

1997

## Background to State of New Jersey v. Shack and Tejeras

Richard H. Chused

when European style ownership systems were introduced into such cultures, thereby privatizing the commons, did destruction of the grazing lands result. Monbiot therefore argued that Hardin's theory only works with the oceans, the air and other resources lacking communal ownership standards. Recall that in his essay, Hardin noted that western ranchers in the United States tended to overgraze western lands. Are the Hardin and Monbiot essays about economics, culture, government regulation or some combination?

2. Färber, in his article on *Boomer v. Atlantic Cement Co.*, argues that, despite its pollution overtones, the case was not really a case about the tragedy of the commons. Farber may be correct as to the plaintiffs actually suing in the case, for Atlantic's operation apparently had dramatic impacts upon them. But what of those further away from the quarry, where the level of dust pollution and vibration was smaller? Was that (unlitigated) part of the case a problem of the commons?

## 2. Trespass

Shopping centers have become the community centers of our era. Their widespread popularity has also drawn controversy, politics and protest. Those seeking to communicate with their fellow citizens are often asked to leave by center personnel or arrested for trespass when they refuse to go. Similar problems have arisen in other areas—such as large apartments, schools, and migrant labor camps—where people congregate or providers of social services seek to find their clients. One case, *State of New Jersey v. Shack*, has become a property staple. After a short essay on the background of that case written by me, there is an excerpt from an article by Curtis Berger, *Pruneyard Revisited: Political Activity on Private Lands*, on the federal constitutional and state trespass law surrounding these sorts of controversies.

---

### Richard H. Chused, *Background to State of New Jersey v. Shack and Tejeras*, CASES, MATERIALS AND PROBLEMS IN PROPERTY 328-330, 335-336 (1988)\*

Disputes about many major American institutions were rife in the late 1960's. The status of migrant farm workers was no exception. Most of the highly publicized activity occurred in Florida, Texas and California, where Cesar Chavez's efforts to organize workers became a national cause célèbre. But farm worker issues also arose in some smaller growing areas, such as Cumberland County in southern New Jersey. In fact, New Jersey's legislature, partially in response to the national concern over the issue, adopted legislation in the spring of 1967 to strengthen regulation of migrant labor camps in the state. Shortly after this legislation was adopted the New Jersey Farm Bureau, a private association of growers, sold 4,000 *NO TRESPASSING* signs to its members in an apparent

---

\* © 1988 by Matthew Bender & Company, Inc. Reprinted and adapted with the permission of Matthew Bender & Company, Inc.

effort to keep anti-poverty workers, union organizers and newspaper reporters off the farms during the coming summer. And in December, 1967, Governor Hughes appointed a task force to investigate and report on migrant worker issues.

Ron Sullivan, a reporter for the *New York Times* and the author of most of the stories on New Jersey migrant workers published in that paper, estimated that in the summer of 1966, about 7,000 black persons migrated from the south to work the New Jersey fields, along with about 5,400 Puerto Ricans. An additional 1,000 persons, mostly from nearby cities like Philadelphia, Camden and Newark, were driven in each day. When the New Jersey Farm Bureau *NO TRESPASSING* signs appeared, the NAACP Legal Defense Fund, deeply interested in the issue because of the large number of black workers, revealed plans to ask federal courts to have the signs removed as a violation of the First Amendment rights of the workers to freely associate with persons of their choice.<sup>6</sup> A short time later the interagency group set up by Governor Hughes to enforce the newly enacted legislation on migrant labor urged that a number of labor camps be closed because of inhumane conditions. Five farmers, including Morris Tedesco who owned the land that was the subject of the *Shack* case, were warned to clean up their camps or face court closure actions. The closure actions were never brought by the state, though migrant workers later confirmed their right to sue the state to demand that migrant camp regulations be enforced.<sup>7</sup>

In 1968, the Governor's task force issued its report on migrant labor, recommending that the state take steps to encourage unionization of the labor force. The notion of constructing state operated housing for migrant laborers was rejected, though such housing had been constructed in the early 1940's by the federal government and seriously considered in New Jersey at about the same time. In any case, the report was never acted upon by the state government. Tensions in the fields grew. By the summer of 1970, guns were being brandished and threats made against anti-poverty workers, lawyers and reporters. Frank Tejeras noted, "We got sick and tired of getting pushed out. Often the farmers would come out with guns. I used to kiss my wife and daughter goodbye every day because I didn't know if I'd be coming home."

On August 6, 1970, Frank Tejeras, a field worker for the Farm Workers Division of the Southern Citizen Organization for Poverty Elimination (SCOPE), went to Tedesco's farm to pick up Tona Rivera, whose face had been slashed some weeks earlier, and take him to the hospital to remove stitches from the wound. The injury was festering because the stitches had been in too long—three weeks. Tejeras passed the *NO TRESPASSING* signs posted along the roadside of the farm and walked up the dirt road toward the migrant camp. Tedesco, rifle in hand, confronted Tejeras and told Tejeras to leave. He left.

Tejeras called Peter Shack, a staff attorney at the Farm Workers Division of Camden Regional Legal Services. The two of them agreed to return to the farm the next day with Ronald Sullivan of the *Times*. At about nine o'clock the next morning Shack, Tejeras and Sullivan (with camera in hand) entered Morris Tedesco's farm. Once again they passed the *NO TRESPASSING* signs posted along the roadside of the farm and walked up the dirt road toward the migrant labor camp.

Tedesco was not pleased. Though without his rifle this time, he was reported to have cursed Shack and Tejeras, said that not "even President Nixon" would be allowed to see

<sup>6</sup> The case was filed, but dismissed on state action grounds. That holding was reversed, but only for a factual hearing on whether state action was present. *Peper v. Cedarbrook Farms, Inc.*, 437 F.2d 1209 (3d Cir. 1971). The case was then dropped. By that time the New Jersey Supreme Court had agreed to review the *Shack* case and the NAACP Legal Defense Fund correctly assumed their interests would prevail in that setting. See Casenote, *State v. Shack*, 46 N.Y.U. L. REV. 834, 840-845 (1971).

<sup>7</sup> *Colon v. Tedesco*, 125 N.J. Super. 446, 311 A.2d 393 (1973).

the farm, and, when Sullivan tried to take his picture, struck the camera against Sullivan's face and yelled, "I'll smash you for this; I'm going to get you for this. This is my property. You can't come in here looking around!" Shack, Tejas and Sullivan decided to stay at the farm. State troopers were called and about two hours later all three were arrested and charged with trespass. Later in the day, Tejas went back to the farm, picked up Rivera and took him to the hospital. Two days later, Tejas went back to the farm and picked up another worker, Ramon Cruz, whom Shack had wanted to see at the farm. Cruz had suffered a cut on his hand while working in the fields. He was unable to work and had not received wages for a month.

The case against Sullivan was severed from the Shack-Tejas matter by Judge Steven Kleiner. Kleiner may have been influenced to split the cases by the First Amendment overtones of the Sullivan matter or by the fact that the *New York Times* had sued Tedesco in tort for damages caused the paper by the battery of its employee, Sullivan. The charges against Sullivan were eventually dropped and the *Times* agreed to dismiss the tort action. The dispute and the resultant publicity led to another round of calls for action by state and federal officials against poorly run farms in southern New Jersey and for adoption of legislation guaranteeing government workers and certain other persons access to labor camps. Early the next year, the Justice Department sued for the first time, seeking access to a migrant labor camp to investigate potential violations of civil rights.<sup>10</sup>

\* \* \*

[After the decision in *State of New Jersey v. Shack* was rendered] Morris Tedesco reacted strongly \* \* \*. "We now might as well turn the country over to the Russians," he said. The decision, he added, will only create more conflict this summer and force the remaining farmers in New Jersey to "clear out within six months." Access problems have apparently eased somewhat since the decision. People have more confidence going in [to farms], though there is still some resistance. Migrant life itself has not changed a whole lot according to Tejas. But the composition of the work force has. The vast majority of seasonal workers are Puerto Rican. Black migrants from the south are not appearing in large numbers now.

---

Curtis J. Berger, *Pruneyard Revisited: Political Activity on Private Lands*, 66 N.Y.U. L. REV. 633-636, 648-657, 659-670, 674-675, 678-679, 681-682, 690-692 (1991)\*

#### INTRODUCTION

More than a decade has passed since the Supreme Court decided *Pruneyard Shopping Center v. Robins*,<sup>1</sup> a case that pitted free-speech rights against those of private-property. In *Pruneyard*, the Court held that the California State Constitution's grant to individuals of the freedom to enter a privately owned shopping mall and gather petitions did not violate the property owner's first and fifth amendment rights under the United States Constitution. In the same opinion, the Court cemented earlier holdings<sup>6</sup> that had

---

<sup>10</sup> \* \* \* See *Folgueras v. Hassle*, 331 F.Supp. 615 (W.D. Mich. 1971).

\* Copyright 1991 by the New York University Law Review and Curtis J. Berger. Reprinted with the permission of the New York University Law Review and the author.

<sup>1</sup> 447 U.S. 74 (1980).

<sup>6</sup> See *Hudgens v. NLRB*, 424 U.S. 507, 523 (1976); *Lloyd Corp. v. Tanner*, 407 U.S. 551, 570 (1972).