

Green v. Garrett:
How the Economic Boom of Professional Sports Helped to
Create, and Destroy, Baltimore's Memorial Stadium



1953 Renovation and upper deck construction of Memorial Stadium¹

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¹ Kneische. Stadium Baltimore. 1953. Enoch Pratt Free Library, Baltimore. *Courtesy of Enoch Pratt Free Library, Maryland's State Library Resource Center, Baltimore, Maryland.*

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Introduction

Buildings, like people, have lives all their own. They have beginnings, middles, ends, and even good and bad years. This project is a study of a building known by many names, including Venable Park, Mud Stadium, The Great White Elephant of 33rd St., The Old Gray Lady, and the World's Largest Outdoor Insane Asylum, although for most of its life it was officially referred to as Memorial Stadium, located in Baltimore, Maryland.

The story of Memorial Stadium is really the story of those in the community that surround it. As the use and popularity of the Stadium grew, so too did the annoyances associated with living near the 20th century Baltimore landmark. Memorial Stadium would become and is most known as the home of both the professional baseball and football teams of Baltimore, the Orioles and the Colts. However, before professional sports teams labored under the lights of the Old Gray Lady, the Stadium was home to some of the most important collegiate football games in the United States, and used as a gathering place for community events and symphonic concerts.

This shift in use from civic-based events and the occasional college football game, to almost exclusive professional sports use spurred consternation and complaints from those that called the surrounding neighborhood home. The number of days the Stadium was used increased four-fold, and instead of the small, docile crowds the local symphonic concert produced, area residents were subjected to the much larger and police-incident prone patrons of professional baseball and football. When the Department of Parks and Recreation awarded a long-term contract permitting the Baltimore Orioles use of the Stadium in 1947, a group of surrounding residents filed suit.

*Green v. Garrett*² represents the anger and frustration the surrounding residents felt in coping with an increase in a use of the facility which was never intended when Venable Park was chosen as the site to build a stadium. Erected upon what was once a famous industrialist's estate, the area surrounding Memorial Stadium was developed and marketed as an idyllic community, a "quiet residential area in which to live."³ Facing stadium lights that created "artificial daylight,"⁴ a loudspeaker system that projected well into the surrounding homes, and unpaved parking lots that created dust clouds and blocked driveways, the surrounding residents turned to the law to try and find relief from the toils associated with living near the sports facility.

However, given the increased revenues the City of Baltimore generated through use of the Stadium and the central role that professional baseball played in American culture, the angry homeowners faced tall opposition from the Baltimore City Solicitor's Office. Memorial Stadium had become a political black-eye when expected revenues failed to materialize, and without the Orioles playing games at the facility, continued use of the stadium was unsustainable.

Also weighing into the fight were the Orioles themselves, along with the league in which they played. Then, as now, professional sports franchises enjoyed an immense amount of sway and influence over the city governments in which they resided. This influence, coupled with the amount of money the sports organizations could devote to furthering their agenda, provided an intimidating force to any organization that raised an

² 192 Md. 52; 63 A.2d 326 (1949).

³ Ednor Gardens - Lakeside Vertical File. Maryland Room – Enoch Pratt Free Library.

⁴ Craig E. Taylor, *Contract To Light Stadium Begins New Era, Kelly Says*, The Baltimore Sun, March 31, 1931, at 32.

opposing voice. In 1947, the surrounding residents of Ednor Gardens were unmoved, and fought to keep the Orioles out of Memorial Stadium.

The stage was set for a dispute in which the outcome would shape not only the sporting history of a major American city, but also the socio-economic fabric of the community surrounding the stadium. *Green v. Garrett* serves not only as an instructive narrative of how a community surrounding a major sporting complex sought to legally preserve their perceived property rights, but also a cautionary tale where the age old wisdom of “be careful what you wish for” is proven yet again. Approximately 30 years after the surrounding residents sued to keep the Orioles out of Memorial Stadium, the same neighborhoods were advertising the financial advantages of living near the complex.⁵

In 1991 the Orioles sought a newer, more modernized ballpark that was readily accessible via interstate highways and thus away from their current home at Memorial Stadium. Like many other teams of the time, the Orioles never had to demand a new stadium. But their options were clear, as populated areas competed to steal teams from long-established locations such as Baltimore. In response, the surrounding residents mounted a large public campaign to keep the team at its current home on 33rd St. The attitude of the community surrounding Memorial Stadium had completely reversed. The residents surrounding the Stadium now clamored for the Orioles to stay.

In 1992 the Orioles moved to their new home in Oriole Park at Camden Yards. For the first time since 1944, Memorial Stadium found itself without a professional sports

⁵ “Within Ednor Gardens-Lakeside, 92% of homes are owner-occupied, evidence of our belief in the value, stability and affordability of the area...sale prices have increased an average of \$3000 per year for the last four years.” Ednor Gardens-Lakeside Newsletter (1972).

team playing under its lights. The financial burden of operating a facility that could not generate sufficient revenues to meet its own operating costs could not be justified. The Ravens played one professional football season in the Old Gray Lady in 1997, but they too received a new facility dedicated for their use, located directly across from Camden Yards.

In 2001 Memorial Stadium was razed to the ground, and the land upon which it stood sold to the YMCA of Baltimore for \$1.00.⁶ Today, a park with a sidewalk path outlining the shape of the Stadium is all that exists to remind those that spent countless afternoons cheering the Orioles or the Colts of the Baltimore landmark's existence.

In 1944, against the wishes of the surrounding residents, professional sports were admitted to Municipal Stadium. The ensuing economic boom not only led to the enhancement of the actual building known as Memorial Stadium, but the community that surrounded it. Fifty years later, against the wishes of the surrounding residents, professional sports abandoned Memorial Stadium, leading ultimately to its destruction.

Historical Background: A Brief History of the Location of Memorial Stadium

The land upon which the Stadium was built had a storied past well before professional athletes toiled upon it. The Stadium, along with the communities of Ednor Gardens and Lakeside that surrounded it, are tied to that of the "Montebello" estate which grew to an enormous size during the 19th century. Two very illustrious Baltimoreans are associated with the history and expansion of that tract: General Samuel Smith and John Work Garrett.⁷

⁶ Maryland Department of Assessments and Taxation – Real Property Data Search, Baltimore City, http://sdatcert3.resiusa.org/rp_rewrite/details.aspx?County=03&SearchType=MAP&AccountNumber=09%20%2021%20%203986C%20%20006 (last visited Oct. 15, 2010).

⁷ Ednor Gardens - Lakeside Vertical File. Maryland Room – Enoch Pratt Free Library.

Samuel Smith, who was one of George Washington's generals during the American Revolution, highly cherished memories of the gallant days when he led French troops. After the war, he wanted to locate his home northeast of Baltimore Town, as it was then called, in a "remote area that was still walking distance from the city."⁸ In 1792 he bought 82 acres of land and began building a mansion four years later.⁹ After Smith's original purchase of property, he continued to add parcels until by the end of the century, his ambitious estate boasted 600 acres. When he learned about the French victory of Marshall Lannes over the Austrians at Montebello, Italy in 1800, he named his new home "Montebello" in commemoration of the victory of his former soldiers.¹⁰

During Smith's ownership, "Montebello" was the site of many elaborate functions. Besides being a soldier, Smith served as Mayor of Baltimore from 1835-38, as a member of the United States Congress for forty years, as President of the United States Senate, and as secretary of the Navy.¹¹ Smith died in 1839 at the age of 87.

In 1871 the estate was bought by John Work Garrett, president of the B. and O. Railroad.¹² With a series of almost a dozen land acquisitions during the next ten years, Garrett expanded the 1877 Montebello estate of 600 acres to 1,400 acres of wooded and rolling terrain. Under Garrett's ownership the estate grew to include a private racetrack

⁸ *Id.*

⁹ Located atop a hill, it once stood in the present roadbed of The Alameda and 33rd St intersection east of the Stadium and near City College. Of equal, if not greater, architectural significance was an extraordinary barn built in 1806 just south of today's intersection of Loch Raven Blvd. and The Alameda. Built of stone and timber, this stable of medieval English architectural style was 325 feet long and 52 feet wide with a "pretentious" courtyard in front. There were 198 stalls for horses, mules and cattle on the ground floor, as well as living quarters for workmen and slaves. Not a single nail was used anywhere in the construction, and every timber and pin was hewn from trees on the estate. In the 1920's when the mansion and barn had been demolished to make way for new streets and homes, the foundations of many of these structures were built with the stones formerly used in the walls of the Montebello barn. *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

with extensive stables, a stone quarry, and Hertel's Brickyard.¹³ However, the Garrett family entirely abandoned the property around the turn of the century. In 1907 the Montebello mansion was razed to allow the construction of 33rd St., but Baltimoreans continued to take "pleasure walks" through the estate woods.¹⁴ The century-old Montebello barn outlasted the mansion, but eventually succumbed to development of the estate by the E. J. Gallagher Realty Company.¹⁵

Ednor Gardens

Edward Joseph Gallagher was a builder who had been constructing houses in Baltimore since the 1880's.¹⁶ His company, the E.J. Gallagher Company, was incorporated in June 1909 and became active in January 1915.¹⁷ Among other activities¹⁸, the company built and sold houses between 1915 and 1950, and in particular developed the residential area of the Montebello estate that would later become know and Ednor Gardens. Ednor Gardens was the largest development of the E. J. Gallagher Company, and was named for Gallagher's two sons, Edward and Norman (Ed-Nor). Gallagher bought this portion of the Montebello estate in the late teens, and began

¹³ Hertel's Brickyard is the site on the estate that would become Venable Park, and then later Memorial Stadium. *Id.*

¹⁴ *Id.*

¹⁵ Despite preservation efforts by Maryland civic organizations to interest Gallagher, local residents, and even Henry Ford, an active preservationist, in the adaptive reuse of the Montebello barn as a community social center, it was gradually demolished. Throughout the years that the Gallagher Company was developing Ednor Gardens, it used the barn to store its building supplies. As the contents were consumed, that section of the barn was razed until it was entirely destroyed during World War II. *Id.*

¹⁶ Edward J. Gallagher Realty Company, <http://archives.ubalt.edu/ejg/info.htm> (last visited Nov. 23, 2010).

¹⁷ *Id.*

¹⁸ Gallagher also founded in 1917 the Acreage Land Company and in 1924 the Montebello Land Company. These two firms, subsidiaries of the realty company, served to acquire and hold land, and to create ground rents. Originally located in an office leased within the Munsey Building located in downtown Baltimore, the realty company and its subsidiary firms moved in 1929 to the company's own building at 3501 Ednor Road in Ednor Gardens. *Id.*

development of the land after World War I.¹⁹ After Gallagher's death in 1933, his sons carried on the building of row houses in the area until the 1950's. The houses constructed were mostly of the typical "Daylight" type built with variation throughout Baltimore in the 1920's.²⁰

The popularity of the area and of the Ednor Gardens development bode well for the fortunes of the Gallagher family. Edward Gallagher, Jr. became president of the realty company, the Montebello Land Company as well as the Eastern Supply Company, a supplier of coal and building materials that was located in east Baltimore.²¹ His good fortune allowed him to also build a significant art collection.²² The other half of the Ednor Garden namesake, A. Norman Gallagher, also reaped the financial benefits of the development of Ednor Gardens. After the Acreage Land Company was dissolved in 1938, and Montebello Land Company in 1952, Norman Gallagher's sons inherited what was then left of the family business and established their own firm, the Gallagher Construction Company, which is still in business today.²³

The Gallagher's were not the only developers in the area, however, and in the blocks east of what would become Memorial Stadium, a builder by the name of Frank Novak built individual brick "cottages" in the 1920's.²⁴ These higher-end homes would not prove to be as successful for him though as the more traditional row houses the

¹⁹ Ednor Gardens - Lakeside Vertical File. Maryland Room – Enoch Pratt Free Library.

²⁰ Daylight houses are only two rooms deep in order to allow light into all areas of the building, and are also characterized by large front porches. *Id.*

²¹ He also served as director of two insurance companies, the Fidelity and Guarantee Fire Corporation and the United States Fidelity and Guarantee Company. Edward J. Gallagher Realty Company, <http://archives.ubalt.edu/ejg/info.htm> (last visited Nov. 23, 2010).

²² A supporter of the arts, he established the Edward Joseph Gallagher III Memorial Collection, and donated his art collection to be housed at the University of Arizona. *Id.*

²³ The Gallagher Construction Company is now located in Plano, TX. Gallagher Construction Services, <http://www.gallaghertx.com> (last visited Oct. 11, 2010).

²⁴ Ednor Gardens - Lakeside Vertical File. Maryland Room – Enoch Pratt Free Library.

Gallaghers constructed. The intended market for all of the area was middle class. Many of Gallagher's and Novak's customers were former German and "Bohemian" clients who had previously bought houses from them in East Baltimore, or whose parents had, and now were moving out to the "suburbs."²⁵ Ednor Gardens was intended as a quiet residential community where one could escape the rigors of city life, and even featured a site of growing public amusement: Venable Park.

Venable Park

Venable Park was opened by the City of Baltimore before World War I, and was named after Richard M. Venable, a former president of the Park Board and one of the men credited with founding the Baltimore park system. Venable Park included 49 acres of extensive property north and south of the then non-existent 33rd St., the site which would later become both Memorial Stadium and Eastern High School. After World War I, there was considerable investigation into a potential site for a sports center in Baltimore which would provide football and baseball facilities, as well as a ¼ mile race track. At the time, the largest crowd-holding facility in all of Baltimore was the 20,000 person capacity of the 5th Regiment Armory.²⁶

Perhaps the largest and most vocal supporter of building a municipal stadium was then Mayor of Baltimore, William F. Broening. Broening was mayor from 1919-1923, and saw the construction of a municipal stadium as a way to both leave his legacy on the city of Baltimore, and provide windfall revenues from hosting home Navy football games. Then, college football generated more money than any professional sport, and

²⁵ *Id.*

²⁶ *Id.*

large stadiums hosting collegiate games had proven successful at the University of Kansas, Syracuse University, and Tacoma, WA.

Public attitude largely favored the building of a sporting complex that would increase Baltimore's "value in municipal prestige and publicity."²⁷ Indeed, it was this public outcry for a facility to rival those of Yale, Harvard, and the Polo Grounds in New York that fueled the interest in a stadium that would put Baltimore in the same breath as the open air stadiums that drew "multitudes from other sections" and "contribute to both the local fame and profit."²⁸ Having reached a popular opinion that such a facility should indeed be built, Baltimore residents then questioned who would pay for such a complex. Inevitably the decision of who would build the stadium, and where it would be built, created much controversy as competing interests proposed several sites and arrangements for the funding of the project.

Initially, the popular choice was for the city to join together with Johns Hopkins University which was planning to build a \$350,000 stadium at Homewood, thereby lessening the initial capital outlay required from the tax payers.²⁹ However, at the Stadium Committee meeting, which was formed by Mayor Broening for the purposes of deciding the best option of funding and where to erect the complex, the Hopkins co-operative project was "bitterly assailed" by representatives of former soldier's organizations and Mayor Broening himself who told the Hopkins representative that he would not support a joint effort because he desired a stadium to be built "before our

²⁷ *The Right Sort of Stadium In The Right Place*, The Baltimore Sun. Dec 3, 1921, as presented in Baltimore City Law Department, case files, Frederick E. Green et. al vs. Mayor and City Council et. al., Stadium Case, Investigation Research and Trial Notes, box no. 794, case no. 81980 MSA BRG13-2-47-1, BC/30/15/028. (hereinafter Circuit Court Investigation Research and Trial Notes) http://www.msa.md.gov/megafile/msa/speccol/sc5300/sc5339/000247/000000/000009/restricted/msa_sc5458_51_4582.pdf (last visited Dec. 2, 2010).

²⁸ *Id.*

²⁹ *Id.*

children become grey-headed.”³⁰ Additionally, the chief engineer assigned to the Stadium Committee, Edward Perring, gave his professional opinion “that a municipal stadium and a Hopkins stadium would interfere with each other.”³¹ The Mayor and Stadium Committee both favored a site known as the Mount Royal Reservoir.

Mount Royal Reservoir

The Mount Royal Reservoir was abandoned some years earlier, and drained in preparation for possible construction of a municipal stadium. Locating the complex at the Reservoir was “virtually assured” when Chief Engineer Perring declared that the site was “admirably located” and “well-favored with street car service.”³² In his opinion, an arena built in the natural bowl of the drained reservoir could easily sit 36,000 people with a diameter of 500 feet of actual playing field, making it the third largest outdoor stadium in America.³³ Evidence of the intended mixed use of the facility is also found in Perring’s plans for the facility. He projected that “the stadium is ample for a football field, a baseball field, a 100-yard straightaway running track, a quarter-mile track, a field for soccer, and other sports.”³⁴

Despite the optimism of the Mayor and his Stadium Committee, there were those that did not wish to have the new municipal stadium located at the Mount Royal Reservoir, namely, the residents surrounding the Mount Royal Reservoir. Also attending the final Stadium Committee meeting were “a delegation of owners of property in the neighborhood of the reservoir protest[ing] the site on the ground of damage to property

³⁰ Hopkins Proposal For Co-Operative Project Bitterly Assailed at City Hall, (American, Jan. 18, 1922).

³¹ *Id.*

³² Mayor’s Committee Favors Reservoir Site For Stadium, (American, Jan. 18, 1922.).

³³ He added that the “huge” Yale bowl could be placed inside the reservoir. *Id.*

³⁴ *Id.*

values.”³⁵ While it is unclear the exact number of property owners that voiced their concerns, the recommendation of the committee was overwhelmingly to site the stadium at Mount Royal. The final approval for the location was to come from the Park Board, however, as it was the entity that would be asked to finance the project. While the Park Board assured Mount Royal residents that their concerns would be heard in the final decision hearing, the Stadium Committee resolution recommending the Mount Royal Reservoir as the stadium site was approved “virtually unanimously.”³⁶

However, in the ensuing days the rush to build Baltimore’s municipal sports complex at Mount Royal faced unseen hurdles. In a revision of his previous proposal, Chief Engineer Perring recanted his opinion that a bowl-shaped stadium would be the best design. Perring now advocated for a U-shaped complex, similar to that which was just built by The Ohio State University. Felix Angus, of the Park Board, also publicly pointed out that in the summer, any spectators sitting below the rim of the bowl would be cut off from air currents, and would suffer from “heat and vitiated air.”³⁷ Thus, the natural bowl shape of Mount Royal Reservoir was being called into doubt as the prospect of thousands of spectators enduring a sweltering Baltimore summer day without any ventilation or relief loomed large before public health officials.³⁸

Meanwhile, the Mount Royal residents grew emboldened in their opposition. The prospect of sharing their community with the proposed municipal stadium “brought them

³⁵ Engineer Perring charged the property owners with “fighting unfairly” by alleged dissemination of untrue statements concerning the suitability of the site. *Id.*

³⁶There were two members of the Park Board present at the Stadium Committee meeting, and both also favored Mount Royal as the location. Herbert B. Flowers, general manager United Railways also favored Mount Royal, and earnestly urged the city officials to consider “car service” in selecting the site. *Id.*

³⁷ *Stadium Ventilation Is Being Considered*, The Baltimore Sun. Jan. 20, 1922, as presented in, Circuit Court Investigation Research and Trial Notes.

³⁸ “Both ventilation and straight-aways are local stadium problems that must be thrashed out by the Mayor’s committee and the city authorities.” *Id.*

fighting mad to the City Hall and...started talk of legal proceedings.”³⁹ At first glance the unrest of the Mount Royal residents could be viewed as a precursor to the legal relief the Ednor Gardens residents would seek in *Green v. Garrett*. However, there is a distinction in the concerns between the two groups. While the Ednor Gardens residents’ main contentions were those of living near an unbearable nuisance, the Mount Royal residents’ fears were entirely economic.

Residents of Mount Royal Terrace were enraged at the possibility that their property values would plummet when throngs of spectators began filing into the bowl, week after week, bringing the noise and nuisance that thousands of people in an enclosed area only can. While supporters of the stadium project were quick to point out that their concerns were unfounded, it did little to allay the rising tension. The political activism of the Mount Royal Residents did enough to raise the attention though of the preeminent Baltimore newspaper, The Baltimore Sun, who invited the designer of the Yale Bowl, Charles A. Ferry, to Baltimore to address not only where he thought the ideal location to be, but also speak to the residents’ fears of falling property values.⁴⁰

Ferry, having designed what was considered to be the best open-air stadium in the United States, carried not only the credentials of a “trained engineer and stadium builder,” but also as one who “knows virtually everything there is to be known about stadiums.”⁴¹ Ferry was unimpressed with the Mount Royal Reservoir as a site, but added his opinion that the surrounding residents had “nothing to kick about,” and that New

³⁹ Raymond S. Tompkins, *Sun Staff Man Tells How Expert Viewed Some Sites*, The Baltimore Sun, Feb. 8, 1922, as presented in, Circuit Court Investigation Research and Trial Notes.

⁴⁰ “In the case of Mount Royal Reservoir matters have reached the point where plans have been drawn, but residents of the neighborhood have raised a storm of protest. At this point in such an important municipal matter The Sun believes Baltimore should seek the services of specialists.” *Id.*

⁴¹ *Id.*

Haven was experiencing increased property values and development as a result of the construction of his Yale Bowl.⁴² Curiously, Ferry was taken to, and gave his opinion on no less than four different locations about Baltimore as a suitable stadium site, none of which were Venable Park. While he did not register an opinion on Venable Park as a site, his opinions on why the sites he saw would not be ideal all factored heavily into the decision the Park Board made in choosing it.

Ferry disliked not only the bowl design of the Mount Royal Reservoir, but also its circular shape. With completely round sides, any racetrack built into the facility would not have any straightaways, and would thus be “objectionable from the runner’s standpoint.”⁴³ In addition, along with many of the other sites, there was a lack of parking

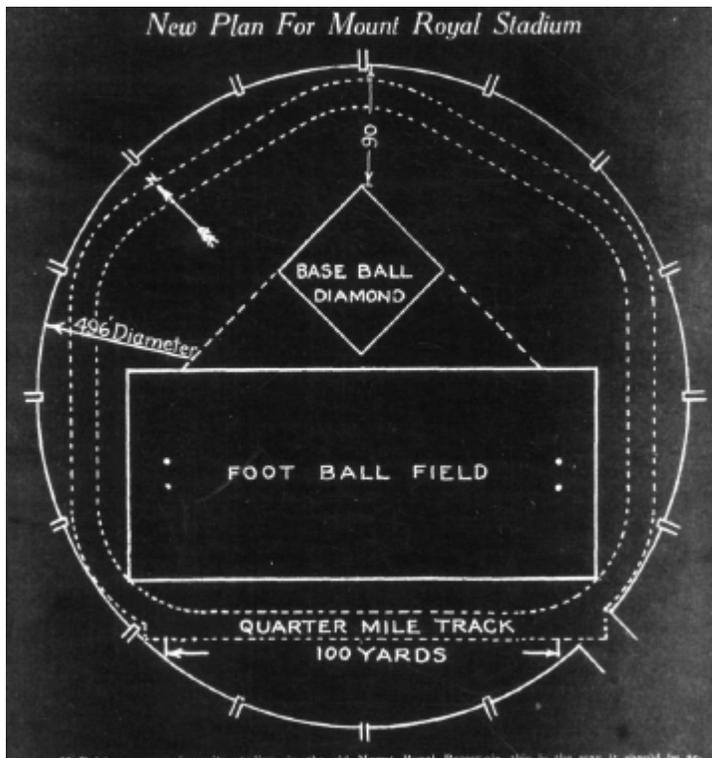


Figure 1, Proposed Stadium Design for Mount Royal Reservoir, as presented in, Circuit Court Investigation Research and Trial Notes.

⁴² “In New Haven, Conn., where he comes from, and which has the Yale Bowl within its municipal limits, property values in the bowl neighborhood have increased and that section has been developing ever since.”

Id.
⁴³ *Id.*

space for automobiles. Ferry instead suggested that the site chosen should allow a sizeable U-shaped facility, like the newly built Ohio State University stadium, and that the end zones for football should be built in the North and South, so that both teams had equal lighting. Additionally, the field must be large enough and designed so that the hard-packed base paths and pitching mound of the baseball diamond did not cross into the soft and spongy turf of the football field.⁴⁴

After his tour of Baltimore, none of the sites that Ferry was taken to seemed suitable to his specifications, and the Park Board was left in a difficult bind.⁴⁵ The site the Mayor's Stadium Committee had enthusiastically endorsed was not only denounced publicly by the nation's foremost expert on stadiums, but also harbored a neighborhood full of incensed residents threatening legal action. Mayor Broening also added pressure by booking the Army-Marine football game for the yet un-built complex, and publicly promised that the stadium would be ready by game time on December 2, 1922.⁴⁶

Venable Stadium

Given that it was April 5, 1922, when he made this pronouncement, the Park Board had less than seven months to decide upon a location, approve a stadium design, and actually construct it. As of April 5, the Mayor announced the stadium was to be constructed at the Mount Royal Reservoir. Nine days later, the Park Board reversed the

⁴⁴ Charles A. Ferry, *Engineer Gives Full Report On Stadium Possibilities Here*, The Baltimore Sun, Feb. 8, 1922, as presented in, Circuit Court Investigation Research and Trial Notes.

⁴⁵ Ferry was shown the Mount Royal Reservoir, Druid Hill Park, Homewood, Stony Run Valley in Wyman's Park, and Federal Hill. *Id.*

⁴⁶ Mt. Royal Stadium Project is Approved. Park Board Will have 30,000 Bowl Completed by December 2 Mayor Announces. Books Army-Marine Game. Plans for Structure to 30,000 Seats revealed at Luncheon to General Bailey. (American, Apr 5, 1922).

Mayor's and the Stadium Committee's recommendation and announced Venable Park as the site for the Baltimore's municipal stadium.⁴⁷

While it cannot be known which factor weighed more heavily on the Park Board; trying to avoid a costly court battle with the Mount Royal residents or seeking to build the more versatile, and therefore more lucrative complex, both concerns were influential. Given the political headache that the Mount Royal residents were already causing those on the Board, the relatively un-populated area surrounding Venable Park offered a risk-free alternative to waging a legal war with affluent Baltimoreans.

Additionally, because the land surrounding Venable Park was largely undeveloped, the U-Shaped stadium design could be utilized without sacrificing any of the features that Charles Ferry advocated, namely, a straightaway for racing and parking for automobiles. The City also received assurances from United Railways that “[w]herever the city finally decides to put the stadium, we will run street-car services to it. We want to give it the best possible kind of service, for a stadium will mean much to the city and much to us.”⁴⁸

Whatever the real reason the Park Board decided to spurn the Mayor and the Stadium Committee was, publicly they announced that “the main objection to Mount Royal Reservoir...was that it would seat only 25,000 persons, unless sweeping changes were made, which would entail immense expense.”⁴⁹ Hence, the entity that was actually funding the project maintained that their main concern was the ratio of seating to cost.

⁴⁷ *Venable Park Is Chosen For Huge Stadium. Park Board Announces Structure Will Seat 40,000 Persons. Will Be Ready For Army-Marine Game. Will Rest Along North Side of Thirty-third St. Will Cost \$325,000.* The Baltimore Sun, April 22, 1922, as presented in, Circuit Court Investigation Research and Trial Notes.

⁴⁸ Quote attributed to John E. Cullen, assistant to the president of the United Railways. *Id.*

⁴⁹ The president of the Park Board said Mount Royal Reservoir had been considered by the board, and had been found a “natural and logical” site, and declared that it hadn't been the objection of the Mount Royal avenue residents that had eliminated the reservoir project, because they represented a “small portion of the population.” *Id.*

The Mount Royal Reservoir simply was not a good deal with a seating capacity of only 25,000 persons, and building a stadium at other sites such as Wyman Park, which was estimated at \$1,000,000, was “unthinkable.”⁵⁰ In any event, the Park Board heartily endorsed Venable Park as the best location in Baltimore, and began construction immediately.⁵¹

Due to the much simpler construction technique of building up an earthen mound in a U-shape, rather than constructing one out of steel girders or wood, Venable Stadium was indeed ready for the Army-Marine game, or at least ready enough to seat 25,000 patrons. The upper deck could not be completed in time and was postponed to fiscal year



Figure 2, Venable Stadium, 1932. Curtis Wright Flying Service. Stadium Baltimore – Aerial View. 1932. Enoch Pratt Free Library, Baltimore. *Courtesy of Enoch Pratt Free Library, Maryland’s State Library Resource Center, Baltimore, Maryland.*

⁵⁰ *Id.*

⁵¹ “Venable Park...is as good a piece of ground for a stadium as it is possible to find anywhere in Baltimore. It is a fit site for a real stadium, not a makeshift, camouflage one.” *Id.*

1923 when “the Park Board’s funds...may enable us to complete the work.”⁵² While the issue of paying for the stadium was chief on the minds of the Park Board at first, Mayor Broening was more optimistic. According to him, the stadium would pay for itself through the increase of property taxes the city would reap through rising property values and area development.⁵³

His prediction seemed imminent when land speculators who had secretly bought up tracts surrounding the Mount Royal Reservoir were outraged at the sudden change of locations.⁵⁴ The Park Board, while not sharing Mayor Broening’s opinion that the stadium would be paid for through tax coffers, was also un-worried about the financial future of the stadium. President Boyd of the Park Board even went so far as to say that he “expects the stadium to pay for itself and become a money-maker through sale of tickets and without reference to taxable basis.”⁵⁵ If the initial Army-Marine Game was any indication, Boyd was correct.

Financial History of Venable Stadium

According to Mayor Broening, the total stadium receipts from the first game were near \$100,000. Mayor Broening testified that the proceeds of the first game were divided three ways, “that is, one-third to the Army, one-third to the Marines and one-third to the City. The share of the City amounted to \$ 30,000.”⁵⁶ Because the then uncompleted stadium only cost \$225,000 to build, the city regained 13.3% of the entire cost of the

⁵² *Id.*

⁵³ *Stadium Will Pay Way, Mayor Asserts. Increased Property Values, He Believes, Will Produce Cost In Taxes*, The Baltimore Sun, May 20, 1922, as presented in, Circuit Court Investigation Research and Trial Notes.

⁵⁴ “It even has been hinted that real estate speculators sought to buy up property in the vicinity of the reservoir when the stadium project was first broached. This report strengthens the Mayor’s view that a large increase will be registered in properties near Venable Park.” *Id.*

⁵⁵ *Id.*

⁵⁶ *Green v. Garrett*, 192 Md. 52, 57 (1949).

project after one event. The Park Board estimated that there were to be between 40-50 games of various “lines of sport” held each year, and while no one expected receipts to continue at the \$100,000 mark, it did not seem far-fetched that Venable Stadium would pay for itself within the first 12 months.⁵⁷ In fact, that first game held at Venable Stadium generated more gross revenues than all events held in the stadium from 1925-28, combined.⁵⁸

For three years after Venable Stadium opened, revenues continued to rise, then, in



Figure 3, Memorial Stadium Earnings Data, Gross Revenues Received, *as presented in*, Baltimore City Law Department, case files, Stadium Case, General Correspondence, box no. 794, case no. 81980A [MSA BRG13-2-47-2, BC/30/15/028].

⁵⁷ *Stadium Will Pay Way, Mayor Asserts. Increased Property Values, He Believes, Will Produce Cost In Taxes*, The Baltimore Sun, May 20, 1922, *as presented in*, Circuit Court Investigation Research and Trial Notes.

⁵⁸ Gross Revenues Received and Events By Year, *as presented in*, Baltimore City Law Department, case files, Stadium Case, General Correspondence, box no. 794, case no. 81980A [MSA BRG13-2-47-2, BC/30/15/028]. (hereinafter Baltimore City Law Department - General Correspondence) http://www.msa.md.gov/megafile/msa/speccol/sc5300/sc5339/000247/000000/000009/restricted/msa_sc5458_51_4584.pdf (last visited Nov. 11, 2010).

1925 a shift away from sporting events and a change in the allocation of stadium earnings precipitated a calamitous drop. However, there were still collegiate football games being played at Venable Park, and there were even more civic-based events where the stadium was used more as a gathering place than sports complex.⁵⁹ The reason revenues “dropped” was not actually discovered until 1941, but until then the popular thought was that the free community events had something to do with it. A good example of this is the Easter Morning Services which were held at the stadium every year, free of charge. While the costs of operating the facility rose annually, the revenue generated by the activities appeared to dwindle year after year.

Mainly the stadium was used for local sports, such as high school football and lacrosse matches.⁶⁰ While the marquee regional sporting events could draw a respectable crowd, the stadium was simply not making enough money. The Parks and Recreation Board tried many different kinds of events to attract crowds to the stadium, including a series of symphonic concerts beginning in 1937.⁶¹ While the concerts were certainly a worthwhile addition to the cultural fabric of the community, they did not draw large numbers, nor did they earn enough capital to sustain their continuation.⁶² These kinds of events, though, were the events that area residents in Ednor Gardens – Lakeside had come to know and expect from living near the stadium. A report from one of these symphonic concerts paints a serene image of a family-friendly summer evening:

⁵⁹ *Id.*

⁶⁰ The annual football game between Baltimore City College and Baltimore Polytechnical Institute was played at stadium nearly every year it existed. *Id.*

⁶¹ “*Stadium Symphony Performance.*” The Evening Sun. 14 Aug. 1939. Enoch Pratt Free Library Maryland Room Vertical File – Stadium.

⁶² The symphonic concert series was cancelled in 1940. Enoch Pratt Free Library Maryland Room Vertical File – Stadium.

“We don’t know how many people were there at the concert, but it was a huge crowd and a friendly crowd, a casual, warm-hearted crowd. Nobody minded when little girls lay down and put their heads in their mothers’ laps.”⁶³

While the newspaper reported a “huge crowd,” stadium receipts from the same evening show that the facility was only one-quarter full.⁶⁴

The revenues that the Park Board expected from admission premiums never materialized, and while the area surrounding the stadium developed at an amazing rate, it is difficult to distinguish that growth from the overall growth Baltimore was experiencing as a whole. The entire city was expanding. Despite the costly addition of lighting, allowing the stadium to be used for night games in 1931, the complex known as Venable Stadium and Municipal Stadium had earned a new nickname; The Great White Elephant of 33rd St.⁶⁵

The largest sports complex in Maryland had arrived with such fanfare and promise, yet by 1941 was relegated to that of an inside joke, an exceedingly expensive elephant in the room for which nobody in City Hall wished to acknowledge or accept responsibility. Venable Stadium became a political hot-potato, with politicians and bureaucrats losing popular support for having an association with the project, and sometimes even their jobs.⁶⁶ The final report of an ousted Park Board Chairman, however, revealed that while the stadium was receiving very little money from its events, other city departments were gaining substantially from operations at The Great White Elephant.

⁶³ “*Stadium Symphony Performance.*” The Evening Sun. 14 Aug. 1939. Enoch Pratt Free Library Maryland Room Vertical File – Stadium.

⁶⁴ Gross Revenues Received, *as presented in*, Baltimore City Law Department - General Correspondence.

⁶⁵ Craig E. Taylor, *Contract To Light Stadium Begins New Era, Kelly Says*, The Baltimore Sun, March 31, 1931, at 32.

⁶⁶ *Park Board Tables Kelly Resignation. Chairman of Stadium Committee Offers To Quit That Post. Had Recommended More Aggressive Management There.*, The Baltimore Sun, Jan. 8, 1942, at 7.

In 1941 the financial situation for Venable Stadium was as grim as ever. The year had yielded only \$22,711.07 in revenues to the stadium, which while nearly double the previous year's totals, were still well below the operating costs of the facility. Worse still, the Chairman of the Stadium Committee, C. Markland Kelly, tendered his resignation "for reasons best know to all of us, and which need no discussion here."⁶⁷ Kelly's final report to the Park Board offered a telling glimpse into not only the difficulties of managing the stadium, but also how revenues generated by events at Venable Stadium were being siphoned off to other City departments.

In his annual report to the Park Board, Kelly listed his "more aggressive management" of the stadium, and indicated that "it was in this connection that [he] was leaving."⁶⁸ Before bowing out, however, Kelly let slip just how much money the stadium was actually earning city departments; "One outstanding fact I would like to bring to your attention is that the Stadium paid to three municipal departments \$53,343 net."⁶⁹ A breakdown showed the School Board received \$21,571, the Fire Department \$5,500, and the Park Department \$27, 272.⁷⁰

This revelation also gives a new perspective on the difference between Mayor Broening's testimony in *Green v. Garrett* of the amount the City received from the very first Army-Marine game, and the amount submitted by the Park Board into evidence for the very same event. Mayor Broening testified that "[t]he share of the City amounted to \$ 30,000" for the first game.⁷¹ However, the official tally submitted to the Court of

⁶⁷ *Id.* (Quote of C. Markland Kelly).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Green v. Garrett*, 192 Md. 52, 57 (1949).

Appeals by the Park Board lists only \$13,602.12.⁷² This discrepancy, paired with Kelly's statement, suggest that it was not the events being held at Venable Stadium that were creating its financial troubles, it was the practice of reallocating the funding to various city departments without providing the stadium adequate operating capital.⁷³ However compelling the book-keeping practices of the Mayor's office were, the simple fact remained though that without either significant change to the management of the facility or the kinds of events being held there, Venable Stadium was on track to become a failed experiment in city planning. Enter the International League Baltimore Orioles.

Baseball in Baltimore

In 1944 the Baltimore Orioles were a minor league baseball team playing in the International League of Professional Baseball Clubs.⁷⁴ Having had one of the best players in the history of the game on their roster for approximately five months in 1914,⁷⁵ the minor league Orioles were quite successful during the 1920's, winning seven consecutive International League pennants. From 1916-1944 their home field was Oriole Park, a facility built on a lopsided block bounded by 10th Street (later 29th), York Road (later Greenmount), 11th Street (later 30th) and the angling Vineyard Lane.⁷⁶ Built entirely out of wood, Oriole Park was beloved despite the care it took to operate the aging structure.

⁷² Gross Revenues Received, *as presented in*, Baltimore City Law Department - General Correspondence.

⁷³ "You can readily see that the taxpayer got some return for his investment in the Baltimore Stadium." *Park Board Tables Kelly Resignation. Chairman of Stadium Committee Offers To Quit That Post. Had Recommended More Aggressive Management There.*, The Baltimore Sun, Jan. 8, 1942, at 7.

⁷⁴ Bready, James H. The First 100 Years: Baseball in Baltimore. Baltimore: Johns Hopkins University Press, 1998.

⁷⁵ George "Babe" Ruth was recruited and played for the Orioles from February 14, 1914 to July 9, 1914. Baseball Reference.com, <http://www.baseball-reference.com/players/r/ruthba01.shtml> (last visited 12/10/10).

⁷⁶ Bready, James H. The First 100 Years: Baseball in Baltimore. Baltimore: Johns Hopkins University Press, 1998.

Because the park was wooden, and cigarette and cigar smoking were common during baseball games, the entire facility was hosed down after every game to ensure stray ashes did not smolder and start a fire. Despite the careful precautions, on the evening of July 3, 1944,⁷⁷ a fire of uncertain origins totally consumed the old ballpark and everything the team owned.⁷⁸

Perhaps seeing the opportunity, then Mayor Theodore McKeldin immediately offered the Orioles a new home in the "cavernous" Municipal Stadium (re-named from Venable Stadium), and pressed his department heads to help convert its ground pattern from football to baseball.⁷⁹ It was, after all, fitted with lighting for night games and unused for most of the summer months. While the stadium was "hastily refitted" for baseball and posed an awkward layout, it did offer one thing in abundance that Oriole Park did not; increased seating capacity.

That summer the Baltimore Orioles literally rose from the ashes of Oriole Park and managed to capture the International League championship in Municipal Stadium. Even more improbable, they defeated Louisville of the American Association in the Junior World Series, drawing greater attendance than the Major League World Series held in St. Louis.⁸⁰ The large post-season crowds made possible by Municipal Stadium caught the attention of the Major Leagues, and Baltimore suddenly became a viable alternative for professional teams looking to move.

Although not intended as a long-term home for the Baltimore Orioles, Municipal Stadium offered the team and the City unique opportunities, namely a venue that was

⁷⁷ Adding insult to injury, the Orioles lost a 10-inning contest that evening to the Syracuse Chiefs. *Id.*

⁷⁸ Even the equipment and the uniforms were lost. The Orioles away uniforms happened to be at the cleaners that evening, so the entire team wore them for every game for the next three weeks. *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

able to support large crowds and generate more revenue for the Baltimore Orioles, the International League, and City of Baltimore. There was only one problem though, the residents surrounding Municipal Stadium were becoming infuriated with the sudden and exponential increase in events, and the nuisances associated with it.

The Case - Not a Temporary Arrangement

The number of events held at Municipal Stadium quadrupled with the arrival of the Orioles. Not only was there a substantial increase in people, the surrounding residents claimed that the baseball games attracted a different kind of patron, one more likely to cause trouble in the quiet residential communities surrounding Municipal Stadium.⁸¹ By 1945, one year after the Orioles began playing all their home games at Municipal, the residents reached their breaking point and formed the Stadium Neighborhood Protection Committee to protest the use of the stadium for commercialized sports, especially at night.⁸²

After they voiced their concerns to the Park Board, they were told that the use of the stadium by the Orioles was only “temporary in character,” and because of a “desire to cooperate” did not pursue the matter further.⁸³ When the residents learned that the Park Board had entered into a long-term agreement with the Orioles in 1947 for the team to use Municipal Stadium as their home, the Neighborhood Committee filed suit. They were outraged that they were lied to repeatedly by the City, and the Orioles themselves

⁸¹ Plaintiffs’ Bill of Complaint, *as presented in*, COURT OF APPEALS (Records and Briefs) Green v. Garrett, 1948, case no. 58 [MSA S1733-1248, 1/27/3/45] (hereinafter Court of Appeals Records and Briefs) http://www.msa.md.gov/megafile/msa/speccol/sc5300/sc5339/000247/000000/000009/restricted/msa_sc5458_51_4429_2.pdf (last visited Dec. 8, 2010).

⁸² Ednor Gardens - Lakeside Vertical File. Maryland Room – Enoch Pratt Free Library.

⁸³ Letter from Wilmer Drive to J. Kemp Bartlett, *as presented in*, BALTIMORE CITY CIRCUIT COURT NO. 2 (Equity Papers A, Miscellaneous) 1947, Box 2384 Case No. 29205A [MSA T56-2384, 3/25/1/16]. (hereinafter Baltimore City Circuit Court Equity Papers) http://www.msa.md.gov/megafile/msa/speccol/sc5300/sc5339/000247/000000/000009/restricted/msa_sc5458_51_4429_7.pdf (last visited Dec. 8, 2010).

that the arrangement for Municipal Stadium was a temporary one.⁸⁴ Temporary, it was not.

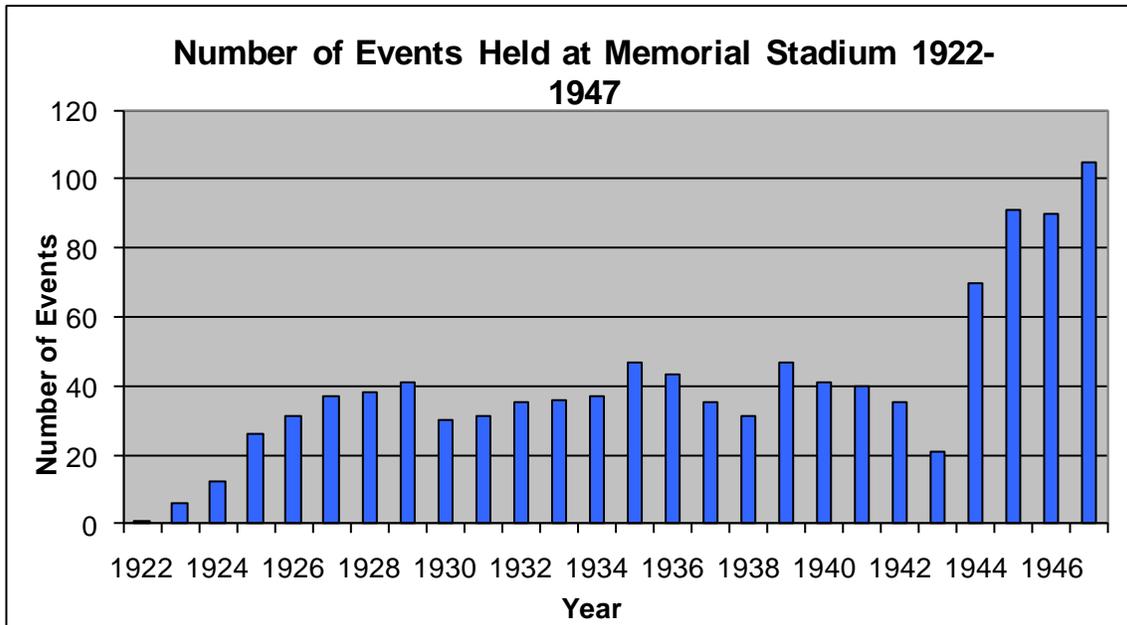


Figure 4, Number of Events at Memorial Stadium, Schedule of Events, *as presented in*, Baltimore City Law Department, case files, Stadium Case, General Correspondence, box no. 794, case no. 81980A [MSA BRG13-2-47-2, BC/30/15/028].

Attorneys – David vs. A Team of Goliaths

Prior to the residents seeking legal action, they hired a lawyer named Wilmer H. Driver to try and leverage some concessions from the Park Board regarding use of the stadium.⁸⁵ Driver graduated from the University of Maryland Law School in 1932, where he was the only student to receive the Alumni Association Prize.⁸⁶ Driver

⁸⁴ “We are very desirous that our temporary use of the Municipal Stadium shall be at as small inconvenience as possible to those persons who live in its vicinity, and believe that the commitments above set forth, particularly the one with respect to our temporary use of the Stadium, should go a long way toward relieving the fears of your clients.” Letter from Baltimore Baseball and Exhibition Co. (the Orioles) to C.G. Evans, *as presented in*, Baltimore City Law Department General Correspondence.

⁸⁵ Letter from Wilmer Driver to Thomas Biddison, *as presented in*, Baltimore City Law Department General Correspondence.

⁸⁶Thurgood Marshall Law Library Archives, *Catalog 1933*, <http://www.law.umaryland.edu/marshall/schoolarchives/documentspriv/Catalog1933.pdf> (last visited Oct. 12, 2010).

practiced as a plaintiff's lawyer in Baltimore, making a name for himself by winning a large case against area shipping merchants.⁸⁷ While there is no doubt that Driver was a competent and intelligent attorney, the legal team the Baltimore City Solicitor's Office compiled were some of the best lawyers in the state, and given the revenues generated from the Orioles at Municipal Stadium, did not intend to concede anything regarding a reduced schedule.

Representing the City Solicitor's Office were three attorneys headed by the new City Solicitor himself, Thomas Biddison. Biddison graduated from the University of Maryland Law School in 1931, where he was a classmate of the plaintiffs' attorney, Wilmer Driver.⁸⁸ This was the first big case for Biddison, who had only been appointed City Solicitor some 8 months prior. There is little doubt that Biddison assembled his best attorneys to work on this issue, as both his reputation and millions of dollars of city revenue rested upon the outcome.

Biddison was incidentally also a terrific athlete. At Johns Hopkins, he played football where he won All-Maryland honors and was a four-year letterman in lacrosse playing on three National Championship teams from 1926-28.⁸⁹ Biddison was named an All-American lacrosse player for three years and is the only player in history to make the All-American team at both close defense and close attack positions.⁹⁰ He was also a

⁸⁷ *Wins Suit For \$3,062 Over Frozen Potatoes*, The Baltimore Sun. Oct.11, 1934, pg. 26.

⁸⁸ Biddison became a leading political figure being successively Assistant State's Attorney, Chairman of the Board and Director of the Maryland Department of Corrections, and the City Solicitor of Baltimore from 1947-58. National Lacrosse Hall of Fame, http://apps.uslacrosse.org/museum/halloffame/new_search_result.php (last visited October 5, 2010).

⁸⁹ *Id.*

⁹⁰ During his time playing on the Hopkins lacrosse team, Biddison would have played several games at Venable Stadium. *Id.*

member of both the All-Time Hopkins Lacrosse Team and the 1928 U.S Olympic lacrosse team.⁹¹

Also arguing for the City was Deputy City Solicitor, Edwin Harlan. Harlan also attended the University of Maryland Law School, where he was also classmates with Wilmer Driver, and graduated in 1934 as class president.⁹² On November 21, 1956, he was elected to the Supreme Bench of Baltimore City as an Associate Judge.⁹³

Rounding out the legal team from the City Solicitor's Office was John J. Ghinger, Jr. Ghinger also graduated from the University of Maryland Law School in 1941⁹⁴ where he was awarded the George O. Blome prize for his work in the Moot Court.⁹⁵ All three attorneys represented the best the University of Maryland School of Law had to offer, and all three would go on to lead distinguished careers in the public sector of the Maryland legal community.

Once the Orioles and the International League were notified that the playing arrangements of the team were in legal jeopardy, they too sought to be included as co-defendants in the matter in order to lend their support to the cause. Their wish was granted, and both entities hired attorneys that had extensive experience litigating large cases and whom also worked for prestigious law firms.

The Orioles, formally known as the Baltimore Baseball and Exhibition Company, hired J. Kemp Bartlett III, of the law firm Bartlett, Poe, and Claggett, which was one of

⁹¹ *Id.*

⁹² *Judge Edwin Harlan Dies; Served on Supreme Bench*, The Baltimore Sun, Dec. 22, 1966.

⁹³ Biddison's son, Thomas Biddison Jr., would later go on to clerk for Edwin Harlan. Galagher, Evelius & Jones – Attorney Biographies, <http://www.gejlaw.com/attorneys/attorneyItem75.html> (last visited Nov. 18, 2010).

⁹⁴ John J. Ghinger, Jr. and John . Ghinger III, *A Contemporary Appraisal of Condemnation in Maryland*, 30 Md. L. Rev. 301 (1970).

⁹⁵ Commencement Exercises, University of Maryland School of Law, Thurgood Marshal Law Library, http://www.archive.org/stream/commencementexer1941univ/commencementexer1941univ_djvu.txt (last visited Oct. 6, 2010).

the most well-respected law firms in Maryland, if not the United States. The founding partners included Bartlett's father, J. Kemp Bartlett Jr., and his classmate L.B. Keene Claggett,⁹⁶ a descendant of a highly regarded Maryland family with noble English roots that included the first Bishop of Maryland.⁹⁷ The law firm's reputation is even more understood when considering that in 1911, Edgar Allan Poe, having resigned as the City Solicitor of Baltimore was admitted to the firm, thus styling the name Bartlett, Poe, and Claggett.⁹⁸

Bartlett was no stranger to the needs and interests of big business. He served as Chairman of the Section of Corporation, Banking and Mercantile Law in 1945, and was also well connected in the legal community serving as treasurer of the Bar Association of Baltimore from 1941–43.⁹⁹ He also authored numerous articles for the *Business Law Journal*, of which he was also a council member in 1947.¹⁰⁰

The International League of Professional Baseball Clubs also brought in an attorney accustomed to litigating large cases. They hired J. Nicholas Shriver, Jr. of the law firm Cross & Shriver. Shriver was a highly successful and noted attorney in Baltimore, known primarily for his work in Wills and Estate law.¹⁰¹ His law firm of Cross & Shriver merged with another Baltimore firm to form Ober, Kaler, Grimes &

⁹⁶ Bones, Molars, and Briefs, 1897, Thurgood Marshal Law Library Archives, <http://www.law.umaryland.edu/marshall/schoolarchives/documents/BonesMolarsandBriefs1897.pdf>, (last visited Oct. 7, 2010).

⁹⁷ "Numerous members of the family were clergymen in the Church of England, among them being the Right Rev. Nicholas Clagett, Bishop of St. David's, in the reign of George the Second, and afterwards transferred to the See of Exeter." Clayton Colman Hall, *BALTIMORE: ITS HISTORY AND ITS PEOPLE*, VOLUME 2, Lewis Historical Publishing Co., 1912.

⁹⁸ *Id.*

⁹⁹ *Section Members' Writings*, 2 *Bus. Law*. 19 (1947).

¹⁰⁰ *Id.*

¹⁰¹ See J. Nicholas Shriver and Shale Stiller, *How to Live and Die with Maryland Probate* (Houston: n.p., 1972).

Shriver in 1969.¹⁰² Ober, Kaler, Grimes & Shriver is still in business today, and counts two Maryland Governors as alumni of the firm.¹⁰³ Shriver did not limit his professional interests to the practice of law, however, and proved to be an adept and shrewd business man. Shriver also served on the Board of Directors for the Kirk Corporation from 1967-68 as an assistant secretary.¹⁰⁴

The City Solicitor's Office paired with the Orioles and the International League outnumbered the residents in attorneys five to one. Not only did they have more eyes and minds to analyze the case, they also had more money to fund their defense. The disgruntled residents and their attorney Wilmer Driver were up against tall odds and adept legal minds, but did not shy away from pursuing their interests after the City and the Orioles refused to cede any concessions on the playing of games or the layout of the stadium.

The Case - “an unbearable and intolerable nuisance...”

Interestingly, the main contentions the residents had concerned the “unlawful annoyances” associated with living so close to the stadium, not fears of falling property values as the Mount Royal residents took up arms against.¹⁰⁵ Indeed, all of the residents purchased their homes after the stadium was built, arguably with the intention to profit from an increase in property value due to the proximity to the landmark, a fact that the defense rose numerous times. However, after repeated attempts by the residents to secure

¹⁰² Maryland Historical Society Library, <http://www.mdhs.org/library/Mss/ms002720.html>, (last visited Oct. 11, 2010).

¹⁰³ Albert Ritchie in 1920 and Robert Ehrlich, Jr., in 2003. Ober Kaler Attorneys at Law Website, http://www.ober.com/our_firm/history, (last visited Oct. 11, 2010).

¹⁰⁴ The Kirk Corporation was a conglomerate that began as a Baltimore-based silversmith company. While Shriver sat on the board, the Kirk Corporation went on a buying spree of businesses in the late 1960's in an effort to diversify revenue streams, acquiring well-known names such as Studebaker Southern, Inc, the Florida based manufacturer of mobile homes. Maryland Historical Society Library: Samuel Kirk 7 Son, Inc. Papers, 1834-1979, <http://www.mdhs.org/library/Mss/ms002720.html>, (last visited Oct. 11 2010).

¹⁰⁵ Plaintiffs' Bill of Complaint, *as presented in*, Court of Appeals Records and Briefs.

any lasting or formal agreement by the Orioles or the City regarding the use of the lights, the loudspeaker, the parking lot annoyances, or the supervision of baseball crowds, they filed suit in Baltimore Circuit Court.

Frederick E. Green was the named plaintiff, one of 14 parties whom were all residents surrounding Municipal Stadium.¹⁰⁶ The named defendant in the case was Robert Garrett,¹⁰⁷ President and Chair of the Recreation and Parks Department, although as stated above both the Orioles and the International League joined as co-defendants. What the residents sought was as simple as it was devastating, to enjoin the City from entering into any agreement permitting the use of the stadium by the Baseball Company for playing of *professional* baseball, and to declare void the current agreement permitting use.¹⁰⁸ In short, the residents sought to return the stadium to its state before the Orioles brought frequent large crowds and the nuisances associated with them.

On April 12, 1948, after reading the voluminous memoranda submitted by all parties involved, the Circuit Court Judge, E. Paul Mason, in an unreported opinion issued a decree largely in favor of the City and the Orioles. While he did require that the public address system “is to be so operated as not to unnecessarily annoy the adjacent residents,” the Team and the City could continue operations as they had all along.¹⁰⁹ The residents quickly filed an appeal, which was granted by the highest court in Maryland, the Maryland Court of Appeals, with arguments to begin July 6, 1948.¹¹⁰

¹⁰⁶ Frederick E. Green lived at 1200 East 33rd St, Baltimore MD. *Id.*

¹⁰⁷ Robert Garrett was also a terrific athlete, winning Olympic gold medals in shot put and discuss, silver medals in high jump and long jump, and bronze medals in shot put and standing triple jump. Robert Garrett, http://en.wikipedia.org/wiki/Robert_Garrett (last visited Dec. 21, 2010).

¹⁰⁸ The distinction of “professional” will be prove to be fatal mistake on the part of the residents. Plaintiffs’ Bill of Complaint, *as presented in*, Court of Appeals Records and Briefs.

¹⁰⁹ *Green v. Garrett*, 192 Md. 52, 56 (1949).

¹¹⁰ Because the arguments made on behalf of all the parties were identical from the Circuit Court level to the Court of Appeals, in the interest of brevity the legal analysis will only contain references to the

Prior to arguing the case before a five judge panel in the Court of Appeals, including Chief Judge Ogle Marbury, Judge Delaplaine, Judge Collins, Judge Henderson, and Judge Markell, the City Solicitor's Office sought help from outside jurisdictions. Knowing that Cleveland had recently permitted professional sports use of its stadium, Biddison wrote a letter to the City of Cleveland asking for any information on the kinds of complaints they received from residents surrounding the stadium, and for a copy of the contract between the Cleveland Baseball Club and the City of Cleveland permitting use.¹¹¹ On both accounts, Cleveland was of little help. They refused to send a copy of the contract because it was a "voluminous affair" and that because "the nearest residential section is more than two miles distant..the lighting glare and amplifying system could in no way constitute a nuisance."¹¹² Biddison and his legal team were thus on their own as the case was heard before the Court of Appeals.

While five judges would decide *Green v. Garrett*, authoring the opinion for the Court of Appeals was Chief Judge Ogle Marbury. Chief Judge Marbury had already led an illustrious legal career prior to *Green v. Garrett*.¹¹³ He served as an associate judge of the Maryland Court of Appeals from 1941 to 1944, and authored the opinion as the Chief Judge when *Green v. Garrett* was decided during his tenure in that role from 1944 to 1952.¹¹⁴ Marbury also exhibited a rare trait in distinguished jurists, a wicked wit and

arguments made at the appellate level. Transcript of the Record, *as presented in*, COURT OF APPEALS (Transcripts) *Green v. Garrett*, 1948, case no. 58, vols. 1-2, MdHR 10,898-8 [MSA S434-77, 1/67/11/6] (hereinafter Court of Appeals Transcripts, http://www.msa.md.gov/megafile/msa/speccol/sc5300/sc5339/000247/000000/000009/restricted/msa_sc5458_51_4429_4.pdf (last visited Dec. 10, 2010).

¹¹¹ Letter from City of Cleveland Law Department to Thomas Biddison, *as presented in*, Baltimore City Law Department General Correspondence.

¹¹² *Id.*

¹¹³ See Biographical Appendix, *supra*.

¹¹⁴ "In Memoriam," in *Maryland Reports: Cases Adjudged in the Court of Appeals of Maryland at September Term, 1973*. Charlottesville, VA: The Michie Company, 1975.

sense of humor. Once, when asked what his qualifications were for becoming a judge, he replied, perhaps a little too candidly, “[I’m] a lawyer who knew the Governor.”¹¹⁵ With the table set, both sides plead their cases in open court for ten days in Annapolis, Maryland.

In quite a daring move, the residents claimed standing for bringing the suit as taxpayers for the City of Baltimore, and that they “have an interest in restraining conditions, arising out of a contract, which constitute a special nuisance to them.”¹¹⁶ The move was daring, because legal precedent at the time favored the City. According to the leading case law,¹¹⁷ taxpayers had sufficient standing to bring suits against municipal authorities to “prevent the waste of public funds or property,” but a different situation arose when a profitable arrangement made by the municipality was sought to be restrained, such as in *Green*.

However, because the Courts in Maryland had “taken jurisdiction of a taxpayer’s suit to enjoin the diversion to profitable but unlawful use of park property in Baltimore City,”¹¹⁸ the Court of Appeals decided to allow the residents standing to bring the case. If the use of the Stadium was found to be unlawful, as the residents argued, then there was convincing precedent for the residents to be heard. The Court was not unaware, however, of how easily the case could have been dismissed for lack of standing as the defendants railed for, stating:

“The decisions are not entirely harmonious, but we have heretofore allowed considerable latitude in this type of suit, and we have, therefore, concluded to

¹¹⁵Displays of his razor-sharp wit also surface in the *Green* opinion, when discussing the parking situation at Municipal Stadium . *Id.*

¹¹⁶ *Green v. Garrett*, 192 Md. 52, 58 (1949).

¹¹⁷ *Sun Cab Co. v. Cloud*, 162 Md. 419 (1932); *Baltimore Retail Liquor Package Stores Ass’n v. Board of License Commissioners*, 171 Md. 426(1937).

¹¹⁸ *See Hanlon v. Levin*, 168 Md. 674 (1935).

consider the entire case without questioning the right of appellants to bring any phase of it.”¹¹⁹

Thus, the initial knock-out punch that the defendants strived for was not delivered. The residents were going to have their entire argument heard. The defendants would not need much consolation, however, as this was the only issue in which the residents would emerge completely victorious.

The residents’ first argument was that the Department of Recreation and Parks had no power or authority to enter into an agreement with the Baseball Company.¹²⁰ The powers of the Department were found in Section 96 of the amended Baltimore City Charter of 1946. By the provisions of that section, the Board of Recreation and Parks, which is the head of the Department, is authorized

“(a) to establish, maintain, operate and control athletic and recreational facilities and **activities for the people of Baltimore City...** (g) to charge and collect rental for the use of property controlled by it; provided that no lease of such facilities shall be made for a period of thirty day or more (or for successive periods aggregating thirty days or more) without the prior approval of the Board of Estimates.”¹²¹

The contention of the residents was that these powers should be strictly construed, and that the Department should not have broader powers with reference to the execution of leases of properties than the municipal corporation itself.

Alternatively, if the Park Board *did* have the authority to enter into an agreement for the professional use of the facility, the residents argued that watching professionals play baseball and football were not “activities for the people of Baltimore City.”¹²² Their argument hinged on the distinction among the kinds of events that were held at the

¹¹⁹ *Green*, 192 at 59.

¹²⁰ Plaintiffs’ Bill of Complaint, *as presented in*, Court of Appeals Records and Briefs.

¹²¹ *Green*, 192 at 59-60. (emphasis added)

¹²² *Id.*

facility before the Orioles and the Colts came, where more often than not the complex was used as a gathering place for the community, and sporting events featured area college or high school match-ups which certainly contained Baltimore City residents using the facility. The defendants countered with the logical argument that one need not participate in the actual sport to consider the activity recreational.¹²³

The Court sided with the defendants, as the argument that watching professionals play the national pastime could not be considered “recreational” is a difficult one to substantiate, especially considering the popularity baseball enjoyed in post-war American life.¹²⁴ Not surprisingly, the Court was quite forward in its dismissal of the residents’ effort to distinguish professional from amateur sporting events at Municipal Stadium, finding:

“From the onlooker’s point of view, a game conducted by professionals is often more interesting than one played by amateurs. The very purpose of a stadium is to afford facilities for spectators. The players need only the ground to play upon.”¹²⁵

Thus, the residents’ legal tactic of highlighting upon professional use of the stadium as their main argument did not carry as much weight as was hoped. The description of the nuisances they were enduring, however, seemed to catch the attention of the appellate Court much more affectively, even more so than at the Circuit Court level.

Their third argument was that “[t]he use of the Stadium by the Baseball Company constitutes such a nuisance as to require an injunction to cease Baseball from being played.”¹²⁶ The nuisances being that, 1) the loudspeaker system kept local residents awake at night when used for evening games; 2) the lights of the Stadium were so

¹²³ Defendant’s Memoranda, *as presented in*, Court of Appeals Records and Briefs.

¹²⁴ “Recreation is a broad term, and it would be an unnatural use of it to say that it does not apply to watching a football or baseball game, but only applied to engaging in one.” *Green*, 192 at 61.

¹²⁵ *Id.*

¹²⁶ *Id.* at 54.

powerful and angled in a way that creates “artificial daylight” in and around their homes when trying to sleep; 3) the un-paved parking lots created massive dust clouds, and less courteous patrons simply used the driveways of surrounding residents at their whim; 4) that the “comfort stations” located outside the stadium amounted to little more than “open sewage pits,” and finally; 5) the “unseemly behavior and disorderly conduct of individuals in the crowds going to and from ball games,” posed a risk for the life and health of the individuals residing in the surrounding community.¹²⁷

Faced with the unenviable task of arguing that these events did not constitute a nuisance, the defendants instead built a defense of equal parts disagreement that some of the events were even happening (a factual defense), and also that there could be no actual nuisance when the value of the properties in question had not diminished (a legal defense).¹²⁸

Concerning the residents’ claims regarding the nuisances associated with living near the stadium, the defendants pointed to testimony of individuals whom lived directly next to many of the appellants, and noted that their testimony “diametrically opposed” the statements of the complainants.¹²⁹ The defense even brought in their own experts who gauged the noise and light levels, and testified that neither could produce “actual discomfort” from the surrounding residents.¹³⁰ Concerning the parking situation, the City took a legal approach.

¹²⁷ Extracts from Plaintiffs’ Bill of Complaint, *as presented in*, Court of Appeals Records and Briefs.

¹²⁸ Extracts from Defendant’s Memoranda, *as presented in*, Court of Appeals Records and Briefs.

¹²⁹ Defendant’s Memoranda, 27, *as presented in*, Court of Appeals Records and Briefs.

¹³⁰ Defendant’s Memoranda, 28, *as presented in*, Court of Appeals Records and Briefs.

Because the value of the residents' properties had not diminished since the acceptance of the Orioles and Colts into the stadium, the defense argued that there could be no actual nuisance.

“The principle of determining the existence of an alleged nuisance from its effect on the value of the property subjected to it is particularly adaptable to cases, such as this one, where a nuisance is claimed to have continued for a substantial period of time, on the theory that if the nuisance is of a real and existing character it is reasonable to assume that its existence will be reflected in the market value of the property which it is said to affect.”¹³¹

This theory was also supported by legal precedent,¹³² and posed a tough obstacle for the residents to pass. They countered with an indirect argument that because the stadium was located in an area that was zoned for residential purposes, the use of it for professional sporting contests constituted a non-conforming use, and was thus unlawful.¹³³ Again, the City answered in a convincing fashion.

The City pointed to the fact that the area was zoned after the stadium had already been built, and had also hosted professional sporting contests before the zoning ordinance was passed. Thus, they continued, the stadium already enjoyed a non-conforming use before the zoning ordinance, and should thus be able to continue it.¹³⁴

Ultimately, the weight of the facts and legal precedent the City argued proved victorious.¹³⁵ The Court of Appeals would not enjoin the City nor the Orioles from using the complex for professional sporting contests, nor would it limit the Park Department's

¹³¹ Defendant's Memoranda, 25, *as presented in*, Court of Appeals Records and Briefs.

¹³² *Dittman v. Repp*, 50 Md. 516. (1879).

¹³³ Plaintiffs' Reply Brief, 12, *as presented in*, Court of Appeals Records and Briefs.

¹³⁴ Defendant's Memoranda, 31, *as presented in*, Court of Appeals Records and Briefs.

¹³⁵ “It does and will constitute a much greater use of the Stadium for professional activities than has heretofore been made of it, but it cannot be said that this exceeds the power reposed in the Department or the Board of Recreation and Parks to maintain athletic and recreational facilities and activities for the people of Baltimore.” *Green v. Garrett*, 192 Md. 52, 62 (1949).

ability to contract with professional sports franchises for use of the facility. The attitude of the Court is summed up nicely in this excerpt from the opinion:

“[L]iving in a city entails the endurance of certain inconveniences and discomforts, and those who have established their residences there cannot expect to have the quiet and peace of the country-side.”¹³⁶

That being said, the Court of Appeals did not entirely turn a blind eye to the plight of the disgruntled residents.

In regards to the lights, the Court ordered that “the lights can be adjusted so as to obviate this difficulty,” and “whoever has to pay for the change” should be determined among the defendants.¹³⁷ In addition to this decree by the Court, the Orioles had previously agreed not to start any inning past 11:30 p.m., during night games. In regards to the sound from the loudspeaker, the Court largely followed the direction of the Circuit Court, and affirmed the order that the public address system be enjoined from producing “not only announcements pertaining to the games, but also music and other entertainment features which [are] undoubtedly destructive of peace and quiet.”¹³⁸ While a baseball or football game today is nearly unimaginable without any kind of music or announcements, the Orioles and the Colts were not burdened too terribly by this order. In practice, it simply meant that the volume level had to be turned down.¹³⁹

In regards to the parking calamities surrounding the stadium, the Court was the most stern with the City and Orioles, bluntly stating that paved parking lots are “so obviously necessary for a Stadium of the size of the one in question, that it seems

¹³⁶ *Green v. Garrett*, 192 Md. 52, 64 (1949) (citations omitted).

¹³⁷ *Id.* at 65.

¹³⁸ *Id.*

¹³⁹ “...the volume of each speaker can be considerably reduced below that used at the present time. It is believed that this will eliminate any future complaints on this score.” Letter from Faisant and Kookon Consulting Engineers to R. Brooke Maxwell, Director of Recreation and Parks, *as presented in*, Baltimore City Law Department General Correspondence.

remarkable it has not been done long ago.”¹⁴⁰ While the Court’s strong language suggested that the residents would be greeted with a paved parking lot immediately, just as with the decree regarding the volume of the loudspeakers, the institutional competency of the judiciary in implementing civic remedies was again put to the test. Due to the ambiguous language in the opinion regarding whose duty it was to supply paved parking,¹⁴¹ it would not arrive until the whole stadium was re-built in 1953 for the coming of Baltimore’s major league team, the former St. Louis Browns, some four years later.

Finally, in regards to the “unseemly behavior and disorderly conduct” of the individuals going to and from ball games, the Court barely addressed the concern at all, and optimistically opined that once it is “brought especially to the attention of the Police Commissioner, he will see to it that enough policemen are assigned to take care of it and to prevent its occurrence.”¹⁴²

Aftermath and Analysis

With the Court giving lip service to all of the symptoms of the residents’ complaints, but not addressing the actual cause of the dilemma of an exponential increase in events held at a facility that was not designed nor planned for heavy professional sports use, the residents were left to deal with the nuisances of living near the stadium much as they had before *Green v. Garrett*. It is worth considering though that each and every one of the plaintiffs bought their property after the stadium was built and in use,

¹⁴⁰ *Green*, 192 at 55.

¹⁴¹ “Who is to do it, and how it is to be done, is not before us, but what is before us, is the continuance of a nuisance created by an unpaved parking place and we think this should be enjoined.” *Id.* at 66.

¹⁴² *Id.*

and each one of them experienced an increase in property value, arguably because of the Orioles moving to Municipal Stadium.

Conversely, the City and the Orioles celebrated a resounding victory. With the legal questions surrounding the use of Municipal Stadium for professional sports use answered, Baltimore was indeed the benefactor of a major league baseball team looking to relocate, and in 1953 welcomed the team formerly known as the St. Louis Browns, and rechristened them the Major League Baltimore Orioles.¹⁴³

In 1954, Memorial Stadium was built upon the site of the Baltimore Municipal Stadium.¹⁴⁴ The funding of the construction of the new stadium was to come from a bond that was to be voted upon by the citizens of Baltimore, and in order to promote the bond the Park Board and City Hall decided to dedicate the stadium to the Maryland dead from two wars.

“When the Board of Recreation and Parks, with City Hall behind it, decided to build Memorial Stadium, both the name and the function appealed to voters. The outbreak of war in Korea served as reminder. In 1953, their ultimate approval of this second bond lean made possible the addition of an upper deck. Fans marveled as the contractors did it all without interrupting the flow of home games on the part of its two major-sport tenants.”¹⁴⁵

Memorial Stadium was now entering its glory years, and would serve as the home field for both the Major League Baltimore Orioles and the National Football League Baltimore Colts, the professional football team in Baltimore for decades to come. For the next 40 years, patrons would attend games at Memorial Stadium, all while the property values and prestige of the surrounding communities of Ednor Gardens – Lakeside

¹⁴³ See Bready, James H. The First 100 Years: Baseball in Baltimore. Baltimore: Johns Hopkins University Press, 1998.

¹⁴⁴ Ednor Gardens - Lakeside Vertical File. Maryland Room – Enoch Pratt Free Library.

¹⁴⁵ Bready, James H. The First 100 Years: Baseball in Baltimore. Baltimore: Johns Hopkins University Press, 1998: p 216-217.

continued to grow. By the 1970's, promotional material for homebuyers looking to move into the surrounding communities boasted of their association with Memorial Stadium as a "major feature" and that residents "look forward to an improved and modernized" stadium."¹⁴⁶ Gone were the calls for the banishment of professional sports teams from the stadium, as Ednor Gardens and Lakeside residents enjoyed the financial benefits of Memorial Stadium in building their "attractive, convenient and peaceful community."¹⁴⁷

But as with all good things, the ties the Orioles and the Colts had to Memorial Stadium both came to an end. At 2:00am on March 29, 1984, the team owners of the Baltimore Colts loaded up 12 trucks with all the possessions of the team and fled to Indianapolis, Indiana, taking different routes so as to confuse Maryland State Troopers who may have tried to stop them.¹⁴⁸ Just as the Browns left St. Louis to play in the larger and more modern Municipal Stadium, so too did the Baltimore Colts, who were met with the newly completed RCA Dome in Indianapolis.¹⁴⁹ The loss of the Colts was devastating, but with the Orioles still playing at Memorial Stadium, the Old Grey Lady would continue to operate for the next 8 years.

Memorial Stadium was aging, however, and the Orioles would soon seek a newer and more modern stadium. When then Mayor William Donald Schaefer reversed his position that Memorial Stadium should be renovated, and instead supported construction of a new facility, the residents surrounding Memorial became worried. Without professional sports teams to draw large crowds, Memorial Stadium could not be sustained as a viable venue. While the stadium events may have created periodic disruptions to

¹⁴⁶ Ednor Gardens-Lakeside Newsletter (1972).

¹⁴⁷ *Id.*

¹⁴⁸ *Twelve Vans to Indianapolis*, The New York Times, March 29, 1984. Retrieved September 14, 2010 from http://www.nytimes.com/packages/html/sports/year_in_sports/03.29.html.

¹⁴⁹ *Id.*

local life, it did provide easy access to major league sports and special attention from the city for maintenance of the area. No one in the local community was optimistic about the future of the neighborhoods.¹⁵⁰

In a complete reversal of their sentiment in *Green v. Garrett*, the local residents now organized committees for the purpose of *keeping* the Orioles at Memorial Stadium. Despite their efforts, Oriole Park at Camden Yards was built in 1992, and the Orioles moved to the facility at the beginning of their season, where they remain today. Without a permanent home team playing at 33rd St., Memorial Stadium was finally razed to the ground in 2002, with much of its remnants used to make an artificial reef in the Chesapeake Bay.¹⁵¹ The land where Memorial Stadium once stood remains now as it started some 79 years ago, as a park where Baltimoreans can go to take “pleasure walks.”

The economic boom of professional sports no doubt helped to create Memorial Stadium. Without the fire at Oriole Park it may never be known how different the sporting history would have been in Baltimore. When the Orioles moved to the Great White Elephant in 1944, they brought excitement, enthusiasm, crowds, and most importantly money.

Without that move Baltimore may never have attracted a major league baseball team, and enjoyed decades of professional baseball and football games in the World’s Largest Outdoor Insane Asylum. Conversely, in a repeat of the same cycle that gave birth to Memorial Stadium, the search for bigger and more modern facilities ultimately lead to its demise when both of its teams sought newer complexes. As both a benefactor, and victim, of professional sports, the story of Memorial Stadium and *Green v. Garrett*

¹⁵⁰ Soloman, Burt. Where They Ain't: The Fabled Life and Untimely Death of the Original Baltimore Orioles, The Team that Gave Birth to Modern Baseball. New York, Free Press, 1999.

¹⁵¹ *Id.*

serve as a cautionary and instructive tale in modern sports facility planning. Just as the residents of Ednor Gardens found out 50 years after *Green v. Garrett*, be careful what you wish for.