

Should NY State Be Able to Track Public Employees Via GPS?

By [Donald Scarinci](#)

While the country continues to debate the federal government's PRISM program, another government surveillance case is underway a little closer to home. New York State is accused of using a GPS device to track the movements of an employee who officials suspected was falsifying time records.

The New York State Court of Appeals recently heard oral arguments for the case of *Cunningham v. New York Department of Labor*. Michael Cunningham filed the suit after the NY Department of Labor installed a GPS device on his personal vehicle for 30 days and tracked his movements both on and off the job. The state did not obtain a warrant or notify the employee. Cunningham was later terminated based on evidence collected from the GPS.

Cunningham, who is represented by the New York Civil Liberties Union, alleges that the GPS monitoring violated his constitutional right against warrantless search and seizure as well as his right to privacy. Meanwhile, the Department of Labor contends that its measures were reasonable given that Cunningham had a history of falsifying time records. Cunningham was also required to report his vehicle travel to the agency, and he was aware of the investigation, according to the Department of Labor.

During the recent hearing, the court appeared to appreciate the significance of the case. "Is there any thought given to whether or not it was necessary?" asked Associate Judge Eugene Pigott. "There are ways you can get this information short of doing a 24-hour surveillance."

"If someone else in the family was using the car and their privacy was invaded would they have a cause of action or do you think that because what [the department] did was reasonable they don't," Pigott also questioned.

In 2012, the U.S. Supreme Court considered the use of GPS devices in *U.S. v. Jones*. While it ruled that warrantless tracking did constitute an illegal search under the Fourth Amendment, it was a criminal case. Depending on the outcome of the *Cunningham* civil case, it could also head to the country's highest court, but I think this is highly unlikely.

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