2018 High School Essay Contest

Introduction
The Oregon State Bar’s New Lawyers Division is proud to announce the 2017 High School Essay Contest. The contest is open to all Oregon high school students and three winners will be chosen to receive $500, $350, and $250, respectively for first, second, and third place entries.

Deadline
All entries must be RECEIVED at the Oregon State Bar office NO LATER THAN 5:00 p.m. on April 9, 2018. Late entries will not be considered. Please include your name, school, and contact information on your submitted essay. To submit your essay you may:

(1) Mail your essay to:
ONLD-LRE Essay Contest
P.O. Box 231935
Tigard, OR 97281-1935

(2) Hand-deliver the essay to the Oregon State Bar located at:
16037 SW Upper Boones Ferry Rd
Tigard, OR 97224
Please direct the essay to ONLD-LRE Essay Contest

(3) Email the essay to:
ONLD@osbar.org
Please write ONLD-LRE Essay Contest in the subject line of the email
The Essay—Rules

Submit a persuasive essay of 500 to 750 words, using only the sources and information found in the Essay Universe\(^1\) attached.

The Essay Universe consists of:

(1) Essay Question;
(2) Fourth Amendment to the United States Constitution, the All Writs Act, and Case Law;
(3) Orange’s Argument;
(4) The FBI’s Argument; and
(5) Oral Argument Excerpt.

Citation to additional research is prohibited. This is a persuasive essay, not a research paper. A bibliography is not necessary.

The first, second, and third place essays will be chosen based on the following:

(1) Each essay must reflect the student’s writing and original thinking.
(2) Each student must thoroughly, thoughtfully, and persuasively explain his or her argument.
(3) Each essay must be organized and typed using appropriate grammar, spelling, and punctuation.

Announcement of Winning Essays

All submissions will be evaluated by a panel of lawyers from the Oregon State Bar’s New Lawyers Division. The three contest winners will be announced and formally recognized.

Good luck everyone!

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\(^1\) Documents in the Essay Universe are based on a series of recent cases pending in federal courts across the country. While they are designed to capture the spirit and key components of the original briefs, they are not designed to reflect the entire legal arguments. They have been summarized here for purposes of this contest only.
**Essay Question**

You and your best friend Chris are at a gathering with a bunch of classmates. You had initially gotten together to support each other as one of your classmates, Sarah, has been missing for a week and people are pretty freaked out. It starts to get late and some people start to have a few alcoholic drinks, although no one there is 21. There is nothing too crazy going on but on the way out of the house one of your friends, who is intoxicated, stumbles into a lawn ornament which shatters and the noise causes a neighbor to call the police.

When the police arrive, events take a turn for the worse. You and Chris try to sneak out the back door but get corralled with the rest of the group. The police begin asking everyone to empty their pockets. You don’t have anything of interest on you but Chris has a joint. Chris isn’t old enough to smoke and he’s taken to the station for booking.

While at the station, a police officer takes Chris’s cell phone and begins to look through it - Chris forgot to change his settings and the phone was unlocked. There are photos on the phone of you and Chris smoking weed and drinking alcohol.

Chris tries to object to the search. He was just taken into custody and no one has provided a warrant to search his phone but police tell him that during the course of their investigation regarding Sarah, they came across a lead and believe Chris may have some information on his phone that could help them find her.

You don’t know how Chris may or may not be involved with Sarah’s investigation and you want the police to be able to find Sarah, but you are worried about the police uncovering the photos of you drinking and smoking. You worry they will use those photos to press charges against you as well.

The police are searching through Chris’s belongings as part of a lawful arrest. Should they be able to go through Chris’s phone without a warrant? What if they only search through his emails and not any other apps or photos? What if the information they find could help locate Sarah? What if they find the photos of you and you get arrested as well?

Fortunately you are a clerk working for one of the judges for the Supreme Court and you are trying to convince the judge of your opinion on the following questions: Should the police be able to search through Chris’s phone without a warrant? And if permitted, should the search be limited to only certain apps or functions of the phone? Write a persuasive essay to your judge, utilizing the: (1) Fourth Amendment of the United States Constitution; (2) case law excerpts; (3) arguments from the parties to the appeal; and (4) oral argument excerpt.
NOTE: This is a hypothetical - feel free to robustly argue from either position. Your argument is in no way an indication of your endorsement of underage drinking or smoking.

*Fourth Amendment to the United States Constitution*

The Fourth Amendment of the U.S. Constitution provides, “[t]he 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.”

*Case Law*

*Chimel v. California, 395 U.S. 752*

In the course of serving an arrest warrant at the defendant’s home they conducted an extended search and found incriminating evidence of other crimes. The court held the extended search was unlawful and evidence found in the course of the search was inadmissible against the defendant. The court explained that in order to “seize weapons and to prevent destruction of evidence,” the Fourth Amendment permits police officers to search “the arrestee’s person and “the area into which an arrestee might reach” while being arrested, but that a search that goes “beyond the [defendant’s] person and the area from within which he might have obtained either a weapon or something that could have been used as evidence against him” was unconstitutional.

*United States v. Robinson, 414 U.S. 218*

An officer searched a crumpled cigarette package found on defendant’s person during his arrest and found heroin inside. Defendant argued that the search was unlawful because the package was unlikely to contain any weapon or evidence related to the crime of arrest. The court rejected that argument, and held that searches made in the course of an arrest do not depend on “the probability in a particular arrest situation that weapons or evidence would in fact be found.” Put another way, the court stated “it is the fact of the lawful arrest which establishes the authority to search.”

*United States v. Chadwick, 433 U.S. 1*

The court held that the Fourth Amendment did not allow officers to search a locked footlocker they had seized from a person while arresting him. Once the officers had “exclusive control” over the footlocker, “there was no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence,” and therefore the warrantless search was unconstitutional.
Maryland v. King, 133 S.Ct. 1958

The court upheld the warrantless DNA testing of someone arrested for a serious crime, relying on the government’s significant interest in identifying an arrestee, including verifying his name and determining his criminal history; the arrestee’s diminished expectation of privacy in his person; and the minimally intrusive nature of the DNA swab procedure. The court found the search to be “reasonable,” and stated “the constitutionality of a search incident to an arrest does not depend on whether there is any indication that the person arrested possesses weapons or evidence.”

United States v. Edwards, 415 U.S. 800

The court held that a valid search incident to arrest need not always be contemporaneous with the arrest. In this case, the defendant was lawfully arrested late one night for attempting to break into a post office. He was transported to jail and placed in a cell, but the jail had no substitute clothing available. Ten hours later, police had the defendant change into new clothing, holding on to his old clothing as evidence because they believed it might contain paint chips from the window through which he had tried to enter the post office. The court held that because the time delay was not unreasonable, and the normal processes incident to arrest and custody had not been completed, the warrantless search and seizure of the defendant’s clothes was constitutional.
IN THE SUPREME COURT OF THE UNITED STATES

DAVID LEON RILEY, Petitioner

v. ORAL ARGUMENT

CALIFORNIA, Respondent

No. 13-132

WASHINGTON, D.C.

Tuesday, April 29, 2014

MR. FISHER [Attorney for Defendant]: Well, what this Court said in Robinson ... is the reason supporting the authority for a search incident to arrest are the two Chimel factors, which are gathering evidence to prevent its destruction, and officer’s safety. Now --

JUSTICE KENNEDY: What about gathering evidence in order to make the case? For instance, with the gun, could they take fingerprints? The -- the gun is in the police station where the arrestee is being booked. A, could they take fingerprints? B, could they copy the serial number? C, could they see how many shells were left in the chamber? They obviously have to empty it for safety purposes. All for the purpose of building the case, of -- of obtaining evidence?

MR. FISHER: Yes, of course that’s done every day. Once the gun is in the police -- the police department’s lawful possession, I think Edwards says that they can do all that.

Justice Kennedy: So -- so if -- if the proposition then, if the principle then is that some objects that are obtained from the arrestee can be examined in order to build the State’s case, is that at least a beginning premise that we can accept in your case, although, obviously, there are problems of the extent and intrusiveness of the search that are -- are in your case, but not in the gun hypothetical.

JUSTICE ALITO: Well, smartphones -- smartphones do present difficult problems. But let me ask you this: Suppose your client were an old-school guy and he didn’t have -- he didn’t have a cell phone. He had a billfold and he had photos that were important to him in the
billfold. He had that at the time of arrest. Do you dispute the proposition that police could examine the photos in his billfold and use those as evidence against him?

... What is the difference between looking at hardcopy photos in a billfold and looking at photos that are saved in the memory of a cell phone?

* * * * *

MR. FISHER: I think it’s fair to say you have a sliding scale and there’s some stuff on a phone that might be posted on the Internet, for example. The difficulty with that case, if you wanted to address it in a future case, would be the intertwined nature of information on a phone. So looking at those photos in a smartphone account will be linked to the contacts inside the phone; it will be linked to GPS information inside the phone. All of this information is intertwined and I think you’d have a difficult administrability problem if you wanted to create some sort of rule like that.

Now, remember, the government might try to deal with that problem differently by saying information in the cloud, so to speak, is not accessible to officers. We submit that just further would compound the difficulty of applying a rule in this circumstance.

JUSTICE ALITO: But do you think in this case we have to decide whether all the information that may be available in a smartphone can be examined by the police when the owner of the phone is arrested or can we just focus on the particular evidence that was admitted in your client’s trial?

* * * * *

MR. DUMONT [Attorney for the Government]: I’m merely saying that it has to do with safety. So no, I can’t point you to a case where they stopped Timothy McVeigh, looked at his phone and saw some notes about bomb making. I can’t give you that case.

JUSTICE SOTOMAYOR: I would assume you need to operate the phone to set off the bomb, so that once the police have the phone the bomb is not going to be set off.

MR. DUMONT: That is true. But it’s also true of all the objects in all the Court’s prior cases. In other words, once in Robinson the police had secured the cigarette pack, there was no question, whether there was a razor blade in it or just heroin --

JUSTICE SOTOMAYOR: Could I just ask you --

MR. DUMONT: -- that neither the evidence -- the evidence was not going to be destroyed and the weapon was not going to be used.
JUSTICE KAGAN: Mr. Dumont, is -- are you saying, essentially, that nobody has any expectation of privacy, or that somebody has a dramatically reduced expectation of privacy in anything that the person actually wants to keep on them at all times? In other words, one has to keep one’s cell phone at home to have an expectation of privacy in it?

MR. DUMONT: No, we’re not saying that at all. But what we are saying is that people do make choices, and those choices have consequences. And the consequence of carrying things on your person has always been that if you are arrested, the police will be able to examine that to see if it is evidence of a crime.

Chris’s Argument

Chris argues that cell phones today (smart phones, really) provide ready access to a vast array of personal data, and are different than other types of personal possessions such as cigarette packages and footlockers. While other physical containers are limited in what they can hold, cell phones are capable of storing a virtually limitless amount of information in a single, compact device. People can now carry way more personal information on their person than they ever could before cell phones.

In addition to document storage, cell phones permit access to the internet which presents additional privacy concerns. A search of Chris’s phone could become a search of his private and confidential information such as his medical records, school emails, chat history and online social history.

Even worse, the contents of Chris’s phone contain intimate details and video of his personal life, which could potentially expose him to extreme embarrassment, bullying and social isolation if the information were to get out.

Chris argues that Chimel should be followed and any search of his cell phone must be justified - at least within the realm of possibility - by the need to “remove any weapons,” and “to prevent evidence concealment or destruction.” Once he is in custody and the police have his cell phone, there is no longer any danger that he might gain access to the cell phone, which is certainly not a weapon, and destroy evidence.

The Government’s Argument

The Government argues that the search of the cell phone can lawfully be made as part of Chris’ arrest. Police will explain that they knew that Sara and Chris were friends and with the
proliferation of social media and easy use of cell phone cameras, there is a high likelihood that Chris had some photos of Sara that could lead to her whereabouts.

According to the government, searching someone’s cell phone for photos incident to arrest is no different than digging through a cigarette container or searching someone’s clothes for paint chips. The cell phone was an item of personal property that was on Chris’ person at the time of his lawful arrest and during the administrative processing at the police station.

Although the cell phone does have more information within it than a cigarette container or a footlocker, the search of the cell phone would be limited to the photographs that might lead to Sarah’s rescue. The government thus argues that by limiting the search in this way, the search was consistent with prior court rulings.