

ORIGINAL

OFFICIAL TRANSCRIPT PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. No. 83-963

TITLE BOARD OF LICENSE COMMISSIONERS, TOWN OF TIVERTON
Petitioner, v. LOUIS H. PASTORE, JR., ETC., ET AL.

PLACE Washington, D. C.

DATE Tuesday, November 27, 1984

PAGES 1 - 54

1
2
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4
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IN THE SUPREME COURT OF THE UNITED STATES

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BOARD OF LICENSE COMMISSIONERS, :

TOWN OF TIVERTON :

Petitioner, :

V. : No. 83-963

LOUIS H. PASTORE, JR., :

ETC., ET AL. :

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Washington, D.C.

Tuesday, November 27, 1984

The above-entitled matter came on for oral
argument before the Supreme Court of the United States
at 11:01 o'clock a.m.

APPEARANCES:

MS. KATHLEEN MANAGHAN, ESQ., Newport, Rhode Island; on
behalf of the petitioner.

JOHN H. HINES, JR., ESQ., Providence, Rhode Island; on
behalf of the respondents;

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C O N T E N T S

<u>ORAL ARGUMENT OF</u>	<u>PAGE</u>
MS. KATHLEEN MANAGHAN, ESQ.,	
on behalf of the petitioner	3
JOHN H. HINES, JR., ESQ.,	
on behalf of the respondents	29

P R C C E E D I N G S

CHIEF JUSTICE BURGER: Ms. Managhan, I think you may proceed whenever you are ready.

ORAL ARGUMENT OF MS. KATHLEEN MANAGHAN, ESQ.,
ON BEHALF OF THE PETITIONER

MS. HANAGHAN: Mr. Chief Justice, and may it please the Court:

This is an appeal from a decision of the Rhode Island Supreme Court. The issue before you today is whether the exclusionary rule should be applied to exclude the admission of evidence at an administrative hearing, in this case a liquor license revocation hearing, which evidence has already been excluded from use at criminal trial. The lower court, the Rhode Island Supreme Court, answered this question affirmatively.

The evidence excluded in this case, stolen property, clothing, was found on the premises of the Attic Lounge, a licensed Tiverton, Rhode Island liquor-serving establishment. On March 11, 1977, the Tiverton police entered the Attic Lounge pursuant to a search warrant which had been obtained by them after receiving a tip from a neighboring police department that they would find stolen property on the property of the Attic Lounge.

1 They entered the lounge, they found the stolen
2 property. However, later that warrant was held
3 defective by a Rhode Island Superior Court judge, and
4 therefore the search warrant was quashed.

5 QUESTION: On what grounds?

6 MS. MANAGHAN: It is my understanding the
7 grounds for the quashing of the warrant were that the
8 police did not knock prior to entering the premises of
9 the Attic Lounge, and also apparently the trial court
10 judge believed that the affidavit which accompanied and
11 caused the warrant to issue did not show probable,
12 sufficient probable cause.

13 QUESTION: Is this in the record at all, the
14 reasons for the quashing?

15 MS. MANAGHAN: Yes, I believe it is.

16 QUESTION: It is?

17 MS. MANAGHAN: We do not have a record of the
18 actual criminal proceedings, but they are referred to.

19 QUESTION: I certainly didn't -- I didn't get
20 it from either brief.

21 MS. MANAGHAN: That is correct. It is,
22 however, in the appendix, Your Honor.

23 Because of the quashing of the warrant,
24 criminal charges --

25 QUESTION: Ms. Managhan, under New Jersey law,

1 could the officers have entered the bar without a
2 warrant and made a search under the authority of the
3 liquor control laws regardless of any --

4 MS. MANAGHAN: Yes, Mrs. Justice O'Connor.
5 Under Rhode Island law, because this was a licensed
6 liquor-serving establishment, there is a particular
7 Rhode Island statute -- I believe it is cited in the
8 appendix to my brief -- which allows police officers and
9 other municipal officials at any time to enter the
10 premises of a licensed liquor-serving establishment in
11 order to see whether they are carrying out their
12 operations within the parameters of the law, and for
13 other reasons. This was in fact acknowledged by the
14 Rhode Island Supreme Court in its decision.

15 In this case, however, in this case the
16 Tiverton police did in fact seek a warrant. Obviously
17 their chief thought was in order to obtain stolen
18 property, they did go into the premises of the bar,
19 found the stolen property, but the warrant was quashed.
20 This, of course, meant that the criminal charges which
21 the State of Rhode Island had initially brought against
22 the manager of the bar and against the bartender, had to
23 be dropped.

24 However, the Tiverton Town Council, which
25 functions as a local licensing authority for bars within

1 its jurisdiction, had also started procedures, liquor
2 license revocation procedures, against the owner of the
3 Attic Lounge. They had begun these procedures pursuant
4 to a Rhode Island statute, another Rhode Island statute
5 which I believe appears in the appendix to my petition,
6 which allows a municipality to revoke a liquor license
7 where it can be shown that any state law was violated on
8 the premises of that licensed establishment.

9 QUESTION: Was one part owner of the Attic
10 Lounge also a member of the town council?

11 What was the link?

12 MS. MANAGHAN: No, no, that is not my
13 understanding. There was no identity between the
14 council members and the bar principals.

15 March 28, 1977, the town council sitting as
16 license commissioners held a hearing, heard testimony
17 from the local police about their obtaining of the
18 warrant, their searching the premises of the bar,
19 finding the stolen clothing, on the basis of that
20 presentation, revoked the license of the bar.

21 The bar owners appealed. Initially they
22 appealed, as it provided by Rhode Island statutory law,
23 to the Liquor License Administrator, Mr. Pastore, who
24 reversed the town council on other grounds, not
25 exclusionary rule grounds.

1 The town then appealed that decision to the
2 Rhode Island Superior Court which, for the first time,
3 raised the issue of whether the exclusionary rule should
4 have been applied to an administrative hearing, and held
5 that in fact the Liquor License Administrator, for the
6 wrong reasons, but nevertheless, was correct in vacating
7 the revoking of the license.

8 The town therefore appealed that decision to
9 the Rhode Island Supreme Court. The Rhode Island
10 Supreme Court affirmed the lower court's holding that
11 evidence of stolen property obtained pursuant to an
12 invalid warrant and suppressed already for criminal
13 purposes, should not have been admissible at a liquor
14 license hearing.

15 This did this I believe on three bases. They
16 indicated very clearly in their decision an
17 unwillingness to dilute the deterrent effects of the
18 exclusionary rule on police misconduct by allowing
19 illegally obtained evidence to be admitted at such an
20 administrative hearing. They also did it by analogizing
21 this administrative hearing, liquor license revocation
22 hearing, to a so-called quasi-criminal hearing. They
23 called it quasi-criminal in character and therefore said
24 that just as the exclusionary rule is applied to
25 criminal hearings, so should it be applied to

1 quasi-criminal hearings such as this. And they finally
2 found an insufficient societal interest in the control
3 of liquor-serving establishments to justify a different
4 finding from the one that they had made.

5 We believe that the Rhode Island Supreme Court
6 should be reversed on each of these grounds: first, on
7 the ground of deterrence.

8 I believe that this court in Janis has
9 commented on the uncertainty as to whether the
10 exclusionary rule in fact deters police from improper
11 searches and seizures. It was suggested I believe in
12 that decision that where there has already been criminal
13 exclusion of suppressed evidence, that that is enough,
14 that that is a sufficient sharp medicine, if you will,
15 strong medicine, enacted against a local police, that
16 that is enough to just -- enough exclusion in that
17 case.

18 I would argue that exclusion has already
19 occurred here. The evidence that was obtained by the
20 Tiverton police has already been excluded from a
21 criminal proceeding. Therefore, there has been a
22 sufficient penalty enforced against the Tiverton police
23 to justify the deterrent purposes of that rule.

24 Moreover, this exclusion occurred at a
25 criminal hearing which I would argue that criminal

1 hearing, that criminal charge was the Tiverton police's
2 zone of primary interest. I would admit that under the
3 standards that were brought forth by this Court in
4 Janis, that this probably qualifies as an intrasovereign
5 situation on its bare facts. I would, however, argue
6 that despite this being an intrasovereign situation, so
7 to speak, that despite their probable employment status,
8 the chief zone of primary interest for these Tiverton
9 police officers entering the bar on that March evening
10 was a criminal offense and not a licensing offense.

11 And I believe this is --

12 QUESTION: Ms. Managhan, also of course we
13 have here the issuance of a warrant by a magistrate, is
14 that correct?

15 MS. MANAGHAN: That is correct.

16 QUESTION: And is the magistrate an official
17 of the town, or is that -- was that officer someone who
18 was a state officer appointed by the state?

19 MS. MANAGHAN: In the case of Rhode Island, it
20 would have had to have been a judge.

21 QUESTION: Not selected by the town, but --

22 MS. MANAGHAN: No, oh, no.

23 QUESTION: -- selected by the state, a
24 different --

25 MS. MANAGHAN: No, it would have been a judge

1 who would have issued that warrant.

2 I would argue that this, that this particular
3 criminal hearing and not the licensing hearing was the
4 zone of primary interest for the police officers
5 involved for various reasons. They acted on a tip.
6 They acted on a tip that there was stolen property at
7 the lounge. Based on that tip they obtained a warrant.
8 They obtained a warrant that specifically indicated that
9 they were searching for stolen property. They also, in
10 effect, under Rhode Island law, and under Rhode Island
11 criminal procedures, were basically acting as agents of
12 the state, not the city which employed them, in
13 investigating the possible commission of a felony.

14 In Rhode Island, it is the State Attorney
15 General's office and not the municipalities that
16 actually prosecute felony offenses. Therefore, I would
17 argue that the Tiverton police entering the lounge that
18 evening were basically acting as state agents, not as
19 agents of the town which employed them. They were
20 interested in the possible commission of a felony, not
21 in the possible commission of a licensing offense.

22 QUESTION: Is there any evidence in the record
23 from which we would know whether the officers were
24 interested in securing evidence of a criminal offense as
25 opposed to evidence for suspension or revocation of the

1 license?

2 MS. MANAGHAN: No, there is not specific
3 evidence where an officer was actually asked what was
4 your purpose in going to the lounge. I would say you
5 would have to make that determination, Your Honor, from
6 an empirical examination of how the entrance to the
7 lounge occurred.

8 QUESTION: Well, what did the warrant
9 affidavit say?

10 MS. MANAGHAN: The warrant affidavit, which I
11 have to admit, Your Honor, I have not seen, but
12 basically consisted --

13 QUESTION: Well, they must have explained, to
14 get the warrant issued, they had to say what they
15 thought they were going to find.

16 MS. MANAGHAN: That's correct.

17 QUESTION: And demonstrate reasonable cause.

18 MS. MANAGHAN: Yes. The warrant affidavit --

19 QUESTION: Well, what did it say?

20 MS. MANAGHAN: The warrant affidavit, as I
21 understand it, reflected the knowledge of a Fall River
22 police officer who had obtained from an informer the
23 information that there was stolen property to be found
24 on the lounge premises.

25 QUESTION: Well, then, that's -- that's their

1 asserted purpose in going there.

2 MS. MANAGHAN: That is correct. That is
3 correct.

4 QUESTION: And I thought you said that they
5 were -- that they were seeking to enforce the criminal
6 laws rather than the licensing laws.

7 MS. MANAGHAN: That is correct, and that's the
8 argument I am making, that they received information
9 that was directly oriented towards the violation of a
10 criminal offense, to wit, the harboring of stolen
11 property on the lounge premises.

12 Now, the fact that they obtained a warrant --

13 QUESTION: May I ask this question, please?

14 I don't quite understand with reference to
15 your argument why you rely on that point. Supposing
16 they were just enforcing the liquor laws, would you say
17 then the exclusionary rule would be applicable?

18 MS. MANAGHAN: I am relying on the -- I am
19 arguing that point because I believe that this Court has
20 indicated some concern in the Janis case particularly
21 about what was the real purpose pursuant to which the
22 officers actually obtained evidence which was later held
23 unlawfully seized. In other words, did they have in
24 mind -- what was their chief purpose? Did they have in
25 mind --

1 QUESTION: But I am still not quite clear.
2 Supposing it had been the other purpose, just to enforce
3 the liquor laws? Then what is your view on whether the
4 exclusionary rule would apply?

5 MS. MANAGHAN: Then I think you probably have
6 a situation very similar to what this Court faced in
7 Lopez-Medndoza where it was basically admitted that
8 officials, officers, immigration officers, actually
9 acted with a specific civil proceeding in mind, and in
10 that case, which I don't believe is this case, you might
11 very well have to argue that the exclusionary rule would
12 have to be applied to that civil proceeding unless you
13 had circumstances such as this Court found in
14 Lopez-Mendoza that for other reasons distinguished the
15 proceeding --

16 QUESTION: Well, let me ask you a simple
17 question, if I can.

18 Is it your position that the exclusionary rule
19 does not apply to this kind of proceeding provided that
20 the officer had a criminal objective?

21 MS. MANAGHAN: I think that is one of the
22 reasons.

23 QUESTION: And that is -- but is that --
24 assume he didn't, would you make a different -- would
25 you concede it would apply, or you would just say that

1 is just a different case?

2 MS. MANAGHAN: I would say that is a different
3 case.

4 QUESTION: Well, what is -- is the law in your
5 state that people who are enforcing the licensing laws,
6 the liquor laws, may enter a premises to inspect without
7 any warrant at all?

8 MS. MANAGHAN: That is correct.

9 QUESTION: Well, where did they find these
10 stolen goods?

11 MS. MANAGHAN: They found -- I am not sure of
12 that, Your Honor. I am sure they probably didn't find
13 it right in the center of the bar. Probably they found
14 those stolen goods in a closet back in the storage
15 area. I think it is safe to say that they were probably
16 out of sight --

17 QUESTION: The officers --

18 MS. MANAGHAN: -- of bar patrons of the Attic
19 Lounge.

20 QUESTION: But the two -- but the liquor laws
21 are enforced by the same police who enforce the criminal
22 laws there, aren't they?

23 MS. MANAGHAN: That is correct.

24 QUESTION: So these same police officers could
25 have entered the lounge any time they wanted to to see

1 if the liquor laws were being --

2 MS. MANAGHAN: That's right, that's right.

3 QUESTION: I have a little problem with that.

4 Don't you have a liquor authority in
5 Massachusetts?

6 MS. MANAGHAN: Rhode Island?

7 QUESTION: Rhode Island.

8 QUESTION: I mean Rhode Island.

9 MS. MANAGHAN: Perhaps we don't have one such
10 as is found in other states.

11 QUESTION: Well, don't you have one that gives
12 the liquor authority officers the right to go in the
13 bars and grills?

14 MS. MANAGHAN: That responsibility is
15 primarily borne in Rhode Island by local police
16 officials.

17 QUESTION: And they don't have any state
18 liquor authority people?

19 MS. MANAGHAN: They function primarily on an
20 administrative basis, Your Honor, to hear appeals such
21 as was taken from the Town of Tiverton.

22 Most --

23 QUESTION: Well, who checks as to whether they
24 are serving watered whiskey or not?

25 MS. MANAGHAN: That could certainly be one

1 reason, yes, or unstamped liquor, or --

2 QUESTION: That's what I'm talking about.

3 MS. MANAGHAN: Right.

4 QUESTION: But that's done by -- it's not done
5 by police?

6 MS. MANAGHAN: It can be. Yes, it can be, or
7 by municipal officials that are specifically designated
8 to have that responsibility.

9 In Rhode Island these kinds of liquor license
10 offenses are handled initially on the municipal level,
11 and if you will read the statutory authority that I have
12 cited in my appendix to my petition and also my
13 appendix to my brief, it becomes very clear.

14 QUESTION: But the state board, the state
15 board revokes the license, not the local city.

16 MS. MANAGHAN: No, it is the local town
17 council.

18 QUESTION: That revokes the license.

19 MS. MANAGHAN: Yes. The local town council
20 awards the licenses --

21 QUESTION: And revokes them.

22 MS. MANAGHAN: And suspends them, and revokes
23 them, yes. They basically put on another, another hat,
24 if you will, and sit as a local liquor licensing or
25 revoking authority, and they do have as --

1 QUESTION: But then it has to go to the state
2 Liquor Control Administrator for review.

3 MS. MANAGHAN: That is correct. That is
4 correct.

5 Well, if it is appealed.

6 QUESTION: Yes.

7 MS. MANAGHAN: If it is appealed. There is no
8 automatic transfer. It is not automatically reviewed.

9 QUESTION: It is the state Liquor Control
10 Administrator who is your opponent in these
11 proceedings.

12 MS. MANAGHAN: That is correct. That is
13 correct.

14 QUESTION: No brief being filed by owners of
15 the Attic Lounge.

16 MS. MANAGHAN: That is correct.

17 QUESTION: The board, the town commission
18 minutes in the appendix do reflect that a one-third
19 owner of shares in the Attic Lounge was apparently one
20 of the town commissioners voting on the matter.

21 MS. MANAGHAN: I stand corrected.

22 QUESTION: I don't know that it is any -- has
23 any great relevance, but I thought it was curious.

24 MS. MANAGHAN: I stand corrected, Your Honor.
25 It was not a point that was ever dwelled upon by the

1 lower court. That is entirely possible. Tiverton is a
2 small town.

3 You have -- several of you have brought up the
4 existence of this particular Rhode Island statute which
5 enables local police officers, where they are interested
6 in learning of licensing offenses, to actually enter the
7 premises of a bar in order to determine whether those
8 licensing offenses have in fact occurred.

9 I bring that to your attention to indicate
10 what to me seems to be a very clear indication that for
11 the Tiverton police officers entering the Attic Lounge,
12 license -- licensing offenses were not what were on
13 their mind. If they were interested in determining
14 licensing offenses, or if that was further down the line
15 for them, they would in fact have not even bothered to
16 have obtained a warrant. They would have simply entered
17 the bar, and they could have checked around to see if
18 there were any licensing offenses, and the statute does
19 not provide any limitation to where they may look, so
20 presumably they could have looked over the entire
21 premises, and as the Rhode Island Supreme Court itself
22 admits, if in fact being on the premises pursuant to
23 that statute they had seen property which they knew from
24 other information to have been stolen, they could have
25 acted appropriately.

1 They didn't do this. They got a warrant. And
2 I think what this indicates, it indicates two things.
3 It first of all supports my argument which I am once
4 again basing upon this Court's concern in Janis, with
5 primary zone of interest, that this -- these police
6 officers' primary zone of interest was felony
7 investigation and not license investigation. If it had
8 been license investigation, why would they have bothered
9 to have gone to the trouble of getting the warrant? In
10 fact, they did. I think this very clearly indicates
11 that it was the felony investigation that was chiefly on
12 their minds.

13 It brings up another issue, however, the
14 existence of this statute, as to what deterrent effect
15 there would be if in this case the evidence that was
16 obtained by the unlawful warrant was in fact excluded.
17 Where you have a statute such as this, there really is
18 very little deterrence effect at all. All it will
19 really do is discourage Rhode Island police officers
20 henceforth from ever obtaining a warrant where there is
21 any other basis pursuant to which they can go on
22 licensed premises in order to take a look around.

23 In this case it certainly is not going to
24 encourage police officers to obtain a warrant. It will
25 have exactly the opposite effect. They will not want to

1 take a chance that the warrant will be quashed, that the
2 evidence will be considered excluded for any purposes,
3 and they will therefore simply enter the bar under the
4 statutory basis and will -- and see what they can see.
5 And presumably, if they see something that indicates a
6 felony violation, they could present it to the Attorney
7 General's office for prosecution of that felony
8 violation, and there would be no constitutional issue
9 because they were appropriately on the premises pursuant
10 to the statute.

11 So I think if in fact this Court were to
12 determine that the excluded evidence could not be used
13 at the liquor license revocation hearing because of the
14 quashed warrant, this would have, if anything, the
15 opposite of a deterrent effect on police officers
16 because it would discourage them from using the more
17 protective constitutional means of obtaining a warrant.
18 Instead they would always proceed under the statute.

19 The Rhode Island Supreme Court also indicated
20 its belief that this liquor license revocation hearing
21 was in fact a quasi criminal hearing, although we
22 attempted to --

23 QUESTION: May I go back to your last argument
24 for just a second?

25 MS. MANAGHAN: Yes.

1 QUESTION: I was trying to think it through.

2 I understand you want to win this case, of
3 course, but apart from this case, it really doesn't make
4 much difference to you, as I understand your argument,
5 because you can always get the information by following
6 the other, the nonwarrant procedure.

7 MS. MANAGHAN: That is correct.

8 QUESTION: So this is really kind of a one
9 shot situation.

10 MS. MANAGHAN: That is correct. That is
11 correct.

12 The Rhode Island Supreme Court called this
13 particular procedure a quasi-criminal proceeding because
14 the object of the proceeding, the liquor license
15 revocation proceeding, was to penalize for a legal
16 offense.

17 This Court I believe in Lopez-Mendoza
18 designated a very similar, similar proceeding as a civil
19 proceeding, and I believe there are great analogies
20 between the deportation hearings and the liquor license
21 revocation hearing that is before you. For instance, in
22 this case, the Tiverton Town Council was reviewing
23 admittedly bad past behavior of the bar in order to
24 determine whether it should continue to be entitled to
25 hold a liquor license issued by the town. Similarly, in

1 Lopez-Mendoza, this Court was faced with the factual
2 circumstances of whether an alien should be allowed to
3 continue to remain in this country because of how he had
4 happened to enter this country, whether he had come in
5 properly or not.

6 In both of these cases an administrative
7 tribunal was reviewing behavior which could be the
8 subject of separate criminal action, but the review was
9 not in fact criminal in type.

10 Also, another similarity between what is
11 before you and Lopez-Mendoza, it was the informality of
12 the proceeding. The Tiverton Town Council was the
13 tribunal which was hearing evidence, excluded evidence,
14 in order to determine whether there should be a license
15 revocation. Certainly some rules of evidence probably
16 pertain, but you are basically dealing with a lay, a lay
17 board making a determination as to revocation or
18 nonrevocation.

19 Another point which should be mentioned is
20 that tribunals such as Tiverton in Rhode Island do not
21 need to be shown that a conviction was obtained for this
22 offense against Rhode Island laws in order for them to
23 revoke a license. In other words, they can be presented
24 with evidence that in fact Rhode Island laws were
25 violated on the premises of a bar. But they don't

1 actually have to be shown evidence that a conviction was
2 obtained.

3 QUESTION: Your Liquor Control Administrator,
4 I take it, thought otherwise until the Superior Court
5 straightened him out.

6 MS. MANAGHAN: That is correct, and he was
7 told that that in fact was not the case, that a
8 conviction is not necessary. To me this indicates an
9 indication that there is a lesser standard of
10 evidentiary concern in order to determine whether a
11 licensed liquor establishment ought to have their
12 license revoked.

13 It is true that a board such as the Town of
14 Tiverton, in making this kind of determination, may in
15 fact penalize. However, I would argue that an
16 immigration court also penalizes in the deportation
17 hearing if they in fact decide that an alien's behavior
18 justifies their being deported.

19 I do not think that this penal, possible penal
20 aspect of a civil hearing such as before you is
21 something that should be, as it was with the Rhode
22 Island Supreme Court, a center for a decision as to
23 whether the exclusionary rule should be applied to such
24 a tribunal. In fact, the Rhode Island Supreme Court
25 admits excluded evidence in certain kinds of criminal

1 hearings, as do a number of courts. The Rhode Island
2 Supreme Court in its decision referred to probation
3 revocation hearings and bail revocation hearings as
4 criminal proceedings where, although a penalty might be
5 the ultimate result, that in fact the exclusionary rule
6 would not apply to these subsequent but nevertheless
7 criminal proceedings.

8 Many civil administrative hearings have penal
9 elements. This type of hearing may in fact be held to
10 have some kind of penal element to it.

11 However, I believe that this Court has made
12 very clear in Janis and in Lopez-Mendoza that the label
13 on a hearing is not nearly as important as the effect of
14 applying the exclusionary rule to that hearing will have
15 on law enforcement practices in the area and on the --
16 and what the social impact will be of such an
17 application.

18 I would pass to what that social impact would
19 be. I believe you have before you in the regulation of
20 the sale of liquor an excellent example of a traditional
21 and appropriate area of great governmental concern. And
22 I think that the statutes that we have discussed in
23 Rhode Island show that there is a clearly public policy
24 for close control of licensed liquor-serving
25 establishments. In fact, a license to serve liquor is a

1 privilege which is granted by a governmental authority
2 in Rhode Island, by a municipal authority, contingent,
3 and is held contingent upon the proper operation of
4 those premises.

5 The public need for that control is clearly
6 shown by the statutes that we have discussed, for
7 instance, the ability to enter upon the premises at any
8 time without a warrant simply to determine appropriate
9 operation, upon the fact that a license may be revoked
10 for any proof of the fact that a state law or other
11 municipal law has been broken on those premises, even if
12 there has been no conviction for the same.

13 QUESTION: Counsel, I take it that most of the
14 cases on this point around the country are against you,
15 are they, or not?

16 MS. MANAGHAN: I would disagree.

17 QUESTION: I don't see much discussion of
18 those cases in your brief.

19 MS. MANAGHAN: I did discuss two cases, one
20 from Illinois and one from Ohio, both of which basically
21 indicated that where liquor license revocation was the
22 concern, that in fact the exclusionary rule would not
23 apply.

24 QUESTION: There are other cases to the
25 contrary, I take it.

1 MS. MANAGHAN: There are other cases to the
2 contrary. There are the cases that the Rhode Island
3 Supreme Court relied on in its decision. The Finn's
4 case is probably the most well known example in New
5 York, and I believe there are other decisions in
6 Pennsylvania.

7 Those cases particularly deal with the issue
8 of liquor license revocation. I think if you look at
9 the larger issue of whether the exclusionary rule ought
10 to be applied to civil hearings in general, you will
11 find a very mixed treatment of this particular issue,
12 and I believe I gave as an example the treatment that
13 the State of California has given to the application of
14 the exclusionary rule to civil hearings. One of their
15 best cases was -- best known cases was the Emslie case
16 in which they basically at the beginning of the case
17 discussed what for them is a very tight adherence to the
18 exclusionary rule even in some other so-called civil
19 proceedings, and then proceed to not apply it in a
20 proceeding which dealt with disbarment of an attorney.

21 So while I would admit that there are in fact
22 some very strong cases against me on the limited issue
23 of the application of the exclusionary rule to liquor
24 license revocation proceedings, I think if you take the
25 larger look at civil application of the exclusionary

1 rule to a variety of such hearings, you will find that
2 in fact it seems as though the jurisdictions and also
3 the federal courts are pretty evenly splith.

4 QUESTION: Ms. Managhan, may I ask one factual
5 question?

6 I think Justice O'Connor pointed out that the
7 Attic Lounge, Inc. is a named respondent, it has not
8 filed any papers in the case.

9 MS. MANAGHAN: That is correct.

10 QUESTION: Is it still in business? Is the
11 lounge still in --

12 MS. MANAGHAN: It is not still in business.

13 QUESTION: Oh, it is out of business?

14 MS. MANAGHAN: That is correct.

15 QUESTION: Do we have a live case in front of
16 us then?

17 MS. MANAGHAN: Yes, I think you do.

18 QUESTION: Who is interested in winning or
19 losing then?

20 MS. MANAGHAN: Well, I think that the town is
21 interested, and also the liquor license -- the Liquor
22 License Administrator is also interested.

23 QUESTION: They would like to know what the
24 law is.

25 MS. MANAGHAN: That is correct.

1 QUESTION: I mean, will the outcome of the
2 case actually decide whether anybody sells any liquor or
3 not?

4 MS. MANAGHAN: That is -- it will not because
5 the Attic Lounge has in fact gone out of business.

6 So I think the interests that you have before
7 you are there interests of the town and also of the
8 state agency in determining what the proper law should
9 be.

10 QUESTION: In just knowing what the law is.

11 MS. MANAGHAN: That is correct.

12 If I could simply summarize, I believe that I
13 have mentioned some societal interests in close -- in
14 the close control of licensed liquor premises which are
15 very much part of this case. I think you have a
16 situation here where improperly obtained evidence has
17 already been excluded, and therefore the local police
18 whose behavior is of central concern to this court, have
19 already been penalized.

20 I believe I have attempted to argue that
21 despite the fact that the Tiverton police were employed
22 by the town, that it was their chief interest, criminal
23 investigation --

24 CHIEF JUSTICE BURGER: Your time has expired
25 now, Ms. Managhan.

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MS. MANAGHAN: Thank you.

CHIEF JUSTICE BURGER: Mr. Hines?

CRAI ARGUMENT OF JOHN H. HINES, JR., ESQ.,
ON BEHALF OF THE RESPONDENT

MR. HINES: Mr. Chief Justice and members of
the Court, I would like to begin by amplifying somewhat
the nature of liquor matters in the State of Rhode
Island.

QUESTION: Could I ask you at the outset --

MR. HINES: Yes, Your Honor.

QUESTION: The issue in the Court below was
whether or not the Administrator was correct in setting
aside the license revocation.

MR. HINES: Yes, that's right.

QUESTION: And the Administrator's decision
was affirmed.

MR. HINES: That is correct.

QUESTION: And so it really is a license case,
a licensing case, and I wonder what your answer is to
Justice Stevens' question. Why isn't this case moot?

MR. HINES: It is not moot, Your Honor, for
the reason that the Attic Lounge did go out of business,
but they did not go out of business immediately, and at
the time that this was in the works, it would have an
effect on them.

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Other than that --

QUESTION: What happens to a liquor license that a tavern owns when it closes? Can they sell it, transfer it?

MR. HINES: Yes. They cannot sell it per se, Your Honor. They can make an application, they can make an arrangement to sell it subject to the sale being approved by the town. The town has the --

QUESTION: Of course, if they -- if it had been properly revoked, they couldn't sell it or transfer it.

MR. HINES: No, that is correct, Your Honor, they could not.

QUESTION: But is there -- did somebody want to succeed these owners in that same place and sell liquor under that license?

MR. HINES: I am not aware of that, but I would doubt if that were the case, Your Honor, if someone wanted to succeed to that license.

What happened, if it were revoked, it would then --

QUESTION: Well, I know, but let's assume the -- I'm still asking whether there is a live controversy here.

Is it possible that this license is -- if we

1 affirmed here, is it possible that that license would
2 still be in existence?

3 MR. HINES: The license is probably still in
4 existence, but not with the former owners of the Attic
5 Lounge.

6 QUESTION: Well, it might be attached to that
7 place, though.

8 MR. HINES: No, Your Honor.

9 QUESTION: It isn't.

10 MR. HINES: The license does not attach to
11 anyplace. The municipality has a certain number of
12 licenses for their community, and --

13 QUESTION: Well, what would happen to the
14 license if we reversed?

15 MR. HINES: Nothing whatsoever.

16 QUESTION: Well, why wouldn't it? What if we
17 said that the court below was wrong in excluding the
18 evidence?

19 MR. HINES: I have no -- I have no doubt,
20 although I am not certain, that since this time the
21 license has been transferred to another entity, totally
22 separate from the Attic Lounge, and they are probably
23 functioning under it right now. It will have no effect
24 whatsoever on the licensing.

25 QUESTION: Well, your client -- and your

1 client is the Commissioner, is that right?

2 MR. HINES: That is correct, Your Honor, yes,
3 sir.

4 QUESTION: Well, suppose we reversed and said
5 the evidence was properly admissible?

6 What would your client do?

7 MR. HINES: In future hearings?

8 QUESTION: No, no, in this case.

9 MR. HINES: It would take no action
10 whatsoever.

11 QUESTION: Well --

12 MR. HINES: If anyone were to take action, it
13 would be the local community. In the first instance,
14 they have the original jurisdiction. The only --

15 QUESTION: Well, I know, but they revoked the
16 license.

17 MR. HINES: That is correct.

18 QUESTION: And you said -- and you reinstated
19 it.

20 MR. HINES: Yes, Your Honor, we did. And we
21 were --

22 QUESTION: On an erroneous basis.

23 MR. HINES: That is correct.

24 QUESTION: And now you are defending the state
25 court's decision.

1 MR. HINES: Your Honor, Your Honor.
2 QUESTION: Not much of a case here, is there?
3 MR. HINES: From a scholarly point of view,
4 perhaps, but from a practical point of view, your
5 questions point out that the ultimate effect does not
6 have a practical result.
7 QUESTION: But this wasn't point out in your
8 brief anywhere, and we have no brief from the Attic
9 Lounge. So these facts that we are discussing are
10 simply not apparent from the record.
11 MR. HINES: No, they were not pointed out.
12 No, they are not apparent, and also, Your
13 Honor, some of them are my assumption.
14 I am not familiar with what is occurring in
15 Tiverton. I am with regard to the Liquor Control
16 Administrator and his concern on how this will go in the
17 future. But the Court can be made aware that if this
18 does become moot, that the Rhode Island case will stand
19 and the exclusionary rule will be applicable.
20 QUESTION: Well, if it is moot, we simply
21 wouldn't decide it at all, would we?
22 MR. HINES: No, you would not.
23 QUESTION: That's why it becomes important to
24 us to know.
25 QUESTION: Except also isn't it true your

1 opponent said that the precedent really doesn't make any
2 difference except in this case because they can always
3 get the information without using a warrant by following
4 the statutory procedure.

5 MR. HINES: That is correct also, Your Honor.

6 QUESTION: So really even theoretically there
7 is not a great deal at stake.

8 MR. HINES: No.

9 QUESTION: Because we are really asked to
10 decide this case only, and this case itself is moot.

11 MR. HINES: That is correct.

12 QUESTION: Except that officers to enforce the
13 liquor laws cannot enter without a license and go to
14 locked doors.

15 MR. HINES: No. The statute is in the
16 appendix, and it is very broad, Your Honor, and it
17 permits a whole host of people, the mayor, the council,
18 may at any time enter upon the premises of a licensed
19 premises to ascertain the manner in which the person
20 conducts his business and to preserve order.

21 QUESTION: Do you think they could go and
22 search bureau drawers?

23 MR. HINES: Under, if they went in under the
24 statute --

25 QUESTION: Desk drawers.

1 MR. HINES: Yes, they could. I don't think it
2 would be right, but under this statute, it is very
3 broad. It says they shall have the power to arrest
4 without a warrant all persons found inside in the
5 commission of any offense in violation of the provisions
6 of this title, the liquor title. It is very broad, Your
7 Honor.

8 QUESTION: Suppose they wanted to go in and
9 hunt for some drugs, and they went in, and if they -- in
10 the back end of the tavern was a living quarters? Do
11 you think they could go in the living quarters?

12 MR. HINES: I don't believe so, Your Honor,
13 no.

14 QUESTION: Well, do you think they could look
15 in a jar, look in a --

16 MR. HINES: I don't believe the living
17 quarters are premises. The liquor -- it would be the
18 four corners of the establishment with respect to
19 serving of liquor.

20 QUESTION: Do you think they could open the
21 cash register?

22 MR. HINES: No, I don't believe they can. I
23 believe I am saying to you this statute, if you read it
24 literally, is so liberal that it would permit that. I
25 don't agree that it would be proper or right, Your

1 Honor.

2 QUESTION: Mr. Hines, may I get back a
3 minute?

4 However we decide this case, whether we affirm
5 or reverse, nothing happens to this license.

6 MR. HINES: No, Your Honor.

7 QUESTION: Does it still continue in
8 existence?

9 MR. HINES: Yes, it does.

10 QUESTION: No matter what we decide.

11 MR. HINES: That is correct.

12 QUESTION: Well, what can we do other than
13 give an advisory opinion?

14 MR. HINES: Your Honor, there is some, as my
15 adversary has pointed out, there is some diversion in
16 the lower courts as to whether or not the exclusionary
17 rule does apply in this type of proceeding. It would be
18 some clarification.

19 My own personal feeling, I wouldn't have a
20 problem with that. I believe that in that event, the
21 Rhode Island Supreme Court case would stand, and the
22 Plymouth Sedan case would still stand and be law, and
23 those are the cases basically that I am relying upon for
24 my position. So I don't have a problem with that.

25 QUESTION: Well, wouldn't it be an advisory

1 opinion?

2 MR. HINES: Yes, it would be, Your Honor.

3 QUESTION: Well, I would have thought, though,
4 that -- I would have thought that if your client
5 determined in his own mind that he had erroneously
6 reinstated the license, that the could consider this
7 evidence, and that there was evidence --

8 MR. HINES: No, he --

9 QUESTION: I would think he could go back and
10 say this license should have been revoked, and I am now
11 going to revoke it.

12 MR. HINES: He would do that, but he would be
13 faced with the same situation you are faced with. At
14 that point it is a moot question for him.

15 QUESTION: Well, I don't know --

16 MR. HINES: The license --

17 QUESTION: Anybody who took, the transferee
18 of his license took it at his risk and his peril.

19 MR. HINES: No, not under the Rhode Island
20 law, Your Honor.

21 QUESTION: I see.

22 MR. HINES: It is a clean, clean slate.

23 QUESTION: It is like issuing a new license?

24 MR. HINES: Yes, it -- exactly, Your Honor.

25 QUESTION: Would it have an effect in the

1 future on the ability of the owners of the Attic Lounge
2 to get -- to hold a liquor license in the future?

3 MR. HINES: Yes, it would, Your Honor.

4 QUESTION: So it would have that effect.

5 MR. HINES: Yes, it would. They cannot --

6 QUESTION: And why wouldn't the Liquor Control
7 Administrator of the state be interested then in going
8 back and taking action so that he would know the status
9 of these people in the future if they were to come back
10 into business.

11 MR. HINES: I haven't made myself clear. He
12 would definitely be interested. He doesn't have the
13 jurisdictional authority in the sense that that type of
14 thing would again have to go originally to the local
15 board for them to determine that.

16 QUESTION: So it would be up to the Town of
17 Tiverton --

18 MR. HINES: That is correct, yes, Your Honor,
19 and that -- it is because of the jurisdictional
20 aspects.

21 QUESTION: Well, the town has already acted.
22 It was the officer whom you are representing who
23 disagreed with the town.

24 MR. HINES: Yes, that's correct, Your Honor.

25 QUESTION: The town has already acted.

1 MR. HINES: Yes, they have.

2 QUESTION: So your administrator would not

3 consider changing his aim on the basis of the evidence

4 on the appeal?

5 MR. HINES: He would consider it if it was

6 properly before him, but it wouldn't come before him

7 until, first of all, the town would have to take the

8 initial original action. That's the way the law is

9 structured in Rhode Island. The administrator, then he

10 is met as an appeal.

11 QUESTION: Well, I thought the town did take

12 it and that your administrator heard it on appeal.

13 MR. HINES: Yes, we did, de novo.

14 QUESTION: Yes.

15 Well, why wouldn't it go back to your

16 administrator? I don't understand, in view of the fact

17 that the town acted.

18 QUESTION: Because the license has been

19 transferred?

20 MR. HINES: Yes.

21 QUESTION: And that that is like issuing a new

22 license to a new person.

23 MR. HINES: That's correct.

24 QUESTION: But let's suppose that this Court

25 did reverse the judgement of the Supreme Court of Rhode

1 Island. Our mandate would then go back to the Supreme
2 Court of Rhode Island, which was considering in this
3 case on a petition for certiorari from the superior
4 court.

5 Now, wouldn't the Supreme Court of Rhode
6 Island send that case back to the Superior Court, and
7 the Superior Court send it back to you?

8 MR. HINES: Yes.

9 QUESTION: So that it isn't up to someone else
10 to start a new proceeding. This proceeding would go
11 back to you.

12 MR. HINES: And then we would send it back to
13 Tiverton, Your Honor.

14 QUESTION: And so it depends on what Tiverton
15 wanted to do --

16 MR. HINES: That is correct.

17 QUESTION: -- what would happen?

18 MR. HINES: Yes. And the reason for that is
19 that the scheme of, statutory scheme of liquor control
20 is to let the original jurisdiction handle things in the
21 first instance on their own.

22 QUESTION: Well, what if Tiverton says we
23 already revoked, and your decision setting aside our
24 revocation has now been overturned by the higher
25 courts?

1 MR. HINES: An interested party who might be
2 affected by that, and I don't think one exists because
3 they are not holding the license, could then appeal to
4 the Liquor Control Administrator.

5 QUESTION: May I ask if your state supreme
6 court has authority to render advisory opinions? In
7 some states they do.

8 MR. HINES: Yes, they do, Your Honor.

9 QUESTION: And so perhaps they were well aware
10 of this whole situation and just rendered an advisory
11 opinion.

12 MR. HINES: No, can I say that at the level of
13 the Supreme Court, the Attic Lounge people were
14 represented by their own counsel.

15 QUESTION: Oh, they were at that, then.

16 MR. HINES: Yes, Your Honor, and the -- I was
17 not involved in that. It was the Town of Tiverton and
18 the counsel for the licensees at that point in time.

19 QUESTION: Of course, you take the position
20 that they were right in their view on the law.

21 MR. HINES: Yes, Your Honor.

22 QUESTION: But so that if we sent it back, the
23 Rhode Island Supreme Court would have the power to say,
24 well, that is all well and good, but our advisory
25 opinion is the following anyway. They could still just

1 give this as an advisory opinion, even if there is no
2 more life at this point.

3 MR. HINES: Yes, Your Honor, they could.

4 QUESTION: Well, they have -- I was going to
5 say, they have already decided this case the way you
6 want it decided.

7 MR. HINES: That is correct, Your Honor.

8 QUESTION: I would think you, with your first
9 point out of the box here would be to say that the case
10 is moot, you should just dismiss it. That leaves the
11 law in Rhode Island exactly the way you want it.

12 MR. HINES: I would not be displeased with
13 that disposition whatsoever, Your Honor.

14 QUESTION: Unless we held it was moot and
15 vacated the judgment below.

16 MR. HINES: Yes, sir. That is a different
17 problem.

18 QUESTION: Do you think we have the authority
19 to vacate advisory opinions of state Supreme Courts?

20 MR. HINES: No, Your Honor, I do not.

21 Basically the position that I have taken is
22 twofold, Your Honors. The first is whether or not the
23 exclusionary rule applies. And I have taken the
24 position that it does, and I am in agreement with the
25 Rhode Island Supreme Court based upon the Plymouth Sedan

1 case, that the nature of a license revocation is
2 quasi-criminal in nature in that it is intended to
3 penalize the licensee for a past transgression or
4 commission of unlawful conduct.

5 QUESTION: Well, wouldn't that mean that
6 virtually all license revocations would fall under that
7 category?

8 MR. HINES: Yes, it would, Your Honor, and it
9 would I think for this reason. Things in the law for
10 the most part remain static, but they do change, and one
11 of the things that has changed with a license, an
12 alcoholic beverage license, at one time it was a naked
13 privilege. Rhode Island Supreme Court has now
14 recognized that it has the nature of a property right,
15 and it really have value in the sense that without it
16 someone in that business of a restaurant or lounge is
17 not going to make any money, so that it is seriously a
18 penalty for someone to have a lounge business or
19 restaurant business and not to have accompanying it an
20 alcoholic beverage license in today's world. As a
21 result, to lose it, to have it revoked is indeed a
22 penalty, and as Justice O'Connor pointed out, the Rhode
23 Island statutes provide that if a revocation occurs
24 under the statute which Tiverton acted under, the
25 licensee is prohibited also from having an alcoholic

1 beverage license in that state for a period of five
2 years time.

3 I believe that that is penal in nature, taking
4 into account the loss of a valuable item of property and
5 the fact that for five years you are prohibited from
6 being in that particular business. And I think the most
7 prominent discussion of what is quasi-criminal was in
8 the recent case of Lopez-Mendoza, where it was
9 acknowledged the case, although purely civil in nature,
10 there was some discussion about what constitutes a
11 quasi-criminal situation.

12 And I believe that this case falls right into
13 that category, and it is analogous to the situation of
14 forfeiture in the Plymouth Sedan case where a property
15 right is forfeited, action of forfeiture is taken
16 against it, a revocation is forfeiture, and it has a
17 quasi-criminal nature.

18 This was also pointed out by the Rhode Island
19 Supreme Court, that they can go against an individual in
20 this kind of case under two different avenues, but they
21 are basically co-extensive is the word I believe they
22 used.

23 QUESTION: Well, Mr. Hines, do you suppose
24 that one Plymouth Sedan quasi-criminal analysis survives
25 the balancing test now employed by the Court not only in

1 Janis, but in cases like Leon and Shephard, which
2 themselves were actually criminal cases.

3 Do you think that this Court is now content to
4 just say, well, it's quasi-criminal, so we apply the
5 exclusionary rule automatically without considering any
6 of the factors that would justify the application of
7 such a rule.

8 MR. HINES: My answer is yes, for this
9 reason. I think there are two questions that need to be
10 asked in this case. One is does it apply? And I
11 believe it does. If you have gone so far in
12 Lopez-Mendoza, which is purely civil, as indicated, and
13 applied the rule, then it applies in this case. Then
14 you go to the balancing test, and in Lopez-Mendoza, I am
15 in basic agreement with the end result of the balancing
16 test.

17 I believe, though, that applying the balancing
18 test in this case, we don't come out with the same
19 result as Lopez-Mendoza.

20 So I think there are two separate questions:
21 application of the rule itself, and if it does apply,
22 then you enter into the balancing situation. But I --

23 QUESTION: But that might put the cart before
24 the horse, mightn't it? Don't you balance to see if it
25 applies?

1 MR. HINES: I don't believe so. I believe
2 that with One Plymouth Sedan, and going back to Boyd,
3 and One Plymouth Sedan, and even Janis, in this
4 situation of an intrascvereign situation, that it does
5 apply, and especially after you have already said in
6 Lopez-Mendoza, which is purely civil, that it does. I
7 don't even know that I need to say that this is
8 necessarily quasi-criminal. But I am, because I am
9 relying upon the Plymouth Sedan.

10 I think it is not putting the cart before the
11 horse. I think that the way these decisions in this
12 Court have come down, it is a necessary process to first
13 determine does it apply. Now, you may determine it
14 doesn't apply for the reason that this is a civil
15 situation and not a criminal situation, but I think we
16 must get to the balancing process as well.

17 QUESTION: May I ask another question about
18 the procedure in the case that kind of puzzles me?

19 MR. HINES: Yes, Your Honor.

20 QUESTION: Apart from this one case -- and I
21 understand that your client sustained or revoked the --
22 or reinstated the license, in effect, here --

23 MR. HINES: Yes, Your Honor.

24 QUESTION: -- that apart from this case, that
25 your client's general duties are supervising the

1 administration of liquor laws in a certain capacity.

2 Why wouldn't it be in your client's best
3 interest not to have the exclusionary rule apply?
4 Wouldn't your client generally be able to perform his
5 function better if he had more evidence available to
6 him?

7 MR. HINES: Yes, but I don't think that that
8 is a standard that should be applicable whether or not
9 you can function better, not with the Fourth Amendment.
10 I don't think that --

11 QUESTION: But from the point of view of his
12 actual, his interest in performing his job would be
13 better served if you lost the lawsuit.

14 MR. HINES: Absolutely.

15 As a point of interest, perhaps only interest,
16 I was not involved in the Superior Court level of this
17 or the Supreme Court in Rhode Island State. The case,
18 when certiorari was granted, or the petition was
19 requested, went to the Rhode Island Attorney General's
20 department. As I understand it, they weren't pleased
21 with necessarily the Rhode Island Supreme Court decision
22 and didn't want to take the time to act to sustain it.
23 That's when I got the call. And I am here as a result
24 of that.

25 QUESTION: Well, you could have passed error.

1 MR. HINES: But I don't -- getting back to
2 what you are asking, I don't think that is the standard,
3 but it certainly would help us, it would help the
4 Attorney General in the State of Rhode Island, but I
5 don't believe that that is necessarily how you make a
6 decision.

7 QUESTION: You mean as long as you have that
8 broad statutory authority to search without a warrant.

9 MR. HINES: Which I have -- yes, that's
10 correct, Your Honor.

11 QUESTION: Well, since we are on the subject,
12 why on earth are you trying to sustain this decision? I
13 would think from the point of view of the Liquor
14 Administrator, he would want his powers to be as
15 unfettered as possible.

16 MR. HINES: In a vacuum he would like that,
17 Your Honor, but he has counsel that -- and if I were
18 faced, and I am his counsel, with this kind of a
19 situation, I would have gone the same way as the Rhode
20 Island Supreme Court.

21 QUESTION: Well, but since you are not a court
22 but really advising the Liquor Administrator, why don't
23 you try to get the best ruling you can from the highest
24 court in the land?

25 MR. HINES: I would like to have that.

1 QUESTION: And what would that consist of?

2 MR. HINES: As I have indicated in my brief,
3 to affirm the Rhode Island Supreme Court decision.

4 Again, it is not function. You know, you are
5 saying that the form should follow what your function
6 is. That's not -- we don't function in that kind of a
7 situation.

8 QUESTION: Well, I'd always thought, having
9 spent three years in the Justice Department, that the
10 job of any government lawyer was to see that there were
11 the fewest conceivable restraints on government conduct,
12 that if there were restraints on government conduct, it
13 should come from governmental decision, not judicial
14 decision.

15 MR. HINES: That is not the position of the
16 Liquor Control Administrator, Your Honor, and has not
17 been.

18 QUESTION: I guess I would have made a poor
19 Rhode Island Liquor Control Administrator.

20 (General laughter.)

21 MR. HINES: I'm not so sure about that, Your
22 Honor.

23 Well, I would like now to get then to the
24 balancing test, and I did want to point out that because
25 of the quasi-criminal nature of the case, that I do

1 believe that the rule applies.

2 But the balancing test, as I pointed out to
3 Justice O'Connor -- I am not sure she agrees with me
4 necessarily, but is the next application that we must
5 undertake to determine if the costs and the benefits
6 warrant its application.

7 I have pointed out and I have made
8 particularly contrast to Lopez-Mendoza which I think
9 went to great lengths at presenting and weighing the
10 various factors that go into a situation of cost and
11 benefit, and as far as the benefit is concerned, the
12 significant benefit I have is we are faced with a
13 situation that is opposite of Janis that we have an
14 intrascovereign situation. The same police officer that
15 went upon the premises with the warrant is the same
16 police officer that would testify, and probably did
17 testify, with respect to the liquor control situation.

18 They both, the officer is interested in both
19 situations, and I maintain that under the case law, that
20 it is sufficiently derivative, the two actions of
21 criminal in the courts and of the administrative hearing
22 before the liquor board, that the rule should apply.
23 And I believe that this was determined to some degree in
24 Janis.

25 I would also like to point out that in

1 deterrence, one of the things that I have experienced in
2 doing the research on this was that deterrence generally
3 is used in a singular sense as against the offending
4 officer, as it were. On the other hand, when we are
5 looking at the costs, we look at them in a pluralistic
6 view as to the cost to society, and I would like to
7 maintain and submit to the Court that I am in agreement
8 with Mr. Justice Brennan when he stated in Leon that the
9 deterrence should be pluralistic in the sense that what
10 we are seeking in deterrence is institutional
11 compliance, and I think that sometimes in making the
12 weighing, balancing situation, the scales are somewhat
13 thrown out of function when we don't stop to look at the
14 institutional compliance that we are looking for, and we
15 focus rather on the singular activity of an officer.

16 And so that in determining the situation of
17 cost, I don't believe that, as was argued by my
18 opponent, that we can simply look at the sphere of
19 influence of the officer himself. I think we have to
20 look beyond that in a pluralistic sense, and I think
21 that would counteract the pluralistic viewpoint we take
22 when we determine what it will cost to implement the
23 rule.

24 QUESTION: Doesn't the -- considering the
25 point that Justice Rehnquist raised with you, I am

1 increasingly puzzled. Isn't it in the interest of the
2 state, which under the 21st Amendment is given broad
3 powers for the control of liquor, to facilitate
4 everything possible to keep the industry clean and
5 upright?

6 MR. HINES: The answer to that question is
7 yes, Your Honor.

8 QUESTION: And isn't that a lot easier if you
9 can march into a liquor establishment without a warrant
10 and see if they are complying with the law?

11 MR. HINES: That is correct, and there is such
12 a statute.

13 The only difficulty with that statute, Your
14 Honor, as I read it to you, its focus is basically upon
15 compliance with liquor matters and not with other
16 aspects of the law. But we do have that broad statute.

17 Now, I wanted to in my conclusion, Your Honor,
18 make reference to the fact that presently the
19 exclusionary rule is considered a judicially created
20 remedial device, and it is restricted to use where its
21 objections -- objectives, rather, are best served. And
22 despite this attitude, I think we also have to look at
23 it in the framework of Mr. Justice Black in his
24 concurring opinion in Plymouth Sedan where he also
25 states that we must be mindful on the principle that

1 constitutional provisions for the security of personal
2 property should be also liberally construed.

3 So although we have a situation where I can
4 understand the Court's feeling that we have a remedial
5 situation with the judicially created exclusionary rule,
6 but on the other hand, we must take into account the
7 fact that we do have a Fourth Amendment situation which
8 is fundamental, and much recognition should be given to
9 it as well.

10 And under those circumstances, a weigh -- even
11 with the balancing of the costs and benefits, as I have
12 outlined in my brief, I think the objective of deterring
13 Fourth Amendment violations requires the result of the
14 Rhode Island Supreme Court to be affirmed.

15 And I say this and would point out that the
16 Rhode Island Supreme Court also recognized, a Chief
17 Justice Burger pointed out to me, that under the 21st
18 Amendment there is a strong police power permitting very
19 vigorous regulation of liquor matters. That is working,
20 and it has worked despite the fact of the Fourth
21 Amendment and the exclusionary rule, and it has worked
22 because of the framework of decisional law that has
23 resulted from that 21st Amendment.

24 The Rhode Island Supreme Court noted that
25 because that point was brought up by my adversary now in

1 that case, and they recognized and pointed out, the
2 Rhode Island Supreme Court, that there were other
3 measures and alternatives which adequately served that
4 purpose, and more importantly, the interest in doing
5 that, regulating the liquor control, was not as
6 significant as giving recognition to Fourth Amendment
7 rights.

8 And I believe that the Rhode Island Supreme
9 Court properly applied the rule, properly entered a
10 weighing and balancing situation as to both cost and
11 benefit, and rendered a proper decision which I request
12 be affirmed.

13 Thank you.

14 CHIEF JUSTICE BURGER: Thank you, Counsel.

15 The case is submitted.

16 We will resume at 1:00 o'clock on the next
17 case.

18 (Whereupon, at 11:58 a.m., the case in the
19 above-entitled matter was submitted.)
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CERTIFICATION

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

#No. 83-963- BOARD OF LICENSE COMMISSIONERS, TOWN OF TIVERTON,

Petitioners, v. LOUIS H. PASTORE, JR. ETC., ET AL.

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

BY

Paul A. Richardson

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