In the ORIGINAL

Supreme Court of the United States

VILLAGE OF HOFFMAN ESTATES, ET AL.,	)	
	)	
Appellants	)	
	)	
v.	)	NO. 80-1681
	)	
FLIPSIDE, HOFFMAN ESTATES, INC.	)	

Washington, D. C.

December 9, 1981

Pages 1 thru 51

ALDERSON REPORTING

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- -:

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Appellants, :

v. : No. 80-1681

FLIPSIDE, HOFFMAN ESTATES, INC. :

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Washington, D. C.

Wednesday, December 9, 1981

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 1:01 o'clock p.m.

APPEARANCES:

RICHARD N. WILLIAMS, ESQ., Hoffman Estates, Illinois; on behalf of the Appellants.

MICHAEL L. PRITZKER, ESQ., Chicago, Illinois; on behalf of the Appellee.

C O N T E N T S

P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next in Village of Hoffman Estates against Flipside, Hoffman Estates.

Mr. Williams, you may proceed whenever you are ready.

ORAL ARGUMENT OF RICHARD N. WILLIAMS, ESQ.,

ON BEHALF OF THE APPELLANTS

MR. WILLIAMS: Mr. Chief Justice, and may it please the Court, the question in this case is limited to a question of vagueness of a drug paraphernalia ordinance. Vagueness, of course, has been defined by this Court under Grayned versus Rockford as an ordinance or statute that gives a person of ordinary intelligence a reasonable opportunity to know what is prohibited, and also that there are in fact standards for those who must enforce this ordinance.

The U. S. District Court found this ordinance constitutional in all respects. The challenge was not just to vagueness, but in fact as to First Amendment issues, as to overbreadth, and as to equal protection. The U. S. Court of Appeals for the Seventh Circuit reached only the vagueness issue, and said quite clearly that they did not reach the other issues, although I think it important to point out that in the brief of Flipside, they argue that

First Amendment issues are present which would call for a stricter test. The Seventh Circuit did not reach that issue, did not apply those issues.

So, before the Court today in the briefs, First Amendment issues have been briefed even though we rely on a less rigorous standard, in that this is a civil licensing ordinance, and we believe one that does not invade constitutionally protected areas.

Flipside argues that First Amendment issues are present, and therefore the stricter standards should follow. I can review that. What we have is presumptive validity. We do not have constitutionally protected issues. We do not have a criminal ordinance, and we are asking the Court review on a less stricter review on that basis.

QUESTION: But if you disregard the licensing requirement, you are subject to criminal penalties, aren't you?

MR. WILLIAMS: Not in the state of Illinois. It is quasi-criminal. It is tried civilly as a civil violation of the village code.

QUESTION: What happens to you if you are found guilty?

MR. WILLIAMS: There could be a fine of up to $500.

QUESTION: That isn't a criminal --

MR. WILLIAMS: No, it is regarded as quasi-criminal. Even traffic violations on ordinance violations are quasi-criminal, and treated civilly, with the civil tests of preponderance only.

QUESTION: Did the court of appeals think that vagueness considerations apply to civil statutes?

MR. WILLIAMS: Well, I think they do, from National Dairy and other areas, and we have conceded that any ordinance or statute still is subject to vagueness tests, but we think it is a stricter test because of what this Court has said in the past in opinions involving criminal matters.

QUESTION: Yes, but what if you can identify some article under this ordinance that any fool would know is covered by it? Is that the end of the inquiry? Isn't it?

MR. WILLIAMS: Well, it depends. If we are going after a head shop per se, they obviously would be licensed and could sell this to adults. If we are going to a convenience store that is selling this type of item, then they have no license, they could be brought before the local circuit court that would sit --

QUESTION: But this is a facial challenge, isn't it? And didn't the court of appeals say that it is facially invalid?

MR. WILLIAMS: No, it was both. I don't believe

they reached facial invalidity.

QUESTION: Well, they said it was vague.

MR. WILLIAMS: They said it was vague, but they did apply the civil test to it.

QUESTION: I know, but it is vague in the sense that you couldn't tell -- you couldn't identify any object that was clearly covered by the --

MR. WILLIAMS: That's what they said.

QUESTION: That's what they said. Well, what if they were wrong on that.

MR. WILLIAMS: I believe they were.

QUESTION: What if they were wrong that there is at least one object that you can identify?

MR. WILLIAMS: Then I think under what the Second Circuit just came down with in Brockey, that then there is nothing more to review, that the matter goes back, until there is in fact a real challenge.

QUESTION: Yes.

MR. WILLIAMS: When this ordinance was written, there were no court opinions. This was written in February of '78, at the direction of the village board to myself. Since then, as you can see, there has been an explosion of litigation in both state and federal courts. As draftsman of the ordinance, I had to meet many concerns, of course, not guided by the case law as we now know it.

The first consideration was to determine, should we criminalize or should we license because of the proliferation of what we believe was in the rational interest of roach clips, bong pipes, and the like. It was recognized that most of these items are legal in and of themselves, that there is not, as Justice White states, obviously that they are illegal.

There are some items, however, that are, so we have approached it two ways, those items that are designed for use with illegal drugs and those items that are marketed for use, and of course our emphasis would be on the marketing, because this is no different than milk, food, flowers, paint, clothing, and so on. Every municipality licenses its retailers within the confines of its jurisdiction, and this is regulating at the commercial source.

So we chose not to definitely define each of these items. If you have gone through what is known as the Model Act, and some of the state statutes that are in the cases cited, you will see they make an attempt to specifically identify this power hitter, this bong pipe. We saw the difficulty right away with trying to make these items per se.

We chose to regulate, therefore, at the retail sale, rather than put the onus on some innocent purchaser that may or may not know what he is purchasing, to put the

burden back on the retailer, in essence, under the McGowan theory. We do only penalize minors in the area where they would drink under age or buy tobacco under age by state statute and city ordinance, and both of these have criminal prohibitions. We chose to place no criminal prohibition even on a minor that bought from a retailer that was selling illegally.

We believe this also addresses the question of transferred intent. In the Record Revolution Number 6 versus Parma case, that was before this Court for review in June of this year, or May of this year, the Sixth Circuit rejected that Parma ordinance on two bases. One, that there was a transferred intent, that if the retailer, the manufacturer intended it for illegal use and the purchaser bought it innocently, they could go back and prove this intent, and here we would have a possible conviction. So they found a vagueness there.

Secondly, that ordinance said that you can't advertise these types of items, and that was just one small city in the state of Ohio. We chose not to touch the First Amendment at all. We have not raised questions of advertising. We were very careful and prudent to avoid First Amendment issues. Throughout the district court proceedings and Seventh Circuit proceedings, we have been attempted to be painted with a First Amendment argument. It

has always been our intent to avoid that, and I think successfully so.

We chose to avoid those issues even though I think under Virginia State Board of Pharmacy and Pittsburgh Press, that if they did advertise these items, clearly this would not be protected speech, and we could proceed, and since then, I believe both the Eighth Circuit, Tenth Circuit, and a number of the other federal opinions have found that these are not first amendment issues when they are promoting the sale of these items for illegal purposes.

Amicus Attorneys General have filed a brief --

QUESTION: Counsel.

MR. WILLIAMS: Yes.

QUESTION: How do you draw a distinction between advertising them for sale and holding them out for sale, except that you have the articulation in the newspaper ad or whatever?

MR. WILLIAMS: The advertisement goes to the broad spectrum of the community, and it would be argued as First Amendment expression. They would argue that the fact that they merely displayed these items together is a form of free expression and free speech. I believe that in the retail setting, that if you -- these things fall together. If you find that our language, "marketed for use with illegal drugs" is not vague, then even if their argument on display

could be free expression, it falls because it is advocating use with illegal substances, and I believe in my reply brief I cited a number of these cases, I believe, Music Stop from California and Novai from Michigan, that have said display does not reach First Amendment issues. Also, the Supreme Court of Kansas in the Carterella case, looked at display and said, this is not First Amendment material, and other courts have just gone right over that issue and not even addressed it.

The Model Act that so many of these cases addressed was not written by the Drug Enforcement Agency of the Department of Justice until 18 months after we had drafted our ordinance. So this is not to say today that we may prefer to take that particular action that in fact criminalizes this conduct. In fact, it gives us a stronger control over this proliferation in the community. But at that time we went with what we had, but I think their argument addresses very clearly the issue of intent in the words "designed for use". They have traced the long history of it, in prohibition cases and other cases, and I think the same language that this Court applied in Parker v. Levy, the history of interpretation of the words can be applied to "designed for use."

In their brief, they point out the number -- I think the Delaware opinion, and the Maryland district court

opinion, both that adopt this word and found that intent or sienter is entered by this, and I think we can go back to the Boyce case as well, where this Court clearly said the word, the magic word "intent" need not be used.

QUESTION: On that point, Mr. Williams, have you previously interpreted the ordinance to include a sienter requirement?

MR. WILLIAMS: There were no previous interpretations, Justice O'Connor.

QUESTION: Was it argued below, the intent element?

MR. WILLIAMS: Not at the district court. It did not come to that issue at the district court.

QUESTION: Would you explain what sort of intent element you would see in this ordinance? I mean, what kind of intent?

MR. WILLIAMS: Designed or marketed, we believe, are active words, as opposed to passive. They are calling for an act on behalf of the retailer, and we believe that by placing goods in a marketing setting, that they could be used with illegal drugs, or designing them, or knowing that they are designed by the manufacturer and placing them, that it puts on us the requirement to show that that was their intent and understanding, that this one innocent item a buyer for a large retail chain may have put out not knowing the intent, we would lose that on the civil question of

licensing in that there is no way we could show that he knew what the design was or he knew how it was marketed.

QUESTION: Well, would you then infer intent from the product's design or the manner of display?

MR. WILLIAMS: Absolutely.

QUESTION: And so the sienter requirement then really doesn't add to the existing ordinance, if that is what it means, does it?

MR. WILLIAMS: Well, it puts the measure, the activity measure on the person we are going after, the retailer, so --

QUESTION: Just an intent to market.

MR. WILLIAMS: Yes. If he markets it, obviously he is showing an intent in the way that he did it. It wasn't an accident, when he has case after case of bong pipes and papers and so on. I am asking the Court to not infer it, but to presume it.

The district court, I feel -- excuse me, the court of appeals, I believe, strained to find an interpretation other than designed for use. They quoted as Record Revolution and the Sixth Circuit quoted the Normal v. Sindak case, that was in the additional opinions filed by counsel for Flipside. That case from Indiana with a three-judge panel looked at the dictionary and found two alternative definitions to design, and this both the Sixth and Seventh

Circuits found did not give a clear definition, and yet we have Hejira, the Tenth Circuit case, that says, no, we reject that there are alternative uses, these are particular uses, we are going to look at that definition.

Community Action Against Drug Abuse' brief here, their amicus brief clearly sets out what the dictionary says. This Court has said in Rose v. Lock that you can go to the dictionary to make the determination, and I think Justice Rehnquist's statement in U. S. v. Powell is very, very apropos here. A court should not strain to find unconstitutionality. It should take the words as they are and not strain to find an alternative meaning.

The Court also said in that U. S. versus Powell that under the void for vagueness doctrine, such cases should be determined by the facts at hand, and I think that is another important point. Throughout the case the argument is made, what about this poor hardware dealer that has his alligator clip that could be adapted for use as a roach clip? Well, we are not concerned about the poor hardware dealer in this case. The facts at hand are, we are dealing with a record store that sells these particular type of items, and we are looking at the way this particular store displays them. That is the facts at hand.

To return to the McGowan versus Maryland test, we argue that Grayned is --

QUESTION: I suppose, counsel, that if you prevail here, this would, to use a common phrase, chill some people from selling these articles. And I suppose that is the general idea of the city.

MR. WILLIAMS: We hope so. I don't believe we are entering into constitutionally protected areas, and I think chilling is an appropriate word. I think drug abuse is a serious cancer in our society, and we think that this will chill the retailing of these items to be used with illegal drugs.

QUESTION: Perhaps freeze is what you really would want.

MR. WILLIAMS: Well, I am realistic enough to know it would only be a chill, Mr. Chief Justice.

The McGowan test takes what we say in Grayned as the ordinary person and moves it to the retailer. Now we are not talking about anybody on the street, because this ordinance can only be enforced against the retailer, and in that case out of Ann Arundel County, they had a Sunday ban on sales for other merchants but you could sell them down at the beach, and they said, well, you can find out what you can sell and what you can't sell by your ordinary commercial knowledge or by reasonable investigation, and we argue that if there are marginal areas, and certainly they can be raised in this case, if there are marginal areas, a prudent

businessman of ordinary commercial knowledge can find what these differences are.

In fact, in this record you will see time after time the owner of the store called my office, asked me for an interpretation, followed it. These guidelines that you have before you, these temporary guidelines, that were issued by the village, were pursuant to a phone conversation written up and given to the merchant concerned, that he was making a reasonable investigation.

Now, what about the items themselves? There were 79 items introduced by Flipside in this case; 72 were of the type that they sold. What we attempted to avoid was saying, could this always be used with illegal substances? And I think we did. You take tobacco paper or papers that you roll your own. Clearly they can be used with a legal purpose. But they also can be used with an illegal purpose, but they aren't designed for a legal purpose. So we set those aside. That is fine. You can sell those.

What about a scale? You can use that to weigh your letters at home, and other things. There are these home type scales. They put four or five of these into evidence. That is fine. It has got a legal use. Put that aside.

A water pipe. We stipulated to an expert that said for thousands of years people have smoked tobacco

through water pipes. Fine. We will put that aside.

QUESTION: Did the expert say how many people smoke it that way?

(General laughter.)

MR. WILLIAMS: Don't know, Mr. Chief Justice.

Alligator clips. They sell these at electronic stores. They were selling some. Fine. It works for tape recorders and electronic things, and it also is of some assistance to get the last hit of a marijuana cigarette. Fine. We will put that over here.

A hemostat. I was presented -- I was a witness on behalf of Flipside on cross examination. They gave me a hemostat. I didn't know what it was. They told me it is a medical instrument. But they sell it. Then they stipulated, and you will find that at Page 29 of the joint appendix, they don't sell tobacco. They don't sell medical supplies. But those five items I just mentioned, the water pipe, the papers, and so on, they are selling them together in the same display.

I think there is only one common denominator here, and that is our theory, the common denominator theory. What is the one common use that can be used with these items? And that, of course, as any child or parent would know, would be to be used with illegal substances. It is more likely than not that they will be used with illegal

substances, not tobacco or any other item.

The Federal District Court in New Jersey took judicial notice that this is the intent. The courts in their opinions and in the literature state that this is proliferating, and it is likely to be used for this. So we are really asking the Court two things. One, to make that Tott-Leary presumption that this is more likely than not in this situation, or, Two, take judicial notice that that is what they are selling these items for in the stores when they display them together, when they market them together.

One other concern we had by the Seventh Circuit is, they said, we fear this type of legislation on lifestyles, and I can't make the argument strong enough that I think under the rational interest of the community and the state we have a right to legislate against lifestyles, such as homicidal maniacs, burglars, and drug abusers, and this is one way, a civil remedy to go after a drug abuser. We don't like his lifestyle in Hoffman Estates, and I don't think anywhere else in the country do they care for that lifestyle, and I believe we have a right to legislate.

QUESTION: Mr. Williams, would you mind referring to the ordinance itself as set forth in the jurisdictional statement on Page 48(a), Subsection (A), and tell me if that is a misprint or if that is how the ordinance --

MR. WILLIAMS: Subsection -- 48(a), Subsection (A).

QUESTION: (A), License Required. It refers to, it shall be unlawful for any person to sell items, paraphernalia, accessory, or thing which is designed by Illinois revised statutes?

MR. WILLIAMS: No, that is a misprint. You will find that --

QUESTION: Has that been corrected somewhere?

MR. WILLIAMS: You will find that same language in the joint appendix at Page 10, I believe, the ordinance is set out, and you will see that it says "It shall be unlawful for any person or persons as principal clerk, agent, or servant to sell any items, paraphernalia, or thing which is designed or marketed for use with illegal cannibis or drugs."

QUESTION: So that is an omission in the jurisdictional --

MR. WILLIAMS: Yes, it appears to be in error.

QUESTION: Thank you.

MR. WILLIAMS: I was in Florida several weeks ago, and they do advise in the press that marijuana is now the second largest cash crop, and we know by the Fourth Amendment cases that come before this Court that drug abuse and use is rampant, and I think there is a rational interest to look at this particular industry. In the cases that are cited to the Court and Drug Enforcement Agency testimony they estimate it is up to a $3 billion industry. I have

some questions about that large of an industry, but certainly it is something that is going on, and we believe that we have a rational interest to go after it, and we do ban it on minors. That is another issue that has to be addressed. We ban these types of items, even though they are legal, and we recognize they are legal for the most part, we ban their sale to minors in the same way we ban tobacco and cigarettes, and I think under the Ginsburg versus New York guidelines, that we can treat minors differently than adults, especially in this area.

The guidelines raise another issue. The Model Act guidelines I believe are good guidelines. The Eighth Circuit thought they were. The Tenth Circuit thought they were. The Second Circuit recently thought they were, in Brockey, which is now at 558 Fed Second.

We find that the guidelines we issued, very short, very temporary, nonetheless gave an enforcement officer and the retailer an idea of what we were looking for. They addressed themselves primarily to display. We found things as roach clips were per se, we conceded that those were designed for legal uses. Now, alligator clips and other things can be adapted, but what we were saying was, the way you display it is what we are going to look at, and again they tried to paint us with a First Amendment, because if they have A Child's Garden of Cocaine, or some other type of

book, or a cocaine mirror, they suddenly say that is First Amendment expression. I again go back to Virginia Board of Pharmacy. I again go back to Pittsburg Press to say, we can limit that expression. But more than that, in the district court we flatly denied it was a First Amendment issue. They agreed.

The Seventh Circuit did not reach that issue. The other courts have said that type of thing does not reach First Amendment proportions. But I think that has to be looked at and addressed here.

One other point that we make that the district court found was proper and the Seventh Circuit had some concern with was our Administrative Procedure Act. I wrote an Administrative Procedure Act a year before based upon the Administrative Procedure Acts that states use. And if you are selling milk or selling food, we have hearings, we have guidelines, we tell you how hot the water has to be to wash the dishes and so on, all the nitty-gritty. We do the same thing with everything we license, just like the federal government. And we were preparing to go to those procedure hearings at the time this suit was filed.

But on file were the temporary guidelines, so we think that we did meet the guideline requirement of Grayned in an adequate manner.

QUESTION: Mr. Williams, have you changed the

ordinance at all since the inception of this litigation?

MR. WILLIAMS: Not a word, Justice Blackmun.

QUESTION: Pardon me?

MR. WILLIAMS: Not a word.

QUESTION: Not a word.

MR. WILLIAMS: Although we have had some concerns in this post-Monnell and post-Owen area. We would not legislate in this area for solicitation or obscenity. We feel that is a chilling effect. We are bound by this. We passed this before Owens. But at this point, good faith, bad faith, we are looking at possible liabilities, and have great concerns in that manner, as I addressed in my jurisdictional statement.

Lastly, a point that I think should be considered is the register. There is great concern about this on chilling effect. We require that the person, the adult person buying these items has to sign a register, the same as you would for a controlled substance Class 5 under the Controlled Substance Act. This Court has had some of those cases, but primarily of physician-patient relationship.

What are we going to do with this? It is going to be a record. If in fact somebody to glamorize and promote his drug industry, his drug sales to the high school, is buying a lot of this paraphernalia, we may look at him. We may make an investigation. But we are always subject to the

Fourth Amendment. And since this does not invade constitutionally protected activity, we see no reason since this Act has been upheld for paragoric and other types of classified substances, why it can't be upheld for this type of paraphernalia. Everything we wrote here was what had already been approved. Minors, we knew tobacco we could ban. We put that in. The register, we knew controlled 5 substances could require a register, we put that in. It may in fact trap the unwary criminal. But if I remember the Court's comments on the entrapment cases, we are permitted to trap the unwary criminal.

The nexus argument was made in their brief and responded to in our reply brief, are these things like burglar tools? A crowbar is legal when you are using it to pry something open. It is now a burglar tool. They claim then a bong pipe is legal, and when you light up some cannibis in it it becomes illegal or paraphernalia. We feel that the presumption at the point of sale handles that situation, and that there is that nexus or connection.

I would state that the Hejira versus McFarlane case that just came out in 660 Fed Second -- it is in the additional authorities, but the citation has just been issued -- talks about the nexus between abuse of controlled substances and glorification of those devices.

QUESTION: In this case, was there some warning

issued?

MR. WILLIAMS: No, there was no prosecution. There was no active -- we were in communication at all times.

QUESTION: Well, yes, but at the time this case was filed, was it clear what the village's claim was?

MR. WILLIAMS: Yes, I made it clear that perhaps they should clear their display cases.

QUESTION: However vague the ordinance might have been without some administrative construction, you administratively construed it to what?

MR. WILLIAMS: We --

QUESTION: To cover items that were being sold?

MR. WILLIAMS: Yes, the way they were displaying their items with papers and pipes together, we said that that would be under the ordinance.

QUESTION: So that at that time there was not much question about what you thought was covered by the ordinance.

MR. WILLIAMS: Yes, there was no question about it. In fact, Judge Layton in his opinion said, why, they unerringly went to their display cases and removed all these items. They clearly were a retailer who understood what the ordinance meant.

In summary, I would ask that even though the Seventh Circuit only reached the issue of vagueness here, and if the Court finds that this ordinance is not vague,

then normally it would be remanded for further consideration, but they chose to go ahead and brief the First Amendment and overbreadth issues, and we have briefed back. The last issue was equal protection, which no court has seriously considered. We feel we are permitted to take any particular industry and legislate if we do it in a reasonable manner. So, I would ask for the benefit of those other opinions that are pending that a full opinion be reached in this case.

QUESTION: Mr. Williams, this is not a criticism of you, but it is of your printer.

MR. WILLIAMS: I think it is about the -- we put an instruction in there, please alphabetize, and it was not done.

QUESTION: No, I am speaking of the table of cases in your brief.

MR. WILLIAMS: They were not alphabetized.

QUESTION: I think they ought to be alphabetized and not serialized.

MR. WILLIAMS: That was an error. We requested that and it was not done.

CHIEF JUSTICE BURGER: Mr. Pritzker?

ORAL ARGUMENT OF MICHAEL L. PRITZKER, ESQ.,

ON BEHALF OF THE APPELLEES

MR. PRITZKER: Mr. Chief Justice, may it please

the Court, Mr. Chief Justice, I have found in preparing for argument that we have mis-cited U. S. v. Freed at Page 47 of our brief, and would ask to excuse that oversight.

In addition, I would ask to call to the Court's attention, Mr. Chief Justice, the recently published Columbia Law Review, which I just became aware of a few days ago, Volume 81 at 581, in which it deals with drug paraphernalia. A couple of other law reviews had been cited because we were aware of them at the time of publication. This has just come to our attention.

QUESTION: What is the cite that you just gave us?

MR. PRITZKER: 81 Columbia Law Review at Page 581.

Appellant has attempted to narrow the question so that the issue presented is any item, effect, thing which is designed or marketed for use with illegal drugs, unconstitutionally vague. By attempting to narrow it in that regard, it is an attempt to overlook the dynamics and other problems inherent in the -- in the construction of the ordinance based on the trial record and as construed by the Seventh Circuit.

Although now we are told that design refers to some abstract intent, during the course of his argument it was clear that when we talk about paraphernalia, that is, when Mr. Williams talks about paraphernalia, he is talking about specific things. It presumes that we can define

paraphernalia. This paraphernalia should not be available to kids, he says. It is as though we could define it and excise it from the community by enactment of the ordinance, but it is clear from the record that such is not the case, that these things are not paraphernalia per se, yet they claim, vascillating between an argument that this is drug paraphernalia; on the other hand, well, it is not really paraphernalia, it is paraphernalia because of the way it is marketed.

QUESTION: Well, Mr. Pritzker, what do you do with Justice Holmes' language in the Nash case in 229, where he says that the law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree?

MR. PRITZKER: Certainly that is relevant to other issues which in this case were commented on by the Seventh Circuit, that in fact language does not lend itself to precision. Certainly, as Justice Holmes noted, there is some amount of looseness, of a lack of precision, that peopl must act in almost all events with a certain amount of lack of certainty as to the significance and the consequences of their actions, but I think that, for example, the Court speaking through you in your opinion of U. S. v. Paul, where you decided and talked between Cohn Grocery, in which you indicated that there was no standard in that case, and

talked about the vagaries of supply and demand.

Here, we analogize that to taste. Is a blue pipe inherently criminal, and a brown pipe lawful because in the officer's experience brown is customary and usual? Is meershaum, as was introduced in this case, lawful except that when it had a cannibis leaf on a large bowl meershaum pipe it was held to be paraphernalia? We are essentially talking about taste, and I think we have been unfairly characterized with regards to what lifestyle means.

Lifestyle did not refer to drug culture. If I may, quoting from that 81 Law Review article, it talks about, "Indeed, courts have been extremely wary of permitting enforcement discretion in drug paraphernalia cases since the counterculture connotations associated with drug use encourage police decision-making on such suspect factors as the age" --

QUESTION: Who is the author of that article?

MR. PRITZKER: I have to punt on that, Your Honor, but I believe it was a student at Columbia.

QUESTION: So you don't know who wrote it?

MR. PRITZKER: No, Your Honor, I don't. Only that it was published just recently. "...appearance, mannerisms, or address of a merchant or his customers. Such discretionary enforcement based largely upon whether an individual looks like an illegal drug user offends the basic

notions of fairness."

The Seventh Circuit and the Eighth Circuit in Egan recognized that when we are talking about lifestyle, we are talking about manner and appearance of the dress or style. If I buy a pipe, is it more likely to be used for a lawful purpose, or because if I have a beard, is it more likely that it will be used for an unlawful purpose?

QUESTION: Suppose, Mr. Pritzker, the proprieter of Flipside is in the store, and two people come in and say, we use marijuana considerably, we would like to have -- and tells him some specific item that they want to use in connection with using marijuana, in which case there is no question about what the use is going to be, and if Mr. Flipside sells the article requested, would there be any question in his mind or could there be that the ordinance would forbid that?

MR. PRITZKER: No, Your Honor. If I may first --

QUESTION: Well, would there or not? Would there be any question or not?

MR. PRITZKER: Under this ordinance?

QUESTION: Yes.

MR. PRITZKER: No, Your Honor, as I said in my brief.

QUESTION: Well, if that is so, how can the ordinance be vague on its face?

MR. PRITZKER: Because such is not the case.

QUESTION: Why? Why? Why?

MR. PRITZKER: Well, because in this case the plaintiff --

QUESTION: There could be all sorts of circumstances where there would be no question whatsoever but what the ordinance would cover some particular sale, but the Seventh Circuit says it could never be applied constitutionally.

MR. PRITZKER: Well, Your Honor, if that had been the case, we would have had a different manner of judging it, as in the same opinion which I referred to earlier --

QUESTION: Well, you wouldn't have said it was vague.

MR. PRITZKER: Well, Your Honor, then it would have been core conduct, and the court would have had to judge it in light of the conduct of the case at the time that it became --

QUESTION: So there would be no question in my example that the ordinance covered that particular conduct.

MR. PRITZKER: If he said that he wanted it?

QUESTION: Yes.

MR. PRITZKER: That depends on if in fact the item was designed or marketed. This is not a specific --

QUESTION: Well, if you marketed it, and you knew

exactly what the use was going to be, you were marketing it for use.

MR. PRITZKER: In the same way that if a customer had gone into a grocery store and purchased a thousand Glad bags or Zip-Lock bags because that is the common way that marijuana is distributed in small amounts, and if he sold it, would that grocer be required to get a license?

QUESTION: That isn't my example. In my example a proprietor is told precisely what the use is going to be.

MR. PRITZKER: Not under this ordinance. No, sir. It would not be an offense.

QUESTION: But in Justice White's example, the proprietor is told.

MR. PRITZKER: Under this ordinance, that would not be an application, because if it was not designed in terms of the physical structure, or if it was not marketed, that is, they talk about manner of display as being marketing, then the incident, the fact that it would happen to be used with an unlawful substance would not trigger a license requirement. If it was not pre-marketed for that purpose, then this law would still not be triggered.

This was pre-enforcement. They walked into the Flipside store and said, this ordinance is coming into effect, and you are covered, so certainly they don't mean intent, because they just determined intent, and they said,

you are covered, yet many of the items that were -- customers would have been required to sign a police register purchased at our store, they would have been exempted from the other items.

They try to draw the analogy, Your Honor, that this is like flowers and milk, but all the milk in Hoffman Estates is licensed, and so are all the flowers. Here, they are just licensing some of the corncob pipes. In fact, in discussing the issues that were removed, it was determined that in fact the items identical to those which were deemed regulated by Judge Layton in our store were bought at other stores. He said, well, okay, I made a mistake, forget 79, we will make it 72.

QUESTION: Don't retailers at whom these ordinances are addressed have some knowledge of their own business so that they know what a head shop is and the kind of things that are sold in head shops?

MR. PRITZKER: Well, if we are going to talk about the application in terms of the merchant, that is, I would concede to Judge Hart's question that it is appropriate to judge from the position of the plaintiff, and the plaintiff has maintained that based upon his experience as a retailer, none of the items which he sells are drug paraphernalia.

QUESTION: Well, if the Seventh Circuit had decided on that, if it said, this, the ordinance as applied

to this particular piece of goods is vague, nobody could possibly -- if that is all the Seventh Circuit said, that would be one thing, but they have, as I understand their judgment, there is no conceivable valid application of this ordinance.

MR. PRITZKER: For there to be, Your Honor --

QUESTION: Because it is vague.

MR. PRITZKER: But they dealt with McGowan. They talked about from the position of the plaintiff, which was the application, and they said from the position of the plaintiff there is no constitutional application.

QUESTION: If the issue would have been, could you tell if a meershaum pipe is covered by this ordinance, it might be vague with respect to a pipe, but that isn't what the Seventh Circuit held.

MR. PRITZKER: Well, there must be standards.

QUESTION: The Seventh Circuit held there is no conceivable --

MR. PRITZKER: And there must be standards both for enforcement and adjudication. It is -- as the example in the Cohn Grocery case, where it was said that as an example of unjust or unreasonable, the Court in that case said it would be as though an act were made that it is unlawful to commit any act which is either unjust or unreasonable, rather, detrimental to the public interest.

Would any intent have cured such a statute, that it shall be knowingly and wilfully unlawful to do the wrong thing? What is the standard for enforcement and the standards for adjudication?

In the Screws case, to set up a different case, that police officer came before this court and said, I didn't know it was a violation of federal law to beat a black handcuffed prisoner to death, I am sorry. He was a policeman, a policeman who was ostensibly trained within his area. And he must come to this court and argue his conduct from the conduct that was committed, as applied to him.

QUESTION: Let's leave the pipe aside. What about these water gadgets, water pipes, or whatever they are called.

MR. PRITZKER: Yes, Your Honor, the bongs, as they were referred to? In this case itself, as a matter of fact, Police Officer Mauer testified that in his experience, he had seized a bong, assuming it was used with marijuana, and found that there was tobacco residue.

QUESTION: Is that in Webster's International?

MR. PRITZKER: No, but it's in the United States Patent Office. It may be now. However, it is an old word. I don't know whether or not. Frankly, I have never looked, but I doubt that it is. It is, however -- the history of bongs as being a contemporary word for water pipe was set

out in the trial record. Several forms of bongs were patented, and the history, the reason the new materials were made, with wood being more expensive, brass being more expensive. A lot of pipes that people think they are smoking that are wood are made with plastic. So I think the only issue is, if a brass water pipe is lawful, like Pier 1 sells and like many tourists who come back from the east, why is a blue one unlawful? I think that again we are talking only about the color and shape of the pipe, that there is no intrinsic differences.

I think the Sixth Circuit recognized that when they talked about, criticized Judge Manos for ignoring his own trial record, where even the police agreed with the pipe expert in that case, Mr. Basai, who testified that there are no design differentials between the things ostensibly designated as drug paraphernalia in the enumeration of items in the DEA Act at that time and pipes which are both historically and customarily used and collected and desired by pipe collectors and by pipe smokers.

QUESTION: What if this ordinance, instead of reading the way it did, had simply regulated the sale of hypodermic needles?

MR. PRITZKER: Illinois has a statute which does that, and probably many states did. Because, I believe, Your Honor, that we are from an urban area, we assume and

automatically associate that hypodermics are unlawful. In Illinois it is a misdemeanor publishable for up to a year to have or sell without prescription a syringe. So only pharmacies may dispense them. However, in North Dakota, and in most livestock-oriented states, they are available over the counter, and in those states they have a tendency and custom to strike hypodermic syringe from enactment of any drug paraphernalia law.

QUESTION: My question was, if the ordinance read as I posited, that the sale of hypodermic needles was unlawful, would you say that was vague?

MR. PRITZKER: No, Your Honor, I would not. It is clearly definable. It lends itself to a clear definition. We know what a hypodermic syringe is. Then I think its constitutionality must stand like the bamboo paper case, on the overbreadth. If in fact it reached either some fundamental right, like the need to receive medicine, if it was an outright prohibition as opposed to prescription available, no, that is clear.

QUESTION: Overbreadth isn't involved here, is it?

MR. PRITZKER: In this case, Your Honor?

QUESTION: Yes.

MR. PRITZKER: I believe it clearly is, because of the nature and the relationship of literature encouraging, for example, the guidelines, mere proximity. In many small

towns, in many big towns, there was a customary association between pipe and book stores, and very often they would have magazines, newspapers, pipes, cigarettes, and this law --

QUESTION: What expression is involved?

MR. PRITZKER: Pardon?

QUESTION: What expression is involved?

MR. PRITZKER: Well, several things. For example, there was much comment about a cocaine mirror. Actually, I selected it, and I see now that it was a trial error, but I selected it as evidence because I assumed -- now incorrectly, I suppose -- that it would be so clear that if a child cannot possess liquor, would it be unlawful for him to possess a Schlitz glass, a beer mug with the word Schlitz on it? And since he can't drink, would it be unlawful for him to have a Johnny Walker Red mirror? And so I introduced mirrors of various different kinds which were sold at the plaintiff's store, one of which had the word "cocaine" on it, and that was focused upon by the trial court as saying, well, see, it had the word "cocaine" on the mirror, that is drug paraphernalia. The essence of the decorative mirror has not changed; although I wouldn't care for it to hang on my wall, it was the expression of their attitude, and certainly many people hold the belief that cocaine should not be unlawful.

They talk about manner of display. Suppose we

take Dunhill, and their pipe shop, and their pipe array, and we add to that the posters. Does that change the marketing aspect? Do we have NORML posters, and Liberate Marijuana, and those kind of posters on the wall? Now we are displaying the same merchandise, but have we changed the manner of display?

QUESTION: Well, if you hold the belief that the sale of morphine ought to be lawful, does that make the Harrison Act unconstitutional?

MR. PRITZKER: No, Your Honor, but putting a poster up, arguing that it should be, that it should be repealed, doesn't mean that you have changed, you have changed the nature of your inventory. Here, I read -- we talked about literature encouraging, and of course they like to focus on childrens' Child of Grass, because the rhetoric is so much nicer, and it sounds good, and it appeals to your interest to stop drug traffic, but what we are talking about are concededly lawful items, and in this case I read From the Doors of Perception, by Aldous Huxley, and I had Sigmund Freud's Letters About Cocaine.

QUESTION: Let me take you back to North Dakota for a minute. What kind of syringes are there that are sold over the counter in North Dakota? For human use or animal use?

MR. PRITZKER: They are ostensibly for animal

use. I don't know if they are -- I would assume there is a difference.

QUESTION: They are quite a bit different from an ordinary hospital syringe, are they not?

MR. PRITZKER: Yes, Your Honor, but also heroine users are not so discriminating; since they would take needles and spoons, I am sure that they would take a much larger, more inappropriate needle in order to --

QUESTION: How does that help your case, your position?

MR. PRITZKER: It is irrelevant. The question of syringes came because Justice Rehnquist asked me if I thought that was vague and I thought no. We all know what a syringe is.

QUESTION: Well, a syringe out in the cattle country, in the farm country is quite a different animal from --

MR. PRITZKER: I am sorry, Your Honor. The statutes do not differentiate between hypodermic syringes and the needles. That is, it does not make unlawful or require prescription for needles of such a width or diameter, but exempts others because they are for husbandry, and such a type is not used for human consumption. It either bans or allows all. I know of no statute such as North Dakota which delimits some and prescribes them and

allows other either for human use with or without prescription

QUESTION: Would you think it would be unlawful if there was an ordinance or a statute that prohibited the public display, sale without a license of pistols with barrels less than five inches?

MR. PRITZKER: It certainly would not be vague. Whether or not it is unlawful is, I think --

QUESTION: Well, it is a lawful instrument if a policeman is using it, is it not?

MR. PRITZKER: Well, but the question is to vagueness. Certainly the merchant would know. I think this is part of the difference. The merchant would know what is expected of him. There are standards for compliance. I know if I am a merchant that my gun has to be less than that amount. The shotgun. We have the sawed off shotgun act. I believe it is barrel to stock 29 inches or 26 inches. I think in the Powell case it was 22 and a half inches. So you know that there is something by which you can measure it, so there is a standard for compliance, but adjudication?

QUESTION: But your attack has been on the licensing process, in part.

MR. PRITZKER: Well, the point is, what is our standard for compliance? We don't know, and what we have complained about is that we did not know what designed for

means. And we are not so naive in that, because if you look at the decisions dealing with design, Your Honor, you will find that the courts are split on it. Many of the courts argue, and have held, such as the Tenth Circuit, that design refers to the intrinsic physical characteristics, if you will, the objective reality of the object. It is designed for, and this is the object. Other courts, such as Maryland, as adopted by the district court in Parma, have held that design means the intention, I design to use that for an unlawful purpose, and that is, if you will, the subjective reality, and how does one distinguish, when the object is lawful, the subjective reality?

Even Judge Manos put careful cautions and limitations on enforcement in his decision. Actually, what I believe Judge Manos did was rewrite the law, write what he believed the law of paraphernalia should be, cautioning against people inferring or bootstrapping, they said in NORMAL v. Sendak court, bootstrapping and inferring an unlawful mens ray from the object itself and required that other circumstances be used to evidence that in fact these objects are drug paraphernalia, holding that there were no design differentials, that they were in fact the same as other items.

QUESTION: What about the Robinson-Patman Act, or other antitrust acts? Certainly there is a lot of language

in there that people cannot be absolutely certain whether they are complying or not.

MR. PRITZKER: Yes, Your Honor, and definitely there are many other cases. Screws was one. Boyce. The acts that you descibe. But in no instance, and here is where I find unique dynamics in the law have taken place, because in those instances, for example, in burglary tools, if I may use that also, sir, what hardware store could have filed a lawsuit seeking declaratory judgment of invalidity? He would have no standing.

The difference here is that although they argue that there is no bootstrapping of intent, there is an imminent, clear, immediate threat of enforcement, because they think they know what drug paraphernalia is. They have told us, and threatened us with enforcement. Not others selling the same merchandise.

In those cases, I can't imagine a company that could have sought a declaratory judgment contemplating a merger, and so they seek a declaratory judgment holding it invalid because it would be violative of their right to make the contemplated merger, in the same way that the hardware store could not bring a suit, because it had no immediate threat of harm, no enforcement. It would be, if you will, no case or controversy.

But this is quite difference. And it was in all

the cases, in Parma, in Ferndale, in Egan. In each case, the village has said, this law applies to you. We are going to arrest you if you do not come into compliance, and we took our chance. We removed all items in the department or, as we were told, have the -- sign the police register for everything, to be sure. That is the type of clarity we were given. That is the type of standards for compliance and adjudication. Have them do it for everything, just to be sure.

So we clearly had standing, because the threat was going to be applied, and it is because of that that we now have the right to challenge the vagueness, because we have such an imminent, real threat of enforcement that we may challenge it based upon our position, pre-enforcement, whereas in almost all of those situations, I cannot conceive of one where he could have challenged it pre-enforcement. I cannot consider, for example, Screws filing a pre-enforcement act to find that -- violating somebody's constitutional rights would be an offense prior to the time. I am contemplating killing this guy, but I want to know first if that is a violation of his federal rights. There is no real or imminent threat. He would not have had standing to bring the action. The court would not have had a case or controversy.

Boyce, could Boyce have said, well, I want to go

through Holland Tunnel, maybe I will explode, maybe I won't, but I want to know if the law, talking about practicable, and dangerous intersections, is sufficiently clear so that I do it without risk? He didn't. Instead, he drove through the tunnel. The third time his truck exploded and 60 people were injured.

QUESTION: Don't you think in Boyce there would have been standing to litigate a declaratory judgment?

MR. PRITZKER: I think that this Court was very clear, and I believe stressed heavily the fact that Boyce, the statute in Boyce was the result of heavy industry participation, and several times in the opening notes, statement of the case, and in its conclusion, the Court reiterated again and again the important role that truck regulations, and that those affected by the statute had in participating in drafting the subject statute. It was in fact an industry participated bill.

QUESTION: But that wouldn't go to standing to litigate a declaratory judgment.

MR. PRITZKER: No, but they did not choose to. Instead, they chose to violate the law, and so they violated it at their own risk. We had standing and yet chose not to violate the law in order to litigate our federal claims, and so certainly if Boyce had had standing, then it would have been a different matter. McGowan, too. McGowan didn't have

to stand in violation of the law and sell items in the department store without going to the beach. If he had had standing, if there was an imminent threat of enforcement, and he had otherwise complied, then he perhaps could have filed in federal court. Perhaps it would have been a situation where he would have had to litigate his federal claims in state court, because there was no imminent threat.

However, instead he chose to violate the law. They sold stuff on Sunday, didn't bother to litigate their federal claims, and didn't bother to go to the beach. And certainly somebody maybe shouldn't be responsible, or maybe it's not constitutional to make everybody go to the beach every Sunday to find out what by virtue of popular demand is being sold, but he at least should have done it or sue, but not just flagrantly violate the law and say, well, gee, that is vague, I didn't know I was supposed to go down to the beach, when the statute set it out.

In the other cases, for example, in the one case mentioned for display, Danovitz, in the appellate decision it was clear that as a part of the array, and this is the only case I am aware of where a marketing case was found a a part of the array, was alcohol, and it is a bootleg case, and so when you talk about the bottles and corks that were present in the Danovitz case, I think it is essential when you read the Feitler -- Feitler died before its

determination so it changed to Danovitz in the Supreme Court; it was Feitler and Danovitz in the appellate court -- they talked about the fact that alcohol was a part of that array.

So you have the nexus that we talked about in our brief. This, these laws, all the laws dealing with drug paraphernalia, as they attempt to define it, are, if you will, prospective attempts to reach derivative contraband. It is anticipatory in nature. On the one hand they argue that there is no such thing as drug paraphernalia per se. And so intent is necessary to clear vagueness. On the other hand, they say, there is a $3 billion business in drug paraphernalia, and it is specific things, and these things are drug paraphernalia.

QUESTION: If intent is required, why doesn't that save the statue?

MR. PRITZKER: First, I do not concede that intent is required. In fact, one of the portions of my brief deals with that fact.

QUESTION: Well, let's assume that it is implied.

MR. PRITZKER: Because intent does not give a standard for adjudication or compliance, just as the example in the Cohn Grocery case, where it shall be unlawful to do anything to the detriment of society. It still does not -- intent cannot add a standard, does not give somebody notice

of what is expected of them.

QUESTION: You mean, you think the ordinance would be invalid if it were interpreted as meaning that somebody who sells any of these items which he intends be used with illegal drugs is an invalid ordinance?

MR. PRITZKER: The standard for compliance is the problem, because how is the intent inferred?

QUESTION: Like any other kind of intent.

QUESTION: Like in Screws.

MR. PRITZKER: Well, but again, in Screws, he had the hard conduct from which to -- from which to argue from. He could not argue overbreadth where, first of all, his conduct was such that it clearly was not First Amendment, and secondly, where in fact his conduct was before the bench. He also had to argue as a merchant does in his situation from his own set of facts, and he could not argue the vagueness in the nature of the conduct. As I said, the Seventh Circuit talked about the Bence case, conduct unbecoming a police officer, and said, making it intention, intentionally committing conduct unbecoming to a police officer doesn't add any standard for adjudication. As I said in the -- well, in the Cohn Grocery case, where it says unlawful to do anything detrimental to the public interest. Would intent add anything to that? It shall be unlawful to wilfully, intentionally, knowingly, and any other mens ray

that we can hypothecate, to do anything which is not in the public interest. And you kick a cat. Some people think it is wrong, some people don't think it is wrong. But what is the standard for compliance?

And assuming that you in your heart think maybe it was wrong, what is the standard for adjudication? How does one know if kicking a cat is wrong or not? Again, here, when you say that it shall be unlawful to sell anything for -- intentionally, how does one measure it? How does one enforce it? Suppose that there were standards --

QUESTION: Well, that is a separate problem, but it would certainly seem to affect the vagueness argument.

MR. PRITZKER: I submit, Your Honor, it does not. It may affect the first prong of the vagueness standard, that is, standards for compliance. I think that it doesn't affect the second. In the First Circuit decision in Smith v. Gogan, they talked about conduct which was outwardly indistinguishable. A person who is a protester, who has disdain for the flag, holding the flag over his head and letting it be rained upon. And doing it out of disdain, as opposed to a Legionnaire filled with grief over having to let the flag get wet, but committing the same conduct, where intent or the action -- certainly you are intentionally holding the flag over your head. Merchants intentionally offer these things for sale, and that is where the confusion

has arisen, because people intentionally hold things out for sale, as the plaintiff here. We intentionally held things out for sale. We knowingly held them out for sale. We denied that they were drug paraphernalia.

QUESTION: Mr. Pritzker, would your position also invalidate the Uniform Drug Paraphernalia bill?

MR. PRITZKER: It is the model drug. Uniform implies a committee of experts as opposed to a administrative --

QUESTION: I don't mean that. The model.

MR. PRITZKER: The model itself is such a -- not such a model. In fact, the agency itself --

QUESTION: Where you have to guess.

MR. PRITZKER: It is completely different. I think that consideration of this case does not necessarily touch upon that case, because I believe that intent is not an issue here. I believe that the logic of the position may affect that, but it is not binding. That is, this case is separate from that case.

CHIEF JUSTICE BURGER: Mr. Williams.

ORAL ARGUMENT OF RICHARD N. WILLIAMS, ESQ.,
ON BEHALF OF THE APPELLANTS - REBUTTAL

MR. WILLIAMS: Counsel has just mentioned Smith versus Gogan. That case -- we compare the less stringent requirements of modern vagueness with cases dealing with

purely economic regulation, which I believe this is. In the two minutes I have left, there are a couple of points I wish to make. He said, well, you license all milk, but you don't license all corncob pipes. We didn't say we do. We license only corncob pipes marketed for use with illegal drugs. And again, we go back to display.

The Chief Justice asked about hypodermic. Many of the older statutes have this in them from the -- that go quite a ways back before we got into head shops, and I would like to leave a citation with the Court in the District of Columbia hypodermic issue, where they did infer intent in that particular area. It was 313 Atlantic Second, 876, Rosser v. U. S., and Justice White was concerned with bong. Well, the court reporter was as well. The court reporter didn't know what a bong was, and on Page 52 of the joint appendix, the testimony of our police officer to show the presumption that what they sell is being used for illegal drugs, "Officer, have you come in contact with what is known as a bong pipe?" It is printed as "bomb". "Yes. Have you seen persons in the community using the item? Yes. Do you recall what was used? Yes, generally cannibis," and so on.

So, I think that is before you. One other issue on these mirrors, with the cocaine. I would like to take -- there is nothing wrong with that. That is not paraphernalia. Judge Layton said it was, but we didn't

argue it was, because when you put that up with the things you sell, it adds to the display and your intent of what you are doing it for. I think in direct sales if the manufacturer or the doctor that was buying these loads of narcotics would have that sign up in his office or his store, the circumstantial evidence and presumption of what they were doing would have been much clearer and much stronger to the court.

The last comment I wish to make is from Casbah v. Thone, the Eighth Circuit opinion, and it is at 651 Fed Second at 551, where they said the dealer, on the other hand, who sells innocuous items when the intent they be used with drugs is in effect put on notice by the illicit nature of his activity that he must be careful to conform his conduct to the law. Even the illicit dealer is not held legally responsible, as plaintiffs would suggest, for guessing what is in the mind of the buyer. We are going right at the retailer. And this is the opinion that seems to now be adopted by the federal courts' reviewing and the circuits such as the Eighth and the Tenth in these particular areas.

QUESTION: Would you say it would have some impact on your case if along with all this paraphernalia they had a sign reading generally, forget your troubles, escape from your anxieties, et cetera?

MR. WILLIAMS: It depends on where it is displayed. They sell records, and you can escape listening to their records. But if they put it with the paraphernalia --

QUESTION: They put it with the paraphernalia.

MR. WILLIAMS: -- it adds to it, yes. It just is one accumulation to --

QUESTION: It would aid the inference of intent, you think.

MR. WILLIAMS: Yes. It would be one piece that we would add to the total display.

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

(Whereupon, at 2:02 o'clock p.m., the case in the above-entitled matter was submitted.)

CERTIFICATION

Alderson Reporting Company, Inc. hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:

VILLAGE OF HOFFMAN ESTATES, ET AL.,
v. FLIPSIDE, HOFFMAN ESTATES, INC. #80-1681

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BY Reene Hammond