

FORMULA ONE TRASH TALK: THE CIRCUS COMES TO OZ TOWN

Hi there Wheel, Empty, and and otherwise gear heads, it is time for Spring Trash Talk. There is a lot under foot, Spring Training in Major League Baseball, free agency season and pending entry draft in the NFL, the somewhat diminished fortunes of the NBA and, most of all, FORMULA ONE! The Circus season is upon us, and it is starting down under in the Land of Oz.

Appears we are starting off where we left off: there is yet no reason to believe the Red Bulls of Sebastian Vettel and Mark Webber are anything less than the cars to beat. But, that being said, there is also no reason to think that the Ferrari and McLarens are anything less than the threat that they were at the end of last season. Drivers make a difference in F1, and Fernando Alonso and Jenson Button are very, very good drivers. And their cars are not chopped liver either. For the *clear* superiority of the Red Bulls, and even the McLarens for that matter, Fernando Alonso pulled off one of the greatest performances in the history of F1 with inferior equipment last year. Alonso was only 3 measly points behind Vettel in the final Driver's standings. Simply astonishing.

The opening two practice sessions for the Australian GP were late last night my time; i.e. between 9 pm and 12 am whatever the heck time AZ is. (Daylight savings time really screws with our heads here, cause we don't do that). Bottom line....not much has changed.

Okay, if I were pleading guilty (I would never!) to a heinous offense under truth serum to make sure I was cray cray (yeah, okay, this is some stupid shit too) I MIGHT admit that a lot of this post was written from a series of taco joints in Old Town Scottsdale. It is nowhere near as opulent as it sounds; hell even the

mariachi music is piped in like Muzak. And the 60 something threesome at the table next to me looks like their Winnebago may be illegally parked out on Camelback Road.

Where were we? Okay, back to the Australian GP. Here is what Brad Spurgeon thought:

Red Bull and Sebastian Vettel have won all the titles for the last three seasons. Vettel became only the third driver in Formula One history to win three drivers' titles in a row, after Juan Manuel Fangio in the 1950s and Michael Schumacher last decade. Only Schumacher, Fangio and Alain Prost have won more than three titles, with seven, five and four, respectively. So both Vettel and the team have more pressure on them than ever. Still, Red Bull has the advantage of the consistency of keeping the same two drivers and technical team, and Mark Webber is still pushing for his own final career chances to capture the drivers' title. With the great designer Adrian Newey leading the way, Red Bull should remain among the strongest.

As a lifelong aficionado of Scuderia Ferrari, I would kill to demur. But, I cannot; I think that is right. Still. As to the beloved Prancing Horse, well, from the lens of the season start, it will take another superhuman drive for the ages by Fernando Alonso to keep Ferrari in the chips.

That leaves McLaren and Mercedes fighting for sloppy thirds. Maybe it will come to be that one will blast out of nowhere to be a contender for King Vettel's Crown, but it is really hard to see. Lewis Hamilton proved himself to be a self absorbed punk at the more superior team, McLaren; now he will try to do what Michael Schumacher could not at fast, but unreliable, Mercedes. Please. Juan Pablo Montoya performed better and was sent packing to NASCAR.

For all the sturm and drang, for all the off season shuffle, the Championship will still be fought for between Red Bull and Ferrari, with a decided advantage to the former.

Let the Circus games begin!

And, then, there is the NFL free agency merrygoround. Heck, I do not know who are the winners and losers at this point. But, a quick take says the Steelers and Cardinals, the teams of local pricks bmaz and Scribe, did not do well. To be kind. Probably nobody did worse than the Cardinals, who signed an aging punt return specialist that even the Cleveland Browns did not care about anymore, and let go Kevin Kolb, the only even practice squad level NFL quarterback they had. Seriously, what kind of addled mentally challenged assholes are running the Cardinals? Oh, wait, it is *still* the fucking Bidwell family. Who could have guessed from this level of rank pathetic incompetence??

The Deetroit Kittlehs seem to have done very well. If they can keep their peeps healthy and out of the klink, they may have the greatest show on fake turf. The Pats lost Welker's whining wife (and shitloads of clutch catches in the slot and over the middle) BUT gained a sometimes fragile Danny Amendola. Amendola was the successor in kind at the Pirate attack fun/gun at Texas Tech. Amendola is actually every bit the route runner, and even faster, than Welker. But he ain't as predictable, nor as reliable, as Welker. This could be a wash, or it could be a loss. Time will tell. The Pat's defense and, especially, secondary looks to be much improved.

Other than the above, the Squawks got Percy Harvin and some other studs, and the Niners got some too. Whoo weee baybee, the gold rush is on on the left coast.

MLB is in Spring Training; let me tell ya something brother, it is fucking hot here. The NBA is in the stretch run, but the only question of interest I see is what lower seed will the

Lakers fill? 8? 7? 6 looks bleak, but not impossible; though I would be shocked. We will return to that in a roundball post later. As we will with the student athletes for March Madness, and very soon.

Rock it, Talk it, Jayhawkit. Get yer sweve on Wheelies. Light it up.

Music by BB King, Bono and the band.

DOJ PIN HEAD STEPS INTO MORE MALFEASANCE POO

Bush DOJ hacks Brenda Morris and Leura Canary are still alive and stirring up more political prosecutorial mischief, even in the Obama/Holder DOJ.

THE NEW ROBBER BARONS

There has been an unsavory blending of the private interests of corporations and financial institutions with the power and hand of the US government that has created a new breed of robber barons that will prove the downfall of the American society and empire if left unchecked.

WHY DID OBAMA KILL THE DAWN JOHNSEN NOMINATION?

Dawn Johnsen's nomination to lead the Office of Legal Counsel at DOJ has been killed in the Senate. It is over unless Obama renominated her and the process starts anew. How did it come to this? The only rational explanation is that it is exactly what Barack Obama wanted; Johnsen's nomination was never more than another Obama political trick on his liberal electoral base.

34 OBAMA NOMINEES NOT NAMED DAWN JOHNSEN CONFIRMED

Barack Obama first announced his intention to nominate Dawn Johnsen, a distinguished lawyer, professor of Constitutional law and former AAG in the Office of Legal Counsel for the DOJ, to be his head of the supremely critical Office of Legal Counsel nearly one year ago on January 5, 2009. Ms. Johnsen is imminently qualified and one of the best selections Obama has made for any position in his administration. In spite of that fact, Barack Obama and Harry Reid have callously and shamelessly left her twisting in the wind and have refused to put any emphasis or effort in forcing her confirmation. It is one of the greatest unpublicized scandals of an increasingly feckless Obama Presidency.

LATE NIGHT: MAX TAX BAUCCHANAL GRABS THE DENTAL FLOSS

Max Baucus takes a walk on the wild side, shags his aide, fluffs her with government perks and hilarity ensues.

DOJ CIRCUMVENTS JUDGE WALKER; ATTEMPTS TO FURTHER CORRECT PREVIOUS FALSITIES

In what can only be described as a curious filing, the US Government, through the DOJ has submitted a pleading to the 9th Circuit Court of Appeals in the previously terminated appeal originally filed in 2006. The filing seeks to correct false statements previously made by the government in claiming state secrets dismissal of the al-Haramain case.

OBAMA DOJ CONTINUES TO FLIMFLAM JUDGE LAMBERTH ON STATE SECRETS

The state secrets doctrine was born on the wings of fraud and lies by the US government in the

case of *US v. Reynolds* in 1953. As Congress struggles to rein in the unbridled use of the doctrine to cover up illegality by the Executive Branch (see here, here and here), it is a good idea to keep focus on just how addicted the Executive Branch has become to this unitary ability to quash inquiry into their malfeasance.

It took over four decades for the outright lie in *Reynolds* to surface and be exposed. The government was well on their way to covering up their similar dishonesty in *Horn v. Huddle* for decades, if not eternity, when a relentless plaintiff was finally able to demonstrate to Judge Royce Lamberth the fraud being perpetrated upon the court, nearly a decade after the original state secrets assertion. After giving the government multiple opportunities to come clean, Judge Lamberth blistered the DOJ with an opinion literally finding their acts a fraud upon the court.

After being exposed on the record by Judge Lamberth, the government suddenly decided to settle with the plaintiff, with a non-disclosure and no admission of wrongdoing agreement of course, and then moved the court to vacate its rulings against them. The DOJ literally wants to erase the record of their fraud.

But not everybody is quite so excited about the thought of the DOJ wiping the record of their time worn proclivity to dishonesty in state secrets assertions. It is important for there to be such a record, with written opinions of the court behind it, because the government is still out there seeking to shirk accountability for illegality and Constitutional malfeasance in critically important cases such as *al-Haramain* and *Jeppesen*.

In this regard, the attorney for *al-Haramain*, Jon Eisenberg, has just taken the extraordinary step of seeking leave to file an amicus brief to Judge Lamberth in the *Horn v. Huddle* case objecting to the government's attempt to vacate the court's opinions. The amicus filing by Eisenberg is brief, but a thing of beauty. And

he nails the government for continuing dishonesty with the court by pointing out how the DOJ unethically failed to cite to the court directly adverse authority to their arguments in seeking to vacate the previous opinions.

The purpose of this brief is to apprise the Court of legal authorities – as to which the United States’s vacatur motion is silent – that are directly adverse to the United States’s position and support this Court’s denial of the motion.

...

The United States contends there is “minimal” value in leaving this Court’s opinions “extant,” because they are interlocutory and thus are “non-precedential.” See United States’s Motion, Dkt. #508, at 6. But a district court’s interlocutory opinions, while lacking precedential value, are hardly valueless. In *Fraser*, 98 F. Supp. 2d at 791, the court refused vacatur of opinions concerning interlocutory issues because “there can be little doubt that, like the appeals court opinion in *Bancorp*, opinions on such matters are a valuable resource for litigants and courts,” especially where the opinions address “questions of first impression.”

That is the situation here. The opinions that the United States wants vacated concern questions of first impression – whether a district court may decline to give a high degree of deference to an assertion of the state secrets privilege where the government has previously made misrepresentations to the court regarding the privilege (the opinion of July 16, 2009), and whether a district court may decide whether counsel who have been favorably adjudicated for access to classified information have a “need to know” the information within the context of pending litigation (the opinion of August 26, 2009). The

opinions will be a valuable resource for litigants and courts as these issues arise in other cases. In fact, the opinions have already proved to be a valuable resource in *Al-Haramain Islamic Foundation, Inc. v. Obama*, where the plaintiffs (*amici curiae* in the present case) have cited them in briefing on a pending motion for partial summary judgment. See *Al-Haramain Islamic Foundation, Inc. v. Obama*, MDL Docket No. 06-1701 VRW (N.D. Cal.), Plaintiffs' Reply to Government Defs.' Opp. to Pls.' Motion for Partial Summ. Judg., Dkt. #104, at 13 n. 2 & 17 n. 3.

Get that? After perpetrating a fraud on Judge Lamberth's court, and being caught redhanded, the Obama DOJ files a brief that fails to disclose directly adverse authority, which is fundamentally unethical. It never stops on the pernicious dishonesty and outright fraud when the government is involved in state secret assertions; that was the case in the outset with *US v. Reynolds*, and that is the case now.

And you have to wonder why, at this point, Judge Lamberth would possibly be interested in granting the government's wish to wash their hands here. It was Judge Lamberth, and his court, the fraud was directly perpetrated on, and that is the very conduct seeking to be escaped from by the settlement and motion to vacate. If not for having been caught, the fraud would still be ongoing. Justice, and the sanctity of the court, require Judge Lamberth to leave those opinions in place (not to mention the authority Eisenberg cites in the amicus filing); it would not be right to give the government the ability to wash away the opinion record of such outrageous perfidy when other litigants across the country are facing potentially similar circumstances.

Judge Lamberth should leave his opinions in place and let them have whatever value they may

for other litigants, as a message to Congress, and, most of all, support for other judges, like Judge Vaughn Walker, trying to wrangle with an obstreperous and obstructionistic Department of Justice and US government. Quite frankly, after all the disingenuous conduct perpetrated by the DOJ in covering up the violations of the executive branch, the court should still impose stiff sanctions on the government as was being contemplated by the court in *Horn v. Huddle* before settlement; but, at a minimum, the court should send a message that such conduct will not be tolerated by leaving its opinions in place and in force.

HARRY REID'S PRICE OF FAILED LEADERSHIP

Harry Reid is in electoral trouble in Nevada, he has a very competent challenger looming on the GOP side and liberal and union activists will not be supporting him if he continues his failure to lead.

THE WIND TAKES THE LION: RIP SENATOR EDWARD M. KENNEDY

Teddy Kennedy has passed away