EXHIBIT B

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JONATHAN BIRDT

Plaintiff

v.

CHARLIE BECK, ET AL.

Defendants.

DECLARATION OF FRANKLIN E. ZIMRING IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Honorable R. Gary Klausner

[Opposition to Plaintiff's Motion for Summary Judgment and Defendants' Motion for Summary Judgment filed concurrently herewith]

I, Franklin E. Zimring, declare as follows:

1. My current academic appointment is William G. Simon Professor of Law, Wolfen Distinguished Scholar and Chair of the Criminal Justice Research Program at the University of California, Berkeley. I have been studying the relationship between firearms and violence, strategies of firearms control, and patterns of gun commerce and civilian gun usage since 1967. I have served as director of research of the task force on firearms of the National Commission on the Causes and Prevention of Violence in 1968-1969 and as a firearms and federal criminal law expert for the National Commission on Reform of Federal Criminal Laws. I have published several empirical studies of firearms and violence and on gun control, and I have co-authored three books with firearms issues at their center, in 1969, 1986 and 1997. I have served as an expert both on the relationship between firearms and violence and on the design and evaluation of firearms control. I am providing expert opinions on both of these topics in this declaration. I was elected a Fellow of the American Academy of Criminology in 1993 and to the American Academy of Arts and Sciences in 1990. A full curriculum vitae is Appendix A of this declaration.

2. This declaration will summarize the empirical evidence and my expert opinions concerning four issues arising out of this litigation.

(1) The relationship between firearms and violence and the governmental interest in reducing the rate of gun use in crime.

(2) The particular governmental concerns with handguns and other concealable weapons because of their disproportionate involvement in life-threatening crimes of violence, particularly in streets and other public places.

(3) The special threat posed by concealed handguns as weapons used by criminals in streets and other public spaces. Persons using the streets cannot avoid and police patrolling the streets cannot detect persons who carry concealed handguns and later will find victims who are at risk when concealed guns are displayed in robberies or assaults and not infrequently discharged. The governmental interest in limiting the number of persons licensed to carry weapons hidden on their persons in public places is substantially related to reducing the volume and deadliness of street robberies and assaults.

(4) A robust right to own a handgun in the privacy of one's own home imposes whatever risks the gun poses on the owner and his family and those who choose to visit those premises as long as the gun stays home. But unlimited freedom given to a person to carry a hidden handgun on the streets subjects everybody else on the street to whatever risks that gun may pose, and the others on the public fare have neither notice of the risk nor power to control it. This "externality" of unrestricted street carrying of concealed weapons is probably the root cause of the longstanding and broadly based history of restricting use of concealed weapons in public places.

3. Firearms and the Death Rate from Violence.

The overlap between firearms and crime in the United States is a partial but important one. Of all so-called "index" crimes reported to the police nationwide (willful homicide, forcible rape, robbery, burglary, aggravated assault, larceny over

$50, motor vehicle theft, and arson), guns are known to be involved in only about 4%. But gun use is concentrated in violent crime, where about 20% of all offenses involve guns. And when only criminal acts that kill are counted, guns account for almost 70% of all cases. Why are gun cases seven out of every ten lethal crimes, if firearms are used in only one out of five violent criminal acts? Commonsense suggests that the greater dangerousness of guns when compared to other frequently used instruments of attack such as knives and blunt instruments, plays a major role in increasing the death rate from crimes, but there is an alternative hypothesis, that robbers and assaulters who truly want to kill will choose guns more often, and therefore that the greater death rate simply reflects the more lethal intentions of those who use guns. Which theory is better supported by studying patterns of violent assault?

A series of studies that were conducted under my supervision addressed this issue from 1967 to 1988. The first study compared knife and gun attacks in Chicago over four police periods in 1967. I found that when one only compared gun and knife assaults to the same part of the body and controlled for the number of wounds inflicted, the gun attacks were five times as likely to kill.[1] Yet knives were the second most deadly instruments used in violent assault. A second study found that guns that fired smaller bullets were much less likely to kill than guns firing larger bullets, again controlling for both the number of and the location of the most life-threatening wound. The central finding was that instrumentality effects – the influences of weapon dangerousness independent of measurable variations in the attacker's intent was an important influence in the death rate from assault.[2]

A second set of studies generated the same general results for the weapons used in robberies. Since the robber usually doesn't mean to inflict harm if his demands are

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[1] Zimring, Franklin E. "Is Gun Control Likely to Reduce Violent Killings?" *University of Chicago Law Review* 35:721 (1968).

[2] Zimring, Franklin E. "The Medium is the Message: Firearms Caliber as a Determinant of the Death Rate from Assault," *Journal of Legal Studies* 1:97 (1972). See Philip J. Cook, "The Technology of Personal Violence," *Crime and Justice* 14:1 (1991).

met, the death rate from all forms of robbery is much lower than from aggravated assault, but robberies with firearms are much more likely to produce a victim's death than robberies using knives or personal force.[3] The availability of guns may or may not influence the rate of robberies, but the proportion of robberies that involve guns will have a major impact on the number of victims who die in robberies, and lethal robberies are a major element in the life-threatening violence that sets U.S. cities apart from the major metropolitan areas of other developed nations.

The governmental interest in restricting the use of guns in violent crime is in reducing the number of deaths and life-threatening injuries that are produced when guns rather than less deadly weapons became instruments of robbery and assault. This interest is clear, appropriate and important for both the State of California and the County and City of Los Angeles.

4. The Special Risks of Handguns.

All forms of firearms are very dangerous to life if they are used in assaults and robberies, but the handgun is the major hazard, particularly in big cities, because handguns are much more likely to be used in criminal violence than shotguns and rifles. Handguns are slightly more than one-third of all firearms owned by civilians in the United States, but they are used in more than 75% of all gun killings and in even larger portions of robberies. The handgun is small, easy to carry and conceal, and deadly at short range. Handguns are the priority concern of law enforcement everywhere.[4]

The special dangers of handgun use in violence have produced a wide variety of different legal strategies to minimize the rate of handgun misuse. Many nations attempt to restrict both the number of such firearms owned by citizens and reasons why citizens might be permitted to own them. But California, like most U.S. states, allows

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[3] Zimring, Franklin E. and James Zuehl. "Victim Injury and Death in Urban Robbery: A Chicago Study," *Journal of Legal Studies* 15:1 (1986).

[4] Zimring, Franklin E. and Gordon Hawkins. Crime Is Not the Problem: Lethal Violence in America, New York: Oxford University Press (1997), Chapters 1, 3 and 7. See also Zimring, Franklin E. and Gordon Hawkins, The Citizen's Guide to Gun Control, New York: McMillan (1986), at Chapter 5, p. 38.

competent adults to own handguns if they have no major record of criminal conviction.

Because California does not restrict eligibility of most citizens to own handguns or the volume of guns owned, the state's first line of defense against the use of such weapons in street crime is a series of restrictions on the time, place and manner of handgun use. California law prohibits the carrying of concealed deadly weapons in public without a special permit. The state law delegates the authority to establish standards and make individual decisions in Los Angeles to county and city law enforcement and government. The goal here is to distinguish uses of handguns that do not pose a special threat to the public (such as storage and use in the owner's home) from uses that pose greater threats to public safety (such as the carrying of concealed weapons in streets and public places). The special danger of a hidden handgun is that it can be used against persons in public robbery and assault. The concealment of a handgun means that other citizens and police don't know it is in their shared space until it is brandished. Concealed handguns are a special problem for police because an armed police officer has no warning that persons carrying concealed handguns are doing so. A police officer will be vulnerable to an element of surprise that will not be present if a person is openly carrying a firearm.

Of course not all of those carrying concealed handguns intend to use them as instruments of public harm. But the existence of a loaded weapon is a hidden danger. California's emphasis on controlling this risky use of guns rather than restricting ownership itself is exactly opposite to the policy formerly pursued by Washington, D.C. and disapproved in the *Heller* decision in 2008. The distinction between restricting ownership and restricting dangerous uses is fundamental in the design of firearms control. And no public law regulation of firearms is as old or as pervasive as restrictions on public space use of firearms.

> "The earliest and most numerous state and local laws relate to the carrying or use of firearms. In the 1600s, Massachusetts prohibited the carrying of defensive firearms in public places. Kentucky in 1813, Indiana in 1819, Arkansas and Georgia in 1837 passed laws prohibiting the carrying of concealed weapons. Many states and most cities today have laws attempting to regulate what has been called the place and manner in which

firearms may be carried or used."[5]

Almost all places make special rules for concealed handguns in public places.

> "Most often, state law prohibits the carrying of concealable firearms without a special permit and the discharge of guns within city limits...Forty-nine states now impose some sort of restrictions on carrying a concealed gun."[6]

5. The Public Danger of Concealed Firearms.

The previous section of this declaration documented the statistical dominance of handguns in life-threatening violence but did not explain it. Why are handguns, a minority of all firearms, responsible for three-quarters of all firearms deaths? Why are handguns the overwhelmingly predominant firearm used in armed robbery?

This is a matter of simple criminal logistics. Most firearms assaults and almost all firearms robberies take place outside the offender's home, so that using a firearm in crime requires transporting it to a non-home location. But carrying a loaded shotgun to a commercial location for a robbery or to somebody else's home or on the street while looking for a target is a warning to potential victims and a red flag to passersby and to any law enforcement personnel that the armed pedestrian is not on an ordinary errand. Other pedestrians and motorists can avoid the visibly armed person and police can ask questions and subject the visibly armed person to identity checks and surveillance.

But the person with a concealed handgun in his pocket generates no special notice until the weapon appears at his criminal destination. The robber or assaulter looks no different from any other user of common public spaces. And this ability to escape special scrutiny is the advantage that makes the concealed handgun the dominant weapon of choice for gun criminals and a special danger to government efforts to keep public spaces

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[5] Newton, George and Franklin E. Zimring, *Firearms and Violence in American Life*, staff report submitted to the National Commission on Causes and Prevention of Violence, Washington D.C.: Government Printing Office (1969) at p. 87 (citations in original omitted).

[6] Zimring, Franklin E. and Gordon Hawkins, *The Citizen's Guide to Gun Control* (1986) at p. 123. A more recent compendium lists 47 states with special permits, see www.lcav.org.

safe and secure.

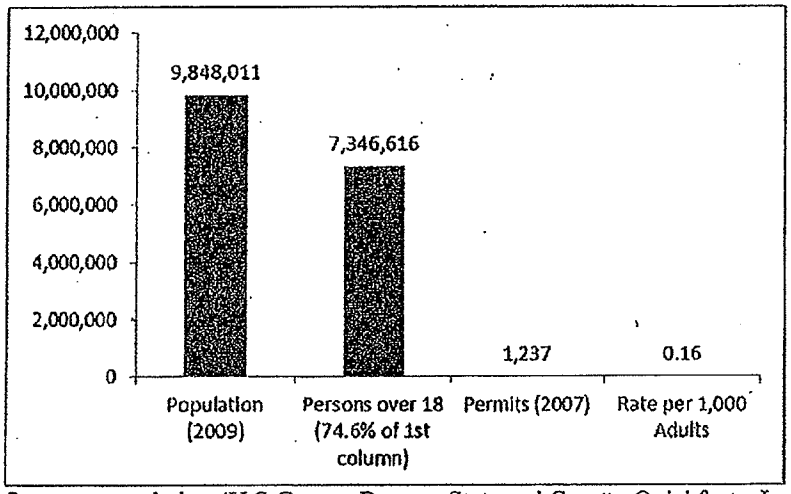
The necessity of carrying guns to crime sites without detection is one reason why the National Violence Commission research reported that 86% of all the firearms used in all assaults were handguns and an astonishing 96% of all firearms robberies were committed with handguns in the ten large cities the task force surveyed.[7] What that robbery percentage means is that the problem of gun robbery in American cities is almost exclusively a problem of concealable handguns.

The stringent requirements that California, Los Angeles County and the City of Los Angeles impose on persons wishing to have permits to carry loaded and concealed guns have two strategic objectives. The first and most important is to restrict drastically the number of persons secretly armed on the streets of Los Angeles County.

Figure 1 shows the current control of the volume of California concealed weapons (CCW) permits and the huge stakes of shifting to the standards asserted as rights by the plaintiff in this litigation. The current system of CCW licensing allows citizens in Los Angeles to apply for CCW licenses either to the county sheriff or to their local police. For this reason, only countywide rates of licensing can be determined without detail on the city of residence for all who obtain county licenses. Figure 1 provides countywide population and CCW data.

[7] Newton, George and Franklin E. Zimring (1969), *Firearms and Violence in American Life*, at Figure 8-1, p. 49.

Figure 1. Population and Licenses to Carry in Los Angeles County.



Sources: population (U.S.Census Bureau, State and County Quickfacts, Los Angeles County, California, available at http://quickfacts.census.gov); permits (California Department of Justice, CCW Counts by County, 2000 through 2007, available at http://ag.ca.gov/firearms/forms/pdf/ccwissuances2007.pdf)

The rate per thousand adults of CCW permits is .16, indicating that fewer than one of every 5,000 adults holds a permit. By contrast, a system where all persons without felony convictions, convictions for domestic violence crime or involuntary mental health commitments would make more than 90% of Los Angeles adults eligible for permits. That would be just under seven million potential carriers.

Making the carrying of hidden deadly weapons into a very rare privilege enables citizens not to worry that they must choose between carrying a gun themselves or being unarmed in public spaces where many strangers are secretly armed. Restricting the publicly entitled carriers of concealed handguns to a tiny number also reinforces the practical monopoly of armed force by the police. And the police are one of the primary groups protected by small rates of carrying concealed guns since more than 90% of killings of police are with guns.[8]

The special vulnerability of police to weapons concealed on a person is the element of surprise in the event of an attack. An openly carried firearm is a special danger to an

[8] U.S. Department of Justice, Federal Bureau of Investigation, *Law Enforcement*

officer, but it is a known danger. The police officer can be prepared to draw or use his weapon when a weapon is on display. But the person carrying a concealed handgun is a hidden danger to an officer. High rates of carrying concealed weapons put the police on the horns of a dangerous dilemma—either they (1) make no assumptions about persons being armed (in which case they are surprised and at a disadvantage when a concealed weapon is drawn) or (2) assume everybody is carrying a loaded gun in which case they will be much quicker to draw and fire their own guns even if no weapons are in fact held by the person being approached. So once a high rate of CCW takes place, the relationship between armed police and citizens without any visible evidence of carrying guns will get more dangerous for the police, for the citizen, or for both.

The second strategic aim of a permit-to-carry requirement is to screen those persons who do have special needs for concealed guns to make sure they will not misuse the guns they carry. This kind of risk screening explains the good character, minimum age and lack of criminal record requirements. But the central reason to require a good reason for needing a gun is to reduce the number of secretly armed citizens on the streets and sidewalks of one of the biggest urban areas in the United States.

There is one factual dispute of central importance in the distinction between small and large volumes of CCW permits—the degree to which criminal conduct is concentrated among formally identified felons. It is sometimes claimed that simply excluding former felons would prevent persons with high risks of future crime from being eligible to carry hidden handguns. This claim is false. A majority of criminal homicides and other serious crimes are committed by individuals who have not been convicted of a felony. The first published study on this question found that in Chicago, 57% of those adults arrested for homicide did not have a felony record.[9]

It has more recently been reported that for all of New York State only 33% of all persons arrested for felonies have a felony conviction at the time of arrest. Thus, about

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Officers Killed and Assaulted (2008), Table 27.

[9] P.J. Cook, J. Ludwig and A. Braqa, "Criminal Records of Homicide Offenders," *Journal of the American Medical Association* 294(5), August 3, 2005.

two-thirds of current felons would not be prohibited from eligibility under "shall issue" criteria (meaning criteria wherein if a person has no prior felony conviction, domestic violence conviction, or recent psychiatric commitment, said person would automatically be entitled to a CCW permit).[10]

My efforts to obtain good estimates of the overlap between active felons and those previous convicted of crimes that might render them ineligible to obtain "shall issue" style CCW permits have not yet produced comprehensive data. The Los Angeles Police Department provided information from 11 of 21 police divisions on homicide arrests, covering 98 of the 221 homicide arrests for 2010, or about 44% of the total. Not included were complicated and high profile cases assigned to the centralized Robbery Homicide Division or killings involving child abuse. For the 98 reported persons, half had prior felony convictions (49 of 98 or 50%), 38 had neither felony records nor prior convictions for misdemeanors involving domestic violence (39%) and 11 other suspects had domestic violence records that current state law uses as a basis for denying gun purchase eligibility (11%). The rate of homicide arrestees with prior felony convictions taken from this sample appears to possibly be inflated due to homicides of children and high-profile homicide cases being excluded. Even with that inflated number, it still shows that approximately 39% of all persons arrested for homicide in the City of Los Angeles had no prior felony or domestic violence convictions, which means they would be allowed to have a CCW permits under a "shall issue" policy. (See Declaration of Conrado Torrez).

We have broader data from the Los Angeles Sheriff's Department, which incorporates other cities in Los Angeles County. In 2009 there were 126,352 total arrests, and 23,001 of them had prior felony convictions. (See Embom Decl., ¶ 3; LASD Arrest Statistics 2009, available at www.lasd.org.) Of those arrested in 2009, 46,329 were felony arrests. (See id.) Thus, even assuming that every single person arrested in 2009 that had a prior felony conviction was a person arrested for a felony, half

[10] Reported in expert's declaration of Philip J. Cook in Kachalsky v. Cacase, Civil Action 10-cv-5413, Southern District of New York (2011).

of the persons arrested for felonies in 2009 would have been eligible for a CCW permit in a "shall issue" policy state. This 50% minimum estimate grossly understates the probable proportion of felony arrests that are attributable to persons not prohibited from CCW licenses under "shall issue" criteria. [11]

The State of California and the City and County of Los Angeles believe that it would threaten the public health and safety to have hundreds of thousands of people in the county carrying loaded handguns that the people who share the streets and stores and parks of Los Angeles cannot see. Is this public choice consistent with *D.C. v. Heller's* conferral of a right to handgun ownership under the Second Amendment? Los Angeles has never tried to restrict home possession, so it obviously believes that public places call for different presumptive policies, and history is on Los Angeles' side. Special restrictions on carrying concealed weapons are venerable and almost universal. Even the plaintiff in this suit does not question the legitimacy of a special license for carrying weapons. The central question is whether publicly concealed weapons can be restricted even if possession in the home is protected by *Heller*.

6. The External Dangers of Concealed Weapons in Public Spaces.

The right of home possession announced in the *Heller* case does not require citizens to purchase and own handguns in their houses but rather confers on individuals the right to decide for themselves if the benefits of gun possession in the home outweigh the risks. So the Second Amendment liberty announced in *Heller* puts the homeowner in a position of power to determine what risks to take. As long as the guns owned in the home stay there, Mr. Smith's gun is no risk to his neighbors. But the presence of loaded

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[11] The most comprehensive estimate of the aggregate criminal involvement of persons not prohibited from CCW licenses by "shall issue" criteria is our request to the California Department of Justice to provide the percentage of all felony arrests subject to criminal record checks in 2010 that produced a felony conviction recorded in the state data that would be used in any CCW screening. Because of a shortage of programmers related to the state's current fiscal problems, this data is not yet available. I will report it in a brief supplemental declaration when it is completed.

and concealed guns in public spaces is an act where Mr. Smith's decision will generate risks to others who use the streets, and go to public accommodations. And if the guns are concealed, the people who are exposed to these risks won't have notice or any ability to avoid the armed presence they confront.

This "externality" means that the implications of concealed carrying are spread over the community of users of public space and the only method of deciding policy is a collective determination of whether concealed weapon carrying should be allowed and under what circumstances.

So government must be involved in public space regulation in a way that is not necessary in the privacy of individual homes. This is why concealed weapons laws are the oldest form of legal regulation of gun use and the most common. There is a public choice that must be made to reduce the number of persons carrying concealed weapons by limiting licenses. But without a general rule on the standard for licenses, there is no way that individual preferences for or against high rates of permits can be translated into a regulatory framework.

I declare under penalty of perjury that the forgoing is true and correct. Executed at Fort Walton Beach, FL, this 11th of April 2011.

FRANKLIN E. ZIMRING

FRANKLIN E. ZIMRING

9 September 2010

PERSONAL Born 1942, Los Angeles, California; married; two adult children.

EDUCATION Los Angeles Public Schools; B.A. with Distinction, Wayne State University (1963); J.D. *cum laude*, University of Chicago (1967).

PRESENT POSITION **WILLIAM G. SIMON PROFESSOR OF LAW; WOLFEN DISTINGUISHED SCHOLAR** and **CHAIR**, Criminal Justice Research Program, Institute for Legal Research (formerly the Earl Warren Legal Institute), Boalt Hall School of Law, University of California, Berkeley.

OTHER WORK **Principal Investigator,** Center on Culture, Immigration and Youth Violence Prevention (2005-).

DIRECTOR, Earl Warren Legal Institute (1983-2002).

FACULTY OF LAW, University of Chicago (1967-85): **KARL N. LLEWELLYN PROFESSOR OF JURISPRUDENCE** (1982-85) and **DIRECTOR**, Center for Studies in Criminal Justice (1975-85).

MEMBER, MacArthur Foundation Research Program on Adolescent Development and Juvenile Justice (1997-2007).

FELLOW, Center for Advanced Studies in the Behavioral Sciences, Stanford, California (1979-80).

RAPPORTEUR, Task Force on Sentencing Policy for Young Offenders, Twentieth Century Fund (1978).

VISITING PROFESSOR OF LAW, University of California, Irvine (2004), University of South Africa (1993), University of California, Berkeley (1983-85), Yale University (1973), and University of Pennsylvania (1972).

DIRECTOR OF RESEARCH, Task Force on Firearms, National Commission on the Causes and Prevention of Violence (1968-69).

CONSULTANT: American Bar Foundation, Police Foundation, National Commission on Reform of Federal Criminal Laws, Institute for Defense Analysis, Department of Justice, Rand Corporation, Abt Associates, Federal Parole Commission, Federal Bureau of Prisons, Federal Bureau of Investigation, General Accounting Office, Canadian Institute for Advanced Studies, States of Alaska, California, Nebraska, Illinois, Virginia, and Washington, Cities of Chicago, New York and San Francisco.

ADVISORY POSTS CURRENT: Campaign for Youth Justice (2007-); California Attorney General's Office (2001-); National Policy Committee, American Society of Criminology (1989-91 and 1993-); Board of Directors, Illinois Youth Services Association (Honorary) (1977-); Advisory Committee, National Pre-Trial Services Association (1975-).

PAST: Asian Pacific Violence Prevention Center, National Council on Crime and Delinquency (2001-2005); Advisory Committee, Sentencing Project, American Law Institute (2001-2003); Criminal Justice Policy Group, Advisory Board, National Campaign Against Youth Violence (2000-2002); Expert Panel Member, U.S. Department of Transportation, National Highway Traffic Safety Administration Panel on Crash Risk of Alcohol-Involved Driving (1994-2002); Expert Panel Member, U.S. Department of Education Panel on Safe, Disciplined, and Drug-Free Schools (1998-2001); National Research Council Panel on Juvenile Crime: Prevention, Intervention, and Control (1998-2001); Advisory Board, Center on Crime, Communities, and Culture, Open Society Institute (1998-2000); Affiliated Expert, Center for Gun Policy and Research, Johns Hopkins University (1995-98); Gun Violence Advisory Group, American College of Physicians (1995-98); Advisory Committee, Violent and Serious

Juvenile Offender Project, National Council on Crime and Delinquency (1994-1997); Panel on NIH Research on Anti-Social, Aggressive, and Violence-Related Behaviors and their Consequences (1997-); Task Force on Future Directions for the National Archive of Criminal Justice Data, Bureau of Justice Statistics, Department of Justice (1995); Panel on Antisocial, Aggressive, and Violence-Related Behaviors and Their Consequences, National Institute of Health (1993-94); Panel on Understanding and Control of Violent Behavior, National Research Council, National Academy of Sciences (1989-91); Research Advisory Committee, California Attorney General (1983-1990); Law Enforcement Committee, California Governor's Policy Council on Drug and Alcohol Abuse (1989-91); National Research Council, Working Group Crime and Violence (1985-88); Internal Revenue Service, Advisory Group Taxpayer Compliance Research (1983-87); Board of Directors, Eisenhower Foundation for the Prevention of Violence (1981-84); U.S. Secret Service Advisory Committee on Protection of the President (1981-82); Assembly of Behavioral and Social Sciences, National Academy of Sciences (1977-80); Executive Committee, Illinois Academy of Criminology (1968-71, 1977-78); Advisory Committee, Assessment Center for Alternatives to Juvenile Courts (1977-78) (chairman); Advisory Committee, Law and Social Science Program, National Science Foundation (1976-77); Advisory Committee, Vera Institute of Justice, Court Employment Project Evaluation (1976-77) (chairman); Panel on Deterrence and Incapacitation, National Academy of Sciences (1975-77); Legal Committee, American Civil Liberties Union, Illinois Branch (1967-70).

EDITORIAL BOARDS

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PAST: Law and Society Review (1988-1998); British Journal of Criminology (1988-1996); Journal of Quantitative Criminology (1984-1989); Ethics, (1985-87); Encyclopedia of Crime and Justice (1979-83); Evaluation Quarterly (1976-84); Law and Behavior (1976-85).

HONORS

Edwin H. Sutherland Award, American Society of Criminology (2007); August Vollmer Award, American Society of Criminology (2006); Notable Book of the Year, *The Economist* (2003); Society of Research on Adolescence, Biannual Book Award (2002); Pass Award, National Council on Crime and Delinquency (1999); Donald Cressey Award, National Council on Crime and Delinquency (1995); Choice, Outstanding Academic Book Citation (1995 and 1982); Paul Tappan Award, Western Society of Criminology (1994); Fellow, American Society of Criminology (1993); Distinguished Alumni Award, Wayne State University (1989); Bustin Prize for Legal Research, University of Chicago (1981); Cooley Lecturer, University of Michigan Law School (1980); National Distinguished Alumnus Award, Delta-Sigma-Rho (1977); Ten Law Professors Who Shape the Future, *Time Magazine* (1977); Civilian Award of Merit for 1975, Chicago Crime Commission; Gavel Award Certificate of Merit, American Bar Association (1973).

MEMBER

American Academy of Arts and Sciences (1990-); California Bar Association (1968-); Order of the Coif (1967-); Phi Beta Kappa (1964-).

BOOKS AND MONOGRAPHS

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EXHIBIT C

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JONATHAN BIRDT,	)	
	)	
Plaintiff,	)	
	)	
V.	)	NO. 2:10-CV-08377-RGK-JEM
	)	
CHARLIE BECK, LEE BACA, THE LOS ANGELES POLICE DEPARTMENT and THE LOS ANGELES COUNTY SHERIFFS DEPARTMENT, DOES 1 to 50,	)	
	)	
Defendants.	)	

DEPOSITION OF JONATHAN BIRDT, TAKEN ON BEHALF OF THE DEFENDANTS THE LOS ANGELES POLICE DEPARTMENT AND CHARLIE BECK, AT 200 MAIN STREET, 6TH FLOOR, LOS ANGELES, CALIFORNIA, COMMENCING AT 10:08 A.M., TUESDAY, FEBRUARY 22, 2011, BEFORE LEIGHA D'ERRICO, CSR 11199.

Q. The clan? What's your concern?
A. I'm only permitted to say that we parted on mutually acceptable terms.
Q. Okay. Well, let's just refer to what you indicated in your application, how about that?
A. Okay. That would be great.
Q. So referencing Exhibit 2, the letter that you wrote.
A. Okay.
Q. You indicated that -- I believe that one of your colleagues was threatened; is that correct?
A. Peter McNulty is a holder of a permit issued by the L.A. County Sheriff's Department, as is an associate of his.
Q. Were you ever threatened while you were at the McNulty firm?
A. Yes.
Q. Did you report that to the police?
A. Yes.
Q. When?
A. I believe there were two occasions where we called 911 and nobody responded. I believe the most recent was April of '09 and sometime in 2008. I don't recall.
Q. So one time in '09 and one time in '08?

A. Specific threats to that office where we called 911 and LAPD did not respond, yes.

Q. I'm not asking about threats to the office. I'm asking about threats to you.

A. Yes.

Q. So you were personally threatened?

A. My physical safety was threatened.

Q. How was your physical safety threatened?

A. By angry people who advised they were going to come to the office and potentially do us harm.

Q. Did they advise you or somebody else?

A. I honestly do not recall what the first incident revolved around. The second incident, I became aware of as it was happening, and I instructed an employee to call 911.

Q. So nobody ever showed up?

A. No, she was there in the lobby.

Q. Nobody from LAPD showed up?

A. Oh, correct, of course.

Q. And did you ever try to make a report after that?

A. Yes.

Q. So did you actually make a report?

A. No.

Q. What happened when you tried to make a report?

A. We actually had a private security company, an armed security company that responded about 40 minutes later and they took the report, and I don't recall the exact discussions between -- I don't recall how it worked out.

Q. To your knowledge, was LAPD ever notified, other than the 911 call?

A. How else would you like us to notify them, bon fire, SOS, mirrors?

Q. Did you ever actually walk into a police station?

A. I have walked into a police station. I did not walk into a police station on that occasion.

Q. On either of those two incidents, to your knowledge, was a police report ever generated?

A. I'm relatively certain there wasn't.

Q. You never spoke to anybody from LAPD regarding either of those two incidents?

A. I have no recollection of doing that.

Q. Moving on. You're a volunteer judge?

A. Yes.

Q. How often do you that?

claims disputes.

Q. As a volunteer judge, was your life or your safety ever threatened?

A. I think the inherent nature of judicial conduct creates a presumption of a safety concern.

Q. So were you ever threatened?

A. No.

Q. Did you ever fear for your life?

A. Every day.

Q. Handling high-profile cases?

A. Is that a question?

Q. Yes.

A. What is it?

Q. Did you handle any high-profile cases?

A. Yes.

Q. Which ones?

A. I handled the endoscopy litigation in Nevada, which resulted in several grand jury indictments and a number of death threats made to the firms I was associated with. I handled a wrongful death case where the doctor was convicted of murder and is sitting in jail. Are you looking for just high-profile where it was in the news?

Q. I was actually just referring to your job as a judge pro tem?

A. Oh, I'm sorry.

Q. Did you want to keep going?

A. No. As a judge pro tem nothing high-profile at all. I'm sorry.

Q. That's okay. We'll get to those in a little bit. You sit on a juvenile dependency court panel?

A. Correct.

Q. What is that?

A. Well, there's two facets. There are attorneys who are appointed by the juvenile dependency court to review tort referrals, so that where there's a ward who's dependent of the court, if the counsel representing them believes they've have been the victim of either negligence or abuse, they write a referral report that is then passed on to me or other attorneys on that panel in the order of rotation to review, and then we make a determination as to whether or not it merits further investigation, and then we are granted access to the confidential juvenile court file and records and appointed as counsel to pursue that action.

I'm also, because of that, and this is the only thing I'm active in right now, on the

public counsel. They appoint guardian ad litems for victims in the system to represent them and act as their guardian ad litem, and I'm on that panel. Currently I'm only guardian ad litem in one case, and it's a teenage girl who was raped, and I believe the gentleman's currently facing felony charges for that.

Q. As a result of that position, have you ever been threatened by either -- the children or parents, your life, the life of your family or anything to that regard?

A. Specifically, no.

Q. Impliedly?

A. I believe the gentleman who's facing felony rape charges may be a little upset with me.

Q. Has he ever said anything to you?

A. No, I've never spoken to him.

Q. Why do you feel he's upset with you?

A. I believe it's a common practice for litigants involved in emotional cases to react with violence. I believe you could ask the family of the Fresno lawyer who was shot in the head and killed by having lunch with her client after a contentious hearing, that being a lawyer can sometimes be dangerous and people get emotional and

upset.

Q. Do you think that all lawyers should be awarded CCW permits?

A. I believe that lawyers who have met the training requirements and desire to exercise their second amendment rights who are involved in contentious litigation should certainly be able to exercise that right.

Q. Would you agree that most lawyers are involved in contentious litigation?

A. No.

Q. Why not?

A. Because I think a lot of lawyers do transactional work. I think a lot of lawyers do a lot of paperwork.

Q. So anybody that's involved in litigation in general, do you think they should be getting CCW permits?

A. I think what I think doesn't matter at all, but generally speaking, I think those, as I just said, involved in contentious litigation, who seek the necessary training and express a desire to exercise their constitutional rights, should be permitted to do so.

Q. Do you do mostly civil or criminal?

law in Nevada?

A. I actually do all of my work for that company in California, but I am licensed in Nevada.

Q. Okay. All right. The endoscopy litigation, you said you received a number of death threats as a result of that?

A. Well, they were called in to our office in Nevada, but, yes.

Q. To you specifically or to the firm?

A. Nobody said "John Birdt, I'm going to put a bomb in your car." It was "You lawyers should be hung up and we're going to blow you up," and there are a number of recorded messages, I think, that were turned over to the grand jury. I don't recall the specific language.

Q. The grand jury meaning there was a criminal investigation into those threats specifically or are you talking about the grand jury in the endoscopy litigation?

A. I'm talking about the grand jury in the endoscopy litigation.

Q. I don't want -- like what was it, what were the facts?

A. There were only two clinics in Las Vegas that did endoscopy and the physicians were

reusing -- they were billing Medicare for ten milligram bottles of propofol but that were buying, on sale, 100 milligram bottle of propofol and reusing them from patient to patient, and so when you have patient A, if you inject them twice with propofol you go into the bottle twice, the second time obviously with a contaminated needle. When the next patient comes in and you draw propofol and give it to the patient you give them hepatitis. And the CDC actually came in and genetically linked, I think, six or seven patients with the hepatitis strain to the patient before them, and they did a public recall in Nevada. I think they estimated there were 50,000 people potentially exposed to any sort of disease as a result of that. And I represented several of the genetically-linked patients, along with a couple classes and larger groups of patients involved in that litigation.

Q. So how many, specifically, if you remember, threats were called in and left on the machine or whatever happened?

A. I only have a specific mental recollection of one on that voice line. There were other -- and it seems stupid. I'm not quite sure why they would go after the lawyers trying to

vindicate it, and I think the tide turned the other way once people finally realized what happened, but there were other Internet postings, newspaper articles, the Las Vegas Sun and the Las Vegas Review Journal both have a like a web comment page, and for some reason they're very active with that in Las Vegas, and I recall several threats early on directed against us. That tide quickly changed.

Q. How many attorneys were involved in that litigation?

A. Well, eventually probably thousands, pretty much all of them in Vegas. We had the first case and the lead plaintiff. I think the original class was not certified and we had a steering committee of five firms, but it quickly became a massive consolidated litigation with a specially appointed master, and I think there were 40 or 50 firms at that point participating in that process, and I was -- or I did the best I could to stay out of that.

Q. Was this while you were still at the McNulty law firm?

A. Yes.

Q. How long ago was it?

A. I think I finished all of our expert

discovery November of 2009, and then over the weekend before their experts were set to commence, they filed bankruptcy, and everything -- I have no idea what's happened since then.

Q. So the verbal threat that was left on the voice mail, could you estimate what approximate date that was?

A. Early '09.

Q. And did you ever make a police report?

A. No.

Q. Did anybody ever make a police report, to your knowledge?

A. I don't know. I know that it was reported to the district attorney. No -- actually, I think it was reported to the metro, because that's who we were communicating with, the metro investigator. I think it was communicated to her -- wait. I'm not sure who the point of contact was on that one. I'm confusing it with another investigator. Whoever the point of contact was, it was communicated to law enforcement, let's put it that way.

Q. Not by you?

A. Not by me.

Q. Did you ever speak to anybody in law

Q. So how specifically, by representing victims of rape, are you in particular danger?

A. It creates contentious litigation and raw feelings, and people in those situations do stupid things.

Q. You specifically have not been threatened as a result, correct?

A. I'm sorry, I didn't catch your whole question.

Q. You specifically have not been threatened as a result of your representation in these cases, correct?

A. No direct threat by a specific individual has been made against me, specifically, that I'm aware of.

Q. What about your family?

A. No.

Q. How is this something that LAPD can't handle?

A. Well, I guess the argument would be what could LAPD handle. LAPD response time to my house, even though they're three blocks away, is ten minutes. Chief Bratton had his own personal police officer follow him around all day long and he apparently still needed a CCW, so apparently even

There has been no expressed threat, there has been an implied threat based upon all of my activities as described in my applications, paperwork and discovery responses.

Q. What you've described to me, heretofore, is generalized threat, you feel that you're involved in some contentious litigation, that your life could potentially be at risk, but there has been no actual expressed or implied threat on your life, just that you've been involved in contentious litigation, am I wrong?

A. Yes.

Q. Am I wrong?

A. In so many ways I don't even know where to start.

Q. Try.

A. You have an opinion. I disagree with your opinion. The First Amendment gives us both the right to have those opinions, the Second Amendment confirms a right we already have, to bear weapons for the purpose of self-defense.

Q. Okay. But let's get back to your answer. I'm not really seeing where there's any expressed or implied threat anywhere in your application. I would like you to explain it to me.

A. I drove down the freeway today and, apparently, sheriff's deputies involved in road rage incidents pull out their service weapons and return fire or open fire on people, so I was impliedly threatened by driving here today. There's a gentleman sitting in a secured building with a firearm on his side. I'm not aware of any present threat to anybody's life, especially in a secured building, or the need for that. Implied threats exist all over the place.

I'm not quite sure what you're looking for. I'm involved in a number of things. I don't think the gentleman that shot the attorney in Fresno last week previously stated an intent to shoot her or her actions probably would have been very different. I don't believe anybody told the guy in Rolling Hills they were going to sneak up behind his car and shoot him in the head. Did the implied threat exist beforehand, I believe it absolutely does.

Q. Well, let's focus on you and not them, because they're not in this litigation and you are.

A. You're right, because they're dead.

Q. Right.

A. Attorneys involved in contentious litigation who were shot by counterparts and are dead in California recently, yes, that's an implied threat.

Q. So let's focus on you and not them, okay?

A. Okay.

Q. You're saying that you feel there are implied threats everywhere, every time you step outside there's implied threats?

A. I think even without stepping outside, but I also don't think that has any bearing whatsoever on this litigation or whether or not the city's policy violates my constitutional rights.

Q. How does it not have any bearing on that?

A. How does it? Do you have a policy that violates the Second Amendment or not? I believe your policy does, and I've set forth paperwork showing why it does and provided you with case authority. You apparently believe that it does not, and that's why we are involved in litigation. It has nothing to do with whether or not somebody's actually chasing me down the street. I've made it very clear to you that there have been no expressed threats; however, I'm involved in a great deal of activities that I believe put me at increased risk

if that were even required. I don't think it is. I think most states, 43 of them, half the counties in this state don't even require an applicant to show any short of threat. All they have to say is "I would like to defend myself, exercise my Second Amendment right" and they're permitted to do so.

Q. Are you done?

A. Yes.

Q. So if you are not seeking just a definition of self-defense I'm still not clear what you're seeking. You keep talking about how our policy is unconstitutional and how policy is violating your Second Amendment rights and 43 other states accept self-defense, as well as half the counties in this state, but you don't believe that's the appropriate standard, is not self-defense?

A. I'm not a politician, I'm not a legislature. I do know that the politicians in L.A. County are currently taking steps to ban exposed open carry of firearms, leaving the only available remedy in this city concealed carry. I know that state legislatures are taking steps to ban open carry, leaving the only remedy in the state concealed carry.

Q. What is your understanding of why your request was denied, your application was denied?

A. Because I did not meet the department policy of good cause, which requires police reports documenting an imminent threat of physical harm.

Q. And have you had any conversations with anyone from the Sheriff's Department that would lead you to believe that the denial was not based on anything but that?

A. No.

Q. Earlier you talked about how you have seen a list of CCW permits issued by the Sheriff's Department, which we talked about off the record, and in conjunction with that question and answer you said that you have seen two applications that -- from individuals who were on the Sheriff's Department's list; is that correct?

A. Yes.

Q. Who are those two individuals?

A. Peter McNulty and Nanette James.

Q. Is that N-a-n-e-t-t-e?

A. Yes.

Q. Now, Peter McNulty is someone you used to work with, correct?

A. Yes.

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

I, LEIGHA D'ERRICO, Certified Shorthand Reporter, Certificate Number 11199, for the State of California, hereby certify:

The foregoing proceedings were taken before me at the time and place therein set forth, at which time the deponent was placed under oath by me;

The testimony of the deponent and all objections made at the time of the examination were recorded stenographically by me and were thereafter transcribed;

The foregoing transcript is a true and correct transcript of my shorthand notes so taken;

I further certify that I am neither counsel for nor related to any party to said action nor in any way interested in the outcome thereof.

In witness whereof, I have hereunto subscribed my name this 3rd day of March, 2011.

Leigha D'Errico

EXHIBIT D

LOS ANGELES COUNTY SHERIFF'S DEPARTMENT
2009 ARREST SUMMARY
ADULTS

	Felony			Misdemeanor/Noncriminal			Adults Total
	Male	Female	Total	Male	Female	Total	
REGION I	**11,653**	**3,205**	**14,858**	**22,221**	**7,417**	**29,638**	**44,496**
Altadena Station	254	71	325	1,263	383	1,646	1,971
Crescenta Valley Station	169	37	206	396	91	487	693
East Los Angeles Station	2,300	396	2,696	3,067	657	3,724	6,420
Lancaster Station	2,873	900	3,773	7,039	2,879	9,918	13,691
Malibu/Lost Hills Station	599	158	757	1,419	360	1,779	2,536
Palmdale Station	2,465	777	3,242	5,127	1,925	7,052	10,294
Santa Clarita Valley Station	1,612	484	2,096	2,021	602	2,623	4,719
Temple Station	1,381	382	1,763	1,889	520	2,409	4,172
REGION II	**14,167**	**3,328**	**17,495**	**15,664**	**3,885**	**19,549**	**37,044**
Avalon Station	55	5	60	108	19	127	187
Carson Station	1,330	454	1,784	2,500	742	3,242	5,026
Century Station	5,387	1,213	6,600	5,134	894	6,028	12,628
Community College Bureau	39	11	50	36	7	43	93
Compton Station	3,096	791	3,887	2,597	900	3,497	7,384
Lennox Station	2,946	555	3,501	2,139	510	2,649	6,150
Lomita Station	254	84	338	623	215	838	1,176
Marina del Rey Station	242	79	321	566	211	777	1,098
West Hollywood Station	818	136	954	1,961	387	2,348	3,302
REGION III	**9,236**	**2,379**	**11,615**	**16,135**	**4,178**	**20,313**	**31,928**
Cerritos Station	279	132	411	415	216	631	1,042
Industry Station	1,963	463	2,426	4,288	1,023	5,311	7,737
Lakewood Station	2,421	666	3,087	3,199	919	4,118	7,205
Norwalk Station	1,962	472	2,434	2,739	769	3,508	5,942
Pico Rivera Station	1,174	317	1,491	2,401	576	2,977	4,468
San Dimas Station	831	192	1,023	1,727	396	2,123	3,146
Walnut/Diamond Bar Station	606	137	743	1,366	279	1,645	2,388
OFFICE OF HOMELAND SECURITY Transit Services Bureau	**1,124**	**170**	**1,294**	**6,519**	**1,571**	**8,090**	**9,384**
Metrolink	65	24	89	204	34	238	327
Light Rail/Bus	1,059	146	1,205	6,315	1,537	7,852	9,057
SPECIALIZED UNITS	**870**	**197**	**1,067**	**2,038**	**395**	**2,433**	**3,500**
DEPARTMENT TOTAL	**37,050**	**9,279**	**46,329**	**62,577**	**17,446**	**80,023**	**126,352**

EXHIBIT E

DECLARATION OF ROLF EMBOM

I, ROLF EMBOM, declare as follows:

1. I am the Section Manager for the Los Angeles County Internal Services Department, Information Support Services Division, Client-Server Section. I have personal knowledge of the facts set forth herein, except as to those stated on information and belief and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

2. One of the regular responsibilities of my section is to operate and maintain the criminal records system for Los Angeles County. One of the systems we operate and maintain is the Consolidated Criminal History Reporting System. I am readily familiar with the maintenance and operation of this system, as well as the procedures, policies, and practices related to its maintenance and function.

3. We created a computer program to ascertain from our records the number of adults arrested by the Los Angeles County Sheriff's Department (LASD) who had prior felony convictions in the years 2008-2010. Our inquiry revealed the following. For 2008, there were 24,542 adults arrested by the LASD with prior felony convictions. For 2009, there were 23,001 adults arrested by the LASD with prior felony convictions. For 2010, there were 26,304 adults arrested by the LASD with prior felony convictions.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on April 8, 2011, at , Cerritos, California.

ROLF EMBOM

HOA.783184.1