

## OLYMPIADS SCHOOL/SAT PREP/HOMEWORK 3

NAME (FIRST AND LAST): \_\_\_\_\_ GRADE: \_\_\_\_\_

### According to the College Board:

The redesigned SAT® prominently emphasizes source analysis and evidence use throughout the Evidence-Based Reading and Writing section and in the Essay. The SAT Reading Test not only requires students to answer questions based on what is stated and implied in texts (both passages and graphics) across a range of content areas but also includes a number of questions asking students to determine which portion of a text best supports the answer to a given question. The SAT Writing and Language Test includes selected-response questions asking students to develop, support, and refine claims and ideas in multiparagraph passages (some of which are associated with one or more graphics) and to add, revise, or delete information in accordance with rhetorical purpose and accuracy (as, for example, when students are asked to verify or improve a passage's explanation of a data table). In the SAT Essay, students are required to analyze a provided source text to determine how the author builds an argument to persuade an audience through the use of evidence, reasoning, and/or stylistic and persuasive devices (and potentially other aspects of the text identified by students themselves) and then to write a cogent and clear analysis supported by critical reasoning and evidence drawn from the source.

### Command of Evidence: Practice

The following passage is adapted from “a speech delivered by Congresswoman Barbara Jordan of Texas on July 25, 1974, as a member of the Judiciary Committee of the United States House of Representatives. In the passage, Jordan discusses how and when a United States president may be impeached, or charged with serious offenses, while in office. Jordan’s speech was delivered in the context of impeachment hearings against then president Richard M. Nixon.” (The College Board, “Command of Evidence”)<sup>i</sup>

Today I am an inquisitor. I believe hyperbole would not be fictional and would not overstate the solemnness that I feel right now. My faith in the Constitution is whole, it is complete, it is total. I am not going to sit here and be an idle spectator to the diminution, the subversion, the destruction of the Constitution.

"Who can so properly be the inquisitors for the nation as the representatives of the nation themselves?" "The subject of its jurisdiction are those offenses which proceed from the misconduct of public men." (Federalist, no. 65). That is what we are talking about. In other words, the jurisdiction comes from the abuse of violation of some public trust. It is wrong, I suggest, it is a misreading of the Constitution for any member here to assert that for a member to vote for an article of impeachment means

that that member must be convinced that the president should be removed from office. The Constitution doesn't say that. The powers relating to impeachment are an essential check in the hands of this body, the legislature, against and upon the encroachment of the executive. In establishing the division between the two branches of the legislature, the House and the Senate, assigning to the one the right to accuse and to the other the right to judge, the framers of this Constitution were very astute. They did not make the accusers and the judges the same person.

We know the nature of impeachment. We have been talking about it awhile now. "It is chiefly designed for the president and his high ministers" to somehow be called into account. It is designed to "bridle" the executive if he engages in excesses. "It is designed as a method of national inquest into the public men." (Hamilton, *Federalist*, no. 65.). The framers confined in the congress the power if need be, to remove the president in order to strike a delicate balance between a president swollen with power and grown tyrannical, and preservation of the independence of the executive.

The nature of impeachment is a narrowly channeled exception to the separation-of-powers maxim; the federal convention of 1787 said that. It limited impeachment to high crimes and misdemeanors and discounted and opposed the term "maladministration." "It is to be used only for great misdemeanors," so it was said in the North Carolina ratification convention. And in the Virginia ratification convention: "We do not trust our liberty to a particular branch. We need one branch to check the others."

...The North Carolina ratification convention: "No one need be afraid that officers who commit oppression will pass with immunity." "Prosecutions of impeachments will seldom fail to agitate the passions of the whole community," said Hamilton in the *Federalist Papers*, no. 65. "And to divide it into parties more or less friendly or inimical to the accused." I do not mean political parties in that sense.

The drawing of political lines goes to the motivation behind impeachment; but impeachment must proceed within the confines of the constitutional term "high crimes and misdemeanors." Of the impeachment process, it was Woodrow Wilson who said that "nothing short of the grossest offenses against the plain law of the land will suffice to give them speed and effectiveness. Indignation so great as to overgrow party interest may secure a conviction; but nothing else can."

Common sense would be revolted if we engaged upon this process for insurance, campaign finance reform, housing, environmental protection, energy sufficiency, mass transportation. Pettiness cannot be allowed to stand in the face of such overwhelming problems. So today we are not being petty. We are trying to be big because the task we have before us is a big one.

\*Jordan quotes from *Federalist* No. 65, an essay by Alexander Hamilton, published in 1788, on the powers of the United States Senate, including the power to decide cases of impeachment against a president of the United States.

Describe the stance that Jordon takes in her speech. Explain your answer by discussing evidence from her speech.

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#### READING COMPREHENSION/ANALYZING RHETORIC

### Is Law Enforcement Crying Wolf About the Dangers of Locked Phones?

<http://www.theatlantic.com/politics/archive/2016/02/is-law-enforcement-crying-wolf-about-the-dangers-of-locked-phones/470055/>

The examples put forward by FBI Director James Comey and his defenders are underwhelming.

CONOR FRIEDERSDORF

If the FBI takes the position that encrypted iPhones and other secure electronic devices pose a significant impediment to law enforcement, Susan Hennessey and Benjamin Wittes write at *Lawfare*, it is reasonable to demand that it does “more than cry wolf.” The FBI should “show us the cases in which the absence of extraordinary law enforcement access to encrypted data is actually posing a problem.”

And in the last couple weeks, the authors argue, the FBI “has shown some serious wolf.” First, they cite, FBI Director James Comey’s following testimony to Congress:

**“A woman was murdered in Louisiana last summer, eight months pregnant, killed, no clue as to who did it, except her phone is there when she’s found killed. They couldn’t open it, still can’t open it. So the case remains unsolved.”**

They add:

**Then came the filing in the San Bernardino case this week. Note that this is a case that has a potentially serious ISIS link. The FBI has been sitting on one of the shooter’s**

phones for more than two months, unable to open it. It wants Apple's help to determine "who [the shooters] may have communicated with to plan and carry out the IRC shootings, where Farook and Malik may have traveled to and from before and after the incident, and other pertinent information that would provide more information about their and others' involvement in the deadline shooting."

**This is, in other words, a law enforcement and intelligence interest of the highest order: involving knowing for criminal justice purposes who may have been involved in an attack that took place within the United States and for prospective purposes who may be planning other such attacks.**

For the *Lawfare* authors, these two cases are compelling evidence that strong security on consumer devices poses a serious enough problem to justify weakening device security for everyone.

In contrast, I am extremely underwhelmed.

Let's begin with the murder victim in Louisiana.

For the first 230 years of U.S. history, police officers managed to investigate murders without the benefit of any evidence from smartphones belonging to the victim. Keep that baseline in mind, because any information that the cops get from the Louisiana victim's device leaves them better off than all prior generations of law enforcement. And they presumably did get some useful information, because a locked device doesn't prevent them from going to the phone company and getting access to call, text, and location data generated by the device.

It doesn't stop the authorities from going to Uber to see when the victim last took a ride, to her cloud backup to see what was last uploaded, to her email client to see if she sent or received any messages through that medium, and on and on and on.

Admittedly, there could be something only on the device relevant to the murder. The victim could've recorded a quick voice memo. She could've jotted a note to herself. She could've snapped a photograph of the killer in the moment before he acted. But you've gotta think that the odds are against there being conclusive evidence on the phone that isn't available elsewhere, not only because so much data is available in multiple places, but because *the killer left the phone with the victim*. If there was evidence of his (or her) identity on the device, the killer didn't know it.

Comey says that "they couldn't open it, still can't open it. So the case remains unsolved." But it is possible and seems likely that it won't be solved even if they do open the phone. The fact that there's an unsolved murder case where some evidence might or might not be on a locked phone doesn't seem like a compelling anecdote demonstrating the need to weaken security on everyone's consumer devices. And if you're worried that you'll be killed and the lock on your smartphone will prevent the cops from finding your killer, by all means, disable the lock screen or leave a copy of your code in a safety deposit box. Everyone is free to decide when the costs of having strong security outweigh the benefits.

The San Bernardino case is much more compelling. Fourteen people were killed. And it's possible that the iPhone in question has data that could lead to a terrorist collaborator.

Even so, there are many factors that make me underwhelmed by the San Bernardino case, too. The killers deliberately destroyed other devices but didn't bother destroying this one. It was a work phone issued by San Bernardino County. Until some time prior to the killings it was backing up to iCloud, and the FBI was able to get those backups.

So once again, law enforcement personnel got information about some of what was on the phone. They're missing a mere fraction of its contents. And one would guess that in the time between the last iCloud backup and the terrorist attack, Syed Farook did not suddenly start updating his work iPhone's contacts with the addresses of his terrorist buddies, but refrained from calling or texting them (which the phone company could tell the FBI).

Nor is it likely that he left a voice memo with information the FBI would love to know.

Sure, you never know what clue might lurk on a single smartphone and nowhere else. I'd want to look inside that iPhone if I were the FBI. But the odds seem low that this locked smartphone contains a breakthrough in the recesses of its data that the FBI can't access.

In both of these cases, the FBI got a lot more data associated with these locked smartphones than it would have had in the pre-smartphone era. Yet it presents the cases as if the mere chance that there could be even more valuable information, however improbable, is a big problem for law enforcement in the age of encryption.

The truth is that despite the spread of encryption, law enforcement is living in a golden age of surveillance. In fact, the rapidly increasing capabilities of Big Brother pose a far greater threat to Americans than criminals or terrorists exploiting new ways to "go dark." Acting surreptitiously is harder than ever in this world.

The final point to bear in mind is how little Americans will benefit if the FBI gets its way here. If iPhones are easy for the FBI to breach, the next San Bernardino shooter won't just leave theirs on a table, blowing their whole network after an attack. They'll abandon the iPhone, so that only non-terrorists are vulnerable to having their security breached; they'll use less mainstream tools to encrypt their data; or they'll "go dark" the old-fashioned way, by dropping their phone off a boat or tossing it off a bridge or pouring gasoline over the device and lighting a match.

All but the dumbest murderers and terrorists will adapt. And Americans will be left with dramatically less secure devices in exchange for infinitesimally more security. If these are the FBI's best examples, bad guys "going dark" is a less-costly phenomenon than I had imagined.

1. What evidence has the FBI used to support the position that encrypted iPhones and other secure electronic devices pose a significant impediment to law enforcement?

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2. What point does the writer make about the murder victim in Louisiana, and how does he support the point?

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3. What point does the writer make about the San Bernardino case, and how does he support the point?

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**THE END**

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## Key Words and Questions

What is impeachment? In Congress or a state legislature, impeachment is the presentation of formal charges against a public official by the lower house, trial to be before the upper house.” (dictionary.com)

The House Explained (<http://www.house.gov/content/learn/>)

“As per the Constitution, the U.S. House of Representatives makes and passes federal laws. The House is one of Congress’s two chambers (the other is the U.S. Senate), and part of the federal government’s legislative branch. The number of voting representatives in the House is fixed by law at no more than 435, proportionally representing the population of the 50 states.”

The Senate Explained (<http://usgovinfo.about.com/od/uscongress/a/aboutsenate.htm>)

“The United States Senate is the upper chamber in the legislative branch of the federal government. It is considered to be a more powerful body than the lower chamber, the House of Representatives.

The Senate is made up of 100 members called senators. Each state is granted two senators who represent the entire state; senators serve six-year terms and are popularly elected by their constituents.”

The Executive Branch Explained (<https://www.whitehouse.gov/1600/executive-branch>)

“The power of the Executive Branch is vested in the President of the United States, who also acts as head of state and Commander-in-Chief of the armed forces. The President is responsible for implementing and enforcing the laws written by Congress and, to that end, appoints the heads of the federal agencies, including the Cabinet. The Vice President is also part of the Executive Branch, ready to assume the Presidency should the need arise.

The Cabinet and independent federal agencies are responsible for the day-to-day enforcement and administration of federal laws. These departments and agencies have missions and responsibilities as widely divergent as those of the Department of Defense and the Environmental Protection Agency, the Social Security Administration and the Securities and Exchange Commission.”