

Bill Walton (00:00):

Let's talk about what we want to talk about.

John Vecchione (00:02):

Sure.

Bill Walton (00:03):

I mean, we've got your lawsuit. It's a first of its kind. We want to talk about not only the state of that suit, but what the philosophical issues are and what we want to do about it as part of the larger predations of the government. And you too are working on that together.

John Vecchione (00:17):

Yes.

Jenin Younes (00:17):

Yeah.

Bill Walton (00:18):

And then you're also involved in the fishing industry.

John Vecchione (00:22):

Yeah, so the appeal just got filed Monday and it looks like a lot of people are putting an amicus briefs next Monday, but it's about NOAA has told all these charter boat fishing.

Bill Walton (00:37):

NOAA, who's NOAA? Oh, the National...

John Vecchione (00:39):

The National Oceanic and Atmospheric Administration.

Bill Walton (00:41):

Oh yeah, it's part of the Commerce. It's part of it, yeah.

John Vecchione (00:41):

Yes, exactly. So, it's always Commerce, NOAA, and National Marine Fisheries. They have to have a GPS that broadcasts their position to the government at all times, whether they're fishing or not.

Bill Walton (00:53):

You're kidding.

John Vecchione (00:53):

So, yeah. So, these are small boats with six people. They use them for pleasure cruise. Sometimes they take people on sightseeing. They're not using their fishing license and the hook, if you will, to put these

GPS on there because they have a license to take people out fishing in the Gulf of Mexico. So, it has tremendous Fourth Amendment issues.

Bill Walton ([01:14](#)):

Oh, good. Let's talk about that.

John Vecchione ([01:15](#)):

Okay.

Speaker 4 ([01:16](#)):

All right, here we go. The Bill Walton Show, May 4th.

Speaker 5 ([01:23](#)):

Welcome to The Bill Walton Show, featuring conversations with leaders, entrepreneurs, artists and thinkers, fresh perspectives on money, culture, politics, and human flourishing. Interesting people, interesting things.

Bill Walton ([01:43](#)):

Welcome to The Bill Walton Show. I'm Bill Walton. A friend of mine, a very successful CEO of a publicly-traded company, confidently told me that he saw no evidence of governments censoring people. He's a good guy, even if his politics are a bit misguided. He misses what's really going on. Government doesn't have to censor people directly. It can get others to do its bidding. And what we want to talk about today is an egregious example of that where the US Surgeon General and the Department of Health and Human Services have directed, that's a great word, directed social media platforms, including Twitter, to censor alleged misinformation about COVID 19.

Bill Walton ([02:30](#)):

And this was, I think, over a year ago, and much of the misinformation that was put out there has since proven or has since been shown to be true. So, I'm thrilled to have back as my returning guest, Jenin Younes, who is suing in a first of a kind lawsuit. You're suing the Health and Human Services Agency. And as a former public defender, after seeing public governments or after seeing governments throughout the nation violate human rights, you decided to stop defending a few people and instead defending all of us. So, welcome.

Jenin Younes ([03:07](#)):

Thank you.

Bill Walton ([03:08](#)):

Jenin is with the New Civil Liberties Alliance, as is my other guest, a terrific guy, John Vecchione, the senior litigation counsel. He represents clients against the administrative state. And we want to talk today not only about what's happening with Twitter, but also some very interesting things going on if you happen to own a charter fishing boat. He was president and CEO of the Action Institute, and he focuses on strategic litigation in the federal district and appellate courts, including the Supreme Court of the United States. John?

John Vecchione ([03:41](#)):

Thank you. It's good to be here.

Bill Walton ([03:42](#)):

Welcome. Great to have you here. Great to have you back. And of course, I'm a huge fan of the New Civil Liberties Alliance, founded by Phil Hamburger. And great Americans, all. So, Jenin, let's start with you. Tell us about your lawsuit. And you two are working on it together.

John Vecchione ([03:56](#)):

Yeah, just got back from Ohio.

Bill Walton ([03:59](#)):

So, I'm not a subject matter expert. And so, feel free to ask each other and amplify what we're going to be learning.

Jenin Younes ([04:07](#)):

So the Surgeon General and other members of the Biden administration have been telling social media companies that they should censor misinformation about COVID, also other things, but this lawsuit focuses on COVID. And what they mean by misinformation is obviously, anything that departs from the government's message at the moment. So, what we're arguing is that this is essentially a First Amendment violation, as well as a Fourth Amendment violation for reasons I'll get into later, and also that the Surgeon General doesn't have the statutory authority to implement this sort of initiative.

Jenin Younes ([04:41](#)):

So, a lot of people think that Twitter and Facebook are private companies, and they can do whatever they want. But if the government is using private companies to accomplish its goals, then that turns it into state action. And so, our clients are three people who've been censored by Twitter. One of them had his account, he entirely lost his account. He had about 112,000 followers and a very influential account. The other two, actually sorry, one of them just lost his account permanently the other day-

John Vecchione ([05:10](#)):

After suing.

Jenin Younes ([05:11](#)):

... after suing. When we filed the lawsuit, the other two had just had their accounts suspended temporarily, which is a warning. But one lost his.

Bill Walton ([05:21](#)):

Now, is Twitter also named in the suit?

Jenin Younes ([05:24](#)):

Twitter is not named in the suit. No.

Bill Walton ([05:27](#)):

Now, suing the federal government, I mean, they have like 43,000 lawyers. We've got two of us here. I'm not one of them. I mean, it's massive. I mean, it's audacious. How do you go about this? John, you've-

John Vecchione ([05:43](#)):

Well, I think the first thing is the theory of the case is, is that why would these companies be taking their accounts down? Let's take Twitter, for example, right? Their whole idea is to get followers and to get eyeballs and to get more on their platform. So, to knock out popular people and Jenin can correct me if I'm wrong, because I will admit freely I am not on Twitter.

Bill Walton ([06:14](#)):

She is.

Jenin Younes ([06:14](#)):

But you look at it all the time.

John Vecchione ([06:15](#)):

And the thing is, I do look at it all the time.

Bill Walton ([06:17](#)):

And the handle is lefty lockdown.

John Vecchione ([06:19](#)):

Lefty lockdown. And so the thing is 100,000, it's a big account, right? And so why are they closing these down? And what did these people say? Did they put up pornography? Did they do things that will drive people off the system by attacking other people and using bad language or anything like that? They didn't do any of those things. They disagreed with what the government was saying. It's not even a factual inaccuracy. If you say that the vaccines have side effects and you state what those side effects are, you can be banned. Now, why would Twitter do that? Does Twitter have any internal reason for doing that? They don't have an internal reason for doing that.

John Vecchione ([07:04](#)):

They have that because the government has been on them incessantly for over a year saying, "Get this off your platforms." So that is what's going on. And how do we know that? We have a FOIA request in that hasn't been answered yet, but we know that because we turn on the news and the Surgeon General's saying it. We turn on the news and he tweets it out, right?

Jenin Younes ([07:28](#)):

Yeah, he said-

John Vecchione ([07:28](#)):

He's on his official Twitter accounts, saying, "Get this stuff off."

Jenin Younes ([07:32](#)):

And that these companies will be held accountable.

Bill Walton (07:34):

So he's using his Twitter account to tell Twitter to take these people off?

Jenin Younes (07:37):

Yeah.

John Vecchione (07:38):

Yes.

Jenin Younes (07:39):

So, he has a personal Twitter account and an official one. And he used the official one to tweet. He wrote a long thread and it said something like these companies will be held accountable if they don't start censoring this misinformation or stop spreading misinformation.

Bill Walton (07:51):

Excellent. And is that what they threatened, antitrust or is it just-

John Vecchione (07:56):

The SAC, he has done that. The president's spokesperson has done that. And you see it and other governmental actors have. I don't think the Surgeon General has said anything, but I don't know if he knows what antitrust is, but he does. But the fact is, so the whole government's doing it. We've sued the folks because what the other thing they did is they asked for all the information about the misinformers, right? So the people who disagreed with the government, who entered private contracts, private agreements with Twitter, so they can get a Twitter account, you put in your information and maybe you privately...

John Vecchione (08:32):

The way Twitter works, as I understand it, is you have your public tweets that everyone can see. But you can direct message people that no one could see. It's supposed to be like your email or a private thing. All that private stuff, he's asked for what the misinformers are doing and what's going on. And for all we know, I think Facebook says they're going to do it, right?

Jenin Younes (08:52):

Facebook said that they would comply. So, that was one reason we asked for an emergency hearing.

Bill Walton (08:56):

So, this is not just Twitter. This is also Facebook.

Jenin Younes (08:58):

It's all of them, actually. So, it happened that we had plaintiffs who use Twitter. And so, that exemplifies the issue, but it's really about all of it and this request for information that the Surgeon General put in at the beginning of March. So, he demanded that the social media companies handover the information-

Bill Walton ([09:13](#)):

Beginning of March?

Jenin Younes ([09:14](#)):

2022.

Bill Walton ([09:16](#)):

This year?

Jenin Younes ([09:17](#)):

Yeah. So, he said they had to hand it over by May 2nd. And this includes eCommerce platforms, instant messaging systems, social media platforms, everything. So, you're talking about Telegram, Amazon. You leave reviews on Amazon. This really reaches into the homes of all Americans. It's not just about people using Twitter.

John Vecchione ([09:37](#)):

And that is the thing here. And so, he said, "Oh, I'm just looking for this information," but some of it's private information that you didn't expect to be turned over to the government so they could look and call you a misinformer. What really bothers me about this is you can be thrown off, not because you're misinforming, not because you're saying lies, but because you're telling truths that they don't want people to know. So, there's no drug ever created, there's no medicine ever created that doesn't have a side effect. And in fact, it's the law that you have to put it on the side of whatever medicine it is, these things can happen to you, these things have been reported.

John Vecchione ([10:12](#)):

So, that's the law that the pharmaceutical companies have to put on what the side effects are on their drugs. But if somebody tells you what the side effects are that the vaccine people have to put on their label, you can be a misinformer. It's incredible, because they just don't want that information out there, because they obviously want people to get vaccinated. Fine, I'm fine with that, but you got to tell the truth. And if you're not going to tell the truth, don't call the people who are telling the truth liars. That's what's going on.

Bill Walton ([10:43](#)):

Now how did your three plaintiffs find you, New Civil Liberties Alliance? I think we need to make the name more simpler.

John Vecchione ([10:52](#)):

NCLA. Yeah, there you go.

Bill Walton ([10:53](#)):

NCLA. I get that confused with the athletic league, anyway.

Jenin Younes ([10:56](#)):

Well, I actually knew them from Twitter because I have a Twitter account.

Bill Walton ([11:00](#)):

So, they found you.

Jenin Younes ([11:01](#)):

Yeah.

Bill Walton ([11:02](#)):

We already covered this in other shows, but explain again, New Civil Liberties Alliance and what you do, because I think there are other people watching this or listening to this who probably have interesting complaints about the government. And I think they should know about you.

Jenin Younes ([11:17](#)):

John.

John Vecchione ([11:18](#)):

So Phil Hamburger's a Columbia Law professor. I understand he's on. I was just talking to him yesterday. And he had the view. He had been a tax lawyer, but he became a professor. He started looking at how the administrative agencies work. And what he found and wrote a book about, he's written a number of books, but the one that I refer to all the time is, "Is Administrative Law Unlawful?" Meaning when you're caught in an administrative agency's processes or when the agencies do something, particularly independent agencies, you don't get a jury. All right. So, what happened to the jury, right? Your due process, you're not in front of a life-tenured judge, right? You oftentimes do not have cross examination ability. So, the administrative agencies have a whole set of rules that [inaudible 00:12:11].

Bill Walton ([12:11](#)):

Very few people understand that the administrative law state and that you've really got very little recourse.

John Vecchione ([12:18](#)):

Very little. And the other thing is I always say this, I've said it for years, but I say it more now, when I'm with NCLA and that is the process is the punishment, because one of the things the administrative state can do is say, "Oh, you're in violation," and you say, "I'm not in violation." Well, you can't run to the federal court and say, "I want an injunction against this," because the statutes or law have often given the administrative agency the right to try you in their own courts and then the only place you can go... Let's say you're called by an administrative law judge. You get an administrative law judge who rules your way. He says, "Mr. Vecchione, you're right. We were wrong."

Bill Walton ([12:57](#)):

Has that ever happened? Anyway...

John Vecchione ([12:59](#)):

Excuse me, it happened once in FTC's 25 years.

Bill Walton ([13:03](#)):

Okay.

John Vecchione ([13:03](#)):

The FTC is the one.

Bill Walton ([13:04](#)):

Okay, all right. Anyway, continue.

John Vecchione ([13:04](#)):

So the thing is, so he says, "You're right." It gets appealed to the agency heads. The heads of the agencies get to decide and they reverse them. At the FTC for 25 years, the ALJ has never been upheld when he found out you were right.

Bill Walton ([13:20](#)):

So it got repealed or rejected by one of the parties in the case.

John Vecchione ([13:25](#)):

Yeah, one of their own judges said, "You're right." It gets appealed by the government. The FTC appeals, it says, "Oh, our guy who works for us, who is our ALJ has looked at the facts, found against us. But you know what? We have all these commissioners. We'll go and ask them," who are the same people, by the way, who had to okay the case being brought. And they then say, "Oh, all right, ALJ. I don't know. He just looked at all the facts and all the law and found against us, even though he works here, but we didn't like that outcome. We're going to get rid of it."

Bill Walton ([13:59](#)):

And how many federal agencies have an administrative law...

John Vecchione ([14:02](#)):

Judge? SEC, FTC. The one people might really go into a lot are Social Security Administration. There's many ALJs for that. It's slightly different but I am not sure how many have ALJs. Any adjudicative process if they're allowed to, the Department of Energy doesn't have any. It's the agencies that are given control over some industry like SEC.

Bill Walton ([14:33](#)):

I can't wait for the Energy Department to hear this and say, "Hey, I need one of those too."

John Vecchione ([14:38](#)):

I want one. Exactly, I want one too. So, the process isn't over. So, now that they've reversed you, now you have to go to the appellate court. So, you can sometimes get to their district court or an appellate court, where you start all over again, and the appellate court has to give deference to all the facts. They have to agree. However, the agency found facts, the independent judiciary has to say, "Oh, it's how the facts are done." So, everything's loaded in their favor when they go to the federal court. And of course, it takes years to do all this.

Bill Walton ([15:09](#)):

Yeah. So, the process is the punishment.

John Vecchione ([15:10](#)):

The process is the punishment.

Bill Walton ([15:11](#)):

This is The Bill Walton Show. And I'm here with Jenin Younes and John Vecchione with the New Civil Liberties Alliance. And we're learning about the scary world of administrative law, but we're also talking about Twitter and the scary world of government censorship and how they're not doing it directly. But they're using the social media companies to do it for them. Jenin, so where is the case now? You had a hearing. Is it ongoing? I mean, how do we follow this?

Jenin Younes ([15:41](#)):

Yeah, it's ongoing. So, we had a hearing in Columbus. One of the plaintiffs lives there. So, we filed there, Mark Changizi. That was a hearing on the preliminary injunction. Both Changizi and Kotzin testified and testified about the effect that the censorship is having on them. So, one of our arguments, which is supported by case law, is that you don't necessarily have to show that these people were censored because of what the government says. We don't have to establish causation to that extent. If the plaintiffs show that they are self-censoring because they're afraid of the government, because of what the government has said, then that's enough. So, they testified about that. The government has also filed a motion to dismiss and I'm not sure if the judge will decide both the preliminary injunction and the motion to dismiss at the same time.

Bill Walton ([16:28](#)):

Now, are they defended by attorneys at-

Jenin Younes ([16:30](#)):

DOJ.

Bill Walton ([16:30](#)):

... HHS or? They're defended by the DOJ. So, we got Merrick Garland's folks.

John Vecchione ([16:39](#)):

That's correct. And it's line attorneys from DOJ in this area. They came out and they want to dismiss. They say, "Hey, you can't prove anything that the government's done. And we're just asking questions here." But if you ask questions, why don't they just send a... This is the thing that drives me nuts.

Bill Walton ([17:03](#)):

Who's asking the questions?

John Vecchione ([17:05](#)):

The Surgeon General, right? Give me this information. Why didn't he just send a letter? Say, "Send me this." Why did he go on the news? Why did he tweet it out that he's doing this? And why did he then threaten accountability? To the extent that certain agencies are allowed to get information, I don't even think the Surgeon General is allowed to ask for. So, there's nothing in his remit to go around asking

social media for questions. But even if you are allowed to ask questions, there's usually processes. The SEC, when they want to ask you a question, they have to do certain things beforehand. You can't just threaten and ask for information when you're the government. It is inherently coercive.

Bill Walton ([17:44](#)):

So your plaintiffs, how are they feeling right now?

Jenin Younes ([17:51](#)):

Well, they're just waiting. They're still optimistic. Daniel Kotzin is obviously upset because he lost his Twitter account permanently a few days ago for tweeting about the side effects of the vaccines, actually.

Bill Walton ([18:03](#)):

How pervasive is this? I mean, you get three plaintiffs, but my impression... Well, I've had a couple of these shows taken off YouTube. Thanks, guys, including one you're on.

Jenin Younes ([18:13](#)):

Yeah.

Bill Walton ([18:13](#)):

I think we talked about ivermectin.

Jenin Younes ([18:15](#)):

Yeah, that's one's a...

Bill Walton ([18:16](#)):

We're talking about it again.

John Vecchione ([18:18](#)):

You're a certified misinformer.

Jenin Younes ([18:21](#)):

I haven't been called out by Twitter yet.

Bill Walton ([18:25](#)):

Given the position you're all in in terms of defending people against these kinds of things by government, you have to have thousands of people coming to you with similar issues.

Jenin Younes ([18:33](#)):

Yeah, well, this is very pervasive. So, as a Twitter user, I had noticed an uptick in suspensions. People were occasionally getting suspended temporarily for saying things about COVID for about a year that was not government approved, but it was very rare and their accounts weren't permanently suspended. And then I noticed that after the Surgeon General and others in the Biden administration started this campaign in the spring of 2021, I noticed a massive increase in suspensions among people I knew on Twitter and followed.

John Vecchione ([19:10](#)):

And that was the testimony on Friday. All these people were active Twitter users and they talked about their own observations of how this happened and when it happened and how it is tied directly with government intervention.

Bill Walton ([19:21](#)):

If you look at Elon Musk's takeover of Twitter, which hasn't happened, there's a lot of things that could happen before it closes the deal. But if it does happen, the people at Twitter are losing their minds. They can't stand the idea that they're not going to be in a position to determine what's allowed to be on it and isn't. So, this is not just the government directing people to do it. It's the Twitter's culture that's so receptive to it, or am I missing something?

Jenin Younes ([19:47](#)):

Although I don't know that that's Twitter.

John Vecchione ([19:49](#)):

They didn't do it before the change in administration. So here's the thing. You could talk about ivermectin, you could talk about the side effects.

Jenin Younes ([19:56](#)):

Hydroxychloroquine.

Bill Walton ([19:56](#)):

This is a January 2021 change.

Jenin Younes ([20:02](#)):

Yeah, yeah.

John Vecchione ([20:03](#)):

Yeah. So, why did that happen? The people who work at Twitter, they can believe whatever they want, but their incentives as a company are not to do this. Now they may have an incentive. We asked about people who call us. One of the beauties of what our clients' right is I haven't found one thing that isn't true or argument or a disputed issue that you want to discuss like scientists, right? One of them is a very good scientist. So, the facts are unknown. So, you discuss the hypotheticals about one and the other. Aren't you supposed to do that?

Bill Walton ([20:34](#)):

Describe the background of your three plaintiffs. There are aa couple of them that are quite impressive.

Jenin Younes ([20:39](#)):

Yeah. Mark Changizi is a cognitive theoretical scientist. And so, he studies all sorts of things like, why we see in color, why our eyes are on the front of our face, and also mass hysteria and how that happens.

Bill Walton ([20:52](#)):

Mass formation hysteria.

Jenin Younes ([20:54](#)):

He didn't use that term, but he calls it social contagion actually. So, he had started tweeting that in March of 2020, that the COVID hysteria was clear mass-

John Vecchione ([21:06](#)):

Psychosis.

Jenin Younes ([21:07](#)):

Mass psychosis. And he was talking about it from a scientific perspective. And he also has a deep insight into knowledge, what it means to know something, which he discussed at the hearing as well. And then Daniel Kotzin was a-

Bill Walton ([21:22](#)):

So, he explores how we know what we know.

Jenin Younes ([21:25](#)):

Yeah.

John Vecchione ([21:25](#)):

He's written six books on various topics, but one of them's that.

Bill Walton ([21:29](#)):

Really interesting.

Jenin Younes ([21:30](#)):

Yeah, very interesting. So, he had very interesting things to say. And he was suspended a bunch of times for tweeting things like the flu is more dangerous to kids than COVID. Masks are useless and harmful to our social interactions, very reasonable things. And then Daniel Kotzin was an attorney and is now stay-at-home father in Denver, and he's married to Jennifer Sey, who was the-

Bill Walton ([21:56](#)):

At the Levi's.

Jenin Younes ([21:56](#)):

Yeah, who was the president at Levi's and had to leave because she was tweeting about open schools.

Bill Walton ([22:03](#)):

She wanted to open them up.

Jenin Younes ([22:04](#)):

Yeah, exactly. And then-

Bill Walton ([22:07](#)):

Of course, given what they're teaching, I'm ambivalent about that.

Jenin Younes ([22:10](#)):

Yeah. That's another story.

John Vecchione ([22:13](#)):

San Francisco. Do you have concerns?

Bill Walton ([22:17](#)):

Well, I have concerns in Fairfax County, anyway.

Jenin Younes ([22:20](#)):

And then the third one is Michael Senger. He's also an attorney. And he wrote a book about... I forgot exactly but it's something about snake oil. He is a firm believer that the CCP has driven a lot of our COVID policies.

Bill Walton ([22:37](#)):

So, Chinese Communist Party.

Jenin Younes ([22:39](#)):

Yeah, yes. Sorry.

Bill Walton ([22:41](#)):

I just assumed that was a commonly known thing.

Jenin Younes ([22:45](#)):

He's done a deep dive into it and yeah. He was-

Bill Walton ([22:48](#)):

Well, we do know the Chinese Communist Party has deep, deep, deep ties in a lot of stuff that's going on in the United States.

John Vecchione ([22:55](#)):

And social media. And social media.

Bill Walton ([22:57](#)):

And social media, yeah.

John Vecchione ([23:00](#)):

But I do think, though, that here, because of the timeline and because of the observable facts and because of their incentives for each of them to make money, every one of these organizations, they don't want to be throwing people off who aren't driving people out of the biosphere of the platform,

right? And none of these people were. And so, the only explanation really, you had a hypothetical that well, the people that work at Twitter, they just like doing this. That they always like doing it, but they didn't start doing it until the government started pushing on it and said, "It was okay, we want you to do this. And in fact, we're going to punish you if you don't do it."

Bill Walton ([23:46](#)):

So, do you have any more coercion trails mix up beyond the tweets that they put out, encouraging the social media companies? Any phone calls? Any emails? Any-

Jenin Younes ([24:00](#)):

We would like that and we actually-

Bill Walton ([24:01](#)):

So, that's part of your FOIA.

Jenin Younes ([24:02](#)):

Yeah, FOIA. And we actually made a discovery request before the preliminary injunction hearing. We asked for any direct communications between the government and Twitter. The government, they made all sorts of complaints about how they didn't have enough time to do this. It was really a very narrow request. We were just saying, "If there are emails between the Surgeon General and Twitter, we want those."

John Vecchione ([24:21](#)):

We also tried to subpoena the Surgeon General, and they definitely were against him sitting. But if the case goes forward, I certainly think he'll have to be deposed because this is not the case. The government always says, "You just want to depose our guys."

Bill Walton ([24:36](#)):

I very much look forward to you deposing the Surgeon General.

John Vecchione ([24:39](#)):

But they usually say, "Oh, you can't get the top guy because it's really somebody else down below." But here, the guy tweeted. It's him. It's his words. It's not some flunky somewhere. It's him doing this in person. So, I look forward to that.

Bill Walton ([24:54](#)):

So, on what basis would the suit be thrown out?

Jenin Younes ([24:58](#)):

They're arguing that we can't prove causation and so...

Bill Walton ([25:01](#)):

Okay, that's what I'm asking. Do you have a direct hammer over their head?

Jenin Younes ([25:05](#)):

Yeah. I mean, not at the moment. I mean, I think there's enough, I guess you would call it circumstantial evidence to draw their conclusion that this is-

John Vecchione ([25:14](#)):

And there's case law. There's case law about how this happened like the bookstore case.

Jenin Younes ([25:18](#)):

Yeah.

John Vecchione ([25:18](#)):

Tell them. Why don't you go with that?

Jenin Younes ([25:20](#)):

Yeah. I mean, there are cases saying that if the government is using third parties to chill speech, you don't have to show direct causation. So, for instance, there was the-

Bill Walton ([25:29](#)):

What's the bookstore?

Jenin Younes ([25:30](#)):

It's called Bantam Books versus Sullivan from the 1960s and they're...

Bill Walton ([25:35](#)):

Bantam Books.

Jenin Younes ([25:36](#)):

Yeah. Although that was not so much about using third parties, but a commission in Rhode Island was going around and threatening book sellers, who are selling pornography and saying, "Well, these are your legal rights. This is what could happen to you." So, it was veiled threats. And the court said... I think the direct quote is, "We should look through forms to substance." And this is obviously government action. There's another case out of New York that's similar, where a plaintiff had put up commission billboards that were anti-gay and contain language that was offensive, in my opinion. The borough president of Staten Island called the billboard-

Bill Walton ([26:17](#)):

They were anti-gay.

Jenin Younes ([26:18](#)):

Yeah, very.

Bill Walton ([26:19](#)):

I should stipulate that you were a full blown liberal when you got into this and remain so in many issues, which is pretty cool.

Jenin Younes ([26:29](#)):

Yeah, I do on many social issues. I certainly don't agree with what the billboard said, but I do think that people have a right to say what they want to say. So, the Staten Island borough president called the billboard company and basically said, "We use you too. You like to make money from us, don't you? You should think about taking down those billboards." And the billboard company did. And then the billboard company actually said, "We did this on our own. We just decided it was a bad idea. They violated our internal, whatever, rules." But the court said that that was actually on a motion to dismiss. The court was saying that was enough that a jury could find that that was a First Amendment violation. So, there are these sorts of cases that I think are very similar and showed that this really is a First Amendment violation.

Bill Walton ([27:14](#)):

This is the Bill Walton Show. I'm here with John Vecchione and Jenin Younes. We're talking about really everything. What are we talking about? About really, why the governments have abused their powers to coerce people to do their bidding, not directly but indirectly, and why that's as big a problem as them doing it directly. Can we engage in speculation here? I know you guys are both careful lawyers, but it seems like this whole pandemic, the lockdowns, has become so political, left versus right. I mean, it really lines up red, blue in terms of this. Theory, speculation? I mean, what-

John Vecchione ([27:54](#)):

Well, I'm not so sure. That's certainly not true of our clients, right? Our clients are not conservatives, as far as I can tell.

Jenin Younes ([28:04](#)):

No.

Bill Walton ([28:04](#)):

Well, that's good to know. That's why I want to probe.

John Vecchione ([28:08](#)):

And so, I think it more has to do, what do you call it, the reality-based community?

Jenin Younes ([28:13](#)):

Team reality.

John Vecchione ([28:15](#)):

The ability to actually look at numbers and assess risk does not seem to be evenly distributed throughout the population.

Bill Walton ([28:22](#)):

I want to do a show some time on innumeracy. Do you know how many people really can't add and subtract, let alone do statistics? I mean, these are people and that most of them are working for Congress now.

John Vecchione ([28:35](#)):

And I want to point out, where did one of our clients move? They left San Francisco and went to Colorado. And who's the governor of Colorado. It's Polis. Polis was a big shut down guy early on, but he had had it. By a year, year and a half in, he's a very liberal guy. He's one of the guys who drove the blue shift to Colorado. But he said, "No, we're back in school, no more lockdowns. Wear a mask if you want to," almost as early as DeSantis did. And I think it's because he was a business guy who looked at metrics, I have to think, and probably the political culture of Colorado.

Bill Walton ([29:12](#)):

That's my background. I mean, you look at metrics and they matter. I love this term, reality-based community.

John Vecchione ([29:17](#)):

Yeah.

Bill Walton ([29:19](#)):

We may start a movement here.

John Vecchione ([29:24](#)):

Everyone says that we talked to about DeSantis. It isn't that he's conservative. It's that he was very interested in the numbers and percentages of what happened under different scenario.

Bill Walton ([29:36](#)):

We had Phil Kerpen on here last week, and he did this study with Casey, the University of Chicago, Casey, anyway, and Steve Moore. And it really took the 50 states and it showed how did states fare with massive lockdown versus states that stayed open and by just unbelievably provable numbers, the states that stayed open, education did well, economy did well, health, life expectancy did well. States that locked down, just the opposite. We've got the data.

John Vecchione ([30:08](#)):

And to your point, on that study, as I recall that study of the Democrat-run states, Colorado easily did the best. Yeah, I think better than Ohio, better than Republicans. This is why it's not quite a left, right thing. It seems to be whether or not who's ever making the decisions is assessing risk in such a way that outcomes matter to them.

Bill Walton ([30:30](#)):

That's interesting. I like that.

Jenin Younes ([30:33](#)):

Well, that's a start. I mean, it's split along party lines on earlier that I think there was and then there were people like me who just from the beginning really disagreed with the whole approach.

Bill Walton ([30:43](#)):

Did you have a trigger point? Did you have a moment where you said, "I have had enough"?

Jenin Younes ([30:45](#)):

I mean, just from the start, I was like, "This doesn't make sense. You can't stop a virus. It's going to spread and you're going to cause massive harms if we disrupt society in this way." So, yeah, I never agreed with it.

John Vecchione ([30:59](#)):

I was saying, I gave everyone a pass for whatever they thought in the first three months. I was like, "Okay, this is new." Anything you want to do for the first three months is fine.

Bill Walton ([31:08](#)):

Yeah, I think it's where I was.

John Vecchione ([31:10](#)):

But they say, "We knew immediately." I'm a backslider, apparently.

Bill Walton ([31:14](#)):

You're a careful lawyer. That's a good thing in the job you have. So, what else should we focus on the Twitter case? Because I also want to talk about what you're doing with the fishing boat owners.

Jenin Younes ([31:30](#)):

I mean, I think we've covered the main points. Yeah, I mean, these people were censored-

John Vecchione ([31:36](#)):

Why don't you just say what we're asking for? [inaudible 00:31:38]

Bill Walton ([31:37](#)):

Yeah. What's the remedy here? What do we want to have happen?

Jenin Younes ([31:39](#)):

Yeah, so we're asking for a few things. We're asking for the court to say that the government can't do this, that this constitutes constitutional law violations, that the Surgeon General can't make this request for information and get the information about the so called misinformers. Now, that deadline was May 2nd, which was passed, which is one reason we're a little surprised not to have heard from the court.

Bill Walton ([32:01](#)):

That's two days ago.

Jenin Younes ([32:03](#)):

Yeah, yeah. So, what this wouldn't do is necessarily reinstate our clients' accounts, because since we're not suing Twitter, we can't demand that Twitter reinstate the accounts. We're just saying the government has to stay out of it. Let Twitter do it.

Bill Walton ([32:20](#)):

Okay. Now, if you win and this isn't case law, how much precedent does this set for all other government encouragements?

John Vecchione ([32:29](#)):

I think it will be huge because this nudging, rather than outward passing a law, this nudging, I think, is going to become more and more common in the regulatory state. And so, I think it will pull back on the nudging and it will also provide courage to those who don't want to do it. In the business world, people get an idea of what they have to do, what are the best practices, if you will. And the best practices are right now, I think they think, doing whatever the government tells us to do, so we don't get in trouble. But if we have a ruling like this, they'll know they don't have to and they don't get in trouble.

Bill Walton ([33:07](#)):

Was it Cass Sunstein who wrote the book Nudge?

John Vecchione ([33:09](#)):

Nudge, yup.

Bill Walton ([33:11](#)):

I didn't read it, because my view is coercion is coercion, whether you call it a nudge or a shove.

John Vecchione ([33:17](#)):

Yeah, I recommend the book. I always recommend the book because I don't agree with it. One of his things is opt in and opt out. And I think it's an interesting concept of whether or not the law requires you to opt in or opt out. And this is the same in business.

Bill Walton ([33:34](#)):

Explain that.

John Vecchione ([33:35](#)):

So, what it means is let's say you have a 401(k) program at your business, right? And do you automatically enroll people in the 401(k) plan or do they have to opt in? More people enroll and don't opt out if you put 3% of their salary in. They all are happy to do that. But if you have them opt in, much fewer will do it and then they complain later that they don't have any savings. So, is that coercion or not? And it's an interesting argument, I think.

Bill Walton ([34:07](#)):

Okay, I've got a new book to read. Let's talk a bit about the work you're doing with the boat owners.

John Vecchione ([34:18](#)):

Yes, I can talk about this. So, I have two cases and I'll talk about Mexican Gulf first because it's right now top of mind. I just filed the appeal on Monday, and I think we're going to get a lot of friend of the court briefs on that maybe in the state of Louisiana. It's going to come in because this is really outrageous. No other than the National Oceanic and Atmospheric Administration, all of you people who read Dirk Pitt novel, he's it's all NOAA propaganda because he's the great hero of this Raise the Titanic or any of these type things, books. He has a whole series-

Bill Walton ([35:00](#)):

You're adding more to my list, really.

John Vecchione ([35:01](#)):

Exactly. But anyway, so NOAA is always the hero of this, but in my stories, they're not the hero.

Bill Walton ([35:10](#)):

National Oceanographic-

John Vecchione ([35:12](#)):

And Atmospheric Administration. So, they collect a lot of data and their data collection is good. And they, also, they are the ones who decide how many fish you can take out of the oceans. And the way I explain it all the time is if you ever saw Errol Flynn and Olivia de Havilland in Robin Hood, and what's Robin Hood always getting in trouble for? He's always getting in trouble for taking the king's deer. He's always shooting the king's deer. And the idea is that whoever's the sovereign owns all the deer and all the wild animals and things like this. Well, the same with fisheries. The fisheries within the United States, the fish are in the control of the federal government. And so, they do get to make regulations about that. And there's the tragedy of the commons.

Bill Walton ([35:53](#)):

Wait, wait, wait. Did I just hear the fishes that swim in the sea are controlled by the federal government?

John Vecchione ([35:58](#)):

In federal waters.

Bill Walton ([35:59](#)):

Okay, in federal waters. Okay, all right.

John Vecchione ([36:00](#)):

In federal waters, yes. So, in any event, so they get to say what the rules are. And this has been a longstanding thing, and we don't have a problem with that. But here's what's going on. Our fisheries are divided into eight different grouping series. If you watch The Most Dangerous Catch, that's the Northern Pacific. And then there's the Gulf of Mexico, and it ends at the tip of Florida. And then you have another one. But in the Gulf of Mexico, charter boat who don't fish themselves have to get a reef fish permit and pelagic fish permit to move around. In any event, to get these permits, they then take people out-

Bill Walton ([36:45](#)):

I don't understand what you just said.

John Vecchione ([36:46](#)):

In other words, they're fish that migrate.

Bill Walton ([36:49](#)):

Okay, migrating fish.

John Vecchione ([36:50](#)):

So anyway. But in any event, so these are the two types of permits they get and then they take you out. If you go down to Florida or down to Texas or Louisiana and you go and you don't have a boat yourself, they take you out. You go get snapper or swordfish, whatever you get. And they take you out fishing. And they've done this for a long time. And they have an app where they have to report when they leave port, generally where they're going, and then their passengers, how many fish did they take. So, we don't complain about them telling the government how many fish they took, but here's what NOAA decided to do. And then Department of Commerce runs them. They said, "You've given us all this information. We already know where you're going back to port. You have to put a GPS."

John Vecchione ([37:42](#)):

They call it a VMS, a vehicle monitoring system. It's a GPS for everyone out there who speaks non-government. So, the GPS device has to be on your boat at all times. It has to broadcast at least hourly, but we prefer continuously so that we know exactly where you are at all times. And you can't turn it off. And even when you're docked at port and you go across to fill up your gas on your boat, you have to call NOAA and tell them you're leaving port and tell them what you're doing. And we're also going to track you while you're doing it. And the kicker of all this, I don't think you can do this to a regulated industry, even while they're out fishing.

John Vecchione ([38:24](#)):

I don't think they can be followed around. They're not breaking any laws. They got a permit. That's what it means. But these are small boats. This is smaller than Gilligan and the Skipper's boats, right? They take them out. They take their wives out to dinner. Sometimes they run sightseeing tours down out of Florida and things like this. What in God's name does NOAA have any ability to follow them around all the time? And there's the Fifth Amendment argument as well, because they've got to put it on their boats. It's not compensated. So, the government is taking a part of their boat and taking their information.

Bill Walton ([38:59](#)):

So how does this work? You're NOAA. Where's NOAA's building?

John Vecchione ([39:04](#)):

Oh, it's in DC.

Bill Walton ([39:06](#)):

Is it Commerce Department?

John Vecchione ([39:07](#)):

No, it's just a little outside. I'd forgotten exactly where, but yes.

Bill Walton ([39:10](#)):

So you're NOAA.

John Vecchione ([39:10](#)):

But Commerce, you know where Commerce is.

Bill Walton (39:12):

Sure, yeah. It's the biggest building. You're a bureaucrat, you work in a NOAA building, you're responsible for the GPS program. You decide it'd be a good idea to know where everybody is all the time. Do you have to go through any procedure?

John Vecchione (39:29):

Yes, you do.

Bill Walton (39:29):

I mean, is this a faceless bureaucrat or is this?

John Vecchione (39:32):

No. Well, it's a little different, because there's one thing that they do have is the National Marine Fisheries Service as guys out in the real world. And they have conferences with fishermen and people who work on the water and they get their input, but they are NOAA's guys, they're National Marine Fishery guys, right? And so the commercial fishers, the folks who go out with huge nets and can take out 50,000 to 100,000 pounds of fish, tons of fish maybe and can clear the sea, they have been tracked for many years. They sued and then they settled something 20 years ago, but that is a whole different animal. But they're on the fishery councils too. And what do they care?

Bill Walton (40:18):

So, we don't want them to be tracked when they're not on the job. Is that the case?

John Vecchione (40:23):

I don't want them tracked at all because it's not necessary to their regulatory purpose, right? They're getting their fish counts. They're getting where these guys caught the fish and they know where they're coming back to. If they want to be waiting on the dock and check everything, they can. If they want to send the Coast Guard out and check the boat, they can.

Bill Walton (40:41):

Now, is this an administrative law judge that you're seeing?

John Vecchione (40:43):

No, we did bring this in district court in New Orleans, Eastern District of Louisiana, as we call New Orleans. The judge issued, we got the administrative record, we made arguments, cross motions for summary judgment, and what she said is, is that charter boat fishing is a closely regulated industry. That was her determination, and they have less expectation of privacy than everybody else. And so, because they have no expectation of privacy, you don't have to get a warrant and you can follow them around. And I respect the judge very much. She didn't make this up out of her head. And this is the real scandal. The Supreme Court has a theory that closely regulated, long regulated, and tightly regulated industries do have less expectations of privacy. And I'll give you an example, I always have this example, which is what's the most closely regulated industry you can think of where the government has the most right to regulate something. I would say-

Bill Walton (41:57):

Federal prison.

John Vecchione ([41:58](#)):

But now, it's an industry. I'd say nuclear power. They invented nuclear power. All guys down at Alamogordo were all government workers. They have all the patents. It didn't cut it, so nuclear power. And it's dangerous. So, there you go. So, that's one thing. So, the government got this theory on stuff like that, stuff that has been regulated a long time since its inception, and which the government has a big... But now, this theory gets out there and the district courts are going around, "A California District Court said that babysitting is closely regulated industry."

Bill Walton ([42:30](#)):

Okay, that's where I wanted to go with this. I don't own a boat. I'd like to own a boat, but I don't own a boat. So, why do we care? Babysitters care. I mean, what else is-

John Vecchione ([42:42](#)):

No, you have to care for this reason. And this is where it's going. Well, let's say you do have a boat. These guys, all they do is go fish in the same place everyone else goes fishing, but they take passengers and they have a reef fish permit, right? That's all they do. Now, you have some regulation from that, but not a violation of your Fourth and your Fifth Amendment rights, just because you're in a regulated industry. And here's the thing. Let's say you have a hunting license. Does this comply to the state's... You have a hunting license. I need to know that you're not out in the woods where you could shoot a bear, right? So can I track you at all times just because you have a hunting license? If you're just a fisherman and I want to go out on my boat, gas up the Evinrude and I go out. Can they track me at all times because I'm out on the ocean?

Bill Walton ([43:34](#)):

Well, and their ability to do that's only growing.

John Vecchione ([43:35](#)):

It's only growing.

Bill Walton ([43:36](#)):

Can they track you through an Apple Watch?

John Vecchione ([43:38](#)):

Yes, that's the thing. Well, they could probably threaten Apple to turn over all the information.

Bill Walton ([43:43](#)):

Can they behind the camera though if what we're talking about is Apple Watch? Of course, it told them whether he was awake or not, but it didn't tell him what day it was.

Jenin Younes ([43:50](#)):

There was actually just an article I haven't had a chance to read closely about how the CDC was apparently tracking millions of American's phones to see if they were complying with lockdown orders.

Bill Walton ([44:00](#)):

See, there we go.

Jenin Younes ([44:01](#)):

Yeah.

John Vecchione ([44:02](#)):

That tells me the CDC has an influence.

Bill Walton ([44:04](#)):

Because I've got a lot of friends and one of them was really worried about social credit systems and China being implied here. And it looks like this is just one of the little things they put in there and then we're doing it here. It's okay here. So, we do more here and then next thing you know, these babysitters are wearing ankle bracelets.

John Vecchione ([44:25](#)):

Here's how insidious it is.

Bill Walton ([44:26](#)):

I mean, are we tracking babies?

John Vecchione ([44:28](#)):

Exactly. Think of this. So, we regulate an industry, then we say it's closely regulated, then we say you have no privacy rights there. And what you just said about technology is a big part of our brief and a big part of where-

Bill Walton ([44:39](#)):

Let's dig into that because that's the one that applies to so many-

John Vecchione ([44:39](#)):

Where we're really going there is, is that certain theories of how the Constitution works were made when it took the government a lot of resources to go do something and the one is the Coast Guard gets to any boat coming into our waters. If the Coast Guard has just reasonable suspicion, very low standard, can go on the boat and take a look, make sure you're not bringing in cocaine or whatever it is or check if you have fish that you shouldn't have. But the Coast Guard has to send a boat, right? So it can't do this to everybody. It can't watch them at all times so that's why the courts have often said it, and they don't know where the boat's coming from.

John Vecchione ([45:22](#)):

The cases say, wait a minute, the Coast Guard guards the coast. They don't know where these boats are coming from. All my charitable captains, they know where they're coming from, because they just called when they left to tell them what their port of call was and where they were going and when they were coming back. So, all these theories that allow a Coast Guard to do this shouldn't apply to these guys. But it's just been take a bit, go a little further, take a bit, go a little further.

Bill Walton (45:44):

Are you going to win your case?

John Vecchione (45:46):

God willing, and I hope we do.

Bill Walton (45:49):

So what resources do you all have to do this? I joked earlier about the army of lawyers, thousands of them that each of these agencies has. I mean, how do you go up against this?

John Vecchione (45:59):

I think one of the things-

Bill Walton (46:01):

Which I'm all in favor of. I want to try to get more.

John Vecchione (46:04):

I will tell you, well, obviously, we have donors at NCLA. But we have, what would you say, 12 lawyers now?

Jenin Younes (46:10):

Yeah, about 12.

John Vecchione (46:11):

About 12 lawyers, and we pick our cases carefully. And you do have to consider what the government can do to you. I will tell you this. If you are in an FTC procedure, in federal court, you only get seven depositions. All right. So, that's seven depositions, that's a cost because you have to record it and you have to go do it and it's cost. But in the FTC, they can have unlimited depositions. So, if they have your company, they can depose everybody and your lawyers have to go to all those depositions, 100, 200. It's unreal.

Bill Walton (46:45):

So paying for those lawyers bankrupts you.

John Vecchione (46:47):

Exactly. Exactly. And then also, if a non-profit to do that takes up-

Bill Walton (46:52):

Yeah, they can impose duties on you that you just can't afford to do it well.

John Vecchione (46:57):

It's certainly a non-profit [inaudible 00:46:57].

Bill Walton (46:57):

So, that's the way they win.

John Vecchione ([46:57](#)):

Yeah, no question.

Jenin Younes ([46:58](#)):

So yeah, we think about that when we bring cases, how much [inaudible 00:47:02].

Bill Walton ([47:01](#)):

I want to circle back to one thing, we're about out of time, but there was one point I wanted to make or wanted you to make was when people talk about getting banned on Facebook or Twitter or any one of these social media platforms, it's not an absolute thing. What happens is they fade you out. And there was one of the charts in your presentation where he noted as his impressions and they grew and they grew and grew. And then all of a sudden, they came down and they were turning the knob on his ability to get his speech out. How does that work?

Jenin Younes ([47:37](#)):

Yeah, so that has to do with the algorithm. Mark Changizi had noticed, he actually had followers alerted him that his tweets weren't coming up for them. When they type his name and you start to type a name, especially someone who has a large following and it pops up, Mark C-H, it should, but you have to type the whole thing out and it still doesn't come up.

John Vecchione ([47:57](#)):

You have to get all the way to the I in Changizi before it would come up.

Bill Walton ([48:00](#)):

Okay, before it autofills.

John Vecchione ([48:02](#)):

Yeah, Changizi is not a common name.

Bill Walton ([48:04](#)):

The autofill device is the thing that they...

Jenin Younes ([48:07](#)):

Yeah. And then the other thing is when you actually look at his profile, it says, "Warning: Sensitive Content" so you have to click to see it, which you don't have to do for very many people. So, this is called a shadow ban effectively. So, it's really throttling his reach. I actually have a partial shadow ban myself. My replies go into Show More replies, which is because I have over 80,000 followers and I'm not an anonymous account. That's very strange. This is usually like anonymous accounts that don't have many followers go into the Show More replies.

John Vecchione ([48:35](#)):

It could be bots.

Jenin Younes ([48:36](#)):

Yeah, yeah.

Bill Walton ([48:38](#)):

Well, we got a lot of work to do and to be continued. I'm really happy to meet you today and see you two are...

John Vecchione ([48:44](#)):

It's a pleasure.

Bill Walton ([48:45](#)):

... working together. Now, do you all collaborate on your cases and share ideas?

John Vecchione ([48:51](#)):

I hate to say it because my boys are always watching Star Wars. There's always two people on most of our cases. And so, we work with different people. But on these CDC cases, we've worked a number of times because we've done a lot of CDC stuff because they've been doing illegal stuff for two years now.

Bill Walton ([49:09](#)):

Well, what you're doing is really one of my... Passion is the wrong word, but we've got to do something about the predations of the state and you guys are working on the front lines.

Bill Walton ([49:21](#)):

This has been The Bill Walton Show, and I've been here with Jenin Younes and John Vecchione with the New Civil Liberties Alliance. And I hope we've helped you understand what's going on with Twitter and with fishing boats and babysitters. I think we'll cover that in our next show. Anyway, as you know, you can follow us on all the major platforms, YouTube, Rumble, Spotify. The list goes on. It's on our website.

John Vecchione ([49:48](#)):

For now.

Bill Walton ([49:48](#)):

For now, for the moment. Anyway, thanks for joining and we'll be back with more of the same. As always, what's true, what's right, and what's next.

Bill Walton ([49:58](#)):

I hope you enjoyed the conversation. Want more? Click the Subscribe button or head over to thebillwaltonshow.com to choose from over 100 episodes. You can also learn more about our guest on our Interesting People page and send us your comments. We read everyone and your thoughts help us guide the show. If it's easier for you to listen, check out our podcast page and subscribe there. In return, we'll keep you informed about what's true, what's right, and what's next. Thanks for joining.

John Vecchione ([50:44](#)):

On the Fourth Amendment, I mean, you cannot be followed around just because you're regulated. I got to-

Jenin Younes ([50:50](#)):

Do they then do that to drivers? I mean, just for-

John Vecchione ([50:52](#)):

Yeah, and the Supreme Court says you can't do that to drivers. This is the thing that's driving me nuts.

Jenin Younes ([50:57](#)):

With Carpenter, right?

John Vecchione ([50:57](#)):

This Carpenter and Jones, the police would go and put a tracker on your vehicle. And they said that's a Fifth Amendment violation because it's your property. You don't get to occupy even one little dime of space. And then also, it's a trespass.

Jenin Younes ([51:15](#)):

And it's a search.

John Vecchione ([51:16](#)):

And it's a search. So, on land, you can't do that. Why can they do it at sea just because you're regulated? Now that was not a regulation.

Bill Walton ([51:23](#)):

Well, because they're already heavy, they're used to it. Now, it's funny. I kept thinking, have you ever seen To Have and Have Not, Humphrey Bogart and Lauren Bacall on their fishing boat?

John Vecchione ([51:32](#)):

Yes.

Bill Walton ([51:33](#)):

I keep thinking about all those regs and how Humphrey Bogart. Of course, that was Savannah.

John Vecchione ([51:38](#)):

What do you want? More.

Bill Walton ([51:39](#)):

Or Cuba. Yeah.