Wabash College Moot Court Competition:
2018 Participant's Guide

Preliminary rounds of the Competition will be held on Saturday, October 20. Participants should report to Baxter Hall at 8:30 A.M.; room assignments will be available outside of Baxter 101. The First Round will begin at 9:00 A.M., and the Second Round will begin at 11:00 A.M. Each team, consisting of two (2) members, will argue in two rounds, once as Petitioners and once as Respondents.

Party	*Name before Trial Court*		*Name in the Court of Appeals (both initially and when the matter was heard en banc)*	***Result in the Court of Appeals (both initially and when the matter was heard en banc)***	*Name in the Supreme Court*
Jean-Michel Basquiat (BAHS KEY AHT)	Defendant	**Lost**	Appellant	**Lost**	Petitioner
United States of America	Prosecution	**Won**	Appellee	**Won**	Respondent

NOTE: Each of the Federal Circuit Courts of Appeal have many judges. The judges normally hear cases in three-judge panels. A party who is initially unsuccessful on appeal may seek to have the case heard again en banc, which means by the full court for that circuit. En banc hearings are rare. This moot court case is adapted from one of those rare en banc hearings.

I. THE PROBLEM:

A. Jean-Michel Basquiat,[1] a male of Haitian and Puerto Rican descent, was a passenger in the back seat of a car. On a very cold February evening, sometime after 7:00 p.m., the driver of the car parked it 7 or 8 feet from a crosswalk in a "rough area" of Walker City, which is located in the State of Barnes. The driver went into a store, leaving the motor running, the doors closed, and his passengers in the car. Parking a car within 15 feet of a crosswalk, is unlawful in Barnes unless the car is there "temporarily for the purpose of and while actually engaged in loading or unloading or in receiving or discharging passengers and while the vehicle is attended by a licensed operator." Barnes Stat. § 346.53.

Five police officers were patrolling the neighborhood in two marked cars. They saw the parked vehicle with all the doors closed. One police car drew up parallel to the stopped car, while another drew up behind. Shining lights through the car's windows, one of the officers saw Basquiat make movements that led him to infer Basquiat was hiding something such as alcohol, drugs, or a gun. Concerned for his safety, the officer ordered Basquiat and the other passengers to get out of the car. Once the car's door was open, the officer saw a gun on the floor. This led to Basquiat's arrest.

[1] This is a French name. The last "t" would normally be silent. But the actual person who had this name pronounced it BAHS KEY AHT. We will pronounce it in the same way.

The U.S. Attorney prosecuted Basquiat for possessing a weapon that, as a felon, he was forbidden to have. 18 U.S.C. § 922(g)(1). After the district court denied his motion to suppress the gun, Basquiat entered a conditional guilty plea, and the district court sentenced him to 346 months' imprisonment. A divided panel of 14th Circuit affirmed the conviction, but that decision was vacated when the full court decided to hear the appeal en banc. The en banc 14th Circuit affirmed the conviction by a 5-3 vote. Basquiat again argues, this time to the U.S. Supreme Court, that the district court improperly denied his motion to suppress the gun because the police obtained it in the course of a search and seizure that violated his rights under the Fourth Amendment to the United States Constitution.

B. The Fourth Amendment to the United States Constitution states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

C. The case is to be decided on the merits. There are two issues:

- Whether the Fourth Amendment standard adopted in *Whren v. United States* should be extended to civil parking violations.
- Whether the police in this case actually had either probable cause or reasonable suspicion to seize Petitioner.

II. DIVISION OF THE ARGUMENT:

A. Petitioner (Basquiat): I agree with the dissenting opinion.

First petitioner's counsel: The Supreme Court has not and should not extend the police tactics approved in *Whren* to the parking context. This Court should focus on the practical consequences of such an extension, including whether the cumulative effects of Fourth Amendment doctrine are reasonable. Allowing the extension of *Whren* would be to lose sight of the core test of reasonableness and the balance at the heart of the Fourth Amendment. In simplest terms, seizing and searching the passengers of a parked car for the supposed purpose of investigating a parking violation is too intrusive to be reasonable under the Fourth Amendment.

Second petitioner's counsel: Even if *Whren* were extended to apply to parking violations, the officers in this case did not even have reasonable suspicion, let alone probable cause, to seize Basquiat. The district court should have suppressed evidence of the gun. This Court should overturn the conviction.

B. Respondent (United States): The majority opinion is right.

First respondent's counsel: There is no basis for treating parking violations differently than moving vehicle violations under the Fourth Amendment. If the police have probable cause to believe a parking violation has occurred, that is sufficient to justify a seizure of the vehicle and those who are in it. The reasoning of *Whren* should extend to parking violations.

Second respondent's counsel: The officers had probable cause to seize Basquiat. Even if probable cause was lacking, they certainly had reasonable suspicion sufficient to justify the seizure, which in turn, led to

discovery of the gun. The district court properly admitted the gun into evidence. This Court should uphold the conviction.

C. Special Note for 2018: This problem follows the structure of the actual majority and dissenting opinions; therefore, the subheadings do not divide the text of the opinions neatly into the four arguments. In addition, while the problem is divided into two issues, those issues are related to one another. Therefore, **EACH speaker on BOTH sides should carefully study the entire problem very carefully and craft his arguments using information in both the majority and dissenting opinions. Specifically, each speaker on both sides should be able to address and discuss the legal concepts of probable cause and reasonable suspicion as well the content of the applicable Barnes statute.**

Although they do not neatly divide the opinions into the two issues, the subheadings can help you to focus and to get your bearings as you prepare. So in addition to reading the entire problem, here are those areas of particular focus. The First Petitioner's Counsel will want to focus in particular on Section A of the dissent, and the Second Petitioner's Counsel will want to focus in particular on Section B of the dissent. The First Respondent's Counsel will want to focus in particular on Section B of the majority opinion, and the Second Respondent's Counsel will want to focus in particular on Sections A and C of the majority opinion.

III. OUTSIDE RESEARCH:

A. ***Outside research is NOT required. It is entirely optional.*** Time is much better spent on understanding and refining the arguments presented than on doing outside research. Suppress, if you can, the desire to find the "gotcha" or killer authority, statistic, or quotation. There's plenty of "ammunition" for the arguments in the two opinions you have.

B. The problem is a variation of *Johnson v. United States*, a Seventh Circuit case. The Defendant's petition for certiorari is currently pending before the United States Supreme Court. Do NOT use *Johnson* as authority in your argument. It is not worth being derailed into exploring how this case is different from that one

ORAL ARGUMENT PROCEDURE:

- You will argue before a panel of three judges, usually made up of a mixture of practicing attorneys, professors, and judges who have had moot court, trial, and appellate experience.

- Your argument should be stapled into a manila folder. It is NOT a crutch, and DO NOT READ FROM IT VERBATIM. Use it for reference and to keep your place in your argument. Your folder should contain relevant facts, summaries of legal authorities or concepts, and other pertinent information.

- When you enter the room, put your name and the side you will be arguing on the blackboard. If you are in a "courtroom" without a blackboard, the judges will ask your name and the respective side you are arguing and will write it on his/her evaluation sheet.

- The Petitioner (here Basquiat) always argues first. When the judges ask if you are ready to proceed, respond "Yes, Your Honor."

- The introduction both sides should use is "May it please the Court. My name is _____, and I represent _____, the [Petitioner or Respondent] in this appeal." The Petitioner is allowed rebuttal

and MUST reserve rebuttal time. You ask for rebuttal immediately after your introduction. "At this time, I would like to reserve (1 to 3) minutes of my time for rebuttal."

- You will be timed by one of the three (3) judges. The timer will remind you how much time you have left. EACH person gets ten minutes. This may sound like an eternity, but it will go by quickly once you get into your argument. You will get a "5 minutes" left signal card, and "2 minutes" left signal card, and "1 minute" left signal card and a STOP card. You won't believe how quickly the 5-minute card will be flashed at you.

- When the STOP card is flashed, it means STOP regardless of where you are in your argument, but don't stop mid-sentence. The best way to handle this is to say, "I see my time has expired. May I have a moment to conclude?" The judge will then grant you additional time quickly to finish your thought and cut to your prayer. More about the prayer later.

- Pay respect to the Court. Be deferential, but assert your client's position. Never interrupt a judge – let him/her get the question out before you start to answer it. Listen carefully to the question to ensure that you are really answering it. Never get mad at a judge or be argumentative – be respectful and assertive (have a conversation with the judges – don't run over them with a truck and call it advocacy!).

- Refer to each of the judges – regardless of gender, profession in the non-moot-court world, or age – as "your Honor" or "Justice (fill in the individual's last name)."

- DON'T talk too fast. Speak clearly and in a moderate tone of voice. Don't dance behind the lectern. It is distracting, unprofessional and makes you appear nervous and tentative. Appear confident and collected (even if you don't feel it). Be calm and alert – you'll be amazed with how much it will enhance your argument. Dress appropriately. Conservative, dark suit and tie.

PREPARING A SUCCESSFUL ARGUMENT:

- An oral argument has three basic parts – the introduction, the body of the argument itself, and the prayer.

- The Petitioner must briefly state the RELEVANT facts of the case which should only last about one to two minutes. They must be fair, but they can be slanted toward your theory of the case. Don't give facts not contained in the record. DO NOT BE SURPRISED IF A JUDGE ASKS A QUESTION BEFORE YOU GET THROUGH YOUR FACTS. IF THAT HAPPENS, ANSWER AND MOVE ON WITH THE ARGUMENT. NOTE: Because of the nature of this case, there may be more argument about the facts than usual. Your focus should, however, be on the APPLICATION OF THE LAW TO THE FACTS.

- The Respondent should do one of the following: (1) accept the Petitioner's statement of the facts; (2) make corrections in the Petitioner's statement of facts; (3) clarify or point out any ambiguity in the Petitioner's statement of the facts; or (4) make any necessary additions to the Petitioner's statement of the facts. Take issue with the facts to suit your theory of the case. Be brief! DON'T ARGUE THE FACTS: ARGUE THE LAW!

- Road map your argument. State the issues for the court to consider in clear, concise terms. For example: "There are three reasons our client should prevail. First, . . ." BE PERSUASIVE. That is the whole object of an appellate argument. Tell the Court why you should win. "The trial court erred in finding for the Respondent because…" or "the ruling of the trial court should be upheld because…" (The word "erred" is pronounced so that it rhymes with "bird").

- After you have "road mapped" your issues for argument, go back to point one and begin your analysis of each point/reason why you should win.

- The Prayer: Tell the Court in one sentence what you want them to do for your client. "We respectfully request that this Court reverse/affirm the Court of Appeal's decision." After your prayer, close your folder and sit down.

- For rebuttal, do not be verbose. Only one of Petitioner's attorneys gives a rebuttal. Your rebuttal should include one or two strong points. Listen to the Respondent's argument closely to pick up on what the judges are questioning him/her about. If it favors your side, hit it hard in your rebuttal. An example might be the correction of a case that the Respondent did not analyze or apply correctly. Rebuttal is very important because it is a great way to win points, and a lawyer's favorite thing to do is to have the last word.

- EYE CONTACT IS VERY IMPORTANT! Look directly at the judges as much as possible. This will also help you appear confident in your argument and enhance your overall advocacy style.

- The most important thing to keep in mind is that you are very familiar with your case, and you know what you are talking about. The best way to avoid feeling nervous is to prepare your argument well, think clearly, and HAVE FUN!

- You will receive feedback after both sides of the argument are completed (including rebuttal). The judges will give you helpful hints and comments that will be invaluable when you go on to the next round.

WHY SO MANY QUESTIONS?

- The judges will ask you questions about the case. This will happen to EVERYONE, and the purpose is not to humiliate you or trip you up. To the contrary, the judges need your help in figuring out how to decide this case. That is why they ask questions. Also, in a moot court competition, they want to determine how well you know your material, how well you can think on your feet, and how well you respond and get back into the flow of your argument.

- Anticipate what these questions might be and prepare to respond to them. Don't write out an answer to any possible questions and then just read it. That's not what the judges are looking for. Answer the question briefly, and then get back into your argument. Remember, YOU control the flow of your argument as much as possible, so don't open yourself up to distractions and interruptions if you can help it by silently fumbling around trying to figure out what to say next.

- Remember to listen to EACH question before you answer it. It may not be as difficult as you think. If you do not hear or do not understand what the judge is asking, it is acceptable to ask him/her to repeat the question so long as you do so politely and on a limited basis.