



E-BRIEFS



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Special Points of Interest:

- *Essay Contest Results*
- *Williams v. State– Can they use your DUI test results in trial?*
- *Client Freed From Prison*

TENTH ANNUAL LAW DAY ESSAY CONTEST WINNERS ANNOUNCED

Every year our office sponsors a Law Day Essay Contest for local area high school students. It is an experience we look forward to all year, every year, to receive and read through each and every submission. This year we focused on the First Amendment which guarantees five freedoms to the American people: religion, speech, press, assembly and petition for redress. Our question was of those five freedoms, which was the most important and why. Surprisingly, every single entry this year selected the freedom of speech as the most important. We are pleased to announce that this year's winner is Mr. Andrew S. Zemaitis a sophomore at Hart County High School. This year's second place winner is Miss Hannah Smith, a senior at Franklin County High School.



We thank all of our entrants this year for their great entries, we enjoyed reading all of them. In the end, Mr. Zemaitis' and Miss Smith's entries rose above the others. As a result, Mr. Zemaitis will be awarded a \$500.00 cash scholarship for his efforts and Miss Smith will be awarded a \$200.00 cash scholarship for her efforts. Each of their essays are available on our website and can be read

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RECENT NEWS— CLIENT FREED FROM PRISON

Warren Caswell was recently retained by a client facing a probation revocation. While Mr. Caswell did not represent the client in his original case, the client sought Mr. Caswell's help when the State sought to revoke his probation and send him to prison for the next 10 years.

Mr. Caswell's client had, while on probation for several years, opened his own successful business, paid off the majority of his debts and was re-establishing his relationship with his family. He had been forgotten by the probation system, and when re-discovered they sought to punish him for their own oversight. In the end, the client was allowed to continue on probation, continue to operate his business, was freed from jail and doesn't have to go to prison.



ESSAY WINNERS— CONTINUED FROM PAGE 1

their at leisure, they are also included at the end of this newsletter.

As noted, each entrant this year selected the freedom of speech as the most important. Also each entrant cited largely the same reason for their selection: that the other freedoms would be meaningless without the freedom of speech. Mr. Zemaitis elaborated on his point showing that the inability to speak as to a point covered by another freedom would render it impotent. He noted specifically that freedom of the press is tied to freedom of speech because otherwise the press would not be able to publish articles which reflect negatively on a political candidate seeking reelection. He also noted that the freedom to assemble, without the freedom of speech, is just a bunch of people standing around not speaking to each other. Mr. Zemaitis also notes that the freedom of speech is essential to our national identity. That we as Americans are accustomed to being able to speak our minds and routinely do so without fear of imprisonment or hostile government action. This has been the case so long in fact that we fail to appreciate the rest of the world views us not only as unique, but strange.

WILLIAMS V. STATE— DUI TEST RESULTS DECISION

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In the last few weeks the Georgia Supreme Court issued its decision in *Williams v. State*. In that case, Williams, the defendant at trial, was stopped for DUI and asked to submit to a test for alcohol by the arresting officer. Williams submitted, and then at trial sought to have his test results suppressed— not considered by the jury— as having been obtained in violation of the Fourth Amendment.

Implied consent is the method by which the police get you take a breathalyzer or other test for alcohol or drugs in your system when arrested for DUI. If you refuse implied consent your driver's license is suspended. The trial judge ruled that the consent under implied consent was all that was needed in order for the State to use the test results at trial that "no fourth amendment analysis" was needed. The Georgia Supreme Court disagreed, citing the age old legal authority that the Constitution (Fourth Amendment) is superior to any law (Implied Consent), and thus the judge *must* consider the Fourth Amendment prior to making a decision.

The Georgia Supreme Court, having been forced to correct the errant trial judge, has forced an argument that defense lawyers have been making for ages— consenting to implied consent doesn't make the test results admissible. This is because, for test results to be admissible they must also be taken in compliance with the Fourth Amendment. This means that the court must make two separate analyses. If the test is taken in violation of the Fourth Amendment, then the defendant's license is not suspended (because they consented) *and* test results may not be used at trial— a potential very big win for the properly situated defendant.

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PROTECTING AND DEFENDING THE INNOCENT



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Feel free to forward this newsletter.

Want to see a particular topic discussed in a future issues of this newsletter? Then send us the question or topic you would like to see discussed. We'll gather together what information we have on the subject and post an article— and best of all you it only costs you the stamp! Just send your questions to the e-mail or address above.

ESSAY— CONTINUED FROM PAGE 2

Miss Smith's essay, also chose freedom of speech and noted that it was essential to keep the other freedoms from being rendered powerless. Ms. Smith noted that not only is the freedom of speech essential to our national identity but is also essential our national existence. The fact that our founding fathers spoke about the injustices of the Crown Government, at risk of their own lives, was an indispensable ingredient in the fomenting of our own revolution. The essay continues to show that power of speech having the power to defeat a super-power nation-state, it must therefore be the most important right guaranteed in not only the First Amendment, but indeed the entire Constitution.

We thank all of our entrants for the great entries this year and are pleased to have Mr. Zemaitis and Miss Smith as this years winners. We hope that next year will be even larger, and better. Look for a new topic for our eleventh annual Law Day Essay Contest at the beginning of January 2016!

Williams— Cont'd from P. 2

While this may not become an issue very often, it is ripe to be explored. A defendant who consented to implied consent, but did so under duress, did not consent for purposes of the Fourth Amendment. In addition to being free from compulsion the consent must also be knowing and voluntary. Unfortunately for the State, implied consent is one of the most confusing statutes in existence today— rivalling the tax code.

If you think this issue may help you, you need to consult with a lawyer immediately so that he can evaluate your case and see if you have a defense under new case law.

Andrew Zemaitis

2015 Law Day Essay Contest

April 10th 2015

Here in America we are assured five rights by our Constitutional First Amendment - freedom of speech, freedom of religion, freedom to assemble, freedom of the press, and the right to petition for redress. Clearly all of these are essential to our lifestyle as Americans. However, the most important of these is the freedom of speech. This freedom by itself is very important, and if examined closely, all first amendment rights branch from or are empowered by the freedom of speech.

The right to freedom of speech means that an individual can say anything without fearing imprisonment or other form of punishment by the government. Due to this right any person in the US can speak unrestrained about topics such as politics, government affairs, national security issues, religion, social issues, etc. It also means that Americans have the right to not speak if they do not wish to. This means that we can criticize who or what we want, we can get a group together and protest an issue, or we can say nothing at all. It's all protected by the First Amendment. In many countries today citizens still do not have the right to speak freely without the potential of being punished. In these countries restricted speech often refers to religion or government. Imagine being sent to jail over saying you were a Christian, or saying something negative about a politician. We could no longer call ourselves a democracy as we would be ignoring parts of the population, and a democracy is government by the people. A democracy just doesn't work if the people can't speak without fear of punishment. Our

democratic process is further helped by the way freedom of speech allows Americans to make better use of the four other rights that are guaranteed by the First Amendment.

All four rights granted to us by the first amendment are linked to freedom of speech. Speech is a way of expressing your views and opinions. Freedom of the press is the right for the press (news agencies) to be able to make statements or claims (forms of speech) either written or spoken. In Greece it is an offense for the press to criticize the president of Greece. If this wasn't protected in the United States, news agencies such as Fox, CNN and MSNBC that often criticize the president or other politicians could not exist, and that could largely obscure citizens' political views. For example, a President running for reelection could not have negative claims made against them. Religion is your view on faith. Freedom of religion lets you express your faith. Freedom of speech helps support the freedom of religion by allowing you to speak freely about faith. In multiple countries around the world people can be jailed for saying something against the national religion of the country. Promoting certain religions is a big problem in the Middle East region. For example, blasphemy is illegal in Sudan and Indonesia. In Iran, Pakistan, Saudi Arabia and many other countries, it is illegal to speak against Islam. Some of these countries even carry a death sentence such as Afghanistan and Egypt. In 2012 seven Egyptian Christians were sentenced to death for producing the film "Innocence of Muslims". This would have been protected by freedom of speech here in the United States. An example of the right to freedom of speech protecting religious freedom is the confirmation process at many churches which requires young people to publicly confess their belief in God. The next right allows you to petition for redress which is voicing concerns with government. In North Korea and China people can assemble but their assemblies cannot say anything negative about

their respective leaders. Which brings us to the final right, what is assembling if that group of people can't voice the assembly's views or opinions? For instance, in Saudi Arabia people can assemble religiously but only the Sunni form of Islam can be practiced publicly. Or what if Republicans were allowed to assemble but didn't have the freedom to voice their thoughts to the public or government? If this was the case, the freedom to assemble would be significantly less powerful.

Without the freedom of speech the other freedoms guaranteed by the first amendment would be much less significant if not useless. This freedom allows us to speak freely and enables us to use these other rights to our advantage. This right is essential to our sense of American pride.

Hannah Smith

Warren Caswell

Essay Contest

13 April 2015

Freedom

Freedom. What does it mean to you? Does it mean you can go out whenever you want? Eat whatever you want? Maybe you believe you should be allowed to do anything and everything you want. You more than likely already know, this isn't how the world today works. There are many laws and many rules you have to abide by whether they are given to you by your parents or by your government. Our government has very strict policies but we are also blessed with freedoms. The United States allows its citizens five different freedoms given to us in our First Amendment through our Constitution. Most of these are being fought for in other countries. They include: freedom of Religion, Speech, Press, Assembly, and Petition for Redress. Everyone has their opinion about which is better, and through this essay I'm going to tell you why I believe that freedom of speech is the most important freedom to have.

For my first argument, I would like to state the fact that humans are the only creatures in God's creation that have been given the gift of speech. The acuity and right of people to say what's on their minds is the foundation of freedom! For any person, man or government, to restrict that right is the foundation of Caesarism. Everything wonderful that our beautiful country has become is all because someone stood up and spoke their mind. They had ideas to make this place better and it became a reality because someone said something. Someone used the ideas that a person spoke of to create a structure, to write a book, or even draft a legislation that

became a part of the American experience. All because someone had an idea or a thought, a big piece of land became our accomplished country.

Imagine, if we weren't given freedom of speech, we could all be kept under a dictatorship and if anything was said about it you would more than likely be tortured or killed for your words, for your opinion. You would fear imprisonment for your thoughts. Without freedom of speech, nothing else matters! You can't discuss your religion or bring people to it without speaking out. Freedom of the Press wouldn't matter because the media wouldn't be able to talk or discuss what's going on the world. They couldn't ask the "real" questions needed when interviewing someone, especially if they were working for the government. Freedom Assembly would be gone. That is where you are suppose to come together and express, promote, and pursue your ideas but how can you do that without speech? Lastly, the right to Petition for Redress is where you complain to your government or ask for assistance with an issue, you can't really say what you want to. Your thoughts are controlled. Nothing else matters if you can't speak for yourself.

In conclusion, I would like to point out that the freedom of speech gives the people some power. It gives citizens the ability to change things, or even simply try and stand up for what they believe in. This gives them the ability to make a difference, they can feel as though they are bettering their country and it also provides a security that the government actually listens to the voices of the ones they have power over. Freedom of speech means the evolution of ideas, which then leads to growth.

Now I would like to conclude this essay by using this example, without freedom of speech, you would not be allowed to question any freedom. You would not be able to express your views on it or write an essay about it. All you would be able to do is keep whatever view you may have in your private thoughts. Your thoughts, opinions, and ideas wouldn't matter. The world would

never know. You could be the person to start the next social buzz around the world but because you can't express your thoughts and ideas, no one will ever know who you are. Without freedom of Speech, nothing would ever change, and we would still be the same country we were when we were founded.