



Surveillance of Protected First Amendment Activities:
Kendricks v. Memphis Police Department

by Bruce Kramer
ACLU-TN Board Member
& Cooperating Attorney

U. S. CONSTITUTION

AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT IV

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probably cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

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HISTORY OF THE LAWSUIT

Two years ago this month, a former Memphis State University Student Council President discovered from his former roommate, who was a Police Undercover Agent, that the Memphis Police Department had a dossier on him. Written requests for confirmation of the existence of such a file and access to it were ignored until Police Chief W.O. Crumby responded by having the file burned despite contrary advice from the Police Legal Adviser and admonitions from City Council members.

The existence of a Police Domestic Intelligence Unit and an unknown quantity of files on individuals and organizations engaged in non-criminal activities quickly became a subject of public concern. Local newspaper editorials and elected officials called for explanations and clarifications from the Police Department and expressed grave doubts about the propriety and extent of such activity. These sources also questioned the necessity, motives, and rationale behind Chief Crumby's destruction of the file.

On Friday, September 10th, 1976, having confirmed reports that the city was preparing to destroy all additional evidence of the Domestic Intelligence Unit's activities rather than answer the mounting questions involving individual's rights, the ACLU requested an order from the Federal District Court restraining the city from further destruction or alteration of the files until the Court could examine the Constitutional issues involved.

The Court granted the order, but before it could be served, Mayor Wyeth Chandler ordered that the files be destroyed "by noon" and the responsibilities of the Domestic Intelligence Unit be terminated. Hurriedly, photographs, reports, and documents which had been compiled over a nine year period (10 filing cabinets full), were stuffed into plastic garbage bags by DIU staff and shuttled by van, truck, and car to the city's Scott Street incinerator where they were doused with fuel and burned.

On Monday, September 14th, 1976, (two years ago today), the ACLU filed a complaint in Federal District Court for declaratory and injunctive relief from the City's maintenance of files on individual and organizational non-criminal and political activities. The suit alleged that such behavior by the City violated basic and fundamental Constitutional rights of privacy and freedom of association and belief.

The City responded by asking the Court to dismiss, but the Court refused stating: "Once a case is established, the citizens will not stand for their officials destroying evidence."

After two years of investigating the case and interrogating witnesses, during which time additional files were recovered, the ACLU and the City have agreed to a Consent Order dealing with the documents and depositions generated by the case, and an Order, Judgement, and Decree dealing with the City's responsibilities in protecting its citizen's First and Fourth Amendment Rights.

SIGNIFICANCE OF THE CONSENT ORDER

The Consent Order protects the rights of privacy of any individual whose identity was disclosed in the depositions and recovered documents, to the extent that individual was not acting in an official governmental capacity. Privacy, and our Constitutionally protected Rights of Free Speech, Assembly, and Security of our Persons, Houses, Papers, and Effects was the reason this suit was brought. The ACLU is pleased that the City Administration in the persons of its Mayor and Director of Police has agreed to this Consent Order. In compliance with the order, the publicly filed documents and depositions have been expunged of all names and other identifying information of and about private individuals. The Consent Order specifically does not prohibit any party to the suit from disclosing to any individual whose name was deleted those portions concerning that individual for disclosure and use as he or she sees fit.

SIGNIFICANCE OF THE ORDER, JUDGEMENT AND DECREE

The Order, Judgement, and Decree is the first in the nation forbidding the maintenance of Domestic Intelligence type units which monitor First Amendment activities of citizens. The order provides that the City of Memphis will never again engage in the collection, maintenance or dissemination of information regarding a person's lawful political activities.

The order forbids the city's use of electronic surveillance, infiltration, harassment, provocation, or any other actions which would have the effect of deterring individuals from exercising their First Amendment Rights.

The order further includes provisions to guard against the abridgement of First Amendment Rights in conjunction with lawful investigations of criminal conduct. The Police Director must authorize in writing any such abridgement and may do so only under strict guidelines and only for limited periods of time.

The ACLU believes this Order, Judgement, and Decree insures that citizens of Memphis will from this time forward be protected by the continuing jurisdiction of the Federal District Court in their political expressions and associations from any form of intimidation by the City Government. We are very pleased that the City has recognized by its acceptance of the provisions of this Order, Judgement, and Decree that its responsibility to uphold the U.S. Constitution need not interfere with its legitimate responsibilities of maintaining the peace and safety of our city.

WHAT WAS DISCOVERED

Considering the intimate knowledge Hutchinson, Ryan, and Arkin must have had of the files collected by the city over a nine year period, they remembered very little. What can be pieced together from their testimony and the recovered documents follows:

In 1967, Lt. Arkin was assigned to the Police Department Inspectional Bureau, which dealt with Internal Affairs, Inspections, and Intelligence, and reported directly to the Chief of Police. (A1-23). In the late summer of that year, Lt. Arkin was assigned to monitor Silent Peace Vigils being conducted in front of the Memphis Federal Building in opposition to the war in Southeast Asia. (A1-36). In early 1968, the City Sanitation Workers' efforts to form a union were causing then Mayor Henry Loeb much concern, so the Inspectional Bureau put two commissioned officers undercover to infiltrate and report to Lt. Arkin on Sanitation Workers' activities. (A2-107).

During the next eight years, the Intelligence Units' staff and network of undercover officers and informers were expanded to the extent that the 1976 Domestic Intelligence Unit's budget was close to \$1,000,000, with another \$10,000 earmarked for paid informers. (A3-176).

The recovered documents reveal that after Dr. Martin Luther King's assassination here in April of 1968, target subjects of investigation were mostly citizens engaged in "Civil-Rights, Union, and Negro Coalition activities." (Document 198). These included the ACLU, City of Memphis Hospital workers, the American Federation of State, County, and Municipal Employees (AFSCME), the NAACP, the Southern Christian Leadership Conference (SCLC), the Black United Front, the Black Knights, the Invaders, and the Black Organizing Project (BOP).

Over the next eight years, this list of organizations was expanded to include:

(See following page)

DOCUMENTS AND DEPOSITIONS

Over one thousand five hundred pages of evidence were generated during the Court ordered "discovery" phase of this suit. Included are: over 300 assorted documents which were recovered from the city following Judge McRae's order to preserve any documentation of Domestic Intelligence activities and files. They include Monthly Intelligence Reports, Undercover Agent and Informer Reports, and Background Reports on subject individuals.

Also included are: over 1100 pages of sworn depositions given by three principle officials of the Police Intelligence Community in response to questions posed by ACLU attorneys.

The three principles are:

George W. Hutchinson	- Deputy Chief of Operations	
Patrick Timothy Ryan	- Commanding Officer Intelligence Bureau	74-76
Ely Arkin	- Intelligence Specialist MPD Inspectional Bureau	67-69
	- Intelligence Expert Intelligence Bureau	1969
	- Administrative Officer to Director Frank Holliman & Chief Henry Lux 9/10/69-3/3/70	
	- Commanding Officer Domestic Intelligence Unit	70-75
	- Executive Officer Special Investigations Unit	75-76

Indices of all recovered documents and depositions are included in the back pocket of this packet.

All documents and depositions which have been expurgated to protect the privacy of subject individuals will be available for inspection upon arrangement with the Tennessee ACLU.

Individuals who believe they may be named as subjects in these documents and depositions may also make arrangements with the ACLU office to review those documents and depositions in which their names appear. (See Consent Order).

SUBJECT ORGANIZATIONS

Afro American Brotherhood - Lemoyne-Owen College
Downtown Black Alliance
Memphis State University Organizations:
 Black Students' Association
 Human Relations Commission
 Interreligious Council
 Newman Foundation
 Presbyterian Student Center
 Student Government Association
 Students for a Democratic Society
Memphis Area Chamber of Commerce
MAP - South
Mayor's Council on Youth Opportunity
Memphis Citizen's Council
Memphis Community Leadership Training
Memphis City Council Public Meetings
Memphis Ecumenical Children's Association
Memphis Labor Council
Memphis Public School meetings of principals and teachers
Memphis Searches for Meaning Committee
Memphis Youth Services
Memphis and Shelby County Human Relations Commission
National Council of Churches
Klu Klux Klan
Peace Caravan (American Friends Service Committee)
VISTA
Vietnam Veterans Against the War
War on Poverty Commission
White Citizens Council
Young Americans for Freedom
Young Workers' Liberation League

FROM PREVIOUS PAGE:

ACLU	Black Knights
AFSCME	Black United Front
BOP	City of Memphis Hospital Workers
NAACP	Invaders
SCLC	

ILLEGAL INVESTIGATIVE TECHNIQUES AND METHODS

In addition to the organizations and their individual members which were subjects of Domestic Intelligence files, the documents and depositions indicate certain illegal investigative techniques and methods were utilized in the collection of some intelligence:

Though denied by the Police Department principals in depositions A3-202 & 252, R2-132, 238, & 249, documents 210 and 214 indicate the U.S. Mail was monitored without benefit of court warrants.

Non-criminal activities in private homes and offices were also monitored and reported - including sexual preferences and activities. When asked if this sort of intelligence was in any way inappropriate, Lt. Arkin's answer was "No." (Documents 167 & 211 and Depositions R2-275 & A4-485)

Access to bank, telephone, credit agency, and students' records was also routinely exercised. (Documents 219, 233, & 254 and Depositions A1-47, A3-261, & A4-459).

Other subjects covered in the depositions include:

- Training of undercover officers

- Searching of homes

- Agents participation in crimes

- Voting instructions and holding of offices in infiltrated organizations by undercover agents