

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF TENNESSEE
3 WESTERN DIVISION

4
5 ACLU of Tennessee, Inc.,

6 Plaintiff,

7 vs.

NO. 2:17-cv-02120

8 City of Memphis, Tennessee,

9 Defendant.

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12
13 EXCERPT OF PROCEEDINGS

14 CROSS-EXAMINATION OF WITNESS, HEDY WEINBERG

15
16 BEFORE THE HONORABLE JON P. McCALLA, JUDGE

17
18 MONDAY

19 20TH OF AUGUST, 2018

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21
22 LISA J. MAYO, CRR, RMR
23 OFFICIAL REPORTER
24 FOURTH FLOOR FEDERAL BUILDING
25 MEMPHIS, TENNESSEE 38103

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A P P E A R A N C E S

Appearing on behalf of the Plaintiff:

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Monday

August 20, 2018

This case began on this date, Monday, 20th day of August, 2018, at 9:00 a.m., when and where evidence was introduced and proceedings were had as follows:

* * *

HEDY WEINBERG,

was called as a witness and having first been duly sworn testified as follows:

* * *

CROSS-EXAMINATION

BY MS. SILK:

Q. The next document I'd like to mark is a September 20, 1994 letter to you, Ms. Weinberg, from Andrew Branham.

THE COURT: Marked without objection as 17.

(WHEREUPON, the above-mentioned document was marked as Exhibit Number 17.)

BY MS. SILK:

Q. This letter is from September 20, 1994, and it's a letter to you and it says that you are excited to be a part of the coming together of what will hopefully be a new -- what hopefully will be a new chapter of the ACLU for Memphis and Greater West Tennessee.

1 So in September 20, 1994, it is evident from this that
2 there was no West Tennessee Chapter?

3 A. I think the chapters had -- again across the state,
4 there had just been absence of energy and we were
5 centralizing more.

6 **MS. SILK:** The next exhibit I would like to mark
7 is a letter to the Honorable Judge Lipman from November 17,
8 1994.

9 **THE COURT:** Marked as 18.

10 (WHEREUPON, the above-mentioned document was
11 marked as Exhibit Number 18.)

12 BY MS. SILK:

13 Q. This letter is from November 17, 1994, and it's a
14 letter from you, it looks like, to the now Honorable Judge
15 Sheri Lipman. And if you look at the bottom here, you
16 state "our work is clearly cut out for us and I appreciate
17 your willingness to coordinate the effort to get things
18 going in Memphis."

19 So in November of 1994 there was still no West
20 Tennessee Chapter; is that correct?

21 A. There was not -- appears there was not a formal
22 chapter.

23 **MS. SILK:** I'd like to mark the next exhibit
24 which is an October 24, 1994, letter to Judge Lipman from
25 you?

1 **THE COURT:** Marked as 19 and received.

2 (WHEREUPON, the above-mentioned document was
3 marked as Exhibit Number 19.)

4 BY MS. SILK:

5 Q. This is a letter predates the one -- I got out of
6 order a little bit -- but it says from -- to Sheri from
7 Hedy, "Subject: Revitalizing the Memphis chapter." It
8 says, "As promised, here is the information on those people
9 attending the September 12th event at Bruce's home who
10 expressed an interest in helping to revitalize the Memphis
11 chapter."

12 And the Bruce you're referring to there, I presume, is
13 Bruce Kramer; is that correct?

14 A. Correct.

15 Q. So Bruce Kramer was affiliated with the Kendrick
16 litigation, was he not?

17 A. He was, yes.

18 Q. But here he is trying to organize a West Tennessee
19 Chapter in 1994, is it not?

20 A. Well, Bruce stayed involved with the organization
21 from -- you know, from Kendrick on. He was involved prior
22 to Kendrick. So he was always engaged and always served on
23 our board and always represented the ACLU of Tennessee and
24 was also very active in the West Tennessee Chapter, which
25 was part of the ACLU of Tennessee.

1 Q. But at this time there was no chapter of the ACLU of
2 Tennessee in West Tennessee?

3 A. There was not a formal chapter but there was activity
4 and interested parties.

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* * * *

8

BY MS. SILK:

9

Q. That was not my question.

10

My question is, was the entity that was the West

11

Tennessee Chapter in May 1, '96 the same entity as the

12

American Civil Liberties Union in West Tennessee, Inc., and

13

the answer was it was not, correct?

14

MR. CASTELLI: Objection, Your Honor.

15

THE COURT: Is that a question? It sounded like

16

testimony.

17

MS. SILK: Let me rephrase.

18

BY MS. SILK:

19

Q. The West Tennessee Chapter that was re-formed in 1996

20

was not the same entity as the American Civil Liberties

21

Union in West Tennessee, Inc., right?

22

A. There were new people involved in this.

23

Q. And it's true then that the West Tennessee Chapter in

24

1996 did not have the same set of bylaws that's the -- what

25

you're referring to as the West Tennessee Chapter in 1996;

1 is that correct?

2 A. I just don't know about the bylaws. I mean, I don't
3 have memory of those.

4 Q. So if the ACLU of Tennessee had subsumed as your own
5 pleadings and filings with this Court have alleged, if it
6 had subsumed the entity that was the ACLU of West
7 Tennessee, Inc., it wouldn't need to form a new chapter in
8 1996, would it?

9 A. I think the goal of the chapter was to engage people
10 to be present. I mean, you can talk about a chapter but a
11 chapter without people, so you wanted to ensure that there
12 were people doing the work and, you know, being ambassadors
13 for the ACLU.

14 Q. And so, from the time when there wasn't a West
15 Tennessee Chapter it follows, doesn't it, that there
16 weren't enough people interested in the efforts of the ACLU
17 of Tennessee, Inc. to support an entity that could bring,
18 for instance, a lawsuit or enforce a consent decree?

19 A. No, that's not correct, because it was the
20 responsibility of the ACLU of Tennessee to do that. So we
21 were still filing lawsuits and engaging with the
22 legislature and doing pub ed programs, and we had members
23 in Memphis and the west Tennessee area who were ACLU of
24 Tennessee members and our -- yeah.

25 Q. So I want to just go back to one exhibit. Sorry, I

1 have to find it.

2 This is Exhibit 1, the charter of the ACLU of
3 Tennessee. And this is going back to -- there we go. This
4 is going back to the entity that was known as the West
5 Tennessee Civil Liberties Union, Inc. So Number 2, it says
6 that the -- your attorney presented this to you, and it
7 states that the purpose of the Charter of Incorporation was
8 to consolidate the affairs and activities of the previously
9 existing East Tennessee Civil Liberties Union, Inc. and
10 Middle Tennessee Civil Liberties, Inc. and continue the
11 previous operations of said corporations and to also absorb
12 at a future time, if agreed to by the membership and/or
13 board of directors of both corporations, to assume and
14 continue the operations of the West Tennessee Civil
15 Liberties Inc., a Tennessee corporation.

16 So I just want to get the record straight that the
17 Charter of Incorporation did not consolidate the affairs of
18 the West Tennessee Civil Liberties Union, Inc. at its
19 inception, but it only stated that it would do so if agreed
20 to at a later time by both boards; is that correct?

21 A. Right. The anticipation was they would join with the
22 ACLU of Tennessee, merge into that organization. I guess
23 in its absence, they would cease not to function.

24 Q. So it's probable, isn't it, that the West Tennessee
25 Civil Liberties Union, Inc. that was never officially a

1 chapter of the American Civil Liberties Union of Tennessee,
2 Inc. was actually the party that initiated the Kendrick
3 litigation?

4 A. I don't think it was probable.

5 Q. But you don't have any knowledge?

6 A. My understanding it was as part of the ACLU of
7 Tennessee.

8 Q. But you have no evidence that the party was not the
9 WTCLU, using the acronym for West Tennessee Civil Liberties
10 Union, Inc.?

11 A. My knowledge is that the West Tennessee Civil
12 Liberties Union or Civil Liberties, Inc. was no longer a
13 formal entity.

14 Q. So my last question is if there was here a group known
15 as the West Tennessee Civil Liberties Union, Inc. and also
16 a West Tennessee Chapter, operating around the same time,
17 it's probable that there could have been a third or fourth
18 group of people also operating in the name of ACLU; and
19 you, yourself, testified that this was a very fluid and
20 loose structure? Is that correct?

21 A. Let me step back from that. There could not be other
22 entities operating with ACLU in the state, and if there
23 were, they would not -- ACLU would not have supported them.
24 We would probably challenge their existence because the
25 ACLU sort of name and presence. So when I said that they

1 were fluid, I meant chapters as part of the organization
2 were alive as long as the people who were engaged in those
3 chapters -- as long as people were engaged in those
4 chapters. That's what I meant by fluid.

5 Q. Did the ACLU of Tennessee, Inc. ever challenge the
6 West Tennessee Civil Liberties Union, Inc. as not being
7 formally affiliated?

8 A. My understanding is the West Tennessee Civil Liberties
9 Union, Inc., like the East Tennessee Civil Liberties Union,
10 Inc. and the Middle Tennessee Civil Liberties, Inc. were
11 entities prior to the ACLU of Tennessee being incorporated.
12 And once it became clear that there was going to be a state
13 affiliate, the movement, while it took some time, was to
14 those organizations were going to blend and become part of
15 the ACLU of Tennessee.

16 That was my understanding when you -- just with my
17 knowledge of the national ACLU and watching statewide
18 affiliates incorporate.

19 Q. But you've asserted that the -- well, if the WTCLU was
20 never absorbed at a later time by the ACLU of Tennessee,
21 Inc., would the -- it seems like the ACLU of Tennessee,
22 Inc. would have challenged them and their authority to act
23 in the name of the ACLU, wouldn't they?

24 I mean, you just stated if some group were acting in
25 the name of ACLU that wasn't officially affiliated with the

1 state affiliate that would you have challenged it; but you
2 didn't challenge the West Tennessee Civil Liberties Union,
3 Inc. that existed from 1967 to 1983, did you?

4 A. I don't think they were engaged in activities
5 independent of the ACLU of Tennessee.

6 Q. But you don't know?

7 A. I don't know?

8 Q. But what we do know is that it did exist?

9 A. They were not actively involved.

10 **MS. SILK:** I have nothing further. Thank you.

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C E R T I F I C A T E

I, LISA J. MAYO, do hereby certify that the foregoing 14 pages are, to the best of my knowledge, skill and abilities, a true and accurate transcript from my stenotype notes of the excerpted portion on 20th day of August, 2018, in the matter of:

ACLU of Tennessee
vs.
City of Memphis, Tennessee

Dated this August 20, 2018.

S/Lisa J. Mayo

LISA J. MAYO, LCR, RMR, CRR
Official Court Reporter
United States District Court
Western District of Tennessee