SMU | Dedman School of Law

SMU Law Review

Volume 25 | Issue 5 Article 10

January 1971

Granting Poverty Workers Access to Farmworkers Housed on Private Property

Boyd Mangrum

the flagrancy of the illegality, that led the court to bar the tainted evidence at trial.

V. CONCLUSION

Edmons analyzed the facts of an illegal arrest, an illegal line-up, and subsequent in-court identification. The court resolved the problem through *Wong Sun's* poisonous tree doctrine such that the *Wade* problem was never really encountered. Because the illegal arrest was the primary illegality, the court properly chose to take this direction.

Two significant factors, clouded by the court's intermingling of *Wade* and *Wong Sun* terminology throughout the opinion, are revealed upon close scrutiny of the case. The first factor was the emergence of both the *Wong Sun* and *Wade* factors in a single case and the court's reliance on *Wong Sun* such that the *Wade* problem was never really encountered. The court extended this line of reasoning to require a distinct independent source exception to purge the taint caused by the illegal arrest, refusing to apply the same independent source that purged the taint caused by the illegal line-up. However, the court recognized a second significant factor that may have undermined the independent source exception had it been established. This factor, the flagrant arrest, may have been *the* determining consideration in the court's decision. It initially appeared as a contributing factor to establish the exploitation requirement of the "fruits" doctrine. However, the court noted that the flagrant nature of the pretextual arrest for the purpose of exhibiting the accused before the victim was particularly offensive and ventured beyond the mere exploitation requirement of the "fruits" doctrine. The court concluded that had the "fruits" doctrine not operated in *Edmons* to bar the testimony from trial, the evidence would have most certainly been barred simply because of the flagrant illegality of the arrest. Hence, the importance of *Edmons*, which future cases may reveal, is that it places greater emphasis on the flagrant arrest. Perhaps it will merge with the "fruits" doctrine to satisfy the doctrine's exploitation requirement or perhaps it will rise as a doctrine itself to independently employ the exclusionary rule as a device to protect fourth amendment rights.

Bob Harrison

Granting Poverty Workers Access to Farmworkers Housed on Private Property

The complainant landowner was a farmer who seasonally employed migrant farmworkers and also provided housing for them at a camp on his property. The defendants were an attorney employed by a federally funded nonprofit corporation which was designed to provide legal advice and representation to farm laborers, and a field worker employed by a federally funded nonprofit corporation designed to provide health services for such laborers.[1] The defend-

[1] Both corporations were funded by the Office of Economic Opportunity. Camden Regional Legal Services, Inc., the attorney's employer, was funded pursuant to 42 U.S.C. §

ants entered the complainant's property to provide specific legal and medical services for certain workers who were in need of their assistance. The defendants also took this opportunity to bring to the farmworkers free literature concerning available federally funded services for which they were eligible. The complainant confronted them and, on learning their purpose, offered to summon both workers. The complainant insisted, however, that the legal consultation take place in his office and in his presence. The defendants rejected this offer and maintained that they had the right to speak privately with the farmworkers. The complainant then demanded that the defendants leave his property and, on their refusal to do so, he executed formal complaints charging them with violations of the New Jersey criminal trespass statute.[2] The defendants were convicted in the municipal and county courts. The Supreme Court of New Jersey certified their appeal before argument in the appellate division. *Held, reversed and remanded*: The property right of the farmer-employer may not be so extended as to deny workers housed on his property the opportunity of receiving aid from federal, state, local, or charitable agencies, and visitation by representatives of such agencies, by members of the press, and by other persons of the worker's choice, is not conduct within the reach of the criminal trespass statute. *State v. Shack*, 58 N.J. 297, 277 A.2d 369 (1971).

I. Property Rights and Personal Freedoms

Anglo-American law has traditionally held a special regard for property rights.[3] Blackstone referred to a property right as "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe."[4] Despite such early references to the absoluteness of property rights, restrictions upon these rights seem to have been recognized in many instances. "All rights tend to declare themselves absolute to their logical extreme. Yet all in fact are limited by the neighborhood of principles of policy which are other than those on which the particular right is founded, and which become strong enough to hold their own when a certain point is reached."[5] Some well-known limitations on property rights are zoning laws, principles of riparian rights, nuisance law, and other principles that seem to square nicely with another Blackstonian pre-

2809(a)(3) (1971). Southwest Citizens Organization for Poverty Elimination, the medical worker's employer, was funded pursuant to 42 U.S.C. §§ 2861-64 (1971). For a discussion of these statutes see notes 32 and 33 *infra*, and accompanying text.

[2] N.J. Rev. Stat. § 2A:170-31 (1951).

[3] *See generally* Hecht, *From Seisin to Sit-in: Evolving Property Concepts*, 44 B.U.L. Rev. 435 (1964).

[4] 2 W. Blackstone, Commentaries *2. Blackstone's view of property rights seems to have been rather expansive. "So great moreover is the regard of the law for private property, that it will not authorize the least violation of it; no, not even for the general good of the whole community." 1 W. Blackstone, Commentaries *139. The preceding language was quoted with approval in an early American decision, which added that "[i]n a government like ours, theories of public good or public necessity may be so plausible, or even so truthful, as to command popular majorities. But whether truthful or plausible merely, and by whatever numbers they are assented to, there are some absolute private rights beyond their reach, and among these the constitution places the right of property." Wynehamer v. People, 13 N.Y. 378, 386-87 (1856).

[5] Hudson Water Co. v. McCarter, 209 U.S. 349, 355 (1908).

cept—*sic utere tuo, ut alienum non laedas*.[6] Such limitations on the use of private property have been termed "a branch of what is called the police power of the State."[7] Many of these limitations have become as basic to the common law as property rights themselves. In examining the history of property rights, "one sees a change from the viewpoint that he who owns may do as he pleases with what he owns, to a position . . . which grudgingly, but steadily, broadens the recognized scope of social interest in the utilization of things."[8]

Apart from these traditional limitations on property rights, there has lately arisen a recognition that property rights and state action incident to their protection should not be applied so as to limit the exercise of certain personal freedoms. In *Martin v. City of Struthers*[9] the defendant was convicted for door-to-door distribution of religious literature in violation of a city ordinance prohibiting all such distribution. The United States Supreme Court held that the ordinance was unconstitutional in that it violated the defendant's first amendment rights to freedom of speech and press, which the Court held to include both the right to receive and the right to distribute literature.[10] "Freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society that . . . it must be fully preserved."[11] The Court had previously made clear that a state or city could not completely bar the distribution of literature on its streets or sidewalks,[12] but *Martin* extended the concept to prohibit laws forbidding private, or door-to-door, solicitation. A further inroad was made in *Marsh v. Alabama*.[13] In that case the defendant was convicted for violating a state criminal trespass law after distributing literature on the premises of a company town against the management's wishes. In reversing the conviction, the Court noted that "[o]wnership 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."[14] The Court thus held that under these circumstances the state trespass law could not be used to enforce the curtailment of first amendment freedoms. In this way the owner's property rights were again limited, at least to the extent that his property was "dedicated" to public use.[15]

The property rights of landowning employers have been restricted by a number of cases decided under the National Labor Relations Act.[16] Some of these

[6] "Use your own property in such a manner as not to injure that of another." 3 W. BLACKSTONE, COMMENTARIES *217. The maxim has been characterized as "mere verbiage" and as "a sound moral precept expressing an ideal never fully attained in the social state." Rose v. Socony-Vacuum Corp., 54 R.I. 411, 173 A. 627, 629 (1934).

[7] Hudson Water Co. v. McCarter, 209 U.S. 349, 355 (1908).

[8] 5 R. POWELL, REAL PROPERTY 494 (1949).

[9] 319 U.S. 141 (1943).

[10] *Id.* at 143.

[11] *Id.*

[12] *See* Follett v. Town of McCormick, 321 U.S. 573 (1944); Murdock v. Pennsylvania, 319 U.S. 105 (1943); Cantwell v. Connecticut, 310 U.S. 296 (1940); Thornhill v. Alabama, 310 U.S. 88 (1940); Schneider v. State, 308 U.S. 147 (1939); Hague v. CIO, 307 U.S. 496 (1939); Lovell v. City of Griffin, 303 U.S. 444 (1938).

[13] 326 U.S. 501 (1946).

[14] *Id.* at 506.

[15] *Marsh* was evidently the first case in which the Court relied upon the now familiar "public function" argument.

[16] 29 U.S.C. §§ 151-68 (1970).

decisions are similar to *Martin* and *Marsh* in that they seem to have been decided primarily on constitutional grounds.[17] However, most appear to be practical reconciliations between the mandates of the labor statutes and the employers' property rights. In *Republic Aviation Corp. v. NLRB*,[18] the Supreme Court recognized that employees could engage in union organizational activity on company property.[19] No constitutional questions were discussed, the Court describing its decision as one "working out an adjustment between the undisputed right of self-organization assured to employees under the Wagner Act and the equally undisputed right of employers to maintain discipline in their establishments."[20] The right of access to company property was extended to nonemployee union organizers in *NLRB v. Lake Superior Lumber Corp.*[21] The rationale for this extension was that because the employees lived in an isolated lumber camp, they would not otherwise have been able to meet with union representatives. Again disregarding constitutional questions, the court seemed to base its decision on the policy motive of allowing free exercise of the "rights guaranteed by the National Labor Relations Act."[22] The right of nonemployee access to company property was again extended in *NLRB v. S. & H. Grossinger's, Inc.*,[23] in which the employees were quartered on the premises of a secluded resort hotel. The court explained:

> Organization rights are granted to workers by the same authority, the National Government, that preserves property rights. Accommodation between the two must be obtained with as little destruction of one as is consistent with the maintenance of the other . . . . But when the inaccessibility of employees makes ineffective the reasonable attempts by nonemployees to communicate with them through the usual channels, the right to exclude from property has been required to yield to the extent needed to permit communication of information on the right to organize.[24]

Thus, the labor cases dealing with property rights make clear that employers' property rights may be limited by the operation of federal labor laws.[25] These

[17] *See, e.g.*, Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308 (1968). Here also the "public function" argument was advanced by the Court.

[18] 324 U.S. 793 (1945).

[19] The specific holding was limited to situations in which a company rule against such activity is "an unreasonable impediment to self-organization and therefore discriminatory in the absence of evidence that special circumstances make the rule necessary" for maintaining "production or discipline." *Id.* at 804 n.10.

[20] *Id.* at 797-98. The court also cited with approval the following language from the decision of the National Labor Relations Board.

> As the Circuit Court of Appeals for the Second Circuit has held, 'It is not every interference with property rights that is within the Fifth Amendment . . . . Inconvenience, or even some dislocation of property rights, may be necessary in order to safeguard the right to collective bargaining.' The Board has frequently applied this principle in decisions involving varying sets of circumstances, where it has held that the employer's right to control his property does not permit him to deny access to his property to persons whose presence is necessary there to enable the employees effectively to exercise their right to self-organization and collective bargaining, and in those decisions which have reached the courts, the Board's position has been sustained.

Id. at 802 n.8.

[21] 167 F.2d 147 (6th Cir. 1948).

[22] *Id.* at 151.

[23] 372 F.2d 26 (2d Cir. 1967).

[24] *Id.* at 30.

[25] For discussions of these cases see Gould, *The Question of Union Activity on Company Property*, 18 VAND. L. REV. 73 (1964); Hanley, *Union Organization on Company*

decisions do not depend on any assertion of first amendment freedoms. Furthermore, they do not appear to have been based on the federal supremacy clause.[26] Instead these decisions, based primarily on policy considerations, simply seem to be practical reconciliations between conflicting laws.

II. HELPING THE HELPLESS: MIGRANT FARM LABOR

The day-to-day existence of migrant farmworkers in the United States has been described as one involving great physical effort, deplorable working conditions, and inadequate compensation.[27]

> A migrant camp is a microcosm of nearly every social ill, every injustice, and everything shameful in our society: poverty almost beyond belief, rampant disease and malnutrition, racism, filth and squalor, pitiful children drained of pride and hope, exploitation and powerlessness, and the inability or unwillingness of public and private institutions, at all levels, to erase this terrible blight on our country.[28]

The specific causes of the destitution of the migrant farmworker are many; but until recently perhaps chief among them has been his almost total exclusion from the provisions of any beneficial social legislation.[29] "Simply put, migrant farm workers are not enjoying the minimal legal protections afforded other workingmen today."[30] They are often isolated from the balance of our culture by race, language, and illiteracy.[31] By necessity migrants and their families are usually forced to live on their employer's property, thus further isolating them from the community.

These flagrant conditions have not gone unnoticed by Congress. Legislation has been passed "to assist migrant and seasonal farmworkers and their families to improve their living conditions and develop skills necessary for a productive and self-sufficient life in an increasingly complex and technological society."[32]

Property—A Discussion of Property Rights, 47 GEO. L.J. 266 (1958); Note, *"Not as a Stranger": Non-employee Union Organizers Soliciting on Company Property*, 65 YALE L.J. 423 (1956).

[26] U.S. CONST. art. VI, § 2. While few cases in this area have been specifically based on the supremacy clause, the language of at least one Supreme Court case would seem to encourage such an approach. It has been asserted that a state law cannot "[stand] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Hines v. Davidowitz, 312 U.S. 52, 67 (1941).

[27] *See, e.g.*, Chase, *The Migrant Farm Worker in Colorado—The Life and the Law*, 40 U. COLO. L. REV. 45 (1967).

[28] *Hearings on Migrant and Seasonal Farmworker Powerlessness Before the Subcomm. on Migratory Labor of the Senate Comm. on Labor and Public Welfare*, 91st Cong., 1st & 2d Sess., pt. 8-A, at 4979 (1970).

[29] SUBCOMM. ON MIGRATORY LABOR OF THE SENATE COMM. ON LABOR AND PUBLIC WELFARE, THE MIGRATORY FARM LABOR PROBLEM IN THE UNITED STATES, S. REP. NO. 1006, 90th Cong., 2d Sess. 26 (1968). It has been vigorously contended that the federal labor statutes should be amended to include farm employees. Note, *The Farm Worker: His Need for Legislation*, 22 ME. L. REV. 213 (1970). The constitutionality of the exemption of agricultural workers from the provisions of the National Labor Relations Act has been seriously questioned. Comment, *The Constitutionality of the NLRA Farm Labor Exemption*, 19 HASTINGS L.J. 384 (1968). For an analysis of the housing problems of migrant labor and the adequacy of the legislative response, see Comment, *Laws and Legislation Providing for the Housing of Migrant Agricultural Workers*, 6 WILLAMETTE L.J. 111 (1970).

[30] Spriggs, *Access of Visitors to Labor Camps on Privately Owned Property*, 21 U. FLA. L. REV. 295, 297 (1969).

[31] Lorenz, *The Application of Cost-Utility Analysis to the Practice of Law: A Special Case Study of the California Farmworkers*, 15 KAN. L. REV. 409, 421 (1967).

[32] Economic Opportunity Act, 42 U.S.C. § 2861 (1971).

Programs are now authorized "to meet the immediate needs of migrant and seasonal farmworkers and their families, such as day care for children, education, health services, improved housing and sanitation (including the provision and maintenance of emergency and temporary housing and sanitation facilities), legal advice and representation, and consumer training and counseling."[33]

It seems clear that any such attempts to improve the lot of migrant farmworkers will bring into conflict the dominion of the owner over his labor camps and the need and desire of the workers to receive information and services at the camps where they work and live.[34] The specific questions of the right of farmworkers to receive visitors and the right of poverty workers and others to enter labor camps have not been extensively litigated, although there are several "access" cases now pending.[35] It has been held, however, that a newspaper reporter could not be prohibited from entering a migrant camp and, therefore, could not be convicted of trespass for his refusal to leave the premises.[36] This holding was based upon both the reporter's right to freedom of the press and the migrants' rights to free access to information. The court stated that the migrants "have under our Constitution a right to free access to information and, most certainly, visitors, such as news reporters, may not be denied without good cause shown the right of reasonable visitation for purposes of gathering and disseminating news."[37] However, the court drew "a sharp distinction . . . between private property used solely for the owner's private purposes, where the owner's right to protection against criminal trespass and from invasion of his constitutional right to privacy, will take precedence, and premises which are clearly open and dedicated to public uses."[38] Hence, the opinion relied to some degree on the "public function" argument.[39] While this decision may indicate the reasoning that will be used by some courts in deciding cases of this nature, because of the lack of precedent in this area, it cannot be said that any rule of law or trend of authority has been established.[40]

III. FORGIVE US OUR TRESPASSES—STATE V. SHACK

Writing on a clean slate in *State v. Shack*,[41] the Supreme Court of New Jer-

[33] *Id.* § 2862(b)(1).

[34] "All attempts to assist the migrant farmworkers must initially address the basic problem of securing for outsiders—health inspectors, O.E.O. funded employees, community or other organizers—access to the residential migrant camps." *Hearings on Migrant and Seasonal Farmworker Powerlessness, supra* note 28, at 5255.

[35] Citations to these cases are collected in Sherman & Levy, *Free Access to Migrant Labor Camps*, 57 A.B.A.J. 434 (1971). In a somewhat analogous situation, a nursing home has been temporarily restrained from interfering with its patients' rights to receive visitors who seek to assist them and inform them of their constitutional and statutory benefits and rights. Health Law Project v. Sarah Allen Nursing Home, Civil No. 71-1795 (E.D. Pa., temporary restraining order filed Sept. 2, 1971).

[36] People v. Rewald, 65 Misc. 2d 453, 318 N.Y.S.2d 40 (Cayuga County Ct. 1971).

[37] 318 N.Y.S.2d at 45.

[38] *Id.*

[39] It seems unfortunate for the cause of the migrant that the court based its decision on the public nature of the particular camp in question, since there are many other camps that are isolated and quite private in nature.

[40] In MICH. ATT'Y GEN. OP. NO. 4727 (1971) an extensive analysis of the question led the attorney general to conclude that migrant farmworkers were *constitutionally* entitled to receive visitors and that the state criminal trespass statute could not be invoked by owners to prevent the entry of any visitors.

[41] 58 N.J. 297, 277 A.2d 369 (1971).

sey was presented with a variety of reasons for holding in favor of the defendants. It was urged that the migrant farmworkers should be considered as tenants at will during the course of their employment, and thus entitled to choose and receive any visitors they so desired.[42] It seems to be settled at common law that, in the absence of any express or implied lease provision to the contrary, a tenant has the right to receive visitors of his choice even when the owner objects, and that the visitors also are entitled to enter the tenant's premises.[43] New Jersey has accepted this common-law concept,[44] but before it can be applied to a situation, it must first appear that there exists a valid landlord-tenant relationship. In cases in which an employee lives on the premises of his employer, however, the New Jersey courts have consistently refused to find that a tenancy exists. Instead it has been held that the relationship is one of master-servant, and that the landowner remains in control of his property.[45] Although there has never been a case specifically dealing with migrant workers, the consistent prior treatment of similar employment situations in New Jersey as master-servant relationships would seem to indicate that neither a tenancy nor the concomitant rights in the tenant would be recognized. In rebutting the argument that the migrants were tenants at will, the court merely stated that the cases cited "did not reach employment situations at all comparable with the one before us."[46]

Another argument made by the defendants was that the supremacy clause demanded that the state criminal trespass statute yield in favor of the mandate of the federal Economic Opportunity Act.[47] Whenever a state law conflicts with or inhibits the operation of federal laws, the supremacy clause requires a finding that the application of the state law is invalid.[48] Chief Justice Marshall considered it "of the very essence of supremacy to remove all obstacles to its action within its own sphere, and so to modify every power vested in subordinate governments, as to exempt its own operations from their own influence."[49] Also, if it could be found that the defendants were officers of the federal government, there is authority to the effect that the supremacy clause would prevent the use of local laws to impede the performance of their official duties.[50] No case has as yet held the employees of nonprofit corporations like those involved in *Shack* to be federal officers. The court refused to consider any of these supremacy clause arguments; it was pointed out that they are "not established by any definitive holding."[51]

Perhaps the most vigorous assertion by the defendants was that the first amendment rights of the defendants and the migrant farmworkers were substantially inhibited by the operation of the trespass statute, and that it was,

---

[42] Brief for Appellants at 26, State v. Shack, 58 N.J. 297, 277 A.2d 369 (1971).
[43] *See, e.g.*, Williams v. Lubbering, 73 N.J.L. 317, 63 A. 90 (Sup. Ct. 1906).
[44] *Id.*
[45] *See, e.g.*, Scottish Rite Co. v. Salkowitz, 119 N.J.L. 558, 197 A. 43 (Sup. Ct. 1938); McQuade v. Emmons, 38 N.J.L. 397 (Sup. Ct. 1876); Schuman v. Zurawell, 24 N.J. Misc. 180, 47 A.2d 560 (Cir. Ct. 1946).
[46] 277 A.2d at 374.
[47] Brief for Appellants at 17, State v. Shack, 58 N.J. 297, 277 A.2d 369 (1971).
[48] McCulloch v. Maryland, 4 U.S. 415 (4 Wheat.) 316 (1819).
[49] *Id.* at 434.
[50] *See, e.g.*, Giacona v. United States, 257 F.2d 450 (5th Cir.), *cert. denied*, 358 U.S. 873 (1958); *In re* Fair, 100 F. 149 (C.C.D. Neb. 1900).
[51] 277 A.2d at 371.

therefore, unconstitutional.[52] Reliance was placed on *Marsh v. Alabama*[53] and *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*[54] In answer to this argument the court observed that those cases were based upon the public nature of the property involved.[55] The migrant camp in *Shack* was essentially private in nature, and the "public function" argument of *Marsh* would, thus, seem inapplicable.

The court chose instead to hold simply that the possessory right of the farmer-employer had not been invaded by the defendants' conduct, which was, thus, held to be beyond the reach of the trespass statute. The court found

> no legitimate need for a right in the farmer to deny the worker the opportunity for aid available from federal, State, or local services, or from recognized charitable groups seeking to assist him. Hence representatives of these agencies and organizations may enter upon the premises to seek out the worker at his living quarters. So, too, the migrant worker must be allowed to receive visitors there of his own choice, so long as there is no behavior hurtful to others, and members of the press may not be denied reasonable access to workers who do not object to seeing them.[56]

It was recognized, however, that the employer might under certain circumstances bar peddlers, and that he might require visitors to identify themselves and state their purposes. The court reached its holding through a practical inquiry into the plight of farmworkers in New Jersey, an examination of the remedial legislation intended for their benefit, and an historical analysis of property rights and limitations thereon. Taking this approach, the court, thus, found it "*unthinkable* that the farmer-employer can assert a right to isolate the migrant worker in any respect significant for the worker's well-being."[57]

IV. CONCLUSION

By its decision in *Shack* the Supreme Court of New Jersey has secured for New Jersey migrant farmworkers and their potential visitors broad access rights that will likely greatly facilitate the operation of private and governmental schemes designed to aid the farmworkers. The decision does not rest on any precedent, constitutional or otherwise; it is rather a practical balancing of property and personal rights. The peculiar reasoning of the court was that "a decision in nonconstitutional terms is more satisfactory, because the interests of migrant workers are more expansively served in that way than they would be if they had no more freedom than these constitutional concepts could be found to mandate if indeed they apply at all."[58] While judicial conservatives may deplore such a "policy" decision for its lack of underlying precedent, the court probably was correct in feeling that the holding would have been more limited if it had been based on any one of the arguments advanced by the defendants.

---

[52] *Id.*
[53] 326 U.S. 501 (1946). For a discussion of *Marsh* see notes 13-15 *supra*, and accompanying text.
[54] 391 U.S. 308 (1968).
[55] 277 A.2d at 371.
[56] *Id.* at 374.
[57] *Id.* (emphasis added).
[58] *Id.* at 372.

If the decision had been based on the supremacy clause, access rights would have been achieved only for employees of federal or federally-funded agencies, and possibly only when the employees could be regarded as "officers" of the federal government.[59]

In order for the court to base its holding on the *Marsh* "public function" argument,[60] it would have been necessary either to extend the doctrine to property not public in nature or else find as a fact that the migrant camp involved was public in nature. Even if the court had so applied *Marsh*, access rights would have been secured only for those wishing to enter the property to exercise protected freedoms. Another reason it is fortunate that the *Marsh* argument was rejected in *Shack* is that many migrant camps are essentially private in nature, and *Shack*, thus, would not have been applicable to them.

The court also properly rejected the argument that the migrants were tenants at will. To find that the migrants were tenants, the court would have had to overturn a long and consistent line of New Jersey cases holding, in similar employment situations, that the relationship is one of master-servant and not landlord-tenant.[61] Even if the migrants were recognized as tenants, it would seem that the farmer-employer could simply require the execution of a lease agreement reserving to him the right to control visitors.

While *Shack* may have achieved, in a broad fashion, the needed access rights for migrant workers in New Jersey, it may be questioned to what extent the decision will be looked to by other jurisdictions in similar fact situations. The complete lack of a constitutional holding makes uncertain what value the decision will have as general precedent in future cases involving migrant farmworker access rights.[62] Other courts may well be reluctant to follow a decision based solely on general policy considerations. Had the decision been based on some constitutional ground, it would have been more limited in its application, as discussed above, but its value as solid precedent for other jurisdictions would have been enhanced. Strictly speaking, the case seems to stand only for the proposition that, in the particular circumstances involved, there was no trespass.

An alternative method by which the defendants' rights could have been vindicated without a specific constitutional holding was available to the court. Reasoning by analogy to the labor cases involving access rights,[63] the court could have found that there was an implied right of access contained in the mandate of the Economic Opportunity Act.[64] Effective implementation of the

[59] *See* notes 47-50 *supra*, and accompanying text.

[60] *See* notes 52-54 *supra*, and accompanying text.

[61] *See* the cases cited in note 45 *supra*.

[62] *State v. Shack* has been cited with approval in another access case which, however, bases its holding on common law tenancy and constitutional rights arguments. Folgueras v. Hassle, Civil No. 252, and United States v. Hassle, Civil No. K 26-71 (W.D. Mich. 1971). This action was the first access case to be prosecuted by the United States Department of Justice. Sherman, *supra* note 35, at 437 n.16.

[63] *See, e.g.*, note 25 *supra*, and accompanying text.

[64] This seems to have been the contention of the United States. Brief for the United States as Amicus Curiae at 12, State v. Shack, 58 N.J. 297, 277 A.2d 369 (1971). The interest of the United States was stated as follows:

> The United States has important responsibilities for ensuring that its programs operate effectively and without interference. Because this litigation, among other things, involves an interpretation of federal legislation authorizing the creation of organizations designed to aid migratory and seasonal farm