

early recognition that the absolute use of property in any way that you wanted it has never been considered a protected property right. And in one of the early Supreme Court decisions they said, we think it is subtle principle growing out of the nature of a well-ordered civil society that every holder of property, however absolute and unqualified may be his title, holds it under the implied liability that use of it may be so regulated that it shall not be injurious to the rights of the community. Now, under that operative principle, they basically had laid down the distinction between the physical taking of property and the impingement on the use of property and if something was an impingement on the use of property, the courts never historically have ever allowed for compensation in that particular category. If, on the other hand, it required...it was a physical taking of the property, such as we do under our eminent domain laws, then they applied the concept of just compensation under the Bill of Rights and protected property. But that was the early distinction. There had to be a physical taking of the entire property in order to get any compensation whatsoever. Since that point in time, there have been a couple series of decisions. One series of decisions took place in 1926 with what was called the Pennsylvania Coal case, and that particular case accepted for the first...for the first time in the history of these decisions the notion that regulations can cause a taking even if there is no physical invasion or taking of the property. And so, in the twentieth century now, we have stepped across that line and begin to protect property holders more and more so under the Pennsylvania Coal case. And, in that case, they started to look at some additional principles with a view to protecting property owners. They started asking, what is the economic impact of a regulation on a property holder? That question had never been asked before in these court cases, and the decision that they came down with was rather vague, but as the appellate courts and the district courts then interpreted the Pennsylvania Coal case, there were, in fact, decisions where property was largely taken, for all practical purposes, and in those decisions,...

PRESIDENT ROBAK: One minute.

SENATOR BEUTLER: ...even though there was not a physical taking, the property owners were compensated. Now that didn't mean that simply denying the highest and best use of the property gave rise to a taking but, nonetheless, there...the court recognized that there could be takings without physical