

In the

Supreme Court of the United States

ORIGINAL

JEAN LORETTO, ON BEHALF OF HERSELF :

AND ALL OTHERS SIMILARLY SITUATED, :

Appellant, :

v. :

No. 81-244

TELEPROMPTER MANHATTAN CATV :

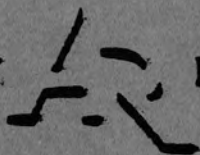
CORP. ET AL. :

Washington, D. C.

Tuesday, March 30, 1982

Pages 1 - 49

ALDERSON



REPORTING

400 Virginia Avenue, S.W., Washington, D. C. 20024

Telephone: (202) 554-2345

1 IN THE SUPREME COURT OF THE UNITED STATES
2 - - - - -x
3 JEAN LORETTO, ON BEHALF OF HERSELF :
4 AND ALL OTHERS SIMILARLY SITUATED, :
5 Appellant, :
6 v. :
7 TELEPROMPTER MANHATTAN CATV :
8 CORP. ET AL. :
9 - - - - -x

10 Washington, D. C.
11 Tuesday, March 30, 1982

12 The above-entitled matter came on for oral
13 argument before the Supreme Court of the United States
14 at 1:00 o'clock p.m.

15 APPEARANCES:

16 MICHAEL S. GRUEN, ESQ., New York, N.Y.;;
17 on behalf of Appellant.
18 ERWIN N. GRISWOLD, ESQ., Washington, D.C.;;
19 on behalf of Appellee.

20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C O N T E N T S

	<u>PAGE</u>
<u>ORAL ARGUMENT OF</u>	
MICHAEL S. GRUEN, ESQ.,	
on behalf of Appellant	3
ERWIN N. GRISWOLD, ESQ.,	
on behalf of Appellee	24
MICHAEL S. GRUEN, ESQ.,	
on behalf of Appellant - rebuttal	46

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments
next in Loretto against Teleprompter Manhattan.

Mr. Gruen, I think you may proceed whenever
you're ready.

ORAL ARGUMENT OF MICHAEL S. GRUEN, ESQ.

ON BEHALF OF APPELLANT

MR. GRUEN: Thank you very much. Mr. Chief
Justice, members of the Court:

I'm here to argue for the preservation of one
of our subordinate constitutional rights, namely the
preservation of property. That constitutional right
existed in its full sanctity --

QUESTION: Are you conceding that?

MR. GRUEN: Excuse me, sir?

QUESTION: In that statement are you conceding
it's a subordinate right?

(Laughter.)

QUESTION: It's not so subordinate that you
can't prevail, is that it?

MR. GRUEN: I'm sorry?

QUESTION: Not so subordinate that you can't
prevail.

MR. GRUEN: I hope not, sir.

QUESTION: Argument by irony.

1 MR. GRUEN: This constitutional right existed
2 in its full sanctity in New York prior to 1973. At that
3 time Teleprompter and other cable television companies
4 made a practice of seeking owner consent before
5 installing cable television lines and the necessary
6 accompanying equipment.

7 It was their practice, dictated by management,
8 to solicit consent using a printed form which you'll
9 find in the joint appendix at pages 32 to 33, which
10 provided specifically for compensation at the rate of
11 five percent of gross revenues derived from the building
12 on which the installation was made.

13 Effective as of January 1, 1973, Executive Law
14 Section 829 was adopted and made effective in New York,
15 prohibiting landlord interference with installations and
16 prohibiting any payments to landlords from cable
17 television companies or from tenants with respect to
18 such installations, with the exception of purely
19 discretionary compensation which could be made by the
20 cable television commission with respect to
21 installations servicing the tenants on the property on
22 which the installation was made, and then only if
23 application was made for it within a very short period
24 after the installation had been made, some, I believe,
25 180 days if I remember correctly.

1 This --

2 QUESTION: The crossovers aren't even subject
3 to that, are they?

4 MR. GRUEN: That's right. According to the
5 Court of Appeals, there may be no compensation for
6 crossovers under any circumstances.

7 Mrs. Loretto then brought this action sounding
8 in trespass, and the sole defense remaining after the
9 elimination of a number of defenses by the Court of
10 Appeals is Section 828, and we're presented therefore
11 with the question of whether there are any extraordinary
12 factors which take this case out of the usual rule that
13 a landlord is entitled to exclusive possession, and
14 particularly to exclusivity with respect to the
15 installation of permanent installations on the property,
16 particularly including television aerials and the like.

17 We have urged throughout this case the
18 observance of a per se or absolute rule --

19 QUESTION: Excuse me, Mr. Gruen.

20 MR. GRUEN: Yes, Justice Brennan.

21 QUESTION: There's no distinction made between
22 commercial and residential property?

23 MR. GRUEN: No distinction was made between
24 commercial and residential property, that's correct.
25 The Court of Appeals referred to rental properties in

1 general. I suppose at some point there may be some fine
2 tuning on that, but that's how it stands.

3 QUESTION: But there was no commercial
4 property issue presented by the record in this case, was
5 there?

6 MR. GRUEN: Your Honor, the designated class
7 is the owners of property in New York State on which
8 Teleprompter has made installations.

9 QUESTION: Well, is that class perfected?

10 MR. GRUEN: Not by the giving of notice, but
11 it has been certified by the Supreme Court, that is to
12 say the trial level court in New York, as consisting of
13 all owners of property in the state on which
14 installations have been made, with a minor exception
15 which I don't think we need to go into here.

16 QUESTION: Well, who are they?

17 MR. GRUEN: Who are all of these?

18 QUESTION: Who are they? I think the question
19 is, are there any owners of commercial -- non-rental
20 commercial property included in that class? Do you
21 know?

22 MR. GRUEN: I do not know as to non-rental,
23 although I can say that the city license obliges
24 Teleprompter to service hospitals, which would normally
25 be non-rental commercial facilities.

1 QUESTION: How about just a warehouse or
2 something like that?

3 MR. GRUEN: Clearly it would be included in
4 the class. I can't point you to instances. I do know
5 that there is at least one case which was decided in New
6 York City which deals with a commercial rental property
7 on which Manhattan Cable Television had made the
8 installation, not Teleprompter.

9 QUESTION: Well, if you're going to make that
10 argument, then it applies to private residences.
11 Literally, they're among the class, just as well as
12 commercial property.

13 MR. GRUEN: You've brought me to the exception
14 which I was not going to go into, yes.

15 QUESTION: All right.

16 MR. GRUEN: There is an exception for single
17 family residences on which the installation serves the
18 sole function of servicing that residence, the theory
19 being obviously that the owner of that residence has in
20 effect implicitly invited Teleprompter onto the property
21 to render the service.

22 But if the line continues from that television
23 set on to the next property, it's a crossover and then
24 that owner is within the class.

25 QUESTION: Suppose an owner who doesn't -- an

1 owner of a single family residence who doesn't want the
2 service nevertheless has to put up with the wires in
3 order for Teleprompter to get to the next property? Is
4 that what you're suggesting?

5 MR. GRUEN: If the premise is a non-rental
6 premise, which I recognize can change from time to time,
7 but if at the instance you're talking about it's
8 non-rental, then the Court of Appeals has interpreted
9 Section 828 as not covering that. So that the owner
10 would be entitled to preclude entry by the television
11 company.

12 QUESTION: Whether he wants the service or
13 not?

14 MR. GRUEN: Well, of course, if he wants it
15 he's welcome to have it in and he can allow entry to the
16 extent he wishes, precluding, if he wants, a crossover.

17 We have urged here the observance of a per se
18 or absolute rule in an era when we recognize that
19 balancing of constitutional rights is popular, on the
20 theory that it is traditional in the area of physical
21 occupation of property or seizure of title to observe a
22 per se rule, although this Court has seldom had an
23 opportunity in perhaps the last century or so to apply
24 that principle. There are some exceptions which I'll
25 mention in a moment.

1 Kaiser Aetna for one states that the right to
2 exclude is universally held to be a fundamental element
3 of the property right, which the government cannot take
4 without compensation. And even if the government
5 physically invades only an easement in property, it must
6 nonetheless pay just compensation.

7 In *St. Louis versus Western Union*, which is an
8 1893 case, this Court held that the installation of
9 telegraph lines and poles in a municipality, no matter
10 how de minimis that installation might be, constitutes a
11 taking, and that the city's use of the top crossarm of
12 the pole constitutes a taking by the city.

13 There's similar dictum of this Court in *United*
14 *States versus Causby*, 1948, and one might also look to
15 the *Delaware Railroad case*, 1928, where the Court held
16 that a municipality's direction to a railroad company to
17 set aside a portion of the private street running
18 through the railroad station property as a taxi stand
19 constitutes a taking.

20 In none of these, I submit, was there any
21 balancing approach with respect to the determination of
22 whether a property right had been taken.

23 The balancing approach does come in in
24 regulation cases, such as *PruneYard versus Robins*, where
25 the Court, on the basis of the ruling made in

1 California, recognized that the people who had come onto
2 the property to distribute literature and solicit
3 signatures were part of the general public who were
4 invited onto the property, were properly there, and were
5 present by virtue of a special invitation made by the
6 owner to the general public to come onto the property.
7 And the question was, to what extent can the state
8 regulate the activities of such people or the activities
9 of the owner with respect to such people on the
10 property.

11 The regulation concept grew up entirely
12 distinctly from the old-fashioned physical occupation or
13 seizure of title concept.

14 QUESTION: Mr. Gruen, can this ordinance or
15 statute be regarded as a form of regulation, to the
16 extent that it affects the tenants, as opposed to the
17 crossover, a landlord-tenant regulation? And there are
18 many such regulations extant around the country
19 requiring landlords to furnish utilities or other such
20 requirements.

21 MR. GRUEN: Yes, Your Honor, there certainly
22 are and there are in New York as well. However, we've
23 been unable to find any instance in which any such
24 regulation, first of all, obliges the landlord to accept
25 the installation of somebody else's property on his

1 property.

2 QUESTION: Permanently.

3 MR. GRUEN: Permanently -- or for that matter,
4 I can't think of any unpermanent one.

5 QUESTION: How about telephone equipment?

6 MR. GRUEN: Telephone equipment is a --

7 QUESTION: It continues to belong to the
8 telephone company.

9 MR. GRUEN: That's true, Your Honor. And to
10 my knowledge there are no cases which oblige a landlord
11 to permit the telephone company to enter property and
12 make installations without compensation to the
13 landlord. It is certainly very common that this
14 happens, we recognize that, and we think it's because
15 landlords recognize that telephone service is desirable,
16 tenants want it.

17 QUESTION: You found no statutory requirement
18 that landlords allow tenants to be served by telephone
19 service?

20 MR. GRUEN: That's right, Your Honor. As a
21 matter of fact, in New York it's very clear that
22 telephone companies are obliged by statute to provide
23 compensation. And furthermore, there is written into
24 the law a protection for the practical situation where
25 the landlord does permit the telephone company to come

1 in, as in through an informal license, without requiring
2 compensation. That statute says that no prescriptive
3 easement or right can arise as a result of this informal
4 permission.

5 So you have a very different situation from
6 Section 828, which obliges the landlord to accept the
7 presence of this stranger's property, and indeed creates
8 a very strong possibility that 20 years later the
9 telephone company -- the cable company will have earned
10 a prescriptive easement.

11 QUESTION: Well, you mean you think that
12 Section 828 would be defensible if it contained an
13 additional provision that said no prescriptive right
14 will attach?

15 MR. GRUEN: No, Your Honor. I think that a
16 situation would be defensible -- that such a provision
17 might be desirable, but it would only protect as to a
18 voluntary acceptance by the landlord of the presence of
19 the cable facilities on his property. I think that what
20 creates the problem here is that the government insists
21 that the landlord allow the cable company to make its
22 installation.

23 QUESTION: Well, would you think it would be
24 different if the law said -- if the law said: in one
25 paragraph, all apartment buildings will be equipped with

1 sprinkler systems for fire prevention; section two, all
2 apartment buildings shall be equipped with cables or
3 equipment so that television -- or so that tenants may
4 easily plug into cable television. A regulation that
5 required the landlord to make these installations, like
6 he does sprinklers or hot water heaters or something
7 else?

8 MR. GRUEN: I think that solves half the
9 problem, Your Honor.

10 QUESTION: Half the problem? Does it solve it
11 all or not?

12 MR. GRUEN: No, it would not solve it all,
13 because the second part of --

14 QUESTION: Well, it wouldn't be a taking
15 problem then, would it?

16 MR. GRUEN: I believe it would, Your Honor,
17 insofar as it requires a substantial expenditure without
18 compensation. We don't have this case, but I think that
19 what --

20 QUESTION: Well, what about, say, installing a
21 sprinkler system? Very expensive.

22 MR. GRUEN: Well, that's true, and at least in
23 New York a landlord is entitled to compensation in the
24 form of rent, increased rent, for making such
25 improvements on his property. I think this is the

1 second factor which distinguishes our case from the
2 safety and health measure cases, such as sprinkler
3 systems and the like.

4 QUESTION: Would you say that that comes under
5 the police power as a matter of public safety, because
6 it involves not only the safety of one tenant, but --

7 MR. GRUEN: Yes, I think it does, Your Honor.
8 I think where the problem is presented in New York with
9 respect to such rules is because of the existence of the
10 pervasive system of rent control.

11 QUESTION: But you would say that the benefits
12 of television are not as great as the benefit of being
13 free from a fire, is that it?

14 MR. GRUEN: I would certainly say that, yes.

15 QUESTION: Well, would it solve your problem
16 if the law said in section two, it said, you will
17 install these Teleprompter or these cable television
18 cables whenever some cable television company will pay
19 you for it? That wouldn't cost you anything. Any time
20 they offer to pay for the installation, you'll put them
21 all over.

22 MR. GRUEN: I think, of course, such a payment
23 would have to be made in advance, and I assume that's
24 part of your question.

25 QUESTION: Yes.

1 MR. GRUEN: It doesn't solve the entire
2 problem, interestingly enough. It changes the precise
3 location of the easement from the surface of the roof to
4 inside the wire. Here you're positing that the wire
5 itself is owned by the landlord, but the cable company
6 has the right to pass its signal through the wire
7 without compensation to the landlord, for its commercial
8 benefit.

9 QUESTION: No, the tenant. The tenant has the
10 right to pass it through from where it's connected on
11 the outside of the building.

12 MR. GRUEN: You're asking, supposing the
13 tenant could make an installation from the outside of
14 the building to his particular apartment?

15 QUESTION: No. The landlord has from the edge
16 of his building to all the tenants' apartments, he has
17 installed a cable, for which he's been paid. And the
18 cable company comes along and just plugs in at the edge
19 of his property.

20 MR. GRUEN: I think if obliged by the
21 government, that that would have to be compensated in
22 some form. And I think that this --

23 QUESTION: Well, they've paid him for the
24 expense.

25 MR. GRUEN: I'm sorry?

1 QUESTION: The cable company pays him the
2 expense.

3 MR. GRUEN: Yes.

4 QUESTION: He's not out of pocket. But you
5 say there's still an appropriation of his property?

6 MR. GRUEN: I think I would not have a problem
7 with your example in a state other than New York, which
8 doesn't have rent control. There I would assume that
9 the landlord can set whatever rents he wishes and
10 thereby compensate himself for the expenditures he makes
11 in improving the property.

12 New York presents the problem that there is no
13 way of a landlord compensating himself for such an
14 expenditure other than by a permitted increase in rent,
15 and in fact I think that's why New York allows for
16 increases in rent for virtually all of the examples
17 which this Court has proposed in the oral discussion
18 now.

19 QUESTION: Did you suggest, Mr. Gruen, that --
20 are there New York statutes which require landlords, say
21 in apartment buildings, to install sprinkler systems,
22 smoke detectors and that sort of thing?

23 MR. GRUEN: Yes, there are.

24 QUESTION: And what do they say as to
25 compensation? I didn't catch that?

1 MR. GRUEN: There was one very recently
2 adopted with respect to smoke detectors. It requires
3 that the tenant pay the landlord for a particular price
4 which is the presumptive price of the smoke detector.

5 QUESTION: I see. So actually the cost is
6 paid by the tenant, not by the landlord?

7 MR. GRUEN: That's right. And furthermore,
8 that the tenant maintains the smoke detector.

9 QUESTION: Well, it's not paid by the landlord
10 here, either. The cost of installation isn't paid by
11 the landlord. It's going to be paid by the cable
12 company.

13 MR. GRUEN: Yes.

14 QUESTION: So he doesn't have to charge the
15 tenant for the cost.

16 MR. GRUEN: That's right.

17 QUESTION: But he's not paid by the tenant for
18 the fact that the sprinklers occupy a piece of his
19 property.

20 QUESTION: Well, the sprinklers becomes his
21 property, I suppose, become the landlord's property.

22 MR. GRUEN: Yes, of course, and he's
23 indemnified by whatever he wishes to charge in rent for
24 the cost of the sprinklers.

25 There's a slight difference between a smoke

1 alarm and the cable installation, because the smoke
2 alarm is within the tenant's own apartment, it occupies
3 no additional space not let by the original demise.

4 QUESTION: Mr. Gruen, aren't you -- you're
5 arguing mainly a question of compensation. I thought
6 your basic position in the brief was that there's a
7 basic distinction between a physical invasion by a third
8 party and a regulation which requires the owner of the
9 property to do something to his own property, and then
10 you have a question of whether that amounts to a
11 taking.

12 And aren't all these examples that have been
13 given to you simply forms of regulation? They don't
14 even approach the basic argument that you've made, isn't
15 that right?

16 MR. GRUEN: Yes, they are. I think they grow
17 out of a hypothetical --

18 QUESTION: They are reasonable regulations of
19 an owner's use of his property.

20 MR. GRUEN: Yes, yes, and particularly because
21 they involve some measure of compensation, I think that
22 they --

23 QUESTION: But it's arguable they might not
24 even require compensation if you look at them as -- if
25 you view them as regulatory rather than as takings,

1 rather than as physical invasions.

2 MR. GRUEN: They certainly involve a different
3 level --

4 QUESTION: None of them involves a physical
5 invasion, which I understand to be your principal
6 argument.

7 MR. GRUEN: That's absolutely correct.

8 QUESTION: What about the phone company's
9 invasion in New York apartments, where they run the wire
10 right straight up the wall?

11 MR. GRUEN: Well, as a landlord I have a
12 perfect right to tell the phone company that I don't
13 want them on my property.

14 QUESTION: But you don't do it.

15 MR. GRUEN: I may choose not to, and in fact
16 most landlords --

17 QUESTION: You don't do it.

18 MR. GRUEN: I'm sorry?

19 QUESTION: You don't do it, and the tenant has
20 his space taken and the landlord's space, too. The
21 phone company uses both spaces to run its cables through
22 in New York.

23 MR. GRUEN: Yes, yes. But it's the landlord's
24 voluntary choice not to charge the cable company -- the
25 telephone company. He has a perfect right to charge the

1 telephone company if he chooses to.

2 QUESTION: Well, the landlord could build an
3 apartment building and simply say that he thinks
4 telephones are an abomination and there'll be no
5 telephones in this building and no telephone wires in
6 the building, could he not?

7 MR. GRUEN: He could. He may get relatively
8 few tenants --

9 QUESTION: He might have trouble getting
10 tenants.

11 MR. GRUEN: It's his choice with his
12 property.

13 QUESTION: On the other hand, he might get a
14 lot of tenants that way.

15 MR. GRUEN: I'm sorry?

16 QUESTION: He might get a lot of tenants.
17 There might be some peculiar people.

18 MR. GRUEN: I might choose to live there.

19 QUESTION: Just think of the speech interest.

20 QUESTION: Mr. Gruen, does the presence of the
21 cable equipment increase the rental value of the
22 apartment?

23 MR. GRUEN: Actually, it doesn't. If one
24 thinks this through in the New York context, it's quite
25 clear that it can't. There is a virtually nonexistent

1 vacancy rate in New York and therefore the presence of
2 cable is unlikely to add additional tenancy to the
3 building. And Section 828 absolutely prohibits the
4 landlord from asking increased rent because of the
5 presence of the cable.

6 Therefore, you have no income to capitalize
7 into a higher value.

8 QUESTION: I'm no fan of most television, but
9 how many channels are available in New York City area on
10 cable?

11 MR. GRUEN: I'm afraid I can't answer that,
12 Your Honor.

13 QUESTION: There are a lot of them.

14 MR. GRUEN: I think quite a few.

15 QUESTION: May I ask you one other factual
16 question. You started out by pointing out that before
17 the ordinance was passed your opponent used a form which
18 gave the landlord five percent of whatever revenues were
19 derived from that building.

20 MR. GRUEN: Yes.

21 QUESTION: As to -- and they're five-year term
22 license agreements, as I understand it. As to those
23 which were in effect and had three or four years to run
24 when the ordinance was passed, did they continue to have
25 payment being made to the landlord or is that money now

1 paid to the city pursuant to the ordinance?

2 MR. GRUEN: Well, the payments to the city are
3 a completely separate item. The payments to the
4 landlords, according to one statement in the record of
5 Teleprompter in an appendix to an agreement with Hughes
6 Aircraft, said that the payments to the landlords
7 continued to be made until mid-1974 under contracts, and
8 at that point, apparently whether the contract had time
9 to run or not, Teleprompter simply ceased making the
10 payments.

11 QUESTION: As I read the ordinance, it would
12 prohibit the continued payment pursuant to those
13 agreements.

14 MR. GRUEN: Yes, I agree with you.

15 You understand that the payments to the city
16 are entirely distinct. They're made under the franchise
17 agreement, so-called, with the city and they consist of
18 five percent of gross revenues.

19 QUESTION: But aren't they the same five
20 percent of gross revenues? I mean, say --

21 MR. GRUEN: They're a different five percent.
22 It adds up to ten. That five percent to the city is
23 paid for a precisely analogous use to that which is made
24 of the rooftops on our blocks. It's for the use of the
25 city streets for the passage of cable underneath.

1 And I should make clear that the right of
2 landlords to be free of such installations in New York
3 or to be compensated for them if they chose to be was
4 extremely clear under case law in New York up until
5 1973. There are innumerable cases which say that any
6 installation made by a tenant outside of his own
7 apartment can be prohibited by the landlord, and if the
8 landlord chooses to allow it to persist the landlord is
9 entitled to compensation for it.

10 In particular, there are a number of cases
11 dealing with television antenna installations on
12 rooftops, where the courts say that the landlord may
13 prohibit it or receive compensation, and rent control
14 regulations up until 1973 provided for compensation.

15 I would propose to reserve the balance of my
16 time.

17 QUESTION: May I just ask you --

18 MR. GRUEN: Yes, please.

19 QUESTION: -- would the rationale of the court
20 below sustain an ordinance which told all landlords
21 that, you must maintain in the basement a room in which
22 vending machine companies may place their vending
23 machines, or laundromat operators may place their
24 laundromat, for the convenience of tenants?

25 MR. GRUEN: I see no substantive difference

1 between Section 828 and such a regulation.

2 QUESTION: The rationale would seem to reach
3 it.

4 MR. GRUEN: Yes. I think the rationale is
5 that essentially the Constitution as viewed by the Court
6 of Appeals in New York --

7 QUESTION: Or you must make a space on your
8 roof for a swimming pool company to put in a swimming
9 pool?

10 MR. GRUEN: I agree. I think it says that
11 landlords may be required to permit any use of their
12 property which doesn't in effect -- which is beneficial
13 to the tenants and which doesn't in effect utterly
14 destroy the value of the property.

15 Thank you.

16 CHIEF JUSTICE BURGER: Mr. Griswold, at your
17 own time somewhere will you address the question of
18 whether a person could lawfully build an apartment and
19 do as I suggested, simply say, I don't want any
20 telephones in my apartment building, I don't want any
21 television sets that require an outside antenna?

22 ORAL ARGUMENT OF ERWIN GRISWOLD, ESQ.

23 ON BEHALF OF APPELLEE

24 MR. GRISWOLD: That, Mr. Chief Justice, is a
25 question of New York law. On it I would rely on the

1 opinion filed in this case by the Attorney General of
2 New York, in which he says that if a tenant wants
3 telephone service that he can apply to the Public
4 Service Commission of New York, which would direct the
5 telephone company to condemn an easement to provide the
6 television service to that building.

7 I think that as I understand the law of New
8 York, the landlord could not prevent the installation of
9 telephone service. But under the statutory law of New
10 York, which goes back 90 years, that right to enter the
11 premises would be obtained by condemning an easement.

12 QUESTION: He'd be compensated for it?

13 MR. GRISWOLD: A compensated one.

14 I --

15 QUESTION: Which is not the case here.

16 MR. GRISWOLD: I like to suggest that this is
17 really a kind of an academic question, quite apart from
18 that lovely apartment building that the Chief Justice
19 would like to live in. But I think the fact that there
20 simply aren't any cases on this arises from the fact
21 that no landlord would dream of telling a tenant that
22 you can't have a telephone in your place. It's simply
23 taken for granted.

24 I think it's important to look at the terms of
25 this statute, which appears in the appendix to our red

1 brief. Section 828: "No landlord" --

2 QUESTION: What page is that?

3 MR. GRISWOLD: It's page 2a in the appendix of
4 the brief.

5 QUESTION: Yes.

6 MR. GRUEN: "No landlord shall:

7 "(a) Interfere with the installation of cable
8 television facilities upon his property or premises,
9 except that a landlord may require:

10 "(1) that the installation of cable television
11 facilities conform to such reasonable conditions as are
12 necessary to protect the safety, functioning, and
13 appearance of the premises, and the convenience and well
14 being of other tenants;

15 "(2) that the cable television company or the
16 tenant or a combination thereof bear the entire cost of
17 the installation, operation or removal of such
18 facilities;

19 "and (3), that the cable television company
20 agree to indemnify the landlord for any damage caused by
21 the installation, operation or removal of such
22 facilities."

23 And then (b): "Demand or accept payment from
24 any tenant in any form in exchange for permitting cable
25 television service on or within his property or

1 premises, or from any cable television in exchange
2 therefore in excess of any amount which the Commission
3 shall by regulation determine to be reasonable."

4 Now, I won't read the rest, though it is
5 relevant. There are other provisions of the statute
6 which set up a cable television commission which has
7 authority to make awards. It has made a general
8 regulation to the effect that there is no damage, that
9 there is no loss to a landlord in the ordinary case, and
10 that the ordinary landlord is entitled to simply a
11 nominal payment, which is one time, one dollar.

12 QUESTION: But that just assumes the answer to
13 the question, that it's perfectly all right to take a
14 piece of your property as long as it doesn't lower its
15 value.

16 MR. GRISWOLD: Well, it doesn't assume
17 question.

18 QUESTION: No, it suggests an answer to the
19 question.

20 MR. GRISWOLD: It suggests an answer, made by
21 the state. And that I think gets to the heart of the
22 case, because here the Appellant's case depends upon the
23 assertion that Mrs. Loretto's property has been taken.

24 But that begs the question. The issue here is
25 what is the extent of the landlord's property after a

1 lease has been made. This is property which, when Mrs.
2 Loretto owns it alone and keeps it vacant, is
3 undoubtedly hers, and Section 828 has no application to
4 it.

5 But when she chooses to devote the property to
6 rental purposes, that connotes a divided ownership of
7 the property. She no longer is the sole owner of that
8 property, and the tenant has rights not only with
9 respect to, shall I say, the six walls of the apartment,
10 but also has a great many other rights with respect to
11 the usage of that building.

12 QUESTION: Then if you treat this as a right,
13 then does the statute not take something away from the
14 tenants without compensation?

15 MR. GRISWOLD: No, it gives it to the tenant.

16 QUESTION: It depends on whether you regard
17 this as a boon or otherwise, I suppose.

18 MR. GRISWOLD: It does not in any way
19 interfere with the tenant's use of any rights which he
20 may have in the overall premises. It does facilitate
21 his use, if he chooses, to have cable television.

22 But let's suppose, for example, that a
23 landlord makes a lease and when the tenant arrives with
24 the moving van the landlord stands at the door and
25 says: Stop, there's nothing in the lease about bringing

1 in furniture. Or suppose the landlord says, there's
2 nothing in the lease about bringing in food; that will
3 attract mice and that will lead to vermin, and I must
4 insist as a health measure that you not bring in food.

5 Of course the landlord would not be sustained,
6 even though there was no provision in the lease about
7 this.

8 QUESTION: Well, what if the lease said that
9 you can't bring in furniture or food?

10 MR. GRISWOLD: I think that would be entirely
11 different. And the lease in this case couldn't do that
12 because the New York legislature has --

13 QUESTION: Well, supposing there was a lease
14 before this statute was passed in which the landlord
15 said, you may not have cable television in our premises,
16 because we think it's a nuisance? That was a term of
17 the lease. The landlord said that --

18 MR. GRISWOLD: And New York has changed the
19 law with respect to the respective rights of landlord
20 and tenant, and our position would be that that is a
21 standard part of the powers of a state legislature, to
22 regulate the rights of landlord and tenant.

23 QUESTION: But that doesn't cover the
24 crossovers, does it?

25 MR. GRISWOLD: In this case the landlord is

1 subjected to no costs. The costs are entirely paid by
2 the television company or by the tenant.

3 QUESTION: But in effect this landlord is
4 required not only to provide for the tenants of her
5 property, but to provide for the tenants of some other
6 landlord by giving a crossover.

7 MR. GRISWOLD: Well, that gets to -- that gets
8 to the question of crossovers, which of course is very
9 important. I would like to suggest, before I get to
10 crossovers, which is an essential issue in the case
11 here, suppose this was a single family house to begin
12 with, on a plot of land, and it was leased. A tenant
13 obtained it and the tenant, having a three-year lease,
14 says, I want cable television.

15 It seems to me extremely unlikely that any
16 court would hold that the tenant, having the rights
17 which a tenant of a three-year lease of a single family
18 house, did not have enough property rights to entitle
19 him to bring in cable television.

20 QUESTION: I don't know. I think it's a
21 pretty normal provision in leases not to permit fixtures
22 without the consent of the landlord. It's a perfectly
23 straightforward provision in every lease.

24 MR. GRISWOLD: That depends on how you define
25 "fixtures." I suppose that building an addition --

1 QUESTION: I would hesitate to think this
2 wasn't a fixture.

3 MR. GRISWOLD: It's certainly removeable.

4 QUESTION: It may be, but --

5 MR. GRISWOLD: Fixtures usually are not
6 removeable. That's part of the definition.

7 QUESTION: Well, the way these are described,
8 they're pretty well plugged into the building.

9 QUESTION: Well, we ought to be careful,
10 taking about New York City apartment leases. Because of
11 the 30 or 40 provisions in the lease, the tenant only
12 has one protection, one provision to protect the
13 tenant. That gives him the right to pay.

14 And all the others -- for example, one
15 provision is if the landlord decides that the tenant is
16 not a decent person he can throw him out. And another
17 provision, I hereby give up my right to a jury trial.

18 I don't think those are common all over, but
19 they are legal in New York and are approved by the New
20 York courts.

21 MR. GRISWOLD: Well, I think in due course I
22 will come to a few rights that the tenant does have. I
23 would like to point out that this particular statute is
24 supportable in our view not merely by the power of New
25 York to regulate the respective interests of landlord

1 and tenant in rental property, but also by the clearly
2 supported, in the legislative history and in the
3 findings of the statute, interest of the State of New
4 York in fostering and developing improved communications
5 and educational facilities.

6 QUESTION: May I interrupt you on that
7 argument? Supposing the statute changed the words
8 "cable television" to the word "telephone." Everywhere
9 it says "cable" it said "telephone," and otherwise it
10 were precisely the same, there's an interest in
11 communication by telephone.

12 Would that be lawful, constitutional?

13 MR. GRISWOLD: I think it would be, Mr.
14 Justice, and I would suggest that for all practical
15 purposes that is the law of New York today.

16 QUESTION: I thought earlier we had agreed
17 that if there were to be a television installation it
18 would be a taking for which there'd have to be
19 condemnation and a payment?

20 MR. GRISWOLD: Under the statutory law of New
21 York, which went back to very early days and much more
22 conventional notions of taking than have been developed
23 in this Court, let's say in the last ten years --
24 PruneYard and a good many labor cases --

25 QUESTION: New York Central.

1 MR. GRISWOLD: Well, certainly. I think it's
2 Penn Central.

3 QUESTION: Penn Central. Excuse me.

4 MR. GRISWOLD: That's one of the cases to
5 which we will refer.

6 I wouldn't doubt myself that if New York were
7 now to repeal that telephone statute, which requires --
8 is interpreted to require the taking and paying, and to
9 substitute a statute like 828, I'd rather like to argue
10 that case here. I kind of think maybe it could be won.
11 At least that's the --

12 QUESTION: It'd really be quite a departure
13 from what the telephone companies in 50 states have been
14 doing for a long, long time, wouldn't it?

15 MR. GRISWOLD: I don't think so, Mr. Justice.
16 I think you will find -- you will find that it is very
17 hard to find that any telephone company has paid for
18 that right for a long, long time.

19 QUESTION: When you say paid for that right,
20 Mr. Griswold, do you mean the right to have an easement
21 to string poles?

22 MR. GRISWOLD: No, I don't mean it. I mean
23 the right to bring in a feeder line to lead telephone
24 service into a residence or into a business building.

25 QUESTION: Well, what if New York amended 828

1 to provide that, because of our interest in
2 communications, in the event that there isn't any
3 telephone -- system of telephone poles in this
4 particular area -- let's assume the poles are above
5 ground -- that any landlord shall allow the telephone
6 company to put a pole in his back yard, without having
7 to pay for it?

8 MR. GRISWOLD: I think that there is a
9 distinction between what I call trunk lines and feeder
10 lines, and there are old cases of this Court, 100 years
11 ago, involving telephone -- telegraph companies putting
12 their lines down city streets and down railroad rights
13 of way, and it was held that they had to pay for that
14 right. And I would suspect that if New York passed a
15 statute saying that any cable television company is
16 entitled to put its trunk lines on private property
17 without paying, that that would not be held to be
18 constitutional.

19 I think it is different with respect to feeder
20 lines, and that perhaps is an appropriate place for me
21 to come to the crossover problem. There are two kinds
22 of crossovers, as I see it. The New York Court of
23 Appeals said there were three, but I think that two of
24 those present the same legal issue.

25 One is what I call the short crossover, and

1 that is that when the cable comes in on the roof to this
2 building, having come from the adjacent building on this
3 side and serving a tenant in this building, then the
4 cable continues, and the record shows in this case four
5 to six feet, in order to bring service to the next
6 building.

7 And we suggest, first, that that's de minimis;
8 and second, that there is a clear quid pro quo in it,
9 because this building's tenants get the service because
10 there's a crossover from the next building, and to say
11 that in order to do that you have to provide the same
12 kind of a lead to the adjoining building on the other
13 side doesn't seem very serious.

14 But in any event, we would contend that that
15 is not a taking requiring a payment under the Fifth
16 Amendment as applied to the states by the Fourteenth.

17 Now, the other one is what I call the pure
18 crossover, and that is the situation where there is no
19 tenant in this building who has cable television, but
20 the cable television company wants to bring the cable
21 from the building on the right across this building in
22 order to get to the building on the left.

23 And I would say that even that, even as
24 applied to that, the statute is valid, just as the New
25 York statute now provides that a person who builds a new

1 apartment house must provide it with water and sewer
2 service. There are no tenants in the building when he
3 is building it. There may be no tenants for six months
4 after he has completed it if his rents are so high that
5 he can't get people in.

6 Nevertheless, he won't get a building permit
7 to start with unless he provides water and sewer
8 service.

9 QUESTION: You necessarily say that if you
10 added to the water and sewer telephone lines, that they
11 must provide telephone lines too if this statute
12 includes it?

13 MR. GRISWOLD: I think, Mr. Justice, Mr. Chief
14 Justice, that if New York should change its statute and
15 say that a person building a new multiple dwelling
16 apartment house must provide telephone lines in the
17 building when it's built, that such a statute would be
18 clearly constitutional.

19 QUESTION: And laundromats and a room for
20 vending machines?

21 MR. GRISWOLD: Laundromats and room for
22 vending machines become more difficult, but --

23 QUESTION: I don't know why. I don't know
24 why, under the rationale of the court below, a
25 requirement that a landlord set aside this space and let

1 vending machine people come in wouldn't be sustainable.

2 MR. GRISWOLD: Well, perhaps this is the time
3 for me to come to another part of my argument. The
4 contention is made by Mrs. Loretto's counsel that
5 several of the cases that I would bring before you,
6 including a whole series of labor cases which have
7 completely denied the right of the owner of property to
8 exclude people -- the owner of property under this
9 Court's decision has to admit union representatives
10 under certain circumstances --

11 QUESTION: Were those cases statute or
12 constitutional arguments?

13 MR. GRISWOLD: Those are affirming orders of
14 the National Labor Relations Board. They have the
15 general statute --

16 QUESTION: That's Babcock.

17 MR. GRISWOLD: Babcock, that's right.

18 -- of fair dealing behind it, but no specific
19 --

20 QUESTION: But rejecting constitutional
21 objections.

22 MR. GRISWOLD: They do reject the
23 constitutional objection, and do it -- and do it on a
24 --

25 QUESTION: PruneYard basis.

1 MR. GRISWOLD: Well, PruneYard is another one
2 of them. But the Republic Aviation case, one of the
3 early ones, quotes Judge Augustus Hand, who was dealing
4 with a ship and union organizers wanted to go on board
5 the ship, which was really the only place that they
6 could get to the employees, because otherwise the ship's
7 on the high seas. And Justice Augustus Hand said, it is
8 not every interference with property rights which is
9 within the Fifth Amendment.

10 And this Court has followed that in the labor
11 cases. We think that the PruneYard case is another
12 clear example of that. California said, through its
13 Supreme Court, applying its constitution, that the owner
14 of a shopping center was required to allow the admission
15 of people for the purpose of soliciting signatures and
16 distributing literature. And this Court held that that
17 was not a taking requiring compensation under the Fifth
18 Amendment. But --

19 QUESTION: Is there a qualitative difference,
20 however, between a temporary use of property and a
21 permanent occupation of a portion of the space?

22 MR. GRISWOLD: Well, Justice O'Connor, that's
23 just the point I am coming to. Our friends say that
24 this is a permanent occupation. I would suggest in the
25 first place that it is not a permanent occupation. It's

1 an occupation only as long as the landlord chooses to
2 use this for rental purposes.

3 The landlord can occupy the building himself
4 and Section 828 no longer has any application. In other
5 words, it is what we call a use-dependent regulation.

6 QUESTION: I suppose that's a little like the
7 argument that the employer in the labor cases could go
8 out of business if he wanted to.

9 MR. GRISWOLD: That the employer --

10 QUESTION: In the labor cases, could just go
11 out of business, and then he wouldn't be subjected to
12 this invasion of his property any more.

13 MR. GRISWOLD: No, no.

14 QUESTION: And that's what you're saying
15 here. The landlords could always go out of the rental
16 business.

17 MR. GRISWOLD: Go out of the rental business,
18 yes, but not necessarily go out of business.

19 I have put together a list of 17 instances
20 where there are permanent occupations of a landlord's
21 premises. Sprinklers has already been referred to, and
22 this Court in the Queenside Hills Realty Company case
23 upheld the validity of that statutory provisions.

24 QUESTION: I don't know that sprinklers is
25 right on point, though, because the landlord owns the

1 sprinkler.

2 MR. GRISWOLD: That suggestion is also made by
3 our opponents. Would this statute be better if it said
4 that the landlord must put in cable television and he
5 owns it and he pays for it? It seems to me that here
6 the landlord is better off, less burdened by a statute
7 which says --

8 QUESTION: But the sprinkler is a matter of
9 public safety, not only for the landlord but for all his
10 tenants.

11 MR. GRISWOLD: Well, that's also --

12 QUESTION: Where is the safety factor, the
13 police power factor, in television?

14 MR. GRISWOLD: The facilitation of
15 communication and education seems to me to come within
16 the police power.

17 QUESTION: Of course, then the landlord can
18 buy any sprinkler system he wants to, too. But here
19 you're telling him what one he's going to get. He
20 doesn't have a choice of cable TV operators, does it?

21 MR. GRISWOLD: I think that that's only
22 because the city has franchised one company. That's not
23 the result of the tenant.

24 QUESTION: Well, yes, but you're attacking an
25 ordinance. You're attacking a law. The city wants to

1 protect its five percent, so it says, please, landlord,
2 you're not going to get a choice of cable operator.

3 MR. GRISWOLD: Well, I suppose they'd get
4 their five percent from whatever cable operators they
5 franchise. I don't think that makes any difference.

6 QUESTION: Well then, the city doesn't need to
7 franchise some of them, because they don't ask for it,
8 as this amicus brief makes clear.

9 MR. GRISWOLD: Well, in addition to fire
10 escapes and sprinklers -- in addition to sprinklers,
11 there are fire escapes and smoke detectors, and those
12 have a safety element in it.

13 But let me point out several things. The
14 Causby case has been referred to. We usually think of
15 that as the case which said that when there are
16 low-flying planes that means that is a taking. But the
17 Causby case is the case which, by way of dictum, but it
18 certainly is one of the most powerful dictums that was
19 ever uttered by this Court, said that the statutes of
20 Congress which provide that the upper air space is a
21 public highway and can be used freely without
22 compensation, thereby changing the clear common law,
23 which said from the surface of the earth to the highest
24 heavens, the Court in the Causby case said that property
25 can be taken without compensation.

1 Now, similarly in Block and Hirsch, which is
2 the early rent control case. The statute in that case
3 provides the tenant can continue to occupy the property
4 after the end of the lease if he continues to pay the
5 same rent, and that is surely a permanent occupation.

6 And one that rather appeals to me is
7 mailboxes. We have cited Section 57 of the New York
8 Multiple Dwelling Act. Mr. Gruen in his brief says,
9 well, there isn't any requirement that there be
10 mailboxes. What the situation is is that the Post
11 Office Department, through regulations -- and this is --
12 this is "Domestic Mail Manual," Section 155.6, says that:

13 "Delivery of mail shall be contingent upon the
14 installation and maintenance of mail receptacles
15 approved by the Postal Service."

16 Which would mean that if you don't have the
17 receptacles you don't get mail. But New York has
18 provided by Section 57 that you must provide for
19 receptacles.

20 And let's continue with the Post Office
21 regulations. There is a regulation on apartment house
22 mail receptacles called Publication 17, and it provides
23 on page 12 that mailboxes must be 6 inches by 5 inches
24 by 15 inches. Now, if you multiply that out, it's 450
25 cubic inches. And if you take a half-inch cable which

1 is on the roof, it takes 194 feet of half-inch cable to
2 occupy 450 cubic inches.

3 QUESTION: Well, again you're -- there it's
4 like the sprinklers. They're the landlord's boxes.

5 MR. GRISWOLD: He has to pay for them, yes.
6 And Mrs. Loretto is better off. She doesn't have to pay
7 for the --

8 QUESTION: I know. But nevertheless, they're
9 a third party coming in and taking a piece of your
10 property or occupying a piece of your property.

11 MR. GRISWOLD: This is permanent occupation of
12 a part of Mrs. Loretto's property, which she is not free
13 to use for some other purpose.

14 QUESTION: What if New York added Telex to the
15 CATV as a means of communication?

16 MR. GRISWOLD: Well, the time might come when
17 that would seem to be reasonable. As of now it seems
18 rather far-fetched. But in New York City I suggest that
19 cable television has become as near a necessity as a
20 telephone and electric service, as to which there really
21 isn't any question because they are always provided.

22 And what New York was trying to do through
23 this statute was to facilitate the development of cable
24 service as a means of improving communication and
25 education in the city of New York or the state of New

1 York. And I would suggest that that is within the
2 generally accepted powers of state legislatures.

3 Now, I would like to refer to Penn Central.
4 It's easy to say, well, Penn Central is just
5 regulation. It's not -- it doesn't have anything to do
6 with occupation. But the fact was that all that space
7 up there, which was reachable by the Penn Central people
8 by building up it, was taken away from them. It isn't
9 that it is occupied by someone else; it's not occupied
10 by them, which is a complete interference with their
11 rights of ownership.

12 It is true that they received a sort of
13 compensation in the form of transferable development
14 rights. But it is also clear that the Court did not
15 have any conception -- or didn't decide that that
16 constituted full value or payment.

17 I would suggest that that is a case of
18 permanent occupancy of the Penn Central space without
19 the payment of just compensation, because the Court
20 concluded on the balance of all the factors involved
21 this was the kind of regulation which did not constitute
22 a taking.

23 QUESTION: Is that any more permanent
24 occupancy than any zoning ordinance that says you can
25 only use a portion of your property?

1 MR. GRISWOLD: Well, I think I could cite
2 zoning ordinances as another instance. Indeed, this all
3 goes back to *Mundt* against Illinois, which in 1877
4 decided that the taking provision of the Fifth Amendment
5 does not prevent -- or of the Fourteenth Amendment --
6 does not prevent a state from regulating substantially
7 to the extent of taking away a large share of the
8 profits of a business.

9 Now, we have a number of other instances. The
10 Section 50(c) of the New York Multiple Dwelling Law
11 provides that the landlord must allow the tenants to
12 organize and provide a doorman in the building. The
13 doorman occupies some of the landlord's space, for which
14 he receives no compensation.

15 There is an interesting passage by Mr. Justice
16 Brandeis --

17 QUESTION: That's a security measure too, I
18 take it, isn't it?

19 MR. GRISWOLD: It's only the -- it's only the
20 tenants who do this. The landlord is not required to do
21 it. It has to do with security. But I don't think
22 these things are -- certainly Penn Central had nothing
23 to do with security. That related to something else.

24 CHIEF JUSTICE BURGER: I think your time has
25 expired now, Mr. Griswold.

1 MR. GRISWOLD: Can I just read one quotation
2 from Justice Brandeis?

3 CHIEF JUSTICE BURGER: One quotation, yes.

4 MR. GRISWOLD: This is on page 33 of our
5 brief, the Delaware, Lackawanna & Western Railroad. It
6 had to do with a city ordinance providing a taxi stand
7 on railroad land. The Court held that that ordinance
8 was invalid.

9 But Mr. Justice Brandeis said that if "the
10 town should pass an ordinance establishing, on the
11 driveway, a taxi stand available only to incoming
12 passengers, I see no reason why, under the contract
13 between it and the railroad or under the general laws of
14 New Jersey, it may not do so."

15 And we suggest that that is the sort of
16 earmark of a use-dependent regulation, that this
17 regulation here depends upon the use of the property for
18 rental purposes, and that it should be sustained.

19 CHIEF JUSTICE BURGER: Do you have anything
20 further, Mr. Gruen?

21 REBUTTAL ARGUMENT OF MICHAEL S. GRUEN, ESQ.

22 ON BEHALF OF APPELLANT

23 MR. GRUEN: If I may for a few minutes. First
24 let me take up a couple of areas where Mr. Griswold and
25 we agree. One is that I also would like to argue the

1 telephone case, but on the other side.

2 The second is more germane to this case. Mr.
3 Griswold has proposed that if trunk lines were installed
4 under the auspices of Section 828 that would probably be
5 unconstitutional, but that he distinguishes between
6 trunk lines and feeder lines.

7 We of course agree that such installation of
8 trunk lines would be unconstitutional, but I think we
9 differ on the facts. Let me demonstrate to you, if you
10 will take a look at joint appendix page 166, just what a
11 crossover is, what a block circuit installation is.

12 This diagram on page 166 illustrates a typical
13 New York City block and a typical installation by
14 Teleprompter. In the upper left-hand corner of the
15 diagram, the cable enters at number 118 Riverside
16 Drive. It then continues about halfway around the block
17 on West 84th Street and it goes down along Riverside
18 Drive from 118 to 110 Riverside Drive, and then along
19 the lower rung of buildings on West 83rd Street,
20 occasionally crossing back to the buildings on 84th
21 Street to provide service there.

22 What this diagram shows is a trunk line, in my
23 opinion, what I would call a trunk line. This diagram
24 shows that the typical installation is the use of
25 rooftops of buildings in New York as if they were a

1 public highway. There is an easement there, by all
2 traditional definitions of what an easement is, to
3 provide service to buildings by dropping feeder lines
4 from that trunks line along the roof to individual
5 apartments and buildings.

6 There has been discussion about the Attorney
7 General providing in New York that a tenant is entitled
8 to receive telephone service if he wants, the telephone
9 company may be required to condemn it. We of course
10 don't deny for a minute that the legislature in New York
11 may require the provision of cable television service.

12 What we say is that, just like in the case of
13 telephone service, it requires condemnation or
14 compensation in the form of rental payments for the use
15 of our property.

16 Mr. Griswold suggested that the labor cases,
17 such as Babcock & Wilcox, allow absolutely free entry by
18 organizers onto private property. I would suggest that
19 this is slightly inaccurate. What these cases provide
20 -- particularly I refer you to Central Hardware and
21 Babcock & Wilcox -- is that where the owner of the
22 property has situated it in such a way that it's
23 inaccessible -- his employees are inaccessible by any
24 means other than a temporary entry by union organizers
25 for the limited duration of an organizational campaign,

1 then he has taken steps which modify his property right
2 to the extent that he is in effect creating a nuisance
3 his injuring outsiders by not permitting their entry
4 for very limited purposes onto his property.

5 I would submit that this is not the case
6 here. There is no necessity. Communications can
7 proceed quite freely to tenants absent cable television,
8 by mail, telephone, any other method.

9 Thank you very much.

10 CHIEF JUSTICE BURGER: Thank you, gentlemen.

11 The case is submitted.

12 (Whereupon, at 3:06 p.m., the case in the
13 above-entitled matter was submitted.)

14 * * *

15

16

17

18

19

20

21

22

23

24

25

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:

Jean Loretto, on behalf of Herself and all others similarly situated, Appellant, v. Teleprompter Manhattan CATV Corp. Et Al.

No. 81-244.

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY Reene Hammond

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE

982 APR 6 PM 4 42