

The Criminalization of Copwatching:

Berkeley Copwatch Report on State Violence, Police Repression and Attacks on Direct Monitoring

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This report was written and compiled by Andrea Prichett and Annie Paradise of Berkeley Copwatch based on research from January –July of 2011¹ and was initially released at the 2nd International Copwatch Conference in conjunction with the panel “Criminalizing Copwatch” where Berkeley Copwatch presented with Mario Cerame, third year law student at Quinnipiac University School of Law in Hamden, Connecticut. Any errors in this document are entirely the responsibility of Berkeley Copwatch.

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¹ While released on July 22, 2011, the report was updated in September of 2011 to include the First Circuit Court of Appeals decision in *Glik v. Cunniffe*, affirming the not only the right, but the importance of civilian monitoring of police (See this document page 20-21).

The Criminalization of Copwatching: Berkeley Copwatch Statement on State Violence, Police Repression and Attacks on Direct Monitoring

July 22, 2011

Introduction

Based on over twenty years of monitoring police conduct, Berkeley Copwatch believes that police brutality and repression by law enforcement of efforts to document and resist police violence are increasing. There has been significant and powerful documentation of the policing of dissent at rallies and protests, but less attention has been focused on the street level encounters where civilians exert their rights to hold the police accountable on a daily basis. Documentation as a form of resistance in everyday encounters is growing through copwatch and other police accountability groups, as well as by unaffiliated individuals with cameras, cell phones, and other recording devices.

Without effective accountability mechanisms in place, the police are free to act with excessive force, brutality, violence. One of our only remaining methods of oversight is in the very act of recording and documenting police conduct. In California and elsewhere, provisions for civilian oversight have been eroded in recent years, and there is a rising trend on a national level to harass and criminalize direct monitoring of police conduct. We see the increased violations of our right to videotape police as leading to an outright abrogation of basic first amendment rights and de facto prohibition of non-violent resistance to abuses by those in authority.

Goals

This report sketches the rise of an increasingly repressive state by focusing on direct attacks on copwatching. It demonstrates the national scale of police repression of civilians' rights to record by highlighting prominent legislative and judicial set backs as well as the misuse of other state and local laws and statutes to discourage those who would document police activity. We hope a growing awareness and continued documentation will help to develop a strategy for greater resistance to police abuse in our communities and on a national scale.

I. Current Overview: Obstacles to Accountability

Police are killing people across this entire country. African Americans are consistently overrepresented in civilian deaths at the hands of police, and the number of Latina/o killed by law enforcement continues to rise consistently each year.²

Despite community outrage at this violence (as evidenced by thousands of organizing efforts that focus specifically on addressing police violence) there are structural issues that obstruct possibilities for justice and prevent effective civilian oversight. Locally and nationally, hard-won processes of accountability have been systematically eroded, and new legislation that shields police misconduct has been passed. The latest nationwide assaults on direct monitoring of police can best be understood as working in conjunction with increasing obstacles to transparency and accountability locally.

Civilian Oversight Restrictions: Berkeley Police Review Commission

From the establishment of the Berkeley Police Review Commission (PRC) in 1973 by city ordinance, citizens were involved in the accountability process. Officers attended PRC hearings and were required to testify at the hearings. Once a model for cities across the nation, the workings of the Berkeley Police Review Commission have come to a virtual halt. Several efforts to weaken the commission have proven effective. Lawsuits placed serious restrictions on the authority of the board. The Police Officer Bill of Rights (1977)³ altered the way that investigations are conducted by the police department, shielding the conduct of police officers from public scrutiny.

The advent of the Caloca Boards⁴, an appeals process for those officers actually found guilty of an offense further reduced the power of the PRC. However, it was the Copley decision that brought things to a complete standstill.

The Copley Decision

Copley Press v. San Diego (2006) was a California Supreme Court decision that secured records of police actions, civilian complaints, use of force reports and any activity that might be used to evaluate police officer performance from public scrutiny. This decision shielded individual officers because any acts of brutality, excessive force, officer involved shootings, dishonesty, and patterns of abuse were now confidential. No public hearings can be held to address these complaints because to do so would, according to the Copley decision, illegally violate the officer's right to keep their personnel records confidential.

This decision rendered the Berkeley Police Review Commission (PRC) basically impotent. The PRC's power originally resided in its ability to establish a public forum for questioning officers. Although it never had the power to advise disciplinary action against officers, it was a powerful deterrent to misconduct because officers were required to attend

² See "Killed by Cops" in *Colorlines*, November 4, 2007, Jeff Kelly Lowenstein.

³ For the full text of the Police Officers' Bill of Rights, See Appendix 1.

⁴ See *Caloca v. County of San Diego* (2002)

hearings and to respond to the direct questioning of complainants. In the wake of the Copley decision, the PRC is not able to hold public hearings nor can it recommend discipline against officers as a result of confidentially held inquiries. Additionally, officers now do not even consider complaints arising through the PRC as having the power to effectively curb or influence behavior.⁵

While the Copley decision only applies directly to police agencies within California, it has provided a powerful precedent for other states that are seeking ways of increasing the power of government to operate free from public scrutiny and accountability.

Impunity

In many recent officer-involved shootings locally and nationally, authorities have justified deadly force as a “legitimate” response to a perceived threat to officer safety. Police department press releases on officer-involved shootings often state that the officers were afraid for their lives and thought the victim had a weapon or was somehow dangerous and/or unpredictable.⁶ This type of justification for police violence has been expanded as civilians’ ability to monitor police has been minimized and even criminalized. Too often, the lack of credible, visual evidence has resulted in police accounts becoming the only record of an event and as a result, officers are not held to account even for the killings of unarmed civilians. Citizen evidence has become the most powerful counterweight to police misinformation and police agencies are well aware of this.

For example, in San Francisco on July 16, 2011, a 19 year old African American man (Kenneth Harding) was shot two times in the back while running away from police who alleged that he had not paid his transit fare. Several conflicting police accounts were released to the public. The first account claimed that the gun had been thrown by the victim onto a nearby roof and that is why it had not been recovered. Another police version claimed that the gun had been “turned in” to the police station hours after the incident. Still another said that the gun had been “recovered” at a parolee’s house. Most recently, on July 21, police released a statement claiming that the man had actually shot himself. Some witnesses say that the young man never had a gun and never fired at police. Numerous video accounts of the shooting were posted on youtube.com. Several officers appear on the scene and appear to be so more interested in holding back the frightened crowd of onlookers than treating his wounds. The video shows the man slowly bleeding to death without benefit of medical attention. Although at least five officers were present and involved in the incident, none seem to make any effort to recover the supposed weapon. The videos raise numerous questions that would otherwise not be considered if the investigation were left solely to the police. Given the conflicting and dubious accounts by police, it is clear that civilian documentation and witnessing of this event will be a crucial contributor to the community’s understanding of what actually happened to Kenneth Harding.

In many communities, the credibility of police accounts of officer shootings has been severely diminished. This leaves it to civilian observation to provide accurate information about

⁵ Berkeley Copwatch *Status of Police Conduct in Berkeley* (2010) submitted to the Berkeley Peace and Justice Commission; April 2010

⁶ See Appendix X: Cases of People Shot by Police in Possession of an Alleged Weapon; compiled by Berkeley Copwatch, February 2011.

the facts surrounding these homicides. Locally, we have seen numerous instances where recorded evidence has had a significant impact on the outcome of criminal and civil proceedings. Most notable was the Oscar Grant shooting of January 1, 2009 where police officers made a great effort to seize the video cameras and cell phones of civilians who chose to record the events leading up to and including the shooting by Officer Johannes Mehserle. Despite police repression, some witnesses were able to post video footage that provided graphic evidence of the criminal actions of the police, lead to the arrest of the officer and brought the case to national prominence.

The breakdown in oversight has also led to an increase in corruption scandals that include drug dealing, theft, witness intimidation, falsifying police reports, coercion and violence in cities and rural areas across the nation.

Harassment

In January of 2011, Berkeley Copwatch conducted a survey of direct-monitoring groups located around the country. Organizations identifying as “Copwatch” or organizing direct patrols against police violence cited several ways in which the police have prevented them from filming in public. The most common tactic encountered was police officers lying to their detainee by saying that the Copwatchers would post video online to humiliate those being detained. The detainees would then ask for the Copwatchers to stop filming. Along similar lines, police often shine their lights in the direction of those filming to make it impossible to focus the cameras.

Physical repression of Copwatchers appeared less regularly but was still a recurring problem for most groups. Organizations said that video cameras have been seized, Copwatchers have been arrested on phony charges, false tickets have been issued, and many have simply been intimidated into leaving the area of the crime scene or turning off their cameras. Some Copwatch groups report being spied on by local agencies.

Berkeley Copwatchers have also experienced and witnessed arrests for monitoring police, even when, as was the case in the November 5th protests following the Officer Mehserle verdict, other journalists and news sources were granted amnesty from dragnet arrests. This speaks to the way that direct monitoring groups are perceived. Berkeley Copwatch regularly publishes on its blog and in journals and Copwatch reports, yet is not considered to be “media”.

Periodic harassment has produced two distinct responses from the state. In some states or cities, organized resistance has led to policies clarifying the right to observe police (see for example Atlanta, Georgia; New Haven, Connecticut). However, in other places, attacks on the right to observe have increased repression and led to the establishment of new laws and/or interpretations of old laws that make citizen monitoring a criminal offense. Copwatching in some areas becomes explicitly prohibited (Illinois, Maryland, Massachusetts). In other areas, the issue remains unaddressed by local agencies and officers continue to harass, intimidate, and discourage civilians from observing.

II. State efforts to stop the documentation and gathering of data

“A cynic might conclude that law enforcement officials in Maryland are reacting to the McKenna embarrassment by threatening and cracking down on anyone who videotapes on-duty cops, and they’ll interpret the law in whatever way allows them to do so. At least until a court tells them otherwise.”

Radley Balko⁷

While harassment is its own form of policing that functions to chill civic participation and social dissent, in many states there is legislative support for this type of harassment. Across the US, police rely on wiretapping statutes and two-party consent laws to convict citizens who attempt to capture police conduct--quite frequently misconduct--on camera. The police are backed up by their departments and by the courts. In many states, including Illinois, Maryland and New Hampshire, recording is a felony charge, and people who have recorded police and other public officials face excessive sentences.

At present, twelve states have all-party consent laws. All-party consent laws are laws which make it criminal to record private as well as public conversations without the consent of all parties concerned. The twelve states are: California, Connecticut, Florida, Illinois, Maryland, Massachusetts, Michigan, Montana, Nevada, New Hampshire, Pennsylvania, and Washington.⁸ Ironically, this legislation was initially drafted to protect civilians from state abuse. It is this same legislation that is being used to justify new interpretations that are applied to civilians who monitor public encounters with police.

In states without this legislation, people recording police have not only faced bogus charges, but Homeland Security measures have even been cited as justification for their arrests and harassment.⁹

Individuals in several states have brought the right to record to national prominence through court cases and lengthy appeals processes. Many of these cases have been pressed by people of relative privilege, including lawyers and college students. In our experience, there are exponentially more incidents of the right to record being violated than ever become known through the courts or the media. Documenting police activity has become a widespread and decentralized activity. Government efforts to prohibit or control it seem unlikely to be completely effective.

III. Sustained resistance to police misconduct

“Videotaping officers throughout the country is exposing an ongoing epidemic of police violence. It is viewed by young people and people of color as a method of self-defense.”¹⁰

⁷ “In Spite of State Law, Maryland Law Enforcement Officials Still Arresting, Charging People for Recording Cops”, *Reason Magazine*, May 29, 2010. <http://reason.com/blog/2010/05/29/maryland-cops-say-its-illegal>

⁸ See The Reporter’s Committee for Freedom of the Press, a journalism group which arose in 1970 to challenge government subpoenas of confidential information, including sources. <http://www.rcfp.org/taping/quick.html>

⁹ Even as video surveillance and other forms of discreet or extralegal monitoring of citizens under Homeland Security becomes ever more pervasive and intrusive.

Berkeley Copwatch has identified at least thirteen copwatch and other direct monitoring and police accountability groups across California,¹¹ and 31 groups nationally.¹² Groups are also challenging police and law enforcement internationally, including throughout Canada,¹³ as well as in Puerto Rico, Britain and France. Although all police monitoring groups are distinct and local, these groups coordinate for conferences, trainings, days of action and protest, phone conferences and strategy sessions around specific urgent issues and larger national trends.

Many groups regularly hold Know Your Rights trainings, with groups sharing resources and experiences and participants are informed of the law, and interactively participate in direct monitoring scenarios to learn peaceful de-escalation and effective recording techniques. People are then prepared to go out on direct monitoring shifts with a shift leader, and are better informed of their rights when interacting with law enforcement officers.

A. Local Observations (Berkeley)

While each city or area has its own urgent issues and challenges, Berkeley Copwatch would like to note some recent trends and highlight certain ongoing practices in police activity that we and others are attempting to address.

- At numerous recent protests and rallies across the Bay Area, officers' badges and names, and even departments have been covered over or otherwise shielded from public view.
- The proliferation of forces and variety of agencies present at protests makes it increasingly difficult to hold a particular department accountable.

¹⁰ From "LA District Attorney orders Gestapo-style police raid on home of Jeremy Marks" Doug Kauffman and Ian Thompson, *Liberation Newspaper*, January 27, 2011; <http://pslweb.org/liberationnews/news/jeremy-marks-home-raided.html>

¹¹ These include Crescent City Copwatch, Fresno Brown Berets, Los Angeles Copwatch, Modesto Brown Berets, Oakland Copwatch, Petulama Copwatch, Redwood Curtain Copwatch (North Coast/Eureka), Reedley Copwatch, Sacramento Copwatch, Salinas Copwatch, San Jose Copwatch, Santa Rosa Copwatch, and Union City Copwatch.

¹² These include in Arizona: Flagstaff Copwatch, Phoenix Copwatch, and Migra Patrol Copwatch (Tucson); in Colorado: Denver Copwatch and West Denver Copwatch; Connecticut: New Haven Copwatch; Florida: Orlando Copwatch and Tallahassee Copwatch; Georgia: Atlanta Copwatch and East Atlanta Copwatch; Idaho: Boise Copwatch; Illinois: Chicago Copwatch; Indiana: Indy Copwatch (Indianapolis); Kansas: Kansas Copwatch; Louisiana: New Orleans Copwatch; Massachusetts: Boston Copwatch and Western Massachusetts Copwatch; Minnesota: Communities United Against Police Brutality (Minneapolis); North Carolina: Asheville Copwatch; New Hampshire: New Hampshire Copwatch; New Jersey: New Jersey Copwatch (Rochelle Park); New Mexico: Albuquerque Copwatch; Nevada: Las Vegas Copwatch; New York: The Bronx Copwatch and Malcolm X Grassroots Movement (Brooklyn); Ohio: Columbus Copwatch; Oregon: Portland Copwatch and Rose City Copwatch; Texas: Austin Copwatch, Dallas Communities Organizing Against Police Terrorism and Houston Copwatch; and Utah: Utah Citizens Against Unethical Law Enforcement (Salt Lake City).

¹³ These include in Alberta: Calgary Copwatch and Edmonton Police Watch; Manitoba: Winnipeg Copwatch; and Quebec: Copwatch Montreal.

- There is increased and sometimes deadly use of tasers, chemical weapons, and other supposedly “less lethal” devices. We believe that their expanded use increases opportunities for abuse, constitutes torture, and is used in many cases where lethal force would not otherwise be justified.
- We note increased attacks on people suffering from mental illness and is itself increasingly used as justification for quick and violent decision making by police.
- There is increased harassment of youth, more violent police responses to typical adolescent misbehavior and daily race-based policing of young people of color.
- Quality of life policing and other policies, laws and practices continue to disproportionately impact particular communities of homeless people and those in poverty (i.e. anti-sitting laws, anti-sleeping, anti-day laborers, etc.)
- “Anti-gang” injunctions have been issued by the Oakland District Attorney which criminalize otherwise non-criminal behavior by certain named and unnamed individuals. These include rules of assembly, association and curfews. They are targeted at particular young men of color who are suspected of having (unproven) “gang” affiliations. (Note that injunctions are a civil procedure with a lower standard of proof than “beyond a reasonable suspicion”. Those named can basically be punished without benefit of an actual trial. These injunctions essentially create a two-tiered, racially based system of justice.)
- Berkeley Copwatch has also organized against the introduction of less-than-lethal weapons into local arsenals. We have spearheaded efforts to ban police use of pepper spray and police use of attack dogs. We also had a significant impact on the decision by the Berkeley Police Department not to introduce the use of taser weapons into their arsenal at the current time.

B. Examples of Resistance Statewide

Eureka/North Coast

Redwood Curtain Copwatch has organized to bring statewide attention to cases of excessive and rampant police violence in the Eureka area, including those targeting people made vulnerable by lack of housing, and on Native American reservations. As a grassroots organization it “seek[s] to intervene in the drastic rise of the presence, militarization, and violence of the police, and build support networks based on self-determination, caring, and concrete needs.”¹⁴

Recent work from Redwood Curtain Copwatch continues to exert pressure to recognize three police killings in 2007, in cases which sometimes did not even reach the local papers, and in which details remain shielded from public scrutiny and due process.¹⁵

¹⁴ See Redwood Curtain Copwatch at <http://redwoodcurtaincopwatch.net/>

¹⁵ For details of the above cases, including the cases of Peter Stewart, Martin Cotton, Jr., and Hans Peters, please see Redwood Curtain Copwatch’s website at: <http://redwoodcurtaincopwatch.net/node/232>

Fresno

Brown Berets are doing direct monitoring in organized community street patrols and working with other activists and police accountability projects. Berkeley Copwatch and Fresno Brown Berets have worked together to share stories, experiences, and strategies for holding the police accountable.¹⁶

Other Efforts

Within California, there are many other Copwatch types formations which have taken hold in local communities. These include (but are not limited to) Los Angeles, San Diego, San Jose, Santa Cruz, Salinas, Modesto, Sacramento, Reedly, Petaluma, Santa Rosa, and more. Other cities have made efforts to maintain a Copwatch type group but for various reasons have not been able to maintain consistency. Oakland and San Francisco are among them. Often these efforts begin in reaction to a particular incident, most commonly, community outrage over police killings.

Organizing efforts are proliferating in response to police killings. Protests have also taken place in Stockton, Manteca, Turlock, Yuba City and Bakersfield and surrounding areas and have been sponsored by Mothers Cry for Justice, Central Valley Coalition Against Police Violence and other organizations that are not necessarily associated with copwatch groups.

C. Nationally Organized Efforts

Police misconduct continues as a national epidemic that is almost completely ignored by politicians and policymakers. The increase in the use of anti-eavesdropping statutes as well as increased efforts by police agencies to prevent monitoring suggests the possibility of a nationally coordinated strategy/campaign to discourage citizen monitoring of police. Individual states, and Homeland Security have taken notice of Copwatch activity and have even attempted to characterized Copwatch activity as “...posing a significant domestic terrorist treat at this time.”¹⁷

Contradictory interpretations by courts and state legislatures about whether the act of observing police is, in fact, constitutionally protected activity indicates the possibility that, ultimately, the U.S. Supreme Court will have to make a ruling on the issue. Based on the current composition of the court, a ruling by the court might not uphold copwatching as protected First Amendment activity.

Berkeley Copwatch, together with other groups, recently was a signatory on a brief of *amicus curiae* in a significant case supporting citizen’s right to record. The amicus initiated from the Center for Constitutional Rights (CCR) and is discussed more fully below as a national collective effort to contest restrictive state legislation. This case is important as well for its ability to organize groups and create a broad coalition of monitoring groups.

¹⁶ “Fresno Hosts Berkeley Copwatch for Know Your Rights Training”. See <http://berkeleycopwatch.org/blog/>

¹⁷ Missouri Information Analysis Center, MIAC Strategic Report: Anarchist Movement 11-28-2008.

D. International

Individuals around the world are increasingly working to use non-violent methods of documenting the activities of the police and state agencies and have sought to adapt aspects of the Copwatch model for use in their own situations.

Individuals from France, Australia, Great Britain, South Wales, India, Zimbabwe, Zambia, Mexico, Puerto Rico and Guatemala who were interested in exploring how the principles of copwatching could be adapted and suited to their own local/national political situations have contacted Berkeley Copwatch.

Winnipeg Copwatch in Winnipeg, Manitoba, Canada is hosting the 2nd International Copwatching Conference in July 2011. Berkeley Copwatch hosted the first International Copwatching Conference in 2007.¹⁸

IV. Conclusion and Recommendations

The proliferation of police agencies and associated budgets means that there are ever more cops on the street. Likewise, citizen efforts to monitor police have also increased in the last 20 years. Recent evidence suggests that efforts to stop or reduce citizen monitoring of police is not simply a matter of individual cops responding negatively to such scrutiny. Efforts are now underway at various state legislatures to criminalize citizen monitoring of police. We believe that the most important and most effective form of police accountability to be practiced in recent times has come from community-based efforts to monitor police. These efforts actually suppress police misconduct and that is why they are being targeted.

We believe that the most important task today in the area of police accountability is to maintain and defend citizen monitoring of police as an essential and fundamental right enshrined in the First Amendment of the U.S. Constitution.

We support collective resistance efforts and collectively shaped mechanisms for greater community involvement and empowerment. Community based alternatives to police, in addition to local campaigns for justice, are vital to increasing community participation and to foster a collective, community vision of what actually constitutes “justice”.

We support public organizing to stop the criminalization of copwatching and targeting of community based monitoring efforts. Local legislation affirming the right of individuals to watch police officers as they do their jobs can be helpful as a way of communicating community values around the role of police and accountability mechanisms.

We do not support the formation of new civilian review policies in the absence of effective implementation structures. Unless the California state legislature acts to repair the damage done to police accountability agencies by the Copley decision, it is very unlikely that civilian review will be able to provide even minimal assurances of oversight of the police.

Most importantly, the issue of whether there is a constitutional right to directly monitor police will most likely go before the Supreme Court in the near future. If the current conservative Supreme Court should decide that there is no constitutional protection of citizens who are

¹⁸See Winnipeg Copwatch Conference Website, <http://conference.winnipegcopwatch.org/>

documenting police activity, the penalties for copwatching could increase. The ability of the public to petition for a redress of grievances will be severely curtailed. It is advised that individuals and groups in the accountability movement begin to consider how they will conduct their organizing in the absence of such basic freedoms.

STATE-BY-STATE INDEX OF DEVELOPMENTS IN THE RIGHT TO COPWATCH

The growing list of state by state attacks is not exhaustive, but gives some sense of an increasingly repressive terrain on a national level.¹⁹

In many states, state wiretapping statutes are used to criminalize copwatching. Two-party, or all party consent “means that all parties to a conversation must agree to be recorded on a telephone or other audio device; otherwise, the recording of conversation is illegal. The law, intended to protect the privacy rights of individuals, appears to have been triggered by a series of high-profile cases involving private detectives who were recording people without their consent.”²⁰

California: All Party Consent State

“The family of Jeremy Marks awoke on Jan. 26 at 7:00 am to the sound of nearly 30 Los Angeles Police Department cops bursting into their house in full tactical gear, guns drawn. They searched the house, taking all computers, cell phones, cameras and trashing Jeremy’s bedroom, his parent’s bedroom and the living room...Every item used to communicate with the outside world about Jeremy’s case was taken from every member of Jeremy’s family, including his parents’ and siblings’ personal possessions.”

Doug Kauffman and Ian Thompson²¹

A current high profile case in California involves a high school student, Jeremy Marks. Marks videotaped a beating of a 15 year old African high school student by Los Angeles Unified School District Police Officer Erin Robles, supposedly for smoking a cigarette, on May 10, 2010. Marks was on probation at the time.

¹⁹ There are numerous websites devoted to the right to record police, among them, the extremely thorough work of Carlos Miller at Photography is Not a Crime: <http://www.pixiq.com/contributors/248> ; and Flex Your Rights: <http://flexyourrights.org/taxonomy/term/81> ; also Radley Balko with *Reason Magazine* has recently posted “An Interactive ‘War on Cameras’ Map”, February 28, 2011, See <http://reason.com/blog/2011/02/28/an-interactive-war-on-cameras>

²⁰ “Police fight cellphone recordings”, *The Boston Globe*, Daniel Rowinski (New England Center for Investigative Reporting) January 12, 2010; http://www.boston.com/news/local/massachusetts/articles/2010/01/12/police_fight_cellphone_recordings/

²¹ “LA District Attorney orders Gestapo-style police raid on home of Jeremy Marks” Doug Kauffman and Ian Thompson, *Liberation Newspaper*, January 27, 2011; <http://pslweb.org/liberationnews/news/jeremy-marks-home-raided.html>

The Los Angeles District Attorney alleges that Marks tried to ‘incite a riot during an attempt to free a suspect from police custody’. Marks was thus arrested on charges of attempted lynching, despite the fact that other video recordings from the scene of the incident evidence that these charges are fabricated. He remained in jail until December of 2010.

Shortly after his release and prior to the trial, the Los Angeles District Attorney ordered a police raid on the family home in Lakeview Terrace, a largely African American neighborhood, at 7:00 in the morning. A team of close to thirty officers in “full tactical gear”²² ransacked several rooms of the house, including Marks’ bedroom and his parents bedroom, and seized cameras, computers, and cell phones from all family members. Police also seized Marks’ notes, papers, and legal documents, including communications protected under attorney-client privilege. Despite demands from Marks’ mother, no search warrant was produced until the raid had been in progress for 45 minutes. Further, and in violation of California law, police did not provide names or badge numbers when asked.

Outside the house, police restricted neighbors from leaving their homes, and aimed guns at members of the community.

This raid did not occur in isolation. The home of a student who posted video footage of the same incident on Youtube, footage which contradicts the police version of the story, was also raided on the same day as Marks’ home.

Following prolific organizing by Marks’ mother, Rochelle Pittman, and other family members and supporters as well as ANSWER LA, the lynching charge against Marks was dropped by the Los Angeles County D.A. According to Marks’ attorneys,

“This count will be dropped to a misdemeanor and expunged from Jeremy's record once he completes three years of probation. Not only is there no jail time for Jeremy, he also will not have a felony "strike" on his record.”²³

Also in California, journalists recording at protests have had their recording equipment confiscated by the police and kept for extended periods. In one prominent case related to the police murder of Oscar Grant, involving SF BayView journalist J.R. Valrey, police seized Valrey’s camera during a community rally in Oakland protesting the murder. Valrey faced bogus charges of arson. Police held Valrey’s camera for over a year, despite repeated requests that it be returned so that Valrey could continue with his work. Further, despite the fact that the arson charges were eventually thrown out, Valrey was nonetheless required to make a significant number of regular court appearances over the next year and a half.

Also related to the issue of direct monitoring is a California Supreme Court decision in January of 2011 that gave police the right to search the cell phones of arrested people without a warrant. The new policy was justified under U.S. Supreme Court precedents on the grounds

²² According to the article, “LA District Attorney orders Gestapo-style police raid on home of Jeremy Marks” Doug Kauffman and Ian Thompson, *Liberation Newspaper*, January 27, 2011; <http://pslweb.org/liberationnews/news/jeremy-marks-home-raided.html>

²³ “Jeremy Marks Attempted Lynching Charge Dropped by Los Angeles County DA”, *LA Weekly*, by Jill Stewart, April 29, 2011: http://blogs.laweekly.com/informer/2011/04/jeremy_marks_attempted_lynchin_1.php

that when people are arrested, they forfeit any privacy rights for their belongings when they are taken into custody. This contradicted an earlier ruling in May of 2007 by a U.S. District Judge in San Francisco who found that the rights of defendants had been violated when police searched their phones.

The U.S. Supreme Court has justified the policy as it applies to the police themselves, ruling in June of 2011 that a police department was within its rights in reading an officer's text sent by a pager that was the property of the police department. While the cell phone search issue has not reached the U.S. Supreme court specifically, in some cases, there is some tacit agreement currently based on the precedent of the right to search an arrested person's wallet, thus equating wallets and cell phones. There is good chance that the issue will be brought to the U.S. Supreme Court because of discrepancies at various state and district levels across the U.S.²⁴

Connecticut: All Party Consent State

New Haven

Luis Luna was arrested in September of 2010 by New Haven Police for direct monitoring of a police arrest, and his recording device, an iPhone camera, was seized at the time. Internal Affairs found that the Assistant Chief of police at the time, Ariel Melendez, acted illegally, ruling that he was in violation of department policy for ordering the arrest, and for ordering that Luna's phone be confiscated and the footage deleted. According to Luna's attorney, Diane Polan, "the city is responsible because of their failure to train at the highest levels as to what is lawful and what is a violation of the First Amendment." Polan demands, "If the assistant chief doesn't know what the policy is, who underneath him doesn't know?"

New Haven Police Chief Frank Limon sent the issue into IA investigation²⁵ and also drafted an order for police department officers outlining the right to record policy. The general order states the legal basis for this civilian right, and clearly states that direct monitoring is not considered "interference". A bill which would grant civilians a specific basis to file suits in cases of unlawful arrests for direct monitoring was introduced by Senator Martin Looney in March of 2011. An amended version of the bill passed the Connecticut State Senate on June 2, 2011, and is awaiting House approval.²⁶

²⁴ "Court OKs searches of cell phones without warrant", in *SF Gate*, by Bob Egelko, January 4, 2011; http://articles.sfgate.com/2011-01-04/bay-area/26357969_1_cell-phones-searches-police-department

²⁵ For a copy of the IA report, see http://www.newhavenindependent.org/archives/upload/2011/03/IA_170-10-I_AC_Melendez.pdf

²⁶ See "IA: Top Cop Trampled Citizen's Rights" in *The New Haven Independent*; Paul Bass And Thomas Macmillan, March 3, 2011. http://www.newhavenindependent.org/index.php/archives/entry/ia_by_the_book_top_cop_trampled_citizen_s_rights/; The work of Mario Cerame offers great depth into this issue in Connecticut, and Berkeley Copwatch would like to offer our gratitude and respect to his substantial work and efforts in supporting this bill and raising visibility on this issue on a national scale. We would also like to recognize the ongoing work of New Haven Copwatch in this struggle.

Florida All Party Consent State

“It really is a perversion of this statute to try to apply it to filming or recording what public officials are doing in public.”

Randall Marshall, legal director, ACLU Florida²⁷

Boynton Beach

In June 2010, Sharron Tasha Ford went to pick up her minor son from the movies. He had been accused of trying to sneak into the movie, and was placed in handcuffs for trespassing. Ford began recording the incident, and alerted the officers with the Boynton Beach Police Department that she was recording their actions. Ford refused to stop filming. This escalated the situation until Ford, too, was handcuffed and charged under State Statute 934.03, the "two-party consent" recording law. Because of state wiretapping statutes, the charges were that Ford had violated the officers' reasonable expectation of privacy. When the ACLU stepped in to file a civil lawsuit against the Boynton Beach Police Department on Ford's behalf, the charges were dropped. The ACLU's attorney Jim Green emphasizes that while the charges were dropped, Ford was wrongfully arrested and that the point is to affirm the right to record.²⁸

South Beach

“It's your responsibility as an American to monitor authority and to speak up when it's being abused.”

Robert Hammonds on direct monitoring

After yelling out the window at a driver who swerved in front of their car, two young men, Robert Hammonds and Brent Bredwell were pulled over by a cop brandishing a weapon. Hammonds began recording from the passenger seat until an officer wrestles the camera away from Hammonds, citing it as evidence. Hammonds continued to repeat that he did not consent to the camera being taken from him. The camera was seized by police, and when Bredwell went to get his camera the next day, Miami Beach Police informed him they did not have his camera. He returned to police headquarters with several friends, who had cameras to film the interaction. Police again refused to give the camera back, and instead arrested Hammonds on an obstruction of justice charge. He was also charged with loitering and trespassing. The retaliation was also physical—an officer yanked Hammonds by the hair during interrogation, and proceeded to detain him for two hours in a locked van in the extreme heat.

Since this incident, Hammonds and Bredwell and another friend, Christian Torres have recorded numerous encounters between civilians, including himself, and police. In retaliation, the police have sent images of the faces of Hammond and his friends to police departments across Miami-Dade county, warning that the young men were hostile and had been filming police. Hammond and his friends have had to pay thousands of dollars in attorney fees and fines, and

²⁷ “Cops vs. cameras: filming cops illegal” Miami New Times, Tim Elfrink, January 27, 2011. See: <http://www.miaminewtimes.com/2011-01-27/news/cops-vs-cameras-filming-cops-illegal/>

²⁸ Lawsuit filed: Mom arrested for recording son's arrest” Fox News. Allison Bybee, August 4, 2010. See: <http://www.wflx.com/Global/story.asp?S=12924814> ; this case appears in "Police Officers Don't Check Their Civil Rights at the Station House Door" in Reason Magazine, Radley Balko, August 9, 2010: <http://reason.com/archives/2010/08/09/police-officers-dont-check-the> ;

have spent numerous nights in jail as a result of contesting the right to record. They have also had vehicles pulled over for “insufficient tread” and impounded.²⁹

The Miami Beach Police Department spokesperson issued a statement following Hammonds’ arrest at police headquarters, stating that “Post 9/11, and in keeping with homeland security, the filming of any possible location which could be considered a target...arouses suspicion”.³⁰

Miami

On May 30, 2011 Narces Benoit and Erika Davis witnessed the police killing of Raymond Herisse. Miami Beach Police shot Herisse numerous times in a sporadic onslaught of bullets that also injured four bystanders. Apparently Herisse had been driving erratically. Before police began firing, they shouted at civilians on the scene to stop filming. One officer held a gun to the head of Benoit and handcuffed him, smashing Benoit’s phone, as well as other people’s phones and other recording devices on the scene. Before Benoit’s phone was smashed however, he was able to remove the memory card and slip it into his mouth and salvage the footage. Benoit was then brought to the police station where he was photographed. The state attorney summoned Benoit to appear in court with “any and all video and all corresponding audio recorded on May 30 that captured incidents occurring [sic] prior to, during and after a police-involved shooting”.³¹

Georgia

West Point

In February of 2011, police slammed the head of 17 year old Ciara Flemister against the hood of a police car for videotaping the arrest of her cousin, who had been playing loud music. The West Point Police Chief justified his officers’ violent response to the cellphone recording made by the teenage girl by stating that she had violated the officers’ safety zone.³² The incident was caught on the police’s own dashboard camera, and the recording contradicts this assessment. Police were later disciplined for excessive force, and sentenced to “written counseling” and “additional use of force training”. Flemister is facing charges of felony obstruction and battery of a police officer.³³

²⁹ “Cops vs. cameras: filming cops illegal” Miami New Times, Tim Elfrink, January 27, 2011. See: <http://www.miaminewtimes.com/2011-01-27/news/cops-vs-cameras-filming-cops-illegal/>

³⁰ “Cops vs. cameras: filming cops illegal” Miami New Times, Tim Elfrink, January 27, 2011. See: <http://www.miaminewtimes.com/2011-01-27/news/cops-vs-cameras-filming-cops-illegal/>

³¹ “US Police Smash Camera for Recording Killing”, *Truth-Media.Info* July 6, 2011, by Chris Arsenault; <http://truth-media.info/?p=2499>

³² See “Excessive Force During Arrest of Ciara Flemister”, at *Georgia Daily News*, March 28, 2011; <http://www.gadailynews.com/news/64488-police-admit-to-excessive-force-during-arrest-of-ciara-flemister.html> Police Admit To

³³ See “Georgia Cops Disciplined for Beating Girl Trying to Record Them”, at Photography is not a Crime. <http://www.pixiq.com/article/georgia-cops-disciplined-for-beating-girl-trying-to-record-them>

This occurred in the rural town of West Point, Georgia, with a population of under 3,500. The *Georgia Daily News* reports that she is now afraid of police officers.

In response to the continuing work of East Atlanta Copwatch, including a recently filed complaint against unlawful arrests, the Atlanta Police Department has affirmed citizen's rights to record in public. The APD reached an agreement with the city of Atlanta to pay \$40,000 in damages based on a complaint filed by Marlon Kautz of East Atlanta Copwatch. The settlement stems from a case in April of 2010 where, while filming an arrest in Little Five Points, Kautz was directed to stop filming by two police officers. When Kautz continued filming, he was physically assaulted by the officers and who seized the recording device. According to Kautz, the officer refused to give the phone back without Kautz first giving the password so the footage could be deleted. When Kautz refused, the phone was confiscated, and upon its eventual return, the footage from the incident had been damaged, changed, or deleted. The APD plans to adopt an operating procedure that will restrict officers from interfering with direct video monitoring. Officers will also be provided training on the new policy.³⁴

Illinois: All Party Consent State

The Chicago Chapter of the ACLU challenged the state's Eavesdropping Act by filing a federal lawsuit in August of 2010. (According to the Illinois Eavesdropping Act it is a crime to record both private and public conversations without the express consent of all parties.³⁵ If you take photographs or a silent video of a police arrest, and then post them on the Web, or take out a full-page ad in a newspaper that includes the photos and a description of the arrest, you have done nothing wrong at all, but if your video has sound, you could be charged with a felony.)

In January of 2011, US District Court Judge Suzanne Conlon ruled that the ACLU's arguments against the law were unconvincing and that there is no "right to audio record".

Robinson

Michael Allison is facing 75 years in jail for allegedly violating the state's eavesdropping law in 2010.³⁶ Concerned that he was being harassed by police in retaliation for a lawsuit he had filed, he wanted to be sure that all future proceedings were recorded and documented. When he was told that misdemeanor cases were not transcribed, he informed the court that he would record the proceedings himself.

³⁴ See "APD Settles Lawsuit Over Cops Stealing Activist's Camera, Trying to Destroy Footage of Drug Raid", at Copwatch of East Atlanta's website: <http://www.copwatchoea.org/content/apd-settles-lawsuit-over-cops-stealing-activists-camera-trying-destroy-footage-drug-raid>; See also, "APD won't hinder citizens who videotape cops" *The Atlanta Journal-Constitution*, February 10, 2011, by Bill Rankin; <http://www.ajc.com/news/atlanta/apd-wont-hinder-citizens-834521.html>

³⁵ See *The Chicago Tribune*, August 19, 2010: http://articles.chicagotribune.com/2010-08-19/news/ct-met-aclu-privacy-lawsuit-20100819_1_police-officers-police-activity-aclu; Accessed March 29, 2011.

³⁶ On September 15, 2011 Allison's right to record was affirmed in an Illinois circuit court. According to the ruling, the state's eavesdropping statute violated Allison's first amendment freedoms. A civilian's right to record police, in this case, did not constitute criminal eavesdropping.

On the day of his trial, he walked into court with a videocamera and began recording. The judge ordered his arrest. Police examined the camera and discovered that Allison had filmed other police encounters as well. Allison's lawyers have argued that the charges against him are a violation of his First Amendment rights. A continuance of the case has been granted so that the Illinois Attorney General can prepare a response.³⁷

In December of 2009, artist Christopher Drew recorded his own arrest while selling art on the streets of Chicago. The arrest was based on the fact that he did not have a permit. Homeland Security was invoked as justification for the arrest, based on the argument that the recording by Drew had the potential to capture police conversations about anti-terrorism tactics. He faces four to 15 years, though his case has recently been suspended due to his ill health.³⁸

Chicago

In July of 2010, during a response to a domestic disturbance call at the residence of Tiawanda Moore and her boyfriend, Chicago Police removed Moore to her bedroom to be interviewed privately. Moore testifies that at that point, the officer fondled her and passed on his home phone number to her. In their attempts to file a complaint against the officer, both Moore and her boyfriend faced police intimidation. During the Internal Affairs investigation into the incident, Moore made a recording using her Blackberry. When the recording was discovered, she was arrested on eavesdropping charges; according to Illinois law, recording others, even public servants like police officers, is illegal. Because it is a Class 1 felony charge, Moore now faces a sentence of between 4-15 years if convicted. Rape is also a Class 1 felony charge, which means that Moore's sentencing for trying to document the process of reporting the sexual assault is on par with the sexual assault itself.³⁹

Maryland All Party Consent State

"To charge Graber with violating the law, you would have to conclude that a police officer on a public road, wearing a badge and a uniform, performing his official duty, pulling someone over, somehow has a right to privacy when it comes to the conversation he has with the motorist."

³⁷ "Chicago State's Attorney Lets Bad Cops Slide, Prosecutes Citizens Who Record Them", in *The Huffington Post*, June 8, 2011 by Radley Balko; http://www.huffingtonpost.com/2011/06/08/chicago-district-attorney-recording-bad-cops_n_872921.html

³⁸ "Chicago State's Attorney Lets Bad Cops Slide, Prosecutes Citizens Who Record Them", in *The Huffington Post*, June 8, 2011 by Radley Balko; http://www.huffingtonpost.com/2011/06/08/chicago-district-attorney-recording-bad-cops_n_872921.html

³⁹ "Chicago State's Attorney Lets Bad Cops Slide, Prosecutes Citizens Who Record Them", in *The Huffington Post*, June 8, 2011 by Radley Balko; http://www.huffingtonpost.com/2011/06/08/chicago-district-attorney-recording-bad-cops_n_872921.html

Two prominent cases involving police and citizen recording of arrests occurred in Maryland in 2010.

Prince George County

Two mounted police officers from the Prince George's County Police Department⁴¹ stopped Maryland University college students, Jack McKenna and Benjamin Donat following a college basketball game victory celebration. The officers on horseback were quickly joined by three riot police, who beat McKenna, arrested him, and charged him with assault and resisting arrest. The official security camera footage went missing, and the officers lied about the incident in official reports. Recordings of the incident by other students present on the scene clearly show excessive force and brutality, and contradict the police version of the incident.⁴² Following the posting of videos of the incident on the Internet, four of the officers were suspended and charges were dropped.

Hartford County

"Do me a favor and turn that off. It's illegal to record anybody's voice or anything else in the state of Maryland."

Baltimore Police Officer, 2010⁴³

In another case a month later, motorcyclist Joseph Graber recorded a traffic stop from a helmet camera where Maryland State Trooper Joseph David Ulher cut him off in a unmarked car and in plain clothes with his gun drawn, and without a visible badge. Within a few days of Graber posting the video on YouTube, the Maryland State Police raided his home in the early morning hours. His computer equipment was confiscated, and he was arrested and charged with violation of Maryland's wiretapping law and with "possession of an intercept device,"⁴⁴ both of which are felonies and were accompanied in this case by a 16 year sentence. Graber was sent to jail. With

⁴⁰ Rocah is quoted in "In Spite of State Law, Maryland Law Enforcement Officials Still Arresting, Charging People for Recording Cops" *Reason Magazine*, Radley Balko, May 29, 2010; <http://reason.com/blog/2010/05/29/maryland-cops-say-its-illegal>

⁴¹ Radley Balko reminds readers that the Prince George's County Police Department was under federal oversight for five years based on consistent cases of excessive force. See "In Spite of State Law, Maryland Law Enforcement Officials Still Arresting, Charging People for Recording Cops" *Reason Magazine*, Radley Balko, May 29, 2010; <http://reason.com/blog/2010/05/29/maryland-cops-say-its-illegal>

⁴² "In Spite of State Law, Maryland Law Enforcement Officials Still Arresting, Charging People for Recording Cops" *Reason Magazine*, Radley Balko, May 29, 2010; <http://reason.com/blog/2010/05/29/maryland-cops-say-its-illegal>

⁴³ "In Spite of State Law, Maryland Law Enforcement Officials Still Arresting, Charging People for Recording Cops" *Reason Magazine*, Radley Balko, May 29, 2010; <http://reason.com/blog/2010/05/29/maryland-cops-say-its-illegal>

⁴⁴ According to journalist Radley Balko, "possession of an intercept device" occurs as a provision in the wiretapping law. See "The War on Cameras" in *Reason Magazine*, 12/07/2010; <http://reason.com/archives/2010/12/07/the-war-on-cameras>

the support of the ACLU (Maryland chapter), Graber's case was dismissed in September of 2010, when a Maryland Circuit Court judge ruled that the helmet camera was not illegal.⁴⁵ This case is particularly disturbing because, like the Jeremy Marks case in California, police raided his parents' home after the incident, taking computer equipment with them. Also disturbing is that, according to rulings in the Maryland courts, police interactions with the public are not protected by privacy rights. In the case of police officers or patrol cars equipped with cameras, Maryland Attorney General Joseph Curran, Jr. in 2000 affirmed that there was no reasonable expectation of privacy in conversations between civilians and police during police stops. However, the State Attorney in the Graber incident, Joseph Cassilly sought to interpret the Maryland law differently, in favor of the police.

The problem is at the level of interpretation and ambiguity: the police continue to tell people that recording their activities is illegal, and prosecutors perpetuate this ambiguity.⁴⁶ Faced with bogus felony charges, this unlawful policy has a chilling effect on civilian direct monitoring of police conduct and misconduct.

Massachusetts: All Party Consent State⁴⁷

"Citizens have a particularly important role to play when the official conduct at issue is that of the police...Their role cannot be performed if citizens must fear criminal reprisals when they seek to hold government officials responsible by recording, secretly recording on occasion, an interaction between a citizen and a police officer."

Chief Justice Margaret Marshall, dissenting opinion
in *Commonwealth v. Hyde*⁴⁸

Abington

The defendant had argued, in the context of urging a specific exception to Section 99 [Massachusetts electronic surveillance statute] for intercepting evidence of police

⁴⁵ See *The Baltimore Sun*, "Motorcyclist wins taping case against state police, September" September 27, 2010. http://weblogs.baltimoresun.com/news/crime/blog/2010/09/motorcyclist_wins_taping_case.html ; See also "Judge Dismisses Wiretapping Charges against Motorcyclist for Recording Traffic Stop" *Cato @ Liberty*, David Rittgers, September 28, 2010; <http://www.cato-at-liberty.org/judge-dismisses-wiretapping-charges-against-motorcyclist-for-recording-traffic-stop/>

⁴⁶ We are grateful to Radley Balko for drawing attention to this discrepancy between law and practice in his coverage of Maryland, and across states, recognize this as a important aspect to this struggle. See "In Spite of State Law, Maryland Law Enforcement Officials Still Arresting, Charging People for Recording Cops" *Reason Magazine*, Radley Balko, May 29, 2010; <http://reason.com/blog/2010/05/29/maryland-cops-say-its-illegal>

⁴⁷ Passed in 1968, Massachusetts' law does not have a reasonable expectation of privacy clause. The convictions are nonetheless being upheld. See "In Spite of State Law, Maryland Law Enforcement Officials Still Arresting, Charging People for Recording Cops" *Reason Magazine*, Radley Balko, May 29, 2010; <http://reason.com/blog/2010/05/29/maryland-cops-say-its-illegal>

⁴⁸ "Police fight cellphone recordings", *The Boston Globe*, Daniel Rowinski (New England Center for Investigative Reporting) January 12, 2010; http://www.boston.com/news/local/massachusetts/articles/2010/01/12/police_fight_cellphone_recordings/

misconduct, "that his prosecution was tantamount to holding him criminally liable for exercising his constitutional rights to 'petition [the government] for redress of his grievances and to hold police officers accountable for their behavior.'"

Massachusetts Law Review on *Commonwealth v Hyde*⁴⁹

A particularly notorious case involves a police stop for an allegedly broken taillight on a Porsche driven by Micheal Hyde on October 26, 1998. The Massachusetts Law Review notes that the broken taillight is a "venerable staple of motor vehicle search cases", and Hyde, thanks to an audio recording, and can be heard protesting that he was stopped because of the length of his hair (long). Following the stop by Abington Police, a substantial number of police began to gather around the Hyde and the stopped Porsche, and his passenger was subjected to search, as was his car. Hyde was eventually given a verbal warning regarding his car, and no citation was issued.

However, Hyde had recorded the entire incident on a tape recorder inside the car. When he later proceeded to file a complaint at the Abington police station about the incident, he submitted a copy of the tape as evidence. The police immediately lodged an internal investigation which cleared the officers involved, and applied for a criminal complaint against Hyde. Hyde was sentenced, following a jury trial, to violating the rights of four difference officers by making the recording during the traffic stop. On appeal, Hyde argued that the law was not intended to refer to public speech, but to protect private communication, and that the police operate in public as they perform their duties.

In a decision as startling in its announcement as in its endurance, the Massachusetts Supreme Judicial Court ruled that the state wiretapping statute is not intended to protect individuals' privacy, but to limit the use of surreptitious surveillance equipment. This is despite the fact that the state wiretapping statute is explicit that its purpose is to protect privacy interests. Additionally, the state wiretapping statute is based on federal legislation of the same nature, and at the federal level, the statute has been consistently interpreted as a protection of privacy.⁵⁰

Worschester

The police sent a second letter on March 29, which clarified the previous letter by stating that, given the statute's limitation to "wire or oral communications," Jean would not be in violation if she removed the audio portion of the recording from her website.

*Mary T. Jean v. Massachusetts State Police et al.*⁵¹

In October 2005, eight armed Worcester police raided the home of Paul Pechonis, arresting him on a misdemeanor charge and conducting a search of his home without a search warrant. The incident was recorded on a motion sensor 'nanny-cam', which Pechonis then sent to

⁴⁹ "Criminal Law: Electronic Surveillance - General Laws chapter 272, section 99", *Massachusetts Law Review*; <http://www.massbar.org/publications/massachusetts-law-review/2001/v87-n3/criminal-law-electronic-surveillance---general#body11>

⁵⁰ "Criminal Law: Electronic Surveillance - General Laws chapter 272, section 99", *Massachusetts Law Review*; <http://www.massbar.org/publications/massachusetts-law-review/2001/v87-n3/criminal-law-electronic-surveillance---general#body11>

⁵¹ *Mary T. Jean v. Massachusetts State Police et al.*, United States Court of Appeals for the First Circuit. June 22, 2007; <http://www.ca1.uscourts.gov/pdf.opinions/06-1775-01A.pdf>

a woman who maintained a website that was critical of the Worcester County District Attorney, John Conte. The woman, Mary T. Jean, published the recording on her website. Jean then received written communication from the Deputy Legal Counsel for the Massachusetts State Police stating that she could face felony charges for her violation of the Massachusetts state wiretapping statute, and attempted to force her to remove the posted video. Thus, Massachusetts State Police were focusing on the site of publication, not the site of recording, to apply the statute.

While the District Court (Federal), upheld Jean's First Amendment right to publish the tape, because they determined that it was lawfully obtained, the court also supported the police's right to further investigate whether Jean had any liability for the production of the tape in the event that it had not been legally obtained—in other words, whether the tape was recorded surreptitiously or not, even though it was recorded in a private residence, during a warrantless search.⁵²

Boston

Simon Glick is an attorney who observed a police arrest involving three officers and a young man on Tremont Street in Boston in 2007. As Glick approached, he heard another young man protest the level of force being used by the police officers.⁵³ Concerned that the officers were using excessive force, Glick recorded the incident. He did not interfere with the arrest, and did not speak to the officers until after the suspect had been handcuffed. According to the brief, Glick recorded the suspect being punched during the arrest. When he confirmed that he had recorded the incident, one of the officers inquired whether the cell phone had audio recording capacities. When Glick affirmed the audio capacity of the device, he was arrested. In the police report written by one of the arresting officers, Glick was “placed under arrest for unlawful electronic recording (unlawful audio recording without permission), aiding escape from police officer, and breach of the peace”.⁵⁴

On the way to the South Boston police station, one of the officers asked Glick whether “he would still be a lawyer after being charged with a felony”.⁵⁵ When Glick was brought in for booking at the police station, the police confiscated a computer flash drive that belonged to Glick, which Glick had stated contained important files. The flash drive remained in police custody as evidence, based on the booking officer's opinion that it looked like a microphone. When the drive was returned, the data “had been tampered with” and the majority of the recorded video from his phone had been erased.⁵⁶

⁵² “You can both videotape and publicize police abuse: Jean v Mass State Police” in *The Legal Satyricon*, July 6, 2007; <http://randazza.wordpress.com/2007/07/06/you-can-both-videotape-and-publicize-police-abuse-jean-v-mass-state-police/>

⁵³ According to the brief, Glick heard the young man observing the arrest say something like, “You are hurting him, stop”. See *Glick v. City of Boston*, p. 3. See also “Echoes of Rodney King” in *The Phoenix*, Harvey Silvergate and James Tierney, February 21, 2008; <http://the phoenix.com/boston/news/56680-echoes-of-rodney-king/>

⁵⁴ See *Glick v. City of Boston*, p. 4. The handcuffed suspect remained in police custody throughout the entire incident, and did not attempt any escape during any time of the incident.

⁵⁵ See *Glick v. City of Boston*, p. 4.

⁵⁶ See *Glick v. City of Boston*, p. 8.

The charges were later dropped, but Glik filed a lawsuit against the officers involved as well as the Boston Police Department and won in district court. The case is now on appeal in the First Circuit court, a federal court.⁵⁷

The Center for Constitutional Rights (CCR) filed an *amicus curiae* on January 27th 2010⁵⁸ in the First Circuit court (a federal court) where the case is currently on appeal.⁵⁹ The brief asserts that “the right to photograph police activity in public places is a grassroots accountability mechanism [that] helps foster greater involvement and trust by the community in local law enforcement” (Glik, p. 9). Other groups involved in shaping the brief and signing on include *Berkeley Copwatch*, *Communities United Against Police Brutality* (Minnesota), *Justice Committee* (New York, New York), *Milwaukee Police Accountability Coalition* (Wisconsin), *Nodutdol for Korean Community Development* (New York, New York) and *Portland Copwatch* (Oregon). Several of the groups offered declarations, including Berkeley Copwatch founding member, Andrea Prichett.

Also in Boston, there have been repeated cases of people being convicted for recording police at public political events, including Jeffrey Manzelli, a Cambridge sound engineer, who recorded Massachusetts Bay Transportation Authority (MBTA) police on the Boston Commons during an anti-war rally in 2002, and Peter Lowney who recorded Boston University Police on Commonwealth Avenue during a protest.⁶⁰

Brighton

⁵⁷ The Center for Constitutional Rights (CCR) worked with community groups, including Berkeley Copwatch, to file an *amicus curiae* in this case in January of 2011. See section on communities fighting back, in this document. (NOTE: On August 26, 2011 after the release of this report by Berkeley Copwatch, the case was decided by the First Circuit Court of Appeals, which affirmed civilians’ right to record in Massachusetts. The court stated that “The First Amendment issue here is, as the parties frame it, fairly narrow: is there a constitutionally protected right to videotape police carrying out their duties in public? Basic First Amendment principles, along with case law from this and other circuits, answer that question unambiguously in the affirmative.” (Personal communication, CCR, September 1, 2011). Lawyers working for CCR, including Anjana Samat, highlight that it is significant that the court decision specifically extends this right to include not just journalists, but civilians. The court affirms this civilian right as a critical aspect in holding the police accountable, given the level of decision making inherent in the job of policing, and thus the potential for abuse.

The court clearly states that the Glik recording could in no way be considered secret, and thus was not in violation according to the meaning of the Massachusetts wiretapping statute. Thus, the arresting officers lacked probable cause, and it is here where Glik’s right were violated. See *Glik v. Cunniffe*, United States Court of Appeals for the First Circuit Court, No. 10-1764 (Court Opinion, August 26, 2011).

⁵⁸ For announcement of brief see Appendix III; for declaration of Andrea Prichett of Berkeley Copwatch, see Appendix IV.

⁵⁹ CCR has defended other police accountability and monitoring groups in attacks against the police, including the New York City chapter of the Malcolm X Grassroots Movement.

⁶⁰ This article also takes care to note that these men were aged 46 and 39 respectively. “Police fight cellphone recordings”, *The Boston Globe*, Daniel Rowinski (New England Center for Investigative Reporting) January 12, 2010; http://www.boston.com/news/local/massachusetts/articles/2010/01/12/police_fight_cellphone_recordings/

“The police apparently do not want witnesses to what they do in public.”
Sarah Wunsch, ACLU Massachusetts⁶¹

In December of 2008, Jon Surmacz was also charged with illegal surveillance when he recorded Boston police officers using excessive force to break up holiday gathering. Surmacz was arrested after using his cell phone to record the interaction.⁶² Again, the courts relied on the state wiretapping statute.

New Jersey

Newark

When 16 year old high school student Khaliah Fitchette started videorecording police response to a man who had fallen on a public bus, she was ordered to stop. When she persisted, an officer grabbed her, yanked her off the bus, and handcuffed her. The recording was deleted, and she was detained for several hours and denied any contact with her family. The officer attempted to charge her with obstruction of justice. On March 28, 2011, it was announced that the American Civil Liberties Union of New Jersey and the Civil Rights and Constitutional Litigation Clinic at Seton Hall Law School were filing a lawsuit on her behalf against the Newark Police Department, on the basis of violation of her first and fourth amendment rights.⁶³

New Hampshire: All Party Consent State

Nashua and Portsmouth

In New Hampshire, there have been two recent cases where civilians were arrested in their homes.

Michael Gannon (Nashua) was arrested in 2006 and charged with a felony for recording police in his own home even though it was posted on the premises that surveillance cameras were in use. And in July 2010 Adam H. Whitman (Portsmouth) was arrested during a raid on his home in search of minors drinking alcohol. Whitman was also charged with a felony, though in both cases the charges were eventually dismissed.⁶⁴

⁶¹ Wunsch, who is a staff attorney with the ACLU of Massachusetts, worked to get the charges dismissed on Surmacz. This quote was taken from “Police fight cellphone recordings”, *The Boston Globe*, Daniel Rowinski (New England Center for Investigative Reporting) January 12, 2010; http://www.boston.com/news/local/massachusetts/articles/2010/01/12/police_fight_cellphone_recordings/

⁶² “Police fight cellphone recordings”, *The Boston Globe*, Daniel Rowinski (New England Center for Investigative Reporting) January 12, 2010; http://www.boston.com/news/local/massachusetts/articles/2010/01/12/police_fight_cellphone_recordings/

⁶³ See “Newark teen sues police department, claims she was illegally detained” *New Jersey Star Ledger*, Nyier Abdou, March 28, 2011, ; http://videos.nj.com/star-ledger/2011/03/newark_teen_sues_police_depart.html ; See also Carlos Miller, *Photography is Not a Crime*; <http://www.pixiq.com/article/nj-girl-suing-cops-who-detained-her-for-videotaping-them>

⁶⁴ “The War on Cameras: It has never been easier—or more dangerous—to record the police.” *Reason Magazine*, Radley Balko, January 2011. See: <http://reason.com/archives/2010/12/07/the-war-on-cameras>

New York

Brooklyn

On February 9, 2005, Lumumba Bandele, Djibril Toure, and David Floyd of the Malcolm X Grassroots Movement (MXGM) were physically deterred through excessive force and arrested while monitoring New York Police Department officers during a regular patrol in Brooklyn. Malcolm X Grassroots Movement has a copwatch program dedicated to exposing, documenting, and inhibiting ongoing police misconduct in the Black community, and works to foster greater police accountability through peaceful direct action. It sees this project as integral to political community empowerment.

Bandele, Toure and Floyd were videotaping an arrest from a lawful distance when an officer ordered them away from the scene. Despite the fact they complied with this request, the officer shoved two of the men, knocking down one of them, together with his camera. All three were arrested, held in custody, and charged with resisting arrest and obstruction of governmental administration. Additionally, one was charged with third degree assault. Under oath, the police officer repeated that the details of the arrests were accurate. The video recovered from the scene contradicts these charges and demonstrates that the police action was aggressive without provocation.

When the officer who pejured himself failed to cooperate with the District Attorney, the charges were dismissed. In April of 2007, the Center for Constitutional Rights filed a federal civil rights lawsuit, *Bandele v. City of New York*, on behalf of the three members of MXGM, charging the NYPD with false arrest, illegal excessive force, malicious prosecution, and deprivation of liberty without due process of law. It charges the officers with violation of the First, Fourth, Fifth, and Fourteenth Amendent rights by denying the constitutional right to lawful assembly, and to observe and document police activity in public.⁶⁵

Rochester

While it is legal to record police in public in New York, in May of 2011, Emily Good was arrested and charged with “obstructing governmental administration” which is a criminal misdemeanor, for filming a police search of a car from the front yard of house. As documented by Good’s recording, a Rochester Police Officer threatens Good’s right to record with a bogus jurisdiction clause (warning her she is not allowed to record “from the sidewalk”). When Good refuses to move, the officer requests that she go back inside of her house, saying that her actions are making him feel unsafe. She remains on the sidewalk, at which point the officer places her in handcuffs and in a police car.

The video was posted on the internet, including video of another witness who continued filming after Good’s arrest. There are elements of the video which contradict the police report of

⁶⁵ See *Bandele v. City of New York*, Center for Constitutional Rights (CCR), Current Cases; <http://ccrjustice.org/ourcases/current-cases/bandele-v.-city-new-york>

the arrest.⁶⁶

Ohio

Delaware County

In July 2010, 20 year old Melissa Greenfield began recording with her cell phone as a deputy sheriff questioned her boyfriend at a truckstop. Her boyfriend, 19 year old Colton Dorich, was being questioned after drivers had reported him walking down the side of the road with a sign asking for money for gas. While recording the encounter between her boyfriend and the sheriff, Greenfield clearly stated, that she was doing so "for legal purposes and our own safety."⁶⁷ After the officer told her to put down the object, which she refused to do, Greenfield was arrested and charged with resisting arrest and obstructing official business.

The sheriff's sargeant's report states that he feared that Greenfield was holding a "cell-phone gun" which the Delaware County Sheriff's Department justified in a statement by recognizing everyday objects are being modified to create dangerous, unrecognizable weapons, including cell-phone guns, which pose a threat to law enforcement and the security of the general public.⁶⁸

When Greenfield's seized phone was returned, the footage of the arrest (together with other vacation videos) had been erased. The sheriff's department denied that any footage was missing, on the grounds that to do so would have required a warrant, and there was no warrant, so the footage must still be on the camera.

Although the resisting arrest charge was eventually dropped, in order to continue with her life, Greenfield pleaded "no contest" on the obstruction of official business charge, and received a twenty dollar fine after serving three days in jail. Her boyfriend was not charged.

Oregon: All Party Consent State

Beaverton

⁶⁶ "Rochester Woman Arrested After Videotaping Police From Her Own Front Yard", in *The Huffington Post*, by Matt Sledge, June 22, 2011; http://www.huffingtonpost.com/2011/06/22/emily-good-arrested-videotaping-police-rochester_n_882122.html

⁶⁷ "Deputy confiscates woman's cell phone" *The Columbus Dispatch*, Randy Ludlow, July 30, 2010; http://www.dispatch.com/live/content/local_news/stories/2010/07/30/deputy-confiscates-womans-cell-phone.html ; this case appears in "Police Officers Don't Check Their Civil Rights at the Station House Door" in Reason Magazine, Radley Balko, August 9, 2010: <http://reason.com/archives/2010/08/09/police-officers-dont-check-the> ; and also "The War on Cameras", in *Reason Magazine*, Radley Balko January 2011. <http://reason.com/archives/2010/12/07/the-war-on-cameras>

⁶⁸ "Deputy confiscates woman's cell phone" *The Columbus Dispatch*, Randy Ludlow, July 30, 2010; http://www.dispatch.com/live/content/local_news/stories/2010/07/30/deputy-confiscates-womans-cell-phone.html

The Oregon wiretapping statute specifically states reasonable expectation of privacy as a condition. In other words, the person or persons concerned, in this case, the police, must be able to demonstrate that they had reason to believe their activities were not public for the recording to be a violation of their rights. Despite this, Hao Xeng Vang had his phone seized by a police officer for recording his friend being arrested at a bowling alley in August of 2008, even while Vang verbally narrated during the incident that he was recording the arrest.

Beaverton Police Department did not return the seized phone for almost two months, and when returned, the recording of the incident in the bowling alley had been deleted.

The Oregonian Newspaper describes Beaverton Police Chief Geoff Spalding's policy as one where, most likely, civilians who record police will not be arrested. However, there is a chance that attempting to record police will result in handcuffs and a trip to the police station. According to *The Oregonian*, "It's up to the officer and his or her interpretation of the law".⁶⁹ A \$19,000 settlement was reached after a federal lawsuit against the City of Beaverton and the officer who seized Vang's camera. Following this ruling, a memo from the city attorneys confirmed that the expectation of privacy in most interactions between police and residents is low, and that an extended cell phone in most cases served as a sufficient warning of recording. However, officers did not receive any additional training following the attorney's memo, and while the officer who seized the phone was disciplined for erasing the file on the unlawfully seized phone, the details of the disciplinary procedure were not made public, and the officer is now a detective.

Vang's attorney places the responsibility for solving the problem on the legislature and the police. The eavesdropping laws need to be clarified, and the police must refrain from only enforcing the statutes against civilians recording arrests and misconduct.

Portland

In Portland, Mike Tabor had his camera seized while recording an incident where the police shoved a man repeatedly in the chest while questioning him. Tabor states, "It really looked like intimidation - bully-type stuff."⁷⁰ After police returned his seized camera, they gave him a ticket with the explanation that he recorded them illegally and that "he was standing too close and making them nervous in what could have been a dangerous situation".⁷¹ As Tabor started walking to the police station, the officers pulled up in their patrol car and began questioning him, and told him they would meet him at the station.

⁶⁹ "Beaverton police chief: Film officers at your own slight risk"; *The Oregonian*. Brad Schmidt, July 10, 2010. See: http://www.oregonlive.com/beaverton/index.ssf/2010/07/beaverton_police_chief_film_officers_at_your_own_slight_risk.html

⁷⁰ "Man threatens suit over seizure of videocamera after he tapes Portland police rousting two men"; *The Oregonian*, Aimee Green. September 16, 2008. See: http://www.oregonlive.com/portland/index.ssf/2008/09/_by_aimee_green_after.html

⁷¹ "Man Threatens Cops with Lawsuit for Right to Video Tape Them"; *Outside the Beltway*, Steve Verdon, September 19, 2008, See: http://www.outsidethebeltway.com/man_threatens_cops_with_lawsuit_for_right_to_video_tape_them/

The county district attorney's office did not prosecute, but Tabor is leveraging the incident to make demands of the Portland Police Bureau. He is requesting that the bureau take a formal stance on civilians' rights to record video and, more importantly, sound (because this is where the wiretapping statute is being used) of police encounters in public.

Tabor's attorney, Benjamin Haile, pulled from the police department's archives a training bulletin from 1991 explicating stating the right of civilians to record video and audio during arrests. Like many shifts in policing policy and upsurges in grassroots pressure, the bulletin emerged following the recorded beating of Rodney King. Because the department was unaware of the bulletin and its clear deliniation of recording rights, Taile is pushing to have this written recognition incorporated into the bureau's policy and procedures manual. He also wants to see written affirmation of these rights extended to include specifically police stops, not only arrests.⁷²

Pennsylvania All Party Consent State

There are numerous right to record cases in Pennsylvania, some going back at as far as 1989.⁷³

Citizens in Pennsylvania fought, with the support of the ACLU, for their right to record, and reached a settlement with the East Vincent and Spring City police departments to adopt a written policy and require officer training to insure citizens' right to record police under the First Amendment.⁷⁴ See Appendix XXXX

Texas

Austin

In February, 2010, Aaron Dykes, a reporter for the website Infowars.com, was filming when he was approached by a state trooper who ordered him to show ID. The trooper ordered Dykes to "point the camera some other direction" and struck it with his hand. The officer called a supervisor to deal with the situation and told Dykes that he was being detained.

Houston

On February 17th, 2011, Houston Police Chief Charles McClelland said during a meeting with journalists that he was becoming concerned about people filming the police. McClelland said that this phenomenon, in conjunction with supposedly intensifying anti-police sentiment, will lead to officers being attacked or killed.

⁷² "Man threatens suit over seizure of videocamera after he tapes Portland police rousting two men"; *The Oregonian*, Aimee Green. September 16, 2008. See: http://www.oregonlive.com/portland/index.ssf/2008/09/_by_aimee_green_after.html

⁷³ See Radley Balko, "The War on Cameras".

⁷⁴ See also: <http://www.dvorak.org/blog/2007/06/23/citizens-do-have-the-right-to-record-police-officers-on-duty-in-pennsylvania/>

McClelland's comments were made two weeks after a surveillance video was released showing four Houston, TX officers punching, kicking, and stomping on a 15-year-old burglary suspect after he voluntarily surrendered to them.

El Paso

In El Paso when taxi cab inspector Jesus Lopez-Ledesma started recording a police traffic stop in March of 2011, El Paso police told him he had to stop, and attempted to justify their restriction with unlawful excuses. The officers then demanded that he show them his identification papers, called his supervisor, and in a recording can be heard saying, *"I'm sure your licensing, your job, depends on your cooperation with the El Paso Police Department," and, "We know who you are."*⁷⁵

The El Paso Police Department stands behind the officers. According to Lopez-Ledesma, *"It's coercions through intimidation. I didn't break the law."*⁷⁶

When KTSM news ran the story, another man, Dan Wild came forward to say that he had also been harassed by police for videotaping a raid behind his house. When Wild began recording, the officers told him that he was committing a felony and demanded his camera. Unsure of the law, and faced with the threat, Wild gave the officers his camera. The officers began looking through footage on his camera and when Wild inquired what they were doing, the police officer's response was *"I'm looking for kiddie porn."*⁷⁷

Washington, DC:

In June of 2011, journalists Pete Tucker and Jim Epstein were arrested by Park Police and charged with "unlawful entry/remaining" and "disorderly conduct" for taking photographs of commission members at a meeting. Tucker has advocated for independent taxi drivers in the city, and was restricted from photographing the meeting by a taxi inspector. After taking pictures of the taxi inspector who was obstructing Tucker's attempts to continue photographing the meeting members, Park Police arrived, and when Tucker refused to leave on the grounds that he had journalistic rights to continue through the public meeting, he was handcuffed and physically removed from the meeting. He was placed in a holding cell, and informed by the police that if he wanted to return to the meeting, he had to promise not to take any further pictures. Both Tucker and Epstein were kept in custody for roughly four hours, and were fingerprinted and photographed before their release.⁷⁸

⁷⁵ KTSM News, March 24, 2011; <http://www.ktsm.com/news/confrontation-between-taxicab-driver-police>

⁷⁶ KTSM News, March 24, 2011; <http://www.ktsm.com/news/confrontation-between-taxicab-driver-police>

⁷⁷ See Carlos Miller, Photography is Not a Crime. April 6, 2011. <http://www.pixiq.com/article/el-paso-police-harassing-citizens-who-videotape-them>

⁷⁸ " 'Sheer Insanity' as Reporters Arrested at Taxicab Commission Hearing" Alan Suderman, *Washington City Paper*, June 22, 2011; <http://www.washingtoncitypaper.com/blogs/looselips/2011/06/22/sheer-insanity-as-reporters-arrested-at-taxicab-commission-hearing/>

Appendices

Appendix I

Police Officers Bill of Rights⁷⁹

CALIFORNIA CODES GOVERNMENT CODE SECTION 3300-3311

3300. This chapter is known and may be cited as the Public Safety Officers Procedural Bill of Rights Act.

3301. For purposes of this chapter, the term public safety officer means all peace officers specified in Sections 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, except subdivision (e), 830.34, 830.35, except subdivision (c), 830.36, 830.37, 830.38, 830.4, and 830.5 of the Penal Code. The Legislature hereby finds and declares that the rights and protections provided to peace officers under this chapter constitute a matter of statewide concern. The Legislature further finds and declares that effective law enforcement depends upon the maintenance of stable employer-employee relations, between public safety employees and their employers. In order to assure that stable relations are continued throughout the state and to further assure that effective services are provided to all people of the state, it is necessary that this chapter be applicable to all public safety officers, as defined in this section, wherever situated within the State of California.

3302. (a) Except as otherwise provided by law, or whenever on duty or in uniform, no public safety officer shall be prohibited from engaging, or be coerced or required to engage, in political activity.

(b) No public safety officer shall be prohibited from seeking election to, or serving as a member of, the governing board of a school district.

3303. When any public safety officer is under investigation and subjected to interrogation by his or her commanding officer, or any other member of the employing public safety department, that could lead to punitive action, the interrogation shall be conducted under the following conditions. For the purpose of this chapter, punitive action means any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.

⁷⁹ See *Police Officers Bill of Rights* at:

http://docs.google.com/viewer?a=v&q=cache:pAQq2ah4AxBgJ:www.slopoa.com/pdf/Police%2520Officers%2520Bill%2520of%2520Rights.pdf+Police+Officer+Bill+of+Rights&hl=en&gl=us&pid=bl&srcid=ADGEEsiwQPniKBM9tPWwXa-IZBpUuTi7EGv8e0kHRVAiFs4PPm_X5Ylanlt-nVUNaqrp90Ym6SD3ZP6NJE_4oVxDfJnWdn_qb_6q4103z6_uDAqZun6lk8SP0dl_EGWZX0y9OedrnY-g&sig=AHIEtbQtQkn6f8FgW-YHP6jO2LVrxZzfew

(a) The interrogation shall be conducted at a reasonable hour, preferably at a time when the public safety officer is on duty, or during the normal waking hours for the public safety officer, unless the seriousness of the investigation requires otherwise. If the interrogation does occur during off-duty time of the public safety officer being interrogated, the public safety officer shall be compensated for any off-duty time in accordance with regular department procedures, and the public safety officer shall not be released from employment for any work missed.

(b) The public safety officer under investigation shall be informed prior to the interrogation of the rank, name, and command of the officer in charge of the interrogation, the interrogating officers, and all other persons to be present during the interrogation. All questions directed to the public safety officer under interrogation shall be asked by and through no more than two interrogators at one time.

(c) The public safety officer under investigation shall be informed of the nature of the investigation prior to any interrogation.

(d) The interrogating session shall be for a reasonable period taking into consideration gravity and complexity of the issue being investigated. The person under interrogation shall be allowed to attend to his or her own personal physical necessities.

(e) The public safety officer under interrogation shall not be subjected to offensive language or threatened with punitive action, except that an officer refusing to respond to questions or submit to interrogations shall be informed that failure to answer questions directly related to the investigation or interrogation may result in punitive action. No promise of reward shall be made as an inducement to answering any question. The employer shall not cause the public safety officer under interrogation to be subjected to visits by the press or news media without his or her express consent nor shall his or her home address or photograph be given to the press or news media without his or her express consent.

(f) No statement made during interrogation by a public safety officer under duress, coercion, or threat of punitive action shall be admissible in any subsequent civil proceeding. This subdivision is subject to the following qualifications:

(1) This subdivision shall not limit the use of statements made by a public safety officer when the employing public safety department is seeking civil sanctions against any public safety officer, including disciplinary action brought under Section 19572.

(2) This subdivision shall not prevent the admissibility of statements made by the public safety officer under interrogation in any civil action, including administrative actions, brought by that public safety officer, or that officer's exclusive representative, arising out of a disciplinary action.

(3) This subdivision shall not prevent statements made by a public safety officer under interrogation from being used to impeach the testimony of that officer after an in camera review to determine whether the statements serve to impeach the testimony of the officer.

(4) This subdivision shall not otherwise prevent the admissibility of statements made by a public safety officer under interrogation if that officer subsequently is deceased.

(g) The complete interrogation of a public safety officer may be recorded. If a tape recording is made of the interrogation, the public safety officer shall have access to the tape if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The public safety officer shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those which are deemed by the investigating agency to be confidential. No notes or reports that are deemed to be confidential may be entered in the officer's personnel file. The public safety officer being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.

(h) If prior to or during the interrogation of a public safety officer it is deemed that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.

(i) Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that are likely to result in punitive action against any public safety officer, that officer, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same investigation. The representative shall not be required to disclose, nor be subject to any punitive action for refusing to disclose, any information received from the officer under investigation for non criminal matters. This section shall not apply to any interrogation of a public safety officer in the normal course of duty, counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other public safety officer, nor shall this section apply to an investigation concerned solely and directly with alleged criminal activities.

(j) No public safety officer shall be loaned or temporarily reassigned to a location or duty assignment if a sworn member of his or her department would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.

3304. (a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure. Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency without providing the public safety officer with an opportunity for administrative appeal.

3305. No public safety officer shall have any comment adverse to his interest entered in his personnel file, or any other file used for any personnel purposes by his employer, without the public safety officer having first read and signed the instrument containing the adverse comment indicating he is aware of such comment, except that such entry may be made if after reading such instrument the public safety officer refuses to sign it. Should a public safety officer refuse to sign, that fact shall be noted on that document, and signed or initialed by such officer.

3306. A public safety officer shall have 30 days within which to file a written response to any adverse comment entered in his personnel file. Such written response shall be attached to, and shall accompany, the adverse comment.

3307. No public safety officer shall be compelled to submit to a polygraph examination against his will. No disciplinary action or other recrimination shall be taken against a public safety officer refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the public safety officer refused to take a polygraph examination, nor shall any testimony or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the public safety officer refused to take a polygraph examination.

3308. No public safety officer shall be required or requested for purposes of job assignment or other personnel action to disclose any item of his property, income, assets, source of income, debts or personal or domestic expenditures (including those of any member of his family or household) unless such information is obtained or required under state law or proper legal procedure, tends to indicate a conflict of interest with respect to the performance of his official duties, or is necessary for the employing agency to ascertain the desirability of assigning the public safety officer to a specialized unit in which there is a strong possibility that bribes or other improper inducements may be offered.

3309. No public safety officer shall have his locker, or other space for storage that may be assigned to him searched except in his presence, or with his consent, or unless a valid search warrant has been obtained or where he has been notified that a search will be conducted. This section shall apply only to lockers or other space for storage that are owned or leased by the employing agency.

3309.5. (a) It shall be unlawful for any public safety department to deny or refuse to any public safety officer the rights and protections guaranteed to them by this chapter.

(b) The superior court shall have initial jurisdiction over any proceeding brought by any public safety officer against any public safety department for alleged violations of this section.

(c) In any case where the superior court finds that a public safety department has violated any of the provisions of this chapter, the court shall render appropriate injunctive or other extraordinary relief to remedy the violation and to prevent future violations of a like or similar nature, including, but not limited to, the granting of a temporary restraining order, preliminary, or permanent injunction prohibiting the public safety department from taking any punitive action against the public safety officer.

3310. Any public agency which has adopted, through action of its governing body or its official designee, any procedure which at a minimum provides to peace officers the same rights or protections as provided pursuant to this chapter shall not be subject to this chapter with regard to such a procedure.

3311. Nothing in this chapter shall in any way be construed to limit the use of any public safety agency or any public safety officer in the fulfilling of mutual aid agreements with other jurisdictions or agencies, nor shall this chapter be construed in any way to limit any jurisdictional or interagency cooperation under any circumstances where such activity is deemed necessary or desirable by the jurisdictions or the agencies involved.

Appendix II

Statement submitted by Andrea Prichett to the Connecticut Senate Judiciary Committee and the Connecticut Legislature, March 21, 2011.

IN SUPPORT OF S.B. 1206: AN ACT CONCERNING THE RECORDING OF POLICE ACTIVITY BY THE PUBLIC

Submitted by: Andrea Prichett on behalf of Berkeley Copwatch, Berkeley, CA.

To Members of the Connecticut Senate Judiciary Committee and the Connecticut Legislature,

In March of 1990 in Berkeley, California, a group of civilian volunteers began a program of monitoring and documenting police activity in their neighborhood. This group became known as “Copwatch”. During the subsequent 20 years, similar groups and projects have sprung up in cities and towns across America. At no time in those 20 years have we been so in danger of losing our rights as we are in the current time. As copwatchers, we have always assumed that our right to assemble in public space, our right to observe, to publish our observations, and our right to hold our government accountable were all protected under the first amendment to the constitution. In the name of justice, and for the genuine love of freedom, we continue to monitor police activity, and the manner in which our democracy is practiced and preserved. In recent times we have endured increasing resistance to our efforts on a local level, and across the nation civil rights workers are being harassed, and even arrested for their efforts. We wholeheartedly support any legislation that reaffirms and clarifies the constitutionality of our efforts to cultivate genuine community based police accountability. We believe that the truest measure of democracy is in the way that police enforce the laws of the land, and the degree to which they submit to the authority of civilians.

For many Americans, police represent the frontline of our democracy. There is no other government employee or worker who is vested with the awesome power to actually take life. Given that police officers hold this unique position, a potent check on that power is in our right to witness the conduct of officers, and to report to our city leaders how city policy is being carried out. For all of the legislation that is passed, and the promises that are made to the people by our elected representatives, we can truly measure the health and vitality of our local democratic structures when we attempt to observe police activity.

Berkeley is perhaps an unusual city. In our town, observing police is considered to be so important that a special Training Bulletin 91 was issued by the police chief in 1984 that reads, “*It shall be the policy of the BPD to put the least possible restriction on citizen observation of the police.*”

The information, and the quality control provided to our Police Review Commission by citizen monitors has proven to be invaluable time and time again. From the way police enforce quality of

life infractions in areas populated by large numbers of homeless people to complaints of racial profiling, and even police conduct during demonstrations, our work has helped to direct the priorities of our oversight body time and again.

Our volunteers are trained, and we have worked to cultivate a consciousness about watching police that encourages

- a) non-interference in police activity*
- b) committed non-violence in word and deed*
- c) de-escalation of situations when that is appropriate*

Over the years, we have had officers express appreciation for our work. While not all officers are happy to see us appear at a stop, there are professional officers who have nothing to fear from being observed, and who value our efforts to involve the community in the way policies are implemented, provide input on how we are being policed, and to identify problem officers to the Police Review Commission. Of course, there are officers who become nervous when our volunteers appear and begin recording, but over time, officers in the BPD have grown used to us.

While many people and groups have defended the right to watch police based on first amendment protections, there has been disagreement about which right most closely extends to civilian efforts to document police behavior. Some say that it is a matter of freedom of the press, especially now as new media creates so many opportunities for any person to become a citizen-reporter as they witness and record police misconduct with any of the many recording technologies currently so prevalent. The digitally recorded homicide of Oscar Grant on a subway train in Oakland, California in 2009, and the subsequent conviction of the officer involved attest to the benefit of having recording technology in the hands of ordinary citizens.

Others believe that the right to assemble freely should protect our right to stand anywhere on public space, and to engage in whatever legal activity we choose. Those who stand on a sidewalk in order to record police should not be singled out because an officer doesn't like the idea of being recorded. After all, as we are told when video cameras are installed in public places, no one has a reasonable expectation of privacy. However, it is the right to petition the government for a redress of grievances that should serve as the constitutional protector of all those who care enough to stop and watch what their police departments are doing.

Currently, it is not uncommon for copwatchers to get arrested, and later released, with no charges actually filed against us. We are simply removed from the scene, and often our cameras are confiscated and footage deleted. In our history at Berkeley Copwatch, no one has ever been convicted of obstructing a police officer, but we have been punitively arrested many times in the process of our peaceful observations. We need protection from police who want to hide their misdeeds, and obstruct the justice that comes from a truly informed community. Our primary objective has always been to document these repeated injuries, put the facts before the people, and let them decide.

We hear the stories, and are in touch with organizations across the country, and we know that in Illinois, Massachusetts, Maryland, and beyond people are being arrested for direct monitoring not because the arresting officers fear for their own safety, but because they fear accountability. This bill will not just establish legal grounds for observation of the police in Connecticut; it will

provide a valuable precedent, and send a message of support for a broader interpretation of our fundamental rights against increasing repression. We strongly urge passage of SB 1206.

Appendix III

Berkeley Copwatch Announces *Glik* brief

Berkeley Copwatch, Center for Constitutional Rights and others file *amicus curiae* around citizens' right-to-videotape police

February 22, 2011

On January 25th, 2011 Berkeley Copwatch helped to file an amicus brief in *Glik v. Cunniffe, et al.* - a case in the US First Circuit Court of Appeals defending our right to record police as they conduct their duties in public.

In recent years, footage of police violence and misconduct has catalyzed social movement across the United States. The recording of Los Angeles Police beating Rodney King in 1991 ushered in a new wave of public scrutiny around police brutality and accountability. The caught-on-tape murder of Oscar Grant helped the public readdress these issues. Both cases revealed the power of recording technology in the hands and eyes of the people.

Against the backdrop of these monumental cases is persistent police monitoring of local groups and civilians who use grassroots organization to establish means to hold the police accountable. Law enforcement officers and police departments across the US, in cooperation with the courts, are responding to public scrutiny with harassment and repression. It is in this context that the amicus brief for *Glik v. Cunniffe, et al.*, a case of First Amendment rights and their necessary protection was filed by local groups across the nation and the Center for Constitutional Rights.

Plaintiff-Appellee (and lawyer) Simon Glik was arrested in 2007 by the Boston Police Department (BPD) while filming an arrest with his cell phone. The charges were later dropped but Glik filed a lawsuit against the officers involved as well as the BPD and won in district court. The case is now in the First Circuit federal court of appeals where our collective amicus asserts that, "the right to photograph police activity in public places is a grassroots accountability mechanism [that] helps foster greater involvement and trust by the community in local law enforcement" (Glik, p. 9).

Battles in the field of civil liberties over the right to record are being fought across the US on a state-by-state basis and constitutional rights groups, community organizers, students, lawyers, and police departments, are watching these battles closely. Twelve states now have legislation to restrict people's right to monitor police, mostly relying on wiretapping statutes or two-party consent laws to ban recording of police conduct in the streets, as well as at protests and parties, on highways and in parks. In other states police create a hostile environment by arresting, detaining, or threatening civilian witnessing through bogus charges including trespassing, loitering, obstructing justice or interfering with arrests. In some cases, the punitive retaliation is extreme, with citizens who record public officials facing sentences of up to 75 years. Homeland Security measures are often cited as justification for these arrests while - paradoxically - video surveillance of citizens under Homeland Security becomes ever more pervasive and intrusive.

Police monitoring groups and citizens continue to fight back. The ACLU in Pennsylvania reached a settlement with the East Vincent and Spring City police departments to adopt a written policy and require officer training to insure citizens' right to record police under the First Amendment. Atlanta Police recently affirmed the people's right-to-record thanks to the dedicated work of East Atlanta Copwatch. Berkeley Copwatch and other direct monitoring and police accountability groups continue to patrol the streets and develop effective community databases to deter abuse, hold individual officers and departments accountable, to impact practices and policies, and to work together to help empower our communities.

Other groups in the Glik brief included *Communities United Against Police Brutality* (Minnesota), *Justice Committee* (New York, New York), *Milwaukee Police Accountability Coalition* (Wisconsin), *Nodutdol for Korean Community Development* (New York, New York) and *Portland Copwatch* (Oregon). Several of the groups offered declarations, including a founding member of Berkeley Copwatch, Andrea Prichett.

We wish to thank the Center for Constitutional Rights - and all communities and individuals - for standing up to police misconduct and violence. Please see our website (www.BerkeleyCopwatch.org) for the full text of the *Glik* brief.

Berkeley Copwatch has been organizing street patrols and community outreach events for over 20 years. See our website for details on upcoming Know Your Rights Trainings or write to us at Berkeleycopwatch@yahoo.com. You can always drop by the office on Fridays between 2 and 7 at 2022 Blake St. in Berkeley.

Berkeley Copwatch

Appendix IV

Declaration Statement of Andrea Prichett, founding member of Berkeley Copwatch, for amicus brief in *Glik v. Cunniffe, et al.* ; January 25, 2011.

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
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Appendix V

Article written by Andrea Prichett for Right to Record (www.righttorecord.org)
September 7, 2011

Ground Level Basics of Copwatching⁸⁰

One of the most important Copwatch principles to realize and understand deeply is that the people in a particular area are experts ON that area. While others might and should share their own experiences and ideas about organizing and strategy, it is the people who have grown up in the neighborhood and live under a certain policing style who are in a very strategic position to understand, assess and lead the efforts to watch the police locally.

There are a great variety of approaches and tactics being used by copwatch groups in all sorts of different situations. Whether the struggle is about urban vs. rurally specific issues, bad policies or psycho cops being shielded just because they are cops, there are different tactics that can be employed. See which one of these types better meets your needs.

Catch them in the act weekly patrols- Day or night; groups of 2 or more walk, bike or drive in a particularly active area and stop when they see some interaction between cops and the people.

Educational/Outreach patrols- Walking day or nighttime shift that gives out literature and collects anecdotal accounts from the people

Demo/Patrol (special events)- Large group copwatching to cover a large area. Various pairs are deployed to a particular street area and with many sub groups it is possible to monitor closely over a large area (especially if you have a scanner and a dispatcher to help get people to areas of action. This was really helpful during anti-war and Cinco de Mayo events.) Lots of pre-shift publicity is recommended.

Clandestine copwatching- this is when you don't let them see you video them. Problem occurs if it is illegal to record without the person/cops permission.

Propaganda Copwatching- This happens when you use a troubling aspect of an interaction as a way to agitate/generate discussion among people standing around. Can be a good recruiting tool if it is used right. This also reminds cops that we are around and we intend to document their activity.

⁸⁰ See http://www.righttorecord.org/?page_id=119

All the other styles and ways that folks have devised!

No matter how we struggle, it seems that most groups calling themselves “copwatch” have a few things in common. Copwatch groups tend to do direct monitoring of police and they tend not intend to interfere in police activity. However, there are some other practices that are widely used because...they help you to get the information about the situation without having to go to jail to make the point.

Get the badge number of officers involved and the department. If they are hiding badges, photo them and/or write a physical description of the cop.

Record details of the incident as soon after it happens as possible. Date, location, witness names, etc. Photo injuries and write a narrative account of what happened. You will need this when talking to lawyers and complaint hearings, etc.

Keep your hands and body visible to the cop. Move slowly and don’t hide your hands. Stay calm, speak clearly, go slow. A minor flinch in a particular direction can spook the cops into shooting. Let the cops know that you are willing to respond to reasonable verbal requests. If they tell you to step back, take a step back. Don’t completely give up but take a step to show that you want to avoid needless power struggles.

Videotape the cops, not the people. We want to respect the privacy of the people as much as possible. Unless you are making a movie, you don’t have a reason to record the activities of the neighborhood.

Follow-Through: If you really get something horrible on your camera, try to give the footage to the victim. If the cops are doing something horrible, we need to address it. If you know don’t know the name of the arrested person, contact the public defender’s office. Maybe they know who it is. Call the chief of police. Write it up for the newspapers. Enter it into a database. Don’t let them just get away with it. We need to make some justice for our community.

And of course, the most important thing is to tell the truth. No matter how unpopular it might be to name names and to name what is happening to our freedoms and rights, we must. We don’t need to exaggerate or to be unkind. We need to maintain our credibility with the people so that others can understand how urgently we need all people to help hold the police accountable.

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