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Civil Rights—Public Accommodations—Recreational Facility Held a Covered Establishment Under 1964 Act

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flexibility that operate within specific agencies on the other. Perhaps the solution to the courts' dilemma lies not in an enumeration of circumstances in which each procedure should be employed, but rather in a legislatively adopted procedure similar to the hybrid rule making-adjudicatory procedure used by the Board in *Excelsior*. Such a procedure could incorporate an opportunity for all interested parties to be heard through amicus briefs, for notice and publication features, deferred effectiveness of rules, and any other due process requirements determined essential by Congress. Perhaps the Board in *Excelsior*, recognizing that its function was best served by the hybrid procedure, was acting in good faith. As long as the Board continues to act in good faith, maybe it should be allowed, in Justice Douglas' words, "to have its cake and eat it too."[62]

FRANK A. VALENTI

CIVIL RIGHTS—PUBLIC ACCOMMODATIONS—RECREATIONAL FACILITY HELD A COVERED ESTABLISHMENT UNDER 1964 ACT

The petitioners, Negro residents of Arkansas, brought a class action seeking injunctive relief[1] under the public accommodation section of the Civil Rights Act of 1964,[2] to restrain the respondent, owner and operator of the Lake Nixon

62. Instant case at 776.

1. Contrary to the Civil Rights Act of 1871, where civil damages were available, the only remedy provided in the Civil Rights Act of 1964 is injunctive relief. 42 U.S.C. § 2000a 3 (1964).

2. The relevant provisions of Title II of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq.* (1964) are as follows:

42 U.S.C. § 2000a(a) (1964). All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin.

42 U.S.C. § 2000a(b) (1964). Each of the following establishments which serves the public is a place of public accommodation within the meaning of this title if its operations affect commerce . . .

(2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises . . . ;

(3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and

(4) any establishment (A) . . . (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

42 U.S.C. § 2000a(c) (1964). The operations of an establishment affect commerce within the meaning of this title if . . . (2) in the case of an establishment described in paragraph (2) of subsection (b), it serves or offers to serve interstate travelers or a substantial portion of the food which it serves . . . has moved in commerce; (3) in the case of an establishment described in paragraph (3) of subsection (b), it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce; and (4) in the case of an establishment described in paragraph (4) of subsection (b) . . . there is physically located within its premises, an establishment the operations of which affect commerce within the meaning of this subsection. For purposes of this section, 'commerce' means travel, trade, traffic, commerce, transportation, or communication among the several states . . . .

Club, from denying Negroes' admission to his facility. The Club is a privately-owned recreational area, which has facilities for swimming, picnicking, boating, miniature golf, and dancing. This 232 acre facility also contains a snack bar. Located twelve miles west of Little Rock, the Club is not adjacent to any state or federal highways. The facility was advertised once in a local magazine distributed in Little Rock, and once in a local armed force's newspaper. Numerous radio announcements were broadcast to the "members" of the Club. In return for a twenty-five cent "membership" fee, patrons were given cards which entitled them to enter the premises for the entire recreation season. Upon payment of additional fees, "members" were allowed to use Lake Nixon's recreational facilities. Cards were available to virtually any white patron, but all Negroes were refused membership. Although finding that Lake Nixon was not entitled to the private club exemption[3] provided in the 1964 Civil Rights Act, the district court dismissed petitioners' complaint,[4] holding that neither the snack bar nor the recreational facilities were within any category of public accommodation regulated under the Act.[5] A divided Court of Appeals affirmed,[6] holding that Lake Nixon's facilities did not affect commerce.[7] Certiorari was granted by the United States Supreme Court.[8] The Court, per Mr. Justice Brennan, in an eight to one decision, reversed. *Held,* recreational facilities which solicit patrons from an audience known to include interstate travelers, which contain eating facilities that serve food that has moved in commerce, and which utilize recreational equipment that has moved in commerce, are subject to the public accommodation section of the Civil Rights Act of 1964. *Daniel v. Paul,* 395 U.S. 298 (1969).

The first civil rights legislation attempting to prohibit discrimination in public accommodations was the Civil Rights Act of 1875,[9] which was based upon the equal protection clause of the fourteenth amendment.[10] Its purpose was to end discrimination in public carriers, public inns, and places of amusement which were operated by private proprietors. In 1883, the Supreme Court, in the *Civil Rights Cases,* declared most of the Act unconstitutional.[11] The Court stated that the fourteenth amendment only prevented discrimination by the state and was not designed to prevent discrimination by private citizens.[12]

3. An exemption is provided under 42 U.S.C. § 2000a(e) (1964) for a facility which is "not in fact open to the public." For a discussion of the private club exemption *see* Note, 45 N.C. L. REV. 498 (1967).

4. Kyles v. Paul, 263 F. Supp. 412 (E.D. Ark. 1967).

5. Unless otherwise indicated, the word "Act" refers to the Civil Rights Act of 1964. 42 U.S.C. § 2000 *et seq.* (1964).

6. Daniel v. Paul, 395 F.2d 118 (8th Cir. 1968).

7. Unless otherwise indicated, the word "commerce" refers to interstate commerce.

8. 393 U.S. 975 (1968).

9. 18 Stat. 335 (1875).

10. For a discussion of the legislative history of the Civil Rights Act of 1875, *see* Avins, *The Civil Rights Act of 1875 and The Civil Rights Cases Revisited: State Action, the Fourteenth Amendment, and Housing,* 14 U.C.L.A. L. REV. 5 (1966).

11. 109 U.S. 3 (1883).

12. For a study of the legislative history of the fourteenth amendment and its relation to public accommodations, *see* Avins, *The Civil Rights Act of 1875: Some Reflected Light*

Therefore, insofar as the Civil Rights Act of 1875 applied to action by private citizens, it was invalid. Following the Court's decision in the *Civil Rights Cases*, no major civil rights legislation was enacted by Congress for over seventy years.[13]

In the absence of federal legislation, the equal protection clause of the fourteenth amendment has been the only authority utilized to prevent discrimination in public accommodations. Consequently, a showing that the discrimination resulted from state action has been required in order to prove unconstitutionality.[14] Discrimination required by statute clearly constitutes sufficient state action,[15] but state action need not be so obvious. Financial involvement in the segregated facility,[16] or support of the segregated facility voiced by public officials[17] has been considered sufficient. The limited availability of the equal protection clause as a remedy for discrimination is illustrated in *Williams v. Howard Johnson's Restaurant*,[18] where the court held that a restaurant located on a public highway in Virginia could lawfully refuse to serve Negroes. The court decided that the refusal did not violate the equal protection clause because the discrimination was the result of local custom, rather than state action. The court indicated that mere acquiescence by the state in the actions of its citizens did not constitute state action within the meaning of the amendment.[19]

The Civil Rights Act of 1964 was based not only on the equal protection clause, but also on the commerce clause.[20] The right of Congress to use its

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on the Fourteenth Amendment and Public Accommodations, 66 COLUM. L. REV. 873 (1966). For a contrasting interpretation, *see* Silard, *A Constitutional Forecast: Demise of the "State Action" Limit on the Equal Protection Guarantee*, 66 COLUM. L. REV. 855 (1966) [hereinafter cited as Silard].

13. Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 245 (1964).

14. Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961); *accord*, Shelley v. Kraemer, 334 U.S. 1 (1948); Civil Rights Cases, 109 U.S. 3 (1883).

15. *See*, Peterson v. City of Greenville, 373 U.S. 244 (1963); Gober v. City of Birmingham, 373 U.S. 374 (1963); Avent v. North Carolina, 373 U.S. 375 (1963).

16. *See*, Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961).

17. *See*, Lombard v. Louisiana, 373 U.S. 267 (1963).

18. 268 F.2d 845 (4th Cir. 1959).

19. This is not to say that the fourteenth amendment has never been utilized to prevent discrimination in public accommodations. There was at least one successful case decided prior to the enactment of the 1964 Civil Rights Act which was brought to compel the integration of a public accommodation. Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961), involved a segregated restaurant located within a public parking facility owned and operated by a city agency. The city benefited financially from the restaurant, and the Supreme Court held that this financial benefit to the state was sufficient state involvement to constitute "state action." Since the state had become a "joint participant in the challenged activity," the discrimination practiced by the restaurant violated the equal protection clause of the fourteenth amendment. *Id.* at 725.

20. The majority in *Heart of Atlanta Motel, Inc. v. United States* noted the existence of a constitutional basis for Title II of the Civil Rights Act of 1964 in addition to the commerce clause:

> The legislative history of the Act indicates that Congress based the Act on § 5 and the Equal Protection Clause of the Fourteenth Amendment as well as its power to regulate interstate commerce under Art. I, § 8, cl. 3, of the Constitution.
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> . . . [However] since the commerce power is sufficient for our decision here we have considered it alone. 379 U.S. 241, at 249-50 (1964).

power over commerce[21] to reach desired social goals has been upheld by the courts in other areas.[22] For example, the Pure Food and Drug Act,[23] although passed pursuant to Congress' power to regulate commerce, did not have economic regulation of the food and drug industries as its goal. The commerce power was used as a means of achieving a social goal: the protection of the health of the American people.

Title II of the Civil Rights Act of 1964 prohibits discrimination or segregation on the grounds of race, color, religion, or national origin at certain public accommodations.[24] There has been considerable litigation involving both its constitutionality and its interpretation. In the first case decided by the Supreme Court under the Act, *Heart of Atlanta Motel, Inc. v. United States*,[25] the enforcement of the "motel provision"[26] was attacked as unconstitutional. The Court upheld the legislation citing the overwhelming evidence[27] that segregated motel facilities affect commerce. The provision was distinguished from the public accommodation section of the Civil Rights Act of 1875 which had been held unconstitutional.[28] First, the Court noted that Title II applied only to four categories of public accommodations which affected commerce, whereas the 1875 Act applied to all public accommodations. Next, while the Act of 1875 was based upon the fourteenth amendment, Title II was based on the commerce clause, and the question of whether the 1875 Act could have been sustained under the commerce clause had not been fully considered. Finally, the Court stated that "the fact that certain kinds of businesses may not in 1875 have been sufficiently involved in interstate commerce to warrant bringing them within the ambit of the commerce power is not necessarily dispositive of the same question today."[29]

In *Katzenbach v. McClung*,[30] the "restaurant provision"[31] of Title II was

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The concurring Justices included the fourteenth amendment as an additional basis for their decision. *See* note 53 *infra*.

21. "The Congress shall have Power . . . to regulate commerce with foreign nations, and among the several States, and with the Indian tribes . . . ." U.S. CONST. art. I, § 8.

22. *See, e.g.*, Hoke v. United States, 227 U.S. 308 (1913), which upheld the "White Slave Act," 36 Stat. 825 (1910). For other cases upholding the right of Congress to legislate against social and moral wrongs under the commerce clause, *see* cases cited in Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 257 (1964).

23. The Pure Food and Drug Act, 34 Stat. 768 (1906) was sustained in Hipolite Egg Co. v. United States, 220 U.S. 45 (1911).

24. 42 U.S.C. § 2000a(a) (1964).

25. 379 U.S. 241 (1964).

26. "[A]ny inn, hotel, motel, or other establishment which provides lodging to transient guests . . . ." 42 U.S.C. § 2000a(b)(1) (1964).

27. The Court in *Heart of Atlanta Motel* cited the hearings of each house which showed the burden that discrimination by motels and hotels placed on commerce. 379 U.S. at 252.

28. Civil Rights Cases, 109 U.S. 3 (1883).

29. 379 U.S. at 251.

30. 379 U.S. 294 (1964).

31. 42 U.S.C. § 2000a(b)(2) and (c)(2) (1964) provide:

> [A]ny restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises. . .
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> . . . [affects commerce if] . . . it serves or offers to serve interstate travelers or a substantial portion of the food which it serves . . . has moved in commerce.

similarly upheld. A restaurant accused of discrimination obtained 46% of the food it served from a local supplier who procured the food from outside the state. Although the owner made no attempt to solicit out of state partons, and there was no proof that an interstate traveler was ever served at this restaurant, the Court held that a restaurant sufficiently affects commerce if a substantial portion of the food served has moved in commerce. Although "substantiality" will depend upon the facts in each case, the Court concluded that 46% was substantial. Since *McClung*, the "substantial portion" test has been further refined. Courts have only required that "more than [a] minimal" quantity move in commerce.[32] Regardless of whether the "substantial portion test" is met, coverage under the restaurant provision may rest upon a finding that the facility offers to serve interstate travelers.[33]

The "entertainment provision"[34] of Title II was interpreted by the court of appeals in *Miller v. Amusement Enterprises, Inc.*[35] By applying *ejusdem generis* to the phrase, "other place of . . . entertainment," two district court cases had restricted the accommodations covered under this section to include only those providing passive, spectator-type sports.[36] The Court in *Miller*, however, accepted the dictionary definition of "entertainment," which includes both passive and active sports.[37] Under this definition, the Court held that an amusement park is a "place of entertainment" under Title II. Under the last category of public accommodation covered by the Act, the "included establishment,"[38] a business which might otherwise be exempt loses its exemption if it is located within, or contains a Title II public accommodation.[39]

The initial issue faced by the Court in the instant case was whether Lake Nixon was within the private club exemption of the Act. A finding that Lake Nixon was a private club would have enabled it to continue its policy of racial

32. Gregory v. Meyer, 376 F.2d 509, 511 n.1 (5th Cir. 1967). *See* Hearings Before Subcomm. No. 5 of the House Comm. on the Judiciary, 88th Cong., 1st Sess., ser. 4, pt. II, at 1385-93 (1963). In the following cases, all percentages have been termed substantial: Katzenbach v. McClung, 379 U.S. 294, 296 (1964) (46%); Gregory v. Meyer, *supra* at 511 (20-30%); Codogan v. Fox, 266 F. Supp. 866, 868 (M.D. Fla. 1967) (23-30%).

33. Gregory v. Meyer, 376 F.2d 509, 510 (5th Cir. 1967). In addition, no proof is needed that an interstate traveler is actually served. An offer is sufficient. Wooten v. Moore, 400 F.2d 239, 242 (4th Cir. 1968).

34. 42 U.S.C. § 2000a(b)(3) and (c)(3) (1964) provide:

> [A]ny motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment . . . [affects commerce if]
>
> . . . it customarily presents films, performances, athletic teams, exhibitions, or other sources of entertainment which move in commerce.

35. 394 F.2d 342 (5th Cir. 1968).

36. Kyles v. Paul, 263 F. Supp. 412 (E.D. Ark. 1967); Miller v. Amusement Enterprises, Inc., 259 F. Supp. 523 (E.D. La. 1966).

37. 394 F.2d at 351.

38. 42 U.S.C. § 2000a(b)(4) provides:

> [A]ny establishment (A) . . . (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

39. *E.g.*, Fazzio Real Estate Co. v. Adams, 396 F.2d 146 (5th Cir. 1968); United States v. Fraley, 282 F. Supp. 948 (M.D. N.C. 1968); Evans v. Laurel Links, Inc. 261 F. Supp. 474 (E.D. Va. 1966).

discrimination.[40] Although the respondents referred to their facility as a private club and charged a nominal membership fee,[41] the Court found that the membership device was a sham, and looked instead to the business practices of Lake Nixon. It found "none of the attributes of self-government and member-ownership traditionally associated with private clubs."[42]

After deciding this initial question, the Court found that Lake Nixon's snack bar was covered under the "restaurant provision" of Title II. To qualify under this provision, the facility must have been *principally engaged* in the sale of food.[43] Without discussion, the Court stated: "Clearly, the snack bar [was] 'principally engaged in selling food for consumption on the premises.' "[44] This finding did not, however, automatically make the snack bar subject to Title II. The Court also had to decide whether the facility affected commerce. The Court noted that "three of the four food items sold at the snack bar contain ingredients originating outside of the State."[45] Using the "substantial portion test," the Court concluded that the food served had moved in commerce.[46] Although there was no proof in the record that any interstate traveler was ever served at the snack bar, the advertisements for Lake Nixon had reached an audience known to include interstate travelers.[47] The Court found that "[t]his choice of advertising media [left] no doubt that the Pauls were seeking broad-based patronage from an audience they knew to include interstate travelers."[48] Since Lake Nixon, therefore, offered to serve interstate travelers, and all patrons of Lake Nixon had access to the snack bar, the Court concluded that the snack bar also offered to serve interstate travelers. Since its operations affected commerce, the Court held that the snack bar was a place of public accommodation. Next, the Court found that the entire Lake Nixon facility was a public accommodation under the "included establishment provision," since the snack bar was covered under Title II.[49] Finally,[50] the Court

40. An exemption to Title II is provided under 42 U.S.C. § 2000a(e) (1964).

41. Respondents employed these devices after the passage of the Civil Rights Act of 1964, in order to qualify as a private club. Instant case at 301-02.

42. Instant case at 301. Characteristics of a private club include a membership committee, self-government, social, rather than profit-making objectives, and member-ownership.

43. The district court in the instant case held that the snack bar did not meet this requirement and refused to consider the snack bar as a separate facility. 263 F. Supp. 412, 419 (1967). This is the only case which has considered an eating facility a "mere adjunct" to the principal business involved. *Contra*, Fazzio Real Estate Co. v. Adams, 396 F.2d 146 (5th Cir. 1968) (bowling alley—eating facility); Evans v. Laurel Links, Inc., 261 F. Supp. 474 (E.D. Va. 1966) (golf course—eating facility).

44. Instant case at 304.

45. *Id.* at 305.

46. *Id.*

47. For example, the Lake Nixon Club was advertised once in *Little Rock Today*, a monthly publication distributed free of charge by Little Rock's hotels, motels and restaurants to guests and tourists. 263 F. Supp. at 417-18.

48. Instant case at 304.

49. *Accord*, Fazzio Real Estate Co. v. Adams, 396 F.2d 146 (5th Cir. 1968).

50. The Court could have ended the decision in the instant case with the finding that Lake Nixon was an included establishment based upon the coverage of the snack bar under the Act. However, the respondents could have easily negated the effect of the decision by

decided that Lake Nixon was also a public accommodation under the "entertainment provision" of Title II, following *Miller v. Amusement Enterprises, Inc.*, which held that "entertainment" includes both passive and active activities.[51] To qualify as a public accommodation, the place of entertainment must present entertainment which moves in commerce. The Court cited the fact that the Club leased fifteen paddle boats from an Oklahoma company, and rented a juke box which was manufactured outside Arkansas.[52] The concurring opinion of Justice Douglas stressed the fourteenth amendment as an additional ground for reversing the decision of the lower courts,[53] stating that racial segregation "is a denial . . . of the equal protection guaranteed by the Fourteenth Amendment . . . ."[54] Justice Black dissented on the ground that the conclusions of the majority were not supported by facts in the record. He argued that the 1964 Civil Rights Act was based *only* upon the commerce power. Therefore, reasoned Justice Black, the party seeking injunctive relief under the statute had to prove the effect of the facility upon commerce, which the petitioners had not done.

The Court's decision in the instant case, prohibiting discrimination at Lake Nixon, resulted from a finding that Lake Nixon affected commerce. By resting its decision only on the commerce power underpinnings of Title II, the Court was forced to fit the facility into one of four possible statutory definitions, and then determine whether the requisite effect upon commerce existed. This mechanical procedure impedes the full integration of public accommodations which do not affect commerce. The requirement of proof of the effect of the facility upon commerce could have been avoided by basing the decision upon the Civil Rights Act of 1866,[55] following the reasoning of *Jones v. Alfred H. Mayer Co.*,[56] which held that private discrimination in the sale or rental of property is barred by the 1866 Act. In addition to prohibiting racial discrimination in private real estate transactions, the Act of 1866 provides

removing the snack bar and petitioner would then have had to bring another action based on the entertainment grounds.

51. The decision in *Miller* occurred after the district court decision, but before the court of appeals decision in the instant case. However, the court of appeals did not accept the reasoning in *Miller* and instead adopted the lower court's definition of "entertainment," which included only passive sports. However, it could be argued that Lake Nixon qualifies under both the passive and active definitions of entertainment. Passive entertainment included listening to the juke box or to the live bands, and watching others dance. Participatory (active) entertainment included playing miniature golf, swimming, dancing, and boating. This point was barely discussed by the lower courts, and was not discussed by the Supreme Court in the instant case.

52. Instant case at 308.

53. This concept is discussed in Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 279, 291 (1964) (concurring opinions). For the legislative history of the fourteenth amendment basis, *see* H.R. Rep. No. 914, 88th Cong., 1st Sess. 20 (1963); S. Rep. No. 872, 88th Cong., 2d Sess. 22-23 (1963). *See also* Heart of Atlanta Motel, Inc. v. U.S., *supra*, at 292, 293 n.1 (concurring opinion).

54. Bell v. Maryland, 378 U.S. 226, 260 (1964), *quoted in* Daniel v. Paul, 395 U.S. 298, 309 (1969).

55. Civil Rights Act of 1866, 14 Stat. 27 (1866), recodified, in part, as 42 U.S.C. § 1981 (1964).

56. 392 U.S. 409 (1968).

"that all persons . . . shall have the same right, in every State and territory in the United States, to make and enforce contracts, . . . as is enjoyed by white citizens . . . ."[57] Under common law, an entrance ticket to a place of entertainment is a contract.[58] Therefore, it may be argued that a refusal to sell an entrance ticket to a black citizen is an interference with his right to contract. Although this argument was presented before the Court in the instant case,[59] the Court chose to base its decision upon the commerce power. The significance of the decision, however, does not lie merely in the constitutional basis used by the Court to prohibit segregation. Of even greater significance is the minimal proof which the Court accepted as sufficient to show that Lake Nixon affected commerce. The Court held that Lake Nixon's snack bar affected commerce because a substantial portion of the food served had moved in commerce. The only basis for this finding was judicial notice taken by the district court judge.[60] The Court's reliance on facts outside the record was emphasized in Black's dissent. He discussed the willingness of the majority to accept "assumptions," "probabilities," and "judicial notice," in place of evidence and judicial findings.[61] As a result of *Daniel v. Paul*, cases involving discrimination in public accommodations may be brought where little proof of the effect of the facility upon commerce exists. The minimal amount of proof required in the *Daniel* case shows that the Supreme Court may well hold that nearly all public accommodations are covered under the Civil Rights Act of 1964.[62]

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57. 42 U.S.C. § 1981 (1964).

58. *E.g.*, Williams v. Kansas City, 104 F. Supp. 848, 859 (W.D. Mo. 1952), *aff'd*, 205 F.2d 47 (8th Cir.), *cert. denied*, 346 U.S. 826 (1953); Watkins v. Oaklawn Jockey Club, 86 F. Supp. 1006, 1016 (W.D. Ark. 1949), *aff'd*, 183 F.2d 440 (8th Cir. 1950).

59. Brief for United States as Amicus Curiae, Daniel v. Paul, 395 U.S. 298 (1969), devotes approx. 50% of its length, and the Brief for Petitioner, Daniel v. Paul, 395 U.S. 298 (1969), devotes approx. 25% of its length to the applicability of the Act of 1866.

60. The snack bar served four items: hamburgers, hot dogs, soft drinks, and milk. Instant case at 305. Although there was no proof in the record concerning the sources of the food, the district court took "judicial notice" that the wheat in the rolls was "produced and processed" outside Arkansas. The court also stated that "certain ingredients" in the soft drinks "were probably obtained . . . from out-of-state sources." 263 F. Supp. at 418. The Supreme Court used this information to state that "three of the four food items sold at the snack bar contain[ed] ingredients" that had moved in commerce. Instant case at 305.

61. Instant case at 310-13 (dissenting opinion).

62. The implications of the decision in *Daniel* are discussed by Justice Black in the dissent:

> [The application of the 1964 Civil Rights] Act [to] this country people's recreation center . . . would be stretching the Commerce Clause so as to *give the Federal Government complete control over every little remote country place of recreation* in every nook and cranny of every precinct and county in every one of the 50 States. (Emphasis added.) *Id.* at 315.