

In the

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Supreme Court of the United States

UNITED STATES OF AMERICA,)

Petitioner,)

v.)

PASCUAL GUANA-SANCHEZ)

No. 73-820

Washington, D. C.
January 14, 1975

Pages 1 thru 57

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PASCUAL GUANA-SANCHEZ :
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Washington, D. C.

Tuesday, January 14, 1975

The above-entitled matter came on for argument
at 10:11 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

PAUL L. FRIEDMAN, Office of the Solicitor General,
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For the Petitioner

JOSEPH BEELER, ESQ., 750 N.E. 61st Street, Miami,
Florida 33137
For the Respondent

C O N T E N T SORAL ARGUMENT OF:PAGE:

PAUL L. FRIEDMAN, ESQ.,
For Petitioner

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JOSEPH BEELER, ESQ.,
For Respondent

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REBUTTAL ARGUMENT OF:

PAUL L. FRIEDMAN, ESQ.

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments first this morning in No. 73-820, United States against Guana-Sanchez.

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

ORAL ARGUMENT OF PAUL L. FRIEDMAN, ESQ.,

ON BEHALF OF PETITIONER

MR. FRIEDMAN: Mr. Chief Justice and may it Please the Court:

This case is here on a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

Respondent was charged in a one-count indictment filed in the United States District Court for the Northern District of Illinois with having knowingly and unlawfully transported three aliens within the United States in violation of Title 8 United States Code Section 1324(a)(2).

He filed a pretrial motion to suppress evidence, alleging that he and his three passengers had been illegally arrested while in his car and that the government's evidence depended upon the testimony of the passengers, which he said was the fruit of the illegal arrests.

The District Court granted the motion to suppress the statements made by the passengers and their future testimony at Respondent's trial.

The government appealed the decision and the Court of Appeals affirmed the District Court with one judge dissenting.

QUESTION: These prejudiced statements made, when and where were they made? You are going to get to that, I guess.

MR. FRIEDMAN: Yes, I am going to go through the facts in some detail because I think it is very important to the resolution of the case.

The issue on which we petitioned is whether a defendant has standing to suppress statements in future testimony of witnesses on the ground that they were unlawfully arrested while passengers in his automobile.

The statements, I might say, took place later when they got down to the police station but the fact of the suppression hearing, briefly, show the following -- I might add that they came solely from a police officer, he being the only witness at the suppression hearing.

He testified that he, Officer Pat Vincent Tenuto, was a police officer in the village of Villa Park, Illinois, some 17 miles west of Chicago, that that was a small village of 25 or 30,000 people, about half residential and half industrial and that the industry consisted of small factories and businesses.

He also testified that the factories, some of them,

often looked for cheap labor and he related three experiences of his own when he was involved in helping to check out some individuals who turned out to be illegal entrants from Mexico who had apparently come to the area to work in the factories.

In each case those people had no identifications, spoke no English and they arrived in the area either by car or bus or truck.

Now, on this particular night, he and his partner, at about 2:30 in the morning, did not stop a vehicle. They saw a vehicle already stopped, pulled over to the side of the road in a vacant lot at an intersection about 15 or 20 miles [sic] off the road.

The lights of the car -- the headlights were on. The interior dome light was on.

The officers went over to see if they could be of assistance, to see if these people were lost. It appeared to them that the driver was looking at a piece of paper which may have been a map and, indeed, when they drove over to the car, they saw Respondent sitting behind the steering wheel on the driver's side looking at an Illinois road map.

Three other people were in the car, one beside the driver on the front seat, two in the back seat.

On the floor of the car were three shopping bags containing what appeared to be items of clothing. The

officers, before talking to the Respondent and his passengers, radioed in their location to headquarters and radioed in the license tag number of the car.

Officer Hall went over to the driver's side, Officer Tenudo to the passenger's side. Officer Hall asked the Respondent if they could be of any help, what the problem was. Respondent said that they were looking for a restaurant owned by a friend but he didn't know the name of the restaurant. If they couldn't find that restaurant, they were looking for another restaurant, which he did name.

One of the officers radioed in to some of the neighboring towns and from those towns found out, at least, that the restaurants in the area closed by midnight or 1:00 o'clock, although not necessarily all the restaurants closed by midnight or 1:00 o'clock.

At this point, Officer Hall asked Respondent for some identification. He showed the officer what appeared to be an apparently valid Illinois driver's license.

Now, either at about that same time or later when they got back to the station, although we don't think it is particularly important which, the radio dispatcher informed the officers that they had checked out the license tag number. The car belonged to the same individual whose name appeared on the license. The car was not stolen. It was not wanted in connection with any particular crime.

The officer, after checking the driver's license, asked the passengers for identification. They shrugged their shoulders as if they didn't understand the question.

The officer repeated the question. He got the same response. He then asked the driver --

QUESTION: What was the question?

MR. FRIEDMAN: The question to the passengers was, "Do you have any identification?" And the passengers indicated by gesture that they didn't understand.

He then, the officer, asked Respondent whether he spoke Spanish.

QUESTION: The Respondent was the driver.

MR. FRIEDMAN: The Respondent was the driver.

The other three passengers in his car; he asked him if he spoke Spanish and if he would ask the passengers for identification.

The Respondent said something to the three passengers in a language the officers did not understand. They assumed it to be Spanish.

In response to the Respondent's inquiry, two people in the back shook their heads back and forth as if to indicate no, they had no identification, assuming that was the question asked by the driver.

The gentleman in the front seat handed the officers a little card written in a foreign language which appeared to

be Spanish. The officers couldn't read it except to make out three words, "Army," "Military" and "Mexico." They assumed that that -- they concluded that that meant it was an army identification card from Mexico.

They called their Sergeant. The Sergeant arrived a few minutes later, through Respondent asked the two passengers in the back seat, the two without identification, to get out of the car and to come to the police station.

They placed them in a police vehicle to transport them to the station.

At that point, Officer Hall asked Respondent if he wouldn't mind coming to the station while a check was done on the two persons without identification. Respondent answered "Fine. I will come with you." And, along with the passenger who had shown identification, he followed the officers to the station in his own car.

At no time prior to the trip to the station did any police officer enter the car or search the car and when they got to the station, the Sergeant asked the three passengers, again through Respondent, if they would write down on a piece of paper their names and their ages.

He then called the local office of the Immigration and Naturalization Service to run a name check on these three people and Chief Parton of that Service asked to speak with the three passengers.

He spoke with each of them in Spanish, or what sounded to the officers to be Spanish, and after speaking with them, told the Sergeant to hold up all four men until morning because the three men had admitted that they were in the country illegally.

Now, just to round out the picture of what happened at the hearing, in response to some hypothetical questions from Court and Counsel, the officer testified that if Respondent had driven off without asking permission, after having shown his driver's license, but with the unidentified persons still in the car, he would have been stopped.

He also testified, however, that if he had refused to come to the station when asked, Respondent would have been free to leave, his license having been checked out and there being no further reason to detain him. The --

QUESTION: That is, free to leave alone.

MR. FRIEDMAN: Free to leave alone, not with his passengers. At least, that is certainly the implication of the officer's answer.

QUESTION: Yes.

MR. FRIEDMAN: And our -- the inference we draw from those two inquiries' answers is that he would have been detained had he tried to leave with the passengers because they hadn't been checked out but he would have been free to

leave alone.

Now, the District Court granted the motion to suppress. He found that the license check was reasonable but anything thereafter was unreasonable, no justification to detain them further, and to interrogate the passengers.

He found that the interrogation constituted a search of the car, even though the passengers were in plain view and solely for the purposes of challenging that finding and that some illegality flowed from it, we assumed arguendo in the Court of Appeals that it was a search but that the whole incident at the car was lawful.

And he also said that the arrests of Respondent and his passengers were unlawful and that everything that flowed were fruits and should be suppressed.

Now the Court of Appeals affirmed.

What it did, and we think it is important for analysis, is it said there were three steps in the facts as they developed. The first step was the license check and that was perfectly reasonable and justified.

The second step was the period beginning --

QUESTION: That is the check of the driver's license --

MR. FRIEDMAN: Of the driver's license.

QUESTION: -- of the Respondent alone.

MR. FRIEDMAN: The Respondent's license alone.

The second step, according to the Court of Appeals, began when the driver was given his license back and everything else that happened at the car, the interrogation of the passengers, was the second step, said the Court of Appeals.

And the third step was the period beginning with the trip to the police station.

Now, the problem as the case comes here, we think, is that while the Court said the first step was reasonable and the third step wasn't, it didn't talk about the second step. It moved immediately to the third step and said that that was an unlawful arrest, taking them to the station, that Respondent was unlawfully arrested and that everything that flowed was fruits of that.

Now, the dissenting judge, also addressing himself to that, first said that he thought everything was reasonable but then went on to say, if we are talking about the Respondent's arrest, Respondent has got no standing because nothing flowed from that and, secondly, that even assuming some illegality, live witness testimony should be treated differently for purposes of the exclusionary rule from inanimate objects.

QUESTION: Now, you speak of the Respondent's arrest. It is your position the Respondent was not arrested, isn't it?

MR. FRIEDMAN: It is our position that -- we are talking about when they left the car.

QUESTION: Yes.

MR. FRIEDMAN: It is our position that Respondent was not arrested but that even if he was, there were no fruits of his arrest. The only fruits in this case come from the arrests, if they were arrests and we are not sure that they were arrests either, frankly. We think it may have been a reasonable detention in the circumstances or that it may have been an arrest on probable cause. But in any event, anything that flowed, the statements and the future testimony of the witnesses, flowed from the arrests of the passengers, not the arrest of Respondent.

And that is essentially the only question on which we petition the Court and the only question that we think it is necessary to decide because any illegality in that second step which Respondent talks about in his brief was not directly addressed by the Court of Appeals.

We think it might be appropriate to let that court address it first, although we also think it is inferable from the Court's opinion that everything in that second step was also reasonable because it said the only illegality that held that the only thing that was illegal were the arrests, taking them down to the station.

QUESTION: Let me see if I have the facts clear now.

Only the two passengers from the rear seat of the car who did not have identification were asked to -- were taken in a police car to the station.

MR. FRIEDMAN: That is correct.

QUESTION: And the man who had -- the passenger who had identification and the driver followed in their car.

MR. FRIEDMAN: That is correct.

QUESTION: Was a police officer placed in their car?

MR. FRIEDMAN: No, he was not.

Well, essentially, as I said, there are no fruits of Respondent's arrest, if we deal solely with that third step in the facts.

No statements were made by Respondent. No evidence came from Respondent. Nothing was seized from Respondent.

And I think the Court of Appeals made its mistake in isolating what were four separate human beings in looking at what happened to each of those separate human beings.

QUESTION: Well, aren't you assuming something, though, that the officers had the right to hold the Respondent after he had identified himself?

MR. FRIEDMAN: Well --

QUESTION: And showed that he had his proper papers. Let's assume that he had been alone in the car and they came and asked him to identify himself. They would let

him go right away.

MR. FRIEDMAN: They would let him go right away.

QUESTION: So that you are assuming that when you stop -- if the officer was entitled to go over and ask somebody driving a car to identify himself and show his license, you are assuming that they also have the right to have the passengers identify themselves.

MR. FRIEDMAN: We are assuming that it is reasonable to ask the passengers in the car to identify themselves.

QUESTION: Yes. Well, let's assume that it is not. Assume that it was not proper to do that. Then you have held the driver of the car beyond the time when you are -- beyond the time that you should be able to hold him, in which event, arguably, you have a fruit of an illegality with respect to him if you go ahead and interrogate the passengers.

MR. FRIEDMAN: Well, we would not concede he was being held at all. There is nothing to say that he couldn't have left at that point.

QUESTION: Well, you have already said you wouldn't let him go.

MR. FRIEDMAN: No, what the officer said, in his testimony is that he wouldn't be permitted to leave so long as the passengers were still with him.

QUESTION: Exactly. Exactly.

MR. FRIEDMAN: But if the passengers had been

separated --

QUESTION: Let's assume, though -- no, let's -- let's just assume. I am not saying this is so. Assume you had no business with the passengers and that you do with and to the passengers is illegal.

Let's just assume that.

And that you have no business holding the driver in order to interrogate or to get the passengers out of his car.

Now, just assume that.

MR. FRIEDMAN: Well, I think it is difficult to assume that you have no business holding him for the brief time it would take to get them out of his car.

I think that what could easily happen is -- is the officers saying, "We have business with the passengers."

You have got no interest in those passengers. They are other human beings. They are not briefcases. They are not papers.

QUESTION: Well, he is supposed to be able to drive away as soon as he identifies himself and you said, "No, just hold on a minute. We are going to do something else here. With your -- with something in your car. It may be bodies, but we are going to get something out of your car."

MR. FRIEDMAN: Well, if four people are walking

down the street and there is reason to arrest three of them, you can take those three people and separate them from the other individuals.

Now, it doesn't seem to us any different if four people happen to be in a car. Does it mean that if there is reason to arrest three of them, you have to arrest all four of them just because they happen --

QUESTION: Of course, you don't even get to this question if you have some right -- if you have some proper business with the passengers.

MR. FRIEDMAN: Well --

QUESTION: And that you may hold the driver while you complete your business with the passengers.

Now, what authority do you have for that?

MR. FRIEDMAN: Well, we think that the right to go up to some individuals, whether they be on the street or in an automobile and ask them some questions -- there is a footnote in Terry versus Ohio. I don't think you need reasonable suspicion to do that.

QUESTION: Sure.

MR. FRIEDMAN: That is your concurring opinion in Terry versus Ohio.

QUESTION: What -- now, you are dealing with an automobile and you are holding one person while you complete your business with another.

Now, give me some authority for that.

MR. FRIEDMAN: There is a case in the -- there are a number of auto stop cases, of course, but --

QUESTION: It seems to me a rather fundamental point in this case.

MR. FRIEDMAN: Well, we don't think that that point is in this case. We think that since the Court of Appeals only dealt with the arrests --

QUESTION: Otherwise, it seems -- assuming that you are dealing with the passengers -- it is illegal, it seems to me, whatever -- whatever developed from the passengers is, arguably at least, a fruit of detaining the driver.

MR. FRIEDMAN: Well, we think that the Court of Appeals did not deal with anything that happened in that car and say it was illegal.

Now, of course, this Court could do so if it wanted to. What it talked about was the arrest and what flowed from the arrests.

We say nothing flowed from the arrests.

Now, if we go back to step two, at the car, what flowed, flowed from the interrogation of the passengers.

QUESTION: Let me ask you something else. Suppose that after you -- when you got the passengers out of the car, you saw a briefcase in the back of the car and you reached -- and the officers reached in and got the briefcase

and it belonged to one of the passengers and they opened it right then and there and it incriminated the driver?

MR. FRIEDMAN: Then, we think it is certainly arguable that he has got standing to complain.

QUESTION: I would think he would. Yes, I would think he would because he is -- because they had invaded his car and, in effect, seized something out of his car which is a protected area.

MR. FRIEDMAN: All right, the car is a protected area and --

QUESTION: Isn't that illustrated clearly in this case because when they got to the police station, they found a revolver in the glove compartment of the car, presumably belonging to the driver, but the government never sought to use that as evidence so far as this case is concerned.

Is that not correct?

MR. FRIEDMAN: That is correct. And so far as we know, he was never charged with that.

QUESTION: And it can be reasonably assumed, can't it, that someone concluded that that pistol fit precisely into what Mr. Justice White has just postulated, namely, they had come into the possession of that pistol by invading the privacy of the driver's car?

QUESTION: Well, let's assume -- assume police break into a man's house illegally without a warrant but

knowing that a henchman of his is there and they arrest the henchman. They take him out of the house. They entered the house illegally. They take him down to the station. He incriminates the owner of the house.

Now, can you use his statements?

MR. FRIEDMAN: I am not sure that the answer to that is clear because I think you then get to this whole question --

QUESTION: Well, it seems to me you have to say that they can use it because they seized these passengers out of this man's car here.

MR. FRIEDMAN: Oh, I don't think they seized them out of the car. They didn't go into the car as they go into the house in your example.

They asked people to get out of the car. They have a right to arrest people whether they be on the street or in the car if there is probable cause.

They have a right to interrogate people whether they be on the street or in the car, if there is reasonable suspicion or, in the case of a license check, maybe even if there is not reason for suspicion.

QUESTION: Nobody has suggested that you have got probable cause to have arrested those people or to take them -- to arrest them on the spot at all.

MR. FRIEDMAN: Well, I am perfectly willing to

suggest that, although I don't think it is important in this case.

I think that everything the police did, step by step, was reasonable on the facts of this case.

QUESTION: Mr. Friedman, how long was this period of time?

MR. FRIEDMAN: They stopped the car at 2:30 a.m. And all these times were accurate because they are recorded in the radio log. They were down to the police station by 2:47 a.m. So it is 17 minutes for the entire process to find out that they were illegally in the country.

But the only --

QUESTION: This was 17 minutes? He called the superior officer and it was only 17 minutes?

MR. FRIEDMAN: That is correct. At 2:33 -- 2:30 they saw the car, 2:33 they drove to where the car was parked. At 2:37 the sergeant was on the scene already and at 2:47 they were at the police station -- 2:46, 16 minutes.

Now, the radio log, which was put in evidence, I believe, by the Defendant at the hearing, corroborates all of those times, the very short period of time that we are talking about.

QUESTION: 17 minutes.

MR. FRIEDMAN: It is a small town and it is not that far from the police station, apparently.

QUESTION: You got more than one building in the town?

MR. FRIEDMAN: Well ---

QUESTION: That is the Respondent's evidence, isn't it?

MR. FRIEDMAN: The radio log, yes. Yes, so that's --

QUESTION: The radio log is the Respondent's? Who kept the radio log?

MR. FRIEDMAN: Well, the police kept it, to my recollection.

I'm sorry. I am advised that I am wrong.

QUESTION: You said the Respondent put it into evidence. Is that not correct?

MR. FRIEDMAN: I am told that that is not correct. I think where I got confused was, we have had some disagreements during the litigation about what the log said about when the radio report came back but, all right, the government put it in.

QUESTION: I am still, in my own mind, confused about the right to question these people.

The man in the front seat showed identification for Mexico and yet that was satisfactory.

MR. FRIEDMAN: Well, I would say, you know, it is not entirely clear that it is satisfactory.

QUESTION: Well, they turned him loose.

MR. FRIEDMAN: But -- well, in fact, I would have to say that the record is unclear whether they would have turned him loose.

QUESTION: Well, didn't --

MR. FRIEDMAN: They would have turned the driver loose. They asked the driver to follow them. They asked the man to follow along with the driver. They didn't take him into a police vehicle. I don't think that the evidence makes clear what they would have done if the man with the Mexican i.d. card wanted to leave but their purpose, they say -- and it is uncontradicted -- was to check out the other two people in the back who had no identification, at least to the same extent that they checked out the man in the front seat and they to take him down to the station to do it. Now --

QUESTION: Well, when they checked, did they put all three names in, or two?

MR. FRIEDMAN: When they checked with Immigration Naturalization, they gave them all three names and they had all three --

QUESTION: So he was in custody, wasn't he?

MR. FRIEDMAN: I think that it is arguable that all three of them were in custody.

Now, the question is, were they lawfully in custody or not, if you want to get to that point and if it

was reasonable to do the license check and if it was reasonable to ask the passengers for identification, then, given the fact that they spoke no English, given the fact that they were Mexican-appearing, given the fact that there were these bags of clothing in the car, given the fact it was 2:30 in the morning in an exclusively industrial area and given the officers prior experience in similar situations, we think step-by-step it was reasonable. The intrusions were minimal into these peoples' privacy and they were checking out identification, asking for a name and address, at least a plurality of the Court once said in, I think, Beyers versus California, asking for a name and address is essentially a neutral act.

There are other cases. I mention Miranda in the concurring opinion and the footnote in Terry or Miranda itself and Terry in a concurring opinion, asking questions of people on the street, to get identification -- Adams versus Williams -- is a reasonable act.

Now, how and what the quantum of -- of facts one has to have as a police officer to ask those questions is a sliding scale and if you look at this thing step-by-step, we think everything that they did was reasonable.

QUESTION: Well, you said at the outset that the issue in this case is a narrow one, namely, the standing of the driver to claim the benefit of some violations of the

passengers' rights. You haven't spent much time on that.

MR. FRIEDMAN: Well, we still think it is that narrow issue. If you focus on step 3 we think it is pretty clear that the arrests of the four individuals -- assuming they were arrested -- or the detention should be viewed separately and everything that flowed, flowed from the "arrests," putting it in quotes for now, of the -- of the passengers, not of the driver, their statements, their future testimony flowed from that.

Had they been -- had the driver been arrested separately, there would have been no fruits.

Had the passengers been arrested separately, and everything else followed the way it did here, clearly the driver would have no standing even though they incriminated him.

We think the dissenting judge summed it up pretty well when he said that -- well, the passengers may have been aggrieved, the driver was not and the driver has no interest in the bodies or the minds of his passengers.

That, we think, is the narrow issue before the Court.

Should the Court feel it appropriate to get into that second stage which the Court of Appeals identified but did not discuss, we think there are three independent reasons which would support the reversal.

One, that everything was reasonable and I talked about that briefly in capsulized form.

Two, that the same standing principles applied here would lead one to the conclusion that the Respondent still has no standing. Everything flowed from the passengers. His rights were not infringed --

QUESTION: Are you talking about the step two?

MR. FRIEDMAN: Step two.

QUESTION: That --

MR. FRIEDMAN: If we want to talk about step two.

QUESTION: All right. I'm not talking about it.

I just asked what you were talking about.

MR. FRIEDMAN: Well, I am talking about it because I think that some people would like to talk about it.

If we talk about that, we still think the same standing principles would preclud him from being heard and complaining about this and we also think at that point it may be appropriate, although we don't think it is necessary, to get to this question which we mentioned in the footnote and which the dissenting judge discussed and which the Chief Justice discussed in numerous opinions when on the Court of Appeals and that is that live witnesses ought to be treated differently from inanimate objects.

That is, essentially, our position.

MR. CHIEF JUSTICE BURGER: Mr. Beeler.

ORAL ARGUMENT OF JOSEPH BEELER, ESQ.,

ON BEHALF OF RESPONDENT

MR. BEELER: Mr. Chief Justice and may it Please the Court:

This case arises out of the Villa Park, Illinois night-time practice and procedure of demanding satisfactory proof of identity from everyone encountered in that suburb in an automobile and taking those persons who can't produce the requested identity documents to the police station to see whether or not they may be criminals.

Frankly, I am a little disappointed that the Government didn't address this problem a little bit more carefully because here we have an extraordinary dragnet procedure which I think poses grave threats to Fourth Amendment rights.

The routine in this case is so comprehensive that the police in Villa Park would stop and demand proof of identity and take people to the jail to see if they might be criminals if they were merely encountered at the side of the road changing an obvious flat tire.

That is the kind of practice that we are dealing with in this case.

QUESTION: Well, there is no indication that if the occupants of this car or any car had given their identity and it had checked out, that they would have been taken to

any stationhouse, is there?

MR. BEELER: I think it is clear from the testimony in the case that if everyone in the car, that is, all four passengers, had had identity documents satisfactory to the police officers, then they could have continued on their business.

QUESTION: In this case we are dealing with passengers who could not speak English against the background of -- so the record indicates -- a number of employers in that community hiring an illegal Mexican alien. So that is another element to be taken into account, isn't it?

We aren't concerned in this case with what they have been doing in some other cases with English-speaking passengers who are changing tires. We are concerned with Spanish-speaking passengers at 2:30 in the morning, aren't we?

MR. BEELER: Precisely and I think it is important that the Court take careful note of how it was that the Spanish identity of these passengers was learned.

If this was something that was paraded from the outside of the car, something the police knew before they began their investigation and before they detained Mr. Sanchez then, perhaps, assuming that there had been some evidence in this case that the police officers were authorized to enforce immigration laws and I point out that District Court Judge Held on that holding has not been overturned, nor has the

Government challenged it here.

Illinois police officers are not vested with authority to investigate immigration offenses.

I think that if Officer Tenuto had any competence or experience that was meaningful in investigating immigration offenses, if he knew a few simple things like whether Puerto Ricans are American citizens or not, if he were able to recognize Mexicans, but his own testimony was that he couldn't recognize Mexicans. He couldn't recognize Spanish.

Well, we have the circumstance here that because this is an immigration offense doesn't change things very much.

I'd mention the fact that the police learned that this was a group of four people, three of whom were Mexican aliens, after the police encounter began.

The Government, in its statement of facts, suggests that there is a question as to when the police radio report came back from the radio dispatcher indicating that Mr. Sanchez was the owner of the motor vehicle and that the motor vehicle was not stolen or wanted in connection with any crime.

I think that the record couldn't be clearer. After all, the Government's own witness, Mr. Tenuto testified that it came back immediately but at the time

that Mr. Sanchez' driver's license was returned to him, the police knew that there was absolutely no suspicion connected with this car.

I would point out that -- I believe it is footnote 9 of our brief -- deals extensively with this problem, but this is an argument which the Government has raised for the first time in the Supreme Court on its brief on the merits.

It has never raised the question below as to when this radio report came back and I think the Court, for purposes of this argument, at least until it can examine the footnote carefully, should assume that the police had no reasonable suspicion whatsoever as to the car and whatever reasonable suspicion they may have had initially had been dispelled.

They had returned the driver's license, yet, rather than let Mr. Sanchez drive on, as he was entitled to, they testified that if he had attempted to leave at that time, they would have chased after him and pulled him off again.

It was then, after he was detained in what we submit is a clear violation of Terry versus Ohio since there was no basis whatsoever for the detention. It was then that they asked the passengers if they wouldn't produce i.d. also and it was then and only then that they learned that these individuals didn't speak English.

This flowed from the detention of Mr. Sanchez.

This is the second stage which the Government doesn't want to talk about but this is what the Defendant has been arguing ever since the District Court.

We have not changed our argument one whit. The Government, I think it will be demonstrated, has been all over the lot.

The Defendant in this case has standing which is the only issue presented in the cert petition because Mr. Sanchez' own personal constitutional rights were violated.

He has a right to use the public highways free of temporary detention. Those rights were violated when he wasn't free to move on as a direct result of this dragnet police practice in violation of his rights --

QUESTION: What do you mean when you say -- you don't mean to lay down any absolute principle that he has the right to use the public highways free of any detention whatsoever, do you?

MR. BEELER: What I am talking about, he has the right to use the public highways, Mr. Justice Rehnquist, subject to the dictates of the Fourth Amendment which not only give him protection but also permit reasonable police inquiry.

The Government, in its cert petition, abandoned

their argument below, as I read the cert petition and as I read the brief on the merits, the Government made no argument that they could justify this detention under Terry versus Ohio or Adams versus Williams.

The first time that I've heard that argument in this Court was a few minutes ago when Mr. Friedman brought it up. I'd point out that the Government is here as the Petitioner. They were in the Court of Appeals as the Appellee and they lost in the District Court where they had the burden of justifying a warrantless arrest.

QUESTION: Well, what you are complaining about here, what your client is complaining about, is that the two passengers in the back seat of the car testified in Sanchez' trial that he had smuggled them across the border and into the United States.

Isn't that what you are complaining about?

MR. BEELER: The Government's proposed testimony is that these three witnesses who were found in his car will be -- would be used against him to establish the elements of harboring or transporting.

QUESTION: I didn't think there was any testimony. I think there was a motion to suppress and it was granted.

QUESTION: It was granted.

MR. BEELER: That is accurate. That is the proposed testimony should this Court reverse the judgment below.

QUESTION: What you are complaining about is -- or the Government is resisting is the fact that these witnesses were not permitted to testify that he had smuggled them in.

MR. BEELER: I don't believe that is accurate, Mr. Chief Justice. The Government would like to argue that, I believe, in some other case.

Their cert petition says that the question in this case is standing and they state expressly in their cert petition that this case does not represent an appropriate vehicle for determining the question which I think you might be getting at, which is when or whether the fruit -- rather, when or whether the testimony of a witness discovered during an illegal search or detention is fruit of the poisonous tree.

And I think the reason the Government has backed away from that issue in their moving papers will be understood if I could read an excerpt from the Government's brief in the Court of Appeals.

This is page 78 -- I'm sorry, 77 of the Appendix where the Government made the only argument that they made in the Court of Appeals and that is, that the police procedure in this case was lawful and proper; it was a justified extension of Terry versus Ohio and Adams versus Williams and they made the argument in the context of saying that the brief questioning was either a valid investigatory

stop or an illegal search. And here is what they said. This is the very first sentence in their very first paragraph: "The Government assumes, for purposes of this appeal, that the questioning of the passengers in Defendant's car constituted a search of the car to which Defendant has standing to object."

The Government also concedes that the testimony of witnesses discovered during illegal search can be suppressed as to a person has standing to object to the search.

The issue presented to this Court is whether the questioning of the passengers while they were in Defendant's car, constituted an illegal search or whether it was a proper and valid investigatory stop.

QUESTION: You don't suggest that this Court is now bound by what an Assistant United States Attorney argued in the Court of Appeals, do you?

MR. BEELER: I am not suggesting that but I think the litigation posture in which this case appears is important.

QUESTION: You do not agree, then, that the basic issue here is standing?

MR. BEELER: I agree, the basic issue here is standing but I understand the question of standing to be one, whether or not the Defendant's constitutional rights, his own personal constitutional rights were violated by the

police procedure and having established in the District Court and the Court of Appeals and the Government's brief on the merits that there was no proper basis for the police conduct here and I think it is being almost indisputable that Mr. Sanchez was detained so that this police procedure could be carried out.

I think that this establishes standing. His rights were violated.

QUESTION: Has any -- do you cite us any case in which the testimony of witnesses such as these two passengers in the car has been excluded or suppressed because of the violation of the rights, constitutional rights of some other person? That is, in this case, the driver. Is there any parallel case that you --

MR. BEELER: Well, if I understand your question accurately, you are bringing us into the area of cases which seem to take a case-by-case analysis to the question of whether or not a particular witness' testimony is fruit of the poisonous tree where that witness was discovered as a result of some police illegality.

QUESTION: Tucker against Michigan involved that and one such case, in answer to the Chief Justice's question would be the decision of the Michigan Supreme Court in the Tucker case, wouldn't it?

MR. BEELER: The Tucker case was a Fifth Amendment

case.

QUESTION: I know.

MR. BEELER: In which the compulsion is an important question and that is the harm that the Court is trying to safeguard against and that is an instance.

QUESTION: And what happened to the Tucker case?

MR. BEELER: Well, in the Tucker case, this Court held that the witness who was -- rather, whose identity was learned as a result of the custodial interrogation which was in no way compulsive, which was in no way in violation of the Fourth Amendment, could be used because of its trustworthiness but it was not fruit of any compulsion because no compulsion was present.

As a matter of fact, warnings were given in the Tucker case. There was just a technical breach of Miranda versus Arizona.

QUESTION: Is there any -- do you make any argument that the testimony of these two aliens in the back seat would be unreliable evidence?

MR. BEELER: I think that it might well be because of the circumstances in which their custody was obtained and the great interest that they would have in inculcating someone else in order to escape a liability themselves.

But that is -- I think the compulsion and trustworthiness question is one which you worry about in a Fifth

Amendment case but in case after case of Fourth Amendment violations the Court has excluded probitive evidence.

They have excluded heroin, guns, all manner of physical evidence which certainly is more reliable than a witness.

In answer to your question, Mr. Chief Justice about cases in which witness' testimony has been excluded, I would refer to note 17 of the brief of the amici curiae and also in our memorandum in opposition we listed a number of cases but inasmuch as the Petition for Certiorari does not raise the fruit question and inasmuch as the Government didn't argue it, our brief on the merits doesn't take up that question.

However, to assume hypothetically that there is a fruit of the poisonous tree question in front of this Court, then I would point out that these particular witnesses were not only discovered as a result of an illegal detention but during the very course of that detention, right -- right in the middle of the illegality, these witnesses and their status as Spanish-speaking individuals, as people without identification cards, was discovered.

Furthermore, these witnesses are really the crux of the Government's case. He is charged with possessing them, with transporting them within the United States.

The obtaining of these witnesses' testimony came

about directly by exploitation of the illegality. The dragnet procedure in this case is directed purposefully at learning about identity and finding criminals and I can't see a clear connection between an illegal procedure and the evidence being offered.

It is very difficult to see how the taint in this case could have been purged.

Furthermore, these witnesses gave statements immediately upon being brought to the police station. There were no intervening Miranda warnings and they were in custody.

As a matter of fact, the record shows, the Government has conceded and the Court of Appeals held and the District Court held that Mr. Sanchez, too, was arrested.

QUESTION: But you can't insist that, on behalf of Mr. Sanchez that other people's testimony be suppressed because those other people weren't given Miranda warnings, can you?

MR. BEELER: I mention the Miranda warnings simply to show that the Government can't argue that the statements given by the aliens at the police station were voluntary, were something that were a product of their individual will, memory, perception, volition, factors -- yes?

QUESTION: Well, do you say if a witness wasn't given a Miranda warning, his statement by definition is not

voluntary, regardless of the circumstances?

MR. BEELER: Not as a matter of law but I think it bears persuasively upon any analysis as to whether or not these witnesses, caught in a foreign country in the middle of a crime, being interrogated by a professional interrogator over the telephone, somehow came forth voluntarily to give testimony which purged the taint of their being discovered during the illegality.

Mr. Chief Justice Burger who was sitting then as a judge in the Court of Appeals in the District of Columbia in the case of Smith and Bowdin versus the United States, which is at 324 Federal 2nd, pointed out that the witness discovered there at first wouldn't give any statements. He wouldn't cooperate and then later on he decided to cooperate and this was seen as an intervening kind of factor.

But the Government, which had the burden on this question, put forward no evidence of an intervening guilty plea, of an intervening voluntary confession or any other independent source of this testimony.

If the testimony of a witness discovered during an illegal search or detention can ever be suppressed as fruit of the poisonous tree, why, then, we submit this is the case.

QUESTION: Mr. Beeler, one of the problems I have with this case is that, as you have pointed out, the Government has changed its argumentative position.

You have been rather consistent in yours but neither the District Court nor the Court of Appeals accepted either yours or the -- or any versions of the Governments. It had quite a different theory, as I understand it and I want to be sure I understand yours and just tell me if it is this, that you do not claim that the approach to the car, parked as it was with the lights on, violated anybody's constitutional rights; nor, indeed, the interrogation of the driver to the extent that he was asked to provide identification of himself, that that violated anybody's rights.

But your point is -- and you tell me if I am wrong -- is that after he did so, then from then on, to detain him and/or to search his car, violated his Fourth and 14th Amendment rights. Is that it?

MR. BEELER: That's it. I would add one other thing.

The District Court, as a matter of fact, did adopt our theory and the District Court opinion, I believe, represents the argument that we are making here.

QUESTION: It was the Court of Appeals that then adopted it.

MR. BEELER: Quite frankly --

QUESTION: The Court of Appeals concentrated on what has been called here "step three."

MR. BEELER: Quite frankly, I think the reason the Government petitioned for cert is they simply didn't like the way the Court of Appeals' opinion was written.

I am not sure that they would have faulted an opinion written like the District Court's opinion because it made clear findings of fact but Mr. Sanchez was detained after his driver's license had been returned and prior to the interrogation of his passengers.

But this violated his own Fourth Amendment rights and the District Court opinion talked about detention as well as a search and it didn't feel that the semantic labels were important.

What was important was that there was an interference with an individual's own constitutional rights.

The Government appears also not to be entirely satisfied with the District Court's fact-finding but it hasn't come out and said that, gee, the District Court was clearly erroneous and these are the reasons why and here is the case law showing why.

And as a matter of fact, the record shows that the District Court agonized over the question of when the detention occurred and he came to the conclusion and made fully supportable fact findings that the detention of Mr. Sanchez occurred after his driver's license was returned and that all four, not just three, were arrested

and they were brought to the police station. The government --

QUESTION: Mr. Beeler, does the record show that Mr. Sanchez objected to that brief period of detention?

MR. BEELER: There is nothing in the record to show that he made any protest. The record, I believe, would show that he acquiesced.

However, he had submitted to a demand for proof of identity from the law enforcement officers who came up to his car, one stationing themselves at his window, one stationing himself at the other window --

QUESTION: Were they in uniform? They were.

MR. BEELER: They were in uniform. They were armed. They were carrying chemical Mace. It was 2:30 in the morning, which cuts two ways.

The Government made no showing that it is unusual for people to be in the suburb of Villa Park looking at a map and hunting for a restaurant at that time of night, but when two police officers come up on either side and they offer to help you find a restaurant and then after that they demand some proof of identity and then they carry on this kind of procedure, I think it is -- it is not in the record other than that Mr. Sanchez is a Mexican-American.

QUESTION: In your colloquy with Mr. Justice Stewart, reference was made to the search. What search do you have in mind?

What do you think constituted a search?

MR. BEELER: In addition to the detention of Mr. Sanchez which resulted in the discovery of the witnesses, the procedure of interrogating the passengers can also be viewed as the search during the period of this detention.

Their simultaneous search and detention, the Government conceded in the Court of Appeals, once again, that this would constitute a search. I think by any standards it is a search.

The police officers were asking questions to learn things that were not in plain view. The identity of these witnesses was in no sense in plain view, any more than the contents inside a paper bag are in plain view.

QUESTION: Would it have been different, as has been suggested, if these four individuals had been walking down the street and had stopped and appeared to have been lost and two officers had come up and said, "May we help you?" and in the course of the conversation the officers asked questions, for i.d. cards, would that be a different case?

And if so, where is the search?

MR. BEELER: Assuming that all of the other facts would be about the same, then we would assume that Mr. Sanchez was in custody. He wasn't free to leave while his three companions were being interrogated, that if he

did attempt to leave, then he would have been pursued and recaptured.

QUESTION: That is a speculation, isn't it?

MR. BEELER: Well, that would make your hypothetical equivalent to the situation that we do have in this case.

The law enforcement officer made it quite clear that he was going to hold Mr. Sanchez there until this routine was completed, that he wasn't free to drive off.

QUESTION: I thought he said he wasn't free to drive off with the passengers.

MR. BEELER: That is what Mr. Friedman says. That is not in the record anywhere.

The record shows that if Mr. Sanchez had attempted to leave -- and my question contains no reference to the passengers in the car or out of the car.

QUESTION: I see.

MR. BEELER: If Mr. Sanchez had attempted to leave, they would have chased after him and -- now I am quoting, "Pulled him off again."

I think from this kind of testimony and from the District Court's finding, upon a very careful analysis, just what was going through the police officers' minds, he was in custody. He couldn't go anywhere. He was held under Terry versus Ohio standards.

QUESTION: It is clear, on the other hand, I suppose,

that had there been no passengers and everything else had transpired as it did, he had been approached and given his identification, there would have been no question about his freedom to leave and that is your case. That is the point of your case, isn't it?

MR. BEELER: If there had been no passengers --

QUESTION: Right.

MR. BEELER: -- he could have driven right off.

QUESTION: Right.

MR. BEELER: Once he proved --

QUESTION: And that is the nub of your argument, isn't it?

MR. BEELER: That is the nub of it.

QUESTION: Do you think it sheds any light on the situation that the police told the two unidentified passengers to leave the car and come with them to the police station -- they distinguished between the two who could not supply an identification and the two who did have identification?

MR. BEELER: There was no testimony that they distinguished. There was the fact that Mr. Sanchez was used to transport --

QUESTION: Physically.

MR. BEELER: -- one of the passengers physically. They went in a convoy and so it was obvious that Mr. Sanchez

probably couldn't have taken off.

The District Court found that they were arrested.

The Court of Appeals found all four were arrested.

The Government concedes in all of their briefs and up until right now that they were arrested. So I don't think it makes much difference what cars they were put in or how the police arranged for their particular custody.

The point was that Mr. Sanchez was driving to a police station instead of to a restaurant, which was his choice.

To return, if I could, just briefly, to Mr. Justice Powell's hypothetical, I think the important factor of the sidewalk situation would be a question of whether or not Mr. Sanchez would have to be detained and stay there while the police conducted their identity search of the people that he was with and if he was held with them, either by a command or by some type of physical act of being in a situation where he couldn't get out, he was held in like he would be in a car -- let's say he was in a dead-end alley and he couldn't get out until the police were done, why, then, the detention factor is the same.

In terms of a search, well, it -- it is not a search of his car in that case. There is no car in that hypothetical but, nonetheless, it is a Fourth Amendment violation and that is the central violation that we are

focusing in on this case.

We believe that this case stands for the freedom of people to move on the highways without being subjected to unconstitutional violations of their freedom of travel.

QUESTION: I don't want to be facetious, but he wasn't travelling. They were parked.

MR. BEELER: He was parked for the purpose of a brief stop in his travel to get his bearings to the restaurant he was looking for.

QUESTION: But his travel wasn't interrupted by the police.

MR. BEELER: Not initially. But once it was detained, for practical purpose, that is an interruption. Instead of ending up at the restaurant or ending up at the restaurant a little bit late, which I would consider to be an interruption of travel, it was almost inevitable --

QUESTION: Do they have restaurants in these little towns at 2:30 in the mornin;?

MR. BEELER: Villa Park isn't such a tiny little town. It is 25 to 30,000 people in a suburb west of Chicago. One suburb is packed up against another.

I think the record in this case, taken in a light most favorable to the Defendant, which it must be -- we are here as the Appellee and as the Respondent --

QUESTION: Mr. Beeler, the car really wasn't just

on the side of the road. As I recall, wasn't it 20 -- 15 or 20 feet off the road in a sort of vacant area?

MR. BEELER: Mr. Justice Powell, it was in a cut-off between North and Addison Road and I have obtained Defendant's Exhibit A, which I thought had been transmitted to the Supreme Court earlier but when I checked with the Marshal's office, it hadn't come and that exhibit, which is a photograph, I am sure would be available from the Marshal.

It shows, as our brief asserts, that this was a perfectly logical, normal place for one to pull off the road to read a map. The police officer in the case testified as to no suspicion about where the car was parked.

There was no parking citation and I don't think the location of the car is any part of the case as it reaches this Court.

QUESTION: Well, but be that as it may, Mr. Beeler, my understanding is, and has been up until now, that you don't object to the policemen approaching the car or interrogating the driver or asking him for his identification or checking his identification.

Am I wrong about that?

MR. BEELER: You are right. We felt that there was no reason to raise that.

QUESTION: Right.

QUESTION: Does this record show at what stage the

pistol was discovered in the glove compartment? That is, it was obviously after they got to the police station, but at what point was the search made?

MR. BEELER: As I understand the record, after the four arrived at the police station and they were "brought inside," which is to use the words chosen by the police officer, then while the interrogation was going on in the police station, there was simultaneously a search being made of Mr. Sanchez' automobile.

Evidently it is the kind of search that would include a search of the trunk except he, of course, had a station wagon, search of the glove compartment, search of any hiding area in the car.

QUESTION: Now, was that -- I don't recall that this record shows, except that -- what happened to it, except that there is a reference to the fact that it isn't in this case but was there a motion to suppress that independently in another proceeding?

MR. BEELER: There was -- it is not in the record but in direct answer to your question, represented by different counsel, Mr. Sanchez pleaded guilty to the Illinois violation of possessing a firearm without having registered it and he received probation and a fine for that offense.

Also, I would add for the record, and it does appear unsworn from counsel in the transcript, the firearm

was a gift he had received from an uncle in Texas which he had just brought into Illinois and there was no opportunity to register it but I also agree with your suggestion that that is not part of this case as it arrives here.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you.

Do you have anything further, Mr. Friedman?

REBUTTAL ARGUMENT OF PAUL L. FRIEDMAN, ESQ.

MR. FRIEDMAN: Just a couple of minor points.

First, on our concessioning and all of that, I think that it -- first of all it is not a concession. It is an assumption for the purposes of argument and what happened, as I understand it --

QUESTION: You mean, in the Court of Appeals.

MR. FRIEDMAN: In the Court of Appeals which we don't feel bound by here it's, the District Court reached a conclusion that the interrogation was a search and so for purposes of argument, we say, let's assume that it was a search and now let's go on and talk about whether it was reasonable or not.

QUESTION: Let's further assume that the Respondent has standing --

MR. FRIEDMAN: Has standing at that point and if it were a search.

The Court of Appeals didn't discuss step two. They

went to step three. Well, now we are talking about step three and that assumption has nothing to do with step three and should this Court want to take a look at step two, we don't feel bound by that assumption. We feel free to argue that the conduct was reasonable, that there was no standing, that live witnesses are different from physical evidence and so on.

QUESTION: Of course, if we agree with Mr. Beeler, that is the end of this case.

MR. FRIEDMAN: That is the end of the case.

QUESTION: But if we agree with you, it has got to go back, doesn't it?

MR. FRIEDMAN: It has got to go back, either with this Court looking at some of those other aspects or asking or telling the Court of Appeals to look at some of those other aspects.

QUESTION: To clarify some of them.

MR. FRIEDMAN: To clarify what went on in that second stage.

In response to Mr. Justice Marshall's question a little while ago about, didn't the officer testify that he only took him down because the passengers were still with him? Well, the question by Mr. Beeler on page 63 of the Appendix was not what you would have done with the Respondent at any stage, but he said, "Back at North and Addison, after

you and Officer Hall had gone over to the Defendant's car and after Officer Hall had asked the Defendant for an i.d. and after the Defendant had produced his driver's license and after Officer Hall had returned the driver's license, what would you and Officer Hall have done if the Defendant then drove off immediately in his car without asking your permission?"

So we think that the Officer's answer that he would have given chase is perfectly consistent with his later testimony that later on he would have let the Defendant -- the Respondent go, once he had had those passengers and once he was beginning to find out something about the passengers.

The point is, so long as the passengers were with him and he hadn't checked them out, he was stopping to get those passengers.

But the Respondent was not being detained for any purposes directed at the Respondent.

QUESTION: Don't you agree that the Respondent, from the time that he was first stopped until he got into the police station, felt that he was sort of --

MR. FRIEDMAN: Well --

QUESTION: I mean, for example, they said, "Will you come along with us?" and he said, "Yes."

MR. FRIEDMAN: He said, "Fine. I'll come along."

QUESTION: Well, I don't know what you do at

2:30 in the morning when a policeman, armed, says, "Would you mind coming along?"

MR. FRIEDMAN: Well, it is also 2:30 in the morning when you are looking for a restaurant and the police come over and they don't say, "You are coming with us." They come over and say, "Can we help you find the restaurant? What seems to be the trouble?"

QUESTION: No, this was after that. I mean --

MR. FRIEDMAN: Well, I think, frankly, that you have to look at it step by step --

QUESTION: What would you have done under the circumstances?

MR. FRIEDMAN: What I would have done?

QUESTION: Would you have gone along?

MR. FRIEDMAN: Under the circumstances I probably would have felt that there was no reason not to go along.

QUESTION: You sure would.

MR. FRIEDMAN: But that doesn't make it an arrest. That doesn't make it an arrest and I am reminded, mainly because I have it written in front of me here, of a concurring opinion by Judge Leventhal at one point where he said, you know, "Walking up and asking questions" -- in a case called Bailey versus United States -- "Is not an arrest. While most people might feel they are not free to go.

"But the difficult question is whether, in the face

of a specific refusal to answer questions or specific request to go, would there then have become an arrest?"

Here there was no specific refusal, no specific request to go and in this case, ought not --

QUESTION: Well, the two men in the back seat, were they under arrest at that time?

MR. FRIEDMAN: They were being detained at that time. Whether they were being detained on reasonable suspicion or being arrested on probable cause is --

QUESTION: So you really don't know what their --

MR. FRIEDMAN: -- arguable.

QUESTION: You don't know when either one of them was arrested?

MR. FRIEDMAN: Well, I think that you can view the facts in two different ways in regard to the passengers. Either they were being detained --

QUESTION: Well, you take two men and put them in a car with a policeman and take them to the police station.

MR. FRIEDMAN: Okay, let's say --

QUESTION: You take another man and say, "Would you mind coming along?" and he says, "Yes."

Aren't all of them in the same position of being detained?

MR. FRIEDMAN: I don't think they are all in the same position.

QUESTION: Well, there is one difference, the last one, you say "Come along," if he turns and runs, he gets shot, he finds out.

MR. FRIEDMAN: Well, there is no evidence of anything like that in this record --

QUESTION: I know. I know, but I mean --

MR. FRIEDMAN: -- Mr. Justice Marshall.

QUESTION: -- what do you feel --

MR. FRIEDMAN: I think that what has happened --

QUESTION:--when a policeman says, "Would you mind coming along?"

MR. FRIEDMAN: "Would you mind coming along?" is different from, "Get in the back of the squad car." And I think that what has happened here --

QUESTION: It wouldn't be to me.

MR. FRIEDMAN: Pardon me?

QUESTION: It wouldn't to me, it wouldn't be any different.

MR. FRIEDMAN: I think it depends how it is said. I think it depends what has gone before.

QUESTION: Yes. Well, we don't know how it was said.

MR. FRIEDMAN: We know what went before. They went over to be of some assistance.

QUESTION: We don't know how it was said because

we don't have the -- we weren't there.

MR. FRIEDMAN: But we -- there was uncontradicted testimony from the officer. The Defendant never took the stand, as he could have, and said, "I felt restrained. I felt detained. I knew I couldn't go." He never said any of that. He --

QUESTION: Well, could you draw any conclusion from that?

MR. FRIEDMAN: Well, he is free to take the stand at the suppression hearing without incriminating himself in a way that can be used against him later on in the trial.

He is free to tell his side of the story in support of his motion to suppress and he didn't do it.

Now, all I am saying is that the evidence before the Court and the evidence in the transcript here is uncontradicted and if you will look at it step-by-step, it is reasonable.

Now, Respondent talks about "dragnet procedures." This case isn't about dragnet procedures.

If you will look at what those police did, step-by-step, we submit their conduct was reasonable. We don't have to get to that question but we submit that their conduct was reasonable because it is --

QUESTION: What case was it in this Court that held that the stop-and-frisk and the patting down, the searching

could be done without constituting an arrest?

MR. FRIEDMAN: Adams versus --

QUESTION: Well, doesn't it resolve some of the questions that are --

MR. FRIEDMAN: Well, I think it certainly does because there was some articulable reason at some point to ask them some questions and after that there was some articulable reason to try to find out who they were further, just to detain them to -- to determine their identity.

That is all that this case is about.

Now, Justice White asked a question a little while ago about are there any cases where the courts have said you can ask passengers in a car for identification.

One case that -- that I know of is a case called United States versus Madrilie, 445 Fed 2nd 827, a Ninth Circuit case. And that makes the point it is okay to ask identity of the people in the car as well.

Let me just make about two other points.

Respondent argues concerning live witnesses and says that the Smith and Bowdin case written by the Chief Justice talked about all the intervening things and so on. We think that the Chief Justice's concurring opinion in Rosier Brown makes clear that what was being discussed there was, you don't suppress live witnesses.

Cross-examination is sufficient to protect people's

rights. It goes to weight, not admissibility whether --- depending upon how they were seized, how they were come at.

We also think that this case is different from the case where, if they had gone into a trunk and found witnesses in a trunk. These witnesses were not come at by any search or any illegality. They were there in plain view and they were not -- they were not the result of any sort of a search.

And even looking at Respondent's argument in its most favorable light, he says that if he had been permitted to drive on after showing his license, the police would have obtained no evidence against him and that that is what this case is all about.

If he had been permitted to drive on, we say, everything else would have been the same as it is here. The passengers would have been detained, the evidence flowed from them. It had nothing to do with his detention and we think if you get to stage two that that may be relevant.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Friedman.

Thank you, Mr. Beeler. And, Mr. Beeler, you came here at the request of the Court and by the Court's appointment to represent Mr. Sanchez.

On behalf of the Court, I want to thank you for your assistance to us and, of course, to Mr. Sanchez.

The case is submitted.

[Whereupon, at 11:17 a.m., the case was submitted.]