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Riley v. California134 S. Ct. 2473 (2014)

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Ohio Northern University
Law Review

Student Case Notes

Riley v. California
134 S. Ct. 2473 (2014)

I. INTRODUCTION

The Fourth Amendment[1] strictly prohibits unnecessary and unreasonable searches of a person's body, their home, and anything in the home or owned by the person without a court ordered warrant.[2] It also states the people have a right "to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no [w]arrants shall issue, but upon probable cause, supported by [o]ath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."[3] However, the Supreme Court in *Chimel v. California*,[4] created an exception to the Fourth Amendment when it ruled that a police officer may search a person's body or the extension of their body, such as the person's car, without a warrant during an arrest to protect the safety of the officer and other citizens.[5] The Court in *Chimel* explained,

> [w]hen 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.[6]

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1. U.S. CONST. amend. IV.
2. *Id*.
3. *Id.*
4. 395 U.S. 752 (1969).
5. *Id.* at 762-63 (1969) (Chimel had been arrested in his house and against his objections the officers that arrested him searched his house without a warrant. The Court concluded the search was an illegal one because the search went beyond the excepted search of Chimel's body and surrounding area.).
6. *Id.* at 762-63.

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Officers are also allowed to take something that is on a person if there is a risk of "concealment or destruction"[7] of evidence such as with drugs, however, this rule is now limited to exclude cell phones after the Supreme Court's decision in *Riley v. California*.[8]

The question presented to the Court in *Riley* was whether police should be allowed to search through a cell phone of an arrestee during an arrest without a warrant.[9] The Court held that allowing police officers to search cell phones during an arrest would be a major invasion of privacy and a violation of the Fourth Amendment.[10]

II. STATEMENT OF FACTUAL AND PROCEDURAL HISTORY

In *Riley*, the Court addressed two cases having the same issue,[11] *Riley v. California* and *United States v. Wurie.*[12] In the first case, the petitioner, David Riley, was pulled over for having expired tags on his vehicle when the officer, while searching the car found handguns, and arrested Petitioner.[13] After arresting Petitioner, the officer confiscated Petitioner's smart phone, which had been in the pocket of Petitioner's pants, and found pictures of Petitioner with a car that the officer believed, was involved in a recent drive by shooting.[14] The officer also discovered, by looking through Petitioner's texts, that Petitioner was a member of the Bloods gang.[15] Petitioner was charged with "firing at an occupied vehicle, assault with a semiautomatic firearm, and attempted murder."[16] At the pretrial, Petitioner moved to suppress all the evidence that was collected from his phone, stating it was a violation of his fourth amendment rights, but the court denied his argument.[17] The evidence collected from his phone was used during the trial and Petitioner was found guilty on all three accounts.[18] Petitioner was sentenced to fifteen years to life in prison. [19] Petitioner appealed to the California Court of Appeals, which, in using *People v.*

7. *Id*. at 763.
8. 134 S. Ct. 2473, 2495 (2014).
9. *Id.* at 2480.
10. *Id.* at 2494-95.
11. *Id.* at 2480.
12. *Id.* at 2480-81.
13. *Riley*, 134 S. Ct. at 2480.
14. *Id.* 2480-81.
15. *Id.* at 2480.
16. *Id.* at 2481.
17. *Id.*
18. *Riley*, 134 S. Ct. at 2481.
19. *Id.*

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Diaz,[20] affirmed the lower court's decision. [21] The California Supreme Court denied review.[22]

In the second case, Respondent Brima Wurie, was arrested under the suspicion of selling drugs.[23] After the arrest, the officer confiscated Wurie's "flip phone" finding in the call log a number that had continually called while Wurie was at the police station, as "my house."[24] The officers traced the number using an online phone directory to Wurie's apartment where, after waiting for a warrant, the officers found "215 grams of crack cocaine, marijuana, drug paraphernalia, a firearm and ammunition, and cash."[25] After the search of the apartment, Wurie "was charged with distributing crack cocaine, possessing crack cocaine with intent to distribute, and being a felon in possession of a firearm and ammunition."[26]

Similar to Petitioner Riley, Wurie moved to suppress the evidence that was found in his apartment arguing it was a result from an unlawful search of his cell phone.[27] The District Court denied the Wurie's argument and he "was convicted on all three counts and sentenced to 262 months in prison."[28] Upon appeal, the "First Circuit reversed the denial of Wurie's motion to suppress . . ." and held "cell phones are distinct from other physical possessions that may be searched incident to arrest without a warrant, because of the amount of personal data cell phones contain and the negligible threat they pose to law enforcement interest."[29]

III. COURT'S DECISION AND RATIONAL

A. The Majority Opinion - Chief Justice Roberts

The majority implemented a straight-line rule, declining to follow the preceding authority, and decided the police need a court ordered warrant to search an arrestee's cell phone.[30] Based on many factors, the Court concluded cell phones are different from other items found during a

20. 244 P. 3d 501 (2011) (The Court held the warrantless search of an arrestee's cell phone was not a violation of the fourth amendment when the cell phone's texts were used to show the arrestee was selling drugs.).
21. *Riley*, 134 S. Ct. at 2481.
22. *Id.*
23. *Id.*
24. *Id.*
25. *Id.*
26. *Riley*, 134 S. Ct. at 2482.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id*. at 2495.

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search.[31] Cell phones, according to the Court, are both quantitatively and qualitatively different from other items kept on a person.[32]

The Court discussed three different cases, *Chimel*, *United States v. Robinson*,[33] and *Arizona v. Gant*,[34] that provided the groundwork for warrantless searches and described why those cases cannot expand to rule over cell phone searches.[35] The Court explained the cases discussed were not binding in *Riley* because cell phones and the privacy issues that come with searching cell phones, were not present when those cases were decided.[36] First, the Court examined *Chimel.*[37] The court in *Chimel* ruled that an officer can search an arrestee, without a warrant, during a lawful arrest for the safety of the officer and any evidence found on the arrestee during the search can be confiscated to prevent concealment or destruction of the evidence.[38] The Court took each "risk" identified in *Chimel,* protecting the officer and the destruction of evidence, and showed why those risks do not apply to cell phones.[39]

First, the Court explained data found in cell phones cannot be used as a weapon or be used to help in an escape and therefore Chimel's risk of the arrestee having a weapon as justification for a warrantless search is not applicable.[40] The government and California argued searching a cell phone without a warrant could help protect the safety of the officers because data could be used to warn them of other possible dangerous situations.[41] However, the Court did not agree with this argument and concluded that, even if the government and California had evidence to prove this risk existed, following the proposition would be broadening *United States v. Chadwick*[42] and *Chimel* and "the interest in protecting officer safety does

31. *Riley*, 134 S. Ct. at 2489-91.
32. *Id.* at 2489.
33. 414 U.S. 218 (1973) (Respondent had been arrested for driving without a license, which the Court found to be a probable cause for arrest. During the pat down of the respondent, the officer found a crumpled cigarette package that contained heroin.).
34. 556 U.S. 332 (2009) (After arresting Gant and securing him in the police car, the officers searched Gant's car and found a gun and cocaine. The Court held searches could be extended to vehicles only when the defendant is within reaching distance of the car and there is reasonable belief the vehicle contains evidence of the crime, neither, which were present in this case.).
35. *Riley*, 134 S. Ct at at 2483-84.
36. *Id*. at 2484.
37. *Id*. at 2485.
38. *Chimel*, 375 U.S. at 762-63.
39. *Riley*, 134 S. Ct. at 2485-88.
40. *Id.* at 2485-86.
41. *Id.* at 2485.
42. 433 U.S. 1 (1977) (200-pound, locked footlocker had been searched without a warrant where marijuana was found. The Court concluded because the footlocker was out of Chadwick's control by the time the officers searched it, there was no more treat of danger that Chadwick would try to retrieve a weapon from it and the officers should have waited for a warrant.).

not justify dispensing with the warrant requirement across the board."[43] The Court did not deny officers the right to examine the cell phone to ensure there are no weapons between the phone and the phone's case, but after that examination is complete the officer cannot continue to search the cell phone.[44]

Next, the Court discussed destruction of evidence, the second risk presented in *Chimel*.[45] The government and California argued warrantless searches should be allowed for cell phones because there is a threat of "digital data-remote wiping and data encryption" that could be done to the cell phone.[46] The Court explained "[r]emote 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. . . ."[47] While "[e]ncryption 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."[48]

The government and California argued that by not searching the cell phones right away the arrestee could be able to "conceal or destroy evidence" held on the phone with remote wiping.[49] However, the Court discussed several other solutions the police officers could use to prevent this problem.[50] The first solution the Court suggested for remote wiping was disconnecting the phone from its network.[51] The Court explained that this could be done several ways; first, by removing the battery or turning off the phone and second, by blocking the radio waves to the phone using "Faraday bags."[52] Faraday bags are cheap and can be made with sandwich bags and foil.[53]

The Court explained if a cell phone is found in an unlocked state, the police officer could disable the locking setting so there is no issue with encryption.[54] This type of action by the police officers would be allowed

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43. *Riley*, 134 S. Ct. at 2485-86.
44. *Id.* at 2486.
45. *Id.*
46. *Id.*
47. *Id*. (citing Dept. of Commerce, Nat'l Inst. of Standards and Tech., R. Ayers, S. Brothers, & W. Jansen, Guidelines on Mobile Device Forensics (Draft) at 29, 31 (SP 800-101 Rev. 1, Sept. 2013)).
48. *Riley*, 134 S. Ct. at 2486; *see also* Brief of United States as Amicus Curiae at 11, *Riley v. California*, 134 S. Ct. 2473 (2014) (No. 13-132 & 13-212), 2014 BL 175779 at * 11.
49. *Riley*, 134 S. Ct. at 2486.
50. *Id*. at 2487.
51. *Id.*
52. *Id.*
53. *Id.*
54. *Riley*, 134 S. Ct. at 2487.

using the principles in *Illinois v. McArthur,*[55] "which approved officers' reasonable steps to secure a scene to preserve evidence while they awaited a warrant."[56] The Court also explained if there is a dire need, the police officers could still check the phone without a warrant.[57]

As with the first *Chimel* risk, the government and California were not able to present evidence to show this type of remote wiping or encryption was a real threat.[58] In the briefs of the government and California, there are only examples of how remote wiping could occur but no real cases affected by triggered remote wiping were cited, showing that it is not really a threat for the police officer's evidence collecting.[59] As for encryption, the Court pointed out the likelihood of officers finding an unlocked phone are limited and more likely than not, the phone will already be encrypted when the officer finds the phone.[60]

After the Court explained *Chimel*'s exceptions to warrants did not apply to cell phones, the Court next examined *Robinson,*[61] which held the search of an arrestee was allowed if there is probable cause for the arrest.[62] The Court in *Robinson* used the reasoning of *Chimel* to justify an officer having the authority to searching as arrestee even when there is no threat of danger or evidence interference.[63]

After concluding *Chimel*'s reasons for allowing warrantless searches do not apply to cell phone the Court said *Robinson*'s rule, which was based off *Chimel*'s exception, does not apply to cell phones either.[64] *Robinson*'s rule, like *Chimel*'s rule, is logical for physical objects but is not logical for cell phone data.[65] The Court explained

> *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

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55. 531 U.S. 326 (U.S. 2001) (The Court held the Respondent's Fourth Amendment rights were not violated when officers refused to let the Respondent in his home for two hours, without an assisting officer, because the officers believed the Respondent had drugs in his home.).

56. *Riley*, 134 S. Ct. at 2488. (citing *McArthur*, 531 U.S. at 331-33).

57. *Riley*, 134 S. Ct. at 2487.

58. *Id*. at 2486.

59. *See id*. (citing Brief of Association of State Criminal Investigative Agencies et al. as Amici Curiae at 9-10, Riley v. California, 134 S. Ct. 2473 (2014) (No. 13-132 & 13-212), 2014 BL 175779 at ** 9-10); *see also* Brief of Respondent at 35-36, Riley v. California, 134 S. Ct. 2473 (2014) (No. 13-132 & 13-212), 2014 BL 175779 ** 35-36 [hereinafter Brief of Respondent].

60. *Riley*, 134 S. Ct. at 2487.

61. *Id.* at 2483.

62. *Robinson*, 414 U.S. at 236.

63. *Id.* at 226, 236.

64. *Riley*, 134 S. Ct. at 2484-85.

65. *Id*. at 2484.

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> a cell phone bears little resemblance to the type of brief physical search considered in *Robinson*.[66]

Unlike the unknown content in a cigarette container, which could be dangerous to an officer, cell phones produce no unknowns; officers know data is the only thing in the cell phones.[67] Based on these reasons, the Court concluded *Robinson* did not extend to the searches of cell phones.[68]

The Court examined *Gant* last.[69] As in *Robinson*, *Gant* used the exception carved out in *Chimel* of protecting the officers and preventing evidence interference, as a justification to create another exception of allowing vehicle searches during an arrest if "the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search."[70] The government and California proposed extending *Gant* from vehicles to cell phones.[71] *Gant,* however, only "protects against searches for evidence of past crimes" while in the "cell phone context . . . it is reasonable to expect that incriminating information will be found on a phone regardless of when the crime occurred."[72] The Court held that expanding *Gant* from vehicles to cell phones would give "police officers unbridled discretion to rummage at will among a person's private effects."[73]

Once the Court assessed why the preceding authority was not appropriate for cell phones, it next examined the government's argument that the information found on cell phones is not distinguishable from the same information that would be found in a physical form.[74] The Court ultimately concluded that cell phones are different, quantitatively and qualitatively, from any other physical object that could be found during a search.[75]

The Court first reasons that cell phones are different from other objects on the person because many cell phones are mini computers and have the ability to hold large amounts of information which makes them quantitatively different.[76] The Court pointed out that most of today's smart phones have sixteen gigabytes which computes to "millions of pages of text, thousands of pictures, or hundreds of videos" that the phone is able to

66. *Id.* at 2485.
67. *Id*.
68. *Id.*
69. *Riley*, 134 S. Ct. at 2492.
70. *Gant*, 556 U.S. at 343.
71. *Riley*, 134 S. Ct. at 2492.
72. *Id.*
73. *Id.* (quoting *Gant*, 556 U.S. at 345).
74. *Id*. at 2488-89.
75. *Id*. at 2489.
76. *Riley*, 134 S. Ct. at 2489.

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store.[77] Carrying that amount of data, as hard copies, on one's person would be impossible, but with a cell phone that information can be stored and retrieved at any time.[78]

The Court also explained even with the most basic of cell phones the storage capacity is large enough to hold text messages, calendars, contact lists, and internet browsing history, which is more information than the average person would carry as hard copies.[79] By piecing together the information stored on cell phones, we are able to recreate a person's day-to-day life for possibly the entire life of the phone or the amount of time the person has owned the phone.[80] The information on a person's day-to-day life is incredibly private and something police officers could possibly not discover without the cell phone.[81] The Court acknowledged these privacy issues stating, "[a]llowing 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."[82]

Second, the Court explained cell phones are qualitatively different from other objects is by the type of information that can be found on cell phones.[83] The Court used examples of Internet browsing history, apps, and location tracker as making cell phones qualitatively different.[84] The type of information cell phones can hold can give the government more information about a person than a search through that person's house.[85]

Lastly, the Court found the information that could be received from a cell phones is different from other objects because that information may not be stored on the cell phone but instead may be stored on the cloud.[86] When something is stored on the cloud, it means the data is "stored on remote servers rather than the device itself."[87] The Court explained that distinguishing what data is stored on the device and the data stored on the cloud, would be almost impossible to do for most police officers.[88] The Court explained allowing officers to look at a person's cell phone that has

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77. *Id.* (citing Brief of Center for Democracy & Technology et al. as Amici Curiae at 7-8, Riley v. California, 134 S. Ct. 2473, (No 13-132 & 13-212), 2014 BL 175779 at ** 7-8 [hereinafter Brief of Center for Democracy & Technology].
78. *Riley*, 134 S. Ct. at 2489.
79. *Id.*
80. *Id.*
81. *Id*. at 2489-90.
82. *Id.* at 2490.
83. *Riley*, 134 S. Ct. at 2490.
84. *Id.*
85. *Id.* at 2491.
86. *Id.*
87. *Id.*
88. *Riley*, 134 S. Ct. 2491.

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access to the cloud data is like "finding a key in a suspect's pocket and arguing that it allowed law enforcement to unlock and search a house."[89]

In concluding cell phones are different from other objects, the Court discussed why there needed to be a straight-line rule for cell phone searches.[90] The government and California suggested several different scenarios where they believed officers should be able to search cell phones, but the Court rejected all of these suggestions.[91] The first suggestion the government and California proffered for the Court was to allow searches of the cell phone in areas of the phone that could be related to the crime.[92] The Court reasoned this would allow too much discretion and that some officers may not know where the information needed was located.[93]

Next, the government and California argued officers should always be allowed to check the call log of cell phones.[94] The Court pointed out, however, that call logs hold more than just numbers; call logs can also hold names, addresses, and email addresses.[95] Lastly, the government and California suggested police officers should be allowed to search sections of cell phones that would hold information the officers could find by a "pre-digital counterpart."[96] The Court reasoned, however,

> the fact that a search in the pre-digital era could have turned up a photograph or two in a wallet does not justify a search of thousands of photos in a digital gallery. The fact that someone could have tucked a paper bank statement in a pocket does not justify a search of every bank statement from the last five years. And to make matters worse, such an analogue test would allow law enforcement to search a range of items contained on a phone, even though people would be unlikely to carry such a variety of information in physical form.[97]

The Court also explained if it would have allowed this suggestion, it would have made more work for the courts and put a strain on the court deciding what part of the cell phone can be searched or if that part of the cell phone was "pre-digital."[98] In the end, after listening to the government and California's suggestions, the Court decided to make a straight-line rule not

89. *Id.*
90. *Id.* at 2492-93.
91. *Id.*
92. *Id.* at 2492.
93. *Riley*, 134 S. Ct. at 2492.
94. *Id.*
95. *See id.* at 2493.
96. *Id.*
97. *Id.*
98. *Riley*, 134 S. Ct. at 2493.

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allowing officers to search cell phones without a warrant and the Court did not declare any exceptions to that rule.[99]

B. The Concurring in part and Concurring in Judgment-Justice Alito

Justice Alito agreed with the ruling that police officers need to obtain a warrant to search a cell phone during a lawful arrest, but was concerned with two issues; first, the majority's primary reasons for allowing warrantless search, which were discussed in *Chimel* as protecting the officer and preventing evidence destruction,[100] and second, that the Court's ruling will lead to "anomalies."[101]

Justice Alito's concern with using the *Chimel* exception is that nowhere in his research of old common law rule did it discuss that exception being the only reasoning for allowing warrantless searches.[102] In Justice Alito's research, he found the older authorities, explained the basis for the rule on searches incident to arrest was "the need to obtain probative evidence."[103] Justice Alito presented cases and treaties to show that protecting an officer and preventing destruction of evidence is not the only reason for allowing searches incident to arrests.[104] Justice Alito concluded his first point by stating

> [t]he idea that officer safety and the preservation of evidence are the sole reasons for allowing a warrantless search incident to arrest appears to derive from the Court's reasoning in *Chimel v. California* . . . As I have explained, *Chimel*'s reasoning is questionable, see *Arizona v. Gant*, . . . and I think it is a mistake to allow that reasoning to affect cases like these that concern the search of the person of arrestees.[105]

The next concern that Justice Alito wrote about is that he believes the majority's decision leads to anomalies and that the majority may favor digital data over hard copies.[106] To illustrate the anomaly, Justice Alito gave an example where two suspects are arrested; one had incriminating material in hard copy form while the other suspect has incriminating material on their cell phone and under the majority's rule, the police could

99. *Id.* at 2492-93.
100. *Chimel*, 395 U.S. at 762-63.
101. *Riley*, 134 S. Ct. at 2495, 2497 (Alito, J. concurring).
102. *Id*. at 2495-96.
103. *Id.* at 2495.
104. *Id.* at 2495-96.
105. *Id*. at 2496.
106. *Riley*, 134 S. Ct. at 2497.

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search the hard copies but not the cell phone.[107] Justice Alito found issue in this situation explaining the majority favored digital information over hard copy information.[108]

Lastly, Justice Alito wrote to explain that while he agreed with the majority's decision, he believes Congress should implement new legislation that explains when an officer can search through a cell phone and where that officer can search in the cell phone.[109] Justice Alito explained his position clearly stating

> it would be very unfortunate if privacy protection in the 21st century were left primarily to the federal courts using the blunt instrument of the Fourth Amendment. Legislatures, elected by the people, are in a better position than we are to assess and respond to the changes that have already occurred and those that almost certainly will take place in the future.[110]

IV. ANALYSIS

A. Introduction

The Framers wrote the Fourth Amendment in reaction to the British government's ability to search any person and any object without justification.[111] When the colonies were still part of the England, the British government used "general warrants" or "writs of assistance" to search anyone's person, home, and effects in the home at any time without reason.[112] The general warrants, unlike today's warrant, did not have to describe the person who needed searched or what things needed searched; the warrant said generally, the government could search anyone and anything.[113] The general warrants and writs gave the British government "unlimited in scope" in their searches.[114] The British government's ability to search anything at any time with general warrants was one of the reasons the colonies wanted to be independent from the British.[115]

107. *Id.*
108. *Id.*
109. *Id.*
110. *Id.* at 2497-98.
111. Brief of Constitutional Accountability Center as Amicus Curiae in Support of Petitioner at 2, *Riley v. California*, 134 S. Ct. 2473 (2014) (No. 13-132 & 13-212), 2014 BL 175779 at * 2 [hereinafter Brief of Constitutional Accountability Center]; *see also* Maryland v. King, 133 S. Ct. 1958, 1980-81 (2013) (Scalia, J., dissenting); Andrew Pincus, *Evolving Technology and the Fourth Amendment: The Implications of Riley v. California*, CATO SUP. CT. REV. 307, 308 (2014).
112. Brief of Constitutional Accountability Center, *supra* note 111, at 2, 2014 BL 175779 at * 2.
113. *Id.*
114. *Id.*
115. *Id.* at 2-3, 11.

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After independence, the Framers wanted to make sure that the type of power the general warrants gave the government would never be allowed in the United States and wrote the Fourth Amendment to state warrants have to "particularly describ[e] the place to be searched, and the persons or things to be seized."[116] This Court's decision in *Riley* demonstrates that privacy and the Fourth Amendment are still highly regarded and the Framers' wishes are still respected.[117]

B. Discussion

i. Current Authority Should Not be Applied to Cell Phones

There are several important cases involved in the decision of *Riley* however each of those cases, while appropriate for physical objects, is not appropriate cell phones.[118] The important cases involved some, which the Court in Riley discussed, and others that the Court did not discuss, in warrantless search situation are *Chimel, Robinson, United States v. Edwards,*[119] *Chadwick,* and *Gant.* As the Court explained in *Riley*, there are major issues with using these cases in the context of cell phone searches.[120]

In the first and probably most important case, *Chimel*, the Court held there are two major reasons or risks to allow warrantless searches and thereby allowed an exception to the Fourth Amendment.[121] The first reason the Court allowed warrantless searches was for the protection of police officers.[122] The second reason the Court allowed warrantless searches was to prevent evidence destruction.[123] *Chimel*'s exception for allowing warrantless searches upon a lawful arrest has shaped the remaining cases involved in this area.[124] While the *Chimel* exceptions have been very important in this area of law, the exceptions do not apply to cell phones, as the Court in *Riley* explained, because there is nothing dangerous about data

116. *Id.* at 3. (citing U.S. CONST. amend. IV.).
117. *See Riley*, 134 S. Ct. at 2494.
118. *Id.* at 2483-85.
119. 415 U.S. 800 (1974) (After being put in jail, the police seized and searched Edwards' clothes without a warrant. The Court held it was lawful to take Edwards' clothing once in jail because it was closely held to his person.).
120. *Riley*, 134 S. Ct. at 2483-87.
121. *Chimel*, 395 U.S. at 762-63.
122. *Id.*
123. *Id.* at 763.
124. *Riley*, 134 S. Ct. at 2483.

to the arresting officer and once the cell phone is out of the control of the arrestee the chance of losing evidence on the phone is minimal.[125]

First, as the Court in *Riley* explained, "[d]igital 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."[126] Under this first risk, there would be no reason for an officer to look through the contents of a cell phone because those contents cannot physically injure the officer.[127] Officers can still search the cell phone and the cell phone's case to ensure that there are no small weapons, such as a knife, hidden between the cell phone and the case.[128]

Second, once the cell phone is out of the control of the arrestee there is little chance of evidence destruction.[129] The government and California argued police officers should be able to search without a warrant because there is a chance of evidence destruction by a third person wiping the phone.[130] However, there are several flaws with this argument; the first flaw is the logic behind the proposed issue.[131] This type of issue could happen for any type of searchable object or place; for example, "[i]t is always possible that an arrestee also could have instructed his accomplices to destroy evidence if he did not return to his home by a specified time" but that does not give the police to power to search the arrestee's house.[132] Allowing a small possibility for any evidence destruction would be expanding *Chimel*'s exception to the point of violating the Fourth Amendment.[133]

The second flaw is that there are cheap ways to prevent remote wiping, such as Faraday bags.[134] Faraday bags or Faraday envelopes are "aluminum-lined container that isolates its contents from outside signals," such as the phone's network, Bluetooth, or internet signals.[135] There is no need to search a cell phone without a warrant for fear of remote wiping because an officer, when arriving to a crime scene can take the cell phone

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125. Brief of Center for Democracy & Technology and Electronic Frontier Foundation as Amici Curiae at 3, *Riley v. California*, 134 S. Ct. 2473 (2014) (No. 13-132 & 13-212), 2014 BL 175779 * 3 [hereinafter Brief of Electronic Frontier Foundation].

126. *Riley*, 134 U.S. at 2485.

127. *Id.*

128. *Id.*

129. Brief of Electronic Frontier Foundation, *supra* note 125, at 21, 2014 BL 175779 at * 21.

130. Brief of Respondent, *supra* note 59, at 35, 2014 BL 175779 at * 35.

131. Brief of Electronic Frontier Foundation, *supra* note 125, at 21-22, 2014 BL 175779 at ** 21-22.

132. *Id.* at 21-22.

133. *See id*. at 22.

134. Brief of Amici Curiae Criminal Law Professors in Support of Petitioner Riley and Respondent Wurie at 2, *Riley v. California*, 134 S. Ct. 2473, (No 13-132 & 13-212), 2014 BL 175779 at * 2 [hereinafter Brief of Criminal Law Professors].

135. *Id.*

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put it in a Faraday bag and wait for a search warrant, without the threat of wiping.[136] Buying Faraday bags should not be an issue for police department budgets because the cost of Faraday bags is so minimal.[137] If, for some reason, a police department was not able to get Faraday bags, they could also wrap the cell phone in aluminum foil and it would work the same way as a Faraday bag.[138]

Not only are Faraday bags cheap, they are also widely used by other law enforcement agencies, proving Faraday bags are a good solution.[139] The Virginia Department of Forensic Science has recommended using Faraday bags for evidence handling.[140] Even the United States Department of Justice uses Faraday bags as part of their protocol.[141] Faraday bags would also not be burdensome for the officers because the bags are small in size, lightweight and not every officer would need to carry the bags with them.[142] Of course, if for some reason the Faraday bags were not available, the officers could turn off the phone or take out the phone's battery to prevent remote wiping.[143] There is no reason for the officers to search cell phones without a warrant in fear of remote wiping because there are so many easy ways to prevent remote wiping from happening.[144]

If there is a true emergency, however, the Court in *Riley* does not leave police officers out in the dark because the officers have a fall back if remote wiping is a direct threat to a specific situation.[145] According to *Brigham City v. Stuart*,[146] a warrant is not needed when "'the exigencies of the situation' make the needs of law enforcement so compelling that the warrantless search is objectively reasonable under the Fourth Amendment."[147] One of those situations occurs when an officer is faced

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136. *Id.* at 10-11.

137. *Id.* at 2.

138. *Id.*

139. Brief of Criminal Law Professors, *supra* note 134, at 4-5, 2014 BL 175779 ** 4-5 (citing United States v. Smith, 715 F.3d 1110, 1114 (8th Cir. 2013)).

140. *See id.* at 5-6, 2014 BL 175779 ** 5-6 (citing VA. Dep't of Forensic Scis., Evidence Handling 7 Lab. Capabilities Guide III-6 (Sept. 2012)).

141. *Id.* at 4-5, 2014 BL 175779 ** 4-5 (citing Nat'l Inst. Of Justice, U.S. Dep't of Justice, Electronic Crime Scene Investigation: A Guide for First Responders 14 (2d ed. 2008)).

142. *Id.* at 9, 2014 BL 175779 * 9.

143. Brief of Amicus Curiae of the DKT Liberty Project in Support of Petitioner at 29-30, *Riley v. California*, 134 S. Ct. 2473, (No 13-132 & 13-212), 2014 BL 175779 * 29-30 [hereinafter Brief of DKT Liberty Project].

144. *Riley*, 134 S. Ct. at 2487; *see also* Brief of Criminal Law Professors, *supra* note 134, at 3.

145. *Riley*,134 S. Ct. at 2487-88.

146. 547 U.S. 398 (2006) (The Court held the respondent's Fourth Amendment rights were not violated when officers entered the home without a warrant because the officers believed someone in the home was seriously injured.).

147. *Id.* at 403 (quoting Mincey v. Arizona, 437 U.S. 385, 393-94 (1978)).

with "the imminent destruction of evidence."[148] If a situation like that, explained in *Brigham City*, were to occur where there was critical evidence on the cell phone, the officer knew the cell phone was going to be wiped, and the Faraday bags were not going to help, the officer could search the phone without a warrant.[149]

In the cases following *Chimel*, the courts built on *Chimel*'s exceptions, extending the exceptions beyond the arrestee to include personal items found on and off the arrestee's person.[150] While these cases are important for physical objects, the cases are not logical in the realm of cell phones because cell phones can hold an endless amount of information.[151] For example in *Robinson*, the Court extended the *Chimel* exception to personal items holding the officer was allowed to search items on the arrestee for the officer's safety from the unknown of the object.[152] The officer in *Robinson* stated he was not sure what was in the crumpled cigarette package, but that the unknown object could have been dangerous, which is why the Court allowed for this type of warrantless search.[153] With cell phones, however, this type of unknown danger does not exist.[154] Cell phone data is not dangerous and there is nothing unknown about what is contained in cell phones.[155] It is also problematic to compare a cell phone, which has endless amounts of data that it can access, to a crumpled cigarette pack that can only hold so much.[156] In *Edwards*, the Court held the police were allowed to take an arrestee's clothing, without a warrant because his clothing was closely related to his person. [157] Cell phones could be considered closely held to the arrestee's person.[158] While both *Robinson* and *Edwards* extended searches to personal items found on the arrestee, *Robinson* and *Edwards* cannot extend to cell phones because of the large amount of information a cell phone can hold.[159]

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148. Missouri v. McNeely, 133 S. Ct. 1552, 1559. (The Court held the arrestee's Fourth Amendment rights were violated and a warrant was needed because there was no emergency when an officer required the testing of the arrestee's blood to check if the arrestee had been drinking.).

149. *See* Brief of Electronic Frontier Foundation, *supra* note 125, at 23, 2014 BL 175779 at * 23.

150. *Robinson*, 414 U.S. at 236; *Edwards*, 415 U.S. at 804-06; *Chadwick*, 433 U.S. at 14; *Gant*, 556 U.S. at 351.

151. Brief of Electronic Frontier Foundation, *supra* note 125, at 1-2, 2014 BL 175779 at ** 1-2.

152. *Robinson*, 414 U.S. at 236.

153. *Id.* at 223, 236.

154. *Riley*, 134 S. Ct. at 2484-85.

155. *Id*.

156. *See* Brief of the National Association of Criminal Defense Lawyers as Amicus Curiae in Support of Petitioner at 4-5, *Riley v. California*, 134 S. Ct. 2473, (No 13-132 & 13-212), 2014 BL 175779 ** 4-5 [hereinafter Brief of Criminal Defense Lawyers].

157. *Edwards*, 415 U.S. at 806.

158. *See* Brief of Respondent, *supra* note 59, at 22, 2014 BL 175779 at * 22.

159. *Riley*, 134 S. Ct. at 2485-87.

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In *Chadwick*, the Court explained for a warrantless search to be proper, the object has to still be in control of the arrestee otherwise, there would be no more threat and a warrant should be sought.[160] The government and California used *Chadwick* to show searching the phones of Riley and Wurie was allowable because it immediately followed the arrest, when the arrestee still had control over the cell phone.[161] However, as explained above, cell phone data is no danger to arresting officers.[162] Even if the cell phone were in control of the arrestee, there would still be no physical threat to the officers and therefore require a warrant.[163]

While the courts in *Robinson*, *Edward*, and *Chadwick* all extended *Chimel* to personal objects found on the arrestee, the Court in *Gant* extended *Chimel* to vehicles related to the arrest.[164] The Court in *Gant* held "[p]olice may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest."[165] The *Gant* rule strictly stated it applies *only* to vehicles.[166] If the Court wanted to enact a more broad rule the Court would not have limited the rule to the "vehicle context but rather would apply across-the-board to any place an arrest occurs and to any item found on the individual's person."[167] Extending *Gant*'s ruling to cell phones would be vastly deviating from what the Court originally intended[168] and would be violating the principals underlying the Fourth Amendment.[169]

The government and California have suggested extending *Gant*'s rule of "reasonable to believe" to cell phones searches as a solution to needless searches of cell phones.[170] Meaning the officer could search the phone if they reasonably believe the cell phone contains evidence.[171] However, extending that rule from *Gant* would be problematic "[b]ecause of the enormous quantity and wide variety of information held in cell phones, it could be reasonable for police to believe evidence of many minor crimes might be found on cell phones."[172] Vehicles may be searched for evidence

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160. *Chadwick*, 433 U.S. at 15-16. (Here, police officers searched a footlocker after the arrestee was already in custody.).
161. *See* Brief of Respondent, *supra* note 59, at 9, 2014 BL 175779 at * 9.
162. *Riley*, 134 S. Ct. at 2485.
163. *See id*.
164. *Gant*, 556 U.S. at 351.
165. *Id.*
166. *Id*.
167. Brief of Electronic Frontier Foundation, *supra* note 125, at 26, 2014 BL 175779 at ** 26.
168. *Id.* at 25-26.
169. *See id*. at 26.
170. Brief of Criminal Law Professors, *supra* note 134, at 18, 2014 BL 175779 at * 18.
171. Brief of Electronic Frontier Foundation, *supra* note 125, at 26, 2014 BL 175779 at * 26.
172. Brief of Criminal Law Professors, *supra* note 134, at 18, 2014 BL 175779 at *18.

of the crime that just occurred; however, if an officer is able to search a cell phone, the cell phone could provide evidence of crimes yet undiscovered and unconnected to the current crime.[173] Extended the *Gant* rule would allow officers to look at a drunk driver's Facebook, Instagram, photo gallery, or, look at a driver who had been texting, text messages, emails, browsing history, and look at an arrestee's cell phone call log and text messages for a low level drug offense.[174] Police could find any nexus between the current crime and the need to search the cell phone, which could lead to searching data completely unrelated of the crime, yet still possibly incriminating.[175]

The same theme runs with all the preceding authorities as applied to cell phones; cell phones are not the same as other physical objects and should not be treated as the same.[176] As the First Circuit noted in *Wurie*, when these cases were decided

> more than thirty-five years ago, [the court] could not have envisioned a world in which the vast majority of arrestees would be carrying on their person an item containing not physical evidence but a vast store of intangible data – data that is not immediately destructible and poses no threat to the arresting officers.[177]

ii. Cell Phones Cannot be Compared to Other Physical Objects

In the early days of the *Chimel* exception, the objects that were searchable would be in paper form, which would make the exception very limited because normally a person would not possess a large physical amount of paper.[178] Individuals would only take the amount of paper they needed for the day or the amount they could fit into a purse or wallet.[179] There was no risk of abuse for the exception because of the physical limitation.[180] However, if this exception extended to cell phones, the exception would not be limited anymore and the police would have access to almost anything they would want and need, making the Fourth Amendment essentially useless.[181] Most of the information stored on cell phones would be stored at the home, if in hard copy form, where the police

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173. *Riley*, 134 S. Ct. at 2492.
174. Brief of Criminal Law Professors, *supra* note 134, at 18-22, 2014 BL 175779 at ** 18-22.
175. Adam Lamparello & Charles MacLean, *Back to the Future: Returning to Reasonableness and Particularity Under the Fourth Amendment*, 99 IOWA L. REV. BULL. 101, 113-14 (2014).
176. *See* Brief of Criminal Law Professors, *supra* note 134, at 18-22, 2014 BL 175779 at ** 18-22.
177. *Wurie*, 728 F.3d at 12.
178. Brief of Electronic Frontier Foundation, supra note125, at 2, 2014 BL 175779 at * 2.
179. *Id.* at 14.
180. *Id.*
181. *See id*. at 15-16.

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would have to get a warrant to search.[182] Therefore, the exception applied to the preceding authority is much smaller than the exception would be if applied to cell phones.[183]

Unlike most physical objects that a person carries on them at any given time, cell phones are able to store massive amounts of data that hold insight into their personal life.[184] An iPhone 5, for example, with only sixteen gigabytes, sixty-four gigabytes being the highest, can hold "800 million words of text . . . over 8,000 digital pictures, over 260,000 private voicemails, or hundreds of home videos."[185] The newest iPad2 has 128 gigabytes, which has a new type of data storage, Secure Digital Extended Capacity (SDXc) "and SDXc is expected to push iPhones and other smartphones into the area currently reserved for laptop computers: the terabyte."[186] Smart phones with terabyte capacity are expected to be on the market within a decade.[187]

Cell phones today allow a person to carry every single paper they have concurrently in their house and every paper they had in their house[188] on their person and as the amount of storage cell phones and other electronic mobile devices continues to grow cell phones in the near future could hold a whole lifetime of data, especially with the SDXc architecture.[189] This means

> videos of one's wedding, the birth of one's children, and every family reunion and school performance will easily fit on the device. Assuming 10 one-minute voicemails a day, everyday [sic] each year, the phone will hold over eleven years of voicemail messages. If you took three photographs of your child everyday [sic] of his life, from birth through high-school graduation, they would all fit on the phone with room to spare. It would easily contain not just every document you authored, but every page of every document you have ever read. Finally, it would hold every email and text message you have ever received or sent – for your entire lifetime.[190]

Applications or "apps" also enable cell phones to hold more private information about their owners because there are apps for everything imaginable that could show the owners hobbies, finances, medical

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182. *Riley*, 134 S. Ct. at 2491.
183. Brief of Electronic Frontier Foundation, *supra* note 125, at 16, 2014 BL 175779 at * 16.
184. *Id.* at 1-2.
185. *Id*. at 7-8.
186. Brief of Criminal Defense Lawyers, *supra* note 156, at 4, 2014 BL 175779 at * 4.
187. *Id*. at 4. (citing Gary Krakow, *Smartphones, Meet the Terabyte*, The Street (Feb. 17, 2009)).
188. *See* Brief of Electronic Frontier Foundation, *supra* note 125, at 15, 2014 BL 175779 at * 15.
189. Brief of Criminal Defense Lawyers, *supra* note 156, at 4-5, 2014 BL 175779 at ** 4-5.
190. *Id.* at 5.

conditions, weight loss goals, etc.[191] There are now apps for things that a person would never have carried in hard copy form before, such as documenting location.[192] Before apps, individuals would not write down where they have been in the past couple of weeks but with GPS tracking through apps, officers can now see everywhere the individual has been, if the individual had the phone with them, for the life of the phone.[193] Apps encourage cell phone owners to continue to carry around their private information with them by storing that information on the apps.[194]

Based on the endless storage capacity cell phones have and apps that track the personality of a person, letting the police look at an arrestee's phone would be allowing the officer to read the arrestee's diary, calendar and day-to-day activities, the contact information of almost every person the arrestee knows, communications between family and friends, the arrestee's financial situation or medical conditions, home videos, web browsing habits, intimate communications, and where the arrestee has been during the life of their phone.[195] With the storage capacity of these phones, text, emails, videos, browsing history, can be saved for the life of the phone, not just the past week's activities.[196] In the past, an officer would be lucky if an arrestee was carrying hard copies of personal information on them from the past couple of days, now officers could find digital information for the past few years.[197] Allowing officers to search cell phones without warrants would be the same amount of privacy invasion as the British officers searching the homes of the colonists.[198]

An example of what can happen when the police are able to abuse the Fourth Amendment is illustrated in the case of Nathan Newhard.[199] When Mr. Newhard was arrested for drunk driving, the officer took his phone for an incidental search and found nude pictures of Mr. Newhard and his girlfriend in "sexually explicit positions." [200] The officer then allegedly shared Mr. Newhard's photos with other members of the police force "for their viewing and enjoyment."[201] The officers, at the time, could search the phone because it was incident to the arrest and there was nothing Mr.

191. Brief of Electronic Frontier Foundation, *supra* note 125, at 10-11, 2014 BL 175779 at ** 10-11.
192. *Id.* at 11-12.
193. *See id.* at 12.
194. *Id*. at 11.
195. *Id*. at 9-12.
196. Brief of Electronic Frontier Foundation, *supra* note 125, at 9, 2014 BL 175779 at * 9.
197. *Id*.
198. *See Riley*, 134 S. Ct. at 2494.
199. *See* Newhard v. Borders, 649 F. Supp. 2d 440, 2009 U.S. Dist. LEXIS 80387 (W.D. Va. 2009).
200. *Id*. at 444.
201. *Id*.

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Newhard could do.[202] Having photos like the photos involved in *Newhard* is not uncommon for cell phone users.[203] The company McAfee preformed a survey that found the "majority of mobile device owners have used them [their cell phones] to 'send or receive intimate content including video, photos, emails and messages. . . .'"[204] While "almost half of smartphone users have stored intimate content received from another person on their smartphones."[205] Luckily, after *Riley*, this sort of situation could be prevented, because the police will need a warrant before searching the cell phone.[206]

iii. A Straight-line rule

The straight-line rule the Court enacted will be the easy for law enforcement to follow and for citizens to understand.[207] Having a straight-line rule is important for law enforcement because the police officers, who have limited resources and time, need an easy standard follow.[208] The Court could have ruled only smart phones are not allowed to be searched without a warrant and phones like Wurie's, a "dumb phone"[209] would be allowed to be searched without a warrant because those phone hold less data than the smart phones. [210] However, that holding would have been problematic because the difference between a smart phone and a dumb phone is very small.[211] Even the cheapest "dumb phones" can still access the internet, play and store music, store text messages, hold one thousand addresses, function as a camera and video recorder, and store personal information in a calendar.[212] Lastly, what is considered a "dumb phone" and "smart phone" is changing every day and asking police officers to distinguish between the two types would be asking too much; police officers could "not keep themselves aware of the information needed to apply this distinction, assuming that some distinction between types of devices could even be delineated."[213]

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202. *Id*. at 448.
203. Brief of DKT Liberty Project, *supra* note 143, at 4-5, 2014 BL 175779 at ** 4-5.
204. *Id.* at 5. (citing *Study Reveals Majority of Adults Share Intimate Details Via Unsecured Digital Devices*, MCAFEE, INC., http://www.mcafee.com/us/about/news/2014/q1/20140204-01.aspx?culture=en-us&affid=0).
205. DKT Liberty Project, *supra* note 143, at 5, 2014 BL 175779 at * 5.
206. *Riley*, 134 S. Ct. at 2495.
207. *See id.* at 2493; *see also* Brief of Electronic Frontier Foundation, *supra* note 125, at 3, 2014 BL 175779 at * 3.
208. Brief of Electronic Frontier Foundation, *supra* note 125, at 29, 2014 BL 175779 at * 29 (quoting Dunaway v. New York, 442 U.S. 200, 213-14 (1979)).
209. Brief of Electronic Frontier Foundation, *supra* note 125, at 30, 2014 BL 175779 at * 30.
210. *Id.* at 30.
211. *Id.* at 30-31.
212. *Id.* at 30.
213. *Id.* at 30-31.

https://digitalcommons.onu.edu/onu_law_review/vol41/iss2/5

Another direction the Court could have gone in, and something that the government and California argued for, was allowing officers to search through certain parts of the phone and not and others.[214] If the Court had allowed for certain parts of the phone to be search it would be asking too much of the police force to stay up to date on the developing parts of cell phones, which as explained above would be impossible for the police to do.[215] In addition, trying to search only sections of cell phones would be impossible to do with most current phones and all phones in the future when most of the developing technology is to integrate all information stored on cell phones, which would make it incredibly hard to distinguish where the information is coming from.[216] Cell phones, and other mobile electronic devices, do not "compartmentalize" its information and "one of the purposes of the phone's applications is to link the various types of information to improve the phone's utility."[217]

Another reason the argument and theoretical holding of allowing police officers to search through sections of the cell phones would not work is because information accessed from a cell phone, may not be stored on that cell phone. [218] Data could be stored on remote servers, such as the cloud or iCloud, and there is no way to know what information is stored where.[219] The cloud works by tagging the cell phone with "permanent conduits (i.e.; saved encrypted passwords and account numbers) to data stored outside the physical device, on distributed systems shared across the internet," which allows an endless amount of storage for cell phones.[220] For example, an officer, while looking through a cell phone's app would actually be looking at stored information on a remote server not the cell phone itself.[221]

iv. The Future of Other Mobile Electronic Devices After Riley

Now that the Court has set this strict limitation on cell phone searches, other mobile electronic devices of the same nature should be treated the same way.[222] Those mobile electronic devices such as tablets, laptops, USB or flash drives, memory cards, and digital cameras, house information

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214. *Riley*, 134 S. Ct. at 2492.
215. Brief of Electronic Frontier Foundation, *supra* note 125, at 3, 2014 BL 175779 at * 3.
216. *Id*.
217. *Id*. at 31.
218. *Id*. at 33.
219. *Id*.
220. Brief of Criminal Defense Lawyers, *supra* note 156, at 5, 2014 BL 175779 at * 5.
221. Brief of Electronic Frontier Foundation, *supra* note 125, at 33-34, 2014 BL 175779 at ** 33-34.
222. *See id*. at 5; *see also* Michael D. Ricciuti & Kathleen D. Parker, *My Phone is My Castle: Supreme Court Decides that Cell Phones Seized Incident to Arrest Cannot be Subject to Routine Warrantless Searches*, 58 B. B.J. 7, 9 (2014).

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electronically, the same as a cell phone.[223] Tablets and laptops can perform almost any task a desk top computer can and much more than a cell phone.[224] Memory cards for any device such as a camera, laptop, computer etc., can hold more information than the latest cell phone can.[225] A USB or thumb drive with even a small amount of gigabytes can hold thousands of pictures.[226] All of these show cell phones and other mobile electronic devices are similar in function and should be treated the same way for searches incident to arrest as the Court in *Riley* enforced.[227]

Before *Riley*, the government won most of the Fourth Amendment cases involving new technologies, however after *Riley*, it will be difficult for the government to continue on this winning streak.[228] *Riley* will shadow any of the government's arguments involving computers or any other electronic device capable of storing information.[229] The case will produce many challenges for the government with computer searches and how the government is able to conduct computer searches.[230] There will also be no way for the government to "wiggle" out of this rule because the court was so clear and the rule was straight-lined.[231]

Justice Alito is correct in his request for legislation because technology is continuously evolving and becoming more complex, [232] too complex for the courts be asked to understand.[233] Every day there are new devices coming out that can store personal information about a person.[234] Devices such as smart watches, which monitor and record information about the person's body[235] and Google Glass, which uses the technology of a smart phone or computer installed into eyeglasses.[236] Almost all of the population

223. Brief of Electronic Frontier Foundation, *supra* note 125, at 5 n.2, 2014 BL 175779 at * 5; Pincus, *supra* note 111, at 328-29.

224. Brief of Electronic Frontier Foundation, *supra* note 125, at 5-6 n.3, 2014 BL 175779 at ** 5-6.

225. *Id.* at 6 n.4.

226. *Id*. at 6 n.5.

227. Pincus, *supra* note 111, at 328-29.

228. *See* Symposium, *Inaugurating the Digital Fourth Amendment*, SCOTUSBLOG (Jun. 26, 2014, 12:37 PM); *see also* The Harvard Law Review Association, *Fourth Amendment-Search and Seizure-Searching Cell Phones Incident to Arrest-Riley v. California*, 128 HARV. L. REV. 251, 251 (2014).

229. Symposium, *Inaugurating the Digital Fourth Amendment*, *supra* note 228.

230. *Id*.

231. Symposium, *Surprising Unanimity, Even More Surprising Clarity*, SCOTUSBLOG (Jun. 26, 2014, 11:02 AM).

232. *See* Brief of Electronic Frontier Foundation, *supra* note 125, at 12, 2014 BL 175779 at * 12.

233. *See Riley*, 134 S. Ct. at 2497-98.

234. *See* Brief of Electronic Frontier Foundation, *supra* note 125, at 12, 2014 BL 175779 at * 12.

235. *Id*.

236. *See* Claire Cain Miller, *Google Glass to Be Covered by Vision Care Insurer VSP*, N.Y. TIMES (Jan. 28, 2014), http://www.nytimes.com/2014/01/28/technology/google-glass-to-be-covered-by-vision-care-insurer-vsp.html?_r=0.

has a cell phone (91% as of June 2013)[237] making it even more critical that the legislator step in to protect almost all of the population.

V. CONCLUSION

The holding in *Riley* upheld the concerns of the Framers and the importance of the Fourth Amendment.[238] The previous authority in this area of law, while appropriate for physical objects, is not appropriate for cell phones.[239] Those cases are not appropriate for several different reasons. First, cell phone data cannot injure anyone and therefore, there is no reason to search the contents of the data for a weapon.[240] Second, there is little chance of evidence destruction once the phone is taken away from the arrestee.[241] Using a Faraday bag or turning off the cell phone can resolve what little risk there is of evidence destruction.[242] Lastly, cell phones can hold an endless amount of private information in them making it problematic to hold cell phones to the same rules as other physical objects[243]

The Court in *Riley* held a straight-line rule with no exceptions that will be easy for law enforcement to follow.[244] Had the Court used any of the government and California's suggestions the law from this case would have been confusing, hard to follow,[245] and would have put more work on the courts.[246] While *Riley*'s ruling will make it more difficult for law enforcement to search cell phones, computers, and other electronic mobile devices, the importance of privacy and the Fourth Amendment has to be put above the inconvenience of the law enforcement.[247]

MADISON PAIGE MEREDITH

237. Aaron Smith, Smartphone Ownership 2013, PEW RESEARCH INTERNET PROJECT (June 5, 2013), http://www.pewinternet.org/2013/06/05/smartphone-ownership-2013/.
238. *Riley*, 134 S. Ct. at 2494.
239. *Id.* at 2483-87.
240. *Id.* at 2485.
241. *Id*. at 2486.
242. *Id.* at 2487.
243. *Riley*, 134 S. Ct. at 2489.
244. *See id.* at 2493; *see also* Brief of Electronic Frontier Foundation, *supra* note 125, at 3, 2014 BL 175779 at * 3.
245. *Riley*, 134 S. Ct. at 2493.
246. *See id.* at 2493.
247. *Id.* at 2493-94.