

#4504-WILLIAM L. GRIFFIN VS STATE.
No. 248, September 1960

T-2261
HF-5-11-28

File Copy

IN THE
Court of Appeals of Maryland

September Term, 1960

No. 248

WILLIAM L. GRIFFIN, *et al.*, *Appellants*,

vs.

STATE OF MARYLAND, *Appellee*,

and

CORNELIA GREENE, *et al.*, *Appellants*,

vs.

STATE OF MARYLAND, *Appellee*.

Appeal From the Circuit Court for Montgomery County
(James H. Pugh, Judge)

BRIEF AND RECORD EXTRACT OF APPELLANTS

CHARLES T. DUNCAN
JOSEPH H. SHARLITT
CLAUDE B. KAHN
8532 Freyman Drive
Chevy Chase, Maryland
Attorneys for Appellants

LEE M. HYDEMAN
Of Counsel

	Page
Cooper v. Aaron, 358 U.S. 1 (1958)	9
Dawson v. Mayor and City Council of Baltimore, 220 F.2d 386 (4th Cir. 1955), <i>aff'd per curiam</i> 350 U.S. 877	13
Department of Conservation v. Tate, 231 F.2d 615 (4th Cir. 1956) <i>cert. denied</i> 352 U.S. 838	13
Dennis v. Baltimore Transit Co., 189 Md. 610, 57 A.2d 813 (1947)	8
Drews v. Maryland, — Md. —, No. 113, September Term, 1960	14, 18
Durkee v. Murphy, 181 Md. 259, 29 A.2d 253 (1942) ..	14
Greenfeld v. Maryland Jockey Club of Baltimore, 190 Md. 96, 57 A.2d 335 (1948)	17
Holmes v. City of Atlanta, 223 F.2d 93 (5th Cir. 1955), <i>aff'd per curiam</i> 350 U.S. 879	13
Interstate Amusement Co. v. Martin, 8 Ala. App. 481, 62 So. 404 (1913)	12
Jones v. Marva Theatres, Inc., 180 F. Supp. 49 (D. Md. 1960)	13
Kansas City, Mo. v. Williams, 205 F.2d 47 (8th Cir. 1953), <i>cert denied</i> 346 U.S. 826	13
Marsh v. Alabama, 326 U.S. 501 (1946)	16
Martin v. Struthers, 319 U.S. 141 (1943)	16
McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950)	14
Muir v. Louisville Park Theatrical Ass'n., 202 F.2d 275 (6th Cir. 1953), <i>aff'd per curiam</i> 347 U.S. 971	13
New Orleans City Park Improvement Ass'n. v. Detiege, 252 F.2d 122 (5th Cir. 1958), <i>aff'd per curiam</i> 358 U.S. 54	13
Plessy v. Ferguson, 163 U.S. 537 (1896)	14
Rice v. Arnold, 45 So. 2d 195 (Fla. 1950), <i>vacated</i> 340 U.S. 848	13
Shelley v. Kraemer, 334 U.S. 1 (1948)	15, 16
Terry v. Adams, 345 U.S. 461 (1953)	15
Tonkins v. City of Greensboro, 276 F.2d 890 (4th Cir. 1960)	13
Valle v. Stengel, 176 F.2d 697 (3rd Cir. 1960)	17

CONSTITUTION AND STATUTES:		Page
Constitution of the United States:		
Fourteenth Amendment	7, 8, 13, 14,	15, 16, 18
United States Code:		
Title 42, Section 1981	7, 11, 17	
Title 42, Section 1982	7, 11, 17	
Annotated Code of Maryland (1957 edition):		
Article 27, Section 576		8
Article 27, Section 577	2, 3, 4, 5, 6,	7, 8, 9, 10
Article 27, Section 578		8
Article 27, Section 579		8
Article 27, Section 580		8

APPENDIX

	Page
Docket Entries and Judgment Appealed From	E. 1
Warrants of Arrest (<i>Griffin, et al.</i>)	E. 11
Warrants of Arrest (<i>Greene, et al.</i>)	E. 12
Proceedings (<i>Griffin, et al.</i>)	E. 13
Testimony at Trial:	
Francis J. Collins	
Direct	E. 14
Cross	E. 18
Abram Baker	
Direct	E. 22
Cross	E. 24
Re-Redirect	E. 26
Kay Freeman	
Direct	E. 30
Cross	E. 32

	Page
Opinion of Court (Griffin, <i>et al.</i>)	E. 33
Proceedings (Greene, <i>et al.</i>)	E. 37
Testimony at Trial:	
Francis J. Collins	
Direct	E. 37
Cross	E. 39
Abram Baker	
Direct	E. 40
Cross	E. 41
Redirect	E. 44
Recross	E. 46
Re-Redirect	E. 46
Lenord Woronoff	
Direct	E. 46
Cross	E. 47
Ronyl J. Stewart	
Direct	E. 48
Martin A. Schain	
Direct	E. 51
Cross	E. 51
Abram Baker (Recalled)	
Direct	E. 52
Cross	E. 53
William Brigfield	
Direct	E. 59
Opinion of Court (Greene, <i>et al.</i>)	E. 60
State's Exhibit No. 8A	E. 66
State's Exhibit No. 8B	E. 75

IN THE
Court of Appeals of Maryland

September Term, 1960

No. 248

WILLIAM L. GRIFFIN, *et al.*, *Appellants*,

vs.

STATE OF MARYLAND, *Appellee*,

and

CORNELIA GREENE, *et al.*, *Appellants*,

vs.

STATE OF MARYLAND, *Appellee*.

Appeal From the Circuit Court for Montgomery County
(James H. Pugh, Judge)

BRIEF OF APPELLANTS

STATEMENT OF THE CASE

Appellants William L. Griffin, Marvons Saunders, Michael Proctor, Cecil T. Washington, Jr., and Gwendolyn Greene (hereinafter referred to as Appellants Griffin *et al.*) were arrested on June 30, 1960, and charged in warrants issued by a Justice of the Peace of Montgomery County with trespassing on June 30, 1960, on the property of Glen Echo Amusement Park in violation of Article 27, Section

577, of the Annotated Code of Maryland (1957 edition). All of the aforementioned Appellants are members of the Negro race.

Appellants Cornelia A. Greene, Helene D. Wilson, Martin A. Schain, Ronyl J. Stewart, and Janet A. Lewis (hereinafter referred to as Appellants Greene *et al.*) were arrested on July 2, 1960, and charged in warrants issued by a Justice of the Peace of Montgomery County with trespassing on July 2, 1960, on the property of Glen Echo Amusement Park in violation of the same statute cited above. Appellants Greene, Stewart, and Lewis are members of the Negro race and Appellants Wilson and Schain are members of the Caucasian race.

Article 27, Section 577, of the Annotated Code of Maryland (1957 edition), provides as follows:

§ 577. Wanton trespass upon private land.

Any person or persons who shall enter upon or cross over the land, premises or private property of any person or persons in this State after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor, and on conviction thereof before some justice of the peace in the county or city where such trespass may have been committed be fined by said justice of the peace not less than one, nor more than one hundred dollars, and shall stand committed to the jail of county or city until such fine and costs are paid; provided, however, that the person or persons so convicted shall have the right to appeal from the judgment of said justice of the peace to the circuit court for the county or Criminal Court of Baltimore where such trespass was committed, at any time within ten days after such judgment was rendered; and, provided, further, that nothing in this section shall be construed to include within its provisions the entry upon or crossing over any land when such entry or crossing is done under a bona fide claim of

right or ownership of said land, it being the intention of this section only to prohibit any wanton trespass upon the private land of others.

Appellants were arraigned, pleaded not guilty, and waived a jury trial. The cases of Appellants Griffin *et al.*, were consolidated for trial, by consent, and tried on September 11, 1960, in the Circuit Court for Montgomery County, Maryland, before Judge James H. Pugh. The cases of Appellants Greene *et al.*, similarly were consolidated for trial and tried on September 11, 1960, in the same Court and before the same judge.* Each of the Appellants (defendants below) was found guilty as charged and fined.

QUESTIONS PRESENTED

1. Are the following elements of Article 27, Section 577, of the Annotated Code of Maryland (1957 edition), each of which is necessary to support a conviction, established by the record:

a. Were the actions of Appellants wanton within the meaning of the statute?

b. Was the statutory requirement of due notice by the owner or his agent not to enter upon or cross over the land in question met?

c. Were Appellants, who were attempting to assert constitutional, statutory, or common-law rights, acting under a bona fide claim of right within the meaning of the statute?

2. Did the arrest and conviction of Appellants violate or interfere with the rights secured to them by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States or the provisions of 42 U.S.C. §§ 1981 and 1982?

* The records of the two consolidated cases were consolidated into one record on appeal pursuant to a letter, dated November 16, 1960, from the Chief Deputy Clerk of the Court of Appeals of Maryland to counsel for the Appellants.

STATEMENT OF FACTS

On June 30, 1960, Appellants Griffin *et al.* entered onto the property of Glen Echo Amusement Park (E. 15, 16), a park operated by Kebar, Inc., a Maryland corporation, under a lease from Rekab, Inc., also a Maryland corporation and the owner of the property (E. 22, 23). The officers, stockholders, and directors of both corporations are the same persons (E. 22, 26). The park is located in Montgomery County, Maryland (E. 15). The owners and operators of the park employ National Detective Agency, a District of Columbia corporation, to provide a force of guards at the park (E. 18, 24), and on June 30, 1960, and at all times pertinent to this action, the aforementioned guards were under the charge of Francis J. Collins (hereinafter referred to as "Lt. Collins"), an employee of National Detective Agency (E. 14, 18) who also holds a commission from the State of Maryland as a Special Deputy Sheriff for Montgomery County, Maryland (E. 18).

When Appellants Griffin *et al.* entered the park, they proceeded to the carrousel which is located within the park and took seats thereon (E. 16). When an attendant appeared, Appellants Griffin *et al.* tendered valid tickets for this ride which had been purchased and transferred to them by others (E. 20, 31). The attendant refused to accept the tickets and also refused to start the carrousel (E. 32). After a short time Lt. Collins approached Appellants Griffin *et al.* and advised them that the park was segregated and that Negroes were not permitted therein; he further advised that Appellants Griffin *et al.* should leave the park or he would cause their arrest (E. 16, 17, 19). Appellants Griffin *et al.* refused to leave, whereupon Lt. Collins arrested them, transported them to an office located on the park property, and notified the Montgomery County Police, who came and took Appellant to a police station located in Bethesda, Maryland (E. 17), where they were charged with violations of Article 27,

Section 577, of the Maryland Code Annotated (1957 edition) (E. 11).

At all times pertinent hereto the conduct of Appellants Griffin *et al.* was orderly and peaceable (E. 21, 22, 31); the policy of the park was to refuse admission to Negroes solely on account of their race (E. 19, 23, 24, 25); and it was pursuant to this policy that Appellants Griffin *et al.* were refused service and arrested (E. 19, 24). Admission to the park is free and there is free and open access to the park through unobstructed entry ways (E. 20); the tickets which were in the possession of Appellants Griffin *et al.* were valid, duly purchased, and without limitation on transfer (E. 20, 31); said tickets could be purchased at a number of booths located within the park (E. 20); and no refund or offer to make good the tickets in any way was made by the operators of the park to Appellants Griffin *et al.* (E. 20).

Glen Echo Amusement Park advertises through various media, such as press, radio, and television, as to the availability of its facilities to the public and invites the public generally, without mention of its policies of racial discrimination, to come to the park and use the facilities there provided (E. 25, 31). In addition to the carousel the park offers various other facilities (E. 32).

Appellants Greene *et al.* were arrested on July 2, 1960, within the confines of a restaurant located in Glen Echo Amusement Park (E. 38), under circumstances substantially similar to those surrounding the arrest of Appellants Griffin *et al.* This restaurant was operated by B & B Catering Co., Inc., under an agreement with Kebar, Inc. (E. 40, 41).

In order to establish the relationship between these corporations, two documents were admitted into evidence (E. 53). The first, dated August 29, 1958, covered the "1959 and 1960 Seasons" (E. 75). The second, undated and consisting of six pages, covered the period commencing on

or about April 1, 1957, and ending on or about Labor Day, September, 1958 (E. 66). Officers of Kebar, Inc., and B & B Catering Co., Inc., testified that the two documents constituted the entire agreement between the parties in effect on the day Appellants Greene *et al.* were arrested (E. 53, 59). Appellants objected to the introduction of the second document (E. 53).

When Appellants Greene *et al.* entered the restaurant, the attendants refused to serve them (E. 49, 51) and closed the counter (E. 51, 52). Shortly thereafter, Lt. Collins appeared and advised Appellants Greene *et al.* that they were undesirable and that if they did not leave, they would be arrested for trespassing (E. 38, 39, 49). Appellants Greene *et al.* refused to leave, whereupon Lt. Collins arrested them, transported them to an office located on the park property, and notified the Montgomery County Police, who took them to a police station located in Bethesda, Maryland (E. 39), where Appellants Greene *et al.* were charged with violations of Article 27, Section 577, of the Annotated Code of Maryland (1957 edition) (E. 12). The arrests were made to implement the policy of the operators of the park to maintain racial segregation (E. 44, 47). Appellants' conduct was peaceful and orderly at all times pertinent hereto (E. 39, 50). The facts concerning ownership and operation of Glen Echo Amusement Park (E. 40) and its policies of racial exclusion (E. 44, 47), Francis J. Collins, and the National Detective Agency guards (E. 37, 38, 39), set forth above, apply equally to Appellants Greene *et al.* as they do to Appellants Griffin *et al.*

At the trials held on September 11 and 12, 1960, respectively, all of the Appellants were found guilty as charged and fined (E. 36, 65). It is from these convictions that this appeal is taken.

SUMMARY OF ARGUMENTS

The record does not support the convictions of Appellants because of failure to meet the requirements of Article 27, Section 577, of the Annotated Code of Maryland (1957 edition), under which they were convicted. First, the acts of Appellants were not wanton but were at all times peaceable and orderly and cannot be characterized as reckless or malicious. Second, Appellants were not given the statutory notice required, since no notice was given to them at or prior to the time of entry into the place of public accommodation involved. Furthermore, Appellants Greene *et al.* were given no notice whatever by duly authorized agents of the restaurant in which they were arrested. Third, Appellants entered and remained on the property in question under a bona fide claim of right and were acting under that claim when they were arrested.

The arrests and convictions of Appellants constituted an unlawful interference with the constitutionally protected rights of Appellants under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States. Appellants are protected by the Constitution against the use of state authority to enforce the private racially discriminatory policies of a person whose property is open to use by the public as a place of public service and accommodation. Further, appellants are entitled under the Constitution and as specified in 42 U.S.C. §§ 1981 and 1982 to be free from interference under color of state law with the making and enforcing of contracts or the purchasing of personal property on account of race or color. Moreover, the arrests and convictions of Appellants were not a reasonable exercise of the police power of the state necessary to maintain law and order.

ARGUMENT**The Requirements for Conviction Under Article 27, Section 577, of the Annotated Code of Maryland (1957 Edition), Were Not Met In That Appellants' Acts Were Not Wanton, Appellants Were Not Given Proper Notice, and Appellants Were Acting Under a Bona Fide Claim of Right.**

A prerequisite to violation of Article 27, Section 577, of the Annotated Code of Maryland (1957 edition), is wantonness. The statute is clear on its face in this regard, since it is entitled "Wanton trespass upon private land." In addition, the statute concludes with the statement that it is "the intention of this section only to prohibit any *wanton* trespass upon the private land of others" (emphasis supplied). Moreover, the use of "wanton" in this section is in contradistinction to other criminal provisions of the Annotated Code of Maryland relating to criminal trespass which do not contain this requirement. Article 27, Sections 576, 578, 579, and 580, Annotated Code of Maryland (1957 edition).

"Wanton" normally means a malicious or destructive act. While this Court has not construed "wanton" as used in Article 27, Section 577, it has construed "wanton" in other contexts. In *Dennis v. Baltimore Transit Co.*, 189 Md. 610, 617, 56 A.2d 813 (1947), this Court stated. "[t]he word wanton means characterized by extreme recklessness and utter disregard for the rights of others", citing *Baltimore Transit Co. v. Faulkner*, 179 Md. 598, 602, 20 A.2d 485 (1941). In recognizing the need for a finding that Appellants' conduct was wanton, the Trial Judge, in his opinion in one of these cases in the lower court stated that "wanton" means ". . . reckless, heedless, malicious, characterized by extreme recklessness, foolhardiness and reckless disregard for the rights or safety of others, or of other consequences" (E. 33).

It is difficult to comprehend the manner in which Appellants' conduct could be deemed wanton for purposes of conviction under the criminal statute here involved. The record is clear that the Appellants at all times conducted themselves in a peaceable and orderly manner. They entered a place of public accommodation to which they, as members of the general public, had been invited through advertisement; they entered the usual and unobstructed route of ingress and egress; and they were attempting to do no more than make use of the services offered at the time of their arrest. The act for which they were arrested was their refusal to leave under the belief that they were entitled to enjoy these services free from interference by the state on account of race or color.

Moreover, they peacefully submitted to arrest. The Trial Judge, in part, seemed to base the finding of wantonness on the possibility that the presence of a Negro in a place of public accommodation, the proprietors of which maintain a policy of racial discrimination, might produce a riot. Not only is this the result of archaic thinking; it also is contrary to the proposition frequently enunciated by the Supreme Court of the United States that the rights of private individuals are not to be sacrificed or yielded to potential violence and disorder brought about by others. See *Cooper v. Aaron*, 358 U.S. 1, 16 (1958); *Buchanan v. Warley*, 245 U.S. 60, 81 (1917).

The other basis for this finding of wantonness is the refusal of Appellants, because of their belief in their right to enjoy the services offered, to leave the premises upon being requested to do so. This, in and of itself, is not a proper basis for a finding of wantonness, since the activity of Appellants was not characterized by that extreme recklessness or foolhardiness which is required in order to arrive at a determination of the type of conduct punishable under the statute.

A second prerequisite to a valid conviction under Article 27, Section 577, of the Annotated Code of Maryland, is due

notice by the owner or his agent not to enter upon or cross over his land, premises, or property. The language of the statute requires prior notice as a condition of conviction. It only applies to an entry or crossing "after having been duly notified by the owner or his agent not to do so." In the instant cases, no notice was posted nor was any notice orally communicated to Appellants prior to their entry onto the land. Appellants had entered through an unrestricted means of ingress, open to the public, who were permitted and, in fact, invited to enter and use the facilities of the park. Appellants Griffin *et al.* received no communication from anyone connected with the park until they were on the carrousel, and Appellants Greene *et al.* received no communication whatever until they were inside the restaurant, both of which were well within the boundaries of the property on which they allegedly trespassed. This Court is under the normal constraint to construe the statute narrowly, particularly since it is in derogation of the common law.

Even if the Court were to construe the statute broadly in the sense of meaning notice subsequent to entry, as to Appellants Greene *et al.*, the record does not show that Lt. Collins was within the category of persons who are authorized to give notice under the statute, and therefore the purported notice was invalid. These Appellants were in a restaurant which was leased by Glen Echo Amusement Park (Kebbar, Inc.) to B & B Catering Co., Inc. Appellants contend that, as a matter of law, the agreement between Kebbar and B & B was confined in its entirety in the document dated August 29, 1958 (E. 75). It did not purport to incorporate by reference or otherwise refer to any prior agreement. It was complete on its face and set forth the fact that it was "the agreement" between the parties containing the "terms" thereof. The prior lease (E. 66), by its terms, expired in September, 1958, and, as a matter of law, was not and could not have been extended by the agreement dated August 29, 1958. The testimony of the corpo-

rate officers to the contrary (E. 55, 56, 57, 59) is insufficient, appellants contend, to alter this conclusion. Further, the fact that the two agreements have overlapping and in some cases contradictory provisions demonstrates that the agreement of August 29, 1958, was not intended as an extension of or supplement to the prior agreement. Unlike the prior agreement, the agreement of August 29, 1958, created a lease rather than a license, and contained no reservation of control over the operation and conduct of the lessee's business beyond a restriction on employment of persons under eighteen years of age. It follows, if B & B was a lessee of the restaurant in which the arrests occurred, as distinguished from a licensee, that the evidence is wholly insufficient to support the contention that Lt. Collins was acting as the agent of the lessee when Appellants Greene *et al.* were "notified" and subsequently arrested.

The third basis for setting aside Appellants conviction is the proviso that the statute does not apply to persons who are acting under a bona fide claim of right to be upon the property of another.

All of Appellants were members of the general public, invited to the park by the operators thereof. This invitation was extended to the public, without qualification as to race or color, particularly to persons residing in the Washington metropolitan area, by way of advertisements in newspapers, signs on buses, and by radio and television. Entry to the park was free and unobstructed and open to all responding to such invitations. In view of these facts, Appellants' bona fide claim of right to enter and cross over the property seems incontrovertible.

This claim of right is reinforced by the fact that all of the Appellants were trying to make or to enforce contracts, or to purchase personal property, and thus their activity is given the express sanction of law, 42 U.S.C.A. §§ 1981, 1982, which give all persons, including Negroes,

the same right "in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens, . . ." and an equivalent right to purchase personal property. A peaceable entry into a place of public business in order to purchase food, tickets, or other items on sale, or to make use of tickets duly purchased from the proprietor is certainly a proper exercise of these federally protected rights and, Appellants submit, gives rise to a bona fide claim of right, within the meaning of the statute involved.

In addition, in the case of Appellants Griffin *et al.*, each of them had valid and duly purchased tickets for admittance to the rides in the park. These Appellants, at the time of their arrest, were on one such ride and had tendered the necessary tickets. Therefore, they were acting under a bona fide claim of right and were thereby excluded from operation of the statute since a ticket to a place of public amusement constitutes a contract between the proprietor and the holder. *Interstate Amusement Co. v. Martin*, 8 Ala. App. 481, 62 So. 404 (1913).

II.

The Arrests and Convictions of Appellants Constitute An Exercise of State Power to Enforce Racial Segregation in Violation of Rights Protected by the Fourteenth Amendment to the United States Constitution and By 42 U.S.C. §§ 1981 and 1982.

The arrests and convictions of Appellants implemented the racially discriminatory policies of Glen Echo Amusement Park, a place of public accommodation. Such arrests and convictions constituted the use of the state police power to enforce those policies. Appellants contend that their federal rights thereby were violated. Although the federal questions presented here have not been squarely decided by the Supreme Court of the United States, the principles on which they rely have been clearly enunciated.

These basic principles were first expressed in the *Civil Rights Cases*, 109 U.S. 3 (1883), in which the Supreme Court declared that the Fourteenth Amendment and the rights and privileges secured thereby "nullifies and makes void . . . State action of every kind which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws." *Supra* at 11. Moreover, the Court stated that racially discriminatory policies of individuals are insulated from the proscription of the Fourteenth Amendment only in so far as they are "unsupported by State authority in the shape of laws, customs or judicial or executive proceedings," or are "not sanctioned in some way by the State." *Supra* at 17.

Consistent with these expressions, the doctrine has been clearly established that state power cannot be used affirmatively to deny access to or limit use of public recreational facilities because of race. This doctrine has been applied to such recreational facilities as swimming pools, *Kansas City, Mo. v. Williams*, 205 F.2d 47 (8th Cir. 1953), *cert. denied* 346 U.S. 826; *Tonkins v. City of Greensboro*, 276 F.2d 890 (4th Cir. 1960); public beaches and bathhouses, *Dawson v. Mayor and City Council of Baltimore*, 220 F.2d 386 (4th Cir. 1955), *aff'd per curiam* 350 U.S. 877; *Department of Conservation v. Tate*, 231 F.2d 615 (4th Cir. 1956), *cert. denied* 352 U.S. 838; *City of St. Petersburg v. Alsup*, 238 F.2d 830 (5th Cir. 1956), *cert. denied* 352 U.S. 922; golf courses, *Rice v. Arnold*, 45 So.2d 195, (Fla. 1950), *vacated* 340 U.S. 848; *Holmes v. City of Atlanta*, 223 F.2d 93 (5th Cir. 1955) *aff'd per curiam* 350 U.S. 879; *City of Greensboro v. Simkins*, 246 F.2d 425 (4th Cir. 1957); parks and recreational facilities, *New Orleans City Park Improvement Association v. Detiege*, 252 F.2d 122 (5th Cir. 1958), *aff'd per curiam* 358 U.S. 54; and theatres, *Muir v. Louisville Park Theatrical Ass'n.*, 202 F.2d 275 (6th Cir. 1953), *aff'd per curiam*, 347 U.S. 971; *Jones v. Marva Theatres, Inc.*, 180 F.Supp. 49 (D. Md. 1960).

Particularly pertinent to the instant case is the statement contained in the decision of the United States Court of Appeals for the Fourth Circuit in the *Dawson* case, *supra* at 387:

“. . . it is obvious that racial segregation in recreational activities can no longer be sustained as a proper exercise of the police power of the state . . .”

The Court of Appeals in that case specifically overruled *Durkee v. Murphy*, 181 Md. 259, 29 A.2d 253 (1942), which had espoused the doctrine of separate-but-equal in public recreational facilities. The Court, of course, based its view on the fact that *Plessy v. Ferguson*, 163 U.S. 537 (1896), had in effect been overruled by the Supreme Court in a series of cases beginning with *McLaurin v. Oklahoma State Regents*, 339 U.S. 637 (1950), as applied to educational facilities, and the Court stated that it was equally inapplicable to any other public facility.

This rule has been followed without distinction between recreational facilities which are operated by state authorities in a “governmental” or “proprietary” capacity, *City of St. Petersburg v. Alsup*, *supra*, and facilities which have been leased by state authorities to private operators, *City of Greensboro v. Simkins*, *supra*. The rule therefore has been applied in an all-inclusive manner.

The distinction between the cases cited above and the instant case is the fact that the facility here involved is not operated by or leased from the state, and therefore the owners or operators of the park are not themselves affected by the limitations of the Fourteenth Amendment. It follows, as has been held by this Court in *Drews v. Maryland*, — Md. — (1961), No. 113, September Term, 1960, that a private owner or operator of a place of public amusement is free to choose his customers on such bases as he sees fit, including race or color. It is equally clear, however, that the state can no more lend its legisla-

tive, executive or judicial power to enforce private policies of racial discrimination in a place of public accommodation than it can adopt or enforce such policies in a facility operated by it directly. If one is an infringement of Fourteenth Amendment rights and an improper exercise of the state's police power, so is the other. *Cf. Terry v. Adams*, 345 U.S. 461 (1953).

The Supreme Court also has enunciated the principle that the powers of the state, whether legislative, judicial, or executive, cannot be used to enforce racially discriminatory policies of private persons relating to the purchase and sale of real property. In *Shelley v. Kraemer*, 334 U.S. 1 (1948), the Court held that state courts could not carry out the racially discriminatory policies of private land owners through judicial enforcement of racial restrictive covenants. Moreover, the Court was unwilling to permit state courts to grant damages against private landowners for breach of such covenants. *Barrows v. Jackson*, 346 U.S. 249 (1953). The Court, in holding that judicial enforcement of racial discrimination violates the Fourteenth Amendment, made it clear "that the action of the States to which the Amendment has reference, includes action of state courts and state judicial officers." *Shelley v. Kraemer*, *supra* at 18. The assertion that property rights of private individuals were paramount was met by the Court in stating that:

The Constitution confers upon no individual the right to demand action by the State which results in the denial of equal protection of the laws to other individuals. *Supra* at 22.

We are not here concerned, nor was the Court in *Shelley* and *Barrows*, concerned with the questions whether or not private citizens are required to sell to Negroes or of the power of the state to force them so to sell. The question, here, as in *Shelley* and *Barrows*, is whether or not the state, consistent with the Constitution, can permit the full panoply of its power to be used to aid, abet, implement, and effec-

tuates discrimination by private entrepreneurs on account of race or color. And, in the instant case, the use of state power is more odious than in *Shelley and Barrows* because criminal, rather than civil, sanctions have been imposed.

Furthermore, if individuals are attempting to exercise federally protected rights, the fact that they are physically present on private property which has been opened up to the public is of no consequence and does not justify the imposition by the state of criminal trespass sanctions.

In *Marsh v. Alabama*, 326 U.S. 501 (1946), privately owned land was being used as a "company town." The landowner caused the arrest (by a company employee who was also a county deputy sheriff) for trespass of a member of a religious sect who was distributing literature contrary to the wishes of the owner. It was argued in support of the arrest that the landowner's right of control is coextensive with the right of the homeowner to regulate the conduct of his guests. The Court stated:

"We cannot accept that contention. Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it." *Supra* at 505-6.

Obviously, the respective rights of the parties must be recognized and balanced. It should be noted, however, that even the homeowner does not have absolute and inviolable rights, as pointed out by the Court in *Martin v. Struthers*, 319 U.S. 141 (1943) (ordinance prohibiting door-to-door distribution of handbills held invalid as applied to advertisement of religious meeting).

Glen Echo Amusement Park has been opened by the owner as a place of public accommodation, for his financial advantage, and, following *Marsh*, he has thereby subordinated his rights as a private property owner to the constitutional rights of the public who use it.

Appellants also rely on 42 U.S.C. §1981, which provides that "all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts . . . as is enjoyed by white citizens, . . .", and on 42 U.S.C. §1982, which provides that "all citizens . . . shall have the same right . . . as is enjoyed by white citizens to . . . purchase . . . personal property." Appellants entered Glen Echo Amusement Park for the purpose of making contracts with the operators of the park to use the facilities located there and to purchase food, tickets, and other articles of personal property which were on sale to the public. Appellants Griffin *et al.*, being in lawful possession of valid tickets, in fact had entered into contractual relations with the operators of the park (see *Greenfeld v. Maryland Jockey Club of Baltimore*, 190 Md. 96, 57 A.2d 335 (1948)), and were, at the time of their arrest, seeking to enforce those contracts. Without question, Appellants arrests constituted unlawful interference with the exercise of their statutory rights under the Fourteenth Amendment to the Constitution.

The arguments advanced hereinabove by Appellants were urged on the court in *Valle v. Stengel*, 176 F.2d 697 (3rd Cir. 1949), involving facts substantially similar to those in the instant case. In *Valle*, the court held that the convictions of the defendants under the New Jersey trespass statute were void on the grounds that they constituted state enforcement of privately imposed racial discrimination in a place of public amusement in violation of defendants' rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment, and that they constituted an unconstitutional interference with defendants' equal rights to make and enforce contracts and to purchase personal property as set forth in 42 U.S.C. §§ 1981, 1982. Appellants rely on that case.

The Court might well inquire as to the means available to the owner of a place of public accommodation to enforce

his right to pick and choose his customers and to remove unwanted persons from his property. Appellants submit that the owner may resort to his common-law right of reasonable self-help to remove such persons. If the person resists to the point of disorderly conduct, or if a breach of the peace is imminent or ensues, then resort may be had to state authority to redress or prevent such independent violations of the law. To permit state authorities to lend their aid by arresting unwanted persons solely on account of race or color in a place of public accommodation, and to enforce judicially such racially discriminatory policies through criminal prosecution and conviction goes too far.

Appellants are aware of the holding of this Court in *Drews v. State of Maryland*, — Md. — (1961), No. 113, September Term, 1960. That case is factually distinguishable on at least two grounds. In the *Drews* case, which involved convictions for disorderly conduct, this Court relied heavily upon the fact as established by the record that the crowd which gathered around the defendants at the time of their arrest was angry and on the verge of getting out of control, which led this Court to conclude that defendants were "inciting" the crowd by refusing to obey valid commands of police officers. In addition, it was found by the trial court that the *Drews* defendants in fact acted in a disorderly manner. In the instant case, the record is entirely barren of evidence that any element of incitement was present. Further, the record repeatedly shows that Appellants at all times conducted themselves in a peaceful and orderly manner. In this case, therefore, disorder and imminent violence were not present, and it cannot be said here, as it was said in *Drews*, that the arrests were made to prevent violence or the further commission of disorderly acts. Appellants submit that this case cannot be decided simply by following *Drews v. Maryland*, *supra*.

This Court is called upon to balance conflicting interests. On the one hand, the private businessman, having invited

the general public to come upon his land, nevertheless seeks to exclude particular members of that public on account of race and color and asks the state to assist him in so doing. On the other hand, members of the public, having been invited to use the services offered by the private businessman, ask only that the state refrain from assisting him in effectuating his discriminatory policies.

In striking this balance, Appellants urge this Court to take judicial notice of the changes which have occurred in the State of Maryland in recent years. Discrimination on account of race is now contrary to the public policy of the State in all areas of public activity. Bills have been introduced in the legislature to outlaw racial discrimination in privately owned places of public accommodation. At least one county has established a Human Relations Council to deal with residual areas of racial friction. In Baltimore, parts of Montgomery County, and elsewhere in the state, privately owned hotels, restaurants, bowling alleys and other places of public accommodation have been desegregated by the voluntary action of their owners.

All of these developments stem from the recognition that racial discrimination is morally wrong, economically unsound, inconvenient in practice and unnecessary in fact.

In deciding these cases justice can permit but one result.

CONCLUSION

It is respectfully submitted that the judgments below should be reversed with directions to vacate the convictions and to dismiss the proceedings against Appellants.

CHARLES T. DUNCAN

JOSEPH H. SHARLITT

CLAUDE B. KAHN

Attorneys for Appellants

LEE M. HYDEMAN

Of Counsel

RECORD EXTRACT

Docket Entries

No. 3881 Criminal

STATE OF MARYLAND

vs.

WILLIAM L. GRIFFIN

TRESPASSING

Aug. 4, 1960—Warrant, Recognizance, Demand for Jury Trial &c filed, Page No. 1.

Sep. 12, 1960—Motion and leave to amend warrant and amendment filed, Page No. 5.

Sep. 12, 1960—Motion and leave to consolidate this case with Numbers 3882, 3883, 3889 and 3892 Criminal.

Sep. 12, 1960—Plea not guilty.

Sep. 12, 1960—Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.

Sep. 12, 1960—The Court finds defendant guilty.

Sep. 12, 1960—Defendant was asked if he had anything to say before sentence.

Sep. 12, 1960—Judgment that the Traverser, William L. Griffin, pay a fine of Fifty and no/100 dollars (\$50.00) current money and costs, and in default in the payment of said fine and costs, that the Traverser, William L. Griffin be confined in the Montgomery County Jail until the fine and costs have been paid or until released by due process of law.

Sep. 12, 1960—Appeal filed, Page No. 6.

Oct. 13, 1960—Petition and Order of Court extending time for transmittal of record to Court of Appeals to and including November 15, 1960 filed, Page No. 7.

L. T. Kardy—State's Attorney

J. H. Sharlitt & C. T. Duncan—Attorneys for Defendant

Docket Entries

No. 3882 Criminal

STATE OF MARYLAND

vs.

MICHAEL A. PROCTOR

TRESPASSING

Aug. 4, 1960—Warrant, Recognizance, Demand for Jury Trial &c. filed, Page No. 1.

Sep. 12, 1960—Motion and leave to amend warrant and amendment filed, Page No. 5.

Sep. 12, 1960—Motion and leave to consolidate this case with Numbers 3881, 3883, 3889 and 3892 Criminals.

Sep. 12, 1960—Plea not guilty.

Sep. 12, 1960—Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.

Sep. 12, 1960—The Court finds defendant guilty.

Sep. 12, 1960—Defendant was asked if he had anything to say before sentence.

Sep. 12, 1960—Judgment that the Traverser, Michael A. Proctor, pay a fine of Fifty and no/100 Dollars (\$50.00) and costs, and in default in the payment of said fine and costs, that the Traverser, Michael A. Proctor, be confined in the Montgomery County Jail until the fine and costs have been paid or until released by due process of law.

Sep. 12, 1960—Appeal filed in No. 3881 Criminal.

Oct. 13, 1960—Petition and Order of Court extending time for transmittal of record to Court of Appeals to and including November 15, 1960 filed in No. 3881 Criminal.

L. T. Kardy—State's Attorney

J. H. Sharlitt & C. T. Duncan—Attorneys for Defendant

Docket Entries

No. 3883 Criminal

STATE OF MARYLAND

vs.

CECIL T. WASHINGTON, JR.

TRESPASSING

- Aug. 4, 1960—Warrant, Recognizance, Demand for Jury Trial &c. filed, Page No. 1.
- Sep. 12, 1960—Motion and leave to amend warrant and amendment filed, Page No. 6.
- Sep. 12, 1960—Motion and leave to consolidate this case with Numbers 3881, 3882, 3889 and 3892 Criminals.
- Sep. 12, 1960—Plea not guilty.
- Sep. 12, 1960—Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.
- Sep. 12, 1960—The Court finds defendant guilty.
- Sep. 12, 1960—Defendant was asked if he had anything to say before sentence.
- Sep. 12, 1960—Judgment that the Traverser, Cecil T. Washington, Jr., pay a fine of Fifty and no/100 Dollars (\$50.00) current money and costs and in default in the payment of said fine and costs, that the Traverser Cecil T. Washington, Jr., be confined in the Montgomery County Jail until the fine and costs have been paid or until released by due process of law.
- Sep. 12, 1960—Appeal filed in No. 3881 Criminal.
- Oct. 13, 1960—Petition and Order of Court extending time for transmittal of record to Court of Appeals to and including November 15, 1960 filed in No. 3881 Criminal.
- L. T. Kardy—State's Attorney
- J. H. Sharlitt & C. T. Duncan—Attorneys for Defendant

E4

Docket Entries

No. 3889 Criminal

STATE OF MARYLAND

vs.

MARVOUS SAUNDERS

TRESPASSING

**Aug. 4, 1960—Warrant, Demand for Jury Trial &c. filed,
Page No. 1.**

**Sep. 12, 1960—Motion and leave to amend warrant and
amendment filed, Page No. 6.**

**Sep. 12, 1960—Motion and leave to consolidate this case
with Numbers 3881, 3882, 3883 and 3892 Criminal.**

Sep. 12, 1960—Plea not guilty.

**Sep. 12, 1960—Submitted to the Court and trial before
Judge Pugh, Mrs. Slack reporting.**

Sep. 12, 1960—The Court finds the defendant guilty.

**Sep. 12, 1960—Defendant was asked if he had anything
to say before sentence.**

**Sep. 12, 1960—Judgment that the Traverser, Marvous
Saunders, pay a fine of Fifty and no/100 Dollars (\$50.00)
current money and costs, and in default in the payment of
said fine and costs that the Traverser, Marvous Saunders,
be confined in the Montgomery County Jail until the fine
and costs have been paid or until released by due process
of law.**

Sep. 12, 1960—Appeal filed in No. 3881 Criminal.

**Oct. 13, 1960—Petition and Order of Court extending time
for transmittal of record to Court of Appeals to and
including November 15, 1960 filed in No. 3881 Criminal.**

L. T. Kardy—State's Attorney

J. H. Sharlitt & C. T. Duncan—Attorneys for Defendant

Docket Entries

No. 3892 Criminal

STATE OF MARYLAND

VS.

GWENDOLYN T. GREENE

TRESPASSING

Aug. 4, 1960—Warrant, Demand for Jury Trial &c. filed, Page No. 1.

Sep. 12, 1960—Motion and leave to amend warrant and amendment filed, Page No. 6.

Sep. 12, 1960—Motion and leave to consolidate this case with Numbers 3881, 3882, 3883 and 3889 and 3892 Criminals.

Sep. 12, 1960—Plea not guilty.

Sep. 12, 1960—Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.

Sep. 12, 1960—The Court finds defendant guilty.

Sep. 12, 1960—Defendant was asked if she had anything to say before sentence.

Sep. 12, 1960—Judgment that the Traverser, Gwendolyn T. Greene, pay a fine of Fifty and no/100 dollars (\$50.00) current money and costs, and in default in the payment of said fine and costs, that the Traverser, Gwendolyn T. Greene, be confined in the Montgomery County Jail until the fine and costs have been paid or until released by due process of law.

Sep. 12, 1960—Appeal filed in No. 3881 Criminal.

Oct. 13, 1960—Petition and Order of Court extending time for transmittal of record to Court of Appeals to and including November 15, 1960 filed in No. 3881 Criminal.

L. T. Kardy—State's Attorney

J. H. Sharlitt & C. T. Duncan—Attorneys for Defendant

Docket Entries

No. 3878 Criminal

STATE OF MARYLAND

vs.

CORNELIA A. GREENE

TRESPASSING

Aug. 4, 1960—Warrant, Recognizance, Demand for Jury Trial &c. filed, Page No. 1.

Sep. 12, 1960—Motion and leave to consolidate this case with numbers 3879, 3890, 3891 and 3893 Criminals.

Sep. 13, 1960—Motion and leave to amend warrant and amendment filed, Page No. 6.

Sep. 13, 1960—Plea not guilty.

Sep. 13, 1960—Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.

Sep. 13, 1960—The Court finds defendant guilty.

Sep. 13, 1960—Defendant was asked if she had anything to say before sentence.

Sep. 13, 1960—Judgment that the Traverser, Cornelia A. Greene, pay a fine of One hundred and no/100 dollars (\$100.00) current money and costs, and in default in the payment of said fine and costs that the Traverser, Cornelia A. Greene, be confined in the Montgomery County Jail until the fine and costs have been paid or until released by due process of law.

Sep. 13, 1960—Appeal filed, Page No. 7.

Oct. 13, 1960—Petition and Order of Court extending time for transmittal of record to Court of Appeals to and including the 15th day of November, 1960, Page No. 8.

L. T. Kardy—State's Attorney

J. H. Sharlitt & C. T. Duncan—Attorneys for Defendant

Docket Entries

No. 3879 Criminal

STATE OF MARYLAND

VS.

HELENE D. WILSON

TRESPASSING

Aug. 4, 1960—Warrant, Recognizance, Demand for Jury Trial &c. filed.

Sep. 12, 1960—Motion and leave to consolidate this case with Numbers 3878, 3890, 3891 and 3893 Criminals.

Sep. 13, 1960—Motion and leave to amend warrant and amendment filed.

Sep. 13, 1960—Plea not guilty.

Sep. 13, 1960—Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.

Sep. 13, 1960—The Court finds defendant guilty.

Sep. 13, 1960—Defendant was asked if she had anything to say before sentence.

Sep. 13, 1960—Judgment that the Traverser, Helene D. Wilson, pay a fine of One Hundred and no/100 dollars (\$100.00) current money, and costs, and in default in the payment of said fine and costs that the Traverser, Helene D. Wilson, be confined in the Montgomery County Jail until the fine and costs have been paid or until released by due process of law.

Sep. 13, 1960—Appeal filed in No. 3878 Criminal.

Oct. 13, 1960—Petition and Order of Court extending time for transmittal of record to Court of Appeals to and including November 15, 1960 filed in No. 3878 Criminal.

L. T. Kardy—State's Attorney

J. H. Sharlitt & C. T. Duncan—Attorneys for Defendant

Docket Entries

No. 3890 Criminal

STATE OF MARYLAND

VS.

MARTIN A. SCHAIN

TRESPASSING

- Aug. 4, 1960—Warrant, Demand for Jury Trial &c. filed.
- Sep. 12, 1960—Motion and leave to consolidate this case with Numbers 3878, 3879, 3891 and 3893 Criminal.
- Sep. 13, 1960—Motion and leave to amend warrant and amendment filed.
- Sep. 13, 1960—Plea not guilty.
- Sep. 13, 1960—Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.
- Sep. 13, 1960—The Court finds defendant guilty.
- Sep. 13, 1960—Defendant was asked if he had anything to say before sentence.
- Sep. 13, 1960—Judgment that the Traverser, Martin A. Schain, pay a fine of One hundred and no/100 dollars (\$100.00) current money, and costs, and in default in the payment of said fine and costs, that the Traverser, Martin A. Schain, be confined in the Montgomery County Jail until the fine and costs have been paid or until released by due process of law.
- Sep. 13, 1960—Appeal filed in No. 3878 Criminal.
- Oct. 13, 1960—Petition and Order of Court extending time for transmittal of record to and including November 15, 1960 filed in No. 3878 Criminal.
- L. T. Kardy—State's Attorney
- J. H. Sharlitt & C. T. Duncan—Attorneys for Defendant

Docket Entries

No. 3891 Criminal

STATE OF MARYLAND

vs.

RONYL J. STEWART

TRESPASSING

Aug. 4, 1960—Warrant, Demand for Jury Trial &c. filed.

Sep. 12, 1960—Motion and Leave to consolidate this case with Numbers 3878, 3879, 3890 and 3893 Criminal.

Sep. 13, 1960—Motion and leave to amend warrant and amendment filed.

Sep. 13, 1960—Plea not guilty.

Sep. 13, 1960—Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.

Sep. 13, 1960—The Court finds defendant guilty.

Sep. 13, 1960—Defendant was asked if he had anything to say before sentence.

Sep. 13, 1960—Judgment that the Traverser, Ronyl J. Stewart, pay a fine of Fifty and no/100 dollars (\$50.00) current money, and costs, and in default in the payment of said fine and costs, that the Traverser Ronyl J. Stewart, be confined in the Montgomery County Jail, until the fine and costs have been paid or until released by due process of law.

Sep. 13, 1960—Appeal filed in No. 3878 Criminal.

Oct. 13, 1960—Petition and Order of Court extending time for transmittal of record to Court of Appeals to and including November 15, 1960 filed in No. 3878 Criminal.

L. T. Kardy—State's Attorney

J. H. Sharlitt & C. T. Duncan—Attorneys for Defendant

Docket Entries

No. 3893 Criminal

STATE OF MARYLAND

vs.

JANET A. LEWIS

TRESPASSING

Aug. 4, 1960—Warrant, Demand for Jury Trial &c. filed.

Sep. 12, 1960—Motion and leave to consolidate this case with Numbers 3878, 3879, 3890 and 3891 Criminal.

Sep. 13, 1960—Motion and leave to amend warrant and amendment filed.

Sep. 13, 1960—Plea not guilty.

Sep. 13, 1960—Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.

Sep. 13, 1960—The Court finds the defendant guilty.

Sep. 13, 1960—Defendant was asked if she had anything to say before sentence.

Sep. 13, 1960—Judgment that the Traverser, Janet A. Lewis, pay a fine of Fifty and no/100 dollars (\$50.00) current money, and costs, and in default in the payment of said fine and costs, that the Traverser Janet A. Lewis, be confined in the Montgomery County Jail until the fine and costs have been paid or until released by due process of law.

Sep. 13, 1960—Appeal filed in No. 3878 Criminal.

Oct. 13, 1960—Petition and Order of Court extending time for transmittal of record to Court of Appeals to and including November 15, 1960 filed in No. 3878 Criminal.

L. T. Kardy—State's Attorney

J. H. Sharlitt & C. T. Duncan—Attorneys for Defendant

State Warrant

STATE OF MARYLAND, MONTGOMERY COUNTY, to wit:

To James S. McAuliffe, Superintendent of Police of said County, Greeting:

WHEREAS, Complaint hath been made upon the information and oath of Lt. Francis Collins, Deputy Sheriff in and for the Glen Echo Park, who charges that William L. Griffin, late of the said County and State, on the 30th day of June, 1960, at the County and State aforesaid, did unlawfully and wantonly enter upon and cross over the land of Rekab, Inc., a Maryland corporation, in Montgomery County, Maryland, such land at that time having been leased to Kebar, Inc. a Maryland corporation, and operated as the Glen Echo Amusement Park, after having been duly notified by an Agent of Kebar, Inc., not to do so in violation of Article 27, Section 577 of the Annotated Code of Maryland, 1957 Edition as amended, contrary to the form of the Act of the General Assembly of Maryland, in such case made and provided, and against the peace, government and dignity of the State.

You are hereby commanded immediately to apprehend the said and bring before Judge at Montgomery County, to be dealt with according to law. Hereof fail not, and have you there this Warrant.

.....
Justice of the Peace for Montgomery
County, Maryland

Issued19.....

[Identical warrants were issued against Appellants Michael A. Proctor, No. 3882 Criminals, Cecil T. Washington, Jr., No. 3883 Criminals, Marvovs Saunders, No. 3889 Criminals, and Gwendolyn T. Greene, No. 3892, Criminals.]

State Warrant

STATE OF MARYLAND, MONTGOMERY COUNTY, to wit :

To James S. McAuliffe, Superintendent of Police of said County, Greeting :

WHEREAS, Complaint hath been made upon the information and oath of Lt. Francis Collins, Deputy Sheriff in and for the Glen Echo Park, who charges that Cornelia A. Greene, late of the said County and State, on the 2nd day of July, 1960, at the County and State aforesaid, did unlawfully and wantonly enter upon and cross over the land of Rekab, Inc., a Maryland corporation, in Montgomery County, Mryland, such land at that time having been leased to Kebar, Inc. a Maryland corporation, and operated as the Glen Echo Amusement Park, after having been duly notified by an Agent of Kebar, Inc., not to do so in violation of Article 27, Section 577 of the Annotated Code of Maryland, 1957 Edition as amended, contrary to the form of the Act of the General Assembly of Maryland, in such case made and provided, and against the peace, government and dignity of the State.

You are hereby commanded immediately to apprehend the said and bring before Judge at Montgomery County, to be dealt with according to law. Hereof fail not, and have you there this Warrant.

Justice of the Peace for Montgomery
County, Maryland

Issued19.....

[Identical warrants were issued against Appellants Helene D. Wilson, No. 3879 Criminals, Martin A. Schain, No. 3890 Criminals, Ronyl J. Stewart, No. 3891 Criminals, and Janet A. Lewis, No. 3893 Criminals.]

2 Excerpts from Transcript of Proceedings (Griffin. et al.)

The above-entitled cause came on regularly for hearing, pursuant to notice, on September 12, 1960, at 10:00 o'clock a.m. before The Honorable James H. Pugh, Judge of said Court, when and where the following counsel were present on behalf of the respective parties, and the following proceedings were had and the following testimony was adduced.

By Mr. McAuliffe: Your Honor, the State will move to amend the warrants in all five cases, and I have prepared copies of the amendment that we would ask that the Court make to these warrants, and I would ask that in each case the copy which I have prepared be attached to the original warrant, as an amendment to it, and the amendment we desire to make is the same amendment in each case and would read as follows:

By Judge Pugh: Have the defense lawyers seen it?

By Mr. Duncan: I would like to see it, your Honor. (Mr. McAuliffe hands a copy of the proposed amendment to defense attorneys). Defense counsel makes no objection to the motion for leave to amend the warrants, your Honor.

By Judge Pugh: The motion is granted.

* * * * *
 3 By Judge Pugh: The pleas are "not guilty?"
 By Mr. Duncan: Yes, your Honor.

* * * * *
 6 By Mr. Duncan: I would like, with the Court's leave, to reserve the opening statement on behalf of the defendants, and I would like to move to dismiss and quash the warrants. The prosecutor has stated that the arrests in this case were made by a State officer for the purpose of enforcing a policy of private segregation, put into effect and maintained by the owner and lessee of the premises involved. I submit to the Court that such use of State power is unconstitutional. That the application of the statute in this case is unconstitutional. The argument being that the State may not discriminate against citizens

on the ground of race and color. It may not do so directly, and it cannot do so indirectly. I further move to dismiss the warrants—

By Judge Pugh: The Court is not allowed to direct a verdict on opening statements. If the Court sits without a jury, it is sitting as a jury, and then the Court is the Judge of the law and the facts, so, on opening statements we do not recognize motions for a directed verdict. The motion is over-ruled.

Whereupon,

Francis J. Collins

a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

7 Direct Examination

By Mr. McAuliffe:

Q. Lieutenant, will you identify yourself to the Court?
A. Francis J. Collins; 1207 E. Capitol Street, Washington, D. C.

Q. Lieutenant, by whom are you employed, and in what capacity? A. I am employed by the National Detective Agency and we are under contract to Kebar, Inc., and Rekab, Inc.,

* * * * *

Q. By whom are you employed, Lieutenant Collins?
A. National Detective Agency.

Q. And where are you stationed, pursuant to your employment with the National Detective Agency? A. My present assignment is Glen Echo Amusement Park.

Q. And at Glen Echo Amusement Park from whom
8 do you receive your instructions? A. From the Park Manager, Mr. Woronoff.

Q. And for how long have you been so assigned at the Glen Echo Amusement Park? A. Since April 2nd, 1960.

Q. What is your connection and capacity with respect to the park special police force there? A. I am the head of the special police force at the park.

Q. What instructions have you received from Mr. Woronoff, the Park Manager, with respect to the operation of the park and your duties in connection therewith?

* * * * *

Q. Now then, Lieutenant, directing your attention to the date June 30, 1960, did you have occasion to be at the Glen Echo Park at that time? A. I was on duty on that date.

Q. And the Glen Echo Amusement Park is located in what County and State? A. Montgomery County, Maryland.

Q. Directing your attention again to June 30, 1960, at a time when you were on duty at Glen Echo Amusement Park, did you have occasion to see the five defendants in this case on that date? A. I did.

Q. Will you relate to the Court the circumstances under which you first observed these five defendants at the Glen Echo Amusement Park?

* * * * *

10 Q. Now, Lieutenant, what first communication, or contact, did you have with the five defendants here, and what were they doing at that time?

By Mr. Duncan: I object, your Honor. That is the same question, if I understand it correctly.

By Judge Pugh: The objection is over-ruled.

A. The defendants broke from the picket line and went from the picket line—

By Judge Pugh: (interrupting the witness)

Just tell when they came on to the private property of the Glen Echo Amusement Park.

A. Approximately 8:15.

By Judge Pugh: All five of them?

11 A. Yes, sir.

* * * * *

Q. What, if anything, occurred then?

By Judge Pugh: On the property of Glen Echo Amusement Park.

A. The five defendants went down through the park to the carousel and got on to the ride, on the horses and the different animals. I then went up to Mr. Woronoff and asked him what he wanted me to do. He said they were trespassing and he wanted them arrested for trespassing, if they didn't get off the property.

Q. What did you tell them to do? A. I went to the 12 defendants, individually, and gave them five minutes to get off the property.

By Mr. Duncan: I object and move to have that answer stricken. It is not relevant.

By Judge Pugh: The objection is over-ruled.

Q. Then, Lieutenant, will you relate the circumstances under which you went to the carousel, and what you did when you arrived there with respect to these five defendants? A. I went to each defendant and told them—

Q. (interrupting the witness) First of all, tell us what you found when you arrived there. Where they were, and what they were doing. A. Each defendant was either on a horse, or one of the other animals. I went to each defendant and told them it was private property and it was the policy of the park not to have colored people on the rides, or in the park.

Q. Now, will you look upon each of the five defendants and can you now state and identify each of the five defendants seated here as being the five that you have just referred to? A. These are the five defendants that I just referred to.

By Mr. Duncan: I would object to that and ask that he be required to identify each defendant individually. These are five separate warrants.

By Judge Pugh: Can you identify each one of these defendants individually?

13 A. Yes.

By Judge Pugh:

Q. Did you tell them to get off the property? A. Yes.

Q. What did each one of them say when you told them that? A. They declined to leave.

Q. What did they say? A. They said they declined to leave the property. They said they declined to leave and that they had tickets.

* * * * *

18 Q. During the five minute period that you testified to after you warned each of the five defendants to leave the park premises, what, if anything, did you do? A. I went to each defendant and told them that the time was up and they were under arrest for trespassing. I then escorted them up to our office, with a crowd milling around there, to wait for transportation from the Montgomery County Police, to take them to Bethesda to swear out the warrants.

By Mr. Duncan: At this point I renew my Motion to quash the warrants.

By Judge Pugh: The motion is denied.

By Mr. Duncan: May I state what the grounds are, your Honor?

By Judge Pugh: You can state that at the end of the case.

By Mr. Duncan: I am required to state this at the beginning.

By Judge Pugh: You have stated your Motion and the Court has ruled on it. You may argue it to the Court of Appeals.

* * * * *

20 Mr. McAuliffe Resumes Examination of the Witness:

Q. Lieutenant, how were you dressed at the time you approached the defendants and when you warned them?

A. I was in uniform.

Q. What uniform was that? A. Of the National Detec-

tive Agency; blue pants, white shirt, black tie and white coat and wearing a Special Deputy Sheriff's badge.

Q. What is your position, or capacity, with respect to being a Deputy Sheriff? Are you, in fact, a Deputy Sheriff of Montgomery County? A. I am a Special Deputy Sheriff of Montgomery County, State of Maryland.

Q. And specifically by what two organizations are you employed? A. Rekab, Inc., and Kebar, Inc.

By Mr. McAuliffe: You may cross-examine.

By Mr. Duncan: Is it my understanding that this witness's duties have been admitted, subject to proof?

By Judge Pugh: Subject to agency. Agency has not been established yet. I sustained the objection on that proffer.

Cross-Examination

By Mr. Duncan:

Q. You just said you are employed by Rekab, Inc., and Kebar, Inc., is that correct? A. I am employed by the National Detective Agency and they have a contract with Kebar, Inc., and Rekab, Inc.

Q. Who pays your salary? A. The National Detective Agency.

Q. And do you have any other income from any other source. A. No, sir.

Q. Do you receive any money directly from Rekab, Inc., or Kebar, Inc.? A. No, sir.

Q. Your salary, in fact, is paid by the National Detective Agency; is that correct? A. Yes.

Q. What kind of agency is that? A. A private detective agency.

Q. Is it incorporated? A. Yes, sir.

Q. In what State? A. The District of Columbia.

Q. Are you an officer of that corporation? A. No, sir.

Q. Are you an officer of either Rekab, Inc., or Kebar, Inc.? A. No, sir.

Q. Mr. Collins, you testified that you saw these defendants prior to the time they entered the park; is that correct? A. Yes, sir.

Q. Had you ever seen them before? A. No, sir.

Q. When you saw them inside the park, did you recognize them as the persons you had seen outside the park? A. Yes, sir.

Q. Now you stated that you told them it was the policy of the park not to admit colored people. Is that, in fact, the policy of the park? A. Yes.

23 Q. Has it always been the policy of the park? A. As far as I know.

Q. How long had you worked at Glen Echo Park? A. Since April 2, 1960.

Q. And before that time were you employed by the National Detective Agency? A. That is right.

Q. But you were assigned to a place other than Glen Echo? A. That is right.

Q. To your knowledge, had negroes previously ever been admitted to the park? A. Not to my knowledge.

Q. Now did you arrest these defendants because they were negroes?

By Mr. McAuliffe: Objection.

By Judge Pugh: Over-ruled.

A. I arrested them on orders of Mr. Woronoff, due to the fact that the policy of the park was that they catered just to white people; not to colored people.

Q. I repeat my question. Did you arrest these defendants because they were negroes? A. Yes, sir.

Q. Were they in the company of other persons, to your knowledge? A. Yes, sir.

24 Q. Were they in the company of white persons? A. Where?

Q. When they were on the carousel. A. There were white persons on the carousel when they were there.

Q. To your knowledge, were they in the company of white persons? A. One white person was with one of the colored people.

Q. With which colored person was the white person with? A. This gentlemen right here (indicating one of the defendants).

Q. Do you know his name? A. No, I don't know.

Q. Did you arrest the white person who was in his company? A. No, sir; I did not.

Q. Why not? A. At the time we got back to the carousel, she had left. By the time I had these defendants out, she had gone, as far as I know.

Q. Does this policy of Glen Echo Park extend to all negroes, no matter who they are?

By Mr. McAuliffe: Objection.

By Mr. Duncan: I will rephrase it.

25 Q. Does it extend to negroes, without regard to how they are dressed, or how they conduct themselves?

Mr. McAuliffe: Objection.

By Judge Pugh: Over-ruled.

By Mr. Duncan: Will the Reporter read the question, please? (the last question was read back).

A. Yes; that is right.

Q. Did it come to your attention, Mr. Collins, that these defendants had tickets when they were arrested? A. They showed me tickets.

Q. Did you make any offer to these defendants with respect to the tickets which they had? Did you offer to refund them any money? A. No, sir.

Q. Are you familiar with the manner in which tickets are acquired and sold at Glen Echo Amusement Park?

A. Yes, sir.

Q. Will you tell the Court how that is? A. They are sold through ticket booths.

Q. Are the ticket booths located inside the park, or are they located at the entrance? A. Inside the park.

Q. Is there any ticket booth at the entrance to the park?

A. No.

26 Q. So the access to the park from the public highway is not obstructed? A. No, sir.

Q. Now, if you know, is it customary at the park for one person to purchase tickets and transfer them to another?

A. I would not know.

Q. Are you ever at the park, Mr. Collins? A. Yes.

Q. Have you ever observed tickets being purchased?

A. Yes. I have.

Q. Have you ever seen a father purchase tickets and give them to his children? A. Yes.

Q. Then you do know that that is done; is that correct?

A. In that case; yes.

Q. Do you know of any other cases in which it is done?

A. No.

* * * * *
36 Q. Would you say, Mr. Collins, that his conduct was peaceful and orderly? A. At the time I spoke to him.

Q. He didn't become disorderly at any time, in fact did he? A. No, sir.

37 Q. There was no loud talking? A. Not that I know of.

Q. And certainly no one was drunk or intoxicated, or anything like that? A. I wouldn't know.

Q. You arrested them, didn't you? A. You said no one.

Q. No one of these defendants were intoxicated, were they? A. As far as I know; no.

Q. You had occasion to talk to each one of them, didn't you? A. Yes.

Q. Can't you say whether any of them had been drinking or not? A. No.

Q. Have you had occasion to arrest people for being intoxicated in Glen Echo? A. Yes.

Q. You are a police officer, aren't you? A. Yes.

Q. Don't you claim some expert knowledge of such matters? A. Yes; by their actions.

Q. Based on the actions of these people can't you say that they were not, in fact, intoxicated? A. As far as I know they were not intoxicated.

* * * * *

38 By Judge Pugh: He said they were not intoxicated and did not appear to be. The objection is sustained. Did you smell any odor of alcohol on any of them?

A. No, sir.

Mr. Duncan Continues Examination:

Q. You testified that the defendant, Griffin, was peaceful and orderly. Was the same true as to all the other defendants? A. Yes.

Q. At all times throughout? A. Yes, sir.

Q. At the time you arrested them, Mr. Collins, did any of them ask to speak to the management? A. No, sir.

Q. Did any of them tell you that they wanted to ride on the merry-go-round? A. Yes, sir.

* * * * *

67

Abram Baker

a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified, upon

Direct Examination

By Mr. McAuliffe:

68 Q. Mr. Baker, will you state to the Court your name and address? A. Abram Baker, 3315 Wisconsin Avenue, N. W.

Q. What is your position or capacity in connection with the Maryland Corporation Rekar, Inc.? A. I am President.

Q. What is your position with the Maryland Corporation Kebar, Inc.? A. I am President.

Q. For how long have you been President of Rekar, Inc.? A. Since June 17, 1955.

Q. How long have you been President of Kebar, Inc.? A. Since June 17, 1955.

Q. What is the relationship of Rekar, Inc., and Kebar, Inc., to the ownership and operation of the Glen Echo Amusement Park, here in Montgomery County, Maryland?

A. Rekab, Inc., owns Kebar, Inc., Kebar, Inc., is the operating company.

Q. Which is the ownership of the land of Glen Echo Amusement Park? A. Rekab, Inc.

* * * * *

72 Q. As President of Rekab, Inc., and Kebar, Inc.,

I ask you whether the two respective corporations are still in effect, and Maryland corporations? A. They are.

Q. Mr. Baker, I show you this lease and ask you if you can identify it? A. Yes, sir.

Q. And what is that instrument? A. This is a lease on the ground from Rekab, Inc., turning it over to Kebar, Inc., as an operating company.

Q. Did you sign this lease? A. I sure did.

By Mr. McAuliffe: We offer this lease into evidence as State's Exhibit #7.

73 Mr. Duncan: No objection.

Judge Pugh: Admit it in evidence.

Q. Is the carousel site a part of this lease? A. Yes; it is leased to Kebar, Inc.

Mr. McAuliffe Continues:

Q. Directing your attention to this lease, State's Exhibit #7, Mr. Baker, I ask you whether that lease was in effect on the date of June 30th of this year? A. Yes, sir; it was.

Q. Now, as President of Rekab, Inc., and Kebar, Inc., will you describe what policy is maintained by the two respective corporations with respect to the admission of negroes to the Glen Echo Amusement Park? A. I don't get your question.

Q. What policy is maintained by Rekab, Inc., and Kebar, Inc., with respect to the admission of negroes to the amusement park? A. They are not allowed in the park.

Q. And what instructions and what authority has been given by Rekab, Inc., and Kebar, Inc., by you as President

of each of these corporations, to Lieutenant Collins with respect to this park policy? A. To give them all due respect and if they do not do what he asks them to do within a time that he thinks it should have been done, that he should arrest them.

* * * * *
74 Mr. McAuliffe Continues:

Q. Now then, Mr. Baker, what agency does the park employ, specifically what agency does Rekab, Inc., and Kebar, Inc., employ for purposes of maintaining law and order on the park property? A. This year it was the National Detective Agency.

Q. And who, in the National Detective Agency, was designated as the director or the man in charge of the police force on the park grounds? A. Lieutenant Collins.

Q. And as such did you have occasion to give Lieutenant Collins any instructions with respect to a park
75 policy against admitting negroes? A. Yes.

Q. And what specific instructions did you give him with respect to authority to order people off of the park premises? A. Well, he was supposed to stop them at the gate and tell them that they are not allowed; and if they come in, within a certain time, five or ten minutes—whatever he thinks, why he would escort them out.

Q. In the event they didn't see fit to leave at his warning, did you authorize Lieutenant Collins to have these people arrested? A. Yes.

Q. On a charge of trespass? A. On a charge of trespassing.

* * * * *
76 Cross-Examination

By Mr. Duncan:

* * * * *
84 Q. Would you tell the Court what you told Lieutenant Collins relating to the racial policies of

the Glen Echo Park? A. We didn't allow negroes and in his discretion, if anything happened, in any way, he was supposed to arrest them, if they went on our property.

Q. Did you specify to him what he was supposed to arrest them for? A. For trespassing.

Q. You used that word to him? A. Yes; that is right.

Q. And you used the word "discretion"—what did you mean by that? A. To give them a chance to walk off; if they wanted to.

Q. Did you instruct Lieutenant Collins to arrest all negroes who came on the property, if they did not leave? A. Yes.

Q. That was your instructions? A. Yes.

Q. And did you instruct him to arrest them because they were negroes? A. Yes.

Q. Did you instruct him to arrest white persons who came on the park property with colored persons? A. If they were doing something wrong, they are supposed to be arrested.

Q. In other words, your instruction as to negroes was to arrest them if they came into the park, and refused to leave, because they were negroes; and your instruction was to arrest white persons if they were doing something wrong? A. That is right.

* * * * *
92 Mr. Duncan Continues Cross-Examination of the Witness:

Q. Does Glen Echo, operating through its advertising agency, advertise in the Washington, D. C. area? A. I would say so.

93 Q. Does it advertise in the Press? A. What do you mean "The Press?"

Q. By newspapers? A. Yes.

Q. By radio? A. Yes.

Q. And by television? A. Yes.

Q. On the back of Capital Transit Busses? A. No.

Q. It does not? A. No, sir.

Q. Do any of the advertisements which the park makes refer to racial policies of the park? A. I don't get that.

Q. Do any of the advertisements which you have referred to, refer to the racial policies of the park? A. I don't think so.

Q. Do any of them state that negroes are not welcome? A. They didn't say they were.

Q. Are they addressed to the public generally A. I would say so.

* * * * *

100 Re-Re-Direct Examination

By Mr. McAuliffe:

Q. Who are the other officers of this corporation? A. My brother.

Q. What is his position? A. Secretary and Treasurer.

Q. What is his name? A. Sam Baker.

Q. Who is the other officer of the corporation? A. My wife.

Q. And have you and your brother, and your wife, conferred, and are you in agreement with respect to the policy to be followed at Glen Echo Park? A. We sure are.

101 Q. And who is your General Manager at the Glen Echo Park? A. Leonard Woronoff.

Q. And is he instructed to carry out all the policies by you and your brother and your wife, with respect to the operation of the park, as you see fit? A. He is.

Q. You take the position, Mr. Baker, that as the owner of this private property, or as President of the corporation, you have the right to determine who shall come on to your property, and the right to arrest them if they do not leave A. Yes.

Mr. McAuliffe: I object to that.

By Judge Pugh: Objection sustained.

* * * * *

105 By Mr. McAuliffe: If the Court please, the State rests.

By Mr. Duncan: May it please the Court, at this time I would like to move to quash the warrants of arrest, or to move for their dismissal, on a number of grounds which I would like to urge on the Court, and the first ground is constitutional grounds, namely, that the application of the Maryland trespass statute, Section 577, under the circumstances of this case, is unconstitutional and constitutes a denial of due process of law. *Marsh v. Alabama*, 326 U. S. 501. The State of Maryland may not assist the owners of the park here in carrying out a pattern of private racial discrimination.

The Supreme Court held in 1947 that although the covenants were valid as private agreements, the State could not enforce them, so we say here the discrimination which may exist at Glen Echo Park is a private matter between the park and the would be negro patrons, but that Glen Echo cannot call upon the State of Maryland to enforce and carry out that policy.

106 In this case I think it is quite clear that the action of the state is resorted to for the purpose of enforcing racial discrimination. They were excluded from the park, not because they were trespassers, but because they were negroes. We contend that these defendants are entitled to the equal protection of the law.

By Judge Pugh: Are the property owners entitled to the equal protection of the law?

Mr. Duncan: Most assuredly. We contend further that the application of the statute in this way deprives the defendants of due process of law, because it results in their arrest. We advance a second constitutional argument, your Honor, and that is the interference by the State officers in this case deprives these defendants of statutory rights which are secured to them by the laws of the United States. I refer specifically to Sections 1981, 1982 and 1983 of Title 42 of the United States Code. As your Honor is aware, Section 1981 provides that every person within the jurisdiction of the United States shall have

the same right, among other things, to make and enforce contracts, as is enjoyed by white persons, to purchase, acquire, hold and sell real property. It is declared to be a right which everyone shall enjoy. In Section 1983 it is made actionable for any person, acting under color of law, to deprive anyone in the exercise of his Section 1981 right. We submit that the action of Lieutenant Collins in this case, in his capacity as a State police officer, 107 interfered with the equal enjoyment of the right which these defendants had to attempt to enter into or make contracts with Glen Echo Amusement Park. *Williams v. Kansas City*, 104 Fed. (2nd). So on these two constitutional grounds we move that the warrants of arrest be quashed and dismissed on the ground that the statute as applied to these facts is unconstitutional.

And then we make the same motion on a number of State grounds. First, the Maryland statute, Section 577, begins as follows: "Any person or persons who shall enter upon or cross over the premises of private property, after having been duly notified by the owner, or his agent, not to do so, shall be deemed guilty of a misdemeanor." This section has only been considered one time by the Court of Appeals of Maryland. *Krauss v. State*, 216 Md. 369. That was a case involving the entry into a garage, by employees of a finance company who were undertaking to repossess an automobile which was in the garage. The owner of the garage land had a lien on the automobile and had had discussions with the defendants prior to their entry, when he notified the defendants that he had a lien on the automobile. Notwithstanding this the defendants entered the land and removed the automobile. Upon conviction, and appeal to the Court of Appeals, that conviction was reversed on the ground that there was insufficiency of notice beforehand. Here we submit, and I think the testimony is uncontradicted on this point—Mr. Collins, himself, testified that his first communication was after they had come on to the land, and I submit to the

108 Court that the statute cannot be violated. We base our motion to dismiss on the ground that the statute, by its very terms applies only to wanton trespass. Reading again from the statute: "It being the intention of this section only to prohibit any wanton trespass upon the private property of others." We have been unable to find a case which defines the phrase "wanton trespass." The Court of Appeals of Maryland, however, has construed the meaning of the word "wanton" in other circumstances, and I cite on that *Dennis v. Baltimore Transit Co.*, 189 Md. 610, 617, and there, in discussing the meaning of the word "wanton" the Court of Appeals said "the word 'wanton' means characterized by extreme recklessness and utter disregard for the rights of others" and I submit that if this Court were to take that as a test of wanton trespass, then the evidence would have to show that these defendants entered Glen Echo Park with extreme recklessness and complete disregard of the rights of others.

Glen Echo advertised to the public generally. Its advertisements were not restricted as to race and any member of the public was entitled to respond to this advertisement and even if it should eventuate that negroes were excluded wantonness under the statute is further negated by the fact that all of these defendants had tickets, and so far it doesn't appear where they obtained the tickets, but there is testimony that the tickets were transferrable. They had tickets on the merry-go-round, and Mr. Collins testified that he saw the ticket in Mr. Griffin's hand. I submit that a person who enters an amusement park and comes into possession of a ticket, whether purchased by him or given to him by someone else, cannot be said to be guilty of wanton trespass.

109 The third ground we base our motion on is that the statute, section 577, provides that—if I may read that section—"and further provided that nothing in this section shall be construed to include in its provisions the entry upon or crossing over any land when such entry or

crossing is done under a bona fide claim of right or ownership of said land." Now, we submit that these defendants were on the land in the exercise of several bona fide rights. They were publicly invited on the land. Secondly, upon coming on the land they came into lawful possession of tickets, which, in the ordinary practice of the park, were clearly transferable. And it can be urged on their behalf that they have a constitutionally protected right to be on the land. If the federal statute gives to them the same right to make contracts as white persons, at least they were on the land in the exercise of this federal statutory right and they cannot be said to be engaged in a wanton trespass or that this was not a bona fide claim of right.

For all of these reasons we urge that the warrants in these cases as against all five defendants should be dismissed and I move for a finding of not guilty, based on the insufficiency of the evidence.

By Judge Pugh: The motion for a directed verdict is denied.

110

Kay Freeman

a witness of lawful age, called for examination by counsel for the defendants, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct Examination

By Mr. Duncan:

Q. For the record, state your name and address. A. Kay Freeman; 732 Quebec Place, N. W.

Q. Miss Freeman, are you acquainted with the five defendants in this case? A. Yes.

Q. Do you know them each by name? A. Yes.

Q. How long have you known them? A. I know some of them for different lengths of time. I guess the longest would be two years.

Q. Did you have occasion to be present at Glen Echo Amusement Park on the night of June 30th, 1960? A. Yes.

Q. Were you in the company of these defendants, and other persons? A. Yes.

Q. Did you enter the park? A. Yes, I did.

Q. Did you enter it in company with these defendants? A. Yes.

Q. Were you on the merry-go-round at the time
111 they were arrested? A. Yes.

Q. Did you see them arrested? A. Yes.

Q. Were you arrested? A. No.

Q. Did you see each of these defendants arrested? A. Yes.

Q. Prior to the time they were arrested, did they have tickets to ride on any of the rides? A. We all had tickets.

Q. Where did you acquire these tickets? A. They were given to us by friends.

Q. White friends? A. Yes.

Q. And they had made the purchase? A. That is right.

Q. Prior to the time that you entered the premises of the Glen Echo Amusement Park, did anyone tell you personally that you should not enter? A. No one did.

Q. I mean anyone representing the park. A. No one.

Q. Did Mr. Woronoff say anything to you? A. No.

Q. Did Mr. Collins say anything to you? A. No.

Q. Were there any signs posted anywhere around there?

A. I didn't see them.

112 Q. The conduct of these defendants at all times was proper, wasn't it?

By Mr. McAnuliffe: Objection.

By Mr. Duncan: I will rephrase it.

Q. What was the conduct of these defendants, during the time they were in the park? A. Their conduct was orderly.

Q. Have you ever seen any advertisements relating to Glen Echo Amusement Park? A. Yes every day, on television, on street cars and on radio.

Q. You say you went to Glen Echo in a group, with these defendants? A. That is right.

By Mr. Duncan: I have no further questions.

* * * * *

113 Cross-Examination

By Mr. McAuliffe:

Q. Miss Freeman, this advertisement that you read, is that what brought you out to Glen Echo Park on June 30th? A. I wanted to use the facilities and I thought this would be a good way of doing it.

Q. You thought you would be able to use the facilities of Glen Echo Park? A. I thought I might.

* * * * *

119 Q. Now, you were on the carousel, or the merry-go-round, were you not? A. Yes.

Q. Were you riding with these five defendants? A. I was near them.

Q. Well; how near? A. Perhaps two or three rides away.

Q. And when you saw these five defendants being arrested, and taken away, did you remain on the carousel? A. Yes; I did.

Q. For how long did you remain there? A. I remained for about thirty minutes.

Q. A half an hour? A. That is right.

120 Did the carousel start up during that time? A. No.

* * * * *

Q. So your best recollection is that it was approximately half an hour that you sat on the carousel, and the carousel did not start up? A. No, it did not.

Q. Did it start up after you left? A. I don't know.

* * * * *

128 By Mr. Duncan: We have no further evidence to offer your Honor, and I would like to renew my motions.

* * * * *

129 By Mr. Duncan: I renew my motion for a directed verdict, and to quash the warrants.

By Judge Pugh: The motion is over-ruled.

* * * * *

It is very unfortunate that a case of this nature comes before the criminal court of our State and County. The nature of the case, basically, is very simple. The charge is simple trespass. Simple trespass is defined under Section 577 of Article 27 of the Annotated Laws of Maryland, which states that "any person or persons who shall enter upon or cross over the land, premises, or private property of any person or persons in this State, after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor." Trespass has been defined as an unlawful act, committed without violence, actual or implied, causing injury to the person, property or relative rights of another. This statute also has a provision in it which says that it is the intention of the Legislature as follows: "It is the intention of this section only to prohibit any wanton trespass upon the private land of others." Wanton has been defined in our
 131 legal dictionaries as reckless, heedless, malicious; characterized by extreme recklessness, foolhardiness and reckless disregard for the rights or safety of others, or of other consequences.

There have been many trespass cases in Maryland. As a matter of fact, there is one case now pending before the Court of Appeals of Maryland where the racial question has been injected into a disorderly conduct case, and that is the case of "State of Maryland versus Dale H. Drews", decided some few months ago. In that case, Judge Menchine filed a lengthy written opinion, in which he touched upon the rights of a negro to go on private property, whether it is a semi-public or actually a public business, and in that case Judge Menchine said as follows:

"The rights of an owner of property arbitrarily to restrict its use to invitees of his selection is the established law of Maryland." This Court agrees with that opinion, and unless that case is reversed by the Court of Appeals

of Maryland, at its session this Fall, that will continue to be the law of Maryland.

That statement by Judge Menchine is based upon authorities of this State, and not too far back, in the case of Greenfeld versus the Maryland Jockey Club, 190 Md. 96, in which the Court of Appeals of this State said: "The rule that, except in cases of common carriers, inn-keepers and similar public callings, one may choose his customers, is not archaic."

If the Court of Appeals changes its opinion in the 132 190 Maryland case, then we will have new law in this State on the question of the right of a negro to go on private property after he is told not to do so, or after being on it, he is told to get off.

In this Country, as well as many, many counties in the United States, we have accepted the decision of integration that has been promulgated by the Supreme Court in the school cases, and without and provocation or disputes of any consequence. There is no reason for this Court to change that method of accepting integration, but when you are confronted with a question of whether or not that policy can be extended to private property, we are reaching into the fundamental principles of the foundation of this country.

The Constitution of the United States has many provisions, and one of its most important provisions is that of due process of law. Due process of law applies to the right of ownership of property—that you cannot take that property, or you cannot do anything to interfere with that man's use of his property, without due process of law.

Now, clearly, in this case, which is really a simple case; it is a simple case of a group of negroes, forty in all, getting together in the City of Washington, and coming into Maryland, with the express intent, by the testimony of one of the defense witnesses, that they were going to make a private corporation change its policy of segregation. In other words, they were going to take the law in their own

133 hands. Why they didn't file a civil suit and test out the right of the Glen Echo Park Amusement Company to follow that policy is very difficult for this Court to understand, yet they chose to expose themselves to possible harm; to possible riots and to a breach of the peace. To be exposed to the possibility of a riot in a place of business, merely because these defendants want to impress upon that business their right to use it, regardless of the policy of the corporation, should not be tolerated by the Courts. Unless the law of this State is changed, by the Court of Appeals of Maryland, this Court will follow the law that has already been adopted by it, that a man's property is his castle, whether it be offered to the public generally, or only to those he desires to serve.

There have been times in the past, not too many years back, when an incident of this kind would have caused a great deal of trouble. It could have caused race riots, and could have caused bloodshed, but now the Supreme Court, in the school case in 1954, has decided that public schools must be integrated, and the people of this County have accepted that decision. They have not quibbled about it; They have gone along with it without incident. We are one of the leading counties in the United States in accepting that decision. If the Court of Appeals of Maryland decides that a negro has the same right to use private property as was decided in the school cases, as to State or Government property, or if the Supreme Court of the United States so
 134 decides, you will find that the places of business in this County will accept that decision, in the same manner, and in the same way that public authorities and the people of the County did in the School Board decision, but there is nothing before this Court at this time except a simple case of criminal trespass. The evidence shows the defendants have trespassed upon this Corporation's property, not by being told not to come on it, but after being on the property they were told to get off.

Now it would be a ridiculous thing for this Court to say that when an individual comes on private property, and after being on it, either sitting on it or standing on it, and the owner comes up and says, "Get off my property", and then the party says "You didn't tell me to get off the property before I came on it, and, therefore, you cannot tell me to get off now" he is not guilty of trespass because he was not told to stay off of the property. It is a wanton trespass when he refuses to get off the property, after being told to get off.

One of the definitions of wanton is "foolhardy" and this surely was a foolhardy expedition; there is no question about that. When forty people get together and come out there, as they did, serious trouble could start. It is a simple case of trespass. It is not a breach of the
135 peace, or a case of rioting, but it could very easily have been, and we can thank the Lord that nothing did take place of such a serious nature.

It is not up to the Court to tell the Glen Echo Amusement Company what policies they should follow. If they violate the law, and are found guilty, this Court will sentence them.

It is most unfortunate that this matter comes before the Court in a criminal proceeding. It should have been brought in an orderly fashion, like the School Board case was brought, to find out whether or not, civilly, the Glen Echo Park Amusement Company could follow a policy of segregation, and then you will get a decision based on the rights of the property owner, as well as the rights of these defendants. So, the Court is very sorry that this case has been brought here in our courts.

It is my opinion that the law of trespass has been violated, and the Court finds all five defendants guilty as charged.

Excerpts from Transcript of Proceedings (Greene, et al.)

2 The above-entitled cases, having been consolidated for purposes of trial, by stipulation of counsel, came on for hearing, pursuant to notice, on September 13, 1960, at 9:30 o'clock a.m. before The Honorable James H. Pugh, Judge of said Court, when and where the following counsel were present on behalf of the respective parties, and the following proceedings were had, and the following testimony was adduced.

By Mr. McAuliffe: Your Honor, we will call No. 3878, Cornelia A. Greene; No. 3879, Helene D. Wilson; No. 3890, Martin A. Schain; No. 3891, Ronyl J. Stewart and No. 3893, Janet A. Lewis, and the State in each of these cases will move to amend the respective warrants, and I have prepared copies of the proposed amendments for the Court and for counsel.

By Judge Pugh: Any objection, Mr. Sharlitt?

By Mr. Sharlitt: No objection.

By Judge Pugh: The motion for leave to amend is granted. File an amended warrant in each case. What is the plea, Mr. Sharlitt?

By Mr. Sharlitt: Not guilty as to each defendant.

3 By Judge Pugh: Do you submit it to the Court?

Mr. Sharlitt: In each case, sir.

By Mr. McAuliffe: The State waives opening statement

By Mr. Sharlitt: I will waive it until the close of the State's case.

Whereupon,

* * * * *

11 **Francis J. Collins**

A witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct Examination

By Mr. McAuliffe:

Q. Give us your name and your address. A. Francis J. Collins, 1207 E. Capitol Street, Washington, D. C.

Q. Where are you employed and in what capacity? A. I am employed at the National Detective Agency, and assigned to Glen Echo Amusement Park.

Q. Directing your attention to the date of July 2nd of this year, 1960, were you so assigned to the Glen Echo Amusement Park? A. Yes, sir.

Q. At the time you were assigned to the Glen Echo
12 Amusement Park on July 2, 1960, from whom did you receive your instructions with respect to your duties and responsibilities? A. The park Manager.

Q. Who was that? A. Leonard Woronoff.

Q. Now, Lieutenant, directing your attention to the five defendants who are seated here at the counsel table, did you have occasion to see them in and about the Glen Echo Park, in or about the end of June or the first of July? A. I did.

* * * * *

13 Q. What were the circumstances under which they [Appellants] entered the Glen Echo Amusement Park property? A. They broke out of the picket line and ran from the picket line to the Ranch Restaurant
14 which is located inside the park.

Q. Now, Lieutenant, what, if anything occurred after they broke from the picket line and ran to the restaurant? A. They ran up to the counter and requested service.

Q. And what, if anything, was done then, Lieutenant? A. I notified the five defendants that they were undesirable on the park property and I ordered them to leave immediately or be placed under arrest for trespassing.

Q. What occurred then? A. They immediately turned their backs on me and requested service again.

* * * * *

15 Q. They turned their backs on you, Lieutenant, following your ordering them out of the park? What occurred then? A. I tapped each one on the shoulder, and

as they turned around, I told them they were under arrest for trespassing.

Q. And then as you placed them under arrest for trespassing where did you take them? A. We escorted them to our office and then we had transportation by Montgomery County police to Bethesda, where we swore out the warrants.

Q. Was this restaurant on the property of the Glen Echo Amusement Park? A. Yes, sir.

* * * * *

16 Q. Now then, Lieutenant—incidentally, what is your connection with Rekab and Kebar, Incorporated? A. I have charge of the police department, their officers and guards.

* * * * *

17 Cross-Examination

By Mr. Sharlitt:

* * * * *

23 Mr. Sharlitt Resumes Examination of the Witness

Q. Mr. Collins, at the time you came up to these defendants in the restaurant, and instructed them to leave, 24 what did they do at that point? A. They immediately turned their backs on me and requested service.

Q. Did they each request service? A. I can't say they did, but they were talking and requested service from the attendant there.

Q. It is your testimony that one of them, at least, requested service? A. As I observed them; yes.

Q. Then what happened after that? A. I tapped each one on the shoulder and they turned around and I placed them under arrest for trespassing.

Q. And I believe you testified you escorted them to the park office. A. To our office in the park.

Q. And their conduct at that time was peaceful, was it not, Lieutenant Collins? A. Yes, sir.

Q. And it was peaceful in the restaurant, was it not, Lieutenant Collins? A. They were quiet.

Q. And it was peaceful until they left the park, was it not? A. They were.

* * * * *

31

Abram Baker

a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct Examination

By Mr. McAuliffe:

Q. Mr. Baker, may we have your name and address? A. Abram Baker, 3315 Wisconsin Avenue, N. W.

Q. What is your position with the corporation, Rekab, Inc? A. President.

Q. What is the relationship of Rekab, Inc., and Kebar, Inc., to the Glen Echo Amusement Park, here in Montgomery County, Maryland? A. Rekab, Inc., is the holding company and Kebar, Inc. is the operating company.

Q. You mean the land is titled in the name of Rekab, Inc., as owner? A. Yes, sir.

* * * * *

33

Q. Now, Mr. Baker, are the corporations, Rekab, Inc. and Kebar, Inc., presently going corporations, authorized to do business in this State? A. Yes, they are.

Q. Who are the other officers of the corporation? A. Sam Baker and Louise Baker.

Q. And are those officers the same for each corporation? A. Yes, they are.

* * * * *

36

Q. As President of Rekab, Inc., and Kebar, Inc., Mr. Baker, do you know who owns the restaurant on the Glen Echo Amusement Park?

By Mr. Sharlitt: It is the same question.

By Judge Pugh: Objection over-ruled.

A. Rekab, Inc.

Q. And as President of Rekab, Inc., and Kebar, Inc., do you know, on July 2, 1960, to whom the restaurant on the Glen Echo Amusement Park property in Montgomery County, Maryland, was leased to? A. B. & B. Catering Company.

37 Q. Do you know who operated the park, and to whom the lease was in effect; what corporation? A. Kebar, Inc.

* * * * *

By Mr. McAuliffe: Cross-examine him.

Cross-Examination

By Mr. Sharlitt:

Q. Mr. Baker, I believe it was your testimony that
38 as of July 2, 1960 that Kebar, Inc., was not operating this restaurant; is that correct? A. Kebar, Inc., leased it out.

Q. Now, just answer my question, please, sir; were they operating the restaurant? A. No.

Q. Now on July 2nd, were there any employees of Kebar, Inc. present on the premises of that restaurant? A. I don't know; I wasn't there.

Q. Well, how long is that lease for, between you and the B. & B.? A. Two years.

Q. And that gives B. & B. the right to occupy the premises alone? A. At my discretion.

Q. Had your discretion been exercised to permit them to occupy and run the premises on July 2nd of this year? A. Yes, sir.

Q. So that B. & B. and its servants, and not Kebar and its servants were in occupancy of the restaurant on that day; is that correct? A. I can't tell you. I wasn't there.

Q. Is there any doubt in your mind that B. & B. were

operating that restaurant under its lease? A. They were operating it; yes, sir.

39 Q. So that Kebar, Inc., wasn't? A. That is right.

Q. So the patrons of that restaurant were patrons of B. & B. and not patrons of Kebar, Inc., isn't that so? A. I don't know. If the lease says so.

Q. Is there any doubt in your mind about that? A. I didn't read the lease lately.

Q. The money that comes over the counter at that restaurant, does that go to B. & B.? Who gets the income from the restaurant? A. We rent it out.

Q. They pay you rental? A. Yes.

Q. And don't they get the income from the customers and then pay you rental from that income? A. Yes.

Q. Who employs the waitresses there? A. B. & B. Catering Company.

Q. Who employs the cooks? A. B. & B. Catering Company.

Q. Who employs the bus boys and clean up people? A. B. & B.

40 Q. Are there any other employees on the premises of the restaurant, or were there on July 2nd? A. I don't know.

Q. Well you are an officer of Kebar, Inc., aren't you, sir? A. That is right.

Q. And Kebar leased these premises to B. & B. did they not? A. Yes.

Q. And they are on the premises of the park. You have just testified to that, haven't you? A. That is right.

Q. You have seen this restaurant in operation, haven't you? A. Yes.

Q. You are familiar with the operation of the restaurant, as well as the operation of the park, aren't you? A. Yes; they have a Manager and I have nothing to do with it.

Q. And Kebar, Inc., has nothing to do with it; isn't that so? A. I collect the rent.

Q. I am talking about the operation. You said you didn't

have anything to do with it, and my question is, isn't it true that Kebar, Inc., doesn't have anything to do with the operation of the restaurant? A. In the lease it says
41 that anything wrong, in any way, that I, in my discretion, can tell them what to do.

Q. Prior to this incident—and is this something that you personally have the right to do? A. No. The company in operation.

Q. And prior to July 2nd, had you talked to any of the officials of B. & B. regarding an interference by you with their operation of that restaurant? A. Prior to that?

Q. That is right. A. Well, they understood it from the beginning.

Q. On July 2nd, sir, at any time during that day, did you have any conversation with any official of B. & B.? A. I was out of town, sir.

Q. Now under ordinary circumstances—the operation of B. & B., they are in full control of those premises, are they not, sir? A. If I say so.

Q. And your testimony was that you would have to talk to the officials of B. & B. if this would not be the case; otherwise it is the case, isn't that true? A. I don't understand you.

Q. The ordinary situation, in the operation by B. & B. of that restaurant, is in their control unless you tell them otherwise; isn't that so? A. That is right.

42 Q. Do you know of any reason at all why that would not have been the case on July 2nd? A. I wasn't there. I don't know.

Q. So you don't know of any reason at all why this would not have been the case on July 2nd? A. I cannot answer it.

Q. My question is if you know of any reason why the operation of that restaurant by B. & B. to the exclusion of

Kebar, Inc., would not have been so on July 2nd. Do you know of any reason? A. No.

* * * * *

43 By Judge Pugh: Did you instruct them with respect to any incidents that might be caused by those in the picket line coming over on the park property? A. Yes, sir.

Q. All right, tell us about that. A. Like I said before; on June 30th when we found out from the newspapers that they were coming out for the first time, I got Mr. Woronoff and Lieutenant Collins together and we talked it over, and the idea was that if they came over the picket line, that within a reasonable time they would be arrested for trespassing.

44 Q. And you so instructed Lieutenant Collins to that effect? A. Yes and Mr. Woronoff, if I was not there.

* * * * *

47 Q. Now this instruction you gave Mr. Woronoff. This was consistent with all your policies in running that park, wasn't it, Mr. Baker? A. Consistent with running the park?

Q. Yes, sir. A. Well he did whatever I told him to do.

Q. This was to implement your policy of racial segregation at that park, was it not?

By Mr. McAuliffe: Objection. There is no indication of that in the testimony.

By Judge Pugh: Objection over-ruled.

A. What was the question? (The last question was read back by the reporter). It was.

* * * * *

48 Re-Direct Examination

By Mr. McAuliffe:

Q. Mr. Baker, does Lieutenant Collins receive his instructions from Rekar, Inc., and Kebar, Inc.? A. Yes, sir.

Q. And B. & B. Catering Company is just a concessionaire there at Glen Echo, is it not? A. That is right.

Q. You have a lot of concessionaires; don't you? A. I have two.

Q. In your relationship with B. & B. do you reserve the right to enforce and maintain whatever policy Glen Echo has as a whole?

49 By Mr. Sharlitt: I object, your Honor. The lease will have to speak for itself.

Examination by the Court

By Judge Pugh:

Q. How large is the restaurant? As large as this Court room, or larger? A. Just about this size, besides an upstairs.

Q. Well you didn't tell that company how to operate its business, do you? A. If they do not serve the right food to the customers, I have a right to tell them to improve it.

Q. Don't they lease the building? A. They lease it from Kebar.

Q. Don't they have a right to operate the restaurant as they see fit? A. Yes they do, but it is just the idea—about the food part of it, if I have complaints in my office which I have to protect, then I have to go and tell them.

Q. How far is the restaurant from the entrance to the park? A. About 150 feet.

Q. The park owns that property doesn't it? A. That is right.

Mr. McAuliffe Resumes Re-direct Examination:

50 Q. And with respect to the restaurant and the other concession that you mentioned in Glen Echo, do the special police enforce law and order there? A. They do.

Q. And is that by agreement between you and the concessionaire? A. That is right.

Re-Cross Examination

By Mr. Sharlitt:

* * * * *

51 Q. Do you or anybody else from Kebar, Inc. come in and supervise anything that goes on inside that restaurant, as a matter of routine? A. No.

By Mr. Sharlitt: I have no further questions.

Re-Re-Direct Examination

By Mr. McAuliffe:

Q. Mr. Baker, to whom does the concessionaire, B. & B. look to eject a disorderly person, or any person not desired in the restaurant?

By Mr. Sharlitt: Objection.

By Judge Pugh: You ought to have the lease. The written agreement speaks for itself.

By Mr. McAuliffe: There is no question in our minds. The defense has raised the question.

Judge Pugh: The restaurant had a lease on the property, and if they did not make a complaint, it would be a pretty good question whether they would be guilty of trespass. Do you have a written lease? A. Yes, sir.

52 Q. Where is it? A. It is at the office.

By Judge Pugh: You better get it out here, Mr. McAuliffe.

* * * * *

Leonard Woronoff

a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct Examination

By Mr. McAuliffe:

Q. State your name and address. A. Leonard Woronoff, 1678 21st Street North, Arlington, Virginia.

53 Q. What is your position if any, with the Glen Echo Amusement Park, and specifically with Rekab, Inc., and Kebar, Inc.? A. I am the General Manager.

Q. Directing your attention to the date of July 2nd, 1960, were you the General Manager at that time? A. Yes, sir.

* * * * *

55 Cross-Examination

By Mr. Sharlitt:

Q. Mr. Woronoff, you have heard the testimony of Mr. Baker, that the instructions were that picketers, as well as negroes, were to be excluded. Were those instructions repeated by you to Lieutenant Collins on July 2nd? A. I think so.

Q. Do you know what crime you instructed Lieutenant Collins to arrest these people for, if they refused to leave? A. In my discussion with Lieutenant Collins, I would simply tell him that these people were not wanted in the park and if, after giving them due notice, they refused to leave, our only recourse was to arrest them for trespassing.

* * * * *

56 By Mr. McAuliffe: Subject to offering the lease; that will be the State's case.

By Mr. Sharlitt: To save time I will make my federal motions and save my others until we read the lease.

By Judge Pugh: You are in a State Court. The Judge sitting without a jury is the judge of the law and the fact.

57 By Mr. Sharlitt: We feel, your Honor, that the action here, of these five arrests on July 2, 1960, involved a violation of these defendants' rights under the Fourteenth Amendment of the Constitution of the United States, both the equal protection clause and the due process clause, in that the State of Maryland and its instrumentalities were being used to implement the policy of race discrimination of Glen Echo Park; and fur-

ther, that the instrumentalities of the State of Maryland were being used to deny these defendants' federal statutory rights, under Secs. 1981, 1982 and 1983 of Title 43 of the United States Code, and we support this by reference to the cases of *Marks v. Alabama* and *Shelley v. Cramer*, 334 U. S. 1. I simply make our motion to direct the verdict on this constitutional ground at this time.

By Judge Pugh: The motion is denied.

By Mr. Sharlitt: Your Honor, Defendants' case will attempt to show that Section 577 of Article 27 of the Code was not violated, in that notice was not given prior to entry upon the land; and, further, that in this case it is quite clear that these defendants were on this ground in an attempt to exercise what they felt to be a right to use the facilities of this park, and that their trespass, assuming it was a trespass, should be considered in that light.

58 In this case we have two white defendants, which we did not have yesterday. Further the statute requires—this is a trespass statute, and the right to prosecute can be maintained solely by the lessor of the land; not by the owner. If sole possession has been passed to B. & B. Catering Company, as we feel is the case, then it is our contention that these complaining witnesses have no grounds for bringing a criminal action.

Ronyl J. Stewart

a witness of lawful age, called for examination by counsel for the defendants, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct Examination

By Mr. Sharlitt:

Q. State your name and address. A. Ronyl J. Stewart; 1734 Upshur Street, N. W.

Q. Are you employed, or are you a student? A. A student.

Q. Where? A. At Goddard College, in Plainfield, Vermont.

Q. On the night of July 2, 1960, Miss Stewart, were you in the vicinity of Glen Echo Park, in Montgomery County? A. I was.

Q. Were you in the restaurant in Glen Echo Park
59 at that time? A. I was.

Q. At that time were you approached by Lieutenant Collins, whom you have seen testify here? A. No.

Q. You were not approached by him in the restaurant? A. I was approached by him as a member of a group; not personally.

Q. Where were you standing, at the time he approached this group? A. I was standing at the counter of the restaurant, facing him.

Q. Did Lieutenant Collins then say something to the group? A. He did.

Q. And did he say it in the earshot of all members of the group? A. He did.

Q. What did Lieutenant Collins say? A. I cannot quote him exactly.

Q. Give your best recollection. A. The best recollection I have is that he said "You know that this park is segregated and that you are not welcome here" and I can't remember anything else. Oh yes, and "You will be given a reasonable length of time to leave the park."

Q. Then what happened? A. The group turned
60 away from him.

Q. Did you, or any other members of the group, in your presence, request service from the restaurant? A. Yes, we did.

Q. Did you? A. Yes.

Q. What did you ask for? A. I asked for a coke.

Q. What happened? A. There was no answer given.

Q. Miss Stewart, had you been on the premises of that restaurant before that time? A. I do not understand your question.

Q. Had you been in that restaurant at an earlier date?

A. No.

Q. What happened after Lieutenant Collins made this statement to you regarding the park being segregated and that you weren't welcome? A. The group as a whole turned away from him and again attempted to order.

Q. And again what happened? A. Lieutenant Collins went down the line and tapped each member of the group on the shoulder and turned him around and he again said to each member of the group "You are under arrest for trespass."

A question was asked by one of the 61 members of the group—I am not sure which one, I think Martin Schain—"On what grounds are we being arrested?" and Lieutenant Collins replied "For trespassing" and then Lieutenant Collins went down and pointed to the three negro members of the group and said "You are colored; "you are colored" and "you are colored" and he pointed to the two white members of the group and he said "You are undesirable" and "you are undesirable."

Q. And all your conversation with Lieutenant Collins took place in that restaurant; is that correct? A. Yes.

Q. Then what happened, Miss Stewart? A. A conversation was entered upon between Helene and Lieutenant Collins and I don't know just the gist of this conversation. After the conversation we were taken out of the restaurant and put in police cars and taken to the Montgomery County police station.

Q. From the time that Lieutenant Collins approached you to the time you left the park, was there any disorder what-so-ever? A. No.

Q. Were you able to observe the conduct of the other four defendants? A. I was.

Q. From the time Lieutenant Collins first approached you to the time you left the park? A. Yes.

Q. And was their conduct peaceful in all respects? A. It was.

* * * * *

81

Martin A. Schain

a witness of lawful age, called for examination by counsel for the defendants, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct Examination

By Mr. Charlitt:

Q. Mr. Schain, state your name and address. A. Martin Schain, 2131 O. Street, N. W.

Q. Are you employed, or are you a student? A. I am a student.

Q. Whereabouts? A. I go to New York University.

Q. On the night of July 2nd, 1960, were you present on the premises of Glen Echo Park? A. Yes, I was.

Q. Were you present on the premises of the restaurant at Glen Echo Park? A. Yes, I was.

Q. What was the purpose of your being present at the restaurant in Glen Echo Park? A. On July 2nd?

Q. Yes. A. I wanted to get served, and I didn't see any reason why they wouldn't serve me.

Q. Were you served? A. No.

Q. Now, had you been present at the restaurant in Glen Echo Park prior to July 2nd, 1960? A. Yes, I had.

Q. When was that? A. That was the night before; Friday night.

Q. Were you approached by Lieutenant Collins on the night earlier and asked to leave? A. No.

* * * * *

84 **Cross-Examination**

By Mr. McAnliffe:

* * * * *

91 Q. Did they serve anybody when they came in?
A. The counter closed; no.

Q. And did it close down almost simultaneously with the appearance of negroes? A. It closed down a few minutes afterwards.

* * * * *

106

Abram Baker

a witness of lawful age, recalled by counsel for the plaintiff, and having already been sworn, testified as follows, upon

Direct Examination

By Mr. McAuliffe:

Q. Mr. Baker, I show you this agreement and ask you if you can identify it? A. Yes, sir.

Q. And what is that agreement? A. That is an agreement between B. & B. Catering Company and Kebar, Inc.

Q. And Mr. Baker, when was this agreement in effect? A. That agreement was in effect from the opening of the season of 1956 to the opening of the season for 1958.

Q. What did you do in 1958, Mr. Baker? A. I made a renewal agreement.

107 Q. I show you this and ask you if that is the renewal agreement?

By Mr. Sharlitt: I object to that characterization "renewal agreement" until I have a chance to look at that second document. (Mr. McAuliffe hands the document to Mr. Sharlitt, who examines it) Your Honor, I move to strike that answer, because this cannot purport to be a renewal agreement, since it doesn't refer to any lease at all. It purports to be an agreement of itself.

By Judge Pugh: Let me see it. (Document is handed to the Court by Mr. McAuliffe). Mr. Baker, what are they referring to in this paper, this letter dated August 29, 1958, when it states here "if terms and conditions meet with your approval?" Is that referring to this matter? A. It is referring to the lease to B. & B. Catering Company.

Q. Another lease other than the one Mr. McAuliffe had in his hand? A. No, sir.

Q. The same lease? In other words, this letter and the paper Mr. McAuliffe has in his hands, constitutes the transaction that was in force on July 2nd, 1960? A. That is right, sir.

108 By Mr. McAuliffe: We offer this letter in evidence and ask that it be marked State's Exhibit #8.

By Mr. Sharlitt: That document is completely unambiguous and I don't see how you can use it.

By Mr. McAuliffe: This recites the agreement and that recites the fact that this agreement is still in effect, or is a part of it, and Mr. Baker has testified that these two instruments together constituted the agreement. The Court asked Mr. Baker to produce the lease and he has done the best he could. He has produced these two papers.

By Judge Pugh: Is that all the papers that existed between you and the B. & B. Catering Company?

A. Yes, sir.

And these are the documents under which the restaurant was holding the property on July 2nd, 1960? A. Yes, sir.

By Mr. Sharlitt: I object to the inclusion of this document.

By Judge Pugh: The objection is over-ruled. It will be admitted in evidence.

* * * * *

110 Cross-Examination

By Mr. Sharlitt:

Q. Mr. Baker, is this the original lease? A. I don't know.

Q. Is there a document that purports to be a lease between you and B. & B. that contains the date? To refresh your recollection—this does not, sir. A. It starts at the beginning of the season and winds up the season; that is all I know.

Q. If I may, I will ask you just to be responsive. Is there a document in existence between you and B. & B. that con-

tains a date? A. The gentleman at B. & B. may have a date on his. He has a date on his.

By Mr. McAuliffe: The President of B. & B. is here in Court and will be our next witness.

Q. Well this lease terminated on or about September 1, 1958, did it not, sir? A. Which one?

Q. This purported document. A. Yes, sir.

111 Q. Now, Mr. Baker, would you read the first sentence of this letter dated August 29, 1958? A. (witness reads) "This will confirm the agreement made with you for the exclusive privilege of operating—"

Q. (interrupting the witness) What agreement was that referring to? A. You have the agreement back of you.

Q. But this letter incorporates new provisions, doesn't it, sir? Doesn't this have new and different provisions than the ones in the original lease? A. Maybe, of money value.

Q. Isn't it true that as of August 29, 1958, you had discussions with representatives of the B. & B. about the future arrangements between the two corporations. A. No, sir; not before that letter.

Q. How were the terms in this letter arrived at? A. Well if you read it all, it says if he agrees he shall sign it, or otherwise talk to me about it.

Q. Well in effect then, what you were doing was setting new terms; were you not? A. With money, yes.

Q. Well, had you had any conversation with Mr. Bergfeld prior to the time you sent this letter to him? A. Not about the lease.

112 Q. So that you were setting new terms in this letter? A. I really don't know. I would have to look them over. That is September of 1958, you know.

Q. In fact, it is August 29, 1958. It is your testimony is it not, sir, that there was no conversation between you and Mr. Bergfeld to the effect that you were merely continuing the other lease, because you hadn't talked to him up until August 29, 1958; isn't that so? A. We became good friends, so I didn't think I had to talk to him.

Q. Yes, but you wrote him about money. A. Well, that was up to him.

Q. That is a new term in this contract; isn't it? A. I could shake hands on a thing like that, if it wasn't on account of death, or your children.

Q. You couldn't shake hands on the amount of money, could you?

By Mr. McAuliffe: Objection; it is argumentative.

Q. The point is, Mr. Baker, that there was no conversation between the two of you as to the continuation of this lease, when you sent this letter to Mr. Bergfeld; isn't that a fact, sir? A. I didn't think I would have to confer with him.

Q. So there was no understanding between you and Mr. Bergfeld that the lease was to be continued? A. I think there was.

113 Q. You said you didn't talk to him. A. I didn't have to. I said we were good friends.

Q. But you weren't good enough friends for the change; is that correct? A. If it were not on account of deaths in the family and Kebar, Inc., and Bekab, Inc.

* * * * *

Q. Well, did you have any conversation with Mr. Bergfeld prior to the time that you got this signed copy back; that is to say, between the time you sent him this letter, asking for his signature, and the time it came back? A. He sent that in after I was gone from the Amusement Park; signed.

Q. Did you have any discussion with him after the time this was received, about any of the practices of the
114 park, which were not included in this? A. I had no discussions at all with him about anything in the park.

Q. You thought you could rely on this? A. That; plus friendship.

Q. So that "plus friendship" is not this plus any other written document. A. Plus the lease that went before it.

Q. Isn't it true that you just felt that you had a general understanding with him as to all the practices involved there? That you were just dealing between friends on anything except the specific terms contained in this letter? A. If we weren't friends, I would have had to make out another one just like that.

Q. So it was just a matter of friendship as to anything that was not included in this letter? A. Yes. We had the other document to go along with it.

Q. You have testified that you didn't even discuss the other document. A. Yes I did.

Q. You did, or you did not discuss it? A. I did not discuss it.

Q. So as of the time you entered into this thing, you had no detailed understanding with Mr. Bergfeld as to anything not included in here? A. Plus the other contract.

115 Q. I thought you said you just went on the basis of friendship with Mr. Bergfeld, in August of 1958? A. That is right.

Q. Well did you discuss with him, prior to August 29, 1958, whether he was a lessee or a licensee? A. I didn't think I had to.

Q. Did you, or didn't you? A. No I did not.

Q. Did you discuss who would have control of the patronage of his restaurant? A. No, I did not.

Q. All those things were just left unsaid? A. That is right, sir.

Q. The only thing that was said between you was this letter? A. That is right, sir.

Q. And you felt that no agreement was necessary on these other things? A. That is right, sir.

* * * * *

116 Mr. Sharlitt continues:

Q. Why didn't you renew the lease, on the lease? A. I can explain that to you.

Q. I don't think you have. A. I said if it wasn't for Kebar, Inc., and Rekar, Inc. and my children, I wouldn't

even have to have a lease. I would just have a handshake with the proposition. That is the way I felt about it.

Q. Well, lets take a look at the period after August 29, 1958; were there any changes in the practices and the policies of the restaurant, commencing at the time the agreement was made August 29, 1958? A. No, sir.

Q. And prior to that time, the restaurant had been operated by Mr. Bergfeld, fully under his control; isn't that true? A. I don't know.

Q. Well you testified this morning that they hired all the employees there. A. That is right.

Q. And that went on after this August 29, 1958,
117 agreement; did it not? A. That is right.

Q. Did you ever have any occasion to go in there and tell him to run his restaurant any differently than the way he was running it? A. I didn't have to tell him in the restaurant. He would come in the office and I would explain to him if there was anything wrong, or wasn't wrong.

Q. From the time they rented the restaurant, they had full charge of it; isn't that so? A. That's what you say.

Q. I want to know what you say. A. If I saw anything wrong, in any way, I would explain it to him and try to change it.

Q. Who brought the fixtures in there? A. B. & B.

Q. They are attached to the property; aren't they? A. I really don't know.

Q. Do you know if at any time whatsoever there was ever an occasion when any agents or representatives or employees of Kebar, Inc., ever interfered with the patronage at that restaurant prior to July, 1960? A. The exact date I wouldn't know, but there must have been times.

Q. What do you mean? A. We have complaints
118 downstairs, lots of times, and we have to get hold of somebody and straighten them out.

Q. I am just talking about complaints in the restaurant. When these complaints came up, you took them up with Mr. Bergfeld, didn't you? A. Yes, sir.

Q. You didn't go in and correct them yourself? A. No, sir.

Q. Was there ever a time that you went in and told them, or, in fact, did pick and choose their customers? A. No, I did not.

Q. That was their decision, was it not? A. They knew who they wanted in and who they didn't.

* * * * *

119 By Judge Pugh: If the lease has a provision saying that B. & B. has control over who shall go into the property and who shall not, read it to him.

By Mr. Sharlitt: We feel this portion is relevant: "Witnesseth, that the said Park Company, for and in consideration (and so forth) and the performance by the said Concessionaire of all the covenants and agreements here-
120 in expressed, the prompt performance of all the covenants herein contained being a condition precedent, the Park company hereby extends to the Concessionaire, the exclusive privilege of maintaining and conducting at Glen Echo Park, situate in the County of Montgomery, State of Maryland, all concessions for the purpose of selling food and beverages." We think that is exclusive, not only as to all other concessionaires but exclusive as to their own facility.

By Judge Pugh: We have been waiting here to get the original lease and have it in evidence, and now you are going into the parole evidence rule. You can argue the lease, but having this witness interpret the terms of a lease that is in writing, I can't see how you can expect him to do that. He says the two papers together constitute the agreement under which the B. & B. opened the restaurant in July, 1960.

By Mr. Sharlitt: Nothing further.

* * * * *

William Birgfeld

a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct Examination

By Mr. McAuliffe:

Q. Mr. Birgfeld, state your name and address. A. William Birgfeld, 5107 Maryland Drive, Sumner, Maryland.

Q. What is your employment? A. I am an officer of B. & B. Catering Service.

* * * * *

By Judge Pugh: Are you holding under the paper that has been introduced in evidence? Were you holding possession of this restaurant on July 2, 1960, under
122 these two papers? Have you seen the papers? A.

I am fairly familiar with all the facts involved in this. This was apparently a previous lease wherein certain addendums were made by a letter I received.

By Judge Pugh:

Q. Do those two papers constitute your legal right to occupy the restaurant? A. Number one, this is the longer lease, which has the technical terms in it, and we are authorized to operate under certain circumstances, and there were addendums made at a later date.

By Judge Pugh:

Q. Were the additions made in that letter? A. Yes, sir. This was a slight change in the rental and combined the advertising and promotion and rental, putting them all into one category, and Kebar, Inc., thought we should not hire anyone under the age of eighteen.

Q. I show you State's Exhibits 8A and 8B and ask you, are they the papers under which you conduct and operate the restaurant in Glen Echo Amusement Park, and did on July 2nd, 1960? A. Yes, sir.

Q. Are there any other papers that have anything to do with your occupancy of those premises? A. No, sir; 123 no other papers.

Mr. McAuliffe Resumes Direct Examination :

Q. And does your agreement as of July 2, 1960, between B. & B. and Kebar, consist of both of those documents, State's Exhibits 8A and 8B? A. Yes, sir; this is the agreement and this is the addition to and in change thereof.

Q. What is your position with the B. & B. Catering Corporation? A. I am President, sir.

* * * * *

133 By Mr. Charlitt: Your Honor, I renew my motion for a directed verdict on constitutional grounds at this point for insufficiency of evidence.

By Judge Pugh: The motion for a directed verdict is denied.

* * * * *

139 Judge Pugh's Oral Opinion (Greene, et al.)

As I stated yesterday, in a somewhat similar case, it is most unfortunate that these parties have used the method that they are attempting to use, in order to establish what they believe to be their constitutional rights, or whatever rights they may call them. To come out into this County, in large groups of thirty-five and forty people, and try to force a change of policy on the part of a private business is really unthinkable. That is the nearest thing to taking the law in your own hands that I can think of. If you want to litigate what you believe to be your rights, then litigate them civilly and in an atmosphere where the legal principles and the constitutional principles may be passed upon, without the fear or without the possibility, of stamping the individuals guilty of some misdemeanor.

It is a fundamental principle of this country, as I understand the Constitution, that a man in business has a right to do business with anybody that he sees fit, whether they

be black, white, yellow, or whatever color he might be, and for any reason that he may deem sufficient in his opinion. If that were not the law, then the man would not stay in business long. His idea of how he should transact business must be the controlling influence. If a man in business cannot run it the way he sees fit, he would
 140 soon be out of business. If he is required to conduct his business on the ideas and fancies of groups of people, it will no longer be his business. It may be that if he would listen to these groups of people, he might get more business, but that is not the question. He is responsible for his own livelihood and he has to make a living out of the business, and if he decides to exclude certain people, for any reason he sees fit, and he goes bankrupt, that is his hard luck. If the business firms of this County cannot stay in business in the way they desire to transact it with the public, they might as well close up all private business and let the government take it over and run it, under the rules of segregation as decided in the school cases. So I say, in private business a man has a right to transact business the way he sees fit, whether it be arbitrary, capricious, unreasonable, or whatnot. The test as to whether or not he remains in business is whether or not the public wants to do business with him. If the public doesn't want to do business with him, because he advocates certain racial policies, he will soon be out of business and then he is through. He will then no longer be making a livelihood out of his business. He will then have to do something else, or be put on public relief.

There is not a great deal of difference between this case and the case tried yesterday. This morning when we heard the testimony about the restaurant, I was a little in
 141 doubt as to whether or not the lessees of the restaurant did desire or would refuse to serve these defendants, had they had the authority or the opportunity to do so. While that question has been satisfactorily removed from this case by proof of the lease, there is no evidence that this Catering Company refused, or actually

told them the get off of their restaurant property. There is evidence in this case that these defendants deliberately went on the property of the Glen Echo Park Amusement Company; that they ran across its property for the purpose of going to this restaurant, and they did it after getting away from the policeman who was there watching the picketing outside of the grounds of the amusement park.

When you are running, and a policeman is behind you, it is a clear indication that you are doing wrong. If you are not doing wrong, then you have no business to run when you know there is a uniformed policeman behind you. It is plain from the evidence in this case that these defendants went out there for one purpose—for the purpose of trying to force on the management of Glen Echo Park Amusement Company their asserted right to impress on the Amusement Company that it was wrong in maintaining its policy of segregation. That is not within their authority. They did not have that right, in the opinion of this Court. Under the law of this State, as it stands today, if anyone decides he desires not to serve negroes, because they are negroes, they have a right to refuse
142 to do so. Whether that is right or wrong will probably have to be determined by the Court of Appeals, but as of this time no decision has been cited; no authority has been cited in this State, where a man who operates a private business does not have the complete and absolute control of it.

Now getting into the question of whether or not you can use the facilities of the State to enforce a policy of that kind. I might say that we are now trying these defendants under the law of trespass. By way of comparison, in answering the arguments of Mr. Sharlitt, wouldn't it be a nice state of affairs if you owned a piece of property out here in Rockville and somebody came on your property and just sat there, and you went out and saw him sitting there, and assuming, for the sake of argument, it is two or three o'clock in the morning, and you go out

there and tell him to get off your property, and he refuses to get off, and then you still insist that he get off and you give him five minutes to leave and you tell him if he doesn't get off that you are going to have him arrested for trespassing—wouldn't it be a ridiculous state of affairs if the owner of this land could not secure a trespass warrant and have the use of the facilities of the police department to have that man arrested for remaining on your property? If that were the law, very clearly the people who own property would take the law in their own hands. In the rural sections of this County I can see some of the
 143 farmers going into the house and getting a shotgun and using it, and in my judgment, if the law did not protect him in his right to be secure in the ownership of his property and enjoy it, he would have a right to do so. I am not condoning shooting people for trespassing, but I am saying if the police department did not help the citizens of this County in the protection of their property, we would be in a sad state of affairs.

This situation in the Glen Echo Amusement Park is not exactly similar to that, but we are dealing with the law of trespass, and whether or not it is a wanton trespass. It is wanton when you are told to get off and you don't get off. How many times you have to tell them that, I am not in a position to say, but in my own judgment when a man comes on your property and you tell him to get off, and he doesn't get off and remains there, it is time for the owner of the property to kick him off, or for the police department to come in and arrest that man for trespassing. This is the law today, and we are trying these defendants under that law. That is the law of trespass of this State, and if it were not we would be in a state of chaos with reference to the ownership and occupancy of our homes.

Wouldn't it be a sad state of affairs if a man knocked at my door and I let him in, and after he entered the house he became boisterous and loud, and he tried to tell

144 me this and that and I say, "Get out of my house; you are ordered off my property" and then he refused to get off the property and I call the police and then the defense is that I didn't tell him not to come on the property; I invited him into my house and, therefore, it is not a wanton trespass?

In this case it is a wanton trespass when a group of people stand out in front of a man's place of business and attempt to harass him or keep people away, and prevent them from doing business with him. The law seems to condone the fact that they can parade up and down outside, or pocket him. I do not condone that practice, but the law says they have that right—that picketing is proper. Still, I do not agree with that practice, but I have to abide by the Court's decisions. When a man owns a business and there are a lot of people out there picketing, and trying to keep possible customers from doing business with him, it is an interference with his right to do business.

Now that is what these defendants were doing in this case, and the evidence shows conclusively that they came out there to picket and harass the Amusement Park owners. The law says it is all right to picket, but why did they break the line and go on the private property of the company? They knew they didn't have any right on the property. They knew it by virtue of the fact that the papers were full of it, and two or three days before that it
145 had been all over the newspapers that there was a segregation policy in effect in Glen Echo Amusement Park.

We are not trying the segregation question here. We are not trying the right of these defendants to test the policy of a private corporation to establish a segregation policy. In other words, the law of this State is, at this time, that he can select his own patrons and I dare say if that decision is changed, it will be a new revolution in the laws of this State and this Country.

So I say to you people that I have been very liberal with you, and very patient with you, and yesterday's

case was only the first of a series of cases that are to be tried in this Court. We are only bound by the law as established today. The Court finds each of you guilty of trespass and sentences each of you to pay a fine of One Hundred Dollars, and costs. Yesterday I gave the defendants a lesser fine than the maximum allowed by the law. Frankly, I think your case is more aggravated. You were parading up and down outside of this park; you college students, one from New York, and the other college students from here in Washington, trying to force your ideas upon a private business in this manner. I cannot understand how you can get into the frame of mind to think that you can force your ideas upon them as to the way it should run its business. I dare say if you were in business, you would run it the way you wanted to, or you would
146 close the door. So I say in this case it is really a wonder that you haven't been charged with attempting to incite a riot. If there had been any disorder, or any bloodshed out there, because of your actions, and you came in here and were convicted of rioting, you would go to jail as quick as lighting, and I say you had better not cause any rioting; you better stay within your bounds and listen to your lawyers. You should go ahead and litigate your cases, the same way the school case was litigated—civilly, and in the proper courts, and advance your ideas there. If the Court agrees with you, that is one thing, and if the Court doesn't agree with you, you must accept it, just like the people in this County have accepted school integration and the business men of this County would accept any change, once their doors are open to everyone.

Under the evidence in this case, the State has established beyond a reasonable doubt that the defendants are guilty of wanton trespass, and the Court so finds you all guilty as charged.

State's Exhibit No. 8A**THIS AGREEMENT**

Made and concluded this day of A.D., 1956, by and between **KEBAR, INC.**, a corporation organized and existing under the laws of the State of Maryland, hereinafter designated as the Park Company, as party of the first part, and **B & B Industrial Catering Service, Inc.**, a corporation organized and existing under the laws of the State of Maryland, hereinafter designated as the Concessionaire, as party of the second part:

WITNESSETH, That the said Park Company, for and in consideration of the sum of **ONE DOLLAR**, in hand paid, receipt of which before the execution hereof is hereby acknowledged, and the performance by the said Concessionaire of all the covenants and agreements herein expressed, the prompt performance of all the covenants herein contained being a condition precedent, the Park Company hereby extends to the Concessionaire, the exclusive privilege of maintaining and conducting at **Glen Echo Park**, situate in the County of **Montgomery**, State of **Maryland**, all concessions for the purpose of selling food and beverages.

All fixtures, appliances, supplies, and services required to operate the foregoing concessions are to be furnished by the Concessionaire, and all prices of goods or other matter sold are to be subject to the approval and agreement of the Park Company, and none other, for the term of two summer seasons, said term to begin on or about the 1st day of **April**, 1957, and to terminate on or about **Labor Day**, **September**, 1958. The concessions and licenses specified in this contract are to be used and exercised daily except when otherwise required by the Park Company; and the Concessionaire hereby agrees to maintain and conduct said concessions for the period named, for which the Concessionaire agrees to pay and provide in services to the Park Company:

- (1) The total rental for the 1957 and 1958 seasons shall be \$85,000.00 based on \$42,500.00 per season, payable in equal bi-annual installments on December 15, 1956, June 15, 1957, December 15, 1957 and June 15, 1958.
- (2) Twenty-five percentum (25%) of the gross receipts from the operation of the Ballroom Refreshment Stand, payable once each week.
- (3) Twenty-five hundred dollars (\$2,500.00) per season for advertising and promotion to be paid in five (5) monthly installments on the 15th Day of May, June, July, August and on the last Wednesday of the seasons.
- (4) One hundred twenty-five dollars (\$125.00) per season for share of the cost of Montgomery County licensing, said sum, however, to be adjusted proportionately to any changes in the Montgomery County licensing charges.
- (5) A daily full course meal for the Park Company employees to consist of appetizer, meat, two vegetables, desert, and coffee, the menu and price subject to approval of the Park Company.
- (6) The Concessionaire shall handle its own money.

IT IS FURTHER AGREED, that the space, buildings or structures used by the Concessionaire in the performance of this contract is not leased to the Concessionaire; that he is a licensee, not a lessee thereof; and his rights under this contract shall continue only so long as he strictly and promptly complies with the covenants, agreements and conditions herein expressed. The Concessionaire shall not sell, mortgage, or assign or in any manner dispose of this contract or concessions, nor any interest herein, nor have the right or authority to allow any other person or party to have any interest in this concession, or the premises occupied, for any purpose, without the written consent of the Park Company.

IT IS FURTHER AGREED, That the Park Company, by its proper officers or agents, shall have the right at all times to enter upon said space, buildings, or structures, for the purpose of preserving and carrying out all the rules and regulations of the Park Company, and to determine that all the conditions of this contract are fulfilled, and to assist the Park Company in this, the Concessionaire shall furnish to the General Manager of the Park Company, duplicates of all keys used by the Concessionaire and necessary to this end.

IT IS FURTHER AGREED, That this contract shall be subject to the following covenants, stipulations and conditions:

FIRST—The Manager of the Park Company shall have the power, during the existence of this contract, to prohibit any show or exhibition, or any amusement, under the Concessionaire, which, in his opinion, shall appear to be against good morals, public safety, or health. And the Concessionaire shall, upon the order of the Manager, immediately stop, or modify, said exhibition; and upon failure to obey such order, said Manager may summarily cause the removal of said show or amusement, or any part thereof, and terminate this contract or concession, and the Concessionaire forfeits and relinquishes all claims for damages or loss occasioned by reason of such removal or closing and the termination of this contract.

SECOND—The Concessionaire shall not allow any form of gambling, the renting of rooms for any immoral purposes, or the making, manufacture, drinking, sale, or, in any form or manner whatsoever, disposal of intoxicating liquors, excepting beer however; and upon a repetition of such offenses in or upon Park Company premises occupied, the Park Company, by its proper officers or agents, shall have the right to seize and destroy any apparatus or device so used, or intended for such use, to take possession and close said premises occupied by the Concessionaire, without notice to the Concessionaire or redress on his part, to cancel and terminate this contract, remove the property

and effects of the Concessionaire, and the Concessionaire hereby waives all claims for damages or loss by reason of any acts of the Park Company under this section.

THIRD—The Concessionaire and his employees shall, at all times, be subject to and strictly comply with the rules and regulations which shall from time to time be prescribed by the Park Company, its officers and agents, and also to the regulation of admission of any persons or vehicles therein. The Park Company shall have the right to approve all employees used by the Concessionaire, and upon notice that any person employed as aforesaid is objectionable, such person shall be dismissed at once by the Concessionaire. The Concessionaire agrees that he shall not, by himself or agent, sell or peddle anything upon the grounds under this contract, or within the neighborhood of said grounds, any commodity, article, or exercise any other privileges other than within the terms of this contract. The Concessionaire covenants and agrees not to advertise his operations in any manner on or about the premises or outside the Glen Echo Park, or in any newspaper or otherwise, except by means of such signs or forms as shall be approved by the Manager of the Park Company; and shall not employ any person known as a crier or spieler, not approved by the Manager of the Park Company.

FOURTH—The Concessionaire covenants and agrees that it will not erect or construct and structure or make any alterations upon said premises except in accordance with plans approved in writing by the proper officers of the Park Company, and then only in such places designated in writing.

FIFTH—The Concessionaire shall be solely responsible and answerable in damages for all accidents and injuries to person or property caused by any negligence on his part, or on the part of his agents or employees; and also the Concessionaire covenants and agrees to indemnify the Park Company, its officers and agents, from every claim for damages made and brought about by reason of such

negligence, and to defend, at his own cost, any action or proceeding brought against the Park Company, its officers or agents, under such claim, whether the Park Company, its officers or agents, be sued jointly or with the Concessionaire or otherwise. The Park Company shall be further protected by securing suitable public liability insurance, the premium of which is to be paid by the Concessionaire.

SIXTH—If the Concessionaire cannot do business due to closing of his stands or stand, due to Park Company failure, the Concessionaire is to be refunded a daily rent, computed on a pro rata basis. However, if the closing of the stand or stands is brought about by failure of the Concessionaire, no refund is to be made.

SEVENTH—The Concessionaire hereby agrees to indemnify and save harmless the Park Company, its officers and agents, against all loss or damage, by action or otherwise, on account of patents or copyrights, or the infringement of the same in its operations.

EIGHTH—The Park Company, by its officers or agents, may order the removal of any substances or explosives, at their option, from the space, buildings or structures under this contract. The Concessionaire agrees to keep said concessions and immediate surroundings in a clean and sanitary condition, free from all rubbish and dirt.

NINTH—It is further agreed that, should the premises occupied under this contract be so damaged as to be uninhabitable for a period of ten consecutive days, at the option of the Park Company, by notice in writing to the Concessionaire, this concession may be cancelled, without recourse for damages as against the Park Company, its officers or agents.

TENTH—The Manager of the Park Company shall decide every dispute which may arise between the Concessionaire and any other concessionaire, and any dispute between the Concessionaire and the Park Company, and the decision shall be final and binding on all parties thereto. Upon

failure to obey such decision, this contract may be terminated.

ELEVENTH—Nothing in this contract shall create a co-partnership between the Park Company and the Concessionaire, or constitute the Concessionaire an agent of the Park Company, to bind the Park Company, its officers or agents, in any way whatsoever.

TWELFTH—The Concessionaire further agrees that, should the carrying out of the purposes of this concession, or any part therein, be stopped by legal proceedings, then the said Park Company, by its officers or agents, by written notice to the Concessionaire, may cancel and terminate this contract.

THIRTEENTH—The Concessionaire hereby covenants and agrees that the Park Company, its officers or agents, shall not be liable for the loss of or injury to any property, goods, or affects of the Concessionaire, due to any cause whatsoever.

FOURTEENTH—Except for the Montgomery County license, as to which the Concessionaire pays \$125.00 as his proportionate share as hereinbefore provided, the Concessionaire shall procure, at his own expense, all necessary licenses and official permits necessary for the purpose of carrying out the provisions of this contract; and they shall be paid and placed into the custody of the Manager of the Park Company.

FIFTEENTH—The Concessionaire shall keep a true and full record of the receipts from the operation of the Ball-room Refreshment Stand, and said record shall, at any time, be open to the inspection of the Park Company's officers or agents, and for this single operation only, duplicate keys to any and all cash registers or other appliances used for the collection of the receipts shall be placed in the hands of the proper officers of the Park Company. The Concessionaire further agrees that the Park Company's officers or agents shall have the right to audit directly

from the cashiers, cash registers or appliances receiving money from this operation and that no adjustment of the readings of such registers or appliances shall be made without the approval of the Park Company.

SIXTEENTH—It is further mutually understood and agreed by and between the parties hereto that in case of default in the payments stipulated to be made by the Concessionaire or any portion thereof, or in the case of non-performance of any of the provisions herein contained to be performed by the Concessionaire, at the election of the Park Company, its successors or assigns, to consider the agreement at an end, the said Concessionaire, his heirs, executors or administrators, shall forthwith remove the paraphernalia and other things of any and every nature, belonging to the Concessionaire, therewith connected and concerned, from the Glen Echo Park premises, at his own cost and expense, and in the event of the failure, default or neglect of the failure to fully perform the obligations of this paragraph assumed, then, in that event, the Park Company, may, at the expense of the Concessionaire, his heirs, executors or administrators, dismantle and remove the same from said premises and charge the cost thereof to the Concessionaire; and should the Concessionaire be indebted to the Park Company by reason thereof or for any other matter, cause, or thing whatsoever, at the termination of this contract, the Park Company shall have a lien upon all the paraphernalia, goods, chattels, and money belonging to the Concessionaire or in which he is interested, which shall be located in or about Glen Echo Park or in the possession of the Park Company; and the Park Company shall have the right to satisfy and discharge the said lien by making sale of the said paraphernalia, goods or chattels in such manner as shall be satisfactory to it, either at public or private sale, but shall in any and every such sale, whether public or private, give at least ten (10) days notice to the Concessionaire before making sale, unless for any reason it shall be found to be impracticable, in

which event, either public or private sale may be made without notice.

Upon termination of this contract the Park Company agrees to purchase for a price equal to the cost less depreciation at the rate of ten per centum (10%) per annum from the date of purchase, all the capital improvements and items of equipment used by the Concessionaire in the performance of this contract.

It is further mutually understood and agreed that each and every of the terms, conditions, stipulations and agreements in this instrument contained, shall be applicable and binding upon the Concessionaire, his Heirs and personal representatives; and should the said Concessionaire violate any one or more of the covenants, agreements or conditions upon his part to be performed, or should he fail to observe and fully keep each and every of the said covenants, agreements and stipulations, then, in that event, the Park Company shall have the right to forfeit and terminate this agreement without notice of any kind or character to the said Concessionaire, and shall also have the right thereupon to dispossess the said Concessionaire either with or without legal proceedings to that end, as it may be deemed proper and advised; the waiver of one or more breaches and violations of the hereinbefore recited covenants and agreements shall not be construed as a waiver of subsequent violations or breaches of the covenants, agreements or stipulation itself.

SEVENTEENTH—The personal pronoun used herein as referring to the Concessionaire shall be understood and construed as having reference to either a natural person of either sex, a firm, or a corporation.

EIGHTEENTH—All notices and orders herein provided to be given to the Concessionaire, may be served by mailing the same to him at his last known place of residence or business, outside of Glen Echo Park, or by delivering a copy thereof to him in person, or by leaving it addressed to

him at his place of business, in said Glen Echo Park, with any person then in charge of the same.

NINETEENTH—In all instances of the agreement providing for the cancelation of same, and particularly in paragraphs numbered 1, 2, 6, 9, 10, and 12, but not limited to said paragraphs, it is mutually understood and agreed that if the cancelation is not the direct result of any legal misconduct on the part of the Concessionaire, or a willful and continued violation of the conditions of this agreement by Concessionaire after due written notice by the party of the first part, then, upon cancellation by the party of the first part, Concessionaire shall be entitled to a rebate according to the formula set forth in the sixth paragraph herein, and any provisions of this agreement to the contrary, or in conflict with this provision notwithstanding.

IN WITNESS WHEREOF, the said parties of the first and second part have directed their proper officers to execute these presents in triplicate and to cause the corporate seal of said corporations to be hereto affixed.

KEBAR, INC.

By ABRAM BAKER
President

By (illegible)
General Manager

B & B INDUSTRIAL CATERING
SERVICE, INC.

By H. W. BIRGFELD, JR.
President

Attest:

.....
Secretary

Attest:

.....
Secretary

State's Exhibit No. 8B

KEBAR, INC.
GLEN ECHO PARK
Playground of the Nations's Capital
GLEN ECHO
MONTGOMERY COUNTY, MD.
OLIVER 2-6743

August 29, 1958.

Mr. William Birgfeld
B & B Catering Co., Inc.

Dear Mr. Birgfeld:

This will confirm the agreement made with me for the exclusive privilege of operating all the food and drink stands at Glen Echo Park. If the terms and conditions meet with your approval, please affix your signature to both copies and return to me, in order that I may sign them.

The following terms will cover the 1959 and 1960 Seasons :

1. The combined rental, which includes Advertising and Promotion, plus Montgomery County Operating License for 1959 and 1960 Seasons will be \$126,250.00 payable in four equal installments of \$31,562.50, payable on December 15, 1958, June 15, 1959, December 15, 1959 and June 15, 1960.

2. No one under 18 years of age should work for your concern.

3. (25%) of the gross receipts from the operation of Ballroom Refreshment Stand. It is further understood that you will pay the premiums on personal liability insurance secured by Kebar, Inc; that you will be solely responsible and answerable for all accidents or injuries, which might occur under these operations,

E76

and that you will indemnify Kebar, Inc. from any claims.

Very truly yours,

ABRAM BAKER
Abram Baker, *President*
Kebar, Inc.

I agree with the terms outlined above:

H. W. BIRGFELD, JR., *Pres.*
H. W. Birgfeld, Jr.
B & B Catering Co., Inc.

.....
SAM BAKER, *Secretary-Treasurer*

File Copy

IN THE
Court of Appeals of Maryland

SEPTEMBER TERM, 1960

No. 248

WILLIAM L. GRIFFIN, ET AL.,
Appellants,

v.

STATE OF MARYLAND,
Appellee.

AND

CORNELIA A. GREENE, ET AL.,
Appellants,

v.

STATE OF MARYLAND,
Appellee.

APPEAL FROM THE CIRCUIT COURT FOR MONTGOMERY COUNTY
(JAMES H. PUGH, Judge)

APPELLEE'S BRIEF AND APPENDIX

THOMAS B. FINAN,
Attorney General,
CLAYTON A. DIETRICH,
Assistant Attorney General,
LEONARD T. KARDY,
State's Attorney for
Montgomery County,
JAMES S. McAULIFFE, JR.,
Assistant State's Attorney
for Montgomery County,
For Appellee.

INDEX

TABLE OF CONTENTS

	PAGE
STATEMENT OF THE CASE.....	1
QUESTIONS PRESENTED.....	2
STATEMENT OF FACTS.....	2
ARGUMENT:	
I. Was there legally sufficient evidence to sustain a conviction of statutory trespass under Section 577, Article 27, as to each of the Appellants?	4
II. Was the conviction of the Appellants in contravention of any constitutional or statutory rights?	8
CONCLUSION	10

TABLE OF CITATIONS

Cases

Baltimore Transit Co. v. Faulkner, 179 Md. 598.....	6
Berry v. State, 202 Md. 62.....	7
Bowser v. State, 136 Md. 342.....	5
Boynton v. Virginia, 364 U.S. 454.....	9
Civil Rights Cases, 109 U.S. 3.....	9
Cooper v. State, 220 Md. 183.....	8
Dennis v. Baltimore Transit Co., 189 Md. 610.....	6
Drews v. State, 224 Md. 186.....	8
Ex Parte Birmingham Realty Co., 63 So. 67.....	6
Finn v. Schreiber, 35 Fed. Supp. 638.....	8
Good Citizens Assoc. v. Board, 217 Md. 129.....	8
Greenfeld v. Maryland Jockey Club, 190 Md. 96.....	8

	PAGE
Griffin v. Collins, 187 Fed. Supp. 149	6
Holtman v. State, 219 Md. 512	7
International Organization Etc. v. Red Jacket C. C. & C. Co. (4th Cir.), 18 Fed. 2d 839	4
Kiefer v. State, 87 Md. 562	5
Madden v. Queens County Jockey Club (N.Y.), 72 N.E. 2d 697	8
Maddran v. Mullerdore, 206 Md. 291	4
Patapsco Loan Co. v. Hobbs, 129 Md. 9	4
Rager v. McCloskey (N.Y.), 111 N.E. 2d 214	4
Rawlings v. State, 2 Md. 201	5
Shelley v. Kraemer, 334 U.S. 1	9
Slack v. Atlantic White Tower System, Inc., 181 Fed. Supp. 124	8, 9
State v. Popp, 45 Md. 432	5
Williams v. Howard Johnson's Restaurant (4th Cir.), 268 Fed. 2d 845	8, 9
Wolfe v. North Carolina, 364 U.S. 177	9

Statutes

Annotated Code of Maryland:	
Article 27, Section 577	1, 2, 6
Constitution of the United States:	
Fourteenth Amendment	9

INDEX TO APPENDIX

Testimony (Volume 1):	
Francis J. Collins—	
Direct	1
Cross	1
Redirect	2

	PAGE
Abram Baker—	
Cross	3
Redirect	3
Recross	3
Kay Freeman—	
Direct	4
Cross	4
Examination by the Court	5
Testimony (Volumes 2 and 3) :	<hr/>
Francis J. Collins—	
Direct	6
Cross	7
Recross	8
Examination by the Court	8
Abram Baker—	
Redirect	8
Ronyl J. Stewart—	
Direct	9
Martin A. Schain—	
Cross	9
Redirect	10
Examination by the Court	10
William Birgfeld—	
Cross	10
Thomas Parsons—	
Direct	11
Cross	12

IN THE
Court of Appeals of Maryland

SEPTEMBER TERM, 1960

No. 248

WILLIAM L. GRIFFIN, ET AL.,
Appellants,

v.

STATE OF MARYLAND,
Appellee.

AND

CORNELIA A. GREENE, ET AL.,
Appellants,

v.

STATE OF MARYLAND,
Appellee.

APPEAL FROM THE CIRCUIT COURT FOR MONTGOMERY COUNTY
(JAMES H. PUGH, Judge)

APPELLEE'S BRIEF

STATEMENT OF THE CASE

This is a consolidated appeal from judgments and sentences to pay fines entered by the Circuit Court for Montgomery County after two trials, each involving five defendants, upon warrants for statutory trespass upon private land under Section 577, Article 27, Annotated Code of Maryland (1957 Edition).

QUESTIONS PRESENTED

The Appellee accepts the substance of the questions presented by the Appellants but submits that they should be rephrased as follows:

I. Was there legally sufficient evidence to sustain a conviction of statutory trespass under Section 577, Article 27, as to each of the Appellants.

II. Was the conviction of the Appellants in contravention of any constitutional or statutory rights.

STATEMENT OF FACTS

Each of the Appellants was arrested upon a warrant issued for violation of Section 577, Article 27, Annotated Code of Maryland (1957 Edition). The warrants had been obtained by the senior officer in the guard service of Glen Echo Amusement Park who also held a commission as Deputy Sheriff of Montgomery County. The warrants charged each of the Appellants with statutory trespass on the amusement park's private property in Montgomery County.

The first five Appellants were arrested on June 30, 1960, and were tried on September 12, 1960. This is the *Griffin* case. The second five Appellants were arrested on July 2, 1960 and were tried on September 13, 1960. This is the *Greene* case. Two of the ten Appellants are members of the white race.

In the *Griffin* case the Appellants had been part of a group of about forty people who had come from Washington June 30, 1960, to the area of the amusement park for the purpose of protesting the park's known policy of racial segregation, that is, the owners and operators of the park would only admit to their premises and provide service to

white people (Apx. 4-5). The group, including the five Appellants, staged a picket line for an hour near the entrance to the amusement park displaying prepared signs and placards which protested racial segregation (Apx. 5). After surreptitiously receiving tickets for use on amusements within the park (Apx. 4, 5), the five Appellants left the picket line and entered the private property of the amusement park, placed themselves upon the carousel and refused to leave the premises when requested to do so by the park's agent (Apx. 2). After five minutes had elapsed from the time Lieutenant Collins, the park's agent, had directed the Appellants to leave the amusement park's private premises, he placed each of the five Appellants under arrest for statutory trespass (Apx. 1). The incident caused a milling crowd to become disorderly (Apx. 2, 5).

The five Appellants in the *Greene* case were a part of a follow-up group who came from Washington to the amusement park on July 2, 1960 to renew the picketing and protesting of the park's known segregation policy (Apx. 6, 10). After the second group had picketed the entrance to the park, they broke suddenly into a trot to the restaurant about one hundred and fifty feet within the amusement park premises (Apx. 7). The Appellants knew they were being pursued by the park guards and the county police (Apx. 10). The second group of Appellants entered the restaurant premises, seated themselves, and ordered refreshments. The group was promptly advised by the amusement park's agent, Lieutenant Collins, that they were unwelcome and were to leave the premises. The members of the invading group turned their back upon the amusement park's agent and ignored his request to leave (E. 38). Lieutenant Collins forthwith arrested the second five Appellants for statutory trespass (E. 39). The

incident caused a public disturbance in the area (Apx. 7, 11-12).

Under the licensing arrangement between the park and its restaurant concessionaire, the amusement park had the right to determine the persons who were entitled to patronize the restaurant (E. 69 and Apx. 9, 10-11) and the park had the right to enforce its regulations (E. 68). Representatives of the park testified that the Appellants were arrested, after they refused an order to leave the park premises, because of the Appellants' conduct in picketing the park, regardless of color (Apx. 3, 7, 8, 10).

ARGUMENT

I.

WAS THERE LEGALLY SUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION OF STATUTORY TRESPASS UNDER SECTION 577, ARTICLE 27, AS TO EACH OF THE APPELLANTS?

The Trial Court properly found the Appellants had wilfully entered upon the private property of the amusement park, knowing in advance that they were not welcome, and refused to leave when directed by the park's agent. Such finding of fact warranted a conviction of statutory trespass.

The Appellants had notification that the amusement park was segregated before and during the time they were picketing the premises. In addition, each of the Appellants received a personal notification from Lieutenant Collins that he or she was not welcome and was to immediately leave the premises. Any further movement upon the property or the failure to leave the property at that time would be a trespass. *Maddran v. Mullendore*, 206 Md. 291, 300; *Patapsco Loan Co. v. Hobbs*, 129 Md. 9, 15; *Rager v. McCloskey* (N.Y.) 111 N.E. 2d 214, 216 and *International Organization, Etc. v. Red Jacket C. C. & C. Co.* (4th Cir.) 18 Fed. 2d 839, 850.

The use of the word *wanton* in the editorial heading of statutory trespass is not material in determining whether wantonness is an element of the statutory crime. Compare *Bowser v. State*, 136 Md. 342, 345 and *State v. Popp*, 45 Md. 432, 437. The statutory proviso as to bona fide claims of right or ownership and as to a legislative intent to prohibit only wanton trespass are matters of defense. A proviso need not be negative by the prosecution. *Rawlings v. State*, 2 Md. 201, 211 and *Kiefer v. State*, 87 Md. 562, 566. Here the Appellants have failed to establish any plausible claim of right or ownership or circumstances to negative wantonness.

If wantonness had to be established by the prosecution, there is an abundance of evidence that the Appellants, as members of a large group, entered the State of Maryland for the sole purpose of protesting the park operator's policy of restricting their premises to white people. In disregard of such operator's known desire, the Appellants entered upon their private property and refused a request to leave, even though their conduct caused a disorderly crowd to form. The Appellants are satisfied that it is proper to publicly berate a private property owner and then to invade his premises on the assumption that they are welcome. The Appellants considered their conduct peaceful notwithstanding the fact that they are running in a crowded area with guards and police in hot pursuit. The Appellants would have the Court believe that the State is helpless to protect a private property owner from invaders who seek to arouse the emotions of such owner's invitees. The Appellants claim that such a trespass is not wanton and the owner has no other recourse than to physically eject the invaders even though this may precipitate a breach of the peace. These Appellants unsuccessfully made the same contention as to the subject matter before Judge Thomsen

in the federal court. *Griffin v. Collins*, 187 Fed. Supp. 149, 153-154.

This Court has not construed the word "wanton" in Section 577. In determining the meaning of *wanton*, as applied to exemplary damages, this Court stated:

"The word 'wanton' means characterized by extreme recklessness and utter disregard for the rights of others." *Dennis v. Baltimore Transit Co.*, 189 Md. 610, 617 and *Baltimore Transit Co. v. Faulkner*, 179 Md. 598, 602.

The Appellants' conduct would meet this higher standard of deliberateness. The Supreme Court of Alabama, in *Ex Parte Birmingham Realty Co.*, 63 So. 67, 69, noted:

"The word 'wanton', when used in a trespass complaint to characterize conduct set up by way of aggravation merely, is not governed by the same rules of pleading applied to the same word when used in negligence counts. As here used, we think it imparts no more than that the rocks were thrown on plaintiff's premises with a knowledge of the violation thereby of plaintiff's rights and of the injurious results therefrom, and there was evidence to support that charge."

The Appellants' discussion of any right to contract is immaterial here since the tickets in the *Griffin* case were admittedly obtained surreptitiously in an attempt to force an undesired contract upon the park and in the *Greene* case the Appellants knew the park would not voluntarily enter into any contract for services. Interference with the right to contract would be applicable only to a third person.

The Appellants in the *Greene* case seek to substitute their construction for the understanding of the parties as to the rights of the parties in the restaurant concession. It is clear that under the third paragraph of the restaurant license, the park could regulate the admission of patrons

(E. 69) and had the power to enforce its regulations (E. 68). This unmistakable language in the written license contract was supported by the testimony of both parties. The testimony indicates that Lieutenant Collins was designated by the parties as their enforcement agent, even though the Appellants draw a different inference.

The Appellants cite no authority for the proposition that a third person has a right to physically enter private property in order to persuade the owner that he is in error in restricting his invitees to members of the white race.

There was legally sufficient evidence to sustain the Trial Court's verdicts that the Appellants entered and remained upon private property knowing they were unwelcome and refused to leave after they had been directed. In recent years this Court has reemphasized that it will not disturb the verdict of a trial judge unless it is "clearly wrong." *Berry v. State*, 202 Md. 62, 67. The Appellant in *Holtman v. State*, 219 Md. 512, 515 was reminded by Judge Prescott:

"We have repeatedly stated that upon appeals of this nature — from the trial court sitting without a jury — it is not the duty of the members of this Court to read the record and decide whether in our judgment the appellant in a criminal prosecution has been proved guilty beyond a reasonable doubt."

In reviewing the record, the Court of Appeals does not retry a criminal case:

"The question is not whether we *might* have reached a different conclusion from that of the trial court, but whether the trial court had before it sufficient evidence upon which it could fairly be convinced beyond a reasonable doubt of the defendant's guilt of the offense charged; and the verdict of the trial court is not to be set aside on the evidence unless clearly erroneous."

Cooper v. State, 220 Md. 183, 192.

This Court observed in *Drews v. State*, 224 Md. 186, 193:

“The police, at the express direction of the manager of the Park, asked the appellants to leave and again they refused, even when told they would be arrested if they did not. Admittedly they were then deliberately trespassing.”

II.

WAS THE CONVICTION OF THE APPELLANTS IN CONTRAVENTION OF ANY CONSTITUTIONAL OR STATUTORY RIGHTS?

The Appellants had no constitutional right to enter private property contrary to the will of the owner. The owner has the right to physically eject a trespasser. An owner of property is entitled to equal protection and to due process of law in maintaining his peaceful possession.

At common law the proprietor of a place of amusement could serve whom he pleased. *Drews v. State*, 224 Md. 186, 191, 193, 194, *supra*; *Greenfeld v. Maryland Jockey Club*, 190 Md. 96, 102; *Good Citizens Assoc. v. Board*, 217 Md. 129, 131; *Finn v. Schreiber*, 35 Fed. Supp. 638, 640; and *Madden v. Queens County Jockey Club* (N.Y.) 72 N.E. 2d 697, 698.

In Maryland there is no statute which either requires or prohibits racial discrimination in business. *Slack v. Atlantic White Tower System, Inc.*, 181 Fed. Supp. 124, 127. Judge Thomsen noted:

“In the absence of statute, the rule is well established that an operator of a restaurant has the right to select the clientele he will serve, and to make such selection based on color, if he so desires” (page 128).

See also *Williams v. Howard Johnson's Restaurant* (4th Cir.) 268 Fed. 2d 845.

The Federal Government can not legislate against such discrimination. *Civil Rights Cases*, 109 U.S. 3. The United States Supreme Court recognized that the owner of private property could be arbitrary and capricious in his choice of invitees, notwithstanding the Fourteenth Amendment. In *Shelley v. Kraemer*, 334 U.S. 1, 13 it was held:

“That Amendment erects no shield against merely private conduct, however discriminatory or wrongful.”

The United States Supreme Court has not seen fit to whittle away the right of an owner of private property to use his own discretion in choosing business invitees. Compare *Boynton v. Virginia*, 364 U.S. 454 and *Wolfe v. North Carolina*, 364 U.S. 177. The only use of any State power in this case is the execution of a warrant obtained by a private owner in support of his right to restrain trespassers. The State has not attempted to guide or restrict this inherent right of every owner of property nor has it designated or restricted invitees. Judge Soper in *Williams v. Howard Johnson's Restaurant*, 268 Fed. 2d 845, 848, *supra*, observed:

“The customs of the people of a state do not constitute state action within the prohibition of the Fourteenth Amendment.”

This was given definitive application by Judge Thomsen:

“No doubt defendant might have had plaintiff arrested if she had made a disturbance or remained at a table too long after she had been told that she would only be sold food to carry out to her car. But that implied threat is present whenever the proprietor of a business refuses to deal with a customer for any reason, racial or other, and does not make his action state action or make his business a state agency.” *Slack v. Atlantic White Tower System, Inc.*, 181 Fed. Supp. 124, 129, *supra*.

CONCLUSION

A private property owner may arbitrarily discriminate as to invitees. The deliberate entry on private property, after picketing, with the intention of forcing the owner to alter his personal policy as to his invitees, is a wanton trespass. Entry or failure to leave private property after a demand by the owner is a violation of Section 577, Article 27. An owner of property is entitled to employ the criminal trespass statute to preserve his peaceful possession where antagonists employ invasion, rather than civil litigation, for the determination of contentions. A claim of right embraces property rights and not disputes as to an owner's use. Since the Appellants wilfully entered private property for the sole purpose of trying to force the owner to alter his mode of use, they were properly found guilty of statutory trespass. The State may not require segregation, but a private property owner is entitled to have his rights of possession protected by equal enforcement of the criminal trespass law. The conviction should be affirmed.

Respectfully submitted,

THOMAS B. FINAN,
Attorney General,

CLAYTON A. DIETRICH,
Assistant Attorney General,

LEONARD T. KARDY,
State's Attorney for
Montgomery County,

JAMES S. MCAULIFFE, JR.,
Assistant State's Attorney
for Montgomery County,
For Appellee.

APPENDIX TO APPELLEE'S BRIEF NO. 248

September 12, 1960

Vol. 1

(T. 6-7):

FRANCIS J. COLLINS, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

DIRECT EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 18):

Q. During the five minute period that you testified to after you warned each of the five defendants to leave the park premises, what, if anything, did you do? A. I went to each defendant and told them that the time was up and that they were under arrest for trespassing. I then escorted them up to our office, with a crowd milling around there, to wait for transportation from the Montgomery County Police, to take them to Bethesda to swear out the warrants.

* * * * *

(T. 21):

CROSS EXAMINATION

By Mr. Duncan:

* * * * *

(T. 38-39):

Q. Lets take Mr. Washington, here on the end. Tell me the conversation you had with him at the time you arrested him and what he said to you. A. As far as I recall there was no conversation between any of us, only I told them

about the policy of the park and they answered me that they weren't going to leave the park.

* * * * *

(T. 42):

REDIRECT EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 48-49):

By Judge Pugh:

Q. Did these defendants have any other people with them? A. There was a large crowd around them from the carousel up to the office.

Mr. McAuliffe continues:

Q. And prior to the arrest, during this five minute interval that you gave them as a warning period, was there a crowd gathering at that time? A. Yes, sir.

Q. And what was the condition, or orderliness, of that crowd as it gathered there?

(Mr. Duncan) I object to that question, your Honor. Mr. Collins has testified that he arrested these persons for no other reason than that they were negroes, and gave them five minutes to get off the property.

Q. (Judge Pugh) Was there any disorder? A. It started a disorder because people started to heckling.

* * * * *

(T. 67):

ABRAM BAKER, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified, upon

* * * * *

(T. 76):

CROSS EXAMINATION

By Mr. Duncan:

* * * * *

(T. 85):

Q. What did you mean when you told Lieutenant Collins to arrest white persons who came into the park property, if they were doing something wrong?

(Mr. McAuliffe) Objection.

(Judge Pugh) Read the question back. (Last question was read by the reporter.) Objection overruled.

A. Well if they were in the picket line and then ran out into the park and we told them to leave and they refused, why shouldn't you arrest them?

* * * * *

(T. 96):

REDIRECT EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 97):

Q. Did you instruct Lieutenant Collins that he was to arrest negroes because they were negroes, or because they were trespassing? A. Because they were trespassing.

* * * * *

(T. 98):

RE-CROSS EXAMINATION

By Mr. Duncan:

Q. Did you instruct Lieutenant Collins to arrest any other persons who trespassed, other than negroes? A. I went over that once before with you. I told him if they came out of that picket line to come on to the property, to give them due notice and to arrest them if they didn't leave; white or colored.

* * * * *

Apx. 4

(T. 110):

KAY FREEMAN,

a witness of lawful age, called for examination by counsel for the defendants, and having first been duly sworn, according to law, was examined and testified as follows, upon

DIRECT EXAMINATION

By Mr. Duncan:

* * * * *

Q. Prior to the time they were arrested, did they have tickets to ride on any of the rides? A. We all had tickets.

Q. Where did you acquire these tickets? A. They were given to us by friends.

Q. White friends? A. Yes.

Q. And they had made the purchase? A. That is right.

* * * * *

(T. 113):

CROSS EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 114-115):

Q. Did you go out with these five defendants? A. Yes.

Q. Did you go out with any others? A. Yes.

Q. How many? A. Thirty-five or forty.

Q. And you all expected to use the facilities there at Glen Echo Park, in accordance with those advertisements?
A. I expected to use them.

Q. Did you have any signs with you when you went out there? A. Yes.

Q. What did these signs say? A. They protested the segregation policy that we thought might exist out there.

* * * * *

Q. Did these five defendants have signs? A. I don't know. I think we all had signs, at one time or another.

* * * * *

(T. 116):

Q. What did these five defendants do and other persons do? A. We had a picket line.

* * * * *

Q. Why did you do that if you didn't know the park was segregated? A. Because we thought it was segregated.

* * * * *

(T. 118):

Q. Now you say after you got on the park property, tickets were given you by some white friends; is that right? A. That is right.

* * * * *

(T. 120):

Q. Was there a crowd around there? A. Yes.

Q. Did you hear any heckling? A. Yes.

* * * * *

(T. 123):

Q. How long did you march in this definite circle, with these five defendants, with these signs, protesting the park's segregation policy, before the five defendants and you entered Glen Echo Park? A. I don't know.

Q. Would you give us your best estimate on that, please? A. Maybe an hour or maybe longer.

* * * * *

(T. 125):

EXAMINATION BY THE COURT

By Judge Pugh:

Q. Was the heckling a loud noise? A. Yes.

Q. How many people were in it? A. I don't know, but the merry-go-round was almost surrounded.

* * * * *

(T. 126):

Q. Why didn't you go with one or two people, instead of forty? What was the idea of going out there in large numbers? A. There was a possibility that it was segregated.

Q. Well you all anticipated that there would be some trouble; didn't you? A. Yes.

* * * * *

September 10, 1960

Vols. 2 and 3

(T. 11):

FRANCIS J. COLLINS,

a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

DIRECT EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 12):

Q. Now, Lieutenant, directing your attention to the five defendants who are seated here at the counsel table, did you have occasion to see them in and about the Glen Echo Park, in or about the end of June or the first of July? A. I did.

* * * * *

Q. What, if anything, occurred then at 7:30 when you first observed these defendants on July 2nd, 1960? A. When I first observed the defendants they were marching in the picket line.

Q. What picket line was that, Lieutenant? A. Against segregation.

* * * * *

(T. 17):

CROSS EXAMINATION

By Mr. Sharlitt:

* * * * *

(T. 19):

Q. Why did you order her off the property? A. Because she had been in the picket line and she was undesirable.

* * * * *

Q. Why was she undesirable? A. Because she had been on the picket line and run through the park.

* * * * *

(T. 23):

By Judge Pugh:

Q. Did they create a commotion when they broke the picket line and came on the park property? A. Yes, sir; very much. There were children playing there and people right inside the entrance.

Q. How far did they travel from the entrance to get to the restaurant? A. 150 feet, probably.

Q. And were there people milling around in the park, through whom they ran to get to the restaurant? A. Yes, sir.

Q. How fast did they run to get to the restaurant? A. It was a fast pace, sir.

* * * * *

(T. 27):

Q. And, as best you can recall, I would like you to tell the Court the exact words you used at that time, in talking to these defendants. A. I told them that the Amusement Park was private property, and as for them being in the picket line and being on the property, they were undesirable, and I ordered them to leave immediately.

Q. Did any of them reply? A. No, sir; they immediately turned their backs on me.

* * * * *

(T. 28):

RE CROSS EXAMINATION

By Mr. Sharlitt:

Q. Did Mr. Woronoff's instructions indicate that all white persons who were on that picket line, no matter what time, would be excluded from the park? Did Mr. Woronoff's instructions state that all white persons who were on that picket line; no matter at what time, would be excluded from the park? A. Yes, sir.

* * * * *

(T. 29):

EXAMINATION BY THE COURT

By Judge Pugh:

* * * * *

Q. Were they walking close together, so that patrons could not get in? A. At times they were, sir, and also blocking the bus service.

* * * * *

Q. When you told them to leave, they didn't leave, did they? A. No, sir.

* * * * *

(T. 31):

ABRAM BAKER,

a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

* * * * *

(T. 49-50):

REDIRECT EXAMINATION (Resumed)

By Mr. McAuliffe:

Q. And with respect to the restaurant and the other concession that you mentioned in Glen Echo, do the special police enforce law and order there? A. They do.

Q. And is that by agreement between you and the concessionaire? A. That is right.

* * * * *

(T. 58):

RONYL J. STEWART,

a witness of lawful age, called for examination by counsel for the defendants, and having first been duly sworn, according to law, was examined and testified as follows, upon

DIRECT EXAMINATION

By Mr. Charlitt:

* * * * *

(T. 62):

Q. When Lieutenant Collins spoke to you, Miss Stewart, did he at any time mention specifically any other part of the park, or any specific part of the park? A. He mentioned the park as a whole. No specific part of the park.

Q. And the conversation took place in the restaurant? A. It did.

* * * * *

(T. 81):

MARTIN A. SCHAIN,

a witness of lawful age, called for examination by counsel for the defendants, and having first been duly sworn, according to law, was examined and testified as follows, upon

* * * * *

(T. 84):

CROSS EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 90):

Q. And did you read that there was five arrests on June 30th for entering the park against the segregation policy of the park? A. Yes.

* * * * *

(T. 97):

REDIRECT EXAMINATION

By Mr. Sharlitt:

Q. Are you white or negro, Mr. Schain? A. White.

* * * * *

(T. 101-102):

EXAMINATION BY THE COURT

By Judge Pugh:

* * * * *

Q. Did you walk or run? A. We walked quickly.

Q. What was your hurry? A. A policeman could be behind me.

* * * * *

(T. 104):

A. I went out because I knew there were people going out there protesting the policy of the park.

Q. And you were against that policy? A. Yes.

* * * * *

(T. 121):

WILLIAM BIRGFELD,

a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

* * * * *

(T. 123):

CROSS EXAMINATION

By Mr. Sharlitt:

* * * * *

(T. 130):

Q. Have the management of Kebar ever intervened in the operation of the restaurant, to control the choice of

your customers? A. Well, let me first answer that by a preliminary point; that is, that they are the over-all management of the park itself. Whatever they establish, we or anyone else that are out there, adhere to. * * *

* * * * *

(T. 131):

By Judge Pugh:

Q. Did you determine whether or not to serve negroes, or did the park determine that? A. The park determined that.

* * * * *

(T. 133):

THOMAS PARSONS,

a witness of lawful age, called in rebuttal for examination by the counsel for plaintiff, and having first been duly sworn, according to law, was examined and testified as follows upon,

DIRECT EXAMINATION

By Mr. McAuliffe:

Q. You are Officer Thomas Parsons, of the Montgomery County Police, stationed at Bethesda? A. That is right.

Q. Directing your attention to July 2nd, 1960, did you have occasion to be present at the Glen Echo Amusement Park in Montgomery County? A. Yes.

* * * * *

(T. 134):

Q. And thereafter what, if anything, did you observe with respect to them? A. While sitting in the cruiser, parked just north of the entrance, about ten feet, we observed a disturbance at the entrance to the park and several people running into the park. At that time my partner

and I jumped out of the car and ran into the park, thinking there was a fight in progress. At this time we saw the tail end of a line going into the restaurant in the park.

* * * * *

(T. 136):

CROSS EXAMINATION

By Mr. Sharlitt:

* * * * *

Q. What was the first indication to you that there was a disturbance? A. I heard noise and a lot of people talking and shouting, plus these people started to run toward the inside of the park.

IN THE
Court of Appeals of Maryland

SEPTEMBER TERM, 1960

No. 248

WILLIAM L. GRIFFIN, ET AL.,
Appellants,

v.

STATE OF MARYLAND,
Appellee.

AND

CORNELIA A. GREENE, ET AL.,
Appellants,

v.

STATE OF MARYLAND,
Appellee.

APPEAL FROM THE CIRCUIT COURT FOR MONTGOMERY COUNTY
(JAMES H. PUGH, Judge)

APPELLEE'S BRIEF AND APPENDIX

THOMAS B. FINAN,
Attorney General,
CLAYTON A. DIETRICH,
Assistant Attorney General,
LEONARD T. KARDY,
State's Attorney for
Montgomery County,
JAMES S. MCAULIFFE, JR.,
Assistant State's Attorney
for Montgomery County,
For Appellee.

INDEX

TABLE OF CONTENTS

	PAGE
STATEMENT OF THE CASE.....	1
QUESTIONS PRESENTED	2
STATEMENT OF FACTS.....	2
ARGUMENT:	
I. Was there legally sufficient evidence to sustain a conviction of statutory trespass under Section 577, Article 27, as to each of the Appellants?	4
II. Was the conviction of the Appellants in contravention of any constitutional or statutory rights?	8
CONCLUSION	10

TABLE OF CITATIONS

Cases

Baltimore Transit Co. v. Faulkner, 179 Md. 598.....	6
Berry v. State, 202 Md. 62.....	7
Bowser v. State, 136 Md. 342	5
Boynton v. Virginia, 364 U.S. 454.....	9
Civil Rights Cases, 109 U.S. 3.....	9
Cooper v. State, 220 Md. 183.....	8
Dennis v. Baltimore Transit Co., 189 Md. 610.....	6
Drews v. State, 224 Md. 186.....	8
Ex Parte Birmingham Realty Co., 63 So. 67.....	6
Finn v. Schreiber, 35 Fed. Supp. 638.....	8
Good Citizens Assoc. v. Board, 217 Md. 129	8
Greenfeld v. Maryland Jockey Club, 190 Md. 96.....	8

	PAGE
Griffin v. Collins, 187 Fed. Supp. 149.....	6
Holtman v. State, 219 Md. 512.....	7
International Organization Etc. v. Red Jacket C. C. & C. Co. (4th Cir.), 18 Fed. 2d 839.....	4
Kiefer v. State, 87 Md. 562.....	5
Madden v. Queens County Jockey Club (N.Y.), 72 N.E. 2d 697.....	8
Maddran v. Mullerdore, 206 Md. 291.....	4
Patapsco Loan Co. v. Hobbs, 129 Md. 9.....	4
Rager v. McCloskey (N.Y.), 111 N.E. 2d 214.....	4
Rawlings v. State, 2 Md. 201.....	5
Shelley v. Kraemer, 334 U.S. 1.....	9
Slack v. Atlantic White Tower System, Inc., 181 Fed. Supp. 124.....	8, 9
State v. Popp, 45 Md. 432.....	5
Williams v. Howard Johnson's Restaurant (4th Cir.), 268 Fed. 2d 845.....	8, 9
Wolfe v. North Carolina, 364 U.S. 177.....	9

Statutes

Annotated Code of Maryland:	
Article 27, Section 577.....	1, 2, 6
Constitution of the United States:	
Fourteenth Amendment.....	9

INDEX TO APPENDIX

Testimony (Volume 1):	
Francis J. Collins—	
Direct.....	1
Cross.....	1
Redirect.....	2

	PAGE
Abram Baker—	
Cross	3
Redirect	3
Recross	3
Kay Freeman—	
Direct	4
Cross	4
Examination by the Court	5
Testimony (Volumes 2 and 3) :	
Francis J. Collins—	
Direct	6
Cross	7
Recross	8
Examination by the Court	8
Abram Baker—	
Redirect	8
Ronyl J. Stewart—	
Direct	9
Martin A. Schain—	
Cross	9
Redirect	10
Examination by the Court	10
William Birgfeld—	
Cross	10
Thomas Parsons—	
Direct	11
Cross	12

IN THE
Court of Appeals of Maryland

SEPTEMBER TERM, 1960

No. 248

WILLIAM L. GRIFFIN, ET AL.,
Appellants,

v.

STATE OF MARYLAND,
Appellee.

AND

CORNELIA A. GREENE, ET AL.,
Appellants,

v.

STATE OF MARYLAND,
Appellee.

APPEAL FROM THE CIRCUIT COURT FOR MONTGOMERY COUNTY
(JAMES H. PUGH, Judge)

APPELLEE'S BRIEF

STATEMENT OF THE CASE

This is a consolidated appeal from judgments and sentences to pay fines entered by the Circuit Court for Montgomery County after two trials, each involving five defendants, upon warrants for statutory trespass upon private land under Section 577, Article 27, Annotated Code of Maryland (1957 Edition).

QUESTIONS PRESENTED

The Appellee accepts the substance of the questions presented by the Appellants but submits that they should be rephrased as follows:

I. Was there legally sufficient evidence to sustain a conviction of statutory trespass under Section 577, Article 27, as to each of the Appellants.

II. Was the conviction of the Appellants in contravention of any constitutional or statutory rights.

STATEMENT OF FACTS

Each of the Appellants was arrested upon a warrant issued for violation of Section 577, Article 27, Annotated Code of Maryland (1957 Edition). The warrants had been obtained by the senior officer in the guard service of Glen Echo Amusement Park who also held a commission as Deputy Sheriff of Montgomery County. The warrants charged each of the Appellants with statutory trespass on the amusement park's private property in Montgomery County.

The first five Appellants were arrested on June 30, 1960, and were tried on September 12, 1960. This is the *Griffin* case. The second five Appellants were arrested on July 2, 1960 and were tried on September 13, 1960. This is the *Greene* case. Two of the ten Appellants are members of the white race.

In the *Griffin* case the Appellants had been part of a group of about forty people who had come from Washington June 30, 1960, to the area of the amusement park for the purpose of protesting the park's known policy of racial segregation, that is, the owners and operators of the park would only admit to their premises and provide service to

white people (Apx. 4-5). The group, including the five Appellants, staged a picket line for an hour near the entrance to the amusement park displaying prepared signs and placards which protested racial segregation (Apx. 5). After surreptitiously receiving tickets for use on amusements within the park (Apx. 4, 5), the five Appellants left the picket line and entered the private property of the amusement park, placed themselves upon the carousel and refused to leave the premises when requested to do so by the park's agent (Apx. 2). After five minutes had elapsed from the time Lieutenant Collins, the park's agent, had directed the Appellants to leave the amusement park's private premises, he placed each of the five Appellants under arrest for statutory trespass (Apx. 1). The incident caused a milling crowd to become disorderly (Apx. 2, 5).

The five Appellants in the *Greene* case were a part of a follow-up group who came from Washington to the amusement park on July 2, 1960 to renew the picketing and protesting of the park's known segregation policy (Apx. 6, 10). After the second group had picketed the entrance to the park, they broke suddenly into a trot to the restaurant about one hundred and fifty feet within the amusement park premises (Apx. 7). The Appellants knew they were being pursued by the park guards and the county police (Apx. 10). The second group of Appellants entered the restaurant premises, seated themselves, and ordered refreshments. The group was promptly advised by the amusement park's agent, Lieutenant Collins, that they were unwelcome and were to leave the premises. The members of the invading group turned their back upon the amusement park's agent and ignored his request to leave (E. 38). Lieutenant Collins forthwith arrested the second five Appellants for statutory trespass (E. 39). The

incident caused a public disturbance in the area (Apx. 7, 11-12).

Under the licensing arrangement between the park and its restaurant concessionaire, the amusement park had the right to determine the persons who were entitled to patronize the restaurant (E. 69 and Apx. 9, 10-11) and the park had the right to enforce its regulations (E. 68). Representatives of the park testified that the Appellants were arrested, after they refused an order to leave the park premises, because of the Appellants' conduct in picketing the park, regardless of color (Apx. 3, 7, 8, 10).

ARGUMENT

I.

WAS THERE LEGALLY SUFFICIENT EVIDENCE TO SUSTAIN A CONVICTION OF STATUTORY TRESPASS UNDER SECTION 577, ARTICLE 27, AS TO EACH OF THE APPELLANTS?

The Trial Court properly found the Appellants had willfully entered upon the private property of the amusement park, knowing in advance that they were not welcome, and refused to leave when directed by the park's agent. Such finding of fact warranted a conviction of statutory trespass.

The Appellants had notification that the amusement park was segregated before and during the time they were picketing the premises. In addition, each of the Appellants received a personal notification from Lieutenant Collins that he or she was not welcome and was to immediately leave the premises. Any further movement upon the property or the failure to leave the property at that time would be a trespass. *Maddran v. Mullendore*, 206 Md. 291, 300; *Patapsco Loan Co. v. Hobbs*, 129 Md. 9, 15; *Rager v. McCloskey* (N.Y.) 111 N.E. 2d 214, 216 and *International Organization, Etc. v. Red Jacket C. C. & C. Co.* (4th Cir.) 18 Fed. 2d 839, 850.

The use of the word *wanton* in the editorial heading of statutory trespass is not material in determining whether wantonness is an element of the statutory crime. Compare *Bowser v. State*, 136 Md. 342, 345 and *State v. Popp*, 45 Md. 432, 437. The statutory proviso as to bona fide claims of right or ownership and as to a legislative intent to prohibit only wanton trespass are matters of defense. A proviso need not be negative by the prosecution. *Rawlings v. State*, 2 Md. 201, 211 and *Kiefer v. State*, 87 Md. 562, 566. Here the Appellants have failed to establish any plausible claim of right or ownership or circumstances to negative wantonness.

If wantonness had to be established by the prosecution, there is an abundance of evidence that the Appellants, as members of a large group, entered the State of Maryland for the sole purpose of protesting the park operator's policy of restricting their premises to white people. In disregard of such operator's known desire, the Appellants entered upon their private property and refused a request to leave, even though their conduct caused a disorderly crowd to form. The Appellants are satisfied that it is proper to publicly berate a private property owner and then to invade his premises on the assumption that they are welcome. The Appellants considered their conduct peaceful notwithstanding the fact that they are running in a crowded area with guards and police in hot pursuit. The Appellants would have the Court believe that the State is helpless to protect a private property owner from invaders who seek to arouse the emotions of such owner's invitees. The Appellants claim that such a trespass is not wanton and the owner has no other recourse than to physically eject the invaders even though this may precipitate a breach of the peace. These Appellants unsuccessfully made the same contention as to the subject matter before Judge Thomsen

in the federal court. *Griffin v. Collins*, 187 Fed. Supp. 149, 153-154.

This Court has not construed the word "wanton" in Section 577. In determining the meaning of *wanton*, as applied to exemplary damages, this Court stated:

"The word 'wanton' means characterized by extreme recklessness and utter disregard for the rights of others." *Dennis v. Baltimore Transit Co.*, 189 Md. 610, 617 and *Baltimore Transit Co. v. Faulkner*, 179 Md. 598, 602.

The Appellants' conduct would meet this higher standard of deliberateness. The Supreme Court of Alabama, in *Ex Parte Birmingham Realty Co.*, 63 So. 67, 69, noted:

"The word 'wanton', when used in a trespass complaint to characterize conduct set up by way of aggravation merely, is not governed by the same rules of pleading applied to the same word when used in negligence counts. As here used, we think it imparts no more than that the rocks were thrown on plaintiff's premises with a knowledge of the violation thereby of plaintiff's rights and of the injurious results therefrom, and there was evidence to support that charge."

The Appellants' discussion of any right to contract is immaterial here since the tickets in the *Griffin* case were admittedly obtained surreptitiously in an attempt to force an undesired contract upon the park and in the *Greene* case the Appellants knew the park would not voluntarily enter into any contract for services. Interference with the right to contract would be applicable only to a third person.

The Appellants in the *Greene* case seek to substitute their construction for the understanding of the parties as to the rights of the parties in the restaurant concession. It is clear that under the third paragraph of the restaurant license, the park could regulate the admission of patrons

(E. 69) and had the power to enforce its regulations (E. 68). This unmistakable language in the written license contract was supported by the testimony of both parties. The testimony indicates that Lieutenant Collins was designated by the parties as their enforcement agent, even though the Appellants draw a different inference.

The Appellants cite no authority for the proposition that a third person has a right to physically enter private property in order to persuade the owner that he is in error in restricting his invitees to members of the white race.

There was legally sufficient evidence to sustain the Trial Court's verdicts that the Appellants entered and remained upon private property knowing they were unwelcome and refused to leave after they had been directed. In recent years this Court has reemphasized that it will not disturb the verdict of a trial judge unless it is "clearly wrong." *Berry v. State*, 202 Md. 62, 67. The Appellant in *Holtman v. State*, 219 Md. 512, 515 was reminded by Judge Prescott:

"We have repeatedly stated that upon appeals of this nature — from the trial court sitting without a jury — it is not the duty of the members of this Court to read the record and decide whether in our judgment the appellant in a criminal prosecution has been proved guilty beyond a reasonable doubt."

In reviewing the record, the Court of Appeals does not retry a criminal case:

"The question is not whether we *might* have reached a different conclusion from that of the trial court, but whether the trial court had before it sufficient evidence upon which it could fairly be convinced beyond a reasonable doubt of the defendant's guilt of the offense charged; and the verdict of the trial court is not to be set aside on the evidence unless clearly erroneous."

Cooper v. State, 220 Md. 183, 192.

This Court observed in *Drews v. State*, 224 Md. 186, 193:

“The police, at the express direction of the manager of the Park, asked the appellants to leave and again they refused, even when told they would be arrested if they did not. Admittedly they were then deliberately trespassing.”

II.

WAS THE CONVICTION OF THE APPELLANTS IN CONTRAVENTION OF ANY CONSTITUTIONAL OR STATUTORY RIGHTS?

The Appellants had no constitutional right to enter private property contrary to the will of the owner. The owner has the right to physically eject a trespasser. An owner of property is entitled to equal protection and to due process of law in maintaining his peaceful possession.

At common law the proprietor of a place of amusement could serve whom he pleased. *Drews v. State*, 224 Md. 186, 191, 193, 194, *supra*; *Greenfeld v. Maryland Jockey Club*, 190 Md. 96, 102; *Good Citizens Assoc. v. Board*, 217 Md. 129, 131; *Finn v. Schreiber*, 35 Fed. Supp. 638, 640; and *Madden v. Queens County Jockey Club* (N.Y.) 72 N.E. 2d 697, 698.

In Maryland there is no statute which either requires or prohibits racial discrimination in business. *Slack v. Atlantic White Tower System, Inc.*, 181 Fed. Supp. 124, 127. Judge Thomsen noted:

“In the absence of statute, the rule is well established that an operator of a restaurant has the right to select the clientele he will serve, and to make such selection based on color, if he so desires” (page 128).

See also *Williams v. Howard Johnson's Restaurant* (4th Cir.) 268 Fed. 2d 845.

The Federal Government can not legislate against such discrimination. *Civil Rights Cases*, 109 U.S. 3. The United States Supreme Court recognized that the owner of private property could be arbitrary and capricious in his choice of invitees, notwithstanding the Fourteenth Amendment. In *Shelley v. Kraemer*, 334 U.S. 1, 13 it was held:

“That Amendment erects no shield against merely private conduct, however discriminatory or wrongful.”

195 The United States Supreme Court has not seen fit to whittle away the right of an owner of private property to use his own discretion in choosing business invitees. Compare *Boydton v. Virginia*, 364 U.S. 454 and *Wolfe v. North Carolina*, 364 U.S. 177. The only use of any State power in this case is the execution of a warrant obtained by a private owner in support of his right to restrain trespassers. The State has not attempted to guide or restrict this inherent right of every owner of property nor has it designated or restricted invitees. Judge Soper in *Williams v. Howard Johnson's Restaurant*, 268 Fed. 2d 845, 848, *supra*, observed:

“The customs of the people of a state do not constitute state action within the prohibition of the Fourteenth Amendment.”

This was given definitive application by Judge Thomsen:

“No doubt defendant might have had plaintiff arrested if she had made a disturbance or remained at a table too long after she had been told that she would only be sold food to carry out to her car. But that implied threat is present whenever the proprietor of a business refuses to deal with a customer for any reason, racial or other, and does not make his action state action or make his business a state agency.” *Slack v. Atlantic White Tower System, Inc.*, 181 Fed. Supp. 124, 129, *supra*.

CONCLUSION

A private property owner may arbitrarily discriminate as to invitees. The deliberate entry on private property, after picketing, with the intention of forcing the owner to alter his personal policy as to his invitees, is a wanton trespass. Entry or failure to leave private property after a demand by the owner is a violation of Section 577, Article 27. An owner of property is entitled to employ the criminal trespass statute to preserve his peaceful possession where antagonists employ invasion, rather than civil litigation, for the determination of contentions. A claim of right embraces property rights and not disputes as to an owner's use. Since the Appellants wilfully entered private property for the sole purpose of trying to force the owner to alter his mode of use, they were properly found guilty of statutory trespass. The State may not require segregation, but a private property owner is entitled to have his rights of possession protected by equal enforcement of the criminal trespass law. The conviction should be affirmed.

Respectfully submitted,

THOMAS B. FINAN,
Attorney General,

CLAYTON A. DIETRICH,
Assistant Attorney General,

LEONARD T. KARDY,
State's Attorney for
Montgomery County,

JAMES S. McAULIFFE, JR.,
Assistant State's Attorney
for Montgomery County,
For Appellee.

APPENDIX TO APPELLEE'S BRIEF NO. 248

September 12, 1960

Vol. 1

(T. 6-7):

FRANCIS J. COLLINS, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

DIRECT EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 18):

Q. During the five minute period that you testified to after you warned each of the five defendants to leave the park premises, what, if anything, did you do? A. I went to each defendant and told them that the time was up and that they were under arrest for trespassing. I then escorted them up to our office, with a crowd milling around there, to wait for transportation from the Montgomery County Police, to take them to Bethesda to swear out the warrants.

* * * * *

(T. 21):

CROSS EXAMINATION

By Mr. Duncan:

* * * * *

(T. 38-39):

Q. Lets take Mr. Washington, here on the end. Tell me the conversation you had with him at the time you arrested him and what he said to you. A. As far as I recall there was no conversation between any of us, only I told them

about the policy of the park and they answered me that they weren't going to leave the park.

* * * * *

(T. 42):

REDIRECT EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 48-49):

By Judge Pugh:

Q. Did these defendants have any other people with them? A. There was a large crowd around them from the carousel up to the office.

Mr. McAuliffe continues:

Q. And prior to the arrest, during this five minute interval that you gave them as a warning period, was there a crowd gathering at that time? A. Yes, sir.

Q. And what was the condition, or orderliness, of that crowd as it gathered there?

(Mr. Duncan) I object to that question, your Honor. Mr. Collins has testified that he arrested these persons for no other reason than that they were negroes, and gave them five minutes to get off the property.

Q. (Judge Pugh) Was there any disorder? A. It started a disorder because people started to heckling.

* * * * *

(T. 67):

ABRAM BAKER, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified, upon

* * * * *

(T. 76):

CROSS EXAMINATION

By Mr. Duncan:

* * * * *

(T. 85):

Q. What did you mean when you told Lieutenant Collins to arrest white persons who came into the park property, if they were doing something wrong?

(Mr. McAuliffe) Objection.

(Judge Pugh) Read the question back. (Last question was read by the reporter.) Objection overruled.

A. Well if they were in the picket line and then ran out into the park and we told them to leave and they refused, why shouldn't you arrest them?

* * * * *

(T. 96):

REDIRECT EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 97):

Q. Did you instruct Lieutenant Collins that he was to arrest negroes because they were negroes, or because they were trespassing? A. Because they were trespassing.

* * * * *

(T. 98):

RE-CROSS EXAMINATION

By Mr. Duncan:

Q. Did you instruct Lieutenant Collins to arrest any other persons who trespassed, other than negroes? A. I went over that once before with you. I told him if they came out of that picket line to come on to the property, to give them due notice and to arrest them if they didn't leave; white or colored.

* * * * *

(T. 110):

KAY FREEMAN,

a witness of lawful age, called for examination by counsel for the defendants, and having first been duly sworn, according to law, was examined and testified as follows, upon

DIRECT EXAMINATION

By Mr. Duncan:

* * * * *

Q. Prior to the time they were arrested, did they have tickets to ride on any of the rides? A. We all had tickets.

Q. Where did you acquire these tickets? A. They were given to us by friends.

Q. White friends? A. Yes.

Q. And they had made the purchase? A. That is right.

* * * * *

(T. 113):

CROSS EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 114-115):

Q. Did you go out with these five defendants? A. Yes.

Q. Did you go out with any others? A. Yes.

Q. How many? A. Thirty-five or forty.

Q. And you all expected to use the facilities there at Glen Echo Park, in accordance with those advertisements?
A. I expected to use them.

Q. Did you have any signs with you when you went out there? A. Yes.

Q. What did these signs say? A. They protested the segregation policy that we thought might exist out there.

* * * * *

Apx. 5

Q. Did these five defendants have signs? A. I don't know. I think we all had signs, at one time or another.

* * * * *

(T. 116):

Q. What did these five defendants do and other persons do? A. We had a picket line.

* * * * *

Q. Why did you do that if you didn't know the park was segregated? A. Because we thought it was segregated.

* * * * *

(T. 118):

Q. Now you say after you got on the park property, tickets were given you by some white friends; is that right? A. That is right.

* * * * *

(T. 120):

Q. Was there a crowd around there? A. Yes.

Q. Did you hear any heckling? A. Yes.

* * * * *

(T. 123):

Q. How long did you march in this definite circle, with these five defendants, with these signs, protesting the park's segregation policy, before the five defendants and you entered Glen Echo Park? A. I don't know.

Q. Would you give us your best estimate on that, please? A. Maybe an hour or maybe longer.

* * * * *

(T. 125):

EXAMINATION BY THE COURT

By Judge Pugh:

Q. Was the heckling a loud noise? A. Yes.

Q. How many people were in it? A. I don't know, but the merry-go-round was almost surrounded.

* * * * *

Apx. 6

(T. 126):

Q. Why didn't you go with one or two people, instead of forty? What was the idea of going out there in large numbers? A. There was a possibility that it was segregated.

Q. Well you all anticipated that there would be some trouble; didn't you? A. Yes.

* * * * *

September 13, 1960

Vols. 2 and 3

(T. 11):

FRANCIS J. COLLINS,

a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

DIRECT EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 12):

Q. Now, Lieutenant, directing your attention to the five defendants who are seated here at the counsel table, did you have occasion to see them in and about the Glen Echo Park, in or about the end of June or the first of July? A. I did.

* * * * *

Q. What, if anything, occurred then at 7:30 when you first observed these defendants on July 2nd, 1960? A. When I first observed the defendants they were marching in the picket line.

Q. What picket line was that, Lieutenant? A. Against segregation.

* * * * *

(T. 17):

CROSS EXAMINATION

By Mr. Sharlitt:

* * * * *

(T. 19):

Q. Why did you order her off the property? A. Because she had been in the picket line and she was undesirable.

* * * * *

Q. Why was she undesirable? A. Because she had been on the picket line and run through the park.

* * * * *

(T. 23):

By Judge Pugh:

Q. Did they create a commotion when they broke the picket line and came on the park property? A. Yes, sir; very much. There were children playing there and people right inside the entrance.

Q. How far did they travel from the entrance to get to the restaurant? A. 150 feet, probably.

Q. And were there people milling around in the park, through whom they ran to get to the restaurant? A. Yes, sir.

Q. How fast did they run to get to the restaurant? A. It was a fast pace, sir.

* * * * *

(T. 27):

Q. And, as best you can recall, I would like you to tell the Court the exact words you used at that time, in talking to these defendants. A. I told them that the Amusement Park was private property, and as for them being in the picket line and being on the property, they were undesirable, and I ordered them to leave immediately.

Q. Did any of them reply? A. No, sir; they immediately turned their backs on me.

* * * * *

(T. 28):

RECROSS EXAMINATION

By Mr. Sharlitt:

Q. Did Mr. Woronoff's instructions indicate that all white persons who were on that picket line, no matter what time, would be excluded from the park? Did Mr. Woronoff's instructions state that all white persons who were on that picket line; no matter at what time, would be excluded from the park? A. Yes, sir.

* * * * *

(T. 29):

EXAMINATION BY THE COURT

By Judge Pugh:

* * * * *

Q. Were they walking close together, so that patrons could not get in? A. At times they were, sir, and also blocking the bus service.

* * * * *

Q. When you told them to leave, they didn't leave, did they? A. No, sir.

* * * * *

(T. 31):

ABRAM BAKER,

a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

* * * * *

(T. 49-50):

REDIRECT EXAMINATION (Resumed)

By Mr. McAuliffe:

Q. And with respect to the restaurant and the other concession that you mentioned in Glen Echo, do the special police enforce law and order there? A. They do.

Q. And is that by agreement between you and the concessionaire? A. That is right.

* * * * *

(T. 58):

RONYL J. STEWART,

a witness of lawful age, called for examination by counsel for the defendants, and having first been duly sworn, according to law, was examined and testified as follows, upon

DIRECT EXAMINATION

By Mr. Sharlitt:

* * * * *

(T. 62):

Q. When Lieutenant Collins spoke to you, Miss Stewart, did he at any time mention specifically any other part of the park, or any specific part of the park? A. He mentioned the park as a whole. No specific part of the park.

Q. And the conversation took place in the restaurant? A. It did.

* * * * *

(T. 81):

MARTIN A. SCHAIN,

a witness of lawful age, called for examination by counsel for the defendants, and having first been duly sworn, according to law, was examined and testified as follows, upon

* * * * *

(T. 84):

CROSS EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 90):

Q. And did you read that there was five arrests on June 30th for entering the park against the segregation policy of the park? A. Yes.

* * * * *

(T. 97):

REDIRECT EXAMINATION

By Mr. Charlitt:

Q. Are you white or negro, Mr. Schain? A. White.

* * * * *

(T. 101-102):

EXAMINATION BY THE COURT

By Judge Pugh:

* * * * *

Q. Did you walk or run? A. We walked quickly.

Q. What was your hurry? A. A policeman could be behind me.

* * * * *

(T. 104):

A. I went out because I knew there were people going out there protesting the policy of the park.

Q. And you were against that policy? A. Yes.

* * * * *

(T. 121):

WILLIAM BIRGFELD,

a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

* * * * *

(T. 123):

CROSS EXAMINATION

By Mr. Charlitt:

* * * * *

(T. 130):

Q. Have the management of Kebar ever intervened in the operation of the restaurant, to control the choice of

your customers? A. Well, let me first answer that by a preliminary point; that is, that they are the over-all management of the park itself. Whatever they establish, we or anyone else that are out there, adhere to. * * *

* * * * *

(T. 131):

By Judge Pugh:

Q. Did you determine whether or not to serve negroes, or did the park determine that? A. The park determined that.

* * * * *

(T. 133):

THOMAS PARSONS,

a witness of lawful age, called in rebuttal for examination by the counsel for plaintiff, and having first been duly sworn, according to law, was examined and testified as follows upon,

DIRECT EXAMINATION

By Mr. McAuliffe:

Q. You are Officer Thomas Parsons, of the Montgomery County Police, stationed at Bethesda? A. That is right.

Q. Directing your attention to July 2nd, 1960, did you have occasion to be present at the Glen Echo Amusement Park in Montgomery County? A. Yes.

* * * * *

(T. 134):

Q. And thereafter what, if anything, did you observe with respect to them? A. While sitting in the cruiser, parked just north of the entrance, about ten feet, we observed a disturbance at the entrance to the park and several people running into the park. At that time my partner

and I jumped out of the car and ran into the park, thinking there was a fight in progress. At this time we saw the tail end of a line going into the restaurant in the park.

* * * * *

(T. 136):

CROSS EXAMINATION

By Mr. Sharlitt:

* * * * *

Q. What was the first indication to you that there was a disturbance? A. I heard noise and a lot of people talking and shouting, plus these people started to run toward the inside of the park.



1/24/65 - R4

4809

Handwritten notes:
Miss Helen
Mark us that

IN THE
CIRCUIT COURT FOR BALTIMORE COUNTY

JANUARY TERM 1960

CRIMINAL COURT
INFORMATION 20084

DALE H. DREWS, JOSEPH C. SHEEHAN,
JURETHA JOYNER, AND HELEN BROWN,

Appellants,

vs.

STATE OF MARYLAND,

Appellee.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that Dale H. Drews, Joseph C. Sheehan, Juretha Joyner and Helen W. Brown, the Appellants named above, hereby appeal to the Supreme Court of the United States from the final order of the Court of Appeals of Maryland, affirming judgments of conviction, entered on October 22, 1964. This order reinstated the prior judgments of conviction which had been affirmed by the Court of Appeals of Maryland on January 18, 1961. Those judgments had been vacated and the case remanded to the Court of Appeals of Maryland for reconsideration by the Supreme Court of the United States in Drews v. Maryland, 378 U.S. 547 (June 22, 1964).

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

4504

October 7, 1964

Joseph L. Rauh, Jr., Esq.
Rauh and Silard
1625 K Street, Northwest
Washington 6, D.C.

Dear Joe: Re: William L. Griffin, et al, v. Maryland

I have asked the Administrative Assistant, State Law Department, to forthwith contact State's Attorney Kardy with reference to the payment of court costs owing to you as a result of your well-deserved victory in the above case.

Kindest personal regards.

Sincerely,

Robert C. Murphy
Deputy Attorney General

RCM:slb

LAW OFFICES
RAUH AND SILARD
1625 K STREET, NORTHWEST
WASHINGTON 6, D. C.

October 6, 1964

JOSEPH L. RAUH, JR.
JOHN SILARD
DANIEL H. POLLITT
HARRIETT R. TAYLOR

737-7795

Robert C. Murphy, Esq.
Deputy Attorney General
State Law Department
One Charles Center
Baltimore, Maryland 21201

Re: William L. Griffin et
al. v. Maryland

Dear Bob:

Thank you very much for sending me a copy of your letter of September 2 to Mr. Kardy.

For your information, I have not heard from Mr. Kardy and am wondering if you could give him a slight jog.

Hope all goes well with you.

Best regards.

Sincerely yours,


Joseph L. Rauh, Jr.

Faint, illegible text at the top of the page.

Faint text block with a horizontal line below it.

Faint text block with a horizontal line below it.

Faint text block.

RECEIVED

OCT 7

STATE LAW DEPT.

4574

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543
September 5, 1963

Honorable Thomas B. Finan
Attorney General of Maryland
Baltimore, Maryland

RE: GRIFFIN, ET AL. v. MARYLAND, No. 6;
BARR, ET AL. v. CITY OF COLUMBIA, No. 9;
BOUIE, ET AL. v. CITY OF COLUMBIA, No. 10;
BELL, ET AL. v. MARYLAND, No. 12, and,
ROBINSON, ET AL. v. FLORIDA, No. 60,
October Term, 1963

Dear Mr. Finan:

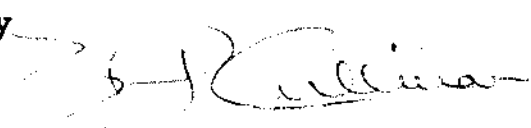
The Solicitor General has been given forty-five minutes to argue as amicus curiae following the conclusion of the argument of these cases, and the respondents have been given a similar amount of time to respond thereto.

If any of the petitioners desire to save part of the thirty minutes allotted in each case, they may do so, and argue in rebuttal at the conclusion of the argument of the respondents in response to the Solicitor General's argument.

Very truly yours,

JOHN F. DAVIS, Clerk

By


E. P. Cullinan
Chief Deputy

EPC:mlg

IN THE COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM 1960

NO. 248

WILLIAM L. GRIFFIN, et al,

Appellants

vs.

STATE OF MARYLAND,

Appellee

and

CORNELIA GREENE, et al,

Appellants

vs.

STATE OF MARYLAND,

Appellee

ARGUMENT

The evidence in these cases shows that the defendants violated the provisions of Article 27, Section 577, of the Annotated Code of Maryland, 1957 Edition as amended, and were properly convicted of the crime of wanton trespass upon private land. In particular, the evidence established that the defendants in these cases wantonly and deliberately entered upon private property known as the Glen Echo Amusement Park, in Montgomery County, Maryland, after knowledge that the owners and operators of the Glen Echo Amusement Park did not desire that these defendants enter upon or remain on their property. The evidence further established that after the defendants had entered upon the property known as the Glen Echo Amusement Park, the defendants in these cases refused to leave the private park property after having been told to leave this property by a duly authorized representative of the park's owners and managers. After having been given a reasonable length of time in which to leave the private park property, the defendants were arrested when they refused to do so. These facts disclose that a wanton

trespass in violation of Article 27, Section 577, was committed by these defendants upon the property known as the Glen Echo Amusement Park.

The appellants argue that their acts constituting trespass were not wanton. Yet, it is difficult to conceive of circumstances when an act of trespass could be more wanton. Here, the appellants had been marching in picket lines on the outside of park property as a protest to the park's policy of not admitting Negroes. Thereafter, the appellants left the picket lines and intentionally went upon the park property. No claim is made in this case that the appellants owned this property or had any legal interest in it. Under the evidence presented in these cases, it is obvious that the defendants knew that they were on the property of others and that they were not wanted on this property. When they refused to leave after being told to leave, and being given a reasonable opportunity in which to leave, their conduct in intentionally remaining on the private property of another, against the expressed wish of the owners of such property, constituted wantonness under Article 27, Section 577. Black's Law Dictionary, 4th Edition, defines "wantonness" on page 1753 as follows: "Conscious doing of some act or the omission of some duty with knowledge of existing conditions and consciousness that, from the act or omission, injury will likely result to another. *Bedwell v. DeBolt*, 221 Ind. 600, 50 N.E. 2d 875, 877. *First Nat. Bank v. Sanders*, 227 Ala. 313, 149 So. 848, 849. Conscious failure by one charged with a duty to exercise due care and diligence to prevent an injury after the discovery of the peril or under circumstances where he is charged with a knowledge of

such peril, and being conscious of the inevitable or probable results of such failure. *Stout v. Gallemore*, 138 Kan. 385, 26 P. 2d 573. A reckless or intentional disregard of the property, rights, or safety of others, implying, actively, a willingness to injure and disregard of the consequences to others, and, passively, more than mere negligence, that is, a conscious and intentional disregard of duty. *Brasington v. South Bound R. Co.*, 40 S.E. 665, 62 S.C. 325, 89 Am. St. Rep. 905; *Louisville & N. R. Co. v. Webb*, 12 So. 374, 97 Ala. 308; *Walldren Express & Van Co. v. Krug*, 291 Ill. 472, 126 N.E. 97, 98."

Under the definitions given in Black's Law Dictionary, it is apparent that the conscious, intentional acts of the appellants in these cases amounted to such wantonness as that term is used in Article 27, Section 577.

Appellants contend that the statute (Article 27, Section 577) prohibiting wanton trespass upon private land requires the giving of notice by the owner or his agent prior to the time that entry is made upon the land. This interpretation could hardly be the intention of the Legislature, as such interpretation would mean that every man would be required to patrol his property and warn all would-be trespassers prior to their entry upon the land that they must not enter. Obviously, if such an interpretation was the intent of the Legislature, then Article 27, Section 577 means nothing. In practically all cases of trespass, the first opportunity that the owner of property has, other than by posting his premises (which is covered in Article 27, Section 576), to warn would-be trespassers that he does not want them on his property occurs only after the would-be trespassers have entered upon the property of such

owner. To say that a would-be trespasser who is successful in getting upon the property of a private owner without first being specifically warned not to enter upon such property is thereafter granted immunity from prosecution for trespass so long as he remains upon the property is certainly to make a farce of the law. To deny to an owner of property the protection of the criminal law where a trespasser has entered upon his property and has refused to leave after being requested to do so is to invite the use of force by the owner of such property against the trespasser. The purpose of the law is to discourage rather than to encourage the use of force by individuals in the settlement of their disputes.

Appellants contend that they entered the Glen Echo Amusement Park under a bona fide claim of right. Yet their only claim of right is that they wished to do business with people who did not wish their business, and desired to enter and remain upon property where they knew they were not wanted. These circumstances could hardly amount to that "bona fide claim of right" which was obviously included as a provision in Article 27, Section 577 to prevent the prosecution of persons who have some color of title or fee or easement or other interest in property which is the subject of a property dispute.

II

Appellants have contended that their arrests and convictions for trespass constitute an exercise of state power to enforce racial segregation, which is prohibited by the Fourteenth Amendment to the United States Constitution. Appellants have conceded that a private owner or operator of a place of public amusement is free to choose his customers on such basis as he sees fit, including race or color, but they contend that

the owner or operator must be left to enforce this right himself, through self-help, and that such owner or operator cannot invoke the use of the criminal laws of the state in this regard. The point of law raised by the appellants in these cases was determined by the Court of Appeals of Maryland in Drews v. Maryland, No. 113, September Term, 1960, Daily Record, Feb. 28, 1961. In the Drews case, this Court stated the following:

"We turn to appellants' argument that the arrest by the County police constituted State action to enforce a policy of segregation in violation of the ban of the Equal Protection and Due Process clauses of the Fourteenth Amendment against State-imposed racial discrimination. The Supreme Court said in the racial covenant case of Shelley vs. Kraemer, 334 U.S. 1, 13, 92 L. Ed. 1161, 1180: 'The action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful.' The Park had a legal right to maintain a business policy of excluding Negroes. This was a private policy which the State neither required nor assisted by legislation or administrative practice. The arrest of appellants was not because the State desired or intended to maintain the Park as a segregated place of amusement; it was because the appellants were inciting the crowd by refusing to obey valid commands to move from a place where they had no lawful right to be. Both white and colored people acted in a disorderly manner and the State, without discrimination, arrested and prosecuted all who were so acting.

"While there can be little doubt that the Park could have used its own employees to eject appellants after they refused to leave, if it had attempted to do so there would have been real danger the crowd would explode into riotous action. As Judge Thomsen said in Griffin vs. Collins, 187 F. Supp. 149, 153, in denying a preliminary injunction and a summary judgment in a suit brought to end the segregation policy of the Glen Echo Amusement Park near Washington: 'Plaintiffs have cited no authority holding that in the ordinary case, where the proprietor of a store, restaurant, or amusement park, himself or through his own employees, notifies the Negro of the policy and orders him to leave the premises, the calling in of a peace officer to enforce the proprietor's admitted right would amount to deprivation by the state of any rights, privileges or immunities secured to the Negro by the Constitution or laws. Granted the right of the proprietor to choose his customers and to eject trespassers, it can hardly be the law, as plaintiffs contend, that the proprietor may use such force as he and his employees possess but may not call on a peace officer to enforce his rights.'

"The Supreme Court has not spoken on the point since Judge Thomsen's opinion. The issue was squarely presented for decision in Boynton vs. Virginia - U.S. - 5 L Ed. 2d 206, but the Court chose to decide the case on the basis that the conviction of a Negro for unlawfully remaining in a segregated bus terminal restaurant violated the Interstate Commerce Act, which uses broad language to forbid a carrier from discriminating against a passenger. In the absence of controlling authority to the contrary, it is our opinion that the arresting and convicting of appellants on warrants sworn out by the Park for

disorderly conduct, which resulted from the Park enforcing its private, lawful policy of segregation, did not constitute 'such action as may fairly be said to be that of the States.' It was at least one step removed from State enforcement of a policy of segregation and violated no constitutional right of appellants."

To adopt the position argued by the appellants in these cases would mean that the operator of a private amusement park could hire employees to eject Negro trespassers after they refused to leave, and in this regard such force could be used as is necessary to accomplish the ejection of the trespassers from the private property. Yet, State officers whose responsibility it is to maintain the peace and prevent violence would be required to stand on the sidelines and simply observe the use of this force involving weapons, if necessary. Further, if the trespassers resisted and themselves used force, would not the State be equally prohibited from prosecuting the trespassers for assault and battery? If a battle between the two forces resulted in a homicide, would not the State be prevented from prosecuting anyone for the homicide? On the part of the operator of the park and his agents, it could be stated that they were simply enforcing their private rights. On the part of the trespassers, it could be stated that the trespassers were not subject to prosecution because any such prosecution would simply be the enforcement by State action of the park's segregation policy. Thus, if this Court should accept the appellants' argument, the State authorities would be placed in the position of by-standers while a possible riot ensued between those persons who have differing views regarding the segregation policy of the park.

The arrests of appellants in these cases were not because the State desired or intended to maintain Glen Echo Amusement Park as a segregated place of amusement; the arrests were caused because the appellants refused to obey valid commands to move from a place where they had no lawful right to be. Both white and colored people refused to obey the valid commands to move from a place where they had no lawful right to be and the State, without discrimination, arrested and prosecuted all who were so acting.

Respectfully submitted,

James S. McAuliffe, Jr.
Assistant State's Attorney
for Montgomery County,
Maryland

Aut 23 - Dec 34

Deek v Baltimore & Ohio RR Co. 100 Md 168, 59 A 650 (1905)

Action to recover damages for personal injury. Pl claimed he was shot by Steiner, a detective & employee of RR. Lower court granted a directed verdict

On 7/1/1899 Tt had boarded a freight & rode to Cella. That evening he returned on another freight w/o authority. Near Mt Clear station Tt was ordered to leave train which he did. After he was off train he was shot. Steiner apparently shot Tt.

Lower Court permitted testimony to show that Steiner held a commission from the State as special policeman. Tt objected & moved to strike "We think it was very material that the jury should have been informed exactly how and in what capacity Steiner was acting. He had testified in chief that he was a police officer of the defendant, that he was employed and paid by it, but that was not all. He was also a State's officer and as such commissioned as a special policeman of the Baltimore & Ohio RR Company.

In reversing C/A said

But it is clearly shown by the testimony of the Plaintiff that Steiner was employed by the Defendant Co. as a police officer and detective, and it is further shown that, as such, it was his duty to protect the company's trains and property and to look after all violations of the law along its road... (and) he was authorized by the defendant not only to drive trespassers from the train, but to prevent them from violating the company's regulations.

" This brings us to the question as to whether Steiner was acting as an employee of the company or as a commissioned officer of the state when the injury was inflicted. It appears to be clear from the testimony that he was employed and paid by the defendant at the time indicated & he was then acting as policeman and detective... And whether he was acting in one capacity or the other is a question for the jury.

Reversed.

Balto & Ohio RR Co v Deek, 10 Md. 669 (1906)

On appeal after 1st trial

Followed
in
Tolchester Co
v

" By the Plaintiff's own evidence it appears that he and his companions were guilty of a criminal act, and if the testimony of the defendant's witnesses be true they were a band of reckless & desperate law breakers.

Scharnagl
105 Md 199
False imp

Steiner was a state officer, appointed by the Governor under the law, and held a commission from the State. He was also an employee of the defendant company, but whether he was acting as an employee of the company at the time of the injury was inflicted, or as a commissioned officer of the State in the exercise of the powers of his office in attempting to arrest, w/o a warrant, the men off the train who were confessedly violators of the criminal law, were questions which should have been submitted to the decision of the jury.

^{Back}
Tolchester Imp Co. v Skumieles 74 Md 313 2017 188

Pl carried on business of renting small boats, etc at Tolchester.
All feeling grew between Pl & his landlord, D.

Appellant upon application to Gov had secured appointment of
Fletcher as a special policeman for the protection of property of the
corporation & preservation of peace & good order.

Pl & Def's sup. had argument over obstruction to wharf.
Def's sup. ordered Pl arrested & Fletcher arrested.

Lower Ct held Pl resp. Reversed.
Sup. had no auth to order an arrest.

Was Co responsible for Fletcher's action.
"But ^{personally} Fletcher was a state officer, appointed by the
governor under the law & commissioned accordingly. It
is true he was appointed upon the nomination & designation
of the appellant, and by the law was to receive his compensation
from the appellant... He took the oath taken by all
other police officers. He was responsible to the state for the
proper discharge of his duty & not to the company. He was
not answerable to the company, but to the state, and could
be indicted for malfeasance as any other state officer. His
duty was the same as any other policeman & constable...
It was for the privilege of commanding, at all times, when
needed an officer with constabulary power for the protection of
their property and preserving the peace on their boats & premises, when

in their peculiar business a need for such person, clothed with such authority, so often arose, that the law required such corporations to pay his salary.

"He was undoubtedly a State officer, and whenever he attempted to enforce the criminal laws of the State, he did it in violation of his oath as a State officer and in the exercise of his common law power as such officer."

Not on Co's premises

Williams v United States 341 U.S. 97, 95 L ed 774 (1951)

Majority Douglas, J

Issue - ... whether a special police officer who in his official capacity subjects a person suspected of crime to force & violence in order to obtain a confession may be prosecuted...

Facts. Lumber Co in Miami suffered numerous thefts & hired Petitioner (a private detective) to ascertain identity of thieves. Petitioner held a "special police officer's card" issued by the City & Petitioner had taken an oath as a special police officer & qualified. Pet. had brutally beaten suspects in order to obtain confessions.

Petitioner went about "flashing his badge"

Findings. Petitioner was acting "under color of law"

"misuse of power, possessed by virtue of state law and made possible only because the wrongdoing is clothed with authority of state law, is action taken under color of 'state law'"

Investigation here conducted "under aegis of the state" because regular police officer was detailed to attend it.

349 U.S. 565 ... (citing case) We need to go no further to conclude that the lower court to whom we give deference on local law matters ... was correct in holding that petitioner was no mere interloper but had a semblance of policeman's power from Florida. "There was evidence that he acted under authority of state law."

May 5
Present 4

Of Plant guards were sworn & bonded as private policemen of the City of Cleveland & exercised "the legal powers of peace officers in their work as plant guards"

Because of "... the magnitude and other characteristics of the Otis Works, its police protection by the ordinary police of the City of Cleveland is not practical & feasible, and, as a result, for a great many years, the police protection of the Works & the enforcement of law, peace & good order therein has been delegated wholly to the plant guard force"

Held Bd acted w/ its discretion

The Board has frequently considered the status of plant guards who have been deputized as deputy sheriffs & special police. When the private employer retains the right to fix wages, hours & other working conditions of such guards, the Board's uniform conclusion has been that they are employees of the private employer and that they retain their rights under the National Labor Relations Act (Citing rulings)....

It is a common practice in this country for private watchmen to be vested with the powers of policemen, sheriffs ~~and~~ peace officers to protect the private property of their private employers. and when they are performing their police function, they are acting as public officers, and assume all the powers and liabilities attached thereto.

But it has never been assumed that such deputized guards thereby cease to be employees of the company concerned ~ that they become municipal employees for all purposes... Wages, hours, benefits and various other conditions of work normally remain subject to determination by the private employer. At least as to these matters, the deputized guards remain employees of the private employer.

Buffin v Md.

Summary of Testimony.

R 5 Callio -

Employed by National Detective Agency.

Assigned to Glen Echo Amusement Park since 4/2/60

Received his instructions from Park Manager, Mr. Wrongoff
Heads special police force at park.

On 6/30/60 was on duty in Park.

R 6 Saw the defendants on that date.

7 Came upon Glen Echo property around 8:15 P.M.

Went thru park to carousel & got on to the ride.

Went to park mgr for instructions

Instructed to arrest for trespassing if they did not get off the
property.

Went to def's - Gave them five minutes to leave property.

Told each def individually

8 Told each def that this was private property and it was the
policy of the park not to have colored people on the rides, nor
the park.

They declined to leave. They had obtained tickets

9. Waited five minutes before taking any other action.

10 Def's told him that they had obtained tickets from white person

11 After 5 minutes elapsed, I told them they were under
arrest for trespassing. Escorted them to office. Waited
for transportation for police dept to Bethesda Police Station
to swear out warrants.

R 14 Was in uniform - blue pants, white shirt, black tie & white coat
and wearing a Special Deputy Sheriff's badge.
Has been appointed "Special Deputy Sheriff of Mont. Co., State of
Maryland.

14 Cross Exam

Employed by Nat'l Detective Agency who has contract with
management of park.

Salary paid by National Detective Agency

15 No other income. No money received from park management.

Neither an officer of detective agency or park.

Had been assigned elsewhere previously.

Had never seen def's before.

Policy of park not to admit colored people.

Regues, to the best of his knowledge, had never admitted
to park.

16 Arrested def's on instructions from Mr. Wrongoff because the
policy of the park was to cater to whites only.

Others, including white persons, were on the carousel.

Whites were not arrested.

17 Policy is against regues regardless of their dress or conduct.

Showed tickets to Collins. No request of money.

Tickets were apparently purchased for the Regues.

18 Identification of def's was positive

19 If he had seen other Regues would have arrested them
after notifying them they were on private property.

25 Conduct was orderly at the time Collins spoke to def.

Defn't become disorderly.

None were intoxicated

- 25 Stated he was a police officer
- 26 All defendants were orderly
None asked to speak to management at time of arrest.
Told def to leave - Def refused.
- 27 Def said he wasn't getting off of carousel.
- 28 Got off carousel when def's were told they were under arrest.
- 30 Didn't grab the def's - they come w/o any body contact.
Reason for arrest. Would not leave the property.
- 33 Large crowd assembled.
A disorder started because people started to heckle.

E 34. Abram Baker

- 35 Proved here.
Policy of park not to allow seizures.
If they do no leave to arrest.
Instructions given to Collins.
- 36 Employs National Detective Agency to maintain law & order
Collins in charge of Nat'l Det Ag, personnel.
Have Collins' Detectors. Tell them to leave & if they refuse
resent them out.
Authorized Collins to arrest.

Cross

Written agreement between Nat'l & Park.
Park pays Nat'l by check & they take care of their men.

*

37 Pay weekly sum to Tel 'L.
Has had conversations with Collins relating to racial policies
Told Collins from the beginning

38 Spoke to Collins about policy on 6/30
Advised to arrest for trespassing if negroes refused to leave.
40 Instructed to arrest because they were negroes.

As to whites - 'if they came out of picket lines on to my
private property, I wanted them arrested'
41 Told Collins - give them sufficient time to leave then arrest.
- Had allowed negro mothers with children.

Negroes never allowed to attend Glen Echo prior to 6/30/60
42 Instructions did not state anything about dress & conduct.

43 Park advertisements in press, radio & TV.

44 Advertising doesn't mention racial policies

Addressed to public generally.

Policy established by custom.

Admit Chinese, Filipinos, Indians.

45 Only exclude negroes.

No official act.

Clearly held corp.

46 Judge Questions
Has someone at gate.

47 Re direct

On 6/30 - When newspaper people gave warning I told
him (Collins) to continue the policy. Occurred in his office
Policy of segregation - 51 yrs.

48 Told to arrest because they were trespassers

51 Did not know of arrest. Park mgr took care of that.
^{other} Officers were Grotter & wif.

Leonard Woronoff

53 Ben mgr of Glen Echo park.

* Policy of Management was to maintain park on a segregated basis

54 Security force reports to me & I am responsible for their conduct.
Discussed problem on 6/30

"I instructed St Collins to notify them that they are not welcome in the park, and we didn't want them there, and to ask them to leave, and if they refused to leave, within a reasonable length of time, they were to be arrested for trespass."

55 Cross Exam

Directs employees of Nationals as he sees fit.

XX

Two Deputy Sheriffs

motion

59 Kay Freeman

Has known def's ~~name~~ for various periods up to 5 years.

Were with def. on car ride.

Had bought tickets for rides.

60 Conduct was orderly.

61 She finally left.

Cross.

Knew of segregation policy but still wanted to use facilities

61. Went with Def's.
35-40 went.
Took signs protesting segregation policy.
Def's took signs.
63. Walked in a circle.
Had a picket line
Didn't try to enter before picket line established.
64. 5 or 6 cars come out.
All had signs
Went to use facilities
Tickets given to all.
Didn't pay for ticket
65. Collins warned of park policy.
66. Left after arrest. Took place in picket line
67. Stayed about an
68. Some heckling taking place.
69. Went in large crowd because of possibility it was
segregated.
70. Goes to Howard U.

September 30, 1963

David W. Robinson, Esq.
1213 Washington Street
P. O. Box 1942
Columbia, S.C.

Dear Mr. Robinson: Re: Griffin v. Maryland, et al.

Thank you very much for your letter of September 19, 1963, in which you volunteer to assume the burden of the State's reply to the Solicitor General's argument that the various trespass laws, as applied to the various Petitioners, are unconstitutionally vague.

It appears that the Court, in allowing 45 minutes to rebut the Solicitor General, did so on the basis that South Carolina, with two cases, would consume 15 minutes; that Maryland, with two cases, would consume 15 minutes; and that Florida, with one case, would consume the remaining time.

After discussion with Attorney General Finan, we believe that it would be more desirable, at least from our standpoint, if we, ourselves, undertake to rebut the Solicitor General's position. We believe that we will need for this purpose our full 15 minutes, as allotted to us by the Court.

Attached are copies of the State's briefs in the Griffin and Bell cases.

Looking forward to seeing you in Washington, I remain, with kind regards,

Sincerely yours,

Robert C. Murphy
Deputy Attorney General

RCM-h

Encl.

September 30, 1963

David W. Robinson, Esq.
1213 Washington Street
P. O. Box 1942
Columbia, S.C.

Dear Mr. Robinson: Re: Griffin v. Maryland, et al.

Thank you very much for your letter of September 19, 1963, in which you volunteer to assume the burden of the State's reply to the Solicitor General's argument that the various trespass laws, as applied to the various Petitioners, are unconstitutionally vague.

It appears that the Court, in allowing 45 minutes to rebut the Solicitor General, did so on the basis that South Carolina, with two cases, would consume 15 minutes; that Maryland, with two cases, would consume 15 minutes; and that Florida, with one case, would consume the remaining time.

After discussion with Attorney General Finan, we believe that it would be more desirable, at least from our standpoint, if we, ourselves, undertake to rebut the Solicitor General's position. We believe that we will need for this purpose our full 15 minutes, as allotted to us by the Court.

Attached are copies of the State's briefs in the Griffin and Bell cases.

Looking forward to seeing you in Washington, I remain, with kind regards,

Sincerely yours,

Robert C. Murphy
Deputy Attorney General

RCM-h

Encl.

LAW OFFICES OF
ROBINSON, McFADDEN & MOORE

1213 WASHINGTON STREET

P. O. BOX 1942

COLUMBIA, S. C.

TELEPHONE AL 2-6311

DAVID W. ROBINSON
J. MEANS McFADDEN
R. HOKE ROBINSON
THOMAS T. MOORE
DAVID W. ROBINSON II
JAMES F. DREHER, COUNSEL

DAVID W. ROBINSON, SR.
(1889-1939)
ALICE ROBINSON
(RET. 1956)

September 19, 1963

The Attorney General
The State of Maryland
Annapolis, Maryland

The Attorney General
The State of Florida
Tallahassee, Florida

Re: Griffin, et al v. Maryland, No. 6;
Barr, et al v. City of Columbia, No. 9;
Bouie, et al v. City of Columbia, No. 10;
Bell, et al v. Maryland, No. 12; and,
Robinson, et al v. Florida, No. 60,
October Term, 1963

Gentlemen:

From letters received from the Clerk of the United States Supreme Court of August 9 and September 3, we conclude that these cases will be argued in the order listed hereinabove unless some subsequent rearrangement is made by the Court.

We expect to present the argument for the City of Columbia in No. 9 and in No. 10.

The letter of September 5 indicates that after the argument by counsel for the litigants, the Solicitor General is to be given 45 minutes to argue as amicus on the side of the plaintiffs and that counsel for the respondents in the five cases would have 45 minutes to respond thereto. It occurred to us that perhaps some determination should be made among the lawyers for the respondents as to who will make the argument in reply to that of the Solicitor General. We have no particular desire to occupy that time if we are to present our argument fully in chief earlier. We feel, however, that a reply to the Solicitor General should be made and we would undertake it if neither of you feels a desire so to do. In any event, I think it is a matter in which we should correspond.

Our brief went to the printer today and we will furnish copies of it to each of you next week.

Sincerely yours,


David W. Robinson

September 30, 1963

Honorable John F. Davis, Clerk
Supreme Court of the United States
Washington, D.C. 20543

Dear Mr. Davis: Re: Griffin, et al. v. Maryland,
 No. 6 - Bell, et al. v.
 Maryland, No. 12, October Term,
 1963

Thank you very much for your letter of September 19, 1963, advising that the Marshal's Office will admit to the Court on October 14, 1963, those persons whom we desire to have present on that date. Following are the names of these individuals, mostly relatives of counsel arguing that day:

Mrs. Loring E. Hawes
Mr. Raymond P. Hawes
Boynton Emerson, Esq.
Jackson R. Collins, Esq.
Clayton W. Daneker, Esq.
Mrs. Robert C. Murphy
Mrs. Eva Murphy

Your kindness in this connection is much appreciated.

Sincerely yours,

Robert C. Murphy
Deputy Attorney General

RCM-h

September 30, 1963

Honorable John F. Davis, Clerk
Supreme Court of the United States
Washington, D.C. 20543

Dear Mr. Davis: Re: Griffin, et al. v. Maryland,
 No. 6 - Bell, et al. v.
 Maryland, No. 12, October Term,
 1963

Thank you very much for your letter of September 19, 1963, advising that the Marshal's Office will admit to the Court on October 14, 1963, those persons whom we desire to have present on that date. Following are the names of these individuals, mostly relatives of counsel arguing that day:

Mrs. Loring E. Hawes
Mr. Raymond P. Hawes
Boynton Emerson, Esq.
Jackson R. Collins, Esq.
Clayton W. Daneker, Esq.
Mrs. Robert C. Murphy
Mrs. Eva Murphy

Your kindness in this connection is much appreciated.

Sincerely yours,

RCM-h

Robert C. Murphy
Deputy Attorney General

- ✓ Mrs. Loring Hawes ✓
- ✓ Mrs. Raymond P. Hawes
- ✓ Mr. Brynton Emerson, Esq.
- ✓ Mr. Jackson R. Collins, Esq.
- ✓ Mr. Clayton W. Daneke, Esq.
- Mrs. Robert C. ~~W. C.~~ Murph
- Mrs. Eva Murph

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543
September 19, 1963

Miss Helen
G...
H...
M.S.

Robert C. Murphy, Esquire
Deputy Attorney General
State Law Department
One Charles Center
Baltimore, Maryland, 21201

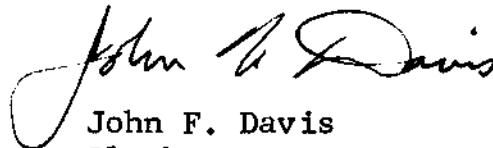
RE: GRIFFIN, ET AL. v. MARYLAND, No. 6,
BELL, ET AL. v. MARYLAND, No. 12,
October Term, 1963

Dear Mr. Murphy:

In response to your letter of September 18th addressed to Mr. Cullinan, I believe that it will be possible to make arrangements for the admittance of wives and friends of counsel for as many as you request.

If you will send me the names of those who will be present, I will give them to the Marshal's Office so that he will be able to admit them on the day of argument. The more promptly we receive the names, the better are chances of getting them all in.

Very truly yours,



John F. Davis
Clerk

JFD:mlg

LAW OFFICES
RAUH AND SILARD
1625 K STREET, NORTHWEST
WASHINGTON 6, D. C.

JOSEPH L. RAUH, JR.
JOHN SILARD
DANIEL H. POLLITT
HARRIETT R. TAYLOR

November 2, 1964

737-7795

Robert C. Murphy, Esq.
Deputy Attorney General
State Law Department
One Charles Center
Baltimore, Maryland 21201

Re: William L. Griffin
et al v. Maryland


Dear Bob:

I am sorry to have to write again, but nothing has happened concerning the costs awarded against the State of Maryland in the above-referenced case.

I know it is not your fault, but I have to turn to you as the only person who can clear up the matter.

Thanks again for your courtesy.

Sincerely yours,


Joseph L. Rauh, Jr.

11/6/64
OK
paul
Rauh

add: ,I m... ..

... ..
... ..
... ..
... ..
... ..

... ..

... ..
... ..
... ..

... ..
... ..

... ..

... ..

... ..

RECEIVED

NOV 4 1964

STATE LAW DEPT.

September 2, 1964

Leonard T. Kardy, Esq.
State's Attorney for
Montgomery County
Court House
Rockville, Maryland 20850

Re: William L. Griffin, et al. v.
Maryland

Dear Mr. Kardy:

As you know, the Supreme Court of the United States reversed the court's judgment in the above captioned case, costs being awarded against the State in the amount of \$588.94, per copy of the attached letter from the office of the Clerk of the Supreme Court. Additionally, mandate of the Court of Appeals of Maryland dated August 3, 1964, (copy attached hereto) indicates an award of costs against the State, to be paid by Montgomery County, in the amount of \$606.43. The total costs awarded against the State, therefore, by the Supreme Court and by the Court of Appeals of Maryland amount to \$1,195.37. The check covering these expenses should be made payable to Joseph L. Rauh, Jr., Esquire, 1625 K Street, Northwest, Washington 6, D. C. Mr. Rauh is, of course, counsel of record in the Griffin case.

With kindest personal regards, I am,

Sincerely,

Robert C. Murphy
Deputy Attorney General

RCM:hd

Encls.

cc: Joseph L. Rauh, Jr., Esq.

Hawes
please see
me on this
Ruh

LAW OFFICES
RAUH AND SILARD
1625 K STREET, NORTHWEST
WASHINGTON 6. D. C.

JOSEPH L. RAUH, JR.
JOHN SILARD
DANIEL H. POLLITT
HARRIETT R. TAYLOR

August 10, 1964

737-7795

Loring E. Hawes, Esq.
Assistant Attorney General
State Law Department
One Charles Center
Baltimore, Md. 21201

Re: William L. Griffin, et al. v. Maryland

Dear Mr. Hawes:

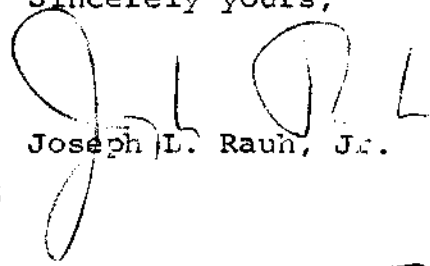
I am writing in response to your letter of August 7, 1964, in connection with the above-referred-to case.

Will you kindly pay the costs to this office and I will then consult with the other counsel on the matter.

As you may know, I spoke to Deputy Attorney General Robert C. Murphy about this some weeks ago. If you have any questions you might consult with him.

Thank you very much for your courtesy in this matter.

Sincerely yours,


Joseph L. Rauh, Jr.

cc: Joseph H. Sharlitt
Jack Greenberg

RECEIVED
AUG 11 1964
STATE LAW DEPT.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

Mont County

July 17, 1964

Honorable Thomas B. Finan
Attorney General of Maryland
1201 Maryland National Bank Bldg.
Baltimore 2, Maryland

Attention: Mr. Jos. S. Kaufman

RE: Griffin et al. v. Maryland,
No. 6, October Term, 1963

Dear Mr. Finan:

The mandate of this Court in the above-entitled case has been mailed today to the Clerk of the Court of Appeals of Maryland.

The petitioners are given recovery for costs in this Court as follows:

Clerk's costs	\$ 224.76
Printing of the record	<u>364.18</u>
Total	\$ 588.94

This amount should be paid into the Court of Appeals of Maryland or direct to opposing counsel or parties.

Very truly yours,

JOHN F. DAVIS, Clerk

By *Evelyn R. Limstrong*

(Mrs) Evelyn R. Limstrong
Assistant

RECEIVED

JUL 20 1964

STATE LAW DEPT.

Montgomery County

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C., 20543

July 17, 1964

Honorable Thomas B. Finan
Attorney General of Maryland
1201 Maryland National Bank Bldg.
Baltimore 2, Maryland

Attention: Mr. Jos. S. Kaufman

RE: Griffin et al. v. Maryland,
No. 6, October Term, 1963

Dear Mr. Finan:

The mandate of this Court in the above-entitled case has been mailed today to the Clerk of the Court of Appeals of Maryland.

The petitioners are given recovery for costs in this Court as follows:

Clerk's costs	\$ 224.76
Printing of the record	<u>364.18</u>
Total	\$ 588.94

This amount should be paid into the Court of Appeals of Maryland or direct to opposing counsel or parties.

Very truly yours,

JOHN F. DAVIS, Clerk

By *Evelyn R. Limstrong*

(Mrs) Evelyn R. Limstrong
Assistant

RECEIVED

JUL 20 1964

STATE LAW DEPT.

RECEIVED

AUG 4 1964

STATE LAW DEPT.

Mr. Griffin

MANDATE

Court of Appeals of Maryland

No. 248 , September Term, 1960

William L. Griffin,
Marvous Saunders,
Michael Proctor,
Cecil T. Washington, Jr. and
Gwendolyn Greene

v.

State of Maryland

2 Appeals in one record from the Circuit Court for Montgomery County.
 Filed: November 16, 1960.
 June 8, 1961: The judgments against the Griffin appellants are affirmed; the judgments against the Greene appellants are reversed; the Griffin appellants shall pay one-half of the costs; and Montgomery County shall pay the other one-half. Opinion by Horney, J.
 July 6, 1961: Petition to stay mandate filed.
 July 7, 1961: Amended petition to stay mandate filed and granted and mandate stayed in the appeal of Griffin appellants
 June 29, 1962: Petition for writ of certiorari to Supreme Court of United States granted (Griffin, et al).
 June 22, 1964: Opinion filed by Supreme Court reversing this Court.
 July 20, 1964: Mandate received from Supreme Court of United States.
 July 31, 1964: Order of this Court filed in conformity with mandate of Supreme Court. Judgment as to the Griffin appellants is reversed without a new trial, the costs to be paid by Montgomery County.

STATEMENT OF COSTS:

In Circuit Court:

Record	\$ 10.00	✓
Stenographer's Costs	182.15	✓

In Court of Appeals:

Filing Record on Appeal	\$ 10.00	✓
Printing Brief for Appellant	399.28	✓
Reply Brief		
Portion of Record Extract — Appellant		
Appearance Fee — Appellant	5.00	✓

Printing Brief for Appellee	67.35	}
Portion of Record Extract — Appellee		
Appearance Fee — Appellee	5.00	

NOTE: ALL costs shown on this mandate are one-half of the original amounts.

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this third day of August A. D. 19 64.

Clerk of the Court of Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE

WILLIAM L. GRIFFIN, ET AL.

v.

STATE OF MARYLAND

*

*

*

IN THE

COURT OF APPEALS

OF MARYLAND

No. 248, September Term, 1960

* *

The judgment of this Court (224 Md. 186, 167 A. 2d 341) having been reversed by the Supreme Court of the United States on the 22nd day of June, 1964 (U.S. , 84 S. Ct. 1770), the costs in that Court, amounting to \$588.94, having been awarded against the State of Maryland, it is ORDERED this 31st day of July, 1964, by the Court of Appeals of Maryland, that pursuant to the judgment of the Supreme Court of the United States reversing the aforesaid judgment of this Court, the judgment of the Circuit Court for Montgomery County against William L. Griffin, Marvous Saunders, Michael Proctor, Cecil T. Washington, Jr. and Gwendolyn Greene (designated in the opinion of this Court above cited as "the Griffin appellants") is reversed without a new trial, the costs (other than those above stated to have been awarded by the Supreme Court) to be paid by Montgomery County.

FREDERICK

Chief Judge

RECEIVED

AUG 4 1964

STATE LAW DEPT.

Mr. Murphy

MANDATE

Court of Appeals of Maryland

No. 248 , September Term, 1960

William L. Griffin,
Marvous Saunders,
Michael Proctor,
Cecil T. Washington, Jr. and
Gwendolyn Greene

v.

State of Maryland

2 Appeals in one record from the Circuit Court for Montgomery County.
 Filed: November 16, 1960.
 June 8, 1961: The judgments against the Griffin appellants are affirmed; the judgments against the Greene appellants are reversed; the Griffin appellants shall pay one-half of the costs; and Montgomery County shall pay the other one-half. Opinion by Horney, J.
 July 6, 1961: Petition to stay mandate filed.
 July 7, 1961: Amended petition to stay mandate filed and granted and mandate stayed in the appeal of Griffin appellants
 June 29, 1962: Petition for writ of certiorari to Supreme Court of United States granted (Griffin, et al).
 June 22, 1964: Opinion filed by Supreme Court reversing this Court.
 July 20, 1964: Mandate received from Supreme Court of United States.
 July 31, 1964: Order of this Court filed in conformity with mandate of Supreme Court. Judgment as to the Griffin appellants is reversed without a new trial, the costs to be paid by Montgomery County.

STATEMENT OF COSTS:

In Circuit Court:

Record	\$ 10.00 ✓
Stenographer's Costs	182.15 ✓

In Court of Appeals:

Filing Record on Appeal	\$ 10.00 ✓
Printing Brief for Appellant	399.28 ✓
Reply Brief	
Portion of Record Extract — Appellant	
Appearance Fee — Appellant	5.00 ✓
Printing Brief for Appellee	67.35
Portion of Record Extract — Appellee	
Appearance Fee — Appellee	5.00

NOTE: ALL costs shown on this mandate are one-half of the original amounts.

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this third day of August A. D. 19 64.

Clerk of the Court of Appeals of Maryland.

Costs shown on this Mandate are to be settled between counsel and NOT THROUGH THIS OFFICE

August 7, 1964

Joseph L. Rauh, Jr., Esquire
1625 K Street, N.W.
Washington 6, D. C.

Re: William L. Griffin, et al v. Maryland

Dear Mr. Rauh:

We are enclosing a copy of a letter received from the office of the Clerk of the Supreme Court of the United States relating to costs to be paid by the State of Maryland to the Petitioners in the above entitled case. This letter states that the costs should be paid to "the Court of Appeals of Maryland or direct to opposing counsel or parties". The Clerk of the Court of Appeals of Maryland has declined to accept the said payment.

The purpose of this letter is to inquire to whom the total costs should be paid. There are a number of counsel of record on the brief filed on behalf of the Petitioners. We would assume that the costs originated from your office; but, we should like to have your confirmation of this fact prior to our making payment to you. A copy of this letter is being mailed to other counsel of record; and, we would appreciate your showing that copies of your reply to us have been mailed to those lawyers.

Very truly yours,

Loring E. Hawes
Assistant Attorney General

LEH:fms
cc: Joseph H. Sharlitt
Jack Greenberg

July 16, 1964

Mr. Stephen E. Barcan
507 La Reine Avenue
Bradley Beach, New Jersey

Dear Mr. Barcan:

As our supply of briefs in the case of Griffin v. State of Maryland (Supreme Court of the United States, October Term, No. 6) is completely exhausted, we regret that we are unable to furnish you with copies of these briefs, as requested in your letter of July 12, 1964.

Sincerely yours,

RCM-h

Robert C. Murphy
Deputy Attorney General

July 12, 1964

RM
Hon. Robert C. Murphy
Attorney General's Office
Annapolis, Maryland

Dear Mr. Murphy,

We of the Rutgers Law Review are considering writing a case comment on Griffin v. State of Maryland (Supreme Court of the United States, October Term, No. 6). We would appreciate it very much if you would forward to us both your and your opponent's briefs. We will return them to you as soon as possible.

As the preliminary report on this case is due on August 3, we would appreciate it if you would send the briefs at your earliest opportunity. You will find the writer's address below.

Thank you very much.

Sincerely,

Stephen E. Garcan
Stephen E. Garcan

Address: Stephen E. Garcan
507 La Reine Avenue
Bradley Beach, New Jersey

RECEIVED

JUL 15 1964

STATE LAW DEPT.

4/504

April 1, 1964

Mr. David H. Reinke
280 West Lorain Street
Oberlin, Ohio

Dear Mr. Reinke:

I am sorry that I cannot respond favorably to your request for a copy of Maryland's briefs in the Griffin and Bell cases.

Unfortunately, we have mailed out all copies save one and no more are available.

Very truly yours,

Robert C. Murphy
Deputy Attorney General

RCM-h

2602 report
2/19/64
3 Griffin v. Bell 3.
out all 3.
are

280 West Lorain Street
Oberlin, Ohio
March 21, 1964

Mr. Thomas B. Finan
Attorney - General of the State of Maryland
Annapolis, Maryland

Dear Mr. Finan:

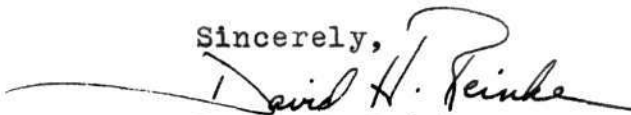
I am a senior at Oberlin College and am majoring in government. At present I am taking a seminar in constitutional law and am working on a project surrounding the concept of state action in the civil rights cases.

I am particularly interested in the pending cases of Griffin v. Maryland and Bell v. Maryland for which, I understand, you are acting as counsel for Maryland. The attempt to connect state action with the licensing system was bound to come up sooner or later, I suppose, and so I am especially eager to learn of Maryland's position in the briefs of both these cases, as well as to learn of the Court's decision.

You may be interested to know that although Oberlin College is a "liberal" school, I for one am opposed to the Court's moving in too broad steps in the civil rights cases. In particular I oppose allowing licensing to be equated with state action, because I feel this would gravely endanger personal liberty.

I would appreciate it very much if you would be kind enough to send me copies of **your** briefs in both of these cases. I realize that you are a very busy man and have more pressing concerns than answering student letters, so I hope that my request will not burden you unduly. Thank you very much for your prompt action and time spent in my behalf.

Sincerely,


David H. Reinke



JAMES W. KYNES, JR.
ATTORNEY GENERAL

STATE OF FLORIDA
OFFICE OF THE
ATTORNEY GENERAL
TALLAHASSEE

February 18, 1964

TBF

Honorable Thomas B. Finan
Attorney General
One Charles Center
Baltimore, Maryland 21201

Re: Griffin, et al. v. Maryland, etc.

Dear General Finan:

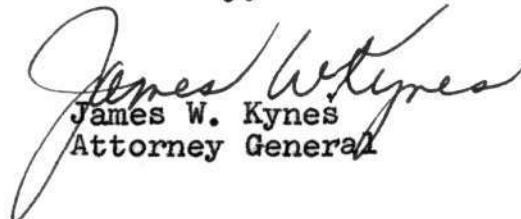
Thank you for your letter of February 10 advising that you do not plan to file a reply brief to the supplemental brief of the United States in the above cases.

You will be interested to know that former Attorney General Dick Ervin has been appointed to the Florida Supreme Court and I have been appointed by the Governor to fill the office of Attorney General of Florida.

I look forward to meeting you and assisting you in any way possible.

With best wishes, I am

Sincerely,


James W. Kynes
Attorney General

JWKreow

file

4504

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 19 63

WILLIAM L. GRIFFIN, ET AL., Petitioners)
 vs.)
 STATE OF MARYLAND)
 CHARLES F. BARR, ET AL., Petitioners)
 vs.)
 CITY OF COLUMBIA)
 SIMON BOUIE, ET AL., Petitioners)
 vs.)
 CITY OF COLUMBIA)
 ROBERT MACK BELL, ET AL., Petitioners)
 vs.)
 STATE OF MARYLAND)
 JAMES RUSSELL ROBINSON, ET AL., Appellants)
 vs.)
 STATE OF FLORIDA)

Nos 6, 9, 10, 12 and 60

Service of two / mimeographed * copies of SUPPLEMENTAL BRIEF FOR

THE UNITED STATES AS AMICUS CURIAE

is acknowledged this _____ day of January, 1964.

* Note: Printed copies will be forwarded shortly.

Mailed: January 17, 1964

Note: Please date, sign and return this acknowledgment to:
OFFICE OF THE SOLICITOR GENERAL
Department of Justice
Washington 25, D.C.

No. 6 WILLIAM L. GRIFFIN, et al. v. MARYLAND

For petitioners:

- JOSEPH L. RAUH, Jr., 1625 K Street, N.W., Washington 6, D. C.
✓ JOSEPH H. SHARLITT, LEE M. HYDEMAN and CLAUDE B. KAHN
1001 Conn. Ave., N.W., Washington 6, D. C.

For respondent:

- ✓ ROBERT C. MURPHY, Deputy Attorney General
✓ RUSSELL R. RENO, Jr., Assistant Attorney General
Suite 1200 One Charles Center, Baltimore, Maryland 21201
HONORABLE THOMAS P. FINAN, Attorney General of Maryland
Annapolis, Maryland
JOSEPH S. KAUFMAN, Deputy Attorney General
State Law Department, 10 Light Street, Baltimore 2, Maryland
LEONARD T. KARDY, States Attorney for Montgomery County,
Rockville, Maryland

No. 9 CHARLES F. BARR, et al. v. CITY OF COLUMBIA

For petitioners:

- MATTHEW PERRY, 1107 $\frac{1}{2}$ Washington Street, Columbia 1, South Carolina
CHARLES L. BLACK, Jr., 346 Willow Street, New Haven, Conn.

For respondent:

- DAVID W. ROBINSON, % ROBINSON, McFADDEN & MOORE
1213 Washington Street, P.O. Box 1942, Columbia, South Carolina
HONORABLE DANIEL R. McLEOD, Attorney General of South Carolina
Columbia, South Carolina
✓ JOHN W. SHOLENBERG^{ER}, City Attorney, City Hall, Columbia, South Carolina

No. 10 SIMON BOUIE, et al. v. CITY OF COLUMBIA

For petitioners:

- MRS. CONSTANCE B. MOTLEY, 10 Columbus Circle, New York 19, N. Y.
(MATTHEW PERRY - argued for petitioner in No. 9)

For respondent: same as counsel in No. 9

No. 12 ROBERT MACK BELL, et al. v. STATE OF MARYLAND

- JACK GREENBERG, 10 Columbus Circle, New York 19, N. Y.
JUANITA JACKSON MITCHELL, 1239 Druid Hill Ave., Baltimore 17, Maryland
TUCKER R. DEARING, 627 N. Aisquith Street, Baltimore 2, Maryland

For respondent:

- ✓ LORING E. MAWES, Assistant Attorney General,
Suite 1200 - One Charles Center, Baltimore, Maryland 21201

(Other counsel for respondent - see No. 6)

No. 60 JAMES RUSSELL ROBINSON, et al. v. FLORIDA

For appellants:

ALFRED I. HOPKINS, 1701 Meridian Avenue, Miami Beach, Florida

TOBIAS SIMON, 223 Southeast First Street, Miami 32, Florida

HOWARD W. DIXON, 415 Seybold Building, Miami 32, Florida

For appellee:

GEORGE R. GEORGIEFF, Assistant Attorney General
Capitol Building, Tallahassee, Florida

HONORABLE RICHARD W. ERVIN, Attorney General of Florida
Capitol Building, Tallahassee, Florida

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1963

WILLIAM L. GRIFFIN, et al., :
 :
 Petitioners, : No. 6
 :
 V. :
 :
 STATE OF MARYLAND, :
 :
 Respondent. :

The Clerk will please enter my appearance as counsel
for the Respondent.

/s/ Russell R. Reno, Jr.

Russell R. Reno, Jr.
Assistant Attorney General
Suite 1200, One Charles Center
Baltimore, Maryland 21201
(539-5413)

I HEREBY CERTIFY, that two copies of the foregoing Entry
of Appearance were mailed, postage prepaid, this *2nd* day of
October, 1963, to Archibald Cox, Solicitor General, Department of
Justice, Washington, D. C., 20530, Attorney for Record for amicus
curiae, and to Joseph L. Rauh, Jr., Esq., 1625 K Street, N.W.,
Washington 6, D. C., Attorney of Record for Petitioners.

/s/ Russell R. Reno, Jr.

Russell R. Reno, Jr.
Assistant Attorney General

4504

January 2, 1964

Mr. Stephen A. Hurwitz
Alpha Delta Phi
777 Stewart Ave.
Ithaca, New York

Dear Mr. Hurwitz:

In reply to your letter of December 22, 1963, we regret to advise that our supply of briefs in the matter of Griffin v. Maryland is completely exhausted, our only remaining copy being in our bound volume.

We are sorry we cannot comply with your request.

Very truly yours,

Robert C. Murphy
Deputy Attorney General

RCM-h

Integration Issue

Supreme Court Soon May Clarify the Right Of a Businessman to Choose His Customers

By WILLIAM BEECHER

WASHINGTON—Believe it or not, a group of lawyers belonging to the White Citizens Council of Mississippi has privately told Federal officials that it plans soon to seek repeal of all the state's laws requiring racial segregation.

These Southern segregationists, far from suddenly softening up, are acting out of hard-headed self-interest. Their reasoning is two-fold:

With the segregation laws on the books, Southern states and cities may find it difficult to sustain in Federal court their local-court convictions of Negro sit-in demonstrators for trespassing. Federal lawyers contend storekeepers have not been acting as free individuals but have been forced by segregation laws to refuse lunch-counter service to Negroes. And since segregation laws are often held unconstitutional, their continuing existence throws a legal shadow over the trespass convictions.

If the segregation laws were repealed, it's figured, civil rights defenders might find it hard to prosecute individual businessmen for suspected or even proved discrimination against Negroes. Private merchants traditionally have had the right of choosing their own customers. Even some ardent civil rights advocates shy from the idea of interfering with this right.

Convergence of Interest

With similar logic but opposite objectives, Government civil rights planners are aiming to get all the states and cities of the old Confederacy to abandon their segregation laws. These officials hope to enlist the segregationists' self-interest in avoiding legal attack. To help make the point clear, they're counting on favorable Supreme Court action in certain sit-in cases to be argued before the court this week.

The strange convergence of interest among integration's foes and friends is largely born of their clashing opinions of what may happen if the South's segregation laws are abandoned.

Federal civil rights planners naturally hoped there would be significant advances toward desegregation. They contend many Southern storekeepers would feel free, even economically impelled, to serve Negroes at lunch counters. Other integration might follow, it's claimed.

Southern segregationists see color lines holding firm without the laws. They insist most Dixie merchants would still resist lunch-counter integration, either out of personal conviction or for fear of alienating white customers.

When the Supreme Court listens to oral arguments starting today on trespass convictions in sit-in cases in Alabama, North Carolina and South Carolina, the Government will argue that the convictions are void because local governments involved have segregation policies and acted to enforce them. Since the Constitution long has been interpreted as forbidding any state or municipality to discriminate on account of race, the Government will say the convictions in these sit-in cases must be reversed.

'Custom' and Compulsion

Thus, even though the manager of Kress' Department Store in Durham, N.C., explained he was merely following the "customs of the community" when he refused to serve five Negro and two white sit-in demonstrators in his store, the Government contends the trespass convictions cannot stand; for from acting voluntarily, the manager was under compulsion, it's said, since Durham had an ordinance requiring separate eating facilities for whites and Negroes. The Justice Department insists that when local authorities prosecuted the demonstrators for trespass, they denied the defendants' Constitutional right to equal protection of the law.

In a similar Louisiana case, even though the state had no restaurant segregation law, it had so many other segregation statutes that its policy was no less apparent and no less coercive, the Government will tell the Court.

In this case, the convictions of three Negroes and a white person for refusing to leave a refreshment counter at McCrory's variety store in New Orleans must be overturned, Federal officials say. The Government's rationale: Since the state had a sizable array of discriminatory laws, it could not enforce segregation in a store open to the public without, in effect, transforming the act of discrimination into a public act. And that connection, it's said, makes the convictions invalid.

Whether a majority of the nine Supreme Court justices will embrace this argument is a matter of conjecture. It might be recalled, however, that in 1948 the court ruled that while private parties could agree to a restrictive covenant forbidding the resale of property to non-whites, such a discriminatory contract could not be enforced in court.

Anyway, Kennedy Administration officials

are hoping the Supreme Court will rule it unconstitutional for a state or locality to prosecute cases of this sort so long as its laws either specifically or generally compel racial discrimination.

But if the Court swallows the Government's argument whole, the effect would be to establish two geographical zones in which the law would apply differently: In the South, local authorities could not enforce trespass laws in race discrimination cases; elsewhere the states presumably would be free to do so. Only after segregation laws were erased in the South could uniform enforcement be resumed.

While the outcome is unpredictable, a half-dozen top professors of Constitutional law at leading Eastern universities, interviewed separately, all agree that on the basis of past precedent and present predictions the Court would be disposed to decide the current sit-in cases in favor of the demonstrators. If the Court does so, Federal officials contend, it may appear even to arch-segregationists in the South that such laws must be repealed.

In any case, Justice Department officials believe this kind of test is infinitely better than asking the Supreme Court, as some civil rights advocates have urged, to rule that all business establishments open to the public amount to "public utilities" in which any discrimination may be considered illegal state action.

This would cut deeply into the traditional legal concept that property owners have a clear right to decide who is welcome on their property and who will be served.

Some Government men and legal scholars, who are convinced racial barriers are morally wrong, nonetheless shudder at the implications of removing from the private entrepreneur his centuries-old right of private choice on such questions.

Freedom of Choice

Before long, one legal authority predicts, a case will come before the Supreme Court clearly testing the businessman's freedom to choose his customers; it would come from some border-state area where there are no segregation laws to cloud the issue. The Court would then have to decide whether the businessman's right to choose his customers must prevail over the Negro's right to demand nondiscriminatory service. "I think, for the first time in years, the Court will have to find against the Negroes in that case," he ventures. "But this should not be fatal to the Negro cause, as they appear to be winning the lunch-counter desegregation battle outside the courtroom anyway."

He and other civil rights supporters stress that since the sit-in demonstrations began in early 1960, hundreds of Southern lunch counters have been voluntarily desegregated by the pressure of peaceful picketing and economic boycotts. Negroes, when refused service at lunch counters in department or variety stores, have quit patronizing other counters that had been open to them.

While the Government, in arguing the sit-in cases before the Supreme Court this week, will take no definite position on the legality of private business discrimination unsupported by state or local laws, it will hint that such discrimination may be legally justifiable.

Already, in legal logic that may seem tortured to the layman, the Government has leaned toward this view. In a brief recently filed in a case involving the arrest of some Negroes who refused to leave the Glen Echo amusement park in Maryland, just outside Washington, the Justice Department suggests that had the park management simply called in local police to remove the "trespassers," there might not have been any challengeable action; the police, it's contended, would have been merely enforcing anti-trespass laws, not a segregation policy, and could have used various means other than arrest to handle the situation.

Unanswered Question

Instead, arrests were made by a park-employed guard who also wore a badge as a Montgomery County special deputy sheriff. Since the guard was on the park payroll but had local police authority, the local government ("the state," in legal jargon) was directly and illegally involved in the private firm's discriminatory policy, the Government insists.

"When the sovereign power of a state is thus combined with the landowner's normal right to decide what (persons) may enter his premises and the combined authority is thus exercised to maintain a policy of racial segregation, the state cannot disentangle itself from the discrimination," the Justice Department stated. But it left open the question of whether, in absence of the guard's local police authority, the "landowner's normal right" to choose his customers would have protected expulsion of the Negroes. That's the question which the Court soon may have to answer.

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON 25, D. C.

May 20, 1963

file
Griffin

RE: GRIFFIN, ET AL. v. MARYLAND,
No. 26, OCT. TERM, 1962

Dear Sirs:

The Court today entered the following order
in the above-entitled case:

This case is restored to the
calendar for reargument.

Very truly yours,

JOHN F. DAVIS, Clerk

By

E. T. Lydson
Assistant

Robert C. Murphy, Esq. and
Joseph S. Kaufman, Esq.
Office of the Attorney General of Maryland
1201 Maryland National Bank Bldg.
Baltimore 2, Md.

June 17, 1963

The Honorable Richard W. Ervin
Attorney General of Florida
State Capitol
Tallahassee, Florida

Dear General Ervin:

I have your letter of June 11, 1963 requesting, on behalf of Mr. Wilfred C. Varn, copies of the brief filed in the case of Griffin v. Maryland, (case # 26 of the October Term of the U.S. Supreme Court).

As you know, this case was argued originally in November, 1962 and we did not anticipate reargument in this case. For some unaccountable reason, our complete file in the case has disappeared and we, ourselves, are in a bit of a quandary over how we ourselves will get copies of the brief filed by the parties. If and when we are successful in locating our file, I shall, of course, forward you copies of the brief.

I am sorry I cannot give you a more favorable reply.

Sincerely,

Robert C. Murphy
Deputy Attorney General

RCM:fms



RICHARD W. ERVIN
ATTORNEY GENERAL

STATE OF FLORIDA
OFFICE OF THE
ATTORNEY GENERAL
TALLAHASSEE

June 11, 1963

Honorable Thomas B. Finan
Attorney General
State of Maryland
1201 Mathieson Building
Baltimore, Maryland

Dear General Finan:

Mr. Wilfred C. Varn, 200 East College Avenue, Tallahassee, Florida, is attorney for the local theaters.

He has obtained a restraining order from the Circuit Court which limits within reason picketing of local theaters by negro groups seeking desegregation of the theaters.


Mr. Varn has asked me to write to you regarding the case of William T. Griffin vs. Maryland (case #26 of the October term of the U. S. Supreme Court).

I understand Mr. Varn would like to file an amicus curiae brief in the case and for this purpose would like to obtain copies of the briefs filed in the case.

If you can accommodate Mr. Varn by loaning him copies of said briefs your assistance will be greatly appreciated.

With kindest regards, I am

Sincerely,


Richard W. Ervin
Attorney General

RWE/reow

cc: Mr. Wilfred C. Varn

June 11, 1963

Coming B. Gibbs, Esq.
Gibbs and Gibbs
The Lining House
Charleston, South Carolina

Dear Mr. Gibbs:

I have your letter of June 7, 1963, relative to the case of Griffin v. Maryland. Unfortunately, we have only one copy each of the brief and record in this case and are therefore unable to comply with your request. It may be that the Supreme Court itself would make copies available to you of these documents.

Very truly yours,

Robert C. Murphy
Deputy Attorney General

RCM:mac

GIBBS & GIBBS

ATTORNEYS AT LAW

THE LINING HOUSE

P. O. BOX 634

CHARLESTON, S. C.

COMING B. GIBBS
COMING B. GIBBS, JR.

TEL. RA 2-5571
RA 2-5572

June 7, 1963

The Honorable Thomas B. Finan
Attorney General of Maryland
Annapolis, Maryland

My dear Mr. Attorney General:

We represent a theater operator here in Charleston, South Carolina, and we are much interested in your case of Griffin v. Maryland, 225 Md. 422, 171 A 2d, 717 which, we understand, is now on appeal to the United States Supreme Court, and in which the Supreme Court recently ordered reargument.

We would appreciate your furnishing us copies of the transcript of record and the briefs used on both sides of the case in the Maryland Courts, and also of the Petition for Certiorari and of the brief opposing certiorari, filed in the United States Supreme Court.

If you do not have these available we will appreciate your advising where we might obtain the same. Of course, we will expect to take care of any expense that may be involved.

Thanking you, I am

Yours very truly,

GIBBS & GIBBS



Coming B. Gibbs

CBG:mns

Solito General:

Reversed on narrower grounds.

Narrow grounds.

Fact

1. Md delegated its police power. Park was exercising police power.

Show cause. 1. Instituted pass by police officer.

3. Park instructions were.

Agency.

When state delegates its police power, it is responsible for all its actions.

Some result constitutionally accomplished.

Some result would have necessarily

Magistrate's function.

Badge being worn by park manager.

October 24, 1962

George W. Baker, Jr., Esq.
Deputy City Solicitor
Court House
Baltimore 2, Maryland

Dear Mr. Baker:

I am enclosing a copy of the State's
brief filed in the Supreme Court of the United
States in the matter of William L. Griffin, et al.,
v. State of Maryland - No. 26 - October Term, 1962.

Very truly yours,

Joseph S. Kaufman
Deputy Attorney General

JSK-h

Encl.

Robert C. Murphy
XXXXXXXXXXXXXXXX

February 14, 1963

Mr. Robert L. Podvey
33 Washington Square West
Room 7-P
New York 11, New York

Dear Mr. Podvey:

We acknowledge receipt of your letter of February 9th, 1963, requesting a copy of our brief in the case of Griffin v. Maryland and regret that we are unable to supply you with a copy of this as we are completely out of copies of that brief.

Very truly yours,

Robert C. Murphy
Deputy Attorney General

RCM:mac

Out of range

February 9, 1963

Mr. Robert C. Murphy, Esq.
Assistant Attorney General
State of Maryland
Annapolis, Maryland

Dear Mr. Murphy,

I am a law student at New York University presently involved in the semi-final round of Moot Court Competition. The case I have been given is similar to Griffin v. Maryland, which you argued before the United States Supreme Court. I would greatly appreciate it if you could send me a copy of your brief in that case. I will return it to you at any date you specify.

Thank you very much for your trouble.

Sincerely yours,

Robert L. Podvey
ROBERT L. PODVEY

Robert L. Podvey
33 Washington Square West
Room 7-P
New York 11, N.Y.

4504

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON 25, D. C.

October 16, 1962.

RE: AVENT, ET AL. VS. NORTH CAROLINA, NO. 11
GRIFFIN, ET AL. VS. MARYLAND, NO. 26

LOMBARD, ET AL. VS. LOUISIANA, NO. 58
GOBER, ET AL. VS. CITY OF BIRMINGHAM, NO. 66
SHUTTLESWORTH, ET AL. VS. CITY OF BIRMINGHAM, NO. 67
PETERSON, ET AL. VS. CITY OF GREENVILLE, NO. 71 and
WRIGHT, ET AL. VS. GEORGIA, NO. 68

October Term, 1962

Dear Sir:

While the Court today denied the motion to remove the case of AVENT, et al. vs. North Carolina, No. 11, from the Summary Calendar, it agreed to allow a total of three additional hours for the argument of these cases. These cases will be first on call for Monday, November 5th, and counsel should be present on that day.

One hour and thirty minutes has been allotted to the petitioners and the Solicitor General, as amicus curiae. This additional time will be consumed as follows:

Mr. Greenberg an additional 25 minutes in No. 11
Mr. Rauh an additional 10 minutes in No. 26
The Solicitor General, as amicus curiae, after
the conclusion of the last case (No. 68),
55 minutes.

I assume that no other attorneys will argue for the petitioners.

The additional hour and thirty minutes allotted to the respondents may be divided as counsel desire, but it is requested that this office be advised immediately of the division of the time in these cases together with the names of the attorneys and the amount of time that

each will consume. The additional ninety minutes may be taken in one or more of the cases or following the Solicitor General's argument at the conclusion of these cases.

It is imperative that this information be furnished this office at the earliest possible date.

Very truly yours,

JOHN F. DAVIS, Clerk

By



E. P. Cullinan,
Chief Deputy Clerk.

CC: To all Counsel

Murphy

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON 25, D. C.

June 17, 1963

RE: GRIFFIN, ET AL. v. MARYLAND,
No. 26, OCT. TERM, 1962

Dear Sirs:

The Court today entered the following order
in the above-entitled case:

The motion of petitioner to remove
this case from the summary calendar is
denied.

Very truly yours,

JOHN F. DAVIS, Clerk

By

J. T. Spaldone
Assistant

Honorable Robert C. Murphy
Honorable Joseph S. Kaufman
Attorneys General of Maryland
1201 Maryland National Bank Bldg.
10 Light St.
Baltimore 2, Md.

CLASS OF SERVICE

This is a fast message unless its deferred character is indicated by the proper symbol.

WESTERN UNION

TELEGRAM

W. P. MARSHALL, PRESIDENT

SF-1201 (4-60)

SYMBOLS

DL = Day Letter

NL = Night Letter

LT = International
Letter Telegram

The filing time shown in the date line on domestic telegrams is LOCAL TIME at point of origin. Time of receipt is LOCAL TIME at point of destination

423P EDT JUN 25 62 PA563

W SNA 128 COLLECT SN WASHINGTON DC 25 343P EDT

HONORABLE THOMAS B FINAN

13 ATTORNEY GENERAL OF MARYLAND 1201 MATHIESON BUILDING BALTO
PETITION FOR CERTIORARI GRIFFIN AGAINST MARYLAND GRANTED TODAY

AND TRANSFERRED TO SUMMARY CALENDAR. LETTER FOLLOWS

JOHN F DAVIS CLERK.

1962 JUN 25 PM 4 29

E- 90787

4504

October 16, 1962

Honorable John F. Davis
Clerk of the Supreme Court
of the United States
Washington 25, D. C.

Re: William L. Griffin, et al v. Maryland
No. 26, October Term, 1962

Attention: Mr. E. P. Cullinan

Dear Sir:

Pursuant to our conversation of this day, I do hereby formally request leave of the State of Maryland to obtain an extension for the time for filing its brief in the above entitled case until Friday, October 26, 1962. This request is made because of a delay in the preparation of this brief which was caused by a circumstance beyond our control. Counsel for the Petitioners, as well as the Solicitor General, have orally consented to the extension requested.

Thanking you in advance for your favorable consideration, I remain

Very truly yours,

Joseph S. Kaufman
Deputy Attorney General

JSK
k

cc: Archibald Cox
Solicitor General of the
United States

Joseph L. Rauh, Jr., Esq.

October 29, 1962

Mr. E. P. Cullinan
Chief Deputy
Supreme Court of the United States
Washington 25, D. C.

Re: Griffin, et al. v. Maryland, No. 26

Dear Mr. Cullinan:

This will confirm your telephone conversation of today with Mr. Joseph S. Kaufman, Deputy Attorney General of Maryland, with reference to the oral argument of the State of Maryland in the above case.

It is our plan that Robert C. Murphy, Assistant Attorney General, will argue on behalf of the State's position following the Petitioner's presentation for not longer than fifteen minutes; and that Mr. Joseph S. Kaufman will argue not longer than fifteen minutes following and in rebuttal of the argument of the Solicitor General of the United States.

I trust this will be satisfactory. If not, please advise.

Very truly yours,

Robert C. Murphy
Assistant Attorney General

RCM
k

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON 25, D. C.

October 24, 1962

RE: AVENT, ET AL. v. NORTH CAROLINA, No. 11;
GRIFFIN, ET AL. v. MARYLAND, No. 26;
LOMBARD, ET AL. v. LOUISIANA, No. 58;
GOBER, ET AL. v. CITY OF BIRMINGHAM, No. 66;
SHUTTLESWORTH, ET AL. v. CITY OF BIRMINGHAM, No. 67;
PETERSON, ET AL. v. CITY OF GREENVILLE, No. 71; and
WRIGHT, ET AL. v. GEORGIA, No. 68, OCT. TERM, 1962

Dear Sir:

On October 16, you were advised that an "additional" ninety minutes had been allotted to each side of the above-mentioned cases and inquiry was made of all of the respondents as to the division of this time among counsel for the seven respondents and at what stage of the arguments such time would be consumed.

Responses to these inquiries indicated that it was not feasible for counsel to communicate with each other and to arrive at a conclusion satisfactory to all parties. Such responses indicated, however, that each respondent wished to have available a portion of such time, but none expressed the desire for more than fifteen minutes. Counsel for respondents in Nos. 66 and 67 have agreed to use a total of fifteen minutes of the extra time, thus leaving seventy-five minutes (or fifteen minutes each) for the remaining five respondents. Accordingly, counsel for respondents in Nos. 11, 26, 58, 71 and 68 will be allotted fifteen minutes of the additional time, all, or some of which, may be used during the argument of their particular case, or all, or the balance of the forty-five minutes, following the argument of the Solicitor General which will occur at the conclusion of the oral argument in No. 68.

Very truly yours,

JOHN F. DAVIS, Clerk

By



E. P. Cullinan,
Chief Deputy.

CC to all counsel

CITY OF BIRMINGHAM---DEPARTMENT OF LAW

October 23, 1962

C
O
P
Y
Honorable E. P. Cullinan
Chief Deputy Clerk
Office of the Clerk
Supreme Court of the United States
Washington 25, D. C.

Re: Gober, et al, v. City of Birmingham, No. 66
Shuttlesworth, et al, v. City of Birmingham No. 67

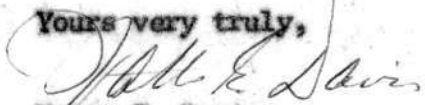
Dear Mr. Cullinan:

Please be advised that the argument on behalf of the respondent in the above cases will be presented by the undersigned Watts E. Davis.

Judging from copies of recent letters addressed to you by other counsel in other cases which will be heard on the date of the above cases, it would appear that their general wish is that they each be permitted fifteen minutes of the additional time allotted in order to reply to the Solicitor General's argument. It will likewise be satisfactory and is our desire that the City of Birmingham be permitted fifteen minutes at the conclusion of the Solicitor General's argument. Mr. J. M. Breckenridge, City Attorney, will address the court during this period.

I am advising the other attorneys involved by copy hereof of our request in this matter and trust that same will meet with their approval.

Yours very truly,


Watts E. Davis
Assistant City Attorney

WED:ngl
cc: Counsel for each respondent

WOFFORD AND SNYDER
ATTORNEYS AT LAW
SUITE 200 MASONIC TEMPLE
GREENVILLE, SOUTH CAROLINA

THOMAS A. WOFFORD
THEODORE A. SNYDER, JR.

TELEPHONE 233-8378
233-8379
POST OFFICE BOX 232

October 22, 1962

C
Honorable E. P. Cullinan
Chief Deputy Clerk
Office of the Clerk
Supreme Court of the United States
Washington 25, D. C.

Re: Peterson, et al. v. City of Greenville
No. 71
October Term, 1962

O
Dear Mr. Cullinan:

This will confirm our recent telephone conversation with reference to your letter of October 16, 1962, directed to counsel in the above entitled case and several companion cases.

P
Please be advised that the argument for the respondent, City of Greenville, will be presented by myself, Mr. Theodore A. Snyder, Jr. If for any reason I am unable to argue, the argument will be presented by Honorable Thomas A. Wofford.

Y
It appears that the City of Greenville is entitled on a proportional basis to fifteen minutes of the additional ninety minutes allocated for argument by the respondents in these several cases. We hereby request that the additional fifteen minutes to which we are entitled be held in reserve to be used following the Solicitor General's argument should we desire to reply thereto.

By carbon copy of this letter I am advising the attorneys for the respondents of each of the companion cases of this request and I trust that the same will meet with the approval of the several counsel.

Yours very truly,

Theodore A. Snyder, Jr.

THEODORE A. SNYDER, JR.

TAS, JR:MT.

CC to counsel for each respondent

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

JACK P. F. GREMILLION
ATTORNEY GENERAL

October 22, 1962

AIR MAIL

Honorable John F. Davis
Clerk
United States Supreme Court
Washington, D. C.

Attention: Mr. E. P. Cullinan, Chief
Deputy Clerk

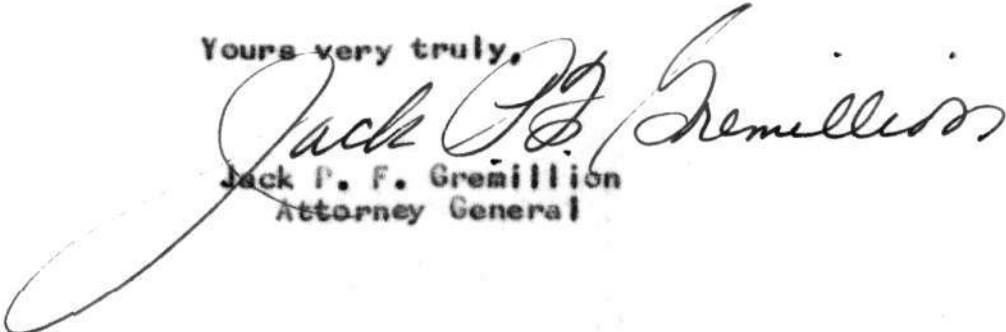
In re: Lombard, et al v. Louisiana
No. 58 Supreme Court of the
United States, October Term
1962 & Consolidated Cases

Dear Sir:

This is with reference to your letter of October 16, 1962 regarding disposition of time allotted for argument.

Be advised that the Louisiana case will be argued by the Attorney General, and it is suggested that since five states are involved along with the City of Birmingham as defendants, making a total of six defendants, that the time allotted to respondents for argument be divided in fifteen minute periods each, thus making a total of one and one-half hours. We trust that this will be satisfactory with all of the parties concerned, and if this is not acceptable, any convenient arrangement which will allow us at least fifteen minutes will be satisfactory.

Yours very truly,


Jack P. F. Gremillion
Attorney General

JPGF:eak

ccs: (See attached page).

C
O
P
Y

ccat Jack Greenberg, Esq.
10 Columbus Circle
Suite 1790
New York 19, N. Y.

L. C. Berry, Jr., Esq.
McKissick and Berry
209½ W. Main St.
Durham, N. C.

William A. Marsh, Jr., Esq.
203½ E. Chapel St.
Durham, N. C.

Joseph L. Rauh, Jr., Esq.
1631 K. St., N.W.
Washington, D. C.

Joseph H. Sharlitt, Esq.
1632 K. St., N. W.
Washington 6, D.C.

John P. Nelson, Jr., Esq.
Pille, Nelson and Limes
702 Gravier Bldg.
535 Gravier St.
New Orleans, La.

Louis E. Elie, Esq.
2211 Dryades St.
New Orleans, La.

Hon. T. W. Bruton
Atty. General of N. C.
Justice Building
Raleigh, N.C.

Hon. Thomas B. Finan
Atty. Gen. of Maryland
1201 Mathieson Bldg.
10 Light St.
Baltimore, Maryland

Arthur Shores, Esq.
1527 Fifth Ave., No.
Birmingham, Ala.

Orzell Billingsley, Jr., Esq.
1630 Fourth Ave., North
Birmingham, Ala.

John E. Jackson, Jr.
Asst. A. G. of La.
Supreme Court Bldg.
301 Loyola Ave., New Orleans, La.

Peter A. Hall, Esq.
Masonic Temple Bldg.
Birmingham, Ala.

J. Richmond Pearson, Esq.
415 N. 16th St.
Birmingham, Ala.

Matthew J. Perry, Esq.
1107½ Washington St.
Columbia 1, S.C.

Willie T. Smith, Esq.
125½ Falls St.
Greenville, S.C.

B. Clarence Mayfield, Esq.
458½ W. Broad St.
Savannah, Ga.

Watts E. Davis, Esq.
Earl McBee, Esq.
Asst. City Attys.
City of Birmingham
Dept. of Law-City Hall
Birmingham, Ala.

Thomas W. Wofford
Wofford and Snyder
200 Masonic Temple
Greenville, S.C.

W. H. Arnold, Esq.
City Atty.
Love, Thornton and Arnold
Suite 103 Lawyers Building
Greenville, S.C.

Hart F. Portee, Esq.
Asst. City Atty.
Lawyers Building
Greenville, S.C.

Hon. Eugene Cook
Atty. General of Ga.
132 Judicial Bldg.
Atlanta 3, Ga.

Andrew J. Ryan, Jr., Sol. Gen.
Eastern Judicial Circuit of Ga.
Room 305 Chatham County Courthouse
Savannah, Ga.

Jim Garrison, Esq., Dist. Atty.
Parish of Orleans
New Orleans, La.

October 23, 1962

Mr. Theodore A. Snyder, Jr.
Wofford and Snyder
Attorneys at Law
Suite 200 Masonic Temple
Greenville, South Carolina

RE: Griffin et al. v. Maryland
No. 26
October Term 1962

Dear Mr. Snyder:

Thank you very much for your letter of October 19, 1962 enclosing copy of your brief in Peterson, et al. v. City of Greenville. I am herewith attaching copy of the brief of the State of Maryland in Griffin et al. v. Maryland.

Inasmuch as we are so close here to Washington, we had not planned to arrive before the day of the argument. If you feel it desirable to have a pre-argument get together, please advise.

Sincerely yours,

Robert C. Murphy
Assistant Attorney General

RCM/eam
Encl.

WOFFORD AND SNYDER
ATTORNEYS AT LAW
SUITE 200 MASONIC TEMPLE
GREENVILLE, SOUTH CAROLINA

THOMAS A. WOFFORD
THEODORE A. SNYDER, JR.

October 19, 1962

TELEPHONE 233-8378
233-8379
POST OFFICE BOX 232

Honorable Thomas B. Finan
Attorney General of Maryland
Mathieson Building
Baltimore, Maryland

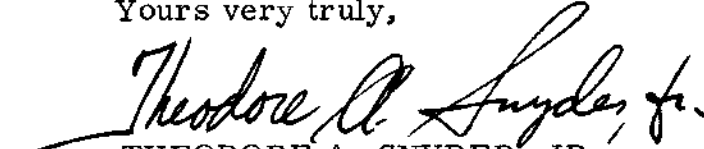
Re: Griffin et al. v. Maryland
No. 26
October Term 1962

Dear Mr. Finan:

Enclosed herewith please find a copy of the Brief in Peterson, et al. v. City of Greenville which, as you know, is a companion case to your case of Griffin et al. v. Maryland. We would appreciate it if you would favor us with a copy of your Brief.

Mr. Wofford and I plan to arrive in Washington early Sunday, November 4. We will be staying at the Mayflower Hotel. Please let us know where you will be staying.

Yours very truly,


THEODORE A. SNYDER, JR.

TAS, JR:MT.

WOFFORD AND SNYDER
ATTORNEYS AT LAW
SUITE 200 MASONIC TEMPLE
GREENVILLE, SOUTH CAROLINA

THOMAS A. WOFFORD
THEODORE A. SNYDER, JR.

TELEPHONE 233-8378
233-8379
POST OFFICE BOX 232

October 19, 1962

C
O
P
Y

Honorable John F. Davis, Clerk
Supreme Court of the United States
Washington 25, D. C.

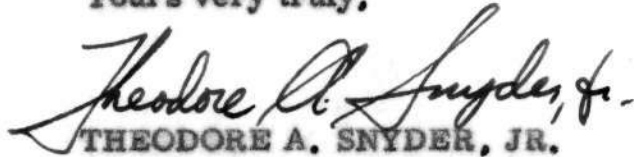
Re: Peterson, et al. v. City of Greenville
No. 7
October Term, 1962

Dear Mr. Davis:

This will acknowledge receipt of your letter of October 16 requesting information as to the division of the additional time allocated for argument in the above entitled case and its companion cases.

In view of the fact that there are seven cases involving six different sets of attorneys in six different States over a vast expanse of territory, it will be impossible for all the counsel to confer together as to the division of this additional time prior to their arrival in Washington, D. C. We will, however, make an effort to get together on the morning of Monday, November 5. We anticipate and plan to hand to you a statement showing the names of the attorneys who will argue and the division of time amongst them prior to the convening of Court on Monday, November 5.

Yours very truly,


THEODORE A. SNYDER, JR.

TAS, JR:MT.

CC to Counsel for each Respondent

September 5, 1961

Mr. R. D. McIlwaine, III
Assistant Attorney General
Commonwealth of Virginia
Richmond, Virginia

Re: Raymond B. Randolph, Jr.
v.
Commonwealth of Virginia

Dear Mr. McIlwaine:

This will acknowledge and thank you for your letter of August 14, 1961 enclosing copies of the records and brief on the above matter in the Supreme Court of Appeals of Virginia. If you have extra copies of any Petition for Certiorari and Brief in Opposition, we would appreciate a copy.

I am enclosing a copy of our Brief in Opposition in the Griffin case. We have no extra copies of the Petition For Certiorari.

Very truly yours,

Clayton A. Dietrich
Assistant Attorney General

CAD:ffz
Encl. 1

Commonwealth of Virginia



FREDERICK T. GRAY
ATTORNEY GENERAL
KENNETH C. PATTY
FIRST ASSISTANT

OFFICE OF THE ATTORNEY GENERAL
RICHMOND

D. GARDINER TYLER
FRANCIS C. LEE
ROBERT D. McILWAINE, III
RENO S. HARP, III
MANDLEY RAY JOHNSTON
MOSES HARRIS PARKER
FRANK V. EMMERSON, JR.
HAROLD V. KELLY
WILLIAM P. BAGWELL, JR.
A. R. WOODROOF
ASSISTANTS

August 14, 1961

Honorable Clayton A. Dietrich
Assistant Attorney General
State Law Department
10 Light Street
Baltimore 2, Maryland

Re: Raymond B. Randolph, Jr.
v.
Commonwealth of Virginia

Dear Mr. Dietrich:

In response to your request of August 11, 1961, I am forwarding to you a copy of the Record, Petition for Writ of Error of Appellants and Brief on Behalf of the Commonwealth in the above captioned matter, which was decided by the Supreme Court of Appeals of Virginia on April 24, 1961.

It would indeed appear that there is a similarity of interest between Virginia and Maryland with respect to this case and the cases of Drews v. Maryland (No. 71) and Griffin v. Maryland (No. 287). If you have available additional copies of the briefs and records in the latter cases, we would appreciate your forwarding them to us.

Thanking you for your consideration in this matter, I am

Very truly yours,

R. D. McIlwaine, III
Assistant Attorney General

RDM:MVH
Enc.

July 26, 1962

Honorable Eugene Cook
Attorney General of Georgia
State Judicial Building
Atlanta 3, Georgia

Dear General Cook:

Thank you for your letter of July 25, 1962 in reference to the "Sit-In" cases to be argued before the Supreme Court in the October 1962 Term.

I will personally be attending the Attorneys General Conference in White Sulphur Springs and would be most interested to discuss this case with you and other interested counsel at that time.

Looking forward to seeing you at the Conference, I remain

Sincerely,

Thomas B. Finan
Attorney General

TBF:jh



The Department of Law
State of Georgia
Atlanta

EUGENE COOK
THE ATTORNEY GENERAL

July 25, 1962

Honorable T. W. Bruton
Honorable Thomas B. Finan
Honorable Jack P. F. Gremillion
Honorable Daniel R. McLeod
Honorable MacDonald Gallion
Honorable Watts E. Davis
Honorable Earl McBee
Honorable W. H. Arnold

Gentlemen:

Each of you has a vital interest in the argument and outcome of the seven cases transferred to the Summary Calendar to be argued before the Supreme Court in the October 1962 Term. These cases are:

85	Avent, et al v. North Carolina
287	Griffin, et al v. Maryland
638	Lombard, et al v. Louisiana
694	Gober, et al v. City of Birmingham
721	Shuttlesworth, et al v. City of Birmingham
750	Peterson, et al v. City of Greenville
729	Wright, et al v. Georgia

I would suggest that inasmuch as some of you plan to attend the Attorneys General Conference at White Sulphur Springs that you consider the possibility of a conference with the defense counsel in each of these cases in the afternoon of August 3, in that the program would seem to permit a meeting at this time.

If this meets with your approval, please so indicate and efforts will be made to make the arrangements for facilities for the meeting and also notify other counsel concerned so that we might have a full discussion of these cases.

Very truly yours,

Eugene Cook
EUGENE COOK
The Attorney General

EC:et

cc: Honorable T. W. Bruton
Attorney General of North Carolina
Justice Building
Raleigh, North Carolina

Honorable Thomas B. Finan
Attorney General of Maryland
1201 Mathieson Building
10 Light Street
Baltimore 2, Maryland

Honorable Jack P. F. Gremillion
Attorney General of Louisiana
State Capitol
Baton Rouge, Louisiana

Honorable Daniel R. McLeod
Attorney General of South Carolina
Hampton Office Building
Columbia, South Carolina

Honorable MacDonald Gallion
Attorney General of Alabama
State Capitol
Montgomery, Alabama

Honorable Watts E. Davis
Honorable Earl McBee
Assistant City Attorneys
City of Birmingham
City Hall
Birmingham, Alabama

Honorable W. H. Arnold
City Attorney of Greenville
Suite 103, Lawyers Bldg.
Greenville, South Carolina

IN THE COURT OF APPEALS OF MARYLAND

#4504

No. 248

September Term, 1960

WILLIAM L. GRIFFIN, et al

v.

STATE OF MARYLAND

Henderson
Hammond
Prescott
Horney
Marbury,
JJ.

Opinion by Horney, J.

Filed: June 8, 1961

This is a consolidated appeal from ten judgments and sentences to pay fines of one hundred dollars each, entered by the Circuit Court for Montgomery County after separate trials, each involving five defendants, on warrants issued for wanton trespass upon private property in violation of Code (1957), Art. 27, § 577.

The first group of defendants, William L. Griffin, Marvous Saunders, Michael Proctor, Cecil T. Washington, Jr., and Gwendolyn Greene (hereinafter called the "the Griffin appellants" or "the Griffins"), all of whom are Negroes, were arrested and charged with criminal trespass on June 30, 1960, on property owned by Rekab, Inc., and operated by Kebar, Inc., as the Glen Echo Amusement Park (Glen Echo or park). The second group of defendants, Cornelia A. Greene, Helene D. Wilson, Martin A. Schain, Ronyl J. Stewart and Janet A. Lewis (hereinafter called "the Greene appellants" or "the Greenes"), two of whom are Caucasians, were arrested on July 2, 1960, also in Glen Echo, and were also charged with criminal trespass.

The Griffins were a part of a group of thirty-five to forty young colored students who gathered at the entrance to Glen Echo to protest "the segregation policy that we thought might exist out there." The students were equipped with signs indicating their disapproval of the admission policy of the park operator, and a picket line was formed to further implement

the protest. After about an hour of picketing, the five Griffins left the larger group, entered the park and crossed over it to the carrousel. These appellants had tickets (previously purchased for them by a white person) which the park attendant refused to honor. At the time of this incident, Rekab and Kebar had a "protection" contract with the National Detective Agency (agency), one of whose employees, Lt. Francis J. Collins (park officer), who is also a special deputy sheriff for Montgomery County, told the Griffins that they were not welcome in the park and asked them to leave. They refused, and after an interval during which the park officer conferred with Leonard Woronoff (park manager), the appellants were advised by the park officer that they were under arrest. They were taken to an office on the park grounds and then to Bethesda, where the trespass warrants were sworn out. At the time the arrests were made, the park officer had on the uniform of the agency, and he testified that he arrested the appellants under the established policy of Kebar of not allowing Negroes in the park. There was no testimony to indicate that any of the Griffins were disorderly in any manner, and it seems to be conceded that the park officer gave them ample time to heed the warning to leave the park had they wanted to do so.

The Greene appellants entered the park three days after the first incident and crossed over it and into a restaurant

operated by the B & B Industrial Catering Service, Inc., under an agreement between Kebar and B & B. These appellants asked for service at the counter, were refused, and were advised by the park officer that they were not welcome and were ordered to leave. They refused to comply by turning their backs on him and he placed them under arrest for trespassing. Abram Baker (president of both Rekab and Kebar) testified that it was the policy of the park owner and operator to exclude Negroes and that the park officer had been instructed to ask Negro customers to leave, and that if they did not, the officer had orders to arrest them. There was no evidence to show that the operator of the restaurant had told the Greeses they were not welcome or to leave; nor was there any evidence that the park officer was an agent of the restaurant operator. And while a prior formal agreement¹ covering the 1957 and 1958 seasons had provided that the restaurant operator was subject to and should comply with the rules and regulations concerning the persons to be admitted to the park and that Kebar had reserved the right to enforce them, the letter confirming the agreement for the 1959 and 1960 seasons fixed the rentals for

1. The document was called an "agreement"; the operator of the restaurant was referred to therein as a "concessionaire" and was described in the agreement as a "licensee" and not a "lessee"; yet the agreement called for the payment of rent (payable bi-annually) as well as a portion of the gross receipts and a part of the county licensing fees and certain other items of expense.

that period and alluded to other matters, but made no reference whatsoever, either directly or indirectly, to the prior formal agreement -- though there was testimony, admitted over objection, to the effect that the letter was intended as a renewal of the prior lease -- and was silent as to a reservation by Kebar of the right to police the restaurant premises during the 1959 and 1960 seasons.

On this set of facts, both groups of appellants make the same contentions on this appeal: (i) that the requirements for conviction under Art. 27, § 577, were not met; and (ii) that the arrest and conviction of the appellants constituted an exercise of the power of the State of Maryland in enforcing a policy of racial segregation in violation of the Fourteenth Amendment to the Constitution of the United States.

Trespass to private property is not a crime at common law unless it is accompanied by, or tends to create, a breach of the peace. See Krauss v. State, 216 Md. 369, 140 A. 2d 653 (1958), and the authorities therein cited. And it was not until the enactment of § 21A of Art. 27 (as a part of the Code of 1888) by Chapter 66 of the Acts of 1900 that a "wilful trespass" (see House Journal for 1900, p. 322) upon private property was made a misdemeanor. That statute, which has remained unchanged in phraseology since it was originally enacted, is now § 577 of Art 27 (in the Code of 1957), entitled "wanton trespass upon^{private} land," and reads in pertinent part:

"Any person *** who shall enter upon or cross over the land, premises or private property of any person *** after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor ***; provided [however] that nothing in this section shall be construed to include *** the entry or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership ***, it being the intention of this section only to prohibit any wanton trespass upon the private land of others."

The Case Against The Griffin Appellants

(1)

The claim that the requirements for conviction were not met is threefold: (a) that due notice not to enter upon or cross over the land in question was not given to the appellants by the owner or its agent; (b) that the action of the appellants in doing what they did was not wanton within the meaning of the statute; and (c) that what the appellants did was done under a bona fide claim of right.

There was due notice so far as the Griffins were concerned. Since there was evidence that these appellants had gathered at the entrance of Glen Echo to protest the segregation policy they thought existed there, it would not be unreasonable to infer that they had received actual notice not to trespass on the park premises even though it had not been given by the operator of the park or its agent. But, even if we assume that the Griffins had not previously had the notice contemplated by the statute which was required to make their entry and crossing

unlawful, the record is clear that after they had seated themselves on the carrousel, these appellants were not only told they were unwelcome, but were then and there clearly notified by the agent of the operator of the park to leave and deliberately chose to stay. That notice was due notice to these appellants to depart from the park premises forthwith, and their refusal to do so when requested constituted an unlawful trespass under the statute. Having been duly notified to leave, these appellants had no right to remain on the premises and their refusal to withdraw was a clear violation of the statute under the circumstances even though the original entry and crossing over the premises had not been unlawful. State v. Fox, 118 S.E.2d 58 (N.C. 1961). Cf. Commonwealth v. Richardson, 48 N.E.2d 678 (Mass. 1943). Words such as "enter upon" or "cross over" as used in § 577, supra, have been held to be synonymous with the word "trespass." See State v. Avent, 118 S.E.2d 47 (N.C. 1961).

The trespass was wanton within the meaning of the statute. Since the evidence supports a reasonable inference that the Griffins entered the park premises and crossed over it well knowing that they were violating the property rights of another, their conduct in so doing was clearly wanton. Although there are almost as many legal definitions of the word "wanton" as there are appellate courts, we think the Maryland definition, which is in line with the general definition of the word in other jurisdictions, is as good as any. In

Dennis v. Baltimore Transit Co., 189 Md. 610, 56 A.2d 813 (1948), as well as in Baltimore Transit Co. v. Faulkner, 179 Md. 598, 20 A.2d 485 (1941), it was said that the word "wanton" means "characterized by extreme recklessness and utter disregard for the rights of others." We see no reason why the refusal of these appellants to leave the premises after having been requested to do so was not wanton in that their conduct was in "utter disregard of the rights of others." Even though their remaining may have been no more than an aggravating incident, it was nevertheless wanton within the meaning of this criminal trespass statute. See Ex Parte Birmingham Realty Co., 63 So. 67 (Ala. 1913).

Since it was admitted that the carrousel tickets were obtained surreptitiously in an attempt to "integrate" the amusement park, we think the claim that these appellants had taken seats on the carrousel under a bona fide claim of right is without merit. While the statute specifically excludes the "entry upon or crossing over" privately owned property by a person having a license or permission to do so, these appellants do not come within the statutory exception. In a case such as this where the operator of the amusement park -- who had a right to contract only with those persons it chose to deal with -- had not knowingly sold carrousel tickets to these appellants, it is apparent that they had no bona fide claim of right to a ride thereon, and, absent a valid right, the refusal to accept

the tickets was not a violation of any legal right of these appellants.

(11)

We come now to the consideration of the second contention of the Griffin appellants that their arrest and conviction constituted an unconstitutional exercise of state power to enforce racial segregation. We do not agree. It is true, of course, that the park officer -- in addition to being an employee of the detective agency then under contract to protect and enforce, among other things, the lawful racial segregation policy of the operator of the amusement park -- was also a special deputy sheriff, but that dual capacity did not alter his status as an agent or employee of the operator of the park. As a special deputy sheriff, though he was appointed by the county sheriff on the application of the operator of the park "for duty in connection with the property" of such operator, he was paid wholly by the person on whose account the appointment was made and his power and authority as a special deputy was limited to the area of the amusement park. See Montgomery County Code (1955), § 2-91. As we see it, our decision in Drews v. State, 224 Md. 186, 167 A.2d 341 (1961), is controlling here. The appellants in that case -- in the course of participating in a protest against the racial segregation policy of the owner of an amusement park -- were arrested for disorderly conduct committed in the presence of regular Baltimore County police who had been called to eject them from the park. Under similar

circumstances, the appellants in this case -- in the progress of an invasion of another amusement park as a protest against the lawful segregation policy of the operator of the park -- were arrested for criminal trespass committed in the presence of a special deputy sheriff of Montgomery County (who was also the agent of the park operator) after they had been duly notified to leave but refused to do so. It follows -- since the offense for which these appellants were arrested was a misdemeanor committed in the presence of the park officer who had a right to arrest them, either in his private capacity as an agent or employee of the operator of the park or in his limited capacity as a special deputy sheriff in the amusement park (see Kauffman, The Law of Arrest in Maryland, 5 Md.L.Rev. 125, 149) -- the arrest of these appellants for a criminal trespass in this manner was no more than if a regular police officer had been called upon to make the arrest for a crime committed in his presence, as was done in the Drews case. As we see it, the arrest and conviction of these appellants for a criminal trespass as a result of the enforcement by the operator of the park of its lawful policy of segregation, did not constitute such action as may fairly be said to be that of the State. The action in this case, as in Drews, was also "one step removed from State enforcement of a policy of segregation and violated no constitutional right of appellants."

The judgments as to the Griffin appellants will be affirmed.

The Case Against The Greene Appellants

There is not enough in the record to show that the Greenes were duly notified to leave the restaurant by the only persons who were authorized by the statute to give notice. The record discloses that these appellants entered the park and crossed over it into the restaurant on the premises, but there was no evidence that the operator or lessee of the restaurant or an agent of his either advised these appellants that they were unwelcome or warned them to leave. There was evidence that the park officer had ordered these appellants to leave, but it is not shown that he was authorized to do so by the lessee, and a new/^{written}~~XXXXXXXXXX~~ agreement for the 1959 and 1960 seasons having been substituted for the former agreement covering the 1957 and 1958 seasons, the state of the record is such that it is not clear that the lessor had reserved the right to continue policing the leased premises as had been the case during the 1957-1958 period. Under these circumstances, it appears that the notice given by the park officer was ineffective. There is little doubt that these appellants must have known of the racial segregation policy of the operator of the park and that they were not welcome anywhere therein, but where notice for a definite purpose is required, as was the case here, knowledge is not an acceptable notice where the required notification is incident to the infliction of a criminal penalty. 1 Merrill, Notice, § 509. See also Woodruff v. State, 54 So. 240 (Ala.

1911), where it was held (at p. 240) that "[i]n order to constitute the offense of trespass after warning, it is necessary to show that the warning was given by the person in possession or his duly authorized agent." And see Payne v. State, 12 S.W.2d 528 (Tenn. 1928), [a court cannot convict a person of a crime upon notice different from that expressly provided in the statute]. Since the notice to the Greene appellants was inadequate they should not have been convicted of trespassing on private property, and the judgments as to them must be reversed.

THE JUDGMENTS AGAINST THE GRIFFIN
APPELLANTS ARE AFFIRMED; THE
JUDGMENTS AGAINST THE GREENE
APPELLANTS ARE REVERSED; THE
GRIFFIN APPELLANTS SHALL PAY
ONE-HALF OF THE COSTS; AND
MONTGOMERY COUNTY SHALL PAY THE
OTHER ONE-HALF.

4504

April 12, 1961

Mr. James Lloyd Young, Clerk,
Court of Appeals,
Court of Appeals Building,
Annapolis, Maryland.

Dear Mr. Young:

Enclosed herewith please find certification signed by the Clerk of the Circuit Court for Montgomery County, Maryland, together with photo copies of State's Exhibits 8A and 8B, which were admitted in evidence during the trial in the Circuit Court for Montgomery County, Maryland, of the case which now appears as William L. Griffin, et al, vs. State of Maryland, and Cornelia Green, et al, vs. State of Maryland, in the Court of Appeals of Maryland, No. 248 September Term, 1960.

You will please find the certification and the photo copies with the record in the aforesaid case No. 248.

Very truly yours,

(S) James S. McAuliffe

James S. McAuliffe, Jr.,
Assistant State's Attorney

JSM:MDW

cc-Assistant Atty. General
1201 Mathieson Bldg.
Baltimore 2, Md.

Claude B. Kahn, Esq.,
c/o Charlotte, Hydeman and Berman,
919 - 18th St. N.W.

MANDATE

Court of Appeals of Maryland

No. 248 , September Term, 19 60

Cornelia A. Greene,
Helene D. Wilson,
Martin A. Schain,
Ronyl J. Stewart and
Janet A. Lewis

v.

State of Maryland

2 Appeals in One Record from the Circuit Court for Montgomery County.
Filed: November 16, 1960.
June 8, 1961: The judgments against the Griffin appellants are affirmed; the judgments against the Greene appellants are reversed; the Griffin appellants shall pay one-half of the costs; and Montgomery County shall pay the other one-half. Op. Horney, J.
July 6, 1961: Petition to stay mandate filed.
July 7, 1961: Amended petition to stay mandate filed and granted and mandate stayed in the appeal of Griffin appellants.

STATEMENT OF COSTS:

All costs shown on this mandate are one-half of the original amounts.

Record	\$ 10.00
Steno. costs	182.15
Filing Record on Appeal	\$ 10.00
Printing Brief for Appellant	399.28
Reply Brief	
Portion of Record Extract — Appellant	
Appearance Fee — Appellant	5.00
Printing Brief for Appellee	67.35
Portion of Record Extract — Appellee	
Appearance Fee — Appellee	5.00

STATE OF MARYLAND, Sct:

I do hereby certify that the foregoing is truly taken from the record and proceedings of the said Court of Appeals.

In testimony whereof, I have hereunto set my hand as Clerk and affixed the seal of the Court of Appeals, this **twelfth** day of **July** A. D. 19 61.

Clerk of the Court of Appeals of Maryland.

September 6, 1961

Joseph H. Charlitt, Esq.
Lee M. Hydeman, Esq.
Claude B. Kahn, Esq.
1632 K Street, N. W.
Washington 6, D. C.

Re: Griffin vs. Maryland

Dear Sirs:

I am enclosing a copy of the Respondent's Brief in
Opposition in the above entitled matter.

Very truly yours,

Clayton A. Dietrich
Assistant Attorney General

CAD:ffz
Encl. 1

September 6, 1961

Thurgood Marshall, Esq.
Jack Greenberg, Esq.
James M. Nabrit, III, Esq.
10 Columbus Circle
New York 19, New York

Re: Griffin vs. Maryland

Dear Sirs:

I am enclosing a copy of the Respondent's Brief in
Opposition in the above entitled matter.

Very truly yours,

Clayton A. Dietrich
Assistant Attorney General

CAD:ffz
Encl. 1

August 11, 1961

Hon. Frederick Gray
Attorney General of Virginia
Supreme Court Building
Richmond 19, Virginia

Dear General Gray:

Two petitions for certiorari against the State of Maryland are pending in the Supreme Court of the United States. The first case, Drews v. Maryland (No. 71), involves a conviction of disturbing the peace against persons invading a segregated private amusement park. The second case, Griffin v. Maryland (No. 287), involves a conviction of trespass against persons who invaded a private amusement park.

In the petitions for certiorari, Randolph v. Virginia (No. 248) is noted. Apparently there is a community of interest between Virginia and Maryland in this matter. It would be to our mutual benefit to be aware of each other's position.

We should appreciate your sending us a copy of both briefs and any printed appendices in the Randolph case.

Sincerely,

Clayton A. Dietrich
Assistant Attorney General

CAD:k

August 11, 1961

Hon. Jack P. F. Gremillion
Attorney General of Louisiana
State Capitol
Baton Rouge, Louisiana

Dear General Gremillion:

Two petitions for certiorari against the State of Maryland are pending in the Supreme Court of the United States. The first case, Drews v. Maryland (No. 71), involves a conviction of disturbing the peace against persons invading a segregated private amusement park. The second case, Griffin v. Maryland (No. 287), involves a conviction of trespass against persons who invaded a private amusement park.

In the petitions for certiorari, the cases of Garner v. Louisiana (No. 26), Briscoe v. Louisiana (No. 27) and Hoston v. Louisiana (No. 28) were noted. Apparently there is a community of interest between Louisiana and Maryland in this matter. It would be to our mutual benefit to be aware of each other's position.

We should appreciate your sending us a copy of both briefs and any printed appendices in the above cited cases.

Sincerely,

Clayton A. Dietrich
Assistant Attorney General

CAD:k

August 11, 1961

Hon. T. Wade Bruton
Attorney General of North Carolina
Department of Justice Building
Raleigh, North Carolina

Dear General Bruton:

Two petitions for certiorari against the State of Maryland are pending in the Supreme Court of the United States. The first case, Drews v. Maryland (No. 71), involves a conviction of disturbing the peace against persons invading a segregated private amusement park. The second case, Griffin v. Maryland (No. 287), involves a conviction of trespass against persons who invaded a private amusement park.

In the petitions for certiorari, Avent v. North Carolina (No. 85) is noted. Apparently there is a community of interest between North Carolina and Maryland in this matter. It would be to our mutual benefit to be aware of each other's position.

We should appreciate your sending us a copy of both briefs and any printed appendices in the Avent case.

Sincerely,

Clayton A. Dietrich
Assistant Attorney General

CAD:k

September 5, 1961

Mr. Harry J. Kron, Jr.
Assistant Attorney General
Department of Justice
Baton Rouge, Louisiana

Re: Garner v. Louisiana, No. 26
Briscoe v. Louisiana, No. 27
Hoston v. Louisiana, No. 28

Dear Mr. Kron:

This will acknowledge and thank you for your letter of August 15, 1961.

Although we have not heard from the District Attorney concerning the Garner et al Appeal, we find that our Deputy had a copy of the Jurisdictional Statement and Motion to Dismiss. We have no extra copies of the Petition For Certiorari in the Griffin case, but I am enclosing a copy of our Brief in Opposition for your information.

We find your Brief in Opposition very informative and helpful.

Very truly yours,

Clayton A. Dietrich
Assistant Attorney General

CAD:ffz
Enc. 1



JACK P. F. GREMILLION
ATTORNEY GENERAL

State of Louisiana

DEPARTMENT OF JUSTICE

Baton Rouge

August 15, 1961

Honorable Clayton A. Dietrich
Assistant Attorney General
State Law Department
State of Maryland
10 Light Street
Baltimore 2, Maryland

Dear Mr. Dietrich:

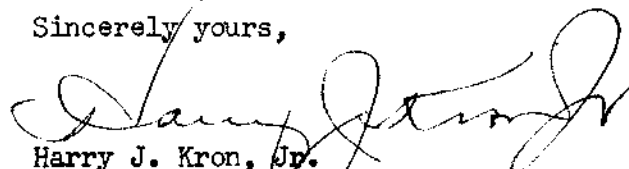
Re: Garner v. Louisiana, No. 26
Briscoe v. Louisiana, No. 27
Hoston v. Louisiana, No. 28

We are in receipt of your letter of August 11,
in which you ask for copies of briefs in the captioned
cases.

These cases are being handled by the office of
the District Attorney for the 19th Judicial District, State
of Louisiana, and I have transmitted your request to him
so that the information you requested may be forwarded to you
forthwith. I am sure you will hear from him in due course.

With kindest personal regards, I am

Sincerely yours,



Harry J. Kron, Jr.
Assistant Attorney General

HJK/ea

September 5, 1961

Mr. Ralph Moody
Assistant Attorney General
Department of Justice
Raleigh, North Carolina

Dear Mr. Moody:

This will acknowledge and thank you for your letter of August 17, 1961 enclosing your three Briefs in Opposition in Avent et al. We find the briefs very informative and helpful.

Although we have no extra copies of the Petition for Certiorari in the Griffin case, we are enclosing a copy of our Brief in Opposition.

Very truly yours,

Clayton A. Dietrich
Assistant Attorney General

CAD:ffz
Encl. 1



THOMAS WADE BRUTON
ATTORNEY GENERAL

STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE
RALEIGH

HARRY W. MCGALLIARD
PEYTON B. ABBOTT
RALPH MOODY
F. KENT BURNS
LUCIUS W. PULLEN
H. HORTON ROUNTREE
THOMAS L. YOUNG
HARRISON LEWIS
G. ANDREW JONES, JR.
ASSISTANT ATTORNEYS GENERAL

17 August 1961

Mr. Clayton A. Dietrich
Assistant Attorney General
State of Maryland
10 Light Street
Baltimore 2, Maryland

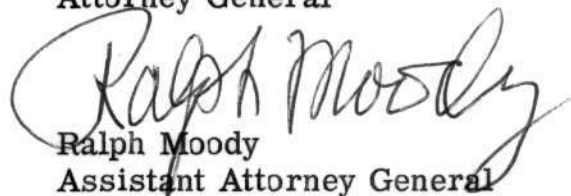
Dear Mr. Dietrich:

Thank you for your letter informing us of your two cases in the Supreme Court of the United States for disorderly conduct and trespass as related to amusement parks.

In accordance with your request I am sending you copies of our briefs in opposition to petition for certiorari. Inasmuch as we have three cases now pending in the Supreme Court of the United States I would appreciate it if you would send copy of your briefs, and this office will be glad to cooperate with you in support of your position in any way possible.

Yours very truly,

T. W. BRUTON
Attorney General


Ralph Moody
Assistant Attorney General

RM:cap
Enclosures

Supreme Court of the United States

OCTOBER TERM, 19

WILLIAM L. GRIFFIN, et al.,
Petitioners,

vs.

STATE OF MARYLAND,
Respondent.

No. 287

To Thomas B. Finan, Counsel for Respondent :

YOU ARE HEREBY NOTIFIED that the petition for writ of certiorari in the above-entitled and numbered case was filed in the Supreme Court of the United States on the 4th day of August, 1961.

The record filed pursuant to the requirement of Rule 21 (1) consists of:

Brief and Record Extract of Appellants, filed in Clerk's

Office on February 8, 1961

Opinion of Court of Appeals, June 8, 1961

Docket Entries in Court of Appeals

(If the record was printed for the use of the court below, state here whether you have or have not filed nine copies as permitted by Rule 21 (4).)

Yes

Joseph L. Rauh, Jr.

Counsel for Petitioner

Joseph L. Rauh, Jr.
Rauh and Levy
1631 K Street, N. W.
Washington 6, D. C.

Office of the Clerk
Supreme Court of the United States

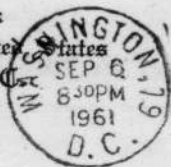
WASHINGTON 25, D. C., September 6, 1961

GRIFFIN, ET AL., v. MARYLAND Case No. 287, O. T. '61

Receipt is acknowledged of 40 copies of Brief in Opposition together with your formal appearance and certificate of service of your brief in opposition.

JAMES R. BROWNING,
Clerk.

Office of the Clerk
Supreme Court of the United States
Washington 25, D. C.



POSTAGE AND FEES PAID
SUPREME COURT OF THE U. S.

Clayton A. Dietrich, Esquire
Assistant Attorney General
State of Maryland
State Law Department
10 Light Street
Baltimore 2, Maryland

Commonwealth of Virginia



FREDERICK T. GRAY
ATTORNEY GENERAL
KENNETH C. PATTY
FIRST ASSISTANT

OFFICE OF THE ATTORNEY GENERAL
RICHMOND

D. GARDINER TYLER
FRANCIS C. LEE
ROBERT D. MCILWAINE, III
RENO S. HARP, III
MANDLEY RAY JOHNSTON
MOSES HARRIS PARKER
FRANK V. EMMERSON, JR.
HAROLD V. KELLY
WILLIAM P. BAGWELL, JR.
A. R. WOODROOF
ASSISTANTS

September 6, 1961

Honorable Clayton A. Dietrich
Assistant Attorney General
State Law Department
10 Light Street
Baltimore 2, Maryland

Re: Griffin, et al.
v.
State of Maryland

Dear Mr. Dietrich:

I am writing to express my appreciation for your letter of September 5, 1961, in which you enclosed a copy of the Brief in Opposition which you have filed in the Supreme Court of the United States in the above captioned matter. I regret that we do not have additional copies of the Petition for Writ of Certiorari in the case of Randolph v. Commonwealth, and no Brief in Opposition to such petition was filed by this office in that case.

Thanking you again for your consideration in this matter, I am

Very truly yours,

R. D. McIlwaine, III
Assistant Attorney General

RDM:MVH

CD

July 10, 1961

Joseph H. Sharlitt, Esq.
Attorney at Law
919 - 18th Street, N. W.
Washington, D. C.

Dear Mr. Sharlitt:

The Court has considered your "Amended Petition to Stay Mandate," filed on July 7, 1961, in the case of William L. Griffin, et al. vs. State of Maryland, No. 248, September Term, 1960, and, for your information, this amended petition was granted on July 7, 1961.

It is requested that you advise this office when an appeal is actually filed in this matter with the United States Supreme Court.

Very truly yours,

J. LLOYD YOUNG

Clerk

JLY/ojr

Enclosure

cc: Charles T. Duncan, Esq.
Office of the Attorney General, ✓
Att'n: Clayton A. Dietrich, Esq.
Leonard Kardy, Esq., State's Attorney,
Montgomery County

IN THE
COURT OF APPEALS OF MARYLAND
SEPTEMBER TERM, 1960

NO. 248

FILED JUL 7 1961
J. LLOYD YOUNG, CLERK
COURT OF APPEALS OF MARYLAND

William L. Griffin, et al., Appellants,

Vs.

State of Maryland, Appellee,

and

Cornelia Greene, et al., Appellants,

Vs.

State of Maryland, Appellee.

AMENDED PETITION TO STAY MANDATE

Comes now appellants William L. Griffin, Marvous Saunders, Michael Proctor, Cecil T. Washington, Jr., and Gwendolyn Greene, by their undersigned attorneys and move this Court to stay the issuance of its mandate in the above entitled cause insofar as the same affects the above mentioned appellants pending the outcome of a further appeal in this matter to the United States Supreme Court to be taken to the United States Supreme Court within 90 days of June 8, 1961.

/s/ Joseph H. Sharlitt

Joseph H. Sharlitt

/s/ Claude B. Kahn

Claude B. Kahn
8532 Freyman Drive
Chevy Chase, Maryland
Attorneys for Appellants

Amended petition granted.

✓ July 7, 1961.

/s/ F. W. Brune,
Chief Judge.

Lee M. Hydeman
Of Counsel

NO. 248

William L. Griffin, et al., Appellants,

vs.

State of Maryland, Appellee,

and

Cornelia Greene, et al., Appellants,

vs.

State of Maryland, Appellee.

AMENDED PETITION TO STAY MANDATE

Comes now appellants William L. Griffin, Marvons
Saunders, Michael Proctor, Cecil T. Washington, Jr., and
Gwendolyn Greene, by their undersigned attorneys and move
this Court to stay the issuance of its mandate in the
above entitled cause insofar as the same affects the above
mentioned appellants pending the outcome of a further
appeal in this matter to the United States Supreme Court
to be taken to the United States Supreme Court within 90
days of June 8, 1961.

\s/ Joseph H. Sharfitt
Joseph H. Sharfitt

\s/ Claude B. Kahn
Claude B. Kahn
8552 Progress Drive
Grove Cr., Maryland
Attorneys for Appellants

Amended petition granted.

\s/ F. W. Brune,
Chief Judge.

July 7, 1961.

Lee M. Hyman
Of Counsel

FILED JUL 7 1961
J. LLOYD YOUNG, CLERK
COURT OF APPEALS OF MARYLAND

248

IN THE COURT OF APPEALS OF MARYLAND

WILLIAM L. GRIFFIN, et al,)	
Appellants,)	
vs.)	3881 Criminals, et al
STATE OF MARYLAND,)	
Appellee,)	
and)	
CORNELIA GREEN, et al,)	
Appellants,)	
vs.)	3878 Criminals, et al
STATE OF MARYLAND,)	
Appellee.)	

STIPULATION

It is hereby stipulated by and between the respective parties, as indicated by the endorsement of their respective counsel hereinbelow, that the time in which to file Appellants' brief be and it is hereby extended to and including February 8, 1961.

Claude B. Kahn
Co-Counsel for Appellants
8532 Freyman Drive
Chevy Chase, Maryland
Telephone: EXecutive 3-3675

For the Attorney General
of the State of Maryland

WILLIAM L. GRIFFIN, et al

v.

STATE OF MARYLAND

:
:
:
:
:
:
:
:
:
:
:
:
:

IN THE

COURT OF APPEALS OF MARYLAND

No. 248

September Term, 1960

STIPULATION

MR. CLERK:

It is stipulated by the parties to the above entitled case, through their respective counsel, that the time for filing the Appellee's Brief be and the same is hereby extended to and including April 4, 1961.

Claude B. Kahn
Attorney for Appellant

Clayton A. Dietrich
Assistant Attorney General
Attorney for Appellee

Court of Appeals of Maryland

No. 248 September Term, 19 60
2 Appeals in One Record

William L. Griffin, et al

VS.

State of Maryland

Charles T. Duncan
Joseph H. Sharlitt

Attorneys for Appellants

C. Ferdinand Sybert
Leonard T. Kardy

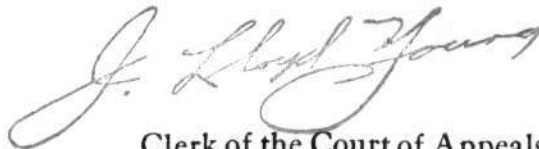
Attorneys for Appellee

MARYLAND, Sct:

I Hereby Certify, that on the sixteenth day of November
nineteen hundred and sixty I received from the Clerk of the Circuit
Court for Montgomery County Transcript of Record to the Court of Appeals of Maryland
in the above entitled cause.

Brief for Appellant due to be filed December 27, 19 60

Stipulation Feb. 1st, 1961



Clerk of the Court of Appeals of Maryland.

4504 ✓

Court of Appeals of Maryland

No. 248, September Term, 1960—Filed June 8, 1961

WILLIAM L. GRIFFIN ET AL. AND
CORNELIA A. GREENE ET AL.

vs.
STATE OF MARYLAND

Two appeals in one record from the Circuit Court for Montgomery County. James H. Pugh, Judge.

Argued by Charles T. Duncan, (Claude B. Kahn, both of Chevy Chase, Maryland, and Joseph H. Sharlitt and Lec M. Hydeman, both of Washington, D. C., on the brief), for appellants.

Argued by Clayton A. Dietrich, Assistant Attorney General, (Thomas B. Finan, Attorney General, both of Baltimore, Maryland, and Leonard T. Kardy and James S. McAuliffe, Jr., State's Attorney, and Assistant State's Attorney, respectively, for Montgomery County, both of Rockville, Maryland, on the brief), for appellee.

Argued before HENDERSON, HAMMOND, PRESCOTT, HORNEY and MARBURY, JJ.

Criminal Law — Wanton Trespass — Segregation At Amusement Park — Notice.

A group of Negroes entered a segregated amusement park in Montgomery County. They were asked to leave, but refused; whereupon the park officer, who was also a deputy sheriff placed them under arrest and they were later charged with trespass. Several days later another group entered the restaurant, operated by a concessionaire of the amusement park, and were told by the park policeman to leave, and were arrested by him. There was no evidence that the park police was an agent of the restaurant operator.

HELD: The first group were guilty of wanton trespass upon private land. The second group, however, were not notified by the restaurant owner, or any agent of his, to leave the premises, and they should not have been convicted.

Judgments against the Griffin appellants affirmed; judgments against Greene Appellants reversed.

HORNEY, J.—

This is a consolidated appeal from ten judgments and sentences to pay fines of one hundred dollars each, entered by the Circuit Court for Montgomery County after separate trials, each involving five defendants, on warrants issued for wanton trespass upon private property in violation of Code (1957), Art. 27, § 577.

The first group of defendants, William L. Griffin, Marvons Saunders, Michael Proctor, Cecil T. Washington, Jr., and Gwendolyn Greene (hereinafter called "the Griffin appellants" or "the Griffins"), all of whom are Negroes, were arrested and charged with criminal trespass on June 30, 1960, on property owned by Rekab, Inc., and operated by Kebar, Inc., as the Glen Echo Amusement Park (Glen Echo or park). The second group of defendants, Cornelia A. Greene, Helene D. Wilson, Martin A. Schain, Ronyl J. Stewart and Janet A. Lewis (hereinafter called "the Greene appellants" or "the Greens"), two of whom are Caucasians, were arrested on July 2, 1960, also in Glen Echo, and were also charged with criminal trespass.

for the 1959 and 1960 seasons fixed the rentals for that period and allowed to other matters, but made no reference whatsoever, either directly or indirectly, to the prior formal agreement—though there was testimony, admitted over objection, to the effect that the letter was intended as a renewal of the prior lease—and was silent as to a reservation by Kebar of the right to police the restaurant premises during the 1959 and 1960 seasons.

On this set of facts, both groups of appellants make the same contentions on this appeal: (i) that the requirements for conviction under Art. 27, § 577, were not met; and (ii) that the arrest and conviction of the appellants constituted an exercise of the power of the State of Maryland in enforcing a policy of racial segregation in violation of the Fourteenth Amendment to the Constitution of the United States.

Trespass to private property is not a crime at common law unless it is accompanied by, or tends to create, a breach of the peace. See *Krauss vs. State*, 216 Md. 369, 140 A. 2d 653 (1958), and the authorities therein cited. And it was not until the enactment of § 21A of Art. 27 (as a part of the Code of 1888) by Chapter 66 of the Acts of

synonymous with the word "trespass." See *State vs. Acent*, 118 S.E. 2d 47 (N.C. 1961).

The trespass was wanton within the meaning of the statute. Since the evidence supports a reasonable inference that the Griffins entered the park premises and crossed over it well knowing that they were violating the property rights of another, their conduct in so doing was clearly wanton. Although there are almost as many legal definitions of the word "wanton" as there are appellate courts, we think the Maryland definition, which is in line with the general definition of the word in other jurisdictions, is as good as any. In *Dennis vs. Baltimore Transit Co.*, 189 Md. 610, 56 A. 2d 813 (1948), as well as in *Baltimore Transit Co. vs. Faulkner*, 179 Md. 598, 20 A. 2d 485 (1941), it was said that the word "wanton" means "characterized by extreme recklessness and utter disregard for the rights of others." We see no reason why the refusal of these appellants to leave the premises after having been requested to do so was not wanton in that their conduct was in "utter disregard for the rights of others." Even though their remaining may have been no more than an aggravating incident, it was nevertheless wanton within the meaning of this criminal trespass statute. See *Ex Parte Birmingham Realty Co.*, 63 So. 67 (Ala. 1913).

Since it was admitted that the carousel tickets were obtained surreptitiously in an attempt to "integrate" the amusement park, we think the claim that these appellants had taken seats on the carousel under a bona fide claim of right is without merit. While the statute specifically excludes the "entry upon or crossing over" privately owned property by a person having a license or permission to do so, these appellants do not come within the statutory exception. In a case such as this where the operator of the amusement park—who had a right to contract only with those persons it chose to deal with—had not knowingly sold carousel tickets to these appellants, it is apparent that they had no bona fide claim of right to a ride thereon, and, absent a valid right, the refusal to accept the tickets was not a violation of any legal right of these appellants.

(i)

We come now to the consideration of the second contention of the Griffin appellants that their arrest and conviction constituted an unconstitutional exercise of state power to enforce racial segregation. We do not agree. It is true, of course, that the park officer—in addition to being an employee of the detective agency then under contract to protect and enforce, among other things, the lawful racial segregation policy of the operator of the amusement park—was also a special deputy sheriff,

appellants that they were unwelcome or warned them to leave. There was evidence that the park officer had ordered these appellants to leave, but it is not shown that he was authorized to do so by the lessee, and a new written agreement for the 1959 and 1960 seasons having been substituted for the former agreement covering the 1957 and 1958 seasons, the state of the record is such that it is not clear that the lessor had reserved the right to continue policing the leased premises as had been the case during the 1957-1958 period. Under these circumstances, it appears that the notice given by the park officer was ineffective. There is little doubt that these appellants must have known of the racial segregation policy of the operator of the park and that they were not welcome anywhere therein, but where notice for a definite purpose is required, as was the case here, knowledge is not an acceptable notice where the required notification is incident to the infliction of a criminal penalty. 1 Merrill, *Notice*, § 509. See also *Woodruff vs. State*, 54 So. 240 (Ala. 1911), where it was held (at p. 240) that "[i]n order to constitute the offense of trespass after warning, it is necessary to show that the warning was given by the person in possession or his duly authorized agent." And see *Payne vs. State*, 12 S. W. 2d 528 (Tenn. 1928), [a court cannot convict a person of a crime upon notice different from that expressly provided in the statute]. Since the notice to the Greene appellants was inadequate they should not have been convicted of trespassing on private property, and the judgments as to them must be reversed.

The judgments against the Griffin appellants are affirmed; the judgments against the Greene appellants are reversed; the Griffin appellants shall pay one-half of the costs; and Montgomery County shall pay the other one-half.

(1) The document was called an "agreement"; the operator of the restaurant was referred to therein as a "concessionaire" and was described in the agreement as a "licensee" and not a "lessee"; yet the agreement called for the payment of rent (payable bi-annually) as well as a portion of the gross receipts and a part of the county licensing fees and certain other items of expense.

PROPERTY SALES

William C. Rogers, Solicitor,
The Rogers Building,
113 East Baltimore Street.

TRUSTEE'S SALE

OF

VALUABLE LEASEHOLD

PROPERTY

413 MAUDE AVENUE

By virtue of a decree of the Circuit Court of Baltimore City, the undersigned, Trustee, will sell at public auction, on the premises, on

PROPERTY SALES

William C. Rogers, Solicitor,
The Rogers Building,
113 East Baltimore Street.

TRUSTEE'S SALE

OF

VALUABLE LEASEHOLD

PROPERTIES

1151 AND 1153 EAST

BALTIMORE STREET

By virtue of a decree of the Circuit Court of Baltimore City, the undersigned, Trustee, will sell at public auction, on the premises, on

MONDAY, JULY 31, 1961,
BEGINNING AT 3 O'CLOCK P. M.
ALL THOSE TWO LOTS OF GROUND AND THE IMPROVEMENTS thereon, situate in Baltimore City, and described as follows:
Beginning for the first thereof on the southernmost side of Baltimore street at the distance of 81 feet westerly from the corner formed by the intersection of the southernmost side of Baltimore street and the westernmost side of Central avenue which place of beginning is at the end of the third or westernmost outline of the whole parcel of ground conveyed by Charles Ridgely of Hampton and wife to Joseph Friedenwald by deed dated May 10, 1899, and recorded among the Land Records of Baltimore City in GR No. 421, folio 410, thence easterly bounding on the southernmost side of Baltimore street 15 feet 4 inches more or less to the center of a partition wall dividing the house erected on the ground now being described from the house adjoining on the east conveyed by the said Friedenwald to Henry Werner thence southeasterly through the center of said partition wall 30 feet to the end thereof thence southerly parallel with Central avenue 39 feet 4 inches more or less to an alley or court about 10 feet wide leading into Central avenue and Watson street said alley to be forever kept open for the use of the property adjoining and bound thereon according to its original dedication and also for the use of this property thence westerly bounding on said alley with the use right and privilege of the same in common 23 feet more or less to the said 3rd or westernmost outline of the whole ground aforesaid and thence northerly with said outline and bounding thereon 76 feet more or less to the place of beginning. The improvements thereon being known as 1151 East Baltimore street.
Subject to an annual irredeemable ground rent of \$120 and improved by a THREE-STORY BRICK DWELLING WITH STOREFRONT.
Beginning for the second thereof on the southeasternmost side of Baltimore street at the distance of 51 feet 8 inches southwestwardly from the corner formed by the intersection of the southeasternmost side of Baltimore street with the west side of Central avenue (formerly called Canal street) which place of beginning is at the northwest corner of the 3rd brick house counting westerly from Central avenue thence running westerly binding on Baltimore street 14 feet more or less to the 5th house counting westerly from Central avenue thence southeasterly binding on last mentioned house 30 feet to southeasternmost corner of the same thence southerly parallel with Central avenue 39 feet 4 inches to north side of alley or court 12 feet 6 inches wide thence easterly binding on said alley or court 13 feet to the yard belonging to the house first herein mentioned thence northerly parallel with Central avenue and binding on said yard 40 feet 6 inches to southwesternmost corner of the house first above mentioned and thence northwesterly binding on said house 30 feet to beginning. Known as 1153 East Baltimore street.

PROPERTY SALES

SAMUEL J. AARON, Solicitor,
110 East Lexington Street,
Baltimore 2, Maryland.

TRUSTEE'S SALE OF

VERY VALUABLE FEE-SIMPLE WATERFRONT

AND FARM PROPERTY

Containing 78 Acres of Land More Or Less

SITUATE ON KENT ISLAND,
QUEEN ANNE'S COUNTY, MD.

VALUABLE FEE-SIMPLE DWELLING PROPERTY

205 BALTIMORE AVENUE
TOWSON, BALTIMORE COUNTY

VALUABLE FEE-SIMPLE GARAGE AND WAREHOUSE PROPERTY

3718, 3722, 3724 AND 3726 HICKORY AVENUE
BALTIMORE CITY

VALUABLE FEE-SIMPLE WAREHOUSE PROPERTY

1115-17-19 LOW STREET
BALTIMORE CITY

By virtue of a decree of the Circuit Court No. 2 of Baltimore City, (70C-140) the undersigned trustee, will sell at public auction, on the respective premises, on

WEDNESDAY, AUGUST 16, 1961

AT THE HOURS HEREINAFTER MENTIONED

AT 12 O'CLOCK NOON

78 ACRE WATERFRONT FARM, DWELLINGS AND BUILDINGS
The farm is situated in Queen Anne's County, Kent Island, has about 2,000 feet of waterfront, more or less, situated directly on Coxes Creek, has 78 acres suitable for a home and farm. Improved by 1½-STORY SHINGLE COTTAGE, six rooms, bath, gas and electric, septic tank, boat house, GARAGE ATTACHED TO HOUSE, large stone grill, barn and other small building. Consists of 65 acres more or less, of tillable soil and 13 acres more or less, of woodland. Also fronts on main highway. The property is described as follows:

Situate, lying and being in the Fourth Election District of Queen Anne County, State of Maryland, and described as follows: Beginning for the same at the water's edge of Coxes Creek and at the distance of 35 feet south 71 degrees 41 minutes west from a locust post heretofore planted at the beginning of the land which by a deed dated February 8, 1915, and recorded among the Land Records of Queen Anne County in Liber WFW No. 6, folio 505, etc., was conveyed by Dora H. Miles et al. to Elizabeth E. Lowery; and running thence bounding on the outline of said land the five following courses and distances, viz: north 71 degrees 41 minutes east 800 feet to a post, north 71 degrees 50 minutes east 1224-3/10 feet to a stake, north 56 degrees 57 minutes east 229-2/10 feet to a marked White Oak; thence north 45 degrees 25 minutes east 349-3/10 feet to a post and south 64 degrees 23 minutes east 196-56/100 feet to the centre of the Public Road leading from Chester to Coxes' Creek Neck; thence bounding on the centre of said road, north 17 degrees 19 minutes east 58-5/10 feet; thence running for lines of division now made the two following courses and distances, viz: south 74 degrees 11 minutes east 225 feet to a stake and north 17 degrees 30 minutes east 52-5/10 feet to the land now belonging to Charles F. Watkins; thence binding on said land the four following courses and distances, viz: south 74 degrees 11 minutes east 65 feet; north 17 degrees 30 minutes east 52-5/10 feet, north 74 degrees 11 minutes west 65 feet, and north 17 degrees 30 minutes east 52-5/10 feet to the land which by a deed dated January 22, 1921, and recorded among the Land Records aforesaid in Liber JFR No. 6, folio 400, etc., was conveyed by Elizabeth L. Rapp to T. Herman Palmer; thence bounding on said land, north 17 degrees 30 minutes east 52 feet to intersect the south 75 degrees east 401 foot line of the land conveyed as aforesaid by Dora H. Miles et al. to Elizabeth E. Lowery; thence bounding on the outline of said land the four following courses and distances, viz: south 74 degrees 11 minutes east 176 feet to a post, south 5 degrees 9 minutes west 485 feet to a stone on the north side of a road, south 19 degrees 16 minutes west 613-3/10 feet to a stake and north 68 degrees 45 minutes west 484 feet to the centre of the aforesaid Public Road leading from Chester to Coxes' Creek Neck; thence bounding on the centre of said road, south 17 degrees 19 minutes west 392 feet; thence bounding on the outlines of the land conveyed as aforesaid by Dora H. Miles et al. to Elizabeth E. Lowery, north 87 degrees 54 minutes west 17 feet, south 32 degrees 55 minutes west 530 feet to a stake, and south 42 degrees west bounding on the centre line of a ditch there situate 453-7/10 feet to the waters of Lewes Cove; thence bounding on the waters of said Cove and the waters of Coxes Creek the seventeen following courses and distances, viz: south 69 degrees 44 minutes west 195-8/10 feet, south 56 degrees 39 minutes west 227-4/10 feet, south 52 degrees 35 minutes west 214 feet, south 68 degrees 33 minutes west 185-9/10 feet, south 78 degrees 42 minutes west 163-2/10 feet, north 36 degrees 52 minutes west 125 feet, north 39 degrees 2 minutes east 47-6/10 feet, north 295 feet, north 21 degrees 15 minutes west 115-9/10 feet, north 34 degrees 24 minutes west 66-7/10 feet, north 83 degrees 42 minutes west 298 feet, north 22 degrees 48 minutes west 149-7/10 feet, north 62 degrees 8 minutes west 60 feet, north 22 degrees 56

group of thirty-five to forty young colored students who gathered at the entrance to Glen Echo to protest "the segregation policy that we thought might exist out there." The students were equipped with signs indicating their disapproval of the admission policy of the park operator, and a picket line was formed to further implement the protest. After about an hour of picketing, the five Griffins left the larger group, entered the park and crossed over it to the carrousel. These appellants had tickets (previously purchased for them by a white person) which the park attendant refused to honor. At the time of this incident, Rekar and Kebar had a "protection" contract with the National Detective Agency (agency), one of whose employees, Lt. Francis J. Collins (park officer), who is also a special deputy sheriff for Montgomery County, told the Griffins that they were not welcome in the park and asked them to leave. They refused, and after an interval during which the park officer conferred with Leonard Woronoff (park manager), the appellants were advised by the park officer that they were under arrest. They were taken to an office on the park grounds and then to Bethesda, where the trespass warrants were sworn out. At the time the arrests were made, the park officer had on the uniform of the agency, and he testified that he arrested the appellants under the established policy of Kebar of not allowing Negroes in the park. There was no testimony to indicate that any of the Griffins were disorderly in any manner, and it seems to be conceded that the park officer gave them ample time to heed the warning to leave the park had they wanted to do so.

The Greene appellants entered the park three days after the first incident and crossed over it and into a restaurant operated by the B & B Industrial Catering Service, Inc., under an agreement between Kebar and B & B. These appellants asked for service at the counter, were refused, and were advised by the park officer that they were not welcome and were ordered to leave. They refused to comply by turning their backs on him and he placed them under arrest for trespassing. Abram Baker (president of both Rekar and Kebar) testified that it was the policy of the park owner and operator to exclude Negroes and that the park officer had been instructed to ask Negro customers to leave, and that if they did not, the officer had orders to arrest them. There was no evidence to show that the operator of the restaurant had told the Greens they were not welcome or to leave; nor was there any evidence that the park officer was an agent of the restaurant operator. And while a prior formal agreement covering the 1957 and 1958 seasons had provided that the restaurant operator was subject to and should comply with the rules and regulations concerning the persons to be admitted to the park and that Kebar had reserved the right to enforce them, the letter confirming the agreement

1900 that a "willful trespass" (see *House Journal* for 1900, p. 322) upon private property was made a misdemeanor. That statute, which has remained unchanged in phraseology since it was originally enacted, is now § 577 of Art. 27 (in the Code of 1957), entitled "wanton trespass upon private land," and reads in pertinent part:

"Any person * * * who shall enter upon or cross over the land, premises or private property of any person * * * after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor * * *; provided [however] that nothing in this section shall be construed to include * * * the entry upon or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership * * *, it being the intention of this section only to prohibit any wanton trespass upon the private land of others."

The Case Against The Griffin Appellants
(i)

The claim that the requirements for conviction were not met is threefold: (a) that due notice not to enter upon or cross over the land in question was not given to the appellants by the owner or its agent; (b) that the action of the appellants in doing what they did was not wanton within the meaning of the statute; and (c) that what the appellants did was done under a bona fide claim of right.

There was due notice so far as the Griffins were concerned. Since there was evidence that these appellants had gathered at the entrance of Glen Echo to protest the segregation policy they thought existed there, it would not be unreasonable to infer that they had received actual notice not to trespass on the park premises even though it had not been given by the operator of the park or its agent. But, even if we assume that the Griffins had not previously had the notice contemplated by the statute which was required to make their entry and crossing unlawful, the record is clear that after they had seated themselves on the carrousel, these appellants were not only told they were unwelcome, but were then and there clearly notified by the agent of the operator of the park to leave and deliberately chose to stay. That notice was due notice to these appellants to depart from the park premises forthwith, and their refusal to do so when requested constituted an unlawful trespass under the statute. Having been duly notified to leave, these appellants had no right to remain on the premises and their refusal to withdraw was a clear violation of the statute under the circumstances even though the original entry and crossing over the premises had not been unlawful. *State vs. Fox*, 118 S.E. 2d 58 (N.C. 1961). Cf. *Commonwealth vs. Richardson*, 48 N.E. 2d 678 (Mass. 1943). Words such as "enter upon" or "cross over" as used in § 577, *supra*, have been held to be

but that dual capacity did not alter his status as an agent or employee of the operator of the park. As a special deputy sheriff, though he was appointed by the county sheriff in the application of the operator of the park "for duty in connection with the property" of such operator, he was paid wholly by the person on whose account the appointment was made and his power and authority as a special deputy was limited to the area of the amusement park. See Montgomery County Code (1955), § 2-91. As we see it, our decision in *Drews vs. State*, 224 Md. 186, 167 A. 2d 341 (1961), is controlling here. The appellants in that case—in the course of participating in a protest against the racial segregation policy of the owner of an amusement park—were arrested for disorderly conduct committed in the presence of regular Baltimore County police who had been called to eject them from the park. Under similar circumstances, the appellants in this case—in the progress of an invasion of another amusement park as a protest against the lawful segregation policy of the operator of the park—were arrested for criminal trespass committed in the presence of a special deputy sheriff of Montgomery County (who was also the agent of the park operator) after they had been duly notified to leave but refused to do so. It follows—since the offense for which these appellants were arrested was a misdemeanor committed in the presence of the park officer who had a right to arrest them, either in his private capacity as an agent or employee of the operator of the park or in his limited capacity as a special deputy sheriff in the amusement park (see Kauffman, *The Law of Arrest in Maryland*, 5 Md. L. Rev. 125, 149)—the arrest of these appellants for a criminal trespass in this manner was no more than if a regular police officer had been called upon to make the arrest for a crime committed in his presence, as was done in the *Drews* case. As we see it, the arrest and conviction of these appellants for a criminal trespass as a result of the enforcement by the operator of the park of its lawful policy of segregation, did not constitute such action as may fairly be said to be that of the State. The action in this case, as in *Drews*, was also "one step removed from State enforcement of a policy of segregation and violated no constitutional right of appellants."

The judgment as to the Griffin appellants will be affirmed.

The Case Against The Greene Appellants

There is not enough in the record to show that the Greens were duly notified to leave the restaurant by the only persons who were authorized by the statute to give notice. The record discloses that these appellants entered the park and crossed over it into the restaurant on the premises, but there was no evidence that the operator or lessee of the restaurant or an agent of his either advised these

MONDAY, AUGUST 14, 1961,
AT 3 O'CLOCK P. M.
ALL THAT LOT OF GROUND AND IMPROVEMENTS thereon, situate in Baltimore City, and described as follows:
Beginning for the same on the south side of Maude avenue at the distance of one hundred fifteen feet westerly from the southwest corner of Maude avenue and Fifth street said place of beginning being at a point in line with the center of a partition wall there erected and running thence westerly binding on the south side of Maude avenue sixteen feet to a point in line with the center of another partition wall erected thence southerly parallel with Fifth street and for part of the distance through the center of said last mentioned partition wall ninety-six feet to the north side of a fourteen foot alley there laid out running parallel with Maude avenue thence easterly binding on the north side of said alley with the use thereof in common sixteen feet thence northerly parallel with Fifth street and for a part of the distance through the center of the partition wall herein first mentioned ninety-six feet to the place of beginning. Known as No. 413 Maude avenue.
Subject to an annual ground rent of \$60 and subject to legal operation and effect of restrictions set forth in deed from Whitden Corporation to John T. Hazard, dated February 11, 1929, recorded among Land Records of Baltimore City in Liber S. C. L. No. 3702, folio 326. Improved by a TWO-STORY BRICK DWELLING WITH 1-CAR CONCRETE BLOCK GARAGE.
Terms of Sale: One-third cash, balance in six and twelve months, or all cash as the purchaser may elect at the time of sale; credit payments to bear interest from the day of sale and to be secured to the satisfaction of the undersigned Trustee.
All expenses, including special paving tax, if any, to be adjusted to day of sale.
A deposit of \$500 will be required of the purchaser at the time and place of sale; balance of purchase money to bear interest from day of sale.
WILLIAM C. ROGERS, Trustee.

MICHAEL FOX, Auct.
Member of Auct. Assn. of Md., Inc.
Jy22,29au5,12,14

LIQUIDATION SALE
OF
3 DESIRABLE
INVESTMENT
PROPERTIES
TO BE SOLD AT PUBLIC AUCTION
ON THE PREMISES
AT THE TIMES HEREINAFTER
SET FORTH
FRIDAY, AUG. 11, 1961

AT 2.30 O'CLOCK P. M.
1312 WEST FRANKLIN STREET
Improved by three-story brick dwelling containing 2 apartments. Oil heat. Ground rent \$90.

AT 3 O'CLOCK P. M.
1716 WEST MOSHER STREET
Improved by brick dwelling. Oil heat. Ground rent \$70.

AT 3.30 O'CLOCK P. M.
727 McHENRY STREET
Improved by brick dwelling. Ground rent \$42.

Terms of Sale: \$500 deposit on each property at time and place of sale; balance in 30 days. All adjustments to be computed as of date of transfer.
By Order:

MARTHA GREENBERG, Owner.
alex cooper
AUCTIONEER
Member of Auct. Assn. of Md., Inc.
PL. 2-4868 212 N. Calvert Street
Jy28,au11

of \$90 and improved by a THREE-STORY BRICK DWELLING WITH STORE FRONT.
Manner of Sale: The above properties will first be offered separately, the bids reserved, then offered as an entirety and will be sold in the manner producing the greater amount of money.
Terms of Sale: One-third cash, balance in six and twelve months, or all cash, as the purchaser may elect at the time of sale; credit payments to bear interest from the day of sale and to be secured to the satisfaction of the undersigned Trustee.
All expenses, including special paving tax, if any, to be adjusted to day of sale.
A deposit of \$300 on each lot if sold separately or \$600 if sold as an entirety, will be required of the purchaser at the time and place of sale; balance of purchase money to bear interest from day of sale.
WILLIAM C. ROGERS, Trustee.

MICHAEL FOX, Auct.
Member of Auct. Assn. of Md., Inc.
Jy8,15,22,29,31

Van Slyke & Doyle, Solicitors,
730 North Collington Avenue.

TRUSTEE'S SALE
OF
VALUABLE LEASEHOLD
PROPERTY
753 YALE AVENUE

By virtue of a decree of the Circuit Court of Baltimore City (101C-38), the undersigned, Trustee, will sell at public auction, on the premises, on
MONDAY, AUGUST 7, 1961,
AT 2 O'CLOCK P. M.

ALL THAT LOT OF GROUND AND THE IMPROVEMENTS thereon, situate in Baltimore City, and described as follows:

Beginning for the same on the southeast side of Yale avenue at the distance of 915.26 feet southwestwardly measured along the southeast side of Yale avenue from the southwest-most end of a curve forming the intersection or meeting of the southeast side of Yale avenue and the southwest side of Bldone road which place of beginning is at a point in line with the center line of a partition wall there erected thence southwestwardly binding on the southeast side of Yale avenue 16 feet to a point in line with the center line of another partition wall there erected thence running southeasterly to through and along the center line of said last mentioned partition wall to the end thereof and continuing the same course in all 100.02 feet to the northwest side of an alley 16 feet wide there situate thence running northeasterly binding on the northwest side of said alley with the use thereof in common with others 16 feet to meet a line drawn northeasterly from the place of beginning to through and along the center line of the partition wall first above mentioned in this description thence running northwesterly reversing said line so drawn and binding thereon 100 feet to the place of beginning. Subject to an annual ground rent of \$90 and improved by a TWO-STORY BRICK DWELLING.
Terms of Sale: One-third cash, balance in six and twelve months, or all cash, as the purchaser may elect at the time of sale, credit payments to bear interest from day of sale, and to be secured to the satisfaction of the undersigned Trustee.
All expenses, including special paving tax, if any, to be adjusted to day of sale.
A deposit of \$500 will be required of the purchaser at the time and place of sale; balance of purchase money to bear interest from day of sale.
FRED J. VAN SLYKE, Trustee.

alex cooper
AUCTIONEER
Member of Auct. Assn. of Md., Inc.
Jy14,21,28,au4,7

minutes west 56-5/10 feet, north 8 degrees 52 minutes west 311-7/10 feet, north 43 degrees 18 minutes west 142-9/10 feet, and north 2 degrees 20 minutes east 145-8/10 feet to the place of beginning; containing 78-2/10 acres of land, more or less.
Saying and excepting therefrom all that portion thereof which by deed dated August 21, 1945, and recorded among the Land Records of Queen Anne County in Liber A.S.G., Jr. No. 11, folio 530, was granted and conveyed by Harry T. Norman, Mabel R. Norman and Elizabeth L. Rapp to State Roads Commission of Maryland and/or Queen Anne's County, and subject to the rights and easements as set forth in said deed. This property is in fee-simple.
The directions to the farm are as follows: Out Ritchie highway across Bay Bridge to Harbor View about one mile from Bay Bridge opposite shopping center. Turn right on road to Harbor View and proceed more than a mile to farm known as "Wesleyhaven". This is one of the show places of the Eastern Shore for year round living, wonderful duck hunting, boating.

AT 2.30 O'CLOCK P. M.
DWELLING HOUSE, BALTIMORE COUNTY
205 Baltimore Avenue, Towson, 8 rooms, two baths with basement, all utilities, one car garage plus built-in freezer. 2 1/2-STORY FRAME DWELLING in a very valuable section of Baltimore County, commercial area. The property is described as follows:
Situate, lying and being in Towson in the Ninth Election District of Baltimore County, State of Maryland, and described as follows: Beginning for the same at the corner formed by the East side of Baltimore Avenue and the south side of a ten foot alley there situate, said point of beginning being at the distance of 150 feet south 14 degrees 16 minutes west from the southeast corner of Baltimore and Susquehanna Avenues; running thence binding on said ten foot alley easterly 113 feet; thence south parallel to Baltimore Avenue 50 feet; thence westerly parallel to the first line in this description 113 feet to the east side of Baltimore Avenue; thence northerly binding on said east side of Baltimore Avenue 50 feet to the place of beginning. This property is in fee simple.

AT 3.30 O'CLOCK P. M.
GARAGE, WAREHOUSE AND ADJOINING DWELLING
Warehouse and dwelling known as 3718-22-24-26 Hickory Avenue, consisting of 1 1/2-STORY WAREHOUSE about 62'5" x 50', more or less, has a conveyor belt, electricity, toilet facilities and small office. Also improved by a house, 5 rooms, utility room, bath and building adjoining. The house rents for \$75.00 a month. The property is described as follows:
Situate, lying and being in Baltimore City, State of Maryland, and described as follows: Beginning for the same on the west side of Hickory Avenue at the distance of 300 feet southerly from the south side of Thirty-eighth Street (formerly Fifth Avenue), and at the northernmost outline of the lot of ground described in a Lease from Walter A. Raleigh, Trustee, to John M. Hammond, dated December 11, 1914, and recorded among the Land Records of Baltimore City in Liber S.C.L. No. 2945 folio 355; and running thence southerly binding on the west side of Hickory Avenue 25 feet to a point in a line with the north side of the north gable end wall of the house on the lot adjoining that being described on the south; thence westerly binding on said wall and on the partition fence and on the south side of the south gable end wall of the garage on the lot now being described in all 135 feet 3 inches to an alley ten feet wide; thence northerly binding on said alley with the use thereof in common with others, 77 feet 9 inches to an alley 4 feet 5 inches wide; thence easterly binding thereon, with the use thereof in common with others, 51 feet to an alley 4 feet 6 inches wide; thence southerly, binding on the west side of said alley, which is also the East side of the East gable end wall of the garage on the lot being described, with the use of said alley in common with others, 52 feet 10 inches to the end of said alley; thence easterly by a line across the south end of said alley and binding on the northernmost outline of the lot described in the lease above mentioned in all, 84 feet 6 inches to the place of beginning. Being and comprising the house and lot known as No. 3718 Hickory Avenue and the garage in the rear of Lots Nos. 3722, 3724 and 3726 Hickory Avenue. This property is in fee simple.

AT 4.30 O'CLOCK P. M.
WAREHOUSE
1115-17-19 Low Street, lot about 40-1/4 front x 65'11", more or less, has three floors and a balcony with elevator. A small truck can drive into the first floor. The property is described as follows:
Situate, lying and being in Baltimore City, State of Maryland, and described as follows: Beginning for the same on the southeast side of Low Street at the distance of 348 feet 7 inches southwestwardly from the corner formed by the intersection of said southeast side of Low Street with the west side of Alsquith Street, which point of beginning is in line with the northeasternmost side of the northeasternmost wall of the three-story brick building erected on the lot now being described; and running thence southeasterly to and along the northeasternmost side of said wall, 70 feet 4 inches, to the end thereof, and to the northwest side of an alley about 6 feet wide there situate; thence southwestwardly, binding on the northwest side of said alley, with the use thereof in common, 40 feet and 1/2 feet to the southernmost corner of the aforesaid three-story brick building erected on the lot now being described; thence northwesterly binding along the southwesternmost side of the southwesternmost wall of said building, and continuing the same direction in all 65 feet and 11 inches to Low Street; and thence north-easterly, binding on the southeast side of Low Street, 40 feet 6 inches to the place of beginning. The improvements thereon being known as Nos. 1115, 1117 and 1119 Low Street. This property is in fee simple.
The plats for all of the properties can be seen at the office of the Trustee.

TERMS OF SALE: One-third cash, balance in six and twelve months, or all cash, as the purchaser or purchasers may elect at the time of sale; credit payments to bear interest from the day of sale and to be secured to the satisfaction of the undersigned Trustee.
All expenses, including special paving tax, if any, metropolitan sanitary liens, to be adjusted to day of sale.
A deposit of 10% of the purchase price on the Kent Island Property, a deposit of \$2,000. on the Baltimore avenue property, a deposit of \$2,000. on the Hickory avenue property and a deposit of \$1,500. on the Low Street property will be required of the purchaser or purchasers at the time and place of sale. Balance of purchase money to bear interest from day of sale. The property transfer tax imposed by Baltimore County to be borne by the purchaser.

SAMUEL J. AARON, Trustee.
LEE ZALIS, Auctioneer
2127 Edmondson Avenue.
Jy22,29,au5,12,16 WI. 5-3000

April 4, 1961

James S. McAuliffe, Jr. Esq.
Assistant State's Attorney
for Montgomery County
Rockville, Maryland

Re: Griffin v. State

Dear Mr. McAuliffe:

Thank you for your efforts in drafting suggested arguments. I am enclosing a copy of the brief which I filed with the Court of Appeals today. As you will note, your research was very helpful. I understand that I will argue the case next Thursday, April 13th, 1961.

Very truly yours,

Clayton A. Dietrich
Assistant Attorney General

CAD:k
encl.

April 4, 1961

Claude B. Kahn, Esq.
Sharlitt, Hydeman & Berman
1632 K Street, N. W.,
Suite 14
Washington 6, D. C.

Re: Griffin v. State

Dear Mr. Kahn:

In accordance with the request of your letter of March 9, 1961, I am enclosing six copies of our brief in the above entitled appeal. I presume that you received the advance manuscript copy which I mailed last Thursday.

Very truly yours,

Clayton A. Dietrich
Assistant Attorney General

CAD:k

encls.

LAW OFFICES OF
SHARLITT, HYDEMAN & BERMAN
1632 K STREET, N. W., SUITE 14
WASHINGTON 6. D. C.

WILLIAM H. BERMAN
LEE M. HYDEMAN
JOSEPH H. SHARLITT

CLAUDE B. KAHN

EXECUTIVE 3-3675

CABLE ADDRESS: SHARMAN

March 9, 1961

Clayton A. Dietrich, Esq.
Assistant Attorney General
Attorney General's Office
1201 Mathieson Building
Baltimore 2, Maryland

Re: Griffin & Greene, et al.
v. State - No. 248

Dear Mr. Dietrich:

When your brief in the above-entitled case has been completed and printed, I would appreciate it if you could send us a minimum of six copies for our office.

I shall be most grateful for your courtesy in this connection.

Sincerely yours,

Claude B. Kahn

Claude B. Kahn (y)

CBK:W



State's Attorney for Montgomery County

LEONARD T. KARDY

Rockville, Maryland

DEPUTY STATE'S ATTORNEY
JAMES ROBERT MILLER

POPLAR 2-2121
EXT. 216

ASSISTANT STATE'S ATTORNEYS

HARPER M. SMITH
STUART H. SWEENEY
JAMES F. TOMES

March 20, 1961

Mr. Clayton Dietrich
Assistant Attorney General
1201 Mathieson Building
Baltimore 2, Maryland

Re: William L. Griffin, et al, and
Cornelia Greene, et al, vs.
State of Maryland

Dear Mr. Dietrich:

Enclosed herewith please find two copies of a suggested Argument in the above entitled cases.

This Argument was prepared by me in some haste, as my recent very frequent appearances in Court have left very little time to accomplish any work in the office. However, I hope that this suggested Argument may be of some assistance to you, at least in indicating to you the basic lines of approach which I feel might be taken in this Appeal. Frankly, it is my opinion that the Drews case has generally determined the issues with which we are concerned here.

I regret that I have not had an opportunity to meet with you, but I know that our respective workloads make it difficult for us to get together. If you will notify me when you learn what date has been set for the Argument, I will make every effort to be present at that time.

Very truly yours,

Jim McAuliffe
JAMES S. McAULIFFE, JR.
Assistant State's Attorney



State's Attorney for Montgomery County

LEONARD T. KARDY

Rockville, Maryland

DEPUTY STATE'S ATTORNEY
JAMES ROBERT MILLER
POPLAR 2-2121
EXT: 216

ASSISTANT STATE'S ATTORNEYS
HARPER M. SMITH
STUART H. SWEENEY
JAMES F. TOMES

March 3, 1961

Clayton A. Dietrich, Esquire
Assistant Attorney General
State Law Department
10 Light Street
Baltimore 2, Maryland

Re: Griffin vs. State

Dear Mr. Dietrich:

Pursuant to your letter dated February 16, 1961 wherein you requested that I return the thermofax copy of the opinion in *Drews vs. State* to you upon publication of such an opinion, I am enclosing herewith such thermofax copy.

I appreciate your furnishing this copy to me.

Very truly yours,

James S. McAuliffe, Jr.
Assistant State's Attorney

JSM:hms
Enclosure

January 26, 1961

Mr. J. Lloyd Young, Clerk
Court of Appeals of Maryland
Annapolis, Maryland

Dear Mr. Young: Re: Griffin & Green, et al.
 v. State - No. 248 -
 September Term, 1960

We are enclosing Stipulation in the above matter extending the time for the filing of Appellant's brief to and including February 8, 1961.

Very truly yours,

Clayton A. Dietrich
Assistant Attorney General

CAD-h

Encl.

cc: Claude B. Kahn, Esq.
 c/o Sharlitt, Hydeman & Berman
 1632 K Street, N.W.
 Washington 6, D.C.

LAW OFFICES OF
SHARLITT, HYDEMAN & BERMAN
1632 K STREET, N. W., SUITE 14
WASHINGTON 6, D. C.

WILLIAM H. BERMAN
LEE M. HYDEMAN
JOSEPH H. SHARLITT
—
CLAUDE B. KAHN

EXECUTIVE 3-3675

CABLE ADDRESS: SHARMAN

January 25, 1961

Mrs. A. D. McSherry
Attorney General's Office
1201 Mathieson Building
Baltimore 2, Maryland

Re: Griffin, et al
vs.
State of Maryland
Green, et al
vs.
State of Maryland

#248
Sept Term '60

Dear Mrs. McSherry:

After the appropriate officer has signed the enclosed stipulation, please forward it to the Court of Appeals. Thank you.

Sincerely yours,



Claude B. Kahn

CBK:W

Enclosure (dup.)



State's Attorney for Montgomery County

LEONARD T. KARDY

Rockville, Maryland

= January 25, 1961

DEPUTY STATE'S ATTORNEY
JAMES ROBERT MILLER
POPLAR 2-2121
EXT. 216

ASSISTANT STATE'S ATTORNEYS
HARPER M. SMITH
STUART H. SWEENEY
JAMES F. TOMES

The Honorable Thomas B. Finan
Attorney General for the State of Maryland
Mathison Building
Baltimore, Maryland

Dear Mr. Finan:

Enclosed herewith please find copies of the two cases tried in the Circuit Court for Montgomery County, Maryland, on the charge of criminal trespass which cases are now pending before the Court of Appeals of Maryland. The appellant's brief in these cases is due February 1, 1961.

It is my understanding that these two cases have been consolidated into one record before the Court of Appeals. In my recent phone conversations with Assistant Attorney General Norris of your Office, and in my recent communication with your Office with reference to these cases I indicated that this Office desires to participate in the preparation of the brief and in the oral argument of these cases before the Court of Appeals. Will you please therefore request the attorney handling this matter for your Office to communicate with James S. McAuliffe, Jr., Assistant State's Attorney for Montgomery County, Maryland, who has been designated by our Office to assist in the handling of this case on the Appeal.

Very truly yours,

James S. McAuliffe, Jr.
Assistant State's Attorney

JSM:hms
Enclosure (3)

024
5227

November 16, 1960

Charles T. Duncan, Esquire
Attorney at Law
6712 Brennon Lane
Chevy Chase, Maryland

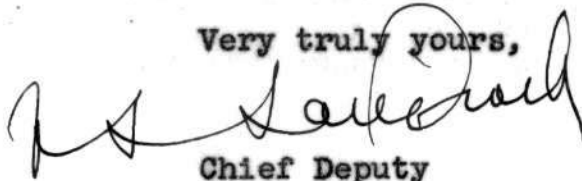
Dear Mr. Duncan:

This will confirm our conversation relative to the appeals of Griffin, et al v. State and Greene, et al v. State, transcripts of which were filed in this office this morning.

It is our understanding that you are filing one brief in these appeals and expect to make one argument. We are, therefore, consolidating the two records that were forwarded by the Montgomery County Circuit Court into one record on appeal (2 appeals in one record - our No. 248)-to which you agreed.

We are returning to you one of your \$20.00 checks since the one fee is sufficient in this instance.

Very truly yours,



Chief Deputy

VTS/vsh

Encls.(2)

cc: Hon. C. Ferdinand Sybert ✓
Leonard T. Kardy, Esquire
Clayton K. Watkins, Clerk

DOCKET ENTRIES

STATE OF MARYLAND :
 :
 VS. : NO. 3878 CRIMINAL
 :
 CORNELIA A. GREENE :
 :
 FOR : TRESPASSING

- August 4, 1960 - Warrant, Recognizance, Demand for Jury Trial &c. filed.
- September 12, 1960 - Motion and leave to consolidate this case with Numbers 3879, 3890, 3891 and 3893 Criminals.
- September 13, 1960 - Motion and leave to amend warrant and amendment filed.
- September 13, 1960 - Plea not guilty.
- September 13, 1960 - Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.
- September 13, 1960 - The Court find defendant guilty.
- September 13, 1960 - Defendant was asked if she had anything to say before sentence.
- September 13, 1960 - Judgment that the Traverser, Cornelia A. Greene pay a fine of One hundred and no/100 dollars (\$100.00) current money and costs, and in default in the payment of said fine and costs that the Traverser, Cornelia A. Greene, be confined in the Montgomery County Jail until the fine and costs have been paid or until released by due process of law.
- September 13, 1960 - Appeal filed.
- October 13, 1960 - Petition and Order of Court extending time for transmittal of record to Court of Appeals to and including the 15th day of November, 1960.
- November 15, 1960 - Testimony filed.
- November 15, 1960 - Record mailed to the Court of Appeals.

L.T. Kardy - State's Attorney
J.H. Sharlitt & C. T. Duncan - Attorneys for Defendant

ead
#241
Jefferson v State

DOCKET ENTRIES

STATE OF MARYLAND	:	
	:	
VS.	:	NO. 3889 CRIMINAL
	:	
MARVOUS SAUNDERS	:	

FOR : TRESPASSING

- August 4, 1960 - Warrant, Demand for Jury Trial &c filed.
- September 12, 1960 - Motion and leave to amend warrant and amendment filed.
- September 12, 1960 - Motion and leave to consolidate this case with numbers 3881, 3882, 3883 and 3892 Criminal.
- September 12, 1960 - Plea not guilty.
- September 12, 1960 - Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.
- September 12, 1960 - The Court find the defendant guilty.
- September 12, 1960 - Defendant was asked if he had anything to say before sentence.
- September 12, 1960 - Judgment that the Traverser, Marvous Saunders pay a fine of Fifty and no/100 dollars (\$50.00) current money and costs, and in default in the payment of said fine and costs, that the Traverser, Marvous Saunders be confined in the Montgomery County Jail until the fine and costs have been paid or until released by due process of law.
- September 12, 1960 - Appeal filed in No. 3881 Criminal.
- October 13, 1960 - Petition and Order of Court extending time for transmittal of record to Court of Appeals to and including November 15, 1960 filed in No. 3881 Criminal.
- November 15, 1960 - Testimony filed in No. 3881 Criminal.
- November 15, 1960 - Record mailed to Court of Appeals.

L.T. Kardy - State's Attorney

J.H. Sharlitt & C.T. Duncan - Attorneys for Defendant

DOCKET ENTRIES

STATE OF MARYLAND
VS.
MICHAEL A. PROCTOR

:
:
:
:
:

NO. 3882 CRIMINAL

FOR : TRESPASSING

- August 4, 1960 - Warrant, Recognizance, Demand for Jury Trial &c filed.
- September 12, 1960 - Motion and leave to amend warrant and amendment filed.
- September 12, 1960 - Motion and leave to consolidate this case with numbers 3881, 3883, 3889 and 3892 Criminals.
- September 12, 1960 - Plea not guilty.
- September 12, 1960 - Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.
- September 12, 1960 - The Court find defendant guilty.
- September 12, 1960 - Defendant was asked if he had anything to say before sentence.
- September 12, 1960 - Judgment that the Traverser, Michael A. Proctor pay a fine of Fifty and no/100 dollars (\$50.00) and costs and in default in the payment of said fine and costs, that the Traverser, Michael A. Proctor, be confined in the Montgomery County Jail until the fine and costs have been paid or until released by due process of law.
- September 12, 1960 - Appeal filed in No. 3881 Criminal.
- October 13, 1960 - Petition and Order of Court extending time for transmittal of record to Court of Appeals to and including November 15, 1960 filed in No. 3881 Criminal.
- November 15, 1960 - Testimony filed in No. 3881 Criminal.
- November 15, 1960 - Record mailed to the Court of Appeals.

L.T. Kardy - State's Attorney

J.H. Sharlitt & C.Y. Duncan - Attorneys for Defendant.

DOCKET ENTRIES

STATE OF MARYLAND :
 :
 VS. : NO. 3891 CRIMINAL
 :
 RONYL J. STEWART :
 :
 FOR : TRESPASSING

- August 4, 1960 - Warrant, Demand for Jury Trail &c Filed.
- September 12, 1960 - Motion and leave to consolidate this case with numbers 3878, 3879, 3890 and 3893 Criminals.
- September 13, 1960 - Motion and leave to amend warrant and amendment filed.
- September 13, 1960 - Plea not guilty.
- September 13, 1960 - Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.
- September 13, 1960 - The Court find defendant guilty.
- September 13, 1960 - Defendant was asked if he had anything to say before sentence.
- September 13, 1960 - Judgment that the Traverser, Ronyl J. Stewart pay a fine of Fifty and no/100 dollars (\$50.00) current money, and costs, and in default in the payment of said fine and costs, that the Traverser, Ronyl J. Stewart, be confined in the Montgomery County Jail, until the fine and costs have been paid or until released by due process of law.
- September 13, 1960 - Appeal filed in No. 3878 Criminal.
- October 13, 1960 - Petition and Order of Court extending time for transmittal of record to Court of Appeals to and including November 15, 1960 filed in No. 3878 Criminal.
- November 15, 1960 - Testimony filed in No. 3878 Criminal.
- November 15, 1960 - Record mailed to the Court of Appeals.

L.T. Kardy - State's Attorney

J.H. Sharlitt & C. T. Duncan - Attorneys for Defendant

DOCKET ENTRIES

STATE OF MARYLAND

VS.

HELENE D. WILSON

:
:
:
:
:

NO. 3879 CRIMINAL

FOR : TRESPASSING

- August 4, 1960 - Warrant, Recognizance, Demand for Jury Trial &c Filed.
- September 12, 1960 - Motion and leave to consolidate this case with numbers 3878, 3890, 3891 and 3893 Criminals.
- September 13, 1960 - Motion and leave to amend warrant and amendment filed.
- September 13, 1960 - Plea not guilty.
- September 13, 1960 - Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.
- September 13, 1960 - The Court find defendant guilty.
- September 13, 1960 - Defendant was asked if she had anything to say before sentence.
- September 13, 1960 - Judgment that the Traverser, Helene D. Wilson pay a fine of One hundred and no/100 dollars (\$100.00) current money, and costs, and in default in the payment of said fine and costs that the Traverser, Helene D. Wilson, be confined in the Montgomery County Jail until the fine and costs have been paid or until released by due process of law.
- September 13, 1960 - Appeal filed in No. 3878 Criminal.
- October 13, 1960 - Petition and Order of Court extending time for transmittal of record to Court of Appeals to and including November 15, 1960 filed in No. 3878 Criminal.
- November 15, 1960 - Testimony filed in No. 3878 Criminal.
- November 15, 1960 - Record mailed to Court of Appeals.

L.T. Kardy - State's Attorney

J.H. Sharlitt & C. T. Duncan - Attorneys for Defendant

July 31, 1962

Mrs. Louise S. Korn
Assistant District Attorney
2700 Tulane Avenue
New Orleans 19, Louisiana

Dear Mrs. Korn:

Please be advised that the citation in the case of Griffin vs Maryland is 225 Md. 422, 171 A.2d 717.

Hoping this will be of some assistance to you, I remain

Sincerely,

Thomas B. Finan
Attorney General

TBF:jh



DISTRICT ATTORNEY

PARISH OF ORLEANS
STATE OF LOUISIANA
2700 TULANE AVENUE
NEW ORLEANS, 19



JIM GARRISON
DISTRICT ATTORNEY

July 25, 1962

Honorable Thomas B. Finan
Attorney General of Maryland
1201 Mathieson Building
10 Light Street
Baltimore 2, Maryland

Dear Sir:

I would appreciate your sending me the citation in the case of Griffin v. Maryland in which the United States Supreme Court granted certiorari in June of this year.

Thank you very much for this information.

Sincerely yours,

Louise Korn

(Mrs.) Louise S. Korn
Assistant District Attorney

LSK/nes

March 22, 1961

Claude B. Kahn, Esq.
Sharlitt, Hydeman & Berman
1632 K Street, N. W., Suite 14
Washington 6, D. C.

Re: Griffin v. State

Dear Mr. Kahn:

This will confirm my telephone conversation this afternoon during which I advised you that our case should be argued in the Court of Appeals on Thursday, April 13, 1961. Since I just finished writing the brief in Appeal 247 and read your brief last night, it will be necessary for me to have some additional time to research and draft an Appellee's brief in 248.

I am enclosing a stipulation to extend the time until the Tuesday after Easter, April 4, 1961. In order to give you a maximum amount of advance notice, I will send you a rough manuscript copy at the time it is sent to the printer.

Very truly yours,

Clayton A. Dietrich
Assistant Attorney General

CAD:k
encl.

14504

March 30, 1961

Claude B. Kahn, Esq.
Sharlitt, Hydeman & Berman
1632 K Street, N. W., Suite 14
Washington 6, D. C.

Re: Griffin v. State

Dear Mr. Kahn:

Today I sent my manuscript to the Daily Record for printing. For your advanced information I am enclosing a copy of the manuscript.

I understand our case is in for argument on April 13th, 1961.

Sincerely,

Clayton A. Dietrich
Assistant Attorney General

CAD:k
encl.

4504

LAW OFFICES OF
SHARLITT, HYDEMAN & BERMAN
1632 K STREET, N. W., SUITE 14
WASHINGTON 6, D. C.

WILLIAM H. BERMAN
LEE M. HYDEMAN
JOSEPH H. SHARLITT
CLAUDE B. KAHN

EXECUTIVE 3-3675

CABLE ADDRESS: SHARMAN

March 22, 1961

Clayton Dietrich, Esq.
Attorney General's Office
1201 Mathieson Building
Baltimore 2, Maryland

Re: Griffin, et al.
v.
State of Maryland

and

Greene, et al.
v.
State of Maryland

Dear Mr. Dietrich:

Pursuant to your request of this date, I am forwarding herewith two additional copies of our brief for the appellants.

Sincerely yours,

Claude B. Kahn

Claude B. Kahn

CBK:W

Enclosure (dup.)

#4504

SMITH, SOMERVILLE & CASE
ATTORNEYS AT LAW
14TH FLOOR
300 ST. PAUL PLACE
BALTIMORE 2, MARYLAND

TELEPHONE
SARATOGA 7-1164
TOWSON OFFICE
204 W. PENNSYLVANIA AVE.
TOWSON 4, MD.
TELEPHONE
VALLEY 5-6617
CABLE ADDRESS "CLARKLAW"

CLATER W. SMITH
WM. B. SOMERVILLE
RICHARD W. CASE
PHILLIPS L. GOLDSBOROUGH III
ALFRED M. PORTH
M. KING HILL, JR.
JOHN H. BOLGIANO
HERBERT F. MURRAY
JEFFREY B. SMITH

EDWARD O. CLARKE, JR.
JAMES M. GABLER
GEORGE EDW. THOMSEN
CLATER W. SMITH, JR.
GLENN C. PARKER
ROGER D. REDDEN
PAUL E. BURKE, JR.
JOHN E. SANDBOWER III

June 26, 1961

Joseph S. Kaufman, Esq.
Deputy Attorney General
State Law Department
1201 Mathieson Building
Baltimore 2, Maryland

Dear Joe:

I enclose a conformed copy of the order signed by Judge Thomsen on Friday. This should close your file in the matter as the case is now finally disposed of, due to the Park's opening on a desegregated basis this spring.

Sincerely,



Roger D. Redden

RDR:lfw
Enclosure

OSK
Office of the Clerk,
Supreme Court of the United States,
Washington 25, D.C.
June 26, 1962

Dear Sir:

The Court, on June 25th, entered the following order in the October Term, 1961, cases listed below:

- ✓ 85 Avent, et al. v. North Carolina
- 287 Griffin, et al. v. Maryland
- 638 Lombard, et al. v. Louisiana
- 694 Gober, et al. v. City of Birmingham
- 721 Shuttlesworth, et al. v. City of Birmingham
- 750 Peterson, et al. v. City of Greenville
- 729 Wright, et al. v. Georgia

The petitions for writs of certiorari are granted and the cases are transferred to the summary calendar to be argued in the order listed.

Mr. Justice Frankfurter took no part in the consideration or decision of these petitions.

You are advised, as provided by Rule 41, these cases will not be reached for argument until next term, and accordingly, petitioners' briefs will not be due until next August 25th, or thirty days after receipt of the printed record, whichever date is later.

For your information, counsel in these cases are indicated on the enclosed sheet.

Very truly yours,

John F. Davis, Clerk

By

G. T. Lydman

Assistant.

Encl.
ETL:ht

Honorable Thomas B. Finan
Attorney General of Maryland
1201 Mathieson Bldg.
10 Light St.
Baltimore 2, Md.

No. 85, Oct. Term, 1961
Avent, et al. v. North Carolina
For petitioners
Jack Greenberg, Esq.
10 Columbus Circle - Suite 1790
New York 19, N.Y.

L. C. Berry, Jr., Esq.
McKissick & Berry
209½ W. Main St.
Durham, N.C.

William A. Marsh, Jr., Esq.
203½ E. Chapel Hill St.
Durham, N.C.

No. 287, Oct. Term, 1961
Griffin, et al. v. Maryland
For petitioners
Joseph L. Rauh, Jr., Esq.
1631 K St., N.W.
Washington 6, D.C.

Joseph H. Sharlitt, Esq.
1632 K St., N.W.
Washington 6, D.C.

Jack Greenberg, Esq.
10 Columbus Circle - Suite 1790
New York 19, N.Y.

No. 638, Oct. Term, 1961
Lombard, et al. v. Louisiana
For petitioners
John P. Nelson, Jr., Esq.
Pilie, Nelson and Limes
702 Gravier Bldg.
535 Gravier St.
New Orleans 12, La.

Lolis E. Elie, Esq.
2211 Dryades St.
New Orleans, La.

For respondent
Hon. T. W. Bruton
Atty. Gen. of North Carolina
Justice Bldg.
Raleigh, N.C.

For respondent
Hon. Thomas B. Finan
Atty. Gen. of Maryland
1201 Mathieson Bldg.
10 Light St.
Baltimore 2, Md.

For respondent
Hon. Jack P. F. Gremillion
Atty. Gen. of Louisiana
Capitol Bldg.
Baton Rouge, La.

M. E. Culligan, Esq.
Asst. Atty. Gen. of Louisiana
104 Supreme Court Bldg.
New Orleans, La.

Richard A. Dowling, Esq.
District Attorney
Parish of Orleans
2700 Tulane Ave.
New Orleans, La.

No. 694, Oct. Term, 1961

Gober, et al. v. City of Birmingham and

No. 721, Oct. Term, 1961

Shuttlesworth, et al. v. City of Birmingham

For petitioners

Jack Greenberg, Esq.
10 Columbus Circle, Suite 1790
New York 19, N.Y.

Arthur D. Shores, Esq.
1527 Fifth Ave., North
Birmingham, Ala.

Orzell Billingsley, Jr.
1630 Fourth Ave., North
Birmingham, Ala.

Peter A. Hall, Esq.
Masonic Temple Bldg.
Birmingham, Ala.

J. Richmond Pearson, Esq.
415 North 16th St.
Birmingham, Ala.

No. 750, Oct. Term, 1961

Peterson, et al. v. City of Greenville

For petitioners

Jack Greenberg, Esq.
10 Columbus Circle, Suite 1790
New York 19, N.Y.

Matthew J. Perry, Esq.
1107½ Washington St.
Columbia 1, S.C.

Willie T. Smith, Esq.
125½ Falls St.
Greenville, S.C.

For respondent

Watts E. Davis, Esq.
Earl McBee, Esq.
Asst. City Attorneys
City of Birmingham
Dept. of Law - City Hall
Birmingham, Ala.

For respondent

Thomas A. Wofford, Esq.
Wofford & Snyder
200 Masonic Temple
Greenville, S.C.

W. H. Arnold, Esq. - City Atty.
Love, Thornton & Arnold
Suite 103, Lawyers Bldg.
Greenville, S.C.

Hoyt F. Partee, Esq.
Asst. City Atty.
Lawyers Bldg.
Greenville, S.C.

No. 729, Oct. Term, 1961

Wright, et al. v. Georgia

For petitioners

Jack Greenberg, Esq.
10 Columbus Circle - Suite 1790
New York 19, N.Y.

B. Clarence Mayfield, Esq.
458½ West Broad St.
Savannah, Ga.

For respondent

Hon. Eugene Cook
Atty. Gen. of Georgia
132 Judicial Bldg.
Atlanta 3, Ga.

Andrew J. Ryan, Jr., Sol. Gen.
Eastern Judicial Circuit of Ga.
Rm. 305, Chatham County Courthouse
Savannah, Ga.

Page 26

In the
SUPREME COURT OF THE UNITED STATES
October Term, 1961

No. 287

WILLIAM L. GRIFFIN, et al.,

Petitioners,

v.

STATE OF MARYLAND,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO
THE COURT OF APPEALS OF MARYLAND

PETITIONERS' DESIGNATION OF PARTS OF
THE RECORD TO BE PRINTED

Petitioner designates the following portions of the
record to be printed for the use of this Court:

1. Docket Entries in No. 3881 Criminal (Tr. 24).
2. Application for warrant against William L. Griffin
(Tr. 1).
3. State warrant against William L. Griffin (Tr. 2).
4. State warrant against William L. Griffin (Tr. 3).

5. Docket Entry filed by Judge Gordon, August 4, 1960 (Tr. 5).
6. Official transcript of proceedings in the Circuit Court of Montgomery County, Maryland, in Griffin, et al. (135 pages) - print entire transcript with the exception of page 51 through page 73, line 4; and page 75, line 15 through page 80, line 5.
7. Opinion of Court of Appeals of Maryland filed June 8, 1961.

Respectfully submitted,

John Silard

Attorney for Petitioners
1625 K Street, N.W.
Washington 6, D. C.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has this 3rd day of July, 1962, served Thomas B. Finan, Attorney General of the State of Maryland, Mathiesen Building, Baltimore, Maryland, and Leonard T. Kardy, State's Attorney for Montgomery County, Rockville, Maryland, with a copy of Petitioners' Designation of Parts of the Record to be Printed, by placing same in the United States mail, first-class, postage prepaid.

John Silard

Attorney for Petitioners

July 12, 1962

Mr. John Silard, Esq.
1625 K Street, N. W.
Washington 6, D. C.

RE: Griffin v. State

Dear Mr. Silard:

Receipt is acknowledged of petitioners' designation of parts of the record to be printed in the above case now pending before the Supreme Court of the United States. I have reviewed the same in light of Rule 26 of the Supreme Court Rules and am in full accord with such designation.

Sincerely yours,

Robert C. Murphy
Assistant Attorney General

RCM/eam

July 12, 1962

Mr. W. H. Arnold
City Attorney
P.O. Box 10045
Greenville, South Carolina

RE: Peterson v. City of Greenville

Dear Mr. Arnold:

Receipt is acknowledged of your letter of July 3, 1962 in which you request a copy of the brief in opposition filed by the State of Maryland in Griffin v. State, which case is now pending before the Supreme Court. Unfortunately we are down to our very last copy of our brief in opposition and it will, therefore, not be possible to forward one to you. We will, however, forward a copy of our brief in the case which we should file sometime this fall.

Very truly yours,

Robert C. Murphy
Assistant Attorney General

RCM/eam

July 3, 1962

Hon. T. W. Bruton
Attorney General
Justice Bldg.
Raleigh, N. C.

Hon. Jack P. F. Gremillion
Attorney General
Capitol Bldg.
Baton Rouge, La.

Hon. Thomas B. Finan
Attorney General
10 Light St.
Baltimore 2, Maryland

Hon. Watts E. Davis
Department of Law - City Hall
Birmingham, Alabama

Hon. Eugene Cook
Attorney General
132 Judicial Bldg.
Atlanta 3, Georgia

Gentlemen:

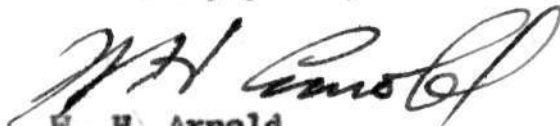
Re: Peterson vs. City of Greenville

I have word from the United States Supreme Court that we are similarly situated with respect to certain cases now pending before that Court.

I am enclosing a copy of our Brief filed in opposition to the Petition for certiorari. I would like very much to have a copy of your Brief in opposition and also a copy of your Brief which you will file sometime this fall.

I will be glad to furnish you with a copy of the Brief which we file this fall.

Sincerely yours,



W. H. Arnold
City Attorney
P. O. Box 10045
Greenville, S. C.

WHA/nm
CC: Wofford and Snyder
P. O. Box 232
Greenville, S. C.

Agreed

Black v. Cutter Labs., 351 U.S. 292 (1956).

Collective bargaining ~~agent~~ so construed that Communist Party membership was "just cause" for discharge of employee and state court held worker lawfully dismissed. Supreme Court held the judgment involved nothing more than an interpretation of the contract. Dissent of Warren, Douglas & Black urged application of Shelley v. Kraemer because state court sustained the discharge based upon the employee's political beliefs. This amounted to state enforcement of a contract infringing upon the employee's guaranteed right to the expression of political thoughts. Such discrimination enforced by state courts amounts to state action prohibited by the Fourteenth Amendment.

1st Amendment right

Majority - rejected state action argument and held there was no federal question presented and the judgment below rested upon adequate state grounds.

BEAL, Law of Bailments - Canadian Ed. 1900

Page 291.

A tavern is not an inn; and in such a place no one has a right to insist on being served any more than in any other shop. Regina v. Rymer (1877) 2 Q.B.D. 136.

The obligation of innkeepers to provide food and lodging extends only to travellers while upon their journeys in order that they may not be deprived of necessary food and lodging. Ibid. Also, Burgess v. Clements (1815) 4 M. & S. 306; Calves Case (1584) 8 Co. Rep. 32.
Coffee house is not an inn. Pitt v. Lansing (1814) 4 Camp 73.

Rationale of Innkeeper's Duty -

See Rex v. Dwens (1835) 7 C. & P. 213, Coleridge. Law gives innkeeper a lien in return for exacting a duty to receive travellers.

Girard Case

Pa. v. Bd. of Directors, 353 U.S. 230, remanded case because Board of Girard College was an agency of the City of Philadelphia. Later, when individuals were substituted for City as trustees, the Pennsylvania court upheld effectuation of testamentary trust by Orphans' Court, which established an all-white school. Supreme Court denied certiorari. 357 U.S. 570 (1958). In re Girard College Trusteeship, 391 Pa. 434; 138 A. 2d 844.

P. 851 -

"The pertinently distinguishing feature of these cases (Shelley and Barrows) is that in each of them it was a constitutionally guaranteed right of an individual that was subjected to the inhibited discrimination based on race or color."

The court conceded that admission of will to probate and administration by the Orphans' Court was State action. Orphans' Court here even changed trustees from City to private persons to avoid the constitutional prohibition.

P. 853 -

"What keeps such a charity so created from constituting violation of equal protection clause is that no one who does not come under settlor's definition of beneficiary has a constitutionally protected right to share in its benefits."

Gordon v. Gordon, 124 N.E. 2d 228 (Mass.); cert. den. 349 U.S. 947 (1955)

Held ⁱⁿ ~~some~~ of testator lost all rights under testamentary trust by his marriage out of the Hebrew faith (to a Catholic). Order of distribution to other children of testator held not to amount to State action violating equal protection clause of the Fourteenth Amendment under Shelley v. Kraemer.

Wechsler, Herbert - "Toward Natural Principles of Constitutional Law", 73 Harv. L. R. 1 (1959).

P. 29 -

"Assuming that the Constitution speaks to state discrimination on the ground of race but not to such discrimination by an individual even in the use or distribution of his property, although his freedom may no doubt be limited by common law or statute, why is the enforcement of the private covenant a state discrimination rather than a legal recognition of the freedom of the individual? . . . What is not obvious, and is the crucial step, is that the state may properly be charged with the discrimination when it does no more than give effect to an agreement that the individual involved is entirely free to make."

Does the state embrace the owner's reasons for excluding another if it buttresses his power to exclude by the law?

Lewis, Thos. P. - "The Meaning of State Action" - 60 Col. L.R. 1083 (1960).

P. 1083 -

"to state that the obvious fact that the action of a state court is the action of the state provides no hint of the unique and perplexing problems concerning this particular kind of state action."

See Harlan's dissent/rejected by majority in

Civil Rights Cases, 109 U.S. 41; Cf. 109 U.S. 24 - Bradley. Harlan found innkeepers had duty to serve as a quasi-public calling.

"If an individual is refused admission to an inn because of his race and has no available state remedy, has the state denied him equal protection?"

Cf. Burton, where state had control over lessee - Does this extend to licensees?

The NAACP announced plans for defense of some 1,000 Negroes arrested for trespass, etc., for demonstrating and sit-ins at lunch counters. Main challenge was to attack use of state courts and police to enforce private discrimination as violating the Fourteenth Amendment. New York Times, March 20, 1960, p. 1, col. 3.

AFFIRMATIVE DUTY -

White Primary Cases - 15th Amendment was designed as a specific prohibition against discrimination on the basis of race or color in voting, while the Fourteenth was for more general protection. Greater state duty in Fifteenth Amendment cases.

Terry & Allbright due process cases involving prepared amendments imply state duty. - Marsh v. Alabama; Brown v. Bd.

READ:

Rice v. Sioux City Memorial Park, 60 N.W. 2d 110 (1953),
245 Iowa 147, aff'd 348 U.S. 880 (1954), vacated 349
U.S. 70 (1955) and cert. denied as improvidently granted.
Defendant refused to bury husband of Plaintiff because he
was an Indian. Breach of contract suit for damages
dismissed by state court because contract not void but
only unenforceable. Judicial recognition of clause held
not to be state action and Defendant could stand on his
contract.

*no
right
to
be
buried*

Terry v. Adams, 345 U.S. 461.

Black, Douglas and Burton held Fifteenth Amendment
prohibited a state from allowing an association to duplicate
state's election process (primary) was to strip Negroes
of any influence in selecting county officials. Jaybird
Association, excluding Negroes, held own primary and its
candidates always won on ballot. Frankfurter rested on fact
that county election officials condoned the continued effort
to exclude Negroes from voting.

Clark, Vinson, Reed and Jackson said organization was a
political party as part of the Democratic Party.

Frankfurter - Page 473:

"The state in these situations must mean not private
citizens, but those clothed with the authority and the
influence which official position affords. The application

of prohibition of the Fifteenth Amendment to 'any State' is translated by legal jargon to read 'State action'. This phrase gives use to a false direction in that it implies some impressive machinery or deliberative conduct normally associated with what orators call a sovereign state. The vital requirement is state responsibility - that somewhere, somehow, to some extent, there be an infusion of conduct by officials, panoplied with state power, into any scheme by which colored citizens are denied voting rights merely because they are colored."

District of Columbia Act of 1872 -

Equal Accommodations Law - refers to both restaurants and hotels as separate places of public accommodation.

See D.C. v. Thompson Co., 346 U.S. 100.

Legislation which prohibits discrimination in facilities serving public is within police power of the states. Railway Mail Association v. Carsi, 326 U.S. 88-98, 89 L. Ed. 2072; Bob Lo v. Michigan, 333 U.S. 28, 92 L. Ed. 455.

October 2, 1963

Mr. E. P. Cullinan
Chief Deputy Clerk
Supreme Court of the United States
Washington, D.C. 20543

Dear Mr. Cullinan:

Re: Griffin v. Maryland - No. 6
Bell v. Maryland - No. 12
October Term, 1963

Pursuant to our telephone conversation today relative to the above cases, I am attaching a request to enter the appearance of Mr. Russell R. Reno, Jr., as counsel for the Appellee in each case. It is our desire to have Mr. Reno occupy the fifteen minute period allotted to the State of Maryland to present argument in rebuttal of that presented by the Solicitor General of the United States, who will appear as amicus curiae.

Your very kind assistance is, as always, greatly appreciated.

Sincerely,

Robert C. Murphy
Deputy Attorney General

RCM-h

Encl.

October 2, 1963

Mr. E. P. Cullinan
Chief Deputy Clerk
Supreme Court of the United States
Washington, D.C. 20543

Dear Mr. Cullinan:

Re: Griffin v. Maryland - No. 6
Bell v. Maryland - No. 12
October Term, 1963

Pursuant to our telephone conversation today relative to the above cases, I am attaching a request to enter the appearance of Mr. Russell R. Reno, Jr., as counsel for the Appellee in each case. It is our desire to have Mr. Reno occupy the fifteen minute period allotted to the State of Maryland to present argument in rebuttal of that presented by the Solicitor General of the United States, who will appear as amicus curiae.

Your very kind assistance is, as always, greatly appreciated.

Sincerely,

Robert C. Murphy
Deputy Attorney General

RCM-h

Encl.

One Charles Center 21201

September 30, 1963

Mr. E. P. Cullinan
Chief Deputy Clerk
Supreme Court of the United States
Washington, D. C. 20543

Re: Griffin v. Maryland, No. 6
Bell V. Maryland, No. 12
October Term, 1963

Dear Mr. Cullinan:

In reply to your letter of September 27, 1963, relative to the above cases, please be advised that the undersigned will occupy the allotted time to present argument in rebuttal of that presented by the Solicitor General.

Sincerely yours,

Robert C. Murphy
Deputy Attorney General

RCM
k

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

September 27, 1963.

Honorable Robert C. Murphy,
Deputy Attorney General of Maryland,
State Law Department,
One Charles Center,
Baltimore, Maryland.

RE: GRIFFIN V. MARYLAND, NO. 6,
BARR V. CITY OF COLUMBIA, NO. 9,
BOUIE V. CITY OF COLUMBIA, NO. 10,
BELL V. MARYLAND, NO. 12,
ROBINSON V. FLORIDA, NO. 60,
October Term, 1963

Dear Sir:

As you heretofore have been advised, the Solicitor General has been allotted forty-five minutes for the presentation of his argument, as amicus curiae, at the conclusion of these cases.


You were also advised that the respondents and appellee had been allotted a similar amount of time to be used following the Solicitor General's argument.

I am writing to inquire whether you are in a position to advise me as to which attorneys will participate in the argument for the respondents and the appellee in these cases.

Very truly yours,

JOHN F. DAVIS, Clerk

By


E. P. Cullinan,
Chief Deputy.

EPC:tw

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543

September 27, 1963.

Honorable Loring E. Hawes,
Assistant Attorney General of Maryland,
One Charles Center,
Baltimore, Maryland.

RE: GRIFFIN V. MARYLAND, NO. 6,
BARR V. CITY OF COLUMBIA, NO. 9,
BOUIE V. CITY OF COLUMBIA, NO. 10,
BELL V. MARYLAND, NO. 12,
ROBINSON V. FLORIDA, NO. 60,
October Term, 1963

Dear Sir:

As you heretofore have been advised,
the Solicitor General has been allotted forty-
five minutes for the presentation of his argument,
as amicus curiae, at the conclusion of these cases.


You were also advised that the respondents
and appellee had been allotted a similar amount of
time to be used following the Solicitor General's
argument.

I am writing to inquire whether you are
in a position to advise me as to which attorneys
will participate in the argument for the respondents
and the appellee in these cases.

Very truly yours,

JOHN F. DAVIS, Clerk

By


E. P. Cullinan,
Chief Deputy.

EPC:tw

OFFICE OF THE CLERK
SUPREME COURT OF THE UNITED STATES
WASHINGTON, D. C. 20543
October 3, 1963

Robert C. Murphy, Esquire
Deputy Attorney General
State Law Department
One Charles Center
Baltimore, Maryland, 21201

RE: GRIFFIN, ET AL. v. MARYLAND, No. 6;
BELL, ET AL. v. MARYLAND, No. 12,
October Term, 1963

Dear Mr. Murphy:

I acknowledge receipt of your letter of October 2nd, together with an order for the entry of Mr. Reno's appearance in the above-entitled cases.

I note that Mr. Reno will present the argument for the respondents in answer to the Solicitor General's argument.

Very truly yours,

JOHN F. DAVIS, Clerk

By



E. P. Cullinan
Chief Deputy

EPC:mlg

Griffin case 4504

October 23, 1963

Charles J. Steele, Esq.
Whiteford, Hart, Carmody & Wilson
815 Fifteenth Street, N. W.
Washington 5, D. C.

Dear Mr. Steele:

In response to your letter of October 14, 1963, I am sorry to advise you that we are now down to our file copy of the brief in the Glen Echo case. Ordinarily, we order a large number of additional copies of a brief in case it is of some importance, such as the Griffin case, but in this instance we failed to do so.

I am sorry that I cannot give you a more favorable reply.

Sincerely yours,

Robert C. Murphy
Deputy Attorney General

RCM:imb

ROGER J. WHITEFORD
RINGGOLD HART
JOHN J. CARMODY
JOHN J. WILSON
HARRY L. RYAN, JR.
PHILIP S. PEYSER
JO V. MORGAN, JR.
B. HOWELL HILL
FRANK H. STRICKLER
WILLIAM E. ROLLOW
CHARLES J. STEELE
JOHN J. CARMODY, JR.

LAW OFFICES
WHITEFORD, HART, CARMODY & WILSON
815 FIFTEENTH STREET, NORTHWEST
WASHINGTON 5, D. C.

TELEPHONE
638-0465
AREA CODE: 202

CABLE ADDRESS
"WHITEHART WASHINGTON"

October 14, 1963

Mr. Robert G. Murphy
Deputy Attorney General
State of Maryland
Annapolis, Maryland

Dear Mr. Murphy:

I read in the Washington Daily News of October 14, 1963, that you are representing the State of Maryland in the Glen Echo racial segregation case before the Supreme Court of the United States.

On November 4, 1963, the Bar Association of the District of Columbia is sponsoring the taping of a one-half hour television show dealing with the right of a private businessman to refuse to serve Negroes, or anyone else for that matter. The show will be shown on Channel 5 in Washington on Sunday, November 10.

I am one of the participants and, in general, will take the position that the owner of a private business does have a right to refuse service to anyone he wants to in the absence of a statute to the contrary. In other words, my position on the program will be basically your position before the Supreme Court.

If possible, I would certainly appreciate receiving from you copies of your briefs in the Glen Echo case as well as any extra copies of legal memoranda which you may have.

Thank you for your cooperation.

Sincerely yours,

A handwritten signature in cursive script that reads "Charles J. Steele". The signature is written in dark ink and is positioned above the typed name.

Charles J. Steele

CJS/pl

October 15, 1963

Miss Jane H. Cohen
Vassar College
Poughkeepsie, New York

Dear Miss Cohen:

I have your letter of October 3, 1963, requesting a copy of the brief of this office filed in the Griffin case.

Unfortunately, because of the great demand for this brief, we have totally run out of them and are now down to our last file copy. Should you be in Baltimore at any time, we shall of course be pleased to let you see it.

Sincerely,

Robert C. Murphy
Deputy Attorney General

RCM:imb

VASSAR COLLEGE
POUGHKEEPSIE - NEW YORK

October 3, 1963

The Honorable Thomas B. Finan
Attorney General
State of Maryland
Baltimore, Maryland

Dear Sir:

I am a senior at Vassar College and am writing my thesis in Political Science on the concept of state action.

Having spent this past summer in Washington, I was able to complete some research and to obtain the October, 1962 briefs which were filed in the Supreme Court in William L. Griffin, et al vs. Maryland. On August 25, however, the petitioners filed a new brief, and Rauh and Silard, Attorneys, were kind enough to send me a copy. To complete my research on this case, I should like a copy of the brief which the State of Maryland has filed as respondent, and I wonder if it would be possible for you to send me one. If you have any comments on this case, I would certainly appreciate them also.

My address is 341 Main, Vassar College, Poughkeepsie, New York.

I shall greatly welcome your assistance. Thank you very much.

Very truly yours,



Jane H. Cohen

4612 C
or 4504⁶

October 15, 1963

Joseph S. Kaufman, Esq.
10 Light Street
Baltimore 2, Maryland

Dear Joe:

I am returning with many thanks your copy of the Fourth Circuit's opinion in Williams v. Howard Johnson's Inc.

At the hearing yesterday on the Griffin case the Justices were just as interested and just as inquisitive as they were at the first hearing. Again Mr. Justice Goldberg pounded away at me, as did Mr. Chief Justice Warren and Mr. Justice Black. With the exception of Mr. Justice Douglas, each of the Justices asked at least one question. In Warren's case it must have been close to 15 and in Goldberg's an equal number. I think that the case will be decided against us either because of the situation of the Special Deputy Sheriff or because the Maryland statute is unconstitutionally vague, as applied to petitioners' conduct.

Kindest personal regards.

Sincerely,

Robert C. Murphy
Deputy Attorney General

RCM:imb

Enclosure

File Copy

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1963

No. 6

WILLIAM L. GRIFFIN, ET AL., *Petitioners,*
vs.
MARYLAND, *Respondent.*

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE
STATE OF MARYLAND

BRIEF FOR PETITIONERS

JOSEPH L. RAUH, JR.
JOHN SILARD,
DANIEL H. POLLITT,
1625 K Street, N.W.,
Washington 6, D. C.

JOSEPH H. SHARLITT,
LEE M. HYDEMAN,
1001 Connecticut Avenue, N.W.,
Washington 6, D.C.

Of Counsel:

JACK GREENBERG,
JAMES M. NABRIT, III,
10 Columbus Circle,
New York 19, New York.

INDEX

	Page
Opinions Below	1
Jurisdiction	1
Question Presented	2
Statutes Involved	2
Statement	2
Summary of Argument	8
Argument	14
I. The State's Active Support to the Racial Discrimination of Glen Echo Park Trans- gresses the Equal Protection Clause of the Fourteenth Amendment	15
II. Under the Equal Protection Clause, the State Can Neither Recognize, Countenance, Nor Protect a "Right" of Discrimination Against Negroes at Public Accommodations	27
Conclusion	42

Table of Cases

<i>Barrows v. Jackson</i> , 346 U.S. 249	8, 9, 12, 15, 16, 17, 21, 31
<i>Boynton v. Virginia</i> , 364 U.S. 454	17
<i>Breard v. Alexandria</i> , 341 U.S. 622	23
<i>Burton v. Wilmington Parking Authority</i> , 365 U.S. 715	8, 9, 12, 14, 15, 20, 21, 30, 34
<i>Cantwell v. Connecticut</i> , 310 U.S. 296	23, 27
<i>Civil Rights Cases</i> , 109 U.S. 3	11, 13, 14, 29, 30, 33, 39
<i>Cooper v. Aaron</i> , 358 U.S. 1	34
<i>Edwards v. South Carolina</i> , 372 U.S. 299	27
<i>Ex Parte Virginia</i> , 100 U.S. 339	15
<i>Garner v. Louisiana</i> , 368 U.S. 157	24, 32
<i>Griffin v. Collins</i> , Civil Action No. 12308, D.C. Md. (1960)	19
<i>Hall v. Commonwealth</i> , 335 U.S. 875	23
<i>Henderson v. United States</i> , 339 U.S. 816	34

	Page
<i>James v. Maranship Corp.</i> , 25 Cal. 2d 721, 155 P. 2d 329	23
<i>Lanzetta v. New Jersey</i> , 306 U.S. 451	27
<i>Lochner v. New York</i> , 198 U.S. 45	38
<i>Lombard v. Louisiana</i> , 373 U.S. 267	9, 14, 21, 32, 40
<i>Marsh v. Alabama</i> , 326 U.S. 501	10, 21, 22, 23, 30
<i>Munn v. Illinois</i> , 94 U.S. 113	38
<i>Nebbia v. New York</i> , 291 U.S. 502	13, 38
<i>Nixon v. Condon</i> , 286 U.S. 73	33
<i>Nixon v. Herndon</i> , 273 U.S. 536	33
<i>Pennsylvania v. Board of Trusts</i> , 353 U.S. 230	19, 34
<i>Peterson v. Greenville</i> , 373 U.S. 244	20
<i>Public Utilities Com'n v. Pollak</i> , 343 U.S. 451	10, 37
<i>Republic Aviation Corp. v. NLRB</i> , 324 U.S. 793	23
<i>Ross v. Ebert</i> , 275 Wisc. 523, 82 N.W. 2d 315	23
<i>Shelley v. Kraemer</i> , 334 U.S. 1,	
8, 9, 11, 12, 14, 15, 16, 17, 21, 31, 34	34
<i>Smith v. Allwright</i> , 321 U.S. 649	33
<i>Smith v. California</i> , 361 U.S. 147	27
<i>Steele v. Louisville & Nashville R. Co.</i> , 323 U.S. 192,	
21, 33, 34	34
<i>Terry v. Adams</i> , 345 U.S. 461	11, 23
<i>Valle v. Stengel</i> , 176 F. 2d 697	16
<i>Virginia v. Rives</i> , 100 U.S. 313	15
<i>Winters v. New York</i> , 333 U.S. 507	27
<i>Wright v. Georgia</i> , 373 U.S. 284	27

Miscellaneous

Cong. Globe, 42nd Cong., 2d Sess., 382	41
Henkin, <i>Shelley v. Kraemer, Notes for a Revised Opinion</i> , 110 Pa. Law Rev. 473	10, 24, 31
Maryland Code (1957), Art. 27, Sec. 577; Art. 52, Secs. 13-25, 99	2, 5, 19
Montgomery County Code, Ch. 75; Ordinance 4-120, January 16, 1962	26, 34, 35
Opinions Circuit Court for Montgomery County and Court of Appeals of Maryland, 225 Md. 422, 171 A.2d 717	1

INDEX

iii

	Page
Pollitt, <i>Dime Store Demonstrations</i> , 1960 Duke L. J. 315	3
St. Antoine, <i>Private Racial Discrimination</i> , 59 Mich. L. Rev. 993	38
<i>The New York Times</i> , August 11, 1960, p. 14, col. 5; October 18, 1960, p. 47, col. 5; February 7, 1962, p. 40, col. 5 (Memphis)	25, 26
<i>The Washington Post</i> , March 15, 1961, p. 1, col. 2; April 9, 1962, p. 5, col. 2 (Houston); Sept. 13, 1962, p. 18, col. 1 (New Orleans); July 19, 1963, p. 4	20, 26
8 R.R.L.R. 268	26, 37
28 U.S.C. § 1257(3)	1

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1963

No. 6

WILLIAM L. GRIFFIN, ET AL., *Petitioners,*

vs.

MARYLAND, *Respondent.*

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE
STATE OF MARYLAND

BRIEF FOR PETITIONERS

Opinions Below

The opinions of the Circuit Court for Montgomery County and of the Court of Appeals of Maryland (225 Md. 422, 171 A. 2d 717) appear at R. 72 and R. 76.

Jurisdiction

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3). The judgment of the Court of Appeals of the State of Maryland was entered on June 8, 1961. The petition for a writ of certiorari was filed on August 4, 1961 and was granted on June 25, 1962 (R. 84). Oral argument

was had on November 5, 1962, and reargument was ordered by this Court on May 20, 1963 (373 U.S. 920).

Question Presented

Whether at a privately-owned amusement facility licensed to serve and catering to the general public, the State may lend its police authority for enforcement of discrimination against Negroes, and, upon refusal of Negro members of the public to leave the premises, may arrest, accuse, prosecute, and convict them of criminal trespass.

Statutes Involved

This case involves the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, and Article 27, Sec. 577 of the Maryland Code (1957) which provides:

“Any person . . . who shall enter upon or cross over the land, premises or private property of any person . . . after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor . . . provided [however] that nothing in this section shall be construed to include within its provisions the entry or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership of said land, it being the intention of this section only to prohibit any wanton trespass upon the private land of others.”

Statement

The group of “sit-in” cases at the 1962 and 1963 terms of court had their origins in Greensboro, North Carolina, on February 1, 1960 in the attempt of Negro citizens to obtain treatment equal to that afforded to

whites in such public accommodations as food, transportation, entertainment and recreation. On that day, four young Negro students at the North Carolina A. & T. College, who had grown increasingly impatient with prevailing practices under which Negro students could not obtain food and refreshment served at local stores, refused to leave a local lunch counter in Greensboro when they were denied a cup of coffee. This modest incident marked the beginning of widespread efforts in a number of states, including Maryland, to open service for Negroes in places of public accommodation. See Pollitt, *Dime Store Demonstrations*, 1960 Duke L.J. 315. One of those efforts, from which this case arose, took place in the summer of 1960 at the amusement park serving the Nation's Capital.

Glen Echo Park, the major amusement facility in the District of Columbia area, is located in Montgomery County, Maryland. The Park is operated by a corporation licensed to do business in the State of Maryland (R. 3; 78, n. 1). In the years up to 1960, Glen Echo Park was frequented by white customers only (R. 46-47), with the exception of Negro maids accompanying white children (as long as they "didn't do anything in the park" (R. 41)). The park offered to the public the usual games and amusement concessions, together with a swimming pool and eating facilities (R. 77).

On June 30, 1960, a number of persons, including petitioners, gathered outside the main entrance of the Park to urge publicly that Negro patrons be permitted to use the Park's facilities and to seek service for Negro patrons by peaceable means (R. 59-71). A picket line protesting racial segregation was set up outside the main entrance to the Park. (R. 62-63). No tickets of admission were required for entry into the Park (R. 17) and petitioners, young Negro students participating in the Glen Echo protest, entered

the Park through the open main gates at about 8:15 p.m. (R. 6-7). While petitioners were generally aware of Glen Echo's long-standing discriminatory policy, they were hopeful that the management would not refuse them service (R. 61-63, 69). Having entered the Park without difficulty, petitioners took seats on the horses and other animals of the carousel and sought to enjoy a merry-go-round ride (R. 7-8), for which they had in their possession valid tickets of admission (R. 17, 59).¹

Petitioners, as we have said, were hopeful that the Park would not refuse them the service which it advertised and rendered to the general public. Their attempts at service were not unreasonable, considering that no tickets were required for admission to the Park itself (R. 17), that none of the signs around the Park indicated any discrimination against Negro customers (R. 60), and that in its press, radio and television advertising in the District of Columbia area the management invited "the public generally" without distinction of race or color (R. 45-46).

It soon developed, however, that petitioners were not going to be able to ride the carousel on which they were seated. While the carousel remained stationary, petitioners were approached by one Francis J. Collins, who ordered them out of the Park (R. 7-8). Collins was employed by the Glen Echo management as head of the special police force at the Park under arrangement with a private detective service, the National Detective Agency (R. 5, 14-15) and was deputized as a Special Deputy Sheriff of Montgomery County on the request of the Park

¹ Friends of the petitioners had purchased these tickets and had given them to petitioners (R. 60). There is no suggestion that the management placed any restriction upon the transfer of tickets to friends and relatives; indeed, it was conceded by an agent of the Park that transfers frequently occurred in his presence (R. 17). No offer to refund the purchase price was made to petitioners (R. 17).

management (R. 14).² Collins was dressed in the uniform of the National Detective Agency *and was wearing the Special Deputy Sheriff's badge representing his state authority* (R. 14). On the orders of and on behalf of the Glen Echo management (R. 7, 54), but wearing the badge of his State office, Collins "gave them five minutes to get off the property" (R. 7), explaining that it was "the policy of the park not to have colored people on the rides, or in the park" (R. 8). Petitioners declined to obey Collins' order, remaining on the carousel for which they tendered their tickets for the ride (R. 8, 17). Having unsuccessfully directed petitioners to leave the premises, and still acting pursuant to his employers' instructions (R. 7, 54) but exercising his police authority (R. A), Collins then arrested petitioners (R. 12) for trespass in violation of Art. 27, Sec. 577 of the Code (R. A). There was no suggestion that petitioners were "disorderly in any manner" or were unwelcome for any reason other than their color (R. 77).

At the Montgomery County Police precinct house where petitioners were taken after their arrest (R. 12), once more acting upon his employers' instructions but exercising his public office, Collins preferred sworn charges for trespass against petitioners by executing an "Application for Warrant by Police Officer" (R. A). Based upon Collins' charge, a "State Warrant" was thereafter issued by the justice of the peace (R. B), leading to petitioners' trial under the Maryland "wanton trespass" statute, Code Art. 27, Sec. 577. Apparently the State had difficulty deciding

² The private force at the Park included at least two employees deputized as Special Deputy Sheriffs (R. 55) pursuant to Montgomery County Code (1955) Sec. 2-91, which provides that the sheriff "on application of any corporation or individual, may appoint special deputy sheriffs for duty in connection with the property of . . . such corporation or individual; . . . to be paid wholly by the corporation or person on whose account their appointments are made."

whether Collins had been exercising his public or his private powers in enforcing segregation at Glen Echo Park. The State Warrant filed on August 4, 1960 (R. B) alleging that petitioners had refused to leave the Park "*after having been told by the Deputy Sheriff for Glen Echo Park*" to leave the property, was replaced by an Amended State Warrant of September 12, 1960 (R. C) alleging that they had refused to leave "*after having been duly notified by an agent of Kebar, Inc.*" not to remain on the property. The shift from describing Collins as "Deputy Sheriff" to describing him as "an agent of" the owner of the Park was necessitated by the provision of the trespass statute which made entry or crossing over property a crime only "*after having been duly notified by the owner or his agent not to do so . . .*"

Petitioners' trial in the Circuit Court for Montgomery County on September 12, 1960, elicited the circumstances under which petitioners were warned off Glen Echo premises and arrested and accused of trespass by Collins, acting on the orders of the private management and contemporaneously exercising the powers of his public police office as a Deputy Sheriff. At the trial, Collins, Park co-owner Abram Baker, and Park Manager Woronoff, all elaborated upon the orders given by the management to Collins with respect to his enforcement of racial discrimination. Co-owner Abram Baker admitted that from the first day of Collins' employment, management had instructed him to enforce segregation (R. 37). Baker candidly described the use of his *State-deputized* private employee to enforce racial discrimination:

"Q. Did you instruct Lieutenant Collins to arrest all negroes who came on the property, if they did not leave?

"A. Yes.

"Q. That was your instructions?

"A. Yes.

"Q. And did you instruct him to arrest them because they were negroes?

"A. Yes" (R. 39-40).

Deputy Sheriff Collins equally affirmed that he arrested petitioners "because they were negroes," and explained that "I arrested them on order of Mr. Woronoff, due to the fact that the policy of the park was that they catered just to white people . . ." (R. 16). Park Manager Woronoff also testified that Glen Echo's policy was "to maintain the park on a segregated basis" (R. 53) and that when he learned of petitioners' presence in the Park, "I instructed Lieutenant Collins to notify them that they were not welcome in the park, and we didn't want them there, and to ask them to leave, and if they refused to leave, within a reasonable length of time, then they were to be arrested for trespass" (R. 54).

Petitioners' constitutional objections to the State's participation in and support of racial discrimination, were repeatedly rejected by the trial court (R. 4, 12, 55, 71, 72-75). Petitioners were convicted and fined (R. F; 72-75). The Maryland Court of Appeals affirmed the convictions (R. 76), holding that, under the wanton trespass statute, petitioners' refusal to leave the premises upon instructions of management agent Collins, constituted unlawful "entry or crossing over" the property "after having been duly notified by the owner or his agent not to do so."

The Court dismissed petitioners' arguments that State support of racial discrimination by a public commercial enterprise violated the Fourteenth Amendment, finding the case to be "one step removed from State enforcement of a

policy of segregation" (R. 82). Concerning the segregation policy of Glen Echo Park itself, the Court assumed that no constitutional objection could be raised, and expressly referred to "the lawful segregation policy of the operator of the park" (R. 82). Because of the importance of the issues thus presented and the impact of this Court's ruling upon those issues, which will necessarily have effect beyond the individual cases now before the Court, we enlarge in the Argument on the various legal considerations involved in racial discrimination at public accommodations and its enforcement by the authority of the state.

Summary of Argument

I

Maryland's active support to the racial discrimination of Glen Echo Park transgresses the equal protection clause of the Fourteenth Amendment. What the State has done here falls well within the area of State action interdicted by this Court's rulings in *Shelley v. Kraemer*, 334 U.S. 1, *Barrows v. Jackson*, 346 U.S. 249, and *Burton v. Wilmington Parking Authority*, 365 U.S. 715.

In *Shelley*, and later in *Barrows*, this Court ruled that judicial recognition or enforcement of private undertakings to practice segregation constitutes denial by the state of the equal protection guaranteed by the Fourteenth Amendment. In the instant case it is clear that at least as much as in *Shelley* and *Barrows*, the courts of the State of Maryland have become the means for enforcing racial discrimination.

Indeed, the instant case is far stronger than *Shelley*. For here the State process enforcing discrimination is not merely a civil action for the redress of private wrongs but a criminal action bespeaking a State public policy in

preventing the proscribed conduct. Moreover, whereas in *Shelley* the proprietary interest enforced was the homeowner's choice of neighbors, here discrimination has been enforced not in the private domain of home ownership but in a place of public amusement and accommodation.

Actually, there is far more in the instant case than mere *judicial* enforcement of racial discrimination—for here the closest interplay existed at every stage between the discrimination at Glen Echo Park and the authority of the State, which was loaned to the owners for the enforcement of their discrimination. Not only the judicial and prosecutory power of the State of Maryland has been employed to enforce discrimination, but the State's police authority was leased to the Glen Echo management on a formalized basis for the continuing administration and enforcement of its discriminatory policy. As regards enforcement of segregation, there was absolutely no severance at any time between public and private authority at Glen Echo Park. See *Burton v. Wilmington Parking Authority*, 365 U.S. 715; *Lombard v. Louisiana*, 373 U.S. 267.

In the deputizing of the private discriminator and in enforcement of his discrimination through arrest, prosecution and conviction of Negroes seeking service, the State has transgressed the guarantee of equal protection as elaborated in this Court's rulings in *Shelley*, *Barrows*, *Wilmington Parking* and *Lombard*. Nor is it any answer to this constitutional showing that states must be empowered to secure the privacy of property owners, or that a potential condition of self-help would arise if this Court were to recognize an area where the State neither protects nor proscribes discriminatory conduct. As regards the contention that application of *Shelley* in the instant cases would leave states helpless to defend the privacy of premises, the answer is that these cases do not involve property which the owner

has reserved for private use. Far from seeking privacy, these establishments are open to and cater to the trade of the public. Where, as here, the proprietor practices no privacy, it is clear that the *only* interest which the State's action is vindicating is the interest in discrimination, and the Fourteenth Amendment precludes State vindication of such an interest. See *Marsh v. Alabama*, 326 U.S. 501, *Public Utilities Comm'n v. Pollak*, 343 U.S. 451, 464; Henkin, *Shelley v. Kraemer, Notes for a Revised Opinion*, 110 Pa. L. Rev. 473.

To the argument that proprietors would employ forceable self-help in the area where the State neither protects nor forbids discrimination, we submit that the public record of recent years provides an answering demonstration. It is not the habit of proprietors seeking the trade of the public to engage in the dirty business of self-help ousters of Negroes seeking to give their patronage; rather they rely upon police forces to oblige in the enforcement of the "unwritten law." There is every reason to believe that the removal of state support for discrimination will be the occasion not for the advent of forcible self-help but for the demise of segregation in public accommodations. And all apart from the fact that there is no issue of self-help directly involved in this case and from the overwhelming public record that racial discrimination in places of public accommodation will not outlive the withdrawal of state supports, it should be noted that there is at least grave doubt whether a proprietor could legally engage in self-help to remove Negro would-be patrons.

The Fourteenth Amendment does not permit the State of Maryland to utilize its police powers of enforcement, arrest, accusation and prosecution and its judicial power of trial and conviction to administer and enforce discrimination at public accommodations. The quantum of state ac-

tion in this case far exceeds that which this Court found adequate in earlier cases to invoke the equal protection guarantee and requires a reversal of the judgment below.

II

Under the equal protection clause, the State can neither recognize, countenance, nor protect, a "right" of discrimination against Negroes at public accommodations. The previous argument has proceeded on the assumption that at public accommodations proprietors have a "right" to discriminate and has demonstrated that under *Shelley* and related precedents the State may not lend its enforcement to such a right. Here we urge that actually the State cannot create nor recognize any right to discriminate in the public domain, and that accordingly there is no right amenable to vindication by the State's criminal law.

This Court's 1883 decision in the *Civil Rights Cases*, 109 U.S. 3, has given rise to the assumption that the Fourteenth Amendment concerns itself only with the active misfeasance of the State in matters of race rather than with the State's mere tolerance of racial practices, even in areas of intimate public interest. Actually, the majority in the *Civil Rights Cases* assumed that there was a right to enjoy equal accommodations in public places "which no State can abridge or interfere with", and expressly reserved the question whether discrimination at public establishments "might not be a denial of a right which, if sanctioned by the State law, would be obnoxious to the prohibitions of the Fourteenth Amendment." Nevertheless, the decision did foster the view that the equal protection guarantee does not reach mere State tolerance of racial discrimination. But beginning in the 1940s the "misfeasance" theory began to show its inadequacy in lines of cases (see e.g. *Terry v. Adams*, 345 U.S. 461) where

this Court found the equal protection clause to apply even in the absence of conscious State support to discrimination as such. Recently in *Wilmington Parking* (365 U.S. at 725) this Court found that by reason of the relationship between the State and the public accommodation there involved, an affirmative State obligation arose to assure non-discrimination.

Indeed, we submit that this Court's rulings in *Shelley* and *Barrows*, reflect the concept of the Fourteenth Amendment as a guarantee against tolerance by substantive State law of racial discrimination in the public domain, whether practiced by government officials or private persons. Whether by statute or judicial ruling, the application of State law—contract, tort, property, or statutory trespass—so as to deprive a person because of race of privileges enjoyed by others, is "state action" reached by the Fourteenth Amendment. As thus seen, the true significance of *Shelley* is that the Fourteenth Amendment speaks no less to the state's substantive law of rights and duties than to affirmative state commandments in favor of segregation. The Constitution precludes the state not only from commanding discrimination, but equally from creating or recognizing a legal "right" to discriminate, with the exception of those areas of private concern, such as the home, constitutionally precluded from state intrusion.

In any event, when the State in its executive capacities has involved itself with private proprietors as in the case at bar, then equal protection requires the State to assure non-discrimination in the service of the Negro public. Analysis demonstrates that the State of Maryland is intimately involved in such public accommodations as Glen Echo. In its varied licensing and inspection requirements for the protection of the public interest and welfare, the

State of Maryland has manifested its high concern regarding the operation of Glen Echo. In its many regulatory measures relating to the enterprise, the State further demonstrates its concern for the public interest in the operation of the public accommodation involved. But the State's involvement does not end with licensing, inspection and regulation; in a myriad of ways governments provide assistance to public accommodations. These varying measures of governmental assistance once more demonstrate the State's consciousness of the public interest involved—the enterprise may be privately owned but the interest served is public and receives the active supportive energies of government.

The State has obviously "become involved" in the operation of public accommodations licensed, regulated and supported by its agencies. The "private property" concepts which underlay this Court's refusal in the 1883 *Civil Rights Cases* to give necessary scope to the Fourteenth Amendment's guarantee of equal protection, cannot today remain dispositive of the question whether the State of Maryland may permit public accommodations to discriminate against Negroes. No reason appears why this Court should decline to give controlling significance in equal protection cases to the public interest consideration it finds dispositive in economic due process cases. Cf. *Nebbia v. New York*, 291 U.S. 502. One hundred years after Emancipation, the effort at true emancipation cannot succeed while great public enterprises, operating with the license, approval, assistance and control of the states, remain beyond the constitutional obligation to afford Negro citizens equal participation in the life of the community.

Argument

This case was argued at the last term of court together with other cases involving State prosecutions against Negroes seeking service at public accommodations and facilities. The reargument permits analysis in somewhat more depth, of some fundamental issues which appeared to concern the Court during the argument of the cases last term. Actually, as we continue to urge in this brief, the convictions herein require reversal under the accepted proposition announced and applied by this Court in *Shelley v. Kraemer*, 334 U.S. 1, *Burton v. Wilmington Parking Authority*, 365 U.S. 715, and most recently, in *Lombard v. Louisiana*, 373 U.S. 267, that the Fourteenth Amendment precludes a State from involving itself with private discrimination either through its legislative, executive, or judicial authority (see *infra*, point I). That proposition calls for the reversal of these convictions without necessity of resolving the question whether the discriminatory policy pursued at the public accommodation herein was one which the State could regard as lawful in the absence of active State support. But we urge in addition (see *infra*, point II), an examination of the proposition espoused by the court below and emanating from the 1883 *Civil Rights Cases*, that the owners of licensed premises chartered to serve and catering to the general public have a "right" to practice racial discrimination, and that the State's recognition of such a "right" is not a denial of the equal protection of the law. Should this Court deem it necessary to reach our second point, we urge that a realistic examination of the Fourteenth Amendment must require the conclusion that it obligates States to assure equal access for Negroes at places of public accommodation, and thus the Fourteenth Amend-

ment necessarily precludes the State's imposition of sanctions upon Negroes who peaceably seek the same service accorded by the proprietors to the white public.

I

**The State's Active Support to the Racial Discrimination of
Glen Echo Park Transgresses the Equal Protection
Clause of the Fourteenth Amendment.**

The instant case is one of a number of proceedings challenging state prosecutions of Negro patrons and white associates at places of public accommodation. The first premise of the challenge against the criminal proceedings involved in the pending cases is that such exertions of state power in support of racially discriminatory practices by enterprises serving the public, constitute "state action" forbidden by the Fourteenth Amendment. What the States have done in these cases falls well within the area of state action interdicted by this Court's rulings. See *Shelley v. Kraemer*, 334 U.S. 1, *Barrows v. Jackson*, 346 U.S. 249, and *Burton v. Wilmington Parking Authority*, 365 U.S. 715.

(1) *Judicial Support to Discrimination.* Long before *Shelley*, this Court emphasized that the Fourteenth Amendment's requirement of equal treatment by the state, reaches "state action of every kind"—legislative, executive and judicial. See *Virginia v. Rives*, 100 U.S. 313, 318; *Ex Parte Virginia*, 100 U.S. 339. In *Shelley* and later in *Barrows*, the Court ruled that *judicial* recognition or enforcement of private undertakings to practice segregation constitutes denial by the state of the equal protection guaranteed by the Fourteenth Amendment. In the instant case it is clear that at least as much as in *Shelley*

and *Barrows*, the courts of the State of Maryland have become the means for enforcing racial discrimination. No more may the State here enforce "private" discrimination by judicial trespass action than it could do so by judicial ejectment action in *Shelley*. We submit that *Shelley* controls the instant case and precludes the affirmance of convictions for "trespass" of persons ordered off premises and arrested and accused "because they were Negroes."³

Indeed, the instant case is far stronger than *Shelley*. Here the State process which enforces racial discrimination is not merely civil process as in *Shelley*, but the substantive criminal law of the State. In contrast to civil process which the State extends to parties for the redress of private wrongs, criminal prohibitions import the existence of a general public interest in the proscription of the conduct prohibited. Even more so than in *Shelley*, where the State merely opened its courts for private redress, here, in the application of a criminal prohibition, the State is expressing and applying a public policy favoring discrimination.

Moreover, any supposed private interest worthy of state court protection in this case must fall far below the private and property interests which this Court precluded from judicial enforcement in *Shelley*. The asserted private and property interest in *Shelley* was that in the home-owner's choice of his neighbors—an interest which certainly stands high in the traditional respect and protection of the law. By contrast, here the State's process has been made available to enforce discrimination not in the private domain of home ownership, but on a merry-go-round at an amusement park catering to the general public.

³ This was the holding of the Third Circuit under similar factual circumstances, in *Valle v. Stengel*, 176 F. 2d 697.

If, as this Court's *Shelley* ruling held, state courts may not lend their powers to the enforcement of discrimination in home ownership, they may do so *even less* to enforce discrimination at premises licensed for, advertised, and dedicated to the custom of the public.

This is the position espoused before this Court several years ago in a brief amicus for the United States in *Boyn-ton v. Virginia*, 364 U.S. 454. In the Government's Brief before this Court (at p. 17), it emphasized that "The application of a general, nondiscriminatory, and otherwise valid law to effectuate a racially discriminatory policy of a private agency, and the enforcement of such a discriminatory policy by state governmental organs, has been held repeatedly to be a denial by state action of rights secured by the Fourteenth Amendment." Pertinent judicial rulings, the Solicitor General pointed out, demonstrate that "*where the state enforces or supports racial discrimination in a place open for the use of the general public . . . it infringes Fourteenth Amendment rights notwithstanding the private origin of the discriminatory conduct*" (at p. 20).

The position elaborated in *Boyn-ton* is, we submit, the only position which this Court can take consistent with its holdings in *Shelley* and *Barrows*. If the Constitution precludes judicial vindication through civil remedies for a right of private discrimination in the selection of neighbors, then it must at least equally preclude judicial enforcement by criminal law of a restriction of premises catering to the public. Without the necessity of considering the state's nonjudicial involvement in this case in the practice of segregation at Glen Echo Park, it is enough for constitutional purposes for this Court to find that Maryland has impermissibly imposed criminal penalties and prohibitions to support discrimination at a public accommodation.

(2) *Executive Support to Discrimination*. Actually, there

is much more in the instant case than *judicial* enforcement of racial discrimination—for here the closest interplay existed at every stage between the discrimination at Glen Echo Park and the executive authority of the State, which was loaned to the owners for the enforcement of discrimination. Not only the judicial and prosecutory power of the State of Maryland has been employed to enforce discrimination, but the State's police authority was leased to the Glen Echo management on a formalized basis for the continuing administration and enforcement of its discriminatory policy. Deputy Sheriff Collins, not upon the mere request but upon the *orders* of the private management which employed him, and wearing the badge of his public office, informed and instructed petitioners that because they were Negroes they would have to leave the premises. Collins and his associates were thus administering the Park's policy of racial discrimination on a day to day basis.

Indeed, it was officer Collins who created the crime of which petitioners were convicted. His direction to petitioners to leave the premises was a necessary ingredient of the offense under the statute, which is committed only "*after having been duly notified by the owner or his agent . . .*" Then, to add even further state support, still following the orders of his employers but *in his capacity as an officer of the State*, Collins arrested petitioners and filed warrants under oath against them, bringing into play the criminal machinery of the State.⁴ Collins' unassisted

⁴ Collins, who was under the orders of his private employers to accuse petitioners of trespass, did so in his public capacity. This is reflected in the "Application for Warrant by Police Officer" (R. A), filed by Collins on his sworn allegation "that he is a deputy sheriff . . . and as such . . . did observe" the alleged offense, and in the State Warrants (R. B, C) reciting that "complaint hath been made upon the information and oath of Lieutenant Collins, Deputy Sheriff . . ."

While the court below points out (R. 82) that Collins might have filed his accusation in his private capacity, it is significant that he did not.

double play is in sharp contrast to the ordinary Tinkers to Evers to Chance initiation of criminal process.

It could hardly be more obvious, we submit, that as regards enforcement of segregation there was absolutely no severance at any time between public and private authority at Glen Echo Park. The Park's policy of racial discrimination was at all times being administered and enforced by the State through Deputy Sheriff Collins and his colleagues. Here the State of Maryland was not merely enforcing racial discrimination through prosecution in the courts, but was itself administering that discrimination on a day to day basis at the premises of the largest public amusement facility in the District of Columbia area. Cf. *Pennsylvania v. Board of Trusts*, 353 U.S. 230. Indeed, but for the State's ready support, the management might not have discriminated against the Negro patrons. Actually, shortly after that State support was challenged in the instant case and in a Federal suit filed by Negro patrons to bar further arrests at Glen Echo (*Griffin v. Collins*, Civil

Maryland employs an accusatory system in petty offenses based upon the discretionary authority of justices of the peace to arraign persons for trial upon complaint to them of an offense having been committed. Code Article 52, Sections 13 to 25. One who persuades a justice of the peace "in his discretion" (Art. 52, Sec. 23) to issue a state warrant, has procured the trial of the accused in the absence of further affirmative action to amend or dismiss the warrant, by the justice of the peace (Art. 52, Sec. 22) or the trial court (Art. 52, Sec. 13; in Montgomery County Art. 52, Sections 25 and 99). That the justice of the peace is influenced in the exercise of his discretionary accusatory power by the fact that a police official is the complainant, is indicated by his maintenance of a separate form of "Application for Warrant by Police Officer" which, unlike the form used by private applicants, requires no listing of other witnesses, is issued in part on the basis of unsworn verbal representations to the justice by the officer of the law, and on his oath that "as a member of the Montgomery County Police Department," he believes the accused guilty (R. A). In these circumstances, it cannot be said that in the exercise of the justice of the peace's discretionary power to accuse petitioners and thus to bring them to trial, it was inconsequential that the complaint made by Collins pursuant to his employers' orders, was in his official capacity as a police officer.

Action No. 12308, D. C. Md. (1960)), the Park abandoned its practice of segregation (see *The Washington Post*, March 15, 1961, p. 1, col. 2).

As this Court recently phrased the presently relevant principle in *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 722, (re-affirmed at the last term in *Peterson v. Greenville*, 373 U.S. 244) the equal protection clause comes into play when "to some significant extent the State in any of its manifestations has been found to have become involved" in private conduct abridging individual rights. The applicability of this rule is clear and direct where the State has loaned its badge of police authority to the private discriminator. Even less can Maryland lease its police badge for discriminatory use here than Delaware could lease its property for discriminatory use in *Wilmington Parking*.

Only this year, the Court decided *Lombard v. Louisiana*, 373 U.S. 267, which appears dispositive on the power of the state to lend its police authority to the maintenance of segregation at public premises. There the public assurances by the New Orleans Mayor and Police Chief to businessmen that police authority would assist in maintenance of segregation constituted impermissible state support to segregation. *Surely an identical result must follow where, as in the present case, the State has not merely promised its police assistance to continued segregation but has actually deputized the proprietor in the daily enforcement of his segregation practice.*⁵

⁵ The court below found Deputy Sheriff Collins' involvement in administering segregation at Glen Echo no different than that of a regular police officer casually called upon for assistance by management (R. 82). While in our view the Constitution precludes either type of police involvement in administering racial segregation at public accommodations, it must be noted that the two situations are not identical. Unlike the policeman requested to make an arrest for trespass, the police power here was under the pay and control of the private management which *ordered* Deputy

(3) The foregoing considerations, we submit, permit no other resolution of this case than a reversal of the convictions against petitioners. In the deputizing of the private discriminator and in enforcement of discrimination through arrest, prosecution and conviction of Negroes who peaceably sought service, the State has transgressed the guarantee of equal protection as defined and applied in this Court's decisions in *Shelley*, *Barrows*, *Wilmington Park- ing*, and *Lombard*. Yet there remain certain questions posed during the oral arguments at the last term about the meaning and effect of the result for which we contend. In particular, it has been suggested, *first*, that the owner of a business has an inherent proprietary right of "privacy" from Negro customers, which right the State may properly safeguard and preserve; and, *second*, that if proprietors may continue to discriminate only without the help of the state, then a dangerous condition of forcible self-help would arise in the "no man's land" where the state neither protects nor proscribes discriminatory conduct. We turn to a brief examination of these issues.⁶

Sheriff Collins to administer its discriminatory policy (R. 16). In this commingling of public and private powers at Glen Echo, there was irretrievably surrendered the integrity ordinarily attaching to the policeman's badge. It seems clear (cf. *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192; *Marsh v. Alabama*, 326 U.S. 501) that the loan of the State's police badge is accompanied by a constitutional prohibition on its use for the enforcement of racial practices.

⁶ A related point which has been suggested during the arguments is that the State's action in convicting petitioners of trespass is "neutral" within the contemplation of the Fourteenth Amendment, since the State courts in applying the law of trespass to petitioners were not racially motivated. But in *Shelley* (334 U.S. 1, 22) this Court rejected the identical argument on the ground that "the power of the State to create and enforce property interest must be exercised within the boundaries defined by the Fourteenth Amendment." In Point II of the argument, we examine at more length the postulate underlying the "neutrality" contention, that the Fourteenth Amendment reaches only the racial misfeasance of the

(a) *Protection of Proprietary Privacy.* It is argued that a right of privacy and racial exclusion inheres in the operator of a public business, which "right" the State has a legitimate interest to safeguard and preserve. But this case does not involve the privacy of the home, or of premises at which the owner has sought to bar the presence of the public at large. Far from seeking privacy, Glen Echo Park is open to and caters to the trade of the public. This Court has had occasion to emphasize precisely this distinction. In *Marsh v. Alabama*, 326 U.S. 501, the Court ruled that the exertion of state criminal authority on behalf of a proprietor's restriction on the liberties of a member of the general public on his premises was precluded by the Fourteenth Amendment. As the Court pointed out (at 505-506): "The State urges in effect that the corporation's right to control the inhabitants of Chickasaw is coextensive with the right of a homeowner to regulate the conduct of his guests. We cannot accept that contention. Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it." And in *Public Utilities Com'n v. Pollak*, 343 U.S. 451, 464, the Court dismissed the contention that the Constitution secures to a passenger on a public vehicle "a right of privacy substantially equal to the privacy to which he is entitled in his own home." Privacy, said the Court, "is substantially limited by the rights of others when its possessor travels on a public thoroughfare or rides in a public conveyance."

State and provides no affirmative obligation upon the State to protect the Negro public in its enjoyment of public services and accommodations. We urge there that there is in fact no "right" to discriminate in the public domain amenable to "neutral" protection by the substantive law of the State (see *infra*, pp. 27 to 32).

This Court has long recognized the attenuation of personal and proprietary privacy when asserted in areas of public interest and concern. Thus, the proprietor of an apartment house, but not the proprietor of a town, can exclude leaflet distributors from privately owned premises. Compare *Hall v. Commonwealth*, 335 U.S. 875 with *Marsh v. Alabama*, 326 U.S. 501. Similarly, the city can protect the citizen's privacy in his living room, but not on the public street. Compare *Breard v. Alexandria*, 341 U.S. 622 with *Cantwell v. Connecticut*, 310 U.S. 296. Private ownership of premises is not dispositive on the right to exclude unwanted and trespassing union organizers. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793. The right to privacy and association must yield when the association wields quasi-public functions. Compare *James v. Marinship Corp.*, 25 Cal. 2d 721, 155 P. 2d 329, with *Ross v. Ebert*, 275 Wisc. 523, 82 N.W. 2d 315. See also *Terry v. Adams*, 345 U.S. 461.

Glen Echo Park is a licensed business enterprise owned and operated by corporations chartered by the State of Maryland. It caters to the general public as the major amusement park in the District of Columbia area and none of its numerous advertisements through various means of public communication reflected any discrimination against Negro members of the public and no signs around the Park proclaimed any restriction upon the custom of Negro patrons. These factors underline the critical consideration in the instant case that the State's power has been invoked to enforce not personal privacy but public discrimination—to assist a business catering to the general public in its refusal of service to Negro members of that public. But he who seeks privacy must practice privacy. To the argument that rights of "privacy" must be given predominant standing here, the simple answer is that there is no privacy to be protected in a place of public accommo-

dation catering to thousands of amusement-seekers.

Whether and to what extent the state may enforce racial discrimination at premises which the owner has not opened to public use is a question not now necessary for decision. In that situation Constitutional rights of private possession and use might be invoked as the justification for the state's protective activism. See Henkin, *Shelley v. Kraemer*, *Notes for a Revised Opinion*, 110 Pa. Law Review 473. *But here where the proprietor practices no privacy, it is clear that the only interest which the State's criminal action can be said to vindicate is in maintenance of segregation at public accommodations, and such an interest cannot survive the Fourteenth Amendment's stricture of equal protection.*⁷

(b) *Segregation By Forcible Self-Help.* To the suggestion that the prohibition of state support to segregation at public accommodations would create a dangerous no man's land, where self-help would replace law and

⁷ Far from dealing with a property-owner seeking privacy, here we have a state-licensed enterprise of public accommodation which has been the beneficiary of state support in its discrimination. Thus it would hardly be argued that a state may license public accommodations expressly to serve the white public. Yet, while the State's license here may in form be neutral, when the State through its courts enforces racial segregation at the licensed premises, then *in effect* the State has licensed and authorized an enterprise to provide accommodations to the white public alone.

This the State clearly may not do. As Mr. Justice Douglas stated in his concurring opinion in *Garner v. Louisiana*, 368 U.S. 157, 184: "I do not believe that a State that licenses a business can license it to serve only whites or only blacks or only yellows or only browns. Race is an impermissible classification when it comes to parks or other municipal facilities by reason of the Equal Protection Clause of the Fourteenth Amendment. By the same token, I do not see how a State can constitutionally exercise its licensing power over business either in terms or in effect to segregate the races in the licensed premises. The authority to license a business for public use is derived from the public. Negroes are as much a part of that public as the whites. A municipality granting a license to operate a business for the public represents Negroes as well as all other races who live there. A license to establish a restaurant is a license to establish a public facility and necessarily imports, in law, equality of use for all members of the public."

order, there are at least two answers. Actually, it may be that proprietors of public accommodations have no right to discriminate against Negroes, even without the active assistance of the state—this is the issue to which the second point of this brief (*infra*, pp. 27 to 41) is addressed. Here we would merely note that there is a serious Constitutional question whether the state may either enforce or permit racial segregation at accommodations licensed for or catering to the general public.

In any event, the public record of recent years demonstrates the unlikelihood of self-help as a means for perpetuating the discrimination which proprietors have heretofore practiced with the assurance of the state's ready assistance. It is not the habit of proprietors seeking the trade of the public to engage in the dirty business of self-help ousters of Negroes seeking to give their patronage; rather they rely upon police forces to oblige in the enforcement of the "unwritten law." The recent wholesale abandonment of racial practices of the business community in many Southern localities, demonstrates that these practices are less the product of public attitudes or business necessity than the vestigial remains of former conditions, succored by the willingness of public authorities to enforce segregation. There is every reason to believe that the removal of state support for discrimination will insure the demise of segregation in public accommodations.

Prior to the first sit-in of February, 1960, lunch counters throughout the South denied normal service to Negroes. Six months later, lunch counters in sixty-nine cities had abandoned discriminatory practices (*The New York Times*, August 11, 1960, p. 14, col. 5); by October of 1960, the number of recently desegregated municipalities had mounted to more than one hundred (*The New York Times*, Oct. 18,

1960, p. 47, col. 5). During 1961 and 1962, desegregation steadily continued,⁸ and in 1963 wholesale abandonment of segregation has been the national pattern.⁹

In the instant case, no possible difficulty could arise from this Court's invalidation of State support for segregation at Glen Echo.¹⁰ After these cases were tried, the Park abandoned its prior racial practices in 1961 (see *The Washington Post*, March 15, 1961, p. 1, col. 2); Montgomery County adopted a public places law (Ordinance 4-120, adopted by County Council, January 16, 1962), and recently so did the Maryland Legislature. See 8 R.R.L.R. 268. Unquestionably, an element in the management's abandonment of discrimination was petitioners' challenge to the State's enforcement of discrimination. The national evidence equally demonstrates that state enforcement alone provides the essential buttress for continued racial discrimination at places of public accommodation.

* * * * *

The Fourteenth Amendment does not permit the State of Maryland to utilize its police powers of enforcement, arrest, accusation and prosecution and its judicial powers of trial and conviction to administer and effectuate racial discrimination at a facility catering to the general public. The quantum of state action here far exceeds that which this

⁸ See e.g. *The New York Times*, Feb. 7, 1962, p. 40, col. 5 (Memphis); *The Washington Post*, April 9, 1962, p. 5, col. 2 (Houston); *The Washington Post*, Sept. 13, 1962, p. 18, col. 1 (New Orleans).

⁹ See *The Washington Post*, July 19, 1963, p. 4.

¹⁰ As the trial judge himself observed (R. 74):

"If the Court of Appeals of Maryland decides that a negro has the same right to use private property as was decided in the school cases, as to State or Government property, or if the Supreme Court of the United States so decides, you will find that the places of business in this County will accept that decision, in the same manner, and in the same way that public authorities and the people of the County did in the School Board decision. . . ."

Court found adequate to bring into play the equal protection clause in earlier cases. We submit that under the Fourteenth Amendment Maryland cannot convict Negro youngsters of criminal trespass merely because they have sought to ride the merry-go-round in a place of public accommodation.¹¹

II

Under the Equal Protection Clause, the State Can Neither Recognize, Countenance, Nor Protect a "Right" of Discrimination Against Negroes at Public Accommodations.

The argument in the previous section has examined State involvement on the general premise that the equal protection clause is invoked by forms of active State conduct which sanction, compel, or enforce discrimination. Most of the Fourteenth Amendment racial cases which have come before this Court have in fact involved voli-

¹¹ State criminal statutes, particularly where First Amendment rights might be unduly impeded by uncertainty in the ambit of the state's proscription of conduct, must avoid vagueness in the definition of a criminal act. *Lanzetta v. New Jersey*, 306 U.S. 451; *Cantwell v. Connecticut*, 310 U.S. 296; *Winters v. New York*, 333 U.S. 507; *Smith v. California*, 361 U.S. 147; *Edwards v. South Carolina*, 372 U.S. 299; *Wright v. Georgia*, 373 U.S. 284. The enforcement of this Maryland criminal trespass statute against these petitioners runs counter to these precedents, for it subjects petitioners to punishment without adequate prior notice that their conduct transgressed the State's criminal proscription. The statute forbids "entering or crossing over" private property after notification not to do so. The Maryland Court of Appeals found the statute applicable to petitioners, who were warned off the property only when actually sitting on the carousel in making their First Amendment protest. While the court below deemed petitioners' failure to leave the premises synonymous with "entering or crossing over" the premises, its sole authority for such a construction was a recent North Carolina Supreme Court ruling (R. 80). Certainly, in the absence of a prior Maryland construction of this criminal trespass statute, the "entering or crossing over" language was not adequate warning to sustain punishment of persons making peaceable public protest simply by remaining on an amusement concession for which they had tickets of admission.

tional and active governmental support to discrimination as such; there have been few occasions for resolving the impact of the Fourteenth Amendment where the state does not compel but merely tolerates discrimination. Some have accordingly come to view equal protection as a guarantee only against the racial misfeasance of the state. Thus, the court below assumed that no constitutional question arises merely from the state's acceptance and recognition of a "lawful policy of segregation" at a place of public accommodation—and having postulated a "right" of discrimination, it found no fault with Maryland's vindication of that right through criminal trespass sanctions. In the previous analysis, we have accepted *arguendo* the premise entertained by the court below that proprietors have a right to discriminate at public accommodations, and have urged that nevertheless the State may lend no enforcement to the exercise of such a right. Here we urge that the premised "right" to discriminate at public accommodations is itself erroneous—that the State cannot create or recognize a right to discriminate against the Negro public, and that accordingly there is no "right" for the State's criminal law to vindicate.¹²

(1) Is it truly the law that equal protection proscribes only state enforcement of racial discrimination? Does the guarantee of "equal protection" import no affirmative obligation of the state to assure non-discriminatory treat-

¹² What is relevant here as a constitutional defense to Maryland's criminal prosecution is that the owner of a public accommodation has no "right" to discriminate against Negroes and in the absence of such a "right" there is no legitimate predicate for the State's criminal action against Negroes who seek service. It is our view, as we develop herein, that the same considerations which make it a violation of the Constitution for the State to recognize a proprietor's "right" to discriminate, also give the Negro an affirmative "right" to service at public accommodations. The Constitution, we submit, not only permits Negro members of the public to sit on the carousel free of State interference, but also requires the State to assure them equal access and service at such accommodations.

ment in any of the areas of public life where the state is otherwise intimately concerned and involved? If proprietors have the "right" to discriminate against Negroes at public accommodations, is it not the substantive state law from which that right is derived, and if so, may a state create and recognize a proprietary right to discriminate in a public calling and in the public domain?

This Court's 1883 decision in the *Civil Rights Cases*, 109 U.S. 3, first gave rise to the assumption that the Fourteenth Amendment concerns itself only with the active misfeasance of the state in matters of race, and not with its nonfeasance. The language of this Court's ruling has been taken to mean that persons may engage in racial discrimination in the operation of public accommodations, and that the Fourteenth Amendment does not require the state to concern itself with such conduct. Actually, closer reading of the *Civil Rights Cases* decision indicates that more has been attributed to its holding than it contained. For this Court held only that that Congress had exceeded the ambit of the Fourteenth Amendment in legislation which spoke directly to the proprietors of accommodations, without directing itself in any way to the intermediate Fourteenth Amendment responsibility of the *state*. Certainly, there was not then before the Court the question whether the Fourteenth Amendment is breached when a state has failed to protect the Negro from discrimination in access to public accommodations. On the contrary, the Court took pains to point out (pp. 19, 21) that the case was resolved "*on the assumption that a right to enjoy equal accommodation and privileges in all inns, public conveyances, and places of public amusement, is one of the essential rights of the citizen which no State can abridge or interfere with,*" and that the Court was not presented with the issue whether denial of equal service at such establish-

ments "might not be a denial of a right which, if sanctioned by the state law, would be obnoxious to the prohibitions of the Fourteenth Amendment."

Notwithstanding the narrow holding of its 1883 ruling, the language of the majority in the *Civil Rights Cases*, which gave pre-emptive emphasis to the consideration that an accommodation is privately owned, has fostered through succeeding years the assumption that equal protection begins and ends with an active state command in favor of discrimination, and does not, even in areas of public interest and concern, reach mere tolerance of racism by the law of the state. But in the early 1940s the "misfeasance" theory began to show its inadequacy. In the adjudication of a line of racial primary cases culminating in the ruling in *Terry v. Adams*, 345 U. S. 461, this Court held that the Fourteenth Amendment reaches "private" discrimination by those who exercise authority from the state or in the area of the state's direct concern. As the Court recently explained in its *Wilmington Parking* decision, there are circumstances where by reason of the confluence of governmental and private authority (cf. *Marsh v. Alabama*, 326 U. S. 501), the affirmative obligation devolves upon the state to assure equality of treatment regardless of race. Concerning the practice of discrimination at a state-connected public accommodation, this Court referred to the responsibility of the State to assure non-discrimination at the premises, and stated that "no state may effectively abdicate" such responsibilities, either by "ignoring them or by merely failing to discharge them whatever the motive may be" (365 U. S. at 725). These authorities indicate that this Court has already recognized that the State may transgress the obligation of equal protection by its mere countenancing of discrimination in areas of public concern.

(2) Indeed, we submit that this Court's rulings in *Shelley* and *Barrows* necessarily reflect the concept of the Fourteenth Amendment as a guarantee against tolerance by state substantive law of racial discrimination, whether practiced by Government or private citizenry. As this Court expressly stated in *Shelley*, the Fourteenth Amendment inhibits in the area of race "the power of the State to create and enforce property interests." Under this view, the state may neither create, enforce, recognize, nor tolerate a "right" to discriminate in the public domain. Neither common law nor statute can be constitutionally applied in a manner which would validate racial discrimination. Whether by statute or judicial ruling, the application or enforcement of state law,—contract, tort, property or statutory crime of trespass—in a manner which would deprive a person solely because of race of rights or privileges enjoyed by other persons, is "state action" which violates the Fourteenth Amendment.

As thus seen, the true significance of *Shelley* is not its proscription on state enforcement of a supposed "right" to discriminate. Rather, it is grounded on the view that the Fourteenth Amendment speaks no less to the state's substantive law of rights and duties than to affirmative state commandments in favor of segregation. With the exception of those areas of private right such as the home, which are constitutionally precluded from government intrusion (see Henkin, *Shelley v. Kraemer*, *Notes for a Revised Opinion*, 110 Pa. Law Review 473), state law which recognizes and gives standing to a "right to discriminate" on the basis of race, offends the equal protection guarantee. This, in our view, is the answer to the question voiced by Mr. Justice Black at the arguments last year, whether if proprietors have a right to discriminate at their establishments the state is precluded from giving

them protection in that right. The Constitution precludes the state not only from enforcing a right to discriminate, but equally from creating or recognizing such a right in the public domain. An individual need not hold himself out to serve the general public, but, if he does, the State under the Fourteenth Amendment may not recognize his "right" to exclude from his offer to serve the public any part thereof solely on grounds of race.

(3) But even in the absence of the suggested assimilation of the state's law of substantive rights to the concept of "state action," we would urge that with respect to the service of Negroes at places of public accommodation the state is so intimately concerned that it can neither compel nor permit racial discrimination. Those who operate accommodations catering to the public must, in our view, be charged by the state with the minimal trust of serving the public without racial discrimination. In *Garner v. Louisiana*, 368 U.S. 157, 176 (see also *Lombard v. Louisiana* 373 U.S. 267), Mr. Justice Douglas in a concurring opinion, pointed to the intimate contacts between the state and a restaurant authorized to cater to the general public. He concluded (p. 182) that "those who run a retail establishment under permit from a municipality operate, in my view, a public facility in which there can be no more discrimination based on race than is constitutionally permissible in the more customary types of public facility." We submit that no other conclusion can properly be reached, and that if the Court should review the question, it must rule that Maryland cannot permit Glen Echo to discriminate against petitioners because of their color and refuse them service at its premises.

The constitutional mandate for applying equal protection guarantees to places of public accommodation, was

brilliantly set forth eighty years ago in Justice Harlan's historic dissent in the *Civil Rights Cases*, 109 U.S. 3. A review of the status of such establishments under law and in the social order led Justice Harlan to the view that the moving purpose of the Emancipation Amendments would be subverted were their ambit to exclude carriers, inns and similar public accommodations:

“In every material sense applicable to the practical enforcement of the Fourteenth Amendment, railroad corporations, keepers of inns and managers of places of public amusement are agents or instrumentalities of the State, because they are charged with duties to the public, and are amenable, in respect of their duties and functions, to governmental regulation. It seems to me that, within the principle settled in *Ex parte Virginia*, a denial, by these instrumentalities of the State, to the citizen, because of his race, of that equality of civil rights secured to him by law, is a denial by the State, within the meaning of the Fourteenth Amendment. If it be not, then that race is left, in respect of the civil rights in question, practically at the mercy of corporations and individuals wielding power under the States” (109 U.S. 3, 58-59).

Justice Harlan's broad concept of the Fourteenth Amendment is not dissimilar from that evidenced by the more recent decisions of this Court. Beginning with the landmark voter discrimination cases (*Nixon v. Herndon*, 273 U.S. 536; *Nixon v. Condon*, 286 U.S. 73; *Smith v. Allwright*, 321 U.S. 649) and going on through *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, and a series of subsequent rulings, this Court has applied the rule that when government has its “thumb on the scales,” private conduct

may become infused with the requirement of equal treatment. Such infusion has been found by the Court in areas of contracts (*Steele, supra; Shelley, supra*), transportation (*Henderson v. United States*, 339 U.S. 816), education (*Pennsylvania v. Board of Trusts*, 353 U.S. 230; and see *Cooper v. Aaron*, 358 U.S. 1, 19) and most recently in the case of a state-assisted public accommodation (*Burton v. Wilmington Parking Authority*, 365 U.S. 715). In the case last named, the Court warned that the equal protection requirement would apply when "*the State in any of its manifestations has been found to have become involved*" with a private enterprise engaging in racial practices.

(4) In the present more refined formulation of the degree of state action necessary to bring "private action" within the reach of the Fourteenth Amendment, we respectfully submit that the State *in many of its manifestations* is indeed involved in public accommodations. Current analysis likewise demonstrates that the State is intimately involved in public accommodations, which are licensed to perform valued public services upon a showing of capacity to serve the public interest, and are governmentally regulated and supported to further the serious public concern in the availability of the services provided. This is illustrated by a brief review of the applicable statutes of Maryland respecting the operation of an establishment such as Glen Echo Park:

(i) *License*. Under Section 15-7 of the Montgomery County Code (1960), it is made "unlawful for any person to hold in the county any picnic, dance, soiree or other entertainment for gain or profit to which the general public are admitted," without first having obtained a permit or license. By Section 15-8, the County Council is empowered to issue such permit or license upon payment of a reasonable fee, and to adopt "such rules and regulations in connection with such permit, license and fee as

are necessary to protect the public health, safety and welfare." By Section 15-11, the Council is empowered to "inspect, license, regulate or limit as to location within the limits of the county any place of public amusement, or recreation . . . and in order to safeguard the public health, safety, morals and welfare, to pass rules, regulations or ordinances . . ."

In Chapter 75 of the Montgomery County Code the Council has promulgated specific regulations (in addition to general rules applicable to matters such as health, fire and sanitation) relative to the licensing and operation of amusement parks, theatres, dance halls, restaurants, cafes, inns, taverns, public swimming pools, etc. These rules prescribe the hours of operation (Section 75-1, 75-2) and other detailed matters. Operation without a license of "amusement parks operated for profit" (Section 75-9) is forbidden (Section 75-5, 75-16). Licenses are issuable by the Director of the Department of Inspection and Licenses (Section 75-6) two weeks after a copy of the application has been published in a newspaper of general circulation (Section 75-7). But no amusement park license may be granted until the park submits proof "of sufficient financial responsibility or adequate liability insurance coverage, to protect the public using the park" (Section 75-9). Payment of the license fee "entitles the operator of the amusement park" to operate all amusement devices not prohibited by law (Section 75-9). In these licensing and inspection requirements for the protection of the public interest and welfare, the State has manifested its high concern regarding the operation of the amusement accommodations involved. But even after the issuance of the State's approval for the operation of the establishment, continuing State concern is reflected in the system of regulation in the public interest.

(ii) *Regulation.* Licenses issued expire within one year (Section 75-10). They may be denied, revoked or suspended if the enterprise "constitutes a detriment, is injurious to, or is against the interests of, the public health, safety, morals or welfare" (Section 75-11). While hearings are provided in cases of revocation and suspension, there is specific authority for the summary closing of the premises to prevent manifest nuisance or danger (Section 75-13). The County reserves its rights of visitation and inspection at the premises (Section 75-15). In these ways, by continual vigilance and inspection, the State further demonstrates its concern for the public interest in the operation of the public accommodation involved.

(iii) *Support.* In the creation and operation of its enterprise, the amusement facility also receives a variety of significant governmental supports. The State first gives it corporate existence and recognition, permitting it to exercise the attributes of a natural person with the privilege of limited liability. Then, with the grant of a permit to operate a public business, the State authorizes the facility to cater and advertise to the general public.

But the State's support does not end with the issuance of corporate charters and public licenses. In a myriad of ways governments provide assistance to public accommodations. Special supports are made available through urban renewal, fair trade protections, anti-trust laws, tax benefits and the like. And assistance is given by outright subsidies and supportive services of Departments of Commerce and Labor. Then, too, there is the vast area of local government assistance—the special zoning and license dispensations, the police protections, and the many daily manifestations of local concern for adequate public facilities. Thus, Glen Echo Park is reached by two public highways paved and repaved from public funds; large numbers

of private cars in and out of the Park create traffic congestion which must be handled by State, local, and Park Police; the Park's thrill rides and attendant noises exist only by relaxation of State laws relating to public nuisances; and, of course, this entire case arises from the action of a State-deputized private employee of the Park. These varying measures of governmental assistance once more demonstrate the State's consciousness of the public interest involved—the enterprise may be privately owned but the interest served is public and receives the active supportive energies of government.

(5) In view of these manifold contacts just reviewed, can it possibly be said that the State has not “become involved” in the operation of public accommodations licensed, regulated, and supported by its agencies? We submit that the points of State involvement are too many and too intimate to allow an affirmative answer in the light of twentieth century relationships between government and public enterprise. *Cf. Public Utilities Com'n v. Pollak*, 343 U.S. 451, 462.¹³ But as important as their “state involvement” aspect, these contacts also express the State's recognition of the constitutionally relevant fact that public accommodations are clothed with a vital public interest. Once that fact be recognized, as urged by Justice Harlan in 1883,

¹³ That the community interest is intimately involved in the service of the citizens at public accommodations is evidenced by the common law of inkeepers, more particularly defined today in the laws of some thirty states which prohibit racial discrimination at public places. Moreover, Southern states have also evidenced their concern with access to service at public accommodations, through the variety of segregation laws in force since the latter part of the last century, which defined the basis for serving the Negro and white public at such establishments. Recently, Maryland enacted a public accommodations law which reverses the former legislative commandments of segregation. See 8 R.R.L.R. 268. Both in the former code of segregation and in the present law of integration, Maryland confesses the State's intimate concern with public access to services and accommodations catering to the custom of the public.

then vital constitutional principles come into play—those which this Court emphasized in a line of adjudications foreshadowed in *Munn v. Illinois*, 94 U.S. 113, and brought to full standing in *Nebbia v. New York*, 291 U.S. 502, and succeeding due process rulings. In the resulting test of government controls against the guarantees of due process, this Court's inquiry no longer ends with the discovery that the enterprise is private, but proceeds on to the question whether the public interest warrants the restraint imposed. This Court has thus definitively accepted Mr. Justice Holmes' view (*Lochner v. New York*, 198 U.S. 45, 75) that "the Fourteenth Amendment does not enact Mr. Herbert Spencer's Social Statics." The "laissez faire" concept which underlay this Court's 1883 refusal to give necessary scope to the Fourteenth Amendment's guarantee of equal protection, cannot today remain dispositive of the pending question.

No reason appears why this Court should decline to give controlling significance in equal protection cases to the public interest consideration it finds dispositive in economic due process cases.¹⁴ Considerations of the highest order of public interest are involved in the availability of public services and accommodations without discrimination or segregation—their magnitude is measured by the cataclysmic struggle in which they were forged and the great Emancipation Amendments in which they are enshrined. Yet as long as these guarantees are thought to permit the wholesale denial to Negroes of public accommodations and the amenities of daily life which they provide, the Amendments remain, in Justice Harlan's prophetic words, merely "*splendid baubles.*" One hundred years after Emanci-

¹⁴ Cf. St. Antoine, *Private Racial Discrimination*, 59 Mich. L. Rev. 993, 1008-1016.

pation there is presented in America the spectacle of apartheid communities where Negro citizens are neither truly free nor nearly equal. True, commendable progress is being made to render them free and equal "before the law"; but the effort at true emancipation cannot succeed while great public enterprises operating with the license, approval, assistance and control of the state, remain beyond the constitutional obligation to afford Negro citizens equal participation in the life of the community.

(6) *Plessy* and the *Civil Rights Cases* are twin rulings born in an era of retreat from the guarantees of the Emancipation Amendments following the famous Hayes-Tilden political compromise of 1877.¹⁵ After decades of damage to the moving purpose of those guarantees, this Court was induced to abandon the "separate but equal" doctrine, to restore the integrity of governmental involvement in public schooling and to remove a major obstacle to the achievement of a desegregated society. As history has proved Justice Harlan correct in *Plessy*, it has also corroborated his forebodings in the *Civil Rights Cases* about a ruling

¹⁵ A leading scholar of the post-Civil War history, Professor C. Vann Woodward, has noted the relationship of the 1883 ruling in the *Civil Rights Cases* to the 1877 compromise:

"So far as the historical Negro question was concerned, the Compromise of 1877 proved to be a more lasting settlement that had the Compromise of 1850 and those that preceded it. The earlier settlements had been superseded or repudiated in relatively short order. There were no serious infringements of the basic agreements of 1877—those regarding intervention by force, respect for state rights, and the renunciation of Federal responsibility for the protection of the Negro. In 1883 the Supreme Court pronounced the Civil Rights Act unconstitutional. The decision constituted a sort of validation of the Compromise of 1877, and it was appropriate that it should have been written by Justice Joseph P. Bradley, the 'Fifth Judge' of the Electoral Commission." Woodward, *Reunion and Reaction, The Compromise of 1877 and the End of Reconstruction* (1951), 245.

which, under the guise of "proprietors' rights", had the effect of carving from the promise of equal protection the area of public life dominated by "corporations and individuals wielding power under the States" to supply public services and accommodations.

Public segregation in the United States is the stepchild of the pre-Civil War slavery and the post-Civil War segregation laws. It has been fostered and maintained through a consistent and total interplay between those in the real community who hold commercial and economic power and elements of the political community of the states (legislatures, courts, executive officials and particularly the police). As Mr. Justice Douglas pointed out in his concurrence in *Lombard v. Louisiana*, 373 U.S. 267, a society which permits exclusion of Negroes at its establishments of public accommodation, and indeed lends its legal sanctions to such exclusion, is practicing *apartheid* no less than the State which directly decrees and compels segregation in public life. Certainly, the framers of the Emancipation Amendments did not anticipate a century of segregation of Negroes from equal participation in community life.¹⁶ Yet that has been the history following this

¹⁶ This point was aptly put by Senator Sumner during the debate on an 1871 Civil Rights Act amendment. Senator Sumner stated:

"Each person, whether Senator or citizen, is always free to choose who shall be his friend, his associate, his guest. And does not the ancient proverb declare that a man is known by the company he keeps? But this assumes that he may choose for himself. His house is his 'castle'; and this very designation, borrowed from the common law, shows his absolute independence within its walls; nor is there any difference, whether it be palace or hovel; but when he leaves his 'castle' and goes abroad, this independence is at an end. He walks the streets; but he is subject to the prevailing law of Equality; nor can he appropriate the sidewalk to his own exclusive use, driving into the gutter

Court's 1883 ruling exempting from the reach of the 14th Amendment the private proprietor trading in the public domain.

Today the moving purposes of the Emancipation Amendments are yet to be fulfilled, while Negro Americans remain social outcasts in the economic and public life of their localities, relegated to the back of the bus in their ride to work and the back alley in their search for lunch hour refreshment. The default on a profound constitutional promise which these realities expose to view, compels a reappraisal of concepts which define equal protection so narrowly as to rob it of its vitality. Such a reappraisal points inexorably to the conclusion that state law cannot tolerate and accordingly cannot enforce racial segregation at places of public accommodation.

all whose skin is less white than his own. But nobody pretends that Equality on the highway, whether on pavement or sidewalk, is a question of society. And, permit me to say, that Equality in all institutions created or regulated by law, is as little a question of society." Cong. Globe. 42nd Cong., 2d Sess., 382.

Conclusion

For the reasons herein set forth, the judgment below should be reversed with instructions to dismiss the proceedings against petitioners.

Respectfully submitted,

JOSEPH L. RAUH, JR.
JOHN SILARD,
DANIEL H. POLLITT,
1625 K Street, N.W.,
Washington 6, D. C.

JOSEPH H. SHARLITT,
LEE M. HYDEMAN,
1001 Connecticut Avenue, N.W.,
Washington 6, D.C.

Of Counsel:

JACK GREENBERG,
JAMES M. NABRIT, III,
10 Columbus Circle,
New York 19, New York.

(7941-8)

SUPREME COURT OF THE UNITED STATES

No. 6.—OCTOBER TERM, 1963.

William L. Griffin et al.,
Petitioners,
v.
State of Maryland. } On Writ of Certiorari to the
Court of Appeals of Mary-
land.

[June 22, 1964.]

MR. CHIEF JUSTICE WARREN delivered the opinion of the Court.

Petitioners were convicted of criminal trespass for refusing to leave a privately owned and operated amusement park in the State of Maryland at the command of an employee of the amusement park acting under color of his authority as a deputy sheriff. For the reasons set forth hereinafter we hold that these convictions are violative of the Fourteenth Amendment and must be set aside.

The Glen Echo Amusement Park is located in Montgomery County, Maryland, near Washington, D. C. Though the park through its advertisements sought the patronage of the general public, it was (until recently) the park's policy to exclude Negroes who wished to patronize its facilities. No signs at the park apprised persons of this policy or otherwise indicated that all comers were not welcome. No tickets of admission were required. In protest against the park's policy of segregation a number of whites and Negroes picketed the park on June 30, 1960. The petitioners, five young Negroes, were participating in the protest. Hopeful that the management might change its policy, they entered the park, and encountering no resistance from the park employees, boarded the carousel. They possessed transferable tickets, previously purchased by others, entitling the holder to ride on the carousel.

At that time the park employed one Collins as a special policeman by arrangement with the National Detective

Agency. Although Collins was formally retained and paid by the agency and wore its uniform, he was subject to the control and direction of the park management. Apparently at the request of the park, Collins had been deputized as a sheriff of Montgomery County.¹ He wore, on the outside of his uniform, a deputy sheriff's badge.

When Collins saw the petitioners sitting on the carousel waiting for the ride to begin, he reported their presence to the park manager. The manager told Collins that petitioners were to be arrested for trespassing if they would not leave the park. Collins then went up to the petitioners and told them that it was the park's policy "not to have colored people on the rides, or in the park." He ordered petitioners to leave within five minutes. They declined to do so, pointing out that they had tickets for the carousel. There was no evidence that any of the petitioners were disorderly. At the end of the five-minute period Collins, as he testified, "went to each defendant and told them that the time was up and that they were under arrest for trespassing." Collins transported the petitioners to the Montgomery County police station. There he filled out a form titled "application for a warrant by police officer." The application stated:

"Francis J. Collins, being first duly sworn, on oath doth depose and say: That he is a member of the

¹ The Maryland Court of Appeals opinion below stated that Collins was deputized at the request of the park management pursuant to § 2-91 of the Montgomery County Code of 1955 which provides that the sheriff "on application of any corporation or individual, may appoint special deputy sheriffs for duty in connection with the property of . . . such corporation or individual; such special deputy sheriffs to be paid wholly by the corporation or person on whose account their appointments are made. Such special deputy sheriffs . . . shall have the same power and authority as deputy sheriffs possess within the area to which they are appointed and in no other area." 225 Md. 422, 430, 171 A. 2d 717, 721.

Montgomery *deputy sheriff* Department and as such, on the 30th day of June, 1960, at about the hour of 8:45 P. M. he did observe the defendant William L. Griffin in Glen Echo Park which is private property [.] [O]n order of Kebar Inc. owners of Glen Echo Park the def[endant] was asked to leave the park and after giving him reasonable time to comply the def[endant] refused to leave [and] he was placed under arrest for trespassing

“Whereas, Francis J. Collins doth further depose and say that he, as a member of the Montgomery County Police Department believes that _____
_____ is violating Sec. 577 Article 27 of the Annotated Code of Maryland.

Francis J. Collins.”

Md. Ann. Code, 1957 (Cum. Supp. 1961), Art. 27, § 577, is a criminal trespass statute.² On the same day a Maryland Justice of the Peace issued a warrant which charged that petitioner Griffin “[d]id enter upon and pass over the land and premises of Glen Echo Park . . . after having been told by the Deputy Sheriff for Glen Echo Park, to leave the Property, and after giving him a reasonable time to comply, he did not leave . . . contrary to the . . . [Maryland criminal trespass statute] and against the peace, government and dignity of the State.” The warrant recited that the complaint had been made by “Collins

² That section provides:

“Any person . . . who shall enter upon or cross over the land, premises or private property of any person . . . after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor . . . provided . . . [however] that nothing in this section shall be construed to include within its provisions the entry upon or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership of said land, it being the intention of this section only to prohibit any wanton trespass upon the private land of others.”

Deputy Sheriff." An amended warrant was later filed. It stated that the complaint had been made by "Collins, Deputy Sheriff" but charged Griffin with unlawfully entering the park after having been told not to do so by "an Agent" of the corporation which operated the park. Presumably identical documents were filed with respect to the other petitioners.

Petitioners were tried and convicted of criminal trespass in the Circuit Court of Montgomery County. Each was sentenced to pay a fine of \$100. The Maryland Court of Appeals affirmed the convictions. 225 Md. 422, 171 A. 2d 717. That court, rejecting the petitioners' constitutional claims, reasoned as follows:

"[T]he appellants in this case . . . were arrested for criminal trespass committed in the presence of a special deputy sheriff of Montgomery County (who was also the agent of the park operator) after they had been duly notified to leave but refused to do so. It follows—since the offense for which these appellants were arrested was a misdemeanor committed in the presence of the park officer who had a right to arrest them, either in his private capacity as an agent or employee of the operator of the park or in his limited capacity as a special deputy sheriff in the amusement park . . .—the arrest of these appellants for a criminal trespass in this manner was no more than if a regular police officer had been called upon to make the arrest for a crime committed in his presence [T]he arrest and conviction of these appellants for a criminal trespass as a result of the enforcement by the operator of the park of its lawful policy of segregation, did not constitute such action as may fairly be said to be that of the State." 225 Md., at 431, 171 A. 2d, at 721.

We granted certiorari, 370 U. S. 935, and set the case for reargument. 373 U. S. 920.

Collins—in ordering the petitioners to leave the park and in arresting and instituting prosecutions against them—purported to exercise the authority of a deputy sheriff. He wore a sheriff's badge and consistently identified himself as a deputy sheriff rather than as an employee of the park. Though an amended warrant was filed stating that petitioners had committed an offense because they entered the park after an "agent" of the park told them not to do so, this change has little, if any, bearing on the character of the authority which Collins initially purported to exercise. If an individual is possessed of state authority and purports to act under that authority, his action is state action. It is irrelevant that he might have taken the same action had he acted in a purely private capacity or that the particular action which he took was not authorized by state law. *Screws v. United States*, 325 U. S. 91; and see cases cited, at p. 247, of *Peterson v. City of Greenville*, 373 U. S. 244. Thus, it is clear that Collins' action was state action. See *Williams v. United States*, 341 U. S. 97; see also *Labor Board v. Jones & Laughlin Steel Corp.*, 331 U. S. 416, 429. The only question remaining in this case is whether Collins' action denied petitioners the equal protection of the laws secured to them by the Fourteenth Amendment. If it did, these convictions are invalid.

It cannot be disputed that if the State of Maryland had operated the amusement park on behalf of the owner thereof, and had enforced the owner's policy of racial segregation against petitioners, petitioners would have been deprived of the equal protection of the laws. *Pennsylvania v. Board of Trusts*, 353 U. S. 230; cf. *Burton v. Wilmington Parking Authority*, 365 U. S. 715. In the *Board of Trusts* case we were confronted with the following situation. Stephen Girard by will had left a fund in trust to establish a college. He had provided in his will, in effect, that only "poor white male orphans" were to be

admitted. The fund was administered by the Board of Directors of City Trusts of the City of Philadelphia as trustee. In accord with the provisions of the will it denied admission to two Negro applicants who were otherwise qualified. We held:

“The Board which operates Girard College is an agency of the State of Pennsylvania. Therefore, even though the Board was acting as a trustee, its refusal to admit Foust and Felder to the college because they were Negroes was discrimination by the State. Such discrimination is forbidden by the Fourteenth Amendment. *Brown v. Board of Education*, 347 U. S. 483.” 353 U. S., at 231.

The *Board of Trusts* case must be taken to establish that to the extent that the State undertakes an obligation to enforce a private policy of racial segregation, the State is charged with racial discrimination and violates the Fourteenth Amendment.

It is argued that the State may nevertheless constitutionally enforce an owner's desire to exclude particular persons from his premises even if the owner's desire is in turn motivated by a discriminatory purpose. The State, it is said, is not really enforcing a policy of segregation since the owner's ultimate purpose is immaterial to the State. In this case it cannot be said that Collins was simply enforcing the park management's desire to exclude designated individuals from the premises. The president of the corporation which owned and managed the park testified that he had instructed Collins to enforce the park's policy of racial segregation. Collins was told to exclude Negroes from the park and escort them from the park if they entered. He was instructed to arrest Negroes for trespassing if they did not leave the park when he ordered them to do so. In short, Collins, as stated by the Maryland Court of Appeals, was “then under contract to

protect and enforce . . . [the] racial segregation policy of the operator of the amusement park" 225 Md., at 430, 171 A. 2d, at 720. Pursuant to this obligation Collins ordered petitioners to leave and arrested them, as he testified, because they were Negroes. This was state action forbidden by the Fourteenth Amendment.

Reversed.

MR. JUSTICE DOUGLAS would reverse for the reasons stated in his opinion in *Bell v. Maryland*, ante, p. —.

SUPREME COURT OF THE UNITED STATES

No 6.—OCTOBER TERM, 1963.

William L. Griffin et al.,
Petitioners,
v.
State of Maryland. } On Writ of Certiorari to the
Court of Appeals of Mary-
land.

[June 22, 1964.]

MR. JUSTICE CLARK, concurring.

I join the Court's opinion with the understanding that it merely holds, under the peculiar facts here, that the State "must be recognized as a joint participant in the challenged activity." See *Burton v. Wilmington Parking Authority*, 365 U. S. 715, 725 (1961). Deputy Sheriff Collins, an agent of the State, was regularly employed by Glen Echo in the enforcement of its segregation policy. I cannot, therefore, say as does my Brother HARLAN, that the situation "is no different from what it would have been had the arrests been made by a regular policeman dispatched from police headquarters." Here Collins, the deputy sheriff, ordered petitioners to leave the park before any charges were filed. Upon refusal, Collins, the deputy sheriff, made the arrest and then took petitioners to the police station where he filed the charges and secured the warrant. If Collins had not been a police officer, if he had ordered the appellants off the premises and filed the charges of criminal trespass and, if then, for the first time, the police had come on the scene to serve a warrant issued in due course by a magistrate, based on the charges filed, that might be a different case. That case we do not pass upon.

SUPREME COURT OF THE UNITED STATES

No. 6.—OCTOBER TERM, 1963.

William L. Griffin et al.,
Petitioners,
v.
State of Maryland. } On Writ of Certiorari to the
Court of Appeals of Mary-
land.

[June 22, 1964.]

MR. JUSTICE HARLAN, whom MR. JUSTICE BLACK and MR. JUSTICE WHITE join, dissenting.

The pivotal issue in this case is whether petitioners' exclusion from Glen Echo, a private amusement park, was the product of state action. I accept the premise that in arresting these petitioners Collins was exercising his authority as deputy sheriff rather than his right as an individual under Maryland law, see 225 Md., at 431, 171 A. 2d, at 721, to arrest them for a misdemeanor being committed in his presence. It seems clear to me, however, that the involvement of the State is no different from what it would have been had the arrests been made by a regular policeman dispatched from police headquarters.

I believe, therefore, that this case is controlled by the principles discussed in MR. JUSTICE BLACK's opinion in *Bell v. Maryland*, *post*, p. —, decided today, and accordingly would affirm the judgment below.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1963

No. 6

WILLIAM L. GRIFFIN, ET AL.,
Petitioners,

v.

STATE OF MARYLAND,
Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF MARYLAND

BRIEF OF RESPONDENT

THOMAS B. FINAN,
Attorney General of Maryland,

ROBERT C. MURPHY,
Deputy Attorney General,

LORING E. HAWES,
Assistant Attorney General,
1200 One Charles Center,
Baltimore, Maryland 21201,
Attorneys for Respondent.

#

K-87

tr

IN THE
Supreme Court of the United States

OCTOBER TERM, 1963

NO. 6

WILLIAM L. GRIFFIN, ET AL.,
Petitioners,

v.

STATE OF MARYLAND,
Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF MARYLAND

BRIEF OF RESPONDENT

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland appears at R. 76-83 and is reported at 225 Md. 422, 171 A. 2d 717. The opinion of the Circuit Court for Montgomery County appears at R. 72-75, but is otherwise not reported.

Attention is also invited to *Griffin v. Collins*, 187 F. Supp. 149, a civil case arising out of substantially the same factual situation as is now before this Honorable Court.

JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on June 8, 1961. The Petition for Writ of Certiorari

fr

was granted on June 25, 1962. The case was argued before this Court on November 5th and 7th, 1962. Reargument was ordered on May 20, 1963 (373 U.S. 920).

QUESTIONS PRESENTED

Whether, consistent with the Fourteenth Amendment, the State of Maryland, under its general statute prohibiting trespass on private property, and acting on the complaint of the owner of a privately-owned and operated amusement park, may convict persons who enter upon such amusement park and who, after demand by the agent of the owner of such private facility, refused to leave such amusement park?

The United States, in its *amicus curiae* brief, raises the further question:

Whether Maryland's criminal trespass statute, which on its face proscribes entry onto or crossing over private property after warning, may constitutionally be applied to Negro defendants, who entered upon unposted business premises open to the general public, but who refused to leave when requested to do so by the owner?

STATUTES INVOLVED

The Petitioners were convicted of violating Chapter 66 of the Laws of Maryland of 1900, codified as Section 577 of Article 27 of the Annotated Code of Maryland (1957 Ed.), which provides:

"Any person or persons who shall enter upon or cross over the land, premises or private property of any person or persons in this State after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor, and on conviction thereof before some justice of the peace in the county or city where such trespass may have been committed be fined by said justice of the peace not

less than one, nor more than one hundred dollars, and shall stand committed to the jail of county or city until such fine and costs are paid; provided, however, that the person or persons so convicted shall have the right to appeal from the judgment of said justice of the peace to the circuit court for the county or Criminal Court of Baltimore where such trespass was committed, at any time within ten days after such judgment was rendered; and, provided, further, that nothing in this section shall be construed to include within its provisions the entry upon or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership of said land, it being the intention of this section only to prohibit any wanton trespass upon the private land of others."¹

The direction to Petitioners to leave the premises was issued on behalf of the owner by one of its agents, a uniformed guard in the employ of a private detective agency under contract to the private owner. The guard, Lieutenant Francis J. Collins, also held an appointment as a Special Deputy Sheriff under the provisions of Chapter 491 of the Laws of Maryland of 1939 (a Public Local Law relating solely to Montgomery County), codified as Section 2-91 of the Montgomery County Code (1955 Ed.), which reads as follows:

"The sheriff of the county, on application of any corporation or individual, may appoint special deputy sheriffs for duty in connection with the property of,

¹ This statute was amended by Chapter 616 of the Laws of Maryland of 1961 (effective June 1, 1961). The amendment eliminated "or city" following "county" in two places and eliminated "or Criminal Court of Baltimore" immediately preceding the words "where such trespass". By Chapter 453 of the Laws of Maryland of 1963, effective June 1, 1963, the Section was again amended to provide that nothing therein should be construed as being in conflict with the right of Baltimore City to enact a Public Accommodations Ordinance.

tr

or under the charge of, such corporation or individual; such special deputy sheriffs to be paid wholly by the corporation or person on whose account their appointments are made. Such special deputy sheriffs shall hold office at the pleasure of the sheriff and shall have the same power and authority as deputy sheriffs possess within the area to which they are appointed and in no other area."²

STATEMENT

The facts of the case were fairly and adequately summarized by the court below, as follows (R. 76-77):

"* * * William L. Griffin, Marvous Saunders, Michael Proctor, Cecil T. Washington, Jr., and Gwendolyn Green (hereinafter called 'the Griffin appellants' or 'the Griffins') all of whom are Negroes, were arrested and charged with criminal trespass on June 30, 1960, on property owned by Rekar, Inc., and operated by Kebar, Inc., as the Glen Echo Amusement Park (Glen Echo or park).

"The Griffins were a part of a group of thirty-five to forty young colored students who gathered at the entrance to Glen Echo to protest 'the segregation policy that we thought might exist out there.' The students were equipped with signs indicating their disapproval of the admission policy of the park operator, and a picket line was formed to further implement the protest. After about an hour of picketing, the five Griffins left the larger group, entered the park and crossed over it to the carfousel. These appellants had tickets (previously purchased for them by a white person) which the park attendant refused to honor. At the time of this incident, Rekar and Kebar had a 'protection' contract with the National Detective Agency

² The office of Sheriff in Maryland still carries with it the common law powers of a conservator of the peace. Deputy Sheriffs have such authority as the Sheriff himself could exercise. Hence, the powers of the "Special Deputy Sheriff" under this statute would appear to include the power of arrest. See *Turner v. Holtzman*, 54 Md. 148.

omit record
1/2"

tr

(agency), one of whose employees, Lt. Francis J. Collins (park officer), who is also a special deputy sheriff for Montgomery County, told the Griffins that they were not welcome in the park and asked them to leave. They refused, and after an interval during which the park officer conferred with Leonard Woronoff (park manager), the appellants were advised by the park officer that they were under arrest. They were taken to an office on the park grounds and then to Bethesda, where the trespass warrants were sworn out. At the time the arrests were made, the park officer had on the uniform of the agency, and he testified that he arrested the appellants under the established policy of Kebar of not allowing Negroes in the park. There was no testimony to indicate that any of the Griffins were disorderly in any manner, and it seems to be conceded that the park officer gave them ample time to heed the warning to leave the park had they wanted to do so."

Upon these facts, the Court considered and rejected the Petitioners' contention that the requisite prior notice required by the Maryland Criminal Trespass Statute was not given to them by the owner or its agent. Specifically, the Court said (R. 79-80):

"* * * Since there was evidence that these appellants had gathered at the entrance of Glen Echo to protest the segregation policy they thought existed there, it would not be unreasonable to infer that they had received actual notice not to trespass on the park premises even though it had not been given by the operator of the park or its agent. But, even if we assume that the Griffins had not previously had the notice contemplated by the statute which was required to make their entry and crossing unlawful, the record is clear that after they had seated themselves on the carousel, these appellants were not only told they were unwelcome, but were then and there clearly notified by the agent of the operator of the

tr

park to leave and deliberately chose to stay. That notice was *due* notice to these appellants to depart from the park premises forthwith, and their refusal to do so when requested constituted an unlawful trespass under the statute. Having been duly notified to leave, these appellants had no right to remain on the premises and their refusal to withdraw was a clear violation of the statute under the circumstances even though the original entry and crossing over the premises had not been unlawful. *State v. Fox*, 118 S.E. 2d 58 (N.C. 1961). Cf. *Commonwealth v. Richardson*, 48 N.E. 2d 678 (Mass. 1943). Words such as 'enter upon' or 'cross over' as used in § 577, *supra*, have been held to be synonymous with the word 'trespass.' See *State v. Avent*, 118 S.E. 2d 47 (N.C. 1961)."

The Court then proceeded to consider the remaining question advanced by the Petitioners, viz., whether their arrest and conviction "constituted an unconstitutional exercise of State power to enforce racial segregation" (R. 81). In concluding that there was no such unconstitutional exercise of State power, and in affirming the judgments of conviction, the Court below said (R. 81-82):

"* * * It is true, of course, that the park officer — in addition to being an employee of the detective agency then under contract to protect and enforce, among other things, the lawful racial segregation policy of the operator of the amusement park — was also a special deputy sheriff, but that dual capacity did not alter his status as an agent or employee of the operator of the park. As a special deputy sheriff, though he was appointed by the county sheriff on the application of the operator of the park 'for duty in connection with the property' of such operator, he was paid wholly by the person on whose account the appointment was made and his power and authority as a special deputy was limited to the area of the amusement park. See Montgomery County Code (1955), § 2-91. As we see it, our decision in *Drews v. State*,

to

224 Md. 186, 167 A. 2d 341 (1961), is controlling here. The appellants in that case — in the course of participating in a protest against the racial segregation policy of the owner of an amusement park — were arrested for disorderly conduct committed in the presence of regular Baltimore County police who had been called to eject them from the park. Under similar circumstances, the appellants in this case — in the progress of an invasion of another amusement park as a protest against the lawful segregation policy of the operator of the park — were arrested for criminal trespass committed in the presence of a special deputy sheriff of Montgomery County (who was also the agent of the park operator) after they had been duly notified to leave but refused to do so. It follows — since the offense for which these appellants were arrested was a misdemeanor committed in the presence of the park officer who had a right to arrest them, either in his private capacity as an agent or employee of the operator of the park or in his limited capacity as a special deputy sheriff in the amusement park (see Kauffman, *The Law of Arrest in Maryland*, 5 Md. L. Rev. 125, 149) the arrest of these appellants for a criminal trespass in this manner was no more than if a regular police officer had been called upon to make the arrest for a crime committed in his presence, as was done in the *Drews* case. As we see it, the arrest and conviction of these appellants for a criminal trespass as a result of the enforcement by the operator of the park of its lawful policy of segregation, did not constitute such action as may fairly be said to be that of the State. The action in this case, as in *Drews*, was also 'one step removed from State enforcement of a policy of segregation and violated no constitutional right of appellants.' ”

SUMMARY OF ARGUMENT

The action inhibited by the Fourteenth Amendment is only such action as may fairly be said to be that of the states. The Amendment erects no shield against merely

Ar

private conduct, however discriminatory or wrongful. Individual invasion of individual rights is not the subject matter of the Amendment. *Shelley v. Kraemer*, 334 U.S. 1, 13; *Civil Rights Cases*, 109 U.S. 3, 11.

A private property owner, such as the operator of a private amusement park, may, consistent with the Fourteenth Amendment, arbitrarily discriminate as to invitees. He has the right, even though he operates his private facility under license from the State, to select his clientele and to make such selection based on color, if he so desires. *Williams v. Howard Johnson's Restaurant*, 268 F. 2d 845 (4th Cir.); *Slack v. Atlantic White Tower Systems, Inc.*, 181 F. Supp. 124, aff. 284 F. 2d 746.

Individuals have no constitutional right to enter or remain upon private property contrary to the will of the owner. The private owner, on the other hand, is entitled to equal protection of law in maintaining his peaceful possession. *Briggs v. State*, 367 S.W. 2d 750 (Ark., 1963). This Court, in *Martin v. Struthers*, 319 U.S. 141, 147, referring to state criminal trespass laws, observed:

“Traditionally the American law punishes persons who enter onto the property of another after having been warned by the owner to keep off. General trespass after warning statutes exist in at least twenty states, while similar statutes of narrower scope are on the books of at least twelve states more. * * *”.

The State's general laws must be applied to all with equal force, regardless of their race, and violation thereof cannot be shielded from state action on account of race. *Bernstein v. Real Estate Commission of Maryland*, 221 Md. 221, 156 A. 2d 657, app. dismissed 363 U.S. 419. The non-discriminatory application and enforcement of Maryland's Criminal Trespass Law in the present case cannot be considered a type of state action proscribed by the Four-

tr

teenth Amendment, even though the private owner's sole reason for excluding Negroes from the amusement park may have been because they were Negroes. *Griffin v. Collins*, 187 F. Supp. 149. The Park's business policy of excluding Negroes was neither induced, dictated or required by any State or local law, policy, executive proclamation or announcement, or custom; nor was it in any way aided by any action that could fairly be said, wittingly or unwittingly, to be that of the State. Petitioners' arrest and conviction for criminal trespass was not due to or because the State of Maryland desired or intended to maintain this facility as a segregated place of amusement. It was not only the right, but the duty of the State of Maryland, upon complaint being made to it by the private owner, to act thereon to protect and provide against unlawful trespass. In so doing, the State was merely allowing the use of its legal remedies as a substitute for force in a civilized community; it was not inducing others to discriminate, nor substituting its judgment for the judgment of the individual proprietor.³ Cf. *Petersen v. City of Greenville*, 373 U.S. 244; and *Lombard v. Louisiana*, 373 U.S. 267.

The State of Maryland is not responsible for the park's racially discriminatory practices merely because the individual who effected Petitioners' arrest, Lieutenant Francis Collins, an employee of the park's private guard service, also held a special deputy sheriff's commission from the Sheriff of Montgomery County, Maryland. Collins' presence at the park had no coercive effect compelling the park to discriminate, nor was Collins' status of special deputy sheriff and his subsequent employment at the

³ The private owner abandoned its policy of not serving Negroes shortly after the conclusion of this case in the lower court. It should also be noted that subsequently thereto the Montgomery County Council enacted an equal accommodations law for Montgomery County. Ordinance 4-120, effective January 16, 1962.

tr

park the result of any collusion on the part of State and park officials, so as to more effectively enforce and perpetuate the park's racially discriminatory practices. The engagement by private enterprises of individuals clothed with the powers of police officers is a common occurrence, and whether in any given situation such individuals are exercising their State authority as police officers, or are acting within the ambit of personal or non-official pursuits on behalf of their employer, and in the scope of their employment, is necessarily a question of fact. In effecting the arrests in this case, Collins was not exercising any State authority, but, even if he were, his action in so doing would not be constitutionally different than had the owner of the park called upon a regular police officer to enforce his rights.

ms spelled

Petitioners' convictions were for violation of Maryland's criminal trespass statute, which proscribes entry upon, or crossing over, land, premises or private property of another after having been duly notified by the owner or his agent not to do so. There was evidence that Petitioners had actual notification not to enter the park premises, and being so notified, their conduct in doing so falls clearly within the terms of the statute. Assuming they received no such notification, nevertheless, the Maryland statute is sufficiently broad as to include a refusal to leave the premises, even though the original entry was lawful. Such a construction of the Maryland statute is clearly merited, and the statute is not, as applied to Petitioners' conduct, unconstitutionally vague as failing to give fair warning of the proscribed conduct.

tr

ARGUMENT

I.

CONVICTION OF PETITIONERS UNDER MARYLAND'S GENERAL STATUTE PROHIBITING WANTON TRESPASS ON PRIVATE PROPERTY DID NOT CONTRAVENE THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION.

A.

A private Amusement Park, though licensed by the State, may constitutionally refuse service to Negroes solely because of their Race.

At common law, a person engaged in a public calling, such as inn-keeper or common carrier, was held to be under a duty to the general public and was obliged to serve, without discrimination, all who sought service. Equally well settled, on the other hand, is the proposition that operators of other private enterprises, including places of amusement, are under no such common law obligation; and in the absence of a statute forbidding discrimination, may select their clientele based on color, if they so desire. That such private enterprises may be required to secure a license from the State in order to operate does not, of itself, prohibit discrimination by the private owner, nor does the requirement of such license convert the private facility into a public one. *Williams v. Howard Johnson's Restaurant*, 268 F. 2d 845 (4th Cir.); *Slack v. Atlantic White Tower Systems, Inc.*, 181 F. Supp. 124, aff. 284 F. 2d 746; *Watkins v. Oaklawn Jockey Club*, 86 F. Supp. 1006, aff. 183 F. 2d 440 (8th Cir.); *Griffin v. Collins*, 187 F. Supp. 149; *Briggs v. State*, 367 S.W. 2d 750 (Ark.); *Tamelleo v. New Hampshire Jockey Club, Inc.*, 163 A. 2d 10 (N.H.); *McKibbin v. Michigan Corp. & Securities Commission*, 119 N.W. 2d 557 (Mich.); *Madden v. Queens County Jockey Club*, 72 N.E. 2d 697 (New York), cert. denied, 332 U.S. 761; *Terrell Wells Swimming Pool*

v. Rodriguez, 182 S.W. 2d 824 (Texas); *Younger v. Judah*, 19 S.W. 1109 (Missouri); *Goff v. Savage*, 210 P. 374 (Washington); *De La Ysla v. Publix Theatres Corporation*, 26 P. 2d 818 (Utah); *Horn v. Illinois Central Railroad*, 64 N.E. 2d 574 (Illinois); *Coleman v. Middlestaff*, 305 P. 2d 1020 (California); *Fletcher v. Coney Island*, 136 N.E. 2d 344 (Ohio); *Alpaugh v. Wolverton*, 36 S.E. 2d 906 (Virginia); *Greenfeld v. Maryland Jockey Club*, 190 Md. 96, 57 A. 2d 335; *Good Citizens Assoc. v. Board*, 217 Md. 129, 141 A. 2d 744; *Drews v. State*, 224 Md. 186, 167 A. 2d 331; *Garfine v. Monmouth Park Jockey Club*, 148 A. 2d 1 (N.J.); *State v. Clyburn*, 101 S.E. 2d 295 (N.C.); *State v. Avent*, 118 S.E. 2d 47 (N.C.), vacated and remanded on other grounds, 373 U.S. 375.

This Court, in *Boynton v. Virginia*, 364 U.S. 454 clearly recognized the validity of the foregoing principles when it said that every time a bus stops at a wholly independent roadside restaurant, the Interstate Commerce Act does not require that restaurant service be supplied in harmony with the provisions of that Act. In fact, this Court has refused to hold that where a privately-owned restaurant is involved, in the absence of the general taxpaying public's ownership of the facility, or interstate commerce, that it will extend federal protection against racial discrimination on the basis of the Fourteenth Amendment. *Burton v. Wilmington Parking Authority*, 365 U.S. 715; *Boynton v. Virginia*, *supra*. These recent pronouncements indicate reaffirmance of the long established law that the owner of private property may be arbitrary and capricious in his choice of invitees, notwithstanding the Fourteenth Amendment; and that that Amendment "erects no shield against merely private conduct, however discriminatory or wrongful". *Shelley v. Kraemer*, *supra*, at page 13. As Justice

Holmes, speaking for the Court in *Terminal Taxicab Co. v. Kutz*, 241 U.S. 252, 256, observed:

"It is true that all business, and, for the matter of that, every life in all its details, has a public aspect, some bearing upon the welfare of the community in which it is passed. But, however it may have been in earlier days as to the common callings, it is assumed in our time that an invitation to the public to buy does not necessarily entail an obligation to sell. *It is assumed that an ordinary shop keeper may refuse his wares arbitrarily to a customer whom he dislikes.* * * *". (Emphasis supplied.)

It being established by the *Civil Rights Cases*, 109 U.S. 3, that the Congress is without power to legislate against such private discrimination as was involved in the present case, this Court cannot (without overruling its prior precedents) accomplish the same result by now holding that the Fourteenth Amendment created a new limitation on the use of private property, as developed in the common law. It has, of course, long been recognized that the Fourteenth Amendment created no new privileges. It merely prohibited the abridgement of existing privileges by state action and secured to all citizens equal protection of the laws. In other words, positive rights and privileges are secured by the Fourteenth Amendment *by way of prohibition* against state laws and proceedings affecting those rights and privileges. The Amendment is essentially a guarantee of protection against the exercise of arbitrary and tyrannical power on the part of the government and legislature of the state, not a guarantee against the commission of individual offenses. It does not add anything to the rights of one citizen as against another. *United States v. Harris*, 106 U.S. 129; *Virginia v. Rives*, 100 U.S. 313; *United States v. Cruikshank*, 92 U.S. 542. In light of these well-

tr

settled principles, it cannot be, as contended by Petitioners, that the Fourteenth Amendment affirmatively requires a state to stop such private discrimination as was involved in the present case; nor does failure of a state to do so constitute adoption of those discriminatory practices as its own. As so succinctly summarized by the three-judge court in *Briggs v. Elliott*, 132 F. Supp. 776, 777:

"* * * the Constitution * * * does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as the result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The Fourteenth Amendment is a limitation upon the exercise of power by a state or state agencies, not a limitation upon the freedom of individuals."⁴

B.

The arrest and conviction of Petitioners did not, under the particular circumstances of this case, constitute an unconstitutional exertion of State power to enforce racial segregation in the private amusement park.

Petitioners contend that even if the private proprietor had a right to exclude them from the premises solely on account of their race, the State of Maryland crossed the line of forbidden conduct marked by the Fourteenth Amendment by arresting, prosecuting and convicting them

⁴ By Chapters 227 and 228 of the Laws of Maryland of 1963, codified as Sections 11-15 of Article 49B of the Annotated Code of Maryland (1963 Supp.), effective June 1, 1963, a Statewide public accommodations law was enacted by the Maryland General Assembly proscribing racial discrimination in hotels, restaurants, inns, motels and like establishments. While a number of counties were exempted from the provisions of the law, it is noteworthy that the geographical area covered comprises 90% of the State's total population. Baltimore City, in addition to being subject to the State-wide Act, also enacted its own equal accommodations ordinance in and for Baltimore City (Ordinance No. 1249, effective June 8, 1962).

tr

under its criminal trespass statute. Virtually the same argument was advanced and rejected in *Griffin v. Collins, supra*, the court there holding:

“Plaintiffs have cited no authority holding that in the ordinary case, were the proprietor of a store, restaurant or amusement park, himself or through his own employees, notifies the Negro of the policy and orders him to leave the premises, the calling in of a peace officer to enforce the proprietor’s admitted right would amount to deprivation by the state of any rights, privileges or immunities secured to the Negro by the Constitution or laws. *Granted the right of the proprietor to choose his customers and to eject trespassers, it can hardly be the law, as plaintiffs contend, that the proprietor may use such force as he and his employees possess but may not call on a peace officer to enforce his rights.*” (Emphasis supplied.)

To the same effect, see the *McKibbin, Avent and Briggs* cases, *supra*.

Shelley v. Kraemer, supra, relied upon by the Petitioners, is distinguishable. There, the use of judicial power to enforce private agreements of a discriminatory character was held unconstitutional. More specifically, the court held that restrictive covenants prohibiting the sale of homes to Negroes could not be enforced in the courts, stating:

“These are not cases, as has been suggested, in which the States have merely abstained from action, leaving private individuals free to impose such discriminations as they see fit. Rather, these are cases in which the States have made available to such individuals the full coercive power of government to deny to petitioners, on the grounds of race or color, the enjoyment of property rights in premises which petitioners are willing and financially able to acquire and which the grantors are willing to sell. The difference between judicial enforcement and nonenforcement of the restrictive covenants is the difference to petitioners be-

tr

tween being denied rights of property available to other members of the community and being accorded full enjoyment of those rights on an equal footing.”

Unlike *Shelley*, where an affirmative, constitutionally-protected property right was involved, the Petitioners in the instant case can assert no right, constitutionally-protected or otherwise, to enter private property against the will of the owner, so that the State, in imposing criminal sanctions under a non-discriminatory trespass statute, is simply providing a means whereby the owner of property may be protected in his use and possession thereof, without having to resort to force and violence. *Briggs v. State, supra*; *State v. Clyburn, supra*.

Though readily conceding that state imposed or mandated racial segregation in the field of recreational activity is absolutely proscribed by the Fourteenth Amendment, it is submitted that “state power” is not being coercively — and hence unconstitutionally — applied to enforce and abet racial discrimination simply by its non-discriminatory and neutral exercise to arrest, prosecute and convict under the circumstances of this case. It is submitted, rather, that the search for unconstitutional state action in this area should be made against the following background, as ably set forth by the United States in its *amicus curiae* brief filed in cases Nos. 11, 58, 66, 67 and 71, 1962 Term, at pages 42 and 45:

“* * * a State cannot constitutionally prohibit association between Negroes and whites, be it in a public restaurant or elsewhere. On the other hand, to cite an example, if a private landowner should invite all of his neighbors to use his swimming pool at will and then request one of the invitees to leave because of his race, creed or color, the decision would be private and, however unpraiseworthy, not unconstitutional. Further-

tr

more, we take it that there would be no denial of equal protection if the State made its police and legal remedies available to the owner of the swimming pool against any person who came or remained upon his property over his objection. *For, in a civilized community, where legal remedies have been substituted for force, private choice necessarily depends upon the support of sovereign sanctions.* In such a case, the law would be color-blind and it could not be fairly said, we think, that the State had denied anyone the equal protection of its laws. (Emphasis supplied.)

* * * * *

“It is one thing for the State to enforce, through the laws of trespass, exclusionary practices which rest simply upon individual preference, caprice or prejudice. It is quite another for the State, exercising as it does immeasurable influence over individual behavior, to induce racial segregation and then proceed to implement the acts of exclusion which it has brought about. If the State, by its laws, actions, and policies, causes individual acts of discrimination in the conduct of a business open to the public at large, the same State, we believe, cannot be heard to say that it is merely enforcing, in even-handed fashion, the private and unfettered decisions of the citizen.”

As otherwise stated in *Burton v. Wilmington Parking Authority, supra*, private conduct abridging individual rights does no violence to the equal protection clause unless “to some significant extent” the State “in any of its manifestations” has become involved in it. This Court there recognized that to fashion and apply a precise formula for recognition of State responsibility under the equal protection clause would be an “impossible task”; and that only by “sifting facts” and “weighing circumstances” could the involvement of a state in private discriminatory conduct, if such existed, be attributed its true significance. Thus,

tr

in that case, this Court found the Fourteenth Amendment violated by racial discrimination by a restaurant, privately operated for private profit, and located in a public authority's off-street automobile parking building, in which the restaurant leased space and facilities from the public authority. This Court noted that the parking building was publicly owned and financed under the authority of a state statute; that the leased premises were planned for such use as an integral part of the parking facility; that the availability of public parking enhanced the business of the restaurant and the restaurant's customers likewise patronized the public parking facility. These and other facts appeared to this Court to have been such as placed the state in a "position of interdependence" with the private restaurant, so that it became a "joint participant in the challenged activity", which, on that account, cannot be considered to have been so "purely private" as to fall without the scope of the Fourteenth Amendment".

It is not seriously contended in the present case that the discriminatory practices of the amusement park were performed in obedience to any positive provision of state or local law, or, induced, caused, required or dictated by any state policy, executive proclamation or custom. On the contrary, all of the evidence in the case indicated that the practice of segregation in the park was solely the result of the business choice of the private proprietor, catering to the desires and prejudices of his customers. Neither is there any evidence of state involvement or participation, financially or otherwise, in the management and operation of the park; and there is nothing in the record to indicate that the State exercised any control over the affairs and management of the National Detective Agency, or of its employee, Lieutenant Collins.

It is, nevertheless, urged by Petitioners that because Lieutenant Collins was in the private employ of the park, held a commission as a Special Deputy Sheriff, and was the individual who initiated their arrests (albeit upon request of the park management), the State of Maryland has thereby, without more, become so inextricably involved in the discriminatory practice by the park that it cannot, consistent with the Fourteenth Amendment, arrest, prosecute and convict the victims of that discrimination. Reliance in support of such proposition is placed on *Peterson v. City of Greenville*, 373 U.S. 244; and *Lombard v. Louisiana*, 373 U.S. 267. In each of those cases, however, there was state action, either in the form of a law or executive pronouncement, compelling the discriminatory practice, so that, clearly, the state's involvement was there such that it was *responsible* for the discrimination. Here, Collins was *not responsible* for the park's discriminatory business policy of excluding Negroes. The park had been segregated for fifty-one years prior to the arrests of Petitioners, *solely* as a business policy of the owner (R. 49). Neither is there any evidence in the record even remotely suggesting that Collins' presence had any coercive effect compelling the park to discriminate. Indeed, Collins was employed at the park for only a few months prior to Petitioners' arrest (R. 5).

Nor, is there any evidence of collusion between state and park officials, which enabled Collins to be deputized, so as to more effectively enforce and perpetuate the park's racially discriminatory practices. Indeed, it is not shown when Collins was deputized or upon whose application. Consistent with the provisions of the enabling statute, he could have been deputized at his own request, or at the

request of the park management, or at the request of Collins' employer, National Detective Agency.⁵

To constitute "state action", even in a general sense, it would in the first instance be necessary to find that Collins arrested Petitioners, not in his private, non-official capacity as a mere agent of the park, but in his official capacity as a special deputy sheriff. Standing alone, the mere fact that Collins was clothed with a degree of state power does not mean that all acts done by him are public and in furtherance of the state authority reposed in him. As noted by this Court in *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 331 U.S. 416, at page 429, it is a common and entirely legitimate practice in this country for private watchmen or guards to be vested with powers of policemen, sheriffs, or peace officers to protect the property of their private employers; but it has not thereby been assumed that such deputized guards cease to be employees of the company concerned, or that they become municipal employees for all purposes. The question as to whether in a particular case the doer of the act complained of was at the time acting in his official capacity, or privately within the scope of his employment as a servant or employee, is ordinarily a question of fact. *Williams v. United States*, 341 U.S. 97; *Neallus v. Hutchinson Amusement Co.*, 139 A. 671 (Me., 1927); *Deck v. B. & O. R.R. Co.*,

⁵ Private detective agencies have no police authority whatsoever under Maryland law. See Sections 75-92 of Article 56, Annotated Code of Maryland (1957 Ed.) regulating the business of private detective agencies. Section 2-91 of the Montgomery County Code (1955 Ed.), authorizing the appointment of special deputy sheriffs, and bestowing upon them the powers of peace officers, is sufficiently broad as to permit any individual or corporation having "charge of" property to be appointed a special deputy sheriff therefor. It is not unlikely, therefore, that Collins, as a private detective, may have been deputized at his own instance or upon application of his employer, National Detective Agency.

100 Md. 168, 59 A. 650 (1905); *B. & O. R.R. Co. v. Deck*, 102 Md. 669, 62 A. 958 (1906).⁶

As shown by the evidence, Collins was an employee of the National Detective Agency, a private organization incorporated under the laws of the District of Columbia, and authorized to provide guard service to its clients. He had been assigned under the guard contract between his employer and the amusement park to be the senior guard with the title of Lieutenant. That Collins deemed his employer to be the Detective Agency and not the State of Maryland, or the park, is abundantly plain from a review of the record. Collins was not paid by the park, but was paid *solely* by his employer, National Detective Agency (R. 14). He received no pay from the park or from anyone else for being a special deputy sheriff (R. 15). He wore the white-coat uniform of the Detective Agency during his employment at the park, and not a uniform of the State of Maryland (R. 14). In effecting Petitioners' arrest, Collins pursued the same procedures as any ordinary citizen in applying for an arrest warrant from a magistrate, indicating that he was not exercising the powers of special deputy sheriff vested in him.⁷ The mere


⁶ By Sections 342-348 of Article 23 of the Maryland Code (1957 Ed.), provision is made for the appointment of special police officers by the Governor of Maryland, upon application being made therefor by certain classes of corporations in Maryland. When appointed by the Governor, such individuals are vested with all the authority and powers of peace officers. A similar provision relating to Baltimore City is contained in Section 558 of the Charter and Public Local Laws of Baltimore City (1949 Ed.), with the exception that the Police Commissioner of Baltimore City, instead of the Governor, is the authorized appointing authority.

⁷ Maryland confers on its peace officers the right to arrest without warrant for any misdemeanor committed in the officer's presence, but confines private persons in similar cases to misdemeanors amounting to a breach of the peace. *B. & O. R.R. Co. v. Cain*, 81 Md. 87, 31 Atl. 801.

tr


fact that Collins was given an application for warrant, entitled "Application for Warrant by Police Officer", should not convert otherwise private actions into those of a public official. Substance, and not mere form, should determine in which capacity Collins was acting. Certainly, every act done by one who is in fact an officer of the law is not an official act, or an act done under color of or by virtue of his authority as such an officer. *Screws v. United States*, 325 U.S. 91; *Watkins v. Oaklawn Jockey Club*, 86 F. Supp. 1006, aff'd 183 F. 2d 440 (8th Cir.).

The latter case was an action for damages alleging malicious false arrest and imprisonment of the plaintiff by the defendant Jockey Club and defendant Sheriff and Deputy Sheriff of Garland County, respectively, pursuant to an alleged conspiracy to deprive plaintiff of his civil rights. The plaintiff, a Caucasian, had been ejected from the defendant club's race track by the Deputy Sheriff, acting on orders of the Sheriff, who, in turn, had received the direction to eject plaintiff direct from the Jockey Club. To establish his cause of action, it was essential that plaintiff prove that the Sheriff and Deputy Sheriff, in ejecting him from the track, were acting under color of state statute, and not merely as individuals or as agents only of the Jockey Club. The evidence indicated that both the Sheriff and Deputy Sheriff were assigned to the race track during the racing meet, and were paid by the Jockey Club; that in ejecting plaintiff from the track, they did no more than forcibly escort him to the track gate; that while they had guns, they did not use them, nor did they actually "arrest" the plaintiff and take him to jail. The court concluded from this evidence that the officers had done nothing in any way inconsistent with what any agent of the club would have done when carrying out orders to eject a person from the premises; and that under such



facts and circumstances whatever evidentiary force the mere showing of the act, that is, the ejection by one who was in fact an officer, may have had in establishing the act as an official one, was by such other evidence conclusively and completely refuted.

It is submitted that upon a fair review of the record in this case the only rational conclusion to be drawn is that Lieutenant Collins was not executing any state authority by virtue of his status as a Special Deputy Sheriff, but was acting solely as the agent of the park in directing Petitioners to leave the park premises. Assuming, however, that Collins was at the time acting in his official capacity, it is nevertheless clear that his actions were not different from those that would have obtained had a regular police officer been called to the scene. Like any police officer called to such scene, Collins received from the owner, and relayed to Petitioners, the owner's demand that Petitioners leave the premises. The contention that Collins, because of his relationship with the park, was permitted no free exercise of police judgment, but was required by the owner to act precisely in accord with the owner's directions, is rank speculation. Indeed, there is nothing in the record to show that Collins did not, in fact, reflect upon the necessity or desirability of arresting Petitioners and ultimately, after due consideration, decide upon effecting the arrests. Viewed in this light, it is submitted that Collins' actions, as such Special Deputy Sheriff, did not, considering all the circumstances, constitute unconstitutional state involvement in the park's racially discriminatory admission policies.



II.

MARYLAND'S CRIMINAL TRESPASS STATUTE IS NOT VOID AS
BEING UNCONSTITUTIONALLY VAGUE, AS APPLIED
TO PETITIONERS CONDUCT IN THIS CASE.


Maryland's criminal trespass statute proscribes entry upon or crossing over land, premises or private property of another "after having been duly notified by the owner or his agent not to do so", it being the express intention of the act "to prohibit any wanton trespass upon the private land of others". The Maryland Court of Appeals found from the evidence that Petitioners did, in fact, have the required actual notification not to enter the amusement park, both before and during the time they were picketing the premises (R. 79). Should this Court concur in that conclusion, it would, of course, be unnecessary to reach the question raised by *amicus curiae* as to the constitutionality on grounds of vagueness of the Maryland criminal trespass statute.

The lower court nevertheless further concluded that a refusal to leave premises upon demand of the owner, even though original entry was lawful, was within the range of conduct proscribed by the statute, in that words such as "enter upon" or "cross over", as used in the statute, were synonymous with the word "trespass". In *Alford v. United States*, 274 U.S. 264, this Court upheld the conviction of a person under a statute penalizing the building of a fire "near" any forest in the public domain. The Court said that the word "near" taken in connection with the danger to be prevented, laid down a plain enough rule of conduct for anyone who seeks to obey the law. Similarly, in *Omaechevarria v. Idaho*, 246 U.S. 343, this Court held that men familiar with range conditions and desirous of observing the law would have little difficulty in knowing what was prohibited by a statute forbidding the herding of sheep

tr

on any cattle "range", "usually" occupied by any cattle grower. It has been held further that a criminal statute, penalizing a bank employee for receiving money, checks or other property as a deposit in the bank when he has knowledge that it is insolvent, is not unconstitutionally vague although "insolvent", which has several meanings, was not defined in the statute. *Eastman v. State*, 131 Ohio State 1, 1 N.E. 2d 140, appeal dismissed 299 U.S. 505.

This Court has said, in effect that persons of ordinary intelligence engaged in an activity coming within the purview of a criminal statute are in a position to know what that statute forbids. *McGowan v. Maryland*, 366 U.S. 420, 428; *United States v. Harriss*, 347 U.S. 612, 617. The Petitioners here fall well within this rule. They arrived at the entrance to the park carrying picket signs protesting the owner's racially discriminatory practices. In light of such evidence, it can hardly be said that Petitioners did not fully appreciate the owner's admission policy. Subsequently, when they entered the premises, each Petitioner received personal notification from Lieutenant Collins that he was not welcome and was to immediately leave the premises. Any further movement upon the property or the failure to leave the property at that time would clearly be a trespass within the meaning of the statute.



CONCLUSION

For the reasons stated, it is respectfully submitted that the judgments of conviction should be affirmed.

Respectfully submitted,

THOMAS B. FINAN,
Attorney General of Maryland,

ROBERT C. MURPHY,
Deputy Attorney General,

LORING E. HAWES,
Assistant Attorney General,
1200 One Charles Center,
Baltimore, Maryland 21201,
Attorneys for Respondent.

#

tr

File Copy
4504

IN THE
Supreme Court of the United States

OCTOBER TERM, 1962

No. 26

WILLIAM L. GRIFFIN, ET AL.,
Petitioners,

v.

STATE OF MARYLAND,
Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF MARYLAND

BRIEF OF RESPONDENT

THOMAS B. FINAN,
Attorney General,

JOSEPH S. KAUFMAN,
Deputy Attorney General,

ROBERT C. MURPHY,
Assistant Attorney General,

10 Light Street,
Baltimore 2, Md.,

Attorneys for State of Maryland.

Hawes

INDEX

TABLE OF CONTENTS

	PAGE
OPINIONS BELOW	1
JURISDICTION	1
QUESTION PRESENTED	2
STATUTES INVOLVED	2
STATEMENT	3
SUMMARY OF ARGUMENT.....	6
ARGUMENT:	
Conviction of Petitioners under Maryland's Gen- eral Statute prohibiting wanton trespass on private property did not contravene the Equal Protection Clause of the Fourteenth Amend- ment to the Federal Constitution.....	8
I. A private amusement park, though licensed by the State, may constitutionally refuse service to Negroes solely because of their race	8
II. The arrest and conviction of Petitioners did not, under the particular circumstances of this case, constitute an unconstitutional exertion of state power to enforce racial segregation in the private amusement park	10
CONCLUSION	15

TABLE OF CITATIONS

Cases

Alpaugh v. Wolverton, 36 S.E. 2d 906 (Virginia).....	9
B. & O. Railroad Co. v. Cain, 81 Md. 87, 31 A. 801.....	15

	PAGE
Bernstein v. Real Estate Commission of Md., 221 Md. 221, 156 A. 2d 657 (Appeal dismissed 363 U.S. 419)	7
Boynton v. Virginia, 364 U.S. 454	9
Burton v. Wilmington Parking Authority, 365 U.S. 715	9, 12
Civil Rights Cases, 109 U.S. 3	6, 10
Coleman v. Middlestaff, 305 P. 2d 1020 (Calif.)	9
De La Ysla v. Publix Theatres Corp., 26 P. 2d 818 (Utah)	9
Drews v. State, 224 Md. 186, 167 A. 2d 341	9
Fletcher v. Coney Island, 136 N.E. 2d 344 (Ohio)	9
Garfine v. Monmouth Park Jockey Club, 148 A. 2d 1 (N.J.)	9
Goff v. Savage, 210 P. 374 (Wash.)	9
Good Citizens Assoc. v. Board, 217 Md. 129, 141 A. 2d 744	9
Greenfeld v. Maryland Jockey Club, 190 Md. 96, 57 A. 2d 335	9
Griffin v. Collins, 187 F. Supp. 149	1, 7, 8, 10
Griffin v. State, 225 Md. 422, 171 A. 2d 717	1
Horn v. Illinois Cent. R.R., 64 N.E. 2d 574 (Ill.)	9
Madden v. Queens County Jockey Club, 72 N.E. 2d 697 (N.Y.)	9, 10
Martin v. Struthers, 319 U.S. 141	7
Shelley v. Kraemer, 334 U.S. 1	6, 9
Slack v. Atlantic White Tower Systems, Inc., 181 F. Supp. 124, aff. 284 F. 2d 746	7, 8, 10, 13
State v. Clyburn, 101 S.E. 2d 295 (N.C.)	9, 10
Terminal Taxicab Co. v. Kutz, 241 U.S. 252	9
Terrell Wells Swimming Pool v. Rodriguez, 182 S.W. 2d 824 (Texas)	9
Turner v. Holtzman, 54 Md. 148	3
Williams v. Howard Johnson's Restaurant, 268 F. 2d 845 (4th Cir.)	6, 8, 10
Younger v. Judah, 19 S.W. 1109 (Missouri)	9

Statutes

	PAGE
Annotated Code of Maryland (1957 Ed.):	
Article 27—	
Sec. 577	2
Article 56—	
Secs. 75-92	15
Laws of Maryland:	
1900 — Chapter 66	2
1939 — Chapter 491	3
1961 — Chapter 616	3
Montgomery County Code—	
Section 2-91	3
Montgomery County Ordinances—	
4-120	8
28 U.S.C. 1257(3)	1

IN THE
Supreme Court of the United States

OCTOBER TERM, 1962

No. 26

WILLIAM L. GRIFFIN, ET AL.,
Petitioners,

v.

STATE OF MARYLAND,
Respondent.

**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF MARYLAND**

BRIEF OF RESPONDENT

OPINIONS BELOW

The opinion of the Court of Appeals of Maryland appears at R. 76-83 and is reported at 225 Md. 422, 171 A. 2d 717. The opinion of the Circuit Court for Montgomery County appears at R. 72-75, but is otherwise not reported.

Attention is also invited to *Griffin v. Collins*, 187 F. Supp. 149, a civil case arising out of substantially the same factual situation as is now before this Honorable Court.

JURISDICTION

The judgment of the Court of Appeals was entered on June 8, 1961. The Petition for Writ of Certiorari was granted on June 25, 1962. The jurisdiction of this Court rests upon 28 U.S.C. 1257(3).

for
case involving Nov 5th 1962.
Revised and filed 11-29-63.
(373 U.S. 920)

13-14 same case } 177
at the
Petit's 177

2 a crime corpus statute
which on its face prohibits
only entry onto private prop
after 2. ^{UPA} (ca 10 requires def's
who entered the house & open 101 LF,
but refused to leave when 19 1000 50

QUESTION PRESENTED

17 C (64)
to (100)
2 substituted
24:
103-14 same
case, 177
7 F 101 C (64)
6401
1-10-1900

Whether, consistent with the Fourteenth Amendment, the State of Maryland, under its general statute prohibiting trespass on private property, and acting on the complaint of the owner of a privately-owned and operated amusement park, may convict persons who enter upon such amusement park and who, after demand by the agent of the owner of such private facility, refuse to leave such amusement park?

STATUTES INVOLVED

The Petitioners were convicted of violating Chapter 66 of the Laws of Maryland of 1900, codified as Section 577 of Article 27 of the Annotated Code of Maryland (1957 Ed.), which provides:

"Any person or persons who shall enter upon or cross over the land, premises or private property of any person or persons in this State after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor, and on conviction thereof before some justice of the peace in the county or city where such trespass may have been committed be fined by said justice of the peace not less than one, nor more than one hundred dollars, and shall stand committed to the jail of county or city until such fine and costs are paid; provided, however, that the person or persons so convicted shall have the right to appeal from the judgment of said justice of the peace to the circuit court for the county or Criminal Court of Baltimore where such trespass was committed, at any time within ten days after such judgment was rendered; and, provided, further, that nothing in this section shall be construed to include within its provisions the entry upon or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership of said land, it being

the intention of this section only to prohibit any wanton trespass upon the private land of others.”¹

The direction to Petitioners to leave the premises was issued on behalf of the owner by one of its agents, a uniformed guard in the employ of a private detective agency under contract to the private owner. The guard, Lieutenant Francis J. Collins, also held an appointment as a Special Deputy Sheriff under the provisions of Chapter 491 of the Laws of Maryland of 1939 (a Public Local Law relating solely to Montgomery County), codified as Section 2-91 of the Montgomery County Code (1955 Ed.), which reads as follows:

[Handwritten scribbles and initials]

“The sheriff of the county, on application of any corporation or individual, may appoint special deputy sheriffs for duty in connection with the property of, or under the charge of, such corporation or individual; such special deputy sheriffs to be paid wholly by the corporation or person on whose account their appointments are made. Such special deputy sheriffs shall hold office at the pleasure of the sheriff and shall have the same power and authority as deputy sheriffs possess within the area to which they are appointed and in no other area.”²

STATEMENT

The facts of the case were fairly and adequately summarized by the court below, as follows (R. 76-77):

“* * * William L. Griffin, Marvous Saunders, Michael Proctor, Cecil T. Washington, Jr., and Gwen-

¹ This statute was amended by Chapter 616 of the Laws of Maryland of 1961 (effective June 1, 1961). The amendment eliminated “or city” following “county” in two places and eliminated “or Criminal Court of Baltimore” immediately preceding the words “where such trespass”. *By Ch 453 of 1961 - 1963 (June 1, 1961)*

update

² The office of Sheriff in Maryland still carries with it the common law powers of a conservator of the peace. Deputy Sheriffs have such authority as the Sheriff himself could exercise. Hence, the powers of the “Special Deputy Sheriff” under this statute would appear to include the power of arrest. See *Turner v. Holtzman*, 54 Md. 148.

Person contact with the [unclear]
20/10 -
Sharon [unclear]
contacted [unclear] B/C
2 meeting a for [unclear]
(which was done)

dolyn Greene (hereinafter called 'the Griffin appellants' or 'the Griffins') all of whom are Negroes, were arrested and charged with criminal trespass on June 30, 1960, on property owned by Rekab, Inc., and operated by Kebar, Inc., as the Glen Echo Amusement Park (Glen Echo or park).

"The Griffins were a part of a group of thirty-five to forty young colored students who gathered at the entrance to Glen Echo to protest 'the segregation policy that we thought might exist out there.' The students were equipped with signs indicating their disapproval of the admission policy of the park operator, and a picket line was formed to further implement the protest. After about an hour of picketing, the five Griffins left the larger group, entered the park and crossed over it to the carrousel. These appellants had tickets (previously purchased for them by a white person) which the park attendant refused to honor. At the time of this incident, Rekab and Kebar had a 'protection' contract with the National Detective Agency (agency), one of whose employees, Lt. Francis J. Collins (park officer), who is also a special deputy sheriff for Montgomery County, told the Griffins that they were not welcome in the park and asked them to leave. They refused, and after an interval during which the park officer conferred with Leonard Woronoff (park manager), the appellants were advised by the park officer that they were under arrest. They were taken to an office on the park grounds and then to Bethesda, where the trespass warrants were sworn out. At the time the arrests were made, the park officer had on the uniform of the agency, and he testified that he arrested the appellants under the established policy of Kebar of not allowing Negroes in the park. There was no testimony to indicate that any of the Griffins were disorderly in any manner, and it seems to be conceded that the park officer gave them ample time to heed the warning to leave the park had they wanted to do so."

X' Upon these facts, and after ruling that there was sufficient proof to establish the statutory elements of "due notice" and "wantonness," the court considered the remaining question advanced by Petitioners, viz, whether their arrest and conviction "constituted an unconstitutional exercise of state power to enforce racial segregation" (R. 81). In concluding that there was no such unconstitutional exercise of state power, and in affirming the judgments of conviction, the court below said (R. 81-82):

"* * * It is true, of course, that the park officer — in addition to being an employee of the detective agency then under contract to protect and enforce, among other things, the lawful racial segregation policy of the operator of the amusement park — was also a special deputy sheriff, but that dual capacity did not alter his status as an agent or employee of the operator of the park. As a special deputy sheriff, though he was appointed by the county sheriff on the application of the operator of the park 'for duty in connection with the property' of such operator, he was paid wholly by the person on whose account the appointment was made and his power and authority as a special deputy was limited to the area of the amusement park. See Montgomery County Code (1955), §2-91. As we see it, our decision in *Drews v. State*, 224 Md. 186, 167 A. 2d 341 (1961), is controlling here. The appellants in that case — in the course of participating in a protest against the racial segregation policy of the owner of an amusement park — were arrested for disorderly conduct committed in the presence of regular Baltimore County police who had been called to eject them from the park. Under similar circumstances, the appellants in this case — in the progress of an invasion of another amusement park as a protest against the lawful segregation policy of the operator of the park — were arrested for criminal trespass committed in the presence of a special deputy sheriff of Montgomery County (who was also the agent of the park operator)

after they had been duly notified to leave but refused to do so. It follows — since the offense for which these appellants were arrested was a misdemeanor committed in the presence of the park officer who had a right to arrest them, either in his private capacity as an agent or employee of the operator of the park or in his limited capacity as a special deputy sheriff in the amusement park (see Kauffman, *The Law of Arrest in Maryland*, 5 Md. L. Rev. 125, 149)—the arrest of these appellants for a criminal trespass in this manner was no more than if a regular police officer had been called upon to make the arrest for a crime committed in his presence, as was done in the *Drews* case. As we see it, the arrest and conviction of these appellants for a criminal trespass as a result of the enforcement by the operator of the park of its lawful policy of segregation, did not constitute such action as may fairly be said to be that of the State. The action in this case, as in *Drews*, was also “one step removed from State enforcement of a policy of segregation and violated no constitutional right of appellants.”

SUMMARY OF ARGUMENT

The action inhibited by the Fourteenth Amendment is only such action as may fairly be said to be that of the states. The Amendment erects no shield against merely private conduct, however discriminatory or wrongful. Individual invasion of individual rights is not the subject matter of the Amendment. *Shelley v. Kraemer*, 334 U.S. 1, 13; *Civil Rights Cases*, 109 U.S. 3, 11.

A private property owner, such as the operator of a private amusement park, may, consistent with the Fourteenth Amendment, arbitrarily discriminate as to invitees. He has the right, even though he operates his private facility under license from the State, to select his clientele and to make such selection based on color, if he so desires. *Williams v. Howard Johnson's Restaurant*, 268 F. 2d 845

Briggs v. State 367 S.W.2d 750 (Ark. 1963)

7

(4th Cir.); *Slack v. Atlantic White Tower System, Inc.*, 181 F. Supp. 124, aff. 284 F. 2d 746.

Individuals have no constitutional right to enter or remain upon private property contrary to the will of the owner. The private owner, on the other hand, is entitled to equal protection of law in maintaining his peaceful possession. This Court, in *Martin v. Struthers*, 319 U.S. 141, 147, referring to state criminal trespass laws, and making specific reference to the Maryland statute here involved, observed:

"Traditionally the American law punishes persons who enter onto the property of another after having been warned by the owner to keep off. General trespass after warning statutes exist in at least twenty states, while similar statutes of narrower scope are on the books of at least twelve states more . . ."

The State's general laws must be applied to all with equal force, regardless of their race, and violation thereof cannot be shielded from state action on account of race. *Bernstein v. Real Estate Commission of Maryland*, 221 Md. 221, app. dismissed 363 U.S. 419. The non-discriminatory application and enforcement of Maryland's criminal trespass law in the present case cannot be considered a type of state action proscribed by the Fourteenth Amendment, even though the private owner's sole reason for excluding negroes from the amusement park may have been because they were negroes. *Griffin v. Collins*, 187 F. Supp. 149. The Park's business policy of excluding negroes was neither induced, dictated, or required by any State or local law, policy or custom; nor was it in any way knowingly aided by any action that could fairly be said to be that of the State. Petitioners' arrest and conviction for criminal trespass was not due to or because the State of Maryland desired or intended to maintain this facility as a segregated

willingly
or
unwillingly

place of amusement. It was not only the right, but the duty of the State of Maryland, upon complaint being made to it by the private owner, to act thereon to protect and provide against unlawful entry. In so doing the State was merely allowing the use of its legal remedies as a substitute for force in a civilized community; it was not inducing others to discriminate, nor substituting its judgment for the judgment of the individual proprietor.³

x3

ARGUMENT

Conviction of Petitioners under Maryland's General Statute Prohibiting Wanton Trespass on Private Property Did Not Contravene the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution.

I.

A PRIVATE AMUSEMENT PARK, THOUGH LICENSED BY THE STATE, MAY CONSTITUTIONALLY REFUSE SERVICE TO NEGROES SOLELY BECAUSE OF THEIR RACE.

At common law, a person engaged in a public calling, such as inn-keeper or common carrier, was held to be under a duty to the general public and was obliged to serve, without discrimination, all who sought service. Equally well settled, on the other hand, is the proposition that operators of other private enterprises, including places of amusement, are under no such common law obligation; and, in the absence of a statute forbidding discrimination, may select their clientele based on color, if they so desire. *Williams v. Howard Johnson's Restaurant*, 268 F. 2d 845 (4th Cir.); *Slack v. Atlantic White Tower System, Inc.*, 181 F. Supp. 124, aff. 284 F. 2d 746; *Griffin v. Collins*, 187

³ The private owner abandoned its policy of not serving Negroes shortly after the conclusion of this case in the lower court. It should also be noted that subsequently thereto the Montgomery County Council enacted an equal accommodations law for Montgomery County. Ordinance 4-120, effective January 16, 1962.

Watkins v Oaklawn Jockey Club 86-F.Supp 1006
 Affirmed 183 F.2d 440 (8th Cir.)

copy
 BB
 Dews

2-0-

Briggs v State 367 SW2d 750 (Ark.);
 Tamelleo v New Hampshire Jockey Club, Inc 163 A.2d 10 (N.H.)
 McRibbin v Michigan Corp - 119 NW2d 557 (Mich.)
 + Securities Commission

F. Supp. 149; *Madden v. Queens County Jockey Club*, 72 N.E. 2d 697 (New York), cert. denied, 332 U.S. 761; *Terrell Wells Swimming Pool v. Rodriguez*, 182 S.W. 2d 824 (Texas); *Younger v. Judah*, 19 S.W. 1109 (Missouri); *Goff v. Savage*, 210 P. 374 (Washington); *De La Ysla v. Public Theatres Corporation*, 26 P. 2d 818 (Utah); *Horn v. Illinois Central Railroad*, 64 N.E. 2d 574 (Illinois); *Coleman v. Middlestaff*, 305 P. 2d 1020 (California); *Fletcher v. Coney Island*, 136 N.E. 2d 344 (Ohio); *Alpaugh v. Wolverton*, 36 S.E. 2d 906 (Virginia); *Greenfeld v. Maryland Jockey Club*, 190 Md. 96; *Good Citizens Assoc. v. Board*, 217 Md. 129; and *Drews v. State*, 224 Md. 186; *Garfine v. Monmouth Park Jockey Club*, 148 A. 2d 1 (N.J.); and *State v. Clyburn*, 101 S.E. 2d 295 (N.C.); *State v. Auent* 118 S.E. 2d 47 (N.C.)

vacated and remanded on other grounds

373 US
375

This Court, in *Boynton v. Virginia*, 364 U.S. 454 clearly recognized the validity of the foregoing principles when it said that every time a bus stops at a wholly independent roadside restaurant, the Interstate Commerce Act does not require that restaurant service be supplied in harmony with the provisions of that Act. In fact, this Court has refused to hold that where a privately-owned restaurant is involved, in the absence of the general taxpaying public's ownership of the facility, or interstate commerce, that it will extend federal protection against racial discrimination on the basis of the Fourteenth Amendment. *Burton v. Wilmington Parking Authority*, 365 U.S. 715; *Boynton v. Virginia*, *supra*. These recent pronouncements indicate reaffirmance of the long established law that the owner of private property may be arbitrary and capricious in his choice of invitees, notwithstanding the Fourteenth Amendment; and that that Amendment "erects no shield against merely private conduct, however discriminatory or wrongful." *Shelley v. Kraemer*, *supra*, at page 13. See also *Terminal Taxicab Co. v. Kutz*, 241 U.S. 252, a case

wherein it was sought to restrain the Public Utilities Commission from exercising jurisdiction over the business of a taxicab company, when Justice Holmes, in the Court, said at p. 256:

It being established by the *Civil Rights Cases*, 109 U.S. 3 that the Congress is without power to legislate against such private discrimination as was involved in the present case, this Court cannot (without overruling its prior precedents) accomplish the same result by now holding that the Fourteenth Amendment created a new limitation on the use of private property as developed in the common law. The fact that the private amusement park was required to have a license from Montgomery County in order to operate does not, as contended by Petitioners, prohibit discrimination by the private owner in its use and enjoyment of the licensed facility; nor does the requirement of such license convert the private facility into a public one. *Williams v. Howard Johnson's Restaurant, supra*; *Slack v. Atlantic White Tower System, Inc., supra*; *Madden v. Queens County Jockey Club, Inc., supra*; *State v. Clyburn*. See also *Griffin v. Collins*.

7: has long been recognized
pr. 146 - created no new
privileges. If many
privileges by 29 & should not

050 Hours
101 25 629
USC Civ Rights
9225
542
Shallow
Mason

II.

THE ARREST AND CONVICTION OF PETITIONERS DID NOT, UNDER THE PARTICULAR CIRCUMSTANCES OF THIS CASE, CONSTITUTE AN UNCONSTITUTIONAL EXERTION OF STATE POWER TO ENFORCE RACIAL SEGREGATION IN THE PRIVATE AMUSEMENT PARK.

Petitioners broadly contend that even if the private proprietor had a right to exclude them from the premises solely on account of their race, the State of Maryland crossed the line of forbidden conduct marked by the Fourteenth Amendment by arresting, prosecuting and convicting them under the criminal trespass statute. Virtually the same argument was advanced and rejected in *Griffin v. Collins, supra*, the court there holding:

"Plaintiffs have cited no authority holding that in the ordinary case, where the proprietor of a store, restaurant or amusement park, himself or through his own

McCulloch

proceed with Peterson
Condon

Wagon of
State

Williams v. Callahan Club Inc. &
next

No 2, see McCibbin; Hoen; 92, 1995

Subscribe to 10

~~in *Robinson*, majority of the Court of Appeals in *Robinson* is a precedent of the law that in a restaurant to private business & for which it is of its own free will has chosen to exclude persons of the Negro race.~~

employees, notifies the Negro of the policy and orders him to leave the premises, the calling in of a peace officer to enforce the proprietor's admitted right would amount to deprivation by the state of any rights, privileges or immunities secured to the Negro by the Constitution or laws. *Granted the right of the proprietor to choose his customers and to eject trespassers, it can hardly be the law, as plaintiffs contend, that the proprietor may use such force as he and his employees possess but may not call on a peace officer to enforce his rights.*" (Emphasis supplied.)

Though readily conceding that *State-imposed* racial segregation in the field of recreational activity is proscribed by the Fourteenth Amendment, it is the position of the State of Maryland that "state power" is not being coercibly, and hence unconstitutionally, applied to enforce and abet racial discrimination simply by its exercise to arrest, prosecute and convict under the circumstances of this case. We submit, rather, that the search for unconstitutional state action in this area must be made against the following background, as ably set forth by the United States in its brief *amicus curiae* in companion cases, nos. 11, 58, 66, 67, and 71 (this term), at pages 42 and 45:

"... a State cannot constitutionally prohibit association between Negroes and whites, be it in a public restaurant or elsewhere. On the other hand, to cite an example, if a private landowner should invite all of his neighbors to use his swimming pool at will and then request one of the invitees to leave because of his race, creed or color, the decision would be private and, however unpraiseworthy, not unconstitutional. Furthermore, we take it that there would be no denial of equal protection if the State made its police and legal remedies available to the owner of the swimming pool against any person who came or remained upon his property over his objection. For, in a civilized community, where legal remedies have been substituted

Shelley v. Kraemer
312 U.S. 571
is dicta
There the use of judicial power to enforce private discrimination of a church
own J.P. comments prohibited (Columbus)

Unlike Shelley
5-4
1845
5-4
1845
5-4
1845
5-4
1845
5-4
1845
5-4
1845

Whelan
D-E was
murder

Barrows v. Jackson, also a decision of a majority in and of the rights recognized in *Shelley*.

Criminal sanction is not necessary for a single provides a means whereby the owner of property may be in his line of poss. or having Briggs Clifton

for force, private choice necessarily depends upon the support of sovereign sanctions. In such a case, the law would be color-blind and it could not be fairly said, we think, that the State had denied anyone the equal protections of its laws. (Emphasis supplied.)

* * * * *

"It is one thing for the State to enforce, through the laws of trespass, exclusionary practices which rest simply upon individual preference, caprice or prejudice. It is quite another for the State, exercising as it does immeasurable influence over individual behavior, to induce racial segregation and then proceed to implement the acts of exclusion which it has brought about. If the State, by its laws, actions, and policies, causes individual acts of discrimination in the conduct of a business open to the public at large, the same State, we believe, cannot be heard to say that it is merely enforcing, in even-handed fashion, the private and unfettered decisions of the citizen."

As otherwise stated in *Burton v. Wilmington Parking Authority*, 365 U.S. 715, 722, private conduct abridging individual rights does no violence to the equal protection clause unless "to some significant extent" the State "in any of its manifestations" has become involved in it. This court there recognized that to fashion and apply a precise formula for recognition of State responsibility under the equal protection clause would be an "impossible task;" and that only by "sifting facts" and "weighing circumstances" could the involvement of a State in private discriminatory conduct, if such existed, be attributed its true significance.

It is not seriously contended that the discriminatory practices of the amusement park were performed in obedience to any positive provision of state law, or induced, required or dictated by any state policy or custom. On the contrary, all of the evidence in the case indicated that the

Justice Harlan's majority in *Papayan*, the ultimate question in that case is whether there has been "a sort of a... or of the... involvement in an act. Discrimination is such... Put oneself to be held responsible for the discrimination.

Th... + W... case... 14... violated by... discrimination. In a restaurant privately operated etc (McC...)

Such involvement was found in *Papayan v. Greenville* 107 Fed 2d 1023 where the facts showed that the State by its laws... discrim against other persons... See end

cont
Chris
Duffin looks

can by name
free of the first class
p9 clothed & 2
v, 6. 29/1968

11-10-5, 6
Peterson n (sub)
3, sure of
about, p 9 of inding
on 20
minutes
to
dramatic
on
about
NY,
in
9/.

practice of segregation in the Park was solely the result of the business choice of the private proprietor, catering to the desires and prejudices of his customers. See *Slack v. Atlantic White Tower System, Inc.*, supra. We submit, therefore, that the only real issue for decision (and so recognized by the United States in its brief *amicus curiae* filed in this proceeding) is whether the arrest of the Petitioners by Lieutenant Collins, in response to the request of the private amusement park for assistance in enforcing its policy of excluding negroes, constituted state action in violation of the Fourteenth Amendment.

The court below found as a fact from the evidence that Lieutenant Collins was not executing any State authority by virtue of his status as a special deputy sheriff, but was acting solely as the agent of the private property owner in directing petitioners to leave the private amusement park premises. It is nevertheless urged upon this Court on behalf of Petitioners that Collins necessarily acted in his capacity as special deputy sheriff in making the arrests, seemingly reasoning that such must have been so because (a) he was specially appointed a special deputy sheriff upon application of the park management, (b) he was paid by the park, (c) he was in uniform and wearing his state badge at the time he made the arrests, and (d) the application for warrants which he executed after the arrests were on a form entitled "Application for Warrant by Police Officer." We submit that these conclusions are both misleading and inaccurate. Collins was an employee of the National Detective Agency, a private organization incorporated under the laws of the District of Columbia and authorized to provide guard service to its clients. He had been assigned under the guard contract between his employer and the amusement park to be the senior guard

22. 4/10/68
47 as held.
Joe's stuff.

1-1-68
in v. Collins - 2, p. 6
no 20 or Collins 2, 1 minutes
in 1-1-68, on 2/1/68
in 1-1-68, 8th sheriff - p. 10 held
at court on 1-1-68 - 1/1/68 (1. 10/23,
1-1-68 court

with the title of Lieutenant. That Collins deemed his employer to be the Detective Agency, and not the State of Maryland, or the Park, is abundantly plain from a review of the record. It is equally plain that there is nothing in the evidence to indicate that Collins was engaged at the Park for any reason other than to maintain peace or protect property from damage or theft; and particularly there is nothing in the record to support even a weak inference that he was hired by the amusement park for the sole purpose of excluding Negroes. The only testimony concerning Collins' status as a Special Deputy Sheriff consists solely in the statement, volunteered by Collins, that "I am a Special Deputy Sheriff of Montgomery County, State of Maryland" (R. 14). The record does not disclose upon whose application Collins was deputized. Consistent with the provisions of the statute it could have been at his own request, or at the request of his employer, National Detective Agency, or at the request of the Park management. That Collins was not paid by the Park, but was paid solely by his employer, National Detective Agency, is certain (R. 14). Collins received no pay from the Park or from anyone else for being special deputy sheriff (R. 15). Collins wore the white-coat uniform of the National Detective Agency (and not a uniform of the State of Maryland), and his only indicia of State authority was that he wore, presumably on his uniform, his deputy badge; although there is absolutely nothing in the record to indicate that the Petitioners observed the badge, or knew that Collins was a special deputy sheriff when he arrested them. It is to be noted that Collins, in effecting the arrests, pursued the same procedures as any ordinary citizen in obtaining an arrest warrant from a magistrate, thus indicating that Collins was not exercising the powers of special

as a special deputy sheriff
collins v. sheriff

1/20/19
01-9-65
Collins
2000-6
1

deputy sheriff vested in him.⁴ Nor does the mere fact that Collins was given an application for warrant entitled "Application for Warrant by Police Officer" convert otherwise private actions into those of a public official. We submit that on a fair review of the record the only rational conclusion to be drawn is that Lieutenant Collins was not executing any State authority on behalf of the private owner's policy of racial discrimination.

CONCLUSION

For the reasons stated it is respectfully submitted that the judgments of conviction should be affirmed.

Respectfully submitted,

THOMAS B. FINAN,
Attorney General,

JOSEPH S. KAUFMAN,
Deputy Attorney General,

ROBERT C. MURPHY,
Assistant Attorney General,

10 Light Street,
Baltimore 2, Md.,

Attorneys for State of Maryland.

⁴ Maryland confers on its peace officers the right to arrest without warrant for any misdemeanor committed in the officer's presence, but confines private persons in similar cases to misdemeanors amounting to a breach of the peace. *B. & O. Railroad Co. v. Cain*, 81 Md. 87. Private Detective agencies have no police authority whatsoever under Maryland law. See Sections 75-92 of Article 56, Annotated Code of Maryland (1957 Ed.) regulating the business of private detective agencies.

TC

1/22/50
J. H. ...

of 12th Nov. 2
J. H. ...

2-2-50
Collins was ar.
was 2 p.m. 1/1
Shelton 2, 1950,
12-11-50

File Copy 4504

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1962

No. 26

WILLIAM L. GRIFFIN, ET AL., PETITIONERS,

vs.

MARYLAND.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF MARYLAND

PETITION FOR CERTIORARI FILED AUGUST 4, 1961
CERTIORARI GRANTED JUNE 25, 1962

Collins

OPORD

PUSH

CT of Appeals

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 26

WILLIAM L. GRIFFIN, ET AL., PETITIONERS,

vs.

MARYLAND.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF MARYLAND

I N D E X

	Original	Print
Record from the Circuit Court for Montgomery County, State of Maryland		
Application for warrant by police officer against William L. Griffin	A	A
State warrant against William L. Griffin	C	B
Amended state warrant against William L. Griffin	E	C
Docket entries in the People's Court of Montgomery County, Maryland, at Bethesda	G	D
Docket entries in No. 3881 (Criminal)	I	E
Transcript of hearing of September 12, 1960	1	1
Appearances	1	1
Colloquy	2	1
Opening statement by Mr. McAuliffe	3	2
Motion to dismiss the warrants and overruling thereof	6	4
Testimony of Francis J. Collins—		
direct	6	7
cross	21	14
redirect	42	29
recross	49	34

	Original	Print
Record from the Circuit Court for Montgomery County, State of Maryland—Continued Transcript of hearing of September 12, 1960— Continued		
Testimony of <u>Abram Baker</u> —		
direct	67	35
cross	80	36
Examination by court	96	48
redirect	96	49
recross	98	50
re-redirect	100	51
Francis J. Collins— (recalled) —		
direct	101	52
cross	102	53
Leonard <u>Woronoff</u> —		
direct	102	53
cross	104	55
State rests	105	55
Motion to quash the warrants of arrest, etc., and statement thereon	105	55
Denial of motion for a directed verdict	109	58
Testimony of <u>Kay Freeman</u> —		
direct	110	59
Examination by court	112	61
cross	113	61
Examination by court	117	64
cross	117	64
redirect	124	68
Examination by court	125	69
Judge Pugh's oral opinion	130	72
Reporter's certificate (omitted in printing)	136	75
Proceedings in the Court of Appeals of Maryland	137	76
Opinion, Hornay, J.	137	76
Judgment	148	84
Order allowing certiorari	149	84

[fol. A]

[File endorsement omitted]

APPLICATION FOR WARRANT BY POLICE OFFICER—
Filed August 4, 1960

State of Maryland, Montgomery County:

Francis J. Collins, being first duly sworn, on oath doth depose and say: That he is a member of the Montgomery *deputy sheriff*

~~County Police~~ Department and as such, on the 30th day of June, 1960, at about the hour of 8:45 P.M. he did observe the defendant William L. Griffin in Glen Echo Park which is private property on order of Kebar Inc. owners of Glen Echo Park the def. was asked to leave the park and after giving him reasonable time to comply the def. refused to leave he was placed under arrest for trespassing

.....
your affiant further makes oath that he has personal knowledge of additional facts and evidence which are not incorporated in this affidavit, but which have been discussed before and given to the Justice of the Peace before whom the request for issuance of a warrant was made.

Whereas, Francis J. Collins doth further depose and say that he, as a member of the Montgomery County Police Department believes that is violating Sec. 577 Article 27 of the Annotated Code of Maryland.

Francis J. Collins

Subscribed and sworn to before me, in Montgomery County, State of Maryland, this day of Jun 30 1960.

Edward W. Cashman, Justice of the Peace for Montgomery County, Maryland.

B

[fol. B]

No. 3881 Crim.

[fol. C]

[File endorsement omitted]

STATE WARRANT—Filed August 4, 1960

State of Maryland, Montgomery County, to wit:

To James S McAuliffe, Supt. of Police of said County,
Greeting:

Whereas, Complaint hath been made upon the information and oath of Lt Collins Deputy Sheriff in and for Glen Echo Park (KEBAR), who charges William L Griffin late of the County and State on the 30th of June 1960 at the County and State aforesaid did unlawfully violate Article 27 section 577 of the Annotated Code of Maryland 1957 edition to wit: Did enter upon and pass over the land and premises of Glen Echo Park (KEBAR) after having been told by the Deputy Sheriff for Glen Echo Park, to leave the Property, and after giving him a reasonable time to comply, he did not leave contrary to the form of the Act of the General Assembly of Maryland, in such case made and provided, and against the peace, government and dignity of the State.

You are hereby commanded immediately to apprehend the said William L Griffin and bring him before The Judge of the Peoples Court at Bethesda Montgomery County, to be dealt with according to law. Hereof fail not, and have you there this Warrant.

Edward W. Cashman, Justice of the Peace for
Montgomery County, Maryland.

Issued June 30 1960

[fol. D]

No. 3881 Crim.

Cepi Joseph Snow, Jr.

Date 6/30/60

[fol. E]

AMENDED STATE WARRANT—Filed September 12, 1960

State of Maryland, Montgomery County, to wit:

To James S. McAuliffe, Superintendent of Police of said County, Greeting:

Whereas, Complaint hath been made upon the information and oath of Lt. Francis Collins, Deputy Sheriff in and for the Glen Echo Park, who charges that William L. Griffin, late of the said County and State, on the 30th day of June, 1960, at the County and State aforesaid, did unlawfully and wantonly enter upon and cross over the land of Rekab, Inc., a Maryland corporation, in Montgomery County, Maryland, such land at that time having been leased to Kebar, Inc., a Maryland corporation, and operated as the Glen Echo Amusement Park, after having been duly notified by an Agent of Kebar, Inc., not to do so in violation of Article 27, Section 577 of the Annotated Code of Maryland, 1957 Edition as amended, contrary to the form of the Act of the General Assembly of Maryland, in such case made and provided, and against the peace, government and dignity of the State.

You are hereby commanded immediately to apprehend the said and bring ...h..... before Judge at Montgomery County, to be dealt with according to law. Hereof fail not, and have you there this Warrant.

....., Justice of the Peace for
Montgomery County, Maryland.

Filed 9-12-1960

[fol. F]

3881

D

[fol. G] [File endorsement omitted]

No. 18112

IN THE PEOPLE'S COURT OF MONTGOMERY COUNTY, MARYLAND
AT BETHESDA

Warrant issued June 30, 1960

By Edward W. Cashman, Justice of the Peace.

To James S. McAuliffe, Supt. of Police.

STATE OF MARYLAND,

vs.

WILLIAM L. GRIFFIN, Defendant.

Upon the information of Lt. Collins, Deputy Sheriff in and for Glen Echo Park, who charges that William L. Griffin on the said 30th day of June, 1960, did unlawfully enter upon and pass over the land and premises of Glen Echo Park, after having been told by the Deputy Sheriff for Glen Echo Park, to leave the property and after giving him a reasonable time to comply, he did not leave contrary to the form of the Act of the General Assembly of Maryland and against the peace, government and dignity of the State.

Return

Commitment for a hearing or trial before the Judge at Bethesda on the 26 day of July, A. D., 1960, with Bond posted as sureties.

Continued to 7/26/60

Trial on the 26th day of July A. D., 1960

Defendant asked the right of trial by Jury. Bond \$100.00 Set for Sept. 12, 1960

Original papers, bond and Docket Entries sent to Circuit Court 8/1/60

Copy of Docket Entries sent to State's Atty.

Deft's Atty: Charlitt

Samuel Gordon, Judge, People's Court of Montgomery County, Maryland.

I hereby certify that the foregoing is a true copy of the Docket Entries in the above entitled case.

Given under my hand and seal this 1st day of August, A. D., 1960.

Louise S. Harding, Clerk, People's Court. Bethesda.

[fol. H]

No. 3881 Crim.

STATE OF MARYLAND,

vs.

WILLIAM L. GRIFFIN.

[fol. I]

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

DOCKET ENTRIES

No. 3881 Criminal

STATE OF MARYLAND,

vs.

WILLIAM L. GRIFFIN.

Trespassing

- Aug. 4, 1960—Warrant, Recognizance, Demand for Jury Trial &c. filed. Page No. 1
- Sep. 12, 1960—Motion and leave to amend warrant and amendment filed. Page No. 5
- Sep. 12, 1960—Motion and leave to consolidate this case with Numbers 3882, 3883, 3889 and 3892 Criminals.
- Sep. 12, 1960—Plea not guilty.

F

Sep. 12, 1960—Submitted to the Court and trial before Judge Pugh, Mrs. Slack reporting.

Sep. 12, 1960—The Court find defendant guilty.

Sep. 12, 1960—Defendant was asked if he had anything to say before sentence.

Sep. 12, 1960—Judgment that the Traverser, William L. Griffin, pay a fine of Fifty and no/100 dollars (\$50.00) current money and costs, and in default in the payment of said fine and costs, that the Traverser, William L. Griffin be confined in the Montgomery County Jail until the fine and costs have been paid or until released by due process of law.

Sep. 12, 1960—Appeal filed. Page No. 6

Oct. 13, 1960—Petition and Order of Court extending time for transmittal of record to Court of Appeals to and including November 15, 1960 filed. Page No. 7

Nov. 15, 1960—Testimony filed. Page No. 9

L. T. Kardy—State's Attorney

J. H. Sharlitt & C. T. Duncan—Attorneys for Defendant

[fol. 1]

[File endorsement omitted]

**IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND**

STATE OF MARYLAND, Plaintiff,

vs.

WILLIAM L. GRIFFIN,	No. 3881 Criminals
MICHAEL A. PROCTOR,	No. 3882 Criminals
CECIL T. WASHINGTON, JR.,	No. 3883 Criminals
MARVOUS SAUNDERS and	No. 3889 Criminals
GWENDOLYN T. GREENE,	No. 3892 Criminals
Defendants.	

Transcript of Hearing—September 12, 1960

APPEARANCES:

Charles T. Duncan, Esq., Joseph Sharlitt, Esq., Attorneys for the Defendants.

James S. McAuliffe, Jr., Assistant State's Attorney, Attorney for the Plaintiff.

[fol. 2]

COLLOQUY

The above-entitled cause came on regularly for hearing, pursuant to notice, on September 12, 1960, at 10:00 o'clock a.m. before The Honorable James H. Pugh, Judge of said Court, when and where the following counsel were present on behalf of the respective parties, and the following proceedings were had and the following testimony was adduced.

Mr. McAuliffe: Your Honor, the State will move to amend the warrants in all five cases, and I have prepared copies of the amendment that we would ask that the Court make to these warrants, and I would ask that in each case the copy which I have prepared be attached to the original warrant, as an amendment to it, and the amendment we desire to make is the same amendment in each case and would read as follows:

Judge Pugh: Have the defense lawyers seen it?

Mr. Duncan: I would like to see it, your Honor. (Mr. McAuliffe hands a copy of the proposed amendment to defense attorneys.) Defense counsel makes no objection to the motion for leave to amend the warrants, your Honor.

Judge Pugh: The motion is granted. Do you desire to make an opening statement?

Mr. McAuliffe: Yes, your Honor.

[fol. 3] Judge Pugh: The pleas are "not guilty?"

Mr. Duncan: Yes, your Honor.

OPENING STATEMENT BY MR. MCAULIFFE

If the Court please, the defendants in this case are William L. Griffin, Michael A. Proctor, Cecil T. Washington, Jr., Marvous Saunders and Gwendolyn T. Greene. The State will show that on the date of June 30th of this year the five named defendants, in the company of others, came to the Glen Echo Amusement Park, located here in Montgomery County, Maryland. That upon arriving at the park a representative of the defendants conferred with Lieutenant Collins, who is the man in charge of the park's special police force there, and after that conferral that the five defendants, in the company of others, having brought with them certain signs primarily aimed at the policy of Glen Echo to segregate, and to exclude colored persons, proceeded to set up a picket line and proceeded to walk this picket line with these signs. These signs proclaimed the policy of the park and objected to it and asked, in effect, that persons who were using the park facilities—that they not use the park facilities, unless the park would see fit to integrate. A short time after this picket line had been formed, in which the five defendants in this [fol. 4] case participated—after they had all been informed, through their representative, that the park did have a policy of not admitting colored persons, the five defendants went on to the park property and went to the carousel, which is located approximately in the heart of the Glen Echo Amusement Park, and proceeded to get on the amusement rides, some of them having obtained tickets from

white persons, who had purchased them from ticket sellers within the park.

Thereafter Lieutenant Collins approached the scene where the five defendants were on the carousel, and spoke to each of the defendants and again informed them that it was the park policy not to admit colored persons to the private property owned by the park and operated by the park, and that if they did not leave that he would arrest them for trespass. He then proceeded to give them approximately five minutes, in which time they were asked to leave. At the end of that time he announced to each of the defendants—they all remaining where they had been on the carousel and in the vicinity of the carousel, in the heart of this private property, Glen Echo Amusement Park—he then proceeded to place the defendants under arrest for trespass, under Article 27, Section 577 of the Maryland Code. The defendants after being placed under arrest by Lieutenant Collins, who is a special deputy and sworn in as a Deputy Sheriff of Montgomery County, were brought to the Bethesda station.

[fol. 5] Now, we will show you further that the Glen Echo property and the Glen Echo park, upon which these defendants went, is private property. That it is owned by a corporation, Rekab, Inc. That it is leased by that corporation to another corporation, Kebar, Inc., which operates Glen Echo Park, and we will show you that Lieutenant Collins, as a member of the detective agency, is the employee and agent of both Rekab, Inc., and Kebar, Inc., and especially in this case the warrant alleges, and we will show, that he is the agent of Kebar, Inc. That he had received full authority from the President and the General Manager of the corporation with respect to enforcing the policy of the park, with respect to segregation, and that he had the full authority to maintain order there and to order off any persons which he, in his discretion and judgment, thought should not be present on the park property, and upon this showing and upon the further showing that Rekab, Inc., and Kebar, Inc., are Maryland corporations, licensed and doing business here in the State of Maryland, and upon showing you that this property upon which the defendants entered, and upon being requested to leave,

refused to leave, is in fact private property, owned by Rekar, Inc., and leased to Kebar, Inc., and upon that statement of facts, upon showing that to the Court, we will ask that the Court find these defendants guilty as charged.

[fol. 6]

MOTION TO DISMISS THE WARRANTS AND OVERRULING THEREOF

Mr. Duncan: I would like, with the Court's leave, to reserve the opening statement on behalf of the defendants, and I would like to move to dismiss and quash the warrants. The prosecutor has stated that the arrests in this case were made by a State officer for the purpose of enforcing a policy of private segregation, put into effect and maintained by the owner and lessee of the premises involved. I submit to the Court that such use of State power is unconstitutional. That the application of the statute in this case is unconstitutional. The argument being that the State may not discriminate against citizens on the ground of race and color. It may not do so directly, and it cannot do so indirectly. I further move to dismiss the warrants—

Judge Pugh: The Court is not allowed to direct a verdict on opening statements. If the Court sits without a jury, it is sitting as a jury, and then the Court is the Judge of the law and the facts, so, on opening statements we do not recognize motions for a directed verdict. The motion is over-ruled.

Whereupon, FRANCIS J. COLLINS, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

[fol. 7] Direct examination.

By Mr. McAuliffe:

Q. Lieutenant, will you identify yourself to the Court?

A. Francis J. Collins; 1207 E. Capitol Street, Washington, D. C.

Q. Lieutenant, by whom are you employed, and in what capacity?

A. I am employed by the National Detective Agency and we are under contract to Kebar, Inc., and Rekab, Inc.

Mr. Duncan: I object to that answer, and move to have it stricken.

Judge Pugh: On what ground?

Mr. Duncan: That this witness is not competent to testify as to the contents of the contract. The contract itself is the best evidence.

Judge Pugh: Objection sustained.

Q. By whom are you employed, Lieutenant Collins?

A. National Detective Agency.

Q. And where are you stationed, pursuant to your employment with the National Detective Agency?

A. My present assignment is Glen Echo Amusement Park.

Q. And at Glen Echo Amusement Park from whom do [fol. 8] you receive your instructions?

A. From the Park Manager, Mr. Woronoff.

Q. And for how long have you been so assigned at the Glen Echo Amusement Park?

A. Since April 2nd, 1960.

Q. What is your connection and capacity with respect to the park special police force there?

A. I am the head of the special police force at the park.

Q. What instructions have you received from Mr. Woronoff, the Park Manager, with respect to the operation of the park and your duties in connection therewith?

Mr. Duncan: Objection. The authority of an agent cannot be established by the testimony of the witness.

Judge Pugh: Objection sustained.

Q. Now then, Lieutenant, directing your attention to the date June 30, 1960, did you have occasion to be at the Glen Echo Park at that time?

A. I was on duty on that date.

Q. And the Glen Echo Amusement Park is located in what County and State?

A. Montgomery County, Maryland.

Q. Directing your attention again to June 30, 1960, at [fol. 9] a time when you were on duty at Glen Echo Amuse-

ment Park, did you have occasion to see the five defendants in this case on that date?

A. I did.

Q. Will you relate to the Court the circumstances under which you first observed these five defendants at the Glen Echo Amusement Park?

Mr. Duncan: I object to that question, on the ground that it is irrelevant, until the agency of this witness has been established.

Judge Pugh: Do you proffer to show that?

Mr. McAuliffe: We proffer to show agency.

Judge Pugh: On the proffer the objection is over-ruled.

A. I did observe the defendant in the picket line, carrying signs.

Q. When was this picket line first established, Lieutenant, and under what circumstances?

Mr. Duncan: I object to that question, on the ground that it is not relevant, in my opinion. What went on outside the park has nothing to do with the issues involved here.

[fol. 10] Judge Pugh: Was this picket line on the property of the Glen Echo Amusement Park?

A. No, sir, it was on the right of way.

Judge Pugh: It wasn't on private property?

A. No, sir.

Judge Pugh: Objection sustained.

Q. Now, Lieutenant, what first communication, or contact, did you have with the five defendants here, and what were they doing at that time?

Mr. Duncan: I object, your Honor. That is the same question, if I understand it correctly.

Judge Pugh: The objection is over-ruled.

A. The defendants broke from the picket line and went from the picket line—

Judge Pugh (interrupting the witness): Just tell when they came on to the private property of the Glen Echo Amusement Park.

A. Approximately 8:15.

Judge Pugh: All five of them?

[fol. 11] A. Yes, sir.

Judge Pugh: All right. Start from there.

Mr. McAuliffe: The warrant in this case charges a wanton trespass and, for purposes of showing that, I think the State should be permitted to show that they did, in fact, carry signs, proclaiming the policy of the park, and that they were aware of the policy of the park.

Judge Pugh: There is no law against carrying signs; is there?

Mr. McAuliffe: We have a right, I think, to show that they knew the policy of the park with respect to segregation at the time.

Judge Pugh: I just want to know if there was any trespass under the statute.

Q. What, if anything, occurred then?

Judge Pugh: On the property of Glen Echo Amusement Park.

A. The five defendants went down through the park to the carousel and got on to the ride, on the horses and the different animals. I then went up to Mr. Woronoff and asked him what he wanted me to do. He said they were trespassing and he wanted them arrested for trespassing, if they didn't get off the property.

Q. What did you tell them to do?

A. I went to the defendants, individually, and gave [fol. 12] them five minutes to get off the property.

Mr. Duncan: I object and move to have that answer stricken. It is not relevant.

Judge Pugh: The objection is over-ruled.

Q. Then, Lieutenant, will you relate the circumstances under which you went to the carousel, and what you did when you arrived there with respect to these five defendants?

A. I went to each defendant and told them—

Q. (interrupting the witness) First of all, tell us what you found when you arrived there. Where they were, and what they were doing.

A. Each defendant was either on a horse, or one of the other animals. I went to each defendant and told them it was private property and it was the policy of the park not to have colored people on the rides, or in the park.

Q. Now, will you look upon each of the five defendants and can you now state and identify each of the five defendants seated here as being the five that you have just referred to?

A. These are the five defendants that I just referred to.

Mr. Duncan: I would object to that and ask that he be required to identify each defendant individually. These are five separate warrants.

Judge Pugh: Can you identify each one of these defendants individually?

[fol. 13] A. Yes.

By Judge Pugh:

Q. Did you tell them to get off the property?

A. Yes.

Q. What did each one of them say when you told them that?

A. They declined to leave.

Q. What did they say?

A. They said they declined to leave the property. They said they declined to leave and that they had tickets.

Mr. Duncan: I renew my objection. There has been no individual identification of these defendants.

Judge Pugh: He recognizes these defendants. He didn't know their names at the time. The objection is over-ruled.

Direct examination (continued).

By Mr. McAuliffe:

Q. Lieutenant, will you step down there and point to each of the defendants that you recognize as being one of

the five persons you saw there that night. (The witness leaves the witness stand and approaches defendants' table.)

A. This gentleman here.

Mr. McAuliffe: Can we stipulate as to that, or may he rise and give his name? Can we have the record show that the Lieutenant is now pointing to the first of the five defendants seated here?

[fol. 14] (The witness continues) Also this gentleman here; this gentleman here; this one here, and this one here.

Mr. McAuliffe: Let the record show, if the Court please, that Lieutenant Collins has pointed to each of the five defendants seated here, and pointed them out.

Mr. Duncan: I would like to object to that procedure, and again move that it be stricken. We did not oppose the State's motion to consolidate these cases, and for that reason the five defendants are here, seated at the table, and it is very easy for the witness to say "Oh, yes, these are the five I arrested", but I submit in a proceeding—

Judge Pugh (interrupting counsel): Lieutenant Collins, is there any doubt in your mind that these five defendants are the five persons that you ordered off the Glen Echo property?

A. No doubt whatsoever.

Judge Pugh: Objection over-ruled.

Examination of the witness (resumed).

By Mr. McAuliffe:

Q. How long did you wait after ordering the five defendants off the property, before taking any further action?

A. Exactly five minutes.

Q. During that time what, if anything, occurred?

A. I walked outside the carousel and the five defendants remained on the ride, and the ride didn't move.

Judge Pugh: Did you ask them who purchased the tickets [fol. 15] to that carousel?

A. They told me they had tickets that had been purchased by white people.

By Judge Pugh:

Q. Who—which one told you that?

A. Saunders. The man with the glasses.

By Mr. McAuliffe (continued):

Q. Lieutenant, I show you this photograph and ask you if you recognize that picture?

A. I do.

Q. And what is that picture?

Mr. Duncan: I object to that, your Honor. I don't see the relevancy of it.

Judge Pugh: He has just asked him what it is. You may object to it when he offers it in evidence.

A. This is a picture of me, warning Saunders about the park's policy.

Q. When was that taken?

A. At 8:15 p.m. on the carousel.

Judge Pugh: Who took the picture?

A. A Star newspaper reporter.

By Mr. McAuliffe:

Q. And is that picture a fair and reasonable representation of the scene that you have just testified to, when you warned the defendant, Saunders?

[fol. 16] A. It is.

Mr. McAuliffe: We offer this into evidence as State's Exhibit Number One.

Mr. Duncan: Your Honor, I object to this. This is a photograph of two individuals, one of whom apparently is Lieutenant Collins, and the other, apparently, the defendant, Saunders. Lieutenant Collins testifies that this is a photograph of him, while he was warning the defendant,

and I submit the photograph does not support any statement of warning whatsoever.

Judge Pugh: Lieutenant, did you ask any of these defendants whether or not they saw the signs before they came on the property?

A. No, sir.

Q. You don't know whether they saw the sign or not?

A. I didn't ask them.

Q. Is the sign in a conspicuous place, where anybody going into the park property can see it? ✓

A. Yes, sir.

Q. Where is it?

A. There are eight signs at the different entrances. ✓

Mr. Duncan: I object to your Honor's statement. I do not believe there has been any testimony that any signs were present. My objection is that the picture is not relevant, for the reason that if it is offered to show that a warning was given, that picture doesn't show it. One can [fol. 17] not tell from that picture whether Saunders is talking to Collins, or Collins is talking to Saunders. Whether they are having a pleasant conversation or not.

Judge Pugh: Was this taken on the property of the Glen Echo Amusement Park?

A. Yes.

Q. Was it at the time of your notification to get off the property?

A. Yes.

Q. Who took the picture?

A. The Star Reporter. I didn't know the picture was being taken.

Q. How did you get it?

A. They sent it to me.

Judge Pugh: The objection is over-ruled. Admit it in evidence as State's Exhibit Number One.

Examination of the witness (resumed).

By Mr. McAuliffe:

Q. Lieutenant, during the five minutes that you testified you waited after warning the defendants, and they remained on the amusement facilities, what, if anything, occurred with respect to other people in the park?

Mr. Duncan: Objection, your Honor; that is not relevant.

Judge Pugh: What is the purpose of it?

Mr. McAuliffe: To show that the Lieutenant's actions [fol. 18] were completely reasonable under the circumstances.

Judge Pugh: Objection sustained.

Q. During the five minute period that you testified to after you warned each of the five defendants to leave the park premises, what, if anything, did you do?

A. I went to each defendant and told them that the time was up and that they were under arrest for trespassing. I then escorted them up to our office, with a crowd milling around there, to wait for transportation from the Montgomery County Police, to take them to Bethesda to swear out the warrants.

Mr. Duncan: At this point I renew my Motion to quash the warrants.

Judge Pugh: The motion is denied.

Mr. Duncan: May I state what the grounds are, your Honor?

Judge Pugh: You can state that at the end of the case.

Mr. Duncan: I am required to state this at the beginning.

Judge Pugh: You have stated your Motion and the Court has ruled on it. You may argue it to the Court of Appeals.

Examination of the witness (resumed).

By Mr. McAuliffe:

Q. Lieutenant, I show you this plat, and ask you if you know what that plat is?

[fol. 19] A. This is a plat of the property that Glen Echo occupies in Montgomery County.

Q. Is that the Glen Echo Amusement Park that you refer to?

A. Yes, sir.

Mr. McAuliffe: May we have this plat marked for identification as State's Exhibit Number Two?

Judge Pugh: It may be marked for identification.

Q. Lieutenant, referring to that plat, State's Exhibit Two for identification, can you point to the spot, or establish on that plat the spot where the defendants were at the time you referred to when they were on the carousel?

Mr. Duncan: I object to that, your Honor. The plat has not been offered into evidence.

Mr. McAuliffe: We proffer to offer the plat in evidence, but we do not seek to show the markings to the Court at this time. We will call our next witness to establish the authenticity of the plat.

Mr. Duncan: I object, your Honor.

Judge Pugh: Pass over that question at the present time and call him back after the survey has been introduced.

By Mr. McAuliffe (continued):

[fol. 20] Q. Lieutenant, immediately prior to the time that these five defendants entered on to the property of the Glen Echo Park, what signs were they carrying?

Mr. Duncan: I object to that, on the same ground. What they were doing on a public street is not relevant.

Judge Pugh: Did they carry the signs on the property of the Glen Echo Park?

A. No, sir.

Mr. McAuliffe: The warrants have charged a wanton trespass. If the defendants intend to claim that the defendants were not aware of the policy of the park—

Judge Pugh (interrupting counsel): We are trying a simple trespass case. We do not care what signs they carried off the property. We are not trying a racial case. We are trying a simple trespass case under the statute. The objection is sustained.

Examination of the witness (resumed).

By Mr. McAuliffe:

Q. Lieutenant, how were you dressed at the time you approached the defendants and when you warned them?

A. I was in uniform.

Q. What uniform was that?

A. Of the National Detective Agency; blue pants, white shirt, black tie and white coat and wearing a Special Deputy Sheriff's badge.

Q. What is your position, or capacity, with respect to [fol. 21] being a Deputy Sheriff? Are you, in fact, a Deputy Sheriff of Montgomery County?

A. I am a Special Deputy Sheriff of Montgomery County, State of Maryland.

Q. And specifically by what two organizations are you employed?

A. Rekar, Inc., and Kebar, Inc.

Mr. McAuliffe: You may cross-examine.

Mr. Duncan: Is it my understanding that this witness' duties have been admitted, subject to proof?

Judge Pugh: Subject to agency. Agency has not been established yet. I sustained the objection on that proffer.

Cross examination.

By Mr. Duncan:

Q. You just said you are employed by Rekar, Inc., and Kebar, Inc., is that correct?

A. I am employed by the National Detective Agency and they have a contract with Kebar, Inc., and Rekar, Inc.

Q. Who pays your salary?

A. The National Detective Agency.

Q. And do you have any other income from any other source?

A. No, sir.

Q. Do you receive any money directly from Rekar, Inc., or Kebar, Inc.?

[fol. 22] A. No, sir.

Q. Your salary, in fact, is paid by the National Detective Agency; is that correct?

A. Yes.

Q. What kind of agency is that?

A. A private detective agency.

Q. Is it incorporated?

A. Yes, sir.

Q. In what State?

A. The District of Columbia.

Q. Are you an officer of that corporation?

A. No, sir.

Q. Are you an officer of either Rekab, Inc., or Kebar, Inc.?

A. No, sir.

Q. Mr. Collins, you testified that you saw these defendants prior to the time they entered the park; is that correct? ✓

A. Yes, sir.

Q. Had you ever seen them before?

A. No, sir.

Q. When you saw them inside the park, did you recognize them as the persons you had seen outside the park?

A. Yes, sir.

Q. Now you stated that you told them it was the policy of the park not to admit colored people. Is that, in fact, the policy of the park?

A. Yes.

[fol. 23] Q. Has it always been the policy of the park?

A. As far as I know.

Q. How long had you worked at Glen Echo Park?

A. Since April 2, 1960.

Q. And before that time were you employed by the National Detective Agency?

A. That is right.

Q. But you were assigned to a place other than Glen Echo?

A. That is right.

Q. To your knowledge, had negroes previously ever been admitted to the park?

A. Not to my knowledge.

Q. Now did you arrest these defendants because they were negroes?

Mr. McAuliffe: Objection.

Judge Pugh: Over-ruled.

A. I arrested them on orders of Mr. Woronoff, due to the fact that the policy of the park was that they catered just to white people; not to colored people.

Q. I repeat my question. Did you arrest these defendants because they were negroes?

A. Yes, sir.

Q. Were they in the company of other persons, to your knowledge?

A. Yes, sir.

[fol. 24] Q. Were they in the company of white persons?

A. Where?

Q. When they were on the carousel.

A. There were white persons on the carousel when they were there.

Q. To your knowledge, were they in the company of white persons?

A. One white person was with one of the colored people.

Q. With which colored person was the white person with?

A. This gentleman right here (indicating one of the defendants).

Q. Do you know his name?

A. No, I don't know.

Q. Did you arrest the white person who was in his company?

A. No, sir; I did not.

Q. Why not?

A. At the time we got back to the carousel, she had left. By the time I had these defendants out, she had gone, as far as I know.

Q. Does this policy of Glen Echo Park extend to all negroes, no matter who they are?

Mr. McAuliffe: Objection.

Mr. Duncan: I will rephrase it.

[fol. 25] Q. Does it extend to negroes, without regard to how they are dressed, or how they conduct themselves?

Mr. McAuliffe: Objection.

Judge Pugh: Over-ruled.

Mr. Duncan: Will the Reporter read the question, please? (the last question was read back).

A. Yes; that is right.

Q. Did it come to your attention, Mr. Collins, that these defendants had tickets when they were arrested?

A. They showed me tickets.

Q. Did you make any offer to these defendants with respect to the tickets which they had? Did you offer to refund them any money?

A. No, sir.

Q. Are you familiar with the manner in which tickets are acquired and sold at Glen Echo Amusement Park?

A. Yes, sir.

Q. Will you tell the Court how that is?

A. They are sold through ticket booths.

Q. Are the ticket booths located inside the park, or are they located at the entrance?

A. Inside the park.

Q. Is there any ticket booth at the entrance to the park?

A. No.

[fol. 26] Q. So the access to the park from the public highway is not obstructed?

A. No, sir.

Q. Now, if you know, is it customary at the park for one person to purchase tickets and transfer them to another?

A. I would not know.

Q. Are you ever at the park, Mr. Collins?

A. Yes.

Q. Have you ever observed tickets being purchased?

A. Yes. I have.

Q. Have you ever seen a father purchase tickets and give them to his children?

A. Yes.

Q. Then you do know that that is done; is that correct?

A. In that case; yes.

Q. Do you know of any other cases in which it is done?

A. No.

Q. Mr. Collins, you testified that you recognized these defendants as being the persons you arrested.

A. That is right.

Q. Do you know the name of any one of them?

A. Yes.

Q. Which ones do you know by name?

A. Marvin Saunders.

Q. What is his name?

A. Marvin Saunders.

Q. I am asking you what you know of your own knowledge.

A. Right now one is all I know.

[fol. 27] Q. And you know him as Marvin Saunders; is that your answer?

A. Yes, sir.

Q. At the time you arrested Mr. Saunders, did you know his name?

A. No.

Q. Had you ever seen him before?

A. Yes, sir.

Q. Where?

A. In the picket line.

Q. You don't know the names of any of the other defendants who are seated at this table?

A. Not sitting right here, but I have the facts in my briefcase here.

Q. My question is, do you know the names of any of the other defendants who are seated at this table?

A. Only Saunders.

Q. Since you don't know Mr. Griffin, on the end there, you don't know whether or not he has a brother; is that correct?

A. I don't know.

Q. Are you positive it was Mr. Griffin you arrested, and not some other person?

A. Yes, sir.

Q. How do you know Mr. Griffin was on the carousel?

A. I saw him there.

Q. How do you remember that you saw this person? There were a lot of people in the park, weren't there?

[fol. 28] A. I was concentrating on these people here at the time.

Q. Were there other people on the carousel?

A. Not colored people.

Q. Were these the only five people in the immediate vicinity?

A. No.

Q. There were other people in the immediate vicinity?

A. Yes.

Q. I want you to tell the Court how you know that Mr. Griffin was on the carousel?

A. I went up to him and told him what the situation was, and I looked at him, and I could see that it was him.

Q. How do you know that it was this man here?

Mr. McAuliffe: I object to this.

Judge Pugh: It is proper cross-examination. Objection over-ruled.

Q. How do you know it was this person here?

A. I recognize him as being the man that was on the carousel.

Q. Were there any negroes on the carousel who were not arrested?

A. Not to my knowledge.

Q. Are you sure?

A. If they were on there, I didn't see them.

Q. If you had seen them, would you have arrested them?

A. Yes, sir.

Judge Pugh: Do you mean just because they were negroes?

[fol. 29] A. Due to the fact that the park is operated on a segregated policy.

Judge Pugh: Would you tell them to get off the property?

A. No. I would notify them they were on private property, and it was not the policy of the park to have negroes in the park.

Cross examination (continued).

By Mr. Duncan :

Q. The next gentleman here now, Mr. Proctor—how do you know Mr. Proctor was on the carousel?

A. Because I talked to him.

Q. And because you talked to him, you know he is the same person who is seated here?

A. Yes.

Q. Was there something distinguishing about his face that made you remember him?

A. No.

Q. Have you talked with him since?

A. No.

Q. Why did you ask this defendant to leave the carousel?

A. Because he was on private property, and the park is segregated.

Q. You said the park was segregated against negroes ; is that correct?

A. Yes.

Q. Did you ask him if he was a negro?

A. No, sir.

Q. How did you know he was a negro?

[fol. 30] A. He has the appearance, and all.

Q. Can you say he is not a Romanian?

A. I can't say.

Q. Can you say he is not a Filipino?

Mr. McAuliffe: I object to this. I don't think it is proper. He was warned and he didn't leave.

Judge Pugh: He said he arrested these defendants because they were negroes. In view of that answer I will allow the question.

Q. Did you ask him if he were a negro?

A. No.

Q. Do you now know what his race is?

A. I believe he is a negro.

Q. Why do you believe that?

A. Outward appearance.

Q. Could his outward appearance purport his being a member of any other race, Mr. Collins?

A. I would not know.

Q. Well then, you couldn't say that he was a negro seated there, could you? Have you ever seen a person from the Philippine Islands?

A. Yes.

Q. From Hawaii?

A. Yes.

Q. From Pakistan?

A. Yes.

Q. Have you ever seen anyone from any of those coun-
[fol. 31] tries who looked like this person here?

A. I don't know what you mean.

Q. I want to find out what your policy is in determining negroes by sight.

A. I don't get your question.

Q. You stated to me, Mr. Collins, that you did not ask Michael Proctor whether he was a negro or not.

A. Yes.

Q. You further testified that you arrested him because he was a negro.

A. Yes.

Q. And I asked you how you knew he was a negro.

A. He didn't deny it.

Q. Did you ask him?

A. No, sir.

Q. You further testified that you thought he was a negro because of his outward appearance; is that correct?

A. Yes.

Q. I am asking you on what basis you concluded, on the strength of his appearance, that he was a negro and not an Armenian, a Tunisian, an Arabian, an Egyptian, or a native of some other country?

A. When I told him of the policy of the park—that negroes were not allowed in the park—he didn't deny it.

Q. Did he say anything?

A. He declined to leave the park.

Q. Did he say anything with respect to his racial identity?
[fol. 32] A. No, sir.

Q. Are you now prepared to say that he is a negro?

A. He didn't deny that he was a negro.

Q. I didn't ask you that. I asked you if you are now prepared to say that Michael Proctor is a negro?

A. In my estimation, he is.

Q. In your opinion he is a negro?

A. In my opinion, yes.

Q. But you are not sure, are you Mr. Collins?

A. I am sure of my opinion.

Q. But you are not sure of his race, are you?

Mr. McAuliffe: I object.

Judge Pugh: The objection is over-ruled.

A. I cannot prove that he is.

Q. You can't prove that he is a negro?

Judge Pugh: He didn't deny that he was a negro?

A. No, he didn't.

Mr. Duncan: Your Honor, I hope we are not at the point where we are under duty to deny being a negro, if such a statement is made.

Q. Mr. Collins, at the time that you first spoke to these defendants, did each one of them tell you that they were holding tickets to ride the device you took them off of?

A. No, sir.

[fol. 33] Q. Did Mr. Griffin tell you that he had a ticket?

A. No, sir; he did not.

Q. Did Mr. Proctor tell you that he had a ticket?

A. He had one in his hand.

Q. Did he offer it to you, or extend it?

A. No.

Q. How did you know he had it?

A. I saw it in his hand.

Q. What about Mr. Saunders? Did he tell you he had a ticket?

A. I didn't see a ticket.

Q. What about Miss Greene, did—

A. I didn't see her ticket.

Q. Let me finish my question, please. Did she say anything to you about having a ticket?

A. No, sir.

Judge Pugh: What kind of ticket was it?

A. An admission to the ride ticket.

Judge Pugh: You mean on the carousel?

A. Yes, sir.

Judge Pugh: You got on the carousel and they were seated on it?

A. Yes, sir.

Judge Pugh: And they had a ticket in their hands?

A. No, sir.

[fol. 34] Judge Pugh: Was the ticket taken up by the ticket collector?

A. No, sir.

Examination of the witness (resumed).

By Mr. Duncan:

Q. How about Mr. Washington? Did you see him with a ticket, or talk to him about a ticket?

A. No.

Q. Is it your testimony that the only ticket you saw was the one held by Mr. Proctor?

A. Yes.

Q. Is it your testimony that only Mr. Proctor had a ticket?

A. As I recall it.

Q. Is there some question in your mind? You were very definite about the identification.

A. He had a ticket in his hand. He may have had more than one ticket. He was holding it up on the rail and I was standing on the ground.

Q. You didn't see tickets in the hands of any of the others?

A. I didn't notice them.

Q. But it is your testimony that they did not tell you they had tickets?

A. They did not.

Q. Describe the conduct of the defendant, Griffin; the gentleman sitting next to you, from the time you first saw him in the Glen Echo property until the time you placed him under arrest.

[fol. 35] A. When I saw him on Glen Echo property, he was on the carousel.

Q. That was the first time you saw him?

A. On Glen Echo property, yes.

Q. How was he dressed?

A. That I do not recall.

Q. You don't recall how he was dressed?

A. Not exactly.

Q. Did he have on a suit?

A. I don't recall.

Q. Shirt and tie?

A. I don't recall.

Q. Sport shirt?

A. I don't recall that.

Q. But you recall that it was this person; is that right?

A. Yes.

Q. Tell me what he was doing when you first saw him, sir.

A. When I first saw him he was on the carousel.

Q. Tell me what he was doing. Was he standing, holding the railing, or sitting on a horse?

A. He was seated on one of the animals.

Q. Which animal; what type?

A. I don't recall.

Q. You don't recall how he was dressed, but you recall him; is that right?

A. Yes, sir.

[fol. 36] Q. Was this a moving horse, or a stationary horse?

A. It was stationary at the time.

Q. The question was, was it a device that moved, up and down, when the carousel was in motion?

A. Most of them do move when the carousel is in operation.

Q. Was he seated astride the horse?

A. I didn't say horse; he was astride one of the animals.

Q. Was he talking to anyone?

A. I believe he was talking to a white girl who was seated opposite him; on the horse beside him.

Q. Did you overhear that conversation?

A. No.

Q. How far away were you?

- A. Three feet, probably.
- Q. And you couldn't overhear the conversation? He was apparently talking softly then?
- A. The music was going.
- Q. Did he have anything in his possession other than the ticket you say you saw?
- A. Not that I recall.
- Q. Would you say, Mr. Collins, that his conduct was peaceful and orderly?
- A. At the time I spoke to him.
- Q. He didn't become disorderly at any time, in fact, did he?
- A. No, sir.
- [fol. 37] Q. There was no loud talking?
- A. Not that I know of.
- Q. And certainly no one was drunk or intoxicated, or anything like that?
- A. I wouldn't know.
- Q. You arrested them, didn't you?
- A. You said no one.
- Q. No one of these defendants were intoxicated, were they?
- A. As far as I know; no.
- Q. You had occasion to talk to each one of them, didn't you?
- A. Yes.
- Q. Can't you say whether any of them had been drinking or not?
- A. No.
- Q. Have you had occasion to arrest people for being intoxicated in Glen Echo?
- A. Yes.
- Q. You are a police officer, aren't you?
- A. Yes.
- Q. Don't you claim some expert knowledge of such matters?
- A. Yes; by their actions.
- Q. Based on the actions of these people can't you say that they were not, in fact, intoxicated?
- A. As far as I know they were not intoxicated.

[fol. 38] Q. You were very quick to judge this gentleman's race by his appearance. I would like your opinion as to his state of sobriety.

Mr. McAuliffe: Objection.

Judge Pugh: He said they were not intoxicated and did not appear to be. The objection is sustained. Did you smell any odor of alcohol on any of them?

A. No, sir.

Examination continues.

By Mr. Duncan:

Q. You testified that the defendant, Griffin, was peaceful and orderly. Was the same true as to all the other defendants?

A. Yes.

Q. At all times throughout?

A. Yes, sir.

Q. At the time you arrested them, Mr. Collins, did any of them ask to speak to the management?

A. No, sir.

Q. Did any of them tell you that they wanted to ride on the merry-go-round?

A. Yes, sir.

Q. Let's take Mr. Washington, here on the end. Tell me the conversation you had with him at the time you arrested [fol. 39] him and what he said to you.

A. As far as I recall there was no conversation between any of us, only I told them about the policy of the park and they answered me that they weren't going to leave the park.

Q. I am talking about Mr. Washington here on the end. I want to know what you told Mr. Washington.

A. I told him that he was on private property and it was the policy of the park not to cater to negroes and I ordered him off the park property.

Q. Where was he at the time you told him that?

A. On one of the animals on the carousel.

Q. What did he say to you?

A. After five minutes he refused to leave.

Q. He said to you after five minutes that he refused to leave? Is that your answer? I don't want to confuse you. I want to know what he said to you in response to your statement to him.

A. He said he wouldn't leave.

Q. Did he make any statement to you?

A. No.

Q. He remained mute; is that correct?

A. He told me he wasn't getting off the animal; whatever animal he was on.

Q. I repeat my question. Will you tell me what Mr. Washington said to you in response to your initial statement to him?

[fol. 40] A. As far as I recall, he just told me that he wasn't going to get off the carousel.

Q. Did he say anything else?

A. Not that I recall.

Q. Did he tell you that he wasn't going to get off the carousel?

A. Yes.

Q. How was he dressed?

A. I believe he had a sport shirt on.

Q. Let's take Miss Greene; where was she when you talked to her?

A. She was on the carousel.

Q. Do you recall where?

A. Yes; on one of the animals.

Q. What did you say to her, Mr. Collins?

A. I told her the policy of the park, and ordered her off the carousel, and off the property.

Q. And what did she say to you?

A. I believe she said she had a ticket. I don't recall what else.

Q. What about Mr. Saunders? Where was he at the time you arrested him?

A. On the carousel, on one of the animals.

Q. What did you say to him?

A. I told him the policy of the park and ordered him off [fol. 41] the property.

Q. And what did he say?

A. He refused to get off the animal, and I told him I would give him five minutes to do it.

Q. What did he say, Mr. Collins?

A. He said "I am not getting off."

Q. They all said pretty much the same thing; is that right?

A. Yes; as far as I know.

Judge Pugh: How did you get him off the animal?

A. I told him he was under arrest and he got down.

Judge Pugh: Did you grab him by the arm?

A. I didn't have to; he got off.

Judge Pugh: And then did you take them to the office?

A. To our office to await transportation.

Judge Pugh: Is that where you swore out the warrant?

A. No; at the sub-station in Bethesda.

The examination (continued).

By Mr. Duncan:

Q. You testified that you saw each of these five individuals before they entered the park; is that correct?

A. Yes.

[fol. 42] Q. On the 30th of June, 1960, where did you have your first conversation with the defendant, Griffin?

A. On the carousel.

Q. Did you have any conversation with any of the other four defendants prior to your conversation on the carousel?

A. No, sir.

Q. No doubt about that then?

A. No, sir.

Mr. Duncan: I have no further questions.

Redirect examination.

By Mr. McAuliffe:

Q. Did you have any conversation with anyone who identified himself as being the representative of the other five defendants?

Mr. Duncan: Objection.

Judge Pugh: Was that in the presence of these five defendants?

Mr. McAuliffe: It was very close to these defendants.

Judge Pugh: Did someone appear in behalf of these five defendants, who were not individually present at the time you had the conversation with him?

A. Yes, sir.

Judge Pugh: Was it in the hearing of these five defendants?

A. They were walking and he was standing still.

Judge Pugh: Where were they walking to? To the office [fol. 43] where you placed them under arrest?

A. No, the situation is this—

Judge Pugh (interrupting the witness): Was it before or after the arrest?

A. Before the arrest.

Judge Pugh: On the park property?

A. I was on park property and this other individual was on government property.

Judge Pugh: The objection will be sustained. He was off the property.

Examination of the witness (continued).

By Mr. McAuliffe:

Q. Referring to this gentleman seated on the end. What characteristics that he possesses, in your opinion, led you to believe that he was a negro?

A. His color.

Q. What is his color?

A. Black.

Q. And are there any other characteristics that he has which led you to believe that he is a negro?

A. His eyes.

Q. What about his eyes?

A. They are black.

Q. What about his hair?

A. Curly. Kinky.

[fol. 44] Q. Now then, Lieutenant, you warned these defendants, because they were negroes, to leave the park; is that correct?

A. Yes.

Q. Did you arrest them because they were negroes, or because they refused to heed your warning to leave the park?

Mr. Duncan: I object to that. He has already testified that he arrested them because they were negroes.

Judge Pugh: It is a leading question; objection sustained.

Q. Exactly why did you arrest these five defendants?

Mr. Duncan: Objection. That question has been answered before.

Judge Pugh: Objection over-ruled.

A. They were trespassing and refused to leave the property.

Judge Pugh: Not because they were negroes? I thought you testified, on cross-examination, that you arrested them because they were negroes. Is that why you arrested them.

A. They were negroes and refused to leave the property.

Judge Pugh: Do you want to change your testimony on cross-examination now?

[fol. 45] A. No, sir.

Judge Pugh: Well, what did you mean when I asked you if you arrested them just because they were negroes? Is that the sole reason?

A. No, sir; they wouldn't leave the property.

Judge Pugh: There were other reasons then?

A. Yes.

By Judge Pugh:

Q. What were the other reasons?

A. They would not leave the property.

Mr. Duncan: I wonder if that answer should not be stricken; on the grounds that it seems to me the prosecutor is now impeaching his own witness.

Judge Pugh: Over-ruled.

Examination of the witness (resumed).

By Mr. McAuliffe:

Q. Are you familiar with the policy of the ticket sellers at Glen Echo on Glen Echo property with respect to selling to negroes?

A. Yes.

Q. What is that policy?

A. They do not sell to negroes.

Judge Pugh: We are not trying a racial case.

[fol. 46] Q. Did you ascertain whether either one of these five defendants had, in fact, purchased a ticket for a ride on the carousel on June 30th?

A. They did not purchase them, as far as I know.

Judge Pugh: What did they do with the tickets they had in their hand?

A. They kept them.

Q. You didn't take them up?

A. No.

Q. How much were they worth?

A. I think five cents apiece.

Examination of the witness (continued).

By Mr. McAuliffe:

Q. At any time did you note the names of the five persons you arrested?

A. Yes, sir.

Q. When did you do that, Lieutenant?

A. At Bethesda.

Q. And on what did you note these names?

A. First on the warrants and then on our arrest cards.

Q. Do you have the arrest cards with you that were prepared in connection with these defendants?

A. Yes, sir.

Q. By referring to the cards, can you identify them by name?

A. Yes, sir.

[fol. 47] Q. What are their names?

Mr. Duncan: Could we see what he has in his hand?

Judge Pugh: Is that the record that you made?

A. The clerk did.

Q. Was it made under your direction?

A. Yes.

Q. Was it made at the time you arrested them?

A. Yes.

Judge Pugh: You may look at it. (Defense counsel takes the paper from witness and examines it.) Is it necessary for you to look at that piece of paper in order to refresh your recollection?

A. Yes, sir, it is.

Mr. Duncan: Your Honor, these cards contain certain information. May I ask the witness where that information came from?

Judge Pugh: They aren't going into evidence. The witness is using them for the purpose of refreshing his recollection.

Examination of the witness (resumed).

By Mr. McAuliffe:

Q. Having refreshed your recollection as to the names of these defendants that were arrested on June 30th, what are their names?

[fol. 48] A. Cecil T. Washington, Jr., Michael A. Proctor, William L. Griffin, Gwendolyn T. Greene and Marvovs Saunders.

Q. You testified on cross-examination, Lieutenant, that these defendants were peaceful and orderly while they were on the carousel, after you had warned them and during that five minute interval that you gave them before arresting them. Were there any persons admitted to the park and in the immediate vicinity of these five defendants, who were not peaceful and orderly at the time?

Mr. Duncan: We object.

Judge Pugh: Did these defendants have any other people with them?

A. There was a large crowd around them from the carousel up to the office.

By Mr. McAuliffe (continued).

Q. And prior to the arrest, during this five minute interval that you gave them as a warning period, was there a crowd gathering at that time?

A. Yes, sir.

Q. And what was the condition, or orderliness, of that crowd as it gathered there?

Mr. Duncan: I object to that question, your Honor. Mr. Collins has testified that he arrested these persons for no [fol. 49] other reason than that they were negroes, and gave them five minutes to get off the property.

Judge Pugh: Was there any disorder?

A. It started a disorder because people started to heckling.

Judge Pugh: They weren't connected with these defendants, were they?

A. No, sir.

Judge Pugh: Objection sustained.

Mr. McAuliffe: That concludes our examination of Lieutenant Collins, subject to a right to recall him for purposes of identifying the location on the plat.

Recross examination.

By Mr. Duncan:

Q. You said you were able to identify Mr. Griffin by his appearance, which you described as "black", "black eyes and kinky hair;" is that the way you tell negroes?

A. Either that or ask them.

Q. One of those two ways?

A. Yes.

Q. And by your definition, all negroes look pretty much [fol. 50] alike to you, don't they?

A. Pretty near.

Q. Mr. Collins, do you hold any degrees from any college or university?

A. No, sir; I don't.

Q. Have you ever taken any courses of study from any colleges or universities in the field of sociology or anthropology?

A. No, sir.

Q. Have you ever done any reading on those subjects, as a hobby or vocation?

A. No, sir.

Q. In light of your answer to Mr. McAuliffe, that you knew that Mr. Griffin was a negro for the reasons that you gave, how did you know that Mr. Proctor was a negro?

A. He didn't deny it.

Mr. Duncan: I have no further questions.

Mr. McAuliffe: That is all I have.

(Short recess.)

* * * * *

[fol. 67] ABRAM BAKER, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified, upon

* * * * *

[fol. 73] Direct examination.

By Mr. McAuliffe (continued):

Q. Directing your attention to this lease, State's Exhibit #7, Mr. Baker, I ask you whether that lease was in effect on the date of June 30th of this year?

A. Yes, sir; it was.

Q. Now, as President of Rekab, Inc., and Kebar, Inc., will you describe what policy is maintained by the two respective corporations with respect to the admission of negroes to the Glen Echo Amusement Park?

A. I don't get your question.

Q. What policy is maintained by Rekab, Inc., and Kebar, Inc., with respect to the admission of negroes to the amusement park?

A. They are not allowed in the park.

Q. And what instructions and what authority has been given by Rekab, Inc., and Kebar, Inc., by you as President of each of these corporations, to Lieutenant Collins with respect to this park policy?

A. To give them all due respect and if they do not do what he asks them to do within a time that he thinks it should have been done, that he should arrest them.

[fol. 74] Mr. Duncan: Your Honor, I move to strike that answer on the ground that Mr. Collins testified he was employed by National Detective Agency.

Judge Pugh: Did you give Lieutenant Collins any instructions yourself?

A. He used to ask for instructions almost every day on something or other in the park.

Judge Pugh: Proceed.

Mr. Duncan: I renew my objection.

Judge Pugh: Over-ruled.

By Mr. McAuliffe (continued):

Q. Now then, Mr. Baker, what agency does the park employ, specifically what agency does Rekab, Inc., and Kebar, Inc., employ for purposes of maintaining law and order on the park property?

A. This year it was the National Detective Agency.

Q. And who, in the National Detective Agency, was designated as the director or the man in charge of the police force on the park grounds?

A. Lieutenant Collins.

Q. And as such did you have occasion to give Lieutenant Collins any instructions with respect to a park policy [fol. 75] against admitting negroes?

A. Yes.

Q. And what specific instructions did you give him with respect to authority to order people off of the park premises?

A. Well, he was supposed to stop them at the gate and tell them that they are not allowed; and if they come in, within a certain time, five or ten minutes—whatever he thinks, why he would escort them out.

Q. In the event they didn't see fit to leave at his warning, did you authorize Lieutenant Collins to have these people arrested?

A. Yes.

Q. On a charge of trespass?

A. On a charge of trespassing.

* * * * *

[fol. 80] Judge Pugh: Ask another question.

Cross examination of the witness (resumed).

By Mr. Duncan:

Q. Has your corporation, either Rekab, Inc., or Kebar, Inc., entered into any contractual relationship with the National Detective Agency for the purpose of providing service at the park?

A. We have an agreement.

Q. A written agreement?

A. Yes.

Q. Do you have a copy of that agreement?

A. I do not have one with me.

Q. Did you pay the salary of Lieutenant Collins, you or the corporation?

A. We pay the National Detective Agency by check, and they take care of their men.

- Q. Do you pay them a lump sum per month, or per year?
A. A lump sum weekly.
Q. For all the services they render to you?
A. That is right.
Q. It is not broken down?
A. It is down in their office.
Q. In other words, you pay them a flat weekly rate?
A. We send the time schedules to their office and [fol. 81] doublecheck with them and then we pay them whatever we owe them for the week.
Q. How is that determined? Do they bill you?
A. Between the auditor in their office and the auditor in our office—that we have the right amount; that the time schedules are correct.
Q. Does the contract to which you have testified relate the duties which the guards in the park have to perform?
A. Yes.
Q. Have you ever had any conversation with Lieutenant Collins, relating to the racial policies of the park?
A. Yes.
Q. When did you first talk to him about your policies?
A. He knew the policy right from the beginning.
Q. I asked you when did you first have occasion to talk to him about that.
A. When he first took over.
Q. When was that?
A. April 2nd, I think, 1960.
Q. Now you talked with him personally?
A. Well if I didn't, my brother did. I can't go back that far. If I didn't, my brother did.
Q. Did you talk with him, personally?
A. I have many times.
Q. I mean, in April 1960, when Mr. Collins took over, did you talk with him, personally, relating to the racial policies of the park?
A. I don't know if it was that day or not, but I did [fol. 82] talk to him.
Q. Have you ever talked with him about the racial policy of the park?
A. Yes.

Q. When, according to your best recollection, did you first talk with him about that?

A. I don't know. I would say it would be April 2nd, but I am not sure. April 2nd, 1960.

Q. Is it your testimony that you talked with him, or your brother talked with him on April 2nd?

A. We both talked to him. If one is there, he talks to him, and—

Q. I want to know what conversation you, Abram Baker, had with Lieutenant Collins.

A. It is all according to what he asked me.

Q. When did you first have occasion to talk with him about the racial policy of the park?

A. We had him sit down, and talked it over the first day.

Q. Were you present at that conversation?

A. That I can't tell you.

Q. You don't know whether you were there or not?

A. I don't know if I was there April 2nd, or whether my brother talked to him.

Q. Will you pick a day, please, when you were there?

A. I don't know.

Q. You have no recollection of talking to him as to the racial policy of the park?

[fol. 83] A. I did; many times.

Q. Well do you think you talked to him in the month of April?

A. I would say so.

Q. Do you mean by that, that you did talk to him during the month of April about that subject?

A. I think so.

Q. Are you in doubt as to whether you did talk to him in the month of April?

A. Well if something didn't come up, why I didn't have to talk to him about it.

Mr. Duncan: Your Honor, I am going to ask the Court's assistance in trying to fix a date.

Judge Pugh: Cross-examine him.

By Mr. Duncan (continued):

Q. Did you have any conversation with Lieutenant Collins, in the month of May, 1960, regarding the racial policies of the park?

A. I may have.

Q. And you may not have?

A. If nothing turned up, I may not have had to talk to him about it.

Q. Did you have any conversation with him in the month of June, 1960, about the racial policies of the park?

A. Yes.

Q. When was that?

[fol. 84] A. June 30th.

Q. And where did that conversation take place?

A. In my brother's office.

Q. Were you present?

A. Yes.

Q. You, yourself, were present?

A. Yes.

Q. Would you tell the Court what you told Lieutenant Collins relating to the racial policies of the Glen Echo Park?

A. We didn't allow negroes and in his discretion, if anything happened, in any way, he was supposed to arrest them, if they went on our property.

Q. Did you specify to him what he was supposed to arrest them for?

A. For trespassing.

Q. You used that word to him?

A. Yes; that is right.

Q. And you used the word "discretion"—what did you mean by that?

A. To give them a chance to walk off; if they wanted to.

Q. Did you instruct Lieutenant Collins to arrest all negroes who came on the property, if they did not leave?

A. Yes.

Q. That was your instructions?

A. Yes.

Q. And did you instruct him to arrest them because they were negroes?

[fol. 85] A. Yes.

Q. Did you instruct him to arrest white persons who came on the park property with colored persons?

A. If they were doing something wrong, they are supposed to be arrested.

Q. In other words, your instruction as to negroes was to arrest them if they came into the park, and refused to leave, because they were negroes; and your instruction was to arrest white persons if they were doing something wrong?

A. That is right.

Q. What did you mean when you told Lieutenant Collins to arrest white persons who came into the park property, if they were doing something wrong?

Mr. McAuliffe: Objection.

Judge Pugh: Read the question back. (Last question was read by the reporter) Objection over-ruled.

A. Well if they were in the picket line and then ran out into the park and we told them to leave and they refused, why shouldn't you arrest them?

Q. So, doing something wrong includes associating with negroes for the purpose of going into the park; is that correct?

A. I don't understand.

Q. You testified that your instructions to Lieutenant Collins, in respect to white people, was to arrest them if they were doing something wrong.

A. That is correct.

[fol. 86] Q. I am trying to find out what you meant by "something wrong", and I asked you whether or not associating with negroes who were in the park would be what you meant.

Mr. McAuliffe: Objection; we are not trying a racial case.

Judge Pugh: Objection over-ruled; answer the question.

A. I still say, if they were in the picket line—I gave him orders if they came out of the picket line on to my private property, I wanted them arrested.

Q. This is as to white persons?

A. That is right.

Q. As to negroes, did you give Lieutenant Collins any further instructions, other than to arrest them if they came on to the premises?

A. What is that?

Q. As to negroes, other than instructing Lieutenant Collins to arrest them if they came into the park, did you tell Lieutenant Collins anything else as to what his duties were, or should be, with respect to negroes who came on park property?

A. He knows what he is supposed to do.

Q. I am sure of that, but I am trying to find out what you told him to do.

A. I told him to give them sufficient time to walk off, or otherwise they would be arrested.

Q. Did you instruct him as to how he should determine who was a negro and who was not?

[fol. 87] A. No.

Q. You left that up to him? That was within his discretion; is that correct?

A. Yes.

Q. Did you make any exceptions to those instructions you gave him?

A. No.

Q. So you instructed him, for instance, to arrest a negro maid, if she came on with white children?

A. They usually call up—a white person would ask if it would be all right for them to bring the children in, if they didn't do anything in the park, and we would say "It is all right."

Q. You would allow it?

A. Yes.

Q. Have negroes ever attended Glen Echo Park prior to June 30, 1960, as patrons?

Mr. McAuliffe: Objection.

Judge Pugh: Objection over-ruled. You may answer it.

A. Not to my knowledge.

(Lunch recess.)

1:45 p.m.

Examination of the witness (resumed).

By Mr. Duncan:

Q. Before we adjourned for lunch, I was asking you about instructions you gave Lieutenant Collins with reference to excluding negroes from the park. Did you in- [fol. 88] struct Lieutenant Collins to exclude all negroes who appeared there?

A. Yes, sir.

Q. Without regard to the way they conduct themselves?

A. Yes.

Q. Without regard to how they were dressed?

A. That is right.

Q. Mr. Baker, we have established that you had a conference with Lieutenant Collins, on or about the 30th of June, 1960; I believe it was also your testimony that he came into your employ on or about the 2nd of April, 1960. I would like to ask whether, between the time he began working at Glen Echo and the time this occurrence happened, did you, yourself, have any conversation with Lieutenant Collins, relating to his duties if negroes came to the park as patrons. Between April 2, 1960 and June 30, 1960—between those two dates, did you have any conversation with Lieutenant Collins in which you gave him instructions as to what he should do in the event negroes presented themselves at the park as patrons?

A. He would come to me if anything happened, first.

Q. Let's go back to the time when he first came into your employ. Did you meet with him to instruct him generally about your policies?

A. That is right.

Q. Did you, yourself, meet with him?

A. Yes.

Q. Can you give the approximate time?

A. The park opened April 2nd; I don't know.

Q. Would you say that sometime around April 2nd you [fol. 89] had a conversation with Lieutenant Collins?

A. I would say so.

Q. Now in that conversation did you give him instructions relating to the treatment to be accorded negroes?

A. To everybody.

Q. Did you give him instructions about the treatment to be accorded to negroes specifically?

A. Not that I know of.

Q. When did you first give him instructions after April 2nd, 1960, relating to the treatment to be accorded to negroes?

A. I didn't have to. That has been the policy of the park ever since it started.

Q. Is it your testimony that you did not, prior to June 30th, give him that instruction?

A. He got his instructions at the beginning of the season. He knew what to do.

Q. From whom did he get his instructions?

A. From me and the Manager.

Q. All right. What instructions did you give him?

Judge Pugh: Haven't you been all over that?

Mr. Duncan: I took it through, month by month, and the first time he stated he gave any instructions was on the 30th of June and that is the date of the arrest.

Judge Pugh: He has now said that policy has been in effect since the park started. He said just before the arrest in this case Lieutenant Collins reported to him that there were negroes in the park and he told him to exclude them. [fol. 90] Tell them to get off the property.

By Mr. Duncan (continued):

Q. You testified you told Lieutenant Collins to arrest these negroes, if they didn't leave, for trespass. Is that correct?

A. Within a reasonable time.

Q. And you said you used the word "trespass"; is that correct?

A. Yes.

Q. Did you give him any instructions which section of the statute to make the arrest under?

A. I didn't know of any section.

Q. Did you draw any distinction in your instruction between trespassing and wanton trespassing?

A. I really don't know the difference.

Q. Do you recall ever having used the term "wanton trespass" to Lieutenant Collins?

A. No, I do not.

Q. You were relying on his knowledge, as a police officer, as to the mechanics of the matter?

A. That is right.

Q. As President of these two corporations, are you familiar with their advertising policies?

A. We have an agency.

Q. What agency is that?

A. The advertising agency advertising the park. Do I have to answer that?

Judge Pugh: You just use the newspapers, don't you?
[fol. 91] The Witness: We have an advertising agency.

Mr. Duncan: One of the specific defenses in the statute, in Section 5770 says "that nothing in this section shall be construed to include within its provisions the entry or crossing over such land unless such entry or crossing is done under a bona fide right." We are trying to establish that the park advertised publicly, and did not exclude negroes in its advertising.

Judge Pugh: Objection over-ruled.

Cross examination (continued).

By Mr. Duncan:

Q. What is the name of that advertising agency?

A. Kal Ehrlich.

Q. Have you had any conferences with any representatives of that agency, relating to the advertising program which they would engage in on your behalf?

Mr. McAuliffe: I object to this line of questioning.

Judge Pugh: I think you are going too far afield, Mr. Duncan.

Mr. Duncan: One defense to the statute is that I think if I can show that the park invited the public, generally,

to come use these facilities, without any mention being made of race—

Judge Pugh: The advertising didn't say anything about negroes?

Mr. Duncan: No.

[fol. 92] Mr. McAuliffe: Of course the State attempted to introduce evidence to show that these five defendants were on a picket line and had full knowledge of the park policy, so the advertising would be completely irrelevant. The evidence is that they came right off the picket line and went into the park, so the evidence is clear that they were not misled, but that they had full knowledge of the park policy when they went in, and on that basis we object to this as being irrelevant.

Mr. Duncan: Mr. McAuliffe's recollection is different from mine.

Judge Pugh: I don't know what your defense is. Your plea up to now is "not guilty." You didn't make an opening statement. I don't know exactly what your defense is.

Mr. Duncan: They were there under a claim of right, and one of the defenses is that they were invited to come there and I am trying to establish the fact that the park does advertising, without mentioning race. I proffer, through this witness and through witnesses I will recall, to show that.

Judge Pugh: On that proffer the objection will be overruled.

Cross examination of the witness (continued).

By Mr. Duncan:

Q. Does Glen Echo, operating through its advertising agency, advertise in the Washington, D. C. area?

A. I would say so.

Q. Does it advertise in the Press?

[fol. 93] A. What do you mean "The Press?"

Q. By newspapers?

A. Yes.

Q. By radio?

A. Yes.

Q. And by television?

A. Yes.

Q. On the back of Capital Transit Busses?

A. No.

Q. It does not?

A. No, sir.

Q. Do any of the advertisements which the park makes refer to racial policies of the park?

A. I don't get that.

Q. Do any of the advertisements which you have referred to, refer to the racial policies of the park?

A. I don't think so.

Q. Do any of them state that negroes are not welcome?

A. They didn't say they were.

Q. Are they addressed to the public generally?

A. I would say so.

Q. Do you happen to know what your advertising budget is for the year?

Mr. McAuliffe: Objection.

Judge Pugh: What is the question? (Last question read by the reporter). Objection sustained. Who determines the policy of the Glen Echo Park, of which you are President. [fol. 94] Is that also determined by some act of the corporation?

A. Its just been that way for years and years; that's all.

Judge Pugh: You mean it is just handed down by custom?

A. Yes.

Judge Pugh: Do you admit Chinese?

A. Yes.

Judge Pugh: Filipinos?

A. Yes.

Judge Pugh: And somebody from India; do you admit them?

A. Yes.

Judge Pugh: And the only ones you exclude are the negroes?

A. Yes.

Judge Pugh: There is no official act of the corporation that bears that out; it is just handed down from year to year?

A. That is right.

Cross examination (resumed).

By Mr. Duncan:

Q. Who in the corporate hierarchy determines that policy?

A. Who what?

Q. Who in the corporation determines that that policy shall continue in effect?

A. We all do.

Q. Are you referring to officers or stockholders?

A. Whoever is in charge at that time. They know that that is the way it is supposed to be.

Q. Is this a closely held corporation?

A. Yes, sir.

[fol. 95] Q. How many stockholders are there?

A. Three.

Q. How many different persons serve as officers?

A. Three.

Q. Are they the same three who are the stockholders?

A. Yes.

Q. And you say that this has always been the policy of the park?

A. That is right.

Judge Pugh: Has your corporation filed any civil suits, or asked the Court for any injunction to prohibit colored people from coming on your property?

A. No, sir.

Q. It never has done that?

A. No, your Honor.

By Mr. Duncan (continued) :

Q. Mr. Baker, at any time in the past five years has there ever been a meeting of the Board of Directors, at which the racial policies of the park were considered and discussed?

A. No, sir.

Q. Not in the past five years?

A. No, sir.

Q. On the night of June 30th, did Lieutenant Collins speak to you about these specific defendants?

A. I wasn't there.

Q. You were not where, sir?

A. I wasn't at the park on the night of June 30th.

[fol. 96] Q. Did you have a discussion with Lieutenant Collins on the 30th of June, 1960, about the racial policy of the park?

A. I don't remember.

Mr. Duncan: I have no further questions.

Examination by the Court.

By Judge Pugh:

Q. I think you testified, on direct, or cross examination, that your corporation had deputy sheriffs, or somebody similar to Lieutenant Collins' position, at the gate of the Glen Echo Amusement Park; is that correct?

A. Yes.

Q. On this particular night did you have such a person at the entrance to the park, so far as you know?

A. They were supposed to be there.

Q. Is that officer directed to tell the negroes not to come in?

A. I left the General Manager there to oversee everything.

Q. Is he here in Court today?

A. Yes.

Redirect examination.

By Mr. McAuliffe:

Q. Did you have a conversation with Lieutenant Collins on the 30th day of June, at any time or any place?

A. When the newspaper people came out and said that there was going to be something going on that night, I told [fol. 97] him to continue the policy.

Q. Where were you when you spoke to him at that time?

A. That was in the daytime, in my office.

Q. And was that at the Glen Echo Amusement Park?

A. Yes; it was.

Q. And that is when you had this conversation that you related to the Court, in which you instructed Lieutenant Collins as to how this situation was to be handled?

A. I don't get that.

Q. Is that when you had this conversation, which you previously related, in which you instructed Lieutenant Collins how the situation with respect to negroes was to be handled?

A. That is right.

Q. And that was prior to the time the five defendants in this case came on to the property and were arrested by Lieutenant Collins?

A. That is right.

Q. Do you know how long the Glen Echo Amusement Park has been in existence, and how long it has maintained a policy of segregation?

A. Fifty-one years.

Q. Did you instruct Lieutenant Collins that he was to arrest negroes because they were negroes, or because they were trespassing?

A. Because they were trespassing.

Mr. McAuliffe: That is all.

[fol. 98] Recross examination.

By Mr. Duncan:

Q. Did you instruct Lieutenant Collins to arrest any other persons who trespassed, other than negroes?

A. I went over that once before with you. I told him if they came out of that picket line to come on to the property, to give them due notice and to arrest them if they didn't leave; white or colored.

Q. Did you, on the 30th of June, 1960, see Lieutenant Collins at all, anywhere?

A. I saw him in the afternoon.

Q. What time in the afternoon; approximately?

A. Three thirty or four o'clock.

Q. Where did you see him?

A. When he came into the office and told me about the reporters.

Q. What office did he come into?

A. My office.

Q. Located where?

A. At the entrance to the park.

Q. On park property?

A. Yes.

Q. Did you have a conversation with him at that time?

A. Yes.

Q. Will you tell the Court, please, what conversation you had with Lieutenant Collins at that time?

Judge Pugh: Haven't you testified to that before?

[fol. 99] A. As far as I know.

Mr. Duncan: In response to the question I put, he said he didn't talk to Lieutenant Collins on the 30th of June.

Judge Pugh: All right. Go ahead, answer it.

A. When the reporters came that afternoon, when they heard about it, he came in and told me that there would be trouble that night, and we went over the same thing.

Q. Did you talk to him subsequently, at the time these defendants were arrested?

A. No.

Q. Do you know what time they were arrested?

A. No.

Q. So Lieutenant Collins did not consult you prior to the time they were arrested?

A. No. My General Manager took care of that.

Q. In your instructions to Lieutenant Collins to arrest negroes for trespassing, were they arrested for any other reason than that they were negroes?

A. You asked me before about anybody else and I told you yes.

Q. Well, were negroes to be arrested for trespassing—was that determination made on the basis of the fact that they were negroes? You wouldn't arrest anybody else that just walked into the park, would you, Mr. Baker?

A. If they were picketing and they came out of the line, white or colored, we are supposed to give them due notice and—

[fol. 100] Q. (interrupting the witness) Well, suppose a negro wasn't picketing, but just came out there and walked into the park, would your instructions apply to him?

A. Lieutenant Collins would get in touch with the gentleman, and tell him that he wasn't wanted in the park.

Q. And he wasn't wanted solely because he was a negro, isn't that correct?

A. So far as I know.

Q. You determine the policy of **this** corporation, don't you?

A. Yes.

Q. Well, is there any doubt in **your** mind that that is why you told him he wasn't wanted?

A. No.

Re-redirect examination.

By Mr. McAuliffe:

Q. Who are the other officers of this corporation?

A. My brother.

Q. What is his position?

A. Secretary and Treasurer.

Q. What is his name?

A. Sam Baker.

Q. Who is the other officer of the corporation?

A. My wife.

Q. And have you and your brother, and your wife, conferred, and are you in agreement with respect to the policy to be followed at Glen Echo Park?

A. We sure are.

[fol. 101] Q. And who is your General Manager at the Glen Echo Park?

A. Leonard Woronoff.

Q. And is he instructed to carry out all the policies by you and your brother and your wife, with respect to the operation of the park, as you see fit?

A. He is.

Q. You take the position, Mr. Baker, that as the owner of this private property, or as President of the corporation, you have the right to determine who shall come on to your property, and the right to arrest them if they do not leave?

A. Yes.

Mr. McAuliffe: I object to that.

Judge Pugh: Objection sustained.

FRANCIS J. COLLINS, recalled to the stand for further examination by counsel for the plaintiff, testified

Direct examination.

By Mr. McAuliffe:

Q. Directing your attention to State's Exhibit #2, will you take this pen which I hand you and mark on there with an "X", and circle that X, in the approximate area where the five defendants were at the time that you talked with them and had occasion subsequently to arrest them, some five minutes later. Make a large "X" and a circle, so we can see it. (The witness complies).

[fol. 102] Mr. McAuliffe: You may cross-examine him.

Cross examination.

By Mr. Duncan:

- Q. Have you ever seen this plat before, Mr. Collins?
 A. Yes, sir.
 Q. Where did you see it, Mr. Collins?
 A. In the State's Attorney's office.
 Q. When?
 A. Thursday of last week.
 Q. Was that the first time you had seen it?
 A. Yes, sir.

Mr. Duncan: I have nothing further.

LEONARD WORONOFF, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified upon

Direct examination.

By Mr. McAuliffe:

- Q. What is your name, and what is your address?
 A. Leonard Woronoff, 1678 North 21st Street, Arlington, Virginia.
 Q. What is your position, if any, with Rekar, Inc., and Kebar, Inc.?
 A. General Manager of Glen Echo Amusement Park.
 Q. And as General Manager what are your duties and [fol. 103] responsibilities?
 A. My duties are to execute the policies as set forth by the officers of the corporation, the owners of the amusement park.
 Q. What are those policies with respect to the admission of negroes to the park as patrons?
 A. The policy has been and is to maintain the park on a segregated basis.
 Q. What are your duties and responsibilities with respect to the special police who are on duty and hired by Rekar, Inc., and Kebar, Inc., at Glen Echo Amusement Park?

A. Well I issue instructions. The officers there, our security force, report to me, and I am responsible for their conduct.

Q. Directing your attention to the date of June 30th, prior to the arrest of the five defendants in this case, did you have occasion to discuss with Lieutenant Collins what action, if any, he should take with respect to the five defendants in this case?

A. Yes, sir.

Q. And when was that discussion held, Mr. Woronoff?

A. That was held when I was notified in the office that these defendants had, in fact, gone into the park and were at that time on the carousel.

Q. From whom did you receive such notification?

A. By Lieutenant Collins.

Q. As the result of gaining that information, what did you do, as the General Manager of Glen Echo Amusement [fol. 104] Park and what instructions did you give to Lieutenant Collins?

A. I instructed Lieutenant Collins to notify them that they were not welcome in the park, and we didn't want them there, and to ask them to leave, and if they refused to leave, within a reasonable length of time, then they were to be arrested for trespass.

Q. Are you familiar with Glen Echo Park?

A. Yes, sir.

Q. And on whose property is the carousel located in Glen Echo Park?

Mr. Duncan: I object to that.

Mr. McAuliffe: I will withdraw the question.

Q. Is the Glen Echo Park in Montgomery County, Maryland?

A. Yes, sir.

Mr. McAuliffe: Cross-examine him.

Cross examination.

By Mr. Duncan:

Q. Mr. Woronoff, you said, as General Manager of the park, you were responsible for the conduct of the National Detective Agency officers; is that right?

A. Yes; while they are in our employ at the park.

Q. Does the National Detective Agency make their employees available to you, and you direct them as you see fit?

A. That is correct.

[fol. 105] Q. How many of those officers are also Deputy Sheriffs of Montgomery County?

A. At the present time there are two.

Q. Who, in addition to Mr. Collins?

A. James E. Honniger.

Mr. Duncan: I have no further questions.

Mr. McAuliffe: If the Court please, the State rests.

MOTION TO QUASH THE WARRANTS OF ARREST, ETC.
AND STATEMENT THEREON

Mr. Duncan: May it please the Court, at this time I would like to move to quash the warrants of arrest, or to move for their dismissal, on a number of grounds which I would like to urge on the Court, and the first ground is constitutional grounds, namely, that the application of the Maryland trespass statute, Section 577, under the circumstances of this case, is unconstitutional and constitutes a denial of due process of law. *Marsh v. Alabama*, 326 U. S. 501. The State of Maryland may not assist the owners of the park here in carrying out a pattern of private racial discrimination.

The Supreme Court held in 1947 that although the covenants were valid as private agreements, the State could not enforce them, so we say here the discrimination which may exist at Glen Echo Park is a private matter between the park and the would be negro patrons, but that Glen

Echo cannot call upon the State of Maryland to enforce and carry out that policy.

[fol.106] In this case I think it is quite clear that the action of the state is resorted to for the purpose of enforcing racial discrimination. They were excluded from the park, not because they were trespassers, but because they were negroes. We contend that these defendants are entitled to the equal protection of the law.

Judge Pugh: Are the property owners entitled to the equal protection of the law?

Mr. Duncan: Most assuredly. We contend further that the application of the statute in this way deprives the defendants of due process of law, because it results in their arrest. We advance a second constitutional argument, your Honor, and that is the interference by the State officers in this case deprives these defendants of statutory rights which are secured to them by the laws of the United States. I refer specifically to Sections 1981, 1982 and 1983 of Title 42 of the United States Code. As your Honor is aware, Section 1981 provides that every person within the jurisdiction of the United States shall have the same right, among other things, to make and enforce contracts, as is enjoyed by white persons, to purchase, acquire, hold and sell real property. It is declared to be a right which everyone shall enjoy. In Section 1983 it is made actionable for any person, acting under color of law, to deprive anyone in the exercise of his Section 1981 right. We submit that the action of Lieutenant Collins in this case, in his capacity as a State police officer, interfered with the equal enjoyment of the [fol.107] right which these defendants had to attempt to enter into or make contracts with Glen Echo Amusement Park. *Williams v. Kansas City*, 104 Fed. (2nd). So on these two constitutional grounds we move that the warrants of arrest be quashed and dismissed on the ground that the statute as applied to these facts is unconstitutional.

And then we make the same motion on a number of State grounds. First, the Maryland statute, Section 577, begins as follows: "Any person or persons who shall enter upon or cross over the premises of private property, after having been duly notified by the owner, or his agent, not to do so, shall be deemed guilty of a misdemeanor." This

section has only been considered one time by the Court of Appeals of Maryland. *Krauss v. State*, 216 Md. 369. That was a case involving the entry into a garage, by employees of a finance company who were undertaking to repossess an automobile which was in the garage. The owner of the garage land had a lien on the automobile and had had discussions with the defendants prior to their entry, when he notified the defendants that he had a lien on the automobile. Notwithstanding this the defendants entered the land and removed the automobile. Upon conviction, and appeal to the Court of Appeals, that conviction was reversed on the ground that there was insufficiency of notice beforehand. Here we submit, and I think the testimony is uncontradicted on this point—Mr. Collins, himself, testified that his first communication was after they had come on to the land, and I submit to the Court that the statute cannot be violated. We base our motion to dismiss [fol. 108] on the ground that the statute, by its very terms applies only to wanton trespass. Reading again from the statute: "It being the intention of this section only to prohibit any wanton trespass upon the private property of others." We have been unable to find a case which defines the phrase "wanton trespass." The Court of Appeals of Maryland, however, has construed the meaning of the word "wanton" in other circumstances, and I cite on that *Dennis v. Baltimore Transit Co.*, 189 Md. 610, 617, and there, in discussing the meaning of the word "wanton" the Court of Appeals said "the word 'wanton' means characterized by extreme recklessness and utter disregard for the rights of others" and I submit that if this Court were to take that as a test of wanton trespass, then the evidence would have to show that these defendants entered Glen Echo Park with extreme recklessness and complete disregard of the rights of others.

Glen Echo advertised to the public generally. Its advertisements were not restricted as to race and any member of the public was entitled to respond to this advertisement and even if it should eventuate that negroes were excluded wantonness under the statute is further negated by the fact that all of these defendants had tickets, and so far it doesn't appear where they obtained the tickets, but there

is testimony that the tickets were transferable. They had tickets on the merry-go-round, and Mr. Collins testified that he saw the ticket in Mr. Griffin's hand. I submit that a person who enters an amusement park and comes into possession of a ticket, whether purchased by him or given to him by someone else, cannot be said to be guilty of wanton trespass.

[fol. 109] The third ground we base our motion on is that the statute, section 577, provides that—if I may read that section—“and further provided that nothing in this section shall be construed to include in its provisions the entry upon or crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership of said land.” Now, we submit that these defendants were on the land in the exercise of several bona fide rights. They were publicly invited on the land. Secondly, upon coming on the land they came into lawful possession of tickets, which, in the ordinary practice of the park, were clearly transferable. And it can be urged on their behalf that they have a constitutionally protected right to be on the land. If the federal statute gives to them the same right to make contracts as white persons, at least they were on the land in the exercise of this federal statutory right and they cannot be said to be engaged in a wanton trespass or that this was not a bona fide claim of right.

For all of these reasons we urge that the warrants in these cases as against all five defendants should be dismissed and I move for a finding of not guilty, based on the insufficiency of the evidence.

DENIAL OF MOTION FOR A DIRECTED VERDICT

Judge Pugh: The motion for a directed verdict is denied.

[fol. 110] KAY FREEMAN, a witness of lawful age, called for examination by counsel for the defendants, and having first been duly sworn, according to law, was examined and testified as follows, upon

Direct examination.

By Mr. Duncan:

Q. For the record, state your name and address.

A. Kay Freeman; 732 Quebec Place, N. W.

Q. Miss Freeman, are you acquainted with the five defendants in this case?

A. Yes.

Q. Do you know them each by name?

A. Yes.

Q. How long have you known them?

A. I know some of them for different lengths of time. I guess the longest would be two years.

Q. Did you have occasion to be present at Glen Echo Amusement Park on the night of June 30th, 1960?

A. Yes.

Q. Were you in the company of these defendants, and other persons?

A. Yes.

Q. Did you enter the park?

A. Yes, I did.

Q. Did you enter it in company with these defendants?

A. Yes.

Q. Were you on the merry-go-round at the time they were arrested?

[fol. 111] A. Yes.

Q. Did you see them arrested?

A. Yes.

Q. Were you arrested?

A. No.

Q. Did you see each of these defendants arrested?

A. Yes.

Q. Prior to the time they were arrested, did they have tickets to ride on any of the rides?

A. We all had tickets.

Q. Where did you acquire these tickets?

A. They were given to us by friends.

Q. White friends?

A. Yes.

Q. And they had made the purchase?

A. That is right.

Q. Prior to the time that you entered the premises of the Glen Echo Amusement Park, did anyone tell you personally that you should not enter?

A. No one did.

Q. I mean anyone representing the park.

A. No one.

Q. Did Mr. Woronoff say anything to you?

A. No.

Q. Did Mr. Collins say anything to you?

A. No.

Q. Were there any signs posted anywhere around there?

A. I didn't see them.

[fol. 112] Q. The conduct of these defendants at all times was proper, wasn't it?

Mr. McAuliffe: Objection.

Mr. Duncan: I will rephrase it.

Q. What was the conduct of these defendants, during the time they were in the park?

A. Their conduct was orderly.

Q. Have you ever seen any advertisements relating to Glen Echo Amusement Park?

A. Yes every day, on television, on street cars and on radio.

Q. You say you went to Glen Echo in a group, with these defendants?

A. That is right.

Mr. Duncan: I have no further questions.

Examination by the Court.

By Judge Pugh:

- Q. Were you told to get out of the park?
 A. Yes, I was asked to leave.
 Q. They told you to leave?
 A. That is right.
 Q. And you left?
 A. No; I didn't leave.
 Q. Were you on the merry-go-round?
 A. Yes; I was.
 [fol. 113] Q. And Lieutenant Collins asked you to leave?
 A. Yes; he asked me to leave.
 Q. Did you go along with the other five when they were taken to the office?
 A. No; they did not ask me.
 Q. You stayed on the merry-go-round?
 A. Yes.
 Q. And you stayed on there and rode?
 A. I did not ride. They did not start the merry-go-round up until after I left.
 Q. And then you left the park?
 A. Yes.

Cross examination.

By Mr. McAuliffe:

- Q. Miss Freeman, this advertisement that you read, is that what brought you out to Glen Echo Park on June 30th?
 A. I wanted to use the facilities and I thought this would be a good way of doing it.
 Q. You thought you would be able to use the facilities of Glen Echo Park?
 A. I thought I might.
 Q. Were you led out there by those advertisements?
 A. It had been rumored.
 Q. What had been rumored?
 [fol. 114] A. The segregation policy.
 Q. So you knew about the segregation policy?

A. I didn't know. I was told about it.

Q. Did you go out with these five defendants?

A. Yes.

Q. Did you go out with any others?

A. Yes.

Q. How many?

A. Thirty-five or forty.

Q. And you all expected to use the facilities there at Glen Echo Park, in accordance with those advertisements?

A. I expected to use them.

Q. Did you have any signs with you when you went out there?

A. Yes.

Q. What did these signs say?

A. They protested the segregation policy that we thought might exist out there.

Q. They protested with respect to a segregation policy that you thought might exist in the park?

A. That is right.

Q. You weren't sure it existed, but you were taking signs along, just in case it did exist; is that correct?

A. That is right.

Q. How many signs did you have?

A. I don't know.

Q. Did these five defendants have signs?

[fol. 115] A. I don't know. I think we all had signs, at one time or another.

Q. You mean these five defendants then, don't you?

A. I cannot speak for them.

Q. They knew you had signs; didn't they?

A. Yes.

Q. You all came out there, in a group, and you had these signs which protested against the segregation policy of Glen Echo Amusement Park; isn't that right, Miss Freeman?

A. They protested the policy that we thought existed. It was not a fact until we were arrested.

Q. When you got out there to Glen Echo, wasn't Mr. Henry with you?

A. He was in the group.

Q. Do you know Mr. Laurence Henry?

A. Yes.

Q. Didn't he confer with Lieutenant Collins shortly after you arrived on the scene?

A. I don't know. I wasn't near him then.

Q. When you arrived at the Glen Echo Amusement Park, what did you do; put your signs to one side and start to walk in?

A. Some of us carried signs; others didn't.

Q. What did you do?

A. I walked around in a circle.

[fol. 116] Q. Walked around in a circle?

A. That's right.

Q. Since you came there, expecting to go into Glen Echo Amusement Park, and were lead on by these advertisements, why didn't you just walk right into the park?

A. Because everybody else didn't just walk right into the park immediately.

Q. Do you mean these five defendants?

A. And other persons.

Q. What did these five defendants do and other persons do?

A. We had a picket line.

Q. Didn't you try to enter Glen Echo Park before you set up the picket lines?

A. No.

Q. Then you knew the policy of Glen Echo Park was segregated, didn't you?

A. No; we didn't know that until we were arrested.

Q. You mean you set up a picket line before you knew the park was segregated?

A. That is right.

Q. Why did you do that if you didn't know the park was segregated?

A. Because we thought it was segregated.

Q. But you didn't bother to find out before you set up [fol. 117] the picket line?

A. No, we did not.

Q. Wasn't Mr. Henry your so-called Leader?

Mr. Duncan: I object to that, your Honor.
 Judge Pugh: The objection is sustained.

Examination by the Court.

By Judge Pugh:

- Q. How many car loads of you came out there that night?
 A. Five or six.
 Q. Did you have all these signs with you?
 A. Yes, we did.
 Q. Did you go out there to try to make them change their policy?
 A. I went to try to use the facilities of the park.
 Q. Were you paid anything to go out there?
 A. I was not.

Cross examination (continued).

By Mr. McAuliffe:

- Q. Do you know of anyone who did receive pay for going out there to Glen Echo Park?
 A. No, I do not.
 Q. Who contacted you, Miss Freeman, to ask you to go out to Glen Echo Park?

[fol. 118] Mr. Duncan: Objection.

Judge Pugh: The objection is sustained.

- Q. Now you say after you got on the park property, tickets were given you by some white friends; is that right?
 A. That is right.
 Q. Since you weren't sure of the policy of the park, why didn't you try to buy a ticket yourself?
 A. It wasn't necessary for me to try to buy a ticket, if somebody had already bought them for us.
 Q. And they paid for them?
 A. That is right.
 Q. Did you reimburse them?
 A. I didn't personally reimburse anybody.
 Q. Who reimbursed them, Miss Freeman, for your ride?
 A. I didn't pay for a ride.
 Q. You paid for a ticket, didn't you?

- A. I did not personally pay for a ticket.
- Q. Who paid for your ticket?
- A. I think Paul Dietrich paid for it.
- Q. He just gratuitously paid for your ticket?
- A. That is right.
- Q. And you didn't go up to the ticket booth and try to [fol. 119] purchase any tickets yourself?
- A. No, I did not.
- Q. And you didn't know whether they would sell you a ticket or not. You just decided it would be better to have Paul Dietrich to get you a ticket; is that right?
- A. He offered his services and I didn't see why I should have to pay for a ticket if somebody is going to buy it for me.
- Q. And Paul Dietrich is a white person; is that right?
- A. Yes; he is.
- Q. Now, you were on the carousel, or the merry-go-round, were you not?
- A. Yes.
- Q. Were you riding with these five defendants?
- A. I was near them.
- Q. Well; how near?
- A. Perhaps two or three rides away.
- Q. And when you saw these five defendants being arrested, and taken away, did you remain on the carousel?
- A. Yes; I did.
- Q. For how long did you remain there?
- A. I remained for about thirty minutes.
- Q. A half an hour?
- A. That is right.
- Q. Did the carousel start up during that time?
- [fol. 120] A. No.
- Q. Was there a crowd around there?
- A. Yes.
- Q. Did you hear any heckling?
- A. Yes.
- Q. And did you see any park policemen around there?
- A. Yes.
- Q. Did you talk with anyone?
- A. Lieutenant Collins.
- Q. And did he tell you about the policy of the park?
- A. Yes.

Q. Did he warn you to leave the park property?

A. Yes.

Q. At the end of thirty minutes, did you leave the park property?

A. I left after the defendants had been arrested.

Q. So your best recollection is that it was approximately half an hour that you sat on that carousel, and the carousel did not start up?

A. No, it did not.

Q. Did it start up after you left?

A. I don't know.

Q. And you just walked out, with some other friends of yours; is that right?

A. That is right.

[fol. 121] Q. Since you weren't arrested—incidentally, you went back in the picket line, didn't you, Miss Freeman?

A. Yes, I did.

Q. Since you weren't arrested, you just walked out of the park and took a place in the picket line; is that right?

A. Yes.

Q. And no one told you you should not enter Glen Echo Park?

A. No.

Q. And you didn't bother to ask anybody before you set up that picket line?

A. I didn't set up the picket line.

Q. Before you took part in it. Before you started walking in this circle.

A. Yes.

Q. Who told you were to walk in this circle?

A. Well, we couldn't—

Q. (interrupting the witness) Wait a minute. How did you know where to walk?

A. Picket lines are usually set up—

Q. (interrupting the witness) I want to know how you knew where to walk.

A. I knew where the entrance to the park was.

Q. The entrance to the park was a short distance away from where you were walking; wasn't it?

[fol. 122] A. Yes.

Q. I want to know how you knew where to walk in this circle?

A. What do you mean?

Q. Didn't somebody tell you to walk there?

A. It was a spontaneous act.

Q. A spontaneous perfect circle?

A. It was not a perfect circle.

Q. And you looked on no one as your leader out there?

A. We were acting, for the most part, as individuals.

Q. It is that little least part that we are interested in. In that little part, who told you what to do? You say "for the most part you acted as individuals" indicating that there was a slight part that you didn't and in that slight part, who told you what to do?

A. No specific individual.

Q. You had no established leader?

A. No.

Q. And you didn't consider Mr. Laurence Henry to be your leader?

A. No.

Q. Nor anyone else there to be your leader?

A. There were those who, perhaps—I can't say that we had one specific leader. I can't say that.

Q. You had several persons who were in a capacity of [fol. 123] leadership; is that what you started to say?

A. Well, certain people said certain things, and if we agreed we went along with it, but there were no definite persons who did everything.

Q. How long did you march in this definite circle, with these five defendants, with these signs, protesting the park's segregation policy, before the five defendants and you entered Glen Echo Park?

A. I don't know.

Q. Would you give us your best estimate on that, please?

A. Maybe an hour or maybe longer.

Q. Your best estimate now would be that it was at least an hour?

A. About an hour.

Q. Do you now recognize each of the five defendants seated at this counsel table as being in that line, which carried signs protesting against the park's segregation

policy, which line protested for an hour before these defendants entered into the park?

Mr. Duncan: I object to that. I am not sure what its relevancy is.

Judge Pugh: Well, you put her on the stand. It is proper cross-examination. Objection over-ruled.

Q. Do you recognize each of these five defendants, seated [fol. 124] at the counsel table, as being in that picket line, that circle of pickets which you have described as being there for about an hour, carrying placards protesting the segregation policy of Glen Echo Park? Do you recognize these five defendants as being in that line and having been there for approximately an hour prior to the time that you and they entered the park?

A. I think that most of them were. I am not positive. It was a rather large line. I cannot be specific and say that each and every one was in the line.

Q. To the best of your knowledge and recollection, they were all there; is that correct?

A. Perhaps.

Redirect examination.

By Mr. Duncan:

Q. Miss Freeman, to your knowledge, have any of your friends, or any persons known by you, ever used the park prior to this arrest?

Mr. McAuliffe: Objection.

Judge Pugh: Objection over-ruled.

A. No.

Q. You said that there was some heckling. Who was [fol. 125] heckling whom?

A. Well the defendants and other persons who were on the merry-go-round were being heckled by the patrons of Glen Echo, and also by some of the people who were working there.

Examination by the Court.

By Judge Pugh:

Q. Was the heckling a loud noise?

A. Yes.

Q. How many people were in it?

A. I don't know, but the merry-go-round was almost surrounded.

Q. In other words, it looked like anything might break out there; a fight?

A. It wasn't that kind of heckling.

Q. How many people would you say were surrounding the merry-go-round when this incident took place?

A. Perhaps forty or so.

Q. You people all knew, when you left Washington, that this park was segregated; didn't you?

A. We didn't know it for a fact.

Q. What did you carry the signs for?

✓ A. We were under the impression that it was segregated.

Q. And you went out there to impress upon them that it [fol. 126] shouldn't be segregated? shouldn't be segregated?

A. I went to see if I could get in.

Q. What did you get together with a crowd for? Why didn't you go by yourself?

A. I would never go to any amusement park alone.

Q. Why didn't you go with one or two people, instead of forty? What was the idea of going out there in large numbers?

A. There was a possibility that it was segregated.

Q. Well you all anticipated that there would be some trouble; didn't you?

A. Yes.

Q. How many men were in the party?

A. It was pretty well mixed.

Q. Well all these were grown men, weren't they?

A. There weren't so many grown men.

Q. You went out there looking for trouble; didn't you?

A. Not trouble; no.

Q. You went out there to try to force them to allow you to go into the park; didn't you?

A. Not to force them to do anything.

Q. Why didn't you stay out of the park, instead of going in there?

A. I wanted to know exactly what would happen.

By Mr. McAuliffe:

Q. You found out what would happen; didn't you?
[fol. 127] A. Yes.

Examination (continued).

By Mr. Duncan:

Q. You weren't arrested, were you?

A. No.

Q. You were in the park, weren't you?

A. Yes.

Q. How old are you?

A. Nineteen.

Q. Do you know how old Miss Greene is?

A. I think Miss Greene is eighteen.

Q. Do you know how old Mr. Saunders is?

A. Twenty-two.

Q. How old is Mr. Washington?

A. I don't know.

Q. How old is Mr. Proctor?

A. I think he is either nineteen or twenty.

Q. Are you a student at any University of learning in this city?

A. Yes, I go to Howard University.

Q. The Court asked you if you anticipated trouble when you went to the park.

A. No, not trouble.

Q. Did you intend to cause any trouble?

A. No.

Q. Did you intend to be disorderly?

[fol. 128] A. No.

Q. Did you intend to force your way in anywhere?

A. No.

Q. Had you discussed what you would do if there were trouble?

A. We didn't expect any real trouble, as far as physical violence is concerned.

Q. Would you say that most of the people that were in the group that accompanied you were the same age as yourself and these young people here?

A. Yes.

Q. Now have you, or anyone with whom you were associated, made any efforts to contact the ownership and management of the park for the purpose of gaining admission, prior to the 30th of June?

A. I have not myself.

Mr. Duncan: We have no further evidence to offer, your Honor, and I would like to renew my motions.

Judge Pugh: We will take a short recess.

(Recess.)

Mr. McAuliffe: Your Honor, for purposes of the record, may we have it shown on the record that State's [fol. 129] Exhibit 3 is the deed, which would be Liber 2072 folio 448, and further for purposes of the record, that the corporation record of Montgomery County, Liber 36 CKW folio 216, the Articles of Incorporation of Rekar, Inc., would be identified as State's Exhibit 4A and that the Montgomery County official corporate record, Liber 36 CKW folio 208, the Articles of Incorporation of Kebar, Inc. would be identified as State's Exhibit 4B. All of them have been admitted in evidence.

Judge Pugh: You just want to change the numbers?

Mr. McAuliffe: Yes.

Judge Pugh: Any objection?

Mr. Duncan: No, your Honor.

Judge Pugh: Change the numbers Miss Reporter. (Exhibit numbers were changed in accordance with Mr. McAuliffe's request.)

Mr. Duncan: I renew my motion for a directed verdict, and to quash the warrants.

Judge Pugh: The motion is over-ruled.

[fol. 130]

ORAL ARGUMENT BY MR. McCAULIFFE

ORAL ARGUMENT BY MR. DUNCAN

REBUTTAL ARGUMENT BY MR. McCAULIFFE

JUDGE PUGH'S ORAL OPINION

It is very unfortunate that a case of this nature comes before the criminal court of our State and County. The nature of the case, basically, is very simple. The charge is simple trespass. Simple trespass is defined under Section 577 of Article 27 of the Annotated Laws of Maryland, which states that "any person or persons who shall enter upon or cross over the land, premises, or private property of any person or persons in this State, after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor." Trespass has been defined as an unlawful act, committed without violence, actual or implied, causing injury to the person, property or relative rights of another. This statute also has a provision in it which says that it is the intention of the Legislature as follows: "It is the intention of this section only to prohibit any wanton trespass upon the private land of others." Wanton has been defined in our legal dictionaries [fol. 131] as reckless, heedless, malicious; characterized by extreme recklessness, foolhardiness and reckless disregard for the rights or safety of others, or of other consequences.

There have been many trespass cases in Maryland. As a matter of fact, there is one case now pending before the Court of Appeals of Maryland where the racial question has been injected into a disorderly conduct case, and that is the case of "State of Maryland versus Dale H. Drews", decided some few months ago. In that case, Judge Menchine filed a lengthy written opinion, in which he touched upon the rights of a negro to go on private property,

whether it is a semi-public or actually a public business, and in that case Judge Menchine said as follows:

"The rights of an owner of property arbitrarily to restrict its use to invitees of his selection is the established law of Maryland." This Court agrees with that opinion, and unless that case is reversed by the Court of Appeals of Maryland, at its session this Fall, that will continue to be the law of Maryland.

That statement by Judge Menchine is based upon authorities of this State, and not too far back, in the case of Greenfeld versus the Maryland Jockey Club, 190 Md. 96, in which the Court of Appeals of this State said: "The rule that, except in cases of common carriers, inn-keepers and similar public callings, one may choose his customers, is not archaic."

If the Court of Appeals changes its opinion in the [fol. 132] 190 Maryland case, then we will have new law in this State on the question of the right of a negro to go on private property after he is told not to do so, or after being on it, he is told to get off.

In this County, as well as many, many counties in the United States, we have accepted the decision of integration that has been promulgated by the Supreme Court in the school cases, and without any provocations or disputes of any consequence. There is no reason for this Court to change that method of accepting integration, but when you are confronted with a question of whether or not that policy can be extended to private property, we are reaching into the fundamental principles of the foundation of this country.

The Constitution of the United States has many provisions, and one of its most important provisions is that of due process of law. Due process of law applies to the right of ownership of property—that you cannot take that property, or you cannot do anything to interfere with that man's use of his property, without due process of law.

Now, clearly, in this case, which is really a simple case; it is a simple case of a group of negroes, forty in all, getting together in the City of Washington, and coming into Maryland, with the express intent, by the testimony of

one of the defense witnesses, that they were going to make a private corporation change its policy of segregation. In other words, they were going to take the law in their own hands. Why they didn't file a civil suit and [fol. 133] test out the right of the Glen Echo Park Amusement Company to follow that policy is very difficult for this Court to understand, yet they chose to expose themselves to possible harm; to possible riots and to a breach of the peace. To be exposed to the possibility of a riot in a place of business, merely because these defendants want to impress upon that business their right to use it, regardless of the policy of the corporation, should not be tolerated by the Courts. Unless the law of this State is changed, by the Court of Appeals of Maryland, this Court will follow the law that has already been adopted by it, that a man's property is his castle, whether it be offered to the public generally, or only to those he desires to serve.

There have been times in the past, not too many years back, when an incident of this kind would have caused a great deal of trouble. It could have caused race riots, and could have caused bloodshed, but now the Supreme Court, in the school case in 1954, has decided that public schools must be integrated, and the people of this County have accepted that decision. They have not quibbled about it; they have gone along with it without incident. We are one of the leading counties in the United States in accepting that decision. If the Court of Appeals of Maryland decides that a negro has the same right to use private property as was decided in the school cases, as to State or Government property, or if the Supreme Court of the United States so decides, you will find that the places of [fol. 134] business in this County will accept that decision, in the same manner, and in the same way that public authorities and the people of the County did in the School Board decision, but there is nothing before this Court at this time except a simple case of criminal trespass. The evidence shows the defendants have trespassed upon this Corporation's property, not by being told not to come on it, but after being on the property they were told to get off.

X
Now it would be a ridiculous thing for this Court to say that when an individual comes on private property,

and after being on it, either sitting on it or standing on it, and the owner comes up and says, "Get off my property", and then the party says "You didn't tell me to get off the property before I came on it, and, therefore, you cannot tell me to get off now" he is not guilty of trespass because he was not told to stay off of the property. It is a wanton trespass when he refuses to get off of the property, after being told to get off.

One of the definitions of wanton is "foolhardy" and this surely was a foolhardy expedition; there is no question about that. When forty people get together and come out there, as they did, serious trouble could start. It is a simple case of trespass. It is not a breach of the peace, [fol. 135] or a case of rioting, but it could very easily have been, and we can thank the Lord that nothing did take place of such a serious nature.

It is not up to the Court to tell the Glen Echo Amusement Company what policies they should follow. If they violate the law, and are found guilty, this Court will sentence them.

It is most unfortunate that this matter comes before the Court in a criminal proceeding. It should have been brought in an orderly fashion, like the School Board case was brought, to find out whether or not, civilly, the Glen Echo Park Amusement Company could follow a policy of segregation, and then you will get a decision based on the rights of the property owner, as well as the rights of these defendants. So, the Court is very sorry that this case has been brought here in our courts.

It is my opinion that the law of trespass has been violated, and the Court finds all five defendants guilty as charged.

[fol. 136] Reporter's Certificate to foregoing transcript (omitted in printing).

[fol. 137]

IN THE COURT OF APPEALS OF MARYLAND

No. 248

September Term, 1960

 WILLIAM L. GRIFFIN, *et al.*

v.

STATE OF MARYLAND

 Henderson
 Hammond
 Prescott
 Horney
 Marbury,
JJ.

OPINION BY HORNEY, J.—Filed June 8, 1961

[fol. 138] This is a consolidated appeal from ten judgments and sentences to pay fines of one hundred dollars each, entered by the Circuit Court for Montgomery County after separate trials, each involving five defendants, on warrants issued for wanton trespass upon private property in violation of Code (1957), Art. 27, §577.

The first group of defendants, William L. Griffin, Marvov Saunders, Michael Proctor, Cecil T. Washington, Jr., and Gwendolyn Greene (hereinafter called "the Griffin appellants" or "the Griffins") all of whom are Negroes, were arrested and charged with criminal trespass on June 30, 1960, on property owned by Rekar, Inc., and operated by Kebar, Inc., as the Glen Echo Amusement Park (Glen Echo or park). The second group of defendants, Cornelia A. Greene, Helene D. Wilson, Martin A. Schain, Ronyl J. Stewart and Janet A. Lewis (hereinafter called "the Greene appellants" or "the Greenes"), two of whom are Caucasians, were arrested on July 2, 1960, also in Glen Echo, and were also charged with criminal trespass.

The Griffins were a part of a group of thirty-five to forty young colored students who gathered at the entrance to Glen Echo to protest "the segregation policy that we thought might exist out there." The students were equipped with signs indicating their disapproval of the admission policy of the park operator, and a picket line was formed to [fol. 139] further implement the protest. After about an hour of picketing, the five Griffins left the larger group, entered the park and crossed over it to the carrousel. These appellants had tickets (previously purchased for them by a white person) which the park attendant refused to honor. At the time of this incident, Rekar and Kebar had a "protection" contract with the National Detective Agency (agency), one of whose employees, Lt. Francis J. Collins (park officer), who is also a special deputy sheriff for Montgomery County, told the Griffins that they were not welcome in the park and asked them to leave. They refused, and after an interval during which the park officer conferred with Leonard Woronoff (park manager), the appellants were advised by the park officer that they were under arrest. They were taken to an office on the park grounds and then to Bethesda, where the trespass warrants were sworn out. At the time the arrests were made, the park officer had on the uniform of the agency, and he testified that he arrested the appellants under the established policy of Kebar of not allowing Negroes in the park. There was no testimony to indicate that any of the Griffins were disorderly in any manner, and it seems to be conceded that the park officer gave them ample time to heed the warning to leave the park had they wanted to do so.

The Greene appellants entered the park three days after the first incident and crossed over it and into a restaurant [fol. 140] operated by the B & B Industrial Catering Service, Inc., under an agreement between Kebar and B & B. These appellants asked for service at the counter, were refused, and were advised by the park officer that they were not welcome and were ordered to leave. They refused to comply by turning their backs on him and he placed them under arrest for trespassing. Abram Baker (presi-

dent of both Rekab and Kebar) testified that it was the policy of the park owner and operator to exclude Negroes and that the park officer had been instructed to ask Negro customers to leave, and that if they did not, the officer had orders to arrest them. There was no evidence to show that the operator of the restaurant had told the Greenses they were not welcome or to leave; nor was there any evidence that the park officer was an agent of the restaurant operator. And while a prior formal agreement¹ covering the 1957 and 1958 seasons had provided that the restaurant operator was subject to and should comply with the rules and regulations concerning the persons to be admitted to the park and that Kebar had reserved the right to enforce them, the letter confirming the agreement for the 1959 and 1960 seasons fixed the rentals for that period [fol. 141] and alluded to other matters, but made no reference whatsoever, either directly or indirectly, to the prior formal agreement—though there was testimony, admitted over objection, to the effect that the letter was intended as a renewal of the prior lease—and was silent as to a reservation by Kebar of the right to police the restaurant premises during the 1959 and 1960 seasons.

On this set of facts, both groups of appellants make the same contentions on this appeal: (i) that the requirements for conviction under Art. 27, §577, were not met; and (ii) that the arrest and conviction of the appellants constituted an exercise of the power of the State of Maryland in enforcing a policy of racial segregation in violation of the Fourteenth Amendment to the Constitution of the United States.

Trespass to private property is not a crime at common law unless it is accompanied by, or tends to create, a breach of the peace. See *Krauss v. State*, 216 Md. 369, 140 A. 2d 653 (1958), and the authorities therein cited. And it was not until the enactment of §21A of Art. 27 (as a

¹ The document was called an "agreement"; the operator of the restaurant was referred to therein as a "concessionaire" and was described in the agreement as a "licensee" and not a "lessee"; yet the agreement called for the payment of rent (payable bi-annually) as well as a portion of the gross receipts and a part of the county licensing fees and certain other items of expense.

part of the Code of 1888) by Chapter 66 of the Acts of 1900 that a "wilful trespass" (see *House Journal* for 1900, p. 322) upon private property was made a misdemeanor. That statute, which has remained unchanged in phraseology since it was originally enacted, is now §577 of Art. 27 (in the Code of 1957), entitled "wanton trespass upon private land," and reads in pertinent part:

[fol. 142] "Any person * * * who shall enter upon or cross over the land, premises or private property of any person * * * after having been duly notified by the owner or his agent not to do so shall be deemed guilty of a misdemeanor * * * ; provided [however] that nothing in this section shall be construed to include * * * the entry upon of crossing over any land when such entry or crossing is done under a bona fide claim of right or ownership * * * , it being the intention of this section only to prohibit any wanton trespass upon the private land of others."

The Case Against The Griffin Appellants

(i)

The claim that the requirements for conviction were not met is threefold: (a) that due notice not to enter upon or cross over the land in question was not given to the appellants by the owner or its agent; (b) that the action of the appellants in doing what they did was not wanton within the meaning of the statute; and (c) that what the appellants did was done under a bona fide claim of right.

There was due notice so far as the Griffins were concerned. Since there was evidence that these appellants had gathered at the entrance of Glen Echo to protest the segregation policy they thought existed there, it would not be unreasonable to infer that they had received actual notice not to trespass on the park premises even though it had not been given by the operator of the park or its agent. But, even if we assume that the Griffins had not previously had the notice contemplated by the statute which was required to make their entry and crossing unlawful, the record is [fol. 143] clear that after they had seated themselves on the

12/20/54
not correct
sup 93

carrousel, these appellants were not only told they were unwelcome, but were then and there clearly notified by the agent of the operator of the park to leave and deliberately chose to stay. That notice was *due* notice to these appellants to depart from the park premises forthwith, and their refusal to do so when requested constituted an unlawful trespass under the statute. Having been duly notified to leave, these appellants had no right to remain on the premises and their refusal to withdraw was a clear violation of the statute under the circumstances even though the original entry and crossing over the premises had not been unlawful. *State v. Fox*, 118 S. E. 2d 58 (N. C. 1961). Cf. *Commonwealth v. Richardson*, 48 N. E. 2d 678 (Mass. 1943). Words such as "enter upon" or "cross over" as used in §577, *supra*, have been held to be synonymous with the word "trespass." See *State v. Avent*, 118 S. E. 2d 47 (N. C. 1961).]

The trespass was wanton within the meaning of the statute. Since the evidence supports a reasonable inference that the Griffins entered the park premises and crossed over it well knowing that they were violating the property rights of another, their conduct in so doing was clearly wanton. Although there are almost as many legal definitions of the word "wanton" as there are appellate courts, we think the Maryland definition, which is in line with the general definition of the word in other jurisdictions, is as good as any. [fol. 144] In *Dennis v. Baltimore Transit Co.*, 189 Md. 610, 56 A.2d 813 (1948), as well as in *Baltimore Transit Co. v. Faulkner*, 179 Md. 598, 20 A.2d 485 (1941), it was said that the word "wanton" means "characterized by extreme recklessness and utter disregard for the rights of others." We see no reason why the refusal of these appellants to leave the premises after having been requested to do so was not wanton in that their conduct was in "utter disregard of the rights of others." Even though their remaining may have been no more than an aggravating incident, it was nevertheless wanton within the meaning of this criminal trespass statute. See *Ex Parte Birmingham Realty Co.*, 63 So. 67 (Ala. 1913).

Since it was admitted that the carrousel tickets were obtained surreptitiously in an attempt to "integrate" the

amusement part, we think the claim that these appellants had taken seats on the carrousel under a bona fide claim of right is without merit. While the statute specifically excludes the "entry upon or crossing over" privately owned property by a person having a license or permission to do so, these appellants do not come within the statutory exception. In a case such as this where the operator of the amusement park—who had a right to contract only with those persons it choose to deal with—had not knowingly sold carrousel tickets to these appellants, it is apparent that they had no bona fide claim of right to a ride thereon, and, absent a valid right, the refusal to accept the tickets was not a [fol. 145] violation of any legal right of these appellants.

(ii)

We come now to the consideration of the second contention of the Griffin appellants that their arrest and conviction constituted an unconstitutional exercise of state power to enforce racial segregation. We do not agree. It is true, of course, that the park officer—in addition to being an employee of the detective agency then under contract to protect and enforce, among other things, the lawful racial segregation policy of the operator of the amusement park—was also a special deputy sheriff, but that dual capacity did not alter his status as an agent or employee of the operator of the park. As a special deputy sheriff, though he was appointed by the county sheriff on the application of the operator of the park "for duty in connection with the property" of such operator, he was paid wholly by the person on whose account the appointment was made and his power and authority as a special deputy was limited to the area of the amusement park. See Montgomery County Code (1955), §2-91. As we see it, our decision in *Drews v. State*, 224 Md. 186, 167 A. 2d 341 (1961), is controlling here. The appellants in that case—in the course of participating in a protest against the racial segregation policy of the owner of an amusement park—were arrested for disorderly conduct committed in the presence of regular Baltimore County police who had been called to eject them from the [fol. 146] park. Under similar circumstances, the appellants

in this case—in the progress of an invasion of another amusement park as a protest against the lawful segregation policy of the operator of the park—were arrested for criminal trespass committed in the presence of a special deputy sheriff of Montgomery County (who was also the agent of the park operator) after they had been duly notified to leave but refused to do so. It follows—since the offense for which these appellants were arrested was a misdemeanor committed in the presence of the park officer who had a right to arrest them, either in his private capacity as an agent or employee of the operator of the park or in his limited capacity as a special deputy sheriff in the amusement park (see Kauffman, *The Law of Arrest in Maryland*, 5 Md. L. Rev. 125, 149)—the arrest of these appellants for a criminal trespass in this manner was no more than if a regular police officer had been called upon to make the arrest for a crime committed in his presence, as was done in the *Drews* case. As we see it, the arrest and conviction of these appellants for a criminal trespass as a result of the enforcement by the operator of the park of its lawful policy of segregation, did not constitute such action as may fairly be said to be that of the State. The action in this case, as in *Drews*, was also “one step removed from State enforcement of a policy of segregation and violated no constitutional right of appellants.”

The judgments as to the Griffin appellants will be affirmed.

[fol. 147]

The Case Against the Greene Appellants

There is not enough in the record to show that the Greens were duly notified to leave the restaurant by the only persons who were authorized by the statute to give notice. The record discloses that these appellants entered the park and crossed over it into the restaurant on the premises, but there was no evidence that the operator or lessee of the restaurant or an agent of his either advised these appellants that they were unwelcome or warned them to leave. There was evidence that the park officer had ordered these appellants to leave, but it is not shown that

he was authorized to do so by the lessee, and a new written agreement for the 1959 and 1960 seasons having been substituted for the former agreement covering the 1957 and 1958 seasons, the state of the record is such that it is not clear that the lessor had reserved the right to continue policing the leased premises as had been the case during the 1957-1958 period. Under these circumstances, it appears that the notice given by the park officer was ineffective. There is little doubt that these appellants must have known of the racial segregation policy of the operator of the park and that they were not welcome anywhere therein, but where notice for a definite purpose is required, as was the case here, knowledge is not an acceptable notice where the required notification is incident to the infliction of a criminal penalty. 1 Merrill, *Notice*, §509. See also *Woodruff v. State*, 54 So. 240 (Ala. 1911), where it was held (at p. 240) [fol. 148] that “[i]n order to constitute the offense of trespass after warning, it is necessary to show that the warning was given by the person in possession or his duly authorized agent.” And see *Payne v. State*, 12 S. W. 2d 528 (Tenn. 1928), [a court cannot convict a person of a crime upon notice different from that expressly provided in the statute]. Since the notice to the Greene appellants was inadequate they should not have been convicted of trespassing on private property, and the judgments as to them must be reversed.

The judgments against the Griffin appellants are affirmed; the judgments against the Greene appellants are reversed; the Griffin appellants shall pay one-half of the costs; and Montgomery County shall pay the other one-half.

File Copy

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

No. 287

WILLIAM L. GRIFFIN, MARVOUS SAUNDERS,
MICHAEL PROCTOR, CECIL T. WASHINGTON,
JR., AND GWENDOLYNE GREENE,
Petitioners,

v.

STATE OF MARYLAND,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION

THOMAS B. FINAN,
Attorney General,

CLAYTON A. DIETRICH,
Assistant Attorney General,
1201 Mathieson Building,
Baltimore 2, Maryland,
For Respondent.

INDEX

TABLE OF CONTENTS

	PAGE
OPINION BELOW	1
JURISDICTION	2
QUESTION PRESENTED	2
STATEMENT	2
ARGUMENT:	
This petition does not present any unique factual situation nor any legal proposition which has not been fairly included in cases recently before this Honorable Court	4
CONCLUSION	9

TABLE OF CITATIONS

Cases

Alpaugh v. Wolverton, 36 S.E. 2d 906 (Virginia)	9
Boynton v. Virginia, 364 U.S. 454	4, 5, 8, 9, 10
Brown v. Board of Education of Topeka, 344 U.S. 1, 347 U.S. 483	8
Burton v. Wilmington Parking Authority, 365 U.S. 715	4, 5, 8
Coleman v. Middlestaff, 305 P. 2d 1020 (California)	9
De La Ysla v. Publix Theatres Corporation, 26 P. 2d 818 (Utah)	9
Drews v. State, 224 Md. 186	9
Drews v. State, Motion to Dismiss or Affirm, No. 71, October Term, 1961, U.S. S. Ct.	4
Fletcher v. Coney Island, 136 N.E. 2d 344 (Ohio)	9
Goff v. Savage, 210 P. 374 (Washington)	8
Good Citizens Assoc. v. Board, 217 Md. 129	9
Greenfeld v. Maryland Jockey Club, 190 Md. 96	9

	PAGE
Griffin & Greene v. State, 225 Md. 422, 171 A. 2d 717	1
Horn v. Illinois Central Railroad, 64 N.E. 2d 574 (Illinois)	9
Madden v. Queens County Jockey Club, 72 N.E. 2d 697 (New York)	8
Slack v. Atlantic White Tower System, Inc., 181 F. Supp. 124	9
Terminal Taxicab Co. v. Kutz, 241 U.S. 252	9
Terrell Wells Swimming Pool v. Rodriguez, 182 S.W. 2d 824 (Texas)	8
United States v. United Mine Workers of America, 330 U.S. 258	5
Williams v. Howard Johnson's Restaurant, 268 F. 2d 845 (4th Circuit)	9
Wolfe v. North Carolina, 364 U.S. 177	5
Younger v. Judah, 19 S.W. 1109 (Missouri)	8

Statutes

Constitution of the United States, Fourteenth Amendment	9
--	---

Miscellaneous

28 U.S.C.A., Section 1257(3)	2
U. S. S. Ct. Rules, Revised Rule 19	2

INDEX TO APPENDIX

Testimony:

Francis J. Collins—

Direct	1
Cross	1
Redirect	2

	PAGE
Abram Baker—	
Cross	3
Redirect	3
Recross	3
Kay Freeman—	
Direct	4
Cross	4
Examination by the Court	5

IN THE
Supreme Court of the United States

OCTOBER TERM, 1961

No. 287

WILLIAM L. GRIFFIN, MARVOUS SAUNDERS,
MICHAEL PROCTOR, CECIL T. WASHINGTON,
JR., AND GWENDOLYNE GREENE,
Petitioners,

v.

STATE OF MARYLAND,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals of Maryland is fully set out on pages 22 through 29 of the Appendix to the Petition for Writ of Certiorari (hereinafter referred to as "A") and is now reported in the Advance Sheets, 225 Md. 422 and 171 A. 2d 717.

JURISDICTION

The judgment of the Court of Appeals of Maryland was entered on June 8, 1961. The Respondent denies that 28 U.S.C.A., Section 1257(3) or Revised Rule 19 of this Honorable Court provides jurisdiction for consideration of the instant Petition for Writ of Certiorari.

QUESTION PRESENTED

The Respondent accepts the substance of the Petitioners' question but submits that it should be rephrased, to delete characterizations and conclusions, as follows:

May the State of Maryland, under a general statute prohibiting trespass on private property and on the complaint of the owner of a privately-owned and operated amusement park, convict persons who picket and enter upon such amusement park and who, after demand by the agent of the owner, refuse to leave such amusement park?

STATEMENT

This is a Petition for Writ of Certiorari to review the judgment of the Court of Appeals of Maryland affirming the conviction of the Petitioners for violation of the general statute prohibiting trespass on private property.

The Court of Appeals affirmed the conviction of these five Petitioners and reversed the conviction of five other persons in a companion case. The Court of Appeals distinguished between the two cases on the basis that these Petitioners had been duly notified by the agent of the owner to leave the private amusement park, whereas in the companion case the authority of the guard giving the notice was not established. Although the same guard gave the notice in both cases, the evidence in the companion case did not clearly establish that the guard was acting

on behalf of the concessionaire who operated the restaurant in the amusement park.

These Petitioners were a part of a group of about forty people who left the District of Columbia and entered the State of Maryland on June 30, 1960. The group proceeded to the area of the privately-owned amusement park for the purpose of protesting the park's known policy of admitting to the premises and providing service to white people only. See Appendix hereto (hereinafter referred to as "Apx."), pages 4 and 5. The group, including these five Petitioners, staged a picket line for an hour near the entrance to the amusement park, displaying prepared signs and placards which protested racial segregation (Apx. 5). After surreptitiously receiving tickets for amusements within the park (Apx. 4, 5), these five Petitioners left the picket line and entered the private property of the amusement park, placed themselves upon the carousel and refused to leave the premises when requested to do so by the park's agent (Apx. 2).

The park's agent at the time was Lieutenant Collins, who was an employee of the National Detective Agency, a private organization authorized to provide guard service to its clients. Under the State law such guards do not have police power. The public local laws authorized the particular county to deputize agents of the owners of private property and businesses for the purpose of permitting them to obtain police protection without cost to the taxpayers generally. Such special deputies are restricted in their authority to the premises of the applicant and do not have the county-wide authority of a regular deputy sheriff. Lieutenant Collins had been assigned under the guard contract between the National Detective Agency and the amusement park to be the senior guard with the title of lieutenant.

Lieutenant Collins wore the uniform of the National Detective Agency, his employer, and as guard on the private amusement park property, he was to execute the orders of the owner and operator as its agent. Under the instructions of the owner and operator, he arrested the Petitioners because they were trespassers (Apx. 3). The trespass incident caused a milling crowd to become disorderly (Apx. 2, 5).

In the companion case, which was reversed by the Court of Appeals of Maryland, two of the arrestees were white.

This is one of several actions, involving claims of civil rights against private property, which have been developed through the criminal and appellate courts of the states to be pressed upon the attention of this Honorable Court. Compare Respondent's *Motion to Dismiss or Affirm* in *Dale H. Drews v. State of Maryland*, No. 71, October Term, 1961.

ARGUMENT

This Petition Does Not Present Any Unique Factual Situation Nor Any Legal Proposition Which Has Not Been Fairly Included In Cases Recently Before This Honorable Court.

The proposition tendered by the Petitioners is essentially the same as the one presented originally in *Boynton v. Virginia*, 364 U.S. 454. The Petitioners in the *Boynton* case and the Solicitor General, by a brief *amicus curiae*, urged this Honorable Court to consider the same proposition which is again being tendered by these Petitioners, but this Honorable Court, in its wisdom, decided the case on another basis. Undoubtedly, this Honorable Court was following the concept contained in the last sentence in the recent dissent by Mr. Justice Harlan in *Burton v. Wilmington Parking Authority*, 365 U.S. 715.

"It seems to me both unnecessary and unwise to reach issues of such broad constitutional significance as those now decided by the Court, before the necessity for deciding them has become apparent."

Evidently, counsel for the Petitioners is not satisfied with the position taken by this Honorable Court in the *Boynton* case, since he quotes and urges again the arguments of the Solicitor General which this Honorable Court had previously considered and rejected.

The Petitioners refer to other applications for certiorari currently pending before this Honorable Court from Virginia, North Carolina and Louisiana. This curious condition tends to indicate that there is a concerted determination that this Honorable Court must continually be presented for decision each term the fringe questions in the field of civil rights and be vigorously pressed forward each year into new areas even prematurely. There has been no lack of opportunity in the last several years for this Honorable Court, if it had seen fit, to consider the question urged by the Petitioners. Compare *Wolfe v. North Carolina*, 364 U.S. 177; *Boynton v. United States*, 364 U.S. 454, *supra*; and *Burton v. Wilmington Parking Authority*, 365 U.S. 715, *supra*. The sudden appearance of many criminal cases involving claims of discrimination in the last several years is not consistent with normal coincidence. Compare *United States v. United Mine Workers of America*, 330 U.S. 258. It is pertinent to observe the comment of the trial Judge below in his oral opinion (A. 20):

"Why they didn't file a civil suit and test out the right of the Glen Echo Amusement Park Company to follow that policy is very difficult for this Court to understand, yet they chose to expose themselves to possible harm; to possible riots and to a breach of the peace."

To grant certiorari to these Petitioners, and perhaps to the petitioners in the other cases referred to by these Petitioners, is to encourage public violence and the use of the criminal law rather than the civil law for the location and determination of the extent of particular civil rights. The civil law should not be evolved in the criminal courts of the nation, and the creation of artificial crises should not be encouraged.

The Petitioners, in order to supply an air of uniqueness to their position, have somewhat distorted the evidence in the case in the trial court. The Petitioners continually refer to the private detective agency guard as "Deputy Sheriff Collins", whereas everyone in the trial court recognized his true status by referring to him as "Lieutenant". There is *nothing* in the record to support the assertion that Collins was hired by the amusement park for the *sole* purpose of excluding Negroes. The usual reason an owner or businessman engages uniformed guards is to maintain peace and to protect property from damage or theft. There is nothing in the record to indicate that Collins was hired for any other reason.

The Petitioners have conveniently overlooked the fact that the Court of Appeals reversed the companion case against *Greene* and others where the same guard gave the same instruction to leave the restaurant in the amusement park but where there was a failure in the record to clearly establish that Collins had the concessionaire's authority as private owner to give such a notice. The opinion of the Court of Appeals clearly indicates that Collins was not executing any State authority by virtue of his special deputy sheriff's commission but was acting solely as the agent of the private property owner in directing the Petitioners to leave the private amusement park premises. It will be noted that although Lieutenant Collins arrested

the Petitioners, nevertheless he went through the same procedure as any ordinary citizen in obtaining an arrest warrant from a justice of the peace for Montgomery County directed to the county superintendent of police (Record Extract, page 11).

It is difficult to reconcile the characterization that the private amusement park was open to the general public with the fact that these Petitioners admittedly believed the park to be restricted to white people, actually protested the supposed segregation policy by picketing prior to entry, surreptitiously obtained carousel tickets through white people and concede in their instant petition that the amusement park "has traditionally been patronized by white customers" on page 3.

The thrust of the Petitioners' argument is that the right of the owner of a private business to determine who his customers will be is lost whenever this discretion is based on his disinclination to serve a particular racial group and that the ordinary trespass law, which insures peaceful possession, is nugatory when the owner's motivation is based on race. The Petitioners seek to strip the private property owner of his right to determine his invitees and to relegate such owner to violent self-help, when the members of a race with whom he is not inclined to do business take the law into their own hands and trespass on his private property. Although the Petitioners have taken liberties with the record and have enjoyed excursions into the hearsay of newspapers, which were not admitted into evidence below, to theorize on the impact which the destruction of long-established private property law concepts might produce, nevertheless, the Petitioners have not indicated whether they should be entitled to have the State defend them while trespassing if the private owner should resort to violent self-help. A petition for a writ

of certiorari should be addressed to the law as it is and not to speculative theorizing as to what the law could be based on hearsay.

The Petitioners were not satisfied to raise their legal theories concerning the rights of a private property owner by a deliberative civil proceeding but took the law into their own hands and forced the issue into the criminal courts. The Petitioners refer to their trespass as *peaceable* but it is difficult to reconcile an invasion of another's private property against his known wish with the use of that word.

The Petitioners have referred to other cases which this Honorable Court has considered. In pertinent cases there has been a public ownership element. It was either a public school, a public recreational facility or a publicly-owned utility. The taxpayers, through the State or municipality, either owned or operated it or they profited from a lessee thereof. The public ownership element has been present in every case, from *Brown v. Board of Education of Topeka*, 344 U.S. 1 and 347 U.S. 483 to and including *Burton v. Wilmington Parking Authority*, 365 U.S. 715, *supra*. In the only case which involved private ownership this Honorable Court decided to consider the matter from a federal statutory aspect. *Boynnton v. Virginia*, 364 U.S. 454, *supra*.

The common law has been well settled that the owner or operator of a private enterprise has the right to select his clientele and to make such selection based on color if he so desires. A few of the noteworthy case are: *Madden v. Queens County Jockey Club*, 72 N.E. 2d 697, 698 (New York); *Terrell Wells Swimming Pool v. Rodriguez*, 182 S.W. 2d 824, 825 (Texas); *Younger v. Judah*, 19 S.W. 1109, 1111 (Missouri); *Goff v. Savage*, 210 P. 374 (Washington);

Garfinc v Monmouth Park Jockey Club, 1489.2d 1 (N.J.)

State v Clyburn 10152d (NC)
9

De La Ysla v. Publix Theatres Corporation, 26 P. 2d 818, 820 (Utah); *Horn v. Illinois Central Railroad*, 64 N.E. 2d 574, 578 (Illinois); *Coleman v. Middlestaff*, 305 P. 2d 1020, 1022 (California); *Fletcher v. Coney Island*, 136 N.E. 2d 344, 350 (Ohio); *Alpaugh v. Wolverton*, 36 S.E. 2d 906, 908 (Virginia); *Greenfeld v. Maryland Jockey Club*, 190 Md. 96, 102; *Good Citizens Assoc. v. Board*, 217 Md. 129, 131; *Drews v. State*, 224 Md. 186, 191, 193, 194; *Slack v. Atlantic White Tower System, Inc.*, 181 F. Supp. 124, 127; and *Williams v. Howard Johnson's Restaurant*, 268 F. 2d 845 (4th Circuit). *Griffin v Collins*]

att. 284 Fed 746

This Court has used language consistent in *Terminal Taxicab Co. v. Kutz*, 241 U.S. 252, 256, and *Boynton v. Virginia*, 364 U.S. 454, *supra*, where it stated that:

"We are not holding that every time a bus stops at a wholly independent roadside restaurant the Interstate Commerce Act requires that restaurant service be supplied in harmony with the provision of that Act."

The Petitioners are in the anomalous position of recognizing that the Congress of the United States cannot enact a federal equal rights statute under the Fourteenth Amendment (Civil Rights Cases, 109 U.S. 3), nevertheless asserting that this Honorable Court by judicial decision can accomplish the same result by now holding that the same Fourteenth Amendment created a new limitation on the use of private property as developed in the common law. For this proposition the Petitioners cite no authority.

CONCLUSION

The Petitioners' essential proposition is that a person cannot be convicted of trespass if the private owner's exclusion is based on racial discrimination. This same proposition was presented and urged by the Solicitor General

in the *Boynton* case, but this Honorable Court declined to decide the *Boynton* case on that issue. The same proposition has been available to the Court in several other recent cases. There is nothing new or unique about the Petitioners' proposition. This petition is addressed to a desire for legislative relief rather than support in existing law and is another phase of the concerted action to press for an immediate determination of a new front in the civil rights crusade.

The contention that violent self-help is the only remedy available to a private property owner or that the aggressive trespasser alone can receive State aid to preserve his asserted right presents little logic to a jurisprudence based on reconciling conflicting rights and developing peaceful remedies.

This petition for a writ of certiorari is premature as an abstract proposition and this Honorable Court has consistently recognized that the essence of this complaint does not involve a substantial federal question. This petition should be denied.

Respectfully submitted,

THOMAS B. FINAN,
Attorney General,

CLAYTON A. DIETRICH,
Assistant Attorney General,
1201 Mathieson Building,
Baltimore 2, Maryland,

For Respondent.

APPENDIX TO BRIEF IN OPPOSITION NO. 287

September 12, 1960

Vol. 1

(Transcript of testimony 6-7):

FRANCIS J. COLLINS, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified as follows, upon

DIRECT EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 18):

Q. During the five minute period that you testified to after you warned each of the five defendants to leave the park premises, what, if anything, did you do? A. I went to each defendant and told them that the time was up and that they were under arrest for trespassing. I then escorted them up to our office, with a crowd milling around there, to wait for transportation from the Montgomery County Police, to take them to Bethesda to swear out the warrants.

* * * * *

(T. 21):

CROSS EXAMINATION

By Mr. Duncan:

* * * * *

(T. 38-39):

Q. Lets take Mr. Washington, here on the end. Tell me the conversation you had with him at the time you arrested him and what he said to you. A. As far as I recall there was no conversation between any of us, only I told them

about the policy of the park and they answered me that they weren't going to leave the park.

* * * * *

(T. 42):

REDIRECT EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 48-49):

By Judge Pugh:

Q. Did these defendants have any other people with them? A. There was a large crowd around them from the carousel up to the office.

Mr. McAuliffe continues:

Q. And prior to the arrest, during this five minute interval that you gave them as a warning period, was there a crowd gathering at that time? A. Yes, sir.

Q. And what was the condition, or orderliness, of that crowd as it gathered there?

(Mr. Duncan) I object to that question, your Honor. Mr. Collins has testified that he arrested these persons for no other reason than that they were negroes, and gave them five minutes to get off the property.

Q. (Judge Pugh) Was there any disorder? A. It started a disorder because people started to heckling.

* * * * *

(T. 67):

ABRAM BAKER, a witness of lawful age, called for examination by counsel for the plaintiff, and having first been duly sworn, according to law, was examined and testified, upon

* * * * *

(T. 76):

CROSS EXAMINATION

By Mr. Duncan:

* * * * *

(T. 85):

Q. What did you mean when you told Lieutenant Collins to arrest white persons who came into the park property, if they were doing something wrong?

(Mr. McAuliffe) Objection.

(Judge Pugh) Read the question back. (Last question was read by the reporter.) Objection overruled.

A. Well if they were in the picket line and then ran out into the park and we told them to leave and they refused, why shouldn't you arrest them?

* * * * *

(T. 96):

REDIRECT EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 97):

Q. Did you instruct Lieutenant Collins that he was to arrest negroes because they were negroes, or because they were trespassing? A. Because they were trespassing.

* * * * *

(T. 98):

RECROSS EXAMINATION

By Mr. Duncan:

Q. Did you instruct Lieutenant Collins to arrest any other persons who trespassed, other than negroes? A. I went over that once before with you. I told him if they came out of that picket line to come on to the property, to give them due notice and to arrest them if they didn't leave; white or colored.

* * * * *

APX. 4

(T. 110):

KAY FREEMAN,

a witness of lawful age, called for examination by counsel for the defendants, and having first been duly sworn, according to law, was examined and testified as follows, upon

DIRECT EXAMINATION

By Mr. Duncan:

* * * * *

Q. Prior to the time they were arrested, did they have tickets to ride on any of the rides? A. We all had tickets.

Q. Where did you acquire these tickets? A. They were given to us by friends.

Q. White friends? A. Yes.

Q. And they had made the purchase? A. That is right.

* * * * *

(T. 113):

CROSS EXAMINATION

By Mr. McAuliffe:

* * * * *

(T. 114-115):

Q. Did you go out with these five defendants? A. Yes.

Q. Did you go out with any others? A. Yes.

Q. How many? A. Thirty-five or forty.

Q. And you all expected to use the facilities there at Glen Echo Park, in accordance with those advertisements?
A. I expected to use them.

Q. Did you have any signs with you when you went out there? A. Yes.

Q. What did these signs say? A. They protested the segregation policy that we thought might exist out there.

* * * * *

APX. 5

Q. Did these five defendants have signs? A. I don't know. I think we all had signs, at one time or another.

* * * * *

(T. 116):

Q. What did these five defendants do and other persons do? A. We had a picket line.

* * * * *

Q. Why did you do that if you didn't know the park was segregated? A. Because we thought it was segregated.

* * * * *

(T. 118):

Q. Now you say after you got on the park property, tickets were given you by some white friends; is that right? A. That is right.

* * * * *

(T. 120):

Q. Was there a crowd around there? A. Yes.

Q. Did you hear any heckling? A. Yes.

* * * * *

(T. 123):

Q. How long did you march in this definite circle, with these five defendants, with these signs, protesting the park's segregation policy, before the five defendants and you entered Glen Echo Park? A. I don't know.

Q. Would you give us your best estimate on that, please? A. Maybe an hour or maybe longer.

* * * * *

(T. 125):

EXAMINATION BY THE COURT

By Judge Pugh:

Q. Was the heckling a loud noise? A. Yes.

Q. How many people were in it? A. I don't know, but the merry-go-round was almost surrounded.

* * * * *

APX. 6

(T. 126):

Q. Why didn't you go with one or two people, instead of forty? What was the idea of going out there in large numbers? A. There was a possibility that it was segregated.

Q. Well you all anticipated that there would be some trouble; didn't you? A. Yes.

* * * * *

SUPREME COURT OF THE UNITED STATES

No. 32.—OCTOBER TERM, 1960.

C. G. Gomillion, et al., Petitioners, v. Phil M. Lightfoot, as Mayor of the City of Tuskegee, et al.	} On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
---	---

[November 14, 1960.]

MR. JUSTICE FRANKFURTER delivered the opinion of the Court.

This litigation challenges the validity, under the United States Constitution, of Local Act No. 140, passed by the Legislature of Alabama in 1957, redefining the boundaries of the City of Tuskegee. Petitioners, Negro citizens of Alabama who were, at the time of this redistricting measure, residents of the City of Tuskegee, brought an action in the United States District Court for the Middle District of Alabama for a declaratory judgment that Act 140 is unconstitutional, and for an injunction to restrain the Mayor and officers of Tuskegee and the officials of Macon County, Alabama, from enforcing the Act against them and other Negroes similarly situated. Petitioners' claim is that enforcement of the statute, which alters the shape of Tuskegee from a square to an uncouth twenty-eight-sided figure, will constitute a discrimination against them in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution and will deny them the right to vote in defiance of the Fifteenth Amendment.

The respondents moved for dismissal of the action for failure to state a claim upon which relief could be granted and for lack of jurisdiction of the District Court. The

court granted the motion, stating, "This Court has no control over, no supervision over, and no power to change any boundaries of municipal corporations fixed by a duly convened and elected legislative body, acting for the people in the State of Alabama." 167 F. Supp. 405, 410. On appeal, the Court of Appeals for the Fifth Circuit, affirmed the judgment, one judge dissenting. 270 F. 2d 594. We brought the case here since serious questions were raised concerning the power of a State over its municipalities in relation to the Fourteenth and Fifteenth Amendments. 362 U. S. 916.

At this stage of the litigation we are not concerned with the truth of the allegations, that is, the ability of petitioners to sustain their allegations by proof. The sole question is whether the allegations entitle them to make good on their claim that they are being denied rights under the United States Constitution. The complaint, charging that Act 140 is a device to disenfranchise Negro citizens, alleges the following facts: Prior to Act 140 the City of Tuskegee was square in shape; the Act transformed it into a strangely irregular twenty-eight-sided figure as indicated in the diagram appended to this opinion. The essential inevitable effect of this redefinition of Tuskegee's boundaries is to remove from the city all save only four or five of its 400 Negro voters while not removing a single white voter or resident. The result of the Act is to deprive the Negro petitioners discriminatorily of the benefits of residence in Tuskegee, including *inter alia*, the right to vote in municipal elections.

These allegations, if proven, would abundantly establish that Act 140 was not an ordinary geographic redistricting measure even within familiar abuses of gerrymandering. If these allegations upon a trial remained uncontradicted or unqualified, the conclusion would be irresistible, tantamount for all practical purposes to a mathematical demonstration, that the legislation is solely

concerned with segregating white and colored voters by fencing Negro citizens out of town so as to deprive them of their pre-existing municipal vote.

It is difficult to appreciate what stands in the way of adjudging a statute having this inevitable effect invalid in light of the principles by which this Court must judge, and uniformly has judged, statutes that, howsoever speciously defined, obviously discriminate against colored citizens. "The [Fifteenth] Amendment nullifies sophisticated as well as simple-minded modes of discrimination." *Lane v. Wilson*, 307 U. S. 268, 275.

The complaint amply alleges a claim of racial discrimination. Against this claim the respondents have never suggested, either in their brief or in oral argument, any countervailing municipal function which Act 140 is designed to serve. The respondents invoke generalities expressing the State's unrestricted power—unlimited, that is, by the United States Constitution—to establish, destroy, or reorganize by contraction or expansion its political subdivisions, to wit, cities, counties, and other local units. We freely recognize the breadth and importance of this aspect of the State's political power. To exalt this power into an absolute is to misconceive the reach and rule of this Court's decisions in the leading case of *Hunter v. Pittsburgh*, 207 U. S. 161, and related cases relied upon by respondents.

The *Hunter* case involved a claim by citizens of Allegheny, Pennsylvania, that the General Assembly of that State could not direct a consolidation of their city and Pittsburgh over the objection of a majority of the Allegheny voters. It was alleged that while Allegheny already had made numerous civic improvements, Pittsburgh was only then planning to undertake such improvements, and that the annexation would therefore greatly increase the tax burden on Allegheny residents. All that the case held was (1) that there is no implied

contract between a city and its residents that their taxes will be spent solely for the benefit of that city, and (2) that a citizen of one municipality is not deprived of property without due process of law by being subjected to increased tax burdens as a result of the consolidation of his city with another. Related cases, upon which the respondents also rely, such as *Trenton v. New Jersey*, 262 U. S. 182; *Pawhuska v. Pawhuska Oil Co.*, 250 U. S. 394; and *Laramie County v. Albany County*, 92 U. S. 307, are far off the mark. They are authority only for the principle that no constitutionally protected contractual obligation arises between a State and its subordinate governmental entities solely as a result of their relationship.

In short, the cases that have come before this Court regarding legislation by States dealing with their political subdivisions fall into two classes: (1) those in which it is claimed that the State, by virtue of the prohibition against impairment of the obligation of contract (Art. I, § 10) and of the Due Process Clause of the Fourteenth Amendment, is without power to extinguish, or alter the boundaries of, an existing municipality; and (2) in which it is claimed that the State has no power to change the identity of a municipality whereby citizens of a pre-existing municipality suffer serious economic disadvantage.

Neither of these claims is supported by such a specific limitation upon State power as confines the States under the Fifteenth Amendment. As to the first category, it is obvious that the creation of municipalities—clearly a political act—does not come within the conception of a contract under the *Dartmouth College* case. 4 Wheat. 518. As to the second, if one principle clearly emerges from the numerous decisions of this Court dealing with taxation it is that the Due Process Clause affords no immunity against mere inequalities in tax burdens, nor does it afford protection against their increase as an indirect consequence of a State's exercise of its political powers.

Particularly in dealing with claims under broad provisions of the Constitution, which derive content by an interpretive process of inclusion and exclusion, it is imperative that generalizations, based on and qualified by the concrete situations that gave rise to them, must not be applied out of context in disregard of variant controlling facts. Thus, a correct reading of the seemingly unconfined dicta of *Hunter* and kindred cases is not that the State has plenary power to manipulate in every conceivable way, for every conceivable purpose, the affairs of its municipal corporations, but rather that the State's authority is unrestrained by the particular prohibitions of the Constitution considered in those cases.

The *Hunter* opinion itself intimates that a state legislature may not be omnipotent even as to the disposition of some types of property owned by municipal corporations, 207 U. S., at 178-181. Further, other cases in this Court have refused to allow a State to abolish a municipality, or alter its boundaries, or merge it with another city, without preserving to the creditors of the old city some effective recourse for the collection of debts owed them. *Shapleigh v. San Angelo*, 167 U. S. 646; *Mobile v. Watson*, 116 U. S. 289; *Mount Pleasant v. Beckwith*, 100 U. S. 514; *Broughton v. Pensacola*, 93 U. S. 266. For example, in *Mobile v. Watson* the Court said:

“Where the resource for the payment of the bonds of a municipal corporation is the power of taxation existing when the bonds were issued, any law which withdraws or limits the taxing power and leaves no adequate means for the payment of the bonds is forbidden by the Constitution of the United States, and is null and void.” *Mobile v. Watson*, *supra*, 116 U. S., at 305.

This line of authority conclusively shows that the Court has never acknowledged that the States have power to do as they will with municipal corporations regardless of

consequences. Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution. The observation in *Graham v. Folsom*, 200 U. S. 248, 253, becomes relevant: "The power of the State to alter or destroy its corporations is not greater than the power of the State to repeal its legislation." In that case, which involved the attempt by state officials to evade the collection of taxes to discharge the obligations of an extinguished township, Mr. Justice McKenna, writing for the Court, went on to point out, with reference to the *Mount Pleasant* and *Mobile* cases:

"It was argued in those cases, as it is argued in this, that such alteration or destruction of the subordinate governmental divisions was a proper exercise of legislative power, to which creditors had to submit. The argument did not prevail. It was answered, as we now answer it, that such power, extensive though it is, is met and overcome by the provision of the Constitution of the United States which forbids a State from passing any law impairing the obligation of contracts. . . ." 200 U. S., at 253-254.

If all this is so in regard to the constitutional protection of contracts, it should be equally true that, to paraphrase, such power, extensive though it is, is met and overcome by the Fifteenth Amendment to the Constitution of the United States, which forbids a State from passing any law which deprives a citizen of his vote because of his race. The opposite conclusion, urged upon us by respondents, would sanction the achievement by a State of any impairment of voting rights whatever so long as it was cloaked in the garb of the realignment of political subdivisions. "It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence." *Frost & Frost Trucking Co. v. Railroad Commission of California*, 271 U. S. 583, 594.

The respondents find another barrier to the trial of this case in *Colegrove v. Green*, 328 U. S. 549. In that case the Court passed on an Illinois law governing the arrangement of congressional districts within that State. The complaint rested upon the disparity of population between the different districts which rendered the effectiveness of each individual's vote in some districts far less than in others. This disparity came to pass solely through shifts in population between 1901, when Illinois organized its congressional districts, and 1946, when the complaint was lodged. During this entire period elections were held under the districting scheme devised in 1901. The Court affirmed the dismissal of the complaint on the ground that it presented a subject not meet for adjudication.* The decisive facts in this case, which at this stage must be taken as proved, are wholly different from the considerations found controlling in *Colegrove*.

That case involved a complaint of discriminatory apportionment of congressional districts. The appellants in *Colegrove* complained only of a dilution of the strength of their votes as a result of legislative inaction over a course of many years. The petitioners here complain that affirmative legislative action deprives them of their votes and the consequent advantages that the ballot affords. When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment. In no case involving unequal weight in voting distribution that has come before the Court did the decision sanction a differentiation on racial lines whereby approval was given to unequivocal withdrawal of the vote solely from colored citizens. Apart from all else, these considerations lift this

*Soon after the decision in the *Colgrove* case, Governor Dwight H. Green of Illinois in his 1947 biennial message to the legislature recommended a reapportionment. The legislature immediately responded, 1947 Ill. Sess. Laws, p. 879, and in 1951 redistricted again. 1951 Ill. Sess. Laws, p. 1924.

controversy out of the so-called "political" arena and into the conventional sphere of constitutional litigation.

In sum, as Mr. Justice Holmes remarked, when dealing with a related situation, in *Nixon v. Herndon*, 273 U. S. 536, 540, "Of course the petition concerns political action," but "The objection that the subject matter of the suit is political is little more than a play upon words." A statute which is alleged to have worked unconstitutional deprivations of petitioners' rights is not immune to attack simply because the mechanism employed by the legislature is a redefinition of municipal boundaries. According to the allegations here made, the Alabama Legislature has not merely redrawn the Tuskegee city limits with incidental inconvenience to the petitioners; it is more accurate to say that it has deprived the petitioners of the municipal franchise and consequent rights and to that end it has incidentally changed the city's boundaries. While in form this is merely an act redefining metes and bounds, if the allegations are established, the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of their therefore enjoyed voting rights. That was not *Colegrove v. Green*.

When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right. This principle has had many applications. It has long been recognized in cases which have prohibited a State from exploiting a power acknowledged to be absolute in an isolated context to justify the imposition of an "unconstitutional condition." What the Court has said in those cases is equally applicable here, *viz.*, that "Acts generally lawful may become unlawful when done to accomplish an unlawful end, *United States v. Reading Co.*, 226 U. S. 324, 357, and a constitutional power cannot be used by way of condition to attain an

unconstitutional result." *Western Union Telegraph Co. v. Foster*, 247 U. S. 105, 114. The petitioners are entitled to prove their allegations at trial.

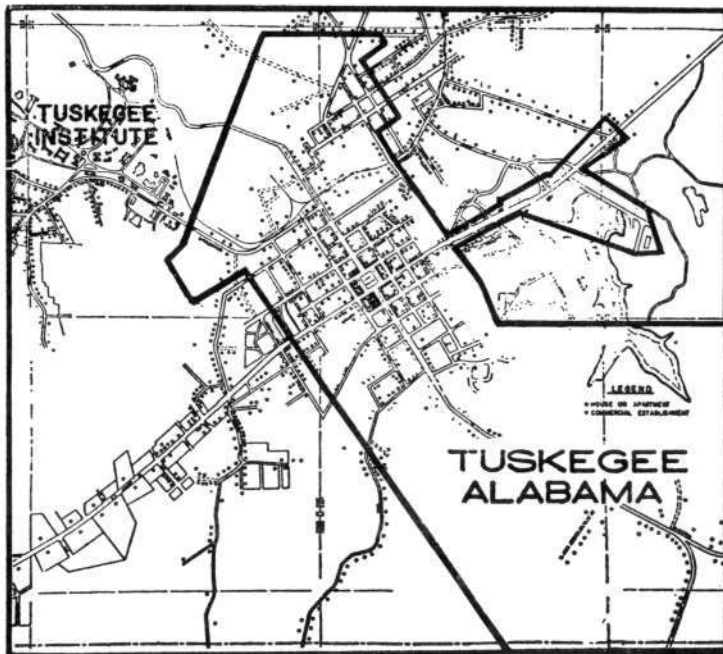
For these reasons, the principal conclusions of the District Court and the Court of Appeals are clearly erroneous and the decision below must be

Reversed.

MR. JUSTICE DOUGLAS, while joining the opinion of the Court, adheres to the dissents in *Colegrove v. Green*, 328 U. S. 549, and *South v. Peters*, 339 U. S. 276.

APPENDIX.

CHART SHOWING TUSKEGEE, ALABAMA, BEFORE AND AFTER ACT 140



(The entire area of the square comprised the city prior to Act 140. The irregular black-bordered figure within the square represents the post-enactment city.)

SUPREME COURT OF THE UNITED STATES

No. 32.—OCTOBER TERM, 1960.

C. G. Gomillion, et al., Petitioners, v. Phil M. Lightfoot, as Mayor of the City of Tuskegee, et al.	} On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.
---	---

[November 14, 1960.]

MR. JUSTICE WHITTAKER, concurring.

I concur in the Court's judgment, but not in the whole of its opinion. It seems to me that the decision should be rested not on the Fifteenth Amendment, but rather on the Equal Protection Clause of the Fourteenth Amendment to the Constitution. I am doubtful that the averments of the complaint, taken for present purposes to be true, show a purpose by Act 140 to abridge petitioner's "right . . . to vote," in the Fifteenth Amendment sense. It seems to me that the "right . . . to vote" that is guaranteed by the Fifteenth Amendment is but the same right to vote as is enjoyed by all others within the same election precinct, ward or other political division. And, inasmuch as no one has the right to vote in a political division, or in a local election concerning only an area in which he does not reside, it would seem to follow that one's right to vote in Division A is not abridged by a redistricting that places his residence in Division B *if* he there enjoys the same voting privileges as all others in that Division, even though the redistricting was done by the State for the purpose of placing a racial group of citizens in Division B rather than A.

But it does seem clear to me that accomplishment of a State's purpose—to use the Court's phrase—of "fencing

Negro citizens out of" Division A and into Division B is an unlawful segregation of races of citizens, in violation of the Equal Protection Clause of the Fourteenth Amendment, *Brown v. Board of Education*, 347 U. S. 483; *Cooper v. Aaron*, 358 U. S. 1; and, as stated, I would think the decision should be rested on that ground—which, incidentally, clearly would not involve, just as the cited cases did not involve, the *Colegrove* problem.

Kress

Office-Supreme Court, U.S.
FILED
DEC 31 1960
JAMES R. BROWNING, Clerk

IN THE
Supreme Court of the United States
October Term, 1960
No. **619**

air hat

JANNETTE HOSTON, *et al.*,
Petitioners,

—v.—

STATE OF LOUISIANA.

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF LOUISIANA**

A. P. TUREAUD
1821 Orleans Avenue
New Orleans, Louisiana

JOHNNIE A. JONES
Baton Rouge, Louisiana

THURGOOD MARSHALL
JACK GREENBERG
10 Columbus Circle
New York 19, New York

Attorneys for Petitioners

WILLIAM COLEMAN, JR.
LOUIS H. POLLAK
ELWOOD H. CHISOLM
JAMES M. NABRIT, III
Of Counsel

INDEX

	PAGE
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statutory and Constitutional Provisions Involved	3
Statement	4
How the Federal Questions Are Presented	7
Reasons for Granting the Writ	11
I. The Decision Below Conflicts With Decisions of This Court on Important Issues Affecting Federal Constitutional Rights	11
II. The Public Importance of the Issues Pre- sented	27
Conclusion	30

TABLE OF CASES

Barrows v. Jackson, 346 U.S. 249	20
Boman v. Birmingham Transit Co., 280 F.2d 531 (5th Cir., 1960)	21
Boynton v. Virginia, — U.S. —, 5 L. Ed. 2d 206	20
Briggs et al. v. State of Arkansas (Sup. Ct. of Arkan- sas, No. 4992)	28
Briscoe v. State of Texas (Court of Crim. App., 1960, No. 32347)	28
Brown v. Board of Education, 347 U.S. 483	26, 29

	PAGE
Buchanan v. Warley, 245 U.S. 60	19
Burstyn v. Wilson, 343 U.S. 495	23
Cantwell v. Connecticut, 310 U.S. 296	17, 24, 25
City of Charleston v. Mitchell, et al. (Ct. of Gen. Sess. for Charleston County)	28
City of Columbia v. Bouie, et al. (Ct. of Gen. Sess. for Richland County)	28
Civil Rights Cases, 109 U.S. 3	20
Cole v. City of Montgomery (Ct. of App. Ala., 3rd Div. Case No. 57)	28
Connally v. General Const. Co., 269 U.S. 385	17
Cooper v. Aaron, 358 U.S. 1	20
Evers v. Dwyer, 358 U.S. 202	19
Freeman v. Retail Clerks Union, 45 Lab. Rel. Ref. Man. 2334 (Wash. Super. Ct., 1959)	24
Gayle v. Browder, 352 U.S. 903	19
Gibson v. Mississippi, 162 U.S. 565	18
Griffin, et al. v. Collins, et al., 187 F. Supp. 149 (D.C. D. Md. 1960)	28
Griffin, et al. v. State of Maryland (Ct. of App. of Md., No. 248, Sept. Term 1960)	28
Herndon v. Lowry, 301 U.S. 242	17
Holmes v. City of Atlanta, 350 U.S. 879	19
King v. State of Georgia (Ga. Ct. of App. Nos. 38648, 38718)	28
Lanzetta v. New Jersey, 306 U.S. 451	17
Lupper v. State of Arkansas (Sup. Ct. of Arkansas, No. 4997)	28

	PAGE
Marsh v. Alabama, 326 U.S. 501	20, 24
Martin v. Struthers, 319 U.S. 141	23
Munn v. Illinois, 94 U.S. 113	24
N.A.A.C.P. v. Alabama, 357 U.S. 449	23
Napue v. Illinois, 360 U.S. 264	12
National Labor Relations Board v. Babcock and Wilcox Co., 351 U.S. 105	24
Niemotko v. Maryland, 340 U.S. 268	12
Norris v. Alabama, 294 U.S. 587	12
Orleans Parish School Board v. Bush, 242 F.2d 156 (5th Cir. 1957), cert. denied 354 U.S. 921	29
People v. Barisi, 193 Misc. 934, 86 N.Y.S.2d 277 (1948)	24
Raley v. Ohio, 360 U.S. 423	17
Randolph v. Commonwealth of Va. (Sup. Ct. of App. Va., No. 5233, 1960)	28
Republic Aviation Corp. v. National Labor Relations Board, 324 U.S. 793	24
Schenck v. United States, 249 U.S. 47	26
Scull v. Virginia, 359 U.S. 344	17
Shelley v. Kraemer, 334 U.S. 1	20
Smith v. State of Arkansas (Sup. Ct. of Arkansas, No. 4994)	28
Spano v. New York, 360 U.S. 315	12
State Athletic Commission v. Dorsey, 359 U.S. 533 ..	19, 26, 29
State of N. C. v. Fox and Sampson (No. 442, Supreme Court, Fall Term 1960)	28
State v. Randolph, et al. (Ct. of Gen. Sess. for Sumter County)	28
State v. Sanford, 203 La. 961, 14 So. 2d 778 (1943)	15
Stromberg v. California, 283 U.S. 359	23

	PAGE
Terminiello v. Chicago, 337 U.S. 1	25
Thompson v. City of Louisville, 362 U.S. 199	11, 13, 14
Thornhill v. Alabama, 310 U.S. 88	23
Town of Pontchatoula v. Bates, 173 La. 824, 138 So. 851 (1931)	11, 15
United States v. L. Cohen Grocery, 255 U.S. 81	17
United Steelworkers v. National Labor Relations Board, 243 F.2d 593 (D.C. Cir., 1956)	24
Watkins v. United States, 354 U.S. 178	17
Wieman v. Updegraff, 344 U.S. 183	17
Winters v. New York, 333 U.S. 507	17
Yick Wo v. Hopkins, 118 U.S. 356	19
 STATUTES:	
28 U.S.C. §1257(3)	1
La. Constitution (1921), Article 7, §10	11
LSA—R.S. §14-103	4, 14

OTHER AUTHORITIES

Pollitt, "Dime Store Demonstrations: Events and Legal Problems of the First Sixty Days," 1960 <i>Duke Law Journal</i> 315 (1960)	27
<i>New York Times</i> , August 11, 1960, p. 14, col. 5 (late city edition)	27
<i>New York Times</i> , Oct. 18, 1960, p. 47, col. 5 (late city edition)	27

IN THE
Supreme Court of the United States

October Term, 1960

No.

JANNETTE HOSTON, *et al.*,

Petitioners,

—v.—

STATE OF LOUISIANA

**PETITION FOR WRIT OF CERTIORARI TO THE
SUPREME COURT OF LOUISIANA**

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court of Louisiana entered in the above-entitled case on October 5, 1960.

Citations to Opinions Below

The opinions below are not reported. The Nineteenth Judicial District Court, State of Louisiana, Parish of East Baton Rouge, rendered an oral opinion which is set forth in the Statement, *infra*, page 6. The Supreme Court of Louisiana entered a brief handwritten opinion which is also set forth, *infra*, pages 10-11.

Jurisdiction

The judgment of the Supreme Court of Louisiana was entered on October 5, 1960. The jurisdiction of this Court is invoked under 28 U.S.C., §1257(3), petitioners claiming rights, privileges and immunities under the Fourteenth Amendment to the Constitution of the United States.

Questions Presented

Petitioners, Negro students, sat down and sought food service at a lunch counter which served only white people in a public establishment which welcomed their trade without racial discrimination at all counters but that lunch counter; for this they were arrested and convicted under the provisions of a law proscribing conduct "in such a manner as to unreasonably disturb or alarm the public"; and there was no evidence of any disorder, disturbance of the peace, or public alarm. Under the circumstances, were petitioners deprived of rights protected by the:

1. due process clause of the Fourteenth Amendment in that they were convicted on a record barren of any evidence of guilt;

2. due process clause of the Fourteenth Amendment in that they were convicted under a penal provision which was so indefinite and vague as to afford no ascertainable standard of criminality;

3. due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution in that they were arrested and convicted to enforce racial discrimination;

4. due process clause of the Fourteenth Amendment, as that clause incorporates First Amendment type protection of liberty of expression?

Statutory and Constitutional Provisions Involved

1. The Fourteenth Amendment to the Constitution of the United States.

2. The Louisiana statutory provision involved is LSA-R.S. 14:103:

“Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

(1) Engaging in a fistic encounter; or

(2) Using of any unnecessarily loud, offensive, or insulting language; or

(3) Appearing in an intoxicated condition; or

(4) Engaging in any act in a violent and tumultuous manner by three or more persons; or

(5) Holding of an unlawful assembly; or

(6) Interruption of any lawful assembly of people;
or

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public.

Whoever commits the crime of disturbing the peace shall be fined not more than one hundred dollars, or imprisoned for not more than ninety days, or both.”

Statement

This is one of three petitions¹ filed here this day involving cases decided on identical grounds by the Supreme Court of Louisiana on October 5, 1960. The questions presented are identical and the factual situations from which they stem are in relevant particulars almost entirely the same. In each criminal prosecution, the State of Louisiana, initially acting through Captail Robert Weiner of the Baton Rouge City Police and other police officials including, on one occasion a major of the police and on another occasion the Chief, arrested petitioners, who were students at Southern University, for violating a state statute, LSA-R.S. 14:103(7), which makes criminal "any other act" committed "in such a manner as to unreasonably disturb or alarm the public." Petitioners in each case, respectively, merely requested nonsegregated service at three different public lunch counters in stores where otherwise they were welcome as customers. No disturbances in fact occurred in any of the three cases. Petitioners in each case were tried on criminal informations which disclosed their race and were convicted and sentenced to imprisonment of four months, three month of which might be suspended upon payment of a fine of \$100.00 and costs.

On March 28, 1960 petitioners in the instant case, Negro students at Southern University (RT 1, 2),² were present as customers in Kress's store in Baton Rouge. It is "cus-

¹ The other two petitions seek review of the following decisions of the Supreme Court of Louisiana; *State of Louisiana v. John B. Garner, et al.*, Nos. 45,214 and 45,338; *State of Louisiana v. Mary Briscoe, et al.*, Nos. 45,336 and 45,212.

² "RT" refers to the trial record and application for review thereof. "RQ" refers to the record on the motion to quash and application for review thereof.

tomary that white and colored [persons] all come into Kréss[']s Store and make other purchases at the same counters at the same time" (RT 13), but Kress in Baton Rouge maintains separate lunch counter facilities for Negroes and whites (RT 12). "That's the custom of [the] store" (RT 17). There were no signs indicating it (RT 14), but the store's rule requiring racial segregation at the lunch counter was said to have been communicated to petitioners by the waitresses and stewards (RT 14). The manager stated that petitioners should have known of it by customs and by noticing "that the colored people were being served at the counter across the store" (RT 14).

Petitioners did not "do anything other than sit at this cafe counter seat that [the manager] would consider would be disturbing the peace" (RT 15).

In this case, as in the *Briscoe* and *Garner* cases filed this day, petitioners were arrested by Captain Weiner of the Baton Rouge police (RT 18). On this occasion he was accompanied by the Chief of Police who ordered the arrests (RT 18).

Captain Weiner was asked (RT 19) :

"Did these defendants do anything other than sit at these particular cafe counter seats that you would consider disturbing the peace or in violation of any law?"

He replied (RT 20) :

"Well, other than the fact that one of them mentioned something about the ice water nothing else was said."

* * * * *

"Q. How were they disturbing the peace. A. By sitting there.

"Q. By sitting there? A. That's right.

* * * * *

"Q. And that is because they were members of the negro race? A. That was because that place was reserved for white people."

The informations filed against petitioners disclosed their race by the notation "(CF)" or "(CM)," (RT 1, 2), i.e., colored female or colored male.

After motions to quash and assertions of various constitutional defenses under the Fourteenth Amendment to the Constitution of the United States, set forth in detail *infra*, pages 7-9, a trial was had and on the evidence set forth above petitioners were convicted. Following the close of the testimony, the trial judge rendered an oral opinion (RT 22-23):

"The evidence in this case put on by the State is not disputed and it is to this effect, that these accused were in Kress' store in Baton Rouge on the date alleged in the bill of information and that they took seats at the lunch counter which by custom had been reserved for white people only. They were advised by an employee of that store, or by the manager, that they would be served over at the other counter which was reserved for colored people. They did not accept that invitation; they remained seated at the counter which by custom had been reserved for white people. The officers were called and the officers talked to these accused, or some of them, and the defendants continued to remain seated at this particular counter. That testimony is uncontradicted, and, in the opinion of the Court, the action of these accused on this occasion was a violation of Louisiana Revised Statutes, Title 14, Section 103, Article 7, in that the act in itself, their

sitting there and refusing to leave when requested to, was an act which foreseeably could alarm and disturb the public, and therefore was a violation of the Statute that I have just mentioned. I, accordingly, find each and every one of them guilty as charged, having been convinced beyond a reasonable doubt of their guilt."

Motion for new trial was made and denied. Application for writs of certiorari, mandamus and prohibition was filed in the Supreme Court of Louisiana and denied (RT 37). Application for stay of execution for 60 days was granted by the Chief Justice of the Louisiana Supreme Court on October 7, 1960, which was later extended until January 6, 1961.

How the Federal Questions Are Presented

The federal questions sought to be reviewed here were raised in the court of first instance (the Nineteenth Judicial District Court, Division A) on April 27, 1960, by petitioners' timely motion to quash the information (RQ 7-10). In this motion, aside from variously alleging that the information charged no offense under Louisiana's "disturbing the peace" statute, petitioners averred (RQ 8):

5. That if said Statute, LSA-R. S. 14:103 of 1950, as amended, does embrace within its terms and meanings that "the defendants' mere refusal to move from a cafe counter seat when ordered to do so by an agent or any other person or persons of the said Kress' Store constitutes a disturbance of the peace," then, and in that event said Statute, LSA-R. S. 14:103, is unconstitutional, in that, it deprives your defendants of their privileges, immunities and/or liberties, without due process of law and denies them the equal protection of the laws guaranteed by the Fourteenth (14th)

Amendment to the Constitution of the United States of America.

6. That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which defendants engaged to protest segregation, and that the use of the criminal process in such a situation denies and deprives the defendants of their rights, privileges, immunities and liberties guaranteed your defendants, each, citizens of the United States, by the Fourteenth (14th) Amendment to the Constitution of the United States of America.

The motion was argued, submitted and denied on April 29, 1960, to which ruling petitioners objected, reserved a formal bill of exceptions and gave written notice of their intention to apply to the State Supreme Court for writs of certiorari, mandamus and prohibition (RQ 12, 14). The bill of exceptions was signed by the trial judge on May 6 (RQ 16) and this application, which was presented to the Supreme Court of Louisiana on the same day (RQ 17-21), urged (RQ 18, 19):

3. That while the arrests and charges were for "DISTURBING THE PEACE," there was not a disturbance of the peace, except for the activity in which relators engaged to protest racial segregation and that the use of the criminal process in such a situation denies and deprives the relators of their rights, privileges, immunities and liberties guaranteed to them, each, citizens of the United States, by the Fourteenth Amendment to the Constitution of the United States of America.

4. That the refusal of your relators to move from a cafe counter seat at Kress' Store in obedience of an order by an agent thereof is not a crime em-

braced within the terms and meanings of LSA-R. S. 14:103(7) of 1950, as amended, and if said act is a crime within the terms and meaning of said Statute, then and in that event, said Statute is sufficiently vague to render it unconstitutional on its face, thus, depriving your relators of their rights, privileges, immunities and/or liberties without due process of law and denies them the equal protection of the law guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

* * * * *

6. That, thus, the relief which your relators seek herein under the Application for Writs of Certiorari, Mandamus and Prohibition, should be granted by this Honorable Court, in that the Statute and Bill of Information under which your relators are charged, both, are insufficient to charge a crime, otherwise your relators be deprived of due process of law and the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

This application for writs of certiorari, mandamus and prohibition was denied on May 9 with a notation that "Relators have an adequate remedy under our Supervisory Jurisdiction in the event of a conviction" (RQ 27). Thereafter, petitioners applied for and were summarily denied a rehearing on May 24 (RQ 28-29, 32).

Petitioners' case came on for trial on June 2, 1960, at which time their counsel stated for the record that "he would like to renew all reservations and motions previously filed, all notices previously given, and all bills of exceptions previously taken" (RT 4).

Petitioners were found "guilty as charged" (RT 3) and, on June 5, they filed a motion for new trial which alleged, *inter alia* (RT 29):

That the said verdict is contrary to the law and evidence in that it is repugnant to and in violation of Article 1, Sections 2 and 3 of the Constitution of Louisiana of 1921, and also repugnant to and in violation of the First and Fourteenth Amendments to the Constitution of the United States; that said verdict deprives the said defendants of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the law as guaranteed by the provisions of the Constitution of the State of Louisiana and of the United States of America, respectively.

This motion was denied (RT 4) and petitioners filed forthwith a bill of exceptions, renewing all reservations, motions and bills of exceptions previously taken (RT 6-7).

Thereafter, on July 19, 1960, petitioners applied to the Supreme Court of the State for writs of certiorari, prohibition and mandamus (RT 24-27) which incorporated by reference their previous applications for such writs (RT 24) and also urged that the verdict and sentence of the trial court "are repugnant to and in violation of . . . the First and Fourteenth Amendments to the Constitution of the United States, depriving relators of their freedom of speech, liberties, privileges, immunities, due process and equal protection of the laws as constitutionally guaranteed all citizens of Louisiana and of the United States" (RT 25).

The Supreme Court of Louisiana denied this application on October 5, 1960, stating (RT 37):

Writs refused.

This Court is without jurisdiction to review facts in criminal cases. See Art. 7, Sec. 10, La. Constitution of 1921.

The rulings of the district judges on matters of law are not erroneous. See *Town of Pontchatoula v. Bates*, 173 La., 824, 138 So., 851.

Reasons for Granting the Writ

I.

The Decision Below Conflicts With Decisions of This Court on Important Issues Affecting Federal Constitutional Rights.

- A. The decision below affirms a criminal conviction based upon no evidence of guilt and, therefore, conflicts with this Court's decision in *Thompson v. City of Louisville*, 362 U. S. 199.**

The trial court reached the following conclusion on the evidence presented at trial, which is detailed in the Statement of Facts, *supra*:

“That testimony is uncontradicted, and, in the opinion of the Court, the action of these accused on this occasion was a violation of Louisiana Revised Statutes, Title 14, Section 103, Article 7, in that the act in itself, their sitting there and refusing to leave when requested to, was an act which foreseeably could alarm and disturb the public, and therefore was a violation of the Statute that I have just mentioned. I, accordingly, find each and every one of them guilty as charged, having been convinced beyond a reasonable doubt of their guilt” (RT 22-23).

It is submitted that none of the evidence presented affords any basis for this conclusion and determination of

guilt, if any conventional meaning is given to the words of the statute.³

It will be noted that there is no finding that petitioners' actions did in fact disturb or alarm the public, but only that they "foreseeably *could* alarm and disturb the public." The Supreme Court of Louisiana apparently regarded itself as inhibited from re-examining the factual basis for the determination of guilt,⁴ but under traditional principles this Court makes its "own independent examination of the record" where facts and constructions are determinative of federal constitutional rights. *Napue v. Illinois*, 360 U.S. 264, 271, 272.⁵

The record simply shows that petitioner, Negroes, peacefully took seats at a lunch counter which served only white people and requested service; that the store manager (who was seated at the counter eating) advised the waitress to offer petitioners service at a counter across the aisle which served Negroes; that they remained seated at the counter; that the manager finished his meal and then telephoned the police because he "feared that some disturbance might occur . . . because it isn't customary for the two races to sit together and eat together" (RT 11). There was no

³ In pertinent part the statute provides:

"Disturbing the peace is the doing of any of the following in such a manner as would foreseeably disturb or alarm the public:

* * * * *

(7) Commission of any other act in such a manner as to unreasonably disturb or alarm the public."

⁴ See opinion below, RT 33.

⁵ It is well settled that this Court will "decide for itself facts or constructions upon which federal constitutional issues rest"; *Napue v. Illinois*, above. See *Spano v. New York*, 360 U.S. 315, 316; *Norris v. Alabama*, 294 U.S. 587; *Niemotko v. Maryland*, 340 U.S. 268, 271; and the many cases collected in *Napue*, at 360 U.S. 264, 272, note 4.

argument or altercation; the manager insisted in his testimony that petitioners were not "requested" to move to the other counter (RT 11), and also that "As I stated before, we did not refuse to serve them. We merely advised them they would be served on the other side of the store" (RT 15). This uncontradicted testimony that petitioners were not ordered to leave by any employee of the store is clearly at variance with the criminal accusation (information) which alleged that petitioners "refused to move from a cafe counter seat at Kress' store at North Third Street and Main Street, Baton Rouge, Louisiana, after having been ordered to do so by the agent of Kress Store" (RT 1). The police chief, along with police Captain Wiener, arrived in the store and then proceeded to the counter where respondents were seated, ordered them to leave, and ordered them placed under arrest when they did not do so (RT 18). Captain Wiener testified that petitioners did nothing else that he regarded as disturbing the peace except "sitting there" at the white counter (RT 19-20).

There is no evidence that any customer in the store complained about or objected to petitioners' presence at the white lunch counter; no testimony that the disturbance which the manager "feared . . . might occur" actually ever did occur or even that there was any imminent danger of a disturbance.

Thus this case is like *Thompson v. City of Louisville*, 362 U.S. 199, and should have been decided on the same principles applied in that case. In the *Thompson* case the petitioner had been convicted of disorderly conduct and loitering. The evidence showed essentially that the petitioner had been out on the dance floor of a cafe alone for about half an hour awaiting a bus (on this the loitering charge was based), and that when he was arrested for loitering he argued with the police (on which the disorderly

conduct charge was based). This Court held the convictions void as having been based on no evidence and, therefore, violative of the due process clause of the Fourteenth Amendment. Here, as in *Thompson*, "there is no support for these convictions in the record . . ." (362 U.S. at 204), and, therefore, the convictions are "void as denials of due process" (*Ibid.*). There is in the instant suit, as the *Thompson* opinion reiterated, "no evidence whatever in the record to support these convictions" (*Ibid.*). [J]ust as "conviction upon a charge not made would be sheer denial of due process," so is it a violation of due process to convict and punish a man without evidence of his guilt" (*Id.* at 206).

The judgment below conflicts sharply with the law as this Court declared it in *Thompson*. A full hearing, therefore, should be granted so that this Court may consider the grave constitutional issue posed by this contradiction.

B. Petitioners were convicted of a crime under the provisions of a state statute which as applied to convict them is so vague, indefinite, and uncertain as to offend the due process clause of the Fourteenth Amendment as construed in applicable decisions of this Court.

The information filed in this case charges petitioners with having violated "Article 103 (Section 7) of the Louisiana Criminal Code" (R. 1). Subsection 7 of The Statute invoked (LSA R.S. §14-103) prohibits the "Commission of any other act in such a manner as to unreasonably disturb or alarm the public." As is evident from the discussion in the preceding section of this petition, no conventional understanding of the meaning of the words of the statute explains or supports the determination of guilt on the present record. Whether or not the statute has been read by the Court below to give it any esoteric meaning

which is not plain from a reading of the statute, it is plain that it is unconscionably vague and indefinite.⁶

It may be observed that subsection 7, the catch-all part of the law, has not been applied in this case in accordance with the maxim *ejusdem generis*, for petitioners were convicted even though they committed no acts of the same character as those specifically prohibited in the six specific subsections. It is plain that petitioners did not (1) engage "in a fistic encounter", (2) use "any unnecessarily loud, offensive, or insulting language", (3) appear "in an intoxicated condition", (4) engage "in any act in a violent and tumultuous manner by three or more persons", (5) hold "an unlawful assembly", or (6) interrupt "any lawful assembly of people", but they were nevertheless adjudged guilty.

Prior decisions of the Supreme Court of Louisiana do nothing to elucidate how the diffuse command of the catch-all section 7 prohibits and makes criminal acts such as petitioners'. The case cited by the Court below, *Town of Pontchatoula v. Bates*, 173 La. 824, 138 So. 851 (1931), states that "a disturbance of the peace may be created by any act or conduct of a person which molests the inhabitants in the enjoyment of that peace and quiet to which they are entitled, or which throws into confusion things settled, or which causes excitement, unrest, disquietude, or fear among persons of ordinary, normal temperament." On the other hand, in the most recent decision of the Louisiana Supreme Court dealing with this section, *State v. Sanford*, 203 La. 961, 14 So. 2d 778 (1943), the Court held that when

⁶ The grammatical construction of subsection 7, viz., "to unreasonably disturb or alarm the public"—opens the door to further confusion and vagueness. Query: Is the act violated when the public "unreasonably" becomes disturbed or alarmed, or when an unreasonable act disturbs or alarms the public? In any event the record fails to show that anyone was disturbed or alarmed.

Jehovah's Witnesses were charged under subsection 7 with having disturbed the peace by distributing literature in the course of their activities, the conviction should be reversed where the record indicated that they were "orderly and did not tend to cause a disturbance of the peace." In that case the court expressed its view that if the statute were applied to the activities in question it might be invalid for vagueness:

"... to construe and apply the statute in the way the district judge did would seriously involve its validity under our State Constitution, because it is well settled that no act or conduct, however reprehensible, is a crime in Louisiana, unless it is defined and made a crime clearly and unmistakably by statute. . . . It is our opinion that the statute is inapplicable to this case because it appears that the defendants did not commit any unlawful act or pursue an unlawful or disorderly course of conduct which would tend to disturb the peace" (14 So. 2d at 781).

Only when the statute is viewed in the light of the arresting officers' theory of the crime, namely that the Negro petitioners committed a crime merely by sitting at a lunch counter reserved for white people, does the real basis of the arrest and conviction emerge. But such a construction and application of the statute is unfair because the statute gives no warning that petitioners' mere act of sitting at a lunch counter reserved for white people and requesting food service is criminally punishable.

Subsection 7 is so broad and vague that definition of the actions which may be punished is effectively relegated to the police, and ultimately to the Courts for *ad hoc* determination after the fact in every case. There is no readily ascertainable standard of criminality or guilt.

This Court has often held that criminal laws must define crimes sought to be punished with sufficient particularity to give fair notice as to what acts are forbidden. As the Court held in *Lanzetta v. New Jersey*, 306 U.S. 451, 453, "no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what crimes are forbidden." See also, *United States v. L. Cohen Grocery*, 255 U.S. 81, 89; *Connally v. General Const. Co.*, 269 U.S. 385; *Raley v. Ohio*, 360 U.S. 423. The statutory provision applied to convict petitioners in this case is so vague that it offends the basic notions of fair play in the administration of criminal justice that are embodied in the due process clause of the Fourteenth Amendment.

Moreover, the statute punished petitioners' protest against racial segregation practices and customs in the community; for this reason the vagueness is even more invidious. When freedom of expression is involved the principle that penal laws may not be vague must, if anything, be enforced even more stringently. *Cantwell v. Connecticut*, 310 U.S. 296, 308-311; *Scull v. Virginia*, 359 U.S. 344; *Watkins v. United States*, 354 U.S. 178; *Herndon v. Lowry*, 301 U.S. 242, 261-264.

As this Court stated in *Winters v. New York*, 333 U.S. 507, 520, a case where the court invalidated a state law applied to limit free expression on the grounds of vagueness: "Where a statute is so vague as to make a criminal an innocent act, a conviction under it cannot be sustained". In this case the state has indiscriminately classified and punished innocent actions as criminal. The result is an arbitrary exercise of the state's power which offends due process. *Wieman v. Updegraff*, 344 U.S. 183, 191.

C. The decision below conflicts with prior decisions of this Court which condemn racially discriminatory administration of State criminal laws.

It is plain on the face of the record from the testimony of the State's own witnesses that petitioners were arrested merely because they were Negroes and sought food service at a lunch counter maintained for white persons. The petitioners' race was the only basis for the police officers' command that they leave the seats which they occupied at the lunch counter, and for the arrests which followed failure to follow this command. Both the arrests and convictions rest on the theory that petitioners violated the state law by their mere presence as Negroes, at the white lunch counter. The criminal accusation itself specifically identifies petitioners' race.

As long ago as *Gibson v. Mississippi*, 162 U.S. 565, a case involving a claim of discrimination in jury procedures, this Court stated the broad proposition that racial discrimination in the administration of criminal laws violates the Fourteenth Amendment. The court said at 162 U.S. 565, 591:

"The guaranties of life, liberty, and property are for all persons within the jurisdiction of the United States or of any state, without discrimination against any because of their race. *Those guaranties*, when their violation is properly presented in the regular course of proceedings, *must be enforced in the courts, both of the nation and of the state, without reference to considerations based upon race. In the administration of criminal justice no rule can be applied to one class which is not application to all other classes.* (Emphasis supplied.)

This Court has repeatedly struck down statutes and ordinances which provided criminal penalties to enforce racial segregation. *Buchanan v. Warley*, 245 U.S. 60; *Holmes v. City of Atlanta*, 350 U.S. 879; *Gayle v. Browder*, 352 U.S. 903, affirming 142 F. Supp. 707 (M.D. Ala. 1956); *State Athletic Commission v. Dorsey*, 359 U.S. 533, affirming 168 F. Supp. 149 (E.D. La. 1958), were all cases in which criminal laws used to maintain segregation were invalidated. Cf. *Evers v. Dwyer*, 358 U.S. 202. Likewise, in *Yick Wo v. Hopkins*, 118 U.S. 356, the Court nullified a criminal prosecution under a statute which was fair on its face but was being administered to effect a discrimination against a single ethnic group.

While it may be argued by the State that in this case the racial discrimination against petitioners is beyond the reach of the Fourteenth Amendment because it originated with the decision of a "private entrepreneur" to establish a "white-only" lunch counter in deference to local customs and traditions, this is not dispositive of the case because it is racial discrimination by agents of the State of Louisiana, i.e., the police, which affords the primary basis for these prosecutions. It was the police officers acting as law enforcement representatives of the State who commanded petitioners to leave their seats at the lunch counter because petitioners were Negroes and the counter was maintained for white people. It was the police officers who arrested petitioners for failure to obey this command. It was the public prosecutor who charged petitioners with an offense, and it was the State's judiciary that convicted and sentenced them. Thus from the policeman's order, the conviction and punishment, the State was engaged in enforcing racial segregation with all of its law enforcement machinery.

This racial discrimination may fairly be said to be the product of state action within the reach of the Fourteenth

Amendment which "nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws." *Civil Rights Cases*, 109 U.S. 3, 11. As stated by the Court in *Cooper v. Aaron*, 358 U.S. 1, 17:

"Thus the prohibitions of the Fourteenth Amendment extend to all action of the State denying equal protection of the laws; whatever the agency of the State taking the action, . . . [citing cases] . . . ; or whatever the guise in which it is taken, . . . [citing cases]."

Just as judicial enforcement of racially restrictive covenants was held to constitute state action in violation of the Fourteenth Amendment in *Shelley v. Kraemer*, 334 U.S. 1, and *Barrows v. Jackson*, 346 U.S. 249, so in this case judicial enforcement of a rule of racial segregation in privately owned lunch counters operated as business property opened up for use by the general public should likewise be condemned.

Unlike *Marsh v. Alabama*, 326 U.S. 501, and *Boynston v. Virginia*, — U.S. —, 5 L. ed. 2d 206, this is not a "trespass" prosecution involving a collision of property rights and personal rights, for it was the police officer's demand that petitioners leave their seats, based upon the officer's determination that they violated the law by their very presence in the seats, that formed the basis for conviction.⁷ There is no evidence that the proprietor or any

⁷ But even if the case is measured in terms of criminal trespass provisions like those in *Marsh, supra*, the language of the Court in that case is apt. See p. 24, *infra*, and cases cited at that point.

of his employees demanded that petitioners leave the premises. Neither did they request that the police make such a demand.

Here petitioners, as welcome customers in a business establishment open to the public, sought to obtain food service at a lunch counter set aside for white persons. They were prevented from pursuing their peaceful requests for service by the intervention of the police officers bent upon enforcing racial segregation.

The police officer's demand that petitioners leave their seats because of the racial segregation customs and the subsequent arrests based on this demand deprived petitioners of the equal protection of the laws. A similar arrest was said to be an illegal deprivation of civil rights by police officers in *Boman v. Birmingham Transit Co.*, 280 F. 2d 531, 533, note 1 (5th Cir. 1960), quoting from the decision below *sub nom. Boman v. Morgan* (N.D. Ala. 1959, C.A. No. 9255), 4 Race Relations Law Reporter 1027, 1031 (otherwise unreported):

“A charge of ‘a breach of the peace’ is one of broad import and may cover many kinds of misconduct. However, the Court is of the opinion that the mere refusal to obey a request to move from the front to the rear of a bus, unaccompanied by other acts constituting a breach of the peace, is not a breach of the peace. In as far as the defendants, other than the Transit Company, are concerned, plaintiffs were in the exercise of rights secured to them by law.

* * * * *

“Under the undisputed evidence, plaintiffs acted in a peaceful manner at all times and were in peaceful possession of the seats which they had taken on boarding the bus. Such being the case, *the police*

officers were without legal right to direct where they should sit because of their color. The seating arrangement was a matter between the Negroes and the Transit Company. It is evident that the arrests at the barn were based on the refusal of the plaintiffs to comply with the request to move since those who did move, though equally involved except as to compliance, were not arrested.

“Under the facts in this case, *the officers violated the civil rights of the plaintiffs in arresting and imprisoning them.* Ordinance 1487-F, and their ‘willful’ refusal to move when directed to do so, did not authorize or justify their conduct.” (Emphasis supplied.)

It is submitted that the use of the criminal laws of the states to enforce racial segregation and discrimination presents a grave challenge to the integrity of our system of criminal justice in the United States. Because, unfortunately, arrests and convictions based upon racial considerations are not uncommon,⁸ it is all the more important that this Court should exercise continued vigilance in protecting civil rights in such cases. For this reason it is submitted that this case presents a question of public importance which merits plenary review by this Court.

D. The decision below conflicts with decisions of this Court securing the Fourteenth Amendment right to freedom of expression.

Petitioners were requesting service at public lunch counters in establishments where their trade was welcome, except that they were not permitted to sit at counters reserved for white persons—and for this, and this alone,

⁸ See II, *infra*.

they were arrested. Their presence at these counters expressed in Baton Rouge what thousands of other Negro students have been manifesting throughout the nation—dissatisfaction with being relegated to second class status in public establishments which accept on an equal basis their trade at all counters except lunch counters; there racial segregation prevails.

As the motion to quash in each of these three cases stated, “your defendants, each, in protest of the segregation laws of the State of Louisiana, did . . . ‘sit in’ cafe counter seat reserved for members or persons of the White race, and for which activity your defendants, each, were arrested . . .”.

The liberty secured by the due process clause of the Fourteenth Amendment insofar as it protects free expression is hardly limited to verbal utterances. It covers picketing, *Thornhill v. Alabama*, 310 U.S. 88; free distribution of handbills, *Martin v. Struthers*, 319 U.S. 141; display of motion pictures, *Burstyn v. Wilson*, 343 U.S. 495; joining of associations, *N.A.A.C.P. v. Alabama*, 357 U.S. 449; the display of a flag or symbol, *Stromberg v. California*, 283 U.S. 359. What has become known at a “sit in” is a different but obviously well understood symbol, a meaningful method of communication.

These “sit ins” occurred in places entirely open to the public and to petitioners as well. That the premises were privately owned should not detract from the high constitutional position which such free expression deserves. This is hardly a case involving, for example, expression of views in a private home or other restricted area private in nature. The establishment here, as in the other two petitions presented today, were open to the public and the patronage of the public, including that of Negroes was sought.

Marsh v. Alabama, 326 U.S. 501, 506, rejected argument that being present upon private property *per se* divests a person of the constitutional right of free expression:

Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. . . .

In that case, therefore, this Court held unconstitutional convictions of Jehovah's Witnesses for trespass for proselytizing on private property of a company town. See also, *Republic Aviation Corp. v. National Labor Relations Board*, 324 U.S. 793, 801, note 6; *National Labor Relations Board v. Babcock and Wilcox Co.*, 351 U.S. 105, 112; *United Steelworkers v. National Labor Relations Board*, 243 F. 2d 593, 598 (D.C. Cir. 1956), *rev. on other grounds*, 357 U.S. 357; *People v. Barisi*, 193 Misc. 934, 86 N.Y.S. 2d 277, 279 (1948); *Freeman v. Retail Clerks Union*, 45 Lab. Rel. Ref. Man. 2334 (Wash. Super. Ct. 1959).

These decisions, of course, are manifestations of the fundamental view, stated in *Munn v. Illinois*, 94 U.S. 113, 126, that "when . . . one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. . . ."

Although in the case now at bar there was no evidence of anything remotely resembling breach of the peace, *Cantwell v. Connecticut* held in invalidating a conviction for inciting breach of the peace, "obvious is it that a state may not unduly suppress free communication of views, religious or other, under the guise of conserving desirable conditions." 310 U.S. 296, 308. "Here," Justice Roberts

wrote, "we have a situation analogous to a conviction under a statute sweeping in a great variety of conduct under a general and indefinite characterization, and leaving to the executive and judicial branches too wide a discretion in its application." *Id.* at 308. Therefore, "... in the absence of a statute narrowly drawn to define and punish specific conduct as constituting a clear and present danger to a substantial interest of the State, the petitioner's communication, considered in the light of the constitutional guaranties, raised no such clear and present menace to public peace and order as to render him liable to conviction of the common law offense in question," *Id.* at 311.

Indeed, in the *Cantwell* case there was evidence that defendants' acts had provoked some hostility. That is not the situation in the instant case. But even if petitioners here had stirred unrest by their demonstration, this is precisely the type of expression that the freedom of speech guarantee of the Constitution is supposed to protect.

Terminiello v. Chicago, 337 U.S. 1, 4, held that:

[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, *Chaplinsky v. New Hampshire*, supra (315 U.S. pp. 571, 572, 86 L. ed. 1034, 1035, 62 S. Ct. 766), is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest.

As Justice Holmes wrote for a unanimous Court in *Schenck v. United States*, 249 U.S. 47, 52:

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evil that Congress has a right to prevent.

In the context of this record the State apparently asserts the power to prevent two evils, as it views them: (1) disturbance of the peace—but the record offers no support for an inference that any such danger was present in any degree; (2) nonsegregation at lunch counters—but the State has no power to compel segregation. See *Brown v. Board of Education*, 347 U.S. 483; *State Athletic Commission v. Dorsey*, 359 U.S. 533, affirming 165 F. Supp. 149 (E.D. La. 1918). Therefore, having no valid interest to preserve, the State has no power to impose criminal penalties for the expression in which petitioners here engaged.

II.

The Public Importance of the Issues Presented

A. This case presents issues posed by numerous similar demonstrations throughout the nation which have resulted in widespread desegregation and also in many similar cases now pending in state and federal courts. Petitioners need not multiply citations to demonstrate that during the past year thousands of students throughout the nation have participated in demonstrations like those for which petitioners have been convicted.

A comprehensive description of these "sit-in" protests appears in Pollitt, *Dime Store Demonstration: Events and Legal Problems of the First Sixty Days*, 1960 *Duke Law Journal* 315 (1960). These demonstrations have occurred in Alabama, Arkansas, Florida, Georgia, Louisiana, North Carolina, South Carolina, Tennessee, Texas, Virginia and elsewhere. *Pollitt, supra, passim.*

In a large number of places, this nationwide protest has prompted startling changes at lunch counters throughout the South, and service is now afforded in many establishments on a nonsegregated basis. The Attorney General of the United States has announced the end of segregation at public lunch counters in 69 cities, *New York Times*, August 11, 1960, page 14, col. 5 (late city edition), and since that announcement the number of such cities has risen above 112, *New York Times*, Oct. 18, 1960, page 47, col. 5 (late city edition).

In many instances, however, these demonstrations, as in the case at bar, have resulted in arrests and criminal prosecutions which, in their various aspects, present as a fundamental issue questions posed here, that is, may the state use its power to compel racial segregation in private estab-

ishments which are open to the public and to stifle protests against such segregation. Such cases having been presented to the Supreme Court of Appeals of Virginia,⁹ the Supreme Court of North Carolina,¹⁰ the Supreme Court of Arkansas,¹¹ the Court of Criminal Appeals of Texas,¹² the Court of Appeals of Alabama,¹³ the Court of Appeals of Maryland,¹⁴ several South Carolina appellate courts,¹⁵ and the Georgia Court of Appeals.¹⁶ Numerous other cases are pending at the trial level.

It is, therefore, of widespread public importance that the Court consider the issues here presented so that the lower courts and the public may be guided authoritatively with

⁹ *Raymond B. Randolph, Jr. v. Commonwealth of Va.* (No. 5233, 1960).

¹⁰ *State of N. C. v. Fox and Sampson* (No. 442, Supreme Court, Fall Term 1960).

¹¹ *Chester Briggs, et al. v. State of Arkansas* (No. 4992) (consolidated with *Smith v. State of Ark.*, No. 4994, and *Lupper v. State of Ark.*, No. 4997).

¹² *Briscoe v. State of Texas* (Court of Crim. App., 1960, No. 32347) and related cases (decided Dec. 14, 1960; conviction reversed on ground that indictment charging in alternative invalid for vagueness).

¹³ *Bessie Cole v. City of Montgomery* (3rd Div. Case No. 57) (together with seven other cases, Case Nos. 58-64).

¹⁴ *William L. Griffin, et al. v. State of Maryland*, No. 248, September Term 1960 (two appeals in one record); see related civil action sub nom. *Griffin, et al. v. Collins, et al.*, 187 F. Supp. 149 (D.C. D.Md. 1960).

¹⁵ *City of Charleston v. Mitchell, et al.* (Court of Gen. Sess. for Charleston County) (appeal from Recorders Ct.); *State v. Randolph, et al.* (Court of Gen. Sess. for Sumter County) (appeal from Magistrates Ct.); *City of Columbia v. Bouie, et al.* (Court of Gen. Sess. for Richland County) (appeal from Recorders Ct.).

¹⁶ *M. L. King, Jr. v. State of Georgia* (two appeals: No. 38648 and No. 38718).

respect to the constitutional limitations on state prosecutions for engaging in this type of protest.

B. The holding below, if allowed to stand, will in effect undermine numerous decisions of this Court striking down state enforced racial discrimination. For example, the discrimination on buses interdicted by the Constitution in *Gayle v. Browder*, 352 U.S. 903, aff'g 142 F. Supp. 707, could be revived by convictions for disturbing the peace. In the same manner, state enforced prohibitions against members of the white and colored races participating in the same athletic contests, outlawed in *Dorsey v. State Athletic Commission*, 168 F. Supp. 149, aff'd 359 U.S. 533, could be accomplished. Indeed, segregation of schools, forbidden by *Brown v. Board of Education*, 347 U.S. 483, and innumerable cases decided since that time, especially those affecting Louisiana, e.g., *Orleans Parish School Board v. Bush*, 242 F. 2d 156 (5th Cir. 1957), cert. denied 354 U.S. 921, might also be accomplished by prosecutions for disturbing the peace even though no disturbances in fact occurred.

The holding below, if allowed to stand, would be completely subversive of the numerous decisions throughout the federal judiciary outlawing state enforced racial distinctions. Indeed, the segregation here is perhaps more invidious than that accomplished by other means for it is not only based upon a vague statute which is enforced by the police according to their personal notions of what constitutes a violation and then sanctioned by state courts but it suppresses freedom of expression as well.

CONCLUSION

Wherefore, for the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be granted.

A. P. TUREAUD
1821 Orleans Avenue
New Orleans, Louisiana

JOHNNIE A. JONES
Baton Rouge, Louisiana

THURGOOD MARSHALL
JACK GREENBERG
10 Columbus Circle
New York 19, New York
Attorneys for Petitioners

WILLIAM COLEMAN, JR.
LOUIS H. POLLAK
ELWOOD H. CHISOLM
JAMES M. NABRIT, III
Of Counsel