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

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BRIEF OF APPELLANTS

STATEMENT OF THE CASE

Appellants William L. Griffin, Marvous 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?

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* 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 carrousel 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.

I

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 servics free from interference by the state on account of race or color.

Moreover, they peacefully submitted to arrest. Ths 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 itslf, 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 (Kebar, Inc.) to B & B Catering Co., Inc. Appellants contend that, as a matter of law, the agreement between Kebar and B & B was contined 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 *Shelly* 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-

tuate 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 *Shelly* 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 dicriminatory 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.

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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

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, 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 ....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

Issued .....19.....

[Identical warrants were issued against Appellants Michael A. Proctor, No. 3882 Criminals, Cecil T. Washington, Jr., No. 3883 Criminals, Marvous 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 ....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

Issued .....19.....

[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.

8 Q. And at Glen Echo Amusement Park from whom 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.

9 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 re-
21 spect 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,
22 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.

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

A. No, sir.

Mr. Duncan Continues Examination:

Q. You testified that the defendant, Griffiin, 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.

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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 Rekab, 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 Rekab, 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 Rekab, 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.

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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.

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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.

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76 Cross-Examination

By Mr. Duncan:

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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 be-
85 cause 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.

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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.

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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.

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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

Court that the statute cannot be violated. We base
108 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 resons 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. McAuliffe: Objection.

By Mr. Ducan: 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.

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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.

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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.

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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.

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

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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.

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130 **Judge Pugh's Oral Opinion (Griffin, et al.)**

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

hands. Why they didn't file a civil suit and test out
133 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 business in
134 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.

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,

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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.

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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.

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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.

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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.

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17 Cross-Examination

By Mr. Sharlitt:

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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.

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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,
32 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.

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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. Cater-
37 ing Company.

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

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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.

Q. Are there any other employees on the premises
40 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.

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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.

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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.

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48 Re-Direct Examination

By Mr. McAuliffe:

Q. Mr. Baker, does Lieutenant Collins receive his instructions from Rekab, 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:

Q. And with respect to the restaurant and the
50 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:

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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.

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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.

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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.

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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 ap-
62 proached you to the time you left the park? A. Yes.

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

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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. Sharlitt:

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.

82 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.

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84 Cross-Examination

By Mr. McAuliffe:

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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.

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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.

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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.

Q. So that you were setting new terms in this let-

112 ter? 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 Rekab, Inc.

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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.

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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 Rekab, 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.

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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.

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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

Direct Examination

By Mr. McAuliffe:

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

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

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By Judge Pugh: Are you holding under the paper that has been introduced in evidence? Were you holding pos-

122 session of this restaurant on July 2, 1960, under 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. Sharlitt: 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,
142 because they are negroes, they have a right to refuse 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 comparsion, 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 convenants, agreements and conditions herein expressed. The Concessionaire shall not sell, mortage, 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 reliquishes 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 roms 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 repition 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 convenants 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 unihabitable 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 concelled, 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 Ballroom 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 percentum (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 procedings 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,

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*

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

The Daily Record Co., Baltimore 3, Md.

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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,

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CLAYTON A. DIETRICH,
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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.

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(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.

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(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.

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(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

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(T. 76):

CROSS EXAMINATION

By Mr. Duncan:

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(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?

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(T. 96):

REDIRECT EXAMINATION

By Mr. McAuliffe:

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(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.

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(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.

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(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.

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(T. 113):

CROSS EXAMINATION

By Mr. McAuliffe:

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(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.

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

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(T. 116):

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

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

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(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.

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(T. 120):

Q. Was there a crowd around there? A. Yes.

Q. Did you hear any heckling? A. Yes.

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(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.

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(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.

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(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.

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(T. 17):

CROSS EXAMINATION

By Mr. Sharlitt:

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(T. 19):

Q. Why did you order her off the property? A. Because she had been in the picket line and she was undesirable.

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Q. Why was she undesirable? A. Because she had been on the picket line and run through the park.

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(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.

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(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.

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(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.

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(T. 29):

EXAMINATION BY THE COURT

By Judge Pugh:

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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.

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Q. When you told them to leave, they didn't leave, did they? A. No, sir.

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(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

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(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.

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(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:

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(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.

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(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

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(T. 84):

CROSS EXAMINATION

By Mr. McAuliffe:

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(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.

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(T. 97):

REDIRECT EXAMINATION

By Mr. Sharlitt:

Q. Are you white or negro, Mr. Schain? A. White.

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(T. 101-102):

EXAMINATION BY THE COURT

By Judge Pugh:

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Q. Did you walk or run? A. We walked quickly.

Q. What was your hurry? A. A policeman could be behind me.

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(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.

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(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

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(T. 123):

CROSS EXAMINATION

By Mr. Sharlitt:

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(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. * * *

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(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.

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(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.