

C O N T E N T S

1 ORAL ARGUMENT OF: P A G E
2 James W. Gallman, Esq.
3 Amicus Curiae 25

4 REBUTTAL ARGUMENT OF:
5 Conrad K. Harper on behalf of Petitioner . . . 38
6 Jerris Leonard, Esq.
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1 IN THE SUPREME COURT OF THE UNITED STATES

2 October Term, 1968

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 4 Mrs. Doris Daniel and Mrs. Rosalyn Kyles, :
 5 Petitioners; :
 6 vs. : No. 488
 7 Euell Paul, Jr., Individually and as Owner, :
 8 Operator or Manager of Lake Nixon Club, :
 9 Respondent. :
 -----x

10 Washington, D. C.
11 Tuesday, March 25, 1969

12 The above-entitled matter came on for further argu-
13 ment at 10:30 a.m.

14 BEFORE:

- 15 EARL WARREN, Chief Justice
- 16 HUGO L. BLACK, Associate Justice
- 17 WILLIAM O. DOUGLAS, Associate Justice
- 18 JOHN M. HARLAN, Associate Justice
- 19 WILLIAM J. BRENNAN, JR., Associate Justice
- POTTER STEWART, Associate Justice
- BYRON R. WHITE, Associate Justice
- ABE FORTAS, Associate Justice
- THURGOOD MARSHALL, Associate Justice

20 APPEARANCES:

21 (The same as heretofore noted.)
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23
24
25

P R O C E E D I N G S

MR. CHIEF JUSTICE WARREN: Doris Daniel and Rosalyn Kyles, petitioners; versus Euell Paul, Jr., et cetera.

Mr. Gallman, you may continue with your argument.

FURTHER ARGUMENT OF JAMES W. GALLMAN, ESQ.

AMICUS CURIAE

MR. GALLMAN: Mr. Chief Justice and may it please the Court:

Yesterday we were discussing the Nixon farm which, under the Pauls, was improved and became more of a place of business, as we observed from the record.

With the advent of the Civil Rights Act of 1964, the Pauls chose to operate their establishment under the guise of a private club. As is evident from the record here, this was rejected out of hand by the District Court. It was not even a serious question in the District Court.

It does have one surprising effect on the case, though, that I think has followed it all the way through. If we look at the record and the commencement of the case, we see that counsel for the plaintiff, or for Mrs. Daniel and Mrs. Kyles, intended a trial based upon the private club exemption of the 1964 Act.

This fell flat, to gain their point in this regard, and thereafter I think the record reflects that adequate proof was not brought in concerning the connection of this business

1 with commerce, so that the Act would apply.

2 Now, the District Court took the view that, Number 1,
3 there was no coverage under the Act because this was not a place
4 of entertainment. It considered it a place of participation or
5 exercise, or such as that, and not one where one is entertained,
6 and it assumed that perhaps some of the items at the place of
7 business had moved in interstate commerce.

8 Q Mr. Gallman, do I understand it to be your posi-
9 tion as amicus representing the position of respondent in this
10 case that the private club exemption of the 1964 Act does not
11 apply here?

12 A That is correct.

13 Q Since that was the finding of the District Court,
14 affirmed by the Court of Appeals, first of all, that that find-
15 ing is erroneous.

16 A That is correct.

17 Q So that is out of this case.

18 A I believe so.

19 There was further the question of what connection the
20 so-called lunch stand, snack bar, or what have you here, had
21 with the establishment; that is, would it come under 201(b)(2),
22 a restaurant, cafeteria, lunchroom, lunch counter, soda fountain,
23 and so on, principally engaged in selling food for consumption on
24 the premises.

25 The lower court felt that this business was one of

1 swimming, sunbathing, and so on, and that the food was strictly
2 incidental and not a major enterprise of the business. It also
3 rejected the idea that there were two establishments, so as to
4 say that under sub-subsection (4) that there was no covered
5 establishment that would bring the entire establishment within
6 the coverage of the Act.

7 When this case got to the Court of Appeals, the reason-
8 ing was not the same, so the Court of Appeals looked at the two
9 requirements for coverage under the 1964 Act; namely, the com-
10 merce connection or the offer to serve interstate travelers.

11 Now, again, I advert to the fact that the record below
12 was not developed with respect to the offer to serve interstate
13 travelers. There is simply no questioning about it. It is true
14 that it could be inferred from the testimony of Mr. Paul that
15 they would serve any white person without inquiring about their
16 origin, but there is no searching inquiry at all as to whether
17 they would restrict their service to domiciliaries of the area;
18 that is, would leave the interstate traveler to go elsewhere.

19 This really is, considering the geography of the mat-
20 ter, a remote and isolated lunchroom, if that is what we are
21 talking about. It is some 12 miles from the city. It is hard
22 to get to and, as I explained yesterday, hard to find.

23 The Court of Appeals then approached it from the
24 standpoint of what did the record show with respect to commerce.
25 I know that Court had in mind, just as the Assistant Attorney

1 General had here, that common sense-wise, the business must have
2 some connection with interstate commerce, but are we dealing with
3 the question of whether there is sufficient connection in the
4 area for Congress to legislate, or are we dealing with the ques-
5 tion of whether, under the provisions of the Act, a substantial
6 part of the food served at the lunchroom, which is serves, has
7 moved in interstate commerce?

8 Now, there were four items mentioned -- hamburgers,
9 hot dogs, soft drinks and milk. It is argued by petitioners here
10 that three of the four items had interstate origins. There was
11 no evidence about it. The District Court, without any evidentiary
12 support at all, said that he supposed that some of the ingredi-
13 ents for the hamburgers -- I suppose the flour -- had interstate
14 origin.

15 The drink I think he laid aside because of the legis-
16 lative history of the Act indicating that it is the inquiry about
17 the food, not about the drink. He said that there some of the
18 ingredients obviously came from out of State, I am sure; it is
19 a matter of common knowledge, but it is not in the record.

20 I am satisfied, or I feel my common sense tells me,
21 that this establishment sold cigarettes, that it sold candy,
22 that it sold some other items -- gum, mints, and items such as
23 this -- but it is not in the record. As a matter of fact, the
24 record indicates the opposite.

25 So this is what we get to when we look for coverage

1 under the Act: We find that it was thought of as a case where
2 there would be a serious contest on the private club exemption,
3 and then, lo and behold, that fell through. I have had the same
4 experience myself. But they did not go ahead and introduce the
5 necessary evidence to show coverage under the Civil Rights Act
6 of 1964.

7 Q Does the record show the kind of beverages that
8 were sold? What were they -- soft drinks? It doesn't show any-
9 thing?

10 A No. They were soft drinks. I think it reflects
11 that clearly.

12 Q They didn't have a liquor license.

13 A No, there is no liquor. It is indicated that no
14 beer was sold. Of course, Arkansas is a package-type State and
15 they cannot dispense liquor by the drink.

16 Q Well, that is a dry State.

17 A But this place has always been noted for no
18 alcoholic beverages of any kind.

19 So the Court of Appeals approaches this: Judge Heaney
20 dissented in the Court of Appeals. He wasn't quite so sure that
21 Judge Mehaffey, the majority judge, was wrong about this lack of
22 evidence concerning movement of the food in commerce. He wanted
23 to look at some Arkansas statutes that permitted, or might be
24 used, to prevent so-called integration or admissions of Negroes
25 to this sort of place, as saying, "Well, there is an omnibus

1 enforcement act in Arkansas that might be used to prevent this
2 sort of thing, so we can say that this practice, this discrimi-
3 natory practice of the Pauls, resulted from State action."

4 So he buttressed his disagreement with this conclusion
5 and contended, all the while, of course, that there was sufficient
6 evidence that interstate commerce had furnished the goods that
7 were sold in the lunchroom.

8 Now, the other question, I think, that deserves comment
9 here is the question of what about this place of entertainment?
10 Basically, this is a participant-type of amusement park, if we
11 can call it that. I would rather call it a farm, but the record
12 doesn't reflect that. But it doesn't have rides. It doesn't
13 have the things that you had in the Fifth Circuit case of Miller
14 where you had 11 or 12 complicated rides manufactured out of
15 State and brought in, without any question.

16 Here our record concerning the equipment used for
17 boating, and boating only did the evidence go to, is not clear
18 as to where that came from. Now, there is some indication that
19 they had about a dozen boats. They are called paddle boats.
20 I don't know what they are exactly, except I think they are the
21 kind where children get in them and they have some pedals they
22 push and the paddle in the rear of the boat makes it go. I think
23 that is what it is. I am not sure. They had a yak, whatever
24 that is.

25 Now, this is a very minor part of the activities, as

1 I understand the record. It is suggested that these were per-
2 haps purchased out of State. Judge Mehaffey, in his opinion,
3 said it was common knowledge that boats were made in Arkansas.
4 There was a reference to an Oklahoma boat company to whom the
5 Pauls paid a royalty, but it is not clear whether -- at one point
6 the question is, "From whom did you purchase the boats or did
7 you purchase the yak?" They say "The same company," meaning the
8 same company to whom they paid the royalties, but there is no
9 testimony about where the boat was made, where the sale was made,
10 where the boat came from, did it come from Oklahoma to Arkansas.
11 There is nothing about it.

12 Now, it is assumed in the briefs that this indicates
13 some interstate contact with reference to that, and for that
14 reason they ought to say that the entertainers here, these boats,
15 moved in commerce and that, therefore, this activity ought to
16 be a covered one under sub-subsection (4) of the Act, or 201 of
17 the Act.

18 We suggest that it is not anywhere near like the
19 Miller case; that Judge Mehaffey in his opinion was correct
20 that the evidence concerning movement with reference to amuse-
21 ment or entertainment, movement in interstate commerce, is not
22 there.

23 Now, the Court of Appeals did not have before it, and
24 has not had a possibility of ruling on the applicability of
25 Title 42, Section 1981 or 1982.

1 Q What about the juke box, Mr. Gallman?

2 A Again, Mr. Paul was asked "Where was the juke box
3 made?" He said, "I don't know." I think the testimony ended
4 there.

5 Q Wouldn't you assume as a possibility that one of
6 the records in that juke box came in interstate commerce?

7 A Oh, in my common knowledge, I know that every one
8 of them, perhaps, came through interstate commerce. I know the
9 juke box is made elsewhere. I don't have any doubt about it.
10 I think that is true.

11 Q What was it used for?

12 A The juke box, to play and listen to, I suppose.

13 Q Was there any dancing there?

14 A Yes, sir. On a Friday night, or perhaps a
15 Saturday night, between the last day in May and perhaps Labor
16 Day, one of those two nights, the establishment would have a
17 dance. The testimony is that a local band would play for that
18 dance and we would not have entertainers who had moved from
19 another State to Arkansas to present the performance. These were
20 so-called amateurs, or local musicians.

21 Of course, if you want to know what I know about it,
22 I would say that the juke box played at intermission, when the
23 band quit, but that is not in the record.

24 Q Where was the dance held?

25 A I believe they had a pavilion, Your Honor, I

1 would judge 20 by 20, something of that sort.

2 Q You said yesterday the only building was the
3 lunch counter. Did I understand you correctly?

4 A No, I didn't mean to say that. There is a dress-
5 ing room. Next to it there is a lunch counter. As I recall,
6 when the Pauls came in, they put some more grass down the edge
7 of this little lake, in the shallow water, and down there they
8 erected a floor, an outdoor-type cover, where this dancing took
9 place.

10 Q For the purpose of entertainment; admittedly so.

11 A Well, I think the people danced. I think the
12 record shows that two nights a week they danced. I think the
13 contention was that it wasn't for watching others dance; it was
14 for people to dance.

15 Q You do raise a question at the outset about
16 whether this is a place of entertainment at all covered by the
17 Act.

18 A Yes. The District Court did, and I think the
19 Court of Appeals said perhaps it is, but still, we don't have
20 any interstate connection, is where it all wound up.

21 Q Yes. What is your position?

22 A What is mine? I agree with the Court of Appeals
23 that the evidence --

24 Q That it was a place of entertainment, or do you
25 disagree with that?

1 A Well, I think we can assume it is a place of
2 entertainment, and then look for the necessary connection, as
3 required by 201(b)(3).

4 I might refer to this: I know that with a reference
5 to excise taxes, for example, where the cabaret tax applied to,
6 the 20 percent tax that we used to have, that --

7 Q There is no reference whatever as to what music
8 was furnished for the dancing?

9 A They referred to the names of the band, Your Honor,
10 as "The Gents", "The Pacers", names of this sort, and I took it
11 from those names that it would be rock and roll music.

12 Q There is no reference about the juke box playing
13 at all?

14 A No, sir.

15 To return to the question of Mr. Justice White, the
16 cabaret tax was applied, and it speaks of entertainment, was
17 applied to places where a juke box furnished the music for
18 dancing, and there was no performance, as such. Those cases do
19 exist, that I know of.

20 As I said, the question of the application of 1981 was
21 not before the Court of Appeals. It appears in language broad
22 enough to prohibit all discriminatory action concerning contracts.
23 The Government, I think, raises some very searching questions in
24 its brief concerning the impediments that might exist to holding
25 that 1981, or Section 1 of the 1866 Act, might in itself be

1 sufficient here.

2 I notice that they caution the Court that perhaps this
3 should be characterized here as a sort of public contract, and
4 that the 1866 Act, if it has viability, ought to be looked at
5 as referring to so-called public-type contracts.

6 Q Mr. Gallman, directing your attention to page 29,
7 Mr. Paul said there were two juke boxes. "May persons put their
8 nickels and dimes in any time during the day and get music and
9 dance or whatever they want to do?" "Answer: Yes. Right."
10 That is Mr. Paul himself. He said there were two juke boxes
11 and they were constantly going.

12 A Yes, Your Honor; I know there were. Did the Court
13 understand me to say there were not juke boxes there?

14 Q No, but these, as I understand this, is says that
15 (1) there were two juke boxes; (2) they were used all during
16 the day and night, and they were used for the purpose of people
17 dancing or whatever else they wanted to do, which I would sub-
18 mit could be entertainment, couldn't it?

19 A Oh, yes. I would agree that it could be; yes.

20 Q Did they have a permit?

21 A This was out in the country, Your Honor. You
22 wouldn't need a permit for the dance.

23 Q I thought you said they had some kind of a per-
24 mit. Was I mistaken in that?

25 A Well, Your Honor; I didn't mean to. I may have.

1 Q I understand.

2 A No, they had no permit. They got no license.

3 I think they did have a periodic inspection by the Health De-
4 partment. As I pointed out yesterday, this posed a problem be-
5 cause sometimes their water supply wasn't sufficient to keep the
6 pool area clean. It couldn't be chlorinated.

7 There is one point I must raise, and I may have been
8 remiss in this, Your Honors, but I had assumed when I was in-
9 vited to appear here that it was perfectly evident that the
10 reason the Pauls were not in the case was that they had dis-
11 posed of this property.

12 I found upon arriving here, and checking with opposing
13 counsel, that they were under the apprehension that the Pauls,
14 in fact, still owned the property, but it is my information that
15 they do not; that they disposed of it September 26, 1968 through
16 a sale; that they reserved 2.75 acres, namely, the three home-
17 sites on this property, for themselves, but otherwise disposed
18 of the property.

19 I give that to you because I think you ought to know
20 this.

21 Q I can't speak for my colleagues, but so far as
22 I am concerned, this is news to me. Is it your suggestion that
23 this moots the case?

24 A Well, it suggests to me that it might have some
25 effect in that area. I do not know what the plans of the new

1 owners are. If they intend to operate it publicly, I can see
2 utility in the opinion or the decision.

3 Q Do you know who the purchaser was?

4 A Yes, it is a group of 10 individuals. I am told
5 that they have a connection with a church. I believe that they
6 formed a private corporation to acquire this. They call it
7 Lake Nixon, Incorporated. That is as much as I know.

8 Q Mr. Gallman, my recollection of it is that we
9 were either told, or at least it was our understanding, that
10 Mr. Paul said that he just didn't want to pursue it any farther
11 and if the Court ruled against him, he would just close it up.

12 A Yes.

13 Q I think that is what we were told when we took
14 the case and that is why we asked you to serve.

15 A Yes, sir.

16 Q Incidentally, Mr. Gallman, I want to say that the
17 Court appreciates your being willing to take this assignment
18 from us, because otherwise we would have had just one side of
19 the case heard.

20 A Thank you, Your Honor. It is a pleasure to be
21 here.

22 MR. CHIEF JUSTICE WARREN: Mr. Harper?

REBUTTAL ARGUMENT OF CONRAD K. HARPER

ON BEHALF OF PETITIONERS

MR. HARPER: Mr. Chief Justice, and may it please the Court:

With reference to Mr. Gallman's last point concerning the disposition of the Lake Nixon property, a rumor came to our attention some time in December, after this Court had granted certiorari, that the property had been disposed of; whereupon, I called the former attorney for the Pauls, Mr. Robinson I believe his name was. He indicated he was not then their attorney.

His understanding was that they did not wish to pursue this case. However, he recommended that since he didn't know anything more, I might talk with Mrs. Paul and Mr. Paul. So I took this extraordinary step of calling Mrs. Paul directly and asked her whether she had, in fact, disposed of the property. Her answer was no, that they thought it was under contract, but the deal had not been consummated, and that is as much as I know. That was as of late December 1968.

With reference to the other principal question I would like to address myself to now, that is, the food that was served at Lake Nixon, I think it is sufficient for this Court, if it wishes, to undertake to look at this case the way it looked at the case of Hamm versus Rock Hill.

There, there was no evidence as to the origin of the food involved, and yet this Court, in a divided opinion, or as

1 a divided Court, undertook to say that the facilities in Hamm,
2 as well as the companion case, were in fact open to the public.
3 They were located in either a five-and-dime in South Carolina,
4 or in a department store in Arkansas, and that was sufficient,
5 the Court felt, to demonstrate that in the ordinary course,
6 interstate connections could be shown as to the origin of the
7 food.

8 We think that situation is particularly apt here be-
9 cause the District Court sitting at Little Rock, very close to
10 Lake Nixon, undertook to say that as far as he was concerned,
11 there was sufficient connection with interstate commerce to
12 demonstrate that some of the food, at least, had originated out-
13 side the State.

14 Therefore, our position, of course, is that the case
15 is not moot, and the complaint, I might mention in conclusion,
16 does run against successors, in addition to the Pauls. I believe
17 that might be the situation here.

18 I have no further comments, unless the Court has some
19 questions.

20 Q Did the District Judge's conclusion that it did
21 involve interstate commerce rely on evidence or did it rely on
22 common knowledge?

23 A With reference to the food, there was no evi-
24 dence. What the Court found was that some of the ingredients
25 in the bread had originated outside of the State as far as he

1 was concerned, and ingredients in the soft drinks had similarly
2 originated outside the State, but there was no testimony with
3 reference to --

4 Q Which ingredients?

5 A He did not specify which ingredients, although I
6 might indicate that on file with the Court are some 20 photo-
7 graphs of Lake Nixon, some of which show Coca-Cola signs. He
8 may have had that in mind when he said "some of the ingredients
9 in the soft drinks originated outside of Arkansas."

10 Thank you.

11 MR. CHIEF JUSTICE WARREN: Mr. Leonard, if you have
12 further comments, you may make them.

13 REBUTTAL ARGUMENT OF JERRIS LEONARD, ESQ.

14 AMICUS CURIAE

15 MR. LEONARD: Mr. Chief Justice, and may it please the
16 Court:

17 Mr. Gallman made some very telling arguments here
18 with respect to that provision relating to the food moving in
19 interstate commerce. I would like to point out to the Court
20 that I don't think that is the issue in this case.

21 The issue is not whether the food moved in interstate
22 commerce. I think the thing that is important in this case when
23 you determine whether or not there is coverage under 201(b)(4),
24 that's the combined establishment provision, is whether such
25 an establishment serves or offers to serve those who travel in

1 interstate commerce, or that a substantial part of the food
2 served moved in interstate commerce.

3 I would like to point out to the Court that there is
4 an error in the printing of the appendix on page 50 which, if
5 not caught, could lead to a bit of confusion in along about the
6 tenth line where it is setting out the provisions of Section 201
7 (c).

8 It says "(2) In the case of an establishment described
9 in paragraph (1)." That should be "paragraph (2)" and that is
10 the important part of this, because if it is an establishment
11 described in paragraph (2), and then also as covered in the fourth
12 paragraph as a combined establishment, then that language of
13 201(c) applies. It need only offer to serve.

14 May it please the Court, I would submit, with 100,000
15 people a year coming to this establishment, advertising three
16 nights a week on the radio station in Little Rock, with a
17 Federal establishment of 15,000 people there, an Air Force Base,
18 that logic and reason just are overwhelming that the place is
19 offering to serve interstate travelers.

20 Q How big an area is this? Do you know?

21 A Pulaski County is 285,000. I am not sure how
22 big the city itself is.

23 Q And I suppose it has an airport and a bus terminal.

24 A It has an airport. It has a bus terminal. I
25 submit to the Court that a glance at a map tells you it is on

1 a number of major Federal highways, so the possibility of its
2 serving -- the lower court, at page 57, in its opinion, said
3 specifically:

4 "It is probably true that some out-of-State people
5 spending time in and around Little Rock have utilized one
6 or both facilities."

7 I would like to point to just a couple of decisions.
8 In a Ninth Circuit case in 1966, in which this Court denied
9 certiorari, 361 F. 2d 567, Capital Insurance, that was an action
10 involving automobile negligence at Guam. The Ninth Circuit
11 Court said there that it is well known that the population of
12 the territory, the military personnel and others, has been
13 unusually transient in its nature.

14 I submit to the Court that logic tells us that the
15 personnel at a military base are transient, and that it would
16 be easy to assume that far less than 50 percent of those people
17 were residents of the State of Arkansas and, thus, that pro-
18 vision --

19 Q You are going one step further, aren't you, and
20 saying that we have to assume, without any proof, that all or a
21 great many of the people who were in the military establishment
22 there were "interstate travelers"? Is that right?

23 A I think, Mr. Justice Fortas, that logic would
24 tell us that when the Congress was drafting this particular
25 section, that they may have been focusing on interstate travelers

1 in the usual sense; that is, people who are traveling today
2 and tomorrow from one state to another. But I don't think this
3 Court is limited to determining -- because remember, the issue
4 here is its effect on commerce.

5 Now, it seems to me the fact that a person is located
6 at a military establishment for six months, eight months, a year
7 and a half, but in fact is a resident of some other State, that
8 he is entitled to as much protection under the commerce clause
9 as is the family that is traveling through the State of Arkansas.

0 Q Well, maybe; but on the other hand, Congress has
1 said what part of commerce it wants to be protected under this
2 Act, and so far as relevant here, it used the phrase "interstate
3 travelers". Am I right?

4 A That is correct.

5 Q And your submission, then, must be that we should
6 assume from the fact that, by assumption, people who are station-
7 ed at this base came up to Lake Nixon, that they were interstate
8 travelers.

9 A I think, Mr. Justice Fortas, my argument would go
0 that far. However, I would also submit to you that interstate
1 travelers in the narrower sense, because of the fact there is
2 a Federal establishment there, are also in and out of that Air
3 Force Base, both private people serving the military government
4 there, military people passing through. I think the point I am
5 trying to create, as I indicated yesterday, is that this isn't

1 some sleepy little hamlet in the back woods of Arkansas. This
2 is a main-line community and, thus, under the terminology "offers
3 to serve interstate travelers", I believe this Court can, under
4 its authority of applying common sense, come to the conclusion
5 that there were offers here to serve interstate travelers.

6 Q Is it your argument here that every place in the
7 United States where there is an army encampment, that it must
8 be considered that if somebody serves them, they are serving
9 interstate commerce?

10 A I wouldn't put it, Mr. Justice Black, just that
11 flatly, but I think you have to look at some of the other cir-
12 cumstances surrounding the situation, also. It could well be
13 that there would be a small encampment of some kind up in Alaska
14 that could be off in the tundra which would not --

15 Q I mean in the United States proper. I have been
16 in several of them. I have never considered myself an interstate
17 traveler while I was there.

18 A I don't think it taxes the logic to make the
19 assumption that where there is a Federal military establishment
20 that there are bound to be people traveling to and from that
21 establishment from someplace outside of the State. I think that
22 is a reasonable assumption. If you want to go as far as --

23 Q Why would you consider somebody bound to be
24 there traveling from outside of the State?

25 A Because I would presume that the people who are

1 at that establishment are not residents of the State; that is,
2 the vast majority of them would be coming from other parts of
3 the United States.

4 Q They had come from there to locate. Are you rely-
5 ing on this mainly in your case?

6 A No, I am not, Your Honor. But I say they wouldn't --

7 Q As far as I am concerned, there would have to be
8 something else relied on besides that.

9 A I say that is just one indication --

10 Q I can't draw an inference from the fact that there
11 is an army encampment, that the places around it are serving
12 interstate commerce, alone.

13 A As I indicated, I think there is more in this
14 particular case than that, but the reason that I can go that
15 far is because these are nonresidents of that particular State,
16 people on the Federal payroll, the community in which that en-
17 campment is located is getting the benefit of Federal spending,
18 and to me this puts it in commerce.

19 Q What has that to do with interstate commerce?
20 Everybody is getting the benefit of Federal spending.

21 Q Do I understand that, through advertising, there
22 was a direct solicitation of patronage from this military
23 installation?

24 A Your Honor, that is correct, except I would want
25 you to understand that the ad does use, the ad which is shown

1 on page 88, does say "Attention All Members of Lake Nixon."
2 However, further in the ad it says "The Villagers play for the
3 big dance Saturday night and, of course, there is a jam session
4 Sunday afternoon. Also swimming, boating, and miniature golf."
5 That is Lake Nixon.

6 Now, I point out to the Court that the Pauls them-
7 selves admit that the membership provision was a sham and a
8 guise; therefore, everyone in the community knew that what
9 "Attention Members" meant, was "Attention White People" in the
10 community, and not Negroes.

11 Q Well, there was something direct to the instal-
12 lation, was there not? This is the one?

13 A Yes, Your Honor. This is the ad. It was run
14 three nights a week from the end of May until the beginning of
15 September.

16 Q What is that supposed to prove?

17 A That there was an offer to serve interstate
18 travelers.

19 Q Well, I understand how it would be an offer to
20 serve soldiers, but that gap is too far for me to go. Has Con-
21 gress included in this law a provision, which it probably might,
22 that soldiers shall be treated, whether they are white or black?

23 A Well, Mr. Justice Black, Title II of the Act is
24 anchored in the commerce clause.

25 Q I understood it was. I thought it was altogether

1 based on the commerce clause.

2 A It seems to me that the Congress cannot restrict
3 this Court in deciding the breadth of interstate commerce.

4 Q I understand that. I agree with that. But I
5 doubt that we are entitled, simply because we think something
6 is true, to hold that it is true, without evidence. You have
7 some other evidence in your case, but I have not understood from
8 the beginning why all this emphasis was put on the fact that
9 they might be serving soldiers.

10 A Mr. Justice Black, in Shulte versus Gangey, at
11 328 U.S., this Court says this: "We will take judicial notice,
12 as a matter of common knowledge, that New York City produces
13 more garments for interstate shipment than any other city in
14 the Nation."

15 I think if you ask the average man on the street what
16 city in the United States produces the most garments for inter-
17 state shipment, he probably would not say New York. At least
18 I would not.

19 I think this Court has broad latitude to apply common
20 knowledge.

21 Q What are we supposed to say about the ad? You are
22 asking us to say that because they advertised to soldiers, they
23 are advertising to interstate travelers?

24 A No, Mr. Justice White. I say that is one of the
25 elements.

1 Q What element?

2 A Of offering to serve interstate travelers. This
3 is a county in which there --

4 Q Well, what has offering to soldiers got to do
5 with interstate commerce?

6 A Well, if they are nonresidents, it seems to me
7 they are entitled to --

8 Q Well, I suppose there are plenty of people in this
9 room who claim they are a resident of some other State and they
10 live here, who haven't moved interstate for 15 years.

11 A I doubt, however, that people at this military
12 establishment --

13 Q You think that the soldiers who are there -- I
14 think that those soldiers might like to feel they are free to
15 engage in interstate commerce; they probably aren't.

16 A They are not residents, and certainly the --

17 Q What has that got to do with it, whether they are
18 residents or not? Is that the basis of interstate commerce?

19 A I think they are in interstate commerce. The
20 purpose is to protect the interstate traveler. The fact that he
21 is a military personnel, located at an establishment, shouldn't
22 deny him of equal protection.

23 Q Your real problem is that if a man is on a mili-
24 tary as a career Sergeant, he has been there 22 years, he is in
25 interstate commerce.

1 A I think that assumes that the people who are at
2 the military base are there for great lengths of time.

3 Q Some are.

4 A I am not dwelling on that alone. That is only a
5 piece of the total activity, the interstate activity. But I
6 think logic tells you that a military establishment is going to
7 attract interstate travelers, whether they be people who are
8 serving that base, providing it with --

9 Q Wouldn't you suppose that on any given day more
10 people pass through the bus terminal in Little Rock and the air-
11 port in Little Rock than pass through that Army base? Wouldn't
12 you?

13 A I would say there is a substantial number who
14 pass through both places, interstate travelers.

15 Q But you only put emphasis on the military base.
16 That is why I don't see why you put all of your eggs in that one
17 basket.

18 A Mr. Justice Marshall, I said that is only a part
19 of the total activity. I said this is a hub of a community.
20 This isn't a sleepy hamlet off in the back woods someplace. This
21 is on main-line highways. I indicated it is on main Federal
22 highways. There are 285,000 people in this county. It is a
23 good-sized community in this State. This State has about 2
24 million people.

25 Q Do you think all the nonresidents of Washington

1 are engaged in interstate commerce?

2 A Well, I think, Mr. Justice Black, it depends on
3 how you look at the anchorage of the commerce clause.

4 Q Can anybody assume that because there are a large
5 number of nonresidents in the District of Columbia who live here,
6 that they are engaged in interstate commerce? Is that enough
7 evidence to show it?

8 A I don't necessarily say that alone is enough. I
9 certainly think that is part of the total effect on interstate
10 commerce, and that, after all, is what the Congress was looking
11 for. I think this Court also has an obligation to construe this
12 broadly. Let's look at the background.

13 Q It also has an obligation, doesn't it, that a
14 case be tried only on evidence and reasonable inferences that
15 can be drawn from that evidence?

16 A That is correct, Your Honor.

17 Q Well, really, Mr. Leonard, all you have to do is
18 to show that there was an offer made to serve interstate
19 travelers, and there is in this record the following evidence,
20 as I recall it.

21 Number 1, the advertisements on the radio.

22 Number 2, the advertisement in Little Rock today which
23 was something offered to travelers to advise them of what was
24 available in and around Little Rock.

25 Number 3, the advertisements in a publication available

1 on the military base.

2 Is that correct? Plus the fact that there were
3 100,000 patrons of Lake Nixon in the course of a period of time.

4 Is that right?

5 A That is substantially my position, Your Honor.

6 MR. CHIEF JUSTICE WARREN: Very well, Mr. Leonard.

7 (Whereupon, at 11:12 a.m. the argument in the above-
8 entitled matter was concluded.)