Private Use of Electronic Tracking Devices on Individuals with Dementia: Balancing Possible Ethical and Legal Issues with Potential Safety Benefits

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I. INTRODUCTION

It was early evening when Lee Ferrero got in his car to make the trip home from a meeting for work. He’d done the trip many times over the years, and he looked forward to the drive. Several hours later he found himself in open farmland in unfamiliar territory. He pulled over, brought out a book of maps, and realized he had driven two hours past the turnoff to this home in Los Osos, California. “It was terrifying,” he remembers now. “I thought, I didn’t mean to come here. How did this happen? I just zoned out.” But he wasn’t just zoning out. A visit to the Mayo Clinic in Scottsdale, Arizona, showed Ferrero was in the beginning stages of Alzheimer’s disease, a form of dementia.1

In 2012, an estimated 5.4 million Americans had Alzheimer’s disease, including 5.2 million individuals age 65 or older and 200,000 individuals under age 65.2 Alzheimer’s disease is a form of “dementia,” a term that describes various diseases and conditions resulting from the death or malfunction of nerve cells, or neurons, in the brain.3 This deterioration of nerve functions in the brain leads to changes in behavior and cognitive ability.4 Alzheimer’s disease,5 in particular, eventually interferes with the

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3. Id. at 4.
4. The changes in cognitive ability can include memory loss or ability to think clearly.
individual’s ability to perform basic daily functions, like walking or swallowing. 6

Those suffering from dementia generally face impaired judgment, difficulties with visual and spatial perception, and physical disorientation. 7 These issues also often lead to an increased risk of wandering. 8 Due to cognitive, environmental and psychosocial factors, wandering is a frequent behavioral symptom of dementia. 9 This behavior includes aimless walking, walking with an inappropriate purpose, nighttime walking, or walking out of the home and getting lost. 10 Wandering is a serious concern for caretakers. It presents substantial risks for individuals with dementia, including falls, injuries, dehydration, hypothermia, and even death. 11

Of the over fifteen million Americans who provide unpaid care for a person with dementia, about eighty percent of them are family members. 12 These private caretakers (as opposed to professional caretakers), however, cannot devote all their time to keep watch over the individuals with dementia. 13 As a result, they are now turning to various types of assistive technology, particularly electronic tracking devices that utilize Global

Id.

5. This article will refer only to dementia without explicitly discussing Alzheimer’s disease, as it is covered by the term “dementia.” For specific distinctions between dementia and Alzheimer’s disease, see id. at 5.
6. Id. at 4.
7. Id. at 55.
8. Id.
12. ALZHEIMER’S ASS’N, supra note 2, at 27.
Positioning System (“GPS”)

This use of GPS technology, as well as other electronic tracking technologies, to track individuals with dementia presents a myriad of issues that requires balancing the ethical concerns and legal issues of such use with the safety benefits. On one hand, electronic tracking can create a more secure environment for individuals with dementia, helping to immediately locate those who get lost, thereby reducing the risk of harm or injury. But on the other hand, electronic tracking can be dehumanizing to individuals with dementia, interfering with their personal autonomy and right to privacy.

Part II.A of this article provides a brief overview of the different types of tracking devices that are available and may be employed to prevent wandering. Part II.B discusses the safety benefits of electronic tracking devices on individuals with dementia, whereas Part II.C outlines the treatment of this issue in the United States through applicable federal and state legislation. Part III then discusses legal issues presented by this particular use of electronic tracking devices. This article focuses on legal issues exclusive to the common law tort of invasion of privacy, as outlined by the Second Restatement of Torts and various related case law, rather

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14. Waseem Karim, The Privacy Implications of Personal Locators: Why You Should Think Twice Before Voluntarily Availing Yourself to GPS Monitoring, 14 WASH. U. J. L. & POL’Y 485, 485 (2004). In the early 1970s, the United States Department of Defense first designed GPS to track the locations of military troops and equipment. GPS is a network of satellites that transmit radio signals, which are used by a radio receiver on Earth to triangulate its own position. GPS became available for civilian use in the 1980s. Id.

15. Michael et al., supra note 13, at 4.

16. See id at 7.

17. See id.


19. See infra Part II.A.

20. See infra Part II.B.

21. See infra Part II.C

22. See infra Part III.
than the constitutional violations of the Fourth Amendment. Part III.A, therefore, describes the four “invasion of privacy” tort claims under the Second Restatement of Torts, and how they may be applied to this context of using electronic tracking devices on individuals with dementia. Part III.B then presents an overview of the issues that arise with obtaining consent to use the tracking device. Part III.C looks to the possible violations of personal autonomy that these devices may prompt. Finally, Part IV outlines a brief discussion of these conflicting interests, and the importance of weighing practical safety concerns with the previously discussed ethical and legal issues that may arise in each particular situation.

II. BENEFITS OF AND MOTIVATIONS FOR USING TRACKING DEVICES

A. Types of Tracking Devices

With advancements in technology, personal tracking devices are now available in various forms, utilizing radio frequency (“RF”) range finding or


24. See infra Part III.A.

25. See infra Part III.B.

26. See infra Part III.C.

27. See infra Part IV.
global positioning systems (‘‘GPS’’). The companies Wherify Wireless, Inc. and Applied Digital Solutions have both produced GPS tracking devices in the form of wristwatches, using GPS technology as well as mobile networks. Individuals can also wear a transmitter in the form of a pager, an ankle bracelet, or a box-like device carried in a small bag. This transmitter allows caretakers to locate the tracked individuals with a computer, mobile phone, or other mobile device. GTX Corp., a company that specializes in creating GPS tracking personal location based services, markets the patented GPS Smart Shoe. This shoe is fitted with built-in GPS technology designed to track individuals with dementia who may wander. The most invasive tracking device available, however, is the VeriChip, a miniature radio frequency identification device (‘‘RFID’’) surgically imbedded underneath the skin, stored with the individual’s verification number that can provide personal information.

B. Potential Safety Benefits of Tracking Individuals with Dementia

Thirty-seven to sixty percent of individuals diagnosed with dementia develop wandering behaviors at some point. Wandering is often classified

29. Karim, supra note 14, at 488-89.
30. For information on the specific benefits of various assistive technology and the requirements to make them effective, see generally F.J.M. MEILAND ET AL., FUNCTIONAL REQUIREMENTS FOR ASSISTIVE TECHNOLOGY FOR PEOPLE WITH COGNITIVE IMPAIRMENTS AND DEMENTIA (R. Wichert et al., eds. 2012).
31. See Karim, supra note 14, at 488-89.
34. Id.
35. Karim, supra note 14, at 490.
as a medical behavior. This classification has caused some scholars to legitimize social control, defining and controlling risky behaviors like wandering. Many individuals with dementia who wander and go missing are later found seriously injured, subjected to exposure from harsh weather conditions, or even dead. Wandering and getting lost has also led caretakers to reduce the wandering individuals’ freedom, as they are likely to keep wanderers confined in the home after a wandering incident.

Even individuals who have not been diagnosed with dementia may still experience wandering behavior. Fifty percent of individuals who meet the requirements to be diagnosed with dementia never receive that diagnosis. As such, delayed or missed diagnoses can lead to lost opportunities to treat symptoms or missed opportunities to prevent injuries. Even with a delayed or missed diagnosis, electronic tracking can effectively prevent possible injuries. A tracking device can locate wandering individuals at any time by positioning the device through satellite technology and providing information through a mobile phone network.

Furthermore, professional legal opinion has commanded much of the discourse regarding the ethical issues behind the use of electronic tracking devices for those with dementia. However, studies that have explored the effects on actual individuals with dementia may provide more accurate and

38. Id.
39. Landau et al., supra note 10, at 409.
40. White & Montgomery, supra note 9 at 2. Wandering and getting lost has also been associated to higher rates of admission to care-homes and higher levels of caretakers’ subjective burden. Id.
41. Alzheimer’s Ass’n, supra note 2, at 54.
42. Id.
43. Id.
44. White & Montgomery, supra note 9 at 2.
45. Id.
46. See id.
practical contribution to this discourse. One scholar, in particular, has suggested that professional opinion is overrepresented and worth noting, as a recent survey found that professionals have greater reservations about electronic tracking than caretakers do. Thus, many of the reservations expressed in the media may reflect hesitations of a cautious legal population rather than unbiased opinions of the general population, which includes individuals who actually take care of a family member with dementia.

C. Applicable Federal and State Legislation in the United States

Federal legislation recognizes that individuals with dementia are people who retain the right to their personal autonomy, despite any mental or physical disabilities. Section 701 of the United States Code asserts that while millions of Americans live with at least one physical or mental disability, these individuals still retain certain rights. These rights include the freedom to live independently, enjoy self-determination and make
choices. Furthermore, it states that the country’s goals include giving individuals with disabilities the tools to make informed choices and decisions to live independently, and to achieve “economic and social self-sufficiency.” These sections of the Code demonstrate that all individuals with disabilities, including those with dementia, should retain the right to their personal autonomy. Additionally, some states, like California, more stringently restrict the use of tracking devices. For example, Section 637.7 of the California Penal Code prohibits any use of an electronic tracking device, unless the individual uses it on his or her own vehicle, or obtains consent from the individual being tracked.

III. CONCERNS WITH USING TRACKING DEVICES

Though numerous safety benefits provide justification and impetus for using electronic tracking devices on individuals with dementia, many legal and ethical issues also arise within this context. One organization that helps locate and return wanderers to their homes has said that GPS tracking is not suitable for locating individuals with dementia because the information may be inaccurate and unreliable. Beyond concerns about the

51. 29 USC. §§ (3)(A)-(C), (F) (1998).
53. CAL. PENAL CODE §§ 637.7(a)-(b) (2011). However, Part IIIA of this article cites case law where courts have permitted the use of tracking devices though the use was alleged to have violated the privacy rights of the individuals whose vehicles were tracked. See infra Part IIIA. Nonetheless, no such precedent exists in the context of using tracking devices on individuals with dementia.
54. PROJECT LIFESAVER, About Us, http://www.projectlifesaver.org/about-us/ (stating that its primary mission is to provide timely response to save individuals who wander or reduce their potential injury). For information on Project Lifesaver’s methods, see also PROJECT LIFESAVER, About Us, http://www.projectlifesaver.org/how-it-works/. Individuals enrolled in Project Lifesaver wear a small personal transmitter around the wrist or ankle, and if an individual wanders, his or her caretaker contacts a trained emergency team who can then track the transmitter’s individualized tracking signal. Id.
55. Michael et al., supra note 13, at 6. The organization explained that GPS lacks four fundamental qualities of effective assistive technology: (1) reliability; (2) responsiveness; (3) practicality; and (4) affordability. Id.
functionality of GPS tracking, this use also creates a number of legal and ethical issues, namely invasions of privacy, problems with establishing consent, and violations of personal autonomy.

A. Invasion of Privacy Torts

Advances in technology continue to provide additional means to intrude on another individual’s privacy. The increasing number of human tracking technology constricts privacy interests, which may result in a societal demand for more options for legal recourse when privacy rights have been violated. The Second Restatement of Torts recognizes four invasion of privacy torts: (1) unreasonable intrusion upon the seclusion of another individual; (2) appropriation of another individual’s name or likeness; (3) unreasonable publicity given to another individual’s private life; and (4) publicity that unreasonably places another individual in a false light before the public. Only the torts of unreasonable intrusion upon the seclusion of another individual and unreasonable publicity of an individual’s private life may be applicable in the context of using electronic tracking devices.

56. Herbert, supra note 23, at 409.
57. Id.
59. RESTATEMENT (SECOND) OF TORTS § 652B (1977). Anyone who intentionally intrudes upon the solitude, private affairs, or concerns of another individual in a way that would be highly offensive to a reasonable person is subject to liability for invading that individual’s privacy. Id.
60. RESTATEMENT (SECOND) OF TORTS § 652D (1977). Anyone who publicizes a matter concerning another individual’s private life is subject to liability for invading that individual’s privacy if the matter would be highly offensive to a reasonable person and it is not of legitimate concern to the public. Id.
61. Karen Eltis, Society’s Most Vulnerable Under Surveillance: The Ethics of Tagging and Tracking Dementia Patients with GPS Technology: A Comparative View, OXFORD U. COMPARATIVE L. FORUM 6 (2005), available at http://ouclf.iuscomp.org/articles/eltis.shtml. Section 652B of the Restatement, defining the tort of intrusion upon seclusion, is applicable in the context of using electronic tracking devices because the intrusion does not need to be physical and can include eavesdropping. Id. Furthermore, solitude depends upon the expectation of privacy and the type of invasion, not whether the location is considered
PRIVATE USE OF ELECTRONIC TRACKING DEVICES

Where employers attach tracking devices on their employees’ cars, the factors of productivity, security, and impact on third parties have largely supported employer interest in using these devices. And though issues of privacy and informed consent may arise from employer use of tracking devices, employees have generally been unsuccessful in their invasion of privacy claims. In Alexandre v. New York City Taxi & Limousine Com’n, for instance, New York taxi drivers protested against the New York City Taxi and Limousine Commission’s (“TLC”) installation of GPS tracking devices on their taxis. The taxi drivers asserted that the tracking devices would continue to track their movements even when they were off duty, and that this unduly invaded their right to privacy.

The Alexandre court upheld the use of the devices reasoning that adequate safeguards existed to protect personal information. It further reasoned that the taxi drivers did not have “a legitimate expectation of privacy,” and the City of New York, acting through TLC, had a strong interest in tracking and protecting the vehicles. Similarly, the court in Elgin v. St. Louis Coca-Cola Bottling Co. found that the employer’s use of GPS tracking devices on its employees’ vehicles did not violate the

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62. See Michael et al., supra note 13, at 3.
63. Andrew McNamee, Ethical Issues Arising from the Real Time Tracking and Monitoring of People Using GPS-based Location Services 1, 27 (2005) (unpublished B.S. thesis, University of Wollongong) (on file with Research Online through the University of Wollongong Library) (identifying privacy, accuracy, inconsistency, right to examine records, and informed consent as ethical issues in using tracking devices on employees).
64. See, e.g., Alexandre v. New York City Taxi and Limousine Com’n, No. 07 Civ. 8175, 2007 WL 2826952 at *1 (S.D.N.Y. 2007); see also, e.g., Elgin v. St. Louis Coca-Cola Bottling Co., No. 4:05CV970-DJS, 2005 WL 3050633 at *3 (E.D.Mo. 2005).
66. Id. at *2.
67. Id. at *7.
68. Id. (quotations omitted).
69. Id. at *8.
employees’ privacy interests. The court found that this use was reasonable because the vehicles were in public view and the employer actually owned those tracked vehicles.

Beyond the context of employer use of tracking devices on employees’ vehicles, a rental car customer alleged that the rental car service invaded his privacy when it installed a GPS tracking device on his rental car. However, the court in Turner v. Am. Car Rental, Inc. held that the car rental service did not invade the customer’s privacy when it installed the GPS device and deducted certain amounts of money from the customer’s bank account each time he exceeded the posted speed limit. The customer alleged that the rental service knew or should have known that the use of the GPS would be “offensive to persons of ordinary sensibilities and that its use constituted an intrusion on his privacy,” but the court found that the use was reasonable.

Section 652D’s disclosure of personal information tort also often fails because an individual’s movements in public places is observable to the public. A New Jersey appellate court recently upheld a wife’s use of a tracking device on her husband’s car during their divorce proceedings. In Villanova v. Innovative Investigations, Inc., the wife hired the defendant, a private investigation agency, to investigate her husband’s suspected infidelities. The agency suggested that she place a GPS tracking device

71. Elgin, 2005 WL 3050633 at *3.
73. Id.
74. Id.
75. Eltis, supra note 61, at 6.
77. Id. at 652.
on his car.\textsuperscript{78} The husband then brought suit, alleging that she invaded his privacy.\textsuperscript{79} The court found in favor of the investigation agency because the husband had failed to produce evidence that he had driven the GPS-tracked vehicle “into a private or secluded location that was out of public view and in which he had a legitimate expectation of privacy.”\textsuperscript{80} As such, the question of whether a tracking device violates the tracked individual’s legitimate expectation of privacy seems to hinge upon whether the individual was in public view or whether the individual was in a private or secluded place.\textsuperscript{81} Therefore, the success of an invasion of privacy claim may depend on where the individual with dementia travels while being tracked.

\textit{B. Issues with Consent}

In one psychological study conducted by a professor of social work and social welfare, the majority of participants stated that electronic tracking devices should only be used on individuals with dementia with their consent and cooperation.\textsuperscript{82} If an individual consents to be tracked, invasion of

\textsuperscript{78}. Id.

\textsuperscript{79}. Id. at 651.

\textsuperscript{80}. Id. at 651-52.

\textsuperscript{81}. Id. The court found that no invasion of privacy occurred because the husband had been out in public view, where he lacked a legitimate expectation of privacy. Id. However, even if a private caretaker did commit an invasion of privacy by using a tracking device on an individual with dementia, that individual may lack the cognitive or physical capacity to bring an action against the caretaker. See H. Richard Beresford, \textit{Ethical Issues in Dementia}, AM. ACAD. OF NEUROLOGY 1, 5 (2009), available at http://www.aan.com/globals/axon/assets/6113.pdf. In such a case, particularly if the individual’s legal guardian is the caretaker, the individual is left without recourse. If the individual lacks the facilities to manage his or her legal affairs, a court may appoint a guardian to act on behalf of the individual, which is discussed in Part III.B. See infra Part III.B. This situation then raises the question of whether the courts or states should intervene to act in the best interests of these individuals with dementia whose rights have been violated but who lack the ability and resources to seek redress. This article will not discuss this policy issue, however, as it largely focuses on the concerns arising from the use of tracking devices, rather than methods whereby individuals may seek legal redress resulting from the use.

\textsuperscript{82}. Landau & Werner, \textit{supra} note 36, at 362.
privacy issues no longer apply. However, the question then becomes whether an individual with dementia is capable of giving informed consent. In 1996, the American Bar Association issued a Formal Opinion that answered various questions regarding lawyers’ conduct when representing individuals with dementia.\(^{83}\) It stated that a lawyer may consult with others and take protective action or support the application of a guardian if the lawyer believes that the individual is no longer mentally capable of handling her or her legal affairs.\(^{84}\)

In the context of will contests, courts determining testamentary capacity have relied on evidence such as observations of the individual’s behavior by neighbors and friends, and the individual’s medical history.\(^{85}\) In cases where experts assessed an individual’s testamentary capacity to establish the validity of a will, the court’s finding was consistent with expert assessments.\(^{86}\) However, “the medical profession has historically done a terrible job of diagnosing dementia in patients in a timely and accurate fashion.”\(^{87}\) One study found that less than twenty-five percent of individuals with moderate to severe dementia were actually diagnosed with dementia by their primary care physicians.\(^{88}\) Though case law has supported findings of expert testimony regarding an individual’s testamentary capacity, a physician’s testimony cannot be the only factor considered when determining mental capacity because medical diagnoses


\(^{84}\) Id.


\(^{86}\) Id. at 35.


\(^{88}\) Id.
have not always been accurate or timely.\textsuperscript{89}

If an individual with dementia is, in fact, declared unfit to give consent to a caretaker’s use of tracking device, that individual may then be appointed a guardian.\textsuperscript{90} A guardian may be necessary if the individual lacks the mental capacity to handle his or her legal affairs, but how it should be done then becomes the critical question.\textsuperscript{91} This question has been answered in the context of will contests,\textsuperscript{92} but no legal standard or precedent exists in this specific situation of private caretakers of individuals with dementia using electronic tracking devices.\textsuperscript{93} Consequently, this type of case must take into account all relevant factors, weighing the potential benefits with possible consequences.

\textbf{C. Preserving Personal Autonomy}

Beyond issues of privacy and consent, individuals with dementia are often anxious that their dementia will deprive them of their independence and control over their lives.\textsuperscript{94} This concern for personal autonomy intertwines with invasions of privacy, as the tort of invasion of privacy involves intrusions into an individual’s personal and private life.\textsuperscript{95} However, it is also linked with rational and independent decision-making.\textsuperscript{96}

\begin{itemize}
\item \textsuperscript{89} Id.
\item \textsuperscript{90} See Beresford, supra note 81, at 2.
\item \textsuperscript{91} See id.
\item \textsuperscript{92} For more information on testamentary capacity, see generally Champine, supra note 85.
\item \textsuperscript{93} For more information on issues of consent, see, e.g., White & Montgomery, supra note 9, at 4-5; see also Landau & Werner, supra note 36, at 362. The majority of participants in a study of tracking individuals with dementia agreed that the devices should not be used without the cooperation and consent of the individuals with dementia, but that some of the family caregivers were willing to force their relatives to use a GPS tracking device while still a few were willing to implant a chip in their bodies. Id.
\item \textsuperscript{94} Landau & Werner, supra note 36, at 362.
\item \textsuperscript{95} Alistair R. Niemeijer et al., Ethical and Practical Concerns of Surveillance Technologies in Residential Care for People with Dementia, 22 INT’L PSYCHOGIATRICS 1129, 1135 (2010).
\item \textsuperscript{96} Id.
\end{itemize}
Society tends to infantilize individuals with dementia.\textsuperscript{97} But in spite of this treatment, these individuals are still adults who have retained some skills, even if those skills are limited.\textsuperscript{98} Individuals with mild dementia can still express their thoughts,\textsuperscript{99} and their caretakers – to the extent that they can determine the individual’s desires – should respect those wishes.\textsuperscript{100}

In one psychological study, family caretakers of individuals with dementia supported the use of electronic tracking devices to help them locate wanderers.\textsuperscript{101} However, these family members had reservations as to the effect of those devices on the individuals’ privacy and personal autonomy, as well as the stigmas associated with the electronic tagging of criminal offenders.\textsuperscript{102} The idea of using a tracking device to keep a family member with dementia safe is a reasonable one. Yet, applying that idea to specific situations can create reservations in caretakers, particularly if such use attaches negative stigmas or demoralizes the tracked family member. Just as legal and ethical issues relating to private use of electronic tracking devices on individuals with dementia conflict with the potential safety benefits of that use, family caretakers are often conflicted by both their desire to keep their loved one safe and their reluctance to force an unwilling family member to submit to electronic tracking. Therefore, balancing the safety benefits of tracking devices against the legal and ethical concerns is the threshold issue for these caretakers.

\textsuperscript{97} Id.
\textsuperscript{98} Id.
\textsuperscript{99} Landau & Werner, supra note 36, at 362.
\textsuperscript{100} Beresford, supra note 81, at 1 (arguing that the principle of autonomy obligates neurologists or other caregivers to take the preferences of the dementia patient into account).
\textsuperscript{101} Landau & Werner, supra note 36, at 359.
\textsuperscript{102} Id.
IV. BALANCING INTERESTS: SAFETY BENEFITS VERSUS LEGAL AND ETHICAL CONCERNS

The key to this discourse is balancing the potential safety benefits with ethical and legal concerns, particularly the infringement on civil liberties, of using electronic tracking devices.103 The use of these devices may be justified if such use prevented the institutionalization of individuals with dementia, thereby allowing them to live at home.104 Particularly in circumstances where family members or close friends are taking care of individuals with dementia, the existing emotional connection eliminates any question of malicious intent to violate their rights or infringe upon their personal liberties. In fact, their use of electronic tracking devices is motivated, and may be justified, by the desire to keep their loved ones safe. However, a survey of forty-three caretakers found that only two of the caretakers who were planning on using electronic tracking devices intended to give the individual with dementia more freedom.105 None of the thirteen caretakers who actually used the devices gave the individuals more freedom.106

Case law where employers installed tracking devices on its employees’ cars has demonstrated that this installation generally does not constitute an invasion of privacy.107 Courts have held similarly where a rental car service used a tracking device on its rental car,108 and a wife used a tracking device on her husband’s car during their divorce proceedings.109 However, the

103. White & Montgomery, supra note 9, at 3.
104. Id.
105. Id.
106. Id.
relationship between family caretakers and individuals with dementia is fundamentally different from an employer’s relationship with its employee or a rental car service’s relationship with its customer since these relationships are financially motivated. Moreover, the caretakers’ relationships with the individuals with dementia are non-adversarial, whereas the parties in a divorce proceeding are wholly adversarial.  

VI. CONCLUSION

Wandering is a serious concern for individuals with dementia, and the large population of family members providing unpaid care for these individuals lacks the time and resources to keep a constant watch over the individuals to prevent wandering. With advances in technology, electronic tracking has provided these caretakers a way to locate wandering individuals through satellite technology. Tracking may also allow individuals with dementia more freedom since their caretakers no longer need to personally monitor them at all times, thereby affording them more mobility. Furthermore, using a tracking device may prevent institutionalization and allow an individual with dementia to keep living at home.

However, the legal and ethical concerns may not justify this use. This type of electronic tracking may constitute an invasion of privacy, particularly the torts of intrusion upon seclusion and dissemination of private information, though plaintiffs alleging violations of these torts in

110. When a lawyer represents an individual with dementia, the client may express to the lawyer certain wishes that conflict with what the client’s family members want. But unlike typical adversarial cases, these family member caretakers often seek to act in the best interest of the individual with dementia. Thus, the situation between individuals with dementia and their caretakers is a unique one. Fleming & Morgan, supra note 83, at 747.
111. See Michael et al., supra note 13, at 4.
112. White & Montgomery, supra note 9, at 2.
various contexts have largely been unsuccessful. Other issues that may arise with obtaining consent, as well as the possible infringements of personal autonomy that may occur, further discourage the use of tracking devices. The use of electronic tracking devices on individuals with dementia presents both potential benefits and consequences. Therefore, the determination of whether to use a tracking device depends largely on the consideration of a number of factors, including the particular individual’s living situation, the nature and severity of the dementia, and the individual’s consent or lack thereof.

113. See supra Part III.A.