Mediation questions for plaintiff

Tell me what rules govern when an intrusion is offensive to a reasonable person.

How do the 4th Amendment cases fit into our analysis?

Is the question of whether RBM intruded into Cooke’s private affairs a question of law for the court or a question of fact for the jury?

Why won’t the court just follow Elgin? The facts are almost identical.

Does it matter that Cooke went to a gated community? That is not really the part of the tracking he objects to.

Tell me about the U.S. Supreme Court case United States v. Jones and its effect on this case.

What is the best argument that RBM did not intrude upon the Plaintiff’s solitude, seclusion, or private affairs?

What is the best argument that, if there was an intrusion here, it would not offend a reasonable person?

Isn’t this case different from Ali? Couldn’t an employer get much more personal, intimate information from overhearing a phone call than it could get from simply knowing where an employee’s car went?

Shouldn’t the rules be different for employers than for the government in 4th amendment cases? Shouldn’t employees have more leeway in monitoring their employees, particular with a car the employer owns, than the police should have in investigating citizens?

What about the balancing test in Ali? Didn’t RBM have a legitimate reason for investigating its employees?
**Mediation questions for defendant**

Tell me what rules govern when an intrusion is offensive to a reasonable person.

Isn’t the question of whether the intrusion is highly offensive a question for the jury? And if this case gets to trial, isn’t Cooke a pretty sympathetic guy?

How do the 4th Amendment cases fit into our analysis?

Would the legal analysis of our case be different if, instead of putting the GPS device on the company car, RBM had surreptitiously placed it on Richard Cooke’s uniform shirt (provided to him by the company)? Explain.

What is the best argument that RBM intruded upon the plaintiff’s solitude, seclusion, or private affairs?

What is the best argument that, if there was an intrusion here, it would offend a reasonable person?

Isn’t this case similar to Ali? If it could be unreasonable to an employer to monitor personal phone calls without its employees’ knowledge, couldn’t it also be unreasonable for an employer to track its employees with GPS without their knowledge?

Isn’t Elgin really just outdated? Don’t more recent court decisions recognize the unique capabilities of GPS to gather so much more information?

What about the concurring opinions in Jones? If you add up all the votes, don’t you have five U.S. Supreme Court justices saying “longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy.”

What are the public policy implications of allowing employers to conduct continuous, long-term GPS tracking of employees?