Clubs that discriminate are going to face more and more law suits aimed at changing their policies.

The courts will ask: To what extent may a right be exercised when it conflicts with the rights of others or with the good of society?
By Jack P. Janetatos
General Counsel, National Club Assn.

Of the many current law suits involving civil rights and private club policies, the Irvis case has attracted the most attention. This case is indicative of the types of legal action which golf clubs can expect to experience in the future and it is an excellent basis for an analysis of the complex problems involved.

Recent law suits aimed at revoking private club liquor licenses have been under considerable discussion among members of clubs throughout the country and within the leadership circles of most club and golf organizations. No less than a dozen such suits and new statutory enactments are now in the works—all of these aimed at preventing clubs from holding state liquor licenses, if the clubs discriminate.

A recent action by the Supreme Court of the United States highlighted the issues on newspaper front pages throughout the country, causing both alarm in country club locker rooms and joy within the memberships of many civil rights organizations.

Late last summer a Federal District Court in Pennsylvania handed down a decision in the now famous Irvis case. The court held that a liquor license granted to a Moose Lodge in Harrisburg, Pa., by the Pennsylvania Liquor Control Board was invalid because it was in violation of the Equal Protection Clause of the 14th Amendment to the United States Constitution.

In late 1968 a member of the Harrisburg Moose Lodge brought to the lodge's dining room a Negro guest, K. Leroy Irvis, the majority leader of the Pennsylvania House of Representatives. The employees of the lodge refused to serve Irvis solely on the ground that he was black, and the law suit resulted.

First, Irvis began a direct attack on the discriminatory practice by complaining of the refusal of service to the Pennsylvania Human Relations Commission. He argued that the club's dining room was a "place of public accommodation," and that he was therefore entitled to service under Pennsylvania's Human Relations Act. The commission agreed, but on appeal, a Pennsylvania state court held that the Moose Lodge dining room was not a place of public accommodation and consequently was not covered by the Human Relations Act.

Irvis, when finding that a direct attack on the racially discriminatory practice of the club brought no relief, filed a suit in the Federal District Court, complaining that the discrimination practiced by the Moose Lodge was in violation of the Federal Constitution.

The Federal court judges agreed with Irvis. They found that the state exercised broad control over liquor licensees and that this broad control made the action of the licensee the actions of the state. Because the 14th Amendment prohibits discrimination by a state government, the court was of the view that this alone was sufficient to support their decision. They went on to say, that even beyond this, the state required a club liquor licensee to abide by its own by-laws. Because the lodge by-laws required racial discrimination, the state was in effect requiring discrimination. "The State has used its great power to license the liquor traffic in a manner which has no relation to the traffic in liquor itself," the Court said, "but instead permits it to be exploited in the pursuit of a discriminatory practice."

The litigation in the Federal District Court in Pennsylvania had two principal defendants: the State Liquor Control Board and the Harrisburg Moose Lodge. The Liquor Control Board apparently was content to let the matter rest at that point and abide by the order of the court directing the board to revoke the lodge's liquor license. The Harrisburg Lodge, however, was not satisfied with the situation. The lodge filed an appeal in the Supreme Court of the United States, and in late March, 1971, the Supreme Court agreed to hear the case under the somewhat unusual procedure by which it postpones a decision as to whether an issue should be adjudicated until after hearing oral arguments in the case.

The principal issue now before the Court, then, is whether the granting of a liquor license to a club constitutes state action so that the action of the club in discriminating will be considered to be the action of the state. Thus, by an indirect attack upon a state liquor licensing law, the Supreme Court has before it a difficult question regarding racial discrimination in private clubs.

Several other similar cases are pending in various state and Federal courts throughout the country. In addition some state legislatures have passed laws requiring the absence of discrimination on the part of liquor licensees. All of this legal activity will undoubtedly be affected by the Supreme Court decision in the Irvis case.

Clearly, clubs have been under growing pressure in the civil rights area for several years. There has been, of course, legal activity consisting of both direct attacks and indirect attacks such as the Irvis case. At least of equal significance have been the efforts of members of clubs to abolish discriminatory practices in their own clubs. Direct attacks either by law, such as the Federal Civil Rights Act of 1964 and the litigation, or by members working to change club membership and guest policies from within, have not yet worked any widely recognized changes in these policies. In light of the lack of success with direct attacks, advocates of non-discrimination have pressed the indirect attacks to effect their goals.

Nonetheless, the issue which must be faced goes to the heart of racial and religious discrimination. There is on one side a legally recognized constitutional right of association and on the other side the right of access to the institutions of society. These lie at the heart of the 13th and 14th Amendments to the Constitution. It would appear that when a private club discriminates in its membership and guest policies, the rights on both sides of the issue come into conflict.

Perhaps it over simplifies the matter to think that the conflict can and should be resolved judicially, but it seems that a resolution is called for. If the Government is to guarantee the rights of association and access, it has the obligation to determine the limits of each right and to provide a resolution to the problems that occur when the rights come into conflict. Our legislatures and our courts are established to make these difficult determinations. The legisla-

(Continued on page 28)
tive and judicial machinery exists to develop the resolution.

It certainly should not be said that the solution to the problem will be easy or that it will be simple. Perhaps it may even be that there are several resolutions to the conflict that can be developed and that can exist contemporaneously. The District Court in the Irvis Case recognized the existence of a right to associate, but denied the club the right to do so when it made use of a state liquor li-
cense. The Court said, “There is no question here of interference with the right of members of the Moose Lodge to associate among them-

telves in harmony with their private predilections. The State, however, may not confer upon them in doing so the authority which it enjoys under its police power to engage in the sale or distribution of intoxicating li-
quors, under grant from the State which is conditioned in this case on the club’s adherence to the require-

Our “no-cost extras”
make the big difference.

Even though specifications are usually given for every turf irrigation
installation, our “extras” can make the difference between a great job and
one that’s just so-so. We have the broadest line of specialized
construction equipment in our field. And we have a large staff for in-depth
coverage of every detail. This staff is backed by the experience of hundreds of successful installations. We feel that we’re right at the top
of the state of the art in this field.

So why miss getting
all those extras?

... For the latest in automatic systems with central
control, call Miller today! Miller Sprinkling Systems,
Division of A. J. Miller, Inc., 1320 N. Campbell Rd.,
Royal Oak, Mich. 48067, (313) 398-2233.

Johns-Manville Transite* irrigation pipe  "TM"
For more information circle number 215 on card

The court here provided no reso-

nution to the problem, but merely
posed the question which must now
be resolved in the Supreme Court.

If the Supreme Court is to face this conflict in rights squarely, it must
first look to the action of the Moose Lodge to find whether the lodge is do-
ing something which is unlawful or whether it is, indeed, exercising a
constitutional right. The analysis of that portion of the problem would
not seem difficult in the light of prior
judicial decisions regarding the
right of association. Indeed, the
District Court in Irvis did this and found that it was the right of associ-
ation which was being exercised.

To go beyond this, it can be said that the objectionable act of the club was
the exclusion of Irvis from its facil-
ities, but is not a right to exclude a necessary correlative of the right to
include, which is the essence of the
right of association? If persons have
any right to associate, it must be a right to associate with whom they
please without interference from those they do not wish to include.

What then is a right? In order for there to be a right, it must be that the
Government will protect one’s oppor-
tunity to exercise the right and
will restrain those who wish to inter-
ference with it.

The District Court in Irvis recog-
nized the Moose Lodge’s right of as-
sociation and claimed that it did
nothing to obstruct the exercise of
that right in merely denying the club
the privilege of dispensing liquor
for use in connection with the exer-
cise of their right of association.

The next step in the resolution of
the difficulty is for the court to ex-
amine the right of Irvis and of others, who are excluded by clubs, to equal
treatment by the Government. Clearly, if the state were to grant li-
quor licenses to organizations com-
posed of white persons and were to
deny licenses to organizations com-
posed of black persons, doing this on
racial grounds, the Constitution
would be violated. If the state re-
mains neutral and issues licenses to
any organization regardless of its
racial makeup, then it would appear
that no violence is done to the con-
stitutional requirement.

(Continued on page 45)
Just when the LPGA is making great strides to improve its image, it is sad that one of their own has had to resort to the world of childish gimmicks to attract an audience. From her title we conclude that Miss Moran feels that women and golf are compatible. And they are. But it is doubtful that most women are hung up on such fads as owning multicolored golf clubs that can match every outfit.

As for her instruction, Miss Moran doesn’t rate much better. You can’t place a bunch of pictures in front of a beginner, or for that matter an expert, and expect her to master the technique without adequate explanations describing how each position is reached. Her approach to teaching is backwards. Since when does an instructor introduce a beginner to the game with a driver? It would make more sense to start a beginner off the tee with a seven or an eight-iron, enabling her to feel for the club. And more important, how and expect her to master the technique without adequate explanations describing how each position is reached. Her approach to teaching is backwards. Since when does an instructor introduce a beginner to the game with a driver? It would make more sense to start a beginner off the tee with a seven or an eight-iron, enabling her to feel for the club. And more important, how

The *Iris* court, however, takes a larger step and requires that the state take positive action in its licensing policies, which will require the club on pain of loss of its license, to cease discrimination.

Over many years of history, the Supreme Court has never held constitutional rights to be absolute: Human sacrifice, even if condoned by religion is still murder; polygamy, even if required by religion, is still a crime. The extent to which one may exercise a right is limited when it comes into conflict with the rights of others or with the good of society.

The right of association, then, must be limited just as other rights are limited. It must not be exercisable to the harm of others or to the detriment of society as a whole. Here, then, lies the real issue. Here is the problem which must be faced by the courts and by the legislatures. How is such a determination to be made? What are the steps to be used? What resolution is proper? These are all questions that the courts must eventually answer. Procedurally, the Supreme Court has available to it several avenues to avoid resolution of any or all of these questions. It may well be that no resolution of these problems will result from the *Iris* litigation. Yet, eventually, the courts must come to grips with the heart of the problem and solve these difficult questions.

Both members of clubs and those excluded from clubs have a right to see a resolution to all of these issues come from the law. Perhaps the facts in *Iris* do not present the issues with sufficient clarity for a Supreme Court determination. If a new case with a more direct presentation is required by the Court, it will not have long to wait. The number and vigor of attacks, direct and indirect, are increasing.

**Former GCSAA president dies**

Norman W. Kramer, who had been superintendent of the Point O’Woods G & CC, Benton Harbor, Mich., since 1959, died last month of a heart attack at age 44. He had just completed a one-year tenure as president of the Golf Course Superintendents Assoc. of America.

*—Ann Heavner*