

Rights Lab– Episode 1: Can the government spy on my phone?

Overview

This lesson is the first in a series of four that accompany the documentary film series, [Rights Lab](#). They provide a vehicle for discussing how laws, government, and technology intersect around the Constitution. With a mix of compelling documentary video and motion graphic elements, the curriculum uses evidence-based learning by teaching students to analyze texts, graphs, and video content as well as participating in role-playing and other engaging activities designed to foster measurable growth in history and social studies courses.

Along with exploring the moral dilemmas raised within the core media, the curriculum also uses relevant historical context to trace the changes within civil liberties over time. Each lesson offers historical context, citing information from scholarly sources, and collaborative activities that include multiple forms of learning in order to engage a diverse class set. Throughout the curriculum, students are provided opportunities to reflect and assess mastery and understanding of current law, how these laws came to be, and how technology and social issues play a factor in moving forward. They are summatively and formatively evaluated and questioned to provide clear benchmarks of achievement and understanding.

Lesson Learning Outcomes

Students will develop a fundamental understanding of the significance and evolution of civil liberties in history and how certain events and advancements led to change. This lesson centers on government surveillance and the importance of precedent with law in America.

Suggested Grade Level

8-12 grades

Duration of Activity

1 class period (90 minutes)

Common Core Standards

CCSS Reading	CCSS writing	CRS English
Reading for Literacy in Social Studies	Writing Standards	Band 13-15

<p>CCSS.ELA-LITERACY.RH.11-12.7 Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.</p> <p>CCSS.ELA-LITERACY.RH.11-12.9 Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.</p> <p>CCSS.ELA-LITERACY.RH.11-12.2 Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.</p> <p>CCSS.ELA-LITERACY.RH.11-12.1 Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.</p> <p>CCSS.ELA-LITERACY.RH.11-12.3 Evaluate various explanations for actions or events and determine which explanation best accords with textual evidence, acknowledging where the text leaves matters uncertain.</p> <p>CCSS.ELA-LITERACY.RH.11-12.8 Evaluate an author's premises, claims, and evidence by corroborating or</p>	<p>CCSS.ELA-Literacy.WHST.9-10.4 Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.</p> <p>CCSS.ELA-Literacy.WHST.9-10.9 Draw evidence from informational texts to support analysis, reflection, and research.</p>	<p>CLR 201. Locate basic facts (e.g., names, dates, events) clearly stated in a passage</p> <p>REL 202. Identify simple cause-effect relationships within a single sentence in a passage</p> <p>Band 16-19</p> <p>CLR 301. Locate simple details at the sentence and paragraph level in somewhat challenging passages</p> <p>CLR 302. Draw simple logical conclusions in somewhat challenging passages</p> <p>REL 302. Identify simple cause-effect relationships within a single paragraph in somewhat challenging literary narratives Band 20-23</p> <p>REL 403. Identify clear cause-effect relationships in somewhat challenging</p> <p>EXJ 302. Generate reasons for a position that are vague or simplistic; show a little recognition of the complexity of the issue in the prompt by</p> <p>DEV 301. Offer limited development in support of ideas; clarify ideas somewhat with vague explanation and the use of general examples</p> <p>ORI 301. Provide a simple organizational structure by logically grouping some ideas</p>
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challenging them with other information.		
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Essential Questions

1. What is a legal precedent and how does it affect law in America?
2. What is a Stingray and what is it used for?
3. Is it legal for the government to spy on my phone?
4. When stopped and searched, can government officials (particularly police officers) search my cell phone content?

Essential Knowledge

1. Legal precedent is a judicial decision that is decided in a court of law. It is legally binding, meaning that the conclusion of the ruling in the court case now becomes the point of law that cannot be broken. It is the authority of decision for similar cases from then on.
2. A stingray is a cell phone tracking device that police use for surveillance. Stingrays are used to intercept and store information traveling from your cell phone to cell phone towers.
3. It is legal for the government to spy on people’s phones, due to surveillance precedent. Stingrays are used. It is also legal for people to identify and track stingrays. So the government can spy on your phones, and you can spy on them spying on you.
4. When stopped and searched, government officials, such as police officers, need a warrant to search your cell phone.

Historical Context

Colonial America had some limited legal privacy protections - there were laws against eavesdropping - but most privacy laws centered around the home. Violating the privacy of a home was seen as violating the home itself, which most legal doctrine agreed shouldn’t be allowed. At the time of the Revolutionary War, this centered primarily around privacy from government intrusion.

While the Constitution limited federal power, it didn’t explicitly take up privacy. This concern about government intrusion impacted the Bill of Rights’ Third, Fourth and Fifth amendments.

The Third Amendment prevented government soldiers from residing in people's homes, the Fourth Amendment prevents unreasonable search and seizure, and the Fifth Amendment places restrictions on compelling an individual to testify with incriminating information against themselves.

Mail, the telegraph and Census data have all been either record-keeping or technological innovations that have become the focus of government-related privacy concerns historically. In 1782, Congress passed a law prohibiting the opening of other people's mail. In 1880, a bill protecting the privacy of telegraphs was introduced. And as government collection of records grew, primarily through the Census, Congress attempted to mitigate these concerns with the passage of a 1919 bill making it a felony to publicize census information.

The protection of private papers and the administrative state clashed in 1886 through a court case, *Boyd v. United States*, through which the court upheld that personal papers wouldn't be released even in a civil forfeiture cases.

Then in 1891, the *Union Pacific Railway Co. v Botsford* established protection against physical body intrusion. The case found that a female plaintiff couldn't be forced to submit to surgery. This was an early recognition of "substantive due process privacy," which is important in modern-day privacy cases.

The most major change in privacy law after the signing of the Bill of Rights took place in 1890, and centered around the growth of newspapers. An article by two lawyers named Warren and Brandeis called "[The right to privacy](#)," was seminal. In it they argued that the new technology of newspapers was making a profession out of spreading malicious gossip, which violated the privacy of individuals. They also expressed concern about the early use of cameras. They argued that common law, the foundation to American law that comes from English law based on social customs, could be tweaked to protect privacy by understanding an individual's right to be "left alone," and from there create an understanding of privacy violations to be protected by common law.

Then in the 1920s, two Supreme Court decisions prohibited the state from interfering with how parents and educators choose to teach children. In *Meyer v. Nebraska*, the Supreme Court struck down a law that didn't allow schools to teach German or other foreign languages till the 9th grade, arguing that restricting language education infringed on the rights of parents and teachers. Then in *Pierce v Society of Sisters*, the court used the earlier precedent to rule against a law in Oregon compelling all children to attend public school, at the risk of closing down all religious schools.

In 1965, constitutional guarantees to privacy were clarified by the Supreme Court with *Griswold v. Connecticut*, which refers to "marital rights to privacy" around contraception use. The case challenged Connecticut's "Comstock law," which was passed in 1873 and litigated against sending contraceptives, sex toys or pornography by mail, but was later expanded to prohibit

people from attempting to use drugs or medicine to prevent conception or pregnancy. The case was eventually ruled in favor of a Planned Parenthood in Connecticut to offer contraceptives because of a right to privacy in married life.

In 1974, the U.S. Congress passed the first Privacy Act, which prohibited agencies from collecting personal information without written permission. In 1988, it extended these protections to computer-related information.

The attacks on the World Trade Center created a new moment in privacy - the Department of Homeland Security began creating secret federal programs to track online and phone communication. Edward Snowden revealed the extent of National Security Administration spying in 2013. Google, Facebook and others petition for the right to disclose when the government requests that they subpoena documents. These questions soon found themselves in the Supreme Court through cases like 2014's *United States v. Wurie*, in which the question of searching cell phones was taken up and ruled that police needed a warrant to search a cell phone.

International human rights documents have also espoused the right to privacy as well. In 1948, the United Nations Universal Declaration of Human Rights included a clause promising that "no one shall be subject to arbitrary interference with his privacy, family, home or correspondence."

Vocabulary

Precedent:

Legal precedent is a judicial decision that is binding, meaning that the conclusion of the ruling in the court case now becomes the point of law that cannot be broken. It is the authority of decision for cases from then on.

Materials

1. Episode 1 Powerpoint Slides
2. Lesson 1 Student Notes Packet
3. Independent Activity (assessment at the end of class)

Lesson

10 min–Opening Question: How is Law Created?

Teacher decides whether or not to have students write their responses silently, work in groups or partners, or engage in an open whole-class discussion.

Teacher should facilitate discussion and prompt students to think about the following:

- The importance of the Constitution and the Amendments
- The role of court cases
- How laws are changed through time

25 min–Powerpoint Instruction

Teacher guides students through the powerpoint slides. Prompting students to take notes accordingly. Additional instructions, further thinking, and discussion questions are associated with each slide in the comments.

20 min–Rights Lab Episode

After instruction, students watch the 1st episode of Rights Lab and engage in a teacher led discussion centering on the content of the episode.

25 min–Independent/Collaborative Assignment

Option 1: Writing Prompt

Post the following question to the class, “Should the government be allowed to use Stingrays? Why or Why not?” Give the students roughly 15 minutes to write a response to the question. Make sure they utilize what they learned from the episode and what they have in their notes as well.

Option 2: Debate Activity

Your class is the city council in your town debating whether or not the police force should acquire a stingray.

Divide the class into groups of four. Each group will have the following roles to select from:

1. **Police chief** - In favor of Stingrays;
2. **Community Member**- In favor of Stingrays
3. **Civil rights activist** - Against Stingrays
4. **Community Member** - Against Stingrays

Engage in a debate on whether or not the local police force should be allowed to use Stingrays. Give the students time to prepare their argument before beginning the debate. Ensure that students provide context from the lesson to support their arguments.

Additional Questions

1. How do stingrays help? How do they hurt?
2. What impact do stingrays have on privacy?
3. What effects do Stingrays have on national security?

Arguments for why the government should use stingrays:

Monitor/catch (foreign) terrorists; Figure out networks of domestic drug dealers/gangs.

Arguments for why government shouldn't use stingrays:

Violation of constitution - fourth amendment; Extremely large amount of data

10 min-Assessment

See attached worksheet for end-of-class assessment

Extended Assignment/Homework

Watch the panel discussion following the Rights Lab Episode & write a response.

Rights Lab Episode 1



Can the Government Spy on my Phone?

How is law created?

Questions for the Day

1. What is legal precedent and how does it affect law in America?
2. What is a Stingray and what is it used for?
3. Is it legal for the government to spy on my phone?
4. When stopped and searched, can government officials (police officers) search my cell phone content?

Agenda

1. Privacy in America and the Constitution
2. The Government and Surveillance
3. The Importance of Precedent
4. Stingrays
5. Rights Lab Episode 1

Privacy in America

- **Revolutionary War** - Government intrusion became an issue with soldiers staying in the homes of citizens without permission
- **1782** - Congress passed a law prohibiting the opening of other people's mail
- **1880** - A bill protecting the privacy of telegraphs was introduced
- **1919** - It became a felony to publicize Census information
- **1974** - Congress passed the first Privacy Act, prohibiting agencies from collecting personal information without written permission

Privacy and the Constitution

- **Third Amendment** - prohibits government soldiers from residing in people's homes
- **Fourth Amendment** - protects people from unreasonable search and seizures from government officials (police for example)
- **Fifth Amendment** - allows people the option of remaining silent when being questioned, so they don't offer information that could hurt their case

About Government Surveillance

Foreign International Surveillance Act (1978)

- The Foreign International Surveillance Act (FISA) established procedures for the authorization of the following:
 - Electronic Surveillance
 - Trap and Trace Devices
 - Physical Searches
- FISA prohibited the surveillance of or production of business records regarding a US person

Smith v. Maryland (1979)

- **Facts:** A person was robbed. Afterward, they received threatening phone calls from the robber. When the robber's identity was discovered, the police requested the robber's phone records from their telephone company. The police did not obtain a warrant.
- **Issue:** Is it legal for the government to search and record people's phone records?
- **Holding:** Since numerical information was voluntarily provided to the telephone company, no warrant is required because of an assumed risk of disclosure when providing that information voluntarily.
- **Reasoning:** The robber disclosed his phone call information to the telephone company, so he did not have a reasonable expectation of privacy for the numbers he dials.

PATRIOT Act (2001)

Providing **A**ppropriate **T**ools **R**equired to **I**ntercept and **O**bstruct **T**errorism

- After the attack on September 11th, 2001, terrorism and the threat of national security became a prominent issue
- The PATRIOT Act was passed 45 days after 9/11
- This act made it easier for the government to spy on people by expanding their authority to monitor phone and email communications in addition to tracking internet activity

Riley v. California & US v. Wurie (2014)

- **Facts:**
- Riley v. California - Riley was arrested for possession of concealed and loaded firearms. Upon arrest, an officer seized Riley's smart phone, found photographs and videos linking Riley to additional crimes, and used them in court.
- US v. Wurie - Police officers arrest Wurie for making an apparent drug sale, seizing Wurie's cell phone. After the arrest, the police accessed information from Wurie's cellphone. They used the call logs to trace an apartment. The police obtained a warrant to search the apartment and found drugs, a firearm, ammunition, and cash.

Riley v. California & US v. Wurie (2014) cont.

- **Issue:** Is it legal for the police to search cell phone information from someone arrested without having a warrant?
- **Holding:** Police must get a warrant before searching a cell phone.
- **Reasoning:** The search of a cell phone is unreasonable under the Fourth Amendment. In order for it to be reasonable, a warrant should be issued first. Without a warrant, it is an intrusion on individual's privacy.

Constitutional Vocabulary

Legal Precedent:

Legal precedent is a judicial decision that is binding, meaning that the conclusion of the ruling in the court case now becomes the point of law that cannot be broken. It is the authority used to decide similar cases from then on.

Why are these cases so important, and what do they have to do with spying on cell phones?

The precedent regarding cell phone surveillance is as follows:

Since cell phone companies have data on the phone numbers that you call, you have no reasonable expectation of privacy for that information

One case made all of this possible:

Smith v. Maryland (1979).

One court ruling resulted in granting the government permission to spy on its people

What is a Stingray

- Cell phone tracking device
- Stingray function: Cellular Surveillance
- Stingray Abilities:
 - Extract IMSI Numbers
 - Capture Metadata
 - Intercept Communications
 - DDOS Attack
 - Extract encryption keys
 - Radio Jamming

How a Stingray Works

- Cell phones send information to a cellphone tower
- A stingray intercepts that information and stores it onto a police computer

How to Identify a Stingray

- In an attempt to counter this surveillance, there have been apps created to identify and track cell phone towers and stingrays

Search and Seizure Question:

When you get arrested, police officers have the right to search which of the following?

- Your pockets
- Your wallet or purse
- Your cell phone
- Your car

Search and Seizure - Answers

When you get arrested, police officers have the right to search which of the following?

- ✓ Your pockets
- ✓ Your wallet or purse
- ✗ Your cell phone
- ! Your car - when it is reasonable to believe evidence relevant to the crime in question might be found

When you get arrested, the police can search anything that you have on you. However, they cannot search information on your cell phone without a warrant.

Rights Lab Episode 1:

Can the government spy on my phone?

Name _____ Date _____ Class _____

Questions for the Day:

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Privacy in America	Privacy in the Constitution

Government Surveillance:

Foreign Intelligence Surveillance Act (1978)

Smith v. Maryland (1979)

Name _____ Date _____ Class _____

Patriot Act (2001)

Riley v. California (2014)

United States v Wurie (2014)

Name _____ Date _____ Class _____

Why are these cases so important?

Define a Stingray

Name _____ Date _____ Class _____

Directions: Answer in complete sentences and to the best of your knowledge.

<p>1</p> <p>a) What is a legal precedent?</p> <p>b) How does precedent affect law in America?</p>	<p>2</p> <p>a) Can the government spy on my phone? Why or why not?</p> <p>b) What are Stingrays and how are they used?</p>
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Name _____ Date _____ Class _____

3 **Scenario Question:**

Sarah is pulled over for speeding. She ends up getting arrested for driving under the influence. The police officer seizes her phone. The officer looks through photo album of the phone and sees pictures of Sarah consuming drugs. In court, she is also charged for drug use. Would Sarah be convicted of drug use? Why or Why not?