

Everyday Champions



**NARSOL
CONFERENCE 2020**

**GLENN GERDING
APPELLATE DEFENDER
DURHAM, NC**

Everyday Champions



- A person who fights or argues for a cause or on behalf of someone else.
 - **Advocate**
 - **Fighter**
 - **Defender**
 - **Proponent**
 - **Protector**
- On a daily basis. Commonplace.
- Each of you is an Everyday Champion.

Everyday Champions



- Need not be an attorney
- Family
- Friends
- Person required to register
- Advocacy groups
- NARSOL

How did I get here?



- State criminal case in 2009
- Charged with violating premises restrictions
- Attended church
 - no accusations of misconduct
- Permission of the pastor
- Known by the congregation
- Trial judge held restrictions unconstitutional
- State failed to properly appeal
- Several cases followed – parks, county fair

My journey since and where I am now

- Trial and appellate court litigation challenging NC's registry requirements, internet restrictions, premises restrictions, and satellite-based monitoring.
- *Doe v. Stein* (M.D.N.C.)
- US Supreme Court in *Packingham v. NC*
- *North Carolina v. Grady*

Grady v. North Carolina

- In *Grady v. North Carolina*, the US Supreme Court ruled in March 2015 that a GPS device attached to a person's leg is a "search" for purposes of 4th Amendment protections. (*Grady I*)
- Case was remanded. The trial court again imposed GPS tracking.
- The North Carolina Court of Appeals held that GPS tracking was unconstitutional "as-applied" to Mr. Grady, in May 2018. (*Grady II*)
- More cases followed in the Court of Appeals also holding GPS tracking unconstitutional as-applied.

State v. Grady, 372 N.C. 509 (2019)

- In August 2019, the NC Supreme Court held that NC's tracking program violates the 4th Amendment for people classified as recidivists. (*Grady III*)
- Cases involving other statutory grounds for imposition of tracking are now under review at the Court of Appeals in light of *Grady III*.

State v. Grady, 372 N.C. 509 (2019)

- NC's statute is facially unconstitutional for people situated like Mr. Grady – classified as a recidivist, and not on any kind of parole or under supervision.
- "Special needs" exception to 4th Amendment doesn't apply. GPS tracking is for crime control.
- Persons on the registry who are not under other supervision have same privacy rights as other citizens.

State v. Grady, 372 N.C. 509 (2019)

- GPS tracking is a substantial invasion of privacy.
 - The device is physically attached to a leg.
 - The device shows more than just a location.
 - It is continuous.
 - It is lifetime, without any individualized consideration.
- No evidence presented of recidivism rates or efficacy (deterrent effect) of GPS tracking.

How to Champion Every Day

- Organize
- Strategize
- Persevere

Champions Organize

- NARSOL
- Partnerships
- Allies
- Thought leaders
- Data
- Monitoring of legislative action

Champions Strategize

- What do we hope to accomplish?
 - Long range planning
- How do we accomplish it?
 - Short term goals
- What are our priorities?
 - Each state is unique in some way
- Strategy includes the smallest details, including the words you use.

Factors Leading to Success and Change

- Advocates who care about the issues
- Advocates who know the law, including nuances
- Compelling stories
- Critical examination of statistics
- Courage of elected judges
- Federal court
- Regular communication between trial and appellate bar and advocates

Future Ideas for Champions

- Decrease the revolving door involving technical registry violations.
- Continue to press challenges to restrictions tied to registration.
- Work to reduce impediments – both legal and factual – to removal from the registry.
- Racial disparities
- Juveniles

Slow The Revolving Door

- Long after a person has been punished, the banishment and Big Brother offenses create new opportunities for the State to imprison a person.
- Violations of registration offenses, most of which are technical in nature, result in imprisonment.
- Otherwise law-abiding people are caught up in the revolving door of the criminal justice system.
 - Most registry and restriction offenses have no intent element.
- Arbitrary and disparate enforcement makes compliance difficult.

Press Legal Challenges

- Remember *Packingham* recognized the “troubling fact that the law imposes severe restrictions on persons who already have served their sentence and are no longer subject to the supervision of the criminal justice system”
- Premises
- Internet
- Residential
- GPS tracking
- Argue federal *and* state constitutions

Improve Chances for Removal

- Legal reform
 - Automatic registry termination
 - Periodic review, rather than simply register “for life”
- Plan ahead and prepare individuals to present the strongest case possible for removal.

Discover and Reduce Racial Disparities

- 25,911 persons on NC registry
- 59% White - 15,280
- 34% African America - 8,775
- 5 % Hispanic - 1,331
- 1.5% Native American - 391
- .5% Asian - 134
- How does race impact removal petitions?
 - “Studies have shown that bias tends to arise when actors are making discretionary decisions.”

Support Reform for Juveniles

- Juveniles who are adjudicated for a sex offense in juvenile court may be added to a registry.
- Some states have registration requirements that are different than for people found guilty of a sex offense in adult court.
- As with adults, registration requirements vary widely around the country.
- Some states allow juveniles to be tried, and added to the registry, in adult court.

Support Reform for Juveniles

- The US Supreme Court has recognized that juveniles are different than adults and should be treated differently:
 - Interrogations
 - Sentencing
- 91.5% of juveniles sentenced to JLWOP, are people of color or members of minority groups.
- Is lifetime registration for a person who was a juvenile at the time of the offense constitutional?

Emerging Issues & Areas for Advocacy

- Seek success stories to share.
- Engage people on the registry to reduce isolation, reduce risk of recidivism.
- Develop support groups to reduce isolation.
- Lobby for funding for counseling for those in prison and on probation.
- Engage partners with common interests:
 - ACLU
 - Faith groups
 - NAACP

Champions Persevere

- Fighting the status quo requires constant chipping away at entrenched beliefs and prejudices. It does not happen overnight.
- Look to other movements for inspiration.
- “Justice will not be served until those who are unaffected are as outraged as those who are.”

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