

COURTEYE



State v. Tate:
Privacy and
Technology



STATE BAR
OF WISCONSIN

State v. Tate
Privacy and Technology

Overall Learning Target

- In a world of social media and changing technology, what is the future of the Fourth Amendment?

Overall Goals: Students will be able to

- answer the above question in written form using evidence derived from experts, statistics, examples, and court cases.
- participate in Socratic Seminar / class discussion in which they respond to the above question orally using evidence derived from experts, statistics, examples, and court cases.

Standards

Wisconsin State Standards - Political Science:

- C.12.1 Identify the sources, evaluate the justification, and analyze the implications of certain rights and responsibilities of citizens
- C.12.2 Describe how different political systems define and protect individual human rights
- C.12.3 Trace how legal interpretations of liberty, equality, justice, and power, as identified in the Constitution, the Bill of Rights, and other Constitutional Amendments, have changed and evolved over time

Wisconsin State Standards - History

- B.12.1 Explain different points of view on the same historical event, using data gathered from various sources, such as letters, journals, diaries, newspapers, government documents, and speeches
- B.12.5 Gather various types of historical evidence, including visual and quantitative data, to analyze issues of freedom and equality, liberty and order, region and nation, individual and community, law and conscience, diversity and civic duty; form a reasoned conclusion in the light of other possible conclusions; and develop a coherent argument in the light of other possible arguments
- B.12.6 Select and analyze various documents that have influenced the legal, political, and constitutional heritage of the United States

C3 Framework For Social Studies: Civics

- D2.Civ.14.9-12. Analyze historical, contemporary, and emerging means of changing societies, promoting the common good, and protecting rights.
- D2.Civ.13.9-12. Evaluate public policies in terms of intended and unintended outcomes, and related consequences.

Common Core, Literacy in History / Social Studies

- Key Ideas and Details:
 - CCSS.ELA-LITERACY.RH.9-10.1 (Cite specific textual evidence to support analysis of primary and secondary sources, attending to such features as the date and origin of the information)

- CCSS.ELA-LITERACY.RH.9-10.2 (Determine the central ideas or information of a primary or secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.)
- Craft and Structure:
 - CCSS.ELA-LITERACY.RH.9-10.4 (Determine the meaning of words and phrases as they are used in a text, including vocabulary describing political, social, or economic aspects of history/social science.)
 - CCSS.ELA-LITERACY.RH.9-10.6 (Compare the point of view of two or more authors for how they treat the same or similar topics, including which details they include and emphasize in their respective accounts.)
- Integration of Knowledge and Ideas:
 - CCSS.ELA-LITERACY.RH.9-10.7 (Integrate quantitative or technical analysis (e.g., charts, research data) with qualitative analysis in print or digital text.)
 - CCSS.ELA-LITERACY.RH.9-10.8 (Assess the extent to which the reasoning and evidence in a text support the author's claims)
 - CCSS.ELA-LITERACY.RH.9-10.9 (Compare and contrast treatments of the same topic in several primary and secondary sources.)

Lesson Name / Objections	Materials
<p>An introduction to the Bill of Rights.</p> <ol style="list-style-type: none"> 1. What is the Bill of Rights? 2. What is the purpose of the Fourth Amendment? 3. Does the Wisconsin Constitution protect the right to privacy? 	<p>Pass out student materials. Modify these to reflect what you want to cover</p> <p>Constitution USA with Peter Sagal: This is a great series - this link is to the series as a whole</p> <ul style="list-style-type: none"> ● Constitution USA, rights <ul style="list-style-type: none"> ● View first video, "Rights," Akhil Amar, 1:13 <p>Overview of the Fourth Amendment</p> <ul style="list-style-type: none"> ● 4 minute video from Time that provides the origins of the Fourth Amendment <p>Wisconsin Constitution, Article I, section 11</p> <ul style="list-style-type: none"> ● Language mirrors the language of the 4th Amendment ● Constitution was ratified in 1848 - it was common for state to adopted the language of the U.S. Constitution ● Note that rather than include rights at the end of the Constitution, the Wisconsin Constitution puts the rights of individuals in the first article
<p>An introduction to the Right of Privacy</p> <ol style="list-style-type: none"> 1. How does the Constitution protect the rights to privacy? 2. In a world of social media and changing technology, what is the future of the Fourth Amendment? 	<p>Constitution USA with Peter Sagal</p> <ul style="list-style-type: none"> ● View Excerpt from Episode 2, "Privacy" 5:47 <p>Annotated copy of the Bill of Rights: this is the entire Bill of Rights, focus for this lesson is on the Fourth Amendment</p> <ul style="list-style-type: none"> ● Amendment IV <ul style="list-style-type: none"> ○ In a world of social media and changing technology, what is the future of the Fourth Amendment? ○ Have students write a preliminary answer to the question above. Share preliminary answers in small groups or as a class
<p>Search and Seizure and the role of technology</p> <ol style="list-style-type: none"> 1. How has court responded to changes in technology? 2. What are current concerns related to technology and privacy? 3. In a world of social media and changing technology, what is the future of the Fourth Amendment? 	<p>A historical overview of technology and the courts</p> <ul style="list-style-type: none"> ● For students click on "Technology and the Fourth Amendment case studies" ● Have students go through materials either in small groups - respond to questions in materials ● Share answers as a class ● Have students return to the writing they completed yesterday. What can they add or change? Have them cite specific cases <p>Privacy and technology today</p> <ul style="list-style-type: none"> ● Have students look at "What's At Stake" and "Current Issues" ● Again -return to writing - what can be added? Have views changed?
<p>State v. Tate</p>	<p>Exploring the intersection of privacy and technology in Wisconsin,</p>

<ol style="list-style-type: none"> 1. What are the basic facts of <u>State v. Tate</u>? 2. What is a search? 3. Is the tracking of a cell phone to locate a person a search? 4. What is the outcome in <u>Tate</u>? 5. In a world of social media and changing technology, what is the future of the Fourth Amendment? 	<p><u>State v. Tate</u></p> <p>In order to teach students about <u>State v. Tate</u>. It is recommended that teachers use the following</p> <ul style="list-style-type: none"> ● Overview of State v. Tate, view from the beginning to 8:30. <ul style="list-style-type: none"> ○ This clip should be viewed together as a class. It provides a great overview of the case in fairly easy to understand language. ○ It is recommended that you show this clip at both the start and the end of the class discussion of <u>State v. Tate</u> ● State v. Tate, annotated version for students <ul style="list-style-type: none"> ○ Note that there is a case analysis form students can use to help digest the case <p>There are two additional pieces teachers may choose to use as a part of the discussion of <u>State v. Tate</u></p> <ul style="list-style-type: none"> ● Oral Arguments for State v. Tate, begin at 13:40. The oral argument is fairly technical and addresses some complexity in the law. It is recommend that you show excerpts of each of the attorney’s presenting their arguments. <ul style="list-style-type: none"> ○ Atty. Byron Lichstein (Tate’s attorney) is the first to make arguments before the court because is the appellant - he is the side asking the court to review the case ○ Atty. Jeff Kassel (from the Wisconsin Department of Justice, represents the state in the appeal) begins at approximately 41:50 ○ Justice Ann Walsh Bradley ask some key questions about the technology at approximately 59:50. ● <u>State v. Tate</u>, Panel Discussion: This is a wonderful panel discussion that includes all of the key players in the case, including <ul style="list-style-type: none"> ○ Byron Lichstein, atty. for Tate ○ Jeff Kassel, atty. for the State of Wisconsin (discussion of responsibilities of attorneys and intersection of law and technology begins at 24:00) ○ Milwaukee County Circuit Court Judge Dennis Cimpl, the trial court judge in the <u>Tate</u> case ○ Larry Dupuis, Legal Director for the American Civil Liberties Union of Wisconsin (Dupuis discusses privacy issues at 55:40)
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The Constitution, the Fourth Amendment, and the Use of Technology
State v. Tate
Student Materials

Overall Learning Target:

- In a world of social media and changing technology, what is the future of the Fourth Amendment?

Introduction

Over the next several days you will be looking at a fascinating area of the law, the intersection of privacy and technology. Do you expect your social media posts to be accessible to future employers or universities? How would you react to your parents monitoring your cell phone calls? Would you behave differently if you believed the police could track your use of cell phone data?

You will be investigating the answers to questions like these using a number of different sources, including a case decided by the Wisconsin Supreme Court. By the end of this unit you will be asked to craft an answer to the question: In a world of social media and changing technology, what is the future of the Fourth Amendment?

Fourth Amendment and the Right to Privacy: An Overview

Constitutions

The [United States \(U.S.\) Constitution](#) includes a Bill of Rights, which is made up of the first ten amendments. You will focus on Amendment IV (Four);

Amendment IV: “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.”

The [Wisconsin Constitution](#) also protects the rights of individuals, though it includes individual rights upfront, in the first article. Article I (One), section 11 of the Wisconsin Constitution mirrors the language of the Fourth Amendment exactly. It was common for states to adopt the language of the U.S. Constitution.

An introduction to the Bill of Rights.

1. What is the Bill of Rights?
2. What is the purpose of the Fourth Amendment?

Begin by getting a feel for the Constitution as a whole. Take a few minutes to look at the following website: [Constitution USA with Peter Sagal](#) (Rights)

- Take a look specifically at the following short video: [“Rights,” Akhil Amar](#)

State v. Tate: Exploring the intersection of privacy and technology in Wisconsin

You will need the following materials over the next few days:

- [Overview of State v. Tate, view from the beginning to 8:30.](#)
- [State v. Tate, annotated version](#)

Status of the case

1. Police obtain a court order to track Tate's cell phone using various devices. There is not Wisconsin Statute/ Law that directly allows this type of tracking.
2. Tate is located and arrested.
3. Tate's attorney files a pretrial motion seeking to suppress all evidence that resulted from the tracking of the cell phone (for example items seized when he was arrested, witness statements, and Tate's post-arrest statement). His attorney argued that the search was illegal because there is no statute in Wisconsin that authorizes this type of search, thus the search is illegal. Tate loses the motion and the evidence can be used against him at trial.
4. Tate lost the motion, he knew the evidence would be used against him so he plead no contest to the murder.
 - In criminal law, a defendant's plea in court that he/she will not contest the charge of a particular crime, also called nolo contendere. While technically not an admission of guilt for commission of the crime, the judge will treat a plea of "no contest" as such an admission and proceed to find the defendant guilty as charged.
5. Tate appealed the loss at the suppression hearing, arguing that if the evidence had been suppressed, there would not have been enough evidence to convict him.
 - Tate loses the appeal, he then files a petition for certiorari, asking the Wisconsin Supreme Court to take his case
6. Tate's case is taken before the Wisconsin Supreme Court

Issue: Can the state get an order to locate a cellphone to help find a suspect when the phone is not evidence of a crime?

- The issue is the key question the court is being asked to answer

Law: Fourth Amendment of the U.S. Constitution and Article I, section 11 of the Wisconsin Constitution

A key consideration for the Wisconsin Supreme Court in this case is a balancing of the right to privacy vs. the need to protect society as a whole

- Privacy: cell phone use is a private thing, especially when the cell phone itself is not evidence of a crime
- Need to protect society as a whole: allow law enforcement to use new technology to track criminals before they harm others

Helpful background / Context for State v. Tate

What is a stingray phone tracker? How does it work?

- [Stingray Phone Trackers](#) - Chicago Tribune
- [Stingray Phone Trackers](#) - USA Today

[What is the Fusion Center?](#)

State v. Tate: Oral Arguments

Preliminary Information - takes place in Sheboygan rather than in Madison

- [Background information on the Court and Justices](#)
- [Link to oral argument](#) (cannot be viewed using Chrome Browser)
 - from 0-8:20 is a nice overview of the court and the case by Attorney Casey J. Hoff
 - from 8:30 - 12:10 is dead time and can be skipped
 - oral arguments begin at about 14:00

Issue: Whether law enforcement officers performed an illegal search when they tracked Tate's cell phone using cell site information and a Stingray Phone Tracker

1. The tracking was a search under the United States and Wisconsin Constitutions and
2. The Judge who authorized the search lacked the authority/power to issue an order/warrant authorizing the police to track Tate's phone

Key part of this is a balancing of the right to privacy vs. the need to protect society as a whole

- Privacy: cell phone use is a private thing, especially when the cell phone itself is not evidence of a crime
- Need to protect society as a whole: allow law enforcement to use new technology to track criminals before they harm others

Complete two column notes below as you view the oral arguments

Tate's Arguments, Attorney Byron Lichstein	State of Wisconsin's Argument (Assistant Attorney General Jeffrey Kassel)

[State v. Tate: Reading the case](#)

Issue: this is the question the	Whether law enforcement officers performed an illegal search when they tracked his cell phone using cell site information and a Stingray Phone Tracker
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Court is being asked to answer.	<ol style="list-style-type: none"> 1. The tracking was a search under the United States and Wisconsin Constitutions and 2. The Judge who authorized the search lacked the authority/power to issue an order/warrant authorizing the police to track Tate's phone
Facts: state those facts that are relevant (essential) to understanding the case)	
<p>Law: May be any or all of the following</p> <ul style="list-style-type: none"> ● case law ● statutory law ● constitutional law 	
Analysis: How does the Court reach its conclusion	
Holding: the Court's decision, who wins	

Consider what you have learned about State v. Tate. What can you use from this case to assist you in answering the following question: **In a world of social media and changing technology, what is the future of the Fourth Amendment?**

