

Northwest Real Estate Company v. Serio:

The “Invasion” of a Northwest Baltimore Suburb

By Eric M. Daniel



A BIRDS-EYE VIEW OF THE HEART OF BALTIMORE

The original of this picture was sketched in pencil by Mr. Edward W. Spofford in the Fall of 1911, a little over seven years after the disastrous fire which laid in ashes practically all the section of the city shown in the foreground. That the city should have rebuilt on such a splendid scale in so short a time is a magnificent tribute to the enterprise and ability of her citizens.

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I. Introduction

In 1920, George R. Morris purchased a large plot of land northwest of Baltimore for the purpose of developing a suburb called Ashburton. Morris divided the plot of land and sold lots to residents interested in a building home. In each deed, Morris included a covenant prohibiting any sale of the property prior to 1932 without his consent. In 1929, under one such covenant, Morris refused to approve Charles Serio, an Italian-American, as a resident of Ashburton. In *Northwest Real Estate Company v. Serio*,¹ the Court of Appeals of Maryland found that Morris' restrictive covenant granting him the right to approve subsequent purchasers was an unlawful restraint on alienation of property. During a time of considerable suburbanization in Baltimore, real estate developers sought to keep their suburbs free of "invasion" by restricting racial and ethnic minorities from purchasing property under local ordinances, restrictive covenants, and unwritten gentlemen's agreements. Heated debate ensued as to whether such restrictions should be banned as overtly racist or whether such restrictions were a necessary evil for preserving property values and enabling planned suburban development to remain a profitable investment. Only after a series of court battles and national legislation were property owners' preservation of property values arguments discredited and discriminatory housing practices banned.

II. Historical Context

A. ALIENABILITY OF PROPERTY

The right to transfer property from one owner to another, known as "alienation," is a basic property right. Freedom of alienation promotes both the free market, allowing resources to be sold for the highest price to the highest bidder, and individual autonomy, allowing owners to rearrange property rights to optimize their use and enjoyment. However, when property rights

¹ 156 Md. 229 (Md. 1929).

have been alienated and divided among many owners it may interfere with the best use of the property and depress its market value. Restraints on alienation may also deny access to the market on the basis of race and class. It is left to the courts to determine when it is in the public interest to promote or prevent alienability. “Exclusive” communities, popular among the early planned suburbs in Baltimore, used restraints on the freedom of alienation known as restrictive covenants to exclude racial and ethnic minorities.²

B. EARLY SUBURBANIZATION IN BALTIMORE

Early suburbanization in Baltimore, as in the rest of the United States, was driven primarily by population growth and the dangers and disgust of urban life. Improvements in transportation facilitated the development of planned suburbs, which quickly joined and often replaced prior unplanned suburban development. The horse-car, railroad, and electric streetcar facilitated outward movement. By the 1910s, the motor vehicles and improved roads stimulated permanent residence by the middle class in newly planned suburbs in Baltimore. During this decade, many of Baltimore’s newest immigrants from Italy quickly gained affluence and became part of this middle class movement to the suburbs.

The Incentives for Fleeing Baltimore’s City Center

In the 1890s, Baltimore had difficulty absorbing unprecedented urban population growth. The influx in population was a result of waves of European immigration and ever-increasing migration by African Americans moving from the rural south to cities in the North and Mid-Atlantic. Between 1865 and 1900, Baltimore’s population doubled to nearly 500,000.³ It grew

² GARRETT POWER. *Meade v. Dennistone: The NAACP’S Test Case To “. . . Sue Jim Crow Out of Maryland With the Fourteenth Amendment.”* 63 Md. L. Rev. 773, 778 (2004).

³ STEPHEN GRANT MEYER, *As Long As They Don’t Move Next Door* 16 (Rowman & Littlefield Publishers, Inc. 2000).

by 50,000 people more between 1900 and 1910.⁴ Largely as a result of European immigration, more whites moved into Baltimore than blacks. After the Civil War, surging European immigration produced ethnic enclaves of Germans, Bohemians, Irish, Hungarians, Poles, and Lithuanians.⁵ One ethnicity would often replace the next in east Baltimore's slums in a type of "ethnic recycling."⁶ Jews too replaced whites, and sometimes blacks, only to be succeeded by a more recent immigrant group, Italians.⁷

In addition, city dwellers faced an increasing fear that living close to downtown was dangerous and disgusting. Those families with the means fled the city center. As the nation's seventh-largest city, Baltimore was the biggest without a sewer system. Low-lying areas of the city smelled awful. In addition, outbreaks of typhus, yellow fever, and even cholera plagued the city. Because key leaders shared ownership in lucrative companies that monopolized cleaning cesspools and processing waste, little was done to resolve the waste-management and public health issues arising in the 1850s. On February 7, 1904, the Baltimore fire incinerated 140 acres of downtown, destroying 1,526 buildings.⁸ Though reconstruction provided the opportunity to address long-overdue concerns such as building the sewer system and deepening the port's vital navigation channel, many perceived city dwelling as dangerous. Families of means fled to suburbs created on land that the city had annexed from the county.⁹

The Rise of Planned Suburban Development in Baltimore

The unplanned neighborhood, representing the earliest movement from the city to the countryside, began in the early nineteenth century through random construction of isolated

⁴ *Id.*

⁵ ANTERO PIETILA, *Not In My Neighborhood* 9-10 (Ivan R. Dee 2010).

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

residences.¹⁰ Beginning in the 1860s, the horse-car lines opened up new suburban areas in Baltimore, however growth was limited to regions close to businesses and industry. The residences built during this time, used primarily as summer retreats, were often built along early road networks or on various lots subdivided from larger parcels, such as country estates or farms. Unlike later development, the random settlement of early suburbanization pre-dated zoning regulations and deed restrictions, and lacked planned spatial arrangement, siting, and building orientation.

Suburbanization grew significantly after the construction of several railways in the early 1870s.¹¹ The Washington Branch of the Baltimore & Potomac Railroad and the Metropolitan Branch of the Baltimore & Ohio Railroad were in operation by 1875. The construction of these



United Railways and Electric Company of Baltimore, Md., 1910

railways caused a great deal of land speculation and residential construction along their rights-of-way. The railways provided convenient access to the city and allowed residential growth to extend farther into the countryside. The stops and railroad towns along the rail lines became centers of residential and commercial activity for the suburban

¹⁰ MONTGOMERY AND PRINCE GEORGE'S COUNTIES, MD., MARYLAND DEPARTMENT OF TRANSPORTATION. STATE HIGHWAY ADMINISTRATION. *Suburbanization Historic Context and Survey Methodology* (1999), at B-2 [hereinafter *Suburbanization Historic Context*].

¹¹ *Id.*

region.¹² Plenty of land was available for development because of Baltimore's unique proximity to large estates surrounding the city.¹³

Despite the advantages of the railway, the settlements also relied on the road network to link communities, farms and the city.¹⁴ During the 1890s, when horse-car lines were electrified and expanded, a new suburban belt grew beyond Baltimore's municipal boundaries.¹⁵ The rise of the electric streetcar enabled developers and real estate speculators to develop unplanned neighborhoods or isolated residences by-passed by railroads into planned suburbs. Outward movement extended from the very rich to the merely affluent.¹⁶

During the early suburbanization period, suburban dwelling was primarily used as a summer retreat rather than a full-time residence. Before 1900 well-to-do families left city rowhouses for Catonsville, Mt. Washington and Towson only during the summer months.¹⁷ Even Sudbrook Park was intended at first as a summer resort conveniently connected to Baltimore City through the Western Maryland Railroad.¹⁸ Streetcars provided more regular and more frequent stops than railroads allowing summer-home communities to begin serving as year-round homes for commuters.¹⁹ By 1910 motor vehicles and improved roads expanded the reach of suburbanization and further stimulated permanent residence in those areas. Ease of

¹² *Id.*

¹³ PIETILA, *supra* note 3, at 9-10.

¹⁴ *Suburbanization Historic Context*, *supra* note 10, at B-2.

¹⁵ *Id.*

¹⁶ GEORGE H. CALLCOTT, *Maryland & America: 1940 to 1980*. (The Johns Hopkins University Press 1985), at 19-20.

¹⁷ HARRY G. SCHALCK, "Planning Roland Park, 1911-1910" *Maryland Historical Magazine*. (Winter 1972): 419-428, at 419

¹⁸ *Id.*

¹⁹ SHERRY OLSON, *Baltimore, the Building of an American City*. (Baltimore: The Johns Hopkins University Press, 1980), at 212.

transportation shortened distances, freed motorists from preplanned itineraries, and made previously faraway parcels attractive for year-round residence.²⁰

For the middle class in Baltimore, the concept of year-round suburban living took hold around 1910.²¹ New suburban areas developed in the North and West as lowered transportation costs helped bring houses within the means of the middle class.²² In middle class areas, the county and private developers jointly constructed a patchwork system of sewers while other companies supplied the remaining utilities. County schools in suburban areas were much improved since the 1880s. Police protection hardly existed in 1888 and, while still modest, was supplemented by the new Maryland State Police. In 1913 county fire protection was sufficient to bring a reduction in property insurance rates. Suburbanites still lacked a comprehensive utility system and the general level of services was not equal to the better areas of Baltimore city, but there were enough facilities for satisfactory living.²³

By the mid-twentieth century, residential clusters became dominated by planned developments.²⁴ Planned suburban neighborhoods consisted of tracts of land subdivided by real estate speculators and developers.²⁵ Early suburban communities often had consistent design features and harmonious building types. The typical planned neighborhood consisted of a grid pattern of streets subdivided into lots. The developers sold the lots, leaving it to the landowner to

²⁰ PIETILA, *supra* note 5, at 9-10.

²¹ Joeseeph L. ARNOLD, "Suburban Growth and Municipal Annexation, 1745-1918." *Maryland Historical Magazine*. (Summer 1978): 109-128, at109.

²² POWER. *supra* note 2, at 774-776.

²³ ARNOLD, *supra* note 21, at 109. Quite the opposite trend developed in the industrial suburbs of the East and in Curtis Bay in Anne Arundel County. The Highlandtown-Canton area contained 35,000 people who lived without sewers, adequate fire or police protection and school buildings that were a health and fire hazard. Too poor to build its own sewer system, it sought a county bond issue for that purpose in 1914; but the county farmers and middle class suburbanites defeated it. *Id.*

²⁴ *Suburbanization Historic Context*, *supra* note 10, at B-2.

²⁵ *Id.*

construct the house. Occasionally, early developers established covenants restricting the orientation of the building, the value of the future residence, or the timeframe within which the new residence must be built.²⁶ Other developers used covenants to restrict the race or ethnicity of the potential buyer. Roland Park, for example, in 1910 became one of the earliest communities in the nation to bar African Americans through property deeds and later Jews through an unwritten company rule.²⁷ Before long, Baltimore became notorious for restrictive covenants controlling race and ethnicity in the planned suburbs northwest of the city.

C. ITALIAN IMMIGRANTS' PROGRESSION TO THE MIDDLE CLASS IN BALTIMORE

As mentioned previously, Baltimore was experiencing significant population growth at the turn of the twentieth century in large part due to European migration. Italian immigrants, Baltimore's newest growing immigrant community, were an important part of this population growth. Between 1900 and 1910 alone, Baltimore's Italian-born population grew from 2,042 to 5,043.²⁸ During this decade, new arrivals and second-generation Italian Americans consolidated their hold what became known as Little Italy immediately to the east of Downtown Baltimore.²⁹

In 1905, Italians were among Baltimore's newest immigrants.³⁰ In 1910, more than half of the Italian-born residents of Baltimore had lived in America for fewer than ten years. Italian immigrants, like other ethnic immigrant groups of the era, endured discrimination not only in Baltimore but across the country. In the 1880s and 1890s, Italian immigrants fell victim to lynching and peonage schemes, especially in the deep South where they mingled with African

²⁶ *Id.*

²⁷ PIETELA, *supra* note 3, at 36-37.

²⁸ GORDON H. SHUFELT, *Jim Crow Among Strangers: The Growth of Baltimore's Little Italy and Maryland's Disfranchisement Campaigns*. *Journal of American Ethnic History*, Vol. 19, No. 4 (Summer, 2000), pp. 49-78.

²⁹ *Id.*

³⁰ *Id.*

Americans often unaware of the risks. Increasing numbers of Italian immigrants began to appear on Maryland’s railroad construction crews in the 1880s. State labor official responded with hostility and declared that Italian workers were of “very little use to American civilization.”³¹ As in the deep South, hostility toward Italians in Maryland was paired with the notion that Italian immigrants should be categorized with African Americans as an exploitable cheaper class of labor.³²

By 1909, an increase in social complexity in the Italian community corresponded with a heightened capacity to participate in and influence affairs on a citywide level.³³ Many members of the growing Italian community applied and were granted naturalization. By this time, an increasing percentage of the Italian community began to acquire wealth, power, and positions of leadership. Several Italian-born businessmen had established substantial enterprises. Many of Baltimore’s more ambitious Italian immigrants used the fruit retail business as a stepping-stone for upward social mobility. In 1905, for example, following a dispute with importers, a group of



fruit vendors formed the Italian Fruit Dealers’ Association, a corporation established for the purpose of assuring that importers treated retailers fairly. A

³¹ *Id.*

³² *Id.*

³³ *Id.*

single retailer, Frank Serio,³⁴ provided most of the \$20,000 raised to start the new organization.³⁵ As Italian-Americans gained affluence, they joined others entering Baltimore's growing middle class in fleeing Baltimore's city center for a suburban lifestyle.

III. The Creation of Ashburton

George R. Morris created Ashburton, a suburb in northwest Baltimore, in the very early stages of what would become a long controversial career as a realtor and builder. Born in LeRaysville, Pennsylvania in 1877 and an architecture graduate from Syracuse University,

Morris came to Baltimore after the Baltimore fire in 1904.³⁶ He decided there would be greater opportunity in a city that needed to be rebuilt.³⁷

George R. Morris had its principal office in the Morris Building at the intersection of Charles and Saratoga streets.³⁸



Morris Building at 300 N. Charles Street, 1922

³⁴ A diligent search of the 1920 and 1930 census records indicated no relationship between Charles Serio and Frank Serio. That being said, the Serio name is commonly associated with Italian fruit stand owners in Baltimore.

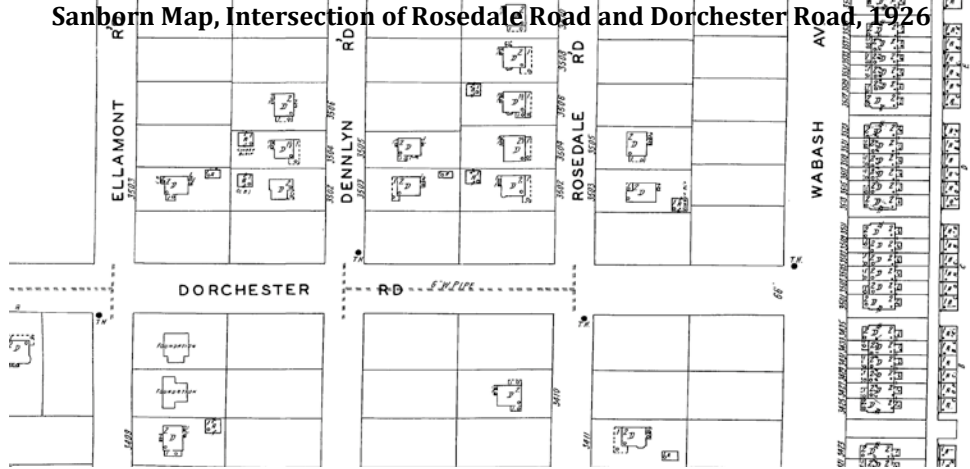
³⁵ SHUFELT, *supra* note 26, at 49-78.

³⁶ *George R. Morris, Realtor And Builder, To Be Buried*. The Baltimore Sun, April 11, 1968, at A15.

³⁷ *Id*; Morris erected two cottages on Beech avenue near Garrison avenue in Northwest Baltimore in 1907 as part of the architectural firm Morris & Clifford. *Will Build In Suburbs*. The Baltimore Sun, September 27, 1907, at 8.

³⁸ *Northwest Real Estate Company v. Serio*, 156 Md. 229 (Md. 1929), (Compl. p5, ¶ 5).

In 1920, the Northwest Real Estate Company, with George R. Morris as its president,



purchased a 170-acre tract of land in Northwest Baltimore City for \$470,000 from the late John S. Gittings.³⁹ Ashburton had been a farm owned by the Gittings family for more than 100 years.⁴⁰ The Gittings family was prominent in Baltimore politics. John S. Gittings, a banker, diplomat and socialite, sold most of the property to Morris, retaining only the Ashburton House itself and surrounding acres.⁴¹ This tract, located in the Forest Park area, was subsequently divided into 600 lots. Morris sold the unimproved lots expecting the purchasers to build homes while Northwest Real Estate Company reserved the right to approve all improvements.⁴² Streets, roads, and other improvements costing approximately \$500,000 were made and the whole development was placed on the market under the name of Ashburton.⁴³ Completion of the improvements throughout the whole tract would cost an additional \$100,000.⁴⁴ Early in the development of Ashburton, Morris also made efforts to ensure surrounding areas remained

³⁹ *Jones v. Northwest Real Estate Company*, 149 Md. 271 (Md. 1925).

⁴⁰ *Live in Baltimore – Ashburton*. <http://www.livebaltimore.com/neighborhoods/list/ashburton>.

⁴¹ *Id.* The house itself passed out of the family's hands and was converted to a nursing home on the 3500 block of Hilton Road. *Id.*

⁴² *Jones*, 149 Md. at 271 (Md. 1925).

⁴³ *Id.*; In August, 1921, the Paving Commission extended its smooth pavement program to cover Ashburton at the joint expense of the city and George R. Morris. *31 Additional Streets in Improvement Plan: Extension of Smooth Pavement Program Decided On By Commission*. The Baltimore Sun, August 12, 1921, at 16.

⁴⁴ *Jones*, 149 Md at 271.

devoted to first-class residential development.⁴⁵ As of December 1925, 400 of the 600 lots in the development had been sold and roughly 225 homes had been built on those sold lots.⁴⁶

Northwest Real Estate Company sold one such lot to Carl W. Einbrod and his wife Julia A. Einbrod in fee simple on August 19, 1927⁴⁷ at what is now the corner of Rosedale Road and Dorchester Road for \$2595 to mature on May 17, 1928.⁴⁸ Included in the deed from Northwest Real Estate Company to the Einbrods, as with all of the deeds conveying lots in Ashburton, was a covenant that the grantee could not convey the land without the grantor's consent within the ensuing four and a half years. It stated that the conveyees should not "have the right to sell or rent the same without the written consent of the grantor . . . until January 1, 1932."⁴⁹ According to the deed, "for the purpose of maintaining the property . . . and the surrounding property as a desirable high class residential section . . . [Northwest Real Estate Company had] the right to pass upon the character, desirability and other qualifications of the proposed purchaser or occupant of the property."⁵⁰

⁴⁵ *Bars Arlington Site for the City Hospital*. The Baltimore Sun, Oct 19, 1921, at 22; Morris spoke before the Zoning Commission in opposition to placement of a municipal hospital for infectious disease in nearby Phillips and Dent. The Zoning Commission did not approve the locations, proposed by the Hospital Commission, taking the position that "the section, being devoted to a first-class cottage development, should be reserved as such." The Zoning Board found that "the territory closely adjacent to this site is already well developed as a first-class residential district" and that placing the hospital in either of these locations "would seriously retard the development of adjacent territory." Despite Mayor Broening's concern that other sites will undoubtedly face the same condemnation and that "opposition to the hospital may lead to no hospital at all," the Zoning Board suggested that the hospital be placed on other sites in districts that had not yet been developed. *Id.*

⁴⁶ *Jones*, 149 Md. at 271; The first home in the new development was built in 1921 by the family of Blanche Van de Castle. Live in Baltimore - Ashburton. <http://www.livebaltimore.com/neighborhoods/list/ashburton/>.

⁴⁷ Baltimore City Land Records, Liber SCL No 4778 Folio 460.

⁴⁸ *Serio*, 156 Md. at 229, (Compl. p5, ¶ 8).

⁴⁹ Baltimore City Land Records, Liber SCL No 4778 Folio 460.

⁵⁰ *Id.*; The entire clause reads: ". . . for the purpose of maintaining the property hereby conveyed and the surrounding property as a desirable high class residential section it is hereby agreed . . .

While George R. Morris was developing his new suburban development in Northwest Baltimore, Charles Serio, a successful fruit stall owner,⁵¹ was looking for a home closer to his fruit stand in the Lexington Market area.⁵² His home at the time, located at 2914 E. Madison Street,⁵³ required an inconvenient commute from his place of employment. Charles Serio, born in Maryland in 1894 to Italian parents,⁵⁴ “admits without apology but proclaims with pride that he is of Italian stock and an American citizen and is proud of both his native and adopted countries.”⁵⁵ His wife, Irene Serio, “is of the purest Nordic stock,”⁵⁶ and “[i]n the veins of their child, the only other member of the family that will occupy said residence, flows the blood of the proud Roman and sturdy Germanic races.”⁵⁷ Having worked diligently in his business, Charles Serio gained the confidence of the business and banking community as well as the respect and esteem of his customers. Charles Serio sought a home that was “within his means, of a design that was pleasing to his wife and himself, and in a location that is within easy distance of his place of business.”⁵⁸ Charles and Irene Serio felt newly developing Ashburton would be a perfect location and found the home they were looking for at 3501 Rosedale Road.⁵⁹

that until January 1, 1932 no owner of the land hereby conveyed shall have the right to sell or rent the same without the written consent of the grantor herein which shall have the right to pass upon the character, desirability and other qualifications of the proposed purchaser or occupant.”
Id.

⁵¹ 1930 Census. Maryland. Baltimore. 15-WD Baltimore. Series: T626, Roll: 859; Page: 26. Heritage Quest Online.

⁵² *Serio*, 156 Md. at 229, (Compl. p8, ¶9).

⁵³ *Id.* (Compl. p8,-9 ¶9).

⁵⁴ 1930 Census. Maryland. Baltimore. 15-WD Baltimore. Series: T626, Roll: 859; Page: 26. Heritage Quest Online.

⁵⁵ *Id.* (Compl. p7, ¶9).

⁵⁶ *Id.* (Compl. p7-8, ¶9).

⁵⁷ *Id.* (Compl. p8, ¶9).

⁵⁸ *Id.* (Compl. p8, ¶9).

⁵⁹ *Id.* (Compl. p5, ¶8).

The current owners of the home, the Einbrods, purchased a lot from Northwest Real Estate Company and constructed the home in strict conformity with the requirements contained in the deed.⁶⁰ On March 27, 1928 the Einbrods agreed to sell their home to Charles and Irene Serio for \$10,500.⁶¹ The Serios put \$500 down and agreed to pay the remaining balance on or before June 1, 1928. The Einbrods turned over the keys to the Serios and the Serios took possession of the home.⁶² Upon selling their home to the Serios, the Einbrods subsequently moved to another house in Ashburton at 3612 Grantly Road.⁶³ A diligent search of the 1930 census records indicates that Charles Serio would be the only resident in Ashburton of Italian descent.⁶⁴ Nearly all residents to that point were born in Maryland or Virginia. Even the parents of these Ashburton residents were primarily American born, Maryland and Virginia mostly, and a small percentage were German, Irish, English or of other Northern European descent.⁶⁵

Immediately after entering into the contract, the Einbrods presented the Serio's name to the Northwest Real Estate Company as required by the covenant.⁶⁶ Northwest Real Estate Company took "an unreasonably long interval" to decide, lasting several weeks. During that time, the Serios assumed liabilities, incurred obligations, and entered into engagements.⁶⁷ The Serios entered into contracts to furnish their new residence and to dispose of their furniture and property in their old home.⁶⁸

⁶⁰ *Id.* (Compl. p5, ¶8).

⁶¹ *Id.* (Compl. p2, ¶4).

⁶² *Id.* (Compl. p2, ¶5).

⁶³ *Id.* (Compl. p12, ¶5).

⁶⁴ 1930 Census. Maryland. Baltimore. 15-WD Baltimore. Series: T626, Roll: 859; Page: 26. Heritage Quest Online.

⁶⁵ *Id.*

⁶⁶ *Serio*, 156 Md. at 229, (Compl. p3, ¶6).

⁶⁷ *Id.* (Compl. p5, ¶8).

⁶⁸ *Id.* (Compl. p3, ¶5).

Weeks later Northwest Real Estate Company notified the Einbrods that they were refusing to approve the Serios as residents of a house in Ashburton.⁶⁹ On April 20, 1928, the Serios, through their attorneys, sent a formal and final request to the Northwest Real Estate Company demanding approval of the sale. On April 21, 1928, in writing over the signature of George R. Morris, President of Northwest Real Estate, refused to give its approval. In his letter, Morris stated that Northwest Real Estate Company was refusing to approve the Serios as a purchaser pursuant to their right under the covenant. The letter stated:

[After a] careful impartial investigation of the proposed purchaser, his past habits, including his place of last occupancy or residence, and all other things pertinent to a careful impartial investigation . . . we have concluded that ‘the desirability and other qualifications of the proposed purchaser or occupant’ are not such, as to justify us, . . . to approve of him as a resident or occupant of Ashburton.

The Serios promptly filed suit.⁷⁰

III. Baltimore City Circuit Court

The Serios, as plaintiffs, filed the Bill of Complaint in Baltimore City Circuit Court on May 2, 1928 naming both the Einbrods and Northwest Real Estate Company as defendants. Serio sought to compel specific performance of the purchase agreement on the theory that the covenant was void and, in the alternative, sought judicial enforcement of Northwest Real Estate Company’s consent because the company’s refusal was arbitrary and unreasonable.

⁶⁹ *Id.* (Compl. p4, ¶6).

⁷⁰ *Id.*

A. THE ATTORNEYS

The Serios hired William Milnes Maloy (1874-1949) as their attorney of Maloy, Brady, Howell & Yost located at 1403 Fidelity Building in downtown Baltimore. Maloy was born in Blacksburg, Virginia in October 1874 and was the son of families that had resided in Maryland for more than two



William M. Maloy

centuries.⁷¹ His father, Reverend William Chambers Maloy of Queen Anne's county, taught classic literature for several years before enlisting in the Confederate army as a private and later as chaplain of the Forty-fourth Mississippi Regiment.⁷² His mother was Margaret (Hopkins) Maloy of Talbot county whose family contributed twelve men to the ministry.⁷³ William Maloy attended Baltimore City College and graduated in 1894 as valedictorian of his class.⁷⁴ Maloy attended the University of Maryland Law School and later took a master's degree and a doctor's degree in law at Catholic University.⁷⁵

Maloy, a physically large man known for his innate modesty coupled with a sharp wit, would go on to be an important figure in Maryland Democratic politics for more than forty years.⁷⁶ He was former chairman of the Public Service Commission, former executive director

⁷¹ CLAYTON COLEMAN HALL, Baltimore: Its History and Its People 607-08 (Lewis Historical Pub. Co. 1912).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *W.M. Maloy, Democratic Figure, Dies.* The Baltimore Sun, August 17, 1949, at 28.

⁷⁶ *Id.*

of the Unemployment Insurance Law, one-time State senator and member of the House of Delegates, and candidate for governor and United States Senator.⁷⁷

Serio was not the first instance in which Maloy represented minority residential housing rights in the face of diminution of property value arguments. Maloy submitted a brief for Morgan College in *Diggs v. Morgan College*⁷⁸ with Edgar Allan Poe submitting a brief for the plaintiff.⁷⁹ In *Diggs*, the Court refused to grant an injunction in favor of an adjacent landowner who filed a bill in equity to enjoin Morgan College from using some its land as building lots for black residents.⁸⁰ Interestingly, it was George R. Morris who advised the residents of Morgan College to include a covenant used to restrict access by whites.⁸¹

George R. Morris hired Walter Conrad Mylander (1897-1951) to represent Northwest Real Estate Company. Mylander was a prominent member of the Maryland bar and real estate expert. A native of Baltimore City, Mylander owned and developed Towson estates, a suburban

⁷⁷ *Id.* In 1908, after he had begun the practice of law, Mr. Maloy was elected in the Maryland House of Delegates and later became a state Senator. In 1915 he was defeated by Albert C. Ritchie for the Democratic nomination for attorney general. In the early 1920's, Mr. Maloy served four years as chairman of the Public Service Commission, resigning to become people's counsel. He ran against Ritchie for the Democratic nomination for governor in 1926 and again was defeated. In 1934, Mr. Maloy again ran for office unsuccessfully, this time opposing George E. Radcliffe in the Democratic primary for the United State Senate. He was appointed executive director of the Unemployment Insurance Law in 1935, a position which he held until 1942. *Id.*

⁷⁸ 133 Md. 264 (Md. 1918).

⁷⁹ *Id.*

⁸⁰ *Id.* Morgan College was chartered to furnish instruction in the higher branches of learning to African Americans. The issue was whether the landowners, claiming the purported use would materially depreciate the value of his land, could attack Morgan College's acquisition of the property as in excess of the corporate powers, which were limited to those expressly contained in the charter. The court held that while Morgan College's charter powers were exceedingly broad, and lacked sufficient limitation on the land the college could own, the trial court had no jurisdiction to grant an injunction unless the college's intended actions amounted to a public nuisance, which it did not. *Id.*

⁸¹ PIETILA, *supra* note 5, at 48.

area on Joppa road, and other large real estate holdings in and near Baltimore.⁸² His home was on the 200 block of St. Martin's Road in Guilford. Mylander graduated from Baltimore City College in 1879 and was the winner of the Peabody Award.⁸³ He attended St. Johns College and graduated cum laude from Harvard Law School in 1903. Mylander would represent Morris in a series of lawsuits regarding Morris' real estate ventures.

As with Maloy, Mylander was no stranger to racially charged residential disputes involving property value concerns. A resident living at 2445 Woodbrook Avenue in northwest Baltimore filed a bill of complaint, through Mylander, claiming that a neighbor violated a near unanimous agreement, signed by the neighbor, not to "rent or sell their property to Negroes."⁸⁴ The neighbor was charged with "threatening openly to sell his house for the purpose of converting the block into a block inhabited by Negroes. . . . The street, it was alleged, by reason of the efforts of the defendants, had become overrun with Negroes inspecting the premises with the intention of the acquiring the property as a residence, and unless the court interfered the value of the complainant's home would be decreased."⁸⁵ The injunction was granted.⁸⁶

The Einbrods hired local attorney John Alexander Dushane Penniman (1892-1939) as counsel. After his early studies at the Boys' Latin School he entered the Johns Hopkins University, where he graduated in 1913.⁸⁷ He then attended Harvard College of Law, graduating

⁸² *Mylander Estate Set at \$988,829*. The Evening Sun, April 16, 1952. Real estate, mostly in Baltimore county and Baltimore city, formed the greater part of the \$988,829 appraisal recorded for the estate of Walter C. Mylander. His real estate holdings were set at nearly \$851,000. Forty-three properties forming the largest part of the real estate valuation were located in the same genral neighborhood on Joppa road near Towson. *Id.*

⁸³ *City College Monitor Students Who Have Made the Highest Averages In Their Studies For The Past Term*. The Baltimore Sun, March 3, 1898, at 7.

⁸⁴ *Prohibits Selling House to Negroes*. The Baltimore Sun. May 15, 1926, at 9.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *J.A.D. Penniman Dies; Stricken Playing Golf*. The Baltimore Sun. March 6, 1939, at 16.

1917.⁸⁸ Penniman enlisted before graduating upon the United States' entry into World War I.⁸⁹ Upon his return, Pennimen started a solo practice in Baltimore. After a brief two-year stint in Springfield, IL, Pennimen returned to Baltimore as a member of the law firm of Heimiller & Penniman representing builders and contractors, among others.⁹⁰ Penniman was also president of the Curtis Motors Company, a member of the Maryland Club, the Elkridge Hunt Club, the Gibson Island Club, the Bachelors' Cotillon and the Harvard Club of New York.⁹¹

B. JUDGE EUGENE O'DUNNE AND HIS OPINION

The Judge presiding over the Baltimore City Circuit Court case was Judge Eugene O'Dunne (1875-1959) "whose wit, wisdom and flair for controversy helped make him the most colorful judge ever to sit on the Supreme Bench in Baltimore."⁹² In 1928, Judge O'Dunne was just beginning what would become a long and prosperous career as Associate Judge of the Supreme Bench of Baltimore City.⁹³ Judge O'Dunne had a reputation as being "eminently fair"⁹⁴ but quite fiery on and off the bench.⁹⁵ O'Dunne was admittedly a "publicity hound"⁹⁶ and is also documented as being "one of the most picturesque figures at the Baltimore bar."⁹⁷

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Judge O'Dunne Dies at 84 at Maine Home.* The Baltimore Sun, Oct 31, 1959, at 28.

⁹³ *Id.*

⁹⁴ *Mr. O'Dunne to Resign.* The Baltimore Sun, November, 17 1910. Above all, as one of his friends said of him, he is eminently fair, and would scorn to take an improper advantage of an opponent. If he does not think the evidence warrants a conviction, he is not afraid to say so, and, therefore secure the acquittal of an accused person. *Id.*

⁹⁵ *Attorney vs. Promoter.* The Baltimore Sun, September, 26 1906. The Baltimore Sun reported that Judge O'Dunne grabbed by the throat and physically threw John S. Alexander his office into the corridor. Alexander, a New York promoter, was seeking to have Allan McLane, formerly receiver of the Maryland Trust Company, indicted for perjury. When O'Dunne refused to take any action against Mr. McLane, explaining there was insufficient evidence to support a charge, McLane accused him of protecting McLane. *Id.*

Eugene O'Dunne



O'Dunne graduated from the University of Maryland Law School in 1900 and served seven years as a member of the Baltimore State's attorney's office before going on the bench.⁹⁸ After a fling as an explorer in South America, he returned to Baltimore and embarked upon his volatile career in 1903. From 1903-1910, he served as an Assistant and Deputy State's Attorney of Baltimore City and was engaged in private law practice from 1910-1926. He also taught at the University of Maryland School of Law, John Hopkins

Medical School, and the University of Baltimore School of Law.⁹⁹ He served as the President of the Bar Association of Baltimore City from 1914-1915.¹⁰⁰ Then in 1926, O'Dunne was appointed to the Supreme Bench by the late Governor Albert C. Ritchie.¹⁰¹ O'Dunne's appointment was a surprise of many politicians and stirred controversy as being subject to political influence.¹⁰² He was elected that same year and remained in office until he reached the statutory retirement age of 70. In 1945, in true O'Dunne fashion, he claimed that his retirement

⁹⁶ *He's Been 'Muzzled' 20 Years, Says O'Dunne Leaving Bench.* The Baltimore Sun, June 21 1945.

⁹⁷ *Mr. O'Dunne to Resign.* The Baltimore Sun, November, 17 1910. “. . . his tall form, stylish clothes and eyeglasses fastened to a long, dangling black silk cord attracting attention wherever he goes. . . . Humor is so natural to him that he rarely tries a case in which some evidence does not crop out. *Id.*

⁹⁸ *Judge O'Dunne Dies at 84 at Maine Home.* The Baltimore Sun, Oct 31, 1959, at 28.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *O'Dunne Choice is Criticized at Meeting of Bar.* The Baltimore Sun, February 25, 1926.

Thurgood Marshall and Donald Murray, circa 1935-1936



was ‘forced by a constitutional imbecility.’¹⁰³

O’Dunne went on to practice law after retiring from the bench.¹⁰⁴

During his twenty years on the bench, Judge O’Dunne presided over many important trials. In one such Baltimore City Court trial, O’Dunne ordered Raymond A. Pearson, president of the University of Maryland Law School, to admit Donald Gains Murray, Sr. to the University of Maryland Law School.¹⁰⁵

Thus, Murray became the first African-American to

attend Maryland Law School following the 1890 effort to prevent African-Americans from attending.¹⁰⁶ Representing Murray was Thurgood Marshall, who argued that that "since the State of Maryland had not provided a comparable law school for blacks that Murray should be allowed to attend the white university."¹⁰⁷ Marshall stated, "What's at stake here is more than the rights of my client. It's the moral commitment stated in our country's creed."¹⁰⁸

Despite his strong liberal convictions and flair for controversy, in *Serio* Judge O’Dunne produced a short, three-page opinion, with little elaboration. Judge O’Dunne found on June 26,

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Donald Gains Murray and the Integration of the University of Maryland School of Law.* African Americans in the Law Collection. Thurgood Marshall Law Library, Special Collections. <http://www.law.umaryland.edu/marshall/specialcollections/murray/>.

¹⁰⁶ *Colored Students Ruled Out.* New York Times. September 14, 1891. From the Archive of the University of Maryland School of Law.

¹⁰⁷ *Donald Gains Murray and the Integration of the University of Maryland School of Law.* African Americans in the Law Collection. Thurgood Marshall Law Library, Special Collections. <http://www.law.umaryland.edu/marshall/specialcollections/murray/>.<http://www.law.umaryland.edu/marshall/specialcollections/murray/>.

¹⁰⁸ *Id.*

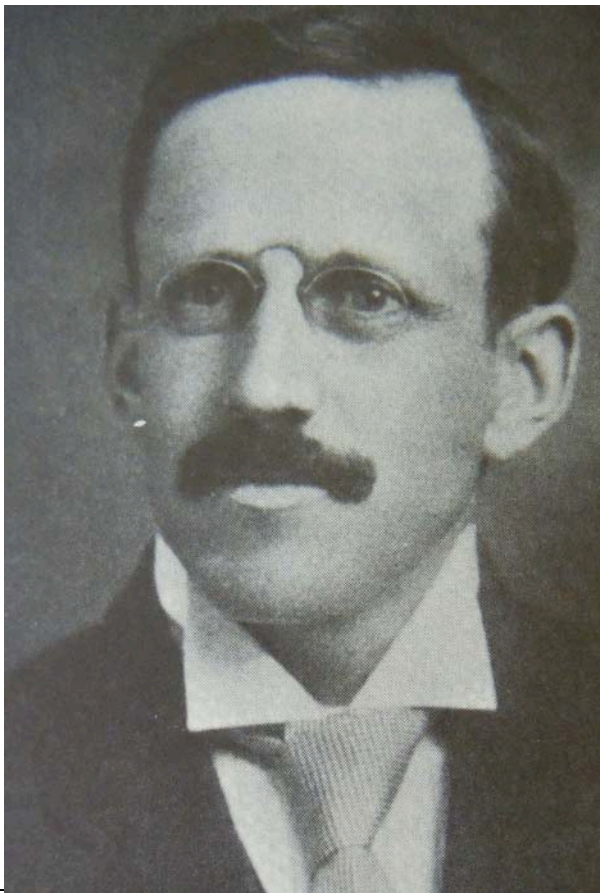
1928 that the covenant contained Section 7 of the deed was an unreasonable and unlawful restraint on alienation and thus null, void, and invalid.¹⁰⁹ He found the covenant repugnant to and inconsistent with the fee-simple estate granted for valuable consideration.¹¹⁰ Thus, title to 3501 Rosedale Road was to be conveyed from the Einbrods to the Serios.¹¹¹

IV. Court of Appeals of Maryland

A. JUDGE HAMMOND URNER AND HIS OPINION

Northwest Real Estate Company immediately filed an Appeal to the Court of Appeals of Maryland. Presiding over the appeal was Judge Hammond Urner. Urner had served as city attorney of Frederick city from 1898 to 1901. In 1907 he became Attorney General of Maryland

Hammond Urner



and in 1909 was elected chief judge of the Sixth Judicial Circuit of Maryland.

Judge Urner affirmed the decision of the Baltimore City Circuit Court. He found the covenant, prohibiting any sale of the property prior to 1932 without Northwest Real Estate Company's consent, to be an unlawful restraint on alienation. He supported his argument saying that this restraint on alienation could not be reconciled with the right of disposition inherent in the fee simple estate granted from

¹⁰⁹ Baltimore City Land Records, Docket 68A Folio 24 (Md. 1928).

¹¹⁰ *Id.*

¹¹¹ *Id.*

Northwest Real Estate to the Einbrods. Urner opined that the alleged purpose of maintaining a “desirable high class residential section” and enabling the grantor to “pass upon the character desirability” was designed to explain rather than limit the reservation of power.

Urner analogized *Clark v. Clark*¹¹² to find that the discretionary control reserved by Northwest Real Estate, repugnant to a vested estate in fee simple, is not valid simply because the restriction is limited in duration. In *Clark*, a testator devised his estate to his seven children. A provision stated that the property was not be sold within ten years without the unanimous consent of the children. The court found this provision to be inoperative and void as an unlawful restraint on alienation because the will would practically amount to a restraint for ten years of all alienation by any child of its share of the estate.¹¹³ Notwithstanding that the restraint in *Clark* was longer than in *Ashburton*, ten years rather than four-and-a-half, and consisted of a requirement for consent by six other devisees rather than a single but corporate grantor, Urner felt that in both instances the intended interference with the normal alienability of the fee simple estate devised or granted was equally apparent.¹¹⁴

In contrast, Urner distinguished *Jones v. Northwest Real Estate Company*,¹¹⁵ a case in which the court considered another restriction in the deeds from Northwest Real Estate Company to lot purchasers in *Ashburton*. Northwest Real Estate Company was again represented by Walter C. Mylander. The provision at issue stated that no building should be erected on the property without the grantor’s approval in writing, which could rightfully be refused if the proposed structure did not reasonably conform to the general plan of the development in the area. Judge Walsh, writing the opinion for a unanimous court, which included Judge Urner and Judge

¹¹² 99 Md. 356 (Md. 1904).

¹¹³ *Id.*

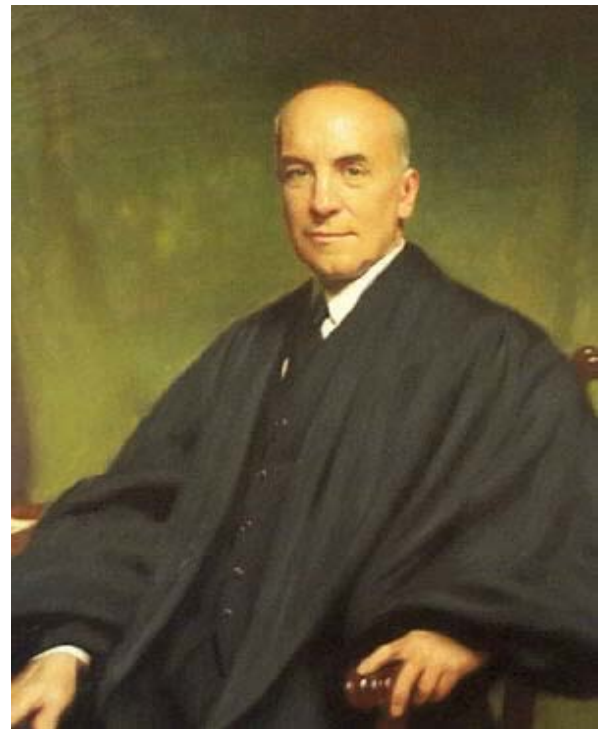
¹¹⁴ *Serio*, 156 Md. at 233.

¹¹⁵ 149 Md. 271 (Md. 1925).

Bond, held that the restriction was lawful because it “did not interfere with the fee of the land to such an extent as to render them void.”¹¹⁶ Judge Urner distinguished *Jones* and rejected the argument suggested by Morris that the real object of the restriction was “simply to regulate the use and occupancy of the property described in the deed.” Rather, Urner saw the restriction as “a prohibition of any sale of the property prior to 1932, without the grantor’s consent, and such a restraint on its alienation cannot be reconciled with the right of disposition inherent in the fee simple estate which has been granted.”¹¹⁷

B. CHIEF JUDGE CARROLL T. BOND AND HIS DISSENT

Chief Justice Carroll T. Bond (1873-1943), who joined in the opinion in *Jones*, wrote a strong dissenting opinion in *Serio*. Judge Bond was a graduate of Harvard University and the University of Maryland School of Law.¹¹⁸ He practiced law in Baltimore for 15 years, interrupted briefly by his service as a corporal with the Maryland Volunteers during the Spanish-American War.¹¹⁹ Bond served as an associate with the firm Marshall, Marbury and Bowdoin, later Marbury and Bodoin, and later as a partner in Williams and Bond, and Marbury and Gosnell.¹²⁰ Bond served as a Trial Judge on the Supreme



Chief Judge Carroll T. Bond

¹¹⁶ *Id.*

¹¹⁷ *Serio*, 156 Md. at 234.

¹¹⁸ *Baltimore Lawyers and Judges Of the 20th Century: Carroll T. Bond*, The Daily Record, September 18 2000.

¹¹⁹ Carroll T. Bond, MSA SC 3520-1630. Archives of Maryland (Biographical Series). www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/001600/001630/html/1630bio.html.

¹²⁰ *Baltimore Lawyers and Judges Of the 20th Century: Carroll T. Bond*, The Daily Record, September 18 2000.

Bench of Baltimore City (now Circuit Court for Baltimore City) from 1911-1924.¹²¹ He became an Associate Judge for the Maryland Court of Appeals in 1924 and served as Chief Judge starting in 1924 until his death in 1943.¹²² Judge Bond was well respected as a judge.¹²³ Governor Herbert R. O'Connor said of him, "His learning, scholarship, experience and mature judgment combine to make him an ideal judge, and our State has been most fortunate in receiving the benefit of his valuable services."¹²⁴ Bond also published a history of the Maryland Court of Appeals and played an instrumental role in supporting construction of an Archive for the State.¹²⁵ Interestingly, Bond was the Court of Appeals judge that presided over *Pearson v. Murray*¹²⁶ on appeal from Judge O'Dunne's lower court opinion discussed previously. Judge Bond affirmed O'Dunne but ruled that, in order to accommodate *Plessy v. Ferguson*, Murray could attend the institution but he had to remain separated from white students.¹²⁷

In his dissent in *Serio*, Judge Bond argued that because the development of suburban areas required a large amount of land and heavy investment in capital, such temporary constraints must be found valid if this type of development is to be encouraged rather than hindered. Judge Bond, supporting the notion that it was in the public interest to have such

¹²¹ Carroll T. Bond, MSA SC 3520-1630. Archives of Maryland (Biographical Series). www.msa.md.gov/megafile/msa/speccol/sc3500/sc3520/001600/001630/html/1630bio.html

¹²² *Id.*

¹²³ *Baltimore Lawyers and Judges Of the 20th Century: Carroll T. Bond*, The Daily Record, September 18 2000.

¹²⁴ *Id.*

¹²⁵ DR. EDWARD C. PAPENFUSE, *The Architect as Archivist and Architectural Historian: Laurence Hall Fowler (1876-1971) & the First Maryland Hall of Records*. JScholarship, 2009, at 5. <https://jscholarship.library.jhu.edu/handle/1774.2/33624>.

¹²⁶ 169 Md. 478 (Md. 1936).

¹²⁷ *Donald Gains Murray and the Integration of the University of Maryland School of Law*. African Americans in the Law Collection. Thurgood Marshall Law Library, Special Collections. <http://www.law.umaryland.edu/marshall/specialcollections/murray/>; "Equality of treatment does not require that privileges be provided members of the two races in the same place. The State may choose the method by which equality is maintained. . . . Separation of the races must nevertheless furnish equal treatment." *Pearson v. Murray*, 182 A. at 592.

suburbs, explained that the only way suburbs could be conveniently and economically opened, with the neighborhood necessities of streets, sewers, and the like ready at the outset, was to permit such temporary constraints as protection of their capital investment. Accordingly, because he felt that Northwest Real Estate Company retained some degree of temporary control over ownership of the lots sold with the intent of protecting early purchasers and to insure a return of the capital outlay, Judge Bond did not believe the restriction was an unlawful restraint on alienation. Judge Bond stated:

[W]e know that there are real, substantial dangers to be feared in such ventures, and that under the modern conditions of rapid city growth and rapid shifts in city populations, one of the most important risks is probably that which comes from the chance of *invasion* into the new neighborhood of an element of the population which the people to whom the developer must look for the return of his outlay will regard as out of harmony with them. However fanciful may be the aversion which give rise to it, and however deplorable they may be, to the developer they and their consequence must be as real as destructive forces. (*emphasis added*).

This so-called “invasion” by undesirable races and ethnicities into planned suburban developments and the right to use property mechanisms as a defense against the claimed decline in property values as a result would become an ongoing debate for decades. George R. Morris, Ashburton, and many of Morris’s subsequent real estate ventures would become focal points of this debate.

VI. The Aftermath: The Controversial Career of George R. Morris

Many regard the restrictive covenant at issue in *Serio* as a method of restricting minorities, particularly Jews, from living in Ashburton. Leon Sachs, director of the Baltimore Jewish Council, stated on multiple occasions that Morris kept Jews out of the Ashburton development. He described ‘gentlemen’s agreements’ in northwest Baltimore, running counterclockwise from Stoneleigh in the northeast to Catonsville in the west, which restricted

Jews from entering. Sachs cited Forest Park as the only exception, amounting to a “slice of the pie” in which Jews were not restricted. He goes on to say that even in the Forest Park area, Morris’s Ashburton was restricted against Jews.¹²⁸

Others agreed with Sachs that the restrictive covenant in Ashburton’s deeds was a method of restricting Jews from living in Ashburton. Weldon Wallace, in a two-part series on Ashburton in *The Baltimore Sun*, stated, “During its first dozen years, Ashburton was reserved for gentiles. The lifting of that restriction in 1932 opened the way for Jews, many of whom acquired homes lost by the original owners during the Depression.”¹²⁹ Antero Pietila, in his book *Not in My Neighborhood*, in describing Ashburton, stated, “Covenants barred Jews for residence. After that restriction expired in 1932 and influential Jews moved in, real estate agents began steering white Christians elsewhere”¹³⁰ Garrett Power, in his article *Residential Segregation of Baltimore’s Jews* stated, “The deeds for [the Northwest suburbs of West Forest Park and Ashburton] conditioned sales on the developers’ written approval of the purchasers’ ‘character, desirability and other qualification’ and were intended to exclude Negroes, Jews and other unwanted minorities. They proved very short-lived, however, as in 1929 the Maryland Court of Appeals [in *Serio*] declared the clause void, as against the public policy favoring free transfer of land.”

In the face of accusations of discrimination surrounding Ashburton and his other real estate developments, Morris claimed that discriminatory measures were justified for the purpose of preserving property values and thereby enabling such capital outlays to remain profitable.

¹²⁸ Baltimore Neighborhood Heritage Project. Interview of Leon, Sachs. October 11, 1979. Interviewer Martha Vill. p10-12.

¹²⁹ WALDEN WALLACE, *We Live Here – Ashburton: change from gentiles to Jews, and now blacks, and staying graceful, pleasant*. *The Baltimore Sun*, June 11, 1973.

¹³⁰ PIETILA, *supra* note 3, at 150.

Morris was subsequently accused of banning Jews from Meadowbrook swimming pool in Mt. Washington,¹³¹ Five Oaks swimming pool in Catonsville, and Bonnie View Golf Course. He was accused of discrimination against Jews in the neighborhoods he built in the 1920s, Ashburton and Hunting Ridge,¹³² as well his apartment houses in Roland Park and Guilford. In 1953 the Baltimore Jewish Council exposed the anti-Semitic practices of George R. Morris during a public hearing before the City Council, which was considering Morris's reappointment to the redevelopment commission.¹³³

In response to these accusations Morris denied that he was personally anti-Semitic. Morris said in response to the Baltimore Jewish Council's charges that he excluded Jews only for "business reasons," referring to the need to preserve property values in these real estate ventures.¹³⁴ While one may quickly dismiss Morris's response as a mere excuse for what was in reality a dislike for ethnic and racial minorities, other elements of his real estate practice make that conclusion murkier. In 1909, after newly arriving Baltimore from his native Pennsylvania, Morris offered his services in the Jewish Social Directory with an ad that stated, "Beautiful Suburban Homes Built especially for you." That the ad disappeared from later editions could be a sign that Morris was adopting discriminatory practices only after learning of how bigotry ruled

¹³¹ PIETILA, *supra* note 3, at. 134-35. "At the City Council hearing, a councilman asked Morris how his manager knew that a prospective swim club visitor was Jewish. 'I guess by racial characteristics,' he answered, but acknowledged that 'Gentiles' were sometimes also excluded by mistake. Certainly no blacks had been admitted, Morris assured." *Id.*

¹³² JOHN G. HUBBARD, *Hunting Ridge: The Story of a Neighborhood 9-1* (Hunting Ridge Community Assembly, 2001).

¹³³ *Morris Loses City Post By 19-To-1 Vote: Anti-Semitism In His Business Practices Grounds of Action*. The Baltimore Sun, June 16, 1953, 36; Morris opponents introduced into evidence a blown-up photograph of a sign posted at his Meadowbrook swimming pool, which read "Privileges of the Swimming Pool Are Extended Only to Approved Gentiles." The policy was stringently enforced. During World War II, Captain Harold Grenstein, wearing a U.S. Army Corps of Engineers uniform, was denied admission while among a group of out-of-town non-Jews seeking to take a swim. PIETILA, *supra* note 5, at 134-35.

¹³⁴ PIETILA, *supra* note 5, at 134-35.

the real estate business in Baltimore.¹³⁵ Also, as mentioned previously, in a fascinating reversal of the commonplace concept of residential segregation, Morris advised residents of a rare African-American residential development launched near the new campus of Morgan College to include a covenant prohibiting whites.¹³⁶ In 1918, the Court of Appeals of Maryland refused to enjoin Morgan College from establishing the African American residential community in a suit by an adjacent property owner claiming the community was a public nuisance and that it materially depreciated the value of his property.¹³⁷

VII. Analysis

Whether Morris truly had no prejudice against Italians and simply included the restrictive covenant in Ashburton's deeds to protect his capital outlay, as argued by he and Bond in *Serio*, is uncertain. There is suspicion that Morris was prejudiced against Italian community and African Americans as well as Jews. In his book *Not in My Neighborhood*, Antero Piatela included the following anecdote from the same City Council hearing in which the Jewish community exposed George R. Morris's anti-Semitic practices:

During an intermission [from redevelopment commission reappointment hearing] Leon Sachs found himself standing at a urinal next to an Italian-American councilman. "I'm starting to think he didn't like wops, either" said the councilman. "Christ," responded Sachs, "I've been trying to tell you that."

This impression regarding Morris's feelings toward Italians, expressed by the Italian-American councilman and Leon Sachs, may have been correct, particularly in light of *Northwest Real Estate Company v. Serio*. That being said, we are left to speculate as to whether the denial of Charles and Irene Serio as purchasers was motivated by George R. Morris's discriminatory

¹³⁵ *Id.*

¹³⁶ *Id.* at 48.

¹³⁷ *Diggs v. Morgan College*, 133 Md. 264 (Md. 1918).

feelings towards Italians or merely to preserve property values in Ashburton. Use of discriminatory practices with the stated purpose of preserving property values neither began nor ended with restrictive covenants in property deeds such as the one at issue in *Serio*. Before these deeds were Baltimore City ordinances and after were restrictive covenants among residential communities.

Baltimore was a national leader in residential segregation. In 1910, Baltimore passed a race-restrictive zoning ordinance, the first of its kind, to compel the separation of white and black races in residential neighborhoods.¹³⁸ Baltimore's segregation zoning ordinance prohibited blacks from moving into majority white neighborhoods, an increasingly common occurrence due to the recent influx of African American migrants from the south. To satisfy the constitutional doctrine of "separate but equal," the law also kept whites out of predominantly black neighborhoods.¹³⁹ The claimed purpose for these ordinances, however, to ease tension between blacks and whites and the preservation of property values. A 1910 *New York Times* article claimed that the "sole object and intention" of the Segregation Ordinance was "to protect our people in the possession of their property and to prevent the depreciation which is of necessity bound to follow when the colored family would move into a neighborhood that had hitherto been exclusively inhabited by white people."¹⁴⁰ Whether preservation of property values was the main purpose, an excuse to segregate, or some combination of the two, was

¹³⁸ *Baltimore Tries Drastic Plan of Race Segregation*. The New York Times. December 25, 1910, at SM2.

¹³⁹ *Id.* Passage of the ordinance was spurred by occupancy by George W. McMechen, an African American Lawyer, moving into a house at 1834 McCulloch Street, a predominantly white neighborhood. *Id.*; See also, *Negro Invasion Opposed: Residents Protest Against Sale of House to Colored Lawyer*. The Baltimore Sun. July 6, 1910, at 7.

¹⁴⁰ *Baltimore Tries Drastic Plan of Race Segregation*. The New York Times. December 25, 1910, at SM2.

subject to debate. In 1917, the Supreme Court unanimously decided in *Buchanan v. Warley*¹⁴¹ that the residential segregation laws were an illegal restraint on alienation. Residential segregation by ordinance was found to be in violation not of the Fourteenth Amendment's "equal protection" clause, but rather of the "due process clause" as a deprivation of a property right to alienate property. Though putting an end to the imposition of residential segregation through legislation, other segregation tools were soon used to effectuate the same purpose.

While *Buchanan v. Warley* ruled that residential segregation could not be implemented by ordinance, it did not foreclose legal enforcement of private covenants requiring residential segregation.¹⁴² After *Buchanan* abolished residential segregation laws, racially restrictive covenants became the new instrument of race separation.¹⁴³ Various neighborhoods barred African Americans, Jews, Catholics, Mexicans, Syrians, Armenians, Persians, Italians, and many others.¹⁴⁴ The Court of Appeals of Maryland decided in 1938 in *Meade v. Dennistone* that racial discrimination in housing did *not* violate the Fourteenth Amendment when based upon private covenant rather than public action. It was not until 1948 that the Supreme Court in *Shelley v. Kraemer*,¹⁴⁵ presented with the same facts and legal questions as in *Meade*, unanimously decided that *enforcement* of racially restrictive covenants was contrary to public policy. The Supreme Court outlawed the enforcement of racially restrictive covenants by the courts, but not the private contracts as such.¹⁴⁶

The popular perception among policy-makers immediately after the depression was that ethnicity was a key to predicting property value. New Deal legislation sought to help the

¹⁴¹ 245 US 60 (1917).

¹⁴² POWER. *supra* note 2, at 794.

¹⁴³ PIETILA, *supra* note 5, at 48.

¹⁴⁴ *Id.*

¹⁴⁵ 334 US 1 (1948).

¹⁴⁶ *Id.*

nation's housing market rebound from the Depression. It required improved accuracy of real estate appraisals so the federal government could avoid undue risks in insuring lenders against losses in the event of homeowner defaults. A hierarchy of ethnicities, in which Jews, Italians, African Americans and Mexicans respectively rounded out the bottom four,¹⁴⁷ was used as a factor to rate residential areas to determine its market value and future prospects. Four colors were used to classify neighborhoods on maps, with red representing the most hazardous places. Banks stopped issuing mortgages in these areas or charged exorbitant fees and interest rates. This process became known as *redlining*. This hierarchy of ethnicities boiled down prior views about the effect of ethnicity on property values to a cardinal ranking.

Not until passage of the Civil Rights Act of 1968, better known as the Fair Housing Act, did the campaign against residential segregation finally succeed in its aim. It won legislative guarantees that minorities would have access to housing and not face discrimination from realtors or lenders based on their race or religion.¹⁴⁸

VIII. Conclusion

Northwest Real Estate Company v. Serio represented an important moment in the history of residential segregation in Baltimore. Incentives to move out of the Baltimore's city center, facilitated by improvements in transportation, allowed the middle class to leave the downtown area. Unplanned suburbanization in northwest Baltimore quickly became dominated by planned

¹⁴⁷ PIETILA, *supra* note 5, at 62-64. Homer Hoyt, chief economist of the Federal Housing Administration in 1934, used a hierarchy grading various nationalities in the order of their real estate desirability. "South Italians" were eighth on that list, one slot below "Russian Jews of the lower class" coming in seventh. Hoyt's list looked suspiciously like the hierarchical rankings that eugenicists had been publishing about various ethnic groups for decades. The complete comparative ranking, first published in Hoyt's 1933 Ph.D. dissertation at the University of Chicago includes: "(1) English, Germans, Scots, Irish, Scandinavians; (2) North Italians; (3) Bohemians or Czechoslovakians; (4) Poles; (5) Lithuanians; (6) Greeks; (7) Russian Jews of the lower class; (8) South Italians; (9) Negroes; (10) Mexicans." *Id.*

¹⁴⁸ MEYER, *supra* note 3, at 210.

suburbs. Suburban developers not only defined aesthetic features of the community but also included restrictive covenants as a means of controlling the ethnic and racial make-up of its residents.

George R. Morris, using a covenant to reserve the right to approve subsequent purchasers of lots in his Ashburton subdivision, claimed that he was merely preserving his capital outlay. Outside observers are left to wonder whether preservation of property values was truly Morris's motivation, or whether he was implementing an outright anti-Italian sentiment against the Serios. Subsequent actions by Morris in his future real estate ventures are inconclusive. Though denied the right to include such a covenant, deemed an illegal restraint on alienation in *Serio*, the notion of preserving property values would continue to be used as an excuse for implementing discriminatory residential practices. It would take a series of court battles and national legislation to stand up to property owners' preservation of property values argument and mandate that they refrain from discriminatory practices. No matter the motivation for discriminatory practices, be it overtly racist sentiment or more honest preservation of capital outlay, prevention of discrimination finally trumped both motivations under the law. Next, it would be up to the people to follow the law, to reverse centuries of cultural practice, to change their attitudes about race and ethnicity, and to accept integration in their neighborhoods.