

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

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ACLU of Tennessee, Inc.,

Plaintiff,

vs.

NO. 2:17-cv-02120

City of Memphis, Tennessee,

Defendant.

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TRANSCRIPT OF PROCEEDINGS

NON-JURY TRIAL

VOLUME I

BEFORE THE HONORABLE JON P. MCCALLA, JUDGE

MONDAY

20TH OF AUGUST, 2018

LISA J. MAYO, CRR, RMR  
OFFICIAL REPORTER  
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MEMPHIS, TENNESSEE 38103

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1                                   **MONDAY**

2                                   **August 20, 2018**

3                   The trial of this case began on this date,  
4           Monday, the 20th day of August, 2018, at 9:00 a.m., when  
5           and where evidence was introduced and proceedings were had  
6           as follows:

7                                   -----

8  
9                   **THE COURT:** I will allow a brief opening  
10          statement on behalf of each side if they would like to do  
11          that. Of course, we start with the ACLU.

12                   In connection with the subsequent request for  
13          potential modification of the consent decree, that issue  
14          has not been briefed by ACLU at this point in time, and I  
15          assume you're not ready to proceed on that?

16                   **MR. CASTELLI:** No, Your Honor.

17                   **THE COURT:** Right. And that's not an issue that  
18          we'll be going into. If it's necessary to go into that  
19          issue at appropriate time, then we'll do that at another  
20          proceeding. I think that probably covers what we needed to  
21          preliminarily. Of course, we have the pretrial order and  
22          it will govern the proceedings.

23                   Counsel, any -- I think -- did you want to  
24          introduce anyone for the record today? I know that we went  
25          through and got a list earlier.

1                   **MR. CASTELLI:** Certainly, Your Honor.

2                   And is this picking up?

3                   **THE COURT:** Make sure your mic is on, and it's  
4 actually close enough that it actually picks up.

5                   **MR. CASTELLI:** That may be better.

6                   **THE COURT:** That's an improvement.

7                   **MR. CASTELLI:** Your Honor, my name is Tom  
8 Castelli, representing the ACLU, the Plaintiff in this  
9 action. I'm here with Mandy Floyd, who you'll be hearing  
10 from today, and our executive director of the ACLU of  
11 Tennessee, Ms. Hedy Weinberg, with us. And then Ms. Lauren  
12 Davis will be helping us out throughout the proceedings  
13 this week.

14                  **THE COURT:** Certainly, that's fine.

15                  **MR. CASTELLI:** And if I may approach, I'll  
16 deliver a brief opening.

17                  **THE COURT:** That's fine. Why don't I let the  
18 other side do any introductions they need to at this time  
19 on the record, because I notice that Mr. McMullen came in.  
20 And you may want him to sit up here. I didn't want him to  
21 be relegated -- or anybody else that needs to sit up. In  
22 fact, if there's anybody else who needs to be up at the  
23 table or closer to the table for consultation, please let  
24 them get in those positions.

25                  Looks like they're going to let you come up,

1 Mr. McMullen, if you want to, or whoever else needs to be  
2 here from the City, and anybody else that needs to be close  
3 for the ACLU to consult with, also.

4 **MR. WELLFORD:** Your Honor, can you hear me with  
5 the microphone?

6 **THE COURT:** Oh, it's perfect.

7 **MR. WELLFORD:** Buck Wellford for the City with  
8 Larry Laurenzi and Jenny Silk and Mark Glover as the  
9 attorneys. And we've got Mr. McMullen and Ms. Sink, if  
10 you'd permit both, as representatives of the City, the city  
11 attorney and the deputy city attorney.

12 **THE COURT:** Absolutely. Certainly.

13 **MR. WELLFORD:** Your Honor, at what point do you  
14 invoke the Rule?

15 **THE COURT:** Now, at this time. Before opening  
16 statements, it's usually invoked. The Rule is now called  
17 for. I think we talked about that earlier in pretrial.  
18 And so if there's anyone who is a witness in the  
19 proceeding, we'll let them go to the witness room and --  
20 hope everybody's been shown where that is.

21 (Whereupon the Rule was invoked and witnesses  
22 excused from courtroom.)

23 **THE COURT:** All right. All right, Counsel. I  
24 think we are now set. Yes, sir.

25 **MR. CASTELLI:** Thank you, Your Honor.

1           So there's been quite a bit of briefing already  
2     in the case over the course of the almost two years this  
3     case has been going on. So I don't want to go into the  
4     extensive background too much, but to frame the case,  
5     Judge, as you're aware, this is a petition for contempt  
6     based on a consent decree that was entered in the case  
7     of -- that was filed in 1976. The decree was entered  
8     September 14th, 1978. And the decree centers around  
9     protecting the free speech rights under the First Amendment  
10    of the US Constitution of people protesting in the city of  
11    Memphis.

12           What sparked this particular petition was a list  
13    of persons left at City Hall who were -- where the list  
14    indicated they needed to have an escort at all times.  
15    Originally, this case was filed by four individual  
16    plaintiffs, who have since been dismissed. And my client,  
17    the ACLU of Tennessee, had moved to intervene and is the  
18    sole remaining plaintiff in the case at this point.

19           The Court has ruled on several of the issues  
20    already in this case, which has limited the issues that are  
21    before us for the next few days, and the Plaintiff has  
22    identified those issues as the following: Under this  
23    consent decree, whether the City is in contempt by learning  
24    about protest events through the monitoring of social  
25    media; whether the City operated an office, division,

1 bureau or unit for the purpose of gathering political  
2 intelligence; whether the City infiltrated a group for the  
3 purpose of gathering political intelligence; whether the  
4 City disseminated derogatory or false information for the  
5 purpose of political intelligence; whether the City  
6 photographed participants at a public protest for the  
7 purpose of chilling or affecting the First Amendment  
8 rights; whether the City contacted organizers about events  
9 for the purpose of chilling their First Amendment rights;  
10 whether there was a different standard for applications of  
11 protests through the City's permitting process than other  
12 events; and whether the City has substantially complied  
13 with the requirement that it refrain from disseminating  
14 information about -- or disseminating political  
15 intelligence to third parties.

16 All of those except for the last one, I believe  
17 the Plaintiff bears the burden with regard to substantial  
18 compliance; that's the City's burden to prove.

19 Through this case, the -- by agreement, the  
20 parties have kind of taken a snapshot of -- you know, we've  
21 got a 40-year-old decree here. So rather than -- in that  
22 40 years of information, we've limited a snapshot that  
23 basically covers the time period before the escort list was  
24 discovered and then subsequently revised, which was  
25 May 2017.

1           So most of the evidence that the Court's going to  
2       hear throughout the next few days is going to be focused on  
3       the time period between probably the spring of 2016 through  
4       the spring of 2017. There may be information that is  
5       presented that's before or after that time period, but I  
6       just wanted the Court to be aware that most of the time  
7       we're focusing on that time period, during which there were  
8       several major protests, which the -- which occurred,  
9       including a protest at the zoo for the Greensward where  
10      arrests were made, a protest at an oil refinery here in  
11      Memphis, the Valero oil refinery where some arrests were  
12      made, the protest that blocked the bridge, the I-40 bridge,  
13      which was in July of 2016, and a protest at Graceland,  
14      which also resulted in some arrests.

15           There also -- the proof will discuss several  
16      other free speech events that occurred during this time  
17      period. So we're not just focusing on these kind of big  
18      flash spots, but also smaller events that occurred on  
19      private property, public property throughout the course of  
20      this about -- roughly year, year-and-a-half time period.

21           This is a -- as we have found over the course of  
22      the -- of discovery, a fairly document-intensive case. So  
23      we expect that the Court will see a lot of what -- in  
24      particular, the Memphis Police Department's  
25      intercommunications about some of these events and about

1 its gathering of political intelligence, and then how  
2 those -- those particular persons working for the police  
3 department operated and what type of information they were  
4 seeking and for what purpose.

5 And I think that's mainly what we're focusing on  
6 for the hearing today, since the Court has ruled that the  
7 City has -- or the police department did, indeed, gather  
8 political intelligence in violation of the decree. We hope  
9 to focus more on these issues of purpose or intent.

10 The witnesses that the Court will hear from at  
11 least from the Plaintiff -- and apologies, Your Honor,  
12 there is one more outstanding issue that we're going to  
13 hear, which involves the standing of the ACLU in Tennessee.

14 **THE COURT:** I was going to ask about that.  
15 That's an important one.

16 **MR. CASTELLI:** Yeah, it is.

17 So we're going to start with that first, Your  
18 Honor. We're going to call the Ms. Weinberg, who is the  
19 executive director of the ACLU of Tennessee and has been  
20 for the past 30 plus years, to basically explain how the  
21 organization has worked in her time period and then to  
22 facilitate discussion of some of these historical documents  
23 that the Court has, I believe, seen before, but we want to  
24 put in the record and discuss and be able to argue about  
25 their significance or their meaning, including minutes and

1 bylaws of the ACLU of Tennessee in its early stages in the  
2 early 1970s before the filing of this -- the original  
3 Kendrick case in 1976.

4 Then the Plaintiff will continue into our  
5 substantive witnesses, Your Honor. And we will plan to  
6 call Sergeant Tim Reynolds, who was a -- at the time period  
7 relevant was a detective with the Office of Homeland  
8 Security, which is the office that is central in this case  
9 as far as the collection of and dissemination of political  
10 intelligence.

11 Mr. Reynolds -- we believe that the proof will  
12 show that Mr. Reynolds was instrumental in collecting this,  
13 was kind of the key figure as far as researching,  
14 surveilling individuals and was the detective behind an  
15 undercover or covert Facebook account that surveilled  
16 protest groups or advocacy groups throughout Memphis.

17 We will then call Major Chandler, who at the time  
18 was the -- one of the supervisors. I believe he was a  
19 lieutenant over the Office of Homeland Security. So he  
20 worked with Detective Reynolds in some of these research or  
21 these surveillance endeavors in collecting the political  
22 intelligence. Often time, he was in a position of ordering  
23 it and sometimes responding to a third witness that we will  
24 call, who is Lieutenant Colonel Eddie Bass, who was  
25 the colonel in charge of the Office of Homeland Security

1 during the relevant period.

2 So the three of those witnesses will be kind of  
3 this unit that the Plaintiff is -- will prove was operating  
4 for the purposes of political intelligence.

5 Plaintiff will also call the director, Michael  
6 Rallings, to discuss his oversight of the entire police  
7 department, his involvement in political intelligence,  
8 policies that may have governed the Office of Homeland  
9 Security during this time period, and just generally his  
10 involvement in some of the political intelligence that was  
11 gathered and disseminated.

12 Plaintiff will then call Sergeant Bradley  
13 Wilburn, who is or was at the time an officer with the Real  
14 Time Crime Center, which will be another unit that will be  
15 important in our discussion over the next few days. The  
16 Real Time Crime Center, the Plaintiffs will show, worked  
17 with the Office of Homeland Security in gathering this  
18 political intelligence.

19 The Real Time Crime Center covers a whole host of  
20 different things across the City, including surveillance  
21 cameras that are disbursed across the City, but what I  
22 think our evidence is going to focus on is the part of the  
23 Real Time Crime Center that use what's called a social  
24 media collator, which is a computer program that will  
25 search through social media posts and -- based on key words

1 and pull them out. So Sergeant Wilburn is familiar with  
2 that, can explain what it is to the Court, how it works,  
3 and then how he used it in conjunction with the Office of  
4 Homeland Security in the gathering of political  
5 intelligence.

6 And then finally, as far as the witnesses from  
7 the Defendant, the Plaintiffs will call Mr. Aubrey Howard,  
8 who is in charge of the City's permitting department. And  
9 Mr. Howard is the final authority on whether somebody who  
10 seeks a permit will receive it, and so he can explain  
11 the -- how permitting works in the City and also go through  
12 some of the documents about what permits were granted  
13 during this time period and for whom.

14 And then finally, the Plaintiff will call a few  
15 of the citizens who were implicated in a lot of the  
16 materials that have already been submitted to the Court and  
17 will be submitted to the Court over the course of the next  
18 several days. We plan to call Mr. Paul Garner, Ms. Elaine  
19 Blanchard, Mr. Earle Fisher, and Mr. Keedran Franklin to  
20 discuss their interactions with the police, their knowledge  
21 of some of these surveillance techniques and how that  
22 affected their free speech.

23 After that and after the Defendant puts on their  
24 proof -- and as we discussed in the pretrial, we anticipate  
25 that Defendants will, through their cross-examinations of

1 especially the witnesses of -- that are employed by the  
2 City, will take care of a lot of -- we won't have a lot of  
3 overlap of calling the same witnesses. But after that,  
4 Your Honor, we'd ask the Court to consider the evidence and  
5 find the City -- that the City has violated the order on  
6 several other issues that I've covered in my opening, in  
7 addition to those that the Court's already determined in  
8 its order on our motion for summary judgment, and also find  
9 that the ACLU of Tennessee does, indeed -- is a proper  
10 party withstanding to enforce this decree. So thank you.

11 **THE COURT:** Thank you. Mr. Wellford?

12 **MR. WELLFORD:** Your Honor, may I cross in front?

13 **THE COURT:** Oh, certainly. Certainly. No  
14 problem at all.

15 **MR. WELLFORD:** I assume the Court will tell me if  
16 you have trouble picking me up, but -- or if I'm getting  
17 too loud or too close.

18 **THE COURT:** It's not a problem. And, of course,  
19 I can see everything on the screen. It's no problem for  
20 me. Main thing is so that everyone in the room can hear  
21 you.

22 **MR. WELLFORD:** Yes, sir.

23 **THE COURT:** Certainly.

24 **MR. WELLFORD:** Your Honor, we will, of course,  
25 contest the issue of standing, which is still an open issue

1 for trial, and that will be appropriately one of the first  
2 issues addressed through witnesses.

3 We will be cross-examining. We won't be putting  
4 independent witnesses on, but we will be cross-examining  
5 the witnesses that are put on by the Plaintiff and probably  
6 presenting some of the documents that have been stipulated  
7 in the record, whether or not it's with cross-examination,  
8 and we'll address the standing issue at the close of  
9 Plaintiff's proof.

10 We acknowledge that the Court's ruling on  
11 August 10 has resolved some issues, unless evidence comes  
12 before the Court in this hearing that would give rise to  
13 some kind of a motion to alter or amend the Court's  
14 previous ruling. And our proof, as well, is going to be  
15 heavily focused on the parts of the consent decree where  
16 the motivations of the City of Memphis Police Department  
17 personnel are at issue. And we think that's what the Court  
18 has identified as a key issue that the Court wishes to hear  
19 evidence about, and that's where our evidence will be  
20 focused. We understand that the motion to modify is not  
21 procedurally ripe.

22 **THE COURT:** Right.

23 **MR. WELLFORD:** But in the context of  
24 demonstrating the motivation of some of the police  
25 officers, especially from the director down, there will be

1 evidence presented on best practices because part of the  
2 theme of the defense is that they were motivated by the  
3 things that -- same things that motivate other police  
4 departments throughout the country, and they were not  
5 motivated in their actions by the content of the political  
6 speech and associations that were being -- that were  
7 involved on the part of the individuals whose -- who we'll  
8 be studying through the course of the presentation.

9           The motivations of a number of the protesters who  
10 were involved in some of the events that are before the  
11 Court is appropriately an issue. The Court identified the  
12 motivations of those involved in alleged First Amendment  
13 activities as a relevant item, and we do think that that  
14 will be a relevant subject for us to cover and we intend to  
15 cover that as a part of our presentation.

16           Fundamentally, the most important thing that we  
17 wish to demonstrate in our evidence is that the police,  
18 from the director down, were attempting to enforce the laws  
19 of the state of Tennessee and the Code of Ordinances of the  
20 City of Memphis, and that that was a driving, motivating  
21 factor behind much of what they did.

22           And with respect to that, can you pull up the  
23 permit ordinance, please?

24           **THE COURT:** Well, we've already had a discussion  
25 about the permit in the materials.

1           **MR. WELLFORD:** We've had a discussion --

2           **THE COURT:** I don't know that it matters what the  
3 permit ordinance is. We can look at it, certainly.  
4 Certainly not -- hope it's not the central part of the  
5 City's case.

6           **MR. WELLFORD:** Well, it is an important part of  
7 the City's case because Your Honor has touched --

8           **THE COURT:** Otherwise, the City could simply pass  
9 ordinances and prohibit all sorts of things that are  
10 protected by the United States Constitution.

11           **MR. WELLFORD:** We acknowledge that, Your Honor,  
12 but Your Honor's order has stated that simply because  
13 someone appears at a rally or engages in speech in an  
14 unpermitted ordinance doesn't categorically place it  
15 outside the context of the First Amendment. We understand  
16 that.

17           **THE COURT:** Okay.

18           **MR. WELLFORD:** But the permit ordinance does go  
19 through a number of obligations on the part of the police  
20 director that we think are relevant to what motivated the  
21 police director and the police.

22           **THE COURT:** The question in so many ways in this  
23 case, not entirely, is whether or not the City violated the  
24 decree that it entered into in 1978, and so that has to be  
25 a focus of the inquiry. And to a degree, this could be

1 collateral and not central to the issues before the Court.  
2 I'm not saying it's something we couldn't consider, but we  
3 want to stay focused as much as we can on the decree and  
4 what the City did. That's the best way to do it.

5 I'm not -- I'm not going to -- I'm going to let  
6 you have a lot of leeway, but it's not a policy decision as  
7 to whether or not the City had a good idea or in some  
8 respects was trying to do something that was for the  
9 benefit of the public. That's important, but the question  
10 is, in a significant degree, did the City comply with the  
11 order. And it was -- I remind everybody, it was a consent  
12 decree. The City agreed to do these things.

13 So we don't want to get -- it's certainly okay to  
14 submit materials and we're going to have them before the  
15 Court and they may be of some importance, but we don't want  
16 to move so far away from the central issue in the case that  
17 it's confusing.

18 So I'm certainly -- I know you want to present  
19 those things. I did focus in and talk about some of those  
20 things in the order, and I think it does matter, but we  
21 kind of have to see what's -- just like the standing issue,  
22 just like -- you're right about that. If the -- both --  
23 both of you are right to focus on that because if the  
24 Plaintiff in the case doesn't have the ability to bring the  
25 case, then the case would be over.

1           So it's a couple of very key general  
2       propositions. So go ahead and certainly if you want to  
3       talk about it, but you be mindful that you can't ordinance  
4       your way out of the consent decree.

5           **MR. WELLFORD:** We understand that, and the  
6       purpose of showing the parts of the ordinances that we're  
7       going to spend time on is to demonstrate what was  
8       motivating, right or wrong, whether it was a correct  
9       motivation or not --

10          **THE COURT:** Sure, sure.

11          **MR. WELLFORD:** -- what was motivating the conduct  
12       of the director. And we'll -- but I get the Court's point.  
13       Believe me, I've been in here before and I understand that  
14       what you want to hear is where you want to focus the case.

15          **THE COURT:** Sure, absolutely.

16          **MR. WELLFORD:** But in terms of what we do intend  
17       to present to demonstrate the motivations of the director  
18       on down, would you please turn to the second page --  
19       actually -- of the ordinance. Actually, let's go ahead and  
20       skip down to the third page with the director's  
21       obligations, the next page.

22               The ordinance does have an entire section that  
23       places responsibilities on the director, and then the  
24       following page.

25          **THE COURT:** Well, you know, it's just not about

1 the ordinance.

2 **MR. WELLFORD:** I understand, Your Honor. And if  
3 I could just -- if I could get it in the record, we'll move  
4 on.

5 **THE COURT:** No, no, no, that's perfectly fine. I  
6 have no problem at all. I just don't want to create  
7 confusion about the central focus of the case.

8 **MR. WELLFORD:** I understand.

9 We will be pointing to the specific sections of  
10 the permit ordinance that, on the next page, Page 4,  
11 require the police director, direct him -- not as a legal  
12 defense, but as a motivation to attempt to do certain  
13 things --

14 **THE COURT:** Right.

15 **MR. WELLFORD:** -- that were, we think the  
16 evidence is going to show, active in his mind as his  
17 purpose, as his motivation, not as a legal defense. We  
18 acknowledge completely that the permanent ordinance is not  
19 a legal defense to compliance with the consent decree. So  
20 with that, we'll move on past the permanent ordinance.

21 Now, we also want to demonstrate -- can you pull  
22 up the timeline -- that what motivated not just the  
23 director but the Office of Homeland Security in particular,  
24 the Real Time Crime Center in particular and the police  
25 command staff and, indeed, the entire police department was

1 a concern over safety issues; and that meant public safety,  
2 that meant the safety of protesters themselves, that meant  
3 the safety of counter-protesters who increasingly,  
4 especially since Ferguson in 2014 where a lot of events  
5 occur where you have protesters and counter-protesters and  
6 when you have a lot of realtime activity associated with  
7 that, the motivations of the police to try to prevent these  
8 types of conflicts at the events were important. And we  
9 think the Court will hear evidence that that was their  
10 motivations, and so some of the events that were motivating  
11 them, we will briefly go through.

12 If we could start with the -- the events in  
13 Ferguson are well-known and will not be discussed in great  
14 detail, but one of the most significant things about  
15 Ferguson for law enforcement in Memphis and elsewhere was a  
16 tactic of shutting down thoroughfares and streets became  
17 something that the department was concerned about and  
18 wanted to prepare for.

19 In 2015, fueled in part by social media, a number  
20 of high profile events nationally, including the Freddie  
21 Gray incident in Baltimore, and in Memphis particularly,  
22 including the Darrius Stewart incident with a Memphis  
23 police officer and a shooting incident and the death of  
24 Darrius Stewart, crystallized within Memphis a lot of  
25 national events that were focused on the same sorts of

1 issues, often associated with the national or local  
2 chapter, Black Lives Matter, movements at the time which  
3 increased tension between law enforcement and protesters  
4 and counter-protestors. And the Darrius Stewart event  
5 brought that home in the Memphis community.

6 And what the Court will hear is that the Office  
7 of Homeland Security, which was up until about the time of  
8 the Darrius Stewart shooting, very much focused on the  
9 types of things you read about with the Federal Office of  
10 Homeland Security, working in conjunction with State and  
11 Federal agencies, very much focused on domestic,  
12 international terrorism-type issues. And it started to  
13 shift a bit in 2015, started to shift particularly after  
14 the Darrius Stewart shooting, so that the necessity of  
15 planning for and trying to avoid confrontations in often  
16 unpermitted and spontaneous events that were springing up  
17 around Memphis in the aftermath of the Darrius Stewart  
18 shooting became something that the Homeland Security's  
19 office started focusing more of its attention upon.

20 As we entered into 2016, what you're going to  
21 hear that is the Office of Homeland Security and Real Time  
22 Crime Center react to hot button issues of the time.  
23 Situational awareness is a term that the Court will hear.  
24 And during 2015 and much of 2016, much of that was  
25 associated with Black Lives Matter events and with the

1       aftermath in Memphis of the Darrius Stewart shooting, but  
2       it wasn't the only issue.

3               And, in fact, one of the earliest uses of an  
4       undercover social media account that's been referred to as  
5       a Bob Smith account was associated with protests at the  
6       Greensward in Overton park. And it generated quite a lot  
7       of activity and concern over disruption to public  
8       thoroughfares and access to zoo property and the police's  
9       concern about protecting the rights, private property  
10      rights and public property rights of the zoo and those who  
11      wanted to go in it, the rights of protesters, and to avoid  
12      confrontations between people who were parking in a place  
13      where lots of activists didn't think they should be  
14      parking.

15             And we will see that one of the first things that  
16      the Bob Smith account uncovered was an overt threat to hack  
17      into the computer system at the Memphis Zoo. And we think  
18      that the evidence on that point -- and we understand that  
19      the Court has found that it violated another section of the  
20      decree, failing to get written authorization from the  
21      director, but in terms of the motivation of the  
22      surveillance, the motivation of the followup that was done  
23      in connection with the hacking threat, none of it had to do  
24      with the content or the opinions themselves. It all was  
25      focused, as we believe the Court will see, on the clear

1 threat of a criminal violation that was about to be  
2 committed in the Memphis City Zoo's computer system.

3 Your Honor will end up hearing that as followup  
4 to the investigation, the zoo's systems were sound enough  
5 that they didn't believe that they had or could be hacked,  
6 but the concern was focused on that and not the content of  
7 the opinions.

8 Your Honor will also see that in 2016, which is a  
9 particularly fraught time and a lot of the evidence in this  
10 case will focus on events occurring in 2016, once again,  
11 situational awareness, the Pulse nightclub shooting was a  
12 very significant event in June of 2016. The Plaintiffs  
13 will spend a lot of time in this case talking about JIBs,  
14 Joint Intelligence Briefings. Your Honor has addressed  
15 them in your order already. We'll hear a lot about them.

16 The very first JIB that was published by the  
17 Office of Homeland Security and distributed within and  
18 certainly for a period of time without the police  
19 department didn't concern Black Lives Matter, didn't  
20 concern the Greensward. It was specifically caused, the  
21 catalyst for it was the Pulse nightclub shooting. And the  
22 very first event that's described in that JIB is a gay  
23 pride awareness series of events in Memphis in the  
24 immediate aftermath of that shooting and the importance of  
25 keeping everyone safe. So that was the motivating factor

1 between the JIBs.

2 July 2016 was probably the most tumultuous month,  
3 barring the assassination of Martin Luther King, that the  
4 Memphis Police Department has maybe faced in modern times,  
5 and it concerned events that were occurring in Memphis as  
6 well as elsewhere.

7 On July 5th, we had a high profile shooting  
8 incident involving a law enforcement encounter and an  
9 African-American man, Alton Sterling. In Baton Rouge in  
10 July 6th, there were violent protests following the deaths  
11 of another African-American man who was involved in an  
12 encounter with a Minnesota police officer.

13 And on July 7th, at a peaceful Black Lives Matter  
14 rally, and that's one of the points that you're going to  
15 hear, just because the organizers actually want a peaceful  
16 event, just because the vast majority of the people at the  
17 event are peaceful does not mean that terrible things can't  
18 happen at the event. And what happened in Dallas was a big  
19 concern with the Memphis Police Department in the aftermath  
20 of these other high profile events.

21 And then, of course, we are getting to the  
22 bridge, but there was another quite controversial event on  
23 July 10, 2016. It was a celebration of Nathan Bedford  
24 Forrest birthday. It was an annual celebration, and people  
25 would come in who had certain points of view that were not

1 popular with a lot of other people in Memphis concerning  
2 Nathan Bedford Forrest. It was a permitted event, but it  
3 nonetheless occasionally caused counter-protests, caused  
4 disruption, and the Memphis City Police Department was  
5 sufficiently concerned about it that they deployed  
6 undercover agents to -- undercover operatives to watch what  
7 was going on at that event.

8 By the way, Your Honor, although we understand  
9 the permit ordinance is not central to the case, I will  
10 point out that part of the series of tools that the permit  
11 ordinance provides the director is to deploy undercover  
12 officers in connection with events where the director  
13 reasonably anticipates disruptions to public safety.

14 Right or wrong, that's what they did and that was  
15 the motivation for what they did on July 10th. There was a  
16 particular concern that the people at that rally would come  
17 into contact with the people who were having a Black Lives  
18 Matter allowed -- it didn't require a permit, but it was  
19 permitted by FedEx Forum -- who were having a rally at the  
20 FedEx Forum. There was great concern that those two groups  
21 would come into contact with each other. They didn't, but  
22 there's a lot of social media traffic that contained overt  
23 threats that was being bandied about that that was a  
24 realistic possibility.

25 We will spend some time talking about the bridge

1 because it was a pivotal event in terms of the Memphis  
2 Police Department. It was a wake-up call, tangible wake-up  
3 call for the Memphis Police Department about danger to  
4 infrastructure and the importance of protecting the City,  
5 protecting the people involved in the protest from the  
6 consequences of unlawful activity at events such as what  
7 led to the bridge.

8 We have distilled about five hours of video in  
9 the evidence that we'll present to the Court in 28 minutes,  
10 but we do wish to have a two-minute spotlight right now,  
11 because it's an important focus of the case, on the events  
12 of the bridge and we would ask to play that.

13 **THE COURT:** It's not in evidence, and normally if  
14 you want to play it, it's an argument. It's going to be  
15 submitted as evidence and it can be considered as evidence.  
16 This is not argument.

17 **MR. WELLFORD:** Then we'll pass it by if Your  
18 Honor doesn't want to hear it.

19 **THE COURT:** Well, I mean, it's not that I don't  
20 want to. It relates to the fact of whether or not it's  
21 appropriate for opening statement.

22 **MR. WELLFORD:** It is in evidence. It's been  
23 stipulated that they are admissible. But, Your Honor, I  
24 don't -- I want to move on because we will see a broader  
25 version of this in the evidence.

1           **THE COURT:** It's not exactly a brief opening.

2           **MR. WELLFORD:** So we'll move on from the bridge  
3 incident.

4           Suffice it to say that it generated great concern  
5 within the department about similar events that were likely  
6 to occur and that were threatened to occur on social media  
7 and elsewhere in the days and weeks following.

8           Two days later, there was an unpermitted,  
9 spontaneous demonstration at Graceland, which shut down  
10 traffic, and arrests were made. Three days after the  
11 event, there was a nonpermitted protest on the grounds of  
12 the Commercial Appeal. And by the way, the evidence is  
13 going to be that Commercial Appeal was reaching out to the  
14 police department to make sure they were quite aware of  
15 that and --

16           **THE COURT:** Sure.

17           **MR. WELLFORD:** -- watch what was going on.

18           **THE COURT:** Right.

19           **MR. WELLFORD:** We had reports of a National Day  
20 of Rage, which turned out to not be something that happened  
21 but were widely circulated nationally where locations  
22 including Memphis were identified by a group called  
23 Anonymous as having violent and disruptive events, and the  
24 police took it seriously here, as they took a lot of the  
25 threats that were being made.

1           One of the difficulties that the Memphis Police  
2     Department had during this period of time is telling  
3     unverified rumors from verified and important rumors. They  
4     would get -- and the Court will hear it in evidence, people  
5     from the DEA would send them during this time frame, we  
6     have a reliable report of a man coming across from Arkansas  
7     with an AK15 and he's going to exercise his Second  
8     Amendment rights. And then we would have reports that were  
9     unverified and turned out to not happen of, there's going  
10    to be six shutdowns of streets at -- they would identify  
11    the intersections around the city. And part of what the  
12    Office of Homeland Security and Real Time Crime Center were  
13    tasked to do was anticipate which of these were real and  
14    which were unlikely to happen, and that was what was  
15    motivating them at the time.

16           The week after the bridge incident, we had other  
17    high profile incidents involving shootings in Baton Rouge  
18    of police officers, which concerned the officers a great  
19    bit because they were concerned about their own personal  
20    safety.

21           There's a JIB that Your Honor will see from  
22    July 19 which references five different police shooting  
23    incidents in different parts of the country, which, once  
24    again, is what was a motivating factor behind what was of  
25    the most pressing concern for the department at the time,

1 safety of the public, sometimes safety of protesters as  
2 well as -- and definitely counter-protestors, and the  
3 safety of the officers themselves.

4 During this period of time, Your Honor will see  
5 evidence that the director actually was instructing the  
6 people within his department to wear their vests everywhere  
7 they went. There were firecrackers -- fireworks that had  
8 been set up under officer's cars. These threats were real  
9 and tangible to the Memphis Police Department during this  
10 time frame.

11 **THE COURT:** Well, there's no question that there  
12 are many issues that the police department has to deal  
13 with. I don't think anybody in this -- is the ACLU saying  
14 that they don't have to deal appropriately with threats of  
15 violence? ACLU, are you going to speak up there?

16 **MR. CASTELLI:** No, that's not what we're saying,  
17 Your Honor.

18 **THE COURT:** Does most of this have much to do  
19 with what we're talking about today?

20 **MR. WELLFORD:** Respectfully, Your Honor --

21 **THE COURT:** Excuse me. I didn't ask you that  
22 question.

23 **MR. CASTELLI:** Your Honor, the ACLU will take the  
24 position that this is not particularly relevant to our  
25 discussion today. We have not taken the position that the

1 City is not able, because of the decree, to investigate  
2 certain incidents or to provide public safety. Our focus  
3 is really more on incidents where the City's gathering of  
4 political intelligence had nothing to do with this public  
5 safety concern.

6 **THE COURT:** I don't think anybody's saying that  
7 the director or the department is not able to take  
8 appropriate steps to protect the public. No one is saying  
9 that. That's not a central issue in the case. I think we  
10 need to stay focused.

11 The environment in which things occur  
12 immediately, locally can be important. The fact that there  
13 are large national issues is less relating -- relevant to  
14 whether or not the City complied with the 1997 consent  
15 decree. I can't go back and say it enough times. It was a  
16 consent decree. It's an agreement between the City and  
17 interested parties, including the ACLU, if the ACLU is able  
18 to establish standing, to not engage in certain conduct,  
19 and this is not about some of the things that are being  
20 brought up.

21 I'm not saying it's not something we're not going  
22 to listen to, because we are, and it may be that it can be  
23 shown to have some relevance to the immediate situation  
24 here in the context of a consent decree. Maybe it can be,  
25 but it's a pretty big jump, and that's -- that's the

1 problem about discussing matters that happened in Missouri  
2 or -- and the tragedy in these situations in Dallas and  
3 Louisiana, but it's not central to the issues that we have  
4 to address.

5 I just don't -- I fear that we will be on a  
6 proceeding that is not a -- focused on legal matters.

7 **MR. WELLFORD:** And, Your Honor, we believe that  
8 Your Honor has identified the key legal issue in this case  
9 as whether the City was taking certain action -- one of the  
10 remaining issues, whether the City was taking certain  
11 actions for the purpose of political surveillance, and --

12 **THE COURT:** Right. And let's make it clear,  
13 there can be multiple reasons that entities engage in  
14 conduct. You might do it to engage in political  
15 surveillance. You might also do it to do something else,  
16 to attempt to preserve public safety. Public safety is  
17 important, but we need to stay -- very important, but we  
18 need to focus a little bit more; otherwise, we will -- we  
19 lose sight of why we're here, and that's what I'm worried  
20 about.

21 **MR. WELLFORD:** I understand, Your Honor.

22 **THE COURT:** We wouldn't be here if the City had  
23 not signed a consent decree. We wouldn't be here in this  
24 case in this context.

25 **MR. WELLFORD:** I'm going to move on because --

1 based on the Court's admonition, we will attempt to focus  
2 our evidence on what the motivating factors behind the  
3 Memphis police officers and the executive level, Memphis  
4 police --

5 **THE COURT:** Sure.

6 **MR. WELLFORD:** -- the director included, were  
7 accused of doing, and we will demonstrate to the Court that  
8 they were not motivated at all by political intelligence.  
9 They were heavily motivated by these other things that I am  
10 bringing up.

11 Let's move on to another -- so we'll play this in  
12 evidence. What I just skipped through was, you will hear  
13 that there are videos of people in the weeks and months  
14 following the event overtly threatening to take back the  
15 bridge. The department's concern over the bridge  
16 specifically and other valuable parts of infrastructure was  
17 a major motivating factor behind everything they were doing  
18 during this time frame. So I'll leave it at that and say  
19 that the evidence will demonstrate that.

20 **THE COURT:** And you're right, that's different  
21 from talking about Dallas or Ferguson or someone else.

22 **MR. WELLFORD:** And then with respect to the  
23 die-in on Mayor Strickland's lawn and the AOA where the  
24 Court -- we understand that -- and a lot of the evidence is  
25 pre-permitted by the Court's order in terms of whether

1 that's political intelligence, but apparently the ACLU  
2 still takes the position that the inclusion of the AOA list  
3 by the chief of the mayor's security for a period of time  
4 at the part of a security list at City Hall was motivated  
5 for purposes of political intelligence and motivated by a  
6 desire to intimidate and chill, and we think the complete  
7 opposite is true.

8 It was motivated, frankly, by a desire to protect  
9 the mayor and motivated by a desire to keep people from  
10 coming back and trespassing on his private property. It  
11 morphed into something that, frankly, we think the evidence  
12 is going to demonstrate it was not intended to be. And  
13 once that became obvious, that it had morphed into  
14 something it wasn't intended to be, they pulled it off.  
15 They pulled it back.

16 And the most pertinent fact is that during the  
17 entire period of time, I think it was a six-week period  
18 that the AOA list was included with a security list at City  
19 Hall, no one was ever escorted the entire period of time,  
20 which we think demonstrates that the motivation of the  
21 department was not to chill, not to intimidate and not to  
22 do anything for the purpose of political intelligence.

23 2017, events started occurring that were  
24 unrelated to the -- a lot of the protests in 2016, but they  
25 were overt threats to infrastructure. The Valero Refinery

1       arrests, and the Court will see the photographs, the Court  
2       will see the video, was an openly unlawful activity that  
3       concerned an important part of Memphis infrastructure, and  
4       the City took it seriously. The director was personally  
5       involved, directed an investigation into it, and the  
6       motivations behind that had nothing to do with the content  
7       of the political opinions that were being expressed.

8               What Your Honor is going to hear -- this is an  
9       example of -- this is not a modification of the consent  
10      decree, but one of the pieces of evidence that the Court's  
11      going to hear with the removal of the Nathan Bedford  
12      Forrest statue, that was another high profile event where  
13      violence was anticipated, there was lots of chatter on  
14      social media about people coming to town, what's going to  
15      happen to them, what's going to happen to  
16      counter-protestors who wish to confront them, what's going  
17      to happen to the public.

18             And the City took its playbook, right or wrong,  
19      the City took its playbook on how to address that situation  
20      from the Charlottesville incident and a very thorough  
21      report that was prepared that sort of summarized what went  
22      right, what went wrong in Charlottesville. And the City  
23      was motivated to try to learn from that and try to protect  
24      public order, not political intelligence in any manner or  
25      respect whatsoever.

1           Some of the evidence that the Court is going to  
2           see is quite alarming with respect to the blow-back from  
3           that event, from the -- and you'll see the evidence of it.  
4           Some of it is extremely strong language about threats to  
5           the mayor, but we will also see that some of the evidence  
6           that's coming forth on social media is more ambiguous. And  
7           part of what the Court will hear is that the department is  
8           attempting, even as we speak, to react to the Court's  
9           order. The City is attempting to develop plans to  
10          implement an effective system that can try to keep its  
11          citizens safe while complying with the Court's order  
12          because it takes it seriously.

13               **THE COURT:** A consent order between the City and  
14          the ACLU.

15               **MR. WELLFORD:** You're correct, and I need to  
16          withdraw that.

17               **THE COURT:** I think suggesting that the Court  
18          ordered that is simply not correct.

19               **MR. WELLFORD:** Your Honor, I misspoke. I  
20          misspoke.

21               **THE COURT:** Well, good.

22               **MR. WELLFORD:** The Court's interpretation of the  
23          consent decree is what the City's working with right now.

24               **THE COURT:** You entered the consent decree,  
25          Mr. Wellford.

1           **MR. WELLFORD:** And the Court's going to hear how  
2 we are attempting to comply with it right now. At the end  
3 of the case --

4           **THE COURT:** If you enter into an agreement with a  
5 party to do certain things and not do certain things,  
6 that's important.

7           **MR. WELLFORD:** It is.

8           **THE COURT:** And the City -- that's the question.  
9 It's not -- nobody's -- nobody forced the City to sign that  
10 document. The City did it on its own. And everyone in  
11 America would expect the City to live up to what it agreed  
12 to do, and that's all that's being asked.

13           Now, I'm not sure it's going to come out, but the  
14 mischaracterization of what occurred might be confusing to  
15 others, and we don't want to do that. We want to be  
16 straightforward and honest about why we're here.

17           **MR. WELLFORD:** At the end of the presentation, at  
18 the end of the evidence, one of the things that the Court's  
19 going to be asked to find is whether one of the remedies  
20 for what you've already found or may find, depending upon  
21 the evidence presented at the hearing, is whether a monitor  
22 is going to be required.

23           **THE COURT:** Sure.

24           **MR. WELLFORD:** And so we are going to be  
25 presenting evidence to demonstrate that the City takes its

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1 responsibility seriously, the City is discussing and  
2 putting into place plans that we believe would comply with  
3 the Court -- with the consent decree, and that we have  
4 moved to modify it and we will deal with that separately,  
5 but unless and until it is modified, the City understands  
6 that it is bound by the order, needs to follow the order,  
7 and we believe --

8 **THE COURT:** Bound by the consent decree. We're  
9 going to use the word "consent decree." Is that okay?

10 **MR. WELLFORD:** Well, I meant the consent decree.  
11 The consent decree. And that the City intends to follow it  
12 and that there's not going to be a need for the Court to  
13 appoint a monitor to ensure that the City complies with it  
14 prospectively.

15 **THE COURT:** Sure.

16 **MR. WELLFORD:** That's going to essentially be our  
17 evidence.

18 **THE COURT:** Okay. Well, I think we're all set  
19 now. And, Mr. Castelli, I think you need to call your  
20 first witness.

21 **MR. CASTELLI:** Thank you, Your Honor. Plaintiff  
22 calls Ms. Hedy Weinberg.

23

24

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\* \* \*

**HEDY WEINBERG,**

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

**THE COURT:** We'll try to follow the same  
procedure with every witness every time, which is, for the  
sake of the reporter, every time asking the name and the  
spelling of the name so that we're comfortable that we have  
it the way it should be in the record.

**MR. CASTELLI:** Certainly.

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**BY MR. CASTELLI:**

Q. Could you state your name and spell your name for the  
record, please?

A. Sure. Hedy Weinberg, H-E-D-Y, W-E-I-N-B-E-R-G.

Q. Thank you.

Ms. Weinberg, what is your position with the ACLU of  
Tennessee?

A. I'm the executive director of the ACLU of Tennessee.

Q. How long have you held that position?

A. September 8th, 1984.

Q. And can you explain kind of your obligations and duty  
as executive director?

A. Sure. I am responsible for the overall operation of  
the ACLU of Tennessee, and that involves oversight of the

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1 administration, financial fundraising programs as well as  
2 leading the staff in the design and implementation of our  
3 campaigns and priorities to address and resolve current and  
4 future civil liberties issues is.

5 Q. And, Ms. Weinberg, in your role as executive director,  
6 are you aware of when the ACLU of Tennessee was  
7 established, what year?

8 A. 1978.

9 MR. CASTELLI: I'd like to hand the witness an  
10 exhibit for her to identify.

11 THE COURT: You may approach the witness.

12 MR. CASTELLI: Thank you.

13 THE COURT: Certainly.

14 BY MR. CASTELLI:

15 Q. Ms. Weinberg, can you look through that and then tell  
16 -- identify the exhibit for me?

17 A. Sure. This is the Charter of Incorporation that was  
18 signed and formally organized the ACLU of Tennessee.

19 MR. CASTELLI: And for defense counsel, that was  
20 pretrial Exhibit 184.

21 THE COURT: Well, it's marked and received as  
22 Exhibit 1 in the case?

23 MR. CASTELLI: Yes, sir. Yes, sir. Just so they  
24 can find it in their records. Your Honor, we --

25 THE COURT: Hopefully they'll have a full set,

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1 which will be on the table up here, which will be marked 1  
2 through the last one numbered. So that will be Exhibit 1.  
3 Have we got a sticker on it already?

4 **MR. CASTELLI:** Let me retrieve it, Your Honor,  
5 and get the sticker.

6 **THE COURT:** That's fine. We're going to get the  
7 number on there.

8 (WHEREUPON, the above-mentioned document was  
9 marked as Exhibit Number 1.)

10 **THE COURT:** Of course, to the degree that it's  
11 useful, we want things displayed on the screen, if  
12 possible.

13 **MR. CASTELLI:** Yes, sir.

14 BY MR. CASTELLI:

15 Q. And so, Ms. Weinberg, you had just identified this as  
16 the charter. This was obviously a copy. Was the original  
17 charter -- where is the original charter kept?

18 A. In our office in the file cabinet.

19 Q. Okay. And turning to Page 2, if you'll follow along  
20 on your screen, can you tell the Court what the original  
21 purpose was for the ACLU of Tennessee as reflected here in  
22 this Exhibit Number 1?

23 A. Sure. This is before I was part of the ACLU of  
24 Tennessee, but it states that the East Tennessee Civil  
25 Liberties Union, Inc. and the Middle Tennessee Civil

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1       Liberties Union, Inc. would merge and to become the ACLU of  
2       Tennessee, and that in the future, at a future time, the  
3       West Tennessee Civil Liberties, Inc. would, in fact, join  
4       and become part of the statewide organization.

5       Q.    Can you describe just the relationship between the --  
6       the term is used here, affiliate, with the ACLU with the  
7       national organization?

8       A.    Yeah, the national organization is the umbrella  
9       organization currently for our statewide affiliate, and  
10      back then, the same -- it was the same. So that if there  
11      was a local chapter, branch, however they were referred to,  
12      and it was loosely identified different ways, the national  
13      ACLU was in relationship -- was in partnership with  
14      those -- with those entities.

15      Q.    Can you explain to the Court what a chapter is?

16      A.    When I -- and I'm going to speak from my knowledge,  
17      which is in 1984 when I came to the ACLU as ED, there were  
18      about five chapters; one in the Memphis area, one in the  
19      Chattanooga area, a Knoxville chapter, an Oak Ridge chapter  
20      and a Chattanooga chapter. And they were loosely -- loose  
21      networks of individuals located in those communities who  
22      were committed to ensuring that the promises of the Bill of  
23      Rights were protected in their communities.

24      Q.    And when you came to the ACLU, how were chapters  
25      formed?

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1 A. The ones I just identified were actually formed prior  
2 to my coming. If a community of people in a location  
3 wanted to build a chapter, they would come to the ACLU of  
4 Tennessee. They needed approval. They couldn't just sort  
5 of formally organize.

6 Q. And what would the approval -- what would determine or  
7 what would tell you or the ACLU what was necessary to form  
8 a chapter?

9 A. Sure. There was probably a lot of informal  
10 conversation that took place before so that there was a  
11 relationship that had already been developed, but the group  
12 would have to prepare bylaws and -- which would describe  
13 what their mission was and how they related to the  
14 statewide organization.

15 Q. Okay. This might be quicker. I can put this document  
16 that is -- Ms. Weinberg, if you can -- let's see. Pull it  
17 down there. Do you recognize this document that I've put  
18 on your monitor?

19 **MS. SILK:** Your Honor, what -- we need to know  
20 what the exhibit is.

21 **THE COURT:** Right, exactly.

22 **MR. CASTELLI:** I'm sorry. It's Exhibit --

23 **THE COURT:** It will be Exhibit 2; is that  
24 correct?

25 **MR. CASTELLI:** We'll mark this -- yes, we'd ask

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1 this to be marked as Exhibit 2.

2 **THE COURT:** These are not disputed as to their  
3 authenticity or admissibility, as I understand it, and so  
4 we'll let you present it and just ask that it be marked.

5 If there is a dispute as to either authenticity  
6 or admissibility, then we'll address it right then.  
7 Otherwise, most -- almost everything is going to be both  
8 authentic and admissible, as I understand the parties.

9 **MR. CASTELLI:** Yes, Your Honor.

10 **THE COURT:** That's marked as 2, that's bylaws of  
11 1973, I believe; is that right?

12 **MR. CASTELLI:** Yes, sir.

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

15 BY MR. CASTELLI:

16 Q. And I was going to ask the witness there at the top of  
17 the page there, could you read the date for the record?

18 A. As revived March 1973.

19 Q. Is revived a typo, do you imagine?

20 A. I think so. It's revised.

21 Q. Okay. And turning here then to -- well, first of all,  
22 turning to the next page, we'll talk about the discussion  
23 about board of directors. What role did the chapter  
24 membership have in forming the ACLU of Tennessee's board?

25 A. As I recall, the board was composed of chapter

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1 representatives, and those -- the number of representatives  
2 was based on the size of the membership at the time.

3 So I mean, again, relating to when I joined, there  
4 were probably nine chapter representatives, there were,  
5 from Memphis and there were actually nine from -- eight or  
6 nine from Nashville. Few were from Knoxville, Oak Ridge,  
7 and Chattanooga.

8 Q. And turning to the next page here at the bottom of the  
9 page, can you identify Article 8 there for the record?

10 A. Okay. Article 8? Oh yes. That's very clear and, you  
11 know, states that the chapters are chartered by the ACLU of  
12 Tennessee board of directors where there's an interest and  
13 a commitment to adhering to the mission of the  
14 organization, and they presented bylaws to ensure that  
15 they're, you know, adhering to that commitment.

16 And again, that the chapter's Section 2 speaks about a  
17 chapter being disbanded, either being revoked for cause or  
18 absence of activity.

19 Q. And then that -- does that article continue on to the  
20 second page, discussing the chapters?

21 A. I'm sorry, which one?

22 Q. On the -- on the next page there at the top of -- is  
23 that the continuation of sections about chapters?

24 A. Yeah. Again, making it very clear, the chapters only  
25 exist because they're part of the ACLU of Tennessee, and

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1 the bylaws which formalize their establishment have to be  
2 approved by the board of directors of the ACLU of  
3 Tennessee.

4 There's additional conversation about requiring  
5 proposed programs, activities and a budget that has to be  
6 and had to be at the time submitted to the ACLU of  
7 Tennessee in order for the ACLU of Tennessee to provide  
8 funds to support those programs.

9 Yeah, the Section 5, we -- again, this is before my  
10 time, but it was the same conversation that took place  
11 besides just chapters, you know, based on members that the  
12 student -- there could be student chapters, as well, and  
13 again, that the ACLU of Tennessee had to formalize and  
14 charter those chapters.

15 Q. And so those would be chapters at universities,  
16 student chapters?

17 A. Exactly.

18 Q. Okay. As far as in the bylaws from 1973, can you read  
19 Article 4 there about the -- who is a member of the ACLU of  
20 Tennessee?

21 A. All members in good standing of the American Civil  
22 Liberties Union, Inc. resident within the state of  
23 Tennessee shall be deemed members of the ACLU of Tennessee.

24 Q. So a member of the national organization that is  
25 within a resident of the entire state of Tennessee,

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1       wherever they're found in Tennessee, would automatically  
2       become a member of the ACLU of Tennessee?

3       A.     Exactly. And that's right today. If you're a member  
4       of the ACLU of -- ACLU, you automatically become a member  
5       of the affiliate in the state with which you reside --  
6       within which you reside.

7       Q.     And here's an exhibit.

8             Speaking of today, are there chapters of the ACLU of  
9       Tennessee currently?

10      A.     There are no chapters. That's a model that's no  
11      longer being used across the country. There are just a  
12      couple affiliates that still have chapters remaining, but  
13      there's not a chapter structure that is part of the ACLU of  
14      Tennessee.

15      Q.     And were you involved in phasing out that structure  
16      for ACLU of Tennessee?

17      A.     Yes. Those chapters were phased out. I think  
18      probably by 2000, there were no longer chapters.

19             **MR. CASTELLI:** I'm going to ask to mark this as  
20      Exhibit 3.

21             **THE COURT:** Marked and received. Announce what  
22      it is very briefly.

23             **MR. CASTELLI:** Sure. Your Honor, these are  
24      minutes from 1975 of the board of directors meeting.

25             **THE COURT:** That's fine. That's no problem.

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1 Minutes 1975.

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

4 BY MR. CASTELLI:

5 Q. And, Ms. Weinberg, do you recognize these -- this  
6 document that I put on the screen?

7 A. Yes. That's an agenda from a meeting in the fall of  
8 1975, the ACLU of Tennessee board of directors.

9 Q. Okay. And so then the second page, is that -- what is  
10 that?

11 A. And that's the list of board members at the time. And  
12 as you can see, they come from across the state. There was  
13 a commitment to always have members from across the state  
14 compose the ACLU of Tennessee board of directors. So there  
15 were a list of various chapters representatives.

16 Q. And the first chapter listed, Ms. Weinberg, is which  
17 one?

18 A. The West Tennessee chapter.

19 Q. Okay. And what was the date at the top of the  
20 minutes?

21 A. October 4, 1975.

22 Q. And again, obviously this is a copy, but are the  
23 original minutes -- where are they maintained?

24 A. Yes. They sit in our office in a very old folder.

25 Q. Thank you.

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1                   **MR. CASTELLI:** We'll mark this as Exhibit 4.

2                   **THE COURT:** Certainly, marked and received as 4  
3 without objection.

4                   (WHEREUPON, the above-mentioned document was  
5 marked as Exhibit Number 4.)

6 BY MR. CASTELLI:

7           Q. And, Ms. Weinberg, here's another document,  
8 unfortunately not quite as clear at the beginning as the  
9 last one. But can you identify it, please, for the record?

10          A. Again, minutes of the ACLU of Tennessee dated  
11 December 11th, 1971.

12          Q. And you had talked earlier about how chapters needed  
13 to submit bylaws to the ACLU of Tennessee. Can you read --  
14 I believe it's like -- under the part that is obscured --  
15 well, actually, I can use this. Can you read this  
16 paragraph that I've marked there?

17          A. Sure. The Chairman reported on the new Upper East  
18 Tennessee Chapter. The bylaws of this group have been  
19 adopted and approved.

20          Q. And was there an Upper East Tennessee Chapter when you  
21 came to the ACLU in 1984?

22          A. I don't recall one.

23          Q. Okay. But this is an example of the chapter formation  
24 process; is that correct?

25          A. That's correct.

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1 Q. Okay.

2 A. But we have members across the state, so you didn't  
3 have to be affiliated necessarily.

4 Q. Okay. So if you weren't a member or affiliated with a  
5 chapter, you could still be a member of the ACLU of  
6 Tennessee?

7 A. Exactly.

8 **THE COURT:** Can you go down to the last page of  
9 the minutes?

10 **MR. CASTELLI:** Your Honor, I'm sorry?

11 **THE COURT:** The last page of the minutes?

12 Go ahead. I'm not sure if there's a reference to  
13 the ACLU West Tennessee or not, not necessarily on the last  
14 page. I was just -- I don't have the document in front of  
15 me.

16 **MR. CASTELLI:** I don't believe there is in this  
17 document, Your Honor.

18 **THE COURT:** Okay.

19 **MR. CASTELLI:** And we'll mark this document as  
20 Exhibit Number 5.

21 **THE COURT:** Certainly, marked and received as 5.  
22 Try to announce briefly what it is.

23 **MR. CASTELLI:** Which is the complaint to the  
24 Kendrick V. Chandler case.

25 **THE COURT:** No problem.

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1 (WHEREUPON, the above-mentioned document was  
2 marked as Exhibit Number 5.)

3 BY MR. CASTELLI:

4 Q. Ms. Weinberg, do you recognize the document that I've  
5 put on the screen?

6 A. I do.

7 Q. What is it?

8 A. It's the complaint from the Kendrick case.

9 Q. Were you aware of this case when you became executive  
10 director?

11 A. I'm pretty sure we discussed it and I learned about it  
12 possibly even at the interview. Bruce Kramer was one of  
13 the people who interviewed me for the position, and this  
14 always stood out as an important case, probably starting --  
15 the Scopes case and this case were important cases to the  
16 ACLU.

17 Q. Of course, ACLU of Tennessee did not exist when the  
18 Scopes case was tried.

19 A. It did not. I apologize.

20 Q. Turning to the section here about the parties in the  
21 case, could you read for the record the beginning of  
22 Paragraph C there?

23 A. Sure. The American Civil Liberties Union of West  
24 Tennessee, Inc. is a chapter of the American Civil  
25 Liberties Union of Tennessee, Inc., which is an affiliate

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1 of the American Civil Liberties Union, all being nonprofit,  
2 nonpartisan organizations dedicated to the preservation of  
3 citizens rights and liberties guaranteed by the  
4 Constitution and the laws of the United States.

5 Q. Thank you.

6 Are you aware of an organization known as the West  
7 Tennessee Civil Liberties Union, Incorporated?

8 A. No, I don't know that organization.

9 Q. Have you become aware of it because of this case?

10 A. I have certainly become aware of it, but I never had  
11 thought about it or heard about it prior to that or thought  
12 about it really.

13 Q. Do you know whether the West -- whether there was any  
14 kind of corporation called the American Civil Liberties  
15 Union in West Tennessee, Incorporated -- or of West  
16 Tennessee, Incorporated?

17 A. No -- incorporated?

18 Q. Yeah.

19 A. No.

20 **MR. CASTELLI:** Your Honor, those are all my  
21 questions for Ms. Weinberg.

22 **THE COURT:** All right. Cross-examination. Ms.  
23 Silk, yes, ma'am.

24 **MS. SILK:** Good morning, Your Honor.

25 **THE COURT:** Good morning.

**CROSS-EXAMINATION**

**BY MS. SILK:**

Q. Good morning, Ms. Weinberg.

A. Good morning.

Q. Ms. Weinberg, you were not affiliated with the ACLU of Tennessee in 1976 when the Kendrick complaint was filed, were you?

A. I was not.

Q. And you were not affiliated with the ACLU of Tennessee when the Kendrick consent decree was entered in 1978, were you?

A. I was not.

Q. So you have no personal knowledge of the Plaintiff or the group of people that made up the Plaintiff that was the party to the 1978 Kendrick consent decree, do you?

A. I know Mr. Kendrick. I haven't seen him for many, many years, but he was a colleague, because he left Tennessee and went to another affiliate.

Q. Okay, but I should have been more clear. You don't have any personal knowledge of the entity that was also a Plaintiff of the 1978 Kendrick consent decree, the American Civil Liberties in West Tennessee, Inc.? I believe you stated that earlier. Is that correct?

A. I don't -- I only know the West Tennessee Chapter of the ACLU of Tennessee.

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1 Q. Okay. So it's your position that the Plaintiff in the  
2 Kendrick case was the West Tennessee Chapter; is that  
3 correct?

4 A. My understanding was that it was the ACLU of Tennessee  
5 because typically -- I mean, the West Tennessee Chapter was  
6 very engaged in it and part of it, but I see them as one  
7 entity because the West Tennessee Chapter doesn't exist  
8 without the ACLU of Tennessee.

9 Q. Let's take a look at the Kendrick consent decree  
10 itself. This is known as Plaintiff's Trial Order 182.

11 **THE COURT:** Do you want to just mark one so you  
12 can -- so you can display it? Will that be easier? Might  
13 be easier. I know it's part of the record, but...

14 **MS. SILK:** I'm sorry?

15 **THE COURT:** Why don't we mark one --

16 **MS. SILK:** Okay.

17 **THE COURT:** -- so that everybody can use the same  
18 document.

19 **MS. SILK:** Okay. Let's mark the --

20 **THE COURT:** Right.

21 **MS. SILK:** Let's mark the Kendrick --

22 **THE COURT:** That will be 6.

23 **MS. SILK:** Number 6.

24 **THE COURT:** No problem. That way, you can show  
25 it and be -- everybody can use the same document.

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1 (WHEREUPON, the above-mentioned document was  
2 marked as Exhibit Number 6.)

3 **THE COURT:** Okay. That will be marked as 6, and  
4 that's the consent decree ACLU.

5 BY MS. SILK:

6 Q. Ms. Weinberg, is the ACLU of Tennessee listed as a  
7 party in the heading of the 1978 consent decree?

8 A. In the heading -- well, it says et al.

9 **THE COURT:** Why don't you put it up? I mean,  
10 that's the idea of putting it on the screen.

11 **MS. SILK:** I'm sorry. Oh, I thought he was going  
12 to pull it up.

13 **THE COURT:** Just lay it down. I think you've got  
14 it. You're in good shape. That's very easy. Sure.

15 **MS. SILK:** Okay.

16 BY MS. SILK:

17 Q. So is the ACLU of Tennessee listed here as a party?

18 A. The highlighted part or the heading?

19 **THE COURT:** Well, let's use the one that's in the  
20 evidence and not the one on the screen, because it has  
21 highlighting and that constitutes an argument. So we won't  
22 be using that.

23 **MS. SILK:** Okay.

24 BY MS. SILK:

25 Q. So do you see on this page in the first paragraph or

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1 in the heading the ACLU of Tennessee, Inc. listed in the  
2 consent decree?

3 A. Well, it reads American Civil Liberties Union in West  
4 Tennessee.

5 Q. But it does not read American Civil Liberties Union in  
6 Tennessee, Inc.?

7 A. It does not.

8 Q. Thank you.

9 Now, let's go back to the entity that was listed in  
10 the exhibit, I believe it was 5, the Kendrick complaint.

11 **THE COURT:** You should have all the exhibits  
12 right there at the table.

13 **MS. SILK:** Okay.

14 **THE COURT:** And that's -- if we use the same  
15 document every time, we don't have to worry about what  
16 we're using.

17 **MS. SILK:** Yes, Your Honor.

18 BY MS. SILK:

19 Q. So as opposing counsel has pointed out, the Plaintiff  
20 in the complaint is the American Civil Liberties Union in  
21 West Tennessee, Inc.; is that correct?

22 A. That's what it says, correct.

23 Q. Okay. You don't know when that entity was formed, do  
24 you?

25 A. My understanding was there was never an American Civil

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1       Liberties Union in West Tennessee, Inc. It was the  
2       American Civil Liberties Union of Tennessee, Inc.

3       Q. But you weren't affiliated with the ACLU of Tennessee  
4       at this time, so you wouldn't necessarily have any  
5       knowledge of this entity, the American Civil Liberties  
6       Union of West Tennessee, Inc., would you?

7       A. I understand what you're saying. There's always been  
8       an understanding that the American Civil Liberties Union of  
9       Tennessee, when it was incorporated, was a statewide  
10      organization that included whatever past organizations had  
11      been engaged in ACLU work in the state.

12      Q. So you testified earlier that to become a chapter of  
13      the American Civil Liberties Union of Tennessee, Inc., that  
14      you would have had to have bylaws; is that correct, the  
15      chapter would have had to have bylaws?

16      A. That was the requirement and what we assumed happened  
17      at the time.

18      Q. And you have not and cannot provide any documents  
19      reflecting the creation of the American Civil Liberties  
20      Union of West Tennessee, Inc. as a chapter of the ACLU of  
21      Tennessee, Inc., can you?

22      A. No. That's -- I don't know that it existed with that  
23      name.

24      Q. Okay. Can you -- you can't provide any bylaws of a  
25      West Tennessee Chapter that existed during the time of the

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1 Kendrick consent decree or complaint, can you?

2 A. I don't recall any.

3 Q. Well, I will submit to you that in response to the  
4 request for production, the ACLU of Tennessee supplied 561  
5 pages of documents, none of which contained the bylaws of  
6 the West Tennessee Chapter of the ACLU of Tennessee, nor  
7 did they include the bylaws of the Plaintiff, American  
8 Civil Liberties Union of West Tennessee, Inc.

9 So I'm asking, I guess, one last time, if you have any  
10 documentation at all that the -- either of these two  
11 entities' bylaws were ever formally adopted, pursuant to  
12 your own bylaws, to become an official chapter of the ACLU  
13 of Tennessee, Inc.

14 A. Again, as you said, I wasn't there then. And  
15 sometimes what is officially required doesn't always --  
16 because it was a very informal network. And so whether or  
17 not they were ever shared with the board, I don't know.

18 Q. Okay. Let's take a look at Exhibit 4 again. So your  
19 attorney noted to the Court that in 1971, that the bylaws  
20 for the Upper East Tennessee Chapter had been adopted and  
21 approved. So there was obviously some sort of recording of  
22 the type of when this event would occur, correct?

23 A. Correct.

24 Q. Do you have any minutes in your possession, custody or  
25 control that evidence when the bylaws for the West

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1 Tennessee Chapter were ever adopted and approved?

2 A. If they were not submitted to you, we must not have  
3 them.

4 Q. Please look at Exhibit 3. I'm going to go to Page 2.

5 Exhibit 3 is the minutes of the meeting of the American  
6 Civil Liberties Union of Tennessee from October 4th, 1975.

7 And if you go down to the bottom here, you can see that the

8 Middle Tennessee Chapter distributed copies of the bylaws

9 of the Middle Tennessee Civil Liberties Union, Inc. and

10 they were approved. Do you see that there?

11 A. I do.

12 Q. So in 1971, you have minutes showing that the East --

13 the Upper East Tennessee Chapter's bylaws were approved.

14 And then four years later, you see that the Middle

15 Tennessee Chapter's bylaws were approved. But yet, we

16 don't have any bylaws or minutes showing that the West

17 Tennessee Chapter's bylaws were ever approved; is that

18 correct?

19 A. That's correct.

20 Q. Let's talk for a second about the entity that your

21 attorney mentioned to you, the West Tennessee Civil

22 Liberties Union, Inc. Now, you testified that you don't

23 have any personal knowledge of that entity; is that

24 correct?

25 A. Correct.

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1                   **MS. SILK:** So if you could pull up stipulated  
2 fact Number 9 and 12, Matt, please.

3 BY MS. SILK:

4           Q. So these are stipulated facts from the pretrial order  
5 that governed this hearing. And you can see here that the  
6 ACLU of Tennessee, Inc. has stipulated that the entity  
7 known as West Tennessee Civil Liberties Union, Inc. existed  
8 in 1967, and that if we go to Number 12, which is above it,  
9 that that entity was dissolved as a corporate entity in  
10 1983.

11          A. Uh-huh.

12          Q. Do you see that?

13                So it's been stipulated that the West Tennessee Civil  
14 Liberties Union, Inc. was operating from 1967 until 1983,  
15 correct?

16          A. When you say operating, I'm not sure what you mean. I  
17 don't --

18          Q. Well, it existed as a corporate entity.

19          A. It existed, uh-huh.

20          Q. And then your position is that there's also a second  
21 entity known as the West Tennessee Chapter, unrelated to  
22 this entity, that was also operating during this same time  
23 frame; is that correct?

24          A. The West Tennessee Chapter was engaged with the ACLU  
25 of Tennessee. I don't know that the West Tennessee Civil

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1       Liberties Union, Inc. was engaged in activity during this  
2       time period after 1968.

3       Q.     But you acknowledge that it existed as a corporate --

4       A.     It says that here, yes.

5       Q.     So since you've stipulated that the West Tennessee  
6       Civil Liberties Union, Inc. existed from '67 to 1983 but  
7       now you're asserting that a different entity that was a  
8       party to the consent decree, that that was -- you're saying  
9       it was the West Tennessee Chapter although the document  
10      says American Civil Liberties Union of West Tennessee,  
11      Inc., it follows that in the '70s, there were clearly at  
12      least two groups of people who were acting in the name and  
13      the spirit of the ACLU in West Tennessee; is that correct?

14      A.     I just don't know that.

15      Q.     But you can -- but you've stipulated that the West  
16      Tennessee Civil Liberties Union existed and then you've  
17      asserted that you had your own chapter.

18      A.     Again, I wasn't here, so I can't speak to what was  
19      actively happening. I see on what paper what you're  
20      referencing.

21      Q.     Understood.

22             So if, indeed, the West Tennessee Civil Liberties  
23      Union, Inc. was at one time a chapter of the ACLU or  
24      operating in the name of the ACLU but it never became a  
25      part of the ACLU of Tennessee, it's possible, isn't it,

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1 that the American Civil Liberties Union in West Tennessee,  
2 Inc., which was a party to the Kendrick decree, also chose  
3 to never become an official chapter of the ACLU of  
4 Tennessee?

5 A. I don't think that's correct because if you look at  
6 the signed order and Jack Novac, who's part of the American  
7 Civil Liberties Union Foundation, their relationship with  
8 the ACLU of Tennessee was such that that's why the ACLU of  
9 Tennessee was, in fact, a party to this case. Does that  
10 make sense?

11 Q. It does -- I understand what you're saying, but the  
12 Plaintiff that is listed on the consent decree is not Jack  
13 Novac; is that correct?

14 A. Correct. He's not the Plaintiff. He's the attorney  
15 who would have been engaging with Mr. Kramer and Mr. Herder  
16 on behalf of the ACLU of Tennessee.

17 **MS. SILK:** I would like to mark Plaintiff's Trial  
18 Number 195 as the next exhibit.

19 **THE COURT:** We don't have -- we're just going to  
20 call them Exhibit 7. How is that?

21 **MS. SILK:** Okay.

22 **THE COURT:** And just identify the document versus  
23 the other number unless it -- it's okay to do it, but  
24 it's a -- we want to avoid confusion if we can.

25 **MS. SILK:** Understood.

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1           **THE COURT:** No, that's fine. And you can display  
2 that when you're ready. And, of course, we'll use the  
3 overhead and not the computer.

4           (WHEREUPON, the above-mentioned document was  
5 marked as Exhibit Number 7.)

6 BY MS. SILK:

7 Q. At the time of the Kendrick decree in --

8           **THE COURT:** You can display that on the ELMO.

9           **MS. SILK:** I'm sorry, Your Honor.

10          **THE COURT:** That's fine.

11 BY MS. SILK:

12 Q. So these are the board of director meetings from --  
13 the meeting minutes from September 2nd, 1969 and it looks  
14 to be the Tennessee -- the ACLU of Tennessee.

15           So if we scroll down here to the bottom, to the last  
16 paragraph, a chapter of the ACLU of Tennessee owed some  
17 fairly significant responsibilities to the state affiliate;  
18 is that correct?

19 A. It did, uh-huh.

20 Q. So let's read through here in this paragraph. It  
21 states, "The chapters must sacrifice income, raise money  
22 for local problems and even consider the prospect of  
23 raising local moneys as to support the state affiliate  
24 office. Mr. Clayton concluded that the Tennessee -- the  
25 TACLU might consider or be forced by economics to give up

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1 the state office unless the chapters were willing to make  
2 the sacrifices necessary."

3 Is that what the document says?

4 A. That's what the document says, yes.

5 Q. So it's possible then, isn't it, that the American  
6 Civil Liberties Union in West Tennessee, Inc. that was a  
7 party to the Kendrick consent decree could have reasonably  
8 decided that it was not willing to make the sacrifices  
9 necessary --

10 **THE COURT:** Possible is not a relevant standard.  
11 It's probable or improbable.

12 **MS. SILK:** Yes, Your Honor.

13 **THE COURT:** You know, it's possible that anything  
14 happened. So that's not a relevant standard. We'll let  
15 you rephrase your question, just so we have some relevant  
16 evidence.

17 **MS. SILK:** So it's not improbable.

18 **THE COURT:** That's fine. No problem.

19 BY MS. SILK:

20 Q. It's not improbable that a group of people acting as a  
21 chapter of the ACLU of Tennessee, including the party that  
22 was an entity listed on the Kendrick complaint, could have  
23 decided that they were not willing to make the sacrifices  
24 necessary to be an official chapter of the ACLU of  
25 Tennessee, right?

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1 A. I don't know who Mr. Clayton is. I do know that once  
2 the ACLU -- whenever a state affiliate is organized and  
3 incorporated, they then become the formal entity. So I'm  
4 not quite sure if a chapter in and of itself could exist  
5 and be identified with ACLU.

6 Q. Well, my question is, you know, if the chapter decided  
7 that it did not want to raise money for the affiliate, the  
8 Tennessee -- the ACLU of Tennessee, then it would no longer  
9 be considered a part of the ACLU of Tennessee; is that  
10 correct?

11 A. But it would also not be part of the ACLU, I don't  
12 think, because of the way the structure was formulated,  
13 because the goal back then was to build statewide  
14 affiliates. So chapters existed --

15 Q. Understood.

16 So if a group decided that it was not willing to make  
17 the sacrifices necessary and it was not a part of the state  
18 affiliate or the national affiliate, then it couldn't  
19 reasonably be considered at a later time to be a part of  
20 the entity that it decided to disassociate itself with; is  
21 that correct?

22 A. Well, one, I don't think that happened. And number  
23 two, I think they're talking here about giving up the state  
24 office, not necessarily changing the relationship with the  
25 affiliate.

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1 Q. Right. But my question is that they -- they were  
2 going to have to give up the state office unless the  
3 chapters were willing to make the sacrifices necessary?

4 A. I understand what you're saying, and perhaps that's  
5 what they meant. I don't read it exactly like that. I  
6 think there was a lot of relationships between chapters and  
7 the state affiliate and who kind of, you know, made -- how  
8 decisions were made, and it was a new relationship that was  
9 forming because there was a staff person and new director  
10 in that position.

11 Q. Okay. I want to go back to Exhibit 5. This is the  
12 complaint filed in the Kendrick V. Chandler case in 1976.  
13 Let's flip to Page 3 of the document.

14 So here for a moment, we're -- it should be noted that  
15 the designation WTCLU is referring to the entity the  
16 American Civil Liberties Union of West Tennessee, Inc. And  
17 here it says, "On information and belief, the WTCLU alleges  
18 that it has been the subject of unlawful surveillance by  
19 the Memphis Police Department's Domestic Intelligence  
20 Unit." Is that correct?

21 A. Yes.

22 Q. Does it say in here that the American Civil Liberties  
23 Union of Tennessee alleged that it had been the subject of  
24 unlawful surveillance by the Memphis Police Department?

25 A. It doesn't say there -- say that there. The use of

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1 acronyms changes throughout a lot of these documents in a  
2 lot of our history.

3 Q. Okay. Now, flip to Page 12 if you will, please.

4 That's the wrong page. I apologize.

5 Flip to Page 7. I'm sorry. Okay. In Paragraph 12,  
6 it states that, "Prior to 2:30 p.m. on September 10th,  
7 1976, the Plaintiff Chan Kendrick, individually and in  
8 official capacity as executive director of the American  
9 Civil Liberties Union of Tennessee, and Plaintiff WTCLU  
10 requested that the Defendants not destroy, alter or  
11 disseminate any of the files maintained by the Domestic  
12 Intelligence Unit." Is that what it says?

13 A. It says that, yes.

14 Q. Okay. So it seems to me and does it seem to you that  
15 there's -- that this paragraph is drawing a distinction  
16 between American Civil Liberties Union of Tennessee, and  
17 the Plaintiff WCLU, does it not?

18 A. I understand what you're saying, but just given the  
19 history of the organization, WTCLU or West Tennessee  
20 Chapter would be part of the ACLU of Tennessee at that  
21 time.

22 Q. But just for the record, the American Civil Liberties  
23 Union of Tennessee is not designated as a Plaintiff in this  
24 paragraph, is it not?

25 A. It's not designated in that paragraph.

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1 Q. Thank you.

2 So as I'm sure you're aware, the Kendrick complaint,  
3 as you can see on the first page, was filed in 1976?

4 A. Uh-huh.

5 Q. And I will submit to you that the Kendrick consent  
6 decree was filed in 1978. You don't have any personal  
7 knowledge of what transpired within the organizational  
8 structure of the ACLU of Tennessee, Inc. between the time  
9 of 1976 and 1978, do you?

10 A. I do not.

11 Q. It's not improbable, is it, that the organizational  
12 structure could have changed between 1976 and 1978?

13 A. It might have. Again, I don't have that knowledge.

14 Q. Chapters were coming and going all the time during  
15 this time; is that correct?

16 A. Right. There were casual relationships, I suppose.  
17 But there was also some commitment to try to engage and  
18 energize people within the various communities and the  
19 excitement about being part of the ACLU of Tennessee, the  
20 newly formed -- you know, formed in 1968, kind of drew  
21 people together.

22 Q. Does the ACLU of Tennessee have any evidence that the  
23 party that was here on the complaint in 1976 was the same  
24 entity that the City entered into an agreement with in  
25 1978?

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1 A. I don't know that, except to say the history I always  
2 learned both from people within the organization in  
3 Tennessee and then from Mr. Kendrick, who was an executive  
4 director and a different affiliate, was that this was an  
5 ACLU of Tennessee case.

6 Q. Thank you.

7 I'm going to go back to the bylaws from 1973. That's  
8 Exhibit 2. Opposing counsel showed this document to you as  
9 the bylaws for the ACLU of Tennessee, Inc. from 1963.

10 **THE COURT:** We're actually going to take our  
11 morning break right now.

12 **MS. SILK:** Okay.

13 **THE COURT:** And then we'll come back. We'll be  
14 out for about 12 minutes. We'll see everybody in  
15 12 minutes. Of course, don't discuss the case with anybody  
16 else. And we'll see you at that time. This is our morning  
17 break. And we'll probably take our lunch break close to  
18 12:15 or 12:20. Thanks very much.

19 (Brief Recess)

20 **THE COURT:** Okay. We're ready to proceed. I  
21 probably need to remind everybody that the Judicial  
22 Conference rules prohibit broadcasting from a courtroom,  
23 just so everybody knows. And there's only one official  
24 record, and that is the record prepared by the court  
25 reporter.

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1           So I think everybody knows that. We don't make  
2       those rules, but we are obligated to follow them, so --  
3       just like in every other case, we're going to follow the  
4       rule in that regard. I think that covers it.

5           Yes, ma'am.

6           **MS. SILK:** I'm ready to proceed if you are.

7           **THE COURT:** Are you examining from there? You're  
8       welcome to come back up. That's fine. No problem at all.

9       BY MS. SILK:

10       Q. We left off at trial Exhibit 2. Do you have that in  
11       front of you there, Ms. Weinberg?

12       A. I do.

13       Q. Could you please flip to the Page 3, which you've  
14       already read, Article 8, Chapters, Section 1, 2, and then  
15       we're actually going to read from Section 3 of that article  
16       on Page 4. And there it says, "Bylaws for any chapter  
17       shall not go into effect until they have been approved by  
18       the board of the directors of the affiliate." Is that  
19       correct?

20       A. That's what it says, yes.

21       Q. And in Section 4, it states, "Each chapter shall  
22       submit a proposed program and budget and a review of the  
23       previous year's activities each year within one month  
24       following the annual meeting of the affiliate. The board  
25       of directors shall allocate funds to the chapter as it

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1       deems appropriate." Is that what it says?

2       A.    It does.

3       Q.    So those are fairly specific requirements for a  
4       chapter; is that correct?

5       A.    Yeah, and it's on paper, not necessarily always  
6       happens that way, but yes.

7       Q.    But the ACLU of Tennessee has not provided any bylaws  
8       for the West Tennessee Chapter at any time, much less the  
9       time pertinent to the Kendrick complaint; is that correct?

10      A.    That's what I understand.

11      Q.    And what about this requirement that each chapter  
12      submit a proposed program and budget annually? Did the  
13      West Tennessee Chapter -- the West Tennessee Chapter didn't  
14      provide this to you, or you would have provided it to us in  
15      the document production; is that correct?

16      A.    If we had it, we would have. I will say just from my  
17      owner experience that that didn't even happen when I was --  
18      that just didn't necessarily happen with chapters when I  
19      joined the organization in '84.

20      Q.    But you were not a part of the organization during the  
21      time of the Kendrick complaint; is that correct?

22      A.    I was not.

23      Q.    So during the time that these bylaws were in effect,  
24      you really have no way of knowing whether the requirement  
25      of Section 4 was enforced or not, do you?

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1 A. I don't know that, but I do know it was a part-time  
2 director -- or a full-time director at that point, but that  
3 these requirements -- they should have been required, but  
4 whether they were or not -- whether or not they were, I  
5 don't know.

6 **MS. SILK:** Your Honor, I left my exhibits over  
7 here. Do you mind if I --

8 **THE COURT:** Oh, absolutely. In fact, they're  
9 supposed to stay here with the exhibits.

10 **MS. SILK:** I'm talking about the ones I'm --

11 **THE COURT:** Oh, sure. That's fine. Sure. No  
12 problem at all.

13 **MS. SILK:** This one may already be admitted. I  
14 apologize for the delay.

15 BY MS. SILK:

16 Q. Okay. Now we're going to look at Exhibit 3.  
17 Exhibit 3 is the agenda for the meeting of the American  
18 Civil Liberties Union of Tennessee, Inc. from October 4th,  
19 1975; is that correct?

20 A. It is.

21 Q. And these are the types of meeting minutes that were  
22 kept by the ACLU of Tennessee through the regular course of  
23 business throughout the history of the organization, to  
24 your knowledge --

25 A. Correct.

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1 Q. -- correct?

2 So in this exhibit, as we've noted, the -- on Page 2,  
3 that the Middle Tennessee Chapter's bylaws were approved in  
4 these minutes. So is this the type of thing that would be  
5 memorialized in typed meeting minutes when bylaws of a  
6 chapter were approved?

7 A. Again, I wasn't there and I don't know who was taking  
8 the minutes, but --

9 Q. But clearly from the documents you produced, this is  
10 something that occurred?

11 A. Certainly, these minutes show that for the Middle  
12 Tennessee Chapter minutes -- yes, bylaws.

13 Q. But in all the pages of documents that you produced to  
14 the City, there's no instance in the minutes where the  
15 bylaws of the West Tennessee Chapter were approved; is that  
16 correct?

17 A. If they were not submitted to you, we don't have  
18 record of them.

19 Q. Now, I would like to talk for a few minutes about how  
20 a chapter would initiate litigation in the '70s around the  
21 time of the Kendrick complaint. It was the chapters who  
22 decided what cases to litigate and not the state affiliate;  
23 is that correct?

24 A. Again, I wasn't there. The chapters existed only --  
25 exist and existed only because they were part of the ACLU

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1 of Tennessee, which was the formal entity.

2 Q. But to your knowledge, it was the chapter that made  
3 the decision?

4 A. I imagine sometimes chapters did and sometimes the  
5 affiliate did and sometimes they made the decision in  
6 partnership. I just don't -- I don't know.

7 Q. Okay. Let's take a look at a couple of exhibits.

8 **MS. SILK:** I'm going to mark the next exhibit.

9 **THE COURT:** Right. Marked and received as 8  
10 without objection. You can briefly identify it.

11 (WHEREUPON, the above-mentioned document was  
12 marked as Exhibit Number 8.)

13 BY MS. SILK:

14 Q. Exhibit 8 is the regular meeting minutes of the West  
15 Tennessee ACLU board of directors; is that correct?

16 A. Correct.

17 Q. And it's from May 12th -- I'm sorry, May 12, 1980?

18 A. Uh-huh.

19 Q. Now, let's go down to the next to the last paragraph,  
20 and it says, "Wilson wages reported on the Brownsville  
21 police false arrest case. The consensus of the group was  
22 that we should not take the case because the damages were  
23 slight and the impact value would apparently be limited. A  
24 letter rejecting the case will be sent to the client." Is  
25 that what it states?

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1 A. That's what it says, yes.

2 Q. Does it state anywhere in this -- it doesn't state  
3 anywhere in this letter that the West Tennessee ACLU had to  
4 consult with the American Civil Liberties Union of  
5 Tennessee, Inc. before deciding not to take this case, did  
6 it?

7 A. And typically, I think that's how it happened. If  
8 they weren't taking a case, it didn't have to be discussed  
9 with the ACLU of Tennessee.

10 Q. Okay.

11 **MS. SILK:** I'd like to mark the next exhibit.

12 **THE COURT:** Marked as 9. And, of course, you can  
13 identify it.

14 (WHEREUPON, the above-mentioned document was  
15 marked as Exhibit Number 9.)

16 BY MS. SILK:

17 Q. Okay. Exhibit 9 is the minutes of the regular meeting  
18 of the board of directors of the West Tennessee Chapter,  
19 correct?

20 A. Yes.

21 Q. And it's from January 15, 1979.

22 A. Uh-huh.

23 Q. Now, if you could please turn to Page 2, the second  
24 paragraph, "Phil Arnold reported that in accordance with  
25 the previous board decision, he had prepared a letter

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1 indicating that the American Civil Liberties Union  
2 willingness to undertake representation of the family of an  
3 individual killed by the Memphis Police Department while  
4 fleeing the scene of a burglary. Upon motion duly made,  
5 seconded and unanimously carried, the board authorized  
6 Mr. Arnold to proceed with the case."

7 So is this another example -- this is another example  
8 of a chapter approving a case; is that correct?

9 A. It says he had prepared a letter indicating that  
10 American Civil Liberties Union willingness to undertake  
11 representation. So again, it was the ACLU as an entity.

12 Q. These are the minutes from the West Tennessee Chapter,  
13 correct?

14 A. Correct, but of the ACLU.

15 Q. Now, the West Tennessee Chapter that existed at some  
16 point in the '70s, '80s and '90s -- the West Tennessee  
17 Chapter that existed in the '70s and '80s, it ceased  
18 existing around 1987; is that correct?

19 A. I don't know if that was the -- I just don't know the  
20 formal date.

21 Q. Okay. If you could pull up stipulated fact Number 13,  
22 please.

23 So the ACLU of Tennessee has stipulated that the  
24 Memphis field office of ACLU of Tennessee was closed  
25 because the budget was inadequate to support it on

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1 December 11th, 1987. Do you see that there?

2 A. Yeah, but that doesn't refer to the West Tennessee  
3 Chapter. That refers to just closing the second office.

4 When I came to Tennessee -- when I took this position,  
5 there was an office in Memphis. They had opened a new  
6 office in Nashville with the intent of closing, I  
7 understood, the Memphis office, not because we didn't want  
8 two offices but because it was costly. So it had nothing  
9 to do with specifically the West Tennessee Chapter.

10 Q. But the West Tennessee Chapter was struggling for  
11 several years before it was finally shuttered; is that  
12 correct?

13 A. When you say shuttered, do you mean the chapter or the  
14 office?

15 Q. The chapter.

16 A. The chapter -- as you know, chapters stay alive as  
17 long as there are people who can stay active. So there  
18 were many attempts to keep the chapter open, but the work  
19 still took place in Memphis. We still have representation  
20 on our state board of individuals who lived in Memphis.

21 **MS. SILK:** I'd like to mark the next exhibit.

22 **THE COURT:** Marked and received as 10. Can you  
23 just identify the document.

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

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1 BY MS. SILK:

2 Q. This document, Exhibit 10, is the West Tennessee  
3 Chapter meeting minutes from the board meeting on  
4 January 10th, 1983; is that correct?

5 A. Correct.

6 Q. And I would like for you to please -- give me one  
7 second. If you look here in this paragraph denoted as  
8 fundraising, it says that, "Cathy reported that the West  
9 Tennessee fundraising in 1982, although not a loss, was  
10 insufficient to adequately support the chapter. The  
11 Memphis office depends on raising enough money to support  
12 it." Is that what it says?

13 A. That's what it says.

14 Q. So in 1983, it's clear from this document that the  
15 West Tennessee Chapter was struggling to meet its  
16 obligations?

17 A. Again, my understanding is that the support of the  
18 money raised in Memphis was part -- you know, it was part  
19 of the ACLU of Tennessee and that there couldn't exist a  
20 chapter without an office in the city, and so it's a little  
21 bit complicated how this is expressed. It's not  
22 necessarily just because the office closed, the chapter  
23 dies.

24 Q. This doesn't reference the office, though. This just  
25 references the organization that is the chapter; is that

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1 correct?

2 A. Right. I was reading ahead to the second.

3 Q. So in 1983, they reported that fundraising was  
4 insufficient to adequately support the chapter, and the  
5 Memphis office depends on raising enough money to support  
6 it. So as early as 1983, it appears that the -- this is an  
7 ACLU of Tennessee document, but whatever entity was a  
8 chapter in 1982 was flailing, for lack of a better word?

9 A. Yeah, I -- I can't speak to that.

10 Q. And there were several unsuccessful attempts at  
11 reorganizing the West Tennessee Chapter in the '80s; is  
12 that correct?

13 A. There were.

14 Q. And it looks like maybe from 1983 to 1988, there  
15 really wasn't a West Tennessee Chapter presence at all; is  
16 that right?

17 A. There were West Tennessee representatives that sat on  
18 our board from the chapter, but the -- there was not a  
19 robust chapter. That's maybe the better way to put it.  
20 They weren't actively engaged in programming and things of  
21 that nature.

22 Q. Now, it looks like you had a big push in 1988 to  
23 reorganize the West Tennessee Chapter, but that ultimately  
24 failed, as well, did it not?

25 A. Well, again, I think at that point -- you know,

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1 chapters were one model that affiliates, state affiliates  
2 had been used to working with. And then as the chapters --  
3 as things moved away, it was understood that it would be  
4 centralized statewide organization and still have cases and  
5 work with legislatures and do fundraising across the state  
6 with or without chapters, frankly.

7 Q. So what you're saying is that there was a -- there was  
8 really no official structure as to who could be a chapter  
9 or who could not be a chapter?

10 A. No. What I'm saying is, you still had to be formally  
11 identified through, you know, relationships with the  
12 affiliate. You had to be affiliated with the ACLU of  
13 Tennessee in order to have a chapter. Sometimes there were  
14 groups who wanted to create chapters but they weren't part  
15 of the ACLU, so they could not use the ACLU designation.

16 Q. Could such a group be the party that was a party to  
17 the Kendrick consent decree? The American Civil Liberties  
18 Union in West Tennessee, Inc., I mean, you've testified  
19 that --

20 **THE COURT:** I think the "could" is the problem.  
21 Why don't we just change that to something that has  
22 evidentiary value? Is it probable?

23 BY MS. SILK:

24 Q. Is it probable that the entity that was a party to the  
25 1978 Kendrick consent decree was exactly the type of group

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1 you just referenced in your testimony that was somehow  
2 acting or affiliated with the ACLU of Tennessee but not  
3 formally a part of the ACLU of Tennessee?

4 A. No, I don't believe it could.

5 **MS. SILK:** I'd like to mark the next exhibit.

6 **THE COURT:** 11, marked as 11. Identify the  
7 document.

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

10 BY MS. SILK:

11 Q. This document is a document from the ACLU of  
12 Tennessee, Inc., February 1st, 1988. It says, "The West  
13 Tennessee Chapter is at a crossroads."

14 Now, you were executive director during that time.  
15 What -- that signifies to me that the West Tennessee  
16 Chapter was about to stop existing.

17 A. Again, as I recall, there were -- it was hard to get a  
18 chapter -- it was hard to get individuals engaged in  
19 chapter activities, be it fundraising or pub ed programs,  
20 probably mostly from -- because of lack of time and people  
21 engaged in other activities.

22 And so we wanted to still keep a presence, keep our  
23 members in West Tennessee in the Memphis area engaged if  
24 they wanted to meet with and organize activities. So we  
25 were continuing to try to, based on one or two or three

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1 people's interest, organize meetings. And that's what this  
2 is a result of, this particular memo.

3 Q. Thank you.

4 **MS. SILK:** I'd like to mark the next exhibit.

5 **THE COURT:** That will be 12, marked and received,  
6 without objection. If you'll identify it.

7 (WHEREUPON, the above-mentioned document was  
8 marked as Exhibit Number 12.)

9 BY MS. SILK:

10 Q. This document is from the ACLU of Tennessee, and it's  
11 to the West Tennessee Chapter board of directors and other  
12 interested members. And it states that -- it's from  
13 June 2nd, 1988, and it states, "Exciting plans are underway  
14 to revitalize the West Tennessee Chapter." Is that  
15 correct?

16 A. It does say that, yes.

17 Q. So on June 2nd, 1988, there was no West Tennessee  
18 Chapter, was there?

19 A. There was a West Tennessee Chapter, but they didn't  
20 have -- they were not organized and there were not enough  
21 people engaged to organize programs and others, but there  
22 were people involved in the statewide organization.

23 Q. So there were people in West Tennessee that were  
24 affiliated with the ACLU of Tennessee, Inc., but there was  
25 no formal chapter?

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1 A. It's hard for me to -- operation-wise, formal. There  
2 were people who were part of the West Tennessee Chapter who  
3 wanted more people to get involved.

4 **MS. SILK:** I'd like to mark the next exhibit.

5 **THE COURT:** It will be 13, marked and received  
6 without objection.

7 (WHEREUPON, the above-mentioned document was  
8 marked as Exhibit Number 13.)

9 BY MS. SILK:

10 Q. This Exhibit 13 is the memorandum of that meeting that  
11 was referenced in Exhibit 12 on June 2nd, 1988.

12 Now, if you flip to Page 2, it says in the second  
13 paragraph, "A successful annual meeting is the first step  
14 in the reorganization and revitalization of the West  
15 Tennessee Chapter. It is incumbent on us to put a  
16 successful program and meeting together." Is that correct?

17 A. Yes, that says that.

18 Q. So when a chapter is being reorganized and  
19 revitalized, that's because it no longer was a chapter?

20 A. Well, the people present at that meeting who were  
21 named on the first page remained active in the organization  
22 as a chapter, but they needed more people involved.

23 Q. But if a chapter was vital and viable, there would be  
24 no need to reorganize it, would there?

25 A. Reorganization is an interesting word. I think

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1 revitalization really refers to wanting more people to be  
2 part of the formal structure.

3 Q. But it does say reorganize, does it not?

4 A. It does say that, yes.

5 Q. It's true, isn't it, that there was no ACLU of  
6 Tennessee presence in the form of a chapter in West  
7 Tennessee from 1988 to 1996, was there?

8 A. I just don't know offhand. I know that the chapter --  
9 well, there was interest -- the chapter was not actively  
10 engaged. And many of the chapters were not as actively  
11 engaged as they once were at that time.

12 **MS. SILK:** I'd like to mark the next exhibit.

13 **THE COURT:** 14.

14 (WHEREUPON, the above-mentioned document was  
15 marked as Exhibit Number 14.)

16 **THE COURT:** Let's try to follow the practice of  
17 stating what it is and then just ask for it to be marked.

18 BY MS. SILK:

19 Q. The next exhibit is -- I'll wait until he marks it --  
20 is a March 11th, 1991 letter from the ACLU of Tennessee,  
21 Inc. to Bruce.

22 Okay. This is a letter, appears to be from you; is  
23 that correct?

24 A. Yes.

25 Q. And it's from March 11, 1991, so three years after the

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1 last set of documents that we looked at where we were  
2 trying to reorganize the West Tennessee Chapter. Three  
3 years later, you wrote to Bruce, "I am excited about the  
4 response we have received from people about the West  
5 Tennessee Chapter reorganization meeting."

6 Is that what it says?

7 A. That's what it says, yes.

8 Q. Okay. So in 1991, it's clear that the West Tennessee  
9 Chapter had still not been reorganized; is that correct?

10 A. That's what it appears.

11 **MS. SILK:** The next exhibit I'm going to mark is  
12 the agenda from March 14th, 1991, West Tennessee Chapter.

13 **THE COURT:** Marked as 15.

14 (WHEREUPON, the above-mentioned document was  
15 marked as Exhibit Number 15.)

16 BY MS. SILK:

17 Q. So this is a document from the ACLU of Tennessee, and  
18 it's an agenda, appears, from the March 14th, 1991 West  
19 Tennessee Chapter reorganization meeting; is that correct?

20 A. Yes, it is.

21 Q. Okay. And then here in Number 4, it lays out the  
22 plans for the West Tennessee Chapter, which includes  
23 identifying a board and a president, establishing a legal  
24 committee, discussing ideas for future public education and  
25 selecting two chapter representatives, plus a president to

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1 serve on the state board.

2 So it's true, is it not, that in 1991, there was  
3 absolutely no entity that could reasonably be described as  
4 a chapter of the ACLU of Tennessee in West Tennessee?

5 A. Yeah, it appears that way and it's -- it was happening  
6 with all the chapters. They were moving away from that  
7 model, but there was an effort and some resistance and we  
8 were still trying to build a chapter in West Tennessee.

9 **MS. SILK:** The next document I'd like to mark is  
10 a July 27th, 1994 letter to Mary Gibson from Hedy Weinberg.

11 **THE COURT:** Marked as 16 and received.

12 (WHEREUPON, the above-mentioned document was  
13 marked as Exhibit Number 16.)

14 BY MS. SILK:

15 Q. This letter is from you, is it not, Ms. Weinberg?

16 A. It is.

17 Q. And it's a letter to a Mary Gibson; is that correct?

18 A. It is, yes.

19 Q. And in this letter, it says, "I'm delighted in your  
20 interest in becoming involved in the Memphis area. We hope  
21 to revitalize our Memphis Chapter in the fall, and I will  
22 contact you when an organized meeting is planned." That's  
23 that second paragraph there; is that correct?

24 A. Yes.

25 Q. So this letter that you sent on July 27th, 1994,

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1 that's three years after the last document that we looked  
2 at. So in 1994, it's still evident that the West Tennessee  
3 Chapter had still yet to be reorganized; is that correct?

4 A. That's what it appears.

5 **MS. SILK:** The next document I'd like to mark is  
6 a September 20th, 1994 letter to you, Ms. Weinberg, from  
7 Andrew Branham.

8 **THE COURT:** Marked without objection as 17.

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

11 BY MS. SILK:

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

17 So in September 20 of 1994, it is evident from this  
18 that there was no West Tennessee Chapter?

19 A. I think the chapters had -- again, across the state,  
20 there had just been an absence of energy and we were  
21 centralizing more.

22 **MS. SILK:** The next exhibit I would like to mark  
23 is a letter to the Honorable Judge Lipman from  
24 November 17th, 1994.

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

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

3 BY MS. SILK:

4 Q. This letter is from November 17th, 1994, and it's a  
5 letter from you, it looks like, to the now Honorable Judge  
6 Sheri Lipman. And if you look down at the bottom here, you  
7 state, "Our work is clearly cut out for us, and I  
8 appreciate your willingness to coordinate the effort to get  
9 things going in Memphis."

10 So in November of 1994, there was still no West  
11 Tennessee Chapter; is that correct?

12 A. There was not -- appears there was not a formal  
13 chapter.

14 MS. SILK: I'd like to mark the next exhibit,  
15 which is an October 24th, 1994 letter to Judge Lipman from  
16 you.

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

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

20 BY MS. SILK:

21 Q. This is a letter -- predates the one -- I got out of  
22 order a little bit -- but it says from -- to Sheri from  
23 Hedy. Subject, Revitalizing the Memphis Chapter. It says,  
24 "As promised, here is the information on those people  
25 attending the September 12th event at Bruce's home who

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1 expressed an interest in helping to revitalize the Memphis  
2 Chapter."

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

5 A. Correct.

6 Q. So Bruce Kramer was affiliated with the Kendrick  
7 litigation, was he not?

8 A. He was, yes.

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

11 A. Well, Bruce stayed involved with the organization  
12 from -- you know, from Kendrick on. He was involved prior  
13 to Kendrick. So he was always engaged and always served on  
14 our board and always represented the ACLU of Tennessee and  
15 was also very active in the West Tennessee Chapter, which  
16 was part of the ACLU of Tennessee.

17 Q. But at this time, there was no chapter of the ACLU of  
18 Tennessee in West Tennessee?

19 A. There was not a formal chapter, but there was activity  
20 and interested parties.

21 **MS. SILK:** The next exhibit I would like to mark  
22 is a letter from December 1st, 1994 to -- which you were  
23 copied on from the Honorable Judge Lipman.

24 **THE COURT:** Marked as 20 and received.

25 (WHEREUPON, the above-mentioned document was

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1 marked as Exhibit Number 20.)

2 BY MS. SILK:

3 Q. This letter is from the Honorable Judge Lipman?

4 **THE COURT:** Actually, it may be a little  
5 confusing. She certainly was not a judge at the time, and  
6 I think you just --

7 **MS. SILK:** I just wanted to be respectful.

8 **THE COURT:** I think you're being confusing.

9 **MS. SILK:** Okay. I apologize.

10 **THE COURT:** I don't think she'll be offended.  
11 And it would also be improper for a judge to be in those  
12 communications, as you know.

13 **MS. SILK:** Okay. That was not my intent. I  
14 apologize.

15 **THE COURT:** She wouldn't want us to incorrectly  
16 state her status at the time.

17 **MS. SILK:** Okay. I apologize.

18 **THE COURT:** No. Apologize to her, not me.

19 **MS. SILK:** Well, don't tell her.

20 BY MS. SILK:

21 Q. And you were copied on this letter; is that correct?

22 A. Yes.

23 Q. Okay. And if you go back to the first page, it says,  
24 "I realize that it's been a while since we first met in  
25 Bruce's office to discuss the revitalization of the Memphis

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1 Chapter. As you will recall, our final plan was to have a  
2 gathering for those interested in restarting the Memphis  
3 Chapter of the ACLU of Tennessee, and I hope we get a few  
4 people out of that group who are willing to put some work  
5 in to accomplishing that goal. Pass along to the others in  
6 attendance the good work that the ACLU has been doing."

7 So here it seems like Sheri Lipman is also trying to  
8 get the West Tennessee Chapter going again because it did  
9 not exist in December 1st, 1994. Is my understanding of  
10 that correct?

11 A. Yeah. It seems like the chapters did not exist. I  
12 totally agree with you, but there was activity taking place  
13 and lawsuits being filed across the state on behalf of the  
14 ACLU of Tennessee of which chapters, if they existed, were  
15 part of that organization. It was a way to engage people.

16 **MS. SILK:** Okay. The next exhibit I would like  
17 to mark is from March 9, 1995, and it's a letter from Sheri  
18 Lipman to "the gang." Please mark that.

19 **MS. FLOYD:** Thank you.

20 **THE COURT:** Marked as 21 without objection.

21 (WHEREUPON, the above-mentioned document was  
22 marked as Exhibit Number 21.)

23 BY MS. SILK:

24 Q. So here we are now in 1995, this letter you were  
25 copied on and it says, "Dear gang, as you each have

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1       probably guessed by now, our kick-off event will not take  
2       place on Sunday, March 12th, 1995."

3               So from this communication, it appears that this 1994  
4       effort to revitalize and reorganize the Memphis or West  
5       Tennessee Chapter was unsuccessful; is that correct?

6       A.    It certainly appears that way.

7               **MS. SILK:**   The next exhibit I would like to mark  
8       is a letter from January 11th, 1995 from Sheri Lipman,  
9       which you were copied.

10              **THE COURT:**   22, marked and received.

11              (WHEREUPON, the above-mentioned document was  
12       marked as Exhibit Number 22.)

13       BY MS. SILK:

14       Q.    Now, this letter, as I stated, was from January 11th,  
15       1995.  And it's a letter again to "the gang" from Sheri  
16       Lipman, CC Hedy Weinberg.  Now, in this one, if we flip to  
17       Page 2, Number 4, it reads, "Hedy Weinberg will give an  
18       enthusiastic talk about the work of the ACLU of Tennessee  
19       and other chapters in the state, including a sampling of  
20       fascinating quality programs which have been put on by  
21       other chapters.  We will have sign-up sheets and literature  
22       available."

23              So in this document, it stated that you were giving a  
24       talk, an enthusiastic talk, trying to enlist enough people  
25       to be -- well, to be interested in forming another West

1 Tennessee Chapter. Is my reading of that correct?

2 A. Yeah. The goal was to have chapters, if they were so  
3 engaged, to organize public education programs as a way of  
4 staying visible outside of just pursuing litigation in our  
5 legislative work. So it -- and a way to increase  
6 awareness. So that was the goal of chapters --

7 Q. Okay.

8 A. -- at this time, and there was a -- the goal was to  
9 ensure that chapters had information about how they could  
10 go about organizing pub ed programs.

11 Q. And this meeting in which you gave an enthusiastic  
12 talk, was it to the same group of people that were -- it  
13 was not to the same group of people that were the entity  
14 that was the West Tennessee Chapter in 1978, was it?

15 A. There might have been similar people there, but I have  
16 no idea who was part of the -- this particular January 9th  
17 meeting. I just don't recall.

18 Q. But it certainly -- it couldn't have been the same  
19 group of people or you wouldn't have had a need to have the  
20 meeting at all; is that correct?

21 A. It might have been trying to reengage people. I don't  
22 know. Certainly Bruce Kramer was part of the organization  
23 in 1978.

24 Q. And on the first page, it says, "We had a meeting  
25 yesterday to organize our kick-off gathering." So it seems

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1 that this kick-off gathering was trying to kick off the  
2 still yet reorganized West Tennessee Chapter.

3 A. It sounds -- that's what it sounds like.

4 Q. Now, you've stated that the ACLU of Tennessee, Inc. no  
5 longer operates with chapters; is that correct?

6 A. Yeah. The ACLU of Tennessee, including most of the  
7 affiliates across the country, do not use chapters anymore.  
8 More centralized. And again, as you might imagine, because  
9 of e-mail and other kinds of ways to communicate, we don't  
10 have chapters formally engaged.

11 Q. Now, the party that was listed in the Kendrick consent  
12 decree, the American Civil Liberties Union of West  
13 Tennessee, Inc., that was not -- well, let me back up.

14 So it's been stipulated, stipulated fact Number 18 --  
15 so in May 1996, the West Tennessee Chapter was reformed.  
16 That's been stipulated by both parties. It's true, isn't  
17 it, that the West Tennessee Chapter that was re-formed in  
18 May 1996 was not the same entity that was the American  
19 Civil Liberties Union of West Tennessee, Inc.; is that  
20 correct?

21 A. Is that the -- what you've referred to as the West  
22 Tennessee Civil Liberties Union, Inc.?

23 Q. No, ma'am. I'm referring to the American Civil  
24 Liberties Union in West Tennessee, Inc. that's listed on  
25 the Kendrick complaint and consent decree.

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1 A. I just -- I don't know. Can you rephrase that -- ask  
2 me that question again? I'm not sure I'm hearing what  
3 you're asking.

4 Q. Sure. I'm asking you if the May 1996 version of the  
5 West Tennessee Chapter that was finally formed after eight  
6 years of fix and starts, if that was the same entity,  
7 legally and organizationally, as the American Civil  
8 Liberties Union in West Tennessee, Inc.

9 A. These chapters are informal entities. I mean, they  
10 exist because they're part of the ACLU of Tennessee, which  
11 was the same with the West Tennessee group that's mentioned  
12 in the complaint.

13 Q. But they're not informal if they have to have bylaws,  
14 right?

15 A. They exist only, though, because they're part of the  
16 ACLU of Tennessee. They don't exist separate from the  
17 state entity.

18 Q. That was not my question.

19 My question is, was the entity that was the West  
20 Tennessee Chapter in May 1996 the same entity as the  
21 American Civil Liberties Union in West Tennessee, Inc.; and  
22 I mean, the answer was it was not, correct?

23 **MR. CASTELLI:** Objection, Your Honor.

24 **THE COURT:** Is that a question? It sounded like  
25 testimony.

1                   **MS. SILK:** Let me rephrase.

2 BY MS. SILK:

3       Q.     The West Tennessee Chapter that was re-formed in 1996  
4       was not the same entity as the American Civil Liberties  
5       Union in West Tennessee, Inc., right?

6       A.     There were new people involved in this.

7       Q.     And it's true, then, that the West Tennessee Chapter  
8       in 1996 did not have the same set of bylaws as the West --  
9       what you're referring to as the West Tennessee Chapter in  
10      1996; is that correct?

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

13      Q.     So if the ACLU of Tennessee had subsumed, as your own  
14      pleadings and filings with this Court have alleged, if it  
15      had subsumed the entity that was the ACLU of West  
16      Tennessee, Inc., it wouldn't need to form a new chapter in  
17      1996, would it?

18      A.     I think the goal of the chapter was to engage people  
19      to be present. I mean, you can talk about a chapter but a  
20      chapter without people, so you wanted to ensure that there  
21      were people doing the work and, you know, being ambassadors  
22      for the ACLU.

23      Q.     And so, from the time when there wasn't a West  
24      Tennessee Chapter, it follows, doesn't it, that there  
25      weren't enough people interested in the efforts of the ACLU

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1 of Tennessee, Inc. to support an entity that could bring,  
2 for instance, a lawsuit or enforce a consent decree?

3 A. No, that's not correct, because it was the  
4 responsibility of the ACLU of Tennessee to do that. So we  
5 were still filing lawsuits and engaging with the  
6 legislature and doing pub ed programs, and we had members  
7 in Memphis and the West Tennessee area who were ACLU of  
8 Tennessee members and our -- yeah.

9 Q. So I want to just go back to one exhibit. Sorry, I  
10 have to find it.

11 And this is Exhibit 1, the charter of the ACLU of  
12 Tennessee. And this is going back to -- there we go. This  
13 is going back to the entity that was known as the West  
14 Tennessee Civil Liberties Union, Inc.

15 So Number 2, it says that the -- your attorney  
16 presented this to you, and it states that the purpose of  
17 the Charter of Incorporation was to consolidate the affairs  
18 and activities of the previously existing East Tennessee  
19 Civil Liberties Union, Inc. and Middle Tennessee Civil  
20 Liberties, Inc. and continue the previous operations of  
21 said corporations and to also absorb at a future time, if  
22 agreed to by the membership and/or board of directors of  
23 both corporations, to assume and continue the operations of  
24 the West Tennessee Liberties, Inc., a Tennessee  
25 corporation.

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

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

10       Q.   So it's probable, isn't it, that the West Tennessee  
11 Civil Liberties Union, Inc. that was never officially a  
12 chapter of the American Civil Liberties Union of Tennessee,  
13 Inc. was actually the party that initiated the Kendrick  
14 litigation?

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

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

17       A.   My understanding is it was part of the ACLU of  
18 Tennessee.

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

22       A.   My knowledge is that the West Tennessee Civil  
23 Liberties Union or Civil Liberties, Inc. was no longer a  
24 formal entity.

25       Q.   So my last question is, if there was here a group

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1 known as the West Tennessee Civil Liberties Union, Inc. and  
2 also a West Tennessee Chapter, operating around the same  
3 time, it's probable that there could have been a third or  
4 fourth group of people also operating in the name of ACLU;  
5 and you, yourself, testified that this was a very fluid and  
6 loose structure? Is that correct?

7 A. Let me step back from that. There could not be other  
8 entities operating with ACLU in the state. And if there  
9 were, they would not -- ACLU would not have supported them.  
10 We would probably challenge their existence because the  
11 ACLU sort of name and presence.

12 So when I said that they were fluid, I meant chapters,  
13 as part of the organization, were alive as long as the  
14 people who were engaged in those chapters -- or as long as  
15 people were engaged in those chapters. That's what I meant  
16 by fluid.

17 Q. Did the ACLU of Tennessee, Inc. ever challenge the  
18 West Tennessee Civil Liberties Union, Inc. as not being  
19 formally affiliated?

20 A. My understanding is the West Tennessee Civil  
21 Liberties, Inc., like the East Tennessee Civil Liberties  
22 Union, Inc. and the Middle Tennessee Civil Liberties Union,  
23 Inc., were entities prior to the ACLU of Tennessee being  
24 incorporated. And once it became clear that there was  
25 going to be a state affiliate, the movement, while it took

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1 some time, was to -- those organizations were going to  
2 blend and become part of the ACLU of Tennessee.

3 That was my understanding when you -- just with my  
4 knowledge of the national ACLU and watching statewide  
5 affiliates incorporate.

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

11 I mean, you just stated if some group were acting in  
12 the name of ACLU that wasn't officially affiliated with the  
13 state affiliate, that you would have challenged it; but you  
14 didn't challenge the West Tennessee Civil Liberties Union,  
15 Inc. that existed from 1967 to 1983, did you?

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

18 Q. But you don't know?

19 A. I don't know --

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

21 A. They were not actively involved.

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

23 **THE COURT:** Redirect?

24 **MR. CASTELLI:** Yes, Your Honor.  
25

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**REDIRECT EXAMINATION**

**BY MR. CASTELLI:**

Q. Let's start, Ms. Weinberg, those -- the records that you've talked about earlier where these minutes and the -- were found, do you have every document that was created by the ACLU of Tennessee or its chapters since 1968?

A. I don't. And our office has moved.

Q. How many times has the office moved since you came to the ACLU?

A. I think we're in our fifth space. Plus, we closed the office in Memphis and I'm afraid things were probably lost when we moved.

Q. Do you know where the office was located in 1976 when the Kendrick complaint was filed for the ACLU of Tennessee?

A. I think it was in Memphis.

Q. Okay. Was that the only statewide office?

A. That was the only statewide office, yes.

Q. And then a second office was opened in Nashville at some point?

A. Yeah, I think in '83, '82 or '83.

Q. And then as you've covered a minute ago, that Memphis office was then closed down at some point?

**MS. SILK:** Objection, leading.

**THE COURT:** Objection sustained.

**BY MR. CASTELLI:**

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1 Q. What happened to the Memphis office?

2 A. Right. When I was hired, it was my understanding that  
3 the state office would be in Nashville, central part of the  
4 state, ability to be -- we would be more accessible to the  
5 state legislature and that we would have to close the  
6 Memphis office, which had been the state office. And so  
7 that office was closed, I think, in '86 or '87.

8 Q. Do you know, in your role as executive director,  
9 whether there was ever any formal dissolution of the West  
10 Tennessee Chapter?

11 A. There was no formal dissolution that I'm aware of.

12 Q. Was there a board of directors meeting during your  
13 tenure where the West Tennessee Chapter was dissolved?

14 A. No.

15 Q. For any reason?

16 A. No.

17 Q. Can you explain how the West Tennessee Chapter wound  
18 down?

19 A. I think people -- the Daniels, Carol and Tom Daniels,  
20 moved to Alaska. Various people moved out of state. There  
21 was still some great energy in Memphis, but people were  
22 getting busy with their careers, families and so things  
23 slowed down. The statewide office was getting stronger and  
24 we were able to do more work and engage more people. And  
25 so it was not out of disinterest but just out of people

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1 having a lot of other commitments.

2 Q. And when the West Tennessee Chapter began to -- when  
3 people began to lose interest in working with the West  
4 Tennessee Chapter, did -- how did that affect the ACLU of  
5 Tennessee's work in the region?

6 A. I don't believe it affected our work. We were still  
7 engaged in the courts and in -- we had media -- a presence  
8 in the media. We had, you know, a good membership for the  
9 longest time. Our membership base, the largest base was in  
10 Memphis. And so our work began taking place statewide but  
11 certainly had a strong presence in Memphis.

12 Q. Let's look at Exhibit Number 5. Now, there -- at the  
13 bottom of the page, you were asked during your  
14 cross-examination about this exhibit. Can you tell us what  
15 this acronym, WTCLU that's in Paragraph 5, what that is  
16 being referenced to in the complaint?

17 A. My sense is that it references the chapter of the ACLU  
18 of Tennessee.

19 Q. And the word -- what's -- can you just read after that  
20 acronym appears what the next -- the text says?

21 A. Sure, WTCLU, which is in quotes, is a chapter of the  
22 American Civil Liberties Union of Tennessee, which is an  
23 affiliate of the American Civil Liberties Union.

24 Q. And then the last sentence there at the bottom of the  
25 page, I think earlier I had asked you to read part of this

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1 but I don't think I got to the last sentence. Could you  
2 read that, please?

3 A. The West Tennessee Chapter?

4 Q. Yes.

5 A. "The West Tennessee Chapter is comprised of  
6 approximately 500 members."

7 Q. And then continuing on to the next page?

8 A. "Residing in the Western District of Tennessee, each  
9 of whom is dedicated to and involved in activities and  
10 conduct protected by the First, Fourth, Fifth, Sixth, Ninth  
11 and Fourteenth Amendments to the Constitution of the United  
12 States. And the corporate entity itself is dedicated to  
13 and involved in such Constitutionally protected  
14 activities."

15 Do you want me to go ahead?

16 Q. No, that's good. That's fine.

17 I'm going to look at Exhibit 22. And I believe on  
18 your cross-examination, you were asked to read the first  
19 paragraph that's on Page 2 of Exhibit 22. Could you read  
20 the second paragraph?

21 A. "Hedy is sending a list of Memphis area members for  
22 anyone who would like to review and to get ideas of people  
23 to target. Also, we will try to send you the invitations  
24 for the people on your list so that you can write a  
25 personal note to people you know."

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1 Q. And this was, again, during a period of time where the  
2 Memphis Chapter was -- there were efforts to revitalize or  
3 reorganize the Memphis Chapter?

4 A. Correct.

5 Q. Or the West Tennessee Chapter?

6 A. Yes.

7 Q. Were there still members, though, in West Tennessee at  
8 this point in time?

9 A. Oh, of course. There have been all -- always been  
10 several hundred members at a minimum in the Memphis area.

11 Q. And is that what Ms. Lipman was referencing there?

12 A. Yes.

13 **MS. SILK:** Objection, leading.

14 **THE COURT:** Objection is sustained. That  
15 suggests the answer. You know, those yes/no questions, it  
16 could be yes or no, but I'm going to sustain the objection.

17 **MR. CASTELLI:** That's fine, Your Honor. I'll  
18 rephrase. Thank you.

19 **THE COURT:** Thank you.

20 BY MR. CASTELLI:

21 Q. Ms. Weinberg, that paragraph I asked you to read, can  
22 you tell me what this list of area members, what that's  
23 referencing?

24 A. Sure. We -- we have members statewide and we were  
25 able to break up our membership to identify who resided in

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1 what part of the state. So this would have been a list of  
2 those folks who were ACLU of Tennessee/ACLU members, and we  
3 would have shared them in order for that group of people to  
4 identify if they knew the people who they could reach out  
5 to.

6 Q. So when a chapter dissolves or wanes, what happens to  
7 the membership privileges of the members of the chapter?

8 A. Well, the members are always ACLU of Tennessee members  
9 and also members of the national organization, and that's a  
10 formal entity always.

11 Q. And the word "entity" was used quite a bit to refer to  
12 the West Tennessee Chapter, is a chapter a formal  
13 incorporated entity?

14 A. The chapters are not and never have been, you know,  
15 since the ACLU of Tennessee incorporated, formal  
16 incorporated entities. And, you know, in fact, that was  
17 sometimes difficult for chapter members to recognize  
18 because they were -- they existed because they were part of  
19 the ACLU of Tennessee and they couldn't exist on their own.

20 Q. Thank you.

21 A. And wouldn't have access to the member list and things  
22 like that.

23 **MR. CASTELLI:** Thank you. Those are my redirect  
24 questions.

25 **THE COURT:** All right. Well, thanks very much,

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1 and we're going to let you step down.

2 **THE WITNESS:** Thank you, Your Honor.

3 **THE COURT:** We're going to see who our next  
4 witness is going to be. Who will our next witness be?

5 **MR. CASTELLI:** Ms. Floyd has our next witness.

6 **THE COURT:** Certainly, that's fine.

7 **MS. FLOYD:** Plaintiff will call Sergeant Tim  
8 Reynolds.

9 **THE COURT:** That's fine. We'll have him come to  
10 the stand and be sworn in. Anything else?

11 **MR. WELLFORD:** Your Honor, before we get to  
12 Detective -- Sergeant Reynolds --

13 **THE COURT:** Well, where is Sergeant Reynolds?  
14 We'll let him come in and be sworn. I mean, what do we  
15 need to talk about?

16 **MR. WELLFORD:** We wanted to raise a motion under  
17 Rule 56 -- under Rule 52C, a judgment on partial findings  
18 on the standing issue, since it doesn't appear that there's  
19 any more evidence that's being presented on the standing  
20 issue and all of --

21 **THE COURT:** Sure.

22 **MR. WELLFORD:** And the record is sufficient for a  
23 ruling.

24 **THE COURT:** No, I agree. I agree.

25 Okay. Well, that's appropriate. Let's just make

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1 sure we've got the witness close by. I think that we --  
2 this is a really important issue in the case. And I  
3 certainly don't want to try to rule on it from the bench.  
4 I think that's not a good idea. I do think it would be  
5 useful to rule on it as quickly as possible. I agree with  
6 that.

7 Do you -- do you want to brief that a little  
8 further, because now we have a complete record?

9 **MR. WELLFORD:** We could brief it based on the  
10 testimony this morning and these exhibits over the lunch  
11 hour if the Court wanted to take that.

12 **THE COURT:** Right. That would be better, because  
13 I think we need to be thoughtful about that. And I would  
14 anticipate that we'll need at least some time to give it --  
15 to complete the analysis on that.

16 So I don't want to -- I don't want to -- I  
17 certainly think it's an important issue. Don't get me  
18 wrong. I think it's very important. I just don't -- I  
19 would prefer that we get a little more briefing on it now  
20 that we have the record complete, because we didn't have it  
21 complete before and now we do, and I think you probably  
22 want to get the transcript here. What do you think?

23 **MR. WELLFORD:** Well, Your Honor, of course, has  
24 discretion under Rule 52C to defer the ruling, and that's  
25 completely within Your Honor's discretion.

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1           **THE COURT:** Sure.

2           **MR. WELLFORD:** We thought it was appropriate.

3           **THE COURT:** I think you nailed it down correctly.  
4 I'm agreeing with you.

5           **MR. WELLFORD:** So I mean, we frankly think  
6 it's --

7           **THE COURT:** I have the right to defer.

8           **MR. WELLFORD:** And we're ready for you to rule on  
9 it if you -- right after lunch, but your --

10           **THE COURT:** No, I'm not waiting to rule on it  
11 right after lunch. There's an optimist in every room, but  
12 I think we need to -- I think it's more important to get it  
13 right than to get it fast.

14           Besides, I think that there were some interesting  
15 things that came up at the end of the testimony. I do not  
16 know if the ACLU of Tennessee anticipates calling anyone  
17 that was discussed in the testimony at any point in the  
18 proceeding that might have personal knowledge of the  
19 events. Have you given that any consideration?

20           **MR. CASTELLI:** Well, we can and we have actually  
21 listed --

22           **THE COURT:** I'm not telling you what to do. You  
23 don't have to do it at all.

24           **MR. CASTELLI:** Well, no. And obviously, I need  
25 to respond to the motion that was made. I mean, our proof

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1 hasn't closed, so we do have that option, Your Honor, of  
2 putting on more evidence if we choose to.

3 **THE COURT:** I think that's correct, but it's a  
4 little awkward situation because if you fail on the  
5 standing question, then nothing else would be before the  
6 Court. That would resolve all issues. So I agree with you  
7 in that regard.

8 **MR. WELLFORD:** May I --

9 **THE COURT:** Absolutely.

10 **MR. WELLFORD:** The only pretrial order witness  
11 that's been identified as a may call witness to offer any  
12 further evidence by the ACLU is Mr. Cody, and they could  
13 call Mr. Cody.

14 **THE COURT:** They could.

15 **MR. WELLFORD:** But barring that, there -- we  
16 would object to new witnesses being called. But, Your  
17 Honor, that said, we've made the motion. We will  
18 immediately start briefing it.

19 **THE COURT:** Absolutely.

20 **MR. WELLFORD:** And just wanted to make sure it  
21 was on the record and we proceed as Your Honor wishes us to  
22 proceed.

23 **THE COURT:** No, absolutely. And I -- well, what  
24 about that? You do have another witness that you indicated  
25 you might call.

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1           **MR. CASTELLI:** Yes, Your Honor, and we may reach  
2 out to that witness and see if we can get him here to  
3 testify.

4           **THE COURT:** He's just down the street. He's not  
5 very far away.

6           **MR. CASTELLI:** So I mean, that -- so that  
7 certainly -- if Mr. Cody is available and willing, since we  
8 have not subpoenaed him, you know, we may bring him in to  
9 testify and maybe clear up some of the things that we heard  
10 today, but --

11           **THE COURT:** Well, okay. I think that everybody  
12 knows it's a very important issue in the case, and I'm not  
13 disagreeing at all. I think we want to go through the rest  
14 of the day at least, through the rest of this day, and make  
15 sure that we have any proof that ACLU of Tennessee is going  
16 to submit.

17           And then you're right, Mr. Wellford, at some  
18 point, I think they have to -- with all due respect,  
19 Counsel, at some point, Mr. Castelli, you have to complete  
20 the record on that issue. I think what Mr. Wellford is  
21 asking is that we complete that record first, and we didn't  
22 really organize it that way. That's what he would like for  
23 us to do. It's not a bad idea.

24           But obviously, you can't do that on such short  
25 notice, so we're going to go ahead and let you call your

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1 first witness, but you will need to complete that record.  
2 And we may have a discussion at the end of the day about  
3 the fact that if you have no other witnesses to present on  
4 the issue, then we would perhaps be able to resolve the  
5 question.

6 **MR. WELLFORD:** Thank you, Your Honor.

7 **THE COURT:** Sure.

8 **MR. GLOVER:** Your Honor, just a point of order  
9 before we bring in the witness, we're coordinating to get  
10 witnesses here when counsel wants them.

11 **THE COURT:** Sure. Sure.

12 **MR. GLOVER:** And there was a little confusion  
13 about the way Mr. Castelli described who would be on next.  
14 And we want to make sure we have our officers available for  
15 your testimony at the time, so if --

16 **THE COURT:** Absolutely.

17 **MR. GLOVER:** To get a better understanding who  
18 would come after --

19 **THE COURT:** You're just asking who -- what's  
20 their sequence of witnesses.

21 **MR. GLOVER:** Who's after Director Reynolds so we  
22 can get the --

23 **THE COURT:** Absolutely appropriate. Your next  
24 witness would be --

25 **MR. CASTELLI:** Our next witness is going to be

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1 Mr. Reynolds or Sergeant Reynolds.

2 **THE COURT:** Right, Sergeant Reynolds.

3 **MR. CASTELLI:** And after Sergeant Reynolds, we  
4 will be calling Major Chandler.

5 **THE COURT:** Okay, Major Chandler. And who after  
6 that?

7 **MR. CASTELLI:** After that, if we have time today,  
8 we would call Sergeant Wilburn.

9 **THE COURT:** Okay. Well, that's important.  
10 You're certainly entitled to have that list, and let me see  
11 if there's anything else that we need to check there.

12 I think we're ready for our next witness. We'll  
13 go for another 15 minutes or so.

14 **MS. FLOYD:** Plaintiff calls Sergeant Timothy  
15 Reynolds.

16 **THE COURT:** Sure. That's fine. We'll have him  
17 come in. If you would stop there and raise your right  
18 hand.

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\* \* \*

**TIMOTHY REYNOLDS,**

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

**DIRECT EXAMINATION**

**BY MS. FLOYD:**

Q. Good morning.

A. Good morning.

Q. Could you --

**THE COURT:** You've got your lapel mic on.

**MS. FLOYD:** Yes, Your Honor.

**THE COURT:** That'll be fine. Just speak up a  
little more and we'll be fine.

BY MS. FLOYD:

Q. Good morning.

A. Good morning.

Q. Could you please state your name for the record and  
spell it?

A. Timothy, T-I-M-O-T-H-Y, Reynolds, R-E-Y-N-O-L-D-S.

Q. And what is your role within the Memphis Police  
Department?

A. I'm a sergeant with the Memphis Police Department.

Q. All right. And what position do you hold at this

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1 time?

2 A. I'm in the Office of Homeland Security.

3 Q. And what role did you hold in the Memphis Police  
4 Department between 2016 and 2017?

5 A. Detective in the Office of Homeland Security.

6 Q. And how large an office was the Office of Homeland  
7 Security at that time? How many people worked there?

8 A. Two officers.

9 Q. Two officers.

10 And what was the supervision structure of the Office  
11 of Homeland Security?

12 A. We report to a lieutenant and then there was a major.

13 Q. Okay. And who was your lieutenant at that time?

14 A. At that time, it was Lieutenant Chandler.

15 Q. And who was your major?

16 A. At that time, it was Major Bass, Eddie Bass.

17 Q. And did the Office of Homeland Security investigate  
18 protest activity between 2016 and 2017?

19 A. Yes, ma'am.

20 Q. And what was the nature of those investigations?

21 A. It started right after the Pulse nightclub. We were  
22 worried about large public gatherings and the safety --  
23 public safety therein.

24 Q. Now, do you recall giving a deposition in this matter?

25 A. I do.

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1 Q. And do you recall whether you mentioned the Pulse  
2 nightclub during that deposition?

3 A. No, ma'am. I didn't.

4 Q. You did not mention it?

5 A. No.

6 Q. So why did you not mention it at that time?

7 A. The time frame was within the 2016. When I got to  
8 read a lot of material that was being put in as an exhibit,  
9 it refreshed my memory.

10 Q. Okay. And so when was your memory refreshed?

11 A. There's lots of stuff to go over. It was a lot of  
12 memory to be refreshed, but the whole process was a nice  
13 refresh for me.

14 Q. When in time?

15 A. Recently.

16 Q. How recently?

17 A. Like within the past two weeks.

18 Q. Within the past two weeks, okay.

19 What is the Real Time Crime Center?

20 A. Real Time Crime Center is Memphis Police Department's,  
21 like, real time analysis. There's officers and analysts  
22 inside. They do a lot of number crunching for Part I  
23 crimes to get back to the precinct.

24 Q. And what was the interaction between the Office of  
25 Homeland Security and the Real Time Crime Center?

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1 A. We occupy the same building. And sometimes when the  
2 task requires it, we collaborate.

3 Q. And how would you collaborate?

4 A. When a directive would come in that a certain event is  
5 coming up, they had social media collators, and we would  
6 try to get a handle on upcoming threats in large public  
7 gatherings.

8 Q. And when you say "they," do you -- are you referring  
9 to the Real Time Crime Center?

10 A. Yes.

11 Q. Okay. And so how did -- did you request that they use  
12 the social media collator?

13 A. That's above my pay grade. It was -- it was  
14 already -- the request was made already.

15 Q. Who would make the request?

16 A. People in charge.

17 Q. Okay. And so there was never an occasion where you  
18 would make a request of the Real Time Crime Center?

19 A. From time to time, yes. Yes, ma'am.

20 Q. Okay. And what was the nature of that request?

21 A. There's tips from CrimeStoppers, public complaints,  
22 tips from the precinct. We have to collaborate sometimes,  
23 and especially when it comes to follow-up investigations in  
24 social media. So you have to go to them to see what they  
25 have, what the nature of the complaint to see if we can

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1 assist.

2 Q. And with respect specifically to protest activity, how  
3 did RTCC help OHS?

4 A. They --

5 **THE COURT:** Do not use act acronyms.

6 **MS. FLOYD:** Yes, Your Honor.

7 **THE COURT:** Because that is not the way human  
8 beings actually speak. Let's use real words so everybody  
9 can understand what's being said.

10 **MS. FLOYD:** Yes, Your Honor.

11 **THE COURT:** Do you want to get that and try it  
12 again?

13 **MS. FLOYD:** Yes, Your Honor.

14 **THE COURT:** Sure.

15 BY MS. FLOYD:

16 Q. How did the Real Time Crime Center assist the Office  
17 of Homeland Security with respect to protest events  
18 specifically?

19 A. They monitor -- the Real Time Crime Center monitors a  
20 lot of social media platforms. There's a lot of them out  
21 there. And they have a larger net than we do. There --  
22 that's -- this is not all we do over there, but that's --  
23 they have a broader selection than what we would have. We  
24 are a narrow -- more narrow focus.

25 Q. Okay. And you're more narrow in what way?

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1 A. Specific threats.

2 Q. Specific threats?

3 A. Yes, sir -- yes, ma'am.

4 Q. Okay. And so the Real Time Crime Center handles  
5 general casting a net?

6 A. Yes, sir -- yes, ma'am.

7 Q. Okay. All right. So what tools did the Real Time  
8 Crime Center use to investigate protest activity other than  
9 the social media collators?

10 A. As I mentioned before, there's tips from the public.  
11 There's open source from news media --

12 **THE COURT:** We're going to get you to pull the  
13 mic. I can hear you fine, but I think people probably want  
14 to -- pull it a little closer.

15 **THE WITNESS:** Okay.

16 **THE COURT:** Just make it comfortable.

17 **THE WITNESS:** Yes, sir.

18 **THE COURT:** Thank you.

19 **THE WITNESS:** Open sources from media across the  
20 country, tips from the public, and also complaints from  
21 like CrimeStoppers and the precincts and the bureaus.

22 BY MS. FLOYD:

23 Q. Okay. And when you say open source, what does that  
24 mean?

25 A. Open to the public. I mean, in public domain.

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1 Q. Okay. With respect specifically to social media  
2 platforms, what does open source mean?

3 A. A lot of social media has an open source component.  
4 In other words, as long as you have access to that  
5 platform, you can see posts that are made to the public.

6 Q. Okay. And where a post is private, how would -- how  
7 did the Office of Homeland Security access those posts?

8 A. Through UC accounts, undercover accounts.

9 Q. So through undercover accounts. What undercover  
10 accounts did the Office of Homeland Security use?

11 A. Bob Smith. A Facebook platform, Bob Smith.

12 Q. You said -- you said undercover accounts with an S.  
13 Was there -- were there accounts other than the Bob Smith  
14 account?

15 A. No, ma'am. Not that I had access to.

16 Q. Who had access to the Bob Smith Facebook account?

17 A. I did.

18 Q. Who else had access?

19 A. Occasionally, my supervisor when I'm -- like I said,  
20 there's only two of us. When I was on vacation or if I  
21 needed to illustrate something that was going on, my boss  
22 had access to my -- that account.

23 Q. And when you say your boss, who are you referring to?

24 A. Lieutenant Chandler.

25 Q. Would the other detective within the Office of

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1 Homeland Security have access to the Bob Smith account?

2 A. If -- well, it's -- if he walked around to my side of  
3 the desk, yes, ma'am, he would have access to it.

4 Q. Did anyone within the Real Time Crime Center have  
5 access to the Bob Smith account or any other undercover  
6 accounts?

7 A. Not to my knowledge.

8 Q. Okay.

9 **THE COURT:** I tell you what, it looks like we may  
10 be at a transition point. We'll go ahead and take our  
11 lunch break at this time. I will make it a little longer  
12 since we have more people here. So we'll come back at a  
13 quarter 'til 2:00. That should be enough time.

14 And I do need to know from ACLU Tennessee if  
15 there will be any additional proof at this time. If you  
16 can tell me -- I understand you might not be able to.

17 **MR. CASTELLI:** I can.

18 **THE COURT:** If you can tell me when we come back,  
19 then we will know if the record is complete on the standing  
20 issue. If it's not complete, that's okay, but you will  
21 need to --

22 **MR. CASTELLI:** I can tell you right now, Your  
23 Honor. We had planned to call Mr. Mike Cody. He'll be  
24 available tomorrow morning.

25 **THE COURT:** Okay. Then that answers that

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1 question.

2 Now, I will want to know and I think that, just  
3 as a matter of efficiency, I will want to know if you  
4 contemplate that there might be anyone you would be adding  
5 to the list. And I understand that that will be within my  
6 discretion to allow you to do so, but I think that both  
7 Mr. Wellford and I want to know when this record is closed  
8 on that issue.

9 If you think that you will need to add someone  
10 else, you will need to tell us because I'll need to decide  
11 if they can be added to the list and I'll need to give the  
12 defense team a chance to be prepared as to that witness.  
13 So I'm not going to ask you to tell me right now, but I  
14 think that Mr. Wellford is correct that that issue will  
15 need -- we'll need to have at least that much notice as to  
16 where we are on that issue. Is that something we can  
17 accomplish?

18 **MR. CASTELLI:** We can do that after lunch. We  
19 can have an answer to the Court and to the defense on --

20 **THE COURT:** Mr. Wellford, I think that was a good  
21 suggestion on your part, and we'll try to complete that  
22 record so we can get the issue wound up if we can.

23 **MR. WELLFORD:** Thank you, Your Honor.

24 **THE COURT:** Sure. Absolutely.

25 **MR. WELLFORD:** Before we adjourn, can we approach

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1 briefly on a matter?

2           **THE COURT:** Sure, absolutely. Absolutely. But  
3 yeah -- and -- well, looks like we get to see you after  
4 lunch. Nice thing is you don't have to -- you cannot talk  
5 to anybody about -- you know that. You cannot talk to  
6 anybody about your testimony, and so we'll see you at a  
7 quarter 'til 2:00. I think we'll be on that schedule  
8 unless they hold me here really late.

9           Okay. Thank you.

10           All right. Then I'll have at least a  
11 representative counsel come up. You don't all have to come  
12 up unless you just really want to.

13           (Bench conference between the attorneys and the  
14 Court.)

15           **MR. WELLFORD:** I don't want to make too big a  
16 deal of it, but I will report that my paralegal has thought  
17 she saw somebody on the back row --

18           **THE COURT:** We have already stationed an officer  
19 and they're not supposed to be videoing. They're not  
20 supposed to be photographing, and it is a policy of the  
21 Judicial Council. So I can't -- I mean, even if I wanted  
22 to change that, I can't change that. So that's -- please  
23 let everybody know.

24           **MR. WELLFORD:** Now I understand why the Court  
25 made its comment.

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1           **THE COURT:** Mr. Laurenzi and I have had this on  
2 more than one occasion in his previous life and absolutely,  
3 certainly no photographs of any witness, no photographs of  
4 anybody, absolutely no photographs of any witness or the  
5 Court or the Court staff or you guys.

6           I mean, really, you know, if somebody wanted  
7 background when nobody's here and they want to take a  
8 picture of the seal, that's fine. That's when nobody's  
9 here except a court officer will allow that, but we don't  
10 really -- there's no exception to that rule. I know you're  
11 familiar with that, too.

12           **MR. CASTELLI:** Absolutely.

13           **THE COURT:** Please let everybody know because  
14 that's a security issue. It's also process issue and it's  
15 an order of the Judicial Council and none of us in this  
16 group want to run counter to that order.

17           **MR. WELLFORD:** And one other thing while we're  
18 just --

19           **MR. CASTELLI:** Should the Court make an  
20 announcement that no one can be videoing in here.

21           **MR. WELLFORD:** Frankly, the Court made the  
22 announcement. I didn't appreciate the why.

23           **THE COURT:** I think I've said it once.

24           **MR. LAURENZI:** I would simply ask the CSO be put  
25 on alert.

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1           **THE COURT:** He is. And we know that's a very  
2 serious matter. We just can't do it that way. I know it  
3 seems odd to people who see Court TV, but it's not allowed  
4 and none of us can have -- we can't run counter to the  
5 rule.

6           **MR. WELLFORD:** And Mr. Castelli and I talked  
7 about this briefly. It's a very logistical point, I wanted  
8 the Court to understand why, with all of the exhibits that  
9 we got and we're not using them all.

10          **THE COURT:** That's okay. We just recently had a  
11 case in Nashville and they identified about 400 exhibits,  
12 and we used -- I'd have to go back and look -- 83, I think,  
13 something in that range.

14          **MR. WELLFORD:** Since we don't know which, the way  
15 we are keeping up is we know them by the pretrial order  
16 number, so what we're trying to do is avoid saying the word  
17 exhibit, 114.

18          **THE COURT:** Can do that, but we want to be  
19 careful because I want that stack up there to be the  
20 official stack and not cause people confusion.

21          **MR. CASTELLI:** Once we reference that one,  
22 another we'll refer to exclusively as the other exhibit.

23          **THE COURT:** And Mr. Sample will print that out  
24 for you as you need it.

25          **MR. WELLFORD:** We just wanted you to know why

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1 we're doing it.

2 **THE COURT:** Do you want me to say?

3 **MR. CASTELLI:** Maybe turnover and people coming  
4 in, so it may not hurt.

5 (Bench conference between the attorneys and the  
6 Court concluded and the proceedings continued as follows:)

7 **THE COURT:** Counsel have asked me to explain one  
8 thing, which is that the Judicial Council of the United  
9 States does not allow the filming or photographing of any  
10 proceeding in a United States courtroom. I don't make that  
11 rule. That is -- it is a rule that they have promulgated  
12 and we are obligated to respect. So just like a rule in  
13 any other circumstance, we must do that.

14 There are many reasons for it, but that's simply  
15 an important rule. The courtroom deputy will remind  
16 anybody if that's confusing. It's not meant to impinge on  
17 anybody or do anything else. It relates more to respecting  
18 the process. It's very important that everyone feel free  
19 within this environment, just like we don't in any other  
20 environment, to proceed in an effective way. And we  
21 certainly wouldn't want anyone's ability to do that to be  
22 impaired; and therefore, there's no broadcasting. There's  
23 no filming and there are no photographs.

24 So I just urge everyone, please respect that.  
25 That's an important rule. I think we're having a case

1 about people not wanting to be photographed and filmed, et  
2 cetera, we ought to respect the same thing for the Court,  
3 and I'm going to ask everybody to be careful in that  
4 regard.

5 All right. We're going to let everybody be  
6 excused. We'll look forward to seeing everybody back -- I  
7 tell you what, because we got started here, there are a  
8 good many people here, lunch is not so easy to do since  
9 there's no facility in the building. We'll come back at  
10 2:00, and that will give everybody, including counsel, who  
11 has an important announcement to make, to give him a chance  
12 to make sure he's made it and he's content with that, both  
13 of you. Thank you very much. We'll see you at 2:00.  
14 Thank you.

15 (Lunch break.)

16 (End of Volume 1.)  
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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 130 pages are, to the best of my knowledge, skill  
and abilities, a true and accurate transcript from my  
stenotype notes of the trial, on 20th day of August, 2018, in  
the matter of:

ACLU of Tennessee

vs.

City of Memphis, Tennessee

Dated this August 28, 2018

S/Lisa J. Mayo

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