

# OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 83-724

**TITLE** KATHRYN R. ROBERTS, ACTING COMMISSIONER, MINNESOTA  
DEPARTMENT OF HUMAN RIGHTS, ET AL., Appellants  
v.  
UNITED STATES JAYCESS

**PLACE** Washington, D. C.

**DATE** April 18, 1984

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IN THE SUPREME COURT OF THE UNITED STATES

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KATHRYN R. ROBERTS, ACTING COMMISSIONER, :

MINNESOTA DEPARTMENT OF HUMAN RIGHTS, :

ET AL., :

Appellants : No. 83-724

v. :

UNITED STATES JAYCEES :

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Washington, D.C.

Wednesday, April 18, 1984

The above-entitled matter came on for oral  
argument before the Supreme Court of the United States  
at 2:11 p.m.

APPEARANCES:

RICHARD L. VARCO, JR., Special Assistant Attorney  
General, St. Paul, Minnescta; on behalf of th  
Appellants.

CARL D. HALL, JR., ESQ., Tulsa, Oklahoma; on behalf  
of the Respondent.

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On Behalf of the Appellants	
CARL D. HALL, JR., ESQ.	29
On Behalf of the Respondent	

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1                                    P R O C E E D I N G S

2                    CHIEF JUSTICE BURGER: Mr. Varco, I think you  
3 may proceed whenever you're ready.

4                    ORAL ARGUMENT OF RICHARD L. VARCO, JR., ESQ.

5                    ON BEHALF OF THE APPELLANTS

6                    MR. VARCO: Mr. Chief Justice and may it  
7 please the Court, at issue today are two conflicting  
8 claims. On one hand, the states, that it can prohibit  
9 sex discrimination in certain commerical associations,  
10 and on the other, the United States Jaycees, with a  
11 constitutionally protected freedom of association,  
12 permits it to engage in precisely that conduct.

13                   In order to understand those claims, it's  
14 necessary that the facts of this case be made clear, and  
15 I'd like to take a few minutes to do just that. What  
16 the Jaycees does, and what it offers, and how it treats  
17 its members are essential to an understanding of this  
18 case. What the organization does is offer leadership  
19 training and leadership skills and the opportunity to  
20 obtain those skills and obtain that training to certain  
21 individuals.

22                   It offers this training and these  
23 opportunities in three types of programs. The first  
24 type of program is the program in which the Jaycees  
25 train an individual to better himself or herself. Such



1 programs would be learning how to be a better speaker.  
2 A second type of program is a program that they call  
3 management skills. That indicates that the Jaycees  
4 train people to run meetings, to run programs. A third  
5 type of program that the Jaycees runs and provides  
6 opportunities for leadership training in are programs  
7 which merge those first two types of skills, but which  
8 work toward the betterment of the community, so that,  
9 for example, an individual Jaycee learns these  
10 individual skills, learns how to run a program, and then  
11 runs a program for the betterment of their community.

12           These programs are made available through some .  
13 7,000 local chapters by a national organization, and  
14 they're run on a local basis in local communities. The  
15 unfortunate part, from the State's point point of view,  
16 about these programs is that women have admission to the  
17 leadership training opportunities that are provided, but  
18 they're on a limited basis. What women cannot do in  
19 these organizations is that they cannot vote, they  
20 cannot hold office, and they cannot receive any of the  
21 awards that the Jaycees give for performance in these  
22 programs.

23           Thus, what happens is the Jaycees can buy part  
24 of this program -- female Jaycees can buy part of this  
25 program, but they can't buy all of it.

1           Now, the Jaycees have pictured themselves as a  
2 private membership organization, and I think it's  
3 essential to understand that they really operate the way  
4 a business operates. For example, their national  
5 headquarters in Tulsa, Oklahoma have a marketing  
6 department, a department that's designed to shape and  
7 promote the Jaycee image. In 1980 this had 40 employees  
8 and had a budget of some \$2 million. In addition to  
9 that, they have a membership development department that  
10 creates these programs that I referred to you about.

11           In the 1980 Annual Report the Jaycees referred  
12 to these programs as some among the most useful that  
13 they have in getting career opportunities and new jobs.

14           Another indication of the business aspect of  
15 this community -- of this organization -- is the way in  
16 which the Jaycees recruit. For example, in 1980 they  
17 had a membership of some 295,000 members; 120 to 130,000  
18 of those members had been recruited the previous year.

19           QUESTION: Well, what does that -- how does  
20 that bear on any of the issues in this case?

21           MR. VARCO: I think, Mr. Chief Justice --

22           QUESTION: How they get their numbers?

23           MR. VARCO: I think what it shows is that it  
24 operates the way a business operates. Businesses go out  
25 and seek customers. They go out on a continuous basis to

1 look for people to buy their products. That's precisely  
2 what the United States Jaycees does in this case.  
3 They're continually looking for new people to bring into  
4 their organization.

5 QUESTION: Well, that's true of social  
6 fraternities, too. Fraternities are constantly  
7 rushing. They want a new pledge group every year. Does  
8 that make them a business organization?

9 MR. VARCO: No, I don't think it does. I  
10 think that in a fraternity, for example,  
11 Justice Rehnquist, you have a situation in which there  
12 are ties that bind the members which are significantly  
13 different than the ties that bind the people in the .  
14 Jaycees.

15 QUESTION: Well, there may be those  
16 differences, but I think one of them is not a -- there  
17 is not a difference between their desire for new members  
18 at frequent intervals.

19 MR. VARCC: Well, I bring that point out to  
20 show that that's one of the aspects of their business.  
21 I think some clubs, for example, some private social  
22 clubs don't show this rush that fraternities do.  
23 They're very discreet and private, there's no recruiting  
24 that goes on, you have to know somebody to belong. So I  
25 think that if we're weighing the Jaycees on the spectrum

1 of where they belong, the fact that they go out and seek  
2 these people actively shows that they're more like a  
3 business and they work more like a business than they do  
4 like a private social club.

5 QUESTION: Well, an association of this kind  
6 has one thing in common with a fraternity that was just  
7 mentioned, in that the fraternity has access to these  
8 people for about four years of undergraduate work, and  
9 perhaps a little longer, and you have an age limit  
10 here. Is that not so?

11 MR. VARCO: Yes, that's correct.

12 QUESTION: And what is that age limit?

13 • MR. VARCO: The Jaycees' programs are offered  
14 to people between the ages of 18 and 35.

15 QUESTION: Does that violate -- does that  
16 discriminate against older people?

17 MR. VARCO: It certainly does, but in the  
18 State of Minnesota that's not illegal. There is no  
19 provision against age discrimination in the state. It  
20 is a form of discrimination; it is a discriminatory  
21 judgment that they make.

22 QUESTION: With that turnover --

23 MR. VARCO: Pardon me?

24 QUESTION: With that age limit, there's a very  
25 substantial turnover in membership, is there not?



1 MR. VARCO: I don't know if the record  
2 indicates quite what their turnover is, Mr. Chief  
3 Justice.

4 QUESTION: You don't need to know what the  
5 record shows. You just need to look at the numbers. At  
6 age 35 or 36, every year quite a few of them are going  
7 out, aren't they?

8 MR. VARCO: Yes, that's correct.

9 QUESTION: Well, then in order to maintain an  
10 organization, they've got to have a program at the  
11 bottom side to bring new ones in, don't they?

12 MR. VARCO: No question about that.

13 QUESTION: What's remarkable about that?

14 MR. VARCO: There's nothing remarkable about  
15 it. But the reason I bring that point up --

16 QUESTION: Why does that make it a business?

17 MR. VARCO: Pardon me?

18 QUESTION: Why does that make it a business?

19 MR. VARCO: It's a businesslike aspect to it.  
20 In other words, I'm sure that there are some clubs that  
21 we would all agree would be private, that don't engage  
22 in this particular type of recruiting, and they lose  
23 members quite regularly; I don't know if they replace  
24 them on the same basis. I think we could hypothesize  
25 that they don't. But this club recruits aggressively.

1 It has a -- it refers to its new members as customers.  
2 It solicits them in a way that business is solicited.  
3 It goes out into the marketplace and looks for --

4 QUESTION: It recruits women, too, doesn't it?

5 MR. VARCO: Pardon me?

6 QUESTION: It recruits women, too, doesn't it?

7 MR. VARCO: The Minneapolis and St. Paul  
8 chapters, in contravention of the financial charter,  
9 recruited women. I don't think that the national  
10 Jaycees recruits women.

11 QUESTION: I thought you, in describing the  
12 Jaycees at the outset, you said that women can be  
13 limited members.

14 MR. VARCO: The Jaycees, Justice White, have  
15 several categories of members. The two that are  
16 important are, for this case, are individual member  
17 which is limited to men between the ages of 18 and 35,  
18 and associate members which is a category of membership  
19 that women can have.

20 QUESTION: Don't they recruit for them?

21 MR. VARCO: I don't believe that they do. I  
22 don't believe that --

23 QUESTION: That's strange, isn't it? They  
24 must have to pay, don't they?

25 MR. VARCO: Yes, they have to pay if they come

1 in.

2 QUESTION: I would think they would be  
3 recruiting them all the time.

4 QUESTION: That's one of their rights.

5 MR. VARCO: Again, I hate to fall back on what  
6 the record says, but the evidence in our record  
7 consisted of what the Minneapolis and St. Paul chapters  
8 did, and it consists of a large number of materials  
9 about how the national chapter operates.

10 The Minneapolis and St. Paul chapters  
11 recruited aggressively for them because, of course, they  
12 treated them equally.

13 QUESTION: As members.

14 MR. VARCO: As individual members. But there  
15 is nothing in there, in the record, that shows how the  
16 associate --

17 QUESTION: Regardless of how sensible --

18 MR. VARCO: That's correct.

19 QUESTION: Would you agree that the core issue  
20 in this case is not whether this is a good idea to  
21 include or exclude women, but whether it is required as  
22 a matter of law. Is that not the issue in this case?

23 MR. VARCO: I'd agree with the first half of  
24 that formulation.

25 QUESTION: What about the second half?

1 MR. VARCO: Whether it's a good idea or not  
2 makes no difference to this Court. I think that the  
3 issue before this Court is whether the Jaycees have a  
4 constitutionally protected right to evade what is an  
5 otherwise valid state law.

6 QUESTION: Or whether people who are not  
7 members have a statutorily guaranteed right to come in.

8 MR. VARCO: Yes. And in Minnesota they do.

9 QUESTION: Then why is the good sense of it  
10 relevant one way or the other?

11 MR. VARCO: I think the good sense of it is  
12 particularly relevant. I agreed with your first part of  
13 the question, that the good sense makes no difference  
14 here. It's simply a question of constitutional and  
15 statutory --

16 QUESTION: There's two organizations in the  
17 two cities that thought it was a good idea.

18 MR. VARCO: Yes, they did.

19 QUESTION: But that has nothing to do, has it,  
20 with whether -- with the legal question that's presented  
21 here.

22 MR. VARCO: No. That only served as the  
23 Petrie dish upon which this all grew. It sprung from  
24 this particular way in which the Jaycees treated their  
25 female members.



1                   The Jaycees' grounds --

2                   QUESTION: Would the statute in your state be  
3 applied to prevent a group of blacks from forming an  
4 all-black club to advocate causes and interests to black  
5 citizens, and compel that group to admit whites?

6                   MR. VARCO: I think, Justice O'Connor, it  
7 would depend on several things. There is a statutory  
8 analysis that you'd have to make, and I think there's a  
9 constitutiona analysis that you'd have to make.

10                  QUESTION: If it were found to be as much of a  
11 public accommodation as the Jaycees, then do you think  
12 that there would be a First Amendment right of that  
13 black association that would override any state  
14 regulations?

15                  MR. VARCO: If the admission of whites to this  
16 black institution in your hypothetical could be shown to  
17 interfere with some constitutionally protected freedom  
18 -- let's say a constitutionally protected right to hold  
19 a belief or to advocate a belief -- then the State of  
20 Minnesota, I think, would have trouble requiring through  
21 its public accommodations law that those people be --

22                  QUESTION: Well, does the First Amendment  
23 incorporate a right to advocate causes relating just to  
24 young men?

25                  MR. VARCO: It probably does, Justice

1 O'Connor, but that freedom is not interfered with in  
2 this particular case. The regulation that the State of  
3 Minnesota imposes upon the Jaycees which requires them  
4 to admit women would not have the effect of interfering  
5 with any position that the Jaycees takes on these issues  
6 that purportedly concern young men.

7 And I can tell you why that's so.

8 QUESTION: I'm sure you tried to tell  
9 Judge Arnold, but he didn't agree with you.

10 MR. VARCO: That's correct.

11 QUESTION: What if there were, in Minneapolis,  
12 an Iranian society devoted to the propagation of Iranian  
13 interests, and one of their big positions was that Iraq  
14 is all bad? And then the Supreme Court of Minnesota  
15 comes along and says, well, these Iraqi people that  
16 wanted to belong to the Iranian society are free to join  
17 it under our public accommodations law. You have to let  
18 them. And then the State tries to defend on a  
19 constitutional basis, and says, well look, there's no  
20 reason in the world why the Iranian society can't keep  
21 on advocating just what it always did; that Iraq is all  
22 bad. And their answer, I suppose, would be if you admit  
23 enough Iraqis into the Iranian society, they're going  
24 to quite substantially change the purpose of the  
25 organization.

1                   Isn't that the same foreseeable here?

2                   MR. VARCO: No, it is not. It's not  
3 foreseeable at all, because the assumption in your  
4 hypothetical, probably quite an accurate one, is that  
5 the Iraqis would have a different point of view on that  
6 war than the Iranians. I think the difference between  
7 the two cases here is that the issues that the Jaycees  
8 purportedly calls men's issues are not issues on which  
9 sex determines your point of view, much the way -- or to  
10 the contrary of what happens in the Iran/Iraq situation.

11                   In addition to that, the Jaycees hold up their  
12 membership to no political litmus test the way the  
13 Iraq/Iran hypothetical would. Men can hold these  
14 divergent views. They can hold --

15                   QUESTION: Well, these are factual assertions  
16 about the character of this organization. Are we  
17 supposed to take your word for it, or how are these  
18 things supposed to be sorted out?

19                   MR. VARCO: I think the record shows,  
20 Justice White, that -

21                   QUESTION: Well, apparently it didn't, or the  
22 Court of Appeals would have believed you.

23                   MR. VARCO: Well, the record shows that the  
24 admissions practices of the Jaycees don't entail any sort  
25 of agreement with a particular issue.

1 QUESTION: Well, at least the Court of Appeals  
2 thought there was something in the notion that the  
3 Jaycees were giving a male point of view, and that is  
4 was distinguishable enough that the State couldn't force  
5 them to take in women.

6 MR. VARCO: I think that the Court of Appeals  
7 made the erroneous assumption that because --

8 QUESTION: I know you --

9 MR. VARCO: -- men uttered something, that  
10 that was a man's point of view. Or, to put it another  
11 way, that because men uttered it, men would hold this  
12 point of view and women wouldn't. But there is nothing  
13 in the record that shows that. And quite to the  
14 contrary, what the record shows is that the Jaycees  
15 don't require any particular political ideology.

16 A striking fact, I think, is that they don't  
17 even require you to pass the test if you come in with  
18 respect to the very issue that's here.

19 QUESTION: Going back to Justice O'Connor's  
20 question, what if the blacks decided that we should have  
21 our own Jaycee, because we ought to really promote black  
22 business participation in black businesses, and things  
23 like that? So they had an absolute carbon copy, so to  
24 speak, of the Jaycees, but they are all limited to black  
25 membership. They did exactly the same things, took



1 great part in community work, trained leadership,  
2 et cetera.

3 MR. VARCO: If there's absolutely no  
4 difference between the organization in your hypothetical  
5 and the organization here, then I would say that they  
6 could not do that.

7 QUESTION: Well, the difference is that  
8 they're all black.

9 MR. VARCO: That would make no difference for  
10 purposes of this application of this statute.

11 QUESTION: You mean under the Minnesota  
12 Supreme Court of the matter and your view of the matter?

13 MR. VARCO: That's correct.

14 QUESTION: Under the Court of Appeals' view,  
15 they could do that, couldn't they?

16 MR. VARCO: That's correct. But if we  
17 accepted the Court of Appeals' view, I guess we wouldn't  
18 be here. We disagree with them both on the law and on  
19 the facts.

20 QUESTION: Is that because you're elevating  
21 the type of speech involved to different levels of  
22 protection? The type of advocacy involved? Is it more  
23 important in one case than another? Are you saying that  
24 there can be no First Amendment advocacy right on  
25 allegedly concerns of only male citizens?

1 MR. VARCO: I'm looking at that question,  
2 Justice O'Connor, from two points of view. First, from  
3 a factual point of view. And I think that the factual  
4 point of view is illustrated by Justice Rehnquist's  
5 observations. There would be -- there's a factual  
6 difference between the Iranian and Iraqi points of view  
7 on this particular war.

8 In this case, what we disagree with is that  
9 the entrance of women into the Jaycees will result in  
10 any difference of opinion on the particular issues that  
11 the Jaycees speaks on. There simply is no basis for  
12 that.

13 QUESTION: Well, what if the Jaycees had taken  
14 a position that the Equal Rights Amendment is bad, and  
15 that women getting into the job market is a bad  
16 development? Now, if they had taken those two  
17 positions, which I am aware they have not, would that  
18 change your answer to any of Justice O'Connor's  
19 questions?

20 MR. VARCO: I think what it would change would  
21 be the nature of the regulation that the state could  
22 impose upon them. It couldn't force them to take into  
23 their organization people who disagreed with that  
24 particular point of view, because that would then be  
25 content regulation. We'd be regulating the content of

1       their beliefs.

2               QUESTION: But you say they still couldn't  
3 just flatly ban women, is that right?

4               MR. VARCO: That's correct. It's obvious that  
5 there are some women who probably agree with that point  
6 of view.

7               QUESTION: Is the government limited to  
8 regulating only non-speech activities of an organization?

9               MR. VARCO: For purposes of the First  
10 Amendment and for purposes of analyzing this case, as  
11 the jurisprudence of this Court has progressed this far,  
12 the answer is probably yes. There are two other areas --

13              QUESTION: Well, does that mean if an  
14 organization did have both social non-speech activities  
15 that it performed and certain advocacy functions that it  
16 performed, that the state could relate just the social  
17 non-speech activities within that organization?

18              MR. VARCO: It could certainly do that, yes.

19              QUESTION: Is that the effect of your state's  
20 law?

21              MR. VARCO: In this particular case it is,  
22 yes, because there is no regulation of content based  
23 speech here.

24              What I was going to suggest is that the First  
25 Amendment, while it protects not only content-based

1 speech, it also protects certain, private, intimate  
2 gatherings. I think that as an extension of that, there  
3 is probably someplace in the concept of liberty, the  
4 notion that the government shouldn't regulate certain  
5 types of behavior that aren't, while not intimate, are  
6 nonetheless personal. So, for example, the government  
7 shouldn't be telling people who they have to go on  
8 picnics with.

9 On none of those three bases, the content  
10 base, the privacy base, or this substantive due proces  
11 base do the Jaycees fit in, because the relationships  
12 that the people have here are simply too impersonal and  
13 too commercial to be accorded any of those types of  
14 protection.

15 QUESTION: What about the occasion of voting,  
16 for instance, in the organization on what political  
17 positions the organization will take? Is that protected  
18 activity?

19 MR. VARCO: Not in this particular instance,  
20 no, because voting is part of what you do as a Jaycee.  
21 You take positions on issues. You elect officers. The  
22 election of officers is a reflection of how you're  
23 trained and how you're viewed, so I would say that the  
24 First Amendment doesn't prohibit the state from  
25 regulating the voting in the Jaycees.



1           QUESTION: And the organization never takes a  
2 vote on what positions to espouse for political or  
3 advocacy purposes?

4           MR. VARCO: It does. The Jaycees, about once  
5 a year, issue what they call external policy statements,  
6 and they are three or four in number, and they appear in  
7 the front of their annual report each year, and they are  
8 positions on various political issues. The vote on  
9 those comes up through the states, through their  
10 delegates to the annual convention, and is voted on by  
11 their executive committee and their executive board of  
12 directors.

13           So, through a process of representation and a  
14 process of distilled voting, the organization issues  
15 those statements. But what I am saying here is that the  
16 requirement that women get into this organization, the  
17 requirement that the state puts on them through its  
18 public accommodations statute, wouldn't affect the  
19 positions that the Jaycees takes on those particular  
20 issues, because there is no sex-based link between the  
21 issues.

22           QUESTION: Counsel, you refer frequently to  
23 the fact that the Jaycees are a business or a commercial  
24 organization. You touched on a couple of points that  
25 perhaps support that view. I'll ask you a question or

1 two, and then I'd like to hear you itemize, A, B, C, D,  
2 the characteristics that make this a business.

3 I suppose these chapters are nonprofit  
4 corporations. Are they incorporated?

5 MR. VARCO: It's incorporated.

6 QUESTION: They are incorporated?

7 MR. VARCO: Yes. It's a Missouri corporation.

8 QUESTION: Right. Did it pay any income  
9 taxes?

10 QUESTION: What is a Missouri corporation?  
11 The international or the chapter?

12 MR. VARCO: The national, Justice White.

13 MR. VARCO: The national.

14 MR. VARCO: Yes.

15 QUESTION: What are the chapters? Are they  
16 incorporated?

17 MR. VARCO: I don't know the answer to that.  
18 I don't think that they are. I think that they could be  
19 viewed as you would view a franchise, various  
20 franchises, without the corporate aspect of it.

21 QUESTION: Excuse me. I turn you back to  
22 Justice Powell.

23 QUESTION: Let's see. I asked you whether or  
24 not they had filed income tax returns.

25 MR. VARCO: I don't know. I suspect that the

1 national files income tax returns. I would doubt that  
2 the local chapters file income tax returns.

3 QUESTION: In that respect, is it any  
4 different from the Kiwanis Club?

5 QUESTION: I'm sure they pay no dividends.  
6 You said they were -- solicit --

7 MR. VARCO: Not the monetary types.

8 QUESTION: Do they advertise in the newspapers  
9 and magazines for members? Radio and television for  
10 members?

11 MR. VARCO: I think that they might. I think  
12 that some of the local chapters might.

13 QUESTION: Does the record show whether or not  
14 they do?

15 MR. VARCO: I don't know.

16 QUESTION: You don't know.

17 Well, you say they buy members. Is this like  
18 buying products in a supermarket? What do you mean by  
19 that?

20 MR. VARCO: What I mean by that is that --

21 QUESTION: You used the term "buy."

22 MR. VARCO: Yes. What I mean by that is  
23 this: after you're recruited, if you learn about the  
24 Jaycees through the recruitment that they do -- and they  
25 do recruit through efforts of their members and through

1 letters to corporations, through letters to businesses  
2 seeking members -- you --

3 QUESTION: What do they pay? In other words,  
4 if you buy, you pay for it.

5 MR. VARCO: They pay a fee, a membership fee.  
6 And that fee buys them the right to be a member in the  
7 organization and to receive the training and the  
8 benefits that the organization has.

9 QUESTION: They're selling the training.

10 MR. VARCO: They market and sell that  
11 training, the Jaycees does.

12 QUESTION: Do they publish any annual reports  
13 showing profits and loss?

14 MR. VARCO: Yes, they do.

15 QUESTION: Are those in the record?

16 QUESTION: Exhibit 20, Your Honor, is one of  
17 their --

18 QUESTION: An annual report that's sort of  
19 like a church report or business report, or how would  
20 you characterize that?

21 MR. VARCO: I would characterize it as an  
22 annual report that a business puts out. It has all of  
23 the same items in there that many corporate reports have.

24 QUESTION: What other characteristics make  
25 these entities businesses rather than voluntary

1       associations?

2               MR. VARCO: Well, I think that what  
3 characterizes this as a business as opposed to a  
4 voluntary association or a private membership club is  
5 the commercial nature of the transaction that's  
6 involved. The ties that bring people to this are the  
7 desire to buy something for a price, to get some  
8 training, to participate in this.

9               QUESTION: But churches train people for  
10 religion, and all sorts of organizations train for civic  
11 participation -- Kiwanis, Rotary, Lions, Masons,  
12 whatever. Is the training factor alone dispositive in  
13 your view?

14              MR. VARCO: I don't think any one factor is  
15 dispositive.

16              QUESTION: Well, aside from training, what  
17 else?

18              QUESTION: Mr. Varco, if I may interrupt, you  
19 say one factor that isn't dispositive. I think the  
20 Minnesota Supreme Court said there was just one factor  
21 it relied on -- was the public sale of memberships to  
22 anybody who would pay the price. That's the whole basis  
23 for their finding, isn't it?

24              MR. VARCO: What I'm trying to describe are  
25 the various aspects of that offering to the public.



1           QUESTION: But they didn't rely on anything,  
2 as I read their opinion, for the business holding except  
3 for the fact of the public sale of memberships to  
4 anybody who was 18 to 35, male, and would pay the price.

5           QUESTION: But every private club requires  
6 dues. Often they require the payment of an initiation  
7 fee.

8           MR. VARCO: Yes, but this organization doesn't  
9 make its money solely off of dues. If you look at their  
10 annual report for 1980, I believe that their budget was  
11 \$4.2 million and only \$2.6 of that came from dues. The  
12 rest of that money came from other sources, sales of  
13 merchandise, sales of membership lists, advertising in a  
14 magazine that they publish.

15           And, Justice Stevens, the Minnesota Supreme  
16 Court did say it was a business and it offered its goods  
17 and services to the public, but when it did it looked at  
18 an extensive record which shows just how similar to a  
19 business this organization is, viewing its members as  
20 customers, selling and advertising the way a business  
21 would.

22           QUESTION: I understand. But the principal  
23 point they relied on -- they made other findings, too --  
24 but on the business issue, the thing they stressed was  
25 simply that they just sold these memberships like

1 anybody who wanted to buy them can have one.

2 MR. VARCO: Yes. Underlying that is the fact  
3 that what gets you into the Jaycees is your ability to  
4 spend the money to do it, in the same way that your  
5 ability to purchase goods in a department store is based  
6 upon the dollars that you have in your pocket.

7 QUESTION: How is it different, in what  
8 respect, from the Kiwanis, the Rotary, and 29 other  
9 luncheon clubs?

10 MR. VARCO: Well, one thing that is --

11 QUESTION: They purchase the membership, in  
12 your terms, for X dollars and pay so much every time  
13 they attend a luncheon. Isn't that right?

14 MR. VARCO: Yes, that's correct.

15 QUESTION: Now, in these clubs that Justice  
16 Powell and others have referred to, very frequently they  
17 take one lawyer, one doctor, one dentist, one  
18 hairdresser perhaps, and the purpose of that -- there  
19 can't be much doubt about it -- to promote business for  
20 the doctors, the lawyer, the banker, whoever.

21 Now, why is the Kiwanis Club or the Rotary  
22 Club any different from the Junior Chamber of Commerce?

23 MR. VARCO: One of the problems with this case  
24 is that there is so much evidence about the Jaycees and  
25 so little about precisely these clubs that you've

1 described. And my suspicion is, is that the difference  
2 between the Jaycees and these clubs is that there is  
3 some degree of selectivity, something other than the  
4 ability to spend money.

5 QUESTION: Selectivity in one sense, that it's  
6 just one lawyer, so that he has a monopoly or a  
7 potential monopoly on that incoming business.

8 MR. VARCO: But if there's a privacy aspect  
9 that has to be protected here, it's protected because of  
10 selectivity. It's because this organization is more  
11 like the picnic among friends or the private club in  
12 which friendship or status gets you in. That simply  
13 isn't here true with respect to the Jaycees. Anybody  
14 can get in.

15 QUESTION: Well, at least they assert that  
16 they're selective in that they want only males between  
17 the ages of 18 and 36 or something like that.

18 MR. VARCO: That's correct. But by the same  
19 token, that simply is too big a pool to say, because  
20 they exclude women, they're not selective.

21 QUESTION: Who says it's too big a pool?

22 MR. VARCO: The composition of the pool.

23 QUESTION: What authority says that's too big  
24 a pool in your terms?

25 MR. VARCO: It's too public a pool. The

1 distinction between men and women is simply too large a  
2 distinction to claim that if we keep women out, we're  
3 not offering this to the public.

4 I think there's cases distinguishing the  
5 private club exemption under Title II in which football  
6 as a sport was offered only to youth, a far narrower  
7 field than we have here, in which the Court held that  
8 that was a public offering because it was offered to  
9 such a big group of people.

10 I'd like to reserve whatever --

11 QUESTION: What about the Girl Scouts now in  
12 Minnesota? Are they going to have to be a public  
13 accommodation and admit boys, do you suppose, because  
14 there may be an aggressive marketing between certain  
15 ages of members?

16 MR. VARCO: If the Girl Scouts operate in the  
17 same fashion as the Jaycees operate in, they will  
18 probably be considered a public accommodation for  
19 purposes of the Minnesota Human Rights Act.

20 QUESTION: And the Boy Scouts, too.

21 MR. VARCO: That's correct.

22 QUESTION: Well, do you -- the District Court  
23 said that even if the Jaycees are interested in  
24 promoting only women's -- only men's point of view --  
25 that the state interest is compelling and overrides that

1 association freedom.

2 MR. VARCO: Yes.

3 QUESTION: Do you agree with that?

4 MR. VARCO: Yes.

5 QUESTION: You think it's just like a hotel?

6 MR. VARCO: I see very little difference  
7 between what the Jaycees do and how they operate and  
8 being able to go into a hotel with a dollar and get a  
9 room or a meal.

10 QUESTION: Where can you go to a hotel for a  
11 dollar?

12 (Laughter.)

13 Speak up.

14 MR. VARCO: Not in this town, Your Honor.

15 (Laughter.)

16 QUESTION: You can take that as a figure of  
17 speech.

18 MR. VARCO: I'd like to reserve the balance of  
19 my time if the Court has no further questions.

20 CHIEF JUSTICE BURGER: Mr. Hall.

21 ORAL ARGUMENT OF CARL D. HALL, JR., ESQ.

22 ON BEHALF OF THE RESPONDENT

23 MR. HALL: If the Court please, Chief Justice  
24 and may it please the Court, our concerns in this case  
25 have been pretty much the same as those expressed by the



1 Court here.

2 The United States Jaycees is not a business.  
3 It's a membership organization, substantially similar to  
4 hundreds of others in this country -- Kiwanis, Lions,  
5 and others.

6 To be specific, some of the questions  
7 answered, the Jaycees is a tax-exempt nonprofit Missouri  
8 corporation. All of the state organizations are  
9 likewise tax-exempt corporations, as are the local  
10 organizations, and they are all tax-exempt as 501(c)(4)  
11 organizations or civic leagues, and they granted  
12 exemption pursuant to a published ruling under that  
13 category some many years ago by the Internal Revenue  
14 Service.

15 This organization has existed since 1920 and  
16 is essentially the same today as it was then, in the  
17 sense that its sole purpose is to promote the interest  
18 of men. It's a young men's organization. Its purpose  
19 is to -- essentially to assist young men in their  
20 development by means of community service.

21 QUESTION: Well, isn't it young businessmen?

22 MR. HALL: No, it's not young businessmen;  
23 it's any young men.

24 QUESTION: Any young men. Young preachers,  
25 anybody?

1                   MR. HALL: That's right. Any young man  
2 between the ages --

3                   QUESTION: School teachers? Young school  
4 teachers?

5                   MR. HALL: Young school teachers, young  
6 doctors, young lawyers, young preachers, anyone who  
7 wants the organization can join and receive the  
8 benefits. The essential objective of the organization  
9 is to develop young men through participation in  
10 community projects. These projects vary by the  
11 thousands. They are essentially developed by the local  
12 organization itself. The national organization does  
13 develop programs, but essentially most of the programs  
14 are developed locally.

15                  QUESTION: Mr. Hall, can you identify any of  
16 those programs in which the sex of the participant  
17 supporting it would tend to make him either support or  
18 oppose the program?

19                  MR. HALL: I can't think of any program that  
20 would. I think -- I cannot. I think where the problem  
21 comes in, the statement has been made that if women are  
22 admitted, it won't really change the organization or its  
23 views.

24                  QUESTION: Well, presumably, it would change  
25 the organization because they'd have women instead of

1 just men. But would it change any of the programs that  
2 they have been engaged in since 1920?

3 MR. HALL: It could very well. The programs  
4 are -- in terms of local programs -- are by the  
5 thousands. I don't think the programs would change so  
6 much as it would the interest advanced. The interest  
7 advanced by the organization is that of young men. And,  
8 presumably, any organization which admits women as  
9 voting members, in due time its --

10 QUESTION: Which of the programs advances the  
11 interests of young men without equally advancing the  
12 interests of young women who might also be executives?

13 MR. HALL: As I said earlier, I don't know of  
14 any external program in that sense. The program which  
15 you --

16 QUESTION: How about any internal objective of  
17 the organization?

18 MR. HALL: It would indeed. It would indeed  
19 change the internal, because the internal programs are  
20 directed to the self-improvement of just young men.

21 QUESTION: Of course, the word "men," I guess,  
22 got in the statement of purposes back in 1920, didn't it?

23 MR. HALL: That's right.

24 QUESTION: When the word "men" was often used  
25 to cover both sexes.

1           MR. HALL: And it has -- and although the  
2 organization has voted three times on this question, the  
3 membership has still indicated they desire the  
4 organization to continue as an organization to advance  
5 the interests of young men.

6           QUESTION: You say it would change the  
7 organization. How it would it change it? Is there some  
8 -- does the record have some explanation in it by the  
9 national organization, by its officers, as to why they  
10 confined their membership to men, other than we just  
11 like men better than women?

12          MR. HALL: Of the majority of -- they voted  
13 three times and, of course, the majority voted all three  
14 times. And the reasons, of course, could be varied as  
15 there are people voting, but essentially the thrust has  
16 always been that the young men want an organization  
17 which promotes the interests of young men.

18          Women have organizations --

19          QUESTION: What interests are there of young  
20 men that would be frustrated by having women members?

21          MR. HALL: I think the desire of young men  
22 simply to have an organization that they entirely run  
23 and promotes solely their interest.

24          QUESTION: So that's really sort of a club  
25 sort of a rationale, a privacy rationale, other than a

1 First Amendment rationale, isn't it?

2 MR. HALL: No. The First Amendment, as we  
3 understand it, would protect the interests of any group  
4 who desires to meet and associate for the purpose --

5 QUESTION: Whether it was communicating  
6 anything distinctive or not.

7 MR. HALL: This organization -- we would  
8 advance that, but in this case it's more than that. In  
9 this case --

10 QUESTION: Well, I don't know that you -- I  
11 thought you answered Justice Stevens that you don't know  
12 of anything that would be different externally. All of  
13 its communications would be the same, wouldn't it?

14 MR. HALL: No, it's communications would not.

15 QUESTION: What? What wouldn't? How -- what  
16 would happen?

17 MR. HALL: Well, the -- as pointed out  
18 earlier, in the number of matters which the organization  
19 votes on not only nationally, but locally, each year  
20 number in the hundreds. The national itself takes a  
21 vote each year on various issues, but all the 6,000  
22 organizations also, from time to time, take public  
23 positions on issues of local community --

24 QUESTION: Can you name me one position that  
25 applies only to men?



1 MR. HALL: Beg pardon?

2 QUESTION: One position that they have taken  
3 that applies only to men.

4 MR. HALL: I can't think of a public  
5 commitment issue which is applied only to men, but I can  
6 foresee that the organization itself, if they take a  
7 vote on ERA or the draft or abortion, or any of those  
8 sensitive issues, they could very well take a different  
9 position.

10 There are -- I think it's not rational --

11 QUESTION: Have they done so up to date?

12 MR. HALL: To my knowledge, they have not  
13 taken a vote on those sensitive issues, but they  
14 certainly are going to.

15 QUESTION: The only position they've taken is,  
16 they don't have any interest in women.

17 MR. HALL: No. I think the interest is that  
18 they have --

19 QUESTION: Have they taken that vote or not?

20 MR. HALL: Beg pardon?

21 QUESTION: They haven't taken that vote, have  
22 they?

23 MR. HALL: About interest in women?

24 QUESTION: Yeah.

25 MR. HALL: To my knowledge, they have not.

1           QUESTION: Would you respond to the view of  
2 the state that this is a business? '

3           MR. HALL: Yes, I will.

4           QUESTION: I think that's an important  
5 question, since apparently that was a basic decision on  
6 which the state --

7           MR. HALL: It is our position that the Jaycees  
8 is not a business; it's a bona fide membership  
9 organization like the thousands of others. Its members  
10 elect its officers, control its affairs, determine its  
11 course of action, make up its budget, determine exactly  
12 where it will go.

13          QUESTION: Everything you've said so far could  
14 apply to a business. What about the concept of selling  
15 membership?

16          MR. HALL: There is no -- well, it does not  
17 sell memberships. It recruits memberships in the sense  
18 that of membership organization. It no more sells  
19 memberships than the Rotary or Kiwanis or any other  
20 women's organization, Junior League or any other, sells  
21 memberships. All of those organizations recruit new  
22 people and they issue members in return for dues. The  
23 Jaycees does exactly the same thing.

24          QUESTION: But some organizations vote people  
25 in. Do you vote them in here, or do they just -- you

1 pay your dues and you come in?

2 MR. HALL: That's up, pretty much, to the  
3 local chapter itself. Age 18 to 35 are eligible. How  
4 that local chapter would go about it would be pretty  
5 much left up to the local chapter itself.

6 QUESTION: So anybody can walk in off the  
7 street and join, if you're male?

8 MR. HALL: That is possible, if you're 18 to  
9 35. That's the purpose of the organization, to promote  
10 young men, and they could.

11 QUESTION: Well, they can't compare that with  
12 all those organizations you named.

13 MR. HALL: Beg pardon?

14 QUESTION: Some of those organizations you  
15 named, one vote can keep you out.

16 MR. HALL: That's true.

17 QUESTION: Right. Well, that's a little  
18 different.

19 MR. HALL: In this case, there could be also  
20 -- local people could be excluded on a de facto basis  
21 likewise, and that's in the record.

22 QUESTION: Mr. Hall, may I ask you just a  
23 question? The debate as to whether it's a business or  
24 not --

25 MR. HALL: Yes.

1                   QUESTION: In what sense are we asking that  
2 question? I think the Minnesota Supreme Court has told  
3 us in a rather surprising opinion, to be quite honest  
4 about it, says it is "a business within the meaning of  
5 of the Minnesota statute."

6                   MR. HALL: Yes.

7                   QUESTION: So don't we have to accept that as  
8 that's where we start from?

9                   MR. HALL: No. The --

10                  QUESTION: Do we have the power to reinterpret  
11 the Minnesota statute?

12                  MR. HALL: Yes. I think you have the power to  
13 analyze the facts in making the constitutional inquiry  
14 as to whether this organization's right to free  
15 association has been -- .

16                  QUESTION: Why don't you just accept the fact  
17 that within the meaning of the Minnesota statute, this  
18 is a business? But that doesn't solve the case.

19                  MR. HALL: Well, if that were accepted, we  
20 would abridge constitutional rights by just pure  
21 imposition of labels.

22                  QUESTION: Why? Why? You would still have  
23 your constitutional argument.

24                  MR. HALL: Well --

25                  QUESTION: Just because it's a business

1 doesn't solve your constitutional question. All it does  
2 is solve that it's a public accommodation within the  
3 meaning of the statute.

4 MR. HALL: Our point is the same as Judge  
5 Arnold made, that the label "business" is simply a  
6 distortion of the facts.

7 QUESTION: Suppose it is. The Minnesota  
8 Legislature and the Minnesota Supreme Court can't  
9 determine the constitutional question here. We  
10 determine that issue, don't we?

11 MR. HALL: Yes. But -- I'm sorry, I didn't  
12 follow your question.

13 QUESTION: We determine the constitutional  
14 question --

15 MR. HALL: That's correct.

16 QUESTION: -- not the Minnesota Legislature or  
17 the Minnesota Supreme Court.

18 MR. HALL: That's correct.

19 QUESTION: Because the Supreme Court of  
20 Minnesota says this is a business under Minnesota law.  
21 That's the last word on Minnesota law.

22 MR. HALL: I'm not quarreling that the last  
23 word on whether or not they label this a public -- that  
24 label, they are the last word. The point I'm making is  
25 that that label does not preclude the constitutional



1 analysis. That's the point we're making.

2 QUESTION: Mr. Hall, what about the  
3 selectivity question? Can any young man between 18 and  
4 35 be admitted?

5 MR. HALL: The organization does have a wide  
6 admission policies of young men 18 to 35. Our position  
7 is that does not take away our right to free association.

8 QUESTION: Right. But is it a fact that any  
9 man between those ages is admitted?

10 MR. HALL: Yes. That is true, except for de  
11 facto exclusion on a local basis where people tend to  
12 admit people and recruit people, as in St. Paul, where  
13 they're primarily business. But in New Orleans it may  
14 be another way, and in Los Angeles it may be another,  
15 where people tend to recruit people they have something  
16 in common with.

17 But it is true that it does not have an  
18 exquisite or exclusive method of recruitment. However,  
19 all the decisions of this Court that have dealt with the  
20 right of freedom association, to my knowledge, none of  
21 those cases have dealt with organizations that have had  
22 highly selective or private club membership policies.  
23 And there's nothing in the cases that we have seen that  
24 indicate that an organization with this kind of a policy  
25 could not enjoy that freedom.

1 QUESTION: Part of your submission is that the  
2 First Amendment protects private organizations, whether  
3 they're communicative organizations or not. Just  
4 fraternal organizations.

5 MR. HALL: That is our position, although in  
6 this case, there is broad communication of controversial  
7 public issues. In this case, the --

8 QUESTION: But none of which -- none of which  
9 you can identify that would be different if women were --

10 MR. HALL: I can't identify -- if the  
11 organization itself, it were required to comply with the  
12 Minnesota injunction and admit women, it is  
13 inconceivable -- and I think you're rational to assume  
14 that the organization won't change and that its  
15 viewpoint won't change. Anytime the membership --

16 QUESTION: Well, you haven't identified one  
17 yet. I've asked about it several times.

18 MR. HALL: Abortion.

19 QUESTION: Well, you don't know what its  
20 viewpoint is.

21 MR. HALL: Well, they've never voted on it,  
22 but I can't predict the issues --

23 QUESTION: How do you know? All men don't  
24 agree on it either.

25 MR. HALL: I can't predict what the viewpoint

1 will be on any given issue that may come up next year or  
2 the year after that.

3 QUESTION: But you just think it inevitably  
4 would be different?

5 MR. HALL: I think an organization in which  
6 you change the membership from one which is all men,  
7 dedicated to voting the interests of men, and you change  
8 it to an organization which also includes women, I think  
9 it's only rational to assume that that organization is  
10 going to undergo a substantial change.

11 QUESTION: But now, it seems to me that  
12 there's something that has to depend on the nature of  
13 the organization. If you have an organization of all  
14 male stockbrokers that are solely concerned with the  
15 business of stockbrokering and what's happening to  
16 stockbrokering, and they're required to take in women  
17 stockbrokers, it seems to me that the great focus on  
18 stockbrokering may be very little different between men  
19 and women.

20 On the other hand, if you have an organization  
21 of male chauvinists that says we're tired of this  
22 affirmative action in favor of women, we want what we  
23 think is a square deal, it seems to me there you get a  
24 different thing.

25 But you haven't really shown that the Jaycees

1 are in the latter category at all, that they espouse  
2 anything close to men's rights or the kinds of issues  
3 that men and women might feel differently about.

4 MR. HALL: Well, the important point that I  
5 think perhaps I haven't made clear is that this  
6 organization's essential core purpose is to advance the  
7 interests of young men, just as there are women's  
8 organizations which central core purpose is to advance  
9 women. If you would require those women's organizations  
10 to admit men, you're going to change the organization.  
11 If you require this organization to admit women, I think  
12 it's inevitable that you're going to essentially change  
13 it.

14 I think we have a constitutional right to have  
15 an organization which just promotes the interests of  
16 young men. And I don't think that we can expect that if  
17 it becomes an organization in which women are members,  
18 that they're going to long stand for leaving the  
19 organization with the sole purpose to advance the  
20 interests of men.

21 QUESTION: Aren't you just afraid that the  
22 women will "take over"?

23 MR. HALL: Maybe that -- that may be a --  
24 Judge Doyle of the Tenth Circuit suggested that may be a  
25 possible fear, and if it is, I think it's the kind of

1 fear that would be legitimately protected by any group.  
2 Women may keep out men for fear they'll take over. I  
3 think it's a legitimate right to do so.

4 QUESTION: Well, if the suffragette movement  
5 of a century ago had taken in men, they probably  
6 wouldn't have had the women's vote quite as soon as they  
7 did, would they?

8 MR. HALL: That's right. And I think if women  
9 had been in this organization five years ago or even six  
10 years ago, they would not have been willing to spend the  
11 kind of money this organization is spending to uphold  
12 its constitutional right to be a men-only organization.

13 QUESTION: Mr. Hall, I'm afraid we're not  
14 giving you much chance to argue, but the Court of  
15 Appeals for the Eighth Circuit, in its holding paragraph  
16 on page A2, says this: "We hold that the Jaycees, a  
17 substantial part of whose activities involve the  
18 expression of social and political beliefs and the  
19 advocacy of legislation and constitutional change does  
20 have the right of association protected by the First  
21 Amendment.

22 No. 1, do you think the record supports that  
23 reading by the Court of Appeals?

24 MR. HALL: Yes, it will. There -- in Exhibit  
25 19, as a matter of fact, there is a list -- a long list



1 of positions taken on critical controversial issues by  
2 the local organizations. In addition to that, in I  
3 think it's Exhibit 3, there is also a long list of  
4 positions which the organization has taken over the  
5 years. They've taken the -- the record itself reveals  
6 many positions since 1956. Actually, they were taking  
7 them even before that.

8 QUESTION: Mr. Hall, those exhibits are in the  
9 record, but not in any appendix that we have before us.

10 MR. HALL: That's true. They're in the  
11 record. Both of those exhibits are in the record before  
12 the District --

13 QUESTION: But none of them can you identify  
14 as just male issues, as just promoting the interests of  
15 men. As you say, your primary interest is in promoting  
16 the interests of young men.

17 MR. HALL: Yes.

18 QUESTION: And yet all of your public  
19 positions -- none of your public positions can you  
20 identify as "promoting the interests of young men" as  
21 distinguished from young women.

22 MR. HALL: That's true. But the taking of  
23 positions on various issues is only one part of the way  
24 in which young men are developed. Young men are  
25 developed in this organization not just by taking

1 positions on issues; that's only a part of it. Young  
2 men are developed primarily by running projects which,  
3 in turn, benefit the community, whether it's the  
4 Hartford Open or the Patty Berg Classic, or whether  
5 it's --

6 QUESTION: And associating with other young  
7 men.

8 MR. HALL: That's right. That's correct. And  
9 being officers and directors of those groups.

10 QUESTION: But aren't those projects designed  
11 to teach them to be good, effective executives?

12 MR. HALL: Beg pardon?

13 QUESTION: That's part of their training to be  
14 effective executives, isn't it?

15 MR. HALL: And they learn by doing.

16 QUESTION: And I suppose women wouldn't learn  
17 the same thing?

18 QUESTION: Women learn exactly the same way.

19 MR. HALL: If women did it, they could benefit  
20 from it.

21 QUESTION: Well, what do the associate members  
22 do? Don't they -- don't they participate in these  
23 programs?

24 MR. HALL: Beg pardon?

25 QUESTION: Don't the associate members, the

1 women, participate in these programs?

2 MR. HALL: The associate members do participate  
3 in these programs. They do not have the right to vote  
4 or control policy of the organization.

5 QUESTION: Well, I know, but they participate  
6 in all these training programs. They learn how to run  
7 meetings.

8 MR. HALL: They do not serve as officers, but  
9 the associate members have run projects, yes.

10 QUESTION: Sure, they run projects and they're  
11 trained, and they get the same exposure, except they  
12 aren't officers of the organizations and don't vote.

13 MR. HALL: And do not vote or hold office.  
14 That's correct.

15 QUESTION: Well, tell me, what other right do  
16 they have, other than to pay their dues?

17 (Laughter.)

18 MR. HALL: I'm sorry.

19 QUESTION: What other right do the women have,  
20 other than to pay dues?

21 MR. HALL: Well, first of all, this is a  
22 voluntary organization, Justice Marshall, and the women  
23 don't have to join on that basis. And they are a very  
24 small group. The number of associate members is very  
25 small at this time. It's about 9,000, and only a small

1 portion of that are women associate members. Women have  
2 not joined in large droves as associate members.

3 QUESTION: That's understandable.

4 MR. HALL: And I don't blame them for that,  
5 and that's their choice to make

6 QUESTION: I was wondering if you wondered.

7 MR. HALL: Beg pardon?

8 QUESTION: I was wondering if you did wonder  
9 why they didn't join.

10 (Laughter.)

11 QUESTION: But in Minnesota, when it was  
12 opened up, apparently women did join in substantial  
13 numbers.

14 MR. HALL: Either -- that was primarily in  
15 violation of the bylaws. As I recall, Minnesota did not  
16 adopt any program, and that was just a flat violation of  
17 bylaws, and that's how we got --

18 QUESTION: But suffice it to say, in those  
19 organizations where the membership was opened up, the  
20 women joined in substantial numbers.

21 MR. HALL: Beg pardon?

22 QUESTION: In those clubs that opted to open  
23 the membership up to full membership for women, women  
24 did join in substantial numbers.

25 MR. HALL: That's correct. They did join in

1 substantial numbers.

2 The point we make here is that if -- no one  
3 would, I think, urge that now or any other active  
4 organization, that the state would have the right to  
5 dictate what that organization advocates. And yet, in  
6 this particular case, by dictating the composition of  
7 its membership --

8 QUESTION: Well, now as I understand the  
9 state's attorney, he's not arguing that the state can  
10 dictate what the Jaycees advocate. I didn't hear him to  
11 say that at all. Did he?

12 MR. HALL: No, he doesn't. But he arrives at  
13 the same conclusion by dictating who the membership, and  
14 by dictating the membership you effectively determine  
15 how that organization will -- its collective voice and  
16 its programs.

17 QUESTION: I don't think your opponent would  
18 have said -- would say that his arguments all apply to a  
19 situation where there was something called the National  
20 Organization of Men, that it anti-affirmative action,  
21 anti-ERA, and so forth.

22 I think perhaps he would say the difference  
23 between that case and your case is, you haven't shown  
24 that the Jaycees are the counterpart of NOW.

25 MR. HALL: Yes. It seems irrational to assume



1 that this organization, to continue as an all-male  
2 organization, has to deliberately take positions on ERA  
3 or abortion in order to show how anti-woman it is. It  
4 doesn't seem to make sense that they can't have an  
5 all-male organization.

6 There are all-women organizations, and I think  
7 they're accepted. Someone asked, will this affect the  
8 Girl Scouts or the Boy Scouts? I don't think there is  
9 any question. It has already -- the trend of this kind  
10 of litigation has already affected the Boy Scouts in  
11 California.

12 QUESTION: You're basically asserting a First  
13 Amendment right. And the state is asserting a right to  
14 eliminate discrimination on the basis of race and sex in  
15 its public accommodations law. And I guess you will  
16 concede that the state does have power to regulate and  
17 prevent discrimination on the basis of race and sex.

18 MR. HALL: In a public accommodation.

19 QUESTION: In a public accommodation. And it  
20 has defined the Jaycees as a public accommodation. So  
21 that requires us, I suppose, to apply some kind of a  
22 balancing test as in O'Brien and see whether the public  
23 interest and concern in elimination of discrimination is  
24 sufficient to uphold the regulation. Right?

25 MR. HALL: No. I don't concede that it's a

1 balancing function at all. The label "public  
2 accommodation" which they placed on the Jaycees, in  
3 which that state law determination is final, that that  
4 does not foreclose the necessary constitutional analysis  
5 to see if the Jaycees -- the right --

6 QUESTION: Well, but the constitutional  
7 analysis is what I'm trying to get at. We apply an  
8 O'Brien type test, do we?

9 MR. HALL: You would apply the test of  
10 Griswold v. Connecticut and Shelton v. Tucker and other  
11 cases which have set forth the basic fundamental right  
12 of freedom of association to choose our own members.  
13 That's the test that we would apply.

14 QUESTION: Well, but you have businesses that  
15 said we don't want to serve blacks. We have a  
16 restaurant and we're not going to serve blacks. And  
17 this Court has said that the state's interest in  
18 eliminating discrimination is enough to put a stop to  
19 that.

20 MR. HALL: Yes, but --

21 QUESTION: All right. So you have -- you have  
22 this kind of balancing to look at, don't you

23 MR. HALL: Well, the two situations are not  
24 comparable. In the case of the traditional public  
25 accommodation -- the restaurant, the theater, the motel,

1 and so forth -- those do not have private associational  
2 characteristics. Those, in fact -- sharing a plate of  
3 food in a restaurant doesn't have any private  
4 associational characteristics.

5 That's much different than the local Jaycee  
6 organization, which many of them have anywhere -- a  
7 minimum of 20 to --

8 QUESTION: Don't you think those were the  
9 arguments that were made in those cases? The same  
10 argument you make.

11 MR. HALL: In the public accommodation cases,  
12 the right of freedom of association was not made, to my  
13 knowledge, because they were no private associational  
14 characteristics involved in a restaurant or a motel, as  
15 distinguished from this case where a local Jaycee  
16 organization of 20 or 30 or 40 or 50 young men associate  
17 together on week-to-week basis.

18 QUESTION: What if they associate together to  
19 organize a training school for young executives?

20 MR. HALL: Beg pardon?

21 QUESTION: What about a training school for  
22 young executives which had different projects and  
23 seminars and so forth?

24 MR. HALL: Well, if it's a training school for  
25 young executives, in the context now of a commercial

1 enterprise --

2 QUESTION: Young male executives.

3 MR. HALL: Yes. Young male executives in the  
4 context of a commercial enterprise, I think that that  
5 would be a public accommodation. They'd have to admit  
6 women.

7 Back to the earlier question, the Jaycees is  
8 simply not a business. It does not -- it's a nonprofit  
9 organization, and does not have the characteristics of a  
10 business.

11 QUESTION: You made reference to the National  
12 Organization for Women and some of these women's  
13 organizations. I notice in their brief that they filed  
14 here, that there are 200,000 women and men in that  
15 organization. Apparently, they do take in men.

16 MR. HALL: Yes. As to those organizations,  
17 the problem of admitting anyone to interfere with their  
18 fundamental underlying purpose has not been a problem.  
19 Some of the organizations who have filed as amicus here,  
20 however, do limit their membership to women, and  
21 legitimately so, because those organizations feel that  
22 they're promoting the interests of women, and if they  
23 want to do that they should limit their organization to  
24 women.

25 There are large organizations in this country

1 which do limit their memberships strictly to women for  
2 the sole purpose of advancing the interests of women.

3 QUESTION: Mr. Hall, I notice that from  
4 Exhibit 3, that the Jaycees in 1981 urged a  
5 constitutional amendment requiring Congress to balance  
6 the budget every year. And in 1983 they urged a  
7 constitutional amendment to support voluntary prayer in  
8 American schools.

9 Now, are those fairly typical of the types of  
10 things that the Jaycees do?

11 MR. HALL: Yes. That's of -- typical in terms  
12 of the national positions they will take. The local  
13 positions by local organizations would be much more tied .  
14 to local bond issues, to local problems of local and  
15 state interest.

16 One further question I'd like to address, and  
17 that's the question of vagueness. Presumably, in this  
18 case, if the Jaycees have a desire to comply with this  
19 statute in any way, the question is how could the bylaws  
20 be amended? They meet each and every June, and could  
21 amend the bylaws in any way that the membership chose to  
22 do so.

23 Now, we submit that not only is it impossible  
24 for an ordinary individual to know how to amend the  
25 bylaws in this case to comply with Minnesota's law so as



CERTIFICATION

to be like the Kiwanis, that I submit it would even be  
literally impossible for the average, ordinary,  
intelligent lawyer to amend the Jaycees' bylaws to  
comply with it in order to be more a private  
organization like the Kiwanis, as distinguished from a  
public organization like the Jaycees.

Thank you.

CHIEF JUSTICE BURGER: Do you have anything  
further? You have one minute remaining.

MR. VARCO: Unless the Court has some  
questions, Mr. Chief Justice, I have no further remarks.

CHIEF JUSTICE BURGER: Thank you, gentlemen.  
The case is submitted.

(Whereupon, at 2:41 p.m., the case in the  
above-entitled matter was submitted.)

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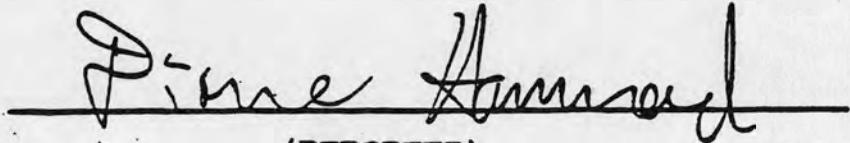
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UNITED STATES JAYCEES

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