resulting from his control over the city's highways, tunnels, and bridges as the head of the Triborough Commission and numerous other public authorities. Therefore, Moses needed to keep the Atlantic Avenue area in decay. *Id.* at 50-51.

³⁹ *Id.* at 110-11. The idea of developing Flushing Meadows, a large and ugly expanse of land located in the geographic center of New York City, had long fired Moses' imagination. *Id.* Moses' plan to develop Flushing Meadows on a grand scale eventually did come to pass. In 1964-65, the World's Fair was held in Flushing Meadows. *Id.* at 111. At the same time, the expansion New York Mets moved to the very site which Moses had offered to O'Malley. *Id.* at 116. *See further infra* notes 46 and 52.

⁴⁰ O'Malley said he did not "want to be a tenant in a political ball park," but rather wanted to "own my own ball park and run it the way I think it should be run." *Id.* at 127. A strong argument can be made that O'Malley's refusal to accept a long-term lease in a public stadium was a product of greed, stubbornness, or both. The last stadium built with private funds had been Yankee Stadium in 1923. *Id.* at 44. In the meantime, the Milwaukee Braves and Baltimore Orioles had both moved from private to public stadiums (in 1953 and 1954, respectively). *Id.* Moreover, public financing was about to become an accepted way of building professional sports arenas. *See infra* note 50. Ultimately, even the New York Yankees joined the move to public funding. In the early 1970's, over \$100 million of public funds were used to finance the renovation of Yankee Stadium. N. SULLIVAN, *supra* note 5, at 213.

⁴¹ *Id.* at 51-57, 130-32.

⁴² Professor Sullivan does not account for why lawyers did not challenge Moses' view, although he does point out that Moses was at the height of his power at this time and beyond the control of normal political forces. *Id.* at 49. Professor Sullivan also does not explain why O'Malley, himself a lawyer, did not seek to bring the issue to a judicial resolution. While discussing another aspect of the move, however, Professor Sullivan does suggest that O'Malley's legal foresight was less than may have been expected of a successful executive. *Id.* at 138-39.

⁴³ As Professor Sullivan points out, however, the media may have been biased against O'Malley, and frequently reported his side of the story incorrectly. *Id.* at 115, 131-32.

⁴⁴ Several years before O'Malley first asked New York City to help the Dodgers by

ter Brown issued a legal opinion on September 11, 1957 offering a

invoking Title I, a law review article studied in great detail all legal challenges to public slum clearance and low-recent housing projects. Hill, *Recent Slum Clearance and Urban Redevelopment Laws*, 9 WASH. & LEE L. REV. 173 (1952). After noting that the overwhelming number of these challenges had failed, the author concluded that:

The *unanimity* of judicial decisions on these questions clearly establishes the validity of this approach to the slum clearance problem. The exercise of the power of eminent domain and the expenditure of public funds to acquire and clear slum areas is proper as being for a public purpose and use.

Id. at 185-86 (emphasis added). The article further stated that "[a]lthough the program described in Title I of the Housing Act of 1949 has not yet been similarly tested under the Federal Constitution, there appears to be no distinction in principle, purpose or approach as to warrant a different result." *Id.* at 183.

Shortly after the appearance of Hill's article, but still before O'Malley sent his proposal to Moses, the United States Supreme Court decided *Berman v. Parker*, 348 U.S. 26 (1954). In *Berman*, the Court adopted a broad definition of the phrase "public use" for eminent domain proceedings. The Court stated that land could be given to private individuals. Because "[t]he concept of public welfare is broad and inclusive," *id.* at 33, Congress could condemn property on a whole-sale basis, whether for the purpose of erecting schools and churches, or even "shopping centers." *Id.* at 35. The final definition of public use and welfare would rest with the legislature, not the courts. *Id.* at 35-36. Thus, virtually any use which would bestow an advantage on the public would justify a taking by the government.

Also prior to O'Malley's letter, Congress expanded the scope of its housing program by enlarging the reach of Title I. Under the amendments, individuals could now apply slum prevention programs not only to deteriorating areas but also to areas in danger of deterioration. Housing Act of 1954, Pub. L. No. 83-560, tit. III, § 311, 68 Stat. 590, 626, *repealed by* Housing and Community Development Act of 1974, Pub. L. No. 93-383, tit. I, § 116, 88 Stat. 633, 652 (codified at 42 U.S.C. § 5316 (1982)). The impact of the amendments was immediate and significant. Just four years after the amendments became law, Yale Law Professor Quintin Johnstone noted that:

Despite Congressional indications that improvement of housing is the primary objective of the urban renewal program, many important projects have as their primary purpose the revival of business districts that have been declining due to suburban or outlying business competition. Project area improvements to fulfill this purpose are new store and office buildings; hotels; markets; parking facilities; traffic patterns; and, adjacent to the business districts, new high income apartments to add retail sales volume.

Johnstone, *The Federal Urban Renewal Program*, 25 U. CHI. L. REV. 301, 321-22 (1958).

Despite these precedents, Professor Sullivan concludes (without explaining why) that it was unclear whether adequate precedents existed in 1957 which would have allowed the Dodgers to invoke Title I. N. SULLIVAN, *supra* note 5, at 120. Yet O'Malley's Atlantic-Flatbush proposal had all the characteristics which Professor Johnstone described and which federal and local officials previously approved. As Professor Sullivan explains, the site O'Malley wanted:

was part of a proposed redevelopment project, . . . [of which a] new stadium for the Dodgers was only one item proposed to the Board Estimate. Also mentioned were the need for commercial and residential redevelopment of substandard and unsanitary dwellings, the problem of traffic congestion, a possible new terminal for the Long Island Rail Road, and relocation of the Fort Greene Meat Market.

Id. at 54-55. O'Malley stressed these aspect of the project while testifying to the Anti-trust Subcommittee of the House Judiciary Committee in June 1957, just months before he announced his decision to relocate to Los Angeles. *Id.* at 124.

way around Moses' position.⁴⁵

Unfortunately, Brown's suggestion came too late. After years of attempting to get New York City to assist him, O'Malley on October 8, 1957, announced that he had decided to move the Dodgers to Los Angeles.⁴⁶ The Los Angeles city fathers had been working for some time to put together an attractive package for O'Malley and in the end had placed a large plot of land known as Chavez Ravine at O'Malley's disposal.⁴⁷ Thus, in the winter of 1958, the Dodgers moved to Los Angeles, and for the next four seasons played in the oversized and ill-equipped Los Angeles Coliseum while construction proceeded on their new stadium.⁴⁸ On April 10, 1962, the

⁴⁵ As reported by *The New York Times*, Brown believed that New York City could acquire the necessary land and resell it to the Dodgers "if the city Planning Commission determined that the area was substandard and unsanitary." *Id.* at 134. Doing so would avoid Title I and circumvent Robert Moses' power as the Title I Administrator. Deputy Mayor John Theobald eagerly announced that this proposal would be studied by the New York City Board of Estimate at its forthcoming meeting on September 19, 1957. *Id.*

⁴⁶ *Id.* at 3. The manner of O'Malley's announcement is worth recounting. As Professor Sullivan tells it:

[D]uring a World Series game between the Yankees and Braves, the Dodgers announced they would move to Los Angeles for the 1958 season. The manner of the announcement showed little consideration for the Brooklyn fans being left behind. A publicist for the Dodgers read the . . . statement to those in the press room at the Waldorf-Astoria Hotel. . . . Walter O'Malley was not in attendance for the announcement, nor was Brooklyn invited to bid its team farewell.

Id. at 135-36.

O'Malley decided to leave New York just a few months after Horace Stoneham, the owner of the New York Giants, decided to move to San Francisco due to sagging attendance at the ancient Polo Grounds. *Id.* at 133. Although many commentators argued that Stoneham's decision absolutely was necessary if the team were to survive, Professor Sullivan suggests that this was not true. If the Giants had stayed in New York, they would have had the lucrative New York broadcast market to themselves. *Id.* at 116. Moreover, it is likely that Moses would have proposed a new stadium in Flushing Meadows for the Giants, just as he had done for the Dodgers and would do for the New York Mets in the early 1960's. *Id.* See further *infra* note 52. The Mets "have prospered [in Flushing Meadows], while the Giants, meanwhile, have battled to survive in San Francisco." *Id.* For a history of the Giants in New York, see N. HYND, *THE GIANTS OF THE POLO GROUNDS* (1988). The final chapter of Hynd's book recalls Stoneham's decision to move the Giants to San Francisco. *Id.* at 378-82.

⁴⁷ N. SULLIVAN, *supra* note 5, at 83-106.

⁴⁸ *Id.* at 137-89. During this period, numerous legal challenges were brought to halt the building of Dodger Stadium. At the core of these challenges was the argument which Robert Moses had raised in New York, namely, that the government could not turn public land over to a private baseball club for the erection of a private stadium. When this issue finally reached the California Supreme Court, the court held that a public purpose was present. See *City of Los Angeles v. Superior Court of the County of Los Angeles*, 51 Cal.2d 423, 333 P.2d 745 (1959). As part of the contract with Los Angeles under which it obtained Chavez Ravine, the Dodgers agreed to convert a portion of the land into public recreational facilities and maintain them as such for at least twenty years. In addition, the Dodgers agreed to turn over to the city a minor league ballpark which the team had acquired while it was still in Brooklyn. Taken together, the land and the minor league ballpark were enough to convince the court that Los Angeles met the

Dodgers moved into the private Dodger Stadium, and have played there ever since.⁴⁹

CONCLUSION

Today, sports team owners expect to have their stadiums paid for through public funds,⁵⁰ and it is quite rare for them to use their own funds to build a new stadium.⁵¹ Thus, Walter O'Malley's strug-

public purpose requirement. N. SULLIVAN, *supra* note 5, at 173. Professor Sullivan reproduces a copy of the agreement between the Dodgers and the City of Los Angeles towards the end of his book. *Id.* at 220-27. In the years that followed, numerous other courts confronted the same issue that had faced the California Supreme Court. All employed similar reasoning to find that the municipal action was proper. *See, e.g.*, Ginsberg v. City & County of Denver, 164 Colo. 572, 436 P.2d 685 (1968); New Jersey Sports & Exposition Auth. v. McCrane, 119 N.J. Super. 457, 292 A.2d 580 (Super. Ct. Law Div. 1971); Conrad v. City of Pittsburgh, 421 Pa. 492, 218 A.2d 906 (1966); Martin v. City of Philadelphia, 420 Pa. 14, 215 A.2d 894 (1966).

⁴⁹ N. SULLIVAN, *supra* note 5, at 190-211.

⁵⁰ *Id.* at 213-15. *See generally* Wilkerson, *What Taxpayers and Their Teams Do for Each Other*, N.Y. Times, July 24, 1988, at E26, col. 1 (nat'l ed.). *See also supra* note 2. *But see Jersey Officials See Defeat on Stadium Bond Issue*, N.Y. Times, Oct. 30, 1987, at 12, col. 1 (nat'l ed.) (reporting on the failure of a \$185 million bond issue designed to lure a professional baseball team to the Meadowlands). Without a doubt, however, the master of stadium shopping is Al Davis, the owner of the National Football League Raiders. Davis has raised shopping for stadium concessions and improvements from local municipalities to an art form. After he became dissatisfied with the Oakland Coliseum, he moved his team to Los Angeles in the early 1980's. This move led to the filing of numerous lawsuits. *See* Koppett, *Raider Colors Match Judges' Robes*, N.Y. Times, July 13, 1988, at 49, col. 1; *see also* Comment, *City of Oakland v. Oakland Raiders: Defining the Parameters of Limitless Power*, 1983 UTAH L. REV. 397; Comment, *Taking the Oakland Raiders: A Theoretical Reconsideration of the Concepts of Public Use and Just Compensation*, 32 EMORY L.J. 857 (1983); Note, *Public Use in Eminent Domain: Are There Limits After Oakland Raiders and Poletown?*, 20 CAL. W.L. REV. 82 (1983); Note, *Eminent Domain Exercise—Stare Decisis or a Warning: City of Oakland v. Oakland Raiders*, 4 PACE L. REV. 169 (1983); Note, *Eminent Domain and the Commerce Clause Defense: City of Oakland v. Oakland Raiders*, 41 U. MIAMI L. REV. 1184 (1987). When Irwindale, a nearby suburb, subsequently made a better offer in August 1987, Davis announced that he again would move the team. *See* Cummings, *From Rocks to Riches: Tiny Suburb That Landed a Pro Team*, N.Y. Times, Sept. 12, 1987, at 6, col. 1. Since then, however, Irwindale has expressed doubt over its ability to finance the promised stadium. *See Raider Stadium Facing Problems*, N.Y. Times, May 28, 1988, at 32, col. 1. Davis, however, already has received a non-refundable advance of \$10 million from Irwindale. *Raider Move is Set Back*, N.Y. Times, Sept. 18, 1987, at 50, col. 1. Moreover, there have been reports that Davis has been negotiating with Oakland officials to return the team to the Oakland Coliseum. *See* Heisler & Reich, *Oakland Says it Awaits Raiders—Irwindale Failure*, L.A. Times, May 19, 1989, pt. 2, at 3, col. 1.

⁵¹ A notable exception is Joe Robbie, the owner of the National Football League Miami Dolphins. Turning his back on Miami after years of pleading with it to repair the aging, decaying Orange Bowl, Robbie built a new stadium by raising more than \$100 million in private funds. In doing so, however, Robbie encountered problems similar to those faced by O'Malley:

On March 5, 1984, he announced plans to build a stadium in time for the 1987 season, when he would no longer be bound by his Orange Bowl lease. He said that after 1986, the Dolphins would never play another game in the city-owned stadium, which was built in 1937 by the Works Project Administration.

gle to build a new stadium using his own money is in many ways now nothing more than a quaint idea of a bygone era. Nevertheless, there is an important lesson for lawyers to learn in the decision of the Brooklyn Dodgers to move West. Had the bar challenged Robert Moses' reading of the Housing Act of 1949, or had Peter Brown made his alternative suggestion sooner, the Dodgers probably would still be playing in Brooklyn. The fact that they are not is living testimony to a collective failure not of law, but of lawyers.⁵²

. . . Robbie had to hock the Dolphins, right down to their last jersey and pair of cleats, to keep construction going, . . .

Robbie leases the property from Dade County for \$1 a year on a 99-year lease. The site was donated to the county by the property owners, Lawrence and Emil Morton of Miami, with an understanding that it would be used as a stadium site. The Mortons still own 270 acres adjacent to the stadium and plan to develop the land with hotels, restaurants, offices, shops and condominiums.

The plan did not please everyone, however. As was Walter O'Malley's takeover of Chavez Ravine for the Dodgers in 1958, Robbie's was met with resistance by residents of neighboring tracts.

Glick, *Miracle of Miami: They Said Joe Robbie Could Not Do It, But his Stadium is Proof he Could—and Did*, L.A. Times, Aug. 16, 1987, pt. 3, at 3, col. 2.

⁵² Following the defection of the Dodgers, the New York bar, led by William A. Shea, a partner in a Manhattan law firm, redeemed itself to an extent by persuading the National League to award New York City an expansion team. Dubbed the New York Mets, the team quickly was installed in a city-built stadium in Flushing Meadows named Shea Stadium. N. SULLIVAN, *supra* note 5, at 119.