

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THE AMERICAN CIVIL LIBERTIES)	
UNION OF ILLINOIS,)	
)	
Plaintiff,)	
	)	Case No. 1:10-cv-05235
v.)	
	)	Judge Suzanne B. Conlon
ANITA ALVAREZ, Cook County State's)	
Attorney, in her official capacity,	)	Magistrate Judge Sydney I. Schenkier
)	
Defendant.)	

**THE ACLU'S MEMORANDUM IN SUPPORT OF ITS MOTION
TO AMEND JUDGMENT, TO FILE AN AMENDED COMPLAINT,
AND FOR A PRELIMINARY INJUNCTION**

Plaintiff the American Civil Liberties Union of Illinois ("ACLU") seeks declaratory and injunctive relief against prosecution by defendant Anita Alvarez under the Illinois Eavesdropping Act (the "Act"). On October 28, 2010, the Court dismissed the ACLU's complaint, denied as moot the ACLU's motion for a preliminary injunction, and entered judgment dismissing the case without prejudice. Dkt. Nos. 32-34. The Court's sole ground for doing so was standing. Because the ACLU is able to cure the standing issues noted by the Court, the ACLU moves under Rule 59(e) to amend its judgment of dismissal and order denying preliminary injunctive relief so that the ACLU can move to amend its complaint under Rules 15(a)(2) and 21 and renew its motion for a preliminary injunction under Rule 65(a). The proposed amended complaint (attached as Exhibit 1) more particularly describes the ACLU's program of audio recording, supplements the complaint with new facts, and adds two individual plaintiffs. In further support of both its Rule 59 motion and its request for injunctive relief, the ACLU submits two new supporting declarations of ACLU employees (attached as Exhibits 2 and

3). Based on these submissions, the ACLU also respectfully requests this Court to amend its earlier order of denial and to now grant a preliminary injunction.

BACKGROUND

The ACLU alleges that it would *immediately* undertake a program of audio recording police officers, without the officers' consent, when (a) the officers are performing their public duties; (b) the officers are in public places; (c) the officers are speaking at a volume audible to the unassisted human ear; and (d) the manner of recording is otherwise lawful ("the ACLU Program") but for fear of prosecution under the Act. Dkt. No. 1 at ¶¶ 3, 16. The Act on its face, and consistent with the Illinois Legislature's intent, prohibits the ACLU's planned audio recording. The ACLU asserts that the Act therefore violates its First Amendment rights to gather, receive, record, and disseminate information on matters of public concern.

On October 28, the Court issued a memorandum opinion and order granting Alvarez's motion to dismiss pursuant to Rule 12(b)(1), holding that "the ACLU has not satisfied its burden of showing that it has standing." Dkt. No. 33 at p. 4. The Court concluded that the ACLU's standing allegations were insufficient, noting: (1) "[c]reating" the ACLU program does not violate the Act (*id.* at p. 4); (2) Alvarez has not threatened to prosecute, or stated she would or would not prosecute, the ACLU if it implements its program (*id.* at pp. 4-5); (3) Alvarez has not prosecuted multiple individuals under the Act (*id.*); (4) there was no "time frame" for implementing the ACLU's program of audio recording police officers (*id.* at p. 5); (5) there was no allegation that an organization (as opposed to an individual) could or would be prosecuted under the Act (*id.*); and (6) there was no "imminent" threat of prosecution of the ACLU (*id.*). On October 28, the Court also denied as moot the ACLU's preliminary injunction motion, *id.* at p. 1, and issued a judgment dismissing the case without prejudice, Dkt. No. 34.

The ACLU's proposed amended complaint addresses these standing concerns. It adds two new plaintiffs: Colleen Connell, Executive Director of the ACLU, and Allison Carter, an ACLU employee. *See* Exh. 1, at ¶¶8-9. Moreover, it adds the following updated and particularized allegations regarding the ACLU program of audio recording on-duty police:

- 1) Connell will instruct Carter (and other ACLU employees) to audio record police, and that Carter will do so. ¶¶20, 21.
- 2) The ACLU has fully implemented the program, and is prepared immediately to actually audio record police. ¶¶19-43.
- 3) The ACLU was prepared to audio record police on June 10 and November 8, 2010, but refrained from doing so based on a reasonable fear of prosecution. ¶¶22, 44.
- 4) The ACLU intends to audio record police officers at public demonstrations, parades, and assemblies that are both planned and spontaneous. ¶¶17, 23.
- 5) But for the threat of prosecution under the Act, Connell would direct Carter to audio record police at an annual anti-war protest in spring 2011 in Chicago, and Carter would do so. ¶23.
- 6) Alvarez has never indicated she would not prosecute the ACLU or its employees for violations of the Act. ¶¶25(d), 46.
- 7) Alvarez is currently engaged in two different prosecutions of individuals under the Act for audio recording police. ¶¶25(c), 39.
- 8) At least seven other Illinois State's Attorneys have prosecuted at least nine other civilians under the Act for doing so. ¶¶25(e), 40.
- 9) The ACLU is a "person" under Illinois law that may be prosecuted under the Act. ¶25(g).
- 10) The Office of the Cook County State's Attorney repeatedly has prosecuted private corporations for criminal offenses. ¶25(h).
- 11) The ACLU (acting by and through its employees), Connell, and Carter have been and continue to be deterred from audio recording police by a reasonable fear of prosecution by Alvarez under the Act. ¶¶19-21, 25, 45.

ARGUMENT

I. This Case Should Be Reopened Under Rule 59.

Once a final judgment has been entered, a plaintiff may amend her complaint by timely moving to set aside the judgment under Rule 59(e).¹ *See Crestview Vill. Apartments v. U.S. Dept. of Hous. & Urban Dev.*, 383 F.3d 552, 558 (7th Cir. 2004); *Sparrow v. Heller*, 116 F.3d 204, 205 (7th Cir. 1997). "What the aggrieved party must do [] is to file a motion under Rule 59(e) seeking relief from the judgment, and, if it believes that the deficiencies the court has identified can be cured through an amended complaint, it must proffer that document to the court in support of its motion." *Fannon v. Guidant Corp.*, 583 F.3d 995, 1002 (7th Cir. 2009). That is precisely what the ACLU is doing here.

Generally, a motion to amend judgment should be granted under Rule 59 where there is new evidence or an error of law. *See Fannon*, 583 F.3d at 1002. In the present procedural context, the "new evidence" standard is satisfied where, as here, the final judgment is entered simultaneously with the dismissal of an original complaint without prejudice and where a proposed amended complaint would cure the deficiency. *See Foster v. DeLuca*, 545 F.3d 582, 584 (7th Cir. 2008). "In evaluating the merits of the motion to vacate a judgment [under Rule 59(e)], the district court is required to consider the merits of the movant's request for leave to amend its complaint." *Harris v. City of Auburn*, 27 F.3d 1284, 1287 (7th Cir. 1994); *see also Foster*, 545 F.3d at 584 (holding that it was an abuse of discretion to deny motions under Rules 59(e) and 60(b) where "the district court made no determination regarding the sufficiency of the amended complaint"); *Paganis v. Blonstein*, 3 F.3d 1067, 1073 n.7 (7th Cir. 1993) ("[I]n general,

¹ Alternatively, a party may so move under Rule 60(b). It should be noted that the ACLU found no case law holding that either Rule 59 or Rule 60 relief was a predicate to seeking amendment under Rule 15 where a final judgment had been entered but the dismissal of the case had been *without prejudice*. As a result, it would appear to be an open question as to whether the ACLU's right to amend the complaint under Rule 15 is conditioned on obtaining relief under Rule 59 or Rule 60.

when a party simultaneously files both motions, the district court will have to examine the merits of a motion for leave to amend before it can decide whether or not to grant the party's Rule 59(e) or 60(b) motion."). As the Supreme Court reasoned in *Warth v. Seldin*, 422 U.S. 490, 501-502 (1975), in standing cases "it is within the trial court's power to allow or to require the plaintiff to supply, by amendment to the complaint or by affidavits, further particularized allegations of fact deemed supportive of plaintiff's standing."

Here, the ACLU is seeking to avail itself of the opportunity to supply further particularized allegations of fact to establish its standing. The Rule 59 motion should be granted because, as discussed *infra* in Part II, the proposed amended complaint recites new facts that address the standing issues noted in the Court's decision.²

Judicial efficiency also weighs in favor of granting the ACLU's Rule 59 motion and allowing its proposed amended complaint. To do otherwise would leave the ACLU, and/or Connell and Carter, filing a fresh lawsuit since this Court's dismissal was without prejudice.

II. The Proposed Amendment Should Be Granted Under Rule 15 and Rule 21.

A. Amendments Should Be Liberally Granted.

"This circuit has adopted a liberal policy respecting amendments to pleadings so that cases may be decided on their merits and not on the basis of technicalities." *Green v. J.C. Penney Inc.*, 722 F.2d 330, 333 n.3 (7th Cir. 1983). Leave to amend is "especially advisable" after the dismissal of a first complaint. *Barry Aviation Inc. v. Land O'Lakes Airport*, 377 F.3d 682, 687 & n.2 (7th Cir. 2004) (collecting cases). "In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure

² The ACLU respectfully maintains that its initial complaint pled sufficient allegations to confer standing upon it to litigate its claim that the Act violates the First Amendment, *see* Dkt. No. 26, Parts II.B-C at pp. 22-28, but that the proposed amended complaint addresses the issues noted by the Court.

deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be 'freely given.'" *Id.* at 687, quoting *Foman v. Davis*, 371 U.S. 178, 182 (1962).

Since none of these defects are present here, leave to amend should be allowed. *See Daugherty v. Traylor Bros, Inc.*, 970 F.2d 348, 351 (7th Cir. 1992). The ACLU has not unduly delayed moving to amend. It did so well within the 28-day period under Rule 59. There is no basis for concluding that the ACLU has acted in bad faith or with a dilatory motive. The ACLU is not guilty of repeatedly failing to cure deficiencies by amendments previously allowed since this is the ACLU's first motion to amend. Alvarez will suffer no undue prejudice as a result of amendment. Denial of the relief the ACLU seeks will result in the filing of a new action. As set forth below, amendment would not be futile. *See infra* Parts II.B and II.C.

With respect to Rule 21, "the court may at any time, on just terms, add or drop a party." Fed.R.Civ.P. 21. The standard for adding parties is "the same" under both Rule 15 and Rule 21. *Moore's Federal Practice* § 15.16[1] at p. 15-55 (3d ed. 2005).

B. The Amended Complaint Would Establish Pre-Enforcement Standing.

The ACLU's proposed amended complaint is not futile because its new allegations address the standing issues noted by the Court as to the ACLU. In addition, the amended complaint establishes standing on behalf of two additional individual plaintiffs, Connell and Carter. The new allegations must be accepted as true. *See Warth*, 422 U.S. at 501 (in evaluating standing "both the trial and reviewing courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party."); *Alliant Energy Corp. v. Bie*, 277 F.3d 916, 920 (7th Cir. 2002) (reversing district court's decision not to permit second

amended complaint: "It is easy to imagine facts consistent with this complaint and affidavits that will show plaintiffs' standing, and no more is required.").

1. The Law of Pre-Enforcement Standing.

"To qualify for standing, a claimant must present an injury that is [1] concrete, particularized, and actual or imminent; [2] fairly traceable to the defendant's challenged behavior; and [3] likely to be redressed by a favorable ruling." *Davis v. FEC*, 128 S. Ct. 2759, 2768 (2008), citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

An organization has standing on its own behalf when it "seek[s] judicial relief from injury to itself and to vindicate whatever rights and immunities the association itself may enjoy." *Warth*, 422 U.S. at 511. See also *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 n.19 (1982) ("organizations are entitled to sue on their own behalf for injuries they have sustained"); *Pennsylvania Chiropractic Ass'n v. Blue Cross Blue Shield Ass'n*, No. 09 C 5619, 2010 WL 1979569, at *19 (N.D. Ill. May 17, 2010) ("An association may satisfy these elements [for constitutional standing] by asserting claims that arise from injuries it sustained itself").³

An organization suffers an injury-in-fact giving rise to standing when a law interferes with the organization's protected First Amendment activity. *Am. Booksellers Ass'n. v. Hudnut* ("*Hudnut*"), 771 F.2d 323, 326-27 (7th Cir. 1985); *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011, 1019 (9th Cir. 2009), cert. denied, 130 S. Ct. 1569 (2010); *NYCLU v. NYC Transit Auth.*, 675 F. Supp. 2d 411, 425-27 (S.D.N.Y. July 16, 2009); *Stauber v. City of New York*, 2004 WL 1593870, at **12-17 (S.D.N.Y. 2004). For example, an organization has standing to challenge a law that, as here, violates its First Amendment right to monitor and gather

³ The ACLU does not plead derivative representational standing for its members. Rather, it pleads direct organizational standing for itself. *Cf. Summers v. Earth Island Inst.*, 129 S. Ct. 1142, 1149 (2009) (addressing representational standing where "[t]he regulations under challenge [in that case] neither require nor forbid any action on the part of" the plaintiff organization).

information about government activity. *NYCLU*, 675 F. Supp. 2d at 425-27 (granting a preliminary injunction providing access to observe certain government hearings). *See also FEC v. Akins*, 524 U.S. 11, 20-21 (1998) (holding that "inability to obtain information" is an injury that provides standing).

An organization has standing to bring a pre-enforcement First Amendment challenge to a law where, as here, the organization "has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by [the] statute, and there exists a credible threat of prosecution." *Babbitt v. UFW*, 442 U.S. 289, 298 (1979). This rule ensures that a party need not "undergo a criminal prosecution as the sole means of seeking relief." *Id.* (quoting *Doe v. Bolton*, 410 U.S. 179, 188 (1973)). *See also Virginia v. Am. Booksellers Ass'n.* ("*Am. Booksellers Ass'n.*"), 484 U.S. 383, 393 (1988) ("[T]he alleged danger of this statute is, in large measure, one of self-censorship; a harm that can be realized even without an actual prosecution."). Many courts have held that a wide variety of organizations have such pre-enforcement standing. *See, e.g., Holder v. Humanitarian Law Project*, 130 S. Ct. 2705, 2717 (2010); *ACLU of Nevada v. Heller*, 378 F.3d 979, 983-85 (9th Cir. 2004); *New Hampshire Right to Life PAC v. Gardner* ("*NH-RTL-PAC*"), 99 F.3d 8, 13-15 (1st Cir. 1996); *S.O.C., Inc. v. County of Clark*, 481 F. Supp. 2d 1122, 1125-29 (D. Nev. 2007); *ACLU v. Reno*, 31 F. Supp. 2d 473, 479-81 (E.D. Pa. 1999); *ACLU v. Johnson*, 4 F. Supp. 2d 1024, 1026-28 (D. N.M. 1998).

The "credible threat of prosecution" standard, *Babbitt*, 442 U.S. at 98, is "quite forgiving." *NH-RTL-PAC*, 99 F.3d at 14; *Reno*, 31 F. Supp. 2d at 479. The Seventh Circuit has explained:

Injury need not be certain. Any pre-enforcement suit entails some element of chance: perhaps the plaintiff will desist before the law is applied, perhaps the law will be repealed, or perhaps the law won't be enforced as written. But pre-enforcement challenges nonetheless are within Article III.

Brandt v. Vill. of Winnetka, 612 F.3d 647, 649 (7th Cir. 2010). Plaintiff need not show "an imminent criminal prosecution," in the "temporal" sense. *520 South Michigan Ave. Assocs. v. Devine*, 433 F.3d 961, 962-63 (7th Cir. 2006). Nor need plaintiff show it was "threatened with prosecution." *Doe v. Bolton*, 410 U.S. 179, 188 (1973). *Accord Majors v. Abell*, 317 F.3d 719, 721 (7th Cir. 2003) ("A plaintiff who mounts a pre-enforcement challenge to a statute that he claims violates his freedom of speech need not show that the authorities have threatened to prosecute him . . . ; the threat is latent in the existence of the statute."). Further, plaintiff need not show that anyone has ever been prosecuted. *Babbitt*, 442 U.S. at 302; *Doe*, 410 U.S. at 188; *Kucharek v. Hanaway*, 902 F.2d 513, 516 (7th Cir. 1990). *See also Hudnut*, 771 F.2d at 327 ("A challenge may be ripe . . . even when the statute is not yet effective.").

Rather, it will usually suffice for the plaintiff to show that the statute is not "moribund." *Doe*, 410 U.S. at 188; *NH-RTL-PAC*, 99 F.3d at 15; *Reno*, 31 F. Supp. 2d at 480. *See also Bauer v. Shepard*, 620 F.3d 704, 708 (7th Cir. 2010) ("the existence of a statute implies a threat to prosecute, so pre-enforcement challenges are proper"). *Cf. Poe v. Ullman*, 367 U.S. 497 (1961) (no standing to challenge a statute enacted in 1879 and only enforced once in the ensuing 82 years). Further, standing usually exists when the relevant prosecutor "has not disavowed any intention of invoking the criminal penalty." *Babbitt*, 442 U.S. at 302. *See also Am. Booksellers Ass'n.*, 484 U.S. at 393 (same); *Commodity Trend Serv., Inc. v. CFTC*, 149 F.3d 679, 687 (7th Cir. 1998) ("a threat of prosecution is credible when a plaintiff's intended conduct runs afoul of a criminal statute and the Government fails to indicate affirmatively that it will *not* enforce the statute") (emphasis in original); *NRA v. City of Evanston*, 2009 WL 1139130, at *3 (N.D. Ill. Apr. 27, 2009) (Aspen, J.) (holding that a prosecutor's statement "during litigation that it might never prosecute plaintiff or that it does not intend to prosecute plaintiff" (quoting *Horina v. City of*

Granite City, No. 05 C 0079, 2005 WL 2085119, at *4 (S.D. Ill. Aug. 29, 2005) does not comprise a "disavowal" of prosecution that bars pre-enforcement standing).

Courts repeatedly have held that the ACLU has organizational standing for itself to bring First Amendment challenges to laws that burden its First Amendment rights. *See, e.g., Heller*, 378 F.3d at 983-85; *S.O.C., Inc.*, 481 F. Supp. 2d at 1125-29; *Stauber*, 2004 WL 1593870, at **12-17; *Reno*, 31 F. Supp. 2d at 479-81; *Johnson*, 4 F. Supp. 2d at 1026-28. *See also ACLU v. GSA*, 235 F. Supp. 2d 816 (N.D. Ill. 2002) (Castillo, J.) (approving an injunctive class settlement).

2. The pre-enforcement standing of the ACLU.

a) ACLU's Program is fully operational.

The amended complaint would add allegations that demonstrate that the ACLU'S Program is fully operational: Connell will instruct Carter to audio record police, and Carter will do so (¶¶8, 9, 20, 21); the ACLU has fully implemented the program, and is prepared immediately to actually audio record police, but refrains from doing so due to a reasonable fear of prosecution(¶¶3,19); the ACLU twice refrained from audio recording police in the last six months, due to its reasonable fear of prosecution (¶¶22, 44); the ACLU intends to audio record police officers at expressive events that are both planned and spontaneous (¶¶17, 23); and, but for the threat of prosecution under the Act, Connell would direct Carter to audio record police at events that occur spontaneously and at a particular protest in spring 2011, and Carter would do so (¶23). Thus, the amended complaint addresses the Court's concern that the ACLU program had only been created, but was not ready to be fully implemented, and that the ACLU had not pled the existence of an employee who was prepared to actually record police officers as part of the program. Dkt. No. 33 at pp. 4-5.

b) The ACLU Program is covered by the Act.

Here, the Act on its face, and as intended by the Illinois Legislature, plainly applies to the ACLU program of certain non-consensual audio recording of on-duty police. *See* 720 ILCS 5/14-1(d) & 2(a)(1)(A). Alvarez has expressly acknowledged this. *See* Dkt. No. 19, at p. 7 ("Plaintiff is precluded from audio recording any conversations without consent of all parties to such conversation, including encounters between law enforcement and citizens.").⁴

c) ACLU is subject to prosecution under the Act.

Likewise, as a matter of law, the ACLU itself plainly is subject to prosecution under the Act for any audio recording by ACLU employees authorized and directed by the ACLU's top management. The Act criminally prohibits certain audio recording by a "person." 720 ILCS 5/14-2. For purposes of the Illinois criminal statutes, a "person" includes a "private corporation," 720 ILCS 5/2-15, and a corporation may be prosecuted for crimes authorized by its top managerial agents, *id.* at 5/5-4(a)(2). The amended complaint alleges that the ACLU is a legal corporation. ¶7. Alvarez and predecessor Cook County State's Attorneys repeatedly have prosecuted corporations for violations of various criminal statutes based on actions by top management. *See, e.g., People v. Universal Public Transp., Inc.*, 401 Ill. App. 3d 179, 192 (1st Dist. 2010) (corporation convicted for fraud); *People v. Bohne*, 312 Ill. App. 3d 705, 706 (1st Dist. 2000) (corporation indicted for tax impropriety); *People v. O'Neil*, 194 Ill. App. 3d 79, 88-89 (1st Dist. 1990) (corporation indicted for involuntary manslaughter). Thus, the amended complaint would allege that the ACLU may be prosecuted as a "person" under the Act (¶25(g)), and that

⁴ Alvarez also argued that the ACLU program fell within the Act's exemption for recording by one conversation participant who reasonably suspects that he is about to be the victim of a crime committed by another conversation participant. *See* Dkt. No. 19, at pp. 5-6; 720 ILCS 5/14-3(i). In fact, the ACLU program does not fall within this exemption. Rather, the ACLU program extends to police conduct that is not reasonably suspected to be criminal, and to recording by persons who are not potential crime victims.

Alvarez has prosecuted organizations as persons (§25(h)). This addresses the Court's concern that the ACLU had not alleged that an organization "could" be prosecuted under the Act. Dkt. No. 33 at p. 5.

d) ACLU has a reasonable fear of prosecution

The amended complaint shows that ACLU has a reasonable fear of prosecution. Alvarez has never indicated that she would not prosecute the ACLU under the Act (§25(d)) and has stated that ACLU is precluded under the Act from audio recording law enforcement officers (§25(d)). If it were Alvarez's position that the ACLU would not be prosecuted under the Act, or that the ACLU program did not violate the Act, Alvarez would have said so by now, instead of vigorously litigating her right to prosecute the ACLU under the Act. This is powerful evidence of the reasonableness of the ACLU's fear of prosecution. *See Am. Booksellers Ass'n.*, 484 U.S. at 393; *Babbitt*, 442 U.S. at 302; *Commodity Trend Service, Inc.*, 149 F.3d at 687.

Further, the amended complaint would allege additional relevant prosecutions under the Act. Most importantly, it would allege that Alvarez is currently prosecuting two different cases under the Act for allegedly recording on-duty police. §§25(c), 39. The original complaint alleged only one such prosecution. Alvarez filed charges in the other case on August 31, 2010 – 12 days after the ACLU filed its original complaint. Further, the amended complaint alleges that in the past six years, at least seven other Illinois State's Attorneys have prosecuted at least nine other civilians under the Act for audio recording on-duty police. §§25(e), 40. At the time it filed its original complaint, the ACLU was only aware of five civilians prosecuted by three State's Attorneys. Finally, the amended complaint alleges that one of these prosecutions involved a program, like the one here, of audio recording on-duty police to increase police accountability. §§25(e), 41. Thus, the Act plainly is not "moribund." *Doe*, 410 U.S. at 188; *NH-RTL-PAC*, 99

F.3d at 15; *Reno*, 31 F. Supp. 2d at 480. *See also Holder*, 130 S. Ct. at 2717 (holding that organizations had standing to challenge certain statutory provisions that had led only to "several" prosecutions). Accordingly, the ACLU, Connell, and Carter reasonably fear prosecution.

3. The Pre-Enforcement Standing of Connell and Carter.

As set forth immediately above, the amended complaint would adequately allege the ACLU's own injury and standing. In the event there is any doubt on this point, the amended complaint also would add as plaintiffs Connell and Carter, two individual ACLU employees who have injury and standing. Further, the new allegations regarding Connell and Carter buttress the injury and standing of the ACLU. For these additional reasons, amendment would not be futile.

Putative plaintiff Carter, an ACLU employee, clearly would be subject to prosecution if she audio recorded on-duty police as part of the ACLU program. The amended complaint thus would add allegations that Carter is prepared to and would record police when authorized and directed to do so by Connell (¶21); and that Carter has not done so due to her reasonable fear, and Connell's, of prosecution of Carter by Alvarez under the Act (¶¶20, 21, 25, 45).

Putative plaintiff Connell, the ACLU's Executive Director, clearly would be subject to prosecution if she authorized and directed Carter to audio record on-duty police as part of the ACLU program, and Carter did so. As a matter of law, a person may be criminally liable for the conduct of another when she is "legally accountable" for the Act. 720 ILCS § 5/5-1. That occurs when "either before or during the commission of an offense, and with the intent to promote or facilitate that commission, he or she solicits, aids, abets, agrees, or attempts to aid that other person in the planning or commission of the offense." *Id.* at § 5/5-2(c). *See also People v. Moss*, 205 Ill. 2d 139, 163-64 (2001) ("the only additional fact necessary to establish accountability beyond the act of solicitation is the fact that the principal crimes had been committed").

Accordingly, the amended complaint would add the allegation that Connell herself may be prosecuted under the Act for directing another ACLU employee to engage in audio recording of police in public (§§20, 23); that she reasonably fears such prosecution (§20); and that she would authorize and direct such audio recording, but for her fear of prosecution of the ACLU, Carter, and herself (§23).

C. The Amended Complaint would not be subject to *Younger* Abstention.

Should the Court reach Alvarez's *Younger* arguments in its evaluation of futility, the Court should conclude that the *Younger* abstention doctrine is inapplicable here. Alvarez relies upon *520 S. Michigan Avenue Associates, Ltd. v. Devine*, 433 F.3d 961, 963 (7th Cir. 2006) for the proposition that abstention may be appropriate if a state prosecution is imminent. That decision, however, is noteworthy for the fact that standing was found precisely in the situation here—namely where an organization, in that case a hotel, sought pre-enforcement review of a state statute based on the fact that the statute was forcing the hotel to change its behavior in the present. *Id.* at 962-63. The court held that the organization had standing even though its prosecution wasn't imminent in the temporal sense. *Id.* Then, the court observed in an aside: "If a criminal prosecution of the Hotel really were imminent, then a federal court might well abstain on comity grounds—for the prosecution would offer the Hotel an opportunity to present its legal arguments, and states are entitled to insist that their criminal courts resolve the entire dispute." *Id.* at 963.

That *dicta* however, as relied upon by Alvarez, is contrary to controlling Supreme Court and Seventh Circuit jurisprudence, which provides that "[i]n the absence of [a state] proceeding ... a plaintiff may challenge the constitutionality of the state statute in federal court." *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 930 (1975); *see also Forty One News, Inc. v. County of Lake*, 491 F.3d 662, 665 (7th Cir. 2007) ("*Younger* abstention is appropriate only when there is an action in

state court against the federal plaintiff and the state is seeking to enforce the contested law in that proceeding."); *Steffel v. Thompson*, 415 U.S. 452, 472 (1974) ("Requiring the federal courts totally to step aside when no state criminal prosecution is pending against the federal plaintiff would turn federalism on its head."); *Allen v. Allen*, 48 F.3d 259, 261 (7th Cir. 1995) ("[T]hese abstention doctrines extend only to parties to ongoing state court litigation while specifically leaving non-parties free to pursue their claims."); *Hoover v. Wagner*, 47 F.3d 845, 848 (7th Cir. 1995).

III. This Court Should Amend its Denial of a Preliminary Injunction.

The ACLU moves the Court to amend its denial of the preliminary injunction motion as moot, and the ACLU renews its motion for a preliminary injunction. The ACLU seeks this relief on the basis of both its original and new submissions, including the attached declarations of Connell and Carter. *See* Dkt. Nos. 18, 26. *See also* Dkt. No. 27 (the Chicago Police Department's policy of August 2010 regarding in-car audio/video recording), at Part II (describing the value of such recording), and Part IV.A (stating that police officers have "no expectation of privacy" related to such recording). As set forth in the ACLU's proposed amended complaint, such relief would be extended to the ACLU, Connell, Carter, and the ACLU's other employees. *Cf.* Dkt. No. 1 (the ACLU's original complaint), at p. 11 (seeking relief on behalf of a broader set of persons). If Connell and Carter are allowed to join this suit, then they join in this motion for a preliminary injunction.

CONCLUSION

For the foregoing reasons, the ACLU respectfully requests that the Court grant its motions to amend the judgment and order denying preliminary relief under Rule 59(e), to amend the complaint under Rules 15(a)(2) and 21, and for a preliminary injunction under Rule 65(a).

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THE AMERICAN CIVIL LIBERTIES)	
UNION OF ILLINOIS, COLLEEN)	
CONNELL, AND ALLISON CARTER,)	
)	
Plaintiffs,	)	Case No. 10 CV 5325
)	
v.	)	Judge Suzanne B. Conlon
)	
ANITA ALVAREZ, Cook County State’s	)	Magistrate Judge Sidney I.
Attorney, in her official capacity,	)	Schenkier
)	
Defendant.)	

AMENDED COMPLAINT

Plaintiffs the American Civil Liberties Union of Illinois (“the ACLU”), Colleen Connell, and Allison Carter, by their attorneys, as their Amended Complaint against defendant Anita Alvarez, in her official capacity as the Cook County State’s Attorney, state as follows:

I. NATURE OF THE CASE

1. This is a civil rights action challenging the constitutionality of the Illinois Eavesdropping Act, 720 ILCS 5/14 (“the Act”), as applied to the audio recording of police officers, without the consent of the officers, when (a) the officers are performing their public duties, (b) the officers are in public places, (c) the officers are speaking at a volume audible to the unassisted human ear, and (d) the manner of recording is otherwise lawful. This application of the Act violates the First Amendment to the U.S. Constitution. The plaintiffs seek declaratory and injunctive relief pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 2201 *et seq.*

2. For nearly a century, the ACLU has sought to protect and to expand the civil liberties and civil rights of all persons in Illinois. It has engaged in this constitutionally protected pursuit through public education, including publication through a variety of media, and advocacy before courts, legislatures, and administrative agencies. The corollary right to gather, receive, record, and disseminate information on matters of public importance relating to civil liberties and civil rights is integral to, and a necessary component of, these other protected activities.

3. In the exercise of these rights, the ACLU (acting through its employees); Connell (as the ACLU's Executive Director and through her direct supervision of ACLU employees); and Carter (as the ACLU's Senior Field Manager and in performing her employment duties), have incorporated the use of common audio/video recording devices into the ACLU's ongoing monitoring of police in public places. Specifically, but for the Act, the ACLU, Connell, and Carter are presently prepared and would immediately audio record police officers, without the consent of the officers, when (a) the officers are performing their public duties, (b) the officers are in public places, (c) the officers are speaking at a volume audible to the unassisted human ear, and (d) the manner of recording is otherwise lawful (hereinafter "the ACLU program"). The ACLU, Connell, and Carter will carry out this ACLU program in Cook County, Illinois. The ACLU, Connell, and Carter will disseminate such recordings when appropriate to the public, and also use these recordings to petition the government for redress of grievances through its advocacy program.

4. The Act makes audio recording police officers in these circumstances a felony. Due to a reasonable fear of arrest and prosecution under the Act by defendant,

the ACLU, Connell, and Carter are presently refraining from engaging in audio recording of police in public pursuant to the ACLU program. This suit seeks a declaration that such conduct is constitutionally protected, and an injunction against enforcement of the Act as applied to the ACLU program.

II. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(3) and (4).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b).

III. THE PARTIES

7. The ACLU is a non-profit, non-partisan, statewide organization with more than 20,000 members and supporters dedicated to protecting and expanding the civil rights and civil liberties guaranteed by the Constitutions and civil rights laws of the United States and the State of Illinois. The ACLU is a not-for-profit corporation incorporated under the laws of the State of Illinois. In all matters relevant to this Amended Complaint, the ACLU acts by and through its staff of approximately 25 salaried employees who are under the direction of the ACLU's Executive Director, Connell.

8. Connell is the ACLU's Executive Director. In this capacity, she directs employees of the ACLU in creating and disseminating communications which further the ACLU's goals of protecting and expanding civil liberties and civil rights. In this capacity, but for the Act, Connell immediately would direct ACLU employees, including Carter, to audio record public police activity as part of carrying out the ACLU program.

9. Carter is the ACLU's Senior Field Manager. In this capacity, she has been selected by Connell to perform the actual audio/video recording of police as part of the ACLU program.

10. Alvarez is the Cook County State's Attorney. In this capacity, she is charged with the enforcement of the criminal laws of the State of Illinois, including the Act. She is sued solely in her official capacity for purposes of declaratory and injunctive relief.

IV. FACTS

A. The right to gather, receive, record, and disseminate information

11. The right to gather, receive, record, and disseminate information is grounded in the Free Speech Clause of the First Amendment. This right is further grounded in:

(a) the Petition Clause of the First Amendment, if the purpose of gathering, receiving, or recording the information is to use it to petition government for redress of grievances; and

(b) the Free Press Clause of the First Amendment, if the purpose of gathering, receiving, or recording the information is to publish and disseminate it to other people.

12. This First Amendment right to gather, receive, record, and disseminate information includes the right to audio record police officers in the circumstances described herein.

B. The ACLU's exercise of its right to gather, receive, record, and disseminate information

13. In pursuing its objectives of protecting and expanding civil rights and civil

liberties, the ACLU regularly gathers, receives, and records information from numerous sources, including by observing events in public places.

14. After gathering, receiving, and recording information, the ACLU regularly publishes and disseminates that information to the general public, and regularly presents that information to government bodies as part of the ACLU's efforts to petition the government for redress of grievances.

15. The ACLU regularly engages in its own expressive activity in public places, and regularly records its own expressive activity at these events.

C. The ACLU program

16. The ACLU presently, as it has in the past, monitors and observes police conduct in public places. In doing so, the ACLU seeks not only to observe and record the manner in which government employees perform their duties, but also to improve police practices, and to deter and detect any unlawful police interference with constitutional liberties. For example, the ACLU often monitors and observes police conduct at expressive activity in public places, including when the ACLU is engaged in its own expressive activity.

17. The ACLU has monitored, and will monitor, police at public demonstrations, protests, parades, assemblies, speeches, leafleting, and similar occasions and events. Such expressive events are sometimes planned, and on other occasions are spontaneous. The ACLU is presently able to, and intends to, monitor police activity both at planned expressive events and at spontaneous expressive events.

18. The ACLU often gathers, receives, and records information about police practices, and then publishes and disseminates that information to the general public, and uses that information to petition government for redress of grievances.

19. But for their reasonable fear of prosecution by Alvarez under the Act (*see infra* ¶ 25), the ACLU, Connell, and Carter would immediately commence the aforementioned program of audio recording police officers in public, and use and disseminate such recordings. This program includes recording police conduct at expressive activity in public places, including when the ACLU is engaged in its own expressive activity.

20. Connell, the ACLU's Executive Director, has approved the expanded program of audio recording police as described above in paragraph 3. Connell joins with the ACLU in seeking to expand and protect civil liberties by implementing the ACLU program of monitoring police by audio recording police in public places to advance police accountability. But for the Act, Connell would immediately authorize and direct Carter (and other ACLU employees) to engage in such audio recording, but for her reasonable fear of imminent prosecution by Alvarez under the Act of Carter (the ACLU employee who made the recording), of Connell (the ACLU Executive Director who authorized and directed the recording), and of the ACLU itself. *See infra* ¶ 25.

21. Carter, the ACLU Senior Field Manager, will audio record police pursuant to the ACLU program described above in paragraph 3 when authorized and directed to do so by Connell. Carter joins with the ACLU and Connell in seeking to expand and protect civil liberties by implementing the ACLU program of monitoring police by audio recording police in public places to advance police accountability. Carter has a

reasonable fear of prosecution under the Act, should she audio record police officers as prescribed by the ACLU program. *See infra* ¶ 25.

22. On two recent occasions, the ACLU would have audio recorded police officers performing their public duties in public places, but for the reasonable threat of prosecution by Alvarez under the Act. *See infra* ¶ 25. On both occasions, ACLU employees did monitor police, but without audio recording. Specifically:

(a) On June 10, 2010, an ACLU employee monitored a Chicago Police Department program of suspicionless container searches on Chicago's lakefront; and

(b) On November 8, 2010, Carter monitored a protest held in Chicago at the James R. Thompson Center concerning the killing of Iraqi Christians.

23. But for the reasonable threat of prosecution by Alvarez under the Act (*see infra* ¶ 25), Connell would authorize and direct Carter to audio record police, and Carter would audio record police, at planned and spontaneous events in Cook County in the future, including but not limited to the annual protest in spring 2011 in downtown Chicago in opposition to U.S. military policy in Iraq and Afghanistan.

24. The Act, by preventing the ACLU from implementing the ACLU program, directly and substantially prevents the ACLU from engaging in its important organizational activity of monitoring police conduct, and directly and substantially frustrates the ACLU's important organizational goal of advancing police accountability, and thereby protecting civil liberties.

D. The ACLU's reasonable fear of prosecution

25. For the following reasons, the ACLU, Connell, and Carter have a reasonable fear that if they implement the ACLU program, Alvarez will prosecute them pursuant to the Act:

(a) The Act on its face prohibits non-consensual audio recording of non-private conversations. *See infra* ¶ 32.

(b) The Illinois Legislature intended the Act to prohibit audio recording of non-private conversations with on-duty police. *See infra* ¶ 33.

(c) Alvarez is now prosecuting two cases under the Act in which civilians allegedly audio recorded on-duty police. *See infra* ¶ 39.

(d) In the original Complaint in this suit, the ACLU described the ACLU program of audio recording police as set forth above in paragraph 3. Alvarez has not in this litigation, or otherwise, indicated that the ACLU program does not violate the Act, or that Alvarez would not prosecute the ACLU or its employees for carrying out the ACLU program by audio recording police officers performing their duties in public. To the contrary, Alvarez stated in her motion to dismiss: "Plaintiff is precluded from audio recording any conversations without consent of all parties to such conversation, including encounters between law enforcement and citizens." Dkt. No. 19, at p. 7.

(e) In the last six years, at least seven other State's Attorneys have prosecuted at least nine other civilians under the Act for audio recording on-duty police, including one prosecution of civilians undertaking a program of monitoring on-duty police to promote police accountability. *See infra* ¶ 40.

(f) The Illinois criminal statutes impose criminal liability on persons who solicit criminal activity by other persons. *See, e.g.,* 720 ILCS 5/5-1 (providing that for purposes of the Illinois criminal statutes, a person is criminally liable when they are “legally accountable” for the criminal misconduct of another); 720 ILCS 5/5-2(c) (providing that a person has such liability if they “solicit” criminal acts by another person). Thus, if Connell authorizes and directs Carter to audio record police, and Carter does so, then Alvarez can prosecute Connell, as well as Carter.

(g) The Illinois criminal statutes impose criminal liability on private corporations that commit criminal activity directed by their top officials. *See, e.g.,* 720 ILCS 5/14-2 (prohibiting certain audio recording by a “person”); 720 ILCS 5/2-15 (providing that for purposes of the Illinois criminal statutes, a “person” includes a “private corporation”); 720 ILCS 5/5-4 (a)(2) (providing that for purposes of the Illinois criminal statutes, a corporation may be prosecuted for crimes authorized by high managerial agents). Thus, if Connell (the ACLU’s Executive Director) authorizes and directs Carter to audio record police, and Carter does so, then Alvarez can prosecute the ACLU (a private corporation), as well as Carter and Connell.

(h) The Office of the Cook County State’s Attorney repeatedly has prosecuted private corporations for criminal offenses. *See, e.g., People v. Universal Public Transp., Inc.*, 401 Ill. App. 3d 179, 192 (1st Dist. 2010) (corporation convicted for fraud); *People v. Bohne*, 312 Ill. App. 3d 705, 706 (1st Dist. 2000) (corporation indicted for tax impropriety); *People v. O’Neil*, 194 Ill. App. 3d 79, 88-89 (1st Dist. 1990) (corporation indicted for involuntary manslaughter).

E. A benefit of audio recording the police

26. While most police officers perform their duties in a lawful manner, some police officers abuse their authority.

27. In many cases, the only evidence of what happened during an encounter between police officers and civilians – including whether police officers and/or civilians behaved lawfully – will be the conflicting testimony of police officers and civilians.

28. In many cases, audio recordings of police-civilian encounters will provide critical evidence that is not available from testimony, photographs, or silent videos.

29. Indeed, on many occasions in the last decade, audio/video recordings made by civilians of police-civilian encounters have helped to resolve testimonial disputes about alleged police misconduct. Sometimes these audio/video recordings have tended to disprove allegations of police misconduct, and sometimes they have tended to prove allegations of police misconduct.

30. Federal, state, and local law enforcement agencies have deployed tens of thousands of audio/video recording devices for purposes of documenting certain interactions between police officers and civilians. For example, many police squad cars are equipped with audio/video recording devices that document traffic stops. One law enforcement purpose of these audio/video recording devices is to deter and detect police misconduct, and to disprove false accusations of police misconduct.

31. Indeed, as more fully explained below, *see infra* ¶¶ 35-36, the Illinois Eavesdropping Act exempts audio/video recordings made by police of conversations between police and civilians during traffic stops, in order to protect both the civilians and the officers from false testimony about these conversations. There is no constitutionally

valid basis for allowing police to make such audio recordings, while criminalizing the conduct of civilians who do so.

F. The Illinois Eavesdropping Act

32. The Illinois Eavesdropping Act criminalizes the use of a machine to record certain conversations – even if the conversations are not private. Specifically:

(a) The Act provides that “[a] person commits eavesdropping when he . . . [k]nowingly and intentionally uses an eavesdropping device for the purpose of hearing or recording all or any part of any conversation . . . unless he does so . . . with the consent of all of the parties to such conversation” 720 ILCS 5/14-2(a)(1)(A).

(b) The Act defines “conversation” to mean “any oral communication between 2 or more persons *regardless of whether one or more of the parties intended their communication to be of a private nature under circumstances justifying that expectation.*” 720 ILCS 5/14-1(d) (emphasis added).

(c) The Act defines “eavesdropping device” to include “any device capable of being used to hear or record oral conversation” 720 ILCS 5/14-1(a).

(d) The Act provides that a first offense of eavesdropping is a Class 4 felony, 720 ILCS 5/14-4(a), which is punishable by a sentence of imprisonment of one to three years, 730 ILCS 5/5-4.5-45.

33. The legislative purpose of extending the Act to non-private conversations was to criminalize civilian audio recordings of police officers performing their public duties in public places. Specifically:

(a) In 1986, in *People v. Beardsley*, 115 Ill. 2d 47 (Ill. 1986), the Illinois Supreme Court held that an element of the criminal offense created by the then-

existing version of the Act was “circumstances which entitle [the parties to a conversation] to believe that the conversation is *private* and cannot be heard by others who are acting in a lawful manner.” 115 Ill. 2d at 53 (emphasis added). The *Beardsley* case involved a motorist who audio recorded a police officer during a traffic stop. *Id.* at 48-49. The Court held that this motorist did not violate the Act, because the conversation was not private.

(b) Eight years later, in 1994, Illinois amended the Act with Public Act 88-677, also known as House Bill 356. This new law adopted the current definition of “conversation,” to wit: “any oral communication between 2 or more persons regardless of whether one or more of the parties intended their communication to be of a private nature under circumstances justifying that expectation.”

(c) On May 19, 1994, during Senate floor debate regarding this bill, the Senate sponsor stated that the bill had earlier passed out of that chamber “to reverse the *Beardsley* eavesdropping case” *See* Tr. at p. 42.

34. In this regard, the current Illinois Eavesdropping Act is abnormal. The federal ban on audio recording certain conversations, and the vast majority of such state bans, extend only to private conversations – as the Illinois Eavesdropping Act did, before it was amended in 1994 for the purpose of reversing the *Beardsley* decision. Only a handful of states have extended their eavesdropping bans to non-private conversations. And most of those states, unlike Illinois, do not extend their prohibitions to open and obvious recording, as opposed to secret recording.

35. The Illinois Eavesdropping Act exempts certain audio recordings by law enforcement officials of conversations between law enforcement officials and members of the general public. Examples include:

(a) Conversations recorded “simultaneously with the use of an in-car video camera” during “traffic stops, pedestrian stops,” and similar events. 720 ILCS 5/14-3(h).

(b) Conversations with a civilian who is “an occupant of a police vehicle.” 720 ILCS 5/14-3(h-5).

(c) Conversations recorded “during the use of a taser or similar weapon or device” if the device is equipped with audio recording technology. 720 ILCS 5/14-3(h-10).

36. The legislative purpose of the statutory exemptions in the preceding paragraph is to deter and detect police misconduct, and rebut false accusations of police misconduct. Specifically:

(a) In 2009, Illinois amended the Act with Public Act 96-670, also known as House Bill 1057. This new law amended the foregoing exemption (h) to its current form, and created the foregoing exemptions (h-5) and (h-10).

(b) On April 2, 2009, during House debate regarding this bill, the House sponsor stated as follows the legislative purpose:

When there’s audio, then there is no question as to what was said or what wasn’t said and if someone is accused of doing something or saying something, this is the proof that they would have as a citizen also, not only for protection of law enforcement, but for the citizens to have the proof in hand as to what actually happened at that particular [moment].

See Tr. at pp. 83-84. *See also id.* at p. 84 (stating that such audio recording provides “protection for both” police and civilians).

37. Police officers performing their public duties in public places, and speaking at a volume audible to the unassisted human ear, have no reasonable expectation that the words they speak are private and will not be recorded, published, and disseminated.

G. Application of the Act to audio recording the police

38. The Act is not moribund, and it is commonly enforced in the context at issue here in Cook County, as well as other Illinois counties. As intended by the Illinois General Assembly, police officers and prosecutors have used the Act to arrest and prosecute members of the general public who made audio recordings of police officers performing their public duties in public places and speaking at a volume audible to the unassisted human ear.

39. For example, defendant the Cook County State’s Attorney currently is prosecuting at least two different alleged violations of the Act:

(a) Alvarez currently is prosecuting a civilian for allegedly violating the Act by audio recording a police officer who was arresting him in a public place. The civilian moved to dismiss, arguing that the application of the Act to his audio recording violated the First Amendment. Alvarez successfully opposed the motion. The eavesdropping charges are now pending. *See People v. Drew*, No. 10-cr-4601 (Cook County Circuit Ct., charges filed Dec. 15, 2009).

(b) Alvarez currently is prosecuting another civilian for allegedly violating the Act by audio recording on-duty police officers. According to the testimony

elicited by Alvarez's office at the preliminary hearing, the two internal affairs officers at the time were interviewing the civilian regarding her allegation that another police officer had committed misconduct against her. *See People v. Moore*, No. 10-cr-15709 (Cook County Circuit Ct., charges filed Aug. 31, 2010).

40. At least seven other State's Attorneys in Illinois have brought eavesdropping charges under the Act against at least nine other civilians who made audio recordings of police officers performing their public duties in public places:

(a) The Champaign County State's Attorney in 2004. *See People v. Thompson*, No. 04-cf-1609 (6th Judicial Circuit Ct.).

(b) The Winnebago County State's Attorney in 2005. *See People v. Wight*, No. 05-cf-2454 (17th Judicial Circuit Ct.).

(c) The Will County State's Attorney in 2006. *See People v. Babarskas*, No. 06-cf-537 (12th Judicial Circuit Ct.).

(d) The Crawford County State's Attorney in 2009. *See People v. Allison*, No. 09-cf-50 (2nd Judicial Circuit Ct.).

(e) The DeKalb County State's Attorney in 2010. *See People v. Parteet*, No. 10-cf-49 (16th Judicial Circuit Ct.).

(f) The Kane County State's Attorney in 2010. *See People v. Biddle*, No. 10-cf-421 (16th Judicial Circuit Ct.).

(g) The Vermillion County State's Attorney in 2010. *See People v. Fitzpatrick*, No. 10-cf-397 (5th Judicial Circuit Ct.).

41. The foregoing prosecution by the Champaign County State's Attorney targeted civilians who, for purposes of advancing police accountability, had undertaken a

program of audio recording on-duty police officers performing their jobs in public places.

42. In the face of felony charges under the Act, several of the foregoing criminal defendants pled guilty to reduced misdemeanor charges of attempted eavesdropping.

H. Necessity of and entitlement to injunctive relief

43. The ACLU, Connell, and Carter are prepared and intend immediately to undertake the aforementioned program of making audio recordings of police officers in public.

44. The ACLU has refrained from audio recording police officers on two occasions since June 2010. *See supra* ¶ 22.

45. The ACLU, Connell, and Carter have a reasonable fear that if they make audio recordings of police officers, Alvarez will prosecute the ACLU, Connell, and Carter for violation of the Act. This reasonable fear is based on the factors set forth above at paragraph 25.

46. Unless enjoined by this Court, Alvarez can – and has not indicated that she would not – prosecute, pursuant to the Act, the ACLU, Connell, and Carter for carrying out the ACLU program of audio recording police officers performing their public duties in public places.

47. The ACLU, Connell, and Carter are suffering, and will continue to suffer, irreparable harm as a result of refraining from carrying out the aforementioned program of audio recording police officers carrying out their public duties in public places.

48. The ACLU, Connell, and Carter have no adequate remedy at law.

V. CLAIM FOR RELIEF

49. The allegations of paragraphs 1 through 48 are realleged and incorporated by reference as if fully set forth herein.

50. The Act violates the First Amendment to the U.S. Constitution, as applied to the audio recording of police officers, without the consent of the officers, when (a) the officers are performing their public duties, (b) the officers are in public places, (c) the officers are speaking at a volume audible to the unassisted human ear, and (d) the manner of recording is otherwise lawful.

51. Among other things, this application of the Act is unlawful because:

(a) The Free Speech Clause of the First Amendment protects the right to gather, receive, record, and disseminate the information at issue herein.

(b) The Free Speech Clause and the Petition Clause of the First Amendment protect the right to gather, receive, record, and disseminate the information at issue herein for purposes of using that information to petition government for redress of grievances.

(c) The Free Speech Clause and the Free Press Clause of the First Amendment protect the right to gather, receive, or record the information at issue herein for purposes of disseminating and publishing that information to other people.

VI. PRAYER FOR RELIEF

WHEREFORE, the ACLU, Connell, and Carter respectfully request the following relief:

A. Entry of a declaratory judgment holding that the Act violates the First Amendment, as applied to the audio recording of police officers, without the consent of

the officers, when (a) the officers are performing their public duties, (b) the officers are in public places, (c) the officers are speaking at a volume audible to the unassisted human ear, and (d) the manner of recording is otherwise lawful.

B. Entry of a preliminary injunction, and then a permanent injunction, that enjoins defendant the Cook County State's Attorney from prosecuting plaintiffs the ACLU, Connell, and Carter, and other ACLU employees as directed by Connell, under the Act for audio recording police officers, without the consent of the officers, when (a) the officers are performing their public duties, (b) the officers are in public places, (c) the officers are speaking at a volume audible to the unassisted human ear, and (d) the manner of recording is otherwise lawful.

C. Award the ACLU, Connell, and Carter their reasonable attorneys' fees, costs, and expenses pursuant to 42 U.S.C. § 1988.

D. Award such other and further relief as this Court may deem just and proper.

DATED: November 18, 2010

Respectfully submitted:

s/ Richard J. O'Brien
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EXHIBIT 2

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THE AMERICAN CIVIL LIBERTIES)	
UNION OF ILLINOIS, COLLEEN)	
CONNELL, AND ALLISON CARTER,)	
)	
Plaintiffs,	)	Case No. 10 CV 5325
)	
v.	)	Judge Suzanne B. Conlon
	)	Magistrate Judge Sidney I.
ANITA ALVAREZ, Cook County State’s	)	Schenkier
Attorney, in her official capacity,)	
)	
Defendant.)	

**DECLARATION OF COLLEEN K. CONNELL
IN SUPPORT OF PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

I, Colleen K. Connell, state as follows:

A. Background

1. I am the Executive Director of the American Civil Liberties Union of Illinois (“the ACLU”). The statements contained herein are based on personal knowledge, including oral and written statements from staff who report to me in the regular course of operations of our organization. If sworn as a witness, I could testify competently thereto.

2. The ACLU is a non-profit, non-partisan, statewide organization with more than 20,000 members and supporters dedicated to protecting and expanding the civil rights and civil liberties guaranteed by the Constitutions and civil rights laws of the United States and the State of Illinois. The ACLU is a not-for-profit corporation incorporated under the laws of the State of Illinois. In all matters relevant to the above-

captioned lawsuit, the ACLU acts by and through its staff of approximately 25 salaried employees who are under my direction.

3. In my capacity as Executive Director, I direct employees of the ACLU in creating and disseminating communications which further the ACLU's goals of protecting and expanding civil liberties and civil rights. In this capacity, but for the Illinois Eavesdropping Act, 720 ILCS 5/14 ("the Act"), I immediately would direct ACLU employees, including Allison Carter who is the ACLU's Senior Field Manager, to audio record public police activity as part of the ACLU program, described below in Paragraph 9.

B. The ACLU's exercise of its right to gather, receive, record, and disseminate information

4. In pursuing its objectives of protecting and expanding civil rights and civil liberties, the ACLU regularly gathers, receives, and records information from numerous sources, including by observing events in public places.

5. After gathering, receiving, and recording information, the ACLU regularly publishes and disseminates that information to the general public, and regularly presents that information to government bodies as part of the ACLU's efforts to petition the government for redress of grievances.

6. The ACLU regularly engages in its own expressive activity in public places, and regularly records its own expressive activity at these events.

C. The ACLU program

7. The ACLU, presently, as it has in the past, monitors and observes police conduct in public places. In doing so, the ACLU seeks not only to observe and record the manner in which government employees perform their duties, but also to improve police

practices, and to deter and detect any unlawful police interference with constitutional liberties. For example, the ACLU often monitors and observes police conduct at expressive activity in public places, including when the ACLU is engaged in its own expressive activity.

8. The ACLU has monitored, and will monitor, police at public demonstrations, protests, parades, assemblies, speeches, leafleting, and similar occasions and events. Such expressive events are sometimes planned, and on other occasions are spontaneous. The ACLU is presently able to, and intends to, monitor police activity both at planned expressive events and at spontaneous expressive events.

9. In the exercise of the ACLU's rights to gather, receive, record, and disseminate information, the ACLU, under my direction and through my direct supervision of ACLU employees, including but not limited to Carter, has incorporated the use of common audio/video recording devices into the ACLU's ongoing monitoring of police in public places. Specifically, but for the Act, I am prepared to and would immediately direct employees, including Carter, to audio record police officers, without the consent of the officers, when (a) the officers are performing their public duties, (b) the officers are in public places, (c) the officers are speaking at a volume audible to the unassisted human ear, and (d) the manner of recording is otherwise lawful (hereinafter "the ACLU program"). The ACLU and its employees under my supervision will carry out this ACLU program in Cook County Illinois.

10. The ACLU, presently, as it has in the past, monitors and observes police conduct in public places. In doing so, the ACLU seeks not only to observe and record the manner in which government employees perform their duties, but also to improve police

practices, and to deter and detect any unlawful police interference with constitutional liberties. For example, the ACLU often monitors and observes police conduct at expressive activity in public places, including when the ACLU is engaged in its own expressive activity.

11. The ACLU has monitored, and will monitor, police at public demonstrations, protests, parades, assemblies, speeches, leafleting, and similar occasions and events. Such expressive events are sometimes planned, and on other occasions are spontaneous. The ACLU is presently able to, and intends to, monitor police activity both at planned expressive events and at spontaneous expressive events.

12. The ACLU often gathers, receives, and records information about police practices, and then publishes and disseminates that information to the general public, and uses that information to petition government for redress of grievances.

13. But for my reasonable fear of prosecution by Alvarez under the Act (*see infra* Section D), I would immediately direct the commencement of the aforementioned program of audio recording police officers in public, and the use and dissemination of such recordings. This program includes recording police conduct at expressive activity in public places, including when the ACLU is engaged in its own expressive activity.

14. I have approved the expanded program of audio recording police as described above in paragraph 9. I join with the ACLU in seeking to expand and protect civil liberties by implementing the ACLU program of monitoring police by audio recording police in public places to advance police accountability. I would immediately authorize and direct Carter (and other ACLU employees) to engage in such audio recording, but for my reasonable fear of imminent prosecution by Alvarez under the Act

of Carter (the ACLU employee who made the recording), of the ACLU, and of myself as the person who authorized and directed the recording. *See infra* Section D.

15. On two recent occasions, I would have directed ACLU employees to audio record police officers performing their public duties in public places, but for the reasonable threat of prosecution by Alvarez under the Act. *See infra* Section D. On both occasions, ACLU employees did monitor police, but without audio recording.

Specifically:

(a) On June 10, 2010, an ACLU employee monitored a Chicago Police Department program of suspicionless container searches on Chicago's lakefront; and

(b) On November 8, 2010, Carter monitored a protest held in Chicago at the James R. Thompson Center concerning the killing of Iraqi Christians.

16. But for the reasonable threat of prosecution by Alvarez under the Act (*see* Section D), I would authorize and direct Carter (and other ACLU employees) to audio record police at planned and spontaneous events in Cook County in the future, including but not limited to the annual protest in spring 2011 in downtown Chicago in opposition to U.S. military policy in Iraq and Afghanistan.

17. The Act, by preventing the ACLU from implementing the ACLU program and audio recording police officers in public, directly and substantially prevents the ACLU from engaging in its important organizational activity of monitoring police conduct, and directly and substantially frustrates the ACLU's important organizational goal of advancing police accountability, and thereby protecting civil liberties.

D. My reasonable fear of prosecution

18. For the following reasons, I have a reasonable fear that if I implement the ACLU program, Alvarez will prosecute them pursuant to the Act:

(a) The Act on its face prohibits non-consensual audio recording of non-private conversations.

(b) The Illinois Legislature intended the Act to prohibit audio recording of non-private conversations with on-duty police.

(c) Alvarez is now prosecuting two cases under the Act in which civilians allegedly audio recorded on-duty police. *See* Exs. A and B.

(d) In the original Complaint in this suit, the ACLU described the ACLU program of audio recording police as set forth above in paragraph 3. Alvarez has not in this litigation, or otherwise, indicated that the ACLU program does not violate the Act, or that Alvarez would not prosecute the ACLU or its employees for carrying out the ACLU program by audio recording police officers performing their duties in public. To the contrary, Alvarez stated in her motion to dismiss: "Plaintiff is precluded from audio recording any conversations without consent of all parties to such conversation, including encounters between law enforcement and citizens." Dkt. No. 19, at p. 7.

(e) In the last six years, at least seven other State's Attorneys have prosecuted at least nine other civilians under the Act for audio recording on-duty police, including one prosecution of civilians undertaking a program of monitoring on-duty police to promote police accountability. *See* Exs. C, D, E, F, G, H, and I.

(f) The Illinois criminal statutes impose criminal liability on persons who solicit criminal activity by other persons. *See, e.g.*, 720 ILCS 5/5-1 (providing that for purposes of the Illinois criminal statutes, a person is criminally liable when they are “legally accountable” for the criminal misconduct of another); 720 ILCS 5/5-2(c) (providing that a person has such liability if they “solicit” criminal acts by another person). Thus, if I authorize and direct Carter to audio record police, and Carter does so, then Alvarez can prosecute me, as well as Carter.

(g) The Illinois criminal statutes impose criminal liability on private corporations that commit criminal activity directed by their top officials. *See, e.g.*, 720 ILCS 5/14-2 (prohibiting certain audio recording by a “person”); 720 ILCS 5/2-15 (providing that for purposes of the Illinois criminal statutes, a “person” includes a “private corporation”); 720 ILCS 5/5-4 (a)(2) (providing that for purposes of the Illinois criminal statutes, a corporation may be prosecuted for crimes authorized by high managerial agents). Thus, if I, as the ACLU’s Executive Director, authorize and direct Carter to audio record police, and Carter does so, then Alvarez can prosecute the ACLU (a private corporation), as well as Carter and me.

(h) The Office of the Cook County State’s Attorney repeatedly has prosecuted private corporations for criminal offenses. *See, e.g., People v. Universal Public Transp., Inc.*, 401 Ill. App. 3d 179, 192 (1st Dist. 2010) (corporation convicted for fraud); *People v. Bohne*, 312 Ill. App. 3d 705, 706 (1st Dist. 2000) (corporation indicted for tax impropriety); *People v. O’Neil*, 194 Ill. App. 3d 79, 88-89 (1st Dist. 1990) (corporation indicted for involuntary manslaughter).

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing statements are true and correct.

Dated: November 18, 2010

Respectfully submitted:

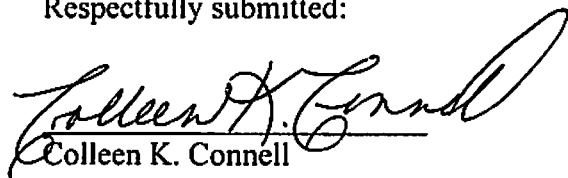

Colleen K. Connell

EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
)
 V.)
)
 CHRISTOPHER DREW)
)
)

INFO. NO. 10CR-45

COPY

INFORMATION

THE PEOPLE OF THE STATE OF ILLINOIS represented by the State's Attorney of Cook County, do hereby inform and charge that against the peace and dignity of the People of the State of Illinois and in violation of the laws of the State of Illinois the herein named defendant(s) contrary to the 1992 Illinois Compiled Statutes did violate said laws of Illinois as described herein.

11/18/10
11/18/10
11/18/10

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

10th Cir.
1/29/2010

The State's Attorney of Cook County now appears before the Circuit Court of Cook County and in the name and by the authority of the People of the State of Illinois states that on or about DECEMBER 2, 2009 at and within the County of Cook

CHRISTOPHER DREW

committed the offense of EAVESDROPPING

in that HE, KNOWINGLY AND INTENTIONALLY USED AN EAVESDROPPING DEVICE, TO WIT: A DIGITAL RECORDER, FOR THE PURPOSE OF RECORDING ALL OR ANY PART OF ANY CONVERSATION WITHOUT THE CONSENT OF ALL PARTIES TO SUCH CONVERSATION AND ONE OF THE PARTIES TO SUCH CONVERSATION WAS A LAW ENFORCEMENT OFFICER, ACTING IN THE PERFORMANCE OF HIS OFFICIAL DUTIES, THEREIN, IN VIOLATION OF CHAPTER 720 ACT 5 SECTION 14-2(a)(1) OF THE ILLINOIS COMPILED STATUTES 1992 AS AMENDED AND

contrary to the Statute and against the peace and dignity of the same People of the State of Illinois.

CHARGE AND CODE: 13012
COUNT 1
100R-46

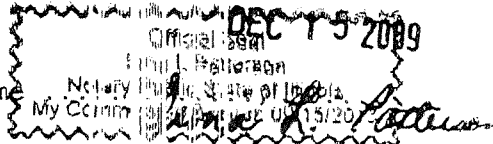
DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS by the State's Attorney of Cook County, through his Assistant State's Attorney, after first being duly sworn on his oath, deposes and swears that the foregoing ONE count(s) in this information has/have been read and subscribed by him as evidenced by his signature below and that the same in each count hereby incorporated is true.

J. Wansley
.....
Assistant State's Attorney

Subscribed and sworn (or affirmed) to before me
by *J. Wansley*



.....
Notary Public

The bail is fixed at

JUDGE:
Enter

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY

EXHIBIT B

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I N D E X

Witness: Page:

LUIS ALEJO

Direct Examination by:
Mr. Piwowarczyk 03

Cross-Examination by:
Mr. Baker 07

1 THE CLERK: Tiawanda Moore, 162.

2 (Witness sworn.)

3 THE COURT: What's your name, please?

4 MS. MOORE: Tiawanda Moore.

5 THE COURT: Is your first name T-i-a-w-a-n-d-a,
6 ma'am?

7 MS. MOORE: Yes, sir.

8 THE COURT: Okay. Ms. Moore stands before the
9 bench with her counsel. The officer's been sworn in.

10 Are there any proposed amendments?

11 MR. PIWOWARCZKY: No, your Honor.

12 THE COURT: All right. State, are you ready to
13 proceed?

14 MR. PIWOWARCZKY: Yes, your Honor.

15 LUIS ALEJO,

16 called as a witness herein, having been first duly sworn,
17 was examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. PIWOWARCZYK:

20 Q. Would you please introduce yourself to the Court
21 stating your name, star number and unit of assignment?

22 A. Officer Luis Alejo, A-l-e-j-o, 10381, currently
23 assigned to Unit 121, Internal Affairs, Chicago Police
24 Department.

1 Q. I'd like to direct your attention to August 18th,
2 2010 at approximately 9:00 a.m. Were you on duty at that
3 time?

4 A. Yes.

5 Q. Were you working alone or with a partner?

6 A. I was working with Sergeant Plotke.

7 Q. Is that spelled P-l-o-t-k-e?

8 A. Correct.

9 Q. And were you -- at that date and time where were
10 you located?

11 A. We were located on 3510 South Michigan Avenue,
12 police headquarters, on the 5th Floor, Internal Affairs
13 Division inside a small interview room with the defendant
14 to my far right wearing the large blue Department of
15 Corrections uniform and glasses.

16 MR. PIWOWARCZKY: Your Honor, may the record
17 reflect an in-court identification of the defendant?

18 THE COURT: The record will.

19 BY MR. PIWOWARCZYK:

20 Q. Was there anyone in that interview room aside from
21 yourself, the sergeant and the defendant in this case?

22 A. No.

23 Q. And while you were in that interview room, was the
24 conversation taking place between yourself, the sergeant

1 and the defendant in this case?

2 A. That is correct.

3 Q. And did you notice something during this
4 conversation?

5 A. Yes, I did. At one point I noticed that the
6 defendant to my far right had a Blackberry in between her
7 legs, and the screen of that Blackberry there was a
8 microphone with some bars or waives indicating to me that
9 the recording application was active.

10 Q. After you made that observation, what did you do?

11 A. I stepped outside for a few seconds, informed the
12 sergeant, went back inside, informed the defendant to my
13 far right, Ms. Moore, of the Eavesdropping Law, and she
14 immediately denied recording the conversation.

15 Q. Subsequently, did you find out whether or not that
16 Blackberry had been recording the conversation between
17 yourself, the sergeant and the defendant?

18 A. Yes.

19 Q. How did you find that out?

20 A. After a search warrant was executed for a
21 forensics look into the phone, there was 7 minutes that
22 was recorded.

23 Q. Did you have an opportunity to hear that
24 recording?

1 A. No.

2 Q. Did you have an opportunity to hear that
3 recording?

4 A. No.

5 Q. Did you talk to someone who heard that recording?

6 A. The state's attorney who approved charges, as well
7 as the detective from confidential investigation section.

8 Q. When did that conversation take place between
9 yourself and the individual who heard that conversation?

10 A. I think it was the day after she had been
11 arrested.

12 Q. And did that conversation take place in person or
13 over the telephone?

14 A. In person.

15 Q. Where did that conversation take place?

16 A. In the 1st District.

17 Q. Was that between yourself and another law
18 enforcement officer or state's attorney?

19 A. That was with myself, Sergeant Plotke and the
20 state's attorney and Detective Morris.

21 Q. And did you also learn that the audiotape from the
22 defendant's Blackberry was inventoried under Inventory
23 No. 12101887?

24 A. Yes, that is correct.

1 Q. And did the defendant have the permission of
2 yourself or Sergeant Plotke to record that conversation?

3 A. No, nor did we have knowledge that we were being
4 recorded.

5 MR. PIWOWARCZYK: I have no further questions,
6 your Honor.

7 THE COURT: Cross, please.

8 CROSS-EXAMINATION

9 BY MR. BAKER:

10 Q. Officer Alejo, Ms. Moore was at the police
11 headquarters with you, and you were interviewing her
12 concerning her complaints of a sexual harassment case
13 against another policeman; is that correct?

14 MR. PIWOWARCZYK: Objection.

15 THE COURT: Sustained. The objection is
16 sustained.

17 BY MR. BAKER:

18 Q. Now, you were there interviewing her concerning an
19 Internal Affairs police matter; is that correct?

20 A. She was filing a complaint, that is correct.

21 Q. Okay. She was not a defendant or accused of a
22 crime; is that correct?

23 MR. PIWOWARCZYK: Objection, relevance.

24 THE COURT: Sustained.

1 BY MR. BAKER:

2 Q. Now, while you were in the interview room with
3 her, you said you noticed a cell phone between her legs;
4 is that correct?

5 A. That's correct.

6 Q. You actually never observed her activate that cell
7 phone; is that correct, sir?

8 A. That is correct.

9 MR. BAKER: Okay. Nothing further of this
10 witness, your Honor. I do have a brief argument.

11 THE COURT: State, do you have any further
12 witnesses?

13 MR. PIWOWARCZKY: May have just one moment, your
14 Honor?

15 THE COURT: Sure.

16 MR. PIWOWARCZKY: Brief redirect, your Honor?

17 THE COURT: Okay.

18 REDIRECT EXAMINATION

19 BY MR. PIWOWARCZKY:

20 Q. Did you find out whose cell phone that was?

21 A. That belonged to the defendant, Ms. Tiawanda
22 Moore.

23 MR. PIWOWARCZKY: I have no further questions.

24 THE COURT: Any cross?

1 MR. BAKER: No.

2 THE COURT: Argument, please.

3 MR. BAKER: Your Honor, we seek finding of no
4 probable cause and Ms. Moore to be discharged.

5 I've had an opportunity to look at the
6 statute here concerning the eavesdropping, and it seems
7 to me the prosecution has to prove that a person
8 knowingly an intentionally decide to eavesdrop on an
9 official, your Honor.

10 There's been no evidence that she knowingly
11 intentionally intended to eavesdrop. She simply had a
12 cell phone on where a recording device may have been
13 activated. There's no telling or there's no evidence as
14 to how that cell phone may have been activated. And all
15 of us who use cell phones know that it's very easy to
16 push the wrong button or it's very easy to activate
17 something unintentionally.

18 When Officer Alejo asked her concerning that
19 cell phone, she denied eavesdropping because she did not
20 intend to eavesdrop. She simply pressed the wrong
21 button, your Honor. And on that basis, I don't believe
22 that the prosecution has in any way met the elements of
23 the offense. On that basis, I believe this woman should
24 be discharged.

1 THE COURT: State, briefly.

2 MR. PIWOWARCZYK: Yes, your Honor. The
3 circumstantial evidence in this case points directly to
4 the defendant knowingly making this recording. Cell
5 phones don't activate themselves.

6 THE COURT: Okay. The burden -- counsel for
7 defense knows the burden is different as opposed to
8 trial. Based upon the burden that the State has at this
9 point, there will be a finding of probable cause. Motion
10 state, transfer to the Chief Judge, Room 101, September
11 15th at 9:00 a.m.

12 Defendant demands trial that will be the
13 order.

14 MR. BAKER: Your Honor, would you consider a bond
15 review for Ms. Moore? Ms. Moore is poor, she's indigent,
16 she has no background. And the offense is relatively a
17 minor one, it doesn't really involve the general public,
18 it involves the Police Department and I think an I-Bond
19 here may be appropriate.

20 THE COURT: What's bond been set at?

21 MR. BAKER: \$15,000.

22 THE CLERK: 10.

23 MR. BAKER: \$10,000. Please, excuse me.

24 THE COURT: Does the defendant have any

1 background, State?

2 MR. PIWOWARCZYK: No convictions, your Honor.

3 The State is not going to waive notice on the
4 bond review on this case.

5 MR. BAKER: Judge, we're asking for the Court to
6 review her bond as for bond review sua sponte.

7 THE COURT: All right. Motion to reduce bond is
8 granted.

9 Bond set 5,000-D. It's still going to be a D
10 bond. 5,000 D. Good luck.

11 MR. BAKER: Thank you, your Honor.

12 (Whereupon, the case was
13 continued to 9/15/10.)

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1 STATE OF ILLINOIS)
2 COUNTY OF COOK) SS:

3 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
4 COUNTY DEPARTMENT - FIRST MUNICIPAL DISTRICT

5 I, Lanetta M. Nunn, an Official Court Reporter for the
6 Circuit Court of Cook County, County Department,
7 First Municipal District, do hereby certify that I
8 reported in machine shorthand the proceedings had at the
9 hearing in the above-entitled cause; that I thereafter
10 caused the foregoing to be transcribed into typewriting,
11 which I hereby certify to be a true and accurate
12 transcript of the report of proceedings had before the
13 HONORABLE EDWARD HARMENING, Judge of said Court.

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Official Court Reporter-CSR No. 84-03354

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Dated this 31st day
of August, 2010.

EXHIBIT C

IN THE CIRCUIT COURT OF CHAMPAIGN COUNTY, ILLINOIS

During the Month of SEPTEMBER A.D., 2004

THE PEOPLE OF THE STATE OF ILLINOIS

FILED
SIXTH JUDICIAL CIRCUIT

vs.

SEP 02 2004

PATRICK D. THOMPSON

Linda S. Frank
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY ILLINOIS

INDICTMENT

EAVESDROPPING

A TRUE BILL

Harry R. [Signature]

Foreman of the Grand Jury

WITNESSES

David Griffet, IV, Champaign Police Department

Bond fixed in the amount of

\$ _____

Judge

STATE OF ILLINOIS)
)
COUNTY OF CHAMPAIGN) ss.

Criminal No. 04-CF-1609
Count 1

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, CHAMPAIGN COUNTY,
ILLINOIS, in the year of our Lord Two Thousand Four

FILED
SIXTH JUDICIAL CIRCUIT

SEP 02 2004

Luigi S. F...
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY ILLINOIS

THE GRAND JURORS, Chosen, selected and sworn in and for the County of Champaign,
in the name and by the authority of the State of Illinois, upon their oaths do present:

THAT PATRICK D. THOMPSON

late of said County, on or about June - July

in the year of our Lord Two Thousand Four at and within

the said County of Champaign and State of Illinois aforesaid committed the offense of:

EAVESDROPPING-CLASS 1 FELONY,

In that the said defendant knowingly and intentionally used an eavesdropping device for the purpose of recording a conversation between Allen Wilson and David Griffet, IV, without the consent of Allen Wilson and David Griffet, IV, and that David Griffet, IV was a law enforcement officer engaged in the performance of official duties at the time of said recording, in violation of 720 Illinois Compiled Statutes, 5/14-2(a)(1)(A).

Contrary to the form of the Statute in such case made and provided and against the peace and dignity of the said People of the State of Illinois.

John C. Piland

John C. Piland, State's Attorney

CHAMPAIGN POLICE DEPARTMENT



INCIDENT DETAIL

Officer Number	7914	METCAD Event #	042470141	Shift	3	Case Number	CC0410399
Occurred	06/29-07/29/2004	23:00-07:00	DOW				
Reported	09/03/2004	04:58	DOW Friday	Time Dispatched	00:00	Time Arrived	00:00
Incident Adr.	100 N FIRST X STR (E UNIVERSITY & E PA CHAMPAIGN			Loc Type	279. PARKING LOT - MUNICIPAL		GEO 54508
Related Incident Numbers	704-9247						

OFFENSE

Offense Crime Code/Description	CSA	Act	# Pr.	Force	Circ.	Weapon	Bias
5.000 EYES DROPPING			000	NO		99	88

SYNOPSIS

An officer's conversations were illegally recorded during a bar closing incident and a large gathering at a local business between the listed dates.

VICTIM

Name	GRIFFET IV, DAVID I						Address	82 UNIVERSITY AVENUE E CHAMPAIGN, IL 61820		Telephone	(217)351-4545								
Emp Code	Y	Employer/School Name	CITY OF CHAMPAIGN				Emp. Address	82 UNIVERSITY AVENUE E CHAMPAIGN, IL 61820		Emp .Tel.	(217)351-4545								
DOB	09/09/1966	Age (when occurred)	37	Race	W	Sex	M	Ht.	508	Wt.	185	Hair	BRO	Eye	BRO	SSN	000-00-0000	DL#	
Injury Code	N	Victim Code	I	Hospitalized	NO		Treated by												

Name	WILSON, ALLEN D						Address	1209 1/2 MAIN STREET E URBANA, IL 61801		Telephone	Unknown								
Emp Code	U	Employer/School Name	UNKNOWN				Emp. Address			Emp .Tel.	Unknown								
DOB	06/07/1968	Age (when occurred)	36	Race	B	Sex	M	Ht.	510	Wt.	220	Hair	BLK	Eye	BRO	SSN	000-00-0000	DL#	
Injury Code	N	Victim Code	I	Hospitalized	NO		Treated by												

OTHER

Name	ROGERS, RACHEL J						Address	38 GURTH DRIVE URBANA, IL 61821		Telephone	(217)344-3077								
Emp Code	U	Employer/School Name	UNKNOWN				Emp. Address			Emp .Tel.	Unknown								
DOB	06/23/1967	Age (when occurred)	37	Race	B	Sex	F	Ht.	505	Wt.	250	Hair	BLK	Eye	BRO	SSN	000-00-0000	DL#	
Injury Code	N	Victim Code	I	Hospitalized	NO		Treated by												

Reporting Officer: GRIFFET, DAVID

officer's initials

approved

9/14

OTHER CONTD.

CC0410399

OTHER CONTD.

ARRESTEE/OFFENDER

Name MILLER, EDWARD MARTEL(offender)		Address 204 PARK STREET E CHAMPAIGN, IL 61820		Telephone (217)356-8857	
---	--	---	--	----------------------------	--

Emp Code U	Employer/School Name UNKNOWN	Emp. Address		Emp. Tel. Unknown
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DOB 07/04/1961	Age (when occurred) 42	Race B	Sex M	Ht. 511	Wt. 235	Hair BLK	Eye BRO	SSN 000-00-0000	DL#
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Injury Code N	Victim Code I	Hospitalized NO	Treated by
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Name THOMPSON, PATRICK L(offender)		Address 3 SOUTHWOOD COURT CHAMPAIGN, IL 61821		Telephone Unknown	
---------------------------------------	--	---	--	----------------------	--

Emp Code U	Employer/School Name UNKNOWN	Emp. Address		Emp. Tel. Unknown
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DOB 11/12/1968	Age (when occurred) 35	Race B	Sex M	Ht. 506	Wt. 155	Hair BLK	Eye BRO	SSN 000-00-0000	DL#
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Injury Code N	Victim Code I	Hospitalized NO	Treated by
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RELATION MATRIX

Offense	Victim	Relation Code	Offender
5000	GRIFFET IV, DAVID I	RU	MILLER, EDWARD MARTEL
5000	GRIFFET IV, DAVID I	RU	THOMPSON, PATRICK L
5000	WILSON, ALLEN D	RU	THOMPSON, PATRICK L

NARRATIVE

Reporting Agent: Sergeant David Griffet

On Tuesday, August 31, 2004, after 2300 hours I met with Champaign County Assistant State's Attorney Elizabeth Dobson who gave me a VHS tape. Ms. Dobson told me that this tape is a copy of a tape that was submitted to the City of Urbana public television network for broadcasting on the local access channel. Ms. Dobson told me that she had obtained the copy with the issuance of a subpoena. Ms. Dobson asked me to review the tape and see what the tape shows.

Note: It should be noted that I was made aware of this tape by Urbana Police Lieutenant Mike Metzler about a week ago. I was at the Champaign County State's Attorney's Office when Lt. Metzler told me that he had reviewed this tape and had found that several officers had been illegally recorded.

Reporting Officer: GRIFFET, DAVID

officer's initials

approved

J 9/14

NARRATIVE CONTD.

NARRATIVE CONTD.

On Wednesday, September 4, 2004, I reviewed the tape and I observed video footage, which showed officers being illegally recorded while performing as police officers. Two (2) of the recorded incidents involved me. They were as follows:

Sometime between the first part of June, 2004 and July 2004, I was at the High Twelve Club monitoring the crowd at closing time. While watching the crowd, a fight broke out between two (2) females who had been separated by officers earlier in the evening. I helped separate the females and they were issued City NTA's for violating the City's fighting ordinance.

After this incident calmed down, I walked across the parking lot north of CPD (100 N. First Street) to watch another group of subjects when I came upon Martel. I saw a video camera in Martel's hands, however I did not know what type of footage he was recording or if he was recording at that time. I greeted Martel and I asked him if he had any problems with what had occurred. He said that he did not. He said that he was just out here, like I am. I told him that I worked for the citizens of Champaign and he said, "so do I."

I then went about my business and finished clearing the crowd.

The second incident on the video tape involving me occurred after June 29, 2004, at the Mac's located at 601 North Neil Street.

Note: It should be noted that during this time period CPD officers were routinely called to this business to remove large groups of people who had gathered in the parking lot after bar closing hours.

On this specific occasion Ms. Dobson was riding with me. When I arrived and observed a large crowd, Ms. Dobson offered to videotape the crowd's action from a safe distance. There was no voice recording, only video footage. As Ms. Dobson videotaped the crowd, she was soon videotaped by Patrick Thompson.

Reporting Officer: GRIFFET, DAVID

officer's initials

approved *J.S./9*

NARRATIVE CONTD.

CC0410399

NARRATIVE CONTD.

I then went to walk through the crowd and I came upon Allen Wilson, a person who I have had many police contacts with.

Note: It should be noted that in addition to being a Sergeant at the Champaign Police Department, I am also employed as a part-time Investigator for the Champaign County State's Attorneys Office in the Domestic Violence Unit.

During one (1) of these previous contacts Allen was a witness to a domestic situation (Violation of Order of Protection) involving Rachel Rogers. When I had spoken with Allen, I was in possession of a subpoena to be served on Rachel in the pending Violation of Order of Protection case, which Allen had witnessed. I told Allen that I had looked for Rachel at her home, but that I had not located her nor had she returned any of my requests to telephone me. Allen was intoxicated and very loud, however we had a conversation and he provided me a telephone number to contact Rachel. I thanked Allen for his time and he left the area.

On Wednesday, September 1, 2004, I returned this tape back to Ms. Dobson.

On Thursday, September 2, 2004, I appeared before the Champaign County Grand Jury to provide testimony regarding the August 7, 2004, incident. During this testimony I also testified to what I had heard and observed on the tape provided by Ms. Dobson. After testifying before the Grand Jury, Ms. Dobson asked me to complete a report pertaining to those incidents where I was illegally recorded.

Note: Attached is a copy of the VEYA letter submitted to Chief Finney on March 26, 2004, regarding the VEYA citizen watch program and what they would be doing in the community.

See 704-9247 for details regarding smilar incident.

Reporting Officer: GRIFFET, DAVID

officer's initials

approved

J 9/4

Copied By:	Entered/Filed By:
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Miscellaneous/Leads #'s

Signature of Reporting Officer	date	APPROVED (Supervisor)	date
		<i>[Handwritten Signature]</i>	9/3/04

No secondary dissemination without consent from Champaign Police Dept.

Reporting Officer: GRIFFET, DAVID

officer's initials _____ approved 9914

CHAMPAIGN POLICE DEPARTMENT**SUPPLEMENTAL REPORT**

Page 1 of 2

SUPPLEMENTAL DETAIL

Case Number CC0409247	Officer Number 7914	Date Entered 09/03/2004	Date/Time of Orig. Rpt. 08/07/2004 23:26
Incident Address 926 W BRADLEY AVENUE X STR (926 W BRADLEY/1200 CHAMPAIGN		Title of Report: Eavesdropping	

NARRATIVE

Reporting Agent: Sergeant David Griffet

This is a supplemental report.

On August 7, 2004, just after 2330 hours I was asked to respond to the 900 block of West Bradley Avenue, Champaign, Champaign County, Illinois. Upon arrival I was told that officers suspected that Martel Miller had been recording their conversations with his video camera.

I spoke with Martel and explained what I had been told. I asked him if I could view the documented footage and he gave me the camera so I could review it. While reviewing a short section of the tape I could hear Officer Clinton's voice on the tape.

I then went to my squad car and I spoke briefly with Champaign County Assistant State's Attorney Elizabeth Dobson who had been riding along with me. I told Ms. Dobson what I had found. I told her that I wanted to seize the tape since it was potential evidence of a crime and the recorder since it was used to make the recording. Ms. Dobson told me that I had the authority to do this without a warrant.

I then met with Martel and I told him that I would be seizing the tape and the recorder. He then called Patrick Thompson on his cellular telephone and Patrick soon arrived and yelled at me.

I later reviewed the footage on the tape at CPD and I found a traffic stop involving a University of Illinois police officer. After this discovery I contacted Sgt. Frederick at the University of Illinois Police Department and Sgt. Frederick told me that he would have his officer complete a report.

Reporting Officer: GRIFFET, DAVID

officer's initials

approved

J 714

NARRATIVE CONTD.

CC0409247

NARRATIVE CCNTD.

See previous reports for further details.

Copied By:		Entered/Filed By:	
Miscellaneous/Leads #'s			
Signature of Reporting Officer	date	APPROVED (Supervisor)	date
		<i>[Signature]</i> 9/14	9/13/04

No secondary dissemination without consent from Champaign Police Dept.

Reporting Officer: GRIFFET, DAVID

officer's initials _____ approved 8914

EXHIBIT D

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE 17th JUDICIAL CIRCUIT
COUNTY OF WINNEBAGO

THE PEOPLE OF THE STATE OF ILLINOIS

Vs

NUMBER _____

Name Wight, Jeremy B.

CASE NUMBER 05-210059

Address 324 W. 4th St.

Pecotonica, IL

Sex: m Race: w DOB: 080785

Defendant

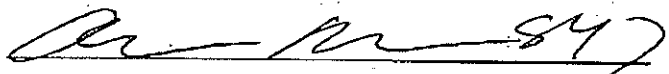
CRIMINAL COMPLAINT

Complainant, Officer Andrew Morse on oath charges:

That on the 29th day of July, 2005, in the County of Winnebago, State of Illinois, Jeremy Wight committed the offense of:

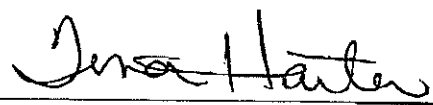
EAVESDROPPING

in that the defendant, Jeremy Wight, in violation of Section 14-2(a)(3) Act 5 of Chapter 720 of the *Illinois Compiled Statutes of said State*, in that the said defendant knowingly used a cellular telephone to audio record the conversation with Officer Morse, without Officer Morse' consent or knowledge.



Complainant

Sworn to before me 29 of July 2005.



Notary Public

Class 1



STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT

COUNTY OF WINNEBAGO

PEOPLE OF THE STATE OF ILLINOIS,)
PLAINTIFF,)

VS)

JEREMY WIGHT,)
DEFENDANT)

CRIMINAL
No. 05CF2454

INFORMATION

The State's Attorney of said County charges:

That on or about the 29th day of July, 2005, in the County of Winnebago and State of Illinois, JEREMY WIGHT committed the offense of ATTEMPT, in that the said defendant, with the intent to commit the offense of EAVESDROPPING, in violation of 720 ILCS 5/14-2(a)(1)(A), performed a substantial step toward the commission of that offense, in that the defendant attempted to knowingly and intentionally use an eavesdropping devise for the purpose of recording a conversation between himself and Andrew Morse, without the consent of Andrew Morse, in violation of 720 ILCS 5/8-4(a)(Class A misdemeanor).

Paul A. Logli
State's Attorney of the County of Winnebago

BY:



Lisa M. Schultz
Assistant State's Attorney

EXHIBIT E

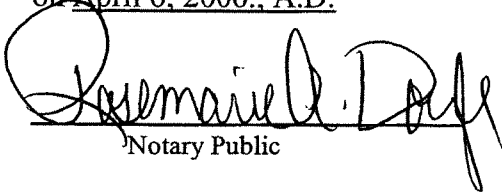
STATE OF ILLINOIS)
)
COUNTY OF WILL) SS.

Matthew J. Mikuska, Assistant State's Attorney of Will County, Illinois being first duly sworn, on his oath, deposes and says that he has read the foregoing information by him subscribed and that the matters and things therein stated are true to the best of his knowledge, information and belief.

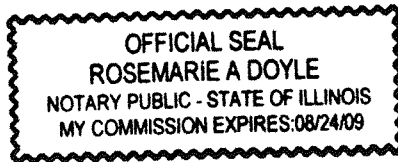
Matthew J. Mikuska
Assistant State's Attorney
Will County, Illinois

Subscribed and sworn before me

on April 6, 2006., A.D.



Notary Public



I have examined the above information and the person presenting the same and am satisfied that there is probable cause for filing the same. Leave is given to file said information.

Bail set at \$ _____.

Warrant of Arrest ordered
 stayed to issue.

Judge

EXHIBIT F

STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
CRAWFORD COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS)
)
 VS)
)
 MICHAEL D. ALLISON,)
 Defendant(s))

CASE NO. 2009-CF-50

FILED

APR 08 2009

INFORMATION

Thomas R Wiseman, Crawford County State's Attorney charges:

Thomas R. Wiseman
CRAWFORD CO. CIRCUIT COURT
CRAWFORD CO. ILLINOIS

COUNT I

That on or about 26th day of November, 2008, in Crawford County, Illinois, **MICHAEL D. ALLISON**, committed the following offense of **EAVESDROPPING** in that said Defendant, knowingly and intentionally used an eavesdropping device, a DS-30 digital recorder, for the purpose of recording a conversation between Chief Bill Ackman, a law enforcement officer, and Michael D. Allison, while in the performance of Chief Bill Ackman's official duties, and without the consent of Chief Bill Ackman, in violation of SECTION 14-2(a)(1) of ACT 5 of CHAPTER 720 of the Illinois Compiled Statutes of said State. Class 1 Felony.

COUNT II

That on or about 6th day of December, 2008, in Crawford County, Illinois, **MICHAEL D. ALLISON**, committed the following offense of **EAVESDROPPING** in that said Defendant, knowingly and intentionally used an eavesdropping device, a DS-30 digital recorder, for the purpose of recording a conversation between Officer William Rutan, a law enforcement officer, and Michael D. Allison, while in the performance of Officer William Rutan's official duties, and without the consent of Officer William Rutan, in violation of SECTION 14-2(a)(1) of ACT 5 of CHAPTER 720 of the Illinois Compiled Statutes of said State. Class 1 Felony.

COUNT III

That on or about 19th day of December, 2008, in Crawford County, Illinois, **MICHAEL D. ALLISON**, committed the following offense of **EAVESDROPPING** in that said Defendant, knowingly and intentionally used an eavesdropping device, a DS-30 digital recorder, for the purpose of recording a conversation between Debbie Phillippe, and Michael D. Allison, without the consent of Debbie Phillippe, in violation of SECTION 14-2(a)(1) of ACT 5 of CHAPTER 720 of the Illinois Compiled Statutes of said State. Class 4 Felony.

COUNT IV

That on or about 31st day of December, 2008, in Crawford County, Illinois, **MICHAEL D. ALLISON**, committed the following offense of **EAVESDROPPING** in that said Defendant, knowingly and intentionally used an eavesdropping device, a DS-30 digital recorder, for the purpose of recording a conversation between Nancy Ulrey, Craig Weber and Michael D. Allison, and without the consent of Nancy Ulrey and Craig Weber, in violation of SECTION 14-2(a)(1) of ACT 5 of CHAPTER 720 of the Illinois Compiled Statutes of said State. Class 4 Felony.

COUNT V

That on or about 13th day of January, 2009, in Crawford County, Illinois, **MICHAEL D. ALLISON**, committed the following offense of **EAVESDROPPING** in that said Defendant, knowingly and intentionally used an eavesdropping device, a DS-30 digital recorder, for the purpose of recording a conversation between the Honorable Kimbara G. Harrell, a judge, and Michael D. Allison, while in the performance of the Honorable Kimbara G. Harrell's official duties, and without the consent of the Honorable Kimbara G. Harrell, in violation of SECTION 14-2(a)(1) of ACT 5 of CHAPTER 720 of the Illinois Compiled Statutes of said State. Class 1 Felony.

Thomas P. Wiseman
State's Attorney

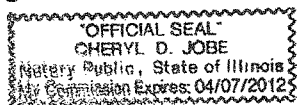
State of Illinois)
) ss:
County of Crawford)

The undersigned, on oath, says that the facts set forth in the foregoing Information are true in substance and matter of fact.

Cheryl D. Jobe

Subscribed and sworn to before me this 3rd day of April, 2009.

Cheryl D. Jobe
NOTARY PUBLIC



STATE OF ILLINOIS

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT

CRAWFORD COUNTY

THE PEOPLE OF THE STATE OF ILLINOIS

vs.

MICHAEL D. ALLISON

(Defendant)

No. 2009-CF-50
Cts. I - V

WARRANT OF ARREST

TO ALL PEACE OFFICERS OF THE STATE OF ILLINOIS:

You are hereby commanded to arrest MICHAEL D. ALLISON, 405 S. Lincoln, Robinson, IL

male

(Sex M/F)

01/12/1969

(Date of Birth)

and bring said person without unnecessary delay before

Presiding

(Judge)

Crawford

Crawford

of the Circuit Court of the Second Judicial Circuit,

County, in the courtroom usually occupied by him in the

County Courthouse in the City of Robinson,

or if he is absent or unable to act, before the nearest or most accessible court in said County, to answer a charge made against said person for the offense of EAVESDROPPING, Cts. I, II, III, IV, and V

and hold said person to bail.

If any geographical limitation is placed on the execution of the warrant, specify such limitations as follows:

STATE OF ILLINOIS

If no geographical limitation is placed on the execution of the warrant then it may be executed anywhere in the State.

The amount of bail is \$ 35,000.00

ISSUED AT

CRAWFORD

COUNTY ILLINOIS, this

15th day of April, 2009

(Judge)

Stephen G. Payne

State of Illinois

County of _____

} ss.

RETURN OF SERVICE

I have executed the within Warrant by arresting the within-named defendant. In accordance with the provisions of 725 ILCS 5/110-9, defendant released on bail in Sum of \$ _____, with security: _____

(Description of Security)

(Surety: _____)

(Name)

(Address)

this _____ day of _____, _____ (year) to appear in court on _____

this _____ day of _____, _____ (year) at _____ M. o 'clock, Central _____ Time

(Standard or Daylight)

FEES: Service and Return \$ _____; Mileage (_____ mi. @ _____ c) \$ _____; TOTAL: \$ _____

[Signature] #136

(Signature)

PATROLMAN RPD

(Official Capacity)

EXHIBIT G

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
DE KALB COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
Plaintiff)
vs.)
FANON PARTEET)
Defendant)

No. 10 CF 49

FILED

JAN 20 2010

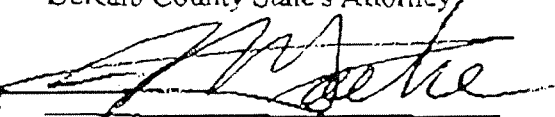
Maureen A. Josh
Clerk of the Circuit Court
DeKalb County, Illinois

INFORMATION

COUNT ONE

In the name and by the authority of the People of the State of Illinois, John Farrell, DeKalb County State's Attorney, by his Assistant, Nicholas R. Gaeke, on information and belief from Officer Rominski, DeKalb Police Department, charges that on or about November 24, 2009 Fanon Parteet, hereinafter Defendant, committed the offense of **EAVESDROPPING (Class 4 Felony)**, in violation of in violation of 720 ILCS 5/14-2(a)(1), in that the defendant knowingly and intentionally used an eavesdropping device, being a camera-equipped cellular telephone, for the purpose of recording a conversation between Officer Rominski and Joshua Cooper without the permission of one of the parties to said conversation, being Officer Rominski.

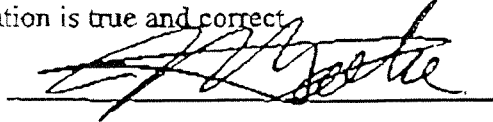
John Farrell
DeKalb County State's Attorney

BY: 
Assistant State's Attorney

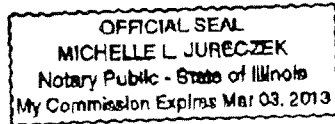
VERIFICATION

STATE OF ILLINOIS)
)
) SS
COUNTY OF DE KALB)

I, the undersigned, on oath say that I have examined the foregoing Information, and on information and belief do believe the above information is true and correct.



Subscribed and sworn to before me
this 20th day of January, 2010.


Notary Public/Judge

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
DE KALB COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS)
Plaintiff)
vs.)
ADRIAN PARTEET)
Defendant)

No. 10 CF 48

FILED
JAN 20 2010

Maureen A. Josh
Clerk of the Circuit Court
DeKalb County, Illinois

INFORMATION

COUNT ONE

In the name and by the authority of the People of the State of Illinois, John Farrell, DeKalb County State's Attorney, by his Assistant, Nicholas R. Gaeke, on information and belief from Officer Rominski, Dekalb Police Department, charges that on or about November 24, 2009 Adrian Parteet, hereinafter Defendant, committed the offense of **EAVESDROPPING (Class 4 Felony)**, in violation of in violation of 720 ILCS 5/14-2(a)(1), in that the Defendant knowingly and intentionally used an eavesdropping device, being a camera-equipped cellular telephone, for the purpose of recording a conversation between Officer Densberger of the DeKalb Police Department and a passenger in the vehicle occupied by the Defendant, without the permission of one of the parties to said conversation, being Officer Densberger.

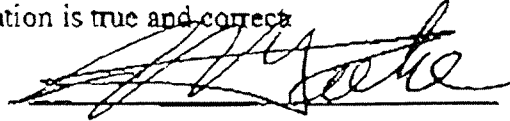
John Farrell
DeKalb County State's Attorney

BY: 
Assistant State's Attorney

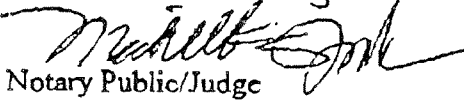
VERIFICATION

STATE OF ILLINOIS)
)
COUNTY OF DE KALB) SS

I, the undersigned, on oath say that I have examined the foregoing Information, and on information and belief do believe the above information is true and correct



Subscribed and sworn to before me
this 20th day of January, 20 10


Notary Public/Judge

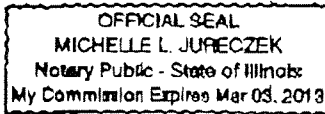


EXHIBIT H

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS
CRIMINAL DIVISION

REGISTERED

PEOPLE OF THE STATE OF ILLINOIS
Plaintiff

VS NIKITA BIDDLE
Defendant

General Number: 10 CF 421

INDICTMENT

COUNT 1

The Grand Jury charges that on or about February 17, 2010, defendant,

NIKITA BIDDLE

committed the offense of

EAVESDROPPING
Class 4 Felony,

in violation of Chapter 720, Section 5/14-2(a)(1) of the Illinois Compiled Statutes, as amended, in that defendant knowingly and intentionally used an eavesdropping device, (a Sony micro tape recorder), for the purpose of recording a conversation between Officer Joshua Horton #323 and the defendant without the consent of Officer Joshua Horton #323, in the City of Aurora, County of Kane, State of Illinois.

All of the foregoing occurring in Kane County, Illinois.

A TRUE BILL

Cynthia J. Rogers

Foreperson of the Grand Jury

CHIEF CLERK COURT CLERK APR - 8 2010 FILED 28 23 ENTERED
--

LIST OF WITNESSES

Hhorton 323 MUST GO

Aurora Police Dept

RECEIVED
CLERK OF COURT
KANE COUNTY, ILL. 4-11-10

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS
CRIMINAL DIVISION

ORDER

FILED
APR 8 2010
CLERK OF COURT
KANE COUNTY, ILL.

The foregoing Indictment was returned in open court on April 6, 2010. APR - 8 2010

Bail is set at \$ _____

(XX) Bond stands as previously ordered.

1. () Arrest Warrant ordered to issue for the arrest of the Defendant NIKITA BIDDLE, returnable for arraignment, before the Hon. Judge Mueller in Room 313, or such Judge as may be sitting in his/her place.

.....or.....

2. () Arrest Warrant previously ordered to continue for the arrest of the Defendant NIKITA BIDDLE returnable for arraignment, before the Hon. Judge Mueller in Room 313, or such Judge as may be sitting in his/her place.

.....or.....

3. () Notice/ _____ summons ordered to issue against the Defendant NIKITA BIDDLE returnable _____ at _____ A.M., before the Hon. Judge Mueller in Room 313, or such Judge as may be sitting in his/her place.

4. (XX) This matter set for arraignment on the pre-existing Court date of April 6, 2010 requiring the defendant NIKITA BIDDLE to appear before the Hon. Judge Mueller in Room 313 or such Judge as may be sitting in his/her place.

Enter: 4-8-10

Thomas Mueller

Judge

JOHN A. BARSANTI
State's Attorney of Kane County
37W777 Rt. 38 - Kane County Judicial Center
St. Charles, IL 60175
(630) 232-3500

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Case No. 10 CF 421

Plaintiff(s) <u>People</u>	Defendant(s) <u>Nikita Biddle</u>		
Plaintiff(s) Atty. <u>Lang</u>	Defendant(s) Atty. <u>Conant</u>		
Judge <u>Mueller</u>	Court Reporter <u>Jackie</u>		Deputy Clerk
A copy of this order <input type="checkbox"/> should be sent <input type="checkbox"/> has been sent			
<input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other _____		File Stamp	

PLEA OF GUILTY

THE COURT HAVING ADDRESSED THE DEFENDANT IN OPEN COURT FINDS:

That the defendant was advised of and understands that the state has the burden of proving him/her guilty beyond a reasonable doubt; that he/she is presumed innocent until proven guilty, the nature of the charge(s) and the possible punishment that might be imposed by the Court, including, if applicable, extended term or consecutive sentences and the right:

- (A) To plead not guilty or to persist in that plea if already made.
- (B) To present evidence in his/her own defense
- (C) To use the subpoena power of the Court.
- (D) To a jury trial or a trial before the judge without a jury.
- (E) To confront the witnesses against him/her.
- (F) To counsel and if indigent, to appointed counsel.
- (G) To pursue an appeal within 30 days, and if indigent, to a transcript of all the proceedings in his/her case without charge to assist in the appeal process

- That the defendant has waived right to counsel.
- That the defendant understands that if he/she is not a U.S. citizen that this plea could result in his/her deportation.
- That a plea agreement as stated to the Court was voluntarily arrived at: The defendant has stipulated that if witnesses were called that they would testify competently to sufficient facts to support a finding of guilty to the offense(s) of:

Eavesdropping Class 4 Statute JAD ELS 5/4-2(a)(1)
Count 1 Original Amended

- That the defendant pleads guilty to the offense(s) stated above, and waives his/her rights as stated in (A) thru (E) above.
- That the defendant agrees to the imposition of a specific sentence and waives the right to a pre-sentence investigation or an aggravation and mitigation hearing.
- That the defendant makes an unconditional (COLD) plea(s) to the charge(s) and asserts the right to a pre-sentence and aggravation and mitigation hearing.
- That the probation office of this Court is directed to conduct a pre-sentence investigation. A written copy is to be furnished to the Court, the defendant and the State's Attorney not less than three (3) Court days before the date set herein for sentencing.

- Sentencing hearing is continued to Instantly at _____ m., in Room _____ of the
 - Kane County Judicial Center, 37W777 Rt. 38, St. Charles, IL
 - Elgin Branch Court, 150 Dexter Ct., Elgin, IL
 - Aurora Branch Court, 350 N. River St., Aurora, IL
 - C'ville Branch Court, 1500 L.W. Besinger Dr., C'ville, IL

Date: 5-7-10

Defendant's Signature

Nikita Biddle



Handwritten: 5/7/10

Handwritten: TCM

RECEIVED

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
 KANE COUNTY, ILLINOIS

Case No. 10 CF 421

People of State of Illinois Plaintiff(s)		Nikita Biddle Defendant(s)		Clerk of the Circuit Court Kane County, IL MAY - 7 2010 FILED 116 ENTERED <i>[Signature]</i> File Stamp
<u>Lang</u> Plaintiff(s) Atty.		<u>Conant</u> Defendant(s) Atty.		
Judge <u>Mueller</u>	Court Reporter <u>Jackie</u>	Deputy Clerk		
A copy of this order <input type="checkbox"/> should be sent <input type="checkbox"/> has been sent				
<input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other				

JUDGMENT ORDER (JG/MTO)

The Court/Jury having found the defendant guilty of: Forward Chopping 1st
 Original Lesser/Incl. Amended Statute: 720 ILCS 5/14-2(a)(1)
 A motor vehicle was involved in the commission of the felony

Judgment entered on conviction and sentence (101).
 Nolle Prosequi Count(s) Any remaining

UPON THE DEFENDANT'S PLEA/VERDICT OF GUILTY THE FOLLOWING SENTENCE IS HEREBY IMPOSED

- | | Months | Days |
|---|-----------|----------------------|
| <input type="checkbox"/> 208 - Withhold Judgment - Court Supervision | | |
| <input type="checkbox"/> 215 - Withhold Judgment - 720 ILCS 550/710 Probation | | |
| <input type="checkbox"/> 216 - Withhold Judgment - 720 ILCS 570/410 Probation | | |
| <input checked="" type="checkbox"/> 204 - Probation (Automatic \$25 month fee <u>18</u> months <input type="checkbox"/> fee waived) | <u>18</u> | <u>09</u> |
| <input type="checkbox"/> 210 - Intensive Probation for _____ months. | | <u>until 11-6-11</u> |
| <input type="checkbox"/> 206 - Conditional Discharge (\$50 per calendar year fee _____ years <input type="checkbox"/> fee waived) | | |
| <input type="checkbox"/> 209 - Perform public service _____ hours. | | |
| <input type="checkbox"/> 213 - Electronic Monitoring: \$ _____ (per day) \$ _____ (total) | | |

The Defendant to report to Judge Court Services Judge and Court Services Non Reporting
 Fine: \$ _____ Fine = \$ 0 after Pretrial Detention Credit. Costs: \$ 350 Sex Assault Fee \$100
 Statutory Assessment Fee: \$ _____ Sex Registration Fee: \$ _____ Drug Assessment Fee \$ _____
 DNA Fee \$200 + Collection Fee of \$12 to ACS Spinal Cord Injury \$5 Drug Fine: \$ _____
 Drug Testing Fee: \$ 100 IPS-Fee \$200 Crime Lab Fee \$100 Pub Def Fee of \$ _____ Reserved
 Restitution: \$ _____ to _____ (Name and Address)
 Sheriff's costs: \$ _____ Fee Waived Trauma Center Fee: \$100 Abuser Serv. Fee \$20 Other \$ _____

THE DEFENDANT SHALL PAY FINES, COSTS, AND FEES, totaling (including Probation) \$ _____ in monthly payments of \$ _____ per month, with the first payment due _____. Monthly payment does not include weekend fees or any fees assessed prior to or post disposition. ACS to determine equal monthly payments

THE DEFENDANT TO SERVE THE FOLLOWING PERIODS OF INCARCERATION

- | | Years | Months | Days |
|---|-------|--------|--------------------------------|
| <input type="checkbox"/> 201 - Department of Corrections | | | |
| <input checked="" type="checkbox"/> 202 - Kane County Jail | | | <u>160</u> <u>6</u> <u>TTA</u> |
| <input type="checkbox"/> 203 - Periodic Imprisonment (\$15 per day-weekend equals 3 days) | | | |
| <input checked="" type="checkbox"/> 250 - Credit for time served: <u>80 days</u> <u>RELEASE INSTANTER</u> | | | |
| <input type="checkbox"/> The sentence of _____ shall run <input type="checkbox"/> Consecutive <input type="checkbox"/> Concurrent to the term imposed by the Circuit Court of _____ County, case number _____ | | | |
| <input type="checkbox"/> Defendant to begin incarceration on _____ | | | |

THE DEFENDANT TO COMPLY WITH THE FOLLOWING CONDITIONS:
 Follow all rules of Probation Conditional Discharge Electronic Home Monitoring Community Service TASC
 Alcohol/Drug Evaluation KCDC Evaluation/Treatment No Contact with abusive Maple Terrace Apt. Management
 Other: my recall any warrants vacate all dependants

Date: 5-7-10 Judge: [Signature]

[Handwritten initials]

KANE COUNTY, ILLINOIS

IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

Case No. 10 CE 421

<p>People</p> <p>Plaintiff/Petitioner</p>	<p>Nikita Biddle</p> <p>Defendant/Respondent</p>	<p>Clerk of the Circuit Court Kane County, IL</p> <p>MAY -7 2010</p> <p>FILED 115 ENTERED <i>[Signature]</i></p> <p>File Stamp</p>
---	--	--

RULES AND CONDITIONS OF PROBATION

IT IS THE FINDING OF THE COURT that the above named defendant has been adjudged guilty of the crime of Evil-doing. Therefore, it is the sentence and order of the Court that the above named defendant be sentenced to Probation for a period of 18 months. 5-7-10 to 11-6-11

It is further ordered that your case be assigned to Adult Court Services under the following conditions.

I SHALL:

1. Report to Adult Court Services, 37W777 Rt. 38, Suite 150, St. Charles, immediately upon being sentenced or released from incarceration.
2. Obey all federal and state laws and local ordinances.
3. Immediately notify Adult Court Services or my probation officer of any arrest
4. Report in person to Adult Court Services as frequently as directed and permit my probation officer to visit me in my home or elsewhere to the extent of his/her duties.
5. Not leave the State of Illinois without giving advance notice to and obtaining written permission from my probation officer.
6. Shall not possess a firearm or other dangerous weapon.
7. Notify Adult Court Services or my probation officer of any change of residence or employment within 48 hours of such change.
8. Attempt to work at a lawful occupation and/or further my education and support my dependants.
9. Pay all court ordered fines, costs, and fees in monthly payments of \$ _____ per month, with the first payment due _____.
10. Promptly undertake evaluations determined appropriate by the probation department (including but not limited to substance abuse and psychological) and thereafter participate in such treatment, therapy, counseling and/or remedial education as are appropriate, based upon said evaluation.
11. Submit to breath, urine, and/or blood specimen for analysis for the possible presence of a prohibited drug or alcohol as requested by the probation officer, and bear the expense of any such analysis.
12. Submit to DNA indexing and pay appropriate costs.
13. Follow any and all other conditions as ordered by the Court.
14. Other: KIDC evaluation + follow all rules.

The defendant is hereby advised that under the law the Court may revoke or modify any conditions of probation, and may issue a warrant for his/her arrest. If probation is revoked, the defendant will be resentenced.

Date: 5-7-10

Judge: *[Signature]*

I UNDERSTAND AND AGREE TO COMPLY WITH THESE PROBATION CONDITIONS:

Date: 5-7-10

Defendant: Nikita Biddle

*****TO BE COMPLETED BY DEFENDANT & PROBATION OFFICER*****

Probation Officer: _____

Date: _____

Defendant: _____

PLD2 (01/10) White - Clerk Green - Probation Yellow - SAO Pink - Defendant Gold - Defendant Attorney

Handwritten: MR # 883

Vertical stamp: RECEIVED

EXHIBIT I

FILED

JUL 27 2010

Clerk of the Circuit Court
Vermilion County, Illinois

**IN THE CIRCUIT COURT
FOR THE FIFTH JUDICIAL CIRCUIT OF ILLINOIS
VERMILION COUNTY, ILLINOIS**

THE PEOPLE OF THE STATE OF ILLINOIS)
 Plaintiff,)

VS.)

**GENERAL DIVISION
CASE NO. 2010-CF-397**

SEKIERA D. FITZPATRICK)
1611 Beechwood Apt. 202)
Danville, IL 61832)
Female/Black DOB: 3/18/1985)
Ht. 5' 5" Wt. 170 Brown/Black)
 Defendant(s).)

INFORMATION

The undersigned states to the Court that he is the duly elected, qualified State's Attorney in and for the County of Vermilion and State of Illinois and that at and within the said County of Vermilion and State of Illinois, the defendant(s) committed the offense(s) of COUNT I - EAVESDROPPING, (Class 1) and COUNT II - CONCEALING OR AIDING A FUGITIVE, (Class 4).

COUNT I - EAVESDROPPING, the defendant(s) on or about the 23rd day of July, 2010, knowingly and intentionally used an eavesdropping device for the purpose of hearing or recording all or any part of a conversation or intercepts, retains or transcribes electronic communication without the consent of all parties, Officer Eric Olson, while in the performance of his official duties, in violation of 720 ILCS 5/14-2 & 14-4.

COUNT II - CONCEALING OR AIDING A FUGITIVE, the defendant(s) on or about the 23rd day of July, 2010, knew Anthony Edwards was wanted by law enforcement in Vermilion County Case Number 10-TR-5473 and with the intent to prevent Anthony

Edwards's apprehension harbored, concealed or aided in harboring Anthony Edwards in the residence located at 1611 Beechwood Apt. 202, Danville, Vermilion County, Illinois, in violation of 720 ILCS 5/31-5.

DEFENDANT(S): Sekiera D. Fitzpatrick

1 COUNT OF CONCEALING OR AIDING A FUGITIVE

1 COUNT OF EAVESDROPPING

Dated this 26th day of July, 2010.

Randall J. Brungar

STATE'S ATTORNEY

STATE OF ILLINOIS)
) ss.
COUNTY OF VERMILION)

The undersigned, being first duly sworn upon oath, states the he has read the foregoing information and same is true.

Charles D. Wolke
Assistant State's Attorney

Subscribed and sworn to before me this 26th day of July, 2010.

Tracie Katakovich
NOTARY PUBLIC

CUSTODY
FB: 10
RPT# 2010-08437
ARREST DATE: 7/24/2010

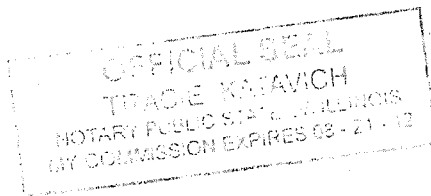


EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

THE AMERICAN CIVIL LIBERTIES)	
UNION OF ILLINOIS, COLLEEN)	
CONNELL, AND ALLISON CARTER,)	
)	
Plaintiffs,	)	Case No. 10 CV 5325
)	
v.	)	Judge Suzanne B. Conlon
	)	Magistrate Judge Sidney I.
ANITA ALVAREZ, Cook County State’s	)	Schenkier
Attorney, in her official capacity,)	
)	
Defendant.)	

**DECLARATION OF ALLISON CARTER
IN SUPPORT OF PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

I, Allison Carter, state as follows:

A. Background

1. I am the Senior Field Manager for the American Civil Liberties Union of Illinois (“the ACLU”). The statements contained herein are based on personal knowledge, including oral and written statements from other ACLU staff with whom I work in the regular course of operations of our organization. If sworn as a witness, I could testify competently thereto.

2. I am the ACLU’s Senior Field Manager. In that capacity, I have been selected by Colleen K. Connell, the ACLU’s Executive Director, to perform the actual audio/video recording of police activity in Cook County as part of the ACLU program, described below in Paragraph 5.

B. ACLU Program

3. The ACLU, presently, as it has in the past, monitors and observes police conduct in public places. In doing so, the ACLU seeks not only to observe and record the manner in which government employees perform their duties, but also to improve police practices, and to deter and detect any unlawful police interference with constitutional liberties. For example, the ACLU often monitors and observes police conduct at expressive activity in public places, including when the ACLU is engaged in its own expressive activity.

4. The ACLU has monitored, and will monitor, police at public demonstrations, protests, parades, assemblies, speeches, leafleting, and similar occasions and events. Such expressive events are sometimes planned, and on other occasions are spontaneous. The ACLU is presently able to, and intends to, monitor police activity both at planned expressive events and at spontaneous expressive events.

5. In the exercise of the ACLU's rights to gather, receive, record, and disseminate information, the ACLU, through my work as Senior Field Manager, has incorporated the use of common audio/video recording devices into the ACLU's ongoing monitoring of police in public places. Specifically, I am prepared to and intend immediately, upon authorization by Connell, to audio record police officers, without the consent of the officers, when (a) the officers are performing their public duties, (b) the officers are in public places, (c) the officers are speaking at a volume audible to the unassisted human ear, and (d) the manner of recording is otherwise lawful (hereinafter "the ACLU program"). I will carry out this ACLU program in Cook County Illinois.

6. But for my reasonable fear of prosecution by Alvarez under the Act (*see* Section C), I would immediately, under the direction of Connell, commence the aforementioned program of audio recording police officers in public, and the use and dissemination of such recordings. This program includes recording police conduct at expressive activity in public places, including when the ACLU is engaged in its own expressive activity.

7. On November 8, 2010, I monitored a protest held in Chicago at the James R. Thompson Center concerning the killing of Iraqi Christians. Under Connell's direction, I would have audio recorded police officers performing their public duties at this public place, but for the reasonable threat of prosecution by Alvarez under the Act. (*See* Section C). I did monitor police, but without audio recording.

8. But for the reasonable threat of prosecution by Alvarez under the Act (*see* Section C), I would, under Connell's direction, audio record police at planned and spontaneous events in Cook County in the future, including but not limited to the annual protest in spring 2011 in downtown Chicago in opposition to U.S. military policy in Iraq and Afghanistan.

C. My reasonable fear of prosecution

18. For the following reasons, I have a reasonable fear that if I implement the ACLU program, Alvarez will prosecute them pursuant to the Act:

(a) The Act on its face prohibits non-consensual audio recording of non-private conversations.

(b) The Illinois Legislature intended the Act to prohibit audio recording of non-private conversations with on-duty police.

(c) Alvarez is now prosecuting two cases under the Act in which civilians allegedly audio recorded on-duty police.

(d) In the original Complaint in this suit, the ACLU described the ACLU program of audio recording police as set forth above in paragraph 3. Alvarez has not in this litigation, or otherwise, indicated that the ACLU program does not violate the Act, or that Alvarez would not prosecute the ACLU or its employees for carrying out the ACLU program by audio recording police officers performing their duties in public. To the contrary, Alvarez stated in her motion to dismiss: “Plaintiff is precluded from audio recording any conversations without consent of all parties to such conversation, including encounters between law enforcement and citizens.” Dkt. No. 19, at p. 7.

(e) In the last six years, at least seven other State’s Attorneys have prosecuted at least nine other civilians under the Act for audio recording on-duty police, including one prosecution of civilians undertaking a program of monitoring on-duty police to promote police accountability.

(f) The Office of the Cook County State's Attorney repeatedly has prosecuted private corporations for criminal offenses. *See, e.g., People v. Universal Public Transp., Inc.*, 401 Ill. App. 3d 179, 192 (1st Dist. 2010) (corporation convicted for fraud); *People v. Bohne*, 312 Ill. App. 3d 705, 706 (1st Dist. 2000) (corporation indicted for tax impropriety); *People v. O'Neil*, 194 Ill. App. 3d 79, 88-89 (1st Dist. 1990) (corporation indicted for involuntary manslaughter).

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing statements are true and correct.

Dated: November 17, 2010

Respectfully submitted:



Allison Carter