OFFICIAL TRANSCRIPT
PROCEEDINGS BEFORE

THE SUPREME COURT OF THE UNITED STATES

DKT/CASE NO. 82-1213

TITLE NEW YORK, Petitioner v. BENJAMIN QUARLES

PLACE Washington, D. C.

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IN THE SUPREME COURT OF THE UNITED STATES

NEW YORK,

Petitioner

v. No. 82-1213

BENJAMIN QUARLES

Washington, D.C.

Wednesday, January 18, 1984

The above-entitled matter came on for oral argument before the Supreme Court of the United States at 11:09 a.m.

APPEARANCES:

STEVEN J. RAPPAPORT, ESQ., Assistant District Attorney, Queens County, New York, New York; on behalf of the Petitioner.

DAVID A. STRAUSS, ESQ., Office of the Solicitor General, Department of Justice, Washington, D.C.; as amicus curiae supporting Petitioner.

STEVEN J. HYMAN, ESQ., New York, New York; on behalf of the Respondent.

C O N T E N T S

P R O C E E D I N G S

CHIEF JUSTICE BURGER: Mr. Rappaport, I think you may proceed whenever you are ready.

ORAL ARGUMENT OF STEVEN J. RAPPAPORT, ESQ.

ON BEHALF OF THE PETITIONER

MR. RAPPAPORT: Thank you, Mr. Chief Justice, and may it please the Court:

The issue in this case is whether the Court of Appeals of the State of New York properly suppressed the defendant's statement, the gun is over there, as having been elicited in violation of his federal constitutional rights and, if so, whether they also properly suppressed the defendant's subsequent statements admitting ownership of the gun, and the gun itself which was recovered seconds after the statement.

This Court has made it clear that the primary purpose of the exclusionary rule is to deter police misconduct. Since Officer Kraft acted properly in the instant case, however, there is simply no purpose to be served by exclusion of any of the evidence obtained as a result of his actions.

Briefly, the facts of the case are that Officer Kraft had probable cause to believe that the Respondent had committed a rape and was in possession of a gun in a supermarket. When the Respondent saw Officer Kraft, he

ran towards the back of the store. Kraft pursued, lost sight of him for a few seconds, caught up to him, handcuffed him, frisked him, found an empty shoulder holster, and then asked, where is the gun? The defendant indicated a carton a few feet away. He said, there is the gun. Kraft recovered the gun from that carton and then asked the defendant, is this your gun? The defendant said, yes. He admitted ownership of it. And, Kraft asked where he bought it and the Respondent told him where he bought it.

Under the circumstances then, it is our position that Officer Kraft acted in a necessary and prudent fashion in securing that gun as quickly as he could.

The contention of the Respondent or of the Court of Appeals, of course, was that Officer Kraft's action was prescribed by this Court's opinion in Miranda versus Arizona.

If one examines the considerations underlying the Miranda opinion, however, it becomes clear that none of those considerations apply in the case at bar.

Specifically, the Miranda opinion talked about a lengthy interrogation in an incommunicado atmosphere with abusive police practices that lead to unreliable confessions.

Well, in the instant case, we have a single

question asked at a public place for the purpose of protection of the police officers and any members of the public who might be in the vicinity and there were no abusive police practices because the officers had already holstered their weapons at the time that the question was asked, and the defendant's statement was completely reliable and its reliability was, in fact, proved seconds later when the gun was located exactly where the Respondent said that it would be.

Of course, it may be said that even if the considerations underlying the Miranda opinion do not apply to the case, the holding of the Miranda opinion requires suppression of the defendant's statement and the derivative evidence.

QUESTION: When you say the holding of the Miranda opinion, was there a holding in Miranda?

MR. RAPPAPORT: Well, as I understand it, the holding of the case was that --

QUESTION: It was really all dicta, the whole opinion, wasn't it? Because none of the facts of the particular Miranda fellow, who was convicted of an offense and everything, didn't raise any of the questions that the Court decided.

MR. RAPPAPORT: I understand what you are saying. That is why I thought it important to discuss

the considerations underlying the opinion which take up a great portion of the body of the opinion. But, whether you want to call it dicta or holding, the Court certainly prescribed certain rules for police officers to follow.

QUESTION: There have been quite a few cases since then.

MR. RAPPAPORT: There have been many cases since then, of course, interpreting that. It is our position, of course, that while we are willing to concede for purposes of our argument that defendant was in custody at the time the question was asked, we submit he was not subjected to interrogation.

Now, there was language in the Miranda opinion itself exempting from the definition of custodial interrogation general on-the-scene questioning as to facts surrounding a crime. The opinion itself left open, however, whether such questioning can occur when an individual was in custody.

Now, this Court did not return to the definition of interrogation for purposes of the Fifth Amendment until 1980 in Rhode Island versus Innis. In Innis, of course, the Court held that in addition to express questioning interrogation also includes any words or actions on the part of the police officer other than those normally attendant in arrest and custody which the police should

know are pretty likely to elicit an incriminating response.

Now, if that Innis standard --

QUESTION: In Innis the Court seems to have decided that unlike Williams against Brewer that there was no question put to Innis. There was a statement made by one policeman to another which was said to have stimulated the response of the accused.

MR. RAPPAPORT: That is correct.

QUESTION: This question was directed to the accused, was it not?

MR. RAPPAPORT: Yes, it was. Of course, it was. But, I was about to say that if the Innis standard were to be applied to the case at bar, we would submit that the question, where is the gun, posed to an individual who is being arrested for an armed felony, and when there is reason to believe that there is a gun in the immediate vicinity of the arrest in a public place, it must be considered normally attendant to the arrest and custody of that individual.

However, as you point out, the Innis opinion itself did not involve an express question and we would submit that on the face of the opinion the standard set forth in this was not meant to apply to express questions.

QUESTION: Well, Mr. Rappaport, certainly the

language in Rhode Island versus Innis seemed to indicate that questions reasonably likely to elicit incriminating responses were not allowable in the absence of the Miranda warnings. And, it seems to me that your proposal is certainly contrary to that as to the admissibility of the response to that question.

MR. RAPPAPORT: Well, I think, Justice O'Connor, that the face of the Innis opinion says that interrogation is either express questioning or the functional equivalent of express questioning and then went on to define the functional equivalent of express questioning in terms of whether it is reasonably likely to elicit an incriminating response.

Again, as the Chief Justice pointed out, the Innis opinion itself did not involve an express question and the standard it was formulating was not intended to apply to express questions.

Now, there have been, however, many state and lower federal court opinions which have answered the question which both Miranda and Innis left open, specifically whether any expressed questions asked of an individual in custody can not be considered interrogation for purposes of Miranda. Specifically -- It is universally accepted that booking and pedigree questions do not constitute interrogation.

Secondly, there are a series of cases from many jurisdictions relying on the language of Miranda involving general on-the-scene questioning referring to questions preliminary or neutral or designed to clarify the nature of the situation confronted.

What all of these cases have in common is this recognition that sometimes expressed questions asked of an individual in custody may not constitute interrogation. I think it depends on the nature of the question asked.

QUESTION: This question goes to the very heart of the offense, doesn't it?

MR. RAPPAPORT: Well, given that the offense now -- The only charge left open now is the possession of the weapon. Of course, it does.

QUESTION: That is pretty incriminating, I suppose.

MR. RAPPAPORT: There is no question that that is incriminating, but the mere fact that the answer to a question might be incriminating or is even likely to be incriminating does not necessarily mean that Miranda prescribes the question to be asked.

More specifically relevant to the instant case, there have been many or at least several state and lower court cases dealing with the issue of questioning a defendant about the presence of a weapon in the immediate

vicinity of the arrest. And, these cases have generally held that such questioning does not constitute interrogation.

Now, sometimes they use the same reasoning as the general on-the-scene questioning cases, talking about -- saying that the question about a weapon, in fact, was designed to clarify the nature of the situation --

QUESTION: Well, it is a question about a crime, the Sullivan law in New York.

MR. RAPPAPORT: Yes, of course, it is a question about a crime, Justice Marshall, but the question, what is going on here, when there is a crime going on --

QUESTION: No, this was specific. Where is the gun and to have a gun is a violation of the law in New York unless you have a permit. So, you are asking him, have you committed a crime?

MR. RAPPAPORT: I think in this situation the duty of Officer Kraft and I think, apparent from the record, the intention of Officer Kraft was not to investigate the possession of a weapon or even to investigate the rape charge, but his intention was to secure this weapon.

QUESTION: He had already frisked him.

MR. RAPPAPORT: He had already frisked him and determined that the weapon was not on the defendant's

person, but it could have been, and very likely was, in the immediate vicinity of the Respondent in a supermarket, and the obligation of the police officer at that point was to secure that weapon.

QUESTION: As a practical matter, Mr. Rappaport, precisely that question, precisely that question could have been addressed to one of the clerks or customers in the store if they were standing nearby, near enough to see what had been done with the gun, is that not so?

MR. RAPPAPORT: Of course, that is so.

QUESTION: So, the response of the customer or the clerk would not involve a question about a crime, would it?

MR. RAPPAPORT: That is correct. And, the fact that the question was addressed to the Respondent, as opposed to someone else who might or might not have been at the scene, should not change our view of the obligations of the police officer in that instance. His obligation was to secure that weapon.

QUESTION: Mr. Rappaport, I guess there are other issues that you raise in the case. Did you expect to discuss those during your presentation?

MR. RAPPAPORT: I would like to discuss those.

QUESTION: And, would you mind mentioning whether you raised those issues in the courts below?

MR. RAPPAPORT: Certainly.

Just to conclude on this issue, however, I think an alternative rationale with respect to the admission of the first statement would be to say that it doesn't really matter whether you call this interrogation or not, but the exigent circumstances of having the gun loose in the supermarket overrode the necessity for Miranda warnings.

Also, it is undisputed that the officer had a right to search the defendant. Given that right, it is up to Congress to say he does not have the right also to ask him where the gun was. Whichever theory you choose to use, however, the point is that Officer Kraft acted properly and, given that fact, there is no reason to suppress the evidence.

Now, it is also our position that if, in fact, it is found that the defendant's initial statement was to be suppressed, then the subsequent statement and the gun itself need not be suppressed.

Now, first of all, we made an argument regarding Michigan versus Tucker, and as I think you were alluding to --

QUESTION: In what court did you make that argument?

MR. RAPPAPORT: We made that argument in this Court. We did not make that argument in the courts below.

It is our position though that we did raise the federal question regarding whether the derivative evidence had to be excluded given the initial violation.

MR. RAPPAPORT: And, in what court or courts did you raise that?

MR. RAPPAPORT: We raised that in the Appellate Division of the State Supreme Court of New York and in the Court of Appeals of the State of New York.

In the hearing court, in fact, no arguments of any kind were made by the representative of our office. We do not think that precludes us from raising particular issues on appeal.

If the record -- As we --

QUESTION: You don't have to make any argument when the arguments are directed against you in the trial court, do you? I mean, it is the other people who are making the federal challenge and so forth. Your first chance to really be on the other side is if the trial court rules against and you go to the Appellate Division.

MR. RAPPAPORT: Well, that is exactly our position. That is why the Assistant District Attorney, who was at that hearing, did not feel it necessary to make a particular argument at the hearing. Again, we do not think that precludes us from raising these issues on appeal.

QUESTION: Well, they addressed them in the state courts, didn't they?

MR. RAPPAPORT: They --

QUESTION: You weren't precluded from making those arguments in the State Appellate Court.

MR. RAPPAPORT: We were not precluded from making the arguments. In fact, the State Appellate Division, the intermediate court, did not issue a decision on the matter, and the New York State Court of Appeals did not discuss the issue of inevitable discovery. We do not think that because the Court of Appeals did not discuss it, however, that that necessarily implies --

QUESTION: Well, if you made the argument and they ignored it, they necessarily rejected it.

MR. RAPPAPORT: Well, they necessarily rejected it, but we think that that rejection is subject to review by this Court. That is the point I am trying to make.

Well, with respect to the argument with regard to Michigan versus Tucker, of course, we believe that this would not be a Fifth Amendment violation even if, in fact, the question was a violation of this Court's opinion in Miranda. The conduct at issue here certainly bears no resemblance to the historical practices at which the Fifth Amendment was aimed.

Therefore, the Wong Sun test for determining the

admissibility of derivate evidence need not be applied and there should be a balancing between the benefits and detriments of exclusion of the derivative evidence. We think if one does that balancing, it is clear that the deterrent effect of excluding the derivative evidence is minimal. It is even questionable to what extent the exclusionary rule ever really deters police misconduct. Certainly we are talking about derivative evidence. That effect is even lessened because the police officer would not be likely to want to risk losing the full confession in the hope of gaining derivative evidence.

QUESTION: What if you won only on the fruits question? His initial statement was introduced too, wasn't it?

MR. RAPPAPORT: This case has not been tried yet.

QUESTION: I see.

MR. RAPPAPORT: We would not introduce it. We think we could convict the defendant only on what --

QUESTION: With the gun, yes.

MR. RAPPAPORT: So, given the speculative nature of the deterrent value of excluding the evidence, that is balanced against the interest in making trustworthy evidence available. We think that the derivative evidence would be admissible.

Finally, with respect to the issue of inevitable discovery, very briefly we think that there is no question on the facts of this case that that gun would have been discovered without the defendant's statement. We don't think that any extensive testimony, any testimony at all other than that which appeared on the record, was necessary to establish that fact.

If there are no further questions, I would like to reserve the rest of my time.

CHIEF JUSTICE BURGER: Very well.

Mr. Strauss?

ORAL ARGUMENT OF DAVID A. STRAUSS, ESQ.

AS AMICUS CURIAE SUPPORTING PETITIONER

MR. STRAUSS: Thank you, Mr. Chief Justice, and may it please the Court:

In Rhode Island against Innis, the Court specifically excepted from its definition of interrogation questions normally attendant to arrest and custody.

And, it is our position that Officer Kraft's question, where is the gun, belongs to a definable category of questions that are incident to an arrest; that is to say his question was part of the process of safely and successfully completing the arrest of Respondent. And, in our view, Miranda warnings should not be required before question that is incident to an arrest.

Now, when Respondent was asked, where is the gun, he had undoubtedly been seized within the meaning of the Fourth Amendment, and it has been assumed all along that he had been arrested. But, it does not follow, as the court below seemed to believe, that he, therefore, had to be given Miranda warnings immediately before he was asked any questions whatsoever.

The concepts of arrest and seizure are Fourth Amendment concepts. Miranda rules are derived from the Fifth Amendment which, of course, serves quite different purposes. And, there is no reason for the Miranda rules necessarily to become automatically applicable whenever there is a Fourth Amendment arrest. That does not serve the purposes of Miranda and, very importantly, it certainly does not provide police officers with any clearer guidance about when they should give Miranda warnings than the interpretation of Miranda that we propose.

QUESTION: Is your argument inconsistent, do you think, with the Orozco case?

MR. STRAUSS: No, I don't think so, Justice O'Connor. In that case, there is no indication that the questions they asked were even asked roughly at the same time of the arrest, let alone that they were necessary to completing the process of the arrest.

I think Orozco can be understood as a case in which the police officers, because they couldn't bring the accused to the station house and interrogate him without Miranda warnings.

QUESTION: Well, you are not arguing that this question was necessary to complete the arrest, are you?

MR. STRAUSS: It was necessary to complete the process of arresting him safely in the same way that searches --

QUESTION: Well, I thought that the handcuffs had already been placed on him and that he had been arrested at the time of the question. Am I wrong?

MR. STRAUSS: The handcuffs had been placed on him, but the officer -- Certainly no prudent officer at that point, having heard reliably that the suspect had a gun and having found an empty shoulder holster and having lost sight of him during the chase for 10 or 15 seconds, would have thought that he could relax and begin the process of investigating the crime and putting the Respondent in jail.

QUESTION: Was he still in danger after he was handcuffed?

MR. STRAUSS: Well, he apparently thought so. He asked for the gun. And, I should point out that there is no --

QUESTION: Well, what in the world could happen to him if the man was handcuffed with his hands behind him?

MR. STRAUSS: Well, there is no doubt, Justice Marshall, that he could have conducted a search incident to arrest of the area of Respondent, of the --

QUESTION: He didn't. He asked him a question.

MR. STRAUSS: Well, he did the more prudent thing. He asked him the question. A search incident to arrest would have taken some time and during that time the gun might have turned up, for example, in the hands of an accomplice.

QUESTION: And, as the East Indian said, it is much easier to rub red pepper in his eyes instead of doing my work.

MR. STRAUSS: Well, this was not an abusive action or a coercive action. There has been no finding --

QUESTION: All he did was ask a question.

MR. STRAUSS: There has been no finding and, I think, no serious suggestion that he coerced Respondent into answering the question.

QUESTION: Do you have to have coercion? Do you mean a man that is handcuffed is not coerced?

MR. STRAUSS: He is coerced into not moving his hands, but not into answering a question. There has been

no finding to that effect.

A search incident to arrest --

QUESTION: Would your distinction between seizure and custody come in airport search cases where perhaps you might say that in response to a stop and frisked a person felt they were not free to walk away, but nonetheless you would say they may be seized but they weren't there in custody?

MR. STRAUSS: That is exactly right, Justice Rehnquist. A Terry stop is a seizure within the meaning of the Fourt Amendment by definition. A Terry stop is a situation in which the accused can't walk away.

QUESTION: He wasn't handcuffed.

MR. STRAUSS: Well, there is nothing that says in a Terry stop the officers couldn't handcuff an accused if they thought it necessary.

QUESTION: But, they didn't.

MR. STRAUSS: Well, in no case before this Court, but I suspect strongly that in some Terry stops accused are handcuffed.

QUESTION: In the Terry case he frisked him for his own protection.

MR. STRAUSS: That is right, in the Terry case itself.

QUESTION: Well, he didn't need to frisk this

man for he has already frisked him.

MR. STRAUSS: Well, he frisked --

QUESTION: And, he found an open holster.

MR. STRAUSS: Well, that is right, but in a Terry stop --

QUESTION: And, then he handcuffed him.

MR. STRAUSS: That is right.

QUESTION: So that he couldn't get any gun.

MR. STRAUSS: Well, there might have been an accomplice or --

QUESTION: Could he have done it with his teeth and fired with his teeth?

MR. STRAUSS: Well, the most logical explanation is there could have been an accomplice, Justice Marshall.

But, Justice Rehnquist, I think you are right in pointing out that a Terry stop is also seizure and the Court has always assumed, and the lower courts have consistently held, and I think common sense dictates, that Miranda warnings don't have to be given before questions that are asked during a Terry stop.

QUESTION: Weren't there other people in the store too?

MR. STRAUSS: I believe that is reflected in the record. Yes, Justice Blackmun.

QUESTION: Doesn't the record show that he was

hoping he would come out of the store so that he wouldn't have to bother the other people? Didn't the policeman say that?

MR. STRAUSS: I don't know. I have no doubt that he would rather have arrested him outside the store.

QUESTION: It said it in the Appendix.

MR. STRAUSS: He didn't. He arrested him in the store in a place where the gun could have been hidden.

Now, given that, in a Terry stop, Miranda warnings don't have to be given before questioning. And, I think that is a universal assumption. When the police approach a suspect and order him to stop and ask him a few questions, the suspect probably doesn't know in the first few minutes whether he has been subjected to a Terry stop or to an arrest.

So, it is difficult to see why the first few minutes of an arrest and questions asked incident to the arrest should be regarded as more coercive and more in need of Miranda warnings than a Terry stop.

QUESTION: Well, is it some -- just some major time in connection with the arrest and no difference between the kinds of questions? Incident to arrest, did you kill her?

MR. STRAUSS: Well, I think -- Our position now is that the question has to be part of completing the

arrest process, so, did you commit the crime, would not be.

QUESTION: Well, I suppose. You don't want to arrest somebody who didn't commit a crime.

MR. STRAUSS: But, his denying it is not going to cause him not to arrest him, Justice White. You don't have to know the answer to that question if you have decided to arrest him. If he says no, you are still going to arrest him.

I should also say, because Respondent doesn't actually seem to argue that Miranda warnings are needed during the first few minutes of an arrest or few moments of an arrest in this case or that that is the kind of situation that Miranda was directed to, what the Miranda court had in mind.

In Respondent's argument --

QUESTION: Well, if it isn't, why shouldn't you be able to ask him where is the body or did you kill her?

MR. STRAUSS: Well, I think it would be a consistent position to say that during the time of an arrest that it could be a Terry stop. You could ask any question. But, we are not arguing that here, Justice White.

QUESTION: Well, you seem to be though. You say you put that aside, but I think your rationale would cover

any kind of a question at that time.

MR. STRAUSS: Well, to the extent that the Court needs a bright-line rule of some kind. We think the incident to arrest criteria --

QUESTION: I thought you were suggesting let's have a bright-line rule for officers.

MR. STRAUSS: Well, the Court needs to supply a bright-line rule to officers.

QUESTION: An officer is not going to get a very bright line if you make a distinction between the kinds of questions you can ask.

MR. STRAUSS: Well, I don't know that that is right, Justice White. The incident to arrest criterion is a familiar one from other areas and officers don't seem to have inordinate difficulty applying it conducting searches incident.

QUESTION: I would have some difficulty distinguishing, under your rationale, between did you kill her and where is the gun?

MR. STRAUSS: Well, questions that are designed to find -- like searches incident to arrest, the rationale for which is that officers need to find a weapon, they need to secure their own safety. That is part of what they have to do to complete the arrest.

QUESTION: May I ask this question?

MR. STRAUSS: Yes, sir.

QUESTION: Suppose the officer in the pat-down, instead of finding a weapon, found a couple of the types of balloons that normally are used to move marijuana about. Could he have asked where is the marijuana?

MR. STRAUSS: I think, under the search incident to arrest rationale, evidence that might be destroyed by the accused before he is arrested might be included in that. I think that is a close call. And, that is, of course, not this case where there is no doubt --

QUESTION: You could have a rationale that turned on danger either to the officer or the public.

MR. STRAUSS: Well, I think danger is an important part of it, making sure that the person is the person who you think he is is an important part of it, questions along those lines.

QUESTION: What if the facts were -- The question was is that your red Volkswagon out in front of the store and then that is asked against the background that the police had then been informed by the victim, the complaining person, that she had been abducted and taken somewhere by a red Volkswagon.

MR. STRAUSS: That is a good example, Mr. Chief Justice. I think there would be considerable doubt whether the suspect in that situation would be under

arrest or just subject to a Terry stop or may be subject to no seizure at all. In fact, the officer might not know, the suspect might not know, and the reviewing court might not know into what Fourth Amendment pigeonhole to put that in --

QUESTION: Well, I am assuming in my hypothetical that he answered, yes, that is my red Volkswagon, which would certainly rather firmly tie him to the criminal act, wouldn't it?

MR. STRAUSS: Yes, I assume.

CHIEF JUSTICE BURGER: Your time is up.

Mr. Hyman?

ORAL ARGUMENT OF STEVEN J. HYMAN, ESQ.

ON BEHALF OF THE RESPONDENT

MR. HYMAN: Thank you. Mr. Chief Justice, and may it please the Court:

It is the position of the Respondent that when Officer Kraft frisked before other officers, surrounded, apprehended, frisked, and hancuffed Mr. Quarles at that time and then started to interrogate him, that Mr. Quarles was entitled to have his Miranda warnings administered prior to the question, where is the gun?

As this Court is aware, the only charge before this Court for which Mr. Quarles is charged is, of course, the gun charge itself and the sole basis for the charge is

his words, "the gun is over there," and then the location of the weapon itself.

I believe that the law, as this Court has framed it in Miranda, is settled today and --

QUESTION: What if the officer had -- He saw the defendant down at the end of this aisle and he pulled his gun and said halt or raise your hands and the defendant halted and raised his hands. And, the officer, with his gun still pointed at him, says, where is your gun?

MR. HYMAN: That, Your Honor, has been permitted in New York in a case called People v. Chestnut and Huffman.

QUESTION: Do you think Miranda forbids that kind of --

MR. HYMAN: No, I do not, Your Honor. I believe that what you have -- And, I think this Court in Beheler has been defining the nature of the stop involved.

I think that the first order is whether there is a significant restraint. Obviously a gun can be a significant restraint. But, we have now refined that further and have come to the extent of saying arrest or restraint on freedom of movement of a degree associated with formal arrest.

And, what I submit here, Mr. Justice White, is that you have an individual who has been handcuffed,

frisked, and arrested. And, when you have those standards present, Miranda must be administered.

Where there is a point of clarification coming on a scene -- And the New York Court of Appeals recognized this distinction quite well. Where you come upon a scene and are going towards a defendant and you may have a gun drawn, so he may not at that moment be able to leave safely, you do not have to say you have a right to remain silent before I question you. You are clarifying the situation as you come upon it.

Once, however, you have taken that step, what I think is the bright line that we --

QUESTION: What if the evidence had been that two men had committed this crime and they both ran into the store and the officer sees one of them, arrests him, handcuffs him, frisks him, doesn't find the gun, he finds an empty holster.

MR. HYMAN: I believe, Your Honor, that that is a difficult question, but that Miranda would apply. Once you have that individual in custody, once you have taken him and are now questioning him, you have put his Fifth Amendment rights in jeopardy and you could no more coerce a confession out of him as you could to try and obtain it, even with the question of safety at issue.

QUESTION: Well, Miranda didn't rest on

coercion, it rested on the possibility of coercion.

MR. HYMAN: Inherent coercion in a situation, that is correct, Your Honor.

QUESTION: What is it here? Is it the handcuffs?

MR. HYMAN: The handcuffs, certainly. You have here the classic coercive situation that Miranda was aimed at when you apply Miranda to outside the station house.

QUESTION: What if he hadn't been handcuffed?

MR. HYMAN: Excuse me?

QUESTION: What if he hadn't been handcuffed?

MR. HYMAN: At that time, Your Honor, he might not have been in the degree associated with formal arrest.

I think that Beheler made this --

QUESTION: In a public place, in a supermarket, there is a possibility of third degree tactics that Miranda was aimed at preventing?

MR. HYMAN: There is a -- Your Honor, I might note that this was in the -- Not to beg the question and not to say --

QUESTION: Well, it was in a public place, wasn't it? People were around.

MR. HYMAN: There was no one else around, Your Honor. The record is clear on that. There was no one else around.

QUESTION: Police aren't about to take out a piece of rubber hose and --

QUESTION: Where does it state that there was nobody around?

MR. HYMAN: Page 25-A. Question: "Were there any other people that you observed at that time?"

"No, sir."

The only one -- I should note no other people -- There was a clerk at the front of the store at the checkout.

QUESTION: I never heard of a supermarket with nobody around.

MR. HYMAN: It was 12:00 at night. It is a 24-hour supermarket.

QUESTION: I have been in those too.

(Laughter)

QUESTION: Well, certainly there were people on the checkout.

MR. HYMAN: Apparently, according to the question -- Now, I asked that question at the time of the hearing. He observes Mr. Quarles at the checkout counter with the clerk. "Were there any other people that you observed at that time?"

"No, sir."

And, the record is silent about anything else.

At no time is there indication of --

QUESTION: They weren't in the station house anyway.

MR. HYMAN: They were not in the station house.

QUESTION: And they weren't locked up in somebody's bedroom. They were in a public place.

MR. HYMAN: They were, but he was, Your Honor --

QUESTION: Well, he was handcuffed, that is true, and he was under arrest.

MR. HYMAN: But, those are the factors, Your Honor, we have as this Court has refined Miranda. It has specifically said that the station house --

QUESTION: What is the closest case you think for the beginning of the Miranda obligation? What is the closest case of this Court, Orozco?

MR. HYMAN: Orozco.

QUESTION: That was another five to four decision, wasn't it?

(Laughter)

MR. HYMAN: Yes. It came the right way, Your Honor, but it was five to four.

QUESTION: Not really.

MR. HYMAN: No, it was. Justice Harlan in Orozco, Your Honor, did join the majority. He indicated that under stare decisis he believed that the Miranda

rationale --

QUESTION: And there were only two dissenters.

MR. HYMAN: Justice White was writing the most eloquent.

(Laughter)

MR. HYMAN: But, it is, Your Honor, a situation that -- And, Your Honor, in your dissent in Orozco indicates that the status of arrest is what counts. And, I think we have achieved a very clear definition of Miranda today. And, what we now --

QUESTION: Mr. Hyman, there are some exceptions that we recognized, even after a custodial arrest, booking information, for example.

MR. HYMAN: That is correct, Your Honor.

QUESTION: So, some types of questions we have permitted without warnings.

MR. HYMAN: You have permitted -- In fact, that question, of course, other than, Your Honor, in Neville, indicating its applicability or that there is no Miranda need with regard to the question where you take a breathalyzer test is that where it is a non-incriminatory question, then you need not give Miranda warnings.

QUESTION: Well, of course, some booking questions could be incriminatory in a sense. One's identity, I suppose, could be.

MR. HYMAN: That has been, but is it -- Under the standard enunciated in Innis, is it reasonably likely if that is the standard to be applied to express questioning. Is it reasonably likely to incriminate -- to elicit an incriminating response, I submit, is not likely when you ask what is your name? When you ask where is the gun, then you have certainly crossed the line.

I think that what you have --

QUESTION: If you have arrested someone on a charge of impersonating someone else, the question of what is your real name might be designed to produce an incriminating answer, I suppose.

MR. HYMAN: That -- It could be under those circumstances, Mr. Justice Rehnquist, but the -- And then we could conceivably have a Miranda question, but we do have a firm rule about booking and -- It is the pedigree information is a clearly defined exception that the courts have worked out over the years.

What you have here, however, is an open-ended situation in which you are judging the questions based upon the circumstances. And, you will, I believe, be introducing a new totality of the circumstance standard that was rejected in California v. Beheler and was rejected when an individual was in the station house.

I submit that it is the status of the individual

that he has been placed in; that is not the place, but what has happened to him, has he been taken into custody. And, when he has been taken into custody to the degree associated with arrest, I submit that we have a Miranda issue and that the Court of Appeals was correct in that it is consistent with the subtle law in the Supreme Court as this Court as enunciated.

I believe that we have a situation here in which certainly in this record you do not have a safety question. You can hypothesize factors, but in the record before us we do not have another accomplice. We do not have a situation in which there is a true safety issue.

The officer himself on cross-examination at the time of the suppression hearing indicated that in his mind the situation was definitely under control.

QUESTION: Mr. Hyman?

MR. HYMAN: Yes.

QUESTION: With respect to the safety element, what about employees of the store who might be called on to move the carton in which the gun had been dropped?

MR. HYMAN: Of course, no one knew where the gun was until --

QUESTION: That is the purpose of the question.

MR. HYMAN: Certainly locating a weapon can be an issue. If someone found the weapon, it could be an

issue of possible harm to an individual.

QUESTION: It would be worse still if you didn't know it was there and picked up the carton and it dropped and shot him, wouldn't it?

MR. HYMAN: But, Your Honor, I believe in Innis you had even a far more egregious situation of a shotgun in a school yard near handicapped children. And, the court enunicated rather a clear standard at that time. And, it didn't look -- It could have at that time said no Miranda warnings are required. There was a gun in the school yard.

Instead, you look to the nature of the question and enunciated that once an individual is in custody, as in this instance, Miranda must be administered and the question is what is the nature of the question.

In Innis you specifically did not use the safety aspect as a means of detracting from Miranda.

QUESTION: Didn't the Court have to decide in Innis that there was no interrogation of Innis?

MR. HYMAN: Yes, that was the -- But, to get to that, Mr. Chief Justice, you had to first, I believe, in reading the opinion, and you specifically stated there, reach the conclusion that Miranda was, in the first instance, to be required and then we had to reach, the Court, the question of what is questions, what is

interrogation as we originally enunciated under Miranda and then you go into that discussion.

But, in the first instance, you do find that Miranda did apply and that safety of the public --

QUESTION: Mr. Hyman, in this case, I assume that if he had not been handcuffed, you would not be making this argument.

MR. HYMAN: That is correct, Your Honor.

QUESTION: Don't you suppose Mr. Innis thought there was a question pending before the house? There were three of them in the automobile, Mr. Innis, and two officers.

MR. HYMAN: I believe, Your Honor, that Mr. Innis certainly could have. This Court, however, found that --

QUESTION: His argument here was that the statement of the one policeman to the other, the question of one policeman to the other was the functional equivalent of a question to the accused --

MR. HYMAN: That is correct.

QUESTION: -- who was in custody.

MR. HYMAN: And --

QUESTION: A rather shallow difference, isn't it, between that and this?

MR. HYMAN: Well, in this, Your Honor, the

question here, of course, is a direct one, where is the gun? I mean, we don't have a functional equivalent here. We have a direct question with a direct incriminating question that --

QUESTION: Well, the words that came out of the mouth of the policeman in Innis were, in effect, where is the gun, where is the shotgun, in that case.

MR. HYMAN: It was a discussion between police officers. This Court found that it did not rise to the functional equivalent, that it was not words or actions on the part of the officers.

QUESTION: Yes, I know that is what we decided, but I am trying to see what the difference is between Innis and this case --

MR. HYMAN: Well, I --

QUESTION: -- except that the question was directed here to your client and ostensibly or superficially the question in Innis was directed by one officer to another and there was no possibility that either of the officers knew where the gun was.

MR. HYMAN: That is correct, as they did not in this case. But, here you do have --

If we are to find standards and give clear guidance to police officers, Mr. Chief Justice, I believe that when you say a question is a question with regard to

reasonably likely to cause an incriminatng statement, you must give Miranda warnings. You have continued the firm rule that has been established in this Court.

And, I suggest that Quarles fits within the classic definition of how Miranda has been applied. It fits within the custody, it fits within the interrogation. It may be at the line, but if we are to move the line, we will undo, I think, the very firm rules that this Court has so carefully enunciated.

QUESTION: Is there any case in this Court where Miranda has been applied to an arrest and questioning in a public place?

MR. HYMAN: No, Your Honor. There is a case called U.S. v. Watson in which an arrest takes place in a restaurant, as I recall, and this Court comments that he was immediately given his Miranda warnings.

QUESTION: But, we haven't had a case where it was in a public place and we required the Miranda warnings?

QUESTION: No, you -- You have not specifically held that as the rationale of the case, no.

QUESTION: I suppose one of your responses to that might be that that would lead police officers to conduct all their interrogation in public places.

MR. HYMAN: Your Honor has certainly put my

argument succinctly.

QUESTION: Well, it might be a good idea.

QUESTION: If they did, they certainly wouldn't -- You know, Miranda said you can take some other -- Instead of giving the warnings, you can take some other kinds of precautions to avoid the danger of third degree like moving into a public place perhaps, having televised questioning. That isn't the only way of avoiding the evils of Miranda.

MR. HYMAN: It is the inherent -- But, it is also, Your Honor -- Miranda is to inform.

QUESTION: Did Miranda say that?

MR. HYMAN: No, it did not.

QUESTION: Well, it didn't say this is the only way the state may --

MR. HYMAN: No, no, it certainly did not. It indicated that these --

QUESTION: That these are not iron-clad rules.

MR. HYMAN: That is correct, Your Honor.

But, Miranda's purpose is also to inform. And, of course, a public place no more informs an individual of his Fifth Amendment rights. The purpose of Miranda is to say --

QUESTION: It avoids coercion. It might avoid coercion. And, what happens alone in a station house?

MR. HYMAN: But, Your Honor, Orozco was not alone in a station house.

QUESTION: He was home alone in his bedroom, wasn't he?

MR. HYMAN: I don't know if he was alone, sir. He was in his bedroom.

QUESTION: With the several police officers.

MR. HYMAN: Yes, there were three. In this instance, you have four, possibly six.

QUESTION: In a public place.

MR. HYMAN: In a supermarket, yes, Your Honor. I wish I could change that part of the fact pattern. I cannot. It is in a public place.

But, I do not believe that that should be the distinction that this Court should consider in arriving at a standard for Miranda. Miranda itself and the progeny have very clearly now defined that it is not the place.

This Court, I believe, in Mathias and O'Beckwith very carefully said it is not the place of the questioning, it is the nature of the custody.

And, I submit under Beheler we have that in this case.

Now, dealing with, I think, the issue of if this Court does find a Miranda violation, the question, of course, is the nature of the remedy. And, it is the

position of Respondent that the claim with regard to both Tucker -- That is that derivative evidence should not be admitted, the gun, and the inevitable discovery aspect of it; that both are not properly before this Court.

Under Gates and under Michigan v. Long, this Court has set down the framework that indicates what claims should or should not be before it.

Now, if I may first deal with the nature of the record. In this case, no aspect of inevitable discovery or derivative evidence was raised in the court below. It is the position of Respondent, substantiated by New York law, that the issue thereafter was not preserved by the people to now argue inevitable discovery or to argue in this Court for the time that derivative evidence should not be admitted.

The law in New York, as we have set forth in our brief, is clear on this subject; that a party must assert its arguments below, otherwise they will not be listened to in the court above.

QUESTION: Well, I think everyone would agree with that general proposition, but the question is at what point must a person against whom a federal constitutional question is urged. And here the suppression, I take it, was urged by your client. Must he make varied responses other than saying, no, this doesn't violate the Fifth

Amendment.

MR. HYMAN: Well, I think, Your Honor, in your opinion in Gates you at least intimate that there is a requirement that arguments be asserted below.

QUESTION: So that the lower courts can pass on them, but I wouldn't think that would apply at the trial stage.

MR. HYMAN: Except in New York that is the only way it can be presented. It is our argument that the silence by the New York courts, particularly on the issue, which was the only one raised, inevitable discovery, is that that is silence in and of itself is an indication that the court did not pass on it. And, New York has recognized inevitable discovery in a case called Fitzpatrick that was denied in this case.

QUESTION: On that score, Mr. Hyman, they found the gun. There is at least some prospect that this man's fingerprints were on the gun, is it not so?

MR. HYMAN: I have never checked. That certainly has never come out. That is certainly a possibility, Your Honor.

QUESTION: Well, what is it that is essential for preserving -- You are saying, in effect, that the person against whom a federal question is urged has the same duty and at the very same early stage of the

proceedings to respond with his kind of federal argument. Inevitable discovery isn't the raising of a federal question for the first time. It is a response to why the federal question raised against the state shouldn't prevail.

MR. HYMAN: Your Honor, I have several answers on that.

QUESTION: Well, give me them all.

(Laughter)

MR. HYMAN: Okay. First, Your Honor, I should note that Your Honor's indication with respect to the issue about raising in the state courts is not present at all with the issue of derivative evidence. At no time in any of the state courts, either the trial court, the appellate division, or the court of appeals did this issue of whether or not the gun, independent of the statement, be admitted.

I believe that, therefore, the claim, as this Court has defined in it Gates, was not a cert. So, to that extent, Your Honor, I believe, with regard to that issue, it certainly has not been preserved to here.

And, that would only leave the question of the inevitable discovery. And, that is one aspect.

The second, Your Honor, is that there could be a spearate finding by the state court on the issues of what

evidence is admissible or not admissible in a court of the State of New York.

By not raising the issue in the trial court -- We have cases that have indicated that the Appellate Division and the Court of Appeals will not hear argument even on the part of the state after they have failed to make that argument below.

There is a case not cited in our brief called People v. Iochi, which is at 61 Appellate Division 2d 1, which indicates that the People themselves, that is the State of New York, whereas here the defendants were not placed on notice that the People were resisting the applications on the ground of lack of standing and the defendant might have introduced proof to establish their right to make the application. We do not believe that we should, in the interest of justice, entertain the question now.

QUESTION: But, of course, I can see why the New York courts might hold that because if an objection is made on the ground of standing, you might be able to get factual evidence in to show standing. But, would the New York Court of Appeals or the Appellate Division follow that same principle where you are just talking about kind of cross currents of legal arguments?

MR. HYMAN: Yes, Your Honor, because the New

York Court of Appeals has held in evitable discovery that there is a burden, and without a hearing, without raising that issue below, we -- there was no issue upon which to focus. And, the Court's silence with regard to that is, I believe, a significant factor and it is not that they did not want to pass on it, they did not have the authority to pass on it. And, their silence is to that extent --

QUESTION: Ought that to bind us though? I mean, where it isn't a question of raising of the federal question at the earliest possible time, but it is basically a question of a response to the federal question.

MR. HYMAN: You have the power to review de novo whether a federal question is preserved, but you must at the same time determine the scope of what the state law is.

And, under Street versus New York, Justice Harlan indicated that the trial court must be the place where the first argument is asserted.

And, I submit that in reviewing New York law there is, I think, clear question that under New York law the issue is not preserved and under --

CHIEF JUSTICE BURGER: We will resume there at 1:00, Mr. Hyman.

MR. HYMAN: Thank you.

(Whereupon, at 12:00 noon, the oral argument of Steven J. Hyamn, Esq., was recessed, to reconvene at 1:00 p.m. this same day.)

A F T E R N O O N S E S S I O N

CHIEF JUSTICE BURGER: Mr. Hyman, you may continue.

ORAL ARGUMENT OF STEVEN J. HYMAN, ESQ. -- continuation

ON BEHALF OF THE RESPONDENT

MR. HYMAN: Thank you, Your Honor.

Your Honor, in dealing with the question of the jurisdictional aspect, I would like to point out that in the New York Court of Appeals opinion with respect to the preservation issue, the Court does not deal, of course, at all with inevitable discovery, but it does indicate in discussing the emergency issue, Mr. Justice Rehnquist, that not so far as it appears from the record was there any such theory advanced by the People at the suppression hearing. Undeniably, neither of the courts below with fact finding jurisdiction made any factual determinationt that the police acted in the interest of public safety.

QUESTION: But, there again you have a factual thing like standing where you might want findings of fact from a court that had authority to do that.

MR. HYMAN: But, Mr. Justice Rehnquist, when we deal with the question of inevitable discovery, as I understand the government's argument, if this Court is to acknowledge that, is that not, I believe, a factual finding to be made by the lower court and none was here.

QUESTION: Well, do you really think it is a factual finding, Mr. Hyman? I think probably every judge in the country, whether he sits on a supreme court, intermediate, appellate court, or a trial court, would feel that he could tell or she could tell whether or not there would have been inevitable discovery.

MR. HYMAN: Well, except that the standard proposed by the government in Nix, which it seeks to assert in this case as well, is that there must be an affirmative showing, there must be a -- They emphasize, Mr. Justice Rehnquist, the need for findings of fact and in New York, findings of fact can only be made in the trial court. And, the failure to do that --

QUESTION: Do you suggest there could have been a finding that they never would have found the gun?

MR. HYMAN: Yes, I do, Your Honor. I submit that --

QUESTION: He had a gun and had an empty holster and you don't think they would have searched the store?

MR. HYMAN: I do not know and I am not trying to be incredulous with the Court.

QUESTION: No, right.

MR. HYMAN: The point is that to find the gun if they thought it existed in the supermarket, they would have had to seal the supermarket and conducted a search.

Would they have done so? I do not know.

QUESTION: How far from where he was standing did they find the gun in the carton?

MR. HYMAN: Four feet, Mr. Chief Justice.

QUESTION: And, you think they wouldn't have found it?

MR. HYMAN: It was inside a carton. There is no indication in the record.

QUESTION: Wouldn't the logical thing, ordinary human experience tell you that they would look in every place within reach or within a pitcher's reach of where he stood?

MR. HYMAN: Mr. Chief Justice --

QUESTION: He might have thrown it.

MR. HYMAN: That can be an assumption, but it is not --

QUESTION: Well, is it a reasonable assumption?

MR. HYMAN: It may be reasonable, but it is speculative.

QUESTION: It is not inevitable you say?

MR. HYMAN: It is not inevitable. I submit that in this case it is not inevitable. It may have been probable. It may have been done, but -- And, it might have been solved by a few questions below. Had the People of the State of New York raised that issue below, then we

would have had a record upon which to deal with it.

QUESTION: Mr. Hyman?

MR. HYMAN: Yes, Your Honor.

QUESTION: In New York, does the first appellate level of court have fact finding power?

MR. HYMAN: It only has fact finding power in the interest of justice. And --

QUESTION: Might this fit that category?

QUESTION: Not in your opinion.

(Laughter)

MR. HYMAN: It would not have been in the interest of justice.

It could have, if it had so desired, determined certain findings of fact, but at the same time, it must give in the law -- the cases we cite including Iochi -- it must give great deference to the trial court. It must -- It is essentially bound --

QUESTION: But, it wasn't precluded under New York law from making findings in the interest of justice.

MR. HYMAN: Only in the interest of justice may the New York Appellate Division make findings of fact.

QUESTION: And, I guess the state did raise the inevitable discovery argument at that level.

MR. HYMAN: They did in that brief raise it for the first time.

QUESTION: And, do you think that the theory espoused by Illinois versus Gates would necessarily preclude this Court from considering the Michigan versus Tucker question in the light of the inevitable discovery allegation?

MR. HYMAN: Yes. I believe that Michigan v. Tucker is an entirely different issue and a different theory and under New York law --

QUESTION: Well, it has to do with the admission of the fruits, if you will.

MR. HYMAN: The derivative evidence.

QUESTION: Sure.

MR. HYMAN: That is correct. And, the findings --

QUESTION: And, I don't think we have ever placed any magic on the words used below to attack the basic question.

MR. HYMAN: No, but the claim is different and the nature of what is sought is different.

QUESTION: But, I think you need some refinement. I mean, what you have got here is basically an argument by your client that you cannot admit this evidence against me, it violates the Fifth Amendment of the United State Constitution to do so. The state's response is, no, it does not do so. Now, there is a

federal issue joined right there. Now, the various subcategories of argument under the state's response as to why it doesn't violate the Fifth Amendment, I don't think, should have the same requirement of raising an independent federal issue, that the parties bears the burden of the first federal issue.

MR. HYMAN: But, New York law puts the burden on the People and it says very clearly in its decisions that it must be raised below. Now, under New York law in People v. Huntley it says that the burden is on the People to prove that which they are seeking to introduce.

QUESTION: I don't know that that has the same adequate independent state ground connotation that a burden on the party raising the federal issue has.

MR. HYMAN: But, I think that -- The discussion in Gates would seem at least there must be an equivalency and New York recognizes that equivalency.

QUESTION: But, Gates didn't get this fine, I don't think.

MR. HYMAN: Well, I might also note that what makes this case even more troublesome, I think, than Gates is that we do have independent state grounds upon which the motion was made that the New York law could be that it would admit the evidence. There is statutory basis for its exclusion rather of the evidence independent of

federal issues.

QUESTION: But, the New York Court of Appeals spoke only of a constitutional issue.

MR. HYMAN: But, its silence, Mr. Justice Rehnquist, I believe, must be construed that there were grounds that prevented it considering it.

I believe in Street that issue -- Justice Harlan indicated that where there is silence, there is at least a presumption that the silence is because the Court did not want to deal with the issue because it was not preserved under state law which is what we are arguing here. They did not, and, in fact, did not deal with the issue because it was not preserved.

Thank you very much.

CHIEF JUSTICE BURGER: Do you have anything further, counsel?

MR. RAPPAPORT: Yes, Your Honor.

CHIEF JUSTICE BURGER: You have three minutes remaining.

MR. RAPPAPORT: Thank you.

ORAL ARGUMENT OF STEVEN J. RAPPAPORT -- Rebuttal

ON BEHALF OF THE PETITIONER

MR. RAPPAPORT: With respect to the issue of the independent and adequate state ground, I would like to refer the Court to its opinion in Michigan versus Long

where the Court said that if, in fact, the state court wishes to base its decision on an independent and adequate state ground, it is incumbent upon that court to make explicit that it intends to do so.

Clearly, the New York Court of Appeals in this case did not explicitly base its decision on an independent and adequate state ground.

QUESTION: Was this case decided by the Court of Appeals before we decided Michigan and Long?

MR. RAPPAPORT: It was decided before --

QUESTION: Well, then how were they to know we didn't make that requirement?

MR. RAPPAPORT: Well, I think the fact that the Court had not made that explicit prior to Michigan versus Long does not mean that the reasoning in that case should not be --

QUESTION: Why should we have made it explicit if it was already the law?

MR. RAPPAPORT: I am not sure I understand the question.

QUESTION: Perhaps we made it explicit because a lot of courts weren't catching the obvious, very obvious signal.

MR. RAPPAPORT: Well, I think the point is that there were reasons behind this Court's opinion in Long and

this case might present a reason for the application of that principle.

The only portion of the Court of Appeals decision which could be interpreted as raising an independent and adequate state ground is the portion cited by counsel where he said that the People never raised the issue of the safety of the public as distinguished from the safety of the officers.

However, the Court made a finding of fact that the record did not establish that there were, in fact, those circumstances. It is that finding which we are asking the Court to review now.

One other point. Counsel characterized our discussion of Miranda as permitting an open-ended kind of activity on the part of police and requiring a totality of the circumstances approach. We submit that we are doing no such thing. We are saying that objectively speaking any time there is a gun in the immediate vicinity of an arrest in a public place, it is reasonably prudent protective measure for the police to take to ask about the location of that gun.

If there is any question of the totality of the circumstances approach, I submit that Respondent is, in effect, asking for that when he can see that well under some circumstances there might be exigent circumstances,

but not in this case.

Thank you, Your Honor.

QUESTION: It is none of our business and you need not comment on it, but one can't help but wonder why a prosecutor thought he needed this evidence. But, as I say, that is not our business.

Thank you, gentlemen, the case is submitted.

We will hear arguments next in Nix against Williams.

(Whereupon, at 1:10 p.m., the case in the above-entitled matter was submitted.)

CERTIFICATION

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

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