

# **EXHIBIT 4**

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017

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1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

3  
4 MICHELLE FLANAGAN, SAMUEL  
5 GOLDEN, DOMINIC NARDONE,  
6 JACOB PERKIO, and THE  
7 CALIFORNIA RIFLE & PISTOL  
8 ASSOCIATION,

9 Plaintiffs,

10 vs.

No. 2:16-cv-06164-  
JAK-AS

11 CALIFORNIA ATTORNEY GENERAL  
12 XAVIER BECERRA, in her  
13 official capacity as Attorney  
14 General of the state  
15 of California, SHERIFF JAMES  
16 McDONNELL, in his official  
17 capacity as Sheriff of Los  
18 Angeles County, California,  
19 and DOES 1-10,

20 Defendants.

21 ~~~~~

22 DEPOSITION OF

23 JOHN J. DONOHUE

24 Wednesday, July 12, 2017

25 9:47 a.m.

180 East Ocean Boulevard, Suite 200

Long Beach, California

Sherryl Dobson, RPR, CCRR, CSR No. 5713



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017

2

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JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017

3

INDEX OF EXAMINATION

WITNESS:

EXAMINATION

JOHN J. DONOHUE

BY MR. BRADY

6



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JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017

4

## INDEX OF EXHIBITS

| Number | Description  | Page |
|--------|--|------|
| Ex 1   | Amended Notice of Deposition   | 6    |
| Ex 2   | Expert Report of John J. Donohue   | 10   |
| Ex 3   | National Bureau of Economic Research, Inc., Working Paper Series booklet   | 15   |
| Ex 4   | Document titled "Firearms and Violence, a Critical Review"   | 52   |
| Ex 5   | International Review of Law and Economics paper titled "The deterrence of crime through private security efforts: Theory and evidence"             | 68   |
| Ex 6   | Expert Report of John J. Donohue with highlighting   | 69   |
| Ex 7   | Document titled "Table 4"  | 74   |
| Ex 8   | Review of Economics & Finance paper titled "The Impact of Right-to-Carry Laws on Crime: An Exercise in Replication"                                | 84   |
| Ex 9   | European Economic Review paper titled "Model uncertainty and the effect of shall-issue right-to-carry laws on crime"                               | 88   |
| Ex 10  | Document titled "Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Controls Analysis" | 90   |
| Ex 11  | Document titled "More Guns Less Crime, Third Edition, Understanding Crime and Gun Control Laws"  | 103  |

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017

5

## 1 INDEX OF EXHIBITS (Continued):

| 2 Number | Description   | Page |
|----------|---|------|
| 3 Ex 12  | Document titled "Updated: Compiling<br>4 Cases Where Concealed Handgun Permit<br>5 Holders Have Stopped Mass Public<br>6 Shootingsand Other Mass Attacks" | 159  |
| 7 Ex 13  | Document titled "Gun Policy & Law<br>8 Enforcement: Survey Results"   | 171  |



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017

6

DEPOSITION OF JOHN J. DONOHUE

Wednesday, July 12, 2017

JOHN J. DONOHUE,

having been first sworn, testified as follows:

EXAMINATION

BY MR. BRADY:

Q Good morning. Can you state your name for the record, please?

A John Donohue.

MR. BRADY: And I'm going to mark this Exhibit 1.

(Exhibit 1 was marked.)

BY MR. BRADY:

Q Have you seen this before?

A I don't know if I've seen this.

MR. EISENBERG: Yeah, I don't think I forwarded this one to him.

MR. BRADY: Yeah.

MR. EISENBERG: This one came in very recently, right?

MR. BRADY: Yes.

MR. EISENBERG: So I'll represent that I did not send this to him, but I just communicated with him about the change of the location, as, obviously, he's here.

MR. BRADY: Yeah, yeah, of course. Yeah, that's



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
10

1 (Exhibit 2 was marked.)

2 BY MR. BRADY:

3 Q So Exhibit 2 has been marked.

4 This is your expert report --

5 MR. EISENBERG: Have you got only one copy? In  
6 other words, you have only two copies here?

7 MR. BRADY: Yeah. I can have another one --

8 MR. EISENBERG: Okay. So we'll both work off of  
9 the actual exhibit.

10 MR. BRADY: Okay.

11 MR. EISENBERG: As marked by the court reporter.

12 MR. BRADY: That's fine. And if you need to make  
13 any notes, then I will trade you. If that's to your  
14 liking.

15 Q Is this that I've just marked as Exhibit 2 the  
16 expert declaration -- or the expert report that you  
17 prepared for this matter?

18 A Yeah, it seems to be the report, and then I  
19 attached my CV. I think I was asked to attach a CV, so I  
20 attached a CV.

21 Q And is that CV comprehensive as to all of  
22 your -- all of your background and qualifications?

23 A Yes.

24 Q What was your assignment in this matter for  
25 Mr. Eisenberg?



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
13

1 THE WITNESS: Yeah, just --

2 BY MR. BRADY:

3 Q You just -- did you just say that it is -- your  
4 paper is not published yet?

5 A Yeah. What I --

6 Q What did you mean by it is not published?

7 A I finished the paper and sent it off to the  
8 National Bureau of Economic Research, and they released  
9 it as an NBER working paper. So in one sense that's  
10 publication.

11 But when I was referring to publication, I was  
12 meaning -- whenever I finish a major paper, I would  
13 submit it to a peer-review journal, and that,  
14 unfortunately, takes a long time.

15 I have submitted this paper, and, you know,  
16 it'll be a while before I hear back from them. And, you  
17 know, it would be -- it wouldn't be unusual for them to  
18 say, you know, do this or do that, you know, can you add  
19 a table or something like that. So in that sense  
20 there'll be a process before the ultimate publication  
21 comes.

22 Q Okay. So what does "working paper" mean  
23 exactly?

24 A Well, the National Bureau of Economic  
25 Research -- I'm very happy to be a member of it -- really

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017

14

1 is the most elite group of empirical academic economists  
2 or empirical economists in the country.

3 And if you're a fellow of the National Bureau  
4 of Economic Research as a way to facilitate your  
5 research, getting out into the public domain more  
6 rapidly, they will, you know, essentially publish it and  
7 reprint it and -- I could even show you what the -- they  
8 do.

9 I think I brought a copy of the actual  
10 publication that they were -- so like this is the NBER  
11 working paper publication, and this goes on to, you know,  
12 everyone in the world that they have on the mailing list.

13 MR. EISENBERG: Do you have multiple copies of  
14 that?

15 THE WITNESS: I do have multiple copies, although  
16 I don't have multiple copies with me.

17 MR. EISENBERG: Right.

18 THE WITNESS: But certainly, people can take this  
19 one, or I can send them to them.

20 MR. EISENBERG: Can we mark this -- I mean, it's  
21 your deposition -- but if he wanted to mark it as an  
22 exhibit and it would stay here, is that going to  
23 present --

24 THE WITNESS: Oh, no, no, no, problem. I have a  
25 stack of these. They send maybe ten of them.



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017

15

1 MR. BRADY: Okay. Then we mark this as Exhibit 3,  
2 please.

3 (Exhibit 3 was marked.)

4 THE WITNESS: I should have thought about bringing  
5 more. I probably have thrown them all out.

6 BY MR. BRADY:

7 Q So a working paper, to be clear, has not been  
8 peer reviewed?

9 A No, it's only something that a research fellow  
10 of the NBER has submitted. Jim Poterba, who's the head  
11 of it, then makes a judgment about whether it's  
12 appropriate to send out, and he does send it out if it  
13 is.

14 Q Do people in your field cite to working  
15 papers --

16 MR. EISENBERG: Objection. Ambiguous as to  
17 "field" -- oh, I'm sorry, you're not finished? Okay. I  
18 thought you'd finished.

19 BY MR. BRADY:

20 Q Do people in research fields rely on working  
21 papers in supporting other -- in supporting their  
22 studies?

23 MR. EISENBERG: Objection. Vague and ambiguous.  
24 The term "research field" is overbroad and may go beyond  
25 the particular expertise of Professor Donohue.



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
16

1 But you may answer.

2 THE WITNESS: Okay. Yeah, in my experience, it  
3 would be unusual in my -- well, I don't know if I want to  
4 go that far. It would be very common in reading a piece  
5 in my field to see an NBER working paper cited.

6 BY MR. BRADY:

7 Q I'm sorry, it would be unusual to see  
8 something --

9 A No, it would be very common to see NBER working  
10 papers cited.

11 Q It would be common to see a published  
12 peer-reviewed study cite a working paper?

13 A Yes. And I'm sure I've done it many times.

14 Q How long did it take you to prepare the report  
15 in this matter?

16 MR. EISENBERG: Objection. Ambiguous as to  
17 "report."

18 Are you speaking about the expert report or the  
19 exhibit?

20 MR. BRADY: The report in this matter.

21 MR. EISENBERG: Okay.

22 BY MR. BRADY:

23 Q Under Federal Rule of Civil Procedures Rule 26,  
24 you had to prepare a report, correct?

25 A Yes.



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
29

1 that to mean somebody who has been issued a concealed  
2 weapon permit?

3 A Yes.

4 Q And if I say CCW, does that term make sense to  
5 you?

6 A Concealed carry weapon.

7 Q Sure.

8 And that is the technical -- or the, you know,  
9 express definition, but it basically means a license,  
10 right? I know other states say CHL or something -- here  
11 in California we say CCW.

12 So if I happen to say that, I'll be referring  
13 to the license. Does that make sense?

14 A Yes.

15 Q So we're talking about panel data analysis.

16 Would it be fair to characterize your report  
17 and Exhibit B -- let me start over by first asking about  
18 your study.

19 Would it be fair to characterize your study  
20 that was attached as Exhibit B as a panel data analysis?

21 A It has two parts to it. So the first part sort  
22 of follows the prior literature, and just updates it to  
23 the most recent crime data available.

24 And then the second part is the synthetic  
25 controls analysis. So that is a separate type of

1 statistical approach.

2 Q So you did both a panel data analysis and a  
3 synthetic controls analysis?

4 A Yes.

5 Q And they both reach the same conclusion?

6 A They varied on some items, but they both reach  
7 the same conclusion on the impact of right-to-carry laws  
8 on violent crime. They came out differently on property  
9 crime.

10 Q And could you summarize your conclusion of what  
11 is the ultimate conclusion of both of those?

12 A Yes. So I mean, the take-away that I got from  
13 the research was that right-to-carry laws increased  
14 violent crime in the neighborhood of, you know, 13 to 15  
15 percent, and that comes from the synthetic controls  
16 assessment.

17 And so when I say 13 to 15 percent, just to be  
18 a little more precise, the pattern seems to be an  
19 incrementally rising violent crime effect, and since I  
20 looked for ten years after adoption, the tenth year  
21 effect was 13 to 15 percent, depending on which specific  
22 model one looked at.

23 And so that was what I took away as the  
24 strongest conclusion from the paper. The right-to-carry  
25 results are somewhat different in form, but essentially

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
31

1 were supportive of that rough conclusion if one looked at  
2 the models that I thought were the most appropriate,  
3 panel data models.

4 Q And for those models, how many regressions did  
5 you run?

6 A You know, essentially, what I tried to do was,  
7 you know, just do my own panel data model. I refer to  
8 that as DAW, for the initials of the three authors,  
9 Donohue, Aneja, and Weber.

10 And so I run a basic statistical model in two  
11 ways, a -- sometimes referred to as a dummy variable  
12 model, where you're just predicting an average change in  
13 crime in the aftermath of right-to-carry, and then a  
14 trend model that is trying to predict the change in the  
15 trend of crime in the aftermath.

16 Q Do both of those require running regressions?

17 A Yes.

18 Q Okay.

19 A Yeah. And so those would be two regressions  
20 that I would run for the right-to-carry estimates, using  
21 my model.

22 But then I did versions of those for both  
23 murder, violent crime, and property crime. And then I  
24 went to other people's published models to see if they  
25 would generate the same results. So everything I tried

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
32

1 to do with my model, then I would try to replicate with  
2 other published models to see if the results would come  
3 out the same.

4 Q Are you able to say how many regressions you  
5 ran?

6 A You know, I could -- I could count them up, but  
7 it would take me a while. So in just thinking about it,  
8 eight for the DAW model over the full period, and then I  
9 would also do eight for the Brennan Center model, eight  
10 for the Lott and Mustard model, eight for the Marvell and  
11 Moody model.

12 But I also then showed results for a limited  
13 time period in the aftermath of the crack cocaine  
14 epidemic. So I, you know, again, showed more regressions  
15 along those lines.

16 And then it depends on whether you consider  
17 synthetic controls to be in this category, but I have a  
18 series of estimates for them as well.

19 Q And what would those estimates be?

20 A So for the synthetic controls approach, it's  
21 sort of a two-stage analysis, that you would get an  
22 estimate for each individual state and then aggregate  
23 those into a single estimate for the impact for each year  
24 for ten years, which is the way I did the analysis.

25 And so, again, I did that for both the DAW



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
33

1 model as well as for the Brennan Center model and the  
2 Lott and Mustard and Marvell and Moody models.

3 Q Okay. Did you include all of those regressions  
4 in your -- in the DAW?

5 A Yes. So in the full paper, not in the expert  
6 report, they would all be included, but not in the more  
7 limited expert report.

8 Q So all regressions that you ran are  
9 contemplated in your paper, in your -- in DAW?

10 Should we just refer to it as DAW? Would that  
11 help?

12 A Whatever works for you is fine with me.

13 Q That seems to be your terminology, correct?

14 A Yes.

15 Q So all of the regressions you ran are  
16 contemplated in the DAW?

17 A You know, it's hard to know -- I literally  
18 haven't run a regression in years. Hard to know how much  
19 the staff was working away, but all of the ones that I  
20 looked at and evaluated appear in the paper, in, you  
21 know, the various versions of the paper that I've done.

22 Q So you had staff helping you run regressions --

23 A Yes.

24 Q -- for the DAW?

25 A Yes.



1 models on the full data set that was now available to me.

2 Q I'm not sure if I heard what criteria you used  
3 in determining what regressions.

4 Could you -- are there specific criteria that  
5 you looked at, like this regression meets this criterion,  
6 et cetera, that you could articulate as to --

7 A Yeah. I mean, again, for my model, my  
8 preferred specification, this is something that I've been  
9 working on for a number of years, and, you know, I'm  
10 always reading what other people write.

11 And so I sort of looked across the board at  
12 crime models that people were using, not only for  
13 right-to-carry, but for other areas, and just thought,  
14 well, almost everything I've done in the past was really  
15 just sort of responsive to the literature. Maybe now I  
16 should, you know, sort of throw off what other people did  
17 and just say what do you think is the best model? And so  
18 that's what I did for the DAW model.

19 Having done that, though, I know that there's  
20 always going to be a concern in panel data, you know,  
21 have you cherry-picked the model in some way. And so I  
22 thought I would take, you know, another prominent crime  
23 model, which was the Brennan Center model, and sort of  
24 ran that through.

25 And then I said, and also, it would -- I'm sure

1 the public would be interested if they followed this  
2 debate over the years, what would the models of Lott and  
3 Mustard and Marvell and Moody show. So I included those.

4 Now, I've been critical of those models, but I  
5 still thought it would be useful to alert people to what  
6 those models -- those models that Lott and Mustard  
7 thought were the best ones and Marvell and Moody thought  
8 were the best ones -- estimated on the data set that I  
9 had created. So that was my selection criterion.

10 One, what did I think was best; and, two, what  
11 were other models that had been used to advocate the  
12 opposing view -- so those were Lott and Mustard and  
13 Marvell and Moody -- and what is just another general  
14 crime model that was sort of widely referred to in the  
15 literature.

16 Q What criteria did you think were best?

17 A Well, for me, you know, there were -- there are  
18 a lot of small decisions that you have to make when  
19 you're doing these analyses.

20 You know, for example, Lott and Mustard didn't  
21 include police and incarceration in their paper. And I  
22 have always included police and incarceration, because I  
23 think of those as two explanatory variables that play an  
24 important role in influencing crime.

25 So, you know, if you just go down the

1 explanatory variables that I include, you get a sense of  
2 the ones that I think were most appropriate. And, you  
3 know, you can do the same thing for the Lott and Mustard  
4 and Marvell and Moody, to see what they thought were most  
5 appropriate.

6 It's interesting how many choices you have to  
7 make to implement a statistical model. And that's why  
8 you're always concerned about the integrity of the  
9 researcher, because you don't want someone going through  
10 and tweaking the model and -- you know, literally, a  
11 hundred different ways, running a hundred different  
12 regressions, and then just showing you the one where the  
13 statistical noise bounced it.

14 Now, remember we talk about statistical  
15 significance. And so what that term actually means is,  
16 if you really had a zero effect, how likely is it that we  
17 would estimate a true effect? And -- well, I'm being  
18 ambiguous here.

19 If you really had a zero effect, how likely is  
20 it that your statistical estimate would suggest that  
21 there was a significant effect? And if you're using the  
22 five-percent level as your measure of statistical  
23 significance, it means five out of a hundred times you  
24 will get results that are ostensibly meaningful, even  
25 though there is no effect, just by the operation of

1 random chance.

2 And so if somebody is dishonest, they could run  
3 the model a hundred times and -- you know, about two and  
4 a half of those will be on one side, and you're  
5 estimating an increase in crime, for example. Two and a  
6 half percent would be on the other side, estimating a  
7 decrease.

8 And if you were dishonest, you could just show  
9 the best one that shows either the increase, if you  
10 wanted to show an increase, or a decrease, if you wanted  
11 to show a decrease. So that's one thing that is very  
12 important, I think, in this area, is that there be  
13 transparency and not an effort to take advantage of this  
14 random or stochastic component of the estimates, which  
15 can bounce around a little bit.

16 Q Did you only run regressions for states that  
17 didn't change their laws for ten years after an RTC law?

18 And just to be clear "RTC" is the term used for  
19 right-to-carry laws, right, so we understand each other?

20 A Yes.

21 Q And is that -- you only ran regressions for  
22 states that didn't change their laws for ten years after  
23 an RTC law was adopted?

24 A Well, for the panel data models, everything  
25 gets included in all of those. For the synthetic

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
45

1 prefer that you not partake in the bar until post  
2 deposition.

3 A I'm fine for now.

4 MR. EISENBERG: Okay.

5 THE WITNESS: I'll jump in if I feel all that  
6 coffee I drank is getting to me.

7 BY MR. BRADY:

8 Q Okay. So you indicate that your study accounts  
9 for both geographic and time fixed effects.

10 Is that accurate?

11 A Yeah. The panel data analysis does that, yes.

12 Q Okay. I think I already asked you this, but  
13 just to clarify, do all panel data analysis account for  
14 both --

15 A They all can, but sometimes they don't.

16 Q What would be a good reason to omit fixed  
17 effects?

18 A You know, if you really felt that your  
19 explanatory variables captured the relevant information,  
20 then you wouldn't need to go to a fixed effect.

21 And so, for example, if I could do like a  
22 cross-section analysis of, let's say, the 50 states and  
23 really predict extremely well, based on things like  
24 police and incarceration, demographics and, you know,  
25 employment status -- if I could predict the crime rates

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
111

1 categories.

2 That -- it is true that they do measure other  
3 property and violent crimes, but those are the -- those  
4 are the breakdowns that the FBI uses. If you read a  
5 report that says violent crime or property crime, that's  
6 the way they're counting that.

7 Q Does violent crime, the term that you use --  
8 the way you use it, does it include murder, or are you  
9 dealing with murder separately?

10 A No, it includes murder.

11 Q Includes murder?

12 A Yeah.

13 Q So you did a separate analysis for murder and  
14 then a separate analysis for violent crime including  
15 murder?

16 A Yes.

17 Q And violent crime does not -- the DAW does not  
18 distinguish between the specific crimes of rape, robbery,  
19 and aggravated assault, as you did in your previous  
20 study; is that correct?

21 A Yeah, in this paper I just looked at murder,  
22 violent crime, and property. I didn't disaggregate  
23 further in either the property or the violent category,  
24 apart from murder being segregated out.

25 Q So what is the benefit to the quality of the



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
112

1 data set by lumping all of these crimes -- treating them  
2 as violent -- treating all these individual crimes as  
3 violent crimes instead of dealing with them individually,  
4 as you did in your previous study?

5 A Yeah.

6 MR. EISENBERG: Objection. Argumentative.

7 THE WITNESS: You know, probably the standard way  
8 I've done it in many crime papers is just to show murder,  
9 property, and violent crime. When I was trying to sort  
10 of follow in John Lott's footsteps to sort of see how my  
11 results compared to his, I was disaggregating.

12 But in this paper, as I think I said earlier, I  
13 really just said, you know, now sort of come up with your  
14 own model and --

15 BY MR. BRADY:

16 Q So why did your own model decide to aggregate  
17 those terms? What's the benefit of doing that --

18 MR. EISENBERG: Were you finished answering?

19 THE WITNESS: Yeah, so I can -- I can say more in  
20 response to the question.

21 So essentially, there were couple of reasons.  
22 Some of them are theoretical, and some of them were sort  
23 of pragmatic.

24 The pragmatic reason is, you know, the paper's  
25 already a hundred pages long, and I do like to go through



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
113

1 a fair number of robustness checks, and the more  
2 individual categories you're using, the more you're sort  
3 of multiplying your tables, and just the verbiage. And I  
4 already have to cut this down a lot to try to get this  
5 published. So that's sort of a pragmatic factor.

6 But as we said earlier, there's always these  
7 issues about, you know, if you move in a certain  
8 direction, you get some benefits, and you give up  
9 something. Move in the other direction, you'll maybe  
10 gain some benefits and lose something.

11 So aggregation makes it easier to generate  
12 statistically significant results. So we can see, if you  
13 compare murder versus violent crime, you do tend to see  
14 more -- you know, more precise estimates, which is what  
15 you need to get statistically significant results in the  
16 violent crime category than the murder category.

17 And that is, in general, true, that the more  
18 you try to narrow your focus, the harder it is going to  
19 be to get precise estimates. So if you look at the --  
20 all of my -- all the estimates that I have in the paper  
21 will have, in parentheses underneath, a standard error.

22 And the bigger that standard error is, the  
23 harder it's going to be to generate statistically  
24 significant results. And you do get lower standard  
25 errors with aggregated violent crime than individual

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
114

1 categories. So it is going to be easier to get  
2 statistically significant result.

3 On the other hand, as your question sort of  
4 suggests, you're getting, you know, in some sense, a  
5 better estimate of a more aggregated phenomenon, and  
6 sometimes we want to know, you know, more precisely about  
7 the disaggregate effects. And so that's what we can do  
8 with this, and I -- I actually have run those exact same  
9 regressions in this context as well.

10 BY MR. BRADY:

11 Q Is that reflected in your report?

12 A You know, I didn't put them into this report,  
13 but I do -- I have done those, and I've looked at them.  
14 And, you know, in essence, it sort of conforms to the  
15 pattern of what we see in this report, that you get, you  
16 know, more precise estimates for the aggregated numbers  
17 than you do for the disaggregated numbers, like murder.

18 Q So you ran regressions for the disaggregated  
19 crimes in preparing this report, but you did not include  
20 them?

21 A No, I actually ran them after there was  
22 criticism of not doing it. And, you know, it pretty much  
23 conformed to the findings of what we saw here.

24 Q Well, then why wouldn't you include it in your  
25 report? That would seem to suggest to bolster your

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
115

1 argument, no?

2 A Well, I said I ran them after there was a  
3 criticism of not including them. Which -- so my report  
4 had already been done.

5 Q So they are not included in your current  
6 report?

7 A That's right. So I think Gary Kleck criticized  
8 me for not doing that. So I just said to my research  
9 assistant, you know, run those and --

10 Q But you're still making revisions to your  
11 report -- or to your study, as we've learned here today,  
12 correct?

13 A Yes.

14 Q You don't think it's important to respond to a  
15 critic and simultaneously bolster your argument with  
16 additional regressions?

17 A You know, I didn't ask if I was allowed to do  
18 another report in response to Kleck, but I -- I really  
19 can't add any more to this paper, because I already am  
20 way over what the American Economic Review and other top  
21 journals wants from a publishable paper.

22 But, you know, if they ask me to write a  
23 supplement, it would be very easy for me to run those  
24 regressions and show them in this context as well.

25 Q When did you run those regressions?

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
116

1 A As I said, I ran them -- or had my staff run  
2 them right after I read the Kleck report.

3 Q Does any other study analyzing the impact of  
4 right-to-carry laws aggregate the different crimes into  
5 the term violent -- into one single category of violent  
6 crime like your report does?

7 A Yeah, we were just looking at the Durlauf  
8 study, and he does the exact same thing, breaks it down  
9 into murder, property, and violent. It's a fairly  
10 standard way. And he's --

11 Q Fairly standard.

12 Are there any other besides Durlauf?

13 A Well, many of my papers have done it that way.  
14 As I mentioned, the papers in which I'm sort of  
15 responding to Lott I would do it in which ever way he did  
16 it. But it is fairly traditional to break it -- the  
17 Brennan Center report, which is -- as I said here, also  
18 followed that protocol.

19 Q So then your aggregating these terms is not  
20 uncommon in your field of research?

21 A No, it's not uncommon.

22 Q Other than Durlauf, are there any other  
23 reports -- any other studies that you cite to in your  
24 report that use the same violent crime aggregate term as  
25 you?

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
117

1 A Yeah, the Brennan Center report does that as  
2 well. So the four major studies that I -- or models that  
3 I would look at are, you know, mine, the Brennan Center,  
4 Lott and Mustard and Marvell and Moody, and the Brennan  
5 Center also looks at aggregated violent crime.

6 Q Are there any studies or reports cited in yours  
7 that did not use the aggregate term for violent crime?

8 A Yeah, so Lott and Mustard and Marvell and  
9 Moody, I believe, disaggregated.

10 Q Do you see any problems in comparing studies  
11 that use two different approaches?

12 A You know, for me it's never a problem, because  
13 I will just -- you know, if I want to compare how my  
14 results work to someone who has done the aggregated or  
15 the disaggregated form, I would usually, you know, create  
16 the data set and then just do the analysis myself  
17 whichever way I thought was better to do it.

18 And if somebody used only violent and I was  
19 interested in the subcategory, then I would -- I could  
20 use their overall model. Because the choice of  
21 explanatory variables and the way you specify them would  
22 be the same whether you're looking at violent crime or  
23 murder or rape.

24 And so I don't need to be bound by whatever  
25 choice the other researchers made. I can aggregate it or

1 disaggregate as I think necessary.

2 Q You can aggregate or disaggregate, right?

3 Aren't you limited to their conclusion -- the  
4 other authors' conclusions in their study?

5 A You know, so -- for example, Lott has a model  
6 that he used, and I can run that -- I can run his exact  
7 model on my data, either disaggregating or aggregating,  
8 and come to my own conclusion based on that and so -- in  
9 general, if you look at my report, you will see -- like  
10 using Lott's model, the results definitely do not support  
11 what Lott contends.

12 So I think that that's pretty powerful  
13 evidence. Because just using the exact identical model  
14 but using it on a longer time period and more complete  
15 data and, you know, the results support the opposite of  
16 what John Lott says.

17 So that's the nice thing about empirical  
18 evaluation of the law, that you don't have to rely on  
19 anyone's word. You just need to get the data and run  
20 the -- run the model, and then you find out. As long as  
21 you're very honest and open in what you're doing, there  
22 isn't -- there isn't any way to criticize the  
23 implementation of the model.

24 You can always criticize whether the model is  
25 appropriate, but once you have a model, you run it on the

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
119

1 data, and that's going to give you the answer for that  
2 model.

3 Q Did the increased violent crimes that result  
4 from right-to-carry laws that you conclude occur in your  
5 report --

6 A Yeah.

7 Q Do all of those crimes involve firearms?

8 A No. No.

9 Q How do you know that?

10 A The increase that were -- or in essence, what  
11 our models are trying to do is show net effects. And so  
12 there could be some benefits in right-to-carry laws,  
13 there could be some costs, and all we're able to conclude  
14 is here is the overall net effect.

15 And when it's a positive estimate, as it is for  
16 violent crime, that's telling us that violent crime has  
17 gone up more than it's gone down. So you can't say too  
18 much more from that narrow finding than what I just said.

19 But we can make inferences about how the  
20 effects are playing out that would lead me to believe  
21 that we're getting declines in both gun crime and non-gun  
22 crime.

23 Q If right-to-carry laws are responsible for  
24 increased violent crime --

25 A Yes.



1 broad terms, two parts of the study. The panel data  
2 study did show fairly strong increases in property crime.  
3 The synthetic controls did not.

4 And since I tend to trust the synthetic  
5 controls more than the panel, I'm sort of leaning to the  
6 view that, whatever the effect is on property crime, is  
7 it's smaller and, therefore, you know, not showing up as  
8 statistically significant in the synthetic controls. But  
9 if you believe the panel data results, then there does  
10 seem to be an elevation in property crime as well.

11 Q A statistically significant increase in  
12 property crime?

13 A Yeah, if you just look at the tables --

14 Q That's the conclusion in your report?

15 A Yes. I mean, it's -- if you look at the  
16 tables, you'll see two asterisks next to the property  
17 crime levels. And that's true with the Brennan Center  
18 study or mine.

19 Q What evidence did you rely on in making the  
20 representation that criminals feel emboldened to steal  
21 guns and carry guns and enforce their will as a result of  
22 a right-to-carry law? What evidence did you look at?

23 MR. EISENBERG: Objection. Misstates the prior  
24 testimony or the report, however you want to characterize  
25 that.



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
122

1 THE WITNESS: Well, there's a lot of evidence that  
2 carrying guns outside the home promotes gun theft and  
3 leads to more gun theft, and this has become a big issue  
4 in the public debate now, where many police chiefs are  
5 encouraging people not to take guns out of the home  
6 because the theft problem has become so bad.

7 And so that's just the nature of, you know, the  
8 world we live in now. Guns are probably one of the most  
9 attractive things for criminals to steal. You know, TV  
10 sets are no longer as appealing as they once might have  
11 been to burglars. Much of the time, when criminals are  
12 trying to steal things, they're looking for guns.

13 BY MR. BRADY:

14 Q Have you looked -- have you done any research  
15 on the theft of firearms in public?

16 A I have spent a fair amount of time reviewing  
17 the research. I have not done the research.

18 Q And what does that research say? How do  
19 firearms get stolen in public?

20 A You know, one of the biggest ways is out of  
21 cars. So, you know, here in California, Sean Penn  
22 created quite a stir when he left his two guns in his car  
23 when he went to Chez Panisse for dinner one night, came  
24 back, the car was stolen. Got the car back two days  
25 later. Of course, the guns were now in the hands of

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
123

1 criminals.

2 And of course, it's -- it's such a bad problem,  
3 because now the criminals have a gun that can't be  
4 traced, and they can use that gun for whatever purposes  
5 they want.

6 Now, of course I don't think Sean Penn would  
7 ever shoot anybody, but I'm not so sure about the people  
8 that stole Sean Penn's gun, whoever they gave that gun  
9 to. I suspect that those guys probably were shooting  
10 people. And that's one of the main avenues that  
11 right-to-carry laws increase violent crime.

12 Q So just -- I just want to be clear.  
13 Right-to-carry laws -- adoption of right-to-carry laws  
14 result in increased property crime, such as gun thefts,  
15 is that correct, in your report?

16 A Yeah, I mean, I -- I just want to be clear. We  
17 discussed sort of the ambiguities about what the net  
18 effect is on property crime, but we said for -- just  
19 looking at gun thefts, right-to-carry laws theoretically  
20 increase gun theft.

21 Q So I guess what I'm asking -- your -- is it  
22 fair to say the premise of your paper is that the net  
23 effect of right-to-carry laws is the increase of violent  
24 crime on a whole, regardless of a firearm being involved  
25 in the crime?

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
124

1 MR. EISENBERG: Objection. Argumentative as to  
2 the word "premise."

3 THE WITNESS: Yeah. I would say that, you know,  
4 one of the main conclusions of the paper is that  
5 right-to-carry laws, on balance, seem to be ticking up  
6 your violent crime rate, you know, maybe a little over  
7 one percent every year for the first ten years.

8 So on balance, they're getting you up into the  
9 neighborhood of 13 to 15 percent after ten years. So  
10 that would be a major conclusion of the study.

11 BY MR. BRADY:

12 Q Okay. And that one percent is a combination of  
13 all sorts of violent crimes? The one percent increase --

14 A Yeah.

15 Q -- is all sorts of violent crimes that you --  
16 or is it just the four that you included in your study?

17 A Yeah, that's just the four. So when I'm making  
18 that statement, I'm using the FBI definition of violent  
19 crime. So that's not including simple assault; it's not  
20 including aggravated assault; and it also includes  
21 murder, rape, and robbery.

22 Q Did you define right-to-carry laws, the term  
23 "RTC," right-to-carry -- do you have a definition for  
24 what is a right-to-carry law?

25 A Yeah, I mean, I -- I simply said when states



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
139

1 estimate, really, as much as the aggregated estimate,  
2 because the noise will tend to be averaged out in the  
3 aggregate estimate, while you do have to deal with the  
4 noise in the individual-state estimates.

5 Q The increase in violent crime rates that you  
6 conclude occur as a result of RTC laws, is it the holders  
7 of carry licenses that are committing this crime?

8 A You know, some of it is done by the carry  
9 holders. I mean, just in the last couple of days you  
10 have the horrible case of road rage, shooting a woman in  
11 the head in Pennsylvania. And the other on the guy  
12 coming home from the wedding drunk in his Uber and kills  
13 his wife by shooting her in the head.

14 So those were permit holders. And those were  
15 crimes that almost certainly would not have happened, had  
16 there not been a right-to-carry law in place. These were  
17 generally law-abiding people, and it was only the quick  
18 access to guns that allowed them to commit these crimes.

19 But a lot of the crime is also committed by the  
20 people who steal the guns that the permit holders  
21 essentially turn over to them. So -- you know, I mean,  
22 there's no question that more guns are stolen from  
23 law-abiding citizens than are used defensively.

24 Q On what do you base that?

25 A Tons of studies and evidence.

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
140

1 Q Can you cite one?

2 A Yeah. I mean, there are lots of them but, you  
3 know --

4 Q Is that reflected in your report?

5 A Yeah, I mean, I wasn't -- I wasn't focused on  
6 that precise question.

7 Q Well, you were focused on the theft of -- you  
8 were focused on property crime and your -- correct me if  
9 I'm wrong. Your position's that the theft of firearms is  
10 a significant element of the increase in crime, both  
11 property crimes -- being a property crime and in violent  
12 crime, because they use those guns; is that not correct?

13 A Yes. And I think that that's true and --

14 Q So you have no support of the vast evidence out  
15 there that more guns are stolen than used in self defense  
16 in your paper?

17 A No, I -- and I'd have to look back to see if  
18 I've cited this literature, but I certainly could cite  
19 that literature.

20 Q Can you give me an estimate, based on having  
21 reviewed that literature -- do you feel comfortable  
22 making an estimate about how many self defense gun uses  
23 there are in a given year?

24 MR. EISENBERG: Objection. Outside the topic.

25 Actually, could we go off the record for a

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
141

1 second?

2 MR. BRADY: I do have a question pending.

3 MR. EISENBERG: Let him answer the question, but  
4 then could we go off?

5 MR. BRADY: Sure.

6 THE WITNESS: Can you define self defense gun  
7 uses?

8 BY MR. BRADY:

9 Q I mean, I guess you're the one who raised the  
10 point that it is clear that there's more gun thefts than  
11 more defensive gun uses. So I guess I'll use your  
12 definition. And I would ask that you define that.

13 A Yeah. So I would say there's no question that  
14 hundreds of thousands of guns are stolen in the United  
15 States every year. Every study that has looked at this  
16 has documented that. And there is more question about  
17 how many defensive gun uses there is.

18 But if your metric is legitimate lawful uses of  
19 guns to thwart violent crime, there's no question in my  
20 mind that that number is a small fraction of the number  
21 of guns stolen in the United States. No question in my  
22 mind.

23 Q But on what do you base that --

24 MR. EISENBERG: Wait. Actually, could we --

25 MR. BRADY: Now you can. Remember, On what do you



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
142

1 base that?

2 (Brief recess taken.)

3 BY MR. BRADY:

4 Q So we're back on the record. The question  
5 pending was, On what do you base that? in response to  
6 your assertion that the number of firearms stolen far  
7 exceeds the number of self defense gun uses.

8 A Yeah, and again, I did -- I did qualify, saying  
9 legitimate lawful use of guns to thwart violent crime.

10 Q Sure.

11 A And I would put that number -- it was  
12 imprecision around this, but maybe in the 50-60,000.

13 Q And on what do you base that number?

14 A You know, a lot of evidence. It's not just one  
15 study. National Crime Victimization Survey, a lot of  
16 work done by David Hemenway. And if you read that entire  
17 literature -- you know, obviously, you're not going to  
18 come up with a precise number, but you get a ballpark.

19 And the number for the defensive uses I'm  
20 talking about is, you know, in the neighborhood of  
21 50-60,000. But the number of thefts is in the hundreds  
22 of thousands. And no one questions the number of thefts.

23 Q But people do question the number of self  
24 defense gun uses, correct?

25 A Yes.



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
143

1 Q You said, unquestionably, the number of firearm  
2 thefts outnumbers the number of self defense gun users,  
3 right?

4 A Yeah. No, I was just saying unquestionably for  
5 me.

6 Q For you, but that's not a definite fact,  
7 correct?

8 A You know, it's hard to come up with a precise  
9 number for that sort of question --

10 Q So it's not a definitive fact?

11 MR. EISENBERG: Let him finish.

12 THE WITNESS: It's hard to come up with a precise  
13 number, but you can, I think, come up with reasonable  
14 ballparks, and so I -- and the relative magnitudes are  
15 such that I feel very confident saying the number of guns  
16 stolen is far above the number of those defensive gun  
17 uses.

18 BY MR. BRADY:

19 Q Are you including in those self defense gun  
20 uses instances where people do not actually discharge the  
21 firearm?

22 A Yes. Yes.

23 Q So the mere -- you're including just the mere  
24 presence of a firearm to deter somebody?

25 A Well, I mean, I --



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
144

1 Q I have a gun. Back off.

2 A Yeah. Yeah. So I would include that. But I  
3 wouldn't include it for a guy who's open carrying,  
4 walking down the street and comes home and says, Nobody  
5 shot me today, so that shows I avoided a murder, because  
6 I have a gun on, which I think some people might be  
7 inclined to say.

8 Q So in your report you say police simply, quote,  
9 "underestimate criminality by permit holders."

10 What evidence do you rely on in concluding that  
11 is the case?

12 A Oh, maybe you can just --

13 MR. EISENBERG: Are you referring to a specific  
14 page in his report?

15 MR. BRADY: You know, I just wrote that down. I  
16 figured with a claim like that, he might remember.

17 THE WITNESS: Yeah.

18 MR. EISENBERG: Paragraph 21 maybe?

19 THE WITNESS: Okay. So this was the misstatement  
20 by Sheriff Jones, when he said, No one has ever been shot  
21 by a holder of a concealed weapons permit issued by this  
22 office, yet he had just signed a letter a couple of  
23 months earlier, revoking the permit of somebody that shot  
24 somebody in the head. So --

25 BY MR. BRADY:

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
159

1 a permit, you have to go through a background check.

2 Q Do you dispute that license holders have a  
3 significant impact on stopping shootings?

4 A By mass shootings?

5 Q Sure.

6 MR. EISENBERG: Vague and ambiguous as to  
7 "significant."

8 THE WITNESS: Yeah, I think the evidence shows  
9 that it's very, very unusual for a permit holder to play  
10 any positive role in a mass-shooting incident.

11 BY MR. BRADY:

12 Q So mark as exhibit wherever we are --

13 THE REPORTER: It's 12.

14 MR. BRADY: -- 12.

15 (Exhibit 12 was marked.)

16 BY MR. BRADY:

17 Q Have you seen this document before?

18 A No, I've never seen this before.

19 Q Have you -- what evidence did you rely on in  
20 concluding that license holders do not stop shootings?

21 A The FBI actually did a study on this and looked  
22 at a hundred and 60 cases between 2000 and 2013 that met  
23 their definition of active shooting incidents. And they  
24 found that, you know, police stopped them a lot; suicide  
25 by the killer stops them a lot; unarmed citizens stopped

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
160

1    them 21 times. But -- security guard stopped them  
2    occasionally.

3               But there was only one case -- so 1-21 of the  
4    number of times stopped by an unarmed citizen was a  
5    permit holder able to stop one of the hundred and 60  
6    cases they looked at, and that guy was an active-duty  
7    Marine who quite well could have stopped the thing  
8    without a gun regardless. But that is always an  
9    uncertainty as well.

10             So the bottom line is, you know, I would not  
11    put much confidence in non-active-duty military person  
12    being much help in a mass shooting incident.

13             Q On what do you base that?

14             A Well, I just mentioned the FBI study. If this  
15    had been a frequent occurrence, you would have seen it  
16    happen more than one out of a hundred and 60 times.

17             Q Is it possible, as is indicated in this article  
18    that we're looking at, Exhibit 12, that citizens who stop  
19    mass public shootings don't get news coverage because  
20    they stop anyone from being killed?

21             A I mean, that is an interesting point. How much  
22    of a role is played by people who shoot someone very  
23    quickly, and what would have happened in the aftermath.  
24    And so that's worth thinking about, which is why I said I  
25    do spend time looking at the NRA defensive gun use

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
161

1 listings, because I think those are useful information to  
2 be thinking about.

3 Q But you've never considered Exhibit 12 before?

4 A I haven't seen this before. This is -- looks  
5 like it's put out by John Lott.

6 Q Yeah, he is the head of Crime Research,  
7 correct?

8 A Yeah.

9 Q I believe that's who put this out.

10 A Yeah. Yeah, so it's worth looking at.

11 I should note that Lott and I were asked to  
12 write something for the New York Times after Gabby  
13 Giffords was shot, and Lott wrote, you know, too bad  
14 there weren't more Joe Zamudios there, because he was the  
15 one who sort of saved the day at the Gabby Giffords  
16 shooting.

17 And then it turned out Joe Zamudio, who did  
18 have a permit, says, Thank God I never took my gun out,  
19 because I thought that the guy who had just tackled the  
20 shooter was the bad guy, and I would have shot the savior  
21 rather than the killer.

22 So the -- while Lott was pretending that the  
23 good guy with the gun had stopped things, it was the good  
24 guy without the gun who had stopped it, and Zamudio  
25 truthfully, amazingly, said if I had taken my gun out, I

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
162

1 would have shot the wrong person.

2 And that's, of course, one of the things you  
3 worry about in these episodes. It's hard enough for the  
4 police to shoot the right person, but it's probably  
5 harder for non-active-duty military to step in and get  
6 the bad guy.

7 Q So without -- how can you determine whether  
8 there's a benefit to concealed carry if you don't know  
9 the universe of self defense gun uses?

10 A Well, I mean, that's what my whole study is  
11 trying to find out. Do we see any evidence that murders  
12 go down or violent crime goes down, and all of the  
13 evidence seems to point in the opposite direction.

14 So the more -- the more examples of these you  
15 can come up with, the more I think, oh, right-to-carry's  
16 even worse than I thought, because whatever this number  
17 is, it's outweighed by the harmful incidents, and I'm  
18 only looking at net effects, and the net effects are very  
19 harmful.

20 Q So the more self defense gun uses there are,  
21 the worse the problem is?

22 A That means the more --

23 MR. EISENBERG: Let me interject. Earlier  
24 Professor Donohue was pointing to this Exhibit 12 when he  
25 was speaking. But of course, the pointing doesn't get

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
163

1 recorded by the court reporter.

2 THE WITNESS: Yes.

3 Yeah. I mean, let's just say a right-to-carry  
4 law goes into effect, and, you know, the net effect is a  
5 hundred more people die because right-to-carry law went  
6 into effect. If you then come and say, Oh, but look at  
7 the 200 lives we saved, that would mean that 300 other  
8 lives were lost. So the higher the number of defensive  
9 gun uses are that saves lives, if the net effect is to  
10 lose lives, that means there's an even bigger stimulative  
11 effect, right?

12 BY MR. BRADY:

13 Q Are the lost lives the attackers against whom  
14 the people were defending themselves?

15 A No, because that would -- it's never a crime to  
16 shoot someone who's doing serious bodily injury --

17 Q I guess I didn't follow.

18 Who were the lost lives you were referring to?

19 A Well, I mean, that's what all of these panel  
20 data/synthetic control studies are trying to identify,  
21 what is the net impact on crime.

22 And so every study that I can describe is  
23 showing violent crime is up rather than down, and  
24 therefore, if somebody is saying, oh, but X-number of  
25 times permit holders are reducing violent crime, that is,

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
164

1 ipso facto, establishing that X-plus some number of times  
2 right-to-carry laws are increasing crime.

3 So it -- really, the only thing that's  
4 important to know if you want to know whether  
5 right-to-carry laws are decidedly beneficial is what's  
6 the net effect on crime. If it goes up, then they're  
7 harmful. If it goes down, then they're beneficial.

8 If there's no effect, then it's probably  
9 harmful in making all these people wasting their money  
10 buying guns and carry them around, which is a pain in the  
11 neck.

12 Q So getting down to the nub of the issue, do you  
13 agree that license holders have stopped some acts of  
14 crime?

15 A Yes.

16 Q Knowing that fact, is it also possible that  
17 some license holders have deterred crime?

18 A Yeah, it's an interesting question how much  
19 criminals are dissuaded by the fact that there are more  
20 people carrying guns around that they might be seeking to  
21 attack in some way.

22 Again, I'm interested in the net effect. And  
23 also, it'd be interesting to know how many criminals  
24 start carrying guns because now permit holders are  
25 carrying guns.

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
165

1 Q Does your -- do you have any data to suggest  
2 that, to support that notion?

3 A Yeah, well, we have lots of data that more  
4 criminals acquire guns through theft when right-to-carry  
5 laws are passed. So that means they have the gun, and I  
6 assume that when a criminal has a gun, they're more  
7 likely to carry it around.

8 But I'm also talking about another nuance here,  
9 which is, you know, yesterday the criminal was thinking,  
10 you know, I'm going to sneak into that house and  
11 burglarize it, and if you're in an area where you're  
12 concerned about facing guns, does that change the  
13 calculus.

14 So you would say, I should have a gun too, and  
15 if that's the case, then we would assume that when a  
16 state goes right-to-carry, that means the criminal who's  
17 thinking about robbing someone goes, Well, if I do this,  
18 I better carry a gun too.

19 Q Could it also possibly change the calculus to  
20 say -- for the criminal to say, It's now too costly to do  
21 this crime?

22 A Yeah, I think --

23 Q Therefore, I'm not going to do it?

24 A I think it probably does both to some degree.  
25 It's just that the harmful effects seem to outweigh the



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
166

1 beneficial effects.

2 Q Your study controls for that -- the difference  
3 there between those two?

4 A I mean, I can't tell the individual components.  
5 All I can say is, you know, what's the net effect. And  
6 if the -- if the only effect were benign, then we'd see  
7 crime go down, and -- I mean --

8 Q So how can you determine that right-to-carry  
9 laws increase violent crime when you can't at least  
10 control for the individual actions of the criminals?  
11 Isn't that vital?

12 A Again, we -- whether we're looking at the  
13 impact of police on crime, incarceration on crime, all we  
14 really know is the net effect. I mean, there's no  
15 question that some people go into prison and it makes  
16 them more violent and degrades their ability to work, and  
17 so that is a stimulus to crime.

18 Q But you're guessing as -- that the net effect  
19 is what it is because of a right-to-carry law, right?  
20 Because you can't link the criminal who commits a crime  
21 without a firearm to the fact that there's a  
22 right-to-carry law; can you?

23 MR. EISENBERG: Objection.

24 THE WITNESS: I mean, I'm --

25 MR. EISENBERG: Let me finish my objection,

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
167

1 please.

2 Lacks foundation, overly long, so it's a bit

3 confusing.

4 You may answer.

5 THE WITNESS: Okay. I mean, I don't see this as

6 any different from trying to identify the effect of

7 incarceration on crime. There are multiple pathways.

8 We can't fully assess how much of the increase

9 in incarceration is operating through incapacitation, how

10 much is through deterrence, how much is that being offset

11 by the stimulus of crime that incarceration imposes.

12 But at the end of the day, we have pretty good

13 estimates of, if you increase your prison population by

14 "X," what impact is it going to have on crime? And we

15 have pretty strong evidence the net effect is crime is

16 going to go down if you look at those people.

17 And the same is true with right-to-carry laws.

18 We don't know all of the individual influences, but the

19 evidence now seems to be pretty strong that if you pass a

20 right-to-carry law, you're going to see more violent

21 crime rather than less violent crime.

22 That doesn't say there isn't some deterrence.

23 That doesn't suggest there aren't some cases where

24 defensive gun use worked, but it just means that those

25 are outweighed by the pernicious consequences of



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
183

1           A You know, I just made the point myself, and I  
2       didn't cite anybody in support of that point.

3           Q So I think I understood you to say that the  
4       burden is -- a monetary one? Is that -- or the burden  
5       on --

6           A Well, yeah, just to -- just to complete the  
7       point of Paragraph 34, you know, as someone who is most  
8       interested in reducing the burdens of crime, the one  
9       thing we know is that if we took the 5 billion or so that  
10      people spend on guns and ammunition in the United States  
11      and put that into an actual effective crime-reducing  
12      measure, we'd really get some pop.

13          For \$5 billion you can reduce crime if you put  
14      it into, you know, well-directed crime-reducing  
15      technologies. So we know, almost as a matter of economic  
16      certainty, that spending that 5 billion on guns in  
17      private hands is giving less benefit than you would get,  
18      in terms of other methods of allocation.

19          Now, why do I say I know that with certainty?  
20      Because so much of what we've talked about today is --  
21      even the supporters of right-to-carry just say, Well,  
22      doesn't really have any effect overall net on crime, and  
23      we know that 5 billion on, let's say, well-trained police  
24      will get you a big pop in reducing crime.

25          So that means that if we knew nothing else,

1 we'd know we're in a suboptimal world by having that  
2 money spent on private weapons, when putting it into the  
3 best crime-reducing expenditure will really get us some  
4 social benefit.

5 Q The monetary burden of the private weapon is  
6 borne by the individual carrying the weapon, correct?

7 A Yeah. So they are wasting their own money.

8 Q So they're wasting their own money.

9 But that -- how is that a burden on the greater  
10 good? That money wouldn't be going to fund a police  
11 force anyway, would it, because it's their private money,  
12 not government money?

13 A Right, but if I could -- if I could find a  
14 group that could somehow, you know, convince every  
15 private gun owner who's thinking about buying a gun in  
16 the next year to say what I really care about is how can  
17 I reduce crime in the United States, and then I would  
18 take that money and use it to hire well-trained police, I  
19 know I'd get a lot more crime reduction from the 5  
20 billion in the well-trained police than 5 billion spent  
21 on private weapons.

22 So remember, the economist is always thinking  
23 how can we reallocate resources for greater social good?  
24 And so this would be one area where we could allocate  
25 resources. It's hard to achieve that allocation, but

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
185

1 that is the job of the economist, who tries to help move  
2 in that direction.

3 Q Just to be clear, you didn't rely upon any data  
4 to measure the resource burdens that open carry imposes?  
5 These are just your inferences; is that correct?

6 A Yeah, I am trying to make some theoretical  
7 observations on what some of the likely consequences of  
8 open carry are vis-a-vis concealed carry.

9 Q But you're making those assessments without  
10 relying on any data, correct?

11 A Well --

12 Q Let me be clear. Data specific to open carry.

13 A Yes. I mean, I am trying to draw inferences  
14 from what we know about concealed carry and see how we  
15 would expect the world to operate differently with open  
16 carry than it does with concealed carry.

17 Q So you're inferring everything that you state  
18 about open carry from your work on concealed carry study;  
19 is that correct?

20 A Yeah, although, again, in light of the  
21 conversations we've talked about -- you know, for  
22 example, there's a literature right now about police  
23 officers saying that open carry facilitates gun theft  
24 even beyond concealed carry, because the criminals just  
25 watch people, and if they see them get out of their car

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
186

1 with an empty holster, they know they've left their gun  
2 in the car, and then they just steal the gun as soon as  
3 the guy leaves the premises.

4 So some police chiefs are saying the open carry  
5 has exacerbated the problem of gun thefts. With  
6 concealed carry you don't have that mechanism operating.  
7 So every day I'm thinking about, in the light of the  
8 current debate among police officials and criminologists,  
9 as to what the impacts are.

10 Q So just to be clear, your conclusion that open  
11 carry would cause a net waste of resources is not based  
12 on a report, is not based on a study, is not based on  
13 data; is that correct?

14 A Well --

15 Q Specific to open carry.

16 A Yeah, I mean, it's based on my review of the  
17 relevant literature and my expertise in this area.

18 Q None of which is cited in your report?

19 A Well, of course, I think I've cited a number of  
20 things, and then I've added further references in our  
21 discussion here.

22 Q Nothing specific to open carry, correct?

23 A Well, again, I think the literature about the  
24 impact of open carry on theft is relevant.

25 Q Is it included in your report?

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
188

1 who's armed and who isn't.

2 Is this a correct characterization?

3 A Yes.

4 Q Based on this conclusion, do you also believe  
5 that officers openly carrying does not have a deterrent  
6 effect on crime by -- shouldn't they be concealed  
7 carrying instead?

8 A You know, there is debate about, you know,  
9 unmarked cars versus visible cars in police literature.  
10 In general, the big difference is that an armed police  
11 officer is sort of a visible representation of someone  
12 who's going to try to stop crime.

13 If you just see a guy walking down the street  
14 with a gun and you're about to rob somebody, you just  
15 say, Oh, I'll wait for the next guy if you're in an  
16 open-carry regime. While in a concealed-carry regime, at  
17 least you have the potential benefit of the person  
18 saying, you know, I have to be careful here, because  
19 somebody might do me harm.

20 Q Okay. So turning to Paragraph 34, if I  
21 understand your conclusion, it's that a possible effect  
22 of open carry is that a criminal will see the person  
23 openly carrying a firearm and then choose another target,  
24 right? In other words, move the burden to somebody else,  
25 correct?

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
189

1 A Yeah. Yeah.

2 Q What data are you aware of that shows that  
3 criminals, when confronted with a potential victim openly  
4 carrying a firearm, generally choose another target?

5 A I mean, this is -- this is a little bit of the  
6 premise of, you know, gun carrying, that you're going to  
7 dissuade criminals if they see the gun. And so I was  
8 just saying, if that's the consequence, it's probably  
9 just going to dissuade them from going after you but not  
10 dissuade them from --

11 Q So you're saying even assume --

12 MR. EISENBERG: Let him finish.

13 MR. BRADY: He was finished.

14 Q So you're saying, even assuming the deterrence  
15 effect, that gun owners purport that, even if that were  
16 the case, it wouldn't matter, because it's just shifting  
17 the burden? Is that essentially what you're saying?

18 A Yeah, I was trying to make a relative  
19 comparison. And it's sort of a two-step argument. One,  
20 if you believe the conclusions of my study, then you  
21 would say we know right-to-carry laws increase crime.  
22 Then you say, well, maybe we could have open carry  
23 instead of right-to-carry.

24 Then I would say, but there's probably more  
25 benefits for concealed carry, even though they're



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
190

1 outweighed by the costs. So that would mean that open  
2 carry would be less beneficial socially than concealed  
3 carry. And we've already concluded from the initial  
4 premise that concealed carry is bad.

5 So if concealed carry is bad, in terms of an  
6 increase in crime, and yet concealed carry is better than  
7 open carry, then we know open carry is the worst of the  
8 three possible worlds, no carry, concealed carry, or open  
9 carry. So that's just sort of a logical syllogism.

10 Q So you're basing that on logic, not on studies?

11 A Yeah, and, you know, the premise of the entire  
12 argument is based on a study. Because --

13 Q But there's no study specific to open carry  
14 saying what you're saying; is that correct?

15 A Well, there's a lot of studies that discusses  
16 this issue of the deterrence of open carry versus  
17 concealed carry, and they all make the same point that I  
18 make here --

19 Q But none of them are mentioned in your report?

20 MR. EISENBERG: Please, you're cutting him off in  
21 mid sentence. You've been doing it several times.  
22 Please let him finish talking before you ask the next  
23 question.

24 MR. BRADY: But we're running short on time, and  
25 with all due respect to the professor, as much as I'm

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
194

1 included.

2 Q Particularly about open carry -- I guess now is  
3 a good time to ask you -- is there anything in your  
4 report specific to open carry outside of Paragraphs 32  
5 through 36?

6 A I don't think so.

7 Q So just to be clear, there is the possibility  
8 that open carry deters crime against those who are openly  
9 carrying?

10 MR. EISENBERG: Objection. Asked and answered.

11 But you may answer, yeah.

12 THE WITNESS: Okay. The -- it's just -- if the  
13 question is do you think that open carry is likely to  
14 dissuade some criminals from picking on the open carrier,  
15 I think the answer to that is yes.

16 BY MR. BRADY:

17 Q Did you conduct any study of the benefits or  
18 burdens of that deterrence in preparing your report?

19 A I mean, in a sense the report on concealed  
20 carry is answering that to a degree, because the  
21 mechanisms that operate for open carry are similar in  
22 many respects to what's happening with concealed carry.  
23 And you may have a bigger problem with gun thefts with  
24 open carry than with concealed carry.

25 You certainly have a bigger problem of, you



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
195

1 know, citizen complaints to 911. The clinic at Stanford  
2 actually has a case going up to the Supreme Court now  
3 where someone said, Oh, there's a man with a gun outside.  
4 And this was in an open carry jurisdiction, and the  
5 police came and searched him, and the question is, you  
6 know, is that a lawful search.

7 So you are clearly taking up police time, and  
8 if these are good guys, that means you're wasting police  
9 time, and that, again, becomes a tax on police. Anything  
10 that keeps police from doing their effective work in  
11 reducing crime inhibits the -- that role. And this is  
12 another area where that would operate.

13 Q Again, you said that -- correct me if I'm  
14 wrong, but you said there's no study about police  
15 responding to lawful open carriers; is that correct?

16 Or let me ask you this. Are you aware of any  
17 study about police response to open carriers?

18 A I am aware of articles about police chief  
19 concerns about open carry with respect to more theft and  
20 with respect to this issue of the gun being carried in a  
21 reckless way that could create opportunities for someone  
22 to seize it from them quickly, as well as this issue  
23 about alarm distraction from the police and this one case  
24 where guy was walking down the street with an assault  
25 weapon.

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
196

1 It was legal to do that. And people called  
2 911. The police said, Well, there's nothing we can do.  
3 It's open carry. And then he started killing people.  
4 And so that was problem one.

5 Problem two is the guy really is a good guy  
6 with a gun, and people are calling 911, and they are then  
7 taking up time sending police over to check out a  
8 situation. So either way you going to be creating  
9 problems once you have open carry.

10 Of course, in the Dallas shooting case, the  
11 police chief there said it made it much more complicated  
12 for us, because there were open carriers around, when  
13 suddenly people are firing at us, and we didn't know who  
14 the good guys and the bad guys were, and according to the  
15 Dallas police chief, we were fortunate that, you know,  
16 none of these guys who were carrying guns got shot.

17 But again, these are all things that burden  
18 police departments in the operation of their dealings,  
19 and therefore, you know, will have a tendency to elevate  
20 crime overall, because the more you get in the way of  
21 police doing their job, the less deterrence and crime  
22 prevention you get from the police themselves.

23 Q What study or data set are you relying on in  
24 saying the burden is outweighed by the benefit of open  
25 carrying?

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
197

1 A Again, because -- I am drawing a logical  
2 inference that if the evidence persuades you -- which it  
3 does for me -- that right-to-carry laws increase violent  
4 crime, I think there are strong reasons supported by  
5 police chief discussions that open carry would have yet  
6 more burdens and less benefits.

7 So that's the sort of logical chance I relied  
8 on my study for the premise, and then I rely on the  
9 literature that discussing the likely consequence of open  
10 carry to say, I interpret that evidence to say that open  
11 carry would be less socially beneficial than concealed  
12 carry, and I've already drawn the conclusion that the  
13 concealed carry is socially harmful.

14 Q So you admit there's a distinction between open  
15 and concealed carry?

16 A Yes.

17 Q Okay. And the right-to-carry laws that you are  
18 evaluating in your reports and studies are solely  
19 concealed-carry laws; is that correct?

20 A That's correct.

21 Q Okay. So is it not problematic to utilize  
22 reports and data on concealed carry, that you admit is  
23 different from open carry, to make conclusions about the  
24 effects of open carry?

25 MR. EISENBERG: Objection. Vague and ambiguous as

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
198

1 to -- the word is "problematic." Vague and ambiguous as  
2 to "problematic."

3 But you may answer.

4 THE WITNESS: You know, I think, given the factual  
5 and empirical predicate of my argument, I feel on solid  
6 grounds drawing logical inferences about the impact of  
7 open carry relative to the impact of concealed carry.

8 And since I think open carry would likely be  
9 more socially harmful, given the factors that we've  
10 discussed, it's -- it sort of follows that open carry  
11 would, on balance, be socially harmful if we've already  
12 accepted the premise that concealed carry is socially  
13 harmful.

14 BY MR. BRADY:

15 Q So what if -- you conclude that a criminal  
16 would shift focus to an unarmed target if somebody's  
17 openly carrying, right?

18 A (No audible response)

19 Q So -- but what if the prevalence of open carry  
20 was so great that there's a significant chance that the  
21 next victim would be openly carrying as well?

22 A Yeah.

23 Q Did you form any opinions about the benefits  
24 and burdens of open carry under circumstances where open  
25 carry's ubiquitous?

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
199

1 A Yeah. You know, the plausible level of  
2 carrying is not going to be so high that a criminal  
3 hanging out isn't going to be able to find anyone to go  
4 after.

5 And again, you would think that if criminals  
6 are being dissuaded by the prospect of running into an  
7 armed person, they'd be more dissuaded by concealed  
8 carry, because then they don't even have the benefit of  
9 surprise.

10 And so when I spoke to one of my colleagues who  
11 went into a gun store the day that Texas opened up their  
12 permit holders to be able to carry openly, many of the  
13 people were saying that, I'm not going to carry openly,  
14 because I'd be the first person the criminal would take  
15 out, and this way I'll keep my gun concealed, and when  
16 they take out somebody else, I'll be the one to take them  
17 out.

18 So at least the Texas concealed carriers were  
19 expressing the view that they thought open carry was less  
20 effective in dealing with crime than concealed carry.

21 Q So hypothetically, using your view of the next  
22 unarmed victim being a target, what if the net effect --  
23 what would, in your opinion, be the net effect of half of  
24 the next potential victims openly carrying be? In other  
25 words, half the population --

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
200

1 A Yeah.

2 Q -- is openly carrying. Now, granted this is a  
3 hypothetical.

4 Would that change the view of the  
5 benefits-versus-burden analysis?

6 MR. EISENBERG: Objection. Compound.

7 THE WITNESS: You know, I think it's unlikely  
8 you'd ever see 50 percent people carrying. I mean, we  
9 live in California. 63 percent of people just voted to  
10 tighten gun access considerably in the latest referendum.  
11 So I don't see this playing a role.

12 And in the areas where you do see lots of guns  
13 openly carried, it's certainly not as though you see  
14 major drops in crime. The major drops in crime over the  
15 last 30 years have come in places like New York, which  
16 has been the most aggressive of any jurisdiction in  
17 trying to eliminate the role of guns, and, of course, in  
18 Australia, which largely got rid of private guns and  
19 prohibited self defense as a basis for applying for a gun  
20 permit.

21 BY MR. BRADY:

22 Q So just to be clear, I was asking  
23 hypothetically. I concede that nowhere would 50 percent  
24 of the people -- I'm just -- I want to pose a  
25 hypothetical to suggest -- is there a point at which the



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
201

1 level of open carrying would provide a deterrent effect,  
2 such that there would be a benefit?

3 A I mean, it's hard for me to envision that  
4 world, but I suspect that if you ever got to that place,  
5 the number of accidental gun deaths would be so high that  
6 there'd be a tremendous backlash with this. People'd be  
7 leaving their guns all over the place.

8 You know, a gun is a nuisance. It's heavy.  
9 People don't like to carry heavy things on their person  
10 the whole day, which is why they tend to put them down  
11 and leave them places.

12 And so if you look at the number of phones that  
13 get lost, it probably is a fairly good approximation of  
14 the number of guns that would get lost, and so 50 percent  
15 of Americans would -- carrying guns, you'd have a lot of  
16 guns ending up in the hands of kids on playgrounds and  
17 subways and buses. That would be a bad thing.

18 Q Are you aware of any studies that show that  
19 people who open carry have accidents with their firearms?

20 A You know, there's certainly a lot of evidence  
21 that people who carry guns have accidents with their  
22 firearms. So whether you're openly carrying or concealed  
23 carrying, it's probably, you know, equally likely that an  
24 accident will occur.

25 Maybe higher with open carry, because you have

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
202

1 the potential of other people being involved in the  
2 accident, as opposed to concealed carry where -- except  
3 the case of the Idaho mom whose two-year-old shot her in  
4 the head because he was in the shopping cart and found  
5 the gun.

6 Most of the time when you have concealed carry,  
7 you're not going to be exposing a gun in that way. But  
8 open carry, at least a little more exposed.

9 Q Let's turn to Paragraph 36 really quick in your  
10 report.

11 Quote, "An openly displayed gun in public also  
12 gives a muddy signal about the gun toter and could draw  
13 undue attention from police officers, directing law  
14 enforcement resources inefficiently, which, again, makes  
15 law firm less effective, thereby further promoting  
16 crime," close quote.

17 Is that an accurate reading of your report?

18 A Yes.

19 Q Do you consider police officers giving undue  
20 attention to open carriers a burden of open carry?

21 A That's a concern. We were discussing this  
22 earlier. Police chiefs have said, you know, if you have  
23 a choice between carrying openly and carrying concealed,  
24 carry concealed, because we've got a lot of 911 calls  
25 about open carriers. Obviously, that's tying up police

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
203

1 resources.

2 And this case going up to the Supreme Court  
3 that the Stanford clinic is handling is exactly that  
4 sort. Guy just carrying a gun openly where open carry is  
5 allowed suddenly triggers police intervention, and the  
6 NRA is coming in on that case on the side of the Stanford  
7 clinic, saying that that intervention was inappropriate,  
8 but it happens, and it's costly.

9 Q But again, that's an anecdote.

10 You don't have any data about stops by police  
11 officers of those openly carrying to support your  
12 Paragraph 36; is that correct?

13 A Again, I don't have numbers on stops, but we do  
14 have the discussions of police chiefs talking about the  
15 amount of attention that gun carriers can encourage from  
16 the public and the issues -- I was speaking earlier about  
17 the Dallas police chief talking about the consequences of  
18 open carry when the shooting in Dallas was going on, and  
19 he considered it problematic that there were people on  
20 the street with guns, because when people are shooting at  
21 the police and you look around and you see a lot of  
22 people with guns, you don't know if they're the good guys  
23 or the bad guys.

24 So any of these things can complicate the  
25 attention and the effectiveness of police, and since I



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
204

1 believe police are an extremely important element of  
2 crime reduction, I don't want to make their job harder.  
3 I want to make it easier.

4 Q So is it fair to say that the conclusion in  
5 Paragraph 36 that police officers would be burdened by  
6 open carriers is a major point of your report --

7 MR. EISENBERG: Objection. Vague -- oh, pardon  
8 me.

9 BY MR. BRADY:

10 Q -- opposing open carry?

11 MR. EISENBERG: Objection. Vague and ambiguous as  
12 to "major point."

13 THE WITNESS: I mean, the major point is really  
14 that concealed carry seems to be socially harmful, and  
15 here are a number of reasons why I think open carry is  
16 likely to be worse than concealed carry.

17 BY MR. BRADY:

18 Q But this is one of your main reasons for why  
19 open carry is a burden, correct, that it burdens police  
20 officers? That's one of your main points?

21 MR. EISENBERG: Objection. Misstates prior  
22 testimony and same objection about the vagueness and  
23 ambiguity of "major point."

24 THE WITNESS: And it is one of the factors and,  
25 you know, thefts -- I think I've discussed how that could



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
208

1 of independent grounds in addition to that to be  
2 skeptical about open carry, and this is -- becomes a  
3 cumulative basis for being skeptical about open carry.

4 BY MR. BRADY:

5 Q Additional ones that are not in your report?

6 A We've been discussing, you know, the  
7 encouragement of theft and the easier ability for  
8 criminals to identify theft opportunities, the lack of  
9 the deterrent umbrella that open carry creates. So those  
10 are two very important factors as well.

11 Q And those are all in your report?

12 A I believe they're in my report.

13 Q Those notions themselves are not based on any  
14 report specific about open carry, correct?

15 A Well, I mean, I had not -- I had not realized  
16 that thieves were sort of targeting people with empty  
17 holsters when they got out of their car. So that was  
18 based on a police chief reporting that information.

19 So reviewing those sorts of studies led me to  
20 that particular concern. And in general, there's a lot  
21 of evidence that people who carry guns outside the home  
22 have those stolen more frequently.

23 So that's no -- that's no different between  
24 open and concealed, but the police chief discussion of  
25 the greater opportunity of open carry to identify theft

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
209

1 opportunities was an additional factor.

2 And then, you know, the big argument that has  
3 always been made for concealed carry is that it provides  
4 a deterrent umbrella. By carrying, I not only protect  
5 myself, but I protect you, because the criminal doesn't  
6 know which of us is carrying, and that gets taken away  
7 when you have open carry, because now they do know.

8 Q You mentioned the anecdote about the police  
9 chief concerns about open carry several times now,  
10 correct?

11 A Yeah.

12 Q So you found that anecdote compelling, correct?

13 A It wasn't an anecdote. It was his discussion  
14 of the problem of theft in the wake of open carry.

15 Q You found his articulation of that problem with  
16 open carry that he viewed to be compelling, correct?

17 A Yes.

18 Q Okay. Then why didn't you develop any reports  
19 about stops by police officers on those who are openly  
20 carrying?

21 MR. EISENBERG: Objection. Argumentative.

22 THE WITNESS: You know, I probably should have  
23 added that to the report, but -- thankfully, we have this  
24 deposition to fill -- flesh out the record.

25 BY MR. BRADY:

JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
221

1 THE WITNESS: Yeah. I mean, lots of things I  
2 think don't work. Gun buy-backs I don't think work. You  
3 know, any sort of very porous regulation, I think is  
4 unlikely to work.

5 So, you know, even the Brady Bill is probably  
6 vastly less effective because it's not uniform, and, you  
7 know, a pure assault weapon ban without a restriction on  
8 large-capacity magazines probably have minimal effect on  
9 overall crime.

10 BY MR. BRADY:

11 Q Speaking of my relatives at the Brady campaign,  
12 have you ever received any funding from the Brady  
13 campaign?

14 A No.

15 Q What about any Bloomberg group?

16 A No.

17 Q Violence Policy Center?

18 A No.

19 Q Oh, the Law Center to Prevent Gun Violence?

20 A No.

21 Q Everytown?

22 A The only thing I've ever done from anyone, the  
23 National Science Foundation and, you know, various  
24 employers.

25 Q Have you been in communication with any gun



JOHN J. DONOHUE  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017  
23C

DECLARATION UNDER PENALTY OF PERJURY

ASSIGNMENT NO. J0614175

FLANAGAN vs CALIFORNIA ATTORNEY GENERAL AVIER BECERRA

## DEPOSITION ERRATA SHEET

Page 24, Line 18 (erroneously omitted words making sentence complete)

Change:

·standard of identifying causal impacts. Very hard to do

To:

·standard of identifying causal impacts. It is very hard to do

Page 25

Line 7 (error in transcription or misspoken word)

Change:

·treatment statements

To:

·treatment states

Line 12 (error in transcription or misspoken word)

Change:

·than having every state as a panel data be the control if

To :

·than having every state in the panel data be a control if



Page 27, Line 4 (error in transcription or misspoken word)

Change:

·seeing do

To:

·seeing if

Page 28, Line 6 (error in transcription or misspoken word)

Change:

·used on this paper.

To:

·used in this paper.

Page 35, Line 17 (error in transcription or misspoken word)

Change:

·table in statistics, and by that I meant

To:

·table in statistics, and by that he meant

Page 39, Line 13 (error in omitting to speak words to complete thought)

Change:

·statistical noise bounced it.

To:

·statistical noise bounced it in a particular direction.

Page 46, Line 19 (error in transcription or misspoken word)

Change:

·follows the normal economic laws as

To:

·follows the normal economic law that

Page 50, Line 23 (misspoken word)

Change:

·And the state said

To:

·And the NRC majority said

Page 51, Line 20 (error in speaking “shorthand,” leading to unclear answer)

Change:

·The committee was split on the murder

To:

·The committee was split on the impact of RTC laws on murder

Page 77, Line 2 (error in transcription or misspoken word)

Change:

·police.· So that's what instruments

To:

·police.· So that's what an instrument

Page 82

Line 15 (error in transcription or inadvertently spoke unnecessary word)

Change:

·instrumented all – for police

To:

·instrumented for police

Lines 19-20 (grammatical error in transcription)

Change:

·have more confidence in the Table 3 shall results than  
·the Table 4 shall results.

To:

·have more confidence in the Table 3 “shall” results than  
·the Table 4 “shall” results.

Page 97, Line 14 (error in transcription or misspoken word)

Change:

·direction, that that's better,

To:

·direction, then that's better,

Page 105, Line 25 (error in transcription or misspoken word)

Change:

·essentially do a variance

To:

·essentially do a variant

Page 124, Line 19 (error in transcription or inadvertently spoke unnecessary word)

Change:

·crime.· So that's not including simple assault; it's not  
·crime.· So that's not including simple assault; it's

Page 126, Line 7 (error in transcription or misspoken word)

Change:

·those.· You know, I gave a 2021 version

To:

·those.· You know, if I have a 2021 version

Page 160, Line 3 (grammatical error in transcription)

Change:

·But there was only one case -- so 1-21

To:

·But there was only one case -- so 1/21

Page 167, Line 16 (error in transcription or misspoken word)

Change:

·going to go down if you look at those people.

To:

·going to go down if you lock up those people.

Page 174, Line 20 (error in transcription)

Change:

·to the Vials Policy Center

To:

·to the Violence Policy Center

Page 177, Line 7 (grammatical error)

Change:

·often more about political power of special interest

To:

·often more about political power of special interests

Page 197, Line 7 (error in transcription or misspoken word)

Change:

·So that's the sort of logical chance

To:

·So that's the sort of logical stance

Page 211, Line 23 (error in transcription or misspoken word)

Change:

·information about gun theft, and at least occasion of

To:

·information about gun theft, and efficient allocation of

Page 215, Line 5 (error or inadvertently omitted to speak word)

Change:

·discussion in labor literature.

To:

·discussion in the labor literature.

Page 218, Line 9 (grammatical error)

Change:

· Those are arguments are on comparable

To:

· Those arguments are on comparable

Page 221

Line 8 (error in transcription or inadvertently omitted to speak word)

Change:

· large-capacity magazines probably have minimal effect on

To:

· large-capacity magazines would probably have minimal effect on

Line 22 (error in transcription or misspoken word)

Change:

· A· The only thing I've ever done from anyone, the

To:

· A· The only thing I've ever gotten from anyone, the

DECLARATION UNDER PENALTY OF PERJURY

2 ASSIGNMENT NO. J0614175

3 FLANAGAN vs CALIFORNIA ATTORNEY GENERAL AVIER BECERRA

4

5

6 I declare under penalty of perjury that I have read  
7 the entire transcript of my deposition taken in the  
8 captioned matter or the same has been read to me, and the  
9 same is true and accurate, save and except for changes  
10 and/or corrections, if any, as indicated by me on the  
11 DEPOSITION ERRATA SHEET hereof, with the understanding

12 that I offer these changes as if still under oath.

13

14 Signed on the 22 day of August, 2017.

15

16

A handwritten signature in black ink that reads "John J. Donohue III". The signature is written in a cursive style with a prominent "J" and "D".

JOHN J. DONOHUE III