

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 10-1764

SIMON GLIK,
Plaintiff-Appellee,

v.

JOHN CUNNIFFE, in his individual capacity; PETER SAVALIS, in his individual
capacity; JEROME HALL-BREWSTER, in his individual capacity;
CITY OF BOSTON,
Defendants-Appellants

On Appeal from a Judgment of the United States District Court
for the District of Massachusetts,
Hon. William G. Young

**MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*,
BERKELEY COPWATCH, COMMUNITIES UNITED AGAINST POLICE
BRUTALITY, JUSTICE COMMITTEE, MILWAUKEE POLICE
ACCOUNTABILITY COALITION, NODUTDOL FOR KOREAN
COMMUNITY DEVELOPMENT, PORTLAND COPWATCH
IN SUPPORT OF PLAINTIFF-APPELLEE SIMON GLIK
AND AFFIRMANCE OF THE RULING BELOW**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, counsel for proposed *amici curiae* makes the following disclosures:

(1) *Amici curiae* are all nonprofit organizations whose purposes are to document and publicize incidents of police misconduct, including through videotaped or audio recordings in public, train communities in how to engage in such projects, and inform communities of their rights *vis a vis* the police.

(2) *Amici curiae* are not publicly held entities.

(3) None of the *amici curiae* are parent, subsidiary, or affiliate of, or a trade association representing, a publicly held corporation, or other publicly held entity. No parent companies or publicly held companies have a 10% or greater ownership in *amici curiae*.

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I. INTERESTS OF *AMICI*

BERKELEY COPWATCH (Berkeley, CA) began in 1990 as an all-volunteer organization dedicated to monitoring police actions and educating and encouraging community members in asserting their rights in a non-violent manner. Berkeley Copwatch does not attempt to interfere in police activity or to resist police misconduct physically. The organization's mission is to work to reduce police violence, empower and unite communities, and encourage people to exercise their right to document police conduct and advocate for each other. Their copwatch trainings and methodology have served as model practices for others interested in similar police accountability mechanisms. As a result, Berkeley Copwatch has trained hundreds of individuals and groups nationwide on their rights *vis a vis* the police and has hosted international observers and members of law enforcement interested in learning more about their copwatch program.

COMMUNITIES UNITED AGAINST POLICE BRUTALITY

(Minneapolis, MN) Communities United Against Police Brutality (CUAPB) was founded in 2000 in the aftermath of an incident of police brutality in which an unarmed man was shot 35 times in the alleyway behind his home. Despite intense efforts by the community, there was no justice in that case. Historically and currently, the Minneapolis Police Department's Internal Affairs Unit and the Minneapolis Civilian Review Authority have provided little relief or accountability

in incidents of police violence. CUAPB was formed in response to this lack of accountability, on the belief that addressing day-to-day abuse will reduce more egregious incidents. An all-volunteer organization, CUAPB provides a 24-hour hotline and other referral and advocacy services for people dealing with the effects of police brutality. CUAPB also operates copwatch and courtwatch programs, engages in litigation, works to change policies and practices that facilitate police brutality, and educates the community on their rights while dealing with police.

Founded in 2005, the JUSTICE COMMITTEE (JC) is a Latina/Latino-led organization dedicated to building a movement against police violence and systemic racism in New York City. In 2008 JC launched its Cop Watch project, a tactic through which the Justice Committee seek to hold the police accountable by patrolling neighborhoods and documenting police misconduct with video cameras. The Justice Committee's Cop Watch team does not interfere in police activities. The JC Cop Watch project seeks to educate community members on their rights when approached by law enforcement, document police interactions with community members, and minimize police harassment, attacks and killings by non-violently observing.

The MILWAUKEE POLICE ACCOUNTABILITY COALITION (MPAC) was founded in 2003. The coalition involves local, state, and national organizations and is driven by families who have lost loved ones at the hands of

the police. MPAC has committed itself to organizing communities and finding solutions to Milwaukee's police brutality crisis--particularly in communities of color where a disproportionate amount of police misconduct takes place. MPAC unites the many voices of families and individuals who have been victimized by police violence into effectively addressing Milwaukee's police brutality crisis.

Founded in 1999, NODUTDOL FOR KOREAN COMMUNITY

DEVELOPMENT (Nodutol) is a grassroots organization dedicated to empowering the Korean people locally and globally and working for justice for immigrant and people of color communities in New York City. As an organization that opposes militarization at home as well as abroad, Nodutdol joined Peoples' Justice for Community Control and Police Accountability in order to help this coalition of grassroots organizations build a network of autonomous Cop Watch teams throughout New York City. Nodutdol members have provided leadership and capacity by joining Cop Watch Network teams, conducting Know Your Rights and Cop Watch trainings, and developing educational public art about New Yorkers rights when approached by law enforcement and the need for Cop Watch as a grassroots strategy for police accountability.

PORTLAND COPWATCH (Portland, OR) is an outgrowth of the People Overseeing Police Study Group, a grassroots group founded in 1992 to promote police accountability through citizen action, to empower victims of police

misconduct and prevent future such incidents, and to educate the public about their rights and responsibilities when dealing with law enforcement. Since its formation, Portland Copwatch has consulted dozens of groups and individuals locally and nationwide on the issue of civilian review of the police, assembled a broad range of reports, articles, interviews, and other resources. Portland Copwatch regularly participates in community forums on police accountability, including meetings of Portland’s civilian complaint review board (the Citizens Review Committee of the Independent Police Review Division) and the Police Chief’s forum. Since its inception, Portland Copwatch has maintained an incident report hotline for monitoring police conduct, provided know-your-rights trainings, conducted police monitoring in various neighborhoods and at demonstrations/protests, and trained community members on how to engage in police monitoring with or without video or other recording devices.

II. SUMMARY OF ARGUMENT

Amici submit this brief in support of Plaintiff-Appellee Simon Glik and of affirmance of the District Court’s ruling below. As the lower court explained, “in the First Circuit, this First Amendment right publicly to record the activities of police officers on public business is clearly established.” *Amici* are groups that have exercised this right – and who have trained or educated others about their

rights in police encounters – to increase direct police accountability to communities, participate in police reform and oversight, encourage civic participation by community members, and promote justice and transparency. In the experience of *amici*, the protection and exercise of the right to record police activity in public places has been necessary to further their goals and to realize the aims and principles underlying the First Amendment’s guarantees against government misconduct through civic engagement.

III. ARGUMENT

A. THE RIGHT TO GATHER INFORMATION ON MATTERS OF PUBLIC CONCERN IS A CORE FIRST AMENDMENT RIGHT THAT INCLUDES THE RIGHT TO RECORD POLICE ACTIVITY IN PUBLIC.

One of the central purposes of the First Amendment is to promote the open exchange of ideas, especially those critical of the government, by among other things protecting free speech, an independent press, freedom of assembly, and the right to petition the government. *Mills v. Alabama*, 384 U.S. 214, 218 (1966) (“a major purpose of [the First Amendment] was to protect the free discussion of governmental affairs.”); *see also Roth v. United States*, 354 U.S. 476, 484 (1957) (“The protection given free speech and the press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired

by the people.”). Indeed the Supreme Court has explained that “speech concerning public affairs is more than self-expression; it is the essence of self-government.” *First Nat’l Bank v. Bellotti*, 435 U.S. 765, 777 n.12 (1978) (citing *Garrison v. Louisiana*, 379 U.S. 64, 74-75 (1964)); *see also Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 604 (1982) (First Amendment guarantees “serve[] to ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government.”). To give meaning to the guarantees expressly stated in the First Amendment, some rights, though not specifically enumerated, nonetheless flow from the general principles and purpose animating the provision. *Globe Newspaper*, 457 U.S. at 604. The gathering of information about government affairs or matters of public concern – including by photographing or otherwise recording police activity – is one such right. *E.g.*, *Smith v. City of Cumming*, 212 F.3d 1332, 1333 (11th Cir. 2000) (finding that plaintiffs “had a *First Amendment* right, subject to reasonable time, manner and place restrictions, to photograph or videotape police conduct. The *First Amendment* protects the right to gather information about what public officials do on public property, and specifically, a right to record matters of public interest.” (emphasis added)); *Iacobucci v. Boulter*, 193 F.3d 14 (1st Cir. 1999) (First Amendment guarantees include right to film public officials’ conduct in public space.); *Fordyce*

v. City of Seattle, 55 F.3d 436, 439 (9th Cir. 1995) (First Amendment protects “right to film matters of public interest.”).

As a practical matter, the photographing or other audio/visual documentation of police conduct in public places is a real-life manifestation of the conduct and values promoted and protected by the First Amendment.¹ To properly “protect the free discussion of governmental affairs” and give teeth to the checks on government authority enshrined in the First Amendment, the public must have access to information concerning and the ability to disseminate information about government conduct. As James Madison explained, “[a] popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.”²

¹ That modern technologies permit individuals to gather and disseminate information concerning matters public concern in ways not contemplated at the writing of the Bill of Rights has little bearing on whether a specific form of conduct is protected by the Constitution. *Citizens United v. FEC*, __ U.S. __, 130 S. Ct. 876, 906 (2010) (“The Framers may have been unaware of certain types of speakers or forms of communication, but that does not mean that those speakers and media are entitled to less First Amendment protection than those types of speakers and media that provided the means of communicating political ideas when the Bill of Rights was adopted.”).

² LETTER FROM JAMES MADISON TO W. T. BARRY (Aug. 4, 1822), in 9 THE WRITINGS OF JAMES MADISON, 1819-1836 (Gaillard Hunt ed.) (1900), available at <http://oll.libertyfund.org/title/1940> on 2011-01-21 (follow “1822: To W. T. Barry Mad. Mss.” hyperlink).

The right to photograph or otherwise record police activity in public places promotes civic participation in matters of governance, is a vital tool in achieving government accountability, aids in the exercise of the right to petitioning the government for redress, and helps counter and deter government misconduct. Groups such as *amici* who engage in the photography or other recording of police activity in public places, engage in the vital, protected act of gathering of information about government action. To use Madison’s terms, these ordinary individuals obtain “popular information” essential to arming the public with information concerning the government conduct. When the government seeks to limit or shut down the right of ordinary members of the public to photograph or otherwise record police activity in public places, when these actions are not interfering with the official conduct or posing a threat to anyone’s safety – as were the events underlying Plaintiff-Appellee Simon Glik’s suit – the government infringes on a protected First Amendment right and strikes at the very heart of the principles animating the First Amendment.³

³ Laws can run afoul of the First Amendment’s free speech regardless at which “point[] in the speech process” they operate. *Citizens United*, 130 S. Ct. at 896; *see also id.* at 908 (when public authorities seek “to command where a person may get his or her information or what distrusted source he or she may not hear, it uses censorship to control thought,” and “[t]his is unlawful.”); *Bellotti*, 435 U.S. at 783 (First Amendment “prohibit[s] government from limiting the stock of information from which members of the public may draw”).

B. THE RIGHT TO RECORD POLICE CONDUCT PROMOTES CIVIC PARTICIPATION AND DEMOCRATIC GOVERNANCE.

Individuals who record, and those who organize as a group with the purpose of recording police conduct in public places, undertake precisely the type of political and social activities that help safeguard against government misconduct and further the function of a more responsive democratic government. “Going back to Madison ... analysts have argued that group life acts as a bulwark against tyranny and the dominance of a limited number of specialized interests.”⁴ The right to photograph police activity in public places is a grassroots accountability mechanism also helps foster greater involvement and trust by the community in local law enforcement. Groups and individuals across the country have relied upon video recordings of police misconduct to effect changes in law enforcement practices and police policies. In this sense, the right to record police activity alters the power imbalance that exists between police departments and the communities they patrol. With the ability to curb the excesses of police power and directly create policy changes, communities are more likely to have faith in local law enforcement.

⁴ Edward T. Walker, *Contingent Pathways from Joiner to Activist: The Indirect Effect of Participation in Voluntary Associations on Civic Engagement*, 23 *SOCIOLOGICAL FORUM* 116, 118 (2008).

One of the earliest organizations to use photographs and, later, video of police-public interactions to increase police accountability and to reduce police misconduct is *amici* Berkeley Copwatch. (Prichett Dec. ¶ 13.) The organization was formed in March 1990 and initially focused on the problems faced by homeless people, an already vulnerable and often disempowered population, because of unchecked police abuse and harassment. Volunteers from Berkeley Copwatch spoke to homeless people about their experiences with the police and literally stood witness to police misconduct as neutral civil rights observers in homeless shelters and elsewhere, creating statements of what they witnessed and using still photographs in their advocacy and support of homeless people. (Id. ¶ 7.)

With changes in technology, Berkeley Copwatch has increasingly used photography and video of police conduct to further their mission, and has trained communities around the country about their rights *vis a vis* the police, about exercising their right to record police activity in public in an appropriate and productive manner, and how to use documentary evidence in advocacy efforts. (Id. ¶ 8.) In fact, for the past fifteen years, the University of California at Berkeley has offered an undergraduate course taught by Berkeley Copwatch volunteers on these matters as well as about civic engagement and participatory democracy. (Id. ¶ 17.)

Berkeley Copwatch is a prime example of how knowledge and exercise of the right to record police activity fosters greater civic engagement, whether through direct

engagement with elected and other government officials, bringing together different communities with shared experiences, and volunteering to train and otherwise share information within their own and other communities.

In Minneapolis, Minnesota, *amici* Communities United Against Police Brutality (CUAPB) was formed to assist victims of police brutality, curb police abuse of power, and increase police accountability to the communities they serve. The organization began as a handful of volunteers who came together in 2000, following an incident in which an unarmed individual was shot “dozens” of times by police in an alley behind his home.⁵ (Gross Dec. ¶ 3.) Today, CUAPB has 150 active volunteers and over 4,000 supporters. (Id. ¶ 4.) CUAPB furthers its mission in part by using videos of police conduct that are created in connection with its own ‘copwatch’ program, through which community members are trained about their rights with respect to police encounters and documenting police activity. (Id. ¶ 8.) Similar to Berkeley Copwatch’s advocacy on behalf of the homeless, CUAPB made a video presentation to the City Council about police misconduct of homeless people, e.g., use of excessive or unnecessary force, confiscation and destruction of their property, with the aim of changing police practices and improving oversight. (Id. ¶ 16.) CUAPB has also presented to City Council and

⁵ Amy Mayron, *No Charges Filed Against Officers in Fatal Shooting / Mentally Ill Man Was Killed as He Drove Toward Police in Alley*, Saint Paul Pioneer Press (Minnesota) May 17, 2001, Thursday City Edition, Page B3

the local Civilian Review Authority (which accepts and investigates complaints of police misconduct) video of police congregating at nightclubs as they are closing and then using excessive force and pepper spray, and mounted police officers almost trampling club patrons with their horses. (Id. ¶ 17.) By exercising their right to record public police activity, CUAPB volunteers and trainees have become more engaged in local governance, discussions about policy reform, and community needs.

In Milwaukee, Wisconsin, Matt Nelson co-founded *amici* Milwaukee Police Accountability Coalition (MPAC), which has been monitoring and documenting police activities since 2003. Having spent several years in different parts of the country on such ‘copwatch’ trainings and activities, Mr. Nelson has found that, in his experience, “the more people participate in their community and in democratic institutions, the better we are able to improve policy and conditions in our neighborhoods and counteract parts of society that continue to be hostile toward African-Americans and people of color, including community-police relations.” (Nelson Dec. ¶ 23.) And, “Harassing civilians who engage in monitoring police activities, can accelerate an innocuous police-civilian interaction into a potential hostile or dangerous situation for both the officer and civilian. Also, police retaliation of citizen monitors will discourage civilian cooperation of those who may otherwise be in a position to assist good police work.” (Id. ¶ 28.) Mr. Nelson

currently works with ColorOfChange.org (CoC), a member-driven non-profit organization that seeks to improve people's lives by promoting engagement in matters of governance and political life. (Id. ¶ 22.) Issues related to the criminal justice system and to police-public encounters are very important to its membership, which is primarily African-American and has experienced instances of police hostility and outright brutality.

C. THE RIGHT TO RECORD POLICE CONDUCT HELPS HOLD LAW ENFORCEMENT ACCOUNTABLE TO THE PUBLIC AND HELPS DETER POLICE MISCONDUCT.

Police officers, as government officials, have responsibilities to the public. The right to record police activity in public places enables community members to ensure that police officers carry out these responsibilities properly and lawfully. And when videotaped material reveals a failure on the part of police officers to live up to their mandates, the ability to disseminate such documentation widely and rapidly through use of new media, can help bring police misconduct, whether individually-rooted or policy-based, to the attention of other government agencies and other communities.

Two prime examples of how video recordings of police brutality was instrumental in bringing this issue to the attention of federal authorities (and people across the country) are those surrounding the police beating of Rodney King in

1992. The video footage brought to some people's attention, for the first time, the problems of racism in policing and criminal justice, while for others, provided concrete evidence of the type of police misconduct that they had been facing in their communities for years. After a state jury acquitted the officers involved in the beating, the Department of Justice announced that it was launching its own investigation into the incident. A federal grand jury indicted each officer, and a trial resulted in guilty verdicts for two of the officers.⁶ More recently, the fatal shooting of Oscar Grant, an unarmed young black man, by a Bay Area Rapid Transit officer, was recorded by numerous witnesses on cell phone cameras and video recorders.⁷ The footage was disseminated through the press and the internet. As more and more footage came to light, authorities launched an internal investigation,⁸ in addition to subsequent state criminal charges levied against the officer who fired the fatal shot.⁹ In the end, two officers were terminated from service while the third was convicted of involuntary manslaughter, and not greater

⁶ Jim Newton, *2 Officers guilty, 2 Acquitted; Guarded Calm follows Verdicts in King Case; Trial: Federal Jury Finds that Stacey Koon and Laurence Powell violated Beating Victim's Civil Rights. Sentencing is set for Aug. 4*, L.A. TIMES, Apr. 18, 1993, at A1.

⁷ Henry K. Lee, *3 charged in Shooting Protest; Misdemeanor Counts could Still be lodged against Dozens More*, S.F. CHRONICLE, Jan. 10, 2009, at A4; Demian Bulwa, *Student's Video given to Police considered Best Look at Killing; Evidence*, S.F. CHRONICLE, May 18, 2009, at A5.

⁸ Marisa Lagos, *Video shows Another BART Cop Apparently Striking Oscar Grant*, S.F. CHRONICLE, Jan. 25, 2009, at B2.

⁹ Bob Elgeko and Marisa Lagos, *Lawyer tells Why Cop hit Oscar Grant; BART Shooting*, S.F. CHRONICLE, Feb. 1, 2009, at B1.

charges.¹⁰ At that point, the U.S. attorney's office and FBI announced that they were commencing their own independent investigation of the incident with the possibility of federal charges.¹¹ The video footage of the shooting served as evidence in the trial and the investigations, and also permitted individuals across the country to learn of what had happened. The strong, national public reactions to the shooting and the dissemination of the various video footage no doubt brought the matter to the light of the federal authorities who otherwise may not have taken interest in the case.

In other cases, the presence of bystanders with video cameras or photographic equipment in tense police-public encounters has helped de-escalate situations and deter potential police abuse. In Minneapolis, residents at homeless shelters who had asked CUAPB to assist by taping their encounters with local law enforcement, told CUAPB that their presence, with cameras, had actually had a calming effect – on both police and lay individuals. (Gross Dec. ¶ 14.) Even *after* CUAPB volunteers and trainees left, the possibility of being recorded, seemed to deter police officers from engaging in some of the harassment and other abuses of power that had led to CUAPB's involvement as third-party documentarians. (Id. ¶

¹⁰ Demian Bulwa, *BART told to reinstate Officer; Oscar Grant Shooting; Probe That led to Her Firing was Flawed, Arbitrator Says*, S.F. CHRONICLE, Dec. 18, 2010, at C1.

¹¹ Demian Bulwa, *Mehserle convicted - Protests, Looting; Verdict: Jury finds Former BART Officer Guilty on Involuntary Manslaughter Charge*, S.F. CHRONICLE, July 9, 2010, at A1.

14.) The right to videotape police conduct in public *fora* can also help create a more professionalized police force. Knowing that their conduct is being recorded does not simply deter “bad actors” but encourages police departments and officers to improve their own standards of conduct. To the extent local law enforcement tries to carry out their job duties while still respecting the civil rights of the communities they serve, videotaping police conduct is a means to ensure that they do so. (Nelson Dec. ¶ 24.)

That there is a need and public desire to hold law enforcement accountable for their actions is reflected by the fact that municipalities across the nation have established boards to review police conduct. Boston established a Community Ombudsman Oversight Panel to review police conduct in the wake of the death at the hands of the Boston Police of a college student in 2004. Boston’s panel purports to “to ensure that the City of Boston has a highly competent, fair and thorough process for the review of complaints of misconduct against Boston Police Officers; ... to promote the professionalism of the Boston Police Department; and ... to build trust and confidence within the Boston community.”¹² Other cities

¹² CITY OF BOSTON, ANNUAL REPORT OF COMMUNITY OMBUDSMAN OVERSIGHT PANEL 6 (2009) *available at* http://www.cityofboston.gov/Images_Documents/CO-OP_Annual_Report_2009_tcm3-9870.pdf.

have similar review boards responsible for some measure of oversight or accountability for the conduct of police officers.¹³

¹³ The following cities have created some form of a civilian complaint review board or other agency outside the police department to investigate complaints of police misconduct: Albany, NY (<http://www.albany.ga.us/content/1798/2879/2939/3086/default.aspx>); Albuquerque, NM (<http://www.cabq.gov/iro/>); Austin, TX (<http://www.ci.austin.tx.us/opm/>); Baltimore, MD (<http://www.ci.baltimore.md.us/government/crb/>); Berkeley, CA (<http://www.ci.berkeley.ca.us/prc/>); Boise, ID (<http://www.boiseombudsman.org/>); Boston, MA (<http://www.cityofboston.gov/police/co-op/default.asp>); Buffalo, NY (http://www.ci.buffalo.ny.us/Home/City_Departments/Citizens_Rights_and_Community_Relation); Cambridge, MA (<http://www.cambridgema.gov/~PRAB/>); Charlotte, NC (<http://www.charmeck.org/Departments/City+Clerk/Boards+and+Commissions/Boards.htm#Citizens%20Review%20Board>); Cincinnati, OH (<http://www.cincinnati.oh.gov/ccs/pages/-5509-/>); Dayton, OH (<http://www.dayton-ombudsman.org/>); Denver, CO (<http://www.denvergov.org/Default.aspx?alias=www.denvergov.org/oim>); Detroit, MI (http://www.ci.detroit.mi.us/police_commissioners/); Grand Rapids, MI (<http://bit.ly/3qpG47>); Iowa City, IA (<http://bit.ly/7MGiK>); King County, WA (<http://www.kingcounty.gov/operations/Ombudsman.aspx>); Knoxville, TN (<http://www.ci.knoxville.tn.us/boards/parc/>); Las Vegas, NV (<http://www.citizenreviewboard.com/>); Los Angeles, CA (<http://www.laoir.com/>); Memphis, TN (<http://www.cityofmemphis.org/framework.aspx?page=85>); Miami-Dade, FL (<http://www.co.miami-dade.fl.us/irp/>); Minneapolis, MN (<http://www.ci.minneapolis.mn.us/cra/>); New Haven, CT (<http://www.cityofnewhaven.com/CivilianReviewBoard/index.asp>); New York, NY (<http://www.nyc.gov/html/ccrb/>); Oakland, CA (http://www.oaklandnet.com/government/citizens/filing_complaints.html); Omaha, NB (<http://bit.ly/KZhke>); Orange County, FL (<http://bit.ly/2LzLL>); Philadelphia, PA (<http://www.phila.gov/pac/>); Pittsburgh, PA (<http://www.city.pittsburgh.pa.us/cprb/>); Portland, OR (<http://www.portlandonline.com/auditor/index.cfm?c=26646&>); Prince George's County, MD (<http://www.co.pg.md.us/Government/BoardsCommissions/CCOP/index.asp>); Riverside, CA (<http://www.riversideca.gov/cprc/>); Salt Lake City UT

The right of individuals to make video recordings of police activity supports the mission of these reviewing bodies and can help make their investigations more thorough and responsive to community concerns. Both Berkeley Copwatch and the Milwaukee Police Accountability Coalition (MPAC) have used video footage in helping individuals file complaints with local law enforcement review boards. (Prichett Dec. ¶ 10; Nelson Dec. ¶ 19.) And where independent review boards lack sufficient authority or fail to live up to their mandates, organizations like *amici* have used video and photographic evidence to emphasize the need for meaningful oversight, at times even resulting in community involvement in reforming review board policies and procedures. (Prichett Dec. ¶ 10 (Berkeley Copwatch); Nelson Dec. ¶ 7 (MPAC).) CUAPB came together after community members became frustrated by ineffective oversight by the Minneapolis Police Department’s Internal Affairs Unit and the local independent Civilian Review Authority. Through their various education, outreach, and advocacy efforts – especially their trainings concerning and engagement in videotaping police conduct – CUAPB created a

(<http://www.slcgov.com/civilianreview/>); San Diego, CA
(<http://www.sandiego.gov/citizensreviewboard/index.shtml>); Syracuse, NY
(<http://www.syracuse.ny.us/deptOther.asp>); County of San Diego, CA
(<http://www.sdcounty.ca.gov/clerb/index.html>); San Francisco, CA
(http://www.sfgov.org/site/occ_index.asp); Seattle, WA
(<http://www.cityofseattle.net/police/opa/>); and Washington, DC
(<http://www.occr.dc.gov/occr/site/default.asp>).

new, citizen-driven mechanism for police accountability, filling the void created by official failures. (Gross Dec. ¶ 3.)

Government entities have themselves sought and relied upon video and photographs documenting law enforcement activity when conducting official reviews of controversial or violent police-public encounters, particularly in the context of lawful mass protests and marches. For example, in May 2008, video footage of 13 or so Philadelphia police officers beating and kicking three men that they pulled out of a car during a traffic stop, made national news. The Philadelphia Police Department relied on the video to identify the officers and remove them from street duty while an investigation was conducted. In the end, eight police officers were fired or disciplined for the conduct recorded on tape.¹⁴ And, as individuals began posting video footage of police misconduct on the internet with greater frequency, the New York City Police Department asked community members to send such footage directly to them.¹⁵

¹⁴ Wendy Ruderman, *4 Cops fired for Beating*, PHILADELPHIA DAILY NEWS, May 20, 2008, at 3.

¹⁵ Daniel A. Begun, *NYPD wants Your Videos to help fight Crime*, hothardware.com, Aug. 1, 2008, <http://hothardware.com/News/NYPD-Wants-Your-Videos-to-Help-Fight-Crime/>. (“It’s a fact of life,” [New York City Police Department’s Commissioner, Ray] Kelly said. “Everybody has a camera in their telephones. When people can record an event taking place that helps us during an investigation, it’s helpful.”)

D. THE RIGHT TO RECORD POLICE ACTIVITY SERVES THE INTERESTS OF JUSTICE AND IMPROVES THE JUDICIAL PROCESS.

Photographs and other recordings of police-public interactions promote justice and improve the judicial process by providing an additional form of tangible evidence for fact-finders in court proceedings. In many such proceedings, regardless whether it is a suppression hearing or a civil trial arising from alleged police misconduct, rulings often turn on the perceived credibility of opposing witness testimony. Video or photographic evidence expands the universe of factors to be considered, resulting in the possibility of more accurate or just dispositions.

Such evidence is particularly important given the findings of studies examining police testimony and juror reactions. For one, there is the problem of police perjury or, as it has been termed, “testilying.” Among jurors, scholars, and other court watchers, there is “a widespread belief that testilying is a frequent occurrence” throughout the nation. Christopher Slobogin, *Testilying: Police Perjury and What to Do About It*, 67 U. Colo. L. Rev. 1037, 1040, 1041 (1996).¹⁶

¹⁶ See also Morgan Cloud, *The Dirty Little Secret*, 43 EMORY L.J. 1311, 1311-12 (1994) (“Judges, prosecutors, defense lawyers, and repeat offenders all know that police officers lie under oath.”); Jerome H. Skolnick, *Deception by Police*, CRIM. JUST. ETHICS, Summer/Fall 1982, at 40, 42 (concluding that police “systematic[ally]” perjure themselves to achieve convictions); ALAN M. DERSHOWITZ, *THE ABUSE EXCUSE* 233 (Hachette Book Group 1994) (suggesting that “recent disclosures about rampant police perjury cannot possibly come as any surprise” to those who have practiced criminal law in state or federal courts); ALAN M. DERSHOWITZ, *THE BEST DEFENSE* xxi-xxii (Random House 1983) (“Almost all

In 2004, during the Republican National Convention in New York City, the police conducted mass arrests of over 1,000 people. However, videotape footage taken by bystanders, copwatch organizations, legal observers, and the police themselves showed that of the approximately 400 people “arrested that week, video recordings provided evidence that they had not committed a crime or that the charges against them could not be proved, according to defense lawyers and prosecutors.”¹⁷ In a 2009 order by Judge Jack B. Weinstein, Senior United States District Court Judge for the Eastern District of New York, found that “[i]nformal inquiry by the court

police lie about whether they violated the Constitution in order to convict guilty defendants.”); Deborah Young, *Unnecessary Evil: Police Lying in Interrogations*, 28 CONN. L. REV. 425, 427 (1996) (asserting that “the reported cases of police lying represent only a fraction of the actual cases in which police lying occurred”); David Kocieniewski, *Perjury Dividend-A Special Report*, N.Y. TIMES, Jan. 5, 1997, at A1 (noting that according to one New York police officer, “lying under oath was standard procedure”); *Lie Detectors Could Curb Police Perjury*, USA TODAY, Aug. 1, 1996, (Magazine), at 13 (“[M]any experienced trial lawyers have said they believe police officers frequently lie on the stand.”); Joseph D. McNamara, *Has the Drug War created an Officer Liars' Club?*, L.A. TIMES, Feb. 11, 1996, at M1 (noting recent perjury scandals have surfaced in police departments in Los Angeles, Boston, New Orleans, San Francisco, Denver, New York, and other large cities; and stating “[H]undreds of thousands of law-enforcement officers commit felony perjury every year testifying about drug arrests.”).

¹⁷ Jim Dwyer, *Videos Challenge Accounts of Convention Arrest*, N.Y. TIMES, Apr. 12, 2005, available at <http://www.nytimes.com/2005/04/12/nyregion/12video.html>. (“Of the 1,670 cases that have run their full course, 91 percent ended with the charges dismissed or with a verdict of not guilty after trial.” In addition, “[b]esides offering little support or actually undercutting the prosecution of most of the people arrested, the videotapes also highlight another substantial piece of the historical record: the Police Department's tactics in controlling the demonstrations, parades and rallies of hundreds of thousands of people were largely free of explicit violence.”)

and among the judges of this court, as well as knowledge of cases in other federal and state courts, has revealed anecdotal evidence of repeated, widespread falsification by arresting officers of the New York City Police Department.” *Colon v. City of New York*, No. 1:09-cv-00008, 2009 U.S. Dist. LEXIS 110520, *4 (E.D.N.Y. Nov. 25, 2009) (order denying motion to dismiss).

While not all police officers commit perjury on the stand or falsify reports, there still exists an inherent power imbalance between law enforcement and ordinary individuals complaining of police misconduct. Many jurors are likely to believe that a police officer is speaking truthfully and take police at their word, as a basic starting point for evaluating officer credibility. In contrast, lay individuals, who do not carry the power of law enforcement, are not given the same benefit of the doubt from the outset.¹⁸ Video evidence can help “level the playing field” by serving as a counterweight to the automatic presumptions people may not consciously realize that they are making when evaluating police-public credibility.

In 2008, a widely reported case in which video evidence served to contradict the official statement of a New York City Police Department (NYPD) officer involved a rider in a monthly “Critical Mass” bike ride who was arrested and held

¹⁸ See, e.g., David N. Dorfman, *Proving the Lie: Litigating Police Credibility*, 26 AM. J. CRIM. L. 455, 471-72 (1999).

on charges of attempted assault and resisting arrest.¹⁹ The arresting officer filed a sworn statement that the rider had charged into the officer with his bicycle, knocking them both to the ground. However, video of the incident, which was taken by a bystander not involved in the bike ride, revealed that none of this was true. In fact the video footage, which was later uploaded to the public YouTube website, showed that the cyclist in fact swerved to avoid running into the officer and that the officer nevertheless tackled him without provocation.²⁰ The NYPD placed the officer on modified duty initially and he was later fired.²¹

IV. CONCLUSION

As explained by *amici* in this brief, the right to record police activity is part and parcel of the First Amendment right to record and speak on matters of public concern. Not only is the right to record police conduct in public places well-established, as demonstrated by Plaintiff-Appellee's principal brief and concluded by the lower court, it is routinely exercised by individuals and groups across the country to improve community safety, promote civic engagement (particularly by

¹⁹ John Eligon & Colin Moynihan, *Police Officer Seen on Tape shoving a Bicyclist is Indicted*, N.Y. TIMES, Dec. 16, 2008, at A33.

²⁰ Critical Mass Bicyclist assaulted by NYPD (video), <http://www.youtube.com/watch?v=oUkiyBVytRQ> (also on file with Center for Constitutional Rights).

²¹ Trymaine Lee, *Police Officer Who Shoved A Bicyclist is Off the Job*, N.Y. TIMES, Feb. 20, 2009, at A24.

communities that have historically borne the brunt of police misconduct), increase direct and community-driven accountability of local law enforcement. These goals directly align with the principles embodied in the First Amendment and protection of this right is warranted as a matter of law and policy.

For the reasons stated above, *Amici* respectfully request that this Court affirm the ruling of the court below and find in favor of Plaintiff-Appellee Simon Glik.

Date: January 25, 2011

/s/ Anjana Samant

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

SIMON GLIK

Plaintiff-Appellee,

v.

JOHN CUNNIFFE, in his individual capacity;
PETER SAVALIS, in his individual capacity;
JEROME HALL-BREWSTER, in his individual
capacity; CITY OF BOSTON

Defendants-Appellants

No. 10-1764

DECLARATION OF MICHELLE GROSS

I, MICHELLE GROSS, pursuant to 28 U.S.C. § 1746, declare the following:

1. I currently reside in Minneapolis, Minnesota. I have been a resident of Minneapolis since 1992.

Minneapolis Communities United Against Police Brutality

2. I am a co-founder and current president of Communities United Against Police Brutality (CUAPB). CUAPB was founded in 2000 as a Minneapolis-area organization that works to provide assistance to people dealing with the effects of police brutality, to educate the community, to decrease police brutality and to increase police accountability.
3. CUAPB was founded by four Minneapolis residents who came together after a particular egregious act of police brutality. Founding members of CUAPB were tired of what we saw as ineffective police oversight. The Minneapolis Police Department's Internal Affairs Unit, as well as the local independent Civilian Review Authority, had delivered little to no accountability for acts of police violence. We formed CUAPB as a new, community-driven way to address issues of police accountability.
4. Ten years later we have over 4,000 supporters and 150 active volunteers.
5. CUAPB is an all-volunteer organization.
6. CUAPB operates a variety of programs in the Minneapolis community. Since 2002 we have operated a 24-hour hotline for reporting of police brutality incidents. We operate a "court watch" program, give legal referrals, engage in litigation, organize to change policies and laws, and provide educational programs.

CUAPB's Copwatch Program

7. Since 2004 CUAPB has operated a "Copwatch" program in the city.
8. The Copwatch program of CUAPB trains volunteers about their legal rights and responsibilities when observing and documenting police behavior. No volunteers are allowed to engage in Copwatch without having first been trained.
9. CUAPB provides volunteers with equipment such as video cameras.
10. CUAPB receives requests from a variety of Minneapolis communities to come implement Copwatch in their neighborhood(s). In addition, many communities ask CUAPB to provide training on how community members can implement their own Copwatch programs.
11. CUAPB believes that an effective Copwatch program increases safety for both communities and officers. By capturing situations on videotape, we provide accountability for everyone involved.

Copwatch in Minneapolis Homeless Shelters

12. Since 2007, CUAPB has had a consistent program of sending Copwatch volunteers to the vicinity of two homeless shelters in downtown Minneapolis on a regular basis of at least once a week. One shelter is operated by the Salvation Army, and the other shelter is operated by Catholic Charities. They are both located on Currie Avenue in downtown Minneapolis. Many homeless residents of Minneapolis gather in the area of these shelters on a consistent basis.
13. Residents of the homeless shelters requested the presence of CUAPB volunteers because of ongoing incidents of police violence in the area around the shelters and to homeless people in the city. Examples of excessive police force included aggressive searches of residents without cause, beatings of homeless people, and police confiscation and destruction of shelter residents' property.
14. Homeless residents welcome CUAPB Copwatch volunteers. Since CUAPB began sending volunteers to monitor the areas around the shelters, homeless residents have said that our presence has had a "calming effect" on the police, and helps de-escalate homeless-police interactions, even when we are not recording anything with our video cameras.

Using Video of Police Encounters to Enact Reforms

15. The videos we create are used in different ways, from educational purposes to legal evidence.

16. We made video presentations to the Minneapolis Civilian Review Authority, various Minneapolis City Council members, and to community groups regarding the treatment of people at and around the homeless shelters since we started collecting such footage in 2007.
17. We have also made video presentations about police violence during “club closings.” “Club closings” are when police congregate around a night club as it is letting out at the end of the evening. Since 2004, we have video documented police running people over with horses, spraying crowds with pepper spray, and other examples of force.
18. By continuing to bring these instances of excessive police force to the City Council and other bodies, we are creating more awareness around the issue of police brutality.
19. In 2006, CUAPB settled a federal class-action lawsuit, *Robinson v. City of Minneapolis*, in the U.S. District Court of Minnesota. One outcome of the settlement was that video cameras were required to be placed into all Minneapolis Police Department squad cars. CUAPB is currently working with local attorneys to develop litigation concerning police conduct toward homeless residents on Minneapolis. Our video work is an essential part of building this case.

I declare under the penalty of perjury that the foregoing statements are true and correct.

Dated: January 20, 2011
Minneapolis, MN



Michelle F. Gross

Communities United Against Police Brutality
3100 16th Avenue South
Minneapolis, MN 55407

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

SIMON GLIK

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PETER SAVALIS, in his individual capacity;
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capacity; CITY OF BOSTON

Defendants-Appellants

No. 10-1764

DECLARATION OF MATT NELSON

I, MATT NELSON, pursuant to 28 U.S.C. § 1746, declare the following:

1. I currently live in Oakland, California, and have resided there since April 2009.
2. From December 1999 until March 2009, I lived in Milwaukee, Wisconsin.

Milwaukee Police Accountability Coalition

3. Between the years 2002 until March 2009, I was a co-founder and spokesperson for the Milwaukee Police Accountability Coalition (MPAC) in Milwaukee, Wisconsin.
4. MPAC was founded primarily by families who had directly experienced police violence, including having had family members killed by police. MPAC's mission is to address community stability and public safety in the primarily African-American and Latino neighborhoods of Milwaukee, as well as elsewhere in the city.
5. As spokesperson for MPAC, I was at the forefront of much of the organizing. I wrote articles in national publications such as The Nation magazine, press releases and spoke at events around the city and state. In 2007 I was a featured speaker at an event sponsored by the public policy forum addressing best practices for law enforcement, gave regular briefings and testimony to City, County and State elected representatives and Criminal Justice administrators.
6. Between the years of 2007 and 2009, I operated a city-wide legal clinic which assisted Milwaukee residents who wished to file complaints against MPD officers as well as managed research and open records requests regarding police training procedures, the civilian complaint process, and pattern of police misconduct.

7. MPAC has been central to promoting better police accountability and community-police relations in Milwaukee. MPAC brought about reforms to the Milwaukee Fire and Police Commission (FPC), which works as an independent oversight body of the Milwaukee Police Department (MPD). Including streamlining the process for civilian complaints and increase the power and independence of the commission.
8. MPAC also improved state policy regarding police procedure, specifically re-writing several rules on how police field interviews should be conducted with civilians with regarding to protecting an individual's civil rights. MPAC also has improved training for police who deal with people with mental illness through supporting a community developed and funded crisis intervention team
9. Additionally, MPAC helped found the Milwaukee Southside Community Justice Center, which provides services for community members such as conflict resolution, mediation, pretrial services and re-entry services.
10. MPAC has served a critical need in Milwaukee, where there has been an average of 10 civilian deaths a year at the hands of police, and ongoing reports of police violence and harassment of city residents in communities of color.
11. MPAC believes monitoring and documenting police-public interactions is an important part of accountability, both by witnessing and reporting police misconduct and recording it through videotape.

Improving Police Practices through Videotape Evidence

12. In 2005 I co-founded the Brewing Grounds for Change Coffeeshop, located at 2008 N. Farewell Avenue in Milwaukee. I was an owner/operator of the business from 2005 until 2009. I still maintain part-ownership in the business.
13. As a small-business owner, my business depended on the relationships I built with others in my neighborhood and community. It was a regular practice that members of our neighborhood would help each other out on day-to-day "quality of life" issues.
14. While I was an owner/operator of the coffeeshop, I had to call on the police to resolve neighborhood issues several times. This included a woman getting hit by a car a block from my business, and separately, a car flipping over nearby the business location.
15. On March 10, 2008, a number of MPD officers gathered in the vicinity of my business to implement an arrest of a civilian.
16. I felt it was my civic duty, especially due to past police interactions in my community, to monitor and document this arrest. By monitoring the situation, I hoped to prevent officers from using excessive force since they would know I was witnessing and recording their conduct.
17. I walked outside of my business with my camera phone to witness and document the police activity. Once I was standing outside of my business, two MPD officers stopped me as I was documenting the situation. One officer, Robert Ferrell,

- approached me aggressively and threatened me with arrest if I did not produce my social security number for him. In addition, he threatened to shut down my business and have the city revoke my permits if I did not comply with his demand.
18. Another resident who witnessed my interaction with these officers stated that Officer Ferrell's actions were hostile and unreasonable.
 19. Working with MPAC, I filed a civilian complaint with the Milwaukee Police and Fire Commission regarding Officer Ferrell's conduct.
 20. In October 2009, the MPD issued a memo saying that officers could not demand to see a person's social security number during a stop of a civilian. This was an important victory for MPAC and Milwaukee residents in making the police more accountable.

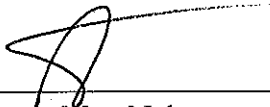
Color of Change – Increasing Civic Involvement

21. I have worked at ColorOfChange.org (CoC) since April 2010. My title is Special Projects Manager.
22. CoC exists to strengthen Black America's political voice. Our goal is to empower our members - Black Americans and our allies - to make government more responsive to the concerns of Black Americans and to bring about positive political and social change for everyone. CoC is a member-driven civil rights organization that tries to find ways for its members, to participate in the democratic process. Issues of police behavior and the criminal justice system are central to CoC's membership, which is primarily African-American.
23. In my experience working with community-based organizations, the more people participate in their community and in democratic institutions, the better we are able to improve policy and conditions in our neighborhoods and counteract parts of society that continue to be hostile toward African-Americans and people of color, including community-police relations.
24. Videotaping of police strengthens police-community relationships and encourages a more professionalized police force. A professionalized police force understands and upholds the civil rights of everybody they come into contact with, which creates a safer environment for everyone.
25. Many police departments espouse the importance of treating civilians with dignity and courtesy. Videotaping and monitoring of police by an active and participatory group of residents helps hold police to these higher standards of conduct.
26. In my experience, people who participate in monitoring police are more likely to be active in everyday civic participation. A person who engages in videotaping police is often more likely to address other "quality of life" issues in their neighborhood, including calling on police during certain situations.

27. When police retaliate against civilians who monitor them, it does serious damage to the level of trust between communities and police. It discourages people from continuing to monitor police in their community. By discouraging people from being civic participants, they are discouraged from other forms of civic participation, including calling on the police when there is an emergency. Discouraging people, especially young people, from taking part in other interactions that make for a healthy, stable neighborhood is detrimental to both community members and local law enforcement.
28. Harassing civilians who engage in monitoring police activities, can accelerate an innocuous police-civilian interaction into a potential hostile or dangerous situation for both the officer and civilian. Also, police retaliation of citizen monitors will discourage civilian cooperation of those who may otherwise be in a position to assist good police work.

I declare under the penalty of perjury that the foregoing statements are true and correct.

Dated: January 19, 2011
Oakland, California



Matt Nelson

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

SIMON GLIK

Plaintiff-Appellee,

v.

JOHN CUNNIFFE, in his individual capacity;
PETER SAVALIS, in his individual capacity;
JEROME HALL-BREWSTER, in his individual
capacity; CITY OF BOSTON

Defendants-Appellants

No. 10-1764

DECLARATION OF ANDREA PRICHETT

I, Andrea Prichett, pursuant to 28 U.S.C. § 1746, declare the following:

1. For the past thirty years, I have lived in Berkeley, California.
2. I am one of the founding members of Berkeley Copwatch, an all-volunteer, non-profit organization that seeks to increase police accountability and decrease police misconduct by promoting civic participation among community members.
3. One of our principal activities is conducting and training others in how to conduct police monitoring by, among other things, recording or filming their interactions with the public, commonly referred to as "copwatch".
4. Berkeley Copwatch's approach is to send out weekly shifts of two or more people who have been trained about their rights and responsibilities with respect to the police, and they document through video recordings, photography, or personal observations incidents of police misconduct, including the use of unnecessary or excessive force, baseless and warrantless searches of people in public, and officers without any identification on their uniforms (as is required by California law).
5. When Berkeley Copwatch was first created, we worked with homeless people. My observations of police interactions with homeless people on the streets and in public places led me to believe that this already vulnerable population was further disempowered by police harassment and misconduct.

6. My early activities with Berkeley Copwatch involved collecting testimonies from homeless people who had suffered police misconduct, such as confiscation of property, unjustified use of force, and outright physical and verbal abuse.
7. In its early years, Berkeley Copwatch relied largely on documenting such incidents, relying on our own first-hand observations, and also taking photographs of police-homeless interactions. Through such documentation, we were able to serve as advocates for homeless people.
8. With changes in technology, including the advent of more accessible video, audio, and photo equipment and the ability to rapidly disseminate information via the internet, our copwatch program has become more heavily reliant on recordings of police activity in public places. The ability to take video footage or photographs of police misconduct allows us to operate more efficiently and effectively.
9. We have used our recordings to further police reform that benefits both local law enforcement and community members. In 2008, for instance, we presented video footage of police misconduct at a special hearing of the local review commission. Specifically, the video showed an overly aggressive and unnecessarily violent police tactics used against protestors at a marine recruitment station.
10. As a result of this footage, the Berkeley Police Department in consultation with the Police review Commission reviewed and revised their crowd control policies and procedures.
11. Berkeley Copwatch has also provided video footage to local attorneys representing victims of police misconduct in litigation or attempting to dissuade prosecutors from pursuing charges against individuals who were wrongfully accused or arrested by the police.
12. Additionally, with our cumulative experience in such activities, Berkeley Copwatch has created training materials and presentations that included know-your-rights components when dealing with the police and "best practices" for recording police conduct.
13. Since its inception in March 1990, Berkeley Copwatch has helped numerous individuals from many different states set up similar organizations in other cities in the U.S., and has hosted law enforcement and non-governmental officials from Australia, Tanzania, and Zambia who were interested in our work around police accountability, including our copwatch program.
14. For example, in January 2011, Berkeley Copwatch was asked to conduct a training in Fresno, California where, for the past several years, an average of 5 or 6 people have

been killed in police encounters. The purpose of our training was to educate concerned community members about how to best record police activity, individuals' rights in police encounters, and other ways of directly increasing police accountability.

15. The training was attended by approximately 50 people with different racial, ethnic, and linguistic backgrounds and across age groups. This very diverse group had come together to become more active in their communities based on their shared commitment to ending police violence and abuse.
16. Over the years, Berkeley Copwatch has been involved in and witnessed communities coming together and becoming more active in local governance and local law enforcement practices through their concerns about police abuse and interest in participating in copwatch programs.
17. For the past 15 years, Berkeley Copwatch has also taught undergraduate, credit courses at the University of California at Berkeley on democratic education. In essence the course teaches students about civil rights and human rights monitoring, in civic engagement, and, specifically, in the process and goals of copwatch programs.

I declare under the penalty of perjury that the foregoing statements are true and correct.

Dated: January 21, 2011
Berkeley, California



Andrea Prichett

Founding Member of Berkeley Copwatch
2339 Oregon St. ,Berkeley, CA

**CERTIFICATE OF COMPLIANCE PURSUANT TO
FED. R. APP. P. 32(a)(7)(C)**

I, Anjana Samant, as counsel for *Amici Curiae*, hereby certify,
pursuant to Fed. R. App. P. 32(a)(7)(C), as follows:

(1) This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 5,507 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

(2) This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in Times New Roman 14-point type.

Attorney for *Amici Curiae*,
/s/ Anjana Samant

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Dated: January 25, 2011