

EXHIBIT 3

B. ACLU Program

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

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

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

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

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

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

C. My reasonable fear of prosecution

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

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

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

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

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

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

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

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

Dated: November 17, 2010

Respectfully submitted:



Allison Carter