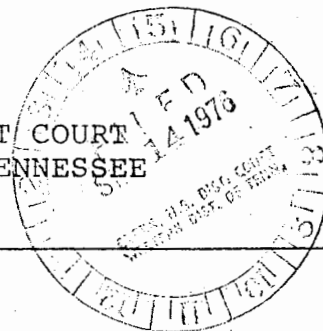


IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION



CHAN KENDRICK, MIKE HONEY,
JOHN DOE and the
AMERICAN CIVIL LIBERTIES UNION
IN WEST TENNESSEE, INC.,

Plaintiffs,

vs.

NO. C 76-449

WYETH CHANDLER, individually and
in his official capacity as Mayor
of the City of Memphis, Tennessee, and
W. O. CRUMBY, individually and as
Chief of Police and acting Director
of Police of the City of Memphis,
Tennessee, P. T. RYAN, individually
and as Captain of the Intelligence
Section of the Memphis Police Department,
GEORGE W. HUTCHISON, individually and
as Deputy Chief of Operations of the
Memphis Police Department,

Defendants.

C O M P L A I N T

Come now the plaintiffs and for their cause of action
against the defendants allege and state as follows:

I.

JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to
28 U.S.C. §§1331 and 1343 as well as under 42 U.S.C. §§1983,
1985, 1986 and 1988 in conjunction with rights secured by
the First, Fourth, Fifth, Sixth, Ninth and Fourteenth
Amendments to the Constitution of the United States; this
Court also has pendent jurisdiction over causes of action
arising under the laws of the State of Tennessee. The
amount in controversy exceeds \$10,000, exclusive of interest
and costs.

II.

CIVIL ACTION

2. This is a civil action for declaratory and injunctive
relief and for monetary damages.

III.

PARTIES

3. Plaintiffs:

(a) Chan Kendrick is a citizen of the United States and a resident of Memphis, Shelby County, Tennessee, and is the Executive Director of the American Civil Liberties Union of Tennessee, Inc. and has been actively engaged in activities protected by the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States, and who intends to continue in such activity in the future. On information and belief, plaintiff Kendrick alleges that he was the subject of unlawful surveillance by the Memphis Police Department "Domestic Intelligence Unit."

(b) Mike Honey is a citizen of the United States and a resident of Washington, District of Columbia, where he is Southern Director of the National Committee Against Repressive Legislation (NCARL). Mr. Honey was formerly a resident of Memphis, Shelby County, Tennessee, and at such time was associated with NCARL and at all pertinent times was actively engaged in activities protected by the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States, and intends to continue in such activity in the future. Plaintiff Honey alleges that he was the subject of unlawful surveillance by the Memphis Police Department "Domestic Intelligence Unit" and that the defendants maintained a file on him.

(c) The American Civil Liberties Union of West Tennessee, Inc. ("WTCLU") is a Chapter of the American Civil Liberties Union of Tennessee, Inc., which is an affiliate of the American Civil Liberties Union, all being non-profit, non-partisan organizations dedicated to the preservation of citizens' rights and liberties guaranteed by the constitution and laws of the United States. The West Tennessee Chapter is comprised of approximately five hundred members.

residing in the Western District of Tennessee, each of whom is dedicated to and involved in activities and conduct protected by the First, Fourth, Fifth, Sixth, Ninth and Fourteenth Amendments to the Constitution of the United States, and the corporate entity itself is dedicated to and involved in such constitutionally protected activities. The WTCLU, and its members intend to continue such activities in the future. On information and belief, the WTCLU alleges that it has been the subject of unlawful surveillance by the Memphis Police Department "Domestic Intelligence Unit."

(d) John Doe is a citizen of the United States whose true name and identity is unknown because the defendants have destroyed the records and evidence necessary to disclose his true name and identity. John Doe represents all those persons and/or organizations who were engaged in conduct and activities protected by the First, Fourth, Fifth, Sixth, Ninth and Fourteenth Amendments to the Constitution of the United States. John Doe intends to continue in such activity in the future.

4. Defendants:

(a) The defendant Weyth Chandler is sued individually and in his official capacity as the Mayor of the City of Memphis and is responsible for the administration and control of the Memphis Police Department.

(b) The defendant W. O. Crumby is sued individually and in his official capacity as Chief of Police and acting Director of the Memphis Police Department.

(c) The defendant George W. Hutchison is sued individually and in his official capacity as Deputy Chief of Operations of the Memphis Police Department.

(d) The defendant P. T. Ryan is sued individually and in his official capacity as head of the Domestic Intelligence Unit, a section of the Memphis Police Department.

IV.

CLASS ACTION

5. This action is brought on behalf of the individual plaintiffs and on behalf of all persons similarly situated pursuant to Rule 23(a) of the Federal Rules of Civil Procedure and is maintainable under Rules 23(b)(1)(A), 23(b)(2) and 23(b)(3).

(a) The plaintiffs represent a class of all individuals and organizations who have engaged in constitutionally protected activity and conduct, and who have been subjects of investigation by the Domestic Intelligence Unit of the Memphis Police Department.

(b) The plaintiffs represent a class of all citizens and organizations of Memphis who wish to exercise their rights under the First Amendment to engage in lawful political expressions, associations and assembly without being the objects of covert and overt surveillance and intelligence by agents, servants, employees and informants of the defendants and without becoming the subjects of dossiers, reports and files maintained by the defendants.

(c) Upon information and belief the number of such persons are so numerous that the joinder of all members of the class is impractical. The total number and identity of the class members is known only to the defendants.

(d) There are common questions of law and fact affecting all members of the class and said common questions predominate over any questions affecting the individual members to such a degree that a class action is the only practical method available for the fair and efficient adjudication of this controversy.

(e) The prosecution of separate claims by the individual members of the class would constitute a burden on the vindication of their rights and create a risk of

inconsistent or varying adjudications which would establish incompatible standards for the defendants' conduct. The claims of the representative parties have the same legal and factual basis as the claims of the members of the class and the defendants have acted on identical grounds with respect to all the members of the class and common relief is sought. Furthermore, the plaintiffs will fairly and adequately protect the interests of the class.

V.

FIRST CAUSE OF ACTION

6. Upon information and belief, the Memphis Police Department in or about 1965 established a Domestic Intelligence Unit whose purpose was to investigate and maintain files upon citizens engaged in non-criminal, constitutionally protected activities which were thought to be "subversive" and/or advocating unpopular or controversial political issues. See Exhibit "A."

7. Upon information and belief the defendants gathered, maintained and held in their possession, custody and control, files, records and reports that contained unverified information and gossip which related exclusively to the exercise of lawful and peaceful activities. Such files, records and reports were collected in violation of the First, Fourth, Fifth, Ninth and Fourteenth Amendments.

8. Upon information and belief, said files, records and reports served no lawful or valid law enforcement purpose and contained:

(a) information on citizens who were never suspected and/or accused of criminal conduct;

(b) information on citizens who may or may not have been suspected of criminal conduct but which was obtained, gathered and collected by unlawful means, including, but not necessarily limited to, the improper use of informants, illegal, improper and unwarranted surveillance and interception

of oral and/or wire communication and other sophisticated forms of surveillance which contravene federal and state constitutional and statutory rights;

(c) information on citizens who have or have not been accused or suspected of criminal conduct but which has or may have been disseminated to other parties, persons, agencies and/or institutions having no legitimate law enforcement need for the information;

(d) information on citizens who have or have not been accused or suspected of criminal conduct but which is knowingly or patently inaccurate and/or erroneous and/or unverified or unverifiable and which was gathered and collected in total disregard for the truth.

9. By letter dated August 15, 1976, Eric Carter, a former resident of Memphis and president of the student body at Memphis State University and a member of the Vietnam Veterans Against the War, requested that the defendants grant him permission to see the file maintained on him by the Domestic Intelligence Unit. Said request was repeated during the following two weeks. Prior to the Police Department's legal advisor ruling on whether Mr. Carter had the legal right to see his file, and without prior approval of the Police legal advisor, the defendants physically destroyed the file by incineration. The defendant Hutchison, on information and belief, admitted that he personally reviewed Mr. Carter's file and that it contained no information indicating any criminal activity on Carter's part. See Exhibit "A."

10. Subsequently, it was revealed by the defendants that they maintained Domestic Intelligence Unit files on persons other than Mr. Carter.

11. On information and belief, at least two members of the Memphis City Council requested that the defendant Chandler refrain from destruction, alteration or dissemination

of the files maintained by the Domestic Intelligence Unit pending an investigation by the Council's Law Enforcement Committee as to the scope, extent and purpose of the Domestic Intelligence Unit. See Exhibit "A."

12. Prior to 2:30 p.m. on September 10, 1976, the plaintiff Chan Kendrick, individually and in official capacity as Executive Director of the American Civil Liberties Union of Tennessee, and plaintiff WTCLU, requested that the defendants not destroy, alter or disseminate any of the files maintained by the Domestic Intelligence Unit.

13. On information and belief, it is alleged that sometime prior to 11:30 a.m. on September 10, 1976, the defendants Chandler, Crumby, Ryan and other persons unknown to the plaintiffs met and determined to destroy all files maintained by the Domestic Intelligence Unit and to disband said unit. Subsequently, the defendant Chandler held a press conference and announced the aforementioned decisions.

14. Immediately thereafter, the plaintiffs WTCLU and Chan Kendrick obtained a temporary restraining order from this Court enjoining the defendants Chandler and Crumby and those persons in active concert with them from destroying, altering or in any manner disclosing the files, records or other materials collected, assembled or gathered and held by defendants and known as domestic intelligence files.

15. The defendants alleged that all of the Domestic Intelligence Unit files had been destroyed prior to receiving notice of the temporary restraining order.

16. Upon information and belief, a purpose and result of the collection, maintenance and dissemination of such information concerning political and other constitutionally protected activity is to harass and intimidate plaintiffs and others similarly situated. Upon information and belief, the defendants conduct was for the purpose and had the effects of discouraging the exercise of the constitutional

rights of freedom of expression, speech, assembly, association, religion, and the right to petition the government for redress of grievances secured by the First Amendment; rights under the Fourth Amendment including the right to privacy and to be free from unreasonable search and seizures; rights under the Fifth Amendment including the right of privacy and due process; rights under the Ninth Amendment, including the right to privacy; and rights under the Fourteenth Amendment, including the right to due process, privacy, liberty, equal protection and the privileges and immunities of citizens to be free from arbitrary state action exceeding the legitimate police power of the state which has a chilling effect upon the exercise of all of the aforementioned constitutionally protected rights.

VI.

SECOND CAUSE OF ACTION

17. Plaintiffs incorporate by reference paragraph 2-16 of the Complaint. The effect of the defendants' activities, and the widespread publicity given thereto, is to cast a pall upon constitutionally protected political activity in Memphis, Tennessee, and to deter plaintiffs and other similarly situated from exercising their First Amendment rights to express their political beliefs, to dissent from governmental policies, to advocate unpopular or controversial ideas, to exercise their freedom of association and the freedom of the press. Defendants conduct chilled the exercise of said rights by instilling the fear that plaintiffs and others similarly situated will be made subjects of dossiers or reports by the Domestic Intelligence Unit or other units of the Memphis Police Department.

VIII.

THIRD CAUSE OF ACTION

18. The plaintiffs incorporate paragraphs 2-17 of the Complaint. The collection, maintenance and dissemination of

information concerning the constitutionally protected activity of the plaintiffs and other similarly situated constitutes an invasion of the right of privacy guaranteed and protected by the First, Fourth, Fifth and Ninth Amendments to the Constitution. The conduct of the defendants exceeds the lawful needs and statutory authority of the Memphis Police Department and is beyond the constitutional authority of the Mayor and the Police Department.

IX.

FOURTH CAUSE OF ACTION

19. The plaintiffs incorporate paragraphs 2-18 of the Complaint. The individuals and organizations whose names are or were contained in the files heretofore referred to have a right to sue for damages in the federal courts for the deprivation of their civil rights as provided by 18 U.S.C. §2520, 42 U.S.C., §§1983, 1985, 1986, and 1988.

20. The defendants and their agents have conspired to conceal the existence of such illegal conduct and have willfully failed to, and refused to, inform said individuals and organizations that they were subjects of illegal surveillance and/or subject of or included in said files. Said individuals and/or organizations have a right of access to the federal courts guaranteed by Acts of Congress, the due process and privileges and immunities clauses of the Fourteenth Amendment and the First, Fourth, Fifth, Sixth and Ninth Amendments to the Constitution for the redress of deprivations of civil rights. The defendants' actions to conceal said activities and files and the subsequent flagrant destruction of said files while there were pending requests to safe-keep the files, deprives said citizens of their constitutional right to the redress of grievances in violation of the First and Fourteenth Amendments to the Constitution and in violation of 42 U.S.C., §§1983 and/or 1985. The destruction of said

files has deprived the plaintiffs of their right to know whether their respective names are contained in said files, their right to obtain evidence material to the deprivation of the rights hereinabove alleged and the right to sue for the vindication thereof.

X.

FIFTH CAUSE OF ACTION

21. The plaintiffs incorporate paragraphs 2-20 of the Complaint. All of the activities heretofore alleged constitute a tort injury under common law and the law of Tennessee for defamation including libel and slander and for invasion of privacy.

WHEREFORE, plaintiffs respectfully request the following relief:

1. That this Court declare that the surveillance, collection, maintenance, storage and distribution of information by the defendants, their agents, servants and employees about the constitutionally protected activities of the plaintiffs and other persons and organizations similarly situated violates the First, Fourth, Fifth and Ninth Amendments to the Constitution.

2. That this Court permanently enjoin the defendants, their agents, servants and employees, from spying on, surveilling, infiltrating, or otherwise collecting, maintaining or using any information, records, files and dossiers of any kind relating to the constitutionally protected activities of plaintiffs and other persons and organizations similarly situated.

3. That this Court compel the defendants to deliver to this Court all domestic intelligence files (including any and all copies thereof) and any microfilm, indexes, cross references, log sheets, photographs, publications, reports, data computer tapes, cards or any other materials maintained by the Domestic Intelligence Unit as well as any other document showing any and all parties who had access

thereto. That this Court notify such person or organization about whom said files contained pertinent information, and to provide said citizens and organizations access thereto, with or without counsel, for examination and copying thereof, and to apprise said individuals and organizations of their rights and remedies to relief for the unconstitutional invasion of their rights heretofore described.

4. That this Court grant the plaintiffs expedited discovery to take depositions of the defendants, their agents, employees, servants or those acting in active concert and participation with them or other witnesses immediately, pursuant to Rule 26, et seq., Fed. R. Civ. P., and specifically Rule 30(a).

5. That this Court award each named plaintiff the sum of \$50,000 damages for injuries suffered as a result of the deprivation of their constitutional statutory and common law rights.

6. That this Court grant the plaintiffs costs and reasonable attorneys' fees.

7. That this Court grant the plaintiffs such other and further relief as this Court may deem just appropriate and necessary.

fsj
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STATE OF TENNESSEE

COUNTY OF SHELBY

CHAN KENDRICK, being duly sworn, deposes and says that he is a resident of Memphis, Shelby County, Tennessee. He is one of the plaintiffs herein, and he has read the foregoing complaint and knows the contents thereof and that the same are true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes them to be true.

Chan Kendrick
CHAN KENDRICK

SWORN to and subscribed before me this 14th day of September, 1976.

C. Bradford Foster
Notary Public

My commission expires:

9/3/79