

ORIGINAL

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 82-11

TITLE MENNONITE BOARD OF MISSIONS, Appellant v.
RICHARD C. ADAMS

PLACE Washington, D. C.

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

2 CHIEF JUSTICE BURGER: We'll hear argument
3 next in Mennonite Board of Missions versus Adams. Mr.
4 Cohen, I think you may proceed whenever you are ready.

5 ORAL ARGUMENT OF WILLIAM J. COHEN, ESQ.,

6 ON BEHALF OF THE APPELLANT

7 MR. COHEN: Mr. Chief Justice, may it please
8 the Court.

9 This is an appeal from the Indiana Court of
10 Appeals. This case presents the question of whether the
11 Indiana tax sale statutes which were in effect at the
12 time this case arose violate due process in equal
13 protection. It is the position of the Mennonite Board
14 of Missions that the Indiana tax sale statutes violate
15 due process because they only provide for constructive
16 notice to a mortgagee of record.

17 The statutes only provided for notice by
18 posting at the courthouse and publication in a
19 newspaper. This case arose as a quiet title action
20 filed by the Appellee, Richard C. Adams. Mr. Adams had
21 purchased the property at 1829 Stevens Avenue in Elkhart
22 at a tax sale on August 8, 1977. Prior to the tax sale,
23 Jean Moore owned the property in fee simple. The
24 Mennonite Board of Missions had a mortgage on that
25 property.

1 The most significant fact in this case is that
2 the Mennonite Board of Missions mortgage was recorded.
3 It was a matter of public record. It was found in the
4 Elkhart County recorder's office in Volume 388, page 693
5 of the Elkhart County records. The name and address of
6 the Mennonite Board of Missions was thus a matter of
7 public record. Under the terms of that mortgage Moore
8 was required to pay the property taxes. She failed to
9 pay those taxes.

10 QUESTION: Does the record show why?

11 MR. COHEN: No, it does not, Justice Blackmun,
12 as to why she did not pay the taxes. But she was,
13 despite not paying the taxes, she was paying that
14 mortgage each month to the Mennonite Board of Missions,
15 which I think is also a very significant point.

16 Under Indiana law if the taxes aren't paid on
17 property for more than 15 months, the county auditor
18 will compile a list of delinquent property tax --
19 properties. And, in this case, they would then send
20 notice under Indiana law to the legal title owner.
21 Indiana law does not provide any mailed notice to an
22 owner of the property.

23 It is the position of the Mennonite Board of
24 Missions that due process requires, at a minimum, mailed
25 notice to a mortgagee of record. Had there been notice

1 mailed to the Mennonite Board of Missions, in this case,
2 I submit to this Court that the Mennonite Board of
3 Missions would have paid the taxes. That's demonstrated
4 by the fact that soon after they learned that the
5 property had actually been sold for delinquent taxes,
6 they immediately tendered to the trial court the
7 statutory amount due to redeem their property.

8 QUESTION: Mr. Cohen, is there any provision
9 of Indiana law that assures that by inspecting the
10 record of the mortgage, the place at which it has been
11 recorded, whichever, a person would be able to apprise
12 themselves of the present address of the mortgagee as
13 well as the name of the mortgagee?

14 MR. COHEN: The mortgage was filed in the
15 county records in Goshen. The county auditor's office
16 is in the same city. Their name and address was on the
17 mortgage. More importantly, the Mennonite Board of
18 Missions offices have been located in Elkhart County for
19 over 50 years. The --

20 QUESTION: You're advocating a principle of
21 request, sending mailed notice to any mortgagee of
22 records, I take it. Now what I'm trying to find out is
23 if there might not be situations in which there hasn't
24 been a recorded mortgage -- where the present address of
25 the mortgagee was not available from the recording data.

1 MR. COHEN: Justice Rehnquist, if the mortgage
2 was not recorded, I do not believe that the county
3 auditor would be forced to search titles and give notice
4 to anybody. If the mortgage wasn't recorded, they
5 couldn't have sent notice.

6 QUESTION: No, but --

7 QUESTION: The question --

8 QUESTION: What if the mortgage had been
9 recorded, but the mortgage either didn't show the
10 mortgagee's address or the mortgagee had moved.

11 MR. COHEN: That is a question that is not
12 applicable to this case, but that would be something
13 that would be a fact question that would possibly
14 relieve the county auditor from sending notice -- actual
15 notice. But I do believe that if the mortgage was
16 recorded in your given hypothetical, then it would be
17 incumbent upon the county auditor to send notice to the
18 last known address.

19 In this case --

20 QUESTION: Would he be entitled to treat the
21 mortgage -- the address shown on the mortgage as the
22 last known address even if it turned out, in fact, to be
23 the third last known address?

24 MR. COHEN: Yes, I believe he would unless the
25 county auditor knew that the mortgagor -- or rather the

1 mortgagee had actually moved. If the facts could be
2 shown that the county auditor knew that the mortgagee's
3 address had changed and the county auditor knew that, I
4 think it would be incumbent upon the county auditor to
5 send notice under those circumstances.

6 QUESTION: Does the record show the contents
7 of the notice that was published in this case?

8 MR. COHEN: No, it does not, Justice
9 O'Connor. But we are not questioning the form of
10 published notice given in this case itself. We're
11 saying, however, that published --

12 QUESTION: What is in -- what is contained in
13 that published form of notice?

14 MR. COHEN: Under Indiana law, the statutes
15 provide that the name of the owner of the property will
16 be listed, an address, if possible, but it does not
17 require a specific street address. The legal title
18 should be in the notice, and that's --

19 QUESTION: And the mortgagee's name or not?

20 MR. COHEN: There is no present -- there is no
21 requirement under the Indiana law in effect at the time
22 this case arose to send mailed notice at all to a
23 mortgagee. That is --

24 QUESTION: Yes, but I'm just asking about the
25 published notice, what it contained.

1 MR. COHEN: Okay. It would contain the name
2 of the legal title owner. It would not contain the name
3 of the mortgagee.

4 In this particular case, the published records
5 of Elkhart County demonstrate that although the county
6 auditor sent notice to Moore, she never picked up the
7 certified mailing, that the property was then sold to
8 Adams, but significantly, Moore continued to pay the
9 property -- to pay the money due and owing under the
10 mortgage to the Mennonite Board of Missions.

11 Indiana law provides for a two-year period of
12 time to redeem the property following the sale at -- by
13 a county official. The Indiana statutes provide for
14 giving notice to the legal title owner prior to the
15 expiration of the redemption period. But there was
16 absolutely no provision in Indiana law at the time this
17 case arose to notify a mortgagee of record that the
18 redemption period is about to expire.

19 Under Indiana law, once the redemption period
20 expires the tax deed purchaser, in this case Adams,
21 obtains a fee simple absolute, free and clear of any
22 prior lien or encumbrance.

23 In this case we submit to this Court that the
24 fact that the notice was only constructive and, by
25 posting and publication initially to the Mennonite Board

1 of Missions, in conjunction with the fact that there was
2 absolutely no notice given at all to the Mennonite Board
3 of Missions prior to the expiration of the redemption
4 period, results in the Mennonite Board of Missions
5 having their prior reported mortgage taken from them by
6 state action with inadequate notice and without any
7 compensation at all.

8 QUESTION: Just a question of procedure. You
9 stated the title in fee simple blossomed in the
10 purchaser at the tax sale after the expiration period.
11 Does he nevertheless have to go into court on a quiet
12 title action?

13 MR. COHEN: He does, Justice Blackmun. But
14 the statute provides that if notice were given to the
15 legal title owner and that is then prima facie evidence
16 that the tax sale was conducted in an improper manner.
17 We do not represent Jean Moore. Our interests are not
18 the same as hers. We could not represent her for that
19 reason. We do not dispute the fact that there was
20 notice sent to Moore under the statute, although she
21 never picked up the notice, but --

22 QUESTION: Anyway, he'd have to go in and get
23 his title cleared up?

24 MR. COHEN: Yes, but --

25 QUESTION: And this is when your people got

1 the notice.

2 MR. COHEN: That was the first time they
3 actually learned that the property had been sold for
4 taxes. Just --

5 QUESTION: What does an ordinary bank mortgagee
6 do in Indiana?

7 MR. COHEN: Well, Justice Blackmun, I'm not
8 really sure what an ordinary bank would do in Indiana.
9 I'm sure that many banks would vary their type of
10 arrangements of looking after their particular loan.
11 However, the Mennonite Board of Missions is not a
12 professional money-lending institution. It's a
13 charitable religious organization, a branch of the
14 Mennonite Church. They were not in the business of
15 making money. They loaned money --

16 QUESTION: But they went into the business in
17 this case?

18 MR. COHEN: Much to their chagrin, at this
19 time. However --

20 QUESTION: Part of the response to Justice
21 Blackmun's question, indeed, that in many cases banks
22 and insurance companies that have numerous mortgages
23 that they are holding arrange -- make arrangements to
24 see that all of the legal publications are sent to them
25 and checked by someone. That's inherent in the notice

1 by publication system, is it not?

2 MR. COHEN: I think notice by posting and
3 publication to a bank or to the Mennonite Board of
4 Missions, each, under Indiana law would be
5 unconstitutional. This Court --

6 QUESTION: Even if the bank sees the notice?

7 MR. COHEN: Not if the bank actually saw the
8 notice, Your Honor, no. If the bank actually had actual
9 notice, had seen the publication, we have a different
10 case.

11 QUESTION: Well, this is not inherence, and
12 part of the system of lending on secured loans with
13 mortgages or trusts, that there's an obligation on the
14 part of the holder of the mortgage to keep in touch with
15 the situation.

16 MR. COHEN: I think the Mennonite Board of
17 Missions did exactly that in this case. They did the
18 one most important thing they could do to protect their
19 interests. They recorded it, and it was a matter of
20 public record. It was notice to the Elkhart county
21 auditor of what their interest was. It was notice to
22 the whole world of what their interest was. There was
23 no requirement under Indiana law that they do anything
24 else. A professional --

25 QUESTION: There are no requirements for a

1 bank or an insurance company to keep a close check on
2 possible foreclosures or additional liens against their
3 security, but they do it as a matter of prudence.

4 MR. COHEN: They have, perhaps, the resources
5 and the sophistication to do that, but the Mennonite
6 Board of Missions as a charitable organization was not
7 accustomed to doing something like that nor did the law
8 require that they do that. They did everything, I
9 submit, Mr. Chief Justice, that the law required them to
10 do under the circumstances.

11 MR. COHEN: Mr. Cohen, was your client's
12 interest in the property totally destroyed by the fact
13 of the tax sale purchase alone, or is -- to follow up on
14 Justice Blackman's question, was there yet to be another
15 proceeding whereby the tax sale purchaser confirmed his
16 title?

17 MR. COHEN: His -- our interest was finally
18 adjudicated in the quiet title action itself but the
19 adjudication was a foregone conclusion, is what I meant
20 to say to Mr. Justice Blackmun. That is, under Indiana
21 law, once the tax deed purchaser obtained his tax deed
22 from the county auditor after the expiration of the
23 redemption period, under Indiana law he had the property
24 free and clear.

25 QUESTION: So, it isn't simply a question of

1 having to pay a penalty plus the amount the tax sale
2 purchaser paid by the time your client had notice?

3 MR. COHEN: That's correct. By the time our
4 client obtained actual notice of the tax sale itself it
5 -- the redemption period expired and they were never
6 given an opportunity.

7 QUESTION: How long was the redemption period?

8 MR. COHEN: The redemption period is two years
9 when the property is purchased by a private individual
10 as in this case.

11 QUESTION: You mean, that for two years this
12 property had been sold for taxes and your client had a
13 mortgage on it, but had no knowledge of the fact that it
14 had been sold for taxes?

15 MR. COHEN: That's correct, Justice
16 Rehnquist. In the meantime, the mortgagor, Moore,
17 continued to pay them each month on the mortgage.

18 QUESTION: And was in possession?

19 MR. COHEN: And was in possession of the
20 property. There was no attack on that property, so to
21 speak, by the State of Indiana. The only situation that
22 happened was posting and publication in a newspaper to
23 the Mennonite Board of Missions.

24 QUESTION: I think most mortgagees in the
25 agreement between the mortgagor and the mortgagee have

1 an agreement whereby the mortgagor has to pay taxes, and
2 the mortgagee has some overseeing by virtue of an escrow
3 fund, doesn't it?

4 MR. COHEN: As far as what type of
5 sophisticated mortgage transaction there may be in the
6 case you mentioned as far as escrowing the money, that
7 is not what happened in this case. The Mennonites are
8 trusting people. When they had the mortgage with Moore,
9 and Moore was required to pay the taxes, they believed
10 she would do it. And she continued to pay the --

11 QUESTION: Well do you think that's really the
12 basis for a constitutional argument? To say that you
13 trusted someone to do it and, therefore, you're not
14 bound by any constructive service or third party notice
15 statutes at all?

16 MR. COHEN: Under the facts of this case I do
17 believe that's correct, Mr. Justice Rehnquist, because I
18 think the focus of this Court really should be on what
19 the state did, or really what the state failed to do.
20 That is, the state failed to send adequate notice in
21 this case.

22 QUESTION: May I ask -- there was no notice
23 before either the tax sale or the expiration of the
24 redemption period. In your view would notice be
25 adequate if either one of those was given?

1 MR. COHEN: Had there been mailed notice to
2 the Mennonite Board of Missions, yes. In fact, as this
3 case was pending -- as it worked its way up the
4 appellate level in the State of Indiana, the Indiana
5 legislature actually amended the tax sale statutes, and
6 they now provide for the very type of notice that we are
7 requesting here.

8 QUESTION: Was that because of this litigation?

9 MR. COHEN: I submit that that's in all
10 likelihood true, Justice Blackmun. I think it's a
11 legislative recognition by the Indiana legislature that
12 the system that was in effect was simply
13 unconstitutional, that it was not difficult or
14 burdensome for a county auditor to look at the public
15 records and send notice.

16 QUESTION: How prevalent are the statutes
17 requiring notice to mortgagees?

18 MR. COHEN: Are you talking about nationwide,
19 Justice White?

20 QUESTION: Yes.

21 MR. COHEN: There is a Yale Law Review article
22 cited in the brief and it is a 1975 article. In that
23 brief it talks about 21 states that only provide for
24 notice by posting and publication, and I might add the
25 author urges those legislatures to amend those statutes.

1 QUESTION: How about the remaining case of
2 states?

3 MR. COHEN: Of those 21 there -- since that
4 law review article --

5 QUESTION: I know, but how about the other
6 states besides the 21?

7 MR. COHEN: Most states do provide for notice
8 by mail to owners of property.

9 QUESTION: Well, your inference is that all
10 the other states besides the 21, correct?

11 MR. COHEN: I can't -- I cannot affirmatively
12 tell you that. I do not know.

13 QUESTION: Well, if not, the number would be
14 more than 21.

15 MR. COHEN: It may well be the remaining 29
16 do, Justice White, but I do not know for sure. I cannot
17 tell you at this point. But I think ---

18 QUESTION: Mr. Cohen, I suppose it's totally
19 irrelevant, but was Mrs. Moore a member of the church?

20 MR. COHEN: No, she was not a member of the
21 Mennonite Church, and this was an arms-length
22 transaction between the parties. She was not the agent
23 of the Mennonite Board of Missions nor was she the
24 caretaker for the Mennonite Board of Missions in this
25 particular case. It was an arms-length transaction and,

1 in this case, there is inadequate notice to the
2 Mennonite Board of Missions. As Mrs. --

3 QUESTION: In this recording of the mortgage
4 deed, is an address given for the Mennonite Board of
5 Missions to which notice could be sent?

6 MR. COHEN: Okay. In the mortgage that was
7 recorded in Elkhart it lists the Mennonite Board of
8 Missions. The specific street address is not listed,
9 Justice -- Mr. Chief Justice.

10 QUESTION: In a small community, how would one
11 go about finding out the -- where to locate the
12 Mennonite Board of Missions?

13 MR. COHEN: I submit, Mr. Chief Justice, in
14 Elkhart County, the Mennonite Board of Missions are
15 well-known.

16 QUESTION: Well I'm -- that's why I pointedly
17 did not pick Elkhart. We don't decide constitutional
18 questions just for Elkhart, Indiana. The generality is
19 of some importance.

20 Now, let us say in Fairfax County, Virginia,
21 or anywhere out in the rural Virginia, how would you go
22 about finding the Mennonite Board of Missions?

23 MR. COHEN: I'm not sure I quite understand
24 your question.

25 QUESTION: How could you find out if you

1 wanted -- suppose you wanted to join the church? Let's
2 make it something to their interests. How would you go
3 about finding them?

4 MR. COHEN: In Fairfax, Virginia? You might
5 call Elkhart, Indiana and find out.

6 [Laughter]

7 QUESTION: Well I'm -- some people might be
8 that much interested in it to make such a call, but a
9 great many might not be.

10 MR. COHEN: But, confining ourselves to the
11 specific facts of this case, this Court has said that
12 adequate notice under due process is notice reasonably
13 calculated to inform interested persons of a pending
14 action to provide them an opportunity to appear and
15 assert their rights.

16 In this particular case, under the Indiana
17 statute in effect at the time this case arose, notice by
18 posting and publication is simply inadequate, that it
19 would be a very relative, easy matter for the Elkhart
20 County auditor to have sent notice by mail. This Court
21 has set forth the balancing test of what should be
22 looked at as far as what due process is accorded in a
23 given situation.

24 In this case, the private interest at stake is
25 the permanent loss of the Mennonite Board of Missions'

1 mortgage without any adequate notice of the initial tax
2 sale.

3 QUESTION: Doesn't the Mennonite Board obey
4 the condition of the mortgage that you annually send us
5 the receipt for your taxes?

6 MR. COHEN: They did not have anything like
7 that.

8 QUESTION: I say, couldn't they have done that.

9 MR. COHEN: They could have, Justice Marshall,
10 but again, I think what private individuals may do is
11 not the focus of this case. What the Mennonites or a
12 bank could have done is not the focus. The focus --

13 QUESTION: Why not? Why not?

14 MR. COHEN: Because constitutionally I believe
15 the focus should be on what the state did.

16 QUESTION: This country has gone for about
17 almost two hundred years now with notice by publication
18 in many areas, affecting important rights. You speak of
19 it as though this is something written in the
20 Constitution or implied.

21 MR. COHEN: Mr. Chief Justice, I think that
22 this is something that has been determined by this Court
23 in Mullane -- in the Mullane case and has been
24 determined by --

25 QUESTION: Yes, but not in this precise

1 context.

2 MR. COHEN: The --

3 QUESTION: If it had been, you wouldn't have
4 to be here.

5 MR. COHEN: That is correct, Mr. Chief
6 Justice. But the comparison with the facts of this case
7 as to what happened in Mullane, there -- I submit to
8 this Court, this case falls squarely within Mullane,
9 that this case cannot really be distinguished from
10 Mullane. And on that basis, I submit that this Court
11 would have to reverse the Indiana Court of Appeals.

12 And this case, I submit, Mr. Chief Justice,
13 also falls squarely within the case decided by this
14 Court, the City -- Walker versus City of Hutchinson
15 case. In that case this Court said that notice by
16 publication only of a condemnation action where the
17 owner of the property's name and address were a matter
18 of public record is unconstitutional.

19 And similarly this Court in City -- Schroeder
20 versus City of New York did the same thing. In that
21 case it was another condemnation action and the owner's
22 name and address was a matter of public record and this
23 Court held the New York statute in that case
24 unconstitutional for the same reason. That is, there
25 was not adequate notice given where the name and address

1 is known, that due process requires at a minimum notice
2 by mail. This Court recently, just last term, in Green
3 v. Lindsey reaffirmed those well-entrenched principles
4 established in Mullane.

5 The Green v. Lindsey case involved the
6 Kentucky forceful entry and detainer act. In that case
7 the procedure utilized by Kentucky is more likely
8 intended to reach a tenant. The case involved an
9 eviction of a tenant and in the Kentucky statutes it
10 first provided for personal service by the sheriff.
11 There was absolutely no requirement of personal service
12 in this case. If the tenant was not home that case
13 provided for posting on the door of the tenant's
14 apartment.

15 I submit to this Court that posting on the
16 property or an intrusion on the property by the state is
17 far more likely or reasonably calculated to inform a
18 person of an eviction action than is the form of notice
19 chosen by Indiana in this case.

20 There have been other states that have
21 considered virtually the same question as raised in this
22 case. In the State of Arizona, the Arizona Supreme
23 Court, back in 1964, determined that the sale of
24 property by posting -- rather publication -- only
25 violated due process as established by this Court in the

1 Mullane case and in the Schroeder case. The State of
2 Florida has ruled the same way. The State of Kansas and
3 the State of Michigan, the State of Missouri and the
4 State of New Jersey are all --

5 QUESTION: Are all of those under the Federal
6 Constitution or under state constitutions?

7 MR. COHEN: The -- all of those cases
8 interpreted this Court's rulings in Mullane and in
9 Schroeder and in Walker and all talked about the Federal
10 Constitution and not state constitutional questions.
11 Although the New Jersey court referred to its state
12 constitution, it did indicate that their decision was
13 based upon the Federal Constitution.

14 If there are no further questions at this
15 time, I'd like to reserve a few moments for possible
16 rebuttal.

17 CHIEF JUSTICE BURGER: Mr. Miller.

18 ORAL ARGUMENT OF ROBERT W. MILLER, ESQ.,

19 ON BEHALF OF THE APPELLEE

20 MR. MILLER: Mr. Chief Justice, may it please
21 the Court.

22 I believe the beginning point is to determine
23 whether or not this is a property right. And we concede
24 that the Mennonite Board of Missions' interest in this
25 real estate is a "property right."

1 But I think the first place to begin is that
2 the Court should understand and determine under Indiana
3 law that a mortgagee is not an owner of any property.
4 The Furnish case which is a case in Indiana where the
5 supreme court reiterated the decision that it made in
6 Mennonite Board versus Adams, I quote,"that a mortgagee
7 is not an owner as well established by Indiana law, and
8 further, a mortgagee has not title to the land
9 mortgaged." Now that is mentioned because, in a due
10 process question as such as is before the Court, Court
11 -- case law indicates that there is a balancing test.

12 QUESTION: So, if we were in a title state it
13 wouldn't make a difference?

14 MR. MILLER: The question wouldn't be any
15 different? I don't know. I only know in Indiana there
16 is no interest in real estate. Arizona, the last case,
17 as I call it, is the only case, I submit, at least that
18 I can find, that has answered the question as to whether
19 a mortgagee requires notice by mail in the 50
20 jurisdictions, excluding Puerto Rico and others.

21 QUESTION: And yet the loss is just as great,
22 whether it's non-ownership or --

23 MR. MILLER: Well, let me --

24 QUESTION: -- or estate or a title one.

25 MR. MILLER: Let me answer it this way. I'll

1 get to that and some of the questions that were asked
2 earlier.

3 The question is, is a mortgage a significant
4 property interest? One thing the Court should note for
5 the balancing test that comes next is that in Indiana
6 it's no -- it's not one of the bundle of sticks that I
7 learned about. It's a lien.

8 Now within -- balance the interests of --

9 QUESTION: But you started out by saying it
10 was a property right.

11 MR. MILLER: Well, my reading indicates that
12 whether it is an interest in real estate or a "property
13 right" as used in the Constitution wouldn't make any
14 difference. This Court has many times said a property
15 right is something that's not real property.

16 QUESTION: But a property right isn't an
17 interest in property?

18 MR. MILLER: It is.

19 QUESTION: And it's owned by the mortgagee?

20 QUESTION: No, it's --

21 QUESTION: It belongs to the mortgagee? It's
22 his right? I'll put it that way, is it his right? Or
23 its rights or --

24 MR. MILLER: I don't think I understand the
25 question. In Indiana a mortgagee has no interest in

1 real property. It does not have legal interest,
2 equitable interest, none of the bundle of sticks. What
3 it has is a "property right" to have a lien on a piece
4 of property that at a future date it may be able to sell
5 to satisfy an obligation.

6 If this Court would determine that it's not a
7 significant interest in property, it would be a finding
8 of -- to affirm the Court of Appeals. In the -- if the
9 Court determines that it is a property right, the next
10 question is, we have to balance the interests.

11 QUESTION: Do you think this Court's previous
12 holdings give an indication that we would regard a
13 mortgage interest as so insignificant as to not come
14 within the kinds of interests that we have protected --

15 MR. MILLER: Oh, no.

16 QUESTION: -- under a Mullane type doctrine?

17 MR. MILLER: Anticipating the question, I
18 believe it is. I concede it's a property right. My
19 brief concedes that it's a property right. I wanted the
20 Court to know that it's not an interest in real property
21 because that comes to play in the balancing test as
22 between the interests of the state and the interests of
23 the mortgage company.

24 I think if a person is an owner there's a
25 greater interest in the balancing as between the state's

1 interests and the owner of the real estate. a legal or
2 equitable owner.

3 QUESTION: I'm going to assume that Indiana
4 has a lien law comparable to all other states so that a
5 mechanic or a laborer who performs some services or
6 furnishes materials could file a lien on the property.

7 MR. MILLER: Yes.

8 QUESTION: Now that's certainly a property
9 right, isn't it?

10 MR. MILLER: Yes. Now --

11 QUESTION: But is it essentially an Indiana
12 law the same as the mortgage lienor's -- mortgagees lien
13 rights? Each has a lien.

14 MR. MILLER: Each has a lien. Now, in some
15 states, it may be that an interest in a mortgage is an
16 equitable interest in the real estate. I want the Court
17 to know that in Indiana it is not.

18 The second question, and I think my opponent
19 didn't make it clear -- my research indicates that this
20 Court has never determined that notice by publication is
21 not constitutionally sufficient for an owner of real
22 estate sold at a tax sale or a tax deed.

23 There are extremely good reasons as to why
24 notice by publication is or would be sufficient. There
25 is only one state, and that is Arizona, that I can find

1 that indicates that notice by mail is required to a
2 mortgage holder or a lien holder, and that is, Laz.

3 The law review article that was mentioned as
4 84 Yale Law Journal indicated at the time of the writing
5 there were 21 states whose statutes say that notice by
6 publication to the owner of the real estate is
7 constitutionally sufficient.

8 In my research, it indicates that 33 states
9 indicate that notice to a mortgage holder is only done
10 by publication. Of the other states, 33, just
11 publication, to a mortgage holder. And I must say to
12 the Court, I've given the benefit of the doubts, and
13 some of them are very confusing. New York, for example,
14 I understand reading it, has an alternate method. They
15 can either go publication or they can go actual notice
16 to the owner. Texas, I don't understand at all. I've
17 put that in one of the other states.

18 Now the question has never been briefed or
19 argued before this Court, whether notice by publication
20 to divest a land owner of his interests in real estate
21 if he doesn't pay his taxes, has never been decided.

22 The -- and there are courts who have decided
23 that it is permissible to give notice mere -- by mere
24 publication to divest a land owner of his interests in
25 real estate by not paying his taxes, that's Coleman v.

1 Sheeve. And that's the district court of -- it's in the
2 District of Columbia in the Court of Appeals in 1976.

3 In the Township of Montville -- that's an
4 Arizona -- excuse me, a New Jersey case, four to three
5 determined that notice by publication is insufficient
6 constitutionally under the the Mullane test. The
7 dissent in that case cited a number of reasons why, as
8 to owners, that notice by publication would be
9 sufficient. He mentions that real estate taxes are a
10 life blood of municipal government. And it -- the case
11 is an extremely good case, and the judge at the end of
12 that indicates that realizing the due process notice
13 requirement he would follow Mullane in all cases where
14 there is a significant interest of property and he would
15 carve out an exception for taxes.

16 People, owners know they're due. It's a just
17 system. There's notice. Everyone knows. But I'm not
18 here to argue that today. We've skipped -- I called
19 that the missing link -- we've skipped that. This Court
20 has never heard, as far as I know, the argument -- at
21 least made a decision, I understand they may have heard
22 the argument, but they've never made that -- rendered
23 that opinion.

24 QUESTION: May I ask you, Mr. Miller, does the
25 dissent in the New Jersey case, which I have not read,

1 or maybe you have if an argument ready, what is the
2 state interest in not giving notice? I suppose the
3 state -- you say it's a life blood -- taxation is the
4 life blood of the state, and they need the money.
5 Wouldn't it be to their interest to give notice to as
6 many people who might possibly --

7 MR. MILLER: Well --

8 QUESTION: -- pay up?

9 MR. MILLER: The answer to that is yes and
10 no. The practical answer is, I think, a state is
11 interested in getting the money. The state is also
12 interested in doing it as cheaply and as efficiently as
13 possible. I can, unfortunately -- you see, I believe
14 that the state should give notice to owners by mail. It
15 makes a lot of sense.

16 I've read cases that frankly the other side
17 has some arguments. The only good one I could find is
18 in the dissent in the Montville -- Montville, New Jersey
19 case, where the judge just says it's a just concept that
20 you own it, you know you're supposed to pay the taxes.
21 The length of time in New Jersey was four years. And
22 after four years, you don't pay your taxes, you're
23 putting a burden on the other taxpayers. The state's
24 not getting your money like it should. If you don't pay
25 it, you ought to know it, with exceptions, unless you're

1 incompetent or something else. And it is just fair.

2 And why should -- notice to owners? Well,
3 that's the next question. Is it notice to all those
4 that have an interest in the property? The Laz case in
5 Arizona -- their decision was based upon a statute that
6 says you give notice to persons with an interest in the
7 lot. And the supreme court in Arizona decided, well, an
8 interest means not only the owner but the mortgage lien
9 holders, judgement lien holders, lists pendants notice.
10 In the Arizona dissent, they found in Arizona that that
11 could cause a lot of problems.

12 Does the Elkhart County recorder or any
13 recorder drive to the county seat, drive to the
14 courthouse and check the judgment dockets for judgment
15 liens? A person who doesn't pay his mortgage, one would
16 think, doesn't pay his bills. One would think he'd get
17 sued. One would think would have judgments against
18 him. One would think those are liens on the real
19 estate, so the possible work for mortgage companies and
20 I don't want to -- I'm trying to get to the issue of the
21 mortgage, the lien holder. To the owner it makes a lot
22 of sense. It's easy. There are -- and I'm not really
23 here to argue -- owners. There are some reasonable
24 reasons why it shouldn't be necessary.

25 QUESTION: Even in the case of mortgages, it

1 occurs to me that, although of course 70 or 80 percent
2 of the mortgages are held by big institutions, when
3 interest rates get real high as they have been in the
4 last few years, there are a lot of purchase money
5 mortgages held by individuals on second mortgage
6 interests and the like and I suppose that's the area in
7 which there's the possibility of this sort of thing
8 happening.

9 MR. MILLER: Yes, there is. And I think it's
10 happening, and I think there is that possibility. And I
11 guess all I can say is that you better protect yourself
12 and you better draw up the instrument or you have the
13 attorney or yourself draw it up to protect yourself.
14 But to have trust in the person that is going to do it,
15 to ignore the payment of taxes for five years, I don't
16 know if that's constitutionally protected or should be.

17 I think the issue is -- is that was this
18 notice reasonably calculated, Mullane test, if we get
19 that far. But -- and I think we have to -- was it
20 reasonably the notice, reasonably calculated under all
21 the circumstances to apprise a lien holder of what
22 action was going to be taken in giving that lien holder
23 an opportunity to object, and in this case opportunity
24 to pay the taxes if it chose.

25 Now, I submit that the Court of Appeals in

1 this case said it quite well. And that is, the Court of
2 Appeals in this case, the Adams case, had its reasons in
3 terms of was it reasonably calculated. It says it is
4 understandable while actual -- why actual notice has not
5 been extended to mortgagees.

6 Most mortgagees are in the business of lending
7 money and as professional money lenders, prudence
8 requires them to be aware of the conditions involving
9 their collateral. They can be expected to protect their
10 interests by keeping records of the mortgagor's
11 discharge of his obligations.

12 In a footnote it goes on to say the Mennonite
13 Board of Missions may not be a professional money lender
14 but it freely chose to enter an area of sophisticated
15 financial investment and thereby necessarily chose to
16 incur the risk inherent therein. And I agree with that.

17 I also point out in *Texaco Inc. v. Short*, an
18 Indiana case that was decided last year, the dissent in
19 that case, by Justice Brenner at page 801, in a lawyers'
20 edition. Court -- "The Court," that is the majority,
21 "would appear to treat property owners as businessmen of
22 whom we do indeed expect the greatest attentiveness to
23 regulatory obligations in the conduct of their business
24 affairs." The Board -- and I take umbrage at some of
25 the things that, a, do not appear in the record, but

1 Elkhart County's population of 150 thousand people -- I
2 honestly didn't know where to get a hold of the
3 Mennonite Board of Missions.

4 I think that's all irrelevant. It is not in
5 the record. They chose to do it. They held the
6 mortgage. It wasn't a free mortgage. It was seven
7 percent. As I recall it was in '73. I think that was a
8 reasonably marketable mortgage in '73. It may have been
9 under the market slightly. It was an arm-length --
10 arms-length transaction. She was a woman, I think.
11 I've never met the individual. And she was paying her
12 mortgage. Why she stopped, I don't know.

13 But we publish -- or the state published
14 notice to a -- to the people that held the mortgages.
15 And as it was stated in Mathews v. Eldridge, the Social
16 Security disability case, decided in this Court in 1971,
17 talking about due process and notice, and it says all
18 that is necessary is that the procedures be tailored in
19 light of the decision to be made to the capacities and
20 circumstances of those who are to be heard.

21 Now the question is would a letter have done
22 it better. In this case, no, which I'll bring out in a
23 moment. But notice by publication, I think the Chief
24 Justice indicated that most institutions have employees,
25 people. I think that's the Nelson v. the City of New

1 York, decided in 1956, in this case. And that's where
2 the notice of a tax sale to the owner went to the
3 bookkeeper.

4 QUESTION: Wouldn't you think that most of the
5 professional moneylenders, big institutions whom you say
6 can take care -- whom you say can take care of
7 themselves, would take care of themselves in a way that
8 there would never be an occasion to have a tax sale or
9 send out any notice. They would follow -- they would
10 know when there -- at least if they use some mechanisms,
11 they would know -- they would make sure that the taxes
12 are paid. So the classic cases in which, the universe
13 of cases in which you're going to have to have a
14 foreclosure or send out a notice are going to be reduced
15 to a lot of people mostly who don't take care of
16 themselves, and don't know enough to take care of
17 themselves.

18 MR. MILLER: Well, I -- I can agree with
19 that. In part I do. I do.

20 QUESTION: I would suppose you have to --

21 MR. MILLER: Well, in part I do, because it's
22 obviously true in part, but two answers: One, I think
23 the question before the Court is, what's the
24 constitutionally necessary minimum; and, two, in
25 Mullane --

1 QUESTION: In argument I would think you'd be
2 making the same argument if they never published
3 anything.

4 MR. MILLER: No, I think --

5 QUESTION: No notice, no publication.

6 MR. MILLER: No --

7 QUESTION: Mortgagees can take care of
8 themselves.

9 MR. MILLER: No -- no, because in --

10 QUESTION: Well, you know that
11 nonprofessionals aren't going to go look -- go get any
12 notice from publication.

13 MR. MILLER: No, and I don't rest my argument
14 on the fact that they would take care of themselves.
15 I'm saying to the Court that there was in fact notice.
16 There was notice by publication. The question you have
17 to ask yourself --

18 QUESTION: Not actual notice, just notice.

19 MR. MILLER: It was not actual. The question
20 is --

21 QUESTION: Wasn't that published notice for
22 the purpose of attracting a lot people to come in and
23 bid?

24 MR. MILLER: It's one of the reasons.

25 QUESTION: One? Isn't that the primary reason

1 in terms of getting -- trying to liquidate the
2 indebtedness, whether it's a tax sale or a mortgage
3 sale. Whoever has the money due is trying to get it
4 back so there's a real purpose -- the publication is not
5 a matter of form. It's a matter of substance, and there
6 are people who are scanning the published notices every
7 day in the week and every city in this county and
8 deciding whether they want to go in and bid.

9 MR. MILLER: Right.

10 QUESTION: But it serves a real purpose.

11 MR. MILLER: It does, and I --

12 QUESTION: It doesn't serve the purpose of
13 giving notice to the mortgagees.

14 MR. MILLER: Well it's not in the record, but
15 that is not so -- at least -- in my experiences, is the
16 banks always check and have people -- or at savings and
17 loans -- they always check and have people to check
18 those. Because at times computers make mistakes, people
19 make mistakes.

20 QUESTION: They want to know when the sale is
21 so they can bid.

22 MR. MILLER: I submit that notice by
23 publication is notice to the people in that county to
24 protect themselves.

25 QUESTION: Okay.

1 QUESTION: Do you concede that notice by mail
2 would be more effective for the mortgagees?

3 MR. MILLER: In a -- where the post office
4 name and address of the mortgagee is in the system --
5 yes, it would be. Now it depends, Justice, on each
6 system. The Elkhart County auditor -- there's the
7 Elkhart County recorder. Those are not necessarily the
8 same office, but -- which I think is irrelevant. But
9 one of the problems, also, is how does the Court define
10 mortgagee? Is that lien holder, which can cover a
11 number of problem areas with counties and states
12 notifying all lien holders.

13 But the question that the Court, I believe one
14 of them, has to decide is wasn't notice by publication
15 reasonably calculated under the circumstances -- the
16 circumstances, I allege, as a mortgage company who chose
17 to enter into a field of giving a mortgage and making a
18 profit if not on the books but still a seven percent
19 interest on the money as a -- balancing it with the
20 interests of the state.

21 The fact that they decided to enter into this
22 field and even -- in this case, even if the Court would
23 determine that it's not reasonably calculated without
24 hearing the arguments as to maybe why notice to
25 publication to owners is all that is necessary.

1 I would point out -- this is the, I believe,
2 the most important argument I can make here under
3 Mullane. The brief of my Appellant, at page 27, has a
4 footnote that indicates as follows: Indiana code 32-821
5 "requires the name and addresses of the mortgagee be on
6 their recorded mortgage." That is not quite right.
7 That statute validates mortgages if they do not have the
8 "full name and post office address of the mortgagee as
9 required by other older Indiana law. And I quote, full
10 name and post office address.

11 The Joint Appendix in this case at page 45 has
12 the address of the Mennonite Board of Missions as
13 follows, Mennonite Board of Missions, a Corporation of
14 Wayne County in the State of Ohio. That is not a post
15 office address. That is not a mailing address. And I
16 submit --

17 QUESTION: Where is that in the Joint Appendix?

18 MR. MILLER: Page 45, where the mortgage of
19 the Mennonite Board of Missions is set out.

20 QUESTION: I find that it appears to be some
21 sort of a brief on page 45 -- is it this tan --

22 MR. MILLER: Yes, the tan Joint Appendix.

23 QUESTION: Where is it now?

24 MR. MILLER: Page 45.

25 QUESTION: I think your -- this seems to be a

1 section of arguments. Could you check your own page 45
2 and --

3 MR. MILLER: I have mortgage and --

4 QUESTION: I think -- at least some of us up
5 here don't seem to have the same numbering or perhaps
6 the same document.

7 MR. MILLER: I can only tell you that I got my
8 Joint Appendix from the other counsel. His page now
9 says 67 --

10 QUESTION: It's on page 67.

11 MR. MILLER: His page is 67. I don't know why
12 mine is 45. He gave me the Joint Appendix. Page 67,
13 the Court will find -- I'll read from the actual
14 mortgage, "The address, Mennonite Board of Missions a
15 Corporation, of Wayne County, in the State of Ohio."
16 There is no other address in this record or in that
17 auditor's office or in that recorder's office of any
18 other address other than Mennonite Board of Missions of
19 Wayne County, State of Ohio.

20 QUESTION: So if the tax collector had gone to
21 this particular mortgage but gone no further, they
22 really -- he really would have had no mailing address by
23 which to mail?

24 MR. MILLER: Correct. Unless he either was a
25 Mennonite and happened to belong to that church and knew

1 what the Mennonite Board of Missions is. That is
2 something, it is not the Mennonite Church. And if he
3 knew that that organization that may be in Elkhart
4 County is not -- is the same organizaiton that is in
5 Ohio.

6 QUESTION: Is this an alternate ground for
7 affirming?

8 MR. MILLER: This would be an alternate ground
9 to affirm under Mullane. Mullane is -- all it says is
10 clear as a bell to the beneficiaries, if post office
11 names and addresses weren't there, they don't have to do
12 it. Mullane says, "where the names and post office
13 addresses of those affected by the proceedings are at
14 hand the reason disappears."

15 In the Mullane case, the trustee had on its
16 books the names and addresses of the income
17 beneficiaries. I agree that if these are all the same
18 people, and if we wanted to go outside the normal course
19 of the auditor and/or the recorder, that we could have
20 gotten a letter to them. A letter to Wayne County, Ohio
21 was not going to get to the Mennonite Board of Missions.

22 QUESTION: Well now, why do you say that?
23 Suppose you had addressed an envelope --

24 MR. MILLER: Because I did, but that's --

25 QUESTION: To the Mennonite Board of Missions,

1 County Seat, Wayne County, Indiana -- whatever it is --
2 why do you think it might not well find its way?

3 MR. MILLER: Well for two reasons. One, it's
4 my understanding of the postal regulations that mail
5 will only be addressed -- delivered to a postal address,
6 either a box or an address, and secondly, from personal
7 knowledge that I don't think has any business in this
8 case. The question of names and post office address is
9 not present in this case.

10 QUESTION: Well we get mail directed to Judge
11 Zilch, care of the Department of Justice, Washington,
12 D.C., but it comes here.

13 MR. MILLER: Presumably that's the wrong
14 place. I notice the address of this Court is simply The
15 Supreme Court, Washington, D.C., with the zip.

16 QUESTION: We also get mail directly addressed
17 that gets here a month later.

18 MR. MILLER: Well, back to the point. My --

19 QUESTION: Actually, I guess the Court of
20 Appeals of the Indiana Court didn't really rely on the
21 difficulty in finding the mortgagee, did it?

22 MR. MILLER: No, it determined that notice by
23 publication --

24 QUESTION: It wasn't necessary.

25 MR. MILLER: It wasn't -- notice by

1 publication is necessary. Notice by mail is not. Their
2 ground was it was reasonably calculated because they
3 entered into a sophisticated area of financing. They're
4 on notice. The notice is supposed to be -- depending on
5 if it was a person on welfare, that's one thing. This
6 was supposed to be a businessman. They chose to enter
7 into the field. Those are all the reasons.

8 QUESTION: May I ask you if the new Indiana
9 statute requires that the mortgagee designate his
10 address when he records his mortgage?

11 MR. MILLER: No, it does not.

12 QUESTION: But it nevertheless requires mailed
13 notice.

14 MR. MILLER: No, it does not, either.

15 QUESTION: Oh, I --

16 MR. MILLER: I take umbrage with my opponent.
17 I don't know why they changed it but what they did is
18 add a provision and that provision says that if the
19 mortgagee will pay up to ten dollars, two to the
20 auditor, and provide his name and post office address,
21 that when the auditor sends out those little notices
22 that your taxes -- your property is about to be sold for
23 taxes, he'll send one to the lien holder also. But the
24 lien holder has the affirmative duty under the statute
25 to provide that name and address to the auditor.

1 QUESTION: And ten dollars?
2 MR. MILLER: Up to. That's the statute.
3 QUESTION: Oh, so --
4 MR. MILLER: It's a very cheap state.
5 QUESTION: But he has to -- does he have to
6 pay the --
7 MR. MILLER: Oh, yes, the mortgagee has to
8 pay --
9 QUESTION: Well, when he gets the notice or
10 before?
11 MR. MILLER: No.
12 QUESTION: Whenever he takes mortgage he
13 writes a check to the auditor and says --
14 MR. MILLER: No.
15 QUESTION: In the event taxes aren't paid
16 please notify me.
17 MR. MILLER: No. When -- see, the mortgagee
18 -- and again, the cases that -- or the footnote that I
19 referred to in the brief mentions Indiana case law. The
20 procedure in Indiana is this. A mortgagee takes his
21 mortgage to the recorder's office and records it for
22 public record. The statute now says that if he wants to
23 receive notices that the taxes are delinquent and that
24 there's about to be a sale, he must go to the auditor
25 and pay a fee.

1 QUESTION: Right then?

2 MR. MILLER: Right then. And notify the
3 auditor of his name and address and pay whatever -- the
4 statute says the auditor can set a fee, the county
5 auditor can set a fee, but not more than ten dollars.

6 QUESTION: I see.

7 MR. MILLER: And he provides the name and
8 address, his name and address, and then, if the taxes
9 are not paid for 15 months and the notice goes out that
10 there's going to be a sale, the auditor is required to
11 send not only a certified letter to the owner --

12 QUESTION: Every county may be different on
13 the fee?

14 MR. MILLER: The statute in my memory says --
15 the state statute says the county shall determine the
16 fee to be charged but not more than --

17 QUESTION: Yes. Do you know what the fee is
18 in this county?

19 MR. MILLER: In Elkhart?

20 QUESTION: Yes.

21 MR. MILLER: I have no idea.

22 QUESTION: Have they got around to determining
23 it if it's a new statute?

24 MR. MILLER: I'm sorry.

25 QUESTION: Have they got around to determining

1 it in Elkhart County, if it's -- or you just don't know.

2 MR. MILLER: I have no idea. I hold no
3 mortgages. I've never had the opportunity to use it.
4 That statute is used in my research in some of the --
5 some of the other states.

6 The Appellant in this case has indicated in
7 his brief and, again in that same footnote, that the law
8 of the State of Indiana is that a deed and mortgage is
9 taken to the auditor.

10 The law in the State in Indiana is, is that a
11 deed, before it be recorded, is taken to the auditor and
12 placed on there are the words to be entered for
13 taxation, or words to that effect. The auditor writes
14 down who owns the property and their address and -- so
15 that the county knows, that are going to be taxed.

16 As to mortgages, the statute says and only
17 says, that before the auditor makes that endorsement on
18 the deed, he may require a tax identification number,
19 and I emphasize may, on other instruments including
20 mortgages that divest a person of a mortgage. That
21 sounds a little complicated, but Indiana has a law that
22 if you have a mortgage on a piece of property, you pay
23 less property taxes because you have that mortgage.

24 There is no requirement to take the mortgage
25 to the auditor's office. In other words, there's no way

1 for an auditor under the Indiana scheme of things to
2 have a name and post office address. But in this case
3 there was no post office address.

4 There was notice that was reasonably
5 calculated in the general scheme of things and I
6 reasonably submit under Mullane, even if the Court felt
7 that all these mortgage holders should get notice that
8 Mullane and all of the cases afterwards -- in the case
9 of Laz versus Arizona, they made a point that Laz versus
10 Arizona requires a letter to a mortgage holder that the
11 taxes, or the property's going to be sold, or it's going
12 to be deeded. But even in Laz, it says that's only to
13 the mortgage or the lien holders whose names and post
14 office addresses are in the public record without
15 inquiry. They're open and available, as was said in
16 Mullane.

17 This Court held in Mullane that the --

18 CHIEF JUSTICE BURGER: Your time is up,
19 counselor.

20 MR. MILLER: Thank you.

21 CHIEF JUSTICE BURGER: Do you have anything
22 further, Mr. Cohen?

23 ORAL ARGUMENT OF WILLIAM J. COHEN, ESQ.,

24 ON BEHALF OF APPELLANT -- REBUTTAL

25 MR. COHEN: Yes, Mr. Chief Justice.

1 QUESTION: Mr. Cohen, does the record show who
2 prepared this mortgage?

3 MR. COHEN: Yes, it does, Justice Powell. The
4 mortgage was actually prepared by Edna Carpenter who
5 worked for the Mennonite Board of Missions. It was not
6 prepared by an attorney.

7 However, with respect to Mr. Miller's point as
8 to no post office address actually being on the mortgage
9 itself. I submit that there was no difficulty for Mr.
10 Adams in this case to send the Elkhart County sheriff
11 directly to the Mennonite Board of Missions offices,
12 which were located for over 50 years in Elkhart.

13 QUESTION: Well, but the county seat is in
14 Goshen, isn't it?

15 MR. COHEN: Yes, it is. Yes, it is, Justice
16 Rehnquist.

17 QUESTION: How is it from -- and is the
18 sheriff in Goshen?

19 MR. COHEN: The sheriff has an office in
20 Goshen and in Elkhart. And the county -- the county
21 recorder's -- well, some of the records are in Elkhart
22 and in Goshen, both.

23 QUESTION: What's the -- what's the population
24 of Goshen and of Elkhart, roughly?

25 MR. COHEN: Elkhart's about 42 thousand,

1 Goshen is about 15, 20 thousand.

2 QUESTION: Thank you.

3 QUESTION: Mr. Cohen, the mortgage also
4 provided that Mrs. Moore would pay the insurance on the
5 house.

6 MR. COHEN: Yes.

7 QUESTION: Do you know whether that was
8 continued after she defaulted on taxes?

9 MR. COHEN: It was my understanding that she
10 continued to pay everything and unbeknownst to the
11 Mennonite Board of Missions, she did not pay the taxes
12 right after the period of time to redeem the property
13 expired. She was asked to leave the property and she
14 went to the Mennonite Board of Missions and informed
15 them that she was in trouble. The first time that they
16 learned there was problem was from her at that time.

17 With respect to a question that was asked by
18 Mr. Stevens, Justice Stevens. In this case, the only
19 interest of the state is for the collection and payment
20 of taxes and that if mailed notice was sent to
21 mortgagees that would actually further the states
22 interest of collecting taxes.

23 In the brief, I cite an Indiana case where the
24 mortgagor and there were -- the mortgagor and the
25 mortgagee, one or the other -- their property was listed

1 for sale for delinquent taxes and the county auditor
2 mailed notice to -- after the tax sale, mailed notice to
3 the mortgagee, informed them that the property had been
4 sold for delinquent taxes.

5 The mortgagee promptly paid the tax and, in
6 investigating what happened as far as why the taxes
7 hadn't been paid, learned that the property taxes -- the
8 payment had not gone onto a computer list and had it
9 gone onto the computer list, it would have never made
10 the tax sales in the first place.

11 So the mailing of notice would actually assist
12 the state in notifying mortgagees who are likely to pay
13 the taxes and in all likelihood would pay the taxes.
14 And it would further the state's interest of collecting
15 the taxes as soon as possible and in a fast and
16 expeditious manner.

17 QUESTION: Well it is hard to understand how
18 that would have helped the board in this case with no
19 address, and I don't think our cases have gone so far as
20 to require county sheriffs to go out personally and look
21 for locations.

22 MR. COHEN: Mullane says, Justice O'Connor, if
23 the name is a matter of public knowledge or if easily
24 ascertainable.

25 CHIEF JUSTICE BURGER: Thank you, gentlemen.

1 The case is submitted.

2 [Whereupon, at 3:12 p.m., the case in the
3 above-entitled matter was submitted.]

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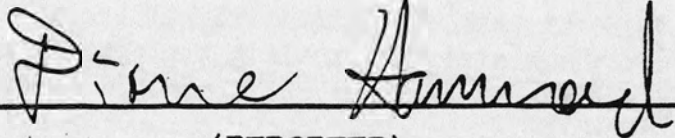
CERTIFICATION

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#82--11

MENNONITE BOARD OF MISSIONS, Appellant v. RICHARD C. ADAMS

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

BY

A handwritten signature in cursive script, appearing to read "P. H. Hammond", written over a horizontal line.

(REPORTER)

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