

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
AT MEMPHIS**

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ACLU OF TENNESSEE, INC.,	)	
	)	
Intervening Plaintiff,	)	
v.	)	No. 2:17-cv-02120-jpm-DKV
	)	
THE CITY OF MEMPHIS,	)	
	)	
Defendant.	)	

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**DEFENDANT'S EXPERT WITNESS DISCLOSURE: FRED GODWIN, ESQ.**

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Pursuant to Fed. R. Civ. P. 26(a)(2)(B), the defendant, City of Memphis submits the following written report:

**I. Background and Relevant Experience**

My name is Fred S. Godwin, Esq. I am an attorney duly licensed to practice law in the State of Tennessee. My background and relevant experience pertinent to the expert opinions being offered in this case is as follows:

Since August 2016 I have been employed by the Madison County, TN Sheriff’s Office as its legal advisor. I am also a sworn reserve deputy with that department. My duties include providing both legal and operational advice to command staff and operational units. Areas in which I am involved are law enforcement, corrections, court security, mental health issues, and personnel issues. I also teach classes to members of the department on constitutional law, criminal law, civil rights issues, sexual harassment and disability rights.

I have a Bachelor of Arts degree (1975) from the University of Michigan in English and Journalism. I have a Master of Arts degree (1980) from the University of Detroit in Criminal Justice. I have a Juris Doctor degree from the University of Memphis (1985). I have been licensed to practice law in Tennessee since 1985. I am admitted to practice before the Sixth Circuit Court of Appeals, the U.S. District Court for the Western District of Tennessee, the Tennessee Supreme Court and various local courts in Tennessee.

I began my law enforcement career in Michigan in 1976, graduating from the Oakland County Police Academy that year. From 1976 until 1980, I worked as a uniform patrol officer for the West Bloomfield Police Department and later the Washtenaw County Sheriff's Department.

In 1980 I accepted an appointment as an assistant professor in the Department of Criminal Justice at the University of Memphis (then Memphis State University). I taught Introduction to Criminal Justice, Police and Community Relations, Criminal Investigation, Criminal Law and Organized Crime. I taught there full time until 1984 and later, as an adjunct, until 1990.

In 1980 I was appointed as a reserve officer with the Memphis Police Department. Until 1985 I worked on weekends in uniform patrol and, on occasion, in the vice squad. In 1985 I was asked to teach Criminal Law and Procedure to Memphis police recruit night classes and was transferred to the police academy. I have taught law to Memphis Police recruits and regional recruits on multiple occasions since then. I have also taught civil rights at in-service training to members of the Memphis Police Department and a number of other West Tennessee police and sheriffs' departments. I have taught in the Memphis Police Department's Crisis Intervention Team (CIT) program since its inception in the 1990's. In that role I have taught officers from all

over the United States, Canada, Australia and Central America. The Memphis CIT program, the first of its type in the nation, teaches officers how to defuse situations when dealing with citizens with mental/emotional health issues. My role within the Memphis Police Department has been limited to teaching since 1985.

While in my last year of night law school (1984) I was hired as a law clerk by the U.S. Attorney's Office for the Western District of Tennessee. Upon my graduation and after passing the bar exam in 1985, I was sworn in as an Assistant U.S. Attorney (AUSA). I served in that position until July 31, 2016. In that role I prosecuted a variety of criminal cases, including anti-terrorism, public corruption (including multiple police misconduct cases), organized crime, bank fraud, money laundering, public corruption, church arsons, narcotics and interstate auto and cargo theft. I also handled appeals for those cases before the Sixth Circuit Court of Appeals.

Although I have a background in law enforcement and with the Memphis Police Department, I have investigated and successfully prosecuted law enforcement officers, including Memphis police officers, for racketeering, narcotics, child exploitation, child pornography and obstruction of justice. In my current role at the Madison County Sheriff's Office, I have provided advice regarding the criminal investigation of law enforcement officers and detention specialists. I am part of the disciplinary review process for all personnel in the department, and have been involved in the suspension and termination of civilian, corrections and law enforcement personnel.

I have been an instructor at the Attorney General's Advocacy Institute (the training arm of the U.S. Department of Justice). I have taught Basic Criminal Prosecution, Complex Criminal Investigations and Crisis Management.

Starting in September 2001 I was named as Antiterrorism Coordinator and supervisor of the National Security Unit in the U.S. Attorney's Office for the Western District of Tennessee. In that capacity, I supervised all domestic and international terrorism cases in the office. I was the direct liaison with the FBI's Joint Terrorism Task Force, which regularly had a Memphis police officer assigned to it. I was also responsible for all counter espionage cases and was the National Cyber Security coordinator for the office. From 2013 until I retired, I was also the Deputy Criminal Chief in the office.

Commencing in 1999, the Department of Justice began deploying me internationally to work with police and prosecution services and courts in multiple foreign nations.

**II. Complete statement of all opinions the witness will express and the basis and reasons for them.**

I am familiar from personal experience through my work as a Memphis reserve police officer, as the supervisory prosecutor assigned to the federal Joint Terrorism Task Force formed after the events of September 11, 2001, and in my previous work at the University of Memphis with the so-called "Kendrick" Decree, which arose out of the case of *Chan Kendrick, et al v. Wyeth Chandler, et al*, Civil Action No. C-76-449, entered September 14, 1978. In my capacity as a teacher of federal constitutional law to Memphis police officers, I have periodically been contacted by officers inquiring into issues potentially relevant to the "surveillance" issues addressed in that case, and can testify that in my personal experience Memphis police officers during the period of time I have taught such classes expressed awareness of the Decree, I do not have knowledge of specific actions taken by the leadership of the Memphis Police Department since the date of the Kendrick Decree with respect to its provisions and compliance with the Decree. However, I am not offering expert testimony or fact testimony on the issue of whether

or not the defendant City of Memphis, and/or the Memphis Police Division, have complied with the provisions of the Decree. Although I can testify that in my leadership position with the federal joint task force referenced above I, and other members of that team were aware of the *Kendrick* Decree, I am not providing and cannot provide testimony addressing the specific nature of or details concerning the work of the task force.

In my various roles, described in more detail in the preceding section, however, I gained a good understanding of the factual background and circumstances surrounding the *Kendrick* litigation and the adoption by the Court and the parties of the Decree itself, as well as the duties and responsibilities of law enforcement in Memphis, Tennessee and similar communities since the enactment of the *Kendrick* Decree, and up to the present time. The activities of Memphis police officers with respect to awareness of, and a culture of compliance with, First Amendment rights and the activities of those involved in peaceful protest activity is quite different today than it was at the time of the *Kendrick* Decree. Law enforcement officers including the Memphis Police Department are exposed to a lot more information and reminders about the importance of protecting the civil rights of individuals including those involved in peaceful protest activities than was the case in the late Seventies. The importance of "proactive" as opposed to "reactive" measures on the part of law enforcement in order to protect against very real threats to public safety associated with domestic as well as foreign terrorist activity, aided by the use of social media, is now a recognized and legitimate responsibility of law enforcement professionals.

Through my own background, I have a working knowledge of the obligations of law enforcement to be in a position to be aware of, and as necessary, monitor the activities of individuals reasonably suspected of being associated with activities or events which have the potential of presenting disruptions to public safety. In particular, I believe that my background

and experience permits me to offer expert testimony on the subject of the importance of law enforcement officials being in a position to quickly and effectively react to potential threats to public and individual safety associated with the use of lawful, common and widely accepted and utilized means of communication completely unknown to, and not reasonably contemplated by, individuals involved in drafting and executing the Kendrick Decree approximately forty years ago.

Most notable among the changes in the use of technology and forms of communication which can, under certain circumstances, pose a clear and present danger to public safety with regard to public gatherings and events is the increased use of various platforms of social media and the use of mobile devices such as cell phones. Social media is increasingly used to record and broadcast the activities which are occurring, in real time, at public gatherings which are the focus of social media commentary and communications. It is invariably used to help plan for, and mobilize resources on the part of individuals and groups with an interest in these events. Further, police body cams are often (and indeed, pursuant to Memphis Police Department policy and procedure, required to be) activated to record events occurring at such events or public encounters, as a regular part of the duties and responsibilities of officers charged with maintaining order and protecting members of the public at these events. Stationary and mobile "skycams" and similar recording devices are increasingly used, and at least partially funded and maintained by law enforcement agencies in public places such as government offices, commercial shopping malls, and even residential neighborhoods as a crime deterrent or security measure. The popularity and acceptance of, and in fact demand for, "skycams" (in Memphis called SkyCop) was very recently made clear at a Memphis City Council meeting where Jamita

Swearengen, protested the failure of the Memphis Police Department to implement "skycams" yet in one of her district's community.

The Internet as we know it did not exist at the time of the *Kendrick* Decree. According to a presentation entitled "Internet History and Growth," published in September 2002 by William Slater, III of the Chicago Chapter of the Internet Society, the Internet grew from 111 hosts in 1977 to over 200 million hosts in 2002. By September 2002 there were 840,000,000 Internet users.

According to this presentation, Six Degrees was the first social media site, created in 1997. MySpace gained prominence in the early 2000s along with sites like Photobucket and Flickr which facilitated online photo sharing. Mark Zuckerberg registered the Facebook domain in January of 2004. YouTube came into use in 2005.

According to a Pew Research Center Survey reported on October 8, 2015, nearly two-thirds of American adults (65%) used social networking sites, up from 7% when Pew Research Center began systematically tracking social media usage in 2005. Young adults (18-29) are the most likely to use social media, at a rate of 90%. Usage among adults 65 and older, however, has nearly tripled since 2010 when 11% used social media. As of this publication of this article 35% of adults 65 and older reported using internet based social media, compared to only 2% in 2005.

Along with the growth of the internet and social media has come the growth of the use of smartphones to access the sites. According to a CBC News article posted April 3, 2013, forty years preceding that date Martin Cooper, a Motorola engineer who was credited as the inventor of the cellphone, made the first public call from a cell phone. In 1984 the first Motorola DynaTAC phones became available for public use. In 1993, BellSouth and IBM announced the

creation of the Simon personal communicator phone - touted as world's first smartphone. In 2002, the first phones with built-in cameras became publicly available. In January of 2007 Apple launched the first iPhone.

According to an NBC news report dated Aug 15, 2011, 8 in 10 Americans "depend" on their cellphones. The report references a Pew Internet & American Life Project survey from 2011 concluding that cellphones are an essential part of 83% of Americans' lives. As of the time of this survey 35% of Americans owned a smartphone, with 9 out of 10 of them using their phones to text or take pictures. Eight out of ten used them to go online or send photos or videos.

A September 13, 2012 Pew Research Center report states that 46% of adult internet users post original photos or videos online that they themselves created and 41% repost photos or videos that they have found online. This survey also found that 66% of online adults use Facebook.

Another Pew Research Center report from April of 2015 finds that 64% of Americans owned a smartphone of some kind, up from 35% in the spring of 2011. This report states that a majority of smartphone owners use their phone to follow along with breaking news and to share and be informed about happenings in their local community. A reported 68% of smartphones owners at least occasionally follow breaking news events, with 33% reporting that they do this "frequently." 67% use their phones to share pictures, videos or commentary about events happening in their community, with 35% doing so "frequently." 56% use their phone at least occasionally to learn about community events or activities with 18% doing so "frequently."

A more recent article published in November of 2017 ([www.brandwatch.com/blog/96-amazing-social-media-statistics-and-fact-for-2016](http://www.brandwatch.com/blog/96-amazing-social-media-statistics-and-fact-for-2016)) sets forth these statistics:

The internet has 3.5 billion users.

There are 3.03 billion active social media users.

Internet users have an average of 7.6 social media accounts.

Social media users grew by 121 million between Q2 2017 and Q3, 2017.

That comes to a new social media user every 15 seconds.

According to this publication, Facebook has 2.072 billion users. Facebook now sees 8 billion average daily video views from 500 million users. Snapchat users also see 8 billion average daily video views. U.S. adults spend an average of 1 hour, 16 minutes each day watching videos on digital devices. It is estimated that videos accounted for 74% of all online traffic in 2017.

A LexisNexis report from 2012 on "Law Enforcement Personnel Use of Social Media in Investigations: Summary of Findings" found that four out of every five law enforcement professionals use social media for investigative purposes. It found that the top use of social media is for crime investigations, followed distantly by crime anticipation. A report on the highly publicized 2017 series of events in Charlottesville, Virginia involving confrontations between groups of self-avowed white supremacists and counter-protesters, commissioned by the City of Charlottesville, noted the importance of social media in planning protests and counter-protests, such as: (1) "[t]he May 14 event demonstrated a degree of coordination between various activist groups in Charlottesville and their ability to rapidly mobilize a large-scale response to a perceived threat using social media and interpersonal networks." (p. 30); (2) the Charlottesville Police Director told the authors of the report that "...the event of May 13 revealed an 'operational blind spot.' Thomas noted that the CPD lacked advanced capabilities for social media monitoring that may have helped the Department anticipate these events" (Id.); (3) during the continuation of May 2017 protest activities in July, the CPD command staff "...monitored

social media because people in the crowds were tweeting and sharing videos" (p. 50); (4) during planning for a key August 12 rally, detectives within the CPD researched information about individuals or groups they believed might participate in the event through "open source" information such as "news reports, internet postings, social media, etc", noting that "...most information came from [these sources]." (p. 70); and (5) the CPD Chief's personal assistant was assigned the task of monitoring "web sites and social media accounts" in the weeks leading up to the August 12 rally (p. 70).

In the "What Went Right" section of the lengthy report, under a heading "Law Enforcement Planning and Response was Informed by Thorough, Accurate Intelligence Before and During the Event," the authors noted that:

In the weeks before August 12, law enforcement received accurate information about possible attendance and the potential for violence at the United the Right Rally from multiple sources. CPD investigators monitored social media and obtained useful information about the United the Right event from both its promoters and opponents.

(p. 152).

The series of rallies, protests and counter-protests which occurred in Charlottesville between May through August 12, 2017 demonstrate the critical importance of social media in planning for and reacting to fast-moving events involving large gatherings of different interest groups on volatile issues of public concern. The Charlottesville Police Department appropriately used open source methods of what might be considered "political intelligence" gathering under the *Kendrick* Decree in order to plan for the event, and to monitor activities during the event. It is difficult to conceive how any law enforcement agency planning for protection of the public in a similar event could do its job without gathering this information. It is virtually impossible, in my opinion, to adequately perform this task in advance of such an event (not to mention during the unfolding of the event) with the burden of the various procedural

mechanisms set forth in the *Kendrick* Decree, particularly the obligation that the Police Director personally approve and extend such methods of gathering "political intelligence."

In my opinion, certain aspects of the *Kendrick* Decree, as set forth below, are either problematic, counter-productive, or literally impossible to comply with from the standpoint of local law enforcement measures reasonably necessary to preserve and promote public safety at public gatherings, lawful or not, involving the use of and communications through social media platforms, and the recording of these events by law enforcement through recording devices such as stationary "skycams" and body cameras.

It is further my opinion that a restrictive reading of the *Kendrick* Decree prohibits otherwise lawful techniques (body and vehicle cameras and "skycams") that in many cases have been implemented in response to overwhelming community demand in Memphis. The *Kendrick* Decree, if read strictly, also prohibits law enforcement tactics that have been found to meet the requirements of the United States Constitution and the State of Tennessee.

In my opinion, while the restrictions in the *Kendrick* Decree may have been appropriate when viewed in relation to the best practices in use by law enforcement agencies in 1976, the dramatic changes in technology and in the means of communication and interaction among citizens has changed the landscape in terms of best practices of law enforcement in protecting the public, including the safety of those members of the public who are engaging in the exercise of their First Amendment rights.

In view of those changes, and in light of the public safety needs that have been accepted as necessary in the post 9-11 world, my experience leads me to conclude that while surveillance for the purpose of chilling First Amendment rights must be avoided, restrictions on law enforcement surveillance which would result from a strict reading of the *Kendrick* Decree would

leave citizens without the best public safety practices necessary to ensure that they can safely exercise their rights to speech and association, and would also result in police and public safety policies which fall below the recognized best practices for such organizations. In that light, it punishes the public by subjecting citizens to dangers which could have been avoided if law enforcement were not hamstrung by restrictions no longer relevant to today's technology and out of step with current operational imperatives for police departments and law enforcement agencies.

My specific concerns with respect to the provisions of the Kendrick Decree and how these provisions, if interpreted in too narrow or technical a manner, may interfere with the necessary law enforcement duties or obligations on the part of the Memphis Police Department are discussed below. The problematic portions of the Kendrick Decree are discussed using the organizational framework of the decree itself, by paragraph.

A. Statement of General Principles.

It is well settled that governmental entities may impose certain “time, place and manner” limitations on the exercise of First Amendment rights. Unfortunately, the United States has become a very polarized society. As seen during the recent events in Charlottesville, Virginia, and elsewhere, groups with diametrically opposed world views may seek to exercise First Amendment rights at the same place at the same time. There may be outliers in any of these groups whose intent is not to engage in protected activity, but to act or cause others to act in an unlawful manner. This clearly happened in Charlottesville, resulting in loss of life.

It is the duty of law enforcement to protect the rights of all of these groups, simultaneously, as well as to protect the safety and rights of non-participants who may live or be lawfully going about their business in proximity to those engaging in First Amendment protected

activity. The Statement of General Principles in the Kendrick Decree broadly prohibits MPD from engaging in law enforcement activities which interferes “with any person's” First Amendment protected activity. The decree fails to recognize that in ensuring that the competing rights of all are protected, there may be lawful limitations that must be imposed.

This statement also contemplates that legitimate police activity is limited to the reactive investigation of past criminal conduct. Law enforcement is not so limited under pre-existing laws. Recently, in a search and seizure case, the Tennessee Supreme Court discussed and adopted the “community care taking” role of the police, following federal precedent going back to the 1970’s. See *State v. McCormick*, 494 SW3d 673 (2016). McCormick recognized that the police perform a wide variety of functions, not related to investigation of past criminal conduct. Protecting the free expression rights of diverse groups, while at the same time protecting the rights of all to be safe, is a complex and challenging community care-taking task. It is inevitable that conflicts will develop in fulfilling these duties. Lawful policing activities to that end should not be prohibited.

## B. Definitions

### 4. Political Intelligence.

The Kendrick Decree’s definition of Political Intelligence is so broad as to include any type of preparation for virtually any event. The definition could include information about the expected size of an event, its location and its timing. It could even be argued that the information required to obtain a permit to hold a march that would require the closing of a public street is included. This and other portions of the decree require MPD to operate in the dark about what they need to do to prepare to carry out one of their core functions.

A fair reading of the decree allows for any lawful law enforcement activity, but due to antiquated language and over-broad definitions, modern police tactics such as body cams and skycams, could be a violation of the decree, if it is read literally. Because police body cameras, vehicle cameras, and “skycams” gather, index, file, maintain, and store information regarding the beliefs, opinions, associations or the exercise of First Amendment rights, the decree could be interpreted to forbid those otherwise lawful and necessary activities.

It must also be remembered that this definition of political intelligence also would include street gangs and outlaw motorcycle clubs, which, although widely known to engage in unlawful criminal activity, are otherwise lawful associations, protected by the First Amendment.

This authors of the Kendrick Decree created this definition in an era when most voice communication was by fixed location copper line telephones or in person. It was at a time when meetings were held in person, not online; when protests were organized by word of mouth and by posters on a telephone pole, and in an era when the arbiter of what happened in police/citizen encounter was what the officer put in his or her report not the unblinking eye of a camera recording the event. The authors did not contemplate mobile devices, the internet, social media, video and audio recording devices worn on the body and no larger than a deck of cards. In 1978, when the decree was implemented, an officer making an arrest could search any personal property found on the person of an arrestee. In 2014 the Supreme Court, recognizing the capabilities and pervasive nature of mobile devices in 21st century America, limited earlier holdings and held that, while a cell phone found on the person of an arrestee could be seized, a warrant was required to search its contents. *Riley v. California*, 134 S. Ct. 3473 (2014). It is my opinion that the Kendrick Decree, just like the precedent overruled in *Riley*, is deficient because it ignores changes in technology. Case law adapts to meet issues raised by technology. The

Kendrick Decree could be interpreted in such a way as to deprive MPD of the ability to use lawful techniques to protect all rights of all citizens.

C. Political Intelligence

The Kendrick Decree prohibits MPD and the City of Memphis from engaging in political intelligence. As discussed above, this prohibition, coupled with the over broad definition of political intelligence, could serve to cause MPD to operate in the blind when preparing for and responding to events that may well have First Amendment protections but also require law enforcement response so that all points of view are protected and that the safety of all persons nearby is protected.

D. Prohibition Against Electronic Surveillance for Political Intelligence

Given the overbroad definition of political intelligence in the Kendrick Decree, it could be argued that body and vehicle cameras, as well as “skycams” violate the decree. Citizens of Memphis sought, and indeed demanded, the use of these technologies. They serve to protect citizens but they will inevitably intercept and record communications that could fall under the definition of political intelligence used in the decree.

This broad prohibition could be read to prohibit MPD monitoring of open source social media, which, because they are accessible by any member of the public, carry with them no reasonable expectation of privacy. As can be seen in the Charlottesville report, it was important and considered to be part of what was “done right” when Charlottesville PD officers were able to monitor social media of Unite the Right and of those who opposed them, to gain information about what was about to occur and the movements of protestors and counter protestors. However, the Charlottesville police director also lamented that he had an “operational blind spot” on May 13, because of CPD’s inability to monitor social media in real time.

A 21st Century police agency should be able to utilize every lawful tool to monitor large events as they happen so that they may properly and effectively respond to events as they unfold. To prevent a police agency from using these lawful means hinders that agency from adequately protecting anyone's rights and prevents them from doing what they are tasked to do.

E. Prohibition Against Covert Surveillance for Political Intelligence.

Given the facts that gave rise to the Kendrick lawsuit, the origin of this provision is understandable. However, it is again problematic due to the overbroad definition of political intelligence in the Kendrick Decree. As discussed above, this could be argued to prevent undercover operations aimed at entities such as street gangs and terrorist groups.

F. Harassment and Intimidation Prohibited

While the first paragraph of this section is not problematic, the example used in the second paragraph, prohibits maintaining records of the name, or photograph of any person in attendance or the record of automobile license number of any person in attendance. If the Charlottesville PD had been subject to such a prohibition, it would have lost the video record of the homicide committed by the driver of an automobile there. Terrorists over the past few years, in Charlottesville, New York, and elsewhere have frequently used vehicles to accomplish these ends. MPD would be prohibited from using "skycams" to create and provide irrefutable evidence of such criminal acts.

G. Criminal Investigations Which May Interfere With the Exercise of First Amendment Rights

While there should be supervision of all investigations, and certainly those where First Amendment rights are implicated, it is impractical to put that burden on the Director of Police. While he/she bears ultimate responsibility for the conduct of the department, this is a task that should be delegated to a person trained and capable of evaluating the issues involved, who

reports to the director. Memphis is a major metropolitan area. Its police force, depending on the time, employs approximately 2000 officers and up to 2400 officers if at full strength, as well as additional civilian employees. Expecting the Memphis Police Director to be personally involved to the degree contemplated in the decree in making multiple written findings every 90 days about what could be a large number of investigations is not realistic. The director of a department as large as Memphis, in a city as large as Memphis, has too many duties and responsibilities to take on this role. Given the overbroad definitions in Kendrick, this burden could overwhelm even the most dedicated director.

The decree is also ambiguous as whether more than one 90 day extension can be granted. Many significant investigations take longer than six months.

H. Maintenance and Dissemination of Information.

The Kendrick Decree prohibits maintaining personal information about any person unless collected in the course of a lawful criminal investigation and requires destruction of any information collected in violation of the decree. This presumes that the only legitimate police function is the reactive investigation of past crimes, and ignores the community care-taking function of the police. Police routinely take reports and legitimately acquire personal information that does not involve criminal investigations. Traffic accidents not involving impaired driving, accidental and non-criminal deaths and injuries, response to calls for assistance with individuals experiencing mental health issues come are some that comes to mind. All require the police to document what they have seen and done.

As pointed out above, a literal interpretation of the Kendrick Decree could result in the prohibition of the use of body cameras. Requiring the destruction of anything that could possibly be useful to a criminal defendant could cause MPD to violate the long established constitutional

requirement of the Brady and Giglio cases to preserve evidence showing the defendant to be innocent or government's case less credible.

I. Restriction on Joint Operations.

Memphis Police Officers regularly serve on task forces with federal and other local officers. Given the overly broad scope of this decree and the antiquated language found in the decree, activities conducted by those task forces that are entirely lawful under federal and Tennessee law could be problematic. Memphis officers have been an essential part of the FBI's Joint Terrorism Task Force in Memphis since 2001. In that role, they are sworn as federal law enforcement officers and are directed by supervisory FBI agents. A supervisory Assistant U.S. Attorney is involved in investigations. Federal agents frequently did not grow up in Memphis and do not have the "on the street" familiarity with the Memphis community that the senior Memphis officers assigned the task force do. Requiring their removal from such task forces for fear that their activities there, while lawful, might violate the decree would be a great blow to the national security effort locally.

The Kendrick decree, which was created before the arrival of mobile devices, social media, or the internet, could be read in such a way that it would deprive the Memphis Police Department of the use of otherwise lawful tools to meet the demands of twenty first century problems.

**III. Facts or data considered by the witness in forming the opinions.**

I have reviewed the following documents and data which I consider relevant to the opinions expressed above.<sup>1</sup>

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<sup>1</sup> The documents and data identified in this report focus only upon the materials that I have reviewed which I consider relevant to the opinions expressed and do not necessarily reflect all of the documents or data I have reviewed that may have some connection with the litigation.

1. Order, Judgment and Decree - *Kendrick, et al v. Chandler*;
2. Complaint, *Kendrick, et al v. Chandler*;
3. Complaint for Enforcement of Order, Judgment and Decree, Damages and Other Relief - *Blanchard, et al v. City of Memphis, Civil Action No. 2:17-cv-02120-JPM-dkv*;
4. Answer of Defendant City of Memphis to Complaint;
5. Answer of Defendant City of Memphis to Intervening Complaint of ACLU of Tennessee;
6. Various news articles referencing a "die-in" at the home of Mayor James Strickland;
7. Various news articles reflecting I-40 bridge shutdown and protest in July of 2016;
8. Various news articles referencing Dallas police ambush on July 8, 2016;
9. Various articles and studies on the use of social media for communication including mass communication;
10. Final Report - Independent Review of the 2017 Protest Events in Charlottesville, VA.

**IV. Exhibits that will be used to summarize or support opinions.**

Not applicable.

**V. Witness's qualifications including list of publications authored in the previous ten years.**

My qualifications and background relevant to the opinions expressed in this report are set forth above.

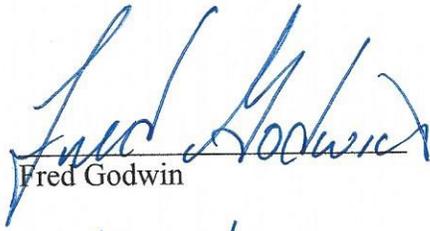
I have no publications to report from the previous ten-year period.

**VI. List of other cases during previous four years where the witness has testified as an expert at trial or by deposition.**

None.

**VII. Statement of compensation paid for expert consultation and testimony.**

I am being compensated at the rate of \$200 per hour.

  
Fred Godwin

2/28/18  
Date