

Local Government Section MCLE Program

Webinar

November 18, 2024

Welcome/Announcements and Introduction

Jeff Jacobson – Section Chair

12:00 PM – 1:00 PM

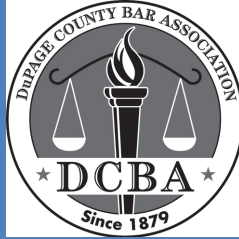
Program

License Plate Reader (LPR) and the 4th Amendment

Michael Molina - Flock Safety

Michael J. Molina is the Vice President of Legal and Deputy General Counsel for Flock Safety, a public safety-as-a-service company that builds ethically designed crime solving technology. Flock deploys the crime-solving technology in neighborhoods and law enforcement areas of interest in over 5,000 communities in 42 states across the nation.

This CLE discussion will explore the intersection of the Fourth Amendment and License Plate Reader (LPR) technology, focusing on recent developments in case law and privacy concerns. The discussion will begin with an introduction to LPR technology, including how it works and its growing use in law enforcement. The speaker, Michael Molina (VP of Legal at Flock Safety) will then examine key historical case law addressing the Fourth Amendment's protections against unreasonable searches and seizures, with an emphasis on how those principles apply to the use of LPR data. Will also discuss recent legal challenges and rulings related to the technology, particularly in the context of evolving privacy rights. Finally, the speaker will provide practical guidance on the proper use of LPR evidence in court, including checks and balances for ensuring compliance with constitutional protections and best practices for



handling and presenting LPR data in legal proceedings. This session will provide attendees with a comprehensive overview of the legal landscape surrounding LPR technology and equip them with strategies for addressing its complex legal issues.

Link to Evaluation

The evaluation must be completed to receive CLE credit.
<https://www.surveymonkey.com/r/LocalGovt11182024>.

Upcoming Events:

November 1 to 21, 2024 - [Lawyers Lending a Hand Coat Drive](#) - Bar Center

December 11, 2024 - [2024 DCBA / DAWL / Justinian Holiday Gala](#) - Lakes at Lacey, Downers Gower.

December 19, 2024 - [2024 DBF Holiday Breakfast](#) - Attorney Resource Center, Wheaton.

DCBA OnDemand CLE is Available on IICLE:

Members can find the link to The Illinois Institute for Continuing Legal Education (IICLE) catalog on the DCBA website under the menu item CLE & Events □ IICLE Online Library. You must be logged into your DCBA Membership Profile to view courses for free or at a reduced price.

View & Print CLE Certificates through the DCBA Website:

CLE Certificates can take up to a week following the date of the CLE program to appear in **your member profile**. Members can view and print their certificates for any DCBA CLE program attended by first signing into their account on the DCBA website. Hover over the **CLE & Events** menu item and select **Find My CLE Credits**. This page will list all the CLE credits earned with DCBA. To the left of each program is an icon to print or email the Statement of Credit. You can find a list of all CLE credits earned in Illinois by signing into your account on the MCLE Board website.



Lawyers Lending a Hand **COAT DRIVE**

Help families in need with new or gently used winter gear to get through the winter months.

*Bring Donations to the Bar Center or
the ARC starting November 1, 2024.*

**Coat Sorting Pizza Party at Bar Center
Thursday, November 21, 2024
5:30 pm - 7:00 pm**



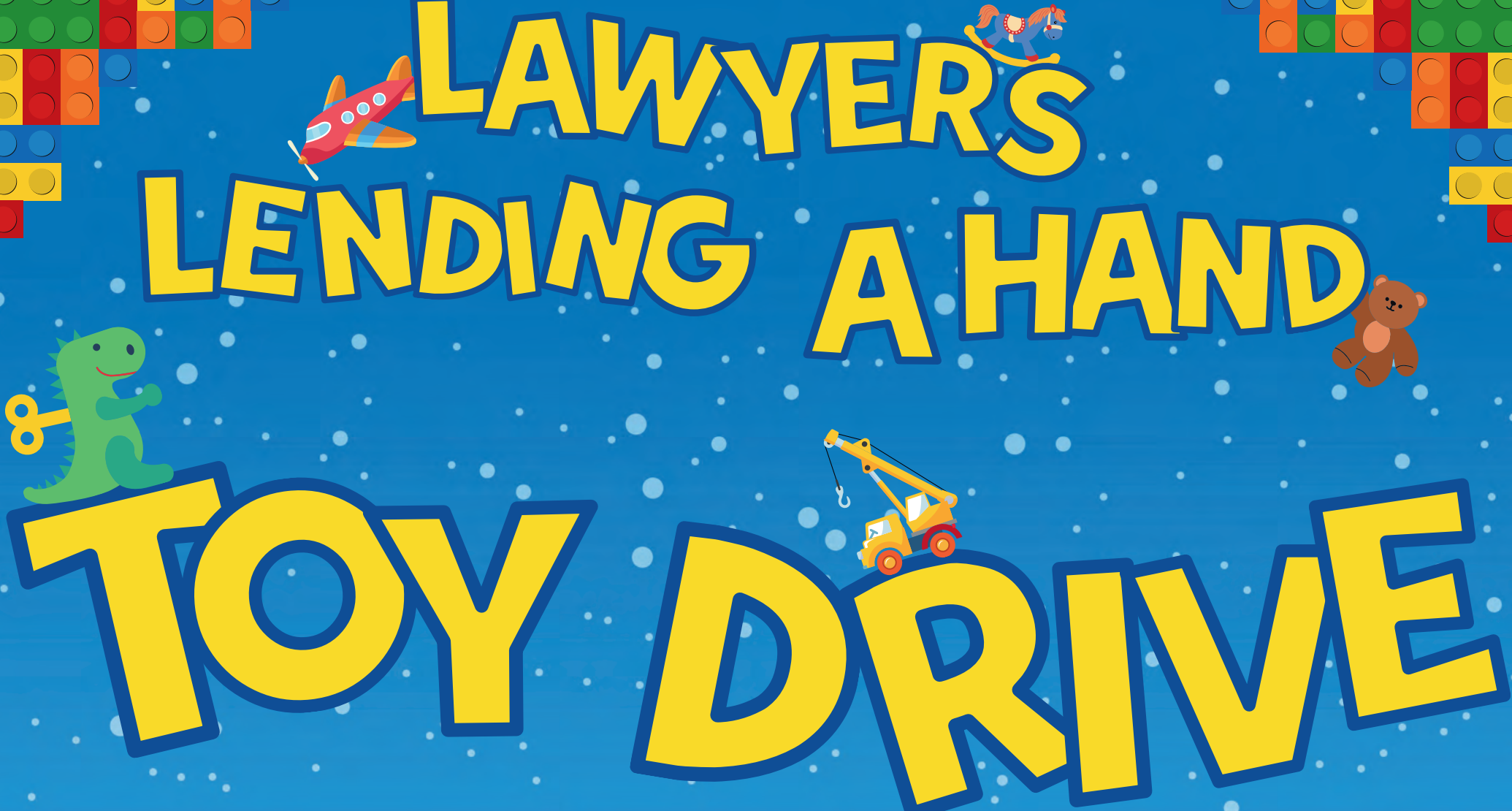
**Community Partner Coat pick up by
Appointment November 22, 25, & 26**

*Organizations needing coats should contact
Sharon Ferguson at sferguson@dcba.org to arrange pickup
or call 630-653-7779.*





LAWYERS LENDING A HAND TOY DRIVE



Bring donations to the Bar Center
starting December 2nd

Toy Sorting Breakfast at Bar Center:
Saturday, December 14th
9 AM - 11 AM



Community Partner Toy Pick - Up by Appointment on
December 16, 17, 18, & 20

Organizations needing toys should contact Sharon Ferguson at
sferguson@dcba.org to arrange a pickup or call 630-653-7779.

Society of Lawyers DuPage County Bar Association DuPage Association Women Lawyers

2024 Holiday Gala

Wednesday, December 11, 2024
5:30 p.m. - 9:30 p.m.

Lakes at Lacey
3500 Lacey Road, Downers Grove 60515

FESTIVE HOLIDAY ATTIRE

Scan Here to Register!



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Contact Robert at rrupp@dcba.org to sponsor today!
go to dcba.org/24gala to register

Save the Date.

2025 DCBA *Presidents Trip*

April 3rd – April 6th, 2025

***Wild Dunes Resort
Isle of Palms, South Carolina***



***Registration opens November 15th. Visit
dcba.org/25PT for more information.***

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LPR and the Fourth Amendment

Fall 2024



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Agenda

- 1 Intro to license plate readers
- 2 History of the Fourth Amendment
- 3 Fourth Amendment Case Law
- 4 License plate reader case law
- 5 Recent challenges
- 6 LPR checks and balances
- 7 Use of LPR evidence in court

LPR

Falcon



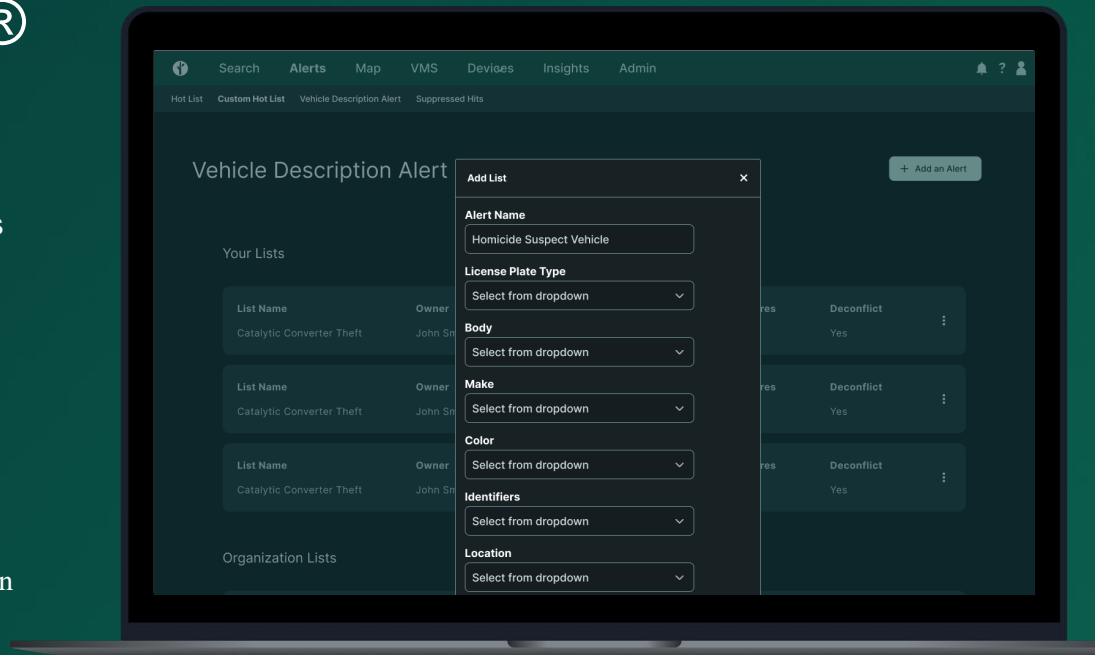
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What Vehicle Fingerprint® technology identifies

Flock's machine learning technology allows officers to search vehicles based on unique vehicle criteria, time, and location — objective, investigative evidence.

INCLUDING

- Vehicle make
- Body type
- Color
- Back racks
- Top racks
- License plates
 - Temporary tags
 - State recognition



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What this is:

- Gathers objective evidence and facts about vehicles, not people
- Alerts police about wanted vehicles

What this is not:

- Not facial recognition
- No collection of biometric or personally identifiable information
- Not used for traffic violations

Firearm Violence: Fast ROI

📍 Rantoul PD - Rantoul, IL

- After months of **increased gun violence** cases, the Village of Rantoul installed a dozen Flock LPR cameras in June 2021.
- Within **two weeks of deployment**, Rantoul PD **arrested two suspects wanted for a July 4th shooting that injured 5**, including two children.
- In August, a suspect in a second shooting was identified with the Flock LPR in **just 14 minutes**.
- “I would recommend that any agency who has similar issues to take a look and at least pursue them because they are a valuable tool,” said Rantoul Deputy Chief Rodney Sullivan.

License plate reader cameras identify suspect in 14 minutes



Village of Rantoul

Interjurisdictional Silver Alert



Taylorville PD - Taylorville, IL

- Officers responded to a report about a missing and endangered senior citizen.
- Authorities entered the senior's vehicle's information into their Flock Safety LPRs and a short time later received an alert that the vehicle had been detected in nearby Morris, IL.
- Multiple agencies started searching for the vehicle, and **eventually the vehicle drove past a Flock Safety LPR in Pontiac, IL, alerting officers there.**
- Officers and State Troopers initiated a traffic stop and reunited the missing senior with his family.



The Fourth Amendment



Colonial America: no protection against government searches

“General warrants” allowed the British government broad leeway to conduct searches of the homes and effects of people living in the colonies.

In the mid 1700s, states like Massachusetts and Virginia began passing laws limiting such searches by government.

These formed the basis for the **Fourth Amendment** .

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The Fourth Amendment

“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.”

There is no explicit right to privacy in the Constitution, but the Supreme Court has interpreted the Fourth Amendment as the right to privacy vis a vis the government.



Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article 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.

Article V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be deprived of life, liberty,

or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Article VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Article IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.



Early Case Law Required Physical Intrusion to Violate the Fourth

Original test: did the government physically intrude on a constitutionally protected area?

1928: Olmstead v. United States - without a warrant, federal agents installed wiretaps on phone lines leading into Olmstead's business and home.

Supreme Court found no violation because the wiretaps were installed from public by tapping into the phone lines - there was no trespass onto his property.

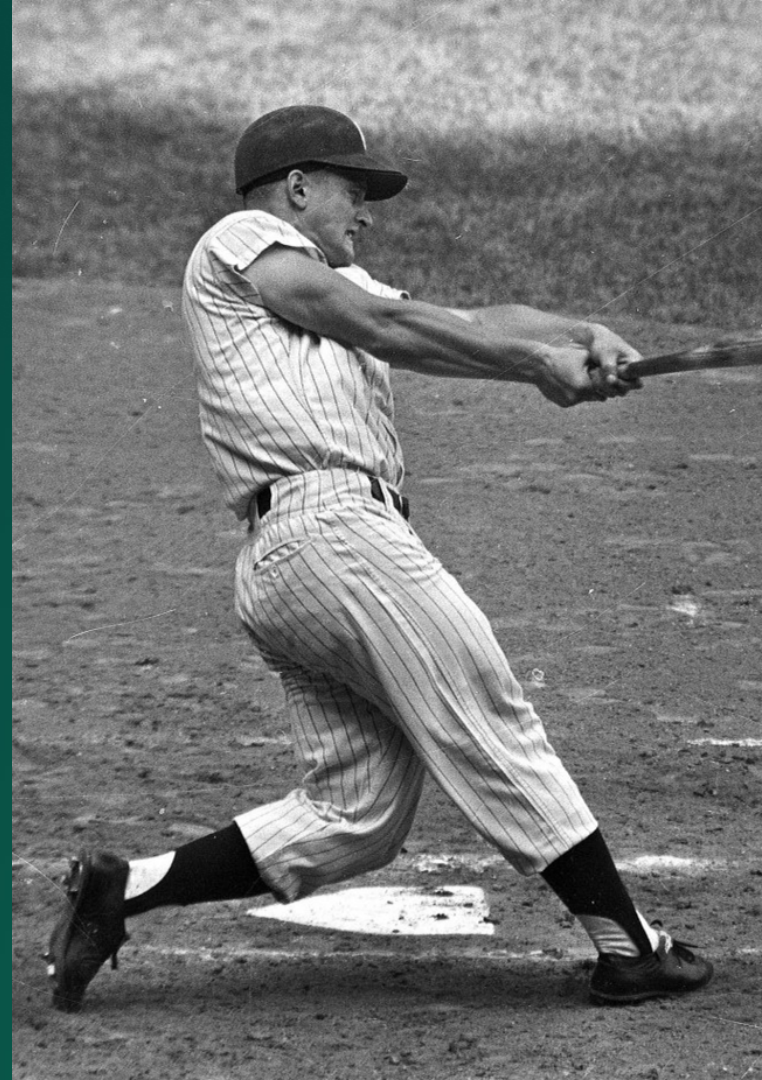
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1967: Supreme Court Articulates a New Test

Katz v. United States: Even though the FBI's eavesdropping device did not physically penetrate the telephone booth, and even though it was a public phone booth, Katz had a reasonable expectation of privacy as to his conversation in the phone booth.

Katz Test:

- 1 Did the person exhibit an actual expectation of privacy? (subjective test), AND
- 2 Is that expectation one that society is prepared to recognize as reasonable? (objective test)



1983: United States v. Knotts

A beeper was placed inside a chemical drum in order to track an individual to a cabin that was operating as a meth lab

Court found no violation of 4th Amendment because the government's activities "amounted...to the following of an automobile on public streets and highways" where individuals have a "diminished expectation of privacy" (Knotts at 281).

"A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view"

When the defendant traveled on public streets he "voluntarily conveyed to anyone who wanted to look the fact that he was traveling over particular roads in a particular direction, the fact of whatever stops homemade, and the fact of his final destination"

2012: United States v. Jones

Officers placed a GPS tracking device on a vehicle to track the vehicle's movements over 4 weeks.

Court found a warrantless search did occur, but NOT because of the GPS, because placing the GPS on the car constituted a physical intrusion on a constitutionally protected area.

“This Court has to date not deviated from the understanding that mere visual observation does not constitute a search”

BUT: “It may be that achieving the same result through electronic means, without an accompanying trespass, is an unconstitutional invasion of privacy”

2018: Carpenter v. United States

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Officers requested cell site location information, receiving 127 days of the defendant's movements from one cell service provider and 2 days from another, for an average of 101 data points per day.

Court found an individual has a reasonable expectation of privacy in the “whole of their physical movements.”

The cell phone data provided an **“all -encompassing record” of the individual’s locations**, providing an “intimate window into a person’s life, revealing not only [their] particular movements, but through them [their] familial, political, professional, religious, and sexual associations”

The Court notes that these cell phone records are retained “up to five years”

Court distinguishes from Knotts and Jones because cell phones are “almost a ‘feature of human anatomy’”

“While individuals regularly leave their vehicles, they compulsively carry cell phones with them all the time.”

This is a narrow decision. It does not “call into question conventional surveillance techniques and tools, such as security cameras.”

2021: Leaders of a Beautiful Struggle v. Baltimore Police Department

US Court of Appeals for the Fourth Circuit: Baltimore PD flew planes over the city to record daily activities of the city. **The program obtained about 12 hours of footage of 90% of the city each day and retained the data for 45 days.**

“Carpenter solidified the line between short-term tracking of public movements..and prolonged tracking that can reveal intimate details through habits and patterns.”

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Mosaic Theory

Information obtained legally may be a warrantless search if it is aggregated to paint a full picture of a person's activities.

The Supreme Court has **partially endorsed the use of mosaic theory** - it is likely to be applied in the future.

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LPR-Specific Case Law



Majority of case law finds LPR does not violate the 4th Amendment

The Supreme Court has not heard a case about whether LPR violates the Fourth Amendment.

But: state appellate courts and/or federal district courts courts in Alabama, California, Georgia, Illinois, Kansas, Kentucky, Massachusetts, Nebraska, Nevada, New Jersey, New York, Pennsylvania, Texas, Utah and the 9th and 11th circuits have **found that warrantless use of LPR does not violate the constitution.**

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2019: Commonwealth v. McCarthy

While investigating the defendant on suspicion of drug distribution, police used LPR on two bridges to track his movements.

The Massachusetts Supreme Judicial Court found that while the defendant has a constitutionally protected expectation of privacy in the whole of his public movements, that interest is not invaded by the limited extent and use of ALPR data in this case.

If you track every movement of the individual, you may violate the 4th amendment. But fixed locations of ALPRs tracking the limited movement of the individual are not a violation of the 4th Amendment.

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2019: United States v. Yang

The defendant was in a rental car, and caught stealing mail. Law enforcement used ALPRs to identify him and make the arrest.

US Court of Appeals for the Ninth Circuit held that the defendant did not have a reasonable expectation of privacy in the historical location data of the rental vehicle.

The court referenced *US v. Carpenter*, finding that it does not apply to license plates and license plate data.

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Case law confirms license plates are not private or personal information

A license plate number **“is not personal information because it does not describe, locate, or index anything about an individual”** (VA Supreme Court, Neal v. Fairfax, 2020)

“A license plate is made to be seen by all who care to look at it” (Junction City Police Department v..Kansas, 2024)

“It strains credulity to argue that a person who, on the one hand, has no reasonable expectation of privacy in his vehicular movements, would, on the other hand, have a reasonable expectation of privacy in the license plates permitting him to make such vehicular movements. The very purpose of the license plate is to identify the vehicle openly for the enforcement of laws relating to safety and the operation of motor vehicles.” (Commonwealth of Virginia v. Jonah Leon Adams, Suppression Hearing, Twelfth Judicial Circuit, Chesterfield, August 1, 2024).



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So why is Flock LPR not a warrantless search in violation of the 4th Amendment?

- 1 There is no subjective or objective expectation of privacy in the exterior of a vehicle or a license plate in public, and...
- 2 LPRs, being limited in **time** (30 day data retention) and **space** (still images taken at fixed locations), cannot create a **full picture of a person's activities** or **record the whole of anyone's movements**.

KATZ

MOZAIC THEORY



Recent Challenges



Recent Virginia Cases Challenging LPR

Commonwealth of Virginia v. Bell (May 2024): a circuit court judge in Norfolk found that an officer accessing LPR data through Flock without a warrant violated the 4th, so the Flock evidence could not be used in that case.

- With current technology, vehicles are “akin to cell phones as they reveal the continued location of civilians.”
- Judge expressed concern with Norfolk PD not requiring training and officers having “unfettered access” to the system.

Since Bell, 6 judges have *denied* motions to suppress Flock evidence, finding no violation of privacy (5 trial courts and 1 federal court).

Schmidt v. City of Norfolk (US District Court, Eastern District of Virginia, October 2024) - using Bell ruling as an opportunity, Institute for Justice/community members claim Flock LPR violates the 4th - *pending*

Other Recent Cases Challenging LPR

Florida: The New Civil Liberties Alliance (NCLA) filed a lawsuit against the City of Coral Gables, the Florida Department of State, and the Florida Department of Law Enforcement on behalf of a Gables resident arguing that LPR violates the 4th amendment and Florida law - *lower court's decision that this did not violate the 4th was affirmed on appeal.*

Schemel v. City of Marco Island Florida (US District Court, 2023) - *complaint dismissed, failure to state a constitutional claim.* “Cases involving precise cellphone and GPS tracking—which track the movements of individuals beyond public thoroughfares—are distinguishable from fixed location cameras recording images of license plates on public roads.”

Oklahoma : *State of Oklahoma vs. Kayode Stephen Ifabiyi* (District Court of McClain County, 2024) - defense made a motion to dismiss LPR evidence as a violation of the Fourth Amendment and OK Law. *Judge did not address the 4th because he found LE use of LPR violated OK law.*

Illinois : *Scholl et al v. Illinois State Police et al* (U.S. District Court for the Northern District of Illinois, May 2024) - Liberty Justice Center is suing the Illinois State Police on behalf of multiple Cook County residents, arguing that LPR violates the 4th - *pending*

South Carolina : *South Carolina Public Interest Foundation v. South Carolina State Law Enforcement Division* (Court of Common Pleas, 5th Judicial Circuit, 2023) - *pending*

Key Questions in LPR cases

- Does the PD have a policy and training for use of the LPR?
- Does the LPR capture images of humans / is the system searchable for humans?
- How many LPRs are in the community?
- How is the location of the LPRs determined?
- How long is the data retained?
- Is there any biometric data or personal information captured or stored in the system?
- How is the data secured?
- Do the images/data reveal anything about an individual's political or religious beliefs?

Flock checks and balances that protect against constitutional challenges

Privacy

- LPR data owned by Agency/City
- 30-day data retention, hard deleted
- All data stored securely with end-to-end encryption
- No ability to search specifically for images of humans
- No facial recognition technology
- No biometrics or personal information; not connected to registration data or third party databases (Carfax, DMV)

Accountability

- Search reason and user saved in indefinitely-available audit trail
- Transparency Portal
- Flock encourages LE to make LPR adoption a **city council** decision
- Flock encourages LE to adopt **LPR policy** and conduct **trainings**

LPR Evidence in Court



How to use Flock Evidence: LPR Image Verification (Unexpired)

Unexpired = within Flock's 30 day data retention period.

Flock provides a **self-certifying image verification affidavit** at the bottom of each Search card. To access this feature the downloader must:

1. Conduct a Search and locate the Search result in question.
1. Click the three vertical dots in the upper right-hand corner of the return.
1. Click "Export to PDF".

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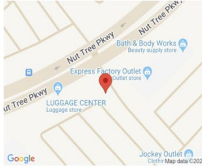
Report ID: d4e0a1d-b69a-4d3d-baff-875efe6e26cf
Date Created: 06/11/24, 02:59

Investigative Summary

License Plate Read

License Plate Detection

Organization name	Created by	Date created	Search reason
Flock RTCC	Martin Howley	Jun 11 2024	test]



License Plate Detection Details

License plate	
Body, Make, Color	SUV-Ford-White
Date/time captured	Jun 11 2024, 2:59:29 PM UTC
Local date/time captured	Jun 11 2024, 8:59:29 AM MDT
Organization name	Flock RTCC
Search reason	test]
Device name	#04 - Nut Tree Pkwy @ Nut Tree Rd - NB
Device type	falconFlex
Device location	38.36666527362259, -121.95792766630393
Nearest address	321 Nut Tree Rd, Vacaville, CA 95687, USA
Device network	Flock City Falcons

Flock Safety, and the Custodian of Record herein, declares, certifies, and verifies under penalty of perjury that this record is a true and accurate exact copy of the original record and/or document that was made and kept in the course of regularly conducted business activity, is a record that is routinely made and kept in the course of Flock Safety's business, was made at or near the time of the event it records, and that the Custodian of Record is familiar with the record and circumstances under which it was made within the regular course of business.

Disclaimer: The Device Location depicted in the map above is an estimation based on latitude and longitude of the device.



Mark Smith
Custodian of Records

How to use Flock Evidence: LPR Image Verification (Expired)

Expired = if a user downloaded images as evidence, and it is now outside the 30 day data deletion period, Flock can no longer access those images within the system to verify them. However, Flock can confirm that a) the camera was installed at that time, b) it was healthy at that time, and c) system records show that the officer did perform the search at that time.

1. To receive an affidavit verifying images, agency must complete Flock's [Intake Form](#).
1. Submit copies of the downloaded images that include **camera network** and **date and time stamp** .

Turnaround time = 5 business days.

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Image Verification Intake Form

Thank you for submitting your request to Flock Safety. Please fill out the intake form below in order for us to better assist you, and we will get back to you within 5 business days.
Thank you!

andrea.korb@flocksafety.com [Switch account](#) 

The name and photo associated with your Google account will be recorded when you upload files and submit this form. Your email is not part of your response.

*** Indicates required question**

How many images do you need validated/certified? *

Your answer

Date of Incident *

Date

mm/dd/yyyy 

Full Name *

How to use Flock Evidence: Custodian of Record

1. **Subpoena** . Any request for witness testimony must be accompanied by a subpoena.
2. **Service of Process** . Direct subpoenas to our Legal Department via evidence@flocksafety.com .
3. **Named Custodian** . If you require a specific individual to be named, provide **trial dates** , courthouse **location** , and **type of case** (homicide, robbery, etc.).

Please Note: Unless otherwise specified, you will cover travel expenses and lodging (to the extent applicable) for Flock's custodian of record.



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