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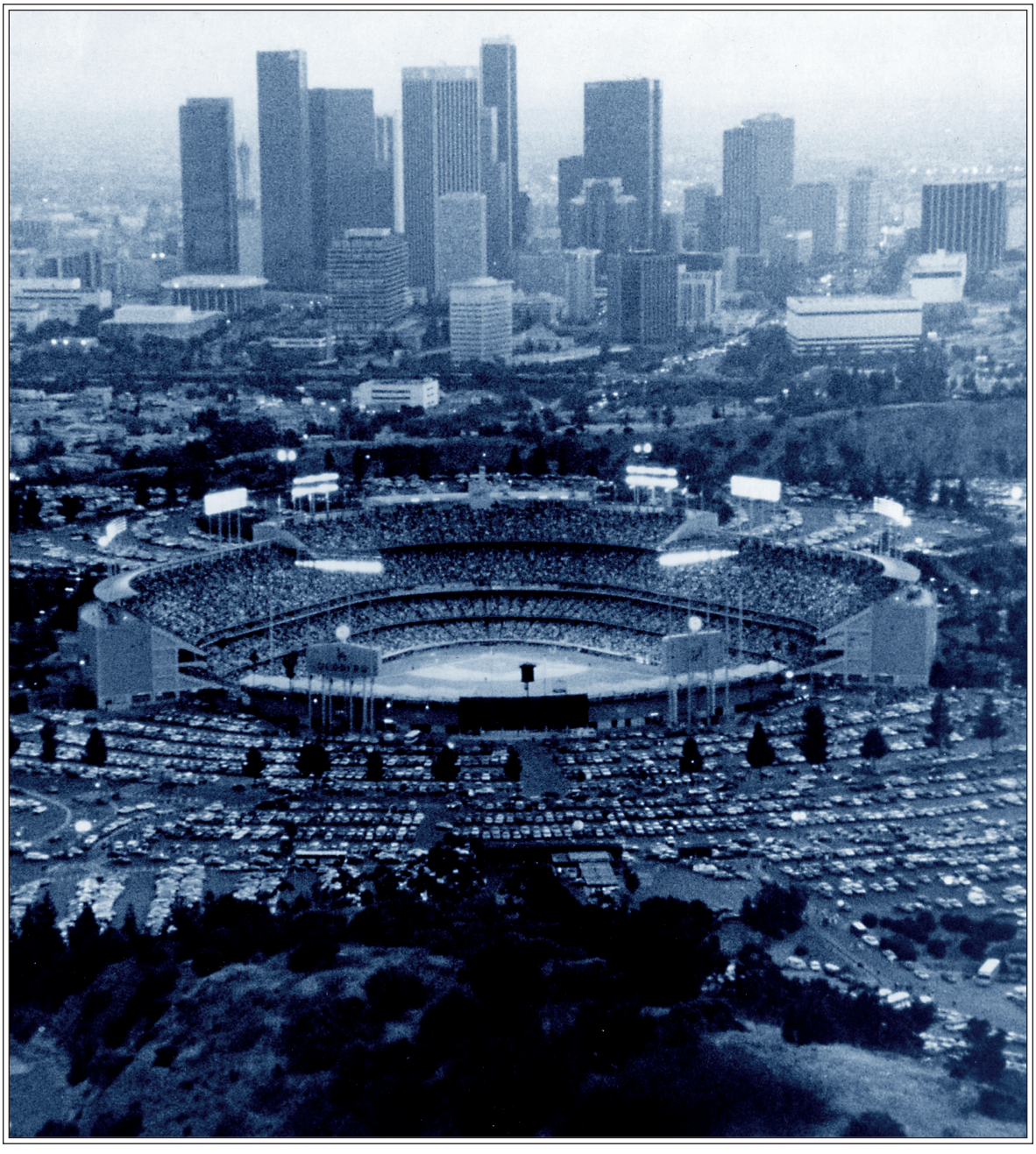


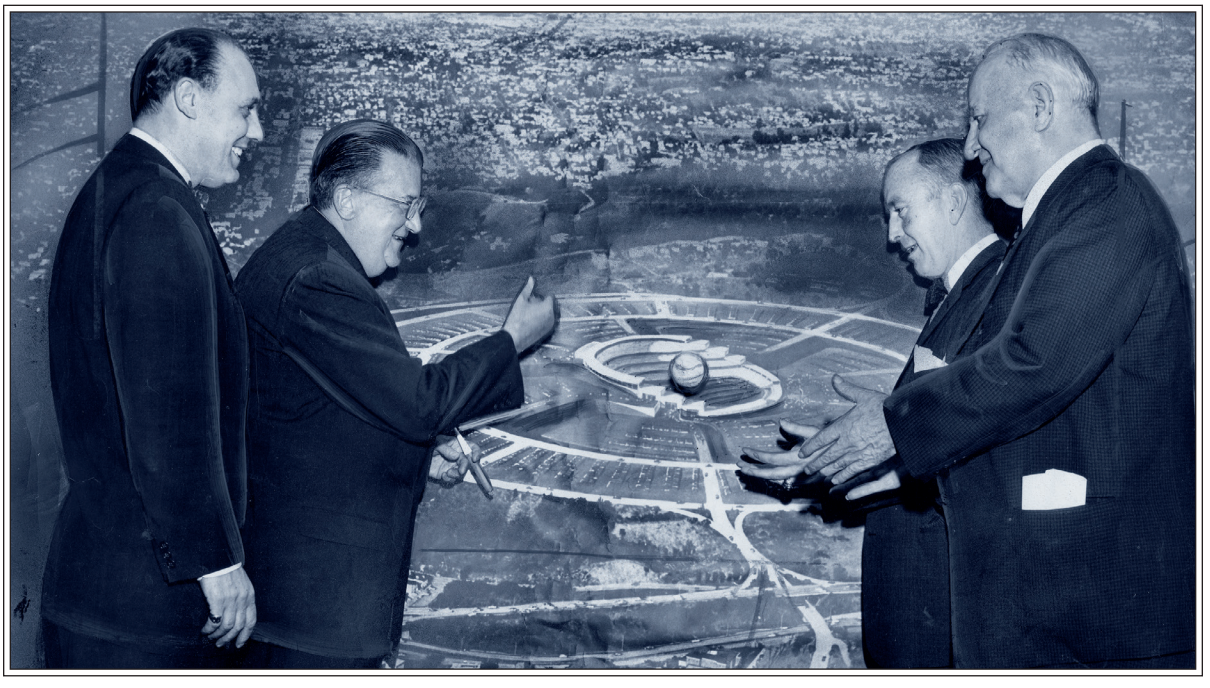
# Dodger Blue:

## How the California Supreme Court Saved Dodger Stadium

# *How the California Supreme Court Saved Dodger Stadium*

## And Helped Create Modern Los Angeles

by jerald podair*



*Dodger President Walter O'Malley* (second from left) *tosses baseball to attorney Harry Walsh after getting word that the California Supreme Court unanimously allowed construction of the stadium in Chavez Ravine. Looking on in front of a photo-sketch of the proposed stadium were Dodger general manager Buzzie Bavasi* (left) *and attorney Joe Crider, Jr. Photograph dated Jan. 14, 1959.*

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In early october 1957, the Los Angeles City Council adopted Ordinance No. 110,204 — by the margin of a single vote — bringing the Brooklyn Dodgers and Major League Baseball to the West Coast. Under its terms, the City of Los Angeles would contract to convey to the team some 300 acres in the Chavez Ravine neighborhood overlooking downtown, on which the new, privately-funded Dodger Stadium would be constructed. In exchange, the city would receive Wrigley Field — a Dodger-owned minor league ballpark in South Los Angeles — and the team's promise to build a public recreation area on a portion of the Chavez Ravine land.

It was one of the most momentous days in the history of the city, and also one of the most contentious. Indeed, few questions have divided the people of Los Angeles more deeply that those of whether, where, and how to build Dodger Stadium. Between 1957 and 1962, when it finally opened, the battle over the ballpark was an intense and emotional one. It featured an attempt to void the stadium deal through a referendum that failed by a narrow margin in June 1958. It included the controversial eviction by city authorities of a group of Mexican-American Chavez Ravine homeowners who had defied notices to vacate so that land for the stadium could be cleared. The sight of sheriff's deputies forcibly removing residents, broadcast live on television in May 1959, remains a source of contention for the Los Angeles Latino community to this day. It also was the occasion for litigation that eventually reached the highest court in the state and which helped determine the identity and direction of modern

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Los Angeles. Few legal cases have been so fraught with policy implications for the city. If Dodger Stadium was built where team owner Walter O'Malley wished to — on the very lip of the downtown area — it would represent a conscious investment in the future of the central core, a statement of Los Angeles's intention to have a downtown worthy of its status as an emerging super city. But some Angelenos, including many who resided in peripheral areas such as the rapidly growing San Fernando Valley, did not share these aspirations. To them, the idea of a baseball stadium to shore up a downtown they rarely visited was a waste of taxpayer resources that could be more gainfully employed for roads and schools in their own communities.

Shortly after the ordinance was adopted and announcing his team's move from Brooklyn, Walter O'Malley flew west with team officials, landing in Los Angeles on an evening in mid October 1957. Immediately after disembarking, O'Malley was served with process in a lawsuit filed by a city taxpayer to void the Dodger Stadium contract. Fewer than five minutes into his time in Los Angeles O'Malley was already a defendant in a legal action.

The taxpayer suit had been filed by local attorney Julius Ruben in Los Angeles County Superior Court.[1] It argued that a public entity had no right to dispose of public property for anything other than a "public purpose," relying on the language in a 1955 deed of Chavez Ravine land from the Housing Authority of the City of Los Angeles (CHA) to the city of Los Angeles. This land had been the site of a planned public housing project in the early 1950s that had been cancelled, but not before most of its largely Mexican-American residents were removed through eminent domain proceedings. The CHA transferred the land to the city with a deed stipulating that it be employed solely for a "public purpose," without defining what those words meant. Ruben contended that the deed barred use of the land for the benefit of any private business, including a baseball team. The city had promised either to remove the public purpose restriction from the deed or have it held harmless and of no effect, but Ruben maintained this would be illegal.

In April 1958, another taxpayer lawsuit was filed against the Chavez Ravine agreement in Los Angeles County Superior Court,[2] this one on behalf of Louis Kirshbaum, who was represented by Phill Silver, a notorious local gadfly attorney. It objected to the allegedly unequal exchange of Wrigley Field for the allegedly more valuable Chavez Ravine property. The Ruben and Kirshbaum cases were consolidated and set for a bench trial.

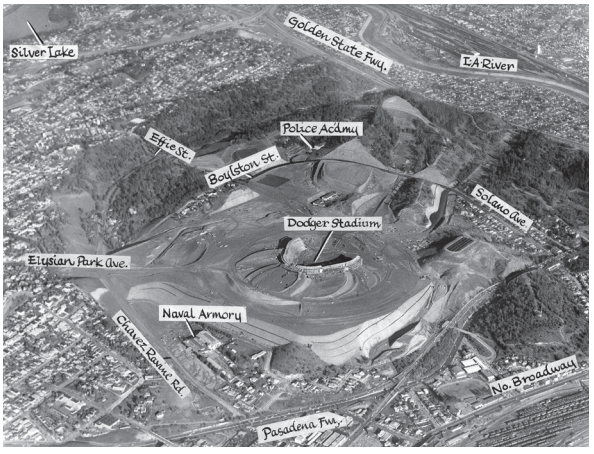
Despite their small-scale legal practices, Julius Ruben, who was representing himself, and Phill Silver, representing Louis Kirshbaum, were formidable adversaries for the Dodgers, who were represented by O'Melveny & Myers and supported by the City Attorney's office. Pierce Works, O'Melveny's lead attorney, was a veteran litigator who was perhaps best known as UCLA's varsity basketball coach in the 1920s and 1930s. Ruben and Silver were known as taxpayer advocates and champions of the little guy. The Dodgers could expect no quarter from them. Ruben and Silver contended that the City Council had exceeded its powers by making what amounted to a gift of public property for the private use of the team. They also posed the litigation's central question: did a privately-owned Dodger Stadium serve a public purpose? A court had never addressed this question. Now one would.

During a pretrial hearing, Ruben and Silver made a concession they would later regret. The relative values of the Chavez Ravine and minor league Wrigley Field properties that were to be exchanged under the terms of the Dodger Stadium deal were the subject of controversy. Contract opponents claimed that the Ravine land was actually worth much more than the city's official valuation of $2,289,204 and Wrigley much less than its assigned $2,250,000.[3] A judicial finding of inadequate valuation could void the agreement. But Ruben and Silver effectively stipulated that property values would not be made an issue in the upcoming trial and the parties would litigate only questions of law, and not of fact.[4] This would preclude the admission of evidence relating to appraisals of the two properties. The attorneys' reasons for limiting the issues are unclear. Perhaps they were confident enough on questions of law that they were willing to concede the complicated property argument in the interests of a clean case. In any event, the question of whether the city had given up a lot for a little in the Dodger deal was, as far as the litigation was concerned, off the table.

The trial began in Los Angeles County Superior Court in mid June 1958 with a touch of farce. Silver called Los Angeles Mayor Norris Poulson as a witness intending to examine him on his attempt to induce the CHA to eliminate the "public purpose" clause from the 1955 Chavez Ravine deed. But the mayor was able to answer only one question in his two hours on the stand, as city lawyers lodged objection after objection to Silver's meandering and argumentative line of inquiry.[5]

The city and the Dodgers opened their case in support of the contract three days later. Judge Arnold Praeger's remarks from the bench did not bode well for the contract's future. He indicated his dissatisfaction with the city's argument that the fact that the Dodgers would derive substantial benefit from the contract was irrelevant to the public purpose question.[6] Ruben zeroed in on the Dodgers as a profit-making entity: "The question is whether the contract is a gift of public property under the law. The whole question hinges on whether the ball club is a private or public purpose."[7] The trial ended on its fifth day.

In mid July Judge Praeger, in a sweeping decision, held the Dodger contract invalid. His opinion was effectively




*Aerial view of Dodger Stadium under construction, Jan. 3, 1962. The new home of the Dodgers, which opened April 10, 1962, included 49,000 seats in the grandstands and an additional 7,000 seats in the centerfield pavilion area.*

an endorsement of the arguments Ruben and Silver had made at trial. Praeger ruled that a privately owned stadium did not fulfill a public purpose and that the deed conveying the Chavez Ravine property to the city could not be altered to benefit the Dodgers.[8] "There is nothing in the City Charter," wrote Praeger, "that in any wise indicates that [it can] use public funds for the purchase of property for the purpose of selling it to a private person or private corporation for the operation of a private business for private profit."[9] The judge saw no difference between purchasing land for a revenue-generating baseball team and "acquir[ing] property for the purpose of selling it for use for a private bowling alley, a private golf course, a steel mill, a hotel, or any other private purpose."[10] Praeger concluded "this is an illegal delegation of the duty of the City Council, an abdication of its public trust, and a manifest gross abuse of discretion."[11]

Contract opponents were ecstatic. Ruben praised Praeger as "an able and conscientious judge" who had ruled correctly "that public money and public property should be used for the benefit of the public and not for the benefit of a private corporation."[12] But Dodger attorneys were already planning legal strategies aimed at securing a reversal by a higher court. The Dodgers' chances of overturning Praeger were also enhanced by a legal blunder committed by the overeager Silver, who in typically aggressive fashion had sued to prevent official certification of the results of the referendum on the stadium contract's validity that the Dodgers had won narrowly in June 1958, arguing that they had been superseded by Judge Praeger's July decision. Silver's action prompted the Dodgers and the city to employ a legal maneuver, by seeking a writ of prohibition, thus bypassing the intermediate California Court of Appeal and instead proceeding directly to the California Supreme Court — substantially shortening a time-consuming process.

Once the writ of prohibition was filed in the Supreme Court, that Court had the opportunity to rule not only on the procedural question but also on the merits of the underlying action itself. Silver's strategic error, along with his and Ruben's stipulation excluding property value evidence at trial, would bear heavily on the fate of the legal challenges to the construction of Dodger Stadium. They would also illustrate that in law as in life, procedure matters as much as substance, sometimes more so.

Judge Praeger had facilitated the writ-of-prohibition maneuver himself, albeit perhaps unintentionally, when shortly after his ruling he enjoined certification of the referendum results until Silver's suit to invalidate them could be heard.[13] This made an application for a writ of prohibition the next logical step. In mid October the Supreme Court issued an order temporarily halting the referendum decertification and scheduling a hearing on the application for a writ of prohibition.[14] Chief Justice Phil Gibson's order for the Court intimated that the Court favored taking up the entire case along with the writ of prohibition question, in light of the fact that Judge Praeger's decision had not decided questions of fact. The Court asked Silver to submit a brief addressing the factual issues that remained in the case. When Silver was unable to do so to the Court's satisfaction, the stage was set for a full adjudication.[15] The Dodgers now had a second chance in the court system.

The team's lawyers challenged Judge Praeger's decision head-on. The centerpiece of O'Melveny & Myers' argument was one the Dodgers had been making in one form or another for a decade: a privately constructed baseball stadium built on land acquired from a municipality or state agency could fulfill a public purpose.[16] The proper way to analyze the contract, they maintained, was through "the various benefits to be derived by the City from the transaction as a whole," and not solely on the basis of how much money the Dodgers would make.[17]

The Los Angeles City Council had determined that it no longer needed the Chavez Ravine land and that increasing its property tax value with a stadium would aid municipal finances, as would the sales and income tax revenues the new ballpark would generate. The council had also decided that it would benefit the city if the Dodgers built the stadium at their own expense, as opposed to incurring substantial cost and debt on a public structure. A public recreation area at Chavez Ravine, such as the one the Dodgers had agreed to construct, was also in the city's interest as a means of combating juvenile delinquency.[18] The Dodgers-owned minor league ballpark, Wrigley Field, which the city would acquire as part of the bargain with the Dodgers, would provide additional public benefit in this regard.[19] The presence of major league baseball in Los Angeles, which the new stadium would ensure, would increase the number of jobs in the city. Taken in aggregate, the Dodgers' lawyers argued, there were clear, "overall benefits to the City" in the stadium

contract and a manifest "public purpose."[20] The Dodgers' attorneys had thus employed the application for a writ of prohibition as a means of obtaining an expedited and definitive ruling on the substance of Praeger's decision from the state's highest court.

Their approach worked. In January 1959 the California Supreme Court filed *City of Los Angeles v. Superior Court*, granting the writ of prohibition in a unanimous decision and allowing the Dodger Stadium contract referendum result to be officially certified. More important, as the Dodgers had hoped, it ruled on the validity of the contract itself. The Court upheld the City Council ordinance on which the agreement was based, and overturned Judge Praeger's decision blocking its enforcement.[21]

Just as Praeger's ruling had adopted most of Ruben and Silver's contentions, Chief Justice Phil B. Gibson, writing for the Court, embraced the arguments of the Dodgers and the city to support his reasoning. After a decade's worth of legal and policy debate over the question of whether a privately constructed baseball stadium fulfilled a public purpose, Gibson weighed in. "In considering whether the contract made by the city has a proper purpose," he wrote, "we must view the contract as a whole, and the fact that some of the provisions may be of benefit only to the baseball club is immaterial, provided the city receives benefits which serve legitimate public purposes."[22] Gibson found these public purposes in the transfer of the Wrigley Field property to the city and the promise to construct the recreation area at Chavez Ravine.[23] With those established to his satisfaction, Gibson did not find it necessary to reach the issue of indirect public benefits such as tax revenue, job creation, and positive publicity.[24]

CHIEF JUSTICE PHIL B. GIBSON

Through this holding, the Supreme Court ensured that Los Angeles would do what O'Malley's former home city would not. In determining that a privately-owned stadium was not a public purpose, New York officials had concentrated on what the private entity — the Brooklyn Dodgers — would receive, rather than general public advantage. Gibson's decision for the California Supreme Court reversed this perspective. Once he decided the City of Los Angeles would realize benefits from the stadium agreement, his inquiry essentially ended. That Walter O'Malley might also realize benefits may have mattered to New York's political leaders and judiciary, but it did not matter to Gibson and his colleagues. By reconciling substantial private gain with public good, the California Supreme Court both settled a legal question and gave expression to a culture of entrepreneurship and risk that had drawn O'Malley to Los Angeles in the first place. It was true, of course, that the issue of the relative worth of the properties exchanged in the Dodger contract had been stipulated out of the case and Gibson thus did not need to rule on it. But the Court's approach to the public purpose issue was certainly more encouraging to private enterprise than the more limited view taken in New York. It was as if the burden of proof had shifted. Under New York law, O'Malley had been forced to show that his benefits would not substantially outweigh those of the city in any stadium deal. The fact that he would profit significantly was enough by itself to tip the scales against a finding that a public purpose existed.

O'Malley's burden was considerably lighter in Los Angeles. To Chief Justice Gibson and his fellow jurists, it did not matter that O'Malley stood to make a great deal of money on the stadium deal. As long as he could show that the City of Los Angeles would receive something tangible in return for Chavez Ravine, in this instance the local Wrigley Field and the public recreation area, a finding of public purpose was still appropriate. Under this more generous legal standard, entrepreneurs like O'Malley could count on assistance from government and greater freedom of action generally in achieving their goals. Gibson's decision reflected a policy approach in which the state's role was to facilitate enterprise wherever possible and regulate only when necessary, and in which public-private collaborations such as the Chavez Ravine contract were viewed not as giveaways but as economic stimuli beneficial to the entire region. In New York, a privately-owned Dodger Stadium was not considered a public purpose. In Los Angeles, in the opinion of Chief Justice Gibson, it was. O'Malley's vision had carried the day.

In addition, the effort by the city to obtain the removal of the public purpose clause from the 1955 CHA deed of the Ravine property, which had so exercised Phill Silver during the underlying trial before Judge Praeger, was held to be legal and proper, as was the city's plan to indemnify the CHA for any future legal liability resulting from such a removal.[25] The Dodgers had won on these issues as well.

O'Malley's victory was a testament both to good lawyering — O'Melveny & Myers had poured a great deal of time, money and talent into the appeal — and to Silver and Ruben's tactical mistakes. But it also reflected the ways in which California's political and legal culture differed from that of New York. The California Supreme Court had ruled that private profit was not the measure of public gain. The Court had construed the discretionary power of a legislative body broadly, permitting it to interpret "public purpose" in a way that could confer substantial private advantage. It had also given legal sanction to the idea that the state could partner with business in the interests of both, and that entrepreneurial gain sponsored and

abetted by the state meant gain for all and was thus public in intent and effect. Government promoting favored enterprises, picking winners and losers: this is what Ruben and Silver had opposed. These men represented a political impulse with lineage tracing back to the Age of Jackson and even Jeffersonianism. But in this instance, it was the Hamiltonians, the champions of public-private partnerships, who had won. The California Supreme Court had ruled that the state could do more than seek to create an economic climate that benefited business generally. It could also assist specific businesses that in the view of government officials promoted a public purpose. And sports entertainment, the court had held, was such a public purpose.

Walter O'Malley had come to Los Angeles to escape a business environment in New York that had largely equated profit making with profiteering. There were, to be sure, public officials as well as ordinary citizens in the Los Angeles region opposed to government–business partnerships such as the Dodger Stadium project and especially sensitive to what they considered evidence of giveaways. But by January 1959, O'Malley's state-aided entrepreneurial vision had prevailed in contests in both the electoral and legal arenas. He had won two victories that would not have been possible in New York. Both the voters and the courts had justified his decision to move to Los Angeles.

Silver and Ruben made the customary noises about continuing the fight up to the U.S. Supreme Court, but the Gibson decision essentially ended their hopes of stopping the stadium project through the legal system. A few months later the California Supreme Court in related litigation again unanimously sustained its ruling[26] and then denied Ruben and Silver's petition for rehearing, after which Silver asked the U.S. Supreme Court to hear his appeal. It refused to accept the case for review in October 1959, bringing the Dodger Stadium litigation to an end and leaving the California Supreme Court decisions as the definitive word on the validity of the contract. After a legal battle of over two years, O'Malley had gotten what he wanted from the Court: Permission to build his stadium.

When Dodger Stadium opened to great acclaim on April 10, 1962, it marked not just the beginning of a new era for baseball in Los Angeles — the stadium continues to this day as one of the most beloved in the sport — but for the city as a whole. Although downtown Los Angeles remains a work-in-progress, it is a far cry from the drab backwater it resembled when the Dodgers arrived in 1957. Much of the credit in this regard should go to Dodger Stadium, which began the process of building a modern downtown for a modern city, a process that has taken decades to bear fruit. By making the construction of Dodger Stadium possible through an expansive reading of the idea of "public purpose," the California Supreme Court became as much a part of that act of creation as any politician, planner, or bricklayer. ✯

**ENDNOTES**

1. *Ruben v. City of Los Angeles*, Los Angeles Superior Court, No. 687210 (1958).

2. *Kirshbaum v. Housing Authority*, Los Angeles Superior Court, No. 699077 (1958).

3. Walter O'Malley, "For Immediate Release," May 26, 1958, Walter O'Malley Archive, Los Angeles, CA (hereafter "O'Malley Archive"); *Los Angeles Times*, May 27, 1958; "Chavez Ravine Fact Book," O'Malley Archive.

4. *Los Angeles Times*, June 25, 1958; Neil Sullivan, *The Dodgers Move West* (New York: Oxford Univ. Press, 1987) 166–67.

5. *Los Angeles Mirror News*, June 21, 1958; *Los Angeles Times*, June 21, 1958; *Los Angeles Examiner*, June 21, 1958; Sullivan, *The Dodgers Move West*, 164.

6. *The Dodgers Move West*, 166–67.

7. *Ibid*.; *Los Angeles Times*, June 25, 1958.

8. See *Los Angeles Daily Journal Report Section*, Aug. 25, 1958, pp. 22–27; *New York Times*, July 14, 1958; Sullivan, *The Dodgers Move West*, 168–71.

9. *Los Angeles Daily Journal Report Section*, Aug. 25, 1958, 25.

10. *Id*., at 26.

11. *Id*., at 27.

12. *Washington Post*, July 15, 1958.

13. *The Dodgers Move West*, 171; *Sporting News*, Nov. 19, 1958.

14. *Sporting News*, Nov. 19, 1958; letter, Harry Walsh to Kay O'Malley, Oct. 16, 1958, O'Malley Archive.

15. *Sporting News*, Nov. 19, 1958; Andy McCue, *Mover and Shaker: Walter O'Malley, the Dodgers, and Baseball's Westward Expansion* (Lincoln: Univ. of Nebraska Press, 2014) 228, 230–31.

16. *Ruben v. City of Los Angeles*, Supreme Court of the State of California, L.A. Nos. 25238 and 25239, Opening Brief of Appellant Los Angeles Dodgers, Inc., 18.

17. *Ibid*.

18. *Id*., at 12–18, 22–24.

19. *Id*., at 23.

20. *Id*., at 17.

21. *City of Los Angeles v. Superior Court* (1959) 51 Cal.2d 423.

22. *Id*., at 433–34.

23. *Id*., at 434.

24. *The Dodgers Move West*, 173.

25. *City of Los Angeles v. Superior Court,* 51 Cal.2d at 436; *The Dodgers Move West*, 173.

26. *Ruben v. City of Los Angeles* (1959) 51 Cal.2d 857.