

March 6, 2024

Asking a Guest to Leave the Premises and Bias – How the Starbucks Incident Five Years Ago Changed the Hospitality Industry

by Rob Schnitz - Partner at Kabat Chapman & Ozmer, LLC

It has been over five years since a Starbucks location in Philadelphia attracted national attention by having two customers removed from the premises in handcuffs by police officers. The incident highlighted the role that bias can play in providing or denying service to customers and challenged the norms and protocols that existed for decades for operators and managers in deciding to remove a guest from the premises. This presentation will examine the rights of hospitality operators and owners to remove guests from the premises and the significant legal and societal changes that can impact how those rights are carried out. Additionally, we will examine steps a hospitality manager can consider in minimizing the impact of bias in providing service to guests.

The right of a property owner to remove a trespasser from the premises is well established in the common law. Threatening “NO TRESPASSING” and “KEEP OUT” signs are a common sight in the United States. However, such a sign is both inappropriate and counter-productive in a hospitality setting. Most hospitality establishments attempt to be welcoming places and legally invite people on the premises. Yet, there are limits to that invitation and hospitality businesses have long had the right as private property owners and managers to remove a guest for a variety of reasons despite the invitation to enter the premises. Many of us are familiar with the signs “No Shoes. No Shirt. No Service” and “We Reserve the Right to Refuse Service to Anyone.” The general premise is that a guest or customer of a hospitality business is an invitee, and the operator or manager must properly revoke the invitation before asking the person to leave the premises.

There are ample cases in the common law justifying the removal of a guest for a variety of reasons including the failure to pay, drunkenness, loitering and disruptive, threatening, or insulting behavior. A key issue in a trespass situation is to understand the nature and scope of the invitation to the guest. Many hospitality operators and managers have historically operated under the premise that guests are invited on the premises to purchase the services and goods they are selling. Accordingly, if a person is not purchasing services or goods, the property manager

should be free to revoke the invitation and ask that person to leave the premises even if they are not otherwise engaging in disruptive conduct or interfering with operations per se. It is the author's view that it was a commonly accepted practice for a property manager or owner to remove non-purchasing patrons from the premises. In turn, it was also common to contact law enforcement to obtain assistance in removing a patron who refused to leave voluntarily. Many hospitality operators had and still have protocols to ask guests who are not purchasing goods or services to leave the premises. This practice might be rooted in a desire to keep seating open for paying guests, or to avoid loitering, or as a general safety practice. Although these reasons appear to be legitimate business reasons to enact such a practice, under the common law of trespass, it may not be required to show anything more than a proper revocation of invitation was made since the guest was not purchasing any goods or services consistent with the property owner's invitation.

However, the Civil Rights Acts of 1964 (Title VII) created a significant wrinkle in trespass enforcement because the law prohibits discrimination in lodging and restaurant establishments based upon race, color, national origin, and religion. Many states enacted similar laws in the sixty years since the landmark law went into effect. Since the law went into effect in 1964 removing a guest from a hotel or restaurant due to guest's race became an unlawful practice nationally and raised questions about the motivations for a hospitality operator's intent in asking a guest to leave. For anyone familiar with this country's civil rights history, the images of Black citizens being pulled away from lunch counters by police officers is a gruesome reminder of the motivation behind the law's enactment. In addition to these blatant examples of denying a guest service due to race are the more subtle issues that can arise when a guest is asked to leave the premises and race is potentially the cause or a motivating factor.

Despite the rise of anti-discrimination laws, we can still find numerous examples of courts upholding the removal of customers and guests from hotels and restaurants despite claims of discrimination. In short, courts seem to routinely find that plaintiffs have failed to meet the burden of proof to find that race, color, or national origin was a motivating factor in the trespass removal and instead found that the hospitality manager or owner's invitation to the guest had been properly revoked. Also, one must question whether Title VII provided enough financial motivation for potential victims to pursue a claim since punitive and emotional distress damages

were not available under the statute until 1991. Also, it can be difficult to retain counsel since often there are not significant underlying damages in this type of case.

So, why did the Starbucks incident become a flashpoint for racial bias in service establishments nearly 55 years after Title VII was passed? There are a variety of factors that converged to trigger a viral moment that set off a wave of attention and concern over bias and discriminatory conduct in the hospitality industry and elsewhere. First, in 2018 when the incident occurred, a number of violent police brutality incidents had flooded the news and social media. Most significant were the Laquan McDonald killing in Chicago and the Michael Brown killing in Ferguson, Missouri. The Black Lives Matter movement had become well known and public attention was more readily focused on bias in the treatment of people of color by law enforcement and others when incidents arose. Second, certain facts in the Starbucks incident separated it from a more typical guest removal scenario. The Starbucks Philadelphia location summoned law enforcement who then arrested and handcuffed the two Black male guests. The incident was captured on video recording and showed the police handcuffing two guests without any noticeable resistance or disruption. In fact, the guests who were being arrested can be described as peaceful and calm. The video was downloaded on social media and viewed by millions. As a result, Starbucks faced a firestorm of criticism, issued an apology, and eventually closed 8,000 locations for several hours on one day to conduct implicit bias training. Since the incident Starbucks and hundreds of other companies have found themselves on the wrong side of social media and news stories about unfair and callous treatment, further highlighting the daily indignities that many Americans suffer due to race, color, and national origin.

The outrage associated with the video images at a time when public awareness around police brutality was high does not likely fully explain the reason for significant impact of this incident. After all, Black customers had endured similar treatment repeatedly even after Title VII was passed and courts had repeatedly found that property managers were within their rights in asking those patrons to leave. One key to understanding the change lies in the question that many were asking on social media at the time of the incident – “What did the men do to deserve such treatment? They weren’t doing anything except sitting and relaxing at a Starbucks restaurant just like everyone else.” Embedded in that common question and observation is the notion that people have an expectation that they are allowed to “hang out” at a restaurant or hotel regardless

of whether they are buying goods or services. This assumption goes to the heart of the legal issue of understanding the nature of the invitation to the public to enter the premises and reflects a notable change in perception over the past several decades.

The rise of Starbucks is likely a primary catalyst for this change in perception by creating spaces for guests to “hang out” and even encouraging that behavior. In the 1990’s Starbucks even adopted the phrase “Third Space” coined by sociologist Ray Oldenburg to describe the environment in their stores. Generally, a third space is an informal place other than home (first space) or work (second space) where people can gather. What is somewhat unique about Starbucks’ decision is that its stores are private property whereas many other third spaces are fully public, such as parks, libraries, and community centers. Although restaurants and hotels are a type of “public accommodation” that invites the public on the premises, that invitation is not unlimited and remains under the control of the property owner.

By 2018 the public had become accustomed to the practice of third spaces as they had become the norm in many coffee shops, restaurants, and hotel lobbies where Wi-Fi connections were touted, and comfortable furniture and power outlets were installed. To be clear, many hotels and restaurants offered third spaces to its guest well before the 1990s. Hotel lobbies in major cities have long been seen as places for people to relax, meet friends and catch up on the news or email. Security personnel at these hotels are often fully aware that non-paying persons are resting in the lobby and do not have a practice in place of questioning each person about whether they are conducting business on the premises. Furthermore, there is also a line of common law cases which find that hotels have a duty to permit even a non-paying person to take refuge at a hotel if safety or security is an issue. This certainly is the case with a minor or potential human trafficking or domestic violence victim on the premises. However, it appears the public had not adopted the third space as the norm for most hospitality businesses open to the public until closer to the second decade of the twenty-first century.

Another significant societal change that was developing at the same time as the prevalence of third spaces is the advent and pervasiveness of social media. The ability to post video clips and generate an echo chamber of loud voices reaching millions of people within a short amount of time created a vehicle for aggrieved people to bring pressure to bear on a hotel or restaurant, especially a national brand with reputational concerns, that did not exist except in the rare

instances where the news media might decide to pick up a story. The warning often expressed within a company to conduct oneself to avoid reading about your company on the front page of the New York Times has been replaced to a large degree by the concern about your company becoming the subject matter of a viral social media video or tidal wave of verbal criticism on social media channels. It is arguable that the stakes are higher and the bar for triggering such an event is lower.

Although there may be some value in understanding all the facts regarding the incident at the Philadelphia Starbucks location in 2018, it will be remembered as an example of bias against Black patrons that set off a national reckoning with the issue to a large degree. Significantly, it was not a lawsuit that triggered the sequence of events as has often been the case in the past in the United States. In fact, the two aggrieved men quietly settled any claims they might have with Starbucks one month after the incident securing promises from Starbucks and the Philadelphia police to support community action in addition to an undisclosed amount of money.

Despite the Starbucks incident in Philadelphia, similar incidents have been reported repeatedly since that time, including at other Starbucks locations, proving that the issue is not easily resolved. In addition to conducting bias training, Starbucks also announced a new policy that any person who walks into their stores would be treated as a customer regardless of whether they are purchasing an item. This policy in effect reflects both the public's perception of the meaning of a third space and the increased burden on Starbucks to establish a lawful basis to remove a guest from the premises. Starbucks store signage now regularly references this policy and explains that guests are expected to act in a respectful and non-disruptive manner.

What can hospitality operators and owners do to minimize the impact of bias in daily service decisions? First, every business should understand the nature and scope of its invitation to the public to enter the premises and the perception that the public may have regarding that invitation. A hotel or restaurant in a suburban drive-up location is intuitively different than an urban location with walk-in traffic. And a coffee shop with Wi-fi is different than a busy restaurant with table service. Private property owners still have the right to revoke an invitation to enter the premises when a patron is engaging in conduct inconsistent with the invitation. But public perception today may serve to override legal arguments depending on the circumstances.

Second, consider the circumstances when it is appropriate to ask a guest to leave the premises and train managers and security personnel on how to initiate and conduct a trespass decision in order to ensure professional conduct and create consistency. Consider when to involve the police. Is an involuntary removal necessary and will it be perceived as excessive and threatening?

Third, consider whether bias could be playing a role in the decision and work to diffuse such situations. If there is a concern that bias may be impacting a decision, consider handing the decision off to another manager and be willing to be flexible in decision making. If allegations of bias arise try to avoid defensive or accusatory behavior and focus on guest service recovery and restorative practices.

Fourth, provide anti-bias training for all your employees, especially guest-facing positions. Raising awareness about implicit bias and learning how to manage bias in the service setting is a key to avoiding future disputes and creating higher customer satisfaction.