

Oral History of Mark Tuohey
Fifth Interview
November 14, 2018

This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit. This is the fifth session of the oral history of Mark Tuohey. Bill Marmon is the interviewer. The interview is taking place at Baker Hostetler, Mark's law firm.

Mr. Marmon: Today we are going to talk about Mark's key role in bringing baseball back to Washington. Mark, how did this all begin?

Mr. Tuohey: It began when our Major League Baseball team, the Washington Senators, after three-quarters of a century in Washington, left the nation's capital in 1971 - for the second time. In the early 1960s, the Washington Senators, then owned by Calvin Griffith (for which Griffith stadium was named), took the team to Minnesota where it still operates as the Twins. A few years later, Major League Baseball awarded a second franchise to Washington, under the ownership of Bob Short, who kept the team in Washington until 1971, when he persuaded the owners of Major League Baseball and Commissioner Bowie Kuhn to transfer the team to Dallas, Texas. Having lost two Major League Baseball franchises, Washingtonians realized it was unlikely that another MLB franchise would return. In 1971, the city and region were not as robust as today. The fan base was quite modest and the economics did not work for baseball. Bob Short's lawyer, Ray Hutchison, who negotiated the move of the team to Dallas, was a Partner at Vinson & Elkins, a firm I joined in 1995. Ironically, 30 years later, as Ray Hutchison's partner, I persuaded Major League Baseball to move the Montreal

Expos to Washington. The headline in the *Houston Chronicle* was, “Vinson & Elkins takes away and gives back”!

Between 1971 and the early 2000’s, there were a number of attempts by city officials to engage MLB to establish a major league franchise transfer to Washington. While there were several transfers affected during that period, including Tampa Bay, San Diego, Toronto and others, the Washington region was not considered suitable for another MLB team. At the same time, the Washington region was beginning to develop in very positive ways, in terms of industry and population growth, and potential fan interest in having another baseball team. In 2002, a group of interested business and professional folks came together and got MLB to agree to sit down and discuss the potential of having a team. The baseball owners were considering moving the Montreal Expos from Montreal. In 2002, the owner of the Montreal Expos, Jeffrey Loria, wanted to purchase the Boston Red Sox from the current owner, but MLB declined. Instead, MLB offered Loria the right to buy the Florida Marlins, when the Marlins’ owner, John Henry put together a triumvirate of folks to purchase the Red Sox. In that three-way transaction, the owners of MLB took over the Montreal Expos. 30 Major League owners now owned the Expos. The decision was a prelude to moving the Expos out of Montreal and moving the team to a new city and then selling the team to a new owner. In 2002 and early part of 2003, the Washington group had a series of meetings and discussions with the MLB Relocation Committee, chaired by Jerry Reinsdorf, the owner of the Chicago White Sox, together with Tom Hicks, owner of the Texas Rangers, Fred Wilpon, owner of the Mets, and

Wendy Selig (daughter of Commissioner Bud Selig), who replaced Selig as the owner of the Milwaukee Brewers, but the negotiations were unsuccessful and went nowhere. After several meetings, the communications with the Relocation Committee went radio silent.

Anthony Williams, who took over as Mayor in late 1990's, after his successful tenure as the Chief Financial Officer of the D.C. Control Board, approached me in the fall of 2003 through his Chief of Staff, Greg McCarthy, to enlist my interest in taking over as Chair of the DC Sports and Entertainment Commission. The Commission had jurisdiction over RFK Stadium and the DC Armory, and was the entity that would engage in any future negotiations with MLB. Mayor Williams asked me to assume the position (which had to be approved by the Council) and initiate new negotiations with MLB. While there were many other responsibilities to perform as the Chairman of the DC Sports and Entertainment Commission, my primary focus was to engage the Relocation Committee of MLB, and develop a persuasive financial package to gain MLB support to relocate the Expos to Washington. I agreed to take over as Chair, and in December, 2003, after Council approved, I met with a number of advisors to review how the District could make a credible proposal to MLB. My own view was that we needed to take a fresh approach. There were several important criteria: 1) we needed to present a robust picture of the Metropolitan Washington region showing how much it had changed since 1971, when the Senators moved to Texas; 2) we had to develop a financing proposal without up-front support from MLB for the relocation, including new stadium construction; and 3) any proposal would include necessary renovations

needed for RFK for play during the interim period of construction of the new baseball stadium. I felt fresh eyes were needed for a financial proposal that would work. I regularly consulted with the District's Chief Financial Officer, Dr. Natwar Gandhi and his team. Dr. Gandhi was a very studied guy with an experienced financial mind and, together with his Deputy, John Ross, had creative thoughts on our approach. I also engaged Goldman Sachs and several other financial consultants to address the \$600-700,000,000 million dollar cost of a new stadium without putting it on the taxpayers of the District. We developed a plan to front the costs for building the new stadium, including the necessary costs for temporary renovations to RFK during the two to three-year construction period. The plan we developed involved the financing of the stadium through tax and tax-exempt bonds over a 30-year period with repayment of the bonds from several tranches. The plan did not involve a tax assessment of the general public like a general sales tax, or a specific industry, like a hotel tax. Different strategies were debated back and forth. The plan developed as follows: Several members of the Sports and Entertainment Commission, including Allen Law, our new Executive Director, John Ross from the Chief Financial Officer's office, (also a statutory member of the Sports Commission), several financial advisors, and the Mayor, met with a number of community groups - the D.C. Chamber of Commerce, the Washington Region Board of Trade, and other interested groups-to discuss a proposed gross receipts tax on the business community, exempting small and thinly capitalized business (e.g. restaurants), as well as minority businesses, that would tax gross receipts of the city's larger businesses, e.g. law firms, accounting

firms, consulting firms, manufacturing firms and the like. This tax would expire when the bonds were paid off; next, a baseball tax that would apply a small tax to items purchased at the ballparks - tickets, parking, food and beverage, and souvenirs; a healthy accelerated rent over the lease period (30 years) to be paid by the team; a tax imposed by the District on the federal government on real property that the federal government leased from the District. The carrying cost of the \$650,000,000 bond issue was roughly \$35,000,000/year. Our experts computed that under this configuration, it was more likely than not that the bonds would be paid off in less than 30 years. Today, ten years into the lease, the bonds are expected to be paid off in 17-18 years – 12 years sooner than expected. The financial plan we proposed was accepted by the Council after serious debate, and it was proved to be a win-win for the District and its citizens.

Mr. Marmon: What was the interest on the bonds?

Mr. Tuohey: I don't remember, but it's been a success. In January, 2004, I sat down with Jerry Reinsdorf, the owner of the White Sox, in Phoenix (where he spent the winter at the White Sox spring training headquarters). An old friend of mine, Bill Schweitzer, then outside counsel to MLB, and close to many of the owners, recommended that I meet with Reinsdorf after I became Chair of DCSEC. Reinsdorf not only served as Relocation Committee Chair but had the ear of the Commissioner and was highly regarded by fellow MLB owners. Schweitzer called Reinsdorf and set up the meeting in Phoenix. We spent four to five hours on the back lawn of the Biltmore Hotel getting to know each other and initiating discussions on where we might go from here. At one point, I said, "Ok Jerry,

what's it going to take? You know we have a very different city and region. It's robust and comes with serious fan interest. We can have a very successful relationship with MLB." His response was, "You have to prove that to us. You must understand we are not going to put any money up front. NONE." I turned to Jerry Reinsdorf and said, "We don't need your money...up front." He looked at me and said, "Explain." I told him we were planning to finance the stadium with bond financing, which would be repaid through a number of tranches, including rent. Money would come in from MLB in the back-end, not the front-end. Jerry looked at me and said, "Now you're talking. You put your plan together and we'll start discussing it." Shortly thereafter, we had our first meeting with the Relocation Committee in Washington. The Mayor and I, with several additional folks on our team, began the discussions. We explained to the Relocation Committee what we intended to show, and how we intended to pay. The negotiations went on for eight or nine months. Our negotiating team commissioned the Glover Park Group to do an in-depth review of the economic base of the region and contrast it with 1971, as well as a wide range in-depth polling of fan interest on having a baseball team in the region. At the same time, our negotiating team was in constant discussions with the District's CFO team and economic advisors from the private sector to fine-tune the numbers, as well as many meetings with community leaders and neighborhood groups to discuss the plans. There was a lot of give and take with baseball's Relocation Team, but primarily with the Chair, Jerry Reinsdorf and the Foley & Lardner lawyers who represented MLB. (Foley & Lardner was a Milwaukee firm that represented and

advised Bud Selig over the years, and during his time as Commissioner, they provided ongoing advice.) In the early spring of 2004, we retained Covington & Burling's Sports Law team to assist us in the drafting of the requisite documents that would be negotiated and signed by the District and MLB. The Covington lawyers had deep experience in these issues, and they did a first-rate job in preparing the requisite documents. By April, there was competition among a number of the cities for the Montreal Expos relocation, including Portland, Oregon; Monterey, Mexico; Norfolk, Virginia; Northern Virginia; New Orleans, Louisiana; and Las Vegas, Nevada. Las Vegas was an interesting competitor, because its proposal, heavily supported by the gaming industry, who would have the stadium built at no cost to MLB. The obvious issue - the specter of Pete Rose and gambling - colored any decision to go to Las Vegas (at least back in 2004). I believe our most serious competitor was Northern Virginia, largely because Peter Angelos, owner of the Orioles, believed he had an understanding with Commissioner Bud Selig to never put a team in Washington. Angelos had a fanciful notion that it was a territorial agreement, which was not accurate. Jerry Reinsdorf made it very clear to us though, that had Virginia officials agreed to have a stadium built across the river in the railroad yards near Old Town Alexandria, or in Arlington, (both of which would have been acceptable to Angelos), the Expos would have been relocated to Northern Virginia – as a Washington region team. Unfortunately for Northern Virginia, city officials in Arlington and Alexandria received no support from the state legislators in Richmond, and therefore were unable to come up with a proposal. Reinsdorf was

an experienced and tough negotiator, but as the negotiations progressed, it became apparent to Mayor Williams and our team that we demonstrated a real ability to support a team in Washington (the third franchise in MLB history), and had put a financial package together which could meet MLB's criteria. During regular weekly negotiations in the spring and summer, 2004, we fine-tuned our proposal. While there was no final decision from MLB yet, we believed that we were moving toward an approval to move the team to Washington. It became clear that we were in the running with our proposal, and after MLB made its decision, it would have to be approved by the Council of the District of Columbia. We decided to discuss the various elements of the proposal with the community before presentation to the Council. In particular, we met with community groups throughout the District of Columbia, and particularly in the RFK neighborhoods. We discussed how the return of MLB would affect them, how the financial elements of our proposal would be considered, and discussed the various locations that were under consideration for the construction of a new stadium. Community groups had serious and understandable questions about the financial dimensions of our proposal and its effect on other city needs. In the discussions with the community groups, I explained that the District's responsibilities to the community - in education needs, health care needs, social service needs and the like - would not be affected by the financial terms of our proposal for several reasons: bond financing involves investors who invest in projects like a stadium with the expectation that they will get a return on their investment. The point was that bond investors do not replace the city's obligation to take care of its citizens

and their health, education and social service needs. That remains the responsibility of the District government, which will continue to fulfill those obligations. The bond financing had a different purpose. That being said, we emphasized that when the bonds are paid off, the revenues from other troughs – the gross receipts tax having expired at that point - would produce tens of millions of dollars for the benefit of the city. Another argument advanced by critics was that the entertainment venue revenues from people coming to the ballpark was just a recycling of monies in the District, and would not produce new revenues. We responded very assertively that in the tristate region, seventy percent of the attendees at the ballpark would be Virginia and Maryland consumers, who usually spend discretionary dollars in their own communities on a regular basis, but now, with a new ballpark in the District, a substantial amount of their discretionary revenues would be spent in the District, creating new money, not recycled money. Finally, we made it clear to a citizens' group with whom we met that the extensive polling reflected a strong desire for a baseball stadium and the economic benefits it would bring to the city.

The final issue we had to consider with citizens' groups was the new stadium location. There were several locations under consideration, including the potential of rebuilding RFK; a stadium build over the South East Freeway by L'Enfant Plaza down to the Potomac; on New York Avenue, east of North Capital Street; and of course, the location the Mayor and I chose – our first choice – the South East Waterfront at South Capitol Street. Ultimately, for reasons proved to be extraordinarily beneficial to the District, similar to the development of the

Verizon Center (the basketball and hockey arena on 7th and F Street) which created revitalization and redevelopment of that portion of NW Washington, we chose the Southeast Waterfront site. We believed the baseball stadium on that site would do the same, and it has, beyond our expectations! We knew we could use eminent domain law to acquire the land, if necessary. It was a light industrial area with very few homes and a couple of dance clubs. It had enormous potential to be a successful stadium with massive potential development (which has occurred) and easy access via vehicle and subway. The Navy Yard metro station would need expansion, and, thanks to the OMB Director, Josh Bolton, a great friend of the District government, a native Washingtonian, and a very enthusiastic baseball fan, we were able to come up with \$30,000,000 to construct the metro improvements required. In August, 2004, we were at the stage where Jerry Reinsdorf was prepared to recommend to Commissioner Selig that the team be relocated to Washington. We made our case. Jerry Reinsdorf trusted us, we trusted him, and we were moving towards a successful result. We knew that the Northern Virginia Alexandria and Arlington sites were not on the table. At the last minute, the Virginia Baseball Group identified a site in Sterling, Virginia near Dulles Airport, and it came up with a substantial privately financed financial package that could advance that site. The Collins Group made Baltimore owner Peter Angelos aware of this, and Angelos advised Commissioner Selig that such a site was ok with him, and Selig should consider it as a Washington team based site. The Commissioner directed Reinsdorf to go out that evening and review the site to see if it was acceptable. Jerry Reinsdorf told me about the call, and

although skeptical and reluctant, he planned to view the site that day. I said to Reinsdorf that if the Sterling, VA site was going to be considered the site of a “Washington team” attracting Washington fans to games, he should leave the city at about the time that Washington fans would leave to go to a game. We planned to meet for later dinner that evening. What I believed would happen did happen. After Mr. Reinsdorf arrived at the site, he called the Commissioner and said it would not work. It was a time-consuming twenty-mile journey through rush hour traffic. Jerry met with the Commissioner that week and recommended Washington, D.C. as the relocation site. In late September, at the teleconference between the Commissioner, the Mayor, and our team, it was announced that Washington had been awarded the team. That is when the final phase of the project began. We now had to put together the final documentation, including the umbrella document – the Baseball Stadium Agreement - the RFK lease, and the new stadium lease. Those documents had been in discussion and draft for several months. The documents were signed by the Mayor and me, and then presented to the Council for approval. There was extensive debate in the Council over a period of several months. The Mayor and I, along with Jack Evans from the Council, believed we had the requisite number of votes, but, there was a lot of debate over certain financial provisions. At one point, very late at night, it appeared that the entire approval could come crashing down, but cooler minds prevailed. In late October, the Council approved the documents. At that point, we had to move forward with the initiation of improvements and renovations at RFK for the opening of baseball in 90-120 days hence. The improvements were

overseen by Allen Law, who put together a very well organized team led by Turner Construction. Against the clock that was ticking, we managed to get it done and baseball opened in Washington for the first time in 33 years on March 31, 2005!

We spent \$30,000,000 renovating RFK to make it suitable for a two to three year period. In the end, it was like putting on Band-Aids, because the structure was so old. The “spaghetti” (plumbing and electricity), with certain modifications, was able to withstand the massive crowds that occurred in the first year. In the meantime, the planning went forward with the contractors and architects for the new stadium. We traveled to a number of cities with the planning team consisting of representatives of Clark Construction, Hunt Construction, the architects and D.C. representatives. We decided on a blend of several stadiums for various different concerns – San Diego’s Padres Stadium (stone), San Francisco Giants Stadium, Philadelphia Phillies Stadium and the Pittsburgh Pirates Stadium (design). In general, I would say the construction of the stadium went on without a hitch. In the middle of the 2006 season, the Commissioner chose the Lerner family as the new owners of the team. By that time, all of relevant and necessary documents and plans for the construction of the stadium were complete. The Lerner family wanted to make some changes during the construction period. We agreed that certain changes could be made, but the Lerner family would have to bear the cost. There was a dispute, but it was resolved. My term ended in 2006, at which time, the stadium was virtually complete.

The decision to defer selection of a new owner until all the principal agreements were documented and executed between MLB and the District was due to the wise insistence of Jerry Reinsdorf and Bud Selig, and it was deferred until 2006, when a substantial portion of the stadium construction was completed. Baseball did not want to see a situation where a new owner would come in and try to change terms of agreements and the like. Therefore, it was signed, sealed and delivered before he chose. There were three choices – a group by Fred Malek, the initial group in support of a baseball team, a group led by Jeff Smulyan, former owner of the Seattle Mariners, and the Lerner Group. In the end, the Commissioner chose the Lerner group for several reasons: The Lerner Group was very successful business, the process would involve one checkbook, not multiple checkbooks, and the Lerner were native Washingtonians with a long history in the city. The decision was made solely by the Commissioner and not a committee. The Lerner have developed into good owners.

Mr. Marmon: What was the nature of the investment?

Mr. Tuohey: \$450,000,000, for a team that is now worth \$1 Billion.