

Minnesota v. Hershberger

Learner Outcomes

Students will:

1. Know the basis for freedom of religion.
2. Compare the protections offered by the Minnesota Constitution with those offered by the U.S. Constitution.
3. Understand that cases reflect real problems facing communities and that lawsuits are only one way of solving the problems.
4. Evaluate rights, responsibilities, actions, and consequences surrounding freedom of religion.

Materials needed: *Copies of* **CASE SUMMARY: *Minnesota v. Hershberger***
ANALYSIS CHART

Time needed: 2 class periods

Grade level: Grades 9-12

Procedure:

1. Ask students to define freedom of religion. Can the right to practice one's religion ever be limited? When? When it infringes on another's rights? Jeopardizes the public safety?
2. Have students consider what would happen if religious freedom was absolute, if government could not regulate it in any way? What if one's religion requires human sacrifice?
3. Explain to students that under both the Minnesota Constitution and under the U.S. Constitution, the government has the power to regulate rights, but that it can do so in a very limited way. The frequent attempts by government to regulate the practice of religion or to act in ways that establishes religion and the countering freedom of religion assertions made by individuals results in many freedom of religion cases.
4. Have students read the **CASE SUMMARY: *Minnesota v. Hershberger***, which is a 1990 freedom of religion case that clarified the Minnesota Constitution's freedom of religion protection. Discuss.
5. Explain to students that most cases are more complex than the facts that are considered by the court (court is limited to the legal questions) and that these complex facts include people making decisions to fulfill their responsibilities and/or assert their rights.

Procedure cont.

6. Have students analyze the *Hershberger* case by using the **ANALYSIS GRID**. Working in small groups, they should answer the questions and discuss the conflicting interests that exist in the community. Students may need assistance in stating the problem and identifying the rights and responsibilities asked for in Question 1. At the conclusion of their analysis, have them select the best solution to the problem. (For your assistance, a **KEY** for the grid has been provided.)
7. Compare grids and preferred solutions. Analyze solutions for constitutional problems.

CASE SUMMARY: *Minnesota v. Hershberger*

462 N.W.2d 393 (1990)

Amish families from Ohio began to arrive in Fillmore County in southeastern Minnesota in 1973. As a religious community, they live a simple lifestyle, traveling by horse and buggy. Initially, there were few problems with the Minnesota law that requires slow-moving vehicles, including Amish buggies and wagons, to display an orange slowmoving vehicle sign. Younger Amish, conscious of their position as newcomers and anxious to fit into their new community, tended to use the familiar orange triangle. Some Amish preferred a black triangle with a white outline. Older, more conservative Amish, did not use any sign. They believed the bright colors of the sign and the symbol itself would put their faith in “worldly symbols” rather than in God. Instead, they outlined their buggies with reflective tape. If stopped and tagged for violating the law, the Amish drivers usually pleaded not guilty. Routinely, they were found guilty, and they paid the assessed fines.

There were sporadic conflicts over the sign law. Some non-Amish people in the area pointed to public safety concerns and occasional accidents involving slow moving vehicles as reasons why the Amish drivers should display the orange sign. At the same time, the non-Amish community recognized that the Amish community was responsible for a significant increase in tourism in the area. Many feared that enforcing the sign law too rigidly would make the Amish move away. This would result in a financial loss for the entire area.

In 1986, a new Minnesota law was passed that permitted the use of a black triangle with a white outline. The Minnesota Highway Patrol supported the law, feeling strongly that, regardless of color, there must be a sign. Many Amish began to comply. Others continued to refuse to comply and continued to outline their vehicles with reflective tape.

In 1987, the law was changed again to require that the orange triangle always be carried in the slow-moving vehicle and used at night or in conditions of poor visibility. The conflict grew. Many Amish refused to carry the orange triangle. Amish buggy and wagon drivers began to be ticketed, fined, and/or sentenced to community service or jail time for violating the law. Initial fines were in the \$20-\$22 range, and first jail sentences were often for 7 days. Sentences were often stayed if there were no additional violations within six months. Soon, however, repeat offenders began to appear back in court within the six month period. They refused to pay the fines and were required to serve time in jail.

As repeat offenders began appearing in court, judges were less willing to accept religious freedom as a defense. Until the fall of 1988, the Amish did not hire attorneys to

CASE SUMMARY: *Minnesota v. Hershberger* cont.

represent them. Instead, they usually accepted the guilty verdict of the court, but continued to break the law. As Amish men began to be sentenced to community service and jail time for refusal to pay the fines, newspapers and other media began covering the issue.

Articles and reports described how other states had handled the same problem. For example, Ohio and Kentucky allowed the use of reflective tape. Pennsylvania required an orange reflective sign with flashing red lights on the back of the vehicle and flashing orange lights on the front. A Michigan court ruled that the Amish did not have to display the sign, citing the willingness of the Amish to outline with reflective tape. It appeared that Minnesota was the only state actively prosecuting Amish drivers for non-compliance.

In December 1988, Mr Hershberger and thirteen others appeared before a Fillmore County judge for violation of the sign law. They asked the court to dismiss the traffic citations explaining their refusal to display the sign was based on their sincere religious beliefs and that the sign law punished them for their beliefs through fines and jail time. They wanted to practice their religion without interference from the government as guaranteed by the First Amendment. They believed that the law should allow an alternative that would not violate their religion. The alternative suggested was the use of silver reflecting tape.

The opposition said free exercise of religion was not an absolute right. It was also suggested that significant disagreement within the Amish community regarding compliance with the law weakened the Amish's religious grounds argument. The opposition declared that highway safety was the higher concern. It was also pointed out that the Amish did use bright colors such as red for barns and orange for hunting clothes. This was an attempt to discount Amish opposition to the color of the orange sign. Amish opposition to the orange triangular sign was not considered sincere or united enough to warrant freedom from the state law.

A case often cited during the conflict was *Wisconsin v. Yoder* (1972), in which the U.S. Supreme Court ruled that Amish parents do not have to formally educate their children beyond the 8th grade and that to force them to do so endangers free exercise of religion. The decision was based on the requirement that the government must prove that where laws conflict with religious beliefs, the government has a compelling interest in the goals of the law and that no less restrictive alternative exists.

The Fillmore County district judge refused to dismiss the citations, but did ask the Minnesota Court of Appeals to consider the constitutional questions, which were then forwarded to the Minnesota Supreme Court. The Minnesota Supreme Court found that the law violated the Free Exercise Clause of the U.S. Constitution. As a result, the trial

CASE SUMMARY: *Minnesota v. Hershberger* cont.

court's decision to refuse to dismiss the charges was set aside and all charges against the Amish were dismissed.

The State appealed to the U.S. Supreme Court. The U.S. Supreme Court agreed to consider the case. At the same time, the court was considering a free exercise of religion case arising out of religious use of peyote. In this case, *Employment Division, Department of Human Resources of Oregon v. Smith* (1990), the Supreme Court significantly changed First Amendment free exercise analysis. The court held that a law of general application, which does not intend to regulate religious belief or conduct, is not invalid because the law incidentally infringes on religious practices. This holding apparently does away with the traditional compelling state interest and least restrictive alternative test for laws burdening the exercise of religion.

The U.S. Supreme Court remanded (sent back) the *Hershberger* case to the Minnesota Supreme Court for reconsideration, applying the new standards decided under *Smith*. In addition to the *Smith* decision interpreting the U.S. Supreme Court, the Minnesota Court also had to consider the protections offered by Article 1, Section 16 of the Minnesota Constitution, which says:

Freedom of conscience; no preference to be given to any religious establishment or mode of worship. The enumeration of rights in this constitution shall not deny or impair others retained by and inherent in the people. The right of every man to worship God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

In comparing the language of the Minnesota Constitution with the language of the First Amendment to the U.S. Constitution which says "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise of . . .," the Court said "This language [the Minnesota Constitution] is of a distinctively stronger

CASE SUMMARY: *Minnesota v. Hershberger* cont.

character than the federal counterpart." Accordingly, government actions that may not constitute an outright prohibition on religious practices (thus not violating the First Amendment) could nonetheless infringe on or interfere with those practices, violating the Minnesota Constitution. The state Bill of Rights expressly grants affirmative rights in the area of religious worship while the corresponding federal provision simply attempts to restrain governmental action."

The Minnesota Supreme Court, in interpreting the protections of the Minnesota Constitution, chose to use the standards that had been used by the U.S. Supreme Court prior to *Smith*: that the state must demonstrate **(1)** a compelling state interest in the goal of the law and **(2)** that there is no less restrictive alternative to the action required or prohibited by the law.

"Only the government's interest in peace or safety or against acts of licentiousness will excuse an imposition on religious freedom under the Minnesota Constitution. . . Rather than a blanket denial of a religious exemption whenever public safety is involved, only religious practices found to be inconsistent with public safety are denied an exemption. By juxtaposing individual rights of conscience with the interest of the state in public safety, this provision invites the court to balance competing values in a manner that the compelling state interest test . . . articulates: once a claimant has demonstrated a sincere religious belief intended to be protected by Section 16, the state should be required to demonstrate that public safety cannot be achieved by proposed alternative means."

The Court ruled that the state failed to demonstrate that the alternative signs did not protect public safety, and therefore the application of the Minnesota law to the Amish defendants violated their freedom of conscience rights protected by the Minnesota Constitution.

Adapted from material collected and written by : Lynn Gresser, Teacher, Jackson Junior High School, Anoka, MN

ANALYSIS CHART

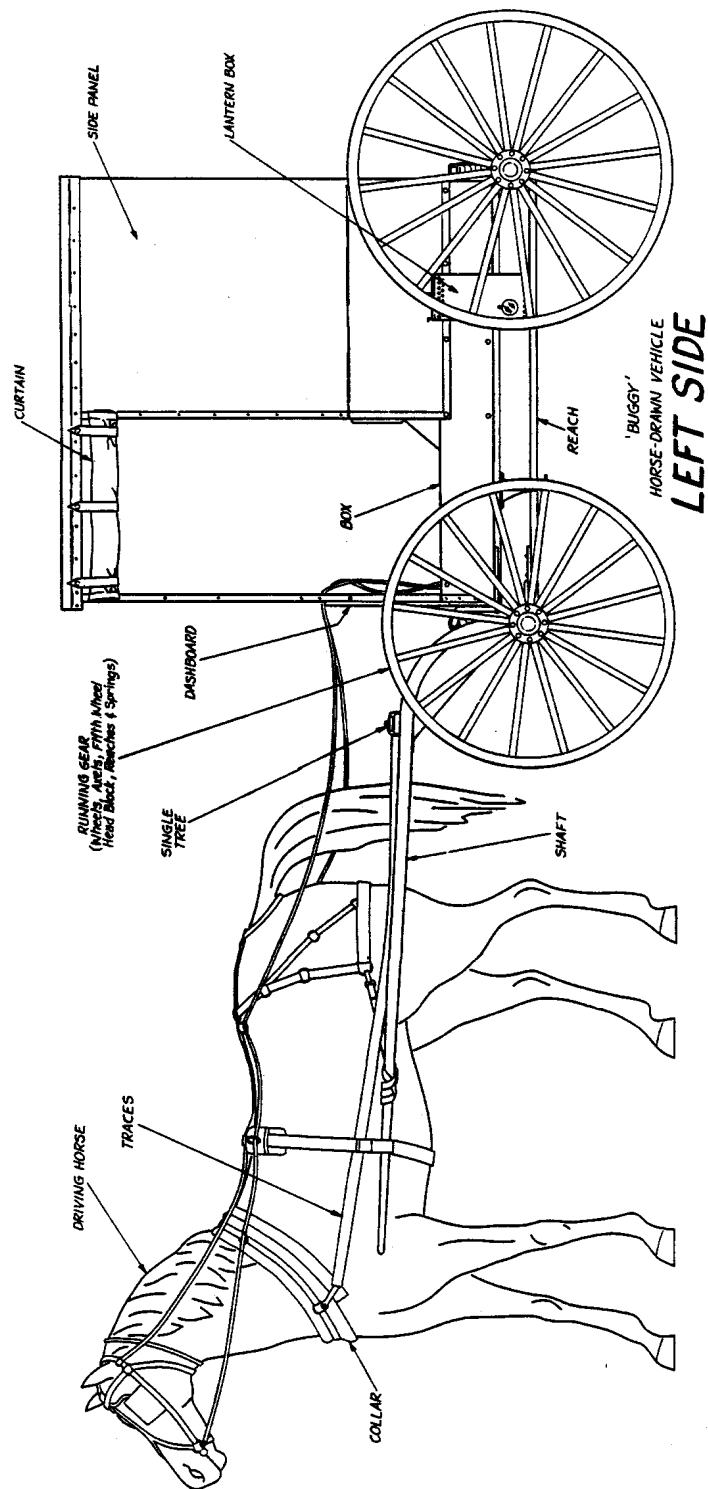
	<i>Minnesota</i>		<i>Hershberger</i>	
1. What rights, responsibilities are involved in this case?				
2. What are the sources of these rights, responsibilities?				
3. a. What happens if you ignore these rights, responsibilities?				
b. What happens if you enforce these rights, responsibilities?				
4. What is the importance of each?				
5. a. What other problems have arisen? b. Who is impacted negatively?				
6. What alternative solutions are there?				
7. What is the best solution?				

Adapted from "intellectual tools" chart, *Responsibility, Level V*, Center for Civic Education/Law in a Free Society, Calabasas, CA.

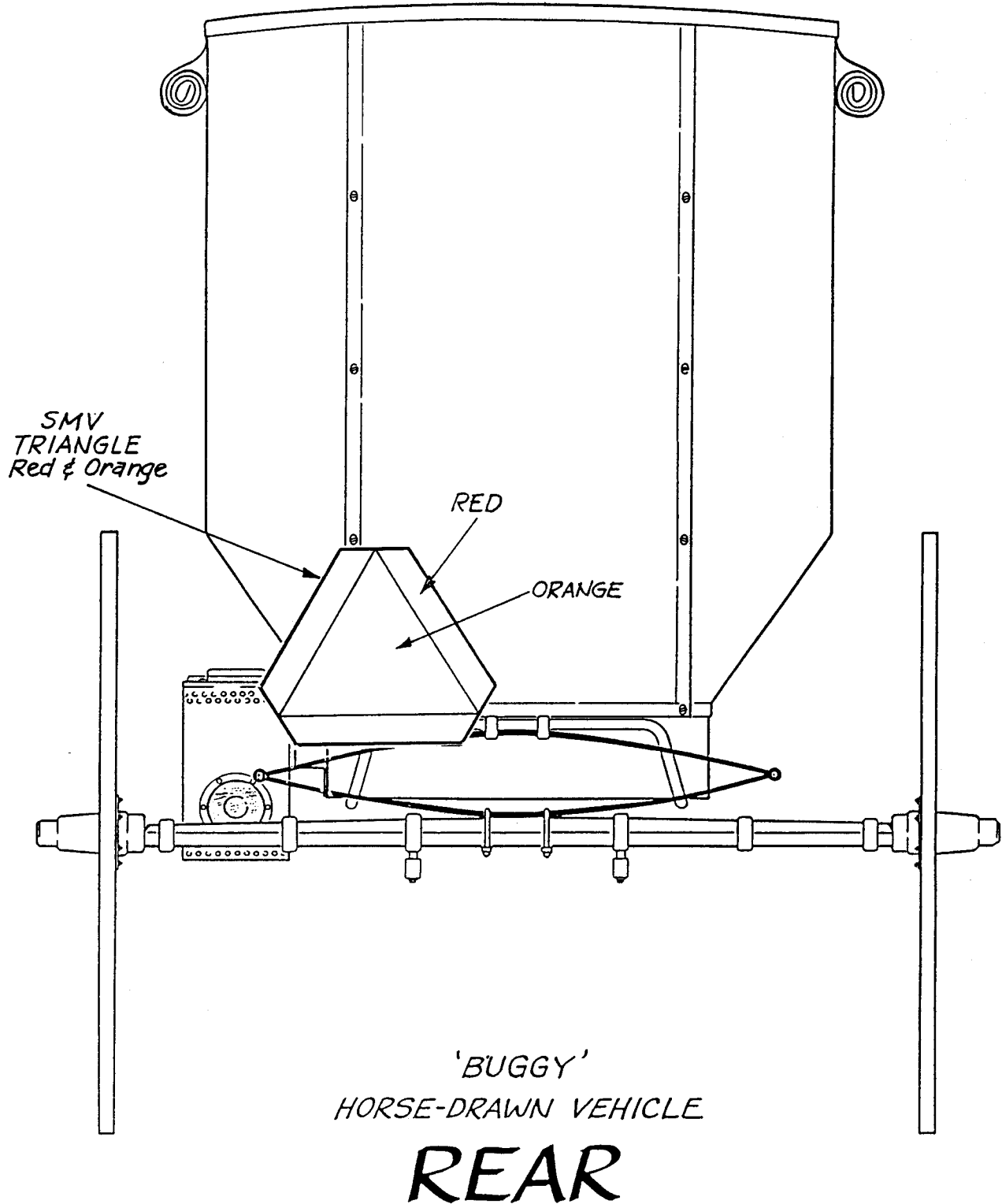
KEY: ANALYSIS CHART

	<i>Minnesota</i>		<i>Hershberger</i>	
1. What rights, responsibilities are involved in this case?	Enforcement of slow-moving vehicle sign law	Upholding First Amendment right to religious freedom	Uphold beliefs of Amish Religion	Obey laws of the state
2. What are the sources of these rights, responsibilities?	State law	Constitution, State and Federal	Doctrines of the Amish religion	State law
3. a. What happens if you ignore these rights, responsibilities?	- more accidents - community conflict - loss of job (patrol officer) - chaos	- infringement of First Amendment right - loss of guaranteed protection - inability by some to fully practice their faith	- "punishment" by Amish community - knowledge of failure to uphold belief - conflict within Amish community	- tickets, fines - jail - litigation - publicity - community conflict between Amish and non-Amish - accidents
b. What happens if you enforce these rights, responsibilities?	- fewer accidents - litigation - infringement of First Amendment right - community conflict - loss of religious freedom	- exceptions - treating people differently - community conflict over exceptions	- respected member of Amish community - self-satisfaction in being true to your faith - accidents - community conflict between Amish and non-Amish - litigation - you must assert your right	- failure to uphold Amish belief - fewer accidents - conflict in Amish community
4. What is the importance of each?	- safety for all - uniformity of signs	- guaranteed right	-the Amish religion is his way of life	- important but religious conviction overrides duty to obey state law
5. a. What other problems have arisen? b. Who is impacted negatively?	- the conflict between the people in the community has potential economic consequences - everyone			
6. What alternative solutions are there?	- reflective tape - stay off state roads			
7. What is the best solution?				

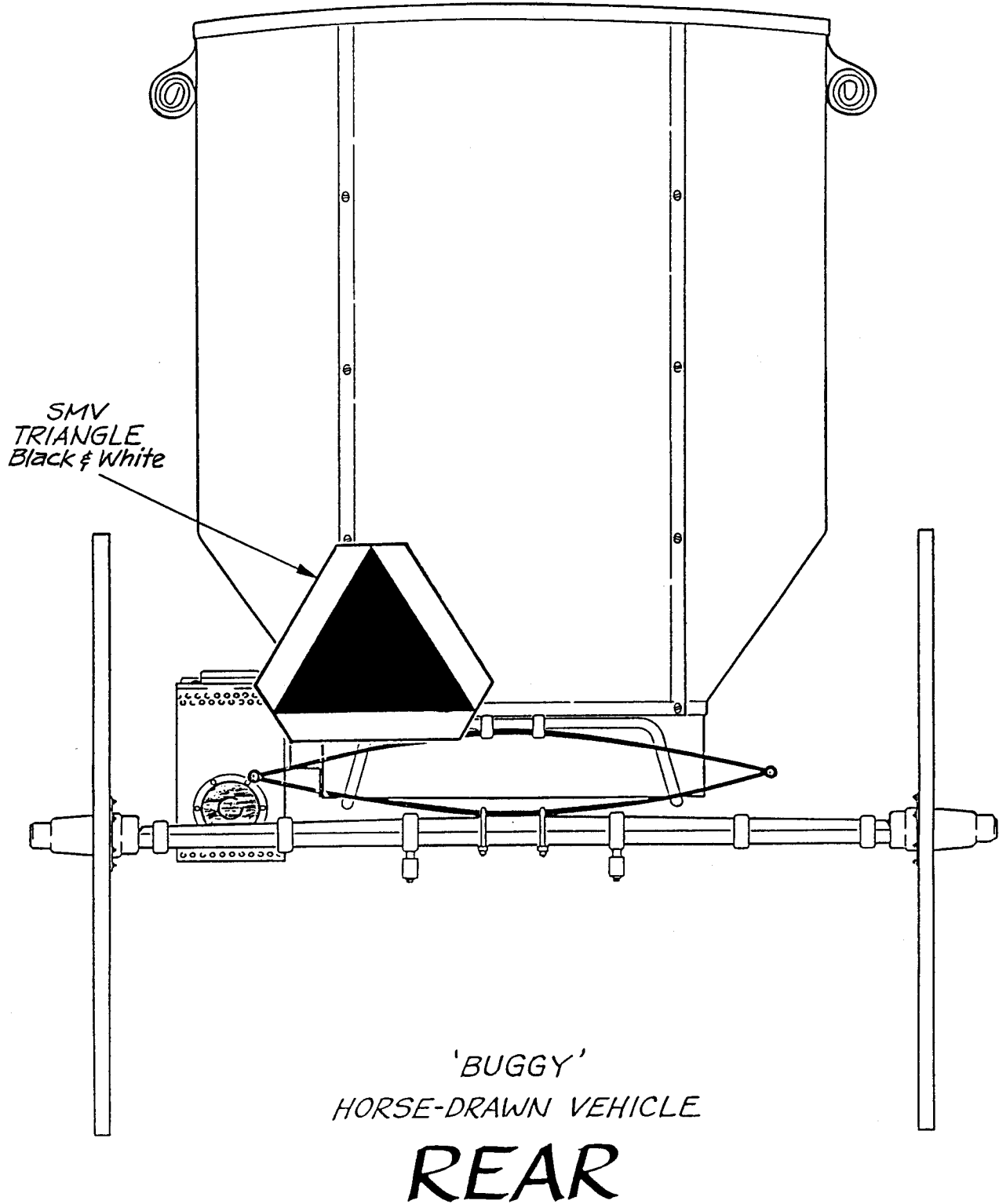
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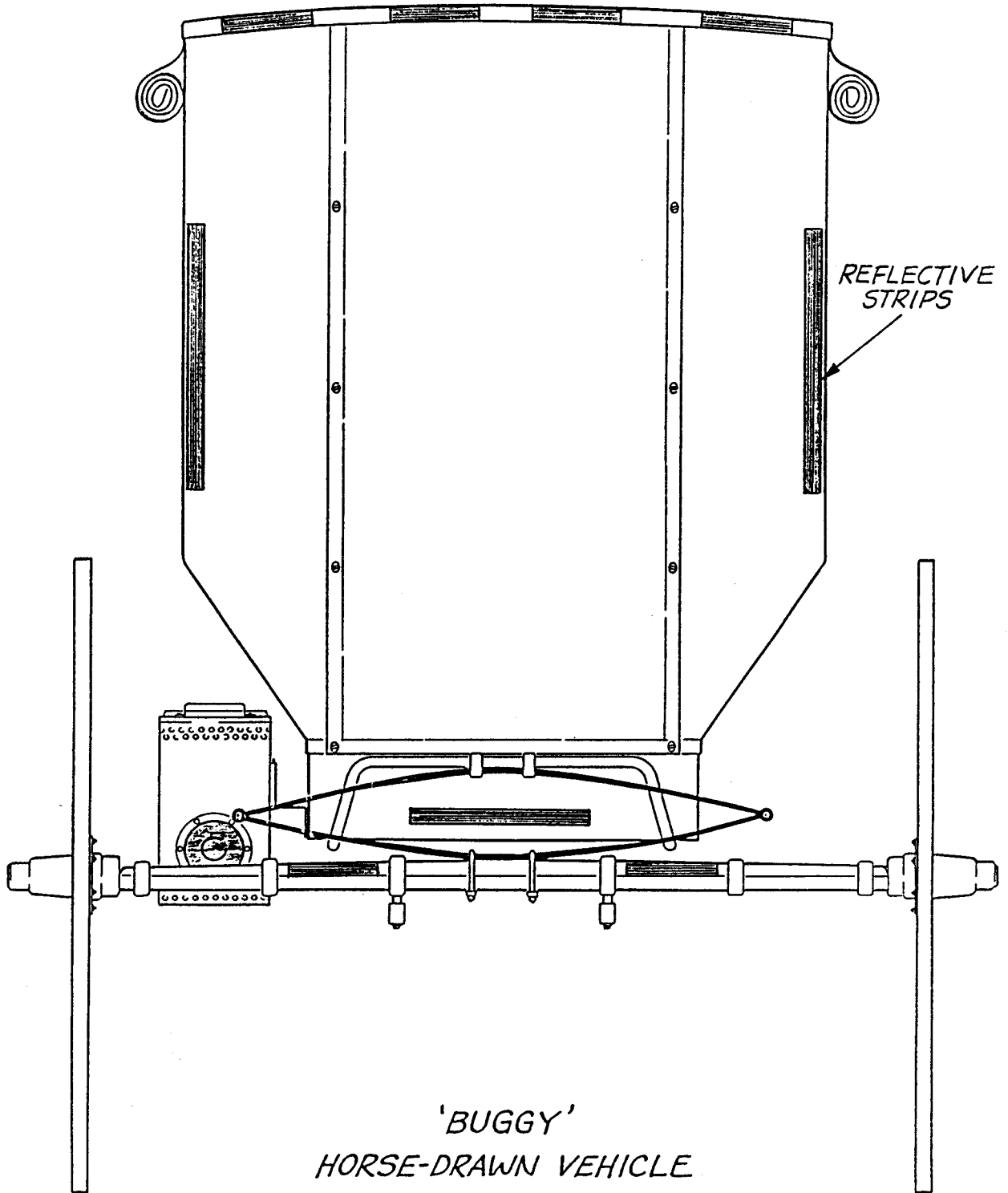
Exhibits from the trial: *State of Minnesota v. Eli A. Hershberger*



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'BUGGY'
HORSE-DRAWN VEHICLE
REAR

Exhibits from the trial: *State of Minnesota v. Eli A. Hershberger*