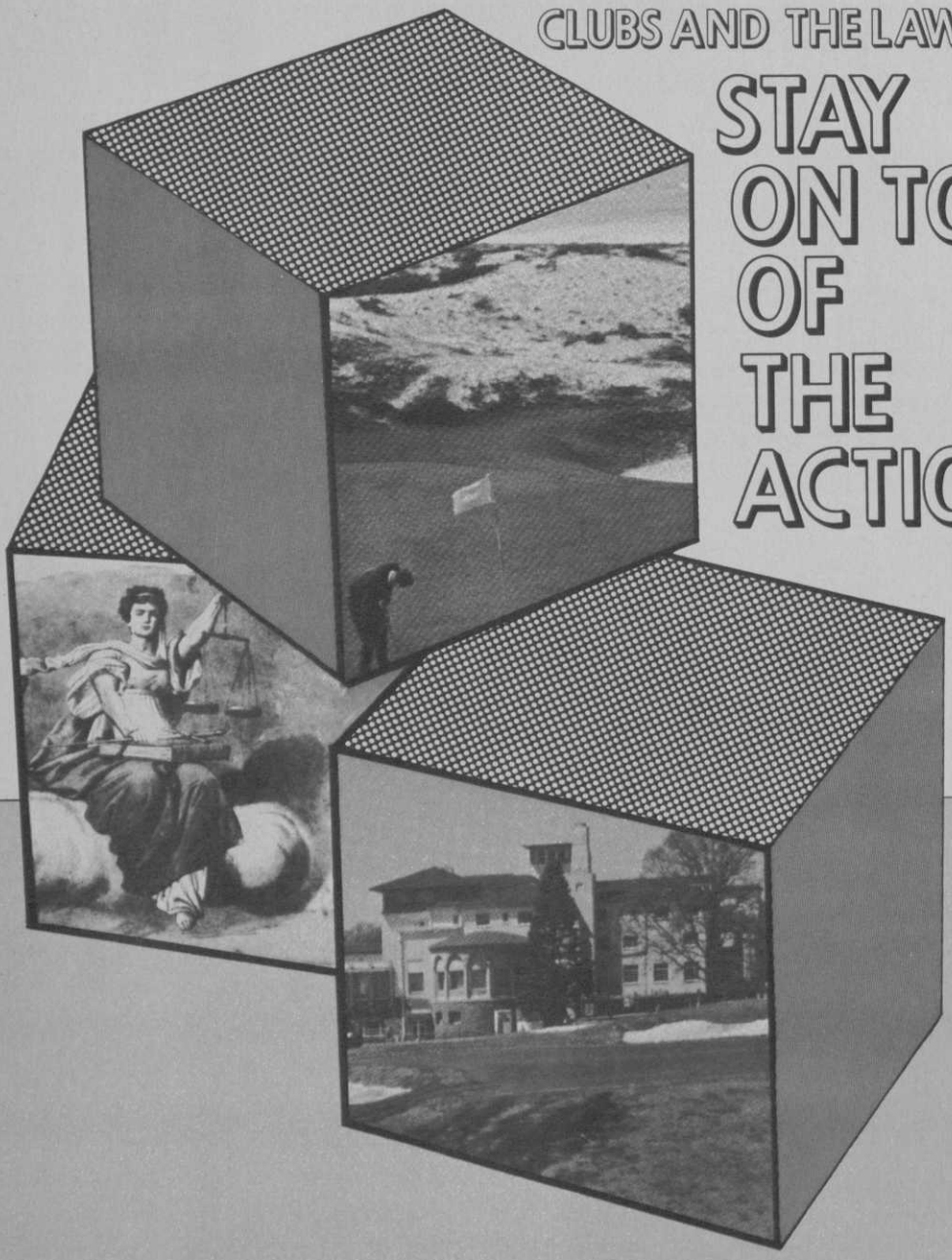
CLUBS AND THE LAW:

STAY ON TOP OF THE ACTION



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 the 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-

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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 license. The Court said, "There is no question here of interference with the right of members of the Moose Lodge to associate among themselves 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 liquors, under grant from the State which is conditioned in this case on the club's adherence to the requirement of its constitution and customs that it must practice discrimination and refuse membership or service because of race."

The court here provided no resolution 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 doing 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 association 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 facilities, 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 opportunity to exercise the right and will restrain those who wish to interfere with it.

The District Court in *Irvis* recognized the Moose Lodge's right of association 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 exercise of their right of association.

The next step in the resolution of the difficulty is for the court to examine 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 liquor licenses to organizations composed of white persons and were to deny licenses to organizations composed of black persons, doing this on racial grounds, the Constitution would be violated. If the state remains neutral and issues licenses to any organization regardless of its racial makeup, then it would appear that no violence is done to the constitutional requirement.

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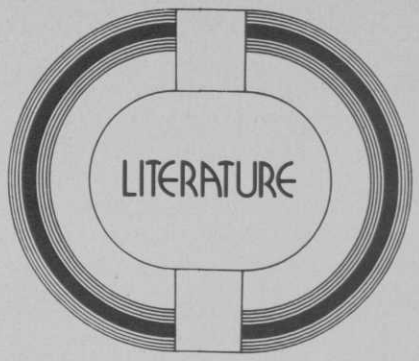

Golf Is a Woman's Game
By Sharron Moran
Hawthorn Books, Inc.
New York, N.Y. $5.95

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 get a more natural and unrestrained feel for the club. And more important, she would gain the self-confidence, which is vital if she is to get the ball into the air.

Despite the lack of continuity and the textbook approach, Miss Moran does give some good advice on clothes, shoes, hair and skin care. It's only too bad that she chose to write an anachronism by approaching her subject strictly on appearances rather than enjoyment of golf for golf's sake. For a professional who lives off the game, she projects none of the empathy or genuine love that one in her position should embody. Furthermore, she does not convince us that golf *is* a woman's game at a time when the women should be on the golf course complementing their peers, not antagonizing them with cutesy fads.

—Ann Heavner

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The *Irvis* 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 *Irvis* 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 *Irvis* 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 Assn. of America.