Vindicated Against the Police, Plus: Life in South Africa
Guest: Carla Gericke
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Carla Gericke is president of the Free State Project.

WOODS: There is so much more to talk about with you than just the Free State Project, but yet, of course, since you're—what's the official title? Are you the president of the Free State Project?

GERICKE: Indeed, yes.

WOODS: Okay, so naturally that's what people initially want to talk about, and we devoted a whole episode of this show some time ago to the Free State Project. We'll get to that a little bit later. I want to talk a little bit about you, because it's interesting how you got to be the president of the Free State Project. You weren't just a random person. You'd had a lot of experience beginning in South Africa as an activist of sorts, and now here you are in the United States.

Let's talk about the most recent episode in your life that would be of interest to listeners of this show. You had some kind of run-in with the police. You'll have to tell me the exact timeframe that resulted in your arrest but then ultimate vindication. What exactly happened?

GERICKE: Yes, it was a very edifying experience as a recovering attorney: you tend to do things, and you see it from the legal side of things, but being arrested was certainly a bit of a shock to my system. This happened back in 2010. I was following some friends home. I was going to stay at their house because I had some skis in the back of the car that I needed to return. We were driving into a town where the speed limit dropped from 45 to 30 or something, and an officer pulled us over initially for speeding. We had two vehicles, and the officer was behaving oddly, and I had a video camera with me, and I thought, you know, this probably makes sense: this is one of those situations where let's record, because it's a great tool to keep everyone accountable. That way we have an independent record of what happened.

The officer asked me to leave, and I was like, look, I'm not going to leave because I don't know where I'm going. I'm following the car in front of me. So how about I just pull into this parking area? And pulled into the parking area. I was a good 30 feet away from them. I was behind a

white picket fence. I was in a school's parking lot, actually, and grabbed my camera, got out of the car, and trained the camera on the officers during the traffic stop that they were doing with the other vehicle. The camera actually did not work that night. The memory card was full. But I thought: this is a tool. He can see I'm recording. I told him I'm recording. That way, at least maybe everyone will be on their best behavior.

He didn't like this. So, of course, he called in some reinforcements from their side, and one of the beautiful things, I guess, about the Free State Project and being in New Hampshire, is that we have a really big liberty community and people kind of do watch each other's backs. So I was in the fortunate situation where all of this was happening, and a Free Stater just happened to be driving by and saw something was going on, probably recognized the car because it was in a small town, and this person lived there, and we all kind of know each other, and so called reinforcements from the freedom side, and I had gotten back into my vehicle because the officer had instructed me to get back into the car, and then when the second police vehicle showed up, the officer, you know, wanted to see license and registration. I had locked myself in the car and rolled up my window.

I was communicating with them, but through a crack, and when he threatened that I had 10 seconds to comply was what I regarded as an illegal instruction, which was basically saying produce your license and registration, and my thinking on the matter was, well, let's say something happened in a place like a Walmart parking lot and an officer orders you back into the vehicle. Let's say he stops you for some random reason, and you're like, well, I don't think you have probable cause. I'm not going to show you my ID. Then he orders you into the car and then uses that as an excuse that you should now have to identify yourself. So I felt like I was on pretty solid ground. But when Officer Montplaisir said you have 10 seconds or we're going to break the car's window and extract you violently from the situation, I caved in, got out of the car, got put in handcuffs that was in the back of the bucket seat, which is incredibly uncomfortable, and taken to the Weare Police Station, where they then chained me to a pole. It was interesting when I was talking to my husband afterwards: we have this concept of "we have these rights," but when you're really physically restrained, and you're sort of in their custody, it doesn't matter if you're on the right side of the law—it's a really scary and terrifying situation.

WOODS: Well, no doubt, and of course it would raise the question among I think a lot of ordinary Americans: why wouldn't you just cooperate, then? Why wouldn't you just go along with whatever it is they are asking you? Then you wouldn't have been put through all this inconvenience. I think that's how Joe American would look at your situation. So what would you say to Joe American?

GERICKE: Well, I think that we have a duty to push back a little bit, because it turns out we went to trial. This was a four-year process, and as you said when we started, I was vindicated. The point was, I was in the right, and they were in the wrong, and I think if we as Americans understand, well, we have these rights, and you don't have to be—I probably was being a little

stroppier than I could have been, but we also learn through experience. I think just taking a very reasonable, measured approach. We see the videos of people who go through the unconstitutional checkpoints. When you're polite about it and just kind of push back, I think that things are changing, and I felt it was my duty, really. I guess that sounds melodramatic, but I was like, you guys are really breaking the law, and I feel like I need to push back and take a stand, and ultimately we got some really good case law out of this. It was a long, onerous process, but you don't have to just say, yes, sir, yes, ma'am. We have rights, and it's really up to them to understand that. So I think as more people start to kind of say, look, enough is enough, or what is your probable cause? What are you basing this on? Because I think a lot of officers tend to just come from a position of authority, and they're used to that idea of you must comply, and it's like, nope, that's not really how it should work.

WOODS: It's such a shame, though, that the camera didn't work that night, even though it served the purpose. You were bluffing, in effect, but it really would have been great to have this footage—especially, I would think, when the whole thing went to court. How were you able to make your argument in the absence of the evidence you would have had on the camera?

GERICKE: Yeah, so it's actually what happened. They charged me with disobeying an officer. That's a great state catch-all for, oh, you were stroppy, and then interference with government—obstruction of government something. And then what actually happened—and in retrospect I'm really glad it happened—they tacked on a later charge of wiretapping. That was felony wiretapping, and I was facing seven years. What had happened was, when I was in police custody, they came in with my handbag and my video camera, and they were very interested in the camera from the start, and I know why: because I think the footage would have been pretty compelling. And when they released me, and I had done my fingerprinting, and the bail bondsman came at 2:00 in the morning by this stage. They were like, here's your handbag, and we're keeping the camera, and I said, well, I need a receipt if you're keeping it for evidence; I need proof that you took my camera. And they refused to give me a receipt, and they refused to tell me that they had taken the camera, and I had just got it, and I was like, this is my birthday present. You're not going to take it. And the officer in charge at that time was like, okay, then I am charging you with wiretapping, and of course, that was great because that's what my entire case hinged on.

So when we got it all the way to the appeals court, we started with—they immediately dropped their charges against me. They knew they didn't really have a leg to stand on, and then over the four years we appealed, they appealed, we appealed, they appealed, and we got it all the way to the First Circuit Appeals Court in Boston. And the Court at that time said, well, it's not relevant whether the camera worked or not. It was clear that I was trying to film, and I think for activists anywhere that's a really important point. Because sometimes maybe your cellphone isn't linked up to be able to get up into the cloud, or we really have a great activist tool now where you can just take your cellphone and just hold it up so that they think you're recording, and based on my reading of my case it wasn't material whether the camera was working or not.

What was pretty interesting in this case as well is that the officers all were wearing at least audio recording. The dash cams ostensibly weren't working that night, and I'm doing giant air quotes. And there were cameras in the police station, which I was pretty excited about, and I told them. I was sitting there chained to the pole after they had come over when I had complained that my handcuff was too tight and [CHECK] actually tightened as far as it could go.

WOODS: Oh!

GERICKE: It was like, get me out of this. It was literally something out of a movie. I was like, wow, okay, we watch these stories and it's good cop/bad cop, and I just kept waiting: when is good cop going to come around? (laughs) And so they had the cameras, and I said, look guys, just so that we're on the same page: once this is said and done, one, I'm going to sue you, and two, I will be subpoenaing all the footage from the station as well, because it was a pretty confrontational, feisty situation. Words were exchanged. Definitely it would show that they had chained me to a pole, they had tightened the handcuffs, and in fact, when I was done and released, three officers—and by this stage it was about 3:00 in the morning; it's March in New Hampshire, so it's cold and dark—took me out the back door. They didn't release me to the front of the station, by which time we had six activists there—took me out back and did a little scrum circle around me, grabbed my upper arm, and told me: get out of here before someone here gets hurt.

And it turns out this is a remarkably bad department. This is not typical, really, of police departments in New Hampshire. Some of the bigger cities, there is the typical sort of overstepping their mark kind of mentality. But in the small towns, for the most part, it's one-cop towns. They know everyone. They are super nice. I've talked to some police officers who understand what the Second Amendment is about. When they get the paperwork, they just shred it. I've talked to an officer who in fact says, look, when I deal with anyone in the public, I assume they are armed. And so there is that sort of mentality here. But it turns out this little town of Weare just has a really rotten problem, and the stories that have come out since then have been pretty illuminating. People got fired. People had to step down. People are being reinstated. They brought in a new police chief. He seemed on the face of it, okay, this guy understands our problems. He fired a couple of people. But then it turned out he ended up having an affair with his secretary. He's on paid leave right now.

WOODS: Oh, my goodness, okay. Well, that was what I was going to ask you, if there is any way for you to know whether the officers involved after you were found to be in the right in the courts got penalized in any way.

GERICKE: Well, they did. One of the things that the case hinged on was also qualified immunity. So for your listeners, they probably do know, but I like to describe it this way. Qualified immunity is one of those crazy things the state does to just kind of cover their bases, and so they will make the argument that to us mere mundanes, as Will Grigg likes to say, they will say, well, ignorance of the law is no excuse, but what the state does is they say, ignorance of the law

is no excuse when it comes to qualified immunity. It's not excuse unless you're the enforcer of the law, in which case it's an absolute defense. So that was the argument they were making: they were saying, well, we didn't know it was constitutionally protected speech, or it was protected by the First Amendment, this activity of video recording us in public, but even if we kind of should have known, we didn't. So don't hold our feet to the fire. So in my case I think that was the big win, too, where they said, no, no, no, you guys don't get qualified immunity. There's enough case law here that says, of course recording police officers in public is constitutionally protected speech. That had hinged on the *Glik* case, which was out of Boston originally, and that was also a lawyer, and he had been on the Boston Common and had recorded an arrest of someone else, and got popped, got charged with wiretapping, and he won his case a couple of years before mine came before the court. So they had clearly established in 2009 that this is constitutionally protected speech.

WOODS: I want to go now to another part of your life, if I may, because I find it very interesting. You were born and raised in South Africa?

GERICKE: Yes, my dad, actually, was a diplomat. So I did travel all over the world, but I was born there. I spent most of my high school years there in boarding school in Pretoria. So I did have the fortunate life of being able to travel. We lived in Stockholm for a long time, and in Rio, and in New York, actually, in the '70s, and so I did travel, but I also was in high school '83 to '88, which was the end of the apartheid era, and then I did my law school in South Africa.

WOODS: You were telling me in an email about some of what it was like to grow up under apartheid South Africa, and there were features of it that I was not aware of just how authoritarian it was. You were saying something about how they restricted TV to a point long after it was reasonable to keep trying to do that.

GERICKE: Yeah, that was one thing that was fascinating, because having spent the '70s in America, I grew up with television, and then when we returned to South Africa, in I think it was '78, there were still no TVs there. They came out that year. But South Africa received their first televisions in 1978.

WOODS: How can that be?

GERICKE: It's crazy, right?

WOODS: It was a prosperous country. It was a modern country. It was not a less-developed country. How could they possibly justify this? I see how they could justify it, but how did they get away with it? Everybody must know there are TVs around the world, right?

GERICKE: Yeah, and this was the old days where it's not like now, where we are fortunate to have hundreds of channels, and it's a business and stuff. I likened growing up in South Africa in the '70s and '80s to I think what America was probably like in the '50s. So once we got television we had initially only one station. It broadcast 6:00 news, had some weird German detective stories that were dubbed into Afrikaans, where the lips and the words didn't even

sync, and then TV would end again with news at 10 o'clock, and then that would be it. So it was a state-owned station. It was obviously very censored and controlled in terms of the messaging, and then over time there was a second station and then a third station. And to just give you an idea, it was the biggest deal ever when they decided they were going to show *Dallas*, the TV show, on TV. That was scandalous. And it was everyone—we used to have *Dallas* viewing parties to be able to see how America was and how things worked. It was an incredibly controlled society.

In fact, up until the time I started college—this was the late '80s—the newspapers were censored literally with blacked out words in your newspaper. It's one of those fortunate situations that we talk about with technology kind of setting us free. We see it with the Internet. It's a kind of genie that can't go back in the bottle. At the time they had more control over the technology. But then by the late '80s there were printing presses that they couldn't control anymore. So we started to get alternative newspapers—people really reporting on the border wars. We had several decades of boycotts from America, so you couldn't—a car, an imported car, cost about two to three times what a house cost. So most of us were driving in really, really crappy, old—I think my first car was like a 1968 Austin Mini, and it was so beat up that you could actually see the ground with that rusted out at the bottom, and things like art and records.

There was one record library in Johannesburg where they were allowed to import music, and it would be a free for all. We lived about an hour's drive from Jo-burg, and on Friday afternoons when we knew they got new records in, everyone from college, from university, would jump in the car, and we'd go to the record library, and it would be like fisticuffs pretty much to get new music. And then whoever got the record would dub 10 tapes, and then we would all share and swap it out. And one year they did an arts festival, and they brought in Pink Floyd's *The Wall*, the movie, and it was not only standing room: they only showed it once, and I think they were like, okay, let's don't show this kind of subversive stuff again. People might start getting ideas. And of course, they did. One of the big protest songs that you would see in the townships at the marches was people marching and singing, "We don't need no education; we don't need no state control." And that's powerful stuff.

WOODS: I can understand why, if they want to maintain a racially separate kind of social arrangement, they would want to have controls on what can be said and heard about and so on, but it seems like this control over music is just so over the top that it's hard to understand what the connection is between that and maintaining their grip on this racial separation. Are there other goals of the regime other than just keeping the blacks in their place? Obviously they are also oppressing the whites, too. What are they aiming at? What's the ideology that's ruling that country that says we keep blacks separate, and we also keep TVs away from the white people?

GERICKE: I think it's control. It's that sort of authoritarian mindset, and I think especially in a place like South Africa, where you're talking 80% black population—20-25% white. So there, of course, it was partially a numbers game, but it was also just really about control.

Another example, and it was interesting because you would watch over time how they were like, oh, okay, this part is slipping. Oh, darn it, we gave them TV, and now look at them, these uppity slaves. And a prime example or two, actually, that have just fascinated me over time is the movie *Black Beauty*, about the horse, was banned in South Africa solely on the title of the movie. And it was a huge deal when the *Cosby Show* started showing on what at that time was sort of dubbed the black channel. So we went from one TV channel to two, to three, and of course, now it's all different, but the second and the third channel became sort of black television, so they were trying to cater to that, and that might have been the shift where they were like, oh, wow, this squawk box can really just keep tamped down and keep them at home, and maybe we can use this as an authoritarian tool instead of being scared of it as a subversive tool. Just use it to dumb people down and to keep them at home, and so when they started—it was a big deal. They actually decided, okay, wow, we're going to show the *Cosby Show*, and it was—it took years. We had censorship boards, and they didn't want to show it because it showed a successful, healthy, family doctor with these great kids, and he happened to be black.

And so when I look back at really just growing up that way—compulsory military conscription, wars that were undeclared on borders. No one knew who was fighting where. We knew that our friends would go to the army, and they would come back, and of course, now we know it's PTSD, but at the time you were just like, wow, you've kind of changed. And just horror stories, horror stories, of course because war is never a good thing.

WOODS: Now you were a white South African. What kind of interaction did you have with black South Africans?

GERICKE: That's a great question. Honestly, mostly it was economic. So in terms of the separation, right? So when I was in high school, I was in an all-girls boarding school. It was all white girls. When I was six or seven, we actually started taking in Chinese nationals, and I will never forget. It was probably some sidelong family friend or someone who was like, oh, you're letting yellow people in? And it really struck me and stuck in my mind that sort of mentality of what? Is that how you look at the world? But the apartheid regime was just our normal and then another normal. And for the black population they had passbooks. They were only allowed in certain places. So my interaction was primarily my nanny was black. You'd have a gardener and a cook, maybe someone who worked at your church, but it was fairly segregated. Certainly by the time I got to college, the university I went to became unsegregated, and that was really the first time where I would say I had black peers or Indians, Indians from India, and that's where it really started to change. And of course, late '80s early '90s, this was when Nelson Mandela was released from jail. I wish I could find this footage because to me it was a really big deal. We had—there were probably, I don't know, 8 or 10 friends. We'd all been sort of small-time anti-apartheid activists. You know, you'd go on some marches. I kind of liked to do some

of my activism as how can I make something better. So I would teach extra classes for students who had started at the University of Pretoria and maybe weren't quite up to speed. So I'd do extra classes just for classmates. But we went to Nelson Mandela's inauguration in '94, and it was just this sea of people at the union buildings, which was sort of the state capitol in Pretoria, and just tens of thousands if not hundreds of thousands of people, and just, you know, the eight of us white people in between the sea of people. I remember CNN came over, and they shot a lot of footage because we were all dancing and hanging out.

And Nelson Mandela also had these issues. Certainly, you know, Fidel Castro was at the inauguration. There's certainly stuff that when you look back 20 years later, you can be like, oh, maybe this, maybe that, but at that time, I was still young enough where I thought the issue was, oh, it's this white government that's the problem, and of course, 20 years later, I'm like, well, now I sort of see the black government is equally crappy, and so maybe the issue isn't what the race of the person is, the issue might actually be the structure of government.

WOODS: Oh, very interesting. Now, what year did you move away from South Africa?

GERICKE: I won a green card in the lottery, and given my role with the Free State Project, I'm sure someone at this stage is like, ohhhh, we shouldn't have done that. But there's a lottery called the diversity lottery, and I think they give out about 25 visas a year, or did at that time, and it literally is just they pull your name out of a hat, and my parents had been traveling, and they said, oh, this thing is happening. Should we put you in? And I was like, sure! What are my chances? One out of like 27 million or something. So I was in law school at the time and came home and found this envelope on my front mat, and I was like, oh, what's this? And it's like you've won a green card to America. And I was like, oh, hell yeah, I'm going. And that was in '94. I had to finish school, and I moved out in '96.

WOODS: So you got to see a little bit of what the new South Africa looked like. What were your impressions?

GERICKE: Yeah, it was definitely by that stage, things really had loosened up a lot. There wasn't as much state control. Certainly being able to see businesses start. Of course, all of that had been sort of messed up over time, too, because one of the negative, I think, effects of the transition was to really push for affirmative action sort of type stuff so where people—you got certain subsidies and benefits—if you form a business that looks this way as opposed to this way. So over time—but at the time it was pretty exciting. It really felt like something new. I think one of the successful things they did in South Africa is to do the truth and reconciliation process, where people could come and instead of really playing an authoritarian-based blame game, it was more like let's all talk about this horrible history we have, and let's really communicate. Because for me, as someone who leans more towards a voluntary society, we have to look at what tools are successful within a voluntary society, and one of them is you know what? You kind of have to communicate. So that was really great to see.

I think it was very painful. But South Africa was—I believe still is, in fact—the only country in the world that voluntarily gave up their nuclear weapons, and they did have nuclear weapons, and really the whole shift from that apartheid-controlled nationalist era into this more free society, which in the end turns out to be not that great either, was compared to many, many other countries very peaceful and actually quite successful. What happens after that, you know, not so great, but that time was really exciting. You could tangibly feel some sense of hope and freedom. And I think that's really what appeals to me a lot about being here in New Hampshire and being part of the Free State Project, is that sense of hope, that sense of optimism, that idea of if we band together, we can actually effect positive change. And knowing if you're in trouble, or you're getting arrested maybe someone is going to show up, someone is going to care. We really are building a robust, thriving community of people who believe in liberty and understand the issues. I would say most of the movers who are coming now—it really is quite intellectual. I think people don't fully appreciate that, but the people moving here are incredibly smart, and I am just daily amazed by the movers coming in and this idea of a solid philosophical basis. These are people who have read Hayek, who have read Mises—not all of them, of course, but there really is that sort of sense of there is a philosophy, and we can see some sort of end game that is going to be positive for freedom and for liberty in our lifetime. I don't want to be one of these people who ends up when I'm 70, and I'm like, yeah, we've been fighting this good fight forever. I actually want to see tangible freedoms in my time, and being together with other people who feel that way is exciting and invigorating.

WOODS: All right, Carla, I'm going to give you 30 seconds to make your pitch for the Free State Project—I'm sure most people listening already know what it is, but not everybody—explaining the idea, and then you can talk a little bit about the Liberty Forum that you have. I guess this year it's going to be in March. So ready, and go.

GERICKE: The Free State Project is a cultural revolution. It's a movement where we are trying to attract 20,000 liberty lovers to the state of New Hampshire. We have about 16,100 people who have signed up, and when we get those last 4,000 and change, we will trigger the move, which means everyone who has pledged to be part of the Free State Project, they have five years to do that. And typical libertarian style, some of us decided not to wait, and so we're here already, and we welcome people to sign up and to move. You can do that at FreeStateProject.org. We host two events. We have the Porcupine Freedom Festival in the summer. But we have our upcoming winter event, which is the NHLibertyForum.com, New Hampshire Liberty Forum, and that is a hotel conference where we both like to showcase what we're doing in the state. We get some fancy pants speakers out. Tom has been one of our speakers in the past. We loved having him, and yeah, we get together, and that will be March 5th through the 8th, 2015, and we've moved it to downtown Manchester into a larger space, so we really encourage people to come. Come check us out. Come hang out with the community. Once you come, you don't want to leave.