

Panels Examine GPS Tracking of Domestic Batterers

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Several students, judges, and professionals spoke at the law school on Friday, February 29, at the Coalition on Gender Violence's conference on GPS tracking of domestic batterers. The discussion was centered around a recent piece of Massachusetts legislation that authorized the use of GPS tracking of convicted batterers in order to enforce orders of protection.

HLS lecturer Diane Rosenfeld, who was instrumental in the passage of the Massachusetts legislation, spoke first, telling the audience that she was making this presentation "in the spirit of changing the paradigm on how law and society treat domestic violence." The traditional paradigm of domestic violence, she said, puts women in particular boxes from which they can exclude their batterer - e.g., their home, their workplace, or a domestic violence shelter - telling them that they are only safe within those boxes; GPS tracking, on the other hand, can exclude batterers from a "zone" that emphasizes women's right to be protected as they move through society freely.

Rosenfeld shared several examples of domestic violence cases, pointing to three articles on domestic homicide in the previous day's Boston Globe and discussing at length the case of a woman who was granted a restraining order then killed by her abuser at a women's shelter. In 2000, she said, 1,247 women were killed by an intimate partner; 440 men were.

Next, several students discussed their "current development" pieces for the Civil Rights-Civil Liberties Review. Alanna Buchanan, '08, discussed the impact of GPS monitoring of batterers in black communities, noting that black women experience 35% higher rates of domestic violence than white women. In black communities, she noted, women may feel that they are betraying their community by turning men over to a racist system. GPS monitoring could also be used by police to disproportionately and unjustly monitor the activities of black men, not an unjustified fear in light of studies demonstrating a racist bias in the criminal justice system.

Buchanan recommended giving victims the option to seek a traditional restraining order as opposed to GPS monitoring, training a diverse team of law enforcement officers and other social service providers, and addressing domestic violence in a holistic way, providing victims of domestic abuse with help in accessing other social services and benefits.

3L Pamela Foohey spoke about using these GPS tracking systems for sex offenders as an alternative to residency restrictions (currently used by 27 states and numerous towns and countries). GPS systems cannot be used to keep sex offenders away from particular victims, as they can with domestic batterers, but they can be tailored towards keeping sex offenders away from victims fitting their particular profile, such as setting GPS trackers to activate only when the sex offender approaches a defined area around an elementary or middle school. This could avoid the problems inherent in residency restrictions which often force sex offenders into the outskirts of society, something which may actually lead to greater recidivism.

Foohey concluded by noting that convincing states to use GPS tracking in place of residency restrictions in the context of sex offenders - which is an issue that state legislators and other politicians are called upon by their constituencies to address forcefully and expediently - has the potential to make GPS tracking of batterers a more acceptable means of monitoring violations of restraining orders, where it has many potential benefits (most likely many more than in the sex offender context) because the technology itself will have been tested and better understood, providing states with another justification for its use.

Fred Medick, '08, discussed whether GPS monitoring could be a violation of offenders' civil rights and civil liberties, particularly because it may be imposed in lieu of a restraining order on people who have not actually been convicted. He concluded that it was unlikely that a court would conclude that it was a violation of the right to a jury trial, but noted that existing jurisprudence might not be equipped to handle the questions raised by new technology.

A second panel featured Judge Amy Krause of Michigan, Judge Michael Linfield of Los Angeles, Professor Tania Tetlow of Tulane, Austin Lin of NOW, and Kelly Dunne, director of programs at the Jeanne Geiger Center, whose Domestic Violence High Risk Assessment Task Force has been implementing the Massachusetts legislation locally. Dunne discussed her experiences in implementing the legislation, stating that the system had been predicated on the assumption that the most at-risk cases would enter a shelter and that no other real form of protection had been given. Since the legislation has passed, the High Risk Team has put some 40 offenders on GPS monitoring; none have violated that monitoring.

Judge Linfield questioned whom GPS monitoring is meant to protect - if it is meant to be used in the worst and highest risk cases, perhaps the solution should be prison instead of monitoring, he suggested. He also expressed concerns over establishing a "high tech illusion of safety" that ultimately doesn't do more to protect women than traditional restraining orders. Similarly, Judge Krauss stated that she felt her local police department already took domestic violence very seriously and that extensive GPS monitoring might be expensive and unnecessary, though she would use it on occasion.

Tetlow defended GPS monitoring as the best current solution because it constitutes slam dunk evidence of a protective order violation, and becomes a clear case of contempt against the court's order, something that is particularly important as police often do not treat stalking itself as a crime.

Austin Lin of NOW's National Board stressed that women have a right to live and travel in safety, and that GPS could be a tool to accomplish that. He did express concerns that the cost of GPS monitoring could divert money from other forms of support for domestic violence victims, and stressed that the ideal is a system like Massachusetts has where the offender pays.