Launch Week:
Reading Assignment
for
Prof. Schwartz's Class on Case Briefing, Part II
(Thursday, Aug 21)

Instructions: *Please read the following materials, which will review what we covered during our first class session on how to brief a case. Then read and brief the attached case, which we will be discussing during our second class session. Following the case there is a case brief chart with some questions that we will be discussing during class. These questions may help guide you as you prepare your case brief.* ***Please print out your case brief and bring it to class****.*

Excerpt from LawNerds.Com

Available at http://www.lawnerds.com/guide/briefing.html

The IRAC Formula

IRAC (*Issue*, *Rule*, *Analysis*, and *Conclusion*) forms the fundamental building blocks of legal analysis. It is the process by which *all* lawyers think about *any* legal problem. The beauty of IRAC is that it allows you to reduce the complexities of the law to a simple equation.

ISSUE -> What *facts* and *circumstances* brought these parties to court?

RULE -> What is the *governing law* for the issue?

ANALYSIS -> Does the rule *apply* to these unique facts?

CONCLUSION -> How does the *court's holding* modify the rule of law?

Issue Spotting - The First Step - *"The facts of a case suggest an Issue."*

The key to issue spotting is being able to identify which facts raise which issues. Because of the complexity of the law, the elimination or addition of one fact (such as time of day or whether someone was drinking) can eliminate or add issues to a case thereby raising an entirely different rule of law.

In law school casebooks, the easiest way to isolate the issue is to merely look at the chapter headings of the cases, such as "Personal Jurisdiction" in Civil Procedure or "Offer and Acceptance" in Contracts. The cases you read will also contain language that signals the important issue. For instance, the judge will simply state:

"The case turns upon the question whether...."
OR "We come then to the basic issue in the case."

However, you need to develop issue-spotting skills on your own in order to do well on the exam and become an effective lawyer. During the exam the professor is not going to state the issue. Ask yourself some of these questions as you read the case:

Questions to ask when reading a case:

- What *facts and circumstances* brought these parties to court?
- Are there *buzzwords* in the facts that suggest an issue?
- Is the court deciding a *question of fact* - i.e. the parties are in dispute over what happened - or is it a *question of law* - i.e. the court is unsure which rule to apply to these facts?
- What are the *non-issues*?

Rule - What is the Law? - *"The issue is covered by a Rule of law."*

Simply put, the rule is the law. The rule could be common law that was developed by the courts or a law that was passed by the legislature.

For every case you read, extract the rule of law by breaking it down into its component parts. In other words, ask the question: what elements of the rule must be proven in order for the rule to hold true?

Questions to ask when reading a case:

- What are the *elements* that prove the rule?
- What are the *exceptions* to the rule?
- From what *authority* does it come? Common law, statute, new rule?
- What's the underlying *public policy* behind the rule?
- Are there *social considerations*?

The trap for the unwary is to stop at the rule. Although the rule is the law, the art of lawyering is in the *analysis*.

Analysis - The Art of Lawyering - *"Compare the facts to the rule to form the Analysis."*

This important area is really relatively simple. For every relevant fact, you need to ask whether the fact helps to prove or disprove the rule. If a rule requires that a certain circumstance is present in order for the rule to apply, then the absence of that circumstance helps you reach the conclusion that the rule does not apply. For instance, all contracts for the sale of goods over $500 have to be in writing. Consequently, in analyzing a contract for the sale of goods, you apply the presence or absence of two facts - worth of good and whether there's a written contract - in order to see whether the rule holds true.

The biggest mistake people make in exam writing is to spot the issue and just recite the rule without doing the analysis. Most professors know that you can look up the law, but they want to test whether you can apply the law to a given set of circumstances. The analysis is the most important element of IRAC since this is where the real thinking happens.

Questions to ask when reading a case:

- Which facts help prove which elements of the rule?
- Why are certain facts relevant?
- How do these facts satisfy this rule?
- What types of facts are applied to the rule?
- How do these facts further the public policy underlying this rule?
- What's the counter-argument for another solution?

Conclusion - *"From the analysis you come to a Conclusion as to whether the rule applies to the facts."*

The holding simply explains how the court concluded. It is the shortest part of the equation. It can be a simple "yes" or "no" as to whether the rule applies to a set of facts.

Questions to ask when reading a case:

- What's the *holding* of the case?
- Has the holding *modified the existing rule* of law?
- What is the *procedural effect* of the holding? Is the case overturned, upheld or remanded for retrial?
- Does the holding further the *underlying policy* of the rule?
- Do you agree with the *outcome* of the case?

Cases and Casebooks, a Brief History - Briefing a case is simply the act of creating a "brief" summary of the relevant facts, issues, rule and reasoning of a particular case you've read in class. However, to understand briefing, you must first understand the *case method*, which is how most law schools teach students. In 1870 at Harvard University Professor Christopher Columbus Langdell decided that the best way to teach law students was to have them read cases rather than textbooks. Textbooks explicitly state the rule of law and explain why it exists. Cases, however, are the stuff of real life. Cases contain the rule and also illustrate how the rule applies to different sets of facts.

After reading the cases, Langdell engaged his students in a Socratic dialogue where he grilled the students on what the cases meant. The idea behind the case method is that each case illustrates one tiny rule out of an entire body of law. By synthesizing each rule into a larger body of law, the student progressively learns not only the rules but also the process of legal reasoning. Law school hasn't changed much in 130 years.

The Structure of a Casebook - Casebooks are unlike any other text you've encountered. Instead of explaining a legal principle, the casebook starts with an actual case and you have to figure out the legal principle based on a real court proceeding. Your job is to the extract the relevant principle and reasoning out of the case. That's where briefing comes in.

Chapters in a casebook are arranged according to broad topic areas that illustrate the general principles of the body of law. The first case in a chapter, also known as the "principal case," usually illustrates the broad rule for that section of the book. The principal case is then followed by a series of squib or note cases that show a refinement of the law, a different rule or a different interpretation of the rule.

Squib cases do one of the following:

- *Broaden* the application of the rule to cover more circumstances.
- *Narrow* the application of the rule to cover fewer circumstances.
- List *exceptions* to the rule.
- State a *policy* consideration.

- Set up *new factors* to prove elements.
- Set up *new tests* to prove elements.
- Show a *dissenting rule*.
- Illustrate a *different rule* in a different jurisdiction.
- Illustrate a *different interpretation* of the same rule.

Casebooks also pose questions at the end of a case that are meant to make you think about the principles. These questions typically are ambiguous and difficult to address given your present knowledge of the material. This can be extremely frustrating for the beginning law student. The most that an author does to answer the question is to cite a case that you then have to look up for the answer.

In between the cases, there might be commentary from law review articles or an illustration of a rule by citing a statute or the Restatement[1] that covers that body of law. Don't overlook the footnotes. More often than not, a lot of key information is found in the footnotes.[2]

By briefing the case using the principles discussed below, you should be able to at least analyze the question. The upside to questions is that you get a clue about what the professor might ask in class.

Why Brief a Case? - Cases are written by lawyers for lawyers. Consequently, there's a structure and method unlike any other type of writing that you've read. Once you know the structure and method, you'll be able to breeze through cases quickly. When the writing is brilliant - for example, cases written by Holmes, Cardozo and Learned Hand - the cases can be as enjoyable as a good piece of fiction. There's drama, conflict, resolution, humor and pathos. Other times, the writing is very non-linear and leaves out important elements, such as the facts of a case.

Briefing is the first step in learning how to <u>outline</u> (which means organizing your class notes and case briefs in preparation of an exam). The brief should distill a case down to its elements, which allows you to immediately understand the principal legal issues at a glance. When you are under the pressure of the harsh glare of an aggressive professor, you want to be able to take one look at the brief and know the answer.

Case briefs are an important tool, but it's also important to keep briefs in perspective. Many students labor intensively over case briefs by creating forms and making sure that the wording is perfect. A brief is just a tool that helps you accomplish three things - build comprehension, answer questions in class and complete an outline. <u>You'll never be graded on a brief.</u> If you're spending time on stylistic niceties that don't accomplish one of the three goals then you're not spending time wisely.

[1] The Restatements are an effort by scholars, judges and leading lawyers to state the principles of a body of common law.
[2] Professors are fond of quoting that "the battle of law school is won in the footnotes."

Three Reasons to Brief a Case

1. Rewriting the material leads to better *comprehension*.
2. Creates a cheat sheet for *questions in class*.
3. Serves as a starting point for *outlining*.

Briefing is a phase that you eventually grow out of. After the first semester, students tend to brief a lot less. Their briefs may just end up being the rule of law or they will write notes in the margin of the casebook, which highlight the different elements. While some complex cases in your second and third years demand briefing, you will probably pick up the skills you need in your first year to analyze cases on the fly.

How to Brief a Case - Briefs should be a one-page summary of the case. Structure the summary according to the elements listed below. The structure adheres to the types of questions the professor asks in class and to the information you'll need for outlining. Not every case can be summed up in one page, but it's a good discipline to attempt to condense the material.

ELEMENTS OF A CASE

- **Facts**
- **Procedural History**
- **Issue**
- **Rule**
- **Analysis (Reasoning)**
- **Holding (Conclusion)**
- **Policy**
- **Dicta**
- **Concurrence**
- **Dissents**

You might consider creating a standard form using a word processor, then fill in the blanks as you read the case; *however, not every element listed in the chart above is used in every brief you make.* You may want to modify the form as you go along through the semester. Professors will differ as to what they like. At the end of this chapter is a sample brief.

Facts - A well-written case gives the relevant facts that brought the parties to court. In a Torts case, for instance, the judge recites the facts of the accident or injury. In Contracts, the prior business relationship might be discussed. In Criminal law, the crime is described.

Case law is at its worst when the court leaves out the facts. Judges sometimes don't include facts because the question before the appellate court doesn't require all of the details to be resolved. The

issue on appeal is so narrow, that the facts as determined by a jury are often no longer relevant to the issue at hand. However, it helps when the judges give you a context by outlining all of the facts.

You'll probably encounter such a case in Civil Procedure. Pennoyer v. Neff is one of those traditional law school cases that is extremely frustrating to understand because it lacks a background history of the facts. In situations like this, you want to revert to secondary sources such as hornbooks,[3] to pick up on the material.

Procedural History - How did this case get to this particular court? Typically, you will be reading case law from the appeals court. That means the case has already been decided at a lower court and the losing party has appealed to a higher court. Typically, the lower courts don't write opinions on their decisions, consequently, you'll almost always be reading appellate decisions.

The judge often starts the case with information on how the court below decided the case and which party is making the appeal. Often the cases will present a detailed history of the arguments presented by both parties in the court below as well. At minimum, you should be able to answer the following two questions that your professor is likely to ask in class: (1) *Who is appealing on what issues?* (2) *What happened in the lower court?*

Issue - A well-written opinion starts out by telling you the legal issue up-front. Language that the court uses might include such phrases as: *"The question before us is whether....;" "This case was brought before us to decide whether...".*

Appellate courts hear a case on appeal when there has been a problem with the case in the court below. The problem could be an error that the court made or the appellate court may want to take the case because the lower courts in its jurisdiction are not consistent in their decisions. By taking this case, it gives the higher court a chance to give guidance and establish precedent for the lower courts to follow. If you're having trouble spotting the issue, then try to key into the word "whether." It often signals what the turning point for a case.

Rule - The court should give a clear statement of the rule that controls the issue. The court often traces the development of the law within its own jurisdiction, starting with the common law rule. Since many of these bodies of law differ slightly between states, the court prefers to look within its own jurisdiction before it cites to a case from another state or country. The judge then either reaffirms a principle of law or fashions a new rule that evolves the law. The rule is the Rule arm of IRAC.

Analysis (Reasoning) - The reasoning is the Analysis arm of IRAC. This is how and why the court fits the particular facts and circumstances of this case into the rule. The courts often fashion tests or rely on precedent, which forms part of the reasoning. You should take special note of the reasoning and try to emulate it in your own writing.

[3] Hornbooks are summaries of the law that can be found in your library.

Holding (Conclusion) - The holding is the court's decision on the issue. Who wins? The holding may be narrowly construed to a particular issue or be very broad. Identifying the holding may merely consist of finding the words "We hold that..." The holding should include the disposition of the case. Is the ruling of the lower court affirmed? Overturned? Remanded for retrial?

Policy - Rules don't stand by themselves without any sort of reason behind them. If there isn't a sound policy behind a rule, then the court tries to fashion a rule that serves the principles of equity or justice. Sometimes a statute that does not further the policies of equity or justice binds the judge. In those circumstances, the judge sometimes upholds the statute but writes the opinion in such a way to bring the injustice to the attention of the legislature in order to encourage them to change the law.

Dicta - Dicta refers to anything that isn't relevant to the case's holding. Often judges will use a case to expound upon their theories of the law. The theories may not be relevant to the case at hand, but it gives the judge a chance to give direction to the lower courts by putting the theory in writing. Dicta does not carry weight as a precedent. But it's useful to note how the court might have ruled given a different set of circumstances.

Concurrence - A Concurrence is a separate opinion in which one of the judges agrees with the result but has different reasoning. Like dissents, you will find that concurrences proliferate in Supreme Court cases. Look at the concurrence to see how the reasoning differs. Make a note of it in the brief.

Dissents - Typically, a panel of judges tries appellate cases. Not surprisingly, there is not always unanimous agreement. Consequently, a judge who is not in the majority will write a dissent. Dissents are ubiquitous in Supreme Court cases. Make sure that you pick up the major sticking points in the dissent. What principles does the dissenting judge disagree with the majority on? Dissents are sometimes indicators of a direction the court may eventually move towards.

Sample Case and Brief - What follows are a sample case and a brief of that case. You'll notice that the elements of the brief scan very closely to the IRAC method with the additional elements of procedural history and the facts.

SAMPLE CASE

The following is a sample case that is commonly used in Contracts Cases to illustrate the idea of a "legal duty." Each element is identified.

STEPHEN GRAY, RESPONDENT, v. THERESA D. MARTINO, APPELLANT Supreme Court of New Jersey 91 N.J.L. 462; 103 A. 24 February 2, 1918, Decided	**Parties:** These are the primary parties. Generally the case will be referred to only by the last names of the parties. E.g. *Gray v. Martino*.
MINTURN, J. The plaintiff occupied the position of a special police officer, in Atlantic City, and incidentally was identified with the work of the prosecutor of the pleas of the county. He possessed knowledge concerning the theft of certain diamonds and jewelry from the possession of the defendant, who had advertised a reward for the recovery of the property. In this situation he claims to have entered into a verbal contract with defendant, whereby she agreed to pay him $500 if he could procure for her the names and addresses of the thieves. As a result of his meditation with the police authorities the diamonds and jewelry were recovered, and plaintiff brought this suit to recover the promised reward.	**Facts of the case:** What happened that brought these parties to court?
The District Court, sitting without a jury, awarded plaintiff a judgment for the amount of the reward, and hence this appeal.	**Procedural History:** Who won in the court below?
Various points are discussed in the briefs, but to us the dominant and conspicuous inquiry in the case is, was the plaintiff, during the period of this transaction, a public officer, charged with the enforcement of the law?	**Legal Issue:** What fact or circumstance is at issue that will be the deciding factor in how the court rules on this case?
The testimony makes it manifest that he was a special police officer to some extent identified with the work of the prosecutor's office, and that position, upon well-settled grounds of public policy, required him to assist, at least, in the prosecution of offenders against the law. The services he rendered, in this instance, must be presumed to have been rendered in pursuance of that public duty, and for its performance he was not entitled to receive a special quid pro quo.	**Reasoning/Analysis:** The court applies the facts to see whether they satisfy the elements of the rule.
The cases on the subject are collected in a footnote to *Somerset Bank v. Edmund. 10 Am. & Ena. Ann. Cas. 726: 76*	**Rule of Law:** Under what rule of law does this issue fall?

Ohio St. Rep. 396, the head-note to which reads: "Public policy and sound morals alike forbid that a public officer should demand or receive for services performed by him in the discharge of official duty any other or further remuneration or reward than that prescribed or allowed by law."

This rule of public policy has been relaxed only in those instances where the legislature for sufficient public reason has seen fit by statute to extend the stimulus of a reward to the public without distinction, as in the case of *United States v. Matthews, 173 U.S. 381*, where the attorney-general, under an act for "the detection and prosecution of crimes against the United States," made a public offer of reward sufficiently liberal and generic to comprehend the services of a federal deputy marshal. Exceptions of that character upon familiar principles serve to emphasize the correctness of the rule, as one based upon sound public policy.

The judgment below for that reason must be reversed.

Holding: What is the conclusion of the court?

SAMPLE BRIEF

Gray (cop, Plaintiff) v. **Martino** (crime victim, Defendant), Supreme Ct of NJ (1918)

Facts

- Plaintiff makes a verbal contract with defendant. In return for $500, plaintiff will find defendant's stolen jewels.
- Plaintiff had knowledge of whereabouts of jewels at contract formation.
- Plaintiff is a special police officer and has dealings with prosecutor's office.
- Defendant published advertisement for reward.
- Plaintiff finds stolen goods and arranges return.

Procedural History

- District court by bench trial (no jury) awards money to the cop.
- Defendant appeals.

Issue

At the time the contract was formed, was the plaintiff acting as a police officer charged with a legal

duty to catch criminals without further reward?

Rule

1. A public officer cannot demand or receive remuneration or a reward for carrying out the duty of his job as a matter of public policy and morality
2. However, it is not against public policy for a police officer to receive a reward in performance of his legal duty if the legislature passes a statute giving the reward to the public at large in furtherance of some public policy - such as preventing treason against the US.

Analysis (Reasoning)

- Court finds sufficient evidence to characterize this fellow as a public official.
- His interaction with the prosecutor's office weighed in as a factor in suggesting he had a legal duty.
- Since he is characterized within the rule as a public official, he cannot, as a matter of law, receive a reward for the performance of his duties.

Holding (Conclusion)

Court reverses decision of lower court in favor of the plaintiff since he was characterized as a public official.

TEN (10) TYPICAL COMPONENTS OF A FIRST YEAR CASE BRIEF*

1	**Caption**	Include the name of the parties, the court that issued the opinion, and the year that the opinion was written. Consider a shorthand note indicating the procedural identification of the parties (*e.g.,* plaintiff/defendant, petitioner/respondent, appellant/appellee).
2	**Author(s)**	Generally, the judge(s) who drafted the unanimous or majority opinion of the court is not crucial to a brief, but if the case was written by the United States Supreme Court consider including the author(s).
3	**Procedural History**	Most of the cases that you'll read in law school will be appellate court decisions. In this section, you want to list what happened in the lower court(s) – usually called the "trial court" or the "district court." Do not go into too much detail. One or two sentences are sufficient for this section.
4	**Facts**	Those facts that are *legally significant* to the court's decision (*i.e.,* those that *made a difference* or *weighed in the balance* in determining the court's holding). Consider using bullet points.
5	**Issue**	The *specific* legal question decided by the court as it relates to the parties in question.
6	**Rule**	The precedential rule stated by the court; generally, should be broadly phrased and in general terms (*i.e.,* the rule that will apply to litigants in similar fact situations in future cases) rather than with respect to the parties involved in the present case. It is very important to fully understand the rule because this will be what is tested.
7	**Analysis (Reasoning)**	The factual reasoning, logic, and/or public policy supporting the court's decision. This is the heart of the case and where professors may spend a lot of time in discussion. Make sure to fully understand why the court came to the conclusion it did.
8	**Holding (Conclusion)**	The holding is the *direct answer* to the issue statement (*i.e*., the court's decision as applied to the specific facts of the case). Also note the Procedural Disposition of the case – how the court disposed of the case after reaching its decision (*e.g.,* affirmed or reversed the lower court, remanded for further proceedings, etc.).
9	**Concurring, Dissenting Opinions (if any)**	Explain concurring and dissenting judges' differing analysis or objections with respect to the majority opinion.
10	**Notes/Questions**	Observations or questions that come to mind as you read and brief the case; *if questions are not resolved by reading subsequent cases or during class, consult with your professor*

**After a few weeks of classes, consider modifying and focusing your briefs according to how your professor approaches the cases.*

David Leon RILEY, Petitioner

v.

CALIFORNIA

573 U.S. __, 134 S. Ct. 2473. (2014)

ROBERTS, C.J., delivered the opinion of the Court, in which SCALIA, KENNEDY, THOMAS, GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed an opinion concurring in part and concurring in the judgment.

I

A

[P]etitioner David Riley was stopped by a police officer for driving with expired registration tags. In the course of the stop, the officer also learned that Riley's license had been suspended. The officer impounded Riley's car, pursuant to department policy, and another officer conducted an inventory search of the car. Riley was arrested for possession of concealed and loaded firearms when that search turned up two handguns under the car's hood. See Cal.Penal Code Ann. §§ 12025(a)(1), 12031(a)(1) (West 2009).

An officer searched Riley incident to the arrest and found items associated with the "Bloods" street gang. He also seized a cell phone from Riley's pants pocket. According to Riley's uncontradicted assertion, the phone was a "smart phone," a cell phone with a broad range of other functions based on advanced computing capability, large storage capacity, and Internet connectivity. The officer accessed information on the phone and noticed that some words (presumably in text messages or a contacts list) were preceded by the letters "CK"—a label that, he believed, stood for "Crip Killers," a slang term for members of the Bloods gang.

At the police station about two hours after the arrest, a detective specializing in gangs further examined the contents of the phone. The detective testified that he "went through" Riley's phone "looking for evidence, because ... gang members will often video themselves with guns or take pictures of themselves with the guns." App. in No. 13–132, p. 20. Although there was "a lot of stuff" on the phone, particular files that "caught [the detective's] eye" included videos of young men sparring while someone yelled encouragement using the moniker "Blood." *Id.*, at 11–13. The police also found photographs of Riley standing in front of a car they suspected had been involved in a shooting a few weeks earlier.

Riley was ultimately charged, in connection with that earlier shooting, with firing at an occupied vehicle, assault with a semiautomatic firearm, and attempted murder. The State alleged that Riley had committed those crimes for the benefit of a criminal street gang, an aggravating factor that carries an enhanced sentence. Compare Cal.Penal Code Ann. § 246 (2008) with § 186.22(b)(4)(B) (2014). Prior to trial, Riley moved to suppress all evidence that the police had obtained from his

cell phone. He contended that the searches of his phone violated the Fourth Amendment, because they had been performed without a warrant and were not otherwise justified by exigent circumstances. The trial court rejected that argument. At Riley's trial, police officers testified about the photographs and videos found on the phone, and some of the photographs were admitted into evidence. Riley was convicted on all three counts and received an enhanced sentence of 15 years to life in prison.

The California Court of Appeal affirmed. The court relied on the California Supreme Court's decision in *People v. Diaz*, 51 Cal.4th 84, 119 Cal.Rptr.3d 105, 244 P.3d 501 (2011), which held that the Fourth Amendment permits a warrantless search of cell phone data incident to an arrest, so long as the cell phone was immediately associated with the arrestee's person . . . The California Supreme Court denied Riley's petition for review . . . We granted certiorari.

II

The Fourth Amendment provides:

> "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."

As the text makes clear, "the ultimate touchstone of the Fourth Amendment is 'reasonableness.' " *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S.Ct. 1943, 164 L.Ed.2d 650 (2006). Our cases have determined that "[w]here a search is undertaken by law enforcement officials to discover evidence of criminal wrongdoing, ... reasonableness generally requires the obtaining of a judicial warrant." *Vernonia School Dist. 47J v. Acton*, 515 U.S. 646, 653, 115 S.Ct. 2386, 132 L.Ed.2d 564 (1995). Such a warrant ensures that the inferences to support a search are "drawn by a neutral and detached magistrate instead of being judged by the officer engaged in the often competitive enterprise of ferreting out crime." *Johnson v. United States*, 333 U.S. 10, 14, 68 S.Ct. 367, 92 L.Ed. 436 (1948). In the absence of a warrant, a search is reasonable only if it falls within a specific exception to the warrant requirement.

[The issue in the case] before us concerns the reasonableness of a warrantless search incident to a lawful arrest. In 1914, this Court first acknowledged in dictum "the right on the part of the Government, always recognized under English and American law, to search the person of the accused when legally arrested to discover and seize the fruits or evidences of crime." *Weeks v. United States*, 232 U.S. 383, 392, 34 S.Ct. 341, 58 L.Ed. 652. Since that time, it has been well accepted that such a search constitutes an exception to the warrant requirement. Indeed, the label "exception" is something of a misnomer in this context, as warrantless searches incident to arrest occur with far greater frequency than searches conducted pursuant to a warrant. See 3 W. LaFave, Search and Seizure § 5.2(b), p. 132, and n. 15 (5th ed. 2012) . . . . [The following] related precedents set forth the rules governing such searches:

The first, *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969), laid the groundwork for most of the existing search incident to arrest doctrine. Police officers in that case arrested Chimel inside his home and proceeded to search his entire three-bedroom house, including the attic and garage. In particular rooms, they also looked through the contents of drawers. *Id.*, at 753–754, 89 S.Ct. 2034.

The Court crafted the following rule for assessing the reasonableness of a search incident to arrest:

> "When an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape. Otherwise, the officer's safety might well be endangered, and the arrest itself frustrated. In addition, it is entirely reasonable for the arresting officer to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction.... There is ample justification, therefore, for a search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which he might gain possession of a weapon or destructible evidence." *Id.*, at 762–763, 89 S.Ct. 2034.

The extensive warrantless search of Chimel's home did not fit within this exception, because it was not needed to protect officer safety or to preserve evidence. *Id.*, at 763, 768, 89 S.Ct. 2034.

Four years later, in *United States v. Robinson*, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973), the Court applied the *Chimel* analysis in the context of a search of the arrestee's person. A police officer had arrested Robinson for driving with a revoked license. The officer conducted a patdown search and felt an object that he could not identify in Robinson's coat pocket. He removed the object, which turned out to be a crumpled cigarette package, and opened it. Inside were 14 capsules of heroin. *Id.*, at 220, 223, 89 S.Ct. 2034.

The Court of Appeals concluded that the search was unreasonable because Robinson was unlikely to have evidence of the crime of arrest on his person, and because it believed that extracting the cigarette package and opening it could not be justified as part of a protective search for weapons. This Court reversed, rejecting the notion that "case-by-case adjudication" was required to determine "whether or not there was present one of the reasons supporting the authority for a search of the person incident to a lawful arrest." *Id.*, at 235, 89 S.Ct. 2034. As the Court explained, "[t]he authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect." *Ibid.* Instead, a "custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification." *Ibid.*

The Court thus concluded that the search of Robinson was reasonable . . . In doing so, the Court did not draw a line between a search of Robinson's person and a further examination of the cigarette pack found during that search. It merely noted that, "[h]aving in the course of a lawful search come upon the crumpled package of cigarettes, [the officer] was entitled to inspect it." *Ibid.*

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III

[This case] require[s] us to decide how the search incident to arrest doctrine applies to modern cell phones, which are now such a pervasive and insistent part of daily life that the proverbial visitor from Mars might conclude they were an important feature of human anatomy. A smart phone of the sort taken from Riley was unheard of ten years ago; a significant majority of American adults now own such phones . . . [such phones are] based on technology nearly inconceivable just a few decades ago, when *Chimel* and *Robinson* were decided.

Absent more precise guidance from the founding era . . . a mechanical application of *Robinson* might well support the warrantless searches at issue here.

But while *Robinson*'s categorical rule strikes the appropriate balance in the context of physical objects, neither of its rationales has much force with respect to digital content on cell phones. On the government interest side, *Robinson* concluded that the two risks identified in *Chimel*—harm to officers and destruction of evidence—are present in all custodial arrests. There are no comparable risks when the search is of digital data. In addition, *Robinson* regarded any privacy interests retained by an individual after arrest as significantly diminished by the fact of the arrest itself. Cell phones, however, place vast quantities of personal information literally in the hands of individuals. A search of the information on a cell phone bears little resemblance to the type of brief physical search considered in *Robinson*.

We therefore decline to extend *Robinson* to searches of data on cell phones, and hold instead that officers must generally secure a warrant before conducting such a search.

A

We first consider each *Chimel* concern in turn . . . .

1

Digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee's escape. Law enforcement officers remain free to examine the physical aspects of a phone to ensure that it will not be used as a weapon—say, to determine whether there is a razor blade hidden between the phone and its case. Once an officer has secured a phone and eliminated any potential physical threats, however, data on the phone can endanger no one.

Perhaps the same might have been said of the cigarette pack seized from Robinson's pocket. Once an officer gained control of the pack, it was unlikely that Robinson could have accessed the pack's contents. But unknown physical objects may always pose risks, no matter how slight, during the tense atmosphere of a custodial arrest. The officer in *Robinson* testified that he could not identify the objects in the cigarette pack but knew they were not cigarettes. See 414 U.S., at 223, 236, n. 7, 94 S.Ct. 467. Given that, a further search was a reasonable protective measure. No such unknowns exist with respect to digital data. As the First Circuit explained, the officers who searched Wurie's cell phone "knew exactly what they would find therein: data. They also knew that the data could not harm them." 728 F.3d, at 10. . . .

2

The United States and California focus primarily on the second *Chimel* rationale: preventing the destruction of evidence. . . . .

The United States and California argue that information on a cell phone may nevertheless be vulnerable to two types of evidence destruction unique to digital data—remote wiping and data encryption. Remote wiping occurs when a phone, connected to a wireless network, receives a signal that erases stored data. This can happen when a third party sends a remote signal or when a phone is preprogrammed to delete data upon entering or leaving certain geographic areas (so-called "geofencing"). . . . Encryption is a security feature that some modern cell phones use in addition to password protection. When such phones lock, data becomes protected by sophisticated encryption that renders a phone all but "unbreakable" unless police know the password.

As an initial matter, these broader concerns about the loss of evidence are distinct from *Chimel* 's focus on a defendant who responds to arrest by trying to conceal or destroy evidence within his reach. See 395 U.S., at 763–764, 89 S.Ct. 2034. With respect to remote wiping, the Government's primary concern turns on the actions of third parties who are not present at the scene of arrest. And data encryption is even further afield. There, the Government focuses on the ordinary operation of a phone's security features, apart from *any* active attempt by a defendant or his associates to conceal or destroy evidence upon arrest.

We have also been given little reason to believe that either problem is prevalent. The briefing reveals only a couple of anecdotal examples of remote wiping triggered by an arrest. . . . Similarly, the opportunities for officers to search a password-protected phone before data becomes encrypted are quite limited. Law enforcement officers are very unlikely to come upon such a phone in an unlocked state because most phones lock at the touch of a button or, as a default, after some very short period of inactivity. . . .

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In any event, as to remote wiping, law enforcement is not without specific means to address the threat. Remote wiping can be fully prevented by disconnecting a phone from the network. There are at least two simple ways to do this: First, law enforcement officers can turn the phone off or remove its battery. Second, if they are concerned about encryption or other potential problems, they can leave a phone powered on and place it in an enclosure that isolates the phone from radio waves. See Ayers 30–31. Such devices are commonly called "Faraday bags," after the English scientist Michael Faraday. They are essentially sandwich bags made of aluminum foil: cheap, lightweight, and easy to use. See Brief for Criminal Law Professors as *Amici Curiae* 9. They may not be a complete answer to the problem, see Ayers 32, but at least for now they provide a reasonable response. In fact, a number of law enforcement agencies around the country already encourage the use of Faraday bags . . . .

B

The search incident to arrest exception rests not only on the heightened government interests at stake in a volatile arrest situation, but also on an arrestee's reduced privacy interests upon being taken into police custody. *Robinson* focused primarily on the first of those rationales. But it also quoted with approval then-Judge Cardozo's account of the historical basis for the search incident to arrest exception: "Search of the person becomes lawful when grounds for arrest and accusation have been discovered, and the law is in the act of subjecting the body of the accused to its physical dominion." 414 U.S., at 232, 94 S.Ct. 467 (quoting *People v. Chiagles,* 237 N.Y. 193, 197, 142 N.E. 583, 584 (1923)); see also 414 U.S., at 237, 94 S.Ct. 467 (Powell, J., concurring) ("an individual lawfully subjected to a custodial arrest retains no significant Fourth Amendment interest in the privacy of his person"). Put simply, a patdown of Robinson's clothing and an inspection of the cigarette pack found in his pocket constituted only minor additional intrusions compared to the substantial government authority exercised in taking Robinson into custody . . . .

Lower courts applying *Robinson* and *Chimel*, however, have approved searches of a variety of personal items carried by an arrestee. See, *e.g., United States v. Carrion,* 809 F.2d 1120, 1123, 1128 (C.A.5 1987) (billfold and address book); *United States v. Watson,* 669 F.2d 1374, 1383–1384 (C.A.11 1982) (wallet); *United States v. Lee,* 501 F.2d 890, 892 (C.A.D.C.1974) (purse).

The United States asserts that a search of all data stored on a cell phone is "materially indistinguishable" from searches of these sorts of physical items. Brief for United States in No. 13–212, p. 26. That is like saying a ride on horseback is materially indistinguishable from a flight to the moon. Both are ways of getting from point A to point B, but little else justifies lumping them together. Modern cell phones, as a category, implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse. A conclusion that inspecting the contents of an arrestee's pockets works no substantial additional intrusion on privacy beyond the arrest itself may make sense as applied to physical items, but any extension of that reasoning to digital data has to rest on its own bottom.

1

Cell phones differ in both a quantitative and a qualitative sense from other objects that might be kept on an arrestee's person. The term "cell phone" is itself misleading shorthand; many of these devices are in fact minicomputers that also happen to have the capacity to be used as a telephone. They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers.

One of the most notable distinguishing features of modern cell phones is their immense storage capacity. Before cell phones, a search of a person was limited by physical realities and tended as a general matter to constitute only a narrow intrusion on privacy. See Kerr, Foreword: Accounting for Technological Change, 36 Harv. J.L. & Pub. Pol'y 403, 404–405 (2013). Most people cannot lug around every piece of mail they have received for the past several months, every picture they have taken, or every book or article they have read—nor would they have any reason to attempt to do so. And if they did, they would have to drag behind them a trunk of the sort held to require a search warrant in *Chadwick, supra,* rather than a container the size of the cigarette package in *Robinson*.

But the possible intrusion on privacy is not physically limited in the same way when it comes to cell phones. The current top-selling smart phone has a standard capacity of 16 gigabytes (and is available with up to 64 gigabytes). Sixteen gigabytes translates to millions of pages of text, thousands of pictures, or hundreds of videos. See Kerr, *supra,* at 404; Brief for Center for Democracy & Technology et al. as *Amici Curiae* 7–8. Cell phones couple that capacity with the ability to store many different types of information: Even the most basic phones that sell for less than $20 might hold photographs, picture messages, text messages, Internet browsing history, a calendar, a thousand-entry phone book, and so on. See *id.*, at 30; *United States v. Flores–Lopez,* 670 F.3d 803, 806 (C.A.7 2012). We expect that the gulf between physical practicability and digital capacity will only continue to widen in the future.

The storage capacity of cell phones has several interrelated consequences for privacy. First, a cell phone collects in one place many distinct types of information—an address, a note, a prescription, a bank statement, a video—that reveal much more in combination than any isolated record. Second, a cell phone's capacity allows even just one type of information to convey far more than previously possible. The sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions; the same cannot be said of a photograph or two of loved ones tucked into a wallet. Third, the data on a phone can date back to the purchase of the phone, or even earlier. A person might carry in his pocket a slip of paper reminding him to call Mr. Jones; he would not carry a record of all his communications with Mr. Jones for the past several months, as would routinely be kept on a phone.[1]

Finally, there is an element of pervasiveness that characterizes cell phones but not physical records. Prior to the digital age, people did not typically carry a cache of sensitive personal information with them as they went about their day. Now it is the person who is not carrying a cell phone, with all that it contains, who is the exception. According to one poll, nearly three-quarters of smart phone users report being within five feet of their phones most of the time, with 12% admitting that they even use their phones in the shower. See Harris Interactive, 2013 Mobile Consumer Habits Study (June 2013). A decade ago police officers searching an arrestee might have occasionally stumbled across a highly personal item such as a diary. See, *e.g., United States v. Frankenberry,* 387 F.2d 337 (C.A.2 1967) (*per curiam*). But those discoveries were likely to be few and far between. Today, by contrast, it is no exaggeration to say that many of the more than 90% of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives—from the mundane to the intimate. See *Ontario v. Quon,* 560 U.S. 746, 760, 130 S.Ct. 2619, 177 L.Ed.2d 216 (2010). Allowing the police to scrutinize such records on a routine basis is quite different from allowing them to search a personal item or two in the occasional case.

Although the data stored on a cell phone is distinguished from physical records by quantity alone, certain types of data are also qualitatively different. An Internet search and browsing history, for example, can be found on an Internet-enabled phone and could reveal an individual's private interests or concerns—perhaps a search for certain symptoms of disease, coupled with frequent visits to WebMD. Data on a cell phone can also reveal where a person has been. Historic location information is a standard feature on many smart phones and can reconstruct someone's specific movements down to the minute, not only around town but also within a particular building. See *United States v. Jones,* 565 U.S. ——, ——, 132 S.Ct. 945, 955, 181 L.Ed.2d 911 (2012)

(SOTOMAYOR, J., concurring) ("GPS monitoring generates a precise, comprehensive record of a person's public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations.").

Mobile application software on a cell phone, or "apps," offer a range of tools for managing detailed information about all aspects of a person's life. There are apps for Democratic Party news and Republican Party news; apps for alcohol, drug, and gambling addictions; apps for sharing prayer requests; apps for tracking pregnancy symptoms; apps for planning your budget; apps for every conceivable hobby or pastime; apps for improving your romantic life. There are popular apps for buying or selling just about anything, and the records of such transactions may be accessible on the phone indefinitely. There are over a million apps available in each of the two major app stores; the phrase "there's an app for that" is now part of the popular lexicon. The average smart phone user has installed 33 apps, which together can form a revealing montage of the user's life. See Brief for Electronic Privacy Information Center as *Amicus Curiae* in No. 13–132, p. 9.

In 1926, Learned Hand observed (in an opinion later quoted in *Chimel*) that it is "a totally different thing to search a man's pockets and use against him what they contain, from ransacking his house for everything which may incriminate him." *United States v. Kirschenblatt,* 16 F.2d 202, 203 (C.A.2). If his pockets contain a cell phone, however, that is no longer true. Indeed, a cell phone search would typically expose to the government far *more* than the most exhaustive search of a house: A phone not only contains in digital form many sensitive records previously found in the home; it also contains a broad array of private information never found in a home in any form—unless the phone is.

2

To further complicate the scope of the privacy interests at stake, the data a user views on many modern cell phones may not in fact be stored on the device itself. Treating a cell phone as a container whose contents may be searched incident to an arrest is a bit strained as an initial matter. See *New York v. Belton,* 453 U.S. 454, 460, n. 4, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981) (describing a "container" as "any object capable of holding another object"). But the analogy crumbles entirely when a cell phone is used to access data located elsewhere, at the tap of a screen. That is what cell phones, with increasing frequency, are designed to do by taking advantage of "cloud computing." Cloud computing is the capacity of Internet-connected devices to display data stored on remote servers rather than on the device itself . . . .

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IV

We cannot deny that our decision today will have an impact on the ability of law enforcement to combat crime. Cell phones have become important tools in facilitating coordination and communication among members of criminal enterprises, and can provide valuable incriminating information about dangerous criminals. Privacy comes at a cost.

Our holding, of course, is not that the information on a cell phone is immune from search; it is instead that a warrant is generally required before such a search, even when a cell phone is seized incident to arrest.

***

Modern cell phones are not just another technological convenience. With all they contain and all they may reveal, they hold for many Americans "the privacies of life," *Boyd, supra*, at 630, 6 S.Ct. 524. The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant.

[Here, Riley's cell phone contained massive amounts of data including contact lists and numerous videos, photos and text messages that spanned over a long period of time. The discovery of some of that data led to additional criminal charges against Riley.] We reverse the judgment of the California Court of Appeal . . . and remand the case for further proceedings not inconsistent with this opinion . . . .

It is so ordered.

Here is the case brief chart we discussed during our first session. These questions may help guide you as you prepare your case brief.

Caption	*Who is the Petitioner? Respondent?*
Author(s)	*Who wrote the opinion and did all 9 justices agree with it?*
Facts	***Section I*** • *Why was D initially arrested?* • *Was D's arrest lawful (and why does this matter)?* • *What was searched and what was discovered?* • *Did the police get a warrant?* • *What evidence did the police find in the search and what charges did that lead to?*
Procedural History	• *State Trial Court (trial): outcome?* • *Cal Ct of Appeal: outcome?* • *Cal Sup Ct – outcome?*
Issue	• *Can you find the trigger words in the case that present the issue? (hint: see page 3)* • *How might the issue statement be written to make it more fact specific than the issue in Robinson (the case you read on Monday)?*
Rule	***Sections II - III*** ***General Rule*** • *What part of the Constitution is cited?* • *What is the general rule as announced in Chimel?* • *What precedent does the Court consider?* o *hint #1: How did the Court apply the rule in Chimel? In Robinson?* o *hint #2: The court cites other cases on p6 and Frankenberry (p8) – how was the rule applied in these cases?* • *In Section III, does the Court apply the Chimel/Robinson to cell phones?* o *In Section (A)(1), why isn't weapon use a valid concern in Riley?* o *In Section (A)(2), why isn't destruction of evidence a valid concern in Riley?* ***Policy:*** • *In Section III(B)(1)-(2), the Court considers the policy underlying the Robinson rule – what is that policy and why can't it be applied to Riley?*
Analysis (Reasoning)	***Section IV*** • *What trigger word suggests the Court is analyzing the case?* • *Would the police ever be able to search the digital data on Riley's phone?*
Holding (Conclusion)	*In the last paragraph, what does the Court mean when it states: "We reverse the judgment of the California Court of Appeal . . . and remand the case for further proceedings not inconsistent with this opinion . . . ."?*
Notes/ Questions	*What happens to D now?*