ing was publicly built and owned, that the restaurant was an integral part of the complex, that the restaurant and the parking facilities complemented each other, that the parking authority had regulatory power over the lessee, and that the financial success of the restaurant benefitted the governmental agency. The "degree of state participation and involvement in discriminatory action," therefore, was sufficient to condemn it.[1312]

The question arose, then, what degree of state participation was "significant"? Would licensing of a business clothe the actions of that business with sufficient state involvement? Would regulation? Or provision of police and fire protection? Would enforcement of state trespass laws be invalid if it effectuated discrimination? The "sit-in" cases of the early 1960s presented all these questions and more but did not resolve them.[1313] The basics of an answer came in *Moose Lodge No. 107 v. Irvis*,[1314] in which the Court held that the fact that a private club was required to have a liquor license to serve alcoholic drinks and did have such a license did not bar it from discriminating against African-Americans. It denied that private discrimination became constitutionally impermissible "if the private entity receives any sort of benefit or service at all from the State, or if it is subject to state regulation in any degree whatever," since any such rule would eviscerate the state action doctrine. Rather, "where the impetus for the discrimination is private, the State must have 'significantly involved itself with invidious discrimination.'" [1315] Moreover, although the state had extensive powers to regulate in detail the liquor dealings of its licensees, "it cannot be said to in any way foster or encourage racial discrimination. Nor can it be said to make the State in any realistic sense a partner or even a joint venturer in the club's enterprise." [1316] And there was nothing in the licensing relationship here that approached "the symbiotic relationship between lessor and lessee" that the Court had found in *Burton*.[1317]

The Court subsequently made clear that governmental involvement with private persons or private corporations is not the critical factor in determining the existence of "state action." Rather, "the inquiry must be whether there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that

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[1312] Burton v. Wilmington Parking Authority, 365 U.S. 715, 724 (1961).

[1313] *See*, *e.g.*, the various opinions in Bell v. Maryland, 378 U.S. 226 (1964).

[1314] 407 U.S. 163 (1972). One provision of the state law was, however, held unconstitutional. That provision required a licensee to observe all its by-laws and therefore mandated the Moose Lodge to follow the discrimination provision of its by-laws. Id. at 177–79.

[1315] 407 U.S. at 173.

[1316] 407 U.S. at 176–77.

[1317] 407 U.S. at 174–75.