

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION FOUR

No. A115018

PAULA FISCAL, LARRY P. BARSETTI, REBECCA KIDDER, DANA
K. DRENKOWSKI, JOHN CANDIDO, ALAN BYARD, ANDREW
SIRKIS, NATIONAL RIFLE ASSOCIATION, SECOND AMENDMENT
FOUNDATION, CALIFORNIA ASSOCIATION OF FIREARM
RETAILERS, LAW ENFORCEMENT ALLIANCE OF AMERICA, and
SAN FRANCISCO VETERAN POLICE OFFICERS ASSOCIATION

Plaintiffs-Respondents,
vs.

THE CITY AND COUNTY OF SAN FRANCISCO,
SAN FRANCISCO POLICE CHIEF HEATHER FONG in
her official capacity and SAN FRANCISCO POLICE DEPARTMENT,
and Does 1-25,

Defendants-Appellants.

APPLICATION OF THE PINK PISTOLS
TO FILE AMICUS CURIAE BRIEF;
[PROPOSED] AMICUS CURIAE BRIEF
IN SUPPORT OF RESPONDENTS

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 **COPY**

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PAGE(S)

STATE CASES

Seelig v. Infinity Broadcasting Corp.,
(2002) 97 Cal.App.4th 798 6

STATUTES & RULES

Evidence Code Section 452 6

OTHER REFERENCES

Akron L. Rev. 113 (2005) 16

American Journal of Criminal Law 113 (1991) 26

Anthony Braga, Anne M. Piehl & David M. Kennedy, "Youth
Homicide in Boston: An Assessment of the Supplementary
Homicide Report Data," 3 HOMICIDE STUDIES 277 (1999) 18

Anthony A. Braga, Jack McDevitt, & Glenn L. Pierce,
"Understanding and Preventing Gang Violence: Problem
Analysis and Response Development in Lowell, MA," 9
Police Q. 20-46 (2006) 19

Charles F. Wellford, John V. Pepper, and Carol V. Petrie
(eds.), Firearms and Violence: a Critical Review
(National Academy of Sciences, 2004) 30

Chester L. Britt, et al, "A Reassessment of the D.C.
Gun Law: Some Cautionary Notes on the Use of
Interrupted Time Series Designs for Policy Impact
Assessment," 30 Law & Soc. Rev. 361-379 (1996) 22

Criminal Victimization in Seventeen Industrialised
Countries in Criminal Victimization in Comparative
Perspective: Results from the International Crime

TABLE OF AUTHORITIES CONTINUED

	PAGE(S)
Victims Survey 1989-2000 (2002)	9
Daly, Statement of Supervisor Chris Daly on Judge Warren's Ruling on Proposition H (June 12, 2006) < http://www.sfgov.org/site/bdsupvrs_page.asp?id=40857 >	4
Daniel Polsby & Don B. Kates, "American Homicide Exceptionalism," 69 U. Colo. L. Rev. 969, 984-88 (1998)	7
David B. Mustard, "Culture Affects Our Beliefs About Firearms, But Data Are Also Important," 151 U. Penn. L. Rev. 1387, 1391 (2003)	25
David Kennedy & Anthony Braga, "Homicide in Minneapolis: Research for Problem Solving," 2 HOMICIDE STUDIES 263-290 (1998)	17
Dean G. Rojek, "The Homicide and Drug Connection," p. 135 in Paul H. Blackman, et al., THE VARIETIES OF HOMICIDE AND ITS RESEARCH (F.B.I. Academy, 2000)	18
Don B. Kates, "The Limits of Gun Control: A Criminological Perspective"	14
Don B. Kates & Gary Mauser, "Would Banning Guns Reduce Murder and Suicide: A Review of International and Some Domestic Evidence"	11
Faderman, Odd Girls and Twilight Lovers: A History of Lesbian Life in Twentieth Century America (1992)	2
FBI, Uniform Crime Reports (2001)	2
"First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws" (CDC, 2003) < www.cdc.gov/mmwr/preview/mmwrhtml/rr5214a2.htm	30

TABLE OF AUTHORITIES CONTINUED

	PAGE(S)
Frank J. Vandall "The Firearms Sellers' Immunity Bill,"	38
Franklin Zimring & Gordon Hawkins, the Citizen's Guide to Gun Control ch. 4 (1987)	26
Gabrielle Salfati & Evangelos Haratsis, "Greek Homicide: A Behavioral Examination" 5 Homicide Studies 335 (2001)	13
Gary Kleck & Don B. Kates, ARMED: NEW PERSPECTIVES ON GUN CONTROL 20-21 (2001)	17
Gerald D. Robin, Violent Crime and Gun Control (Academy of Criminal Justice Sciences: 1991)	17
Guns Don't Die, People do, by then-Handgun Control, Inc. Chairman Nelson "Pete" Shields at p. 124-5 (1981)	26
Gus G. Sentementes , "Patterns Persist in City Killings," Baltimore Sun, January 1, 2007	17
Hans Toch & Alan J. Lizotte, "Research and Policy: The Case of Gun Control", in Psychology and Social Policy, edited by Peter Sutfeld and Philip Tetlock (1992)	25, 26
Joseph F. Sheley & James D. Wright, in the Line of Fire: Youth, Guns and Violence in America 63 (1995)	29
Independent News: January 15, 2002 "Police Move to Tackle Huge Rise in Gun Crime	23
J. Crim. L. & Criminol. 188 (1995)	28
James B. Jacobs, Can Gun Control Work 120 (Oxford University Press, 2002)	14, 27

TABLE OF AUTHORITIES CONTINUED

	PAGE(S)
James D. Wright & Peter Rossi, <i>Armed and Considered Dangerous: a Survey of Felons and Their Firearms</i> , chapter 7 (1986)	29
Jo Craven McGinty, "New York Killers, and those killed, by the numbers," <i>N.Y. Times</i> , April 28, 2006.	17
John Lott, <i>More Guns, less Crime</i> (University of Chicago Press, 2000)	12
John van Kesteren, et al., <i>Criminal Victimization in 17 Industrialised Countries</i> (2001).	9
John van Kesteren & Martin Rindlisbacher: "Guns, Violent Crime, and Suicide in 21 Countries," 43 <i>Canadian J. of Criminology</i> 429-448 (2001).	10
Jungyeon Tark & Gary Kleck, "Resisting Crime: The Effects of Victim Actions on the Outcomes of Crimes"	28
Karl P. Adler, et al. "Firearms Violence and Public Health: Limiting the Availability of Guns," 271 <i>JAMA</i> 1281 (1994)	20
Kathryn E. Moracco, Carol W. Runyan, & John D. Butts, "Femicide in North Carolina, 1991-1993," 2 <i>Homicide Studies</i> 422-446 (1998)	20
Lance Stell, "Self Defense and Handgun Rights"	26, 28
Lawrence Southwick, "Do Guns Cause Crime? Does Crime Cause Guns? A Granger Test," 25 <i>Atlantic Economic J.</i> 256 (1997)	8
Lawrence Southwick, "Self-Defense with Guns: The Consequences," 28 <i>J. Crim. Justice</i> 351-370 (2000)	28

TABLE OF AUTHORITIES CONTINUED

	PAGE(S)
Linda Gorman & David B. Kopel, "Self-defense: The Equalizer," 15 Forum for Applied Research and Public Policy 92 (2000).	5
London Times, Jan. 16, 2000: "Killings Rise As 3 Million Illegal Guns Flood Britain"; October 13, 2002: "Murder rate soars to highest for a century"; Jan. 9, 2003	23
Marvin E. Wolfgang, "A Tribute to a View I Have Opposed"	28
Matthew Yeager, et al., How Well Does the Handgun Protect You and Your Family?	26
Murray A. Straus, "Domestic Violence and Homicide Antecedents," 62 Bulletin of the N.Y. Academy of Medicine 446, 454, 457 (1986) and "Medical Care Costs of Intrafamily Assault and Homicide," 62 Bulletin of the N.Y. Acad. Of Med. 556 (1986)	19
New Statesman, "The British Become Trigger Happy," Nov. 5, 2001	23
Paige Hall-Smith et al., "Partner Homicide in Context," 2 Homicide Studies 400 (1998)	19
Philip Cook, et al. "Criminal Records of Homicide Offenders," 294 JAMA 538-601 (2005).	18
Punch, "Britain's Tough Gun Control Laws Termed Total Failure: Land of Hope and Gunrunning," May 3-16, 2000	23
Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws" (CDC, 2003) www.cdc.gov/mmwr/preview/mmwrhtml/rr5214a2	30, 31

TABLE OF AUTHORITIES CONTINUED

	PAGE(S)
Reuters (London) Jan. 9, 2003: "Gun crime soars in Britain"	23
Roger Lane, MURDER IN AMERICA: A HISTORY (Ohio U. Press, 1997)	18
Schafer & Navarro, The Seven-Stage Hate Model: The Psychopathology of Hate Groups, 72:3 FBI L. Enforcement Bull.(March, 2003)	2, 3
Small Arms Survey 2003 (Oxford U. Press 2003)	11
Swersey and E. Enloe, HOMICIDE IN HARLEM (Rand 1975)	18
Swigonski, Mama, Ward, Eds., From Hate Crimes to Human Rights (2001)	2
Targeting Guns	7, 9,10
The Prevalence and Nature of Self-Defense with a Gun," 86 J. of Crim. L. & Criminol. 150 (1995)	28
Violence, Guns, and Drugs: A Cross-Country Analysis, 44 J. Law & Econ. 615 (2001)	13
"Violent Crime is Out of Control" July 21, 2005, Yahoo! New UK; March 13, 2005 News Telegraph	23
Vital Statistics Report for 2003 v. 54 # 13 (April 19, 2006)	7
Vital Statistics Report for 2000 to Vital Statistics Report for 1991	7
Wade C. Myers & Kerrilyn Scott, "Psychotic and Conduct Disorder Symptoms in Juvenile Murderers," 2 Homicide Studies 160 (1998)	21

Amicus Curiae respectfully moves this court, pursuant to California Rules of Court, Rule 8.200 (c)(1), for leave to file the concurrently submitted brief in support of Respondents.

INTEREST OF THE AMICUS CURIAE

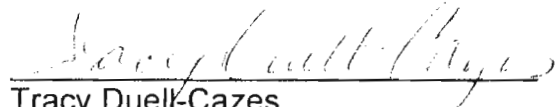
Pink Pistols is an unincorporated association established in 2000 to advocate for the interests of gay, lesbian, bisexual, and transgendered (hereinafter GLBT) firearms owners, with specific emphasis on self-defense issues. There are 49 Pink Pistols chapters, in 32 states. Membership is open to anyone who supports the rights of GLBT firearms owners, regardless of their sexuality.

REASONS FOR FILING

Amicus submits this brief in order to highlight the effects of Proposition H on the GLBT community. Specifically, amicus submit this brief to show that firearms are uniquely suited to protecting the GLBT community from physical attacks and to refute the assumption of Proposition H's proponents that fewer firearms would lead to a reduction in crime.

Dated: June 22, 2007

LAW OFFICE OF TRACY DUELL-CAZES


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AMICUS CURIAE BRIEF

Pink Pistols is keenly aware of the long history of hate crimes and violence directed at the GLBT community, and of police harassment of, and indifference to, this community. Indeed, the genesis of the modern gay rights movement involved resistance to police harassment of patrons of a gay bar – The Stonewall Inn in New York City - in 1969. (See Faderman, ODD GIRLS AND TWILIGHT LOVERS: A HISTORY OF LESBIAN LIFE IN TWENTIETH CENTURY AMERICA 194-195 (1992).) The GLBT community thus has historical reason to expect that police will not diligently protect its members from hate crimes.

The right to carry firearms for self-defense has particular relevance for its members because GLBT persons are frequent victims of hate crimes. (FBI, UNIFORM CRIME REPORTS (2001) at 59-60 (14.3 % of hate crimes reported to FBI in 2001 based on sexual orientation).)

Hate crimes based on sexual orientation are the most violent bias crimes. (Swigonski, Mama, Ward, Eds., FROM HATE CRIMES TO HUMAN RIGHTS (2001) at 2.) Members of hate groups, almost without exception, attack in groups, and target single victims. (Schafer & Navarro, The Seven-Stage Hate Model: The Psychopathology of

Hate Groups, 72:3 FBI L. ENFORCEMENT BULL. 1, 4 (March, 2003).)

This means that a lone unarmed member of Pink Pistols is unlikely to escape an attack by a hate group without serious injury.

Many bias attacks involve broken bottles, baseball bats, blunt objects, screwdrivers, and belt buckles. (*Id.* At 4-5.) Firearms are less common because they do not allow the hate group to express their violence personally. (*Id.* at 5.) A Pink Pistols member who is lawfully carrying a firearm or who possesses it at home, may be able to prevent an attack by displaying and using the firearm, if necessary, in compliance with local self-defense law.

It is vital for members of the GLBT community to be able to lawfully defend themselves against would-be “gay bashers.” The ordinance challenged in this case places at risk an individual’s right to possess a firearm for self-defense, and thus places the very lives of Pink Pistol’s members at risk.

Underlying Proposition H is the widespread quasi-religious faith that the more guns (particularly handguns) there are, the more violence and death there will be and, concomitantly, the fewer guns, the fewer deaths.¹ We call this a quasi-religious faith for though

¹ This can be seen in Supervisor Chris Daly’s reaction to the trial court’s ruling, posted on his website, wherein Supervisor Daly suggests that Judge Warren has the blood of some 50 murder victims on his hands: “I

there are scores of relevant studies in the United States and elsewhere, none bears out the anti-gun mantra that more guns in a society equals more violence and death, and fewer guns equals less. If there is any observable correlation it is that nations with more gun ownership generally have *lower* violent crime and murder rates than nations with fewer guns. (See Table and explanation for this correlation given in section 2, *infra*.)

There are endless varieties of deadly instruments in every environment. The incidence of these instruments being used in violence is determined by basic socio-cultural and economic factors, not by the mere availability of any particular lethal instrument. For aggressive purposes firearms are similar to other weaponry. It is only in defense that firearms are unique. Of all weapons, guns alone allow the weak to resist aggression by the strong:

Reliable, durable, and easy to operate, modern firearms are the most effective means of self-defense ever

am very disappointed that Judge James Warren delayed his ruling by months, asking the City to suspend enforcement while almost 50 people were murdered on our streets. Given this disregard for the voters of San Francisco, it's no surprise that Warren would strike down Proposition H. Passed in November 2005 by 58% of San Francisco voters, Proposition H will reduce the unacceptable homicide number of gun-related homicides in our City." (Daly, STATEMENT OF SUPERVISOR CHRIS DALY ON JUDGE WARREN'S RULING ON PROPOSITION H (June 12, 2006) <http://www.sfgov.org/site/bdsupvrs_page.asp?id=40857> as of May 24, 2007).)

devised. They require minimal maintenance and, unlike knives and other weapons, do not depend on an individual's physical strength for their effectiveness. Only a gun can allow a 110 pound woman to defend herself against a 200 pound man.²

In fact, each year guns are used three to six times more often to repel criminals than by criminals in attempting crimes.³

Pink Pistols take great exception to Appellants' implication that those who oppose Proposition H are insensitive to victims of violent crime. (AOB at p. 1 (arguing that this appeal is actually about Deanne Bradford, Brian Williams, Jr., and other victims of senseless criminal attacks.) This implication is an improper attempt to make up for Appellants' indefensible legal position through appeal to emotion. It is also an oversimplification of San Francisco's violent crime problem, as can be seen in local media coverage of Brian Williams' death and his mother's complaints about the City's own policies with which she and many local residents have taken issue.⁴

² Linda Gorman & David B. Kopel, "Self-defense: The Equalizer," 15 FORUM FOR APPLIED RESEARCH AND PUBLIC POLICY 92 (2000).

³ See statistics and discussion in section 5, *infra*.

⁴ See, e.g., Joan Walsh's October 2004 article in San Francisco Magazine, "Getting Away with Murder" examining San Francisco's failure to address violent crime, which includes a section on Brian Williams and his mother, Cathy Tyson (one of the City's declarants). The article nowhere suggests that taking guns away from law abiding citizens would improve the situation. Rather, the article suggests that the City's alarming murder rate is the result of the local political situation, in which the District

DISCUSSION

1. **Criminological Evidence Discredits the Mantra That More Guns = More Violence and Death: American Data.**

We start with the United States, for it has the longest, most extensive data on gun ownership and murder rates. The earliest reliable gun ownership data begin right after WWII. In 1946, the civilian gunstock was c. 48.5 million and the murder rate was six per 100,000 population. Fifty-five years later in 2000, civilian gun ownership had quintupled (to 263.8 million) but the murder rate had increased only one tenth of one percent (6.1 per 100,000 population).⁵ So much for the quasi-religious faith that a vast growth

Attorney's office is reluctant to prosecute criminal acts. The article notes specifically that: 1) "A 2002 *Chronicle* investigation found that while New York cleared almost 80 percent of its homicides from 1996 to 2000, San Francisco barely cleared half." 2) "The SFPD asserts that police can't make a difference if the city won't let them put bad guys in jail." 3) ". . . the D.A.'s office charges cases only when it believes the evidence shows the suspect is guilty 'beyond a reasonable doubt' while other counties charge based upon a lesser standard." and 4) According to Cathy Tyson, the SFPD bungled the investigation of her son's murder almost immediately. There is no mention of the State's "clearly inadequate firearms regulation[s]" as being the cause of Brian Williams' death or the focus of Ms. Tyson's grievances, as the City suggests.

Ms. Walsh's article is attached hereto as an exhibit. Periodicals may be considered under Evidence Code section 452 (h). (*Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798, 808, fn. 5.)

⁵ The 1946 gunstock figures come from Gary Kleck, *TARGETING GUNS: FIREARMS AND THEIR CONTROL* 96 (1997) which gives figures for American gun ownership through 1994. Subsequent figures were supplied us by Professor Kleck. The 1946 Public Health Service murder rate comes

in civilian gunstock will produce concomitant (or any) increase in murder.

Moving up to the 2000's, each year three million or more guns have been added to the civilian gunstock – a total of c. 9 million more guns as of year-end 2003. Yet our murder rate over those years remained 6.1 per 100,000 pop.⁶ These 2000's data follow a dramatic increase in the gunstock during the 1990s – a decade in which murder *decreased* dramatically. In 1990-1999, American gun ownership increased by over 47.4 million guns, yet gun murders fell from 7 per 100,000 pop. to 3.9 yearly.⁷ In their turn, the 1990's culminated a thirty-year fall in American murder rates: gun ownership more than doubled but murder *decreased* by a third.⁸

Such comparisons may be multiplied ad infinitum. But no matter how one looks at them, the figures discredit the mantra's

also from TARGETING GUNS (p. 362). The 2000 murder figure comes from the *Vital Statistics Report* for 2000.

Kleck's and all U.S. murder rate data used herein derive from the Public Health Service whose data are preferable to F.B.I. figures which are less comprehensive.

⁶ *Vital Statistics Report* for 2003 v. 54 # 13 (April 19, 2006), p. 78.

⁷ Compare *Vital Statistics Report* for 2000 to *Vital Statistics Report* for 1991.

⁸ See discussion in Daniel Polsby & Don B. Kates, "American Homicide Exceptionalism," 69 U. Colo. L. Rev. 969, 984-88 (1998).

prediction that multi-million increases in the civilian gunstock will produce concomitant (or any) increases in murder. That did not occur with the c. 9 million gunstock increase in the early 2000's, nor the 47.4 million gunstock increase in the 1990s nor the 145 million gunstock increase over the 30 years 1973-2002 nor the 224.5 million gun increase over the years 1946-2002. Extended study of the data led Professor Southwick to conclude that, while rising crime rates cause frightened citizens to acquire guns, rises in the civilian gunstock did *not* increase violent crime.⁹

It should be noted that American murder rates have fluctuated substantially since 1946. What none of those fluctuations did, however, was fulfill the mantra's prediction that vast increase in guns increases murder. The standard work on the criminology of firearms summarizes the data:

The per capita accumulated stock of guns (the total of firearms manufactured or imported into the United States, less exports) has increased in recent decades, yet there has been no correspondingly consistent increase in either total or gun violence... About half of the time gun stock increases have been accompanied by violence decreases, and about half the time [they have been] accompanied by violence increases, just what one would expect if *gun levels had*

⁹ Lawrence Southwick, "Do Guns Cause Crime? Does Crime Cause Guns? A Granger Test," 25 Atlantic Economic J. 256 (1997)

*no net impact on violence rates.*¹⁰

2. Foreign Criminological Evidence Discredits the More Guns = More Death; Fewer Guns = less Death Mantra.

For decades the mantra was promoted by comparison of American violent crime rates to those of a few nations specially selected for having both severely restrictive gun laws and low crime. But this ended in the 1990's as England, Canada and Australia came to have the highest violent crime rates in the industrialized world – double American rates¹¹ – despite decades of ever more restrictive controls culminating in the outright confiscation of nearly a million guns from those nations' law abiding, responsible adults.

Criminological analyses of large numbers of neutrally-chosen nations further discredit the mantra. Comparing "homicide and suicide mortality data for thirty-six nations (including the United States) for the period 1990-1995" to gun ownership levels showed "no significant (at the 5% level) association between gun ownership

¹⁰ TARGETING GUNS, *supra* at 18, emphasis added.

¹¹ John van Kesteren, et al., *Criminal Victimization in 17 Industrialised [sic] Countries* (2001). The surveys involved (the International Crime Victim Surveys) were conducted under the auspices of the governments of each nation surveyed and the general supervision of the University of Leiden and the Dutch Ministry of Justice. Esther Borden, et al. *Criminal Victimization in Seventeen Industrialised Countries* in *CRIMINAL VICTIMIZATION IN COMPARATIVE PERSPECTIVE: RESULTS FROM THE INTERNATIONAL CRIME VICTIMS SURVEY 1989-2000* at pp. 13, 15-16 (2002).

and the total homicide rate.”¹² Paralleling this is a later European study of data from twenty-one nations in which “no significant correlations [of gun ownership levels] with total suicide or homicide rates were found.”¹³ In other words, nations with more guns did *not* have higher murder rates than nations with fewer guns as the mantra predicts. See also the Table below comparing gun ownership and murder rate data for all European nations on which we could find the data. Again, these data show no correlation of nations with more guns having higher murder rates. The tendency is actually almost opposite: the annual murder rates for the nine nations having 16,000- 39,000 guns per 100,000 pop. average out to 1.17 while the murder rates for the nine nations having just 5,000 or fewer guns average out to 5.5, almost five times higher.

¹² TARGETING GUNS, *supra*, p. 254.

¹³ Quoted from the Abstract to Martin Killias, John van Kesteren & Martin Rindlisbacher: “Guns, Violent Crime, and Suicide in 21 Countries,” 43 *Canadian J. of Criminology* 429-448 (2001).

TABLE: EUROPE – GUN OWNERSHIP & MURDER RATES¹⁴

[rates given are per 100,000 people]

<u>NATION</u>	<u>MURDER RATE</u>	<u>GUN OWNERSHIP</u>
Russia	20.54 [2002]	4,000
Luxembourg	09.01 [2002]	c. 0
Moldova	07.81	1,000
Slovakia	02.63	3,000
Romania	02.50	300
Macedonia	02.29	16,000
Hungary	02.22 [2003]	2,000
Finland	01.98 [2004]	39,000
Poland	01.79 [2003]	1,500
Slovenia	01.79	5,000
Cz. Republic	01.69	5,000
France	01.65 [2003]	30,000

¹⁴ The data for this table come from the data for the various tables in Don B. Kates & Gary Mauser, "Would Banning Guns Reduce Murder and Suicide: A Review of International and Some Domestic Evidence," forthcoming c. 4/15/07 in the Harvard Journal of Law & Public Policy. The table above covers all European nations for which we have data on gun ownership and murder rates. The gun ownership data come from the Graduate Institute of International Studies' SMALL ARMS SURVEY 2003 (Oxford U. Press 2003) at pp. 64 and 65, tables 2.2 ("Known Civilian Firearms in the European Union") and 2.3 ("Known Civilian Firearms in Other European Countries").

For twelve of the nations in this table, the murder rate data come from the pamphlets "JURISTAT: Homicide in Canada" (Canadian Centre for Justice Statistics) for the years 2001-04. Each of these pamphlets has a table listing murder rates for various nations. (The nations covered vary from year to year and the pamphlets offer no explanation why any particular nation is covered.) In each case the date of the pamphlet is specified after the murder rate in the Table.

As to the other six nations listed in the Table the murder rate data are from the Seventh United Nations Survey of Crime Trends and Operations of Criminal Justice Systems covering the period 1998 - 2000 (United Nations Office on Drugs and Crime, Centre for International Crime Prevention).

<u>NATION</u>	<u>MURDER RATE</u>	<u>GUN OWNERSHIP</u>
Denmark	01.21 [2003]	19,000
Greece	01.12 [2003]	11,000
Switzerland	00.99 [2003]	16,000
Germany	00.93 [2003]	30,000
Norway	00.81 [2001]	36,000
Austria	00.80 [2002]	17,000

Why would comparison of large numbers of nations show those with few guns actually tending to have higher violence rates? We suggest the answer is political, not criminological. Every environment abounds with potentially lethal instruments. But many people think the major cause of violence is the mere availability of one such instrument, firearms. So in nations with high and rising violence rates, governments tend to ban guns as a quick fix rather than focusing on the fundamental socio-cultural and economic factors which are the actual determinants of violence. Since banning guns does not stem lethal violence, nations with high and rising violence come to also have gun bans, while nations with low violence generally allow gun ownership.¹⁵ “Many countries such as

¹⁵ We recognize the substantial evidence that confrontation crime has been greatly reduced in c. 40 states by highly publicized enactments of laws requiring that law abiding, responsible adult applicants be given licenses to carry handguns. See, e.g., John Lott, *MORE GUNS, LESS CRIME* (University of Chicago Press, 2000) and papers in the Oct. 2001 issue of the *JOURNAL OF LAW & ECONOMICS*. But that evidence is limited to the U.S., a high crime nation where many potential victims keep and carry

Switzerland, Finland, New Zealand and Israel, have high gun ownership rates and low crime rates, while many other countries have both low gun ownership rates and [either] high or low crime rates.”¹⁶

Our explanation of the contrast of low-violence nations that allow guns with high violence nations which ban them appears especially at the extremes. Handguns are allowed in all the European nations lowest in violence: Switzerland, Germany, Norway and Austria (See Table *supra*.) Contrast those nations’ tiny murder rates (below one per 100,000 population) with those of the handgun banning European nations: Luxembourg (nine times higher), Lithuania and other former Soviet nations (10 or more times higher¹⁷), Russia (20 times higher).¹⁸ The murder rates of those handgun banning nations are not only the highest in Europe by far;

guns for self-protection. It seems implausible that gun ownership severely deters violent crimes in the many foreign nations where violent crime is so rare that, while guns are commonly owned for hunting and collecting purposes, few people seem to keep and carry guns for self-protection.

¹⁶ Lott, *MORE GUNS, LESS CRIME*, *supra*, at 113.

¹⁷ See rates from the 1990s given in Jeffrey A. Miron, “Violence, Guns, and Drugs: A Cross-Country Analysis,” 44 *J. Law & Econ.* 615, 625 ff. (2001).

¹⁸ Information on the gun laws of the nations discussed in the text derives from Seventh United Nations Survey, *supra*.

they also far exceed U.S. murder rates.¹⁹

Once again, murder rates are determined by fundamental socio-economic and cultural factors, not by the mere availability of firearms among the varieties of deadly weapons with which the world abounds. Quoth two European criminologists (quoting a Canadian social scientist):

It was not the presence of the rifle that provoked the homicide: Murderous technology is available everywhere, in every kitchen and every garage; an axe or a knife, a bottle or a car would have accomplished the same end. It is the will to use that technology that is culturally coded... this is what shapes the number of homicidal assaults in a nation.²⁰

Consistent with this are criminological studies of the effects of gun bans on murder and suicide in various areas. Some studies show no effect; in others *gun* deaths declined somewhat but this produced no net benefit, for killings with other instruments just rose to make up the difference.²¹

¹⁹ The latest available U.S. Public Health American murder figures are around six per 100,000. See note 5, *supra*.

²⁰ C. Gabrielle Salfati & Evangelos Haratsis, "Greek Homicide: A Behavioral Examination" quoting Canadian anthropologist Elliott Leyton. 5 *Homicide Studies* 335, 337 (2001).

²¹ TARGETING GUNS, *supra*, ch. 8 (collecting studies), James B. Jacobs, CAN GUN CONTROL WORK 120 (Oxford University Press, 2002) ("if the Brady Act did have the effect of modestly reducing firearms suicides ... this effect was completely offset by an increase of the same magnitude in nonfirearm suicide" resulting in the same number of deaths), Don B. Kates, "The Limits of Gun Control: A Criminological Perspective" p. 65 in Timothy Lytton, ed., SUING THE FIREARMS INDUSTRY: A LEGAL BATTLE AT THE

3. **Disarming Ordinary People Is Pointless since They Don't Commit Violent Crimes.**

It bears emphasis that Prop. H is deliberately designed to disarm *only* law abiding responsible adults. Its section 6 specifies that it is inapplicable to anyone who is barred from owning guns by state law, e.g., convicted felons and violent misdemeanants, juveniles and the insane. Prop. H, like the City's brief, reflects the falsehood that murderers are mostly ordinary people killing because they have ready access to a firearm in a moment of rage. If that were true, murder rates would probably be higher in nations where many people have guns. But it is not true; as discussed above, nations with more guns per capita do not have higher murder rates – and often have lower ones – than do those with fewer guns.²² By the same token, within Canada,²³ “England, America and Switzerland, [the areas] with the highest rates of gun ownership are in fact those with the lowest rates of further violence.”²⁴ The mantra is further refuted by data from a study comparing gun ownership and crime rates in various states: “the [reductive]

CROSSROADS OF GUN CONTROL AND MASS TORTS (Ann Arbor, University of Michigan Press, 2005), Martin Killias, et al. note 11, *supra*.

²² Please review Table, *supra*.

²³ Philip C. Stenning, “Gun Control - A Critique of Current Policy,” 15 Policy Options 15 (1994).

²⁴ Joyce Lee Malcolm, GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE (Cambridge, Harvard: 2002).

effect of gun ownership on crime is quite large: a 1 percent increase in gun ownership correlates with a 4.1% *lower* violent crime rate.”²⁵

Anti-gun advocates, including Prop. H’s authors, and the City’s brief, mischaracterize murder as mostly involving ordinary people who kill because they have access to guns in a moment of rage.²⁶ This is *never* accompanied by citation to a supporting study, there being none. To the contrary, what criminological studies dating back to at least the 1890s invariably show is that: (1) “the vast majority of persons involved in life-threatening violence have a long criminal record with many prior contacts with the justice system”²⁷; (2) “Guns or no guns, ordinary people do not murder . . . Far from being ordinary, [murderers] are extreme social deviants with life histories of crime, violence, substance abuse and/or psychopathology.”²⁸; (3) “Thus homicide – of a stranger or someone known

²⁵ John Lott, *MORE GUNS, LESS CRIME* 115 (U. Of Chicago Press, 2000), emphasis added.

²⁶ See, e.g., a law review article so asserting based on previous unsupported claims by anti gun-advocates – but *without citation to any supporting study*. Frank J. Vandall “The Firearms Sellers’ Immunity Bill,” 38 Akron L. Rev. 113, 118-19 (2005), footnotes 28 and 32. Many more (unsupported) claims that ordinary people murder are chronicled in Don B. Kates, “The Hopelessness of Trying to Disarm the Kinds of People Who Murder,” 12 BRIDGES 313-30 (2005) at 315-16.

²⁷ Delbert S. Elliott, “Life Threatening Violence is *Primarily* a Crime Problem: A Focus on Prevention,” 69 Colo. L. Rev. 1081-1098 at 1093 (1998), collecting studies.

²⁸ “Limits of Gun Control,” *supra*, footnote 18, at 67 (collecting studies).

to the offender – is usually part of a pattern of violence, engaged in by people who are known ... as violence prone.”²⁹

In sum, contrary to Prop H, neither most murderers nor many murderers – nor virtually any murderers – are ordinary people. These things are so established in the literature as to rank as “criminological axioms.”³⁰ Though only 15% of Americans have criminal records,³¹ roughly 90 percent of adult murderers have adult records, with an average adult crime career of six or more years, including four major felonies.³²

These national data dovetail with findings from local studies. For example: “92 percent of [Baltimore] murder suspects had criminal records in 2006”³³; “More than 90% of the killers [in NY City murders 2003-2005] had criminal records.”³⁴; of Illinois murderers in 1991-2000, the great majority

²⁹ Gerald D. Robin, *VIOLENT CRIME AND GUN CONTROL* (Academy of Criminal Justice Sciences: 1991) at p. 47.

³⁰ David Kennedy & Anthony Braga, “Homicide in Minneapolis: Research for Problem Solving,” 2 *HOMICIDE STUDIES* 263-290 (1998).

³¹ Mark Cooney, “The Decline of Elite Homicide,” 35 *Criminology* 381, 386 (1997).

³² Gary Kleck & Don B. Kates, *ARMED: NEW PERSPECTIVES ON GUN CONTROL* 20-21 (2001).

³³ Gus G. Sentementes, “Patterns Persist in City Killings,” *Baltimore Sun*, January 1, 2007.

³⁴ Jo Craven McGinty, “New York Killers, and those killed, by the numbers,” *N.Y. Times*, April 28, 2006.

had prior felony records³⁵; eighty percent of 1997 Atlanta murder arrestees had previously been arrested at least once for a *drug* offense; and 70% had three or more prior drug arrests – all these being independent of their pre-murder records of *other* kinds of crimes.³⁶; a colloquium of 1990s Boston police and probation officers agreed that virtually all juveniles who murder are gang members, though the killing is not necessarily gang-directed, e.g., a gang member, suspecting his girlfriend was unfaithful, strangles her.³⁷; “the great majority of both perpetrators and victims of. [1970s Harlem] assaults and murders had previous [adult] arrests, probably over 80% or more;”³⁸ “Victims as well as offenders [in 1950s and 1960s Philadelphia murders], finally, tended to be people with prior police records, usually for violent crimes such as assault, and both had typically been drinking at the time of the fatal encounter.”³⁹

Several of the more recent homicide studies cited above were

³⁵ Philip Cook, et al. “Criminal Records of Homicide Offenders,” 294 JAMA 538-601 (2005).

³⁶ Dean G. Rojek, “The Homicide and Drug Connection,” p. 135 in Paul H. Blackman, et al., THE VARIETIES OF HOMICIDE AND ITS RESEARCH (F.B.I. Academy, 2000).

³⁷ Anthony Braga, Anne M. Piehl & David M. Kennedy, “Youth Homicide in Boston: An Assessment of the Supplementary Homicide Report Data,” 3 HOMICIDE STUDIES 277, 283-84 (1999)

³⁸ A. Swersey and E. Enloe, HOMICIDE IN HARLEM (Rand 1975) 17.

³⁹ Roger Lane, MURDER IN AMERICA: A HISTORY (Ohio U. Press, 1997) p. 259.

conducted by the Kennedy School at Harvard whose latest study found the great majority of arrested murderers to be known gang members, and almost all to have prior arrests.⁴⁰

Many murders occur within families – but not ordinary families, nor are the murderers ordinary, law abiding adults. “The day-to-day reality is that most family murders are preceded by a long history of assaults” by the perpetrator (the man) upon his mate or other family members.⁴¹ One study of such murders found that “[a] history of domestic violence was present in 95.8%” of cases.⁴² Quotations like the following are a routine feature of domestic homicide studies:

[1] The overriding theme to emerge from these cases was that [domestic] partner homicide is most often the final outcome of

⁴⁰ “Some 95% of homicide offenders, 82% of aggravated gun assault offenders, 47% of homicide victims, and 29% of aggravated gun assault victims were arraigned at least once in Massachusetts courts before they committed their crime or were victimized. Individuals that were previously known to the criminal justice system were involved in a wide variety of offenses and, on average, committed many prior crimes. . . . On average, aggravated gun assault offenders had been arraigned for 12 prior offenses, homicide offenders had been arraigned for 9 prior offenses. . . .” Anthony A. Braga, Jack McDevitt, & Glenn L. Pierce, “Understanding and Preventing Gang Violence: Problem Analysis and Response Development in Lowell, MA,” 9 *Police Q.* 20-46 (2006).

⁴¹ See Murray A. Straus, “Domestic Violence and Homicide Antecedents,” 62 *Bulletin of the N.Y. Academy of Medicine* 446, 454, 457 (1986) and “Medical Care Costs of Intrafamily Assault and Homicide,” 62 *Bulletin of the N.Y. Acad. Of Med.* 556, 557 fn. (1986).

⁴² Paige Hall-Smith et al., “Partner Homicide in Context,” 2 *Homicide Studies* 400, 410 (1998).

chronic women battering.⁴³

[2] [Citing studies from Detroit and Kansas City,] 90% of all the family homicides were preceded by previous disturbances at the same address, with a median of 5 calls per address.⁴⁴

[3] This study reemphasizes the central role of domestic violence as an antecedent to partner femicide.⁴⁵

The only kind of evidence cited to support the mythology that most murderers are ordinary people is that many murders occur between acquaintances and arise from arguments and/or occur in homes.⁴⁶ Those who think these bare facts relevant apparently believe criminals don't have acquaintances or homes or arguments so if murders involve these things, the murderers must be non-criminals. Of the many studies belying this, the broadest analyzed a year's national data on gun murders occurring in homes and between acquaintances; in these killings "the most common victim-offender relationship" was "where *both parties knew one another because of prior illegal transactions.*"⁴⁷

Additional evidence of the extreme aberrance of murderers are

⁴³ Hall-Smith, et al., *supra*, at 411.

⁴⁴ Robin, *supra*, fn. 25, at 47.

⁴⁵ Kathryn E. Moracco, Carol W. Runyan, & John D. Butts, "Femicide in North Carolina, 1991-1993," 2 *Homicide Studies* 422-446 (1998).

⁴⁶ See, e.g. Adler, et al. Correspondence, 272 *JAMA* 1409 (1994), responding to criticism on this point of their article Karl P. Adler, et al. "Firearms Violence and Public Health: Limiting the Availability of Guns," 271 *JAMA* 1281 (1994).

⁴⁷ TARGETING GUNS, *supra*, 236 (emphasis added).

psychological studies finding that 80-100% of juvenile murderers are psychotic or have psychotic symptoms.⁴⁸

In sum, the term “acquaintance homicide” does not refer to murders between ordinary acquaintances. Rather it refers to, for example: drug dealers being killed by competitors or customers; gang members being killed by members of the same or rival gangs; and women being killed by stalkers or abusers who have previously brutalized them. Federal and California law already prohibits guns to such aberrants.⁴⁹

There is no reason to supplement these laws with ordinances banning guns to ordinary, law abiding responsible adults since they virtually never murder. Such adults being far more likely to be crime victims than to commit violent crimes, disarming them is not just useless but counter-productive.⁵⁰

4. Handgun Prohibitions Invariably Fail to Reduce Violence.

Ironically, a prime example is the Washington, D.C. handgun ban

⁴⁸ Wade C. Myers & Kerrilyn Scott, “Psychotic and Conduct Disorder Symptoms in Juvenile Murderers,” 2 *Homicide Studies* 160, 161-63 (1998).

⁴⁹ Current federal law prohibits gun possession by minors, persons previously convicted of domestic violence misdemeanors, or of any felony, or who have been involuntarily committed to mental institutions or by drug addicts. 18 U.S.C. sec. 921ff.; For a summary of the general patterns of federal and state gun laws see *CAN GUN CONTROL WORK?*, *supra*, ch. 2.

⁵⁰ As to the defensive value of firearms – which are used more often in repelling criminals than by criminals in committing crime – see discussion, and criminologists quoted, in section 5 of this brief, *infra*.

referenced in the City's brief. In the five years before that law was enacted, D.C.'s murder rate fell from 37 per 100,000 population to 27. But in the five years after the ban went into effect, the murder rate rose back up to 35. In fact, while crime rates have fluctuated over time, the D.C. murder rate after 1976 has only once fallen below what it was before the handgun ban. Over the ensuing decades, D.C.'s murder rate has been the highest in America excepting the few years when it came in second or third.

Faced with the ban's failure, its defenders claimed it at least had curbed the murder rate. When this proved untrue⁵¹ they offered the excuse that municipal bans are unenforceable in a nation where handguns are legal elsewhere. Note that this excuse admits that local handgun bans like Prop. H are useless. Moreover, its assumption that national bans are enforceable is refuted by the experience of nations having them.

Consider England, where violent crime steadily rose over decades of ever more restrictive controls which culminated in the 1997 ban of handguns and many types of long guns.⁵² Despite confiscation of hundreds of thousands of guns, by 2000 England had the industrialized world's

⁵¹ See Chester L. Britt, et al, "A Reassessment of the D.C. Gun Law: Some Cautionary Notes on the Use of Interrupted Time Series Designs for Policy Impact Assessment," 30 *Law & Soc. Rev.* 361-379 (1996).

⁵² 12 BRIDGES, *supra* (fn. 23) at 317-19.

highest violent crime rates, far surpassing the U.S.⁵³ Today, English news accounts overflow with crime stories melodramatically headlined like those in American news reports.⁵⁴ As Professor Malcolm writes:

When it had no firearms restrictions [19th and early 20th Century] England had little violent crime, while the present extraordinarily stringent gun controls have not stopped the increase in violence or even the increase in armed violence.... Armed crime, never a problem in England, has now become one. Handguns are banned but the kingdom has millions of illegal firearms. Criminals have no trouble finding them and exhibit a new willingness to use them. In the decade after 1957 the use of guns in serious crime increased a hundredfold.⁵⁵

⁵³ Van Kesteren, et al., (Borden) *supra*, n. 11.

⁵⁴ See e.g.: "Violent Crime is Out of Control" July 21, 2005, Yahoo! New UK; March 13, 2005 NEWS TELEGRAPH (quoting a police chief) , "We are Reeling with the Murders; We Are in a Crisis with Major Crime" <<http://news.Telegraph.co.uk>>; April 12, 2005 London Evening Standard "Police fear gun crime explosion."; May 21, 2003 BBC News: "Gun Crimes Growing 'Like Cancer,'" and July 16, 2001 "Handgun Crime 'Up' Despite Ban." See also: PUNCH, "Britain's Tough Gun Control Laws Termed Total Failure: Land of Hope and Gunrunning," May 3-16, 2000; NEW STATESMAN, "The British Become Trigger Happy," Nov. 5, 2001; and Reuters (London) Jan. 9, 2003: "Gun crime soars in Britain", and the following articles for the dates indicated a) from the LONDON TIMES, Jan. 16, 2000: "Killings Rise As 3 Million Illegal Guns Flood Britain."; October 13, 2002: "Murder rate soars to highest for a century"; Jan. 9, 2003: "Handgun Crime Rises by 46% [in 2002]; b) from the INDEPENDENT NEWS: January 15, 2002 "Police Move to Tackle Huge Rise in Gun Crime; 27 December 2002 "Firearms amnesty to tackle surge in gun crime"; c) from the LONDON TELEGRAPH: 25 August, 1999: "[Home Secretary Jack] Straw Braced for 20% Increase in Crime Rate"; 17 July 2001, "Gun crime rises despite Dunblane pistol ban"; 17 August 2001, "Gun killings double as police claim progress"; 3 January 2002, "Police fear crime explosion as school-age muggers graduate to guns"; Feb. 24, 2002, "Gun crime trebles as weapons and drugs flood British cities."

⁵⁵ Joyce Lee Malcolm, GUNS AND VIOLENCE: THE ENGLISH EXPERIENCE (Harvard, 2002) at pp. 209 and 219.

Banning handguns has proved unenforceable even in an island nation like England; as its National Crime Intelligence Service 2002 Report laments, while “Britain has some of the strictest gun laws in the world [i]t appears that anyone who wishes to obtain a firearm [illegally] will have little difficulty in doing so.”⁵⁶

As to continental Europe, the nations that ban handguns all have distinctively higher murder rates than those allowing handguns, e.g., Austria, Germany, Switzerland and Norway, all of which have murder rates below one per 100,000 population. In contrast, handgun banning Luxembourg’s is nine per 100,000 and the murder rates of Russia and the former USSR republics like Belarus and Lithuania are 10 to 20 per 100,000 pop.⁵⁷

Again we are not suggesting that banning handguns causes high murder rates. Our explanation is that nations with high and growing violent violence turn to banning guns as a quick fix solution. But since that does not reduce violence the result is an artificial correlation of high crime nations tending to have strict gun controls while low crime nations tend to be far less stringent.

⁵⁶ Quoted in 12 BRIDGES *supra* (fn. 23) at 319.

⁵⁷ See the Table, *supra*, and notes 12-16, *supra*.

5. Self-defense Works – and Handguns Are Far More Often Used to Repel Criminal Attack than by Criminals to Commit Crimes.

“When I started my research on guns in 1995, I passionately disliked firearms and fully accepted the conventional wisdom that increasing the gun-ownership rate would necessarily raise violent crime and accidental deaths” writes Professor Mustard. “My views on this subject were formed primarily by media accounts of firearms, which unknowingly to me systematically emphasized the costs of firearms while virtually ignoring their benefits. . . . It is now over six years since I became convinced otherwise and concluded that laws allowing law abiding responsible adults to carry concealed handguns reduce violent crime and have no impact on accidental deaths.”⁵⁸

This disavowal of his earlier views places Professor Mustard in distinguished company. Hans Toch of the School of Criminal Justice at the State University of New York (Albany) has long ranked among leading American criminologists. As a consultant to the 1960s Eisenhower Commission he had joined in its support for national handgun prohibition and “conclusion ‘that... reducing the availability of the handgun *will* reduce firearms violence.’”⁵⁹ Thirty-some years later Professor Toch repudiated

⁵⁸ David B. Mustard, “Culture Affects Our Beliefs About Firearms, But Data Are Also Important,” 151 U. Penn. L. Rev. 1387, 1391 (2003).

⁵⁹ Quoting Hans Toch & Alan J. Lizotte, “Research and Policy: The Case of Gun Control”, in *PSYCHOLOGY AND SOCIAL POLICY*, edited by Peter

that position because intervening research showed:

that where firearms are most dense, violent crime rates are lowest, and where guns are least dense violent crime rates are highest. ***

[Moreover] *when used for protection firearms can seriously inhibit aggression* and can provide a psychological buffer against the fear of crime. Furthermore, the fact that national patterns show little violent crime where guns are most dense implies that *guns do not elicit aggression in any meaningful way*. Quite the contrary, these findings suggest that *high saturations of guns in places, or something correlated with that condition, inhibit illegal aggression*. [Italic emphasis added.]⁶⁰

Opponents of precautionary gun ownership discourage *any* form of resistance to rapists or robbers: “the best defense against injury is to *put up no defense -- give them what they want* or run.”⁶¹ But, to the contrary criminological studies “indicate resisting criminal attack with a firearm lowers one’s risk of injury *more than unarmed resistance or non-resistance*.”⁶²

Sutfeld and Philip Tetlock (1992).

⁶⁰ *Ibid.*, p. 234 and fn. 10.

⁶¹ GUNS DON'T DIE, PEOPLE DO, by then-Handgun Control, Inc. Chairman Nelson “Pete” Shields at p. 124-5 (1981), our italics. To the same effect, see Matthew Yeager, et al., HOW WELL DOES THE HANDGUN PROTECT YOU AND YOUR FAMILY? (Handgun Control Staff of the U.S. Conference of Mayors, 1976) and Franklin Zimring & Gordon Hawkins, THE CITIZEN'S GUIDE TO GUN CONTROL ch. 4 (1987).

⁶² Lance Stell, “Self Defense and Handgun Rights,” forthcoming in the Journal of Law, Economics, and Policy (2007), Jungyeon Tark & Gary Kleck, “Resisting Crime: The Effects of Victim Actions on the Outcomes of Crimes,” 42 Criminology 861-909 (2004), Don B. Kates, “The Value of Civilian Arms Possession as Deterrent to Crime or Defense Against Crime,” 18 American Journal of Criminal Law 113 (1991) and studies there cited.

How many gun crimes are committed in the U.S. each year? Slightly less than 460,000.⁶³ Compare how often guns are used by victims to repel criminals each year. The lowest research estimate is 1.3 million or almost three times as often. One higher research estimate is 2.5 million defense uses, i.e., almost six times as many defense uses as criminal uses.

Summarizing the research, the director of NYU's Center for Research in Crime and Justice writes that, based on 19 different population surveys,

criminologist Gary Kleck found that Americans defend themselves [with guns] 2.5 million times per year by warding off threats to their persons and property. Phil Cook and Jens Ludwig put the number of defensive gun uses at 1.3 million per year. Hemenway and Azrael's national survey, sponsored by the National Institute of Justice, found 1.5 million defensive gun uses per year. All these surveys reveal a great deal of self-defensive gun use of firearms; in fact, *more defensive gun uses than crimes committed with firearms.*⁶⁴

In 1995 the late Marvin Wolfgang, often deemed the doyen of American criminologists, was asked to review one of these studies by the Journal of Criminal Law and Criminology. His evaluation opened: "I am as strong a gun control advocate as can be found among the criminologists in

⁶³ U.S. Bureau of Justice Statistics, "Summary of Findings: Firearms and Crime Statistics" reports that in its crime victim surveys for 2004, the latest year available, "449,150 interviewees say they were victimized by attacker(s) with guns" In addition "The FBI's Crime in the United States estimated that 66% of the 16,137 murders in 2004 were committed with firearms.[= 10,751.]" Together this gives a total of 459,901 gun crimes in 2004.

⁶⁴ James B. Jacobs, CAN GUN CONTROL WORK? 14 (Oxford U. Press, 2003) italics added.

this country. If I [could]. . . I would eliminate *all* guns from the civilian population and maybe even from the police. *I hate guns...*"

But, Professor Wolfgang continued, "the methodological soundness of the... [study] is clear. I cannot further debate it.*** I do not like ... their ... conclusions that having a gun can be useful, but I cannot fault their methodology. They have tried earnestly to meet all objections in advance and have done exceedingly well."⁶⁵

Beyond the studies analyzed by Professor Jacobs above, other criminological studies have found guns are far more often used to repel crime than by criminals committing violence.⁶⁶

As to the overall effect on crime of widespread gun ownership by responsible, law abiding adults, consider the surveys conducted under the sponsorship of the National Institute of Justice among incarcerated felons, both juvenile and adult: "Seventy percent of the respondents [felons]

⁶⁵ Marvin E. Wolfgang, "A Tribute to a View I Have Opposed", 86 J. Crim. L. & Criminol. 188 (1995), evaluating Gary Kleck and Marc Gertz, "Armed Resistance to Crime: The Prevalence and Nature of Self-Defense with a Gun", 86 J. of Crim. L. & Criminol. 150 (1995).

⁶⁶ See, e.g. Gary A. Mauser, "Armed Self Defense: the Canadian Case," 24 Journal of Criminal Justice 393-406. (1996), Toch & Lizotte, *supra* (fn. 56), Lawrence Southwick, "Self-Defense with Guns: The Consequences," 28 J. CRIM. JUSTICE 351-370 (2000), John Lott, MORE GUNS, LESS CRIME 3 (U. of Chicago Press, 2001), David B. Kopel, "Lawyers, Guns and Burglars," 43 Arizona Law Rev. 346, 349-52 (2001), Jungyeon Tark & Gary Kleck, "Resisting Crime: The Effects of Victim Actions on the Outcomes of Crimes," 42 Criminology 861-909 (2004), Lance Stell, "Self Defense and Handgun Rights," forthcoming in the Journal of Law, Economics, and Policy 2006.

reported having been 'scared off, shot at, wounded or captured by an armed victim.' [Quoting the actual question asked.]⁶⁷ Many of the felons reported: (1) that they often feared potential victims might be armed; (2) therefore they and/or their friends shied away from confrontation crime; and (3) such fear had caused them and/or others they knew to abort plans to commit confrontation crimes.⁶⁸ Moreover "the felons most frightened 'about confronting an armed victim' were those from states with the greatest relative number number of privately owned firearms."⁶⁹ As to one specific control, the ban on carrying concealed weapons (CCW) for protection, "violent crime rates were highest in the states [that flatly ban CCW], next highest in those that allowed local authorities discretion [to deny CCW] . . . permits, and lowest in states with nondiscretionary" CCW laws under which police must license every qualified applicant.⁷⁰

⁶⁷ Joseph F. Sheley & James D. Wright, *IN THE LINE OF FIRE: YOUTH, GUNS AND VIOLENCE IN AMERICA* 63 (1995), James D. Wright & Peter Rossi, *ARMED AND CONSIDERED DANGEROUS: A SURVEY OF FELONS AND THEIR FIREARMS*, chapter 7 (1986).

⁶⁸ *Id.*

⁶⁹ *Id.* at 151.

⁷⁰ Lott, *MORE GUNS*, *supra*, 43. As a practical matter, where police retained discretion to grant or deny licenses/permits, they often are only issued to celebrities, the very wealthy and others having extraordinary political influence. Permit holders in jurisdictions with discretionary issuance have included Eleanor Roosevelt, Arthur Ochs Sulzberger (publisher of the New York Times) William F. Buckley, Donald Trump, various DuPonts and Rockefellers, Dianne Feinstein, and actors Tom Selleck, Sean Penn, and James Caan. See, e.g., Melanie Lefkowitz,

CONCLUSION

As documented above:

- Areas with more guns do not have more death or violent crime than areas with fewer guns. If anything it is the reverse.
- The world abounds with deadly instruments. The extent to which these instruments are used in violence in any particular nation is determined by basic socio-cultural and economic factors, not by the mere availability of any particular kind of lethal instrument.
- The unique relevance of firearms is only that alone among weapons they allow weaker people (i.e., victims) to resist attack by stronger ones (i.e., predators).

Confirming the foregoing are two recent general studies of gun control. In 2004 the U.S. National Academy of Sciences released its evaluation from review of 253 journal articles, 99 books, 43 government publications and some empirical research of its own. It could not identify any gun control that had reduced violent crime, suicide or gun accidents.⁷¹ The same conclusion was reached in a 2003 evaluation by the Centers for Disease Control's of then-extant studies.⁷²

Newsday, Sept. 30, 2002, "Cleared to Carry in [New York] City: [Carry] Permit Totals Drop, But Not for Notables." In nondiscretionary states, c. 4-10% of the adult population apply for licensure and must be granted it upon showing that they are properly trained and law abiding, regardless of whether they have special influence.

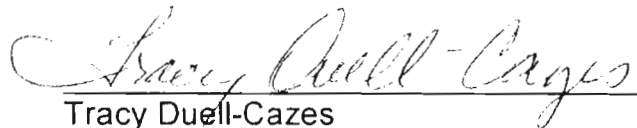
⁷¹ Charles F. Wellford, John V. Pepper, and Carol V. Petrie (eds.), FIREARMS AND VIOLENCE: A CRITICAL REVIEW (National Academy of Sciences, 2004).

⁷² "First Reports Evaluating the Effectiveness of Strategies for Preventing Violence: Firearms Laws" (CDC, 2003)

The violent crime problem in San Francisco is not the result of lax State laws, nor would confiscating firearms from law abiding citizens improve the problem of violent crime. All it would do is greater expose those citizens to violent crime by disarming them. This is especially true regarding members of minority communities subject to hate crimes, including members of the GLBT community. Accordingly, Pink Pistols urges this Court to affirm the decision of the trial court.

Dated: June 22, 2007

LAW OFFICE OF TRACY DUELL-CAZES



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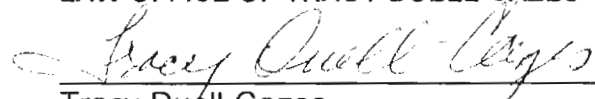
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Dated: June 22, 2007

LAW OFFICE OF TRACY DUELL-CAZES



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DECLARATION OF SERVICE

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

I, LARRY CAZES, am employed in the City of San Jose, Santa Clara County, California. I am over the age eighteen (18) years and am not a party to the within action. My business address is 2125 Canoas Garden Ave., Ste. 120, San Jose, CA 95125.

On June _____, 2007, I served the foregoing document(s) described as

APPLICATION OF THE PINK PISTOLS TO SUBMIT AMICUS BRIEF IN SUPPORT OF PETITIONERS; [PROPOSED] AMICUS BRIEF IN SUPPORT OF PETITIONERS

on the interested parties in this action by placing
[X] a true and correct copy
thereof enclosed in sealed envelope(s) addressed as follows:

SEE SERVICE LIST

X (BY MAIL) As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under the practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at San Jose, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date is more than one day after date of deposit for mailing an affidavit.

Executed on June _____, 2007, at San Jose, California.

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

Larry Cazes

PAULA FISCAL et al., v. CITY AND COUNTY OF SAN FRANCISCO et al.,

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