University of Baltimore Law Forum

Volume 28
Number 1 *Winter/Spring 1998*

Article 3

1998

Monday Morning Quarterback: Maryland v. Wilson Revisited: For the Respondent

Byron L. Warnken
University of Baltimore School of Law, bwarnken@ubalt.edu

FOR THE RESPONDENT

Byron L. Warnken, Professor of Law,
University of Baltimore School of Law

In *Maryland v. Wilson*,[1] the Supreme Court of the United States held, by a vote of 7 to 2, that the Reasonableness Clause of the Fourth Amendment prohibition against unreasonable searches and seizures permits law enforcement officers, under a "bright-line" rule, to remove all passengers from all validly stopped vehicles. This article addresses my involvement, and that of many others within the University of Baltimore School of Law community, in the *Wilson* case at the Supreme Court level.

On December 11, 1996, I argued Respondent Wilson's case before the Supreme Court. For thirty glorious minutes, I was afforded the opportunity that most attorneys only dream about: to engage in vigorous dialogue with the justices of the Supreme Court of the United States. In retrospect, at least three ingredients came together to allow me to be the one who stood before the Supreme Court: (1) academic credentials in Fourth Amendment search and seizure, (2) academic and practical credentials in appellate advocacy, and (3) luck.

Wilson in the Maryland Court System

On August 30, 1995, the Court of Special Appeals of Maryland filed a published opinion in *Maryland v. Wilson*,[2] authored for an unanimous court by the Honorable Charles E. Moylan, Jr. I immediately made note of the opinion for three reasons. First, Judge Moylan and Professor Wayne LaFave of the University of Illinois are considered the two leading experts in the nation on Fourth Amendment search and seizure. Second, the opinion may be the best teaching tool I've ever seen for explaining the difference between holding/rationale and mere dicta. Third, the opinion clearly articulated the Fourth Amendment jurisprudence leading up to, and applicable in, the instant case.

The State of Maryland, as the non-prevailing party, then filed a Petition for a Writ of Certiorari in the Court of Appeals of Maryland. After the court of appeals denied certiorari,[3] the State then filed a Petition for a Writ of Certiorari in the Supreme Court of the United States. Twenty-seven other states joined in an *amicus* petition filed in support of Maryland. Subsequently, the Court "conferenced" the case and requested a Brief in Opposition to be filed no later than May 3, 1996.

Shortly thereafter, I learned that defendant Jerry Lee Wilson had not been represented by counsel since the court of special appeals level, meaning that he did not have an attorney in either the Court of Appeals of Maryland or the Supreme Court of the United States. On April 11, I confirmed this with his prior counsel, who encouraged me to become involved in the appeal. At that point, I tried unsuccessfully to make contact with Mr. Wilson and to offer my services on a pro bono basis. Mr. Wilson was not in Maryland and I was unable to make contact at that time.

Wilson in the Supreme Court

On April 12, I called the Supreme Court and explained the situation to Francis J. Lorson, Esquire, Chief Deputy Clerk. It was apparent that the Court wanted to appoint counsel for Mr. Wilson. My dilemma was that I was willing to represent Mr. Wilson, but I had not yet been able to obtain Mr. Wilson's authorization. This situation seemed to present no problem for the Court, which authorized me to commence work on the Brief in Opposition, with the assurance that I would be appointed "counsel of record."[4]

I had been involved in cases before the Supreme Court in the past, but never as counsel of record. In 1990, in *Maryland v. Craig*,[5] I had served as lead counsel on the Respondent's Brief. At that time, I became a member of the Supreme Court Bar, and I had the privilege of sitting at counsel table during the oral argument. As part of my service component on the law faculty, I serve as the Legal Program Director of the National Law

[1] 117 S. Ct. 882 (1997).

[2] 106 Md. App. 24, 664 A.2d 1 (1995).

[3] 340 Md. 502, 667 A.2d 342 (1995).

[4] On October 7, 1996, the Court issued an order appointing me "counsel of record."

[5] 497 U.S. 836 (1990).

Enforcement Officers' Rights Center.[6] In that capacity, in 1995, I assisted on the *amicus* brief, filed on behalf of the Petitioners, by the National Association of Police Organizations, in *Koon & Powell v. United States,*[7] which is better known as the Rodney King case.

I expressed to the Chief Deputy Clerk of the Supreme Court my grave concern that I would not be able to properly prepare the Brief in Opposition in only twenty-one days. I assumed that I had some leverage because, by offering to provide representation for Mr. Wilson, I was, in a real sense, doing the Court a favor. I was told that I could "probably" obtain a ten-day extension, until May 13, which would give me a total of thirty-one days. On April 15, I obtained a copy of the petitions filed by the State and the amicus. I wrote a letter to the Supreme Court, begging for an additional two weeks or, in the alternative, at least one week. The Court ultimately granted a total extension of seventeen days, meaning that I had five weeks from the date I received the petitions until the date I had to file the Brief in Opposition.

The Supreme Court receives more than 6,000 certiorari petitions annually, yet it heard oral argument in only eighty-five cases last year. Thus, nearly 99% of the petitions for a writ of certiorari are summarily disposed of with a one line order saying "cert. denied." Nonetheless, based on the Court's having "conferenced"the petitions in *Wilson*, plus the Court's request for a written Brief in Opposition, I believed that the Court had already decided to grant certiorari or, at a minimum, was leaning strongly in that direction, even before I contacted the Court.

The Brief in Opposition

I had thirty-five days to accomplish what I have always described to my students as an attorney's most difficult task. An attorney is on the prevailing side of a case, before either a federal circuit court or a state court of last resort, and then the losing side petitions the Supreme Court to take the case. The zealous advocate wants to -- and must -- take every legal and ethical step to ensure that the Supreme Court does not take the case. At the same time, the human being in any attorney would certainly relish the once-in-a-lifetime opportunity to argue before the nine justices of the highest court in the land. I was determined that if certiorari were granted, I could look in the mirror every morning knowing that I had left no stone unturned in my effort to have certiorari denied.

The issue presented to the Court by the State was as follows: "When a police officer makes a lawful traffic stop, does the officer's automatic right to order the driver to exit the vehicle, pursuant to *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), extend to passengers in the stopped vehicle?" My task was to convince the Supreme Court that this question was not important enough to need an answer. Thus, the Brief in Opposition to the Petition for a Writ of Certiorari is not a brief on the merits of the case. The key to precluding certiorari from being granted is not to convince the Supreme Court that your side is the winning side, but to convince the Supreme Court that American jurisprudence does not need the Supreme Court to answer the question presented to it. My strategy and approach were five-fold.

First, I planned to demonstrate that the analysis set forth by Judge Moylan was absolutely correct. Second, it was my strong surmise that, during the nearly two decades since the Court's decision in *Pennsylvania v. Mimms*, only infrequently had appellate courts even been presented with the issue of the applicability of *Mimms* to passengers. If I could demonstrate that only rarely did any court need to know the answer to the question posed by the State, perhaps I could convince the Court that this was not a "cert. worthy" issue. Third, it was my hope to demonstrate that there was no significant split among those jurisdictions that had addressed this issue. Fourth, it was my hope that there was only minimal evidence that harm to law enforcement officers during traffic stops was inflicted at the hands of passengers, as opposed to drivers. Fifth, because the State was urging the Court to adopt a "bright-line" rule, it was my hope to persuade the Court that such a rule was inapplicable when considering the vast array of passenger situations. Of course, at

[6] The National Law Enforcement Officers' Rights Center is the advocacy and education branch of the Police Research and Education Project (PREP), which is a component of the National Association of Police Organizations, Inc., representing approximately 200,000 law enforcement officers nationally.

[7] 518 U.S. 81 (1996).

that point, I did not know with certainty where the research would take me.

The legal research on the second of the five points mentioned above would require examining every case addressing a Fourth Amendment issue, in the context of an automobile, during a two-decade period. I assumed that almost all of those intrusions would be controlled by existing Fourth Amendment jurisprudence, e.g: (1) a valid warrant or warrantless arrest of one or more of the occupants of a vehicle, followed by a valid search of the interior of the vehicle, pursuant to the search incident to a lawful arrest exception to the warrant requirement; (2) a valid vehicle search, pursuant to a valid search warrant or a valid automobile exception to the warrant requirement; a valid vehicle stop, followed by a valid vehicle search, based on reasonable suspicion that one or more of the occupants was presently armed and dangerous; or (3) a valid consent search. Every one of these situations, as well as others, would permit law enforcement officers to remove the passengers from the vehicle, yet would not require application of *Pennsylvania v. Mimms*. Thus, the issue presented in *Wilson* would only present itself in those situations in which (1) a vehicle was validly stopped for a traffic violation, (2) there was no evidence of administrative or criminal wrongdoing on the part of the passenger, and (3) there was nothing that posed a threat to officer safety, yet (4) the officer required the passenger to exit the vehicle.

University of Baltimore Law Student Volunteers

If each federal and state jurisdiction had only one reported post-*Mimms* vehicle case per month, there would be close to 23,000 opinions to review. At two cases per month, there would be more than 45,000 opinions. At four cases per month, the number of opinions would exceed 90,000. Just the first step -- locating and reviewing these opinions -- would be an impossible task for one person, who would then also have the ultimate assignment of preparing and filing a timely Brief in Opposition.

At that time, it was two weeks before the start of the spring semester law school final exams. My timing could not be worse. Nonetheless, I posted a sign at the Law School, seeking research assistance and promising, in return, an interesting experience, a one-line resume entry, and a ticket to the oral argument if I could obtain one. I assumed that, with law school exams just two weekends away, I would be lucky to get five or six student volunteers and, as such, there should be no trouble obtaining that many seats for the oral argument. What a wonderful surprise for me when fifty-seven law students came forward to volunteer. It was so impressive that *The Daily Record*, Maryland's legal newspaper, ran a feature story on it.[8] When counting the states, the federal circuits, and the federal districts, a total of 157 jurisdictions had to be examined. Accordingly, with fifty-seven volunteers, each student was assigned three jurisdictions.

The Team for the Brief in Opposition

While the law students went to work, I assembled the team of those individuals who would assist me in the actual crafting of the Brief in Opposition. This team consisted of Joe Freeman Shankle, Esquire, Deborah N. Abramson, Esquire, and Stacy W. McCormack, then a law clerk at my wife's firm. Joe, a 1994 University of Baltimore School of Law graduate, and Stacy, a 1996 graduate, were both former students of mine. Joe ultimately invested in excess of 300 hours on the *Wilson* appeal.

The fifty-seven volunteers had one week and two weekends to complete the legal research. Each volunteer was required to produce a work product, consisting of one or more three-inch 3-ring "D" binders, for the three assigned jurisdictions, containing every opinion published during the applicable 19-year period, if there was any argument that the case could possibly be a *Mimms* application to a passenger. The student work product was due by April 29 -- seven days before the start of final exams. After April 29, the student volunteers would return to their exam preparation, hoping not to have irretrievably harmed their semester with a ten-day side trip to the Supreme Court.

While the student volunteers were researching, Joe, Stacy, and I began analyzing the petitions filed by the State and the *amicus*. Joe and Stacy pulled all of the authority relied on in these petitions. I continued to plan the strategy for our

---

[8] *U.B. Students Wet Legal Feet*, THE DAILY RECORD, June 12, 1996, at ___.

three issues. Joe began constructing the Statement of the Case. He also conducted legal research into the applicable secondary authority. In addition, Joe began obtaining and analyzing government data regarding assaults on law enforcement officers during the last twenty years. Stacy likewise researched secondary authority. In addition, she researched all of the cases in which the Court had adopted, or had rejected, a "bright-line" approach in its Fourth Amendment analysis.

By April 29, the student volunteers had submitted dozens and dozens of binders of case authority. The task of analyzing and synthesizing this authority, and converting it into a cohesive, persuasive Brief in Opposition in only twenty-one days seemed nearly impossible. We constructed the first argument under the following point heading: "The opinion of the Court of Special Appeals of Maryland is not contrary to Supreme Court precedent."

The point heading for the second argument was as follows: "The issue presented in the petition has remained largely untouched by the lower courts." The final analysis of the case authority on this issue supported my supposition. There were only sixty-one occasions, in nineteen years -- or roughly three times per year throughout the entire nation -- in which a published opinion had addressed the issue of whether the rule in *Mimms* was intended to apply to passengers. The District of Columbia and twenty-seven of the states had not had even one occasion to address this issue. Moreover, only four of the twelve federal circuits and only four of the ninety-five federal districts had confronted this issue even once. The small number of jurisdictions confronting the issue is probably because law enforcement officers, based on their training, ordinarily keep all passengers in the vehicle. When a validly stopped vehicle contains two or more individuals, usually the last thing that the law enforcement officer wants is to have them outside the vehicle.

Not only was there minimal need for a "*Mimms* to passenger" rule, there was only a minor split among those states that had addressed the issue. In *Wilson*, Maryland had become only the third state to expressly hold, on non-independent and adequate state grounds, that *Mimms* does not apply to passengers.

The information provided by the Department of Justice, in its annual *Uniform Crime Reports*, was also revealing. During an eight-year period, there were only four law enforcement officers killed by passengers, during routine traffic stops, in the entire nation. There were an additional seven situations in which the assailant was unknown, as well as four situations in which the assailant was a combination of the driver and the passenger.

On the bright-line issue, the point heading stated: "This issue is not an appropriate issue for this Court to adopt a bright-line rule." An analysis of the primary and secondary authority on this issue appeared to place us in a strong posture on this issue.

On May 20, following a handful of "all-nighters," we filed the Brief in Opposition to the Petition for a Writ of Certiorari. In our judgment, we had accomplished everything that could possibly be accomplished. Our Brief in Opposition was accompanied by our Motion for Leave to Proceed in Forma Pauperis with Affidavit of Indigency by Respondent's Father. Obtaining *in forma pauperis* status was crucial because, without it, even if I were willing to provide pro bono legal services, I would still have to absorb hundreds of dollars in printing costs.

The Grant of Certiorari

On June 17, the Supreme Court granted the State's Petition for a Writ of Certiorari.[9] Even though we were the non-moving party on appeal, we began work on the Respondent's Brief immediately. In light of the State's Petition for a Writ of Certiorari, we did not need the Petitioner's Brief to know exactly what the State would be arguing. Joe, Deborah, Stacy, and I met to plan our strategy for the Respondent's Brief.

We knew that our posture in the Respondent's Brief would have to be different than our posture had been in the Brief in Opposition. In the Brief in Opposition, our goal had been to persuade the Court why, with only eighty-five cases argued that year, the Court should not allocate its time and effort to an issue with minimal need for resolution. Through its grant of the State's Petition for a Writ of Certiorari, the Court had already decided that issue against us. Now our task would be to convince the

[9] 116 S. Ct. 2521 (1996).

Court why our side of the merits of the argument was the correct side.

We knew that this task was formidable. First, the current Supreme Court grants certiorari much more to reverse than it does to affirm, particularly when it grants certiorari to the government in constitutional criminal procedure issues. Second, this Court is quite conservative, i.e., pro-government, on Bill of Rights issues in criminal cases. Third, among Fourth Amendment intrusions, *Wilson* probably represented as *de minimis* an intrusion as any that had come before the Court. Fourth, in *Pennsylvania v. Mimms*, the Court's closest precedent, a much more liberal Court had previously ruled 6-3 in favor of the government.

The Petitioner's Brief

The State filed the Petitioner's Brief on August 1, 1996. It was an excellent brief that made three arguments. First, the State argued that the Court, in *Mimms*, had already extended to law enforcement officers the authority to require all passengers to exit all validly stopped vehicles. Second, even if the Court had not previously included passengers within its holding in *Mimms*, it should now do so for exactly the same reason that it ruled as to drivers, and the government's weighty interest in officer safety should be balanced against a de minimis Fourth Amendment intrusion. Third, the Court should announce a bright-line rule in favor of the government. Under a bright-line rule, there is no need for a constitutional analysis on a case-by-case basis because the Court has pre-approved a "bright line," meaning that the result will be the same for all cases coming within the "line." In addition to the State's brief, five amicus briefs were filed in support of the State's position. These amicus briefs were filed by the United States of America, 39 states (filing together in one brief), the Criminal Justice Legal Foundation, the National Association of Police Organizations, Inc., and Americans for Effective Law Enforcement, Inc. (which was joined by the International Association of Chiefs of Police, Inc., the National District Attorneys Association, Inc., the National Sheriffs' Association, and the Police Law Institute).

The Respondent's Brief

Our Brief naturally countered each of the State's arguments. The Supreme Court is always concerned with the precedential effect of both its holding and its rationale on the myriad of situations that may subsequently arise. Around the same time that the court of special appeals handed down *Wilson*, the Court of Appeals of Maryland handed down a 7-0 decision, in favor of the defendant, in *State v. Dennis.*[10] *Wilson* was the "make 'em get out of the car" case, and *Dennis* was the "make 'em stay in the car" case. Because the State had also filed a petition seeking certiorari in *Dennis,* we intended to urge the Court that the State was seeking a bright line that would permit law enforcement officers to remove any passenger from any vehicle, or to demand that any passenger remain in any vehicle, all within the unfettered discretion of the officer and not subject to judicial review.

If such a rule were fashioned, a Supreme Court Justice, as a passenger in a taxi, pulled over for speeding in front of the Supreme Court, could be required to remain in the cab for up to a half an hour if the computer records indicated a problem with the taxi driver. Moreover, because the State had argued that many states had already applied *Mimms* to passengers, our strategy included the argument that there was no evidence that such a rule had produced the desired goal of enhanced officer safety.

After a few extensions courteously granted by the Court, and after hundreds of hours invested on our part, we filed the Respondent's Brief on September 11, 1996.[11] The point headings accompanying our arguments were as follows:

WHEN A POLICE OFFICER MAKES A LAWFUL TRAFFIC STOP, THE AUTOMATIC RIGHT TO REQUIRE THE DRIVER TO EXIT THE VEHICLE CANNOT CONSTITUTIONALLY BE EXTENDED TO PASSENGERS, WHEN THERE IS NO REASONABLE SUSPICION THAT THE PASSENGER HAS COMMITTED ANY

[10] 342 Md. 196, 674 A.2d 928 (1996). The Supreme Court remanded *Dennis* back to the court of appeals, instructing it to reevaluate its decision in light of the Supreme Court's decision in *Whren v. United States*, 517 U.S. 806 (1996). In *Whren*, the Court held that if the law enforcement officer's conduct is objectively reasonable, the intrusion was reasonable, regardless of the motives of the officer. On remand, the Court of Appeals of Maryland reached the same result, although the previous 7-0 became 6-1. *Dennis v. State*, 345 Md. 649, 693 A.2d 1150 (1997). The State again filed a Petition for a Writ of Certiorari, which the Supreme Court denied. 118 S. Ct. 329 (1997).

[11] To obtain a copy of the Respondent's Brief, call Ms. Barbara Jones at 410-837-4635.

WRONGDOING OR POSES ANY THREAT TO OFFICER SAFETY, PARTICULARLY WHEN SUCH A RULE WOULD INSULATE POLICE CONDUCT -- AND MISCONDUCT -- FROM JUDICIAL REVIEW.

A. Judge Moylan, a nationally recognized Fourth Amendment scholar, correctly analyzed this Court's decisions in *Mimms*, *Rakas*, and *Long*. He correctly ruled that this Court has never permitted the police to automatically require a passenger to exit a vehicle, merely because the passenger is in a vehicle that has been lawfully stopped for a traffic violation.

B. It is unreasonable, under Fourth Amendment jurisprudence, for the police to have the *per se* power, as to all passengers, in all vehicles, under all circumstances, to demand that the passenger exit the vehicle, when there is no reasonable suspicion of passenger wrongdoing and no threat to officer safety, and the passenger is merely present when the driver violates a traffic regulation.

C. If this Court were to extend *Mimms* to passengers, much of the reasonableness analysis, slowly and carefully evolved by this Court since *Terry*, would be overruled.

D. No Fourth Amendment issue could be less appropriate for the adoption of a bright-line rule than the issue now before this Court. The State's proposed rule would "draw the line" in such a way as to extend unfettered discretion to the police, and thus insulate police conduct from judicial review. Moreover, by applying a bright-line rule in the context of the most frequent of all citizen-police encounters, this Court would be deeming an almost limitless variety of situations to be constitutionally indistinguishable.

E. Because Trooper Hughes was not constitutionally entitled to automatically require Wilson to exit the vehicle, the evidence seized was a fruit of the poisonous tree. Accordingly, the trial court correctly ruled that the evidence must be suppressed, and the appellate court correctly affirmed the judgment of the trial court.

United States Attorney General Janet Reno

During her first three and one-half years in office, Attorney General Janet Reno had not argued a case before the Court. In the summer of 1996, with the presidential election only three months away, there was speculation that, even if President Clinton were re-elected, Ms. Reno may not be part of the second-term Cabinet. Thus, it would not be surprising if Attorney General Reno were seeking an opportunity to argue before the Supreme Court.

Naturally, if the Attorney General of the United States argues a case -- any case -- in the Supreme Court, that fact alone will give the case a much higher profile in the media than it otherwise would have. Accordingly, it would be important to select an "appropriate" case. *Maryland v. Wilson* was the perfect case for three reasons. First, by way of background, Ms. Reno was a career prosecutor, so the ideal case for her to argue would be a criminal case. Second, because lay persons would pay attention to the case as a result of the Attorney General's participation, the ideal case would present an issue with which the average man on the street could identify. Virtually everyone is, at some time, a passenger in a vehicle. Third, because of the high profile of the case, it would be important for the administration to select a case that the government "could not lose." On August 15, 1996, the United States, having previously filed an *amicus* brief in *Wilson*, filed a motion requesting ten minutes of the thirty minutes of oral argument time allocated to the State of Maryland. The State filed an answer, in which it did not oppose the federal government's motion, and the Court granted the motion.[12] Thus, as I began to contemplate my thirty-minute oral argument before the Supreme Court, scheduled for December 11, 1996, I knew that not only would I be arguing against the Attorney General of Maryland, I would also be arguing against the Attorney General of the United States. For me personally, it was simply more good luck. As the notoriety of the case increased, so did the level of enthusiasm and encouragement from both my students and my colleagues.

I was also very excited for my law school. I am very loyal to my alma mater. Understandably, I felt proud to be able to a part of the process that brought national attention to the University of Baltimore School of Law. The media was taking note that an upcoming Supreme Court case would be argued by the Attorney General of the United States and two graduates of the University of

[12] 117 S. Ct. 34 (1996).

Baltimore School of Law, one of whom was the State Attorney General and one of whom was on its faculty.

The Oral Argument

The Supreme Court has made an audiotape of all oral arguments since 1955. The Earl Warren Project has created a six-cassette tape series of portions of the oral argument in eighteen landmark Supreme Court cases. I listened to these tapes in the morning while I jogged. To better prepare me, Stacy McCormack created a chart of every case (Supreme Court and otherwise) cited in any of the briefs, to include the holding, the rationale, and the facts. For Supreme Court cases, the chart included the vote of every currently sitting justice, if applicable, as well as whether that justice authored or joined the opinion of the Court, a concurring opinion, and/or a dissenting opinion.

During the two weeks before the oral argument, I presented eleven practice arguments before two-person or three-person panels.[13] I requested each panel to be "hot," meaning a lot of questions -- policy questions, questions relating to the facts, holding, and rationale of prior decisions, questions relating to the record in this case, questions on "what if" as to a myriad of scenarios both normal and strange.

At exactly 10:00 a.m. on December 11, 1996, Chief Justice Rehnquist called for oral argument in the case of *Maryland v. Wilson*, and Maryland Attorney General Joe Curran approached the lectern. Joe had allocated fifteen minutes for his argument, ten minutes for Ms. Reno's argument, and five minutes for rebuttal. The bench was "very hot," and the Court had all three of the advocates "on the ropes" for the next sixty minutes. I argued without notes. Not only did I know my argument, I was sure that the Court would be so active in its questioning that notes would be of no value. This would be -- and in fact was -- a rigorous dialogue and not a monologue. After the argument, when reflecting on which justices had asked which questions, I counted twenty-two questions that I fielded during thirty minutes of argument.

What I did not appreciate, until I stood at the lectern, is that the advocate is only about ten feet from the Chief Justice. Not only is the bench long, with four justices spread out on either side, the bench is bowed, such that Justice Ginsberg and Justice Breyer, each of whom is on one of the extreme ends as a junior justice, are about three feet in front of the Chief Justice. To be able to see all nine justices at one time, an advocate would have to be about another ten feet further back. Early in my argument, I had a trilogy of questions from Justice Kennedy (two justices to my right), Justice Breyer (four justices to my right), and Justice Souter (three justices to my left), which required me to keep turning from side to side. The justices and I entered into a fast paced interchange that continued, unabated, for thirty minutes.

I assumed that I would be nervous, but I was not. I did my best to follow the advice of the late Justice William Brennan, who suggested that counsel come before the Court to explain their doctoral thesis, and not come to fight with the Court. For twenty-one years, I have been explaining principles of law, their rationale, and the subtle nuances in their application. That is exactly what I tried to do on December 11, 1996.

After the oral argument, Attorney General Reno was gracious in her remarks to me and generous with her time, as she joined Joe Curran and me for pictures taken by the Law School photographer. Her presence gave the case a high profile, resulting in my participation in numerous national television and radio forums, including CNN "Crossfire," "Geraldo Rivera Live," "Cochran & Company," and MSNBC.

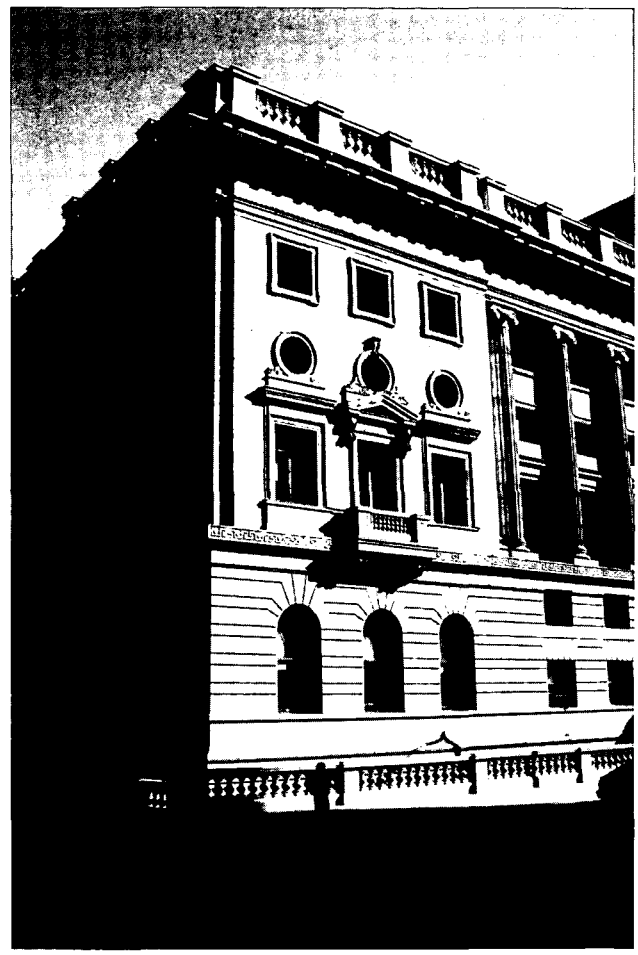
Knowing the law, and understanding the Fourth Amendment jurisprudence of the current Court, I had no illusion of prevailing on the merits of the case. When the Court handed down its 7-2 opinion in favor of the State, on February 19, 1997, I was not surprised. I did rationalize a pyrrhic victory in two ways. First, Justice Kennedy, who is usually pro-government on Fourth Amendment search and seizure issues, wrote a dissent on the defense side of the case. Second, the Court gave the State less of a bright line rule than it requested. Although the Court did extend to law enforcement officers the *per se* authority to make all passengers exit all vehicles, the Court declined to reach the

[13] I will always be grateful to those individuals who "mooted" me during one or more of my eleven practice arguments. They included judges, professors, attorneys, and former students.

issue of whether law enforcement officers have *per se* authority to make all passengers remain in all vehicles. Although the advocate in me fought hard for a different result in *Wilson*, the citizen in me is not uncomfortable with the law that resulted from the Court's ruling.

Conclusion

I find now that whenever I sit as a visitor in the Supreme Court, I relive those wonderful memories of that one moment in time when the answers were all up to me. Our system of government is founded on the rule of law. Since *Marbury v. Madison*,[14] the Supreme Court has been the ultimate authority under our separation of powers doctrine. Decisions such as *Brown v. Board of Education*,[15] *Gideon v. Wainwright*,[16] *Roe v. Wade*,[17] *United States v. Nixon*,[18] *Jones v. Clinton*,[19] and others prove the point. To have been a small part of that legacy is an awesome thought and an experience for which I will always be grateful.



[14] 5 U.S. (1 Cranch) 137 (1803).

[15] 347 U.S. 483 (1954).

[16] 372 U.S. 335 (1963).

[17] 410 U.S. 113 (1973).

[18] 418 U.S. 683 (1974).

[19] 117 S. Ct. 1636 (1997).