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I Paid for That Rooftop Seat

By Randy J. Maniloff

Baseball is the national pastime, but litigation is a close second. So it is no surprise that the recently announced \$500 million renovation of Chicago's Wrigley Field has been accompanied by talk of a possible lawsuit. Wrigley is famous for its "friendly confines," and that is what the lawsuit would concern: One party wants to change those confines, and the other considers that an unfriendly move—because it would block a view of the field.

Since the stadium's construction in 1914, spectators have been able to see its field from the rooftops of buildings behind the outfield bleachers. For the owners of those buildings, this is big business. Each game, more than 1,500 people pay in the \$70-\$200 range to watch the Cubs from such an unusual vantage point.

But the impending renovation of Wrigley Field will reportedly include the construction of a Jumbotron in the outfield—a 6,000-square-foot video screen that would obscure the view from some rooftops across the street. That is where the potential lawsuit comes in.

This isn't the first time that rooftop owners and the Cubs organization have had to address their coexistence. In

2002, the Cubs sued the rooftop owners to bring an end to their "free ride," as Andy MacPhail, then president and CEO of the Cubs, put it. Two years later, the parties reached a 20-year agreement that has the Cubs collecting 17% of the rooftop owners' revenue from selling views of the friendly confines.

A potential legal spat over the neighborhood views of Wrigley Field would be another of the sport's property-rights clashes.

Now the rooftop owners are threatening to use "any and all means necessary"—translation: a lawsuit—to demonstrate that their contract entitles them to 11 more years of unobstructed views.

Is all this yet another sign that baseball is losing its innocence to the insatiable appetite for money? Not quite. Of course the sport has changed since the days when men wore suits and hats to the ballpark, but the legal storm around Wrigley isn't such a novel phenomenon.

Consider the story of John Deppert Jr., who once owned a building next to a ballpark where a professional baseball team played. The team used fences and screens to prevent people from watching the action if they hadn't paid to enter.

Deppert had an idea. He built stands on the roof of his building tall enough to enable fans to look over the park's fences and watch the games. He charged admission to his roof at a price far cheaper than the team's tickets, and he sold refreshments to his spectators, who numbered 25 to 100 per game.

But Deppert didn't own a building in Chicago. He owned one in Detroit. And the team that played on the field across the street was the Detroit Baseball Club, one of eight in the National Base Ball League. The year was 1885.

The Detroit Baseball Club was not pleased with Deppert and demanded that he stop selling access to stadium views. He refused. The late 19th century might have been a gentler time, but soon the baseball club lawyered up, suing for

an injunction against Deppert's operation. The club lost at trial but appealed to the Supreme Court of Michigan.

Each side had some points in its favor. The club had expenses of more than \$3,000 per month, and it relied largely on ticket sales to defray costs. By building a fence around the stadium, the team was only protecting its rightful use of the property. Deppert, for his part, was simply using his property without breaking any laws. And the board of building inspectors had pronounced his rooftop stand safe.

Michigan's highest court sided with Deppert, concluding that it "cannot limit the extent, up or down, to which a man may enjoy his property; and if he goes higher than his neighbor, so long as he does not interfere with the rights of others, or injure his neighbor, he subjects himself to no liability."

One of the four justices saw it differently and would have ordered an injunction against Deppert. He wrote: "Giving to every landowner the largest liberty in the reasonable use of his own premises, there is no principle which will justify him in resorting to measures which are calculated and designed to annoy his neighbors, as well as to reap a profit from their property."

Despite all of their disagreements, Deppert and the Detroit Baseball Club described their case in nearly the same language: To the team, it was about the "golden rule of the common law"—a man has dominance over his own property. To Deppert, it was about man's inalienable right to use his property as he sees fit, as long as he obeys the law.

Much has changed in the nearly 130 years since John Deppert Jr. and the Detroit Baseball Club went to bat against each other. But their story—like that of Wrigley Field today—illustrates at least one constant in American life: Citizens will go to great lengths to guard their property and maximize its value. That is America's real national pastime.

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