



RM258: GPS and the 4th Amendment
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Announcer 00:00

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Andy 00:18

Recording live from FYP studios, east and west, transmitting across the internet, this is episode 258 of a Registry Matters. How are you doing this evening, sir?

Larry 00:30

I'm doing marvelous. I'm so glad to be with you. Again. I don't know why you keep having me come back?

Andy 00:37

Well, probably because everyone else that I have on the roster will not show up. But I do. Someone just said in chat, Larry. And this pisses me off. So quote, unquote, someone said, the media is in it just for the views and the clicks, which media, all of it all of the media is just in it for the views and the clicks? It bothers me so bad when people say that all of the media is the same?

Larry 01:01

Well, I think the person is probably referred to the commercial media, because the commercial media and people who make their living off of this, they are very similar. But there is an outlet that doesn't operate with that same business model. Are you familiar with it?

Andy 01:18

I am. And there's more than just the one because there's I think ProPublica is also nonprofit, and so forth. But of course, the Corporation for Public Broadcasting, which is NPR and the PBS NewsHour are not in it, obviously are can't function without money. However, their incentive is not a money stream to lead, you know, with it bleeds, it leads, whatever. It just irritates me. When all of the media is not trustworthy, then why do you watch it? Any of it?

Larry 01:47

I don't know the answer to that. But you know, the funny thing is, when you start having conversations with these people about solutions, they go ballistic. Because I said, Okay, well, you agree that the media is biased? I agree with you it is. What things are you willing to do? Are you willing to reinstitute any of the regulations that existed prior to the 1980s? And of course, they go ballistic and say no. Then I say, well, then, what options do we have? Do you want to pump more money into public broadcasting? And then they go ballistic on that. I say, well, if you don't want to put more money in public broadcasts, and you don't want to break up the monopolies that control largely what we hear, and you don't want to have governmental intervention, what else is there? Obviously, they have not been able to do anything

about this themselves. They cannot self-correct because it's a business model that that they're forced to compete in. Even if you really want to do it differently, you're forced because you live and die by those ratings. I don't know why people can't understand that.

Andy 02:52

Did I ever tell you the story about a conversation I had with someone about Nielsen ratings? Is that the that's the people that do the surveys and check what you are watching on TV?

Larry 03:03

Yes, I just did a survey for them. [Did you really?] I didn't get my \$20 that they were going to pay me, but I did turn it in.

Andy 03:11

So this person--now this was 2010 or 2011 or so when the person and I were having this conversation--they said that there was some sort of device in the television that told them what you were watching. And I was like, no that's not it works. It could work with a Roku. That's how that works. But I was like, no doofus. They call you and they say did you watch these things? They said, I don't think that's true. I was like, can you imagine all the technology that would be required for them to phone home all of the data about what you're watching? How would that work?

Larry 03:44

I don't know. I just got a questionnaire. And I had a \$5 bill visible through the envelope of the mailer. They said, if you complete the rest of this, upon receipt will give you \$20 more. And it was like 16 to 18 questions. But even though I don't watch television, I filled it out and sent it out. But I didn't get my \$20 yet.

Andy 04:07

Because you said I watch "Meet the Press on Sunday morning" and that's it. And they're like, we're not sending you 20 dollars. [laughter] Would you be kind and tell me what we're doing this evening.

Larry 04:23

We're going to be doing a little bit of this, and a little bit of that.

Andy 04:28

Oh, perfect. I like those programs.

Larry 04:29

So we've got a question from one of our listeners. And we've got some articles that I've selected among a whole batch of articles. And then we're going to do a deep dive into GPS monitoring, also known as Satellite-Based-Monitoring.

Andy 04:44

It's very good that you put that in there because there's a hard switch that no one's going to get. Well, very good.

Larry 04:51

And so before we get started, I want to pontificate about some observations I've made in the legislature this past week.

Andy 04:58

Oh, well, you know all that stuff is legalese. It's a bunch of gobbledygook. We don't want to hear about that.

Larry 05:03

So do you have time for you or don't have time to hear about it?

Andy 05:06

I'll ask chat. They have three to one. They said, okay.

Larry 05:10

So, so you call it gobbly gook?

Andy 05:14

It's definitely gobbly gook.

Larry 05:16

Well, I was listening to debate. I monitor online, and I go to the Capitol once in a while. But I was listening online in this particular instance, and I heard someone say, something that was just totally destructive to their success. It was so detrimental, and they couldn't figure it out. And there was the bill was being debated. And it had some changes made throughout his journey through the legislative process. And the changes, of course, were popular with some and not so popular with others. The Speaker said, before you guys snuck these changes in, I supported the bill. You've just alienated the entire committee when you say that, cuz if they were snuck in, how would you know about them? They're right there in black and white. They were put in an amendment. The amendment was debated in public. It was voted on by the committee and accepted. And it became a part of the legislation as amended. So that person, for whatever traction they thought they were going to get, they just alienated the entire committee by saying something as ridiculous as that. It was okay until you snuck these amendments in. And then there was another one that was speaking ill of intentions. And we don't allow that. I know that they see it in the US Capitol. But we don't allow that here. We do not impugn the motivations of sponsors. And we don't impugn the motivations of the people who are speaking for or against legislation. So you just don't do that you don't call them liars, and this person just couldn't stop. And she was admonished to stop impugning the integrity of the previous speaker. She said that person just lied. And the chairlady said, no, don't say that. No, stay focused on your point. And she continued, so they finally took her time away from her because she was showing disdain and disrespect for the process. You don't do that, folks. You just don't do that. She could have easily said--both of them could have been easily remedied if the person didn't like the changes. All they needed to have said was in the legislation I find some troubling points, because there's been some changes made that I'm having difficulty understanding, and I can no longer support the legislation. You've accomplished your goal right there. But when you say the stuff you snuck in, you've told them that you don't have any respect for their integrity, that you think that there are weasels and they're dishonest people, they no longer have value. I mean, they're still going to be polite to you. But you've just diminished your standing when you did that. And that's the type of

thing if people would let me teach them, I could do that. It's all in how you say it and what you say and your choice of words. And the person who thought that had been speaker before had lied. I feel that way. Sometimes. On my general systems bill, I felt like the Department of Human Services lied. But you don't say that. You actually say, looking, listening to what the previous speaker said. That doesn't comport with what I know about the issue, or at least what I think I know about the issue. It seems to be inconsistent, and you stop. That's about as blunt as you can get and maintain credibility, but you don't call people a liar.

Andy 09:07

Okay, Larry, you're a liar, just saying.

Larry 09:13

Oh, all right. So what do we have next?

Andy 09:16

Okay, well, next, there was a question. I believe this is one that I forwarded you a couple days ago. "I listened to your podcast from last week and thought I could elaborate on some things. My charge was not another SO offense. It was for my first offense. The original charge was lewdness with a minor under 14. My victim was under 14. However, I took a plea deal that raised the conviction to attempted lewdness with a minor under 16. According to the Adam Walsh act I believe I should be classified as a tier 2 offender. I believe 18 U.S. code 2244 a(3) and 2243 apply. Unless I am misunderstanding, and Nevada has some odd classification system, I should be a 2 because of the plea deal regardless of the actual age of the victim. I appreciate any help that you can give. FYP."

Larry 10:16

All right. Well, Mr. Gloom and Doom is going to have to tell you that you're not seeing the law the way it exists. The federal guidelines are merely advisory. The states can put everybody at tier three, or they could put everybody at tier two. Now, you'd have trouble with being deemed substantially compliant if they did that. You would have no problem if you put everybody at tier three. But if you put people in tier two that belonged at tier three, you'd have trouble. But those are advisory guidelines. They're not binding. But I did a little bit of research, and I used an attorney's website for the response. And it says, ""According to N.R.S. 179D.115, a Tier II offender is defined as an offender who has been convicted of a crime against a child. The relevant statute also defines a Tier II offender as a PFR, other than a Tier III PFR, whose crime committed against a child could result in a sentence of one or more years of imprisonment." Based on the description of the underlying conviction, sure sounds like a tier two to me. I mean, would you agree that a person under 14 or 16 could qualify as a child when they define a child as anyone being under 18?

Andy 11:37

That's not really too much gray area there.

Larry 11:42

So he did indeed describe an offender against a child, and he pled it down. Now the way he worded it, it could be that he played it up. And what he means is they raised the age of the attempted or they dropped it to an attempt rather than the actual completion. And then they raised the age of the attempted offense from 14 to

16. And that was probably done to lessen the severity and terms of the sentence that could be imposed to reduce his exposure, as we call it. That offense that he pled to being an attempt normally lessens that by one level of offense. So if you have a third degree felony, and you plea to an attempted third degree felony that you should raise decreases that to a fourth. So that was probably done by his attorney for strategic reasons, but it still didn't change the underlying fact it's a child, whether it's 14 or 16. And the Adam Walsh Act does not control. It's merely wrote a recommendation on the website. The attorney I use, the link will be in the show notes, right.

Andy 12:49

Yeah, I have that up on the screen here. But it'll be in the show notes, too.

Larry 12:54

Yes. I wish I could give him better news, but I just don't think I can't.

Andy 13:00

Very well, then we should move on. I'll just say though, the website that you use was LV Criminal Defense. So that would be lvcriminaldefense.com. You also put in here something about some recent news that you wanted to talk about. And what do you want to pontificate about? Larry, I know what this is going to be.

Larry 13:21

Two things. The stellar employment report issued Friday. Is it in the good column. The closure of Silicon Valley Bank is in the not-so-good column.

Andy 13:31

Do me a favor. Let's talk about the good stuff. First, what were the job numbers? And are these just all lies that when one president likes them, they use them? And when a certain president doesn't like them, then we can ignore them?

Larry 13:43

One, that's not true. We had only one president who accused them of being lies. And they immediately stopped being lies the day he was sworn in. I saw the numbers. The numbers had been good. And the years leading up to that president's election, did he say there were phony numbers? And then when he got in office, because the good numbers were continuing, magically, they became good numbers. Is that what you're talking about?

Andy 14:06

That might be. Yes. [All right]. So tell me about the good numbers.

Larry 14:12

It shows an all-time record number of more than 160 million people working and more than 300,000 jobs added during the month of February. Prior to the pandemic, the all-time high number of people with jobs was 158 million. We are well past that number now. And I put the jobs report for December 2020 PDF in the show notes if everybody wants to read it. And then the most recent jobs report that covers the month of February 2023. And you can see the number of people working is at an all-time high.

Andy 14:50

Well, okay, then. And so then let's move over to the bad news, which I honestly haven't heard about the failure of Silicon Valley Bank. I can't imagine anybody else's heard of it either. So what's there to see here, sir?

Larry 15:05

Probably not much other than I want to attempt to reduce the fear mongering that's all over the internet. And these YouTubers are spreading fear to make money on their channels claiming it's too late to get your money out of the bank. It just drives me up the wall, all this fear mongering that goes on. And I know it pays well. You know, you look at their subscribers, they have 100,000, 200,000, 300,000 people gravitating to fear and stuff. That's just not true. They just love it, apparently.

Andy 15:36

So is it not too late? Or is it too late to get their money out? Which way is this?

Larry 15:40

It's absolutely not too late to get the money out of the bank. The Silicon Valley Bank is actually the 16th largest bank in the United States in terms of assets. They have an asset base of over \$200 billion. And the largest bank failure prior to that was back during the financial meltdown and that was Washington Mutual with a little over \$350 billion. So this is right up there. But it was closed Friday. It will reopen Monday. All the branches will be reopened. They will be handing out cash to people who want their money because all the fear mongers will be telling them that it's too late. And you will receive all of your money up to the \$250,000 for depositor insured accounts. You will get your money. Sleep well tonight and sleep well tomorrow night. You have nothing to fear unless you have a lot more than \$250,000 in Silicon Valley Bank. It'll be business operations on Monday morning. And they will be paying depositors as they walk in the door.

Andy 16:46

And did you cover the \$250,000 insurance piece of that?

Larry 16:50

Yes, that's the that's the Federal Deposit Insurance Corporation limit. So you will get up to \$250,000. Now there won't be uninsured deposits. All institutions have that uninsured deposits, and they will be paid off in a different way. They may not get their full deposit, but they may not get all their money back. But to tell people to run to their bank to get their money because there's not going to be money, it's the craziest thing I've ever heard of.

Andy 17:14

And you're saying uninsured depositors would be over the 250 or somebody that has their little \$100 in their little passport checking account or whatever.

Larry 17:22

No, the \$100 would be covered. It'd be a depositor that has greater than \$250,000 to the same depositor, they would have a potential of loss, which doesn't mean they're going to lose the money because it'll depend on how this institution is disposed of. If it's taken over by another institution, rather than a government. It likely will open as a new institution. Right now they've given it a

temporary name and it's operating as an entity of the government. But depending on if the institution takes over, you generally don't build a lot of goodwill by telling people that you're going to be off the money. So the new institution will probably make good on everyone's deposit. Who will be wiped out will be the stockholders. The equity holders will be wiped out. And, you know, the stock has been plummeting over the last couple of days just as the word got out that there was problems in this institution. So the stock has been on freefall from \$500 a share down to about \$100 a share when they suspended trading Friday, when the closure took place.

Andy 18:28

While you are normally Mr. Doom and Gloom, but even with that being negative news about a bank closing, you at least provide some level of positivity on the spin.

Larry 18:39

Well, I do that even though we don't have the loyal 10s of 1000s of people waiting for the clickbait. But there's no reason to be afraid of this. We've done this rodeo many times before. Not a single dime has ever been lost in a FDIC insured account in the history of those creations, which came about in the 1930s during the Depression. No one has ever lost a dime in insured account. So I don't know why all of a sudden people are just going ballistic. And they're even predicting maybe it will bleed over and we will have runs on other banks. And the banks are solvent. The regulatory framework is much stronger than it was back in the financial crisis of 2008-2009. They're doing stress test. This was foreseeable, but there was nothing that we could do about it. But what happened is, as the interest rates have risen, Silicon Valley had a large amount of "available for resale Treasury securities." Well, as interest rates go up, that old Treasury portfolio is going down in value, because nobody wants to pay a lot on a treasury that's yielding 2%, when they're much higher than that now. So those available for resale treasuries have plummeted in value. So they had to take a huge charge against that even though that's a temporary decline in value. So as they took the write off, their capital ratio got too low. They were inadequately capitalized. And they were in the process of trying to raise capital, but then a bank run started. And that's when the regulator's came in--we learned from Washington Mutual after Chuckie Schumer blabbered his mouth, you know who Chuck Schumer is right? [I believe he's a Senate leader, a majority leader?] Yes. Well, Chuck Schumer was a part of the run on Washington Mutual because he talked about it being an unsafe institution. So he contributed to the run on Washington Mutual, which led to its possible premature seizure. But all that's ancient history now. But there's no reason for people to have any fear. They're going to get their money.

Andy 20:49

Already, then. Okay, well, let's move along to some GPS monitoring/SPM. And do me a favor. Tell me what SBM is.

Larry 20:58

That is satellite-based monitoring.

Andy 21:01

No, it's funny you say that because it was this website that I read called Science Based Medicine. SPM. Same thing. So when I first read it, I thought why are you converting over to science based?

It's got to be something else. Anywho. So you wanted to talk about this on this episode? We do receive constantly people asking about GPS monitoring, and I'm big fan. I like some technology, Larry. GPS stuff is pretty cool. But maybe you aren't quite so hip on it. So what's wrong with this?

Larry 21:29

Tonight, we are using a Law Review article written by Glenn Gerding and Luke Honeycutt Everett back in 2022. I have stolen their work for this episode. And I'll get into answering the question of why I'm not a fan of after you tell people who these people are, and while we should listen to what they've said in their Law Review article.

Andy 21:51

Did you did you ask them if we could steal their work first?

Larry 21:56

No, since it's on public domain, I didn't feel I needed to.

Andy 21:59

Okay. So before we move on, I will read their bios. I have met the other person, the Glenn Gerding guy. Luke Honeycutt Everett is a Clinical Professor of Law at the University of North Carolina School of Law. In 2015, the U.S. Supreme Court vacated and remanded Grady v. North Carolina after granting Everett's petition for cert, and he has continued to work on the issue in the North Carolina courts. He won a substantial victory in the Supreme Court of North Carolina in August 2019. Glenn Gerding is the North Carolina Appellate Defender at the Office of the Appellate Defender. Gerding has also served as an Adjunct Professor at Campbell University School of Law, teaching Military Law, and at UNC Law, teaching Appellate Advocacy. Neither of these are lightweights.

Larry 22:55

I would hope so. That's why I chose to still in plagiarize their work. As stated in the article, my issue is that electronic monitoring to track criminal offenders—particularly PFRs has exploded in the last twenty years. While the technology to electronically track individuals' movements has existed since the 1960s, it was first used in the criminal justice system in the early 1980s. By the early 2000s the technology began to see wide use in tracking convicted offenders, particularly PFRs. My issue is that it's not been used as an alternative to incarceration. My observation is it has been used to expand the universe of offenders under pretrial supervision and post incarceration supervision. How often can you say it has been used as an alternative to incarceration?"

Andy 23:49

I wouldn't say that any of them. And it also shifts the burden of the finances from the state having to pay for feeding and housing you to you having to pay some orders of hundreds of dollars a month to put the little bracelet on your ankle. Right.

Larry 24:03

I hadn't even thought of that.

Andy 24:05

Right. All right. "The article states, several factors contributed to this increased use of SBM: new GPS technology that could track individuals via satellites wherever they went; a nationwide push

towards decarceration; and a generalized fear of and ill will towards PFRs, as evidenced by the U.S. Supreme Court's 2002 opinion in *McKune v. Lile*, which described the risk of recidivism among sex offenders as "frightening and high."

Larry 24:40

Well, I think I'm going to ignore that for now. I will note that I switched the reference from SBM to GPS since more people are familiar with GPS rather than SBM. Consider them to be interchangeable as we go through this episode.

Andy 24:58

To continue. "In August 2019, the Supreme Court of North Carolina ruled that the state's satellite-based monitoring program was unconstitutional for Torrey Grady and others who were similarly situated. That decision ended nearly seven years of litigation for Mr. Grady as the case made its way to the U.S. Supreme Court." That fixed the problem. I'm sure Larry, sure of it.

Larry 25:24

No, it didn't. The North Carolina Supreme Court's decision was a great result for Grady unfortunate left unanswered questions for North Carolina and many other jurisdictions that have enacted some form of GPS and last 20 years, far from ending GPS monitoring. That decision has led to more litigation and confusion as to the future of such monitoring and the state in the state of North Carolina and beyond.

Andy 25:50

So what are the problems as you see them, if you don't mind me asking?

Larry 25:56

Well, each program in the various states differs in important ways. For instance, not every state allows for lifetime monitoring. Of the ones that do, some allow for monitoring only if the offender is on probation or parole, while others allow unsupervised individuals to be monitored. You remember the case in Georgia, the Park case. [I do] Park had finished his supervision and he told him they could take that monitor and do--well, I don't think I say this on a family show [tell them to go pound sand]. Ok. But some like New Mexico have continuous real time monitoring for people who are on supervision, which is very long because of our indeterminate supervision. And while others create a record of movements that can be used and looked at later, after the fact. And some require judicial assessment before imposing the monitoring while others simply categorize a group of offenders the way we do, and they automatically must do it. Our statute, our law here, lists in the statute the offenses that require it once they're released and while they're on what we call parole that they have to have this monitoring real time monitoring for the entire duration of their parole. I'm thinking very seriously that we need to litigate this now that the case law is moving in our favor.

Andy 27:14

I'm guessing that these differences are critical in assessing the constitutionality of such monitoring programs. Let's dig into the North Carolina statute as it existed prior to the Grady decision.

Larry 27:29

Sure. North Carolina's initial version, which was challenged in Grady, became effective January 1, 2007. The statute established four categories of PFRs that must submit to monitoring for life. Number one, SVP, I'm not going to try to dig into what it took to be classified as a sexually violent predator. Number two, recidivist. That kind of goes without saying. Theoretically, you would have more than one offense, but in Wisconsin, you can have more than one count in the same case, and you're a recidivist. Number three, those convicted of an aggravated offense. Again, I do not know what all constitutes an aggravated offense. And number four, adults convicted of statutory rape of an individual under the age of 13. And a significant problem. And that statute is that did not require an individualized assessment. And no court had any discretion on whether it imposed GPS or to determine a duration or an exit plan. That was the problems with the original statute. It was the focus of the litigation and grading.

Andy 28:30

And as I recall, no court could terminate the obligation.

Larry 28:34

That is correct. There was no way to get out of it. You were in it for life.

Andy 28:41

The article states, "an offender subjected to lifetime monitoring could file a request with the state's Post-Release Supervision and Parole Commission to terminate GPS one year after completing his sentence of incarceration plus any period of probation or parole. The Commission could terminate SBM if it found 'that the person is not likely to pose a threat to the safety of others.'" So Larry, my question to you is, did the commission terminate anyone? [Clinton laugh track]

Larry 29:24

Oh, that is such a beautiful laugh. From 2010 to 2015, the Commission received only 16 such requests and denied all of them.

Andy 29:37

Well, my question, Larry, why would they have only received 16?

Larry 29:43

I would guess that people either didn't know about it, or they couldn't afford. Remember, you're being hit with all these fees to pay for this monitor and for counseling and all these things. And I would guess they either didn't know, or the attorneys didn't know how to do it because it wasn't clearly delineated what the petition would look like. It's kind of like what--I think it was Maine or New Hampshire, (one of those states) created a new exit plan. The plan said you need to file a petition for removal, but no such document and no such process existed. And the number could be a number of things. But it does seem like a relatively low number in five years. That's only like three for a year, right?

Andy 30:23

Only 16 did it. Something like that. So 2010, 11, 12, 13, 14 and 15. Six years for them to have 16 people. Well, anyhow it's simple to me that, in my in my mind, there was a Supreme Court case where they ruled putting a GPS monitor on your car was an unlawful

search. And I have a hard time with--if you're still on probation, I guess we could talk about it. But with the Park case, all of these are searches and potentially unconstitutional except with the requisite individualized assessment by a court. It's great technology. I think it's awesome. People get found out in the wilderness all the time having GPS stuff. But I don't think it should be used to keep micromanaged track of where everyone goes, every little step you take.

Larry 31:13

I agree with you. In theory it should be unconstitutional, particular for non-supervised defender. That was the issue in Grady that made its way the Supreme Court. They argued, meaning the attorneys, that such monitoring violated Mr. Grady's Fourth Amendment right. They had to make a two-pronged argument. First, they had to show that GPS monitoring was a search and second had to show the search itself was not reasonable.

Andy 31:40

I see that. The article states, "the North Carolina courts had not gotten past the first step. In the 2013 case State v. Jones, the North Carolina Court of Appeals ruled that the state's program was not a search. The court of appeals in Grady confirmed that holding, and the Supreme Court of North Carolina denied discretionary review." Please describe tell me what discretionary review is, and then go on to what's next, please.

Larry 32:05

Well, that means that he had his statutory right to the first level of appeal with the Court of Appeals. And then, as with the US Supreme Court, the North Carolina Supreme Court had the option to decline a cert and they did. So what happened next is a petition with the Supreme Court was filed. Remember, you have to exhaust before you can take an issue to the Supreme Court. You have to have two things. You've got to have a federal constitutional issue. And you have to have exhausted all hopes of getting a remedy in the state court. A state Supreme Court denial of CERT is full exhaustion. If you can't get the state Supreme Court to look at it, that doesn't mean they don't turn around say, well, since the state Supreme Court wouldn't take the case, we're not going to take the case. They're not bound by that. So a cert petition was filed, the US Supreme Court granted cert, and they relied on their own 2012 decision, the United States versus Jones and GPS monitoring. And they decided in that case was indeed a search. And in Jones, they held that attaching a GPS monitor on an individual's vehicle--which I think you referenced above--was a search, even if the vehicle was only driven on public roads. And they asserted if GPS monitor attached to one's car was a search, certainly attaching one to an ankle with one's body would be. I mean, you can't fault the logic--if you can't plop it on someone's car, it's unconstitutional. How can we plop it and attach it to your body and expect a different outcome?

Announcer 33:39

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Andy 34:27

And then the Supreme Court agreed in a *per curiam* decision. What is *per curiam*?

Larry 34:33

Everybody agreed to them.

Andy 34:37

Why can't they just say unanimous?

Larry 34:41

That's not the Latin term.

Andy 34:43

Okay. All right. The court ruled that a state conducts a search when it attaches a device to a person's body without consent for the purpose of tracking that individual's movements. But the court did not take up the second prong of the argument whether the search was reasonable. Instead it remanded the case to the no North Carolina courts to conduct a hearing and make the reasonableness determination. The US Supreme Court gave little guidance. And you're going to tell us what happened next.

Larry 35:10

Well, additional losses in the lower courts and trial courts. But ultimately after losing at the trial court, the Supreme Court of North Carolina agreed and held that GPS monitoring was unconstitutional not only as applied to Mr. Grady, or for any individual who was situated like him, named anyone who was subjected to monitor and solely by virtue of being classified as recidivist who are not on probation, parole or post release supervision.

Andy 35:42

The article states, "the picture only gets murkier when considering the major differences between monitoring programs in different jurisdictions, differences that can greatly affect the balancing test that determines whether a search is reasonable. For instance, would a short-term GPS order be more reasonable than a lifetime order, or is the search unconstitutional on day one? Could a GPS program be reasonable if it required a judicial assessment that the individual was an ongoing threat? What if an individual subjected to GPS had ready access to judicial review of an ongoing order? And what if, unlike North Carolina, a state was able to demonstrate that such monitoring was effective at preventing crime?"

Larry 36:25

Well see, these are the so many unanswered questions when people don't understand the complexity of law. Back when they were founding the Republic, no one would have ever thought about this kind of stuff. There wasn't anything about GPS on the horizon. And we don't have the answers to these questions. This is new territory. We have to figure these things out. And this is going to require a lot of litigation, which is going to be expensive. I promise you that the states will fight tooth and nail to defend the statutes for two reasons. First, they're obligated to because it's the

job of the Attorney General of the State to defend the laws that have been duly enacted by the people of the state. And second of all, the public wants these monitors, particular on the PFR population. So they're going to fight tooth and nail. So we got lots of litigation to do.

Andy 37:19

When we talked with the guy from Georgia last week about that bill, it looks like it's going to pass and there's a piece in there that talks about the recidivism is why having GPS monitoring put on a second offense.

Larry 37:36

So, yep, well, they're effectively trying to undo Park. That's what they're trying to do.

Andy 37:40

Yeah, totally, totally agree with you.

Larry 37:43

They're trying to see how they're trying to see how far they can go. And we don't know how far they can go. Like the questions you just read. We don't know how far they can go. As Justice Scalia said about gun control. He said there's no absolute right to possess any type of weapon that's ever been devised. Of course, there are limits, but we just don't know where they are yet. The right case hasn't come before the courts and worked its way up to the US Supreme Court in terms of where those boundaries can be drawn. Now, they're likely to be drawn a lot more leniently under the current court as it's currently composed. But we just don't know the answer to what we can do with GPS, and how much we can shoot in people's lives. And I can tell you this, the more robust the due process is, the more it's individualized, the more you can do, you can do a lot of things when you've had individualized due process. Because if the person has had the opportunity to rebut the presumptions that they're making, which I don't like rebuttable presumptions, but at least if they've had the opportunity, we presume if you've done certain heinous crimes, that you're dangerous, you at least deserve a robust process to rebut that presumption. At least.

Andy 38:55

Oh, right. Anything else? What kind of timeline what happens next? What happens with all of this moving forward?

Larry 39:03

Well, for example, our statute here in Mexico requires a list of offense convictions to be on that monitor and for the duration of their post-prison supervision. And it's either going to be five to 20, depending on the offense, or in some instances five to life. I'm warming up to litigation on this because we don't make any distinction. There's no due process. It's not an individual thing. It's just categorical. You fall into this group of offenses; therefore, you have to be monitored like this for the duration. I'm warming up to litigation, but it's going to take us years if we were able to get together plaintiff class by June of 2023. We'd be litigating in 2026. I think we'd still be in court.

Andy 39:50

I always like to throw up my felony jaywalking that could be listed as one of your offenses, and therefore you've now felony

jaywalked, and that it does seem like something that we could use GPS monitoring on to know whether you've done jaywalking in the future?

Larry 40:06

Well, we could. I'm a fan of it.

Andy 40:08

But I mean, that could be listed. And therefore, just because you did the thing, now you have the GPS monitoring, regardless of any of the other circumstances. And as you were just describing without any sort of due process to go along with it.

Larry 40:22

Absolutely. I'm a fan of the technology, if it were used correctly. I think in previous episodes I've said, if we used it for internal sanctions, when you're violating probation, if the PO shows up your house, and your curfew is at 10, and you're not there, rather than putting you in jail at enormous cost, and causing you to lose your job, they say, Andy, you know, we can't trust you anymore. So we've got a special little device, I'm going to give you option A. I've got this device in the car, and I'm going to attach it to you. And you're going to have to rebuild the trust. Or Option B, I've got a little bracelet here I'm going to put on and then I'm going to take you to jail. Right, which of those options would you prefer?

Andy 41:01

But even what you just described was, we're going to have to rebuild some trust, which kind of implies, Larry, that it would be, I don't know, we'll pick 3 or 6 months, something like that of a probation period, while I rebuild the trust that I'm following the rules again, and then we take the thing off.

Larry 41:18

That's correct. And that's where I was headed that after six months or some period of time, depending on how egregious the offense was, if they came back two o'clock in the morning, which they generally don't do, but if they came back two o'clock in the morning, you were not gone. That's different if they come by at 10:15. At night at two o'clock in the morning, if you don't have a job, you probably ought to honor your curfew. That would be my advice, but totally up to you. But, you know, it's proven that people tend to get in more trouble in the middle of the night, when they're out gallivanting. But I would be a big supporter of GPS, if it were used to reduce the incarcerated population. But it has not been used in that way. It has been used to expand the universe of people subjected to correctional control.

Andy 42:04

Yeah, and again, as I said earlier, it shifts the burden of the cost unto you of paying a couple 100 bucks per month to support the program to

Larry 42:13

Is that all? Only 200? I thought it was worse than that.

Andy 42:16

That's the number that I've heard. And I'm sure people have it worse. But that's what I know. And then we could then go on to have a conversation about why is it so freakin' expensive? I mean, this is not expensive equipment. GPS monitoring itself is

effectively free with a few dollars of parts. Yes, you need something like a cell phone sim kind of card thing so the thing can phone home. But this is not expensive technology. So why does it cost so much?

Larry 42:45

Well, I can explain it to you. But you'd go ballistic. It is because the capitalist system has generated a way to make money. It's kind of like the prison mail scanning operations. Those are exploding exponentially across the country because the companies that have popped up to do this type of work. They're making pitches around the country saying we can save you a whole bunch of money. We can save you from having contraband in your prisons. And it's selling like gangbusters. Well, they do the same thing with these devices, these companies, what you can't believe what we can do for you. I mean, we've got this neat device. And for like X number of dollars per unit, we can do X,Y and Z for you. It is just wonderful. And capitalism has a great way of generating a demand for services.

Andy 43:29

I understand. All right. Anything else on this particular subject before we go into a couple articles?

Larry 43:36

No, I think we can move on. I hope that's helped people. GPS is here to stay. And a lot of litigation is needed. And it's going to be slow, painfully slow.

Andy 43:49

Let me ask you this, because someone posted this in chat, and we'll stick around here for just one more second. Someone posted a press release that the ACLU recommends eliminating electronic monitoring in the criminal legal system. And that was from September 29th of 2022. And this would be similar to--I can't remember the body of law professors that were making the recommendations on what to do with the PFR laws. I can't remember what that one's called. Can you remind me?

Larry 44:20

The American Law Institute. ALI.

Andy 44:23

So I mean, this is just some nonprofit group of Think Tank kind of people saying we recommend doing a thing, and it has zero weight.

Larry 44:33

Not only doesn't have weight, most of the conservative oriented legislatures will laugh and find disdain in anything they say. They would say because, as far as they're concerned, the ACLU is destroying the country. I can go down a list of things that the ACLU is doing that angers conservatives, and they have no respect whatsoever for the ACLU.

Andy 44:53

Gotcha. All right. Well, then we will move along to an article that you put in here from AP News. The article states, "Reported sexual assaults at U.S. military academies shot up during the 2021-22 school year, and one in five female students told an anonymous

survey that they had experienced unwanted sexual contact, the Pentagon said Friday."

Larry 45:21

So, "the increases have triggered outrage on Capitol Hill and a steady stream of legislation. But as yet, the changes have not appeared to make a dent in the problem, although officials argue that expanded assistance programs have encouraged more victims to report the crimes." So the response is that this is merely it's not necessarily just more of it is just because we've become aware of it now more and more people feel uncomfortable coming forward. I don't know. But we need to talk about it, because we've got a lot of people who were in that facility over in Fort Leavenworth. And they told us a different story about incentives to falsely report.

Andy 46:04

Right. "Based on the survey, attacks against women were most often by a male who was usually in the same class year and more than half the time knew them from school or other activities. Attacks on men were more often — 55% of the time — by a female who was in the same class year and knew them." Attacks on men. Did I confused the way that that got worded?

Larry 46:27

I had the same reaction as you did, but attacks on men. I'm just not all that familiar with it. I'm not saying that what happened, but according to the report, the rates of unwanted sexual contact report in the survey are "at or above civilian rates." That's totally contrary to what we were told. But this is from the American Association of Universities, and no other more recent statistics were available. So it's difficult to accurately compare the military academies with a nonmilitary university at this point.

Andy 47:02

Okay. I guess we will move on to another article after that. This one is from also from the AP. "Restoring the voting rights of former felons drew national attention after Florida lawmakers weakened a voter-approved constitutional amendment and after a new election police unit championed by Republican Gov. Ron DeSantis arrested 20 former felons." I really don't like that guy, really, really don't like him.

Larry 47:37

Well, we have a huge fan that's one of our patrons. He thinks Ron DeSantis should be president. But I just point out periodically, factually, not with any political bias, if this is your guy, do not be surprised when you don't get any criminal justice or positive reforms from him. He has told you in his government so far, in particular on this issue, what his position is about reintegrating felons into normal society. You can go out and vote for him, but don't expect anything different. But anyway, it's sad because several of them were confused by their rest, because they had been allowed to register to vote and I thought they were legitimately entitled to vote, but yet, the goon squad came out and arrested them.

Andy 48:25

And the good news is that we are moving in a positive direction with the exception of Florida.

Larry 48:32

Yes, we are. And that's really good. And that's what I want to point to the positive attempts like those and Florida to discourage ex-felons, from voting appeared to be an outlier among states, even some Republican led states, even though they continue to restrict voting or cross access in other ways. At least 14 states have introduced proposals this year focused on restoration of voting rights. According to the Brennan Center for Justice, a voter proposal would allow felons to vote while incarcerated, which would be only the third state to do that. A Tennessee bill, which is about as conservative as they come, would automatically restore voting rights once the sentence is completed, except for a small group of crimes. And I don't know if PFRs or small group at Texas legislation would restore voter voting rights, so that was on probation or parole.

Andy 49:22

And in Minnesota, Democratic Governor Tim Waltz on Friday signed a bill restoring voting rights to convicted felons as soon as they get out of prison. And then a bill moving through New Mexico legislature would do the same. What's the status of that bill? Since you probably are kind of close to it?

Larry 49:40

I am indeed. I don't deserve much credit for the bill. But I'm close to it in terms of supporting it, and it has passed as part of election reform measure. Not a single Republican voted for it. Now, there were other provisions that the Republicans hung their hat on to justify their no votes, but this was a part of open election reform that included, you can put yourself on an automatic absentee ballot list, rather than having to call to the county clerk and request one each election. For example, if you have a need like you have physical limitations, and they're not going to improve, and you're never going to be able to get up vote, or you have transportation issues, you can put yourself on a list. Republicans didn't like that at all.

Andy 50:22

I don't understand why.

Larry 50:25

And then another big thing Republicans didn't like is the voter drop boxes that are secured. They did not like that, because they said that the voter drop boxes are going to be filled with fraudulent ballots. Of course, it ignores the fact that every ballot is examined and scanned for authenticity, and it's saved for signature verification and all these different things. But anyway, not a single Republican, listen to me, you New Mexicans that are listening, not a single Republican voted for the restoration of voting rights, which would extend to when people get out of prison, rather than the current law where they have to wait until they're off all supervision related to their conviction. So that is likely to become law. I can't see the governor, no I can absolutely guarantee you--even though I don't have a direct pipeline--the governor is not going to veto this legislation.

Andy 51:15

And then the article goes on more than 4.6 million people are disenfranchised in the United States because of felony convictions according to the Sentencing Project. So the tide is turning now. So let's see 70 million like 150ish million people vote for at least for

the presidential election. You think I have that number sort of close?

Larry 51:36

You're pretty close. I think each of the last candidates got about 70 million votes. So yeah, you're close to, to that. Yes.

Andy 51:42

And so 4 million, that's not a drop in the bucket. I mean, that's a statistically significant portion.

Larry 51:49

Well, it is, and it's so important that people be allowed to participate and be treated like a normal human being. Look, they paid their debt, and the debt is pretty high. The United States people serve long prison sentences here, and they serve long periods of supervision. It's not as if they got a slap on the wrist. And we're told to go away and have a great life. And most instances, felons pay a significant price here.

Andy 52:17

Would you be so kind and play devil's advocate and tell me what is the argument why can't people vote in prison? That part? Like maybe I could, could be convinced to not let them vote. But then once they're out? And even while on supervision? What would be the argument to say, no, you can't vote?

Larry 52:39

Well, the only argument I've heard that they make is that those people haven't fully paid their debt to society. So therefore, their slate is not clean. But I don't buy the argument. But that's the only thing they come up with. The reality is they're afraid it's going to be a whole bunch of new Democrat voters. And the funny thing is, it's not going to be. It's going to actually going to be a whole bunch of new conservative Republican voters. That's the funny thing about it.

Andy 53:06

I don't know that I agree with that, either.

Larry 53:09

We've had evidence on the podcast from time to time that people tend to be conservative, unless you're looking at just one ethnic group in prison. But if you're looking at the totality of incarcerated individuals, they tend to be very conservative.

Andy 53:28

Okay. And all right. Well, you would think that they would have those numbers with all like the red state program, what I can't remember what the name of that program is where they were statistically, like finding very vulnerable districts where they would only have to get like 10 people to vote, and then they would get somebody into that legislative body. I think it was called Red State. And you would think that the with the power of big data like that they would have access to that information and know what, how that's going to turn out for them.

Larry 53:59

You would think so, I think in many instances, people are just oblivious to reality. And there's so many things that I see in the arena of political discourse that are just totally disconnected from

reality. You hear me moan and groan about the YouTubers that I see. The 10s, and 100s, and 1000s. And in some cases, hundreds of 1000s of subscribers. And they're showing up repeatedly. Some of these YouTubers do multiple videos a week. Some more than one a day, feeding them garbage. Total garbage. [Yeah.] As the guy named Adam, that you heard, he's been telling people over the weekend that it's too late to get their money. And he's raking in all kinds of money and people thanking him for being so thoughtful of their needs. And the bank will be up on Monday. They'll get all the cash they've got.

Andy 54:51

Ah. So with our small little following of people and we try to be as accurate as we can and these other folks are out there with hundreds of 1000s of followers making fairly significant chunks of change off the YouTube algorithm and not necessarily being so forthright or just outright wrong. I don't know if they're being intentionally deceitful, or if they are just wrong. And somehow they are charismatic and have a following. I'm not sure which way that works, which way that goes.

Larry 55:25

I've watched it enough that I think it's a combination of the two. I think that they're generally wrong by mistake. Issues get complicated, and it takes particular, confident persons. I don't know the answer--like you hear us do from time to time, we don't know the answer that we'll try to figure it out. Sometimes we never get around to fanned out because there's too many other things. But people try to make up answers to sound intelligent. And sometimes I think they do it deliberately. They just flat out do it deliberately. We had a conversation about one of my nemeses. And I said, I know he knew better than this. He knows better. He is an attorney. He knows better, but he does it anyway.

Andy 56:05

Well, very good. Any Do you want to cover any one of these articles we have? Say it's five minutes, but we can call it at five minutes early. If you don't feel like one of these articles.

Larry 56:16

Let's give let's give a shout out to our supporters and give our transcriptionist a break and rush. Next weekend is the last weekend of the session. We get done here Saturday, so I should be somewhat freer. But guess what, we're likely to have a special session because important priority legislation from the governor hasn't moved yet, and the governor is going to call him back.

Andy 56:41

Okay. Wow. Like how many people is that?

Larry 56:46

What do you mean, how many people is that?

Andy 56:49

You said they're going to call them back? If you want to call them back.

Larry 56:52

You mean, the governor without certain priority bills that she's identified? If they don't make it through the process, she's going to call a special session.

Andy 57:00

Do they get paid for that?

Larry 57:02

Yes, they get their per diem, which is right at \$200 a day. [Okay.] But what the governor has to understand is that yes, you can disrupt their life and be vindictive. She can call them, but she cannot force them to legislate. She can issue the proclamation, and she can put the items that she would like to have on the agenda. But she cannot force them to legislate, nor can the courts. And people need to understand that. You know, we can go do a little quantification. When we have these decisions, and say that, you know, the Court told them to legislate, the court can only recommend that they legislate. I mean, we had the case, some time back, with the image possession and the state of Maryland. The Maryland Supreme Court did a textual interpretation. And they said, you know, the law says, if you are a person, you have these images, it doesn't say anything about there being any prohibition of your age that you're protected. And they suggested to the Maryland legislature that they fixed that. To my knowledge, I don't think they have fixed that. They can't require them to legislate. And the governor can call the special sessions. You know what the legislature could do? They could show up enough lawmakers to achieve quorum, and they could vote to adjourn immediately and turn around and go back home. That's what they could do.

Andy 58:15

All right. Well, as you said, we need to thank our supporters. And so thank you very much to each and every one of you, you know who you are. If you are a financial supporter of the program, it really does help out a lot. You do four or five hours of prep. And then there's four or five hours of post prep and so forth of keeping this thing done every week. And then we have this transcriptionist thrown in there, that is supported as well. So for all of you that do support the podcast, Registry Matters, and FYP education, it is so very much appreciated that you folks do that consistently and continually every month. And I thank you from the bottom of my heart. And if Larry had one, he would thank you from the bottom of his due.

Larry 58:56

I would at 179 years old soon to be a couple of months. The effort that goes into this is beyond what most people understand, of trying to be accurate, trying to try to sound intelligent. Maybe we fail sometimes trying to have a good quality program and try not to mislead you and tell you what you want to hear. It's all a lot of effort. Because I don't like to be the bearer of bad news. I'd love to be able to tell you great stuff that's happening all the time. But unfortunately, great things aren't happening all the time. A lot of not so good stuff is happening. And when good things are happening, we try to report them as accurately as we can understand them. Absolutely. And I don't do what those other channels do that drive me up the wall. You know, if I had never started watching YouTube, I wouldn't know about all this stuff. But the more I watch, the more disgusted I become of what people are willing to fall for. And one of them gets 10, 20, 30 dollar contributions while he's talking because he goes live and people just eat it up. You know, he tells them you're about to lose your

disability benefits, and they give them a \$10 bill for being told.
That's something that's not going to happen.

Andy 1:00:07

Well, we'll make it live next time and people can donate all their money to us next time.

Larry 1:00:12

I don't think we have the requisite number of subscribers. I don't think you said we can't do that. But people are sitting there spending of money to tell them stuff that's just not true.

Andy 1:00:22

And we'll send it through PayPal.

Larry 1:00:26

And he's constantly Mr. Doom and Gloom, and we're not constantly doom and gloom. We just went through some good news tonight. We talked about the positive movement on satellite and GPS based monitoring. Not fast enough, but these are positive developments.

Andy 1:00:43

Well, all right. So we will close everything out. From here though, you can find all the show notes over at registrymatters.co and fypeducation.org. The information from last week's episode will come out. Our transcriptionist nearly died last week. And so things were slightly delayed, but the programs did go up, but not the supporting materials to go with it. And so find all that information at registrymatters.co. And, of course, as we were just talking about the books that support us over at patreon.com/registrymatters. Thank you all so very much for all that you do for the program to keep it running. And I thank you very much, Larry, for all the work that you do put in. It is not possible without you, for real. And I thank you very much.

Larry 1:01:28

Thank you. Good night.

Announcer 1:01:32

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