

NICERC @ HOME

Cyber Literacy 4th Amendment

In this activity, students will work through a variety of opportunities to learn about the 4th Amendment to the US Constitution; how it has been used throughout history, how it has adapted to modern times, and what might be some issues that we haven't thought about yet.

PART 1

Text of the 4th Amendment:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized (National Archives, Official Bill of Rights).

Rough meaning:

- It prohibits unreasonable searches and seizures and requires any warrant to be judicially sanctioned and supported by probable cause.

What is Probable Cause?

- The standard by which an officer or agent of the law has the grounds to obtain a warrant for, or as an exception to the warrant requirements for, making an arrest or conducting a personal or property search, etc., when criminal charges are being considered.
- A reasonable amount of suspicion supported by circumstances sufficiently strong enough to justify a prudent and cautious person's belief that certain facts are probably true.

LESSON 1: Unmanned Vehicles

Research the many types of unmanned vehicles, including UGV (ground), UAV (aerial), USV (surface vessel), AUV (underwater), Unmanned Spacecraft. To help, we recommend doing a Google images search for "unmanned vehicles." The vehicle we are most concerned with today is the UAV, **Unmanned Aerial Vehicle**.

UAV – A powered aerial vehicle that does not carry a human operator, uses aerodynamic forces to provide lift, can fly autonomously or be piloted remotely, can be expendable or recoverable, and can carry lethal or nonlethal payloads. (Bolkcom, 2004, p. 2)

Question:

- How does probable cause play into UAV flyovers?

LESSON 2: UAVs and National Airspace System

Federal Aviation Act of 1958:

The National Airspace System (NAS) is defined as the domestic airspace under the control of the Federal Aviation Administration (FAA) and includes a network of airspace, airports, air navigation facilities, ATC facilities, communication, surveillance, supporting technologies, and operating rules and regulations.

Currently, UAVs may enter the NAS only via complex regulatory rules and special FAA authorization. The FAA has effectively outlawed UAV general operations in the NAS because technological impediments do not allow unmanned aircraft to fly safely with manned aircraft under a “see and avoid doctrine,” which is the primary method pilots use to maintain a safe distance in the visual flight spectrum.

Potential Uses for UAVs:

- Ecosystem monitoring
- Ozone/greenhouse gas mapping
- Land and real estate surveying and mapping
- Oil and gas pipeline management
- Forest fire detection or surveillance
- Search and rescue assistance
- Customs and Border Protection (CBP)
- Assist local law enforcement in criminal surveillance, situational awareness, hot pursuit, accident or crime forensics, and hazmat reconnaissance

LESSON 3: Tech and History

Question: How does Katz relate to modern technology?

[Katz v. United States, 1967](#)

- Katz set the standard for electronic surveillance and is still referenced today.
- Wiretapping a phone booth was not permitted due to the implied privacy of entering the booth and closing the door. Previous court decisions allowed warrantless surveillance of persons in private spaces.

Question: What is a private-public space? Yard? Car port? Field inside of a fence?

- Aerial Searches by UAVs. California v. Ciraolo (1986) and Florida v. Riley (1989)
- Oliver v. United States (1984) credited officers that were present beyond a “No Trespass” sign were not in violation of the Fourth Amendment.
- Ciraolo permits police to search residences from the air provided the technology cannot display “intimate details” from within the structure (an observation from a fixed wing aircraft at 1000 ft revealed marijuana in the backyard).
- Attempts to conceal a yard from the ground can now be bypassed and observed from the air.
- Riley admits that an observation from a helicopter circling at 400 ft in navigable airspace does not constitute a search. Officers observed marijuana in a greenhouse with two missing roof panels.

- Defendant had posted a “Do Not Enter” sign and a wire fence enclosing the property. In this case, expectation of privacy does not constitute right of privacy.

Question: What is curtilage and how does it play into the discussion? Can UAVs bypass privacy beyond what is visible or expected?

- Both California v. Ciraolo and Florida v. Riley dealt solely with manned flight. What about UAVs? Must the operators “look away”? Can you trust law enforcement to use their vehicles only while near their target? What are the safety hazards of turning off all detection and surveillance equipment while flying?
- Riley’s decision offers “some Fourth Amendment protection from surveillance by UAVs that are able to transit the NAS safely without visual ground navigation surveillance via such technology”.
- Should you cover and protect ALL curtilage from overhead surveillance? The courts stated that would demand “more than the precautions customarily taken by those seeking privacy.”
- Recent cases (Dow Chemical v. United States, United States v. Torres, and Kyllo v. United States) have supported the fact that the courts “most likely will not allow UAVs to target and view private residences via intrusive observation technology or to utilize non-general public use technology regardless of the safety of flight issues”.
- Finally, the question becomes: Will video cameras aboard UAVs fall under constitutional surveillance analysis or will safety of flight needs that rely on the cameras prevail?

LESSON 4: Review

It’s clear this an ever-evolving issue and will continue to impact the legal space as technology progresses. Based on recent decisions, the Court will not allow video surveillance, or “eyes in the sky,” without meeting strict warrant requirements. Specifically, if ground video is not required for the safety of the flight, then it’s likely UAVs will have to keep their cameras off, or at least powered down, until reaching their target location.

Think through the implications of persistent “eyes in the sky” and how it could affect your life. Where is the balance between protection and privacy?

Question: Will security ever trump privacy?

- What about border patrol?
- The northern border, separating the US and Canada is 4,121 miles long with 430 available ports of entry (official and unofficial), yet only 1000 border patrol agents.
- The southern border, separating the US and Mexico is only 2,062 miles long with only thirty official points (and innumerable unofficial points) of entry with a staggering 10,408 agents (as of January 2003, Bolcom, 2004).

PART 2

OBJECTIVES:

- Research current Department of Justice policy on electronic search and seizure.
- Research current event articles on cybersecurity and privacy.

LESSON 1: Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations.

Go to the following website:

<https://www.justice.gov/sites/default/files/criminal-ccips/legacy/2015/01/14/ssmanual2009.pdf>

- Pages 5 and 6 (PDF pages 17 and 18) of the above-mentioned document contain at least nine examples of court cases where the investigator did not need a warrant to search or seize information from a computer.

- Move now to page 10, “4. Private Searches” (PDF page 22). The paper states that in *United States v. Jacobsen*, 466 U.S. 109, 113 (1984), a search of electronic media by a private individual, when reported to a law enforcement agent, permits law enforcement to repeat the same search without a warrant. An example they present is when a computer is delivered to a technician for repair and the technician reports to law enforcement the results of a search of the device. In this case, the private search can be repeated by the law enforcement officer without a warrant.

Assignment 1:

Select two cases from the PDF file that you agree with and two that you disagree with. Write one well thought-out paragraph for EACH CASE, explaining WHY you agree or disagree with it. Be sure to CITE THE CASE and RECITE SOME OF THE DETAILS behind the warrantless search in each of your paragraphs.

Assignment 2:

In NO LESS THAN one well-constructed and thought-out paragraph, answer the following question:

Must law enforcement agents limit themselves to only the files examined by the repair technician or is all data on a particular storage device within the scope of the initial private search?

Use information from the document and citations where necessary.

LESSON 2: Privacy and Security

- Your job is to read and analyze the following three articles and fulfill the assignments below.
- Once you have completed reviewing and reporting on the articles, you must answer the Discussion Questions at the bottom of the page. Please take your time and provide a cohesive, well thought-out response, consisting of no less than one paragraph. Use references from the articles and from discussions you have had earlier in the year, and be sure to cover all parts of the Discussion Questions.

Article 1: House Intel Chief Wants to Increase Cyber Attacks against Russia

<http://www.defenseone.com/politics/2014/10/house-intel-chief-wants-increase-cyber-attacks-against-russia/95675/>

Article 2: “Beyond the Law?” FBI Director Criticizes Apple, Google Privacy Features

<http://www.nextgov.com/big-data/2014/09/beyond-law-fbi-director-criticizes-apple-google-privacy-features/95198/>

Article 3: Facebook Retools Secret Research Guidelines

<http://www.nextgov.com/emerging-tech/2014/10/facebook-retools-secret-research-guidelines/95777/>

Assignment 1: Identify five statements or ideas that you think are important to the concept of Privacy or Security. They can be ideas from the article or comments directly relating to issues from the article. Regardless, you must provide five statements from each of the three articles.

Assignment 2: Discussion Questions

(Please take your time and provide a cohesive, well thought-out response, consisting of no less than one paragraph.)

- Why do you think others make this kind of information public?
- Does the US public have a right to know how the Intel is gathered/used in this country?
- Do you think it is bad for us to release this information when terrorists with cell phones can search for and read these same articles?

PART 3

OBJECTIVES:

- Research and discuss the relationship between electronic surveillance and the right to privacy as it relates to the 4th amendment.
- The lesson will provide a modern approach to the 4th amendment right of search and seizure.
- The lesson will focus on recent events such as the Boston bombings, child sexual predators, and the powers of the NSA.

LESSON 1: Introduction

Analyze the last paragraph of http://www.law.cornell.edu/anncon/html/amdt4frag4_user.html

The question of the scope of the President's constitutional powers, if any, remains judicially unsettled. Congress has acted, however, providing for a special court to hear requests for warrants for electronic surveillance in foreign intelligence situations, and permitting the President to authorize warrantless surveillance to acquire foreign intelligence information. The caveats are that the communications being monitored are exclusively between or among foreign powers and there is no substantial likelihood any "United States person" will be overheard.

LESSON 2: Time Magazine- Homeland Insecurity

Read the following article and prepare to discuss the topics below in paragraph form:

<https://swampland.time.com/2013/05/01/homeland-insecurity-after-boston-the-struggle-between-liberty-and-security/>

Topics for research and discussion (feel free to develop your own):

- Discuss the historical context of the freedom v. security balance and how it relates to today's society and technology.
- The FBI conducted its assessment of Tamerlan Tsarnaev by using post-9/11 powers to investigate potential threats without opening a formal inquiry. The FBI ran Tamerlan's name through a federal counterterrorism database of known Islamic-extremist websites, and checked whether Tamerlan had called telephone numbers associated with known Islamic extremists. Discuss the balance between personal freedom, the right to privacy and protection from potential threats.
- As Washington debates what lessons to draw from Boston, Americans say they are more concerned about protecting liberty than attaining perfect security. Support for public surveillance cameras may be up substantially over the past decade, but Americans are warier than ever about government monitoring of their private cell-phone and e-mail communications, with 59% opposed to such actions. Can America ever achieve perfect security? Do we want to? Discuss what individual freedoms you would be forced to give up for America to achieve personal security?

LESSON 3: Operation Predator

Read the following article and prepare to discuss the topics below in paragraph form:

<https://www.cnn.com/2013/09/12/tech/ice-phone-app-child-sex-predator/index.html>

Topics for research and discussion (feel free to develop your own):

- U.S. Immigration and Customs Enforcement has unveiled an iPhone app called Operation Predator that asks the public for help in gathering information on suspected child sexual predators, including those who are fugitives. Do you see any issues with the general public being able to anonymously provide this information?
- Discuss the potential implications of listing “suspected” child predators, rather than those convicted and charged?
- Discuss if there are certain liberties you’d be willing to give up to protect our nation’s children.

LESSON 4: Amash and Bachmann

Read the following article and prepare to discuss the topics below in paragraph form:

<https://www.nationalreview.com/corner/amash-and-bachmann-butt-heads-over-nsa-betsy-woodruff/>

Topics for research and discussion (feel free to develop your own):

- How would you vote on Amash’s proposed amendment and why?
- Discuss the rights companies have to your information and data.
- Read through the text of the 4th Amendment again, how does the text apply to the current topic of discussion?

ADDITIONAL QUESTIONS:

Conduct your own research to answer the following questions about the rights employers have to monitor and collect information:

Email

- Can our employer monitor my work email?
- Can they monitor my private email sent at work?

Phones

- Can our employer monitor my office telephone?
- Can they monitor the calls I make from my work cell phone at home?

Internet

- Can our employer monitor my web activity?
- Can they monitor my web activity on my work laptop at home?
- Can they monitor my web activity on my personal laptop at home?
- Can they monitor my web activity on my personal laptop at work?