

1 C.D. Michel – SBN 144258
Email: cmichel@michellawyers.com
2 Joshua R. Dale – SBN 209942
Sean A. Brady – SBN 262007
3 Anna M. Barvir – SBN 268728
MICHEL & ASSOCIATES, P.C.
4 180 E. Ocean Blvd., Suite 200
Long Beach, CA 90802
5 Telephone: (562) 216-4444
Facsimile: (562) 216-4445

6 Attorneys for Plaintiffs
7

8 **IN THE UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 MICHELLE FLANAGAN, et al.,

12 Plaintiffs,

13 v.

14 CALIFORNIA ATTORNEY
GENERAL XAVIER BECERRA, in
15 his official capacity as Attorney
General of the State of California, et
16 al.,

17 Defendants.
18

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

**DECLARATION OF SEAN A.
BRADY IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

Judge: John A. Kronstadt
Hearing Date: November 6, 2017
Hearing Time: 8:30 AM
Courtroom: 10B

Action Filed: August 17, 2016
Trial Date: February 6, 2018

1 I, Sean A. Brady, declare as follows:

2 1. I am an attorney at the law firm Michel & Associates, P.C., attorneys
3 of record for plaintiffs in this action. I have personal knowledge of the facts set
4 forth herein and, if called and sworn as a witness, could and would testify
5 competently thereto.

6 2. On April 26, 2017, counsel for Defendants deposed Plaintiff Michelle
7 Flanagan. Attached hereto as Exhibit 1 is a true and correct copy of excerpts from
8 the transcript of Ms. Flanagan's deposition.

9 3. On April 26, 2017, counsel for Defendants deposed Plaintiff Dominic
10 Nardone. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from
11 the transcript of Mr. Nardone's deposition.

12 4. On May 1, 2017, counsel for Defendants deposed Plaintiff Samuel
13 Golden. Attached hereto as Exhibit 3 is a true and correct copy of excerpts from the
14 transcript of Mr. Golden's deposition.

15 5. On May 1, 2017, counsel for Defendants deposed Plaintiff Jacob
16 Perkio. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the
17 transcript of Mr. Perkio's deposition.

18 6. On July 12, 2017, and again on August 8, 2017, counsel for Plaintiffs
19 deposed Defendant's expert witness, Stanford Law Professor John J. Donohue III.
20 Attached hereto as Exhibit 5 is a true and correct copy of excerpts from the
21 transcript of Prof. Donohue's deposition.

22 7. Plaintiffs' expert witness Professor Gary Kleck, a professor of
23 criminology at Florida State University, submitted in this matter an expert report
24 analyzing and responding to the report of Defendant's expert, Professor John J.
25 Donohue III. Attached hereto as Exhibit 6 is a true and correct copy of the Expert
26 Report of Professor Gary Kleck.

27 8. Plaintiffs' expert witness Guy Rossi, a retired law enforcement officer
28 and a law enforcement trainer, submitted in this matter an expert report analyzing

1 and responding to the report of Defendant's expert witness Chief Kim Raney (ret.).
2 Attached hereto as Exhibit 7 is a true and correct copy of the Expert Report of Guy
3 Rossi.

4 9. Plaintiffs' expert Senator John Cooke, a Colorado state senator and
5 retired police chief, submitted in this matter an expert report analyzing and
6 responding to the report of Defendant's expert witness Chief Kim Raney (ret.).
7 Attached hereto as Exhibit 8 is a true and correct copy of the Expert Report Senator
8 John Cooke.

9 10. I have researched and confirmed that 46 states allow the open carry of
10 firearms in some form. States generally prohibiting open carry of any firearm by
11 statute are California, Hawaii, Florida, Illinois as well as the District of Columbia.

12 11. I have researched and confirmed that there are three additional states
13 that do not have statutory prohibitions against open carry, but state law has been
14 construed to generally prohibit the practice. These states are Massachusetts, New
15 York, and New Jersey.

16 12. I have researched and confirmed that there are two states which
17 generally prohibit the open carry of handguns, but otherwise allow the open carry
18 of long guns. These states are Maryland and South Carolina.

19 13. I have researched and confirmed that 34 states allow unlicensed
20 persons to carry firearms openly, notwithstanding municipal ordinances in some
21 states. There are six states which require a permit but permits are granted on a shall
22 issue basis. These states are Indiana, Georgia, Minnesota, Oklahoma, Texas, and
23 Tennessee. The remaining six states allow open carry with a permit but are "may
24 issue" permit regimes, and it is unknown how many permits they issue.

25 14. I have researched and confirmed that in the following 29 states, the
26 practice of openly carrying a firearm in public was generally not prohibited prior to
27 the passage of "shall issue concealed weapon permit" statutes. These states include
28 Alabama, Alaska, Arizona, Colorado, Idaho, Kansas, Kentucky, Louisiana, Maine,

1 Michigan, Missouri, Mississippi, Montana, North Carolina, Nebraska, New
2 Hampshire, New Mexico, Nevada, Ohio, Oregon, Pennsylvania, South Dakota,
3 Utah, Virginia, Washington, West Virginia, Wisconsin, Wyoming, Vermont. Most
4 of these states never specifically banned the practice of openly carrying and
5 firearm. And in those states that did prohibit the open carry of a firearm, the
6 prohibition was ultimately eliminated by statute or found unconstitutional under
7 that state's constitution.

8 I declare under penalty of perjury that the foregoing is true and correct.
9 Executed within the United States on October 2, 2017.

10
11 /s/Sean A. Brady
12 Declarant
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EXHIBIT 1

MICHELLE FLANAGAN
MICHELLE FLANAGAN vs CALIFORNIA ATTORNEY

April 26, 2017

1

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

MICHELLE FLANAGAN, SAMUEL
GOLDEN, DOMINIC NARDONE,
JACOB PERKIO, and THE
CALIFORNIA RIFLE & PISTOL
ASSOCIATION,

Plaintiffs,

vs.

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

CALIFORNIA ATTORNEY
GENERAL XAVIER BECERRA, in
his official capacity as
Attorney General of the
State of California,
SHERIFF JAMES McDONNELL, in
his official capacity as
Sheriff of Los Angeles
County, California, and
DOES 1-10,

Defendants.

~~~~~

DEPOSITION OF  
MICHELLE FLANAGAN

Wednesday, April 26, 2017

9:35 A.M. - 10:10 A.M.

300 S. Spring Street, Suite 1702  
Los Angeles, California

Nancy Collier Hamada, CSR No. 5819



800.211.DEPO (3376)  
EsquireSolutions.com

MICHELLE FLANAGAN  
MICHELLE FLANAGAN vs CALIFORNIA ATTORNEY

April 26, 2017

2

APPEARANCES OF COUNSEL

For Plaintiffs:

MICHEL & ASSOCIATES, PC  
BY: SEAN A. BRADY, ESQ.  
180 E. Ocean Boulevard, Suite 200  
Long Beach, California 90802  
562.216.4444  
sbrady@michellawyers.com

For Attorney General Xavier Becerra:

STATE OF CALIFORNIA  
OFFICE OF ATTORNEY GENERAL  
BY: P. PATTY LI, ESQ.  
455 Golden Gate Avenue, Suite 11000  
San Francisco, California 94102-7004  
415.703.1577  
patty.li@doj.ca.gov



800.211.DEPO (3376)  
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MICHELLE FLANAGAN  
MICHELLE FLANAGAN vs CALIFORNIA ATTORNEY

April 26, 2017

10

1 not be able to carry concealed. I would not be  
2 able to carry a firearm. That's basically it.  
3 Because of the current sheriff, his viewpoint from  
4 my perspective. That was it.

5 BY MS. LI:

6 Q What is your current job?

7 A I'm a commercial real estate broker.

8 Q And how long have you had that job for?

9 A Since July of 2015, but I've been in the  
10 real estate industry for over 30 years.

11 Q Are you eligible to possess a firearm in  
12 California?

13 A Yes, ma'am.

14 Q And have you ever been informed by anyone  
15 that you were not eligible?

16 A No.

17 Q Have you ever been convicted of a felony?

18 A No.

19 Q A misdemeanor?

20 A No.

21 Q And I don't mean to offend you, but I  
22 just need to ask have you ever been involuntarily  
23 committed to a mental health facility?

24 MR. BRADY: Objection, privilege on the  
25 grounds of privacy grounds, irrelevant, and I



1 carrying a firearm concealed on your person?

2 MR. BRADY: Objection, incomplete  
3 hypothetical, vague and ambiguous. You can go  
4 ahead and answer.

5 THE WITNESS: Well, I could carry it on  
6 my hip, I guess. I don't believe that's legal in  
7 Los Angeles County. I don't think I can carry  
8 openly, but if I were allowed to carry openly, I  
9 would -- there would be very specific ways that I  
10 would carry, yes.

11 BY MS. LI:

12 Q So the phrase "open carry," is that a way  
13 to describe the other way to carry in public that  
14 is not concealed on your person?

15 MR. BRADY: Objection, vague and  
16 ambiguous, but go ahead to the extent you  
17 understand.

18 THE WITNESS: Open would be open to  
19 everyone seeing what I had on me, so I would say  
20 open would be maybe on my belt.

21 BY MS. LI:

22 Q Have you ever applied for a concealed  
23 carry license from the Los Angeles County Sheriff?

24 A Yes, ma'am.

25 Q And do you know when that was roughly?

MICHELLE FLANAGAN  
MICHELLE FLANAGAN vs CALIFORNIA ATTORNEY

April 26, 2017  
15

1 A I want to say it was in the summertime a  
2 year, maybe two years ago, August maybe, August,  
3 July. I don't recall exactly the date.

4 Q And what was the result of that  
5 application?

6 A I was denied.

7 Q Why did you apply to carry a concealed  
8 weapon?

9 MR. BRADY: Objection, calls for a  
10 narrative. Go ahead and answer to the extent you  
11 understand.

12 THE WITNESS: Because I'd like the right  
13 to protect myself.

14 BY MS. LI:

15 Q And the application that you completed  
16 for the L.A. County Sheriff, did you need to give  
17 a reason in that application for wanting to carry  
18 a concealed weapon?

19 A Yes.

20 Q Do you remember what that reason was?

21 A Yes.

22 Q Can you tell me what that reason was?

23 A I am a commercial real estate broker. I  
24 travel sometimes with large sums of money because  
25 I collect rents in commercial building situations,

MICHELLE FLANAGAN  
MICHELLE FLANAGAN vs CALIFORNIA ATTORNEY

April 26, 2017  
25

1 A Yes, ma'am.

2 Q If there were no choice and carrying  
3 openly were the only option available to you,  
4 would you take advantage of that option?

5 A Yes, ma'am.

6 Q Have you ever carried openly in  
7 California?

8 A Not off of my property, no.

9 Q Do you wish to carry openly now if it  
10 were legal?

11 MR. BRADY: Objection, vague and  
12 ambiguous as to "wish to," asked and answered. Go  
13 ahead.

14 THE WITNESS: I desire to carry a firearm  
15 legally in the State of California and in the  
16 County of Los Angeles. Whichever is a legal,  
17 viable way for me to carry, yes, I want to carry.  
18 BY MS. LI:

19 Q And by "carry" -- I just want to make  
20 sure we all understand each other -- by "carry"  
21 you mean outside your home?

22 A Correct, outside my home, off of my  
23 property. I would like to carry wherever I go.

24 Q Are you familiar with the California  
25 Rifle & Pistol Association?

MICHELLE FLANAGAN  
MICHELLE FLANAGAN vs CALIFORNIA ATTORNEY

April 26, 2017  
32

REPORTER'S CERTIFICATION


I, the undersigned, a Certified Shorthand  
Reporter of the State of California, do hereby  
certify:

That the foregoing proceedings were taken  
before me at the time and place herein set forth;  
that any witnesses in the foregoing proceedings,  
prior to testifying, were placed under oath; that  
a verbatim record of the proceedings was made by  
me using machine shorthand which was thereafter  
transcribed under my direction; further, that the  
foregoing is an accurate transcription thereof.

I further certify that I am neither  
financially interested in the action nor a  
relative or employee of any attorney of any of the  
parties.

IN WITNESS WHEREOF, I have this date  
subscribed my name.

Dated: May 1, 2017



NANCY COLLIER HAMADA  
CSR No. 5819

MICHELLE FLANAGAN  
MICHELLE FLANAGAN vs CALIFORNIA ATTORNEY

April 26, 2017  
33

Our Assignment No. 559008A

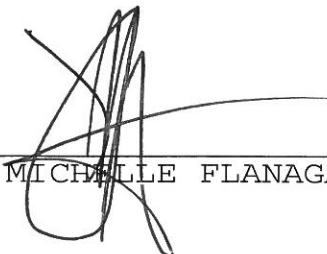
Case Caption: MICHELLE FLANAGAN, et al.

vs. CALIFORNIA ATTORNEY GENERAL XAVIER BECERRA,  
et al.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I  
have read the entire transcript of my Deposition  
taken in the captioned matter or the same has been  
read to me, and the same is true and accurate,  
save and except for changes and/or corrections, if  
any, as indicated by me on the DEPOSITION ERRATA  
SHEET hereof, with the understanding that I offer  
these changes as if still under oath.

Signed on the 31<sup>st</sup> day of May,  
2017.

  
\_\_\_\_\_  
MICHELLE FLANAGAN



800.211.DEPO (3376)  
EsquireSolutions.com

# **EXHIBIT 2**

DOMINIC NARDONE  
MICHELLE FLANAGAN vs CALIFORNIA ATTORNEY

April 26, 2017

1

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
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  
12 GENERAL XAVIER BECERRA, in  
13 his official capacity as  
14 Attorney General of the  
15 State of California,  
16 SHERIFF JAMES McDONNELL, in  
17 his official capacity as  
18 Sheriff of Los Angeles  
19 County, California, and  
20 DOES 1-10,

21 Defendants.  
22 ~~~~~

23 DEPOSITION OF  
24 DOMINIC NARDONE  
25

Wednesday, April 26, 2017

11:50 A.M. - 12:20 P.M.

300 S. Spring Street, Suite 1702  
Los Angeles, California

Nancy Collier Hamada, CSR No. 5819



800.211.DEPO (3376)  
EsquireSolutions.com

APPEARANCES OF COUNSEL

For Plaintiffs:

MICHEL & ASSOCIATES, PC  
BY: SEAN A. BRADY, ESQ.  
180 E. Ocean Boulevard, Suite 200  
Long Beach, California 90802  
562.216.4444  
sbrady@michellawyers.com

For Attorney General Xavier Becerra:

STATE OF CALIFORNIA  
OFFICE OF ATTORNEY GENERAL  
BY: P. PATTY LI, ESQ.  
455 Golden Gate Avenue, Suite 11000  
San Francisco, California 94102-7004  
415.703.1577  
patty.li@doj.ca.gov



1 U.S. citizen and as an honest citizen and never  
2 been in trouble.

3 Q So what is it that you are hoping to get  
4 through this lawsuit?

5 A My attorney asked me the same question.  
6 First thing I would like to get is the carry  
7 permit real peaceably and just go through the  
8 normal circumstances and get it.

9 If I can't get that, you're taking one of  
10 my Amendment rights away. I want you to pay  
11 through the nose. I want you to every time you  
12 hear my name squirm. That's what I want. You're  
13 not allowed to take my rights away. You're not  
14 the Supreme Court. You can't take my rights away.  
15 What are you going to take away next time,  
16 religion, freedom of speech? It don't work.  
17 That's what I want.

18 Q So I heard you discussing your desire to  
19 get a concealed carry permit.

20 A Yes.

21 Q What about carrying openly in public, is  
22 that something that you would like to...

23 A It would be my second option, not my  
24 preference, but I would take that.

25 Q So if the result of this lawsuit were

DOMINIC NARDONE  
MICHELLE FLANAGAN vs CALIFORNIA ATTORNEY

April 26, 2017  
30

REPORTER'S CERTIFICATION

I, the undersigned, a Certified Shorthand  
Reporter of the State of California, do hereby  
certify:

That the foregoing proceedings were taken  
before me at the time and place herein set forth;  
that any witnesses in the foregoing proceedings,  
prior to testifying, were placed under oath; that  
a verbatim record of the proceedings was made by  
me using machine shorthand which was thereafter  
transcribed under my direction; further, that the  
foregoing is an accurate transcription thereof.

I further certify that I am neither  
financially interested in the action nor a  
relative or employee of any attorney of any of the  
parties.

IN WITNESS WHEREOF, I have this date  
subscribed my name.

Dated: May 1, 2017



NANCY COLLIER HAMADA  
CSR No. 5819

# **EXHIBIT 3**

SAMUEL GOLDEN  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

May 01, 2017

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

\_\_\_\_\_  
MICHELLE FLANAGAN, SAMUEL GOLDEN, )  
DOMINIC NARDONE, JACOB PERKIO, and )  
THE CALIFORNIA RIFLE & PISTOL )  
ASSOCIATION, )

Plaintiff(s), )

vs. )

CASE NO. 2:16-cv-06164  
JAK-AS

CALIFORNIA ATTORNEY GENERAL XAVIER )  
BECERRA, in his official capacity )  
as Attorney General of the State )  
of California, SHERIFF JAMES )  
McDONNELL, in his official )  
capacity as Sheriff of Los Angeles )  
County, California, and DOES 1-10, )

Defendants. )  
\_\_\_\_\_

DEPOSITION OF

SAMUEL GOLDEN

May 1, 2017

2:39 p.m.

300 South Spring Street  
Suite 1702  
Los Angeles, California

Maria Lozano, CSR NO. 13687



800.211.DEPO (3376)  
EsquireSolutions.com

APPEARANCES OF COUNSEL

For the Plaintiff(s):

MICHEL & ASSOCIATES, P.C.  
SEAN A. BRADY, ESQ.  
180 East Ocean Boulevard  
Suite 200  
Long Beach, California 90802  
562.216.4444  
sbrady@michellawyers.com

For the Defendants:

STATE OF CALIFORNIA DEPARTMENT OF JUSTICE  
OFFICE OF THE ATTORNEY GENERAL  
P. PATTY LI, ESQ.  
455 Golden Gate Avenue  
Suite 11000  
San Francisco, California 94102  
415.703.1577  
patty.li@doj.ca.gov

1 A. I believe it's more dangerous and I believe it  
2 could cause people to jump to a conclusion that is not  
3 correct.

4 Q. What kind of conclusion?

5 A. Somebody that's anti-gun could just freak out  
6 because I'm -- I happen to be standing next to them in the  
7 grocery line with a gun on my hip.

8 Q. So even if open carry were permitted that person  
9 might, quote, unquote, freak out, might have an oversized  
10 reaction? Is that what you mean?

11 A. Yes.

12 Q. Did you decide to join this lawsuit after you  
13 learned that your most recent application to the L.A. County  
14 Sheriff had been denied?

15 A. No.

16 Q. When was -- when were you informed that your most  
17 recent application had been denied?

18 A. After I joined the lawsuit.

19 Q. But you -- you had previously applied and been  
20 denied before the lawsuit at some point; is that right?

21 A. Correct. But when I joined the lawsuit, my last  
22 correspondence from the Sheriff's Department was not that  
23 they were denying me, but that they were not making any  
24 decisions because they were waiting for --

25 Q. Peruta?

1 A. The Peruta San Diego concealed carry judgment --  
2 no, verdict.

3 Q. There's a lawsuit concerning --

4 A. Yes.

5 Q. Concealed carry?

6 A. Yes.

7 Q. Is that your understanding?

8 A. Yes.

9 Q. So, correct me if I'm wrong, it sounds like what  
10 you're hoping to achieve through this lawsuit is a change in  
11 the law so that you can carry a firearm publicly in  
12 California; is that right?

13 A. Yes.

14 Q. And you would prefer to be able to carry that  
15 firearm in a concealed manner?

16 A. Yes.

17 Q. Would you if the right to carry publicly were for  
18 some reason only available as open carry, would you take  
19 advantage of that?

20 A. Yes.

21 Q. If you are able to achieve the right to carry a  
22 firearms publicly in California, are there any public places  
23 that you think it would be acceptable to be off limits for  
24 persons to carry firearms?

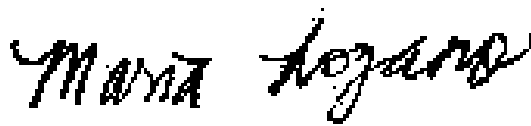
25 A. I don't think that's for me to say.

REPORTER'S CERTIFICATION

I, MARIA LOZANO, a Certified Shorthand Reporter  
in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn;  
that the deposition was then taken before me at the time  
and place herein set forth; that the testimony and  
proceedings were reported stenographically by me and later  
transcribed into typewriting under my direction; that the  
foregoing is a true record of the testimony and proceedings  
taken at that time.

IN WITNESS WHEREOF, I have subscribed my name  
this 1st day of May, 2017.



Maria Lozano, CSR NO. 13687.



May 01, 2017  
27

SAMUEL GOLDEN  
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

DEPOSITION ERRATA SHEET

Our Assignment No. J0559021

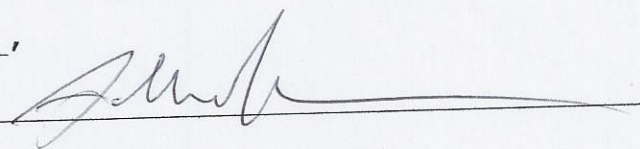
Case Caption:  
Michelle Flanagan vs California Attorney General

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the above captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the 21 day of May,

2017,



SAMUEL GOLDEN

# **EXHIBIT 4**

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
MICHELLE FLANAGAN, SAMUEL GOLDEN,  
DOMINIC NARDONE, JACOB PERKIO,  
and THE CALIFORNIA RIFLE & PISTOL  
ASSOCIATION,

Plaintiffs,

vs.

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

CALIFORNIA ATTORNEY GENERAL  
XAVIER BECERRA, in his official  
capacity as Attorney General of  
the State of California,  
SHERIFF JAMES McDONNELL, in his  
official capacity as Sheriff of  
Los Angeles County, California,  
and DOES 1-10,

Defendants.

~~~~~

DEPOSITION OF

JACOB PERKIO

May 1, 2017

1:00 p.m.

Volume I

300 South Spring Street, Suite 1700

Los Angeles, California

Maria A. Hasakian, CSR No. 8469

1 APPEARANCES:

2
3 For the Plaintiff:

4 MICHEL & ASSOCIATES, P.C.
5 SEAN A. BRADY, ESQ.
6 180 East Ocean Boulevard, Suite 200
Long Beach, California 90802
562.216.4444

7 For California Attorney General Xavier Becerra:

8 DEPARTMENT OF JUSTICE
9 OFFICE OF THE ATTORNEY GENERAL
P. PATTY LI, ESQ.
455 Golden Gate Avenue, Suite 11000
10 San Francisco, California 94102-7004
415.703.1577
11
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1 to the L.A. County Sheriff was denied?

2 A. It came up after I was denied, yes.

3 Q. Is part of the reason that you joined the
4 lawsuit the fact that the application was denied?

5 A. Yes.

6 Q. And what is it that you are hoping to
7 achieve through this lawsuit?

8 A. I'm hoping that any law abiding gun owner
9 can carry a firearm in public.

10 Q. And when you say carry a firearm in public,
11 do you -- do you mean carry a firearm in a concealed
12 manner or carry a firearm openly or both?

13 A. I don't have a preference if it's open or
14 concealed. I just believe that it's a right to
15 carry a firearm in public.

16 Q. So if you were able to carry a firearm in
17 public but the only way you could carry it would be
18 openly, would you take advantage of that?

19 A. Definitely.

20 Q. And if you were able to carry a firearm in
21 public, but the only way that you could do that was
22 to carry a weapon in a concealed manner, would you
23 take advantage of that?

24 A. Definitely.

25 Q. And you indicated that you have no

1 preference as between carrying concealed and
2 carrying openly?

3 A. Correct.

4 Q. Do you think you would be -- if both
5 concealed carry and open carry were available, would
6 you default more to one or the other?

7 A. It would probably depend on the weather,
8 the day.

9 Q. You mean in terms of what you're wearing?

10 A. The temperature outside, what I'm wearing,
11 what I'll be doing, where I'll be going.

12 Q. Do you think there are -- it would be
13 appropriate to have a right to carry in public but
14 have that right limited so that you would not be
15 able to carry in certain public places?

16 A. Can you repeat that?

17 Q. Sure.

18 Would it be acceptable to you if there were
19 some kind of right to carry a firearm in public but
20 that right was somewhat limited in terms of there
21 being certain places, certain public places where
22 you could not carry the weapon?

23 I can give you some examples, if that would
24 help. So, for example, government buildings,
25 schools. There may be various places where even if

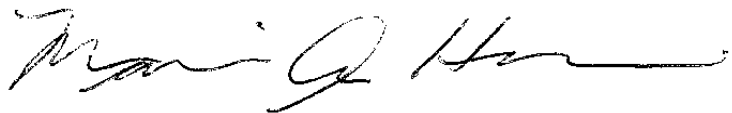
REPORTER'S CERTIFICATION

I, Maria A. Hasakian, a Certified Shorthand
Reporter in and for the State of California, do
hereby certify:

That the foregoing witness was by me duly
sworn; that the deposition was then taken before me
at the time and place herein set forth; that the
testimony and proceedings were reported
stenographically by me and later transcribed into
typewriting under my direction; that the foregoing
is a true record of the testimony and proceedings
taken at that time.

That before the conclusion of the deposition,
the witness has requested a review of this
transcript pursuant to Rule 30(e)(1).

IN WITNESS WHEREOF, I have subscribed my name
this 2nd day of May, 2017.



Maria A. Hasakian, CSR No. 8469

JACOB PERKIO Volume I
FLANAGAN vs CA A.G. XAVIER BECERRA

May 01, 2017
23

DEPOSITION ERRATA SHEET

Our Assignment No. JO559029

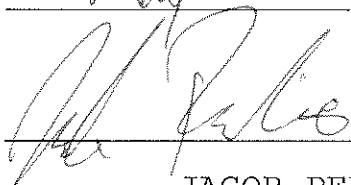
Case Caption: MICHELL FLANAGAN, SAMUEL GOLDEN,
DOMINIC NARDONE, JACOB PERKIO and THE CALIFORNIA
RIFLE & PISTOL ASSOCIATION, vs. CALIFORNIA ATTORNEY
GENERAL XAVIER BECERRA, in his official capacity as
Attorney General of the State of California, et al.

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury
that I have read the entire transcript of
my Deposition taken in the above captioned matter
or the same has been read to me, and
the same is true and accurate, save and
except for changes and/or corrections, if
any, as indicated by me on the DEPOSITION
ERRATA SHEET hereof, with the understanding
that I offer these changes as if still under
oath.

Signed on the 30th day of

May, 2017,



JACOB PERKIO



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EXHIBIT 5

JOHN J. DONOHUE
FLANAGAN vs CALIFORNIA ATTORNEY GENERAL

July 12, 2017

1

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



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APPEARANCES OF COUNSEL:

For the Plaintiffs:

MICHEL & ASSOCIATES
BY: SEAN A. BRADY, ESQ.
ANNA BARVIR, ESQ.
180 East Ocean Boulevard, Suite 200
Long Beach, California 90802
562-216-4444
sbrady@michellawyers.com

For the Defendants:

JONATHAN M. EISENBERG, Deputy Attorney General
STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE,
OFFICE OF THE ATTORNEY GENERAL
300 South Spring Street, Suite 1702
Los Angeles, California 90013
213-897-6505
jonathan.eisenberg@doj.ca.gov

Also Present:

MATTHEW NGUYEN

1 A No, I have not revised the report.

2 Q Only Exhibit B?

3 A Yes.

4 Q So then the answer is you have not finished
5 your assignment in this matter?

6 MR. EISENBERG: Objection. Ambiguous.

7 But you may answer.

8 THE WITNESS: Okay. I just wasn't sure if I was
9 supposed to answer.

10 I mean, I think of myself as having finished
11 the expert report, and in that sense -- although my --
12 you know, my job is to be a researcher and, you know,
13 until this paper is published, I'll be working on it. So
14 that process goes on.

15 So I think my task here was to write the expert
16 report, but my task, you know, and my job as a Stanford
17 researcher is to, you know, get that paper published, and
18 I'll be working on that until it finally is published.

19 BY MR. BRADY:

20 Q So that -- the paper that was attached as
21 Exhibit B, both the original Exhibit B and the updated
22 one -- neither is published; is that correct?

23 A That's right.

24 MR. EISENBERG: Wait. Objection. Ambiguous as to
25 the word "published."

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.

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.

1 Q Do you know whether all of the firearm-related
2 studies you have conducted analyzed the effectiveness of
3 a firearm restriction?

4 A You know, I -- a lot of my work -- I was
5 originally asked to comment on some work that John Lott
6 had done, in which he was exploring the impact of
7 right-to-carry laws on crime.

8 And so I would say the heart of my work has
9 focused on that question, what is the impact on crime of
10 the state adoption of right-to-carry laws.

11 Q Have you authored or coauthored any studies
12 about firearms-related matters that are not about
13 right-to-carry laws?

14 A You know, I don't think that I -- I don't think
15 I've written anything for a peer-reviewed journal about
16 firearms that didn't focus on right-to-carry laws.

17 Q Okay. So all of -- is it fair to say that all
18 of your work on firearm-related matters is about the
19 effectiveness of right-to-carry laws?

20 A I think all of my publications and
21 peer-reviewed journal fall into that. Probably, you
22 know, some shorter pieces that I've worked on have
23 discussed other aspects of firearm regulation, but I'm
24 distinguishing between writing for, you know, a
25 peer-reviewed journal versus, you know, some other forum.

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

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 Q Did you rely on staff to present the
2 regressions that you reviewed to you?

3 A Yes. I mean, I'm fortunate that I'm able to
4 hire research assistants to actually, you know, run the
5 regressions for me. So I don't have to do that myself.

6 Q Could they have -- and when I say the staff,
7 your assistants.

8 Could they have withheld certain regressions
9 without your knowledge?

10 A It's conceivable, because one never knows what
11 someone does that you don't know, but they typically just
12 do what I tell them to do. So they would then bring
13 whatever I tell them to do to me.

14 Q What would be the effect of omitting
15 regressions?

16 A You know --

17 MR. EISENBERG: Wait a minute. I'll just
18 interpose an objection. Vague and ambiguous.

19 But you may answer.

20 THE WITNESS: Yeah. I mean, it's -- one could
21 imagine a world where someone runs lots of regression
22 analyses and gets results that they don't like and then
23 buries them and then -- because there's always a certain
24 amount of statistical noise in any of these models, if
25 you run them enough different ways, you can bounce the

1 numbers in a way that, you know, some estimate will
2 suddenly bounce in a certain direction, and if then you
3 grab that one and say, oh, this is what I found, then you
4 can get very misleading results.

5 BY MR. BRADY:

6 Q Did you do that in preparing the DAW?

7 A No. I mean, I really tried to be extremely
8 careful in this way to sort of show -- you know, show
9 estimates that I -- that I even think are not plausible,
10 just in case somebody believes that they think that is a
11 more plausible estimate. So I will always put into my
12 paper things that I may find not plausible estimates, but
13 I just want researchers to know the full scope of the
14 results.

15 And I think one time Stephen Stigler at
16 University of Chicago said, I want to see hands above the
17 table in statistics, and by that I meant that he didn't
18 want somebody so -- working in the background to obscure
19 results and pick out very selected results because --
20 because of the nature of statistical analysis, that there
21 are these random variations, if you run enough
22 regressions and then just pick out one that you like, you
23 can really, really engineer results that are very
24 misleading.

25 Q Do you recall seeing any regressions that

1 contradicted your conclusion in the DAW?

2 A You know, some of the regressions that I
3 include in the paper using the panel data models are
4 inconsistent with, certainly, the synthetic controls
5 conclusions.

6 Q So some regressions are not consistent with
7 your conclusion in DAW? Is that a fair statement?

8 A Yes.

9 Q What criteria did you use in choosing which
10 regressions to include?

11 A You know, essentially, what I did was -- I
12 wanted to, you know, choose the model I thought was the
13 best, and that's what I referred to as DAW specification
14 or model.

15 And then I wanted to give researchers --
16 especially because there is this long history of
17 uncertainty about the panel data estimates -- a sense of
18 how robust the results would be if you ran other
19 published versions of models that were trying to estimate
20 the impact of right-to-carry laws.

21 And so I used the Brennan Center model and ran
22 those results through, and those were extremely similar
23 to my version. But I also used models that had been used
24 by those who were **advocating** that right-to-carry laws
25 reduced crime, to see what would happen if we ran their

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

1 controls models, what I did there was only identify what
2 the estimated impact was for the ten years after
3 right-to-carry adoption. And so any state that had not
4 adopted a right-to-carry law in that ten-year period
5 could be a potential control in doing the synthetic
6 control analysis.

7 So for example, Wisconsin adopted a
8 right-to-carry law in 2011. And that means if I'm trying
9 to figure out the effect of the right-to-carry law in
10 Texas, which adopted in 1996, I can consider Wisconsin as
11 a potential synthetic control, because, for the period
12 from 1996 to 2006, Wisconsin did not have a
13 right-to-carry law in effect, and therefore, that is part
14 of the potential cohort of controls for the synthetic
15 control analysis of Texas.

16 Q So then for running regressions on the
17 synthetic control analysis, you only considered -- you
18 only ran regressions for states that didn't change their
19 laws for ten years after a right-to-carry?

20 A Well, remember, all I'm trying to do is get an
21 estimate for the impact on crime of any state that does
22 change their right-to-carry law over my data period.

23 And so what I need to do, using the synthetic
24 controls, is find states that are good control states to
25 compare to the treatment state, the treatment state being

1 the state that adopts the right-to-carry law.

2 And so every state that adopted over my period,
3 you know, before, I think, 2007, I come up with an
4 estimate, and I show the estimated effect for each year
5 up to ten years after they passed their right-to-carry
6 law.

7 That help you?

8 Q Well, I'm really just asking a yes-or-no
9 question.

10 A Oh, I'm sorry.

11 Q It's okay.

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

14 A No.

15 Q So you ran regressions for -- and we're talking
16 about just for the synthetic controls.

17 The answer's still no, just for synthetic
18 controls?

19 A Yes.

20 Q So you ran regressions on states that had --
21 that didn't change their laws for less than ten years?

22 A Well, the thing is, for the synthetic controls,
23 I came up with a synthetic control estimate for all of
24 the 33 states that changed their right-to-carry law over
25 my data period. And I would allow any state to be a

1 potential control as long as they didn't adopt a
2 right-to-carry law in the ten years after the state that
3 I was interested in.

4 Does that make sense?

5 Q Are you saying that you would not run a
6 regression on a state that had a right-to-carry law in
7 place for less than ten years if you were comparing it to
8 a state that did have that for more than ten years?

9 A Well, for the -- for the synthetic controls
10 analysis -- you know, Texas, for example, passed their
11 law in 1996. So they had a right-to-carry law in effect
12 for more than ten years. But I only estimated the effect
13 for Texas and for every state for the ten years
14 afterwards.

15 But every state that adopted a right-to-carry
16 law I did come up with as long an estimate as I could.
17 So if I had ten years post adoption, I'd have ten years
18 of estimates. For a few states -- if they adopted in,
19 let's say, 2007, I would only maybe have seven years of
20 estimates. That data ended at 2014.

21 Q So then you did try running regressions for a
22 set of years less than ten on at least some states?

23 A Yes. For a state that adopted so late in the
24 data period, I would have less than ten years of
25 post-adoption estimates.

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

1 really well, then I would say, well, maybe you don't need
2 fixed effects.

3 But it turns out, even controlling for all the
4 things that I just mentioned -- you know, San Francisco
5 has a lot lower crime rate than, you know, St. Louis.
6 Not a good example. But San Francisco has a lot lower
7 crime rate than many other states, and it's an enduringly
8 lower crime rate that's not well explained by just those
9 factors.

10 So basically, the test would be, if the factors
11 that you can easily measure really capture all of the
12 variation in the cross-section, then you'd say we don't
13 need fixed effects. If they can't capture it, then you
14 would say probably helpful to have the fixed effects in
15 there.

16 Q Is it ever unhelpful to have -- to consider
17 fixed effects?

18 A Well, it's -- it turns out that regression
19 follows the normal economic laws as there's no free
20 lunch. So every time you add an explanatory variable,
21 there are -- there are costs to it.

22 It can -- there's an interesting paper by Gary
23 King at Harvard, who's a university professor at Harvard,
24 and he said something like, you know, every variable that
25 you add to a model makes it harder to get a precise

1 estimate of the thing that you're most interested in.

2 And so there's this art of good statistics,
3 where you don't want to leave out something that's
4 important, but you don't want to add in a lot of things
5 that are unimportant, because there are going to be costs
6 in either of those choices.

7 Q Could omitting one fixed effect significantly
8 alter results?

9 A I mean, are you saying like omitting either
10 state or year fixed effects?

11 Q Yeah.

12 So if you just used state and you don't use
13 time --

14 A Yeah.

15 Q -- could that be -- result in a drastically
16 different outcome than if you used both state and time?

17 A It could, and it goes back to this point that
18 we talked about a second ago.

19 The more your included explanatory variables do
20 a good job of capturing the variation in your -- in this
21 case crime measure, the less you need to rely on state
22 and year fixed effects.

23 And it does turn out in the crime arena that
24 it's harder to fully articulate the factors that explain
25 crime than in some arenas. And therefore, you would

1 typically use state and year fixed effects to capture
2 what you're not able to explicitly explain.

3 Q So in at least some instances, omitting one
4 fixed effect could significantly change the outcome?

5 A It could, yes.

6 Q Could it ever result in the opposite
7 conclusion? Or outcome, I'm sorry.

8 A Yeah, I mean, I think -- I take the question to
9 mean if you run a state and year -- and if you run a
10 panel data model with state and year fixed effects and
11 conclude that, let's say, crime is going up by ten
12 percent, if you left out the state or year fixed effects,
13 could it alter that conclusion. And yes, the answer is
14 it could alter that conclusion.

15 Q I was asking could it be the opposite? So to
16 use your example that says crime is going up by ten
17 percent, could it ever say that crime went down by ten
18 percent by --

19 A It certainly could if the factor that is being
20 captured by the fixed effect, you know, is powerfully
21 correlated with whether the state adopts a right-to-carry
22 law. If it's uncorrelated with that, then it would never
23 reverse the sign. It might move it towards zero, but if
24 it's powerfully correlated, then it could reverse the
25 sign.

1 we emphatically reject your conclusion about murder,
2 because we think the evidence is as ambiguous for murder
3 as it is for these other categories.

4 Q So is it fair to say they were emphatically
5 rejecting the definitive claim that right-to-carry laws
6 reduce murder?

7 A Yes.

8 Q But not -- you could not say that about the
9 report saying that about violent crime; is that correct?

10 MR. EISENBERG: Objection. Vague and ambiguous
11 with double negatives.

12 BY MR. BRADY:

13 Q Okay. Let me rephrase.

14 The council made no emphatic rejection of RTC
15 laws' effect on violent crime; is that correct?

16 A The committee was unanimous on the conclusion
17 that the evidence available at that time was not strong
18 enough to draw conclusion on any crime category other
19 than murder.

20 The committee was split on the murder, 16 to 1,
21 where they said -- where the one said, We think there's
22 evidence -- or I think there's evidence, he said, that
23 murder is reduced by right-to-carry laws, and the
24 committee said the scientific evidence does not support
25 that conclusion.

1 Q Did the NRC report make any other conclusions
2 about RTC laws that you're aware of?

3 A You know, for my purposes, the main focus of
4 the report that I was interested in -- the report is
5 called "Firearms and Violence," and so it was a broader
6 examination than simply right-to-carry laws, but I was
7 focused on the chapter that tried to estimate what is the
8 impact of right-to-carry laws on crime.

9 Q So you're not aware of any other conclusions?

10 A You know, it's a long report. I'm certainly
11 broadly familiar, and as the National Research Council
12 reported, it's usually filled with "and we need more
13 evidence, using better statistical models, to draw firmer
14 conclusions."

15 But just off the top of my head, I'm not -- I'm
16 not sure if I -- if I'm aware of other specific findings.

17 Q Isn't that the conclusion that they reached
18 with right-to-carry laws, that they simply needed more --

19 A Yes.

20 Q -- research?

21 A Yeah, they felt that you need more data and,
22 hopefully, better statistical approaches.

23 MR. BRADY: I actually have more this time.

24 Mark this as 4.

25 (Exhibit 4 was marked.)

1 MR. EISENBERG: Sean, is this supposed to be four
2 pages?

3 MR. BRADY: I believe so. Let me just confirm.

4 Yes. I believe. Let me just confirm.

5 Yes.

6 BY MR. BRADY:

7 Q So do you recognize this?

8 A Yes.

9 Q Is this the NRC report, or a portion of the NRC
10 report?

11 A Yeah, this is the cover page and then the other
12 pages from the NRC report.

13 Q I'll direct you to the third page, under the
14 section "Conclusions."

15 Could you read the last sentence?

16 A On the third page?

17 Q Yes, sir.

18 A "Thus the committee concludes that, with the
19 current evidence, it is not possible to determine that
20 there is a causal link between the passage of
21 right-to-carry laws and crime rates.

22 But the thing is, if I'm reading something,
23 then we can know that you're wrong. If I'm just
24 speaking, no one will ever know if you're wrong.

25 Q So can you turn now to the last page.

1 MR. EISENBERG: Objection. Vague and ambiguous.

2 But you can answer.

3 THE WITNESS: They were trying to say, We, as a
4 committee, feel that we don't know the answer at this
5 point what is the impact of right-to-carry laws on crime,
6 and, you know, more data and new and better statistical
7 techniques are likely to be necessary before that
8 conclusion will change.

9 BY MR. BRADY:

10 Q Did you rely on this conclusion by the NRC
11 report in making your conclusions in your study?

12 A Yeah, and in fact, the -- that conclusion is
13 what led me to the reliance on the synthetic controls
14 approach. Because again, one of my colleagues, a very
15 brilliant empiricist at Stanford named Dan Ho, H-o, had
16 been looking into synthetic controls and encouraged me to
17 use this as a new and better tool to identify the causal
18 impact of right-to-carry laws.

19 And so that became sort of the motivation
20 behind the paper that is now released as the NBER working
21 paper.

22 Q I'd like to direct you to same page, same
23 paragraph of your report, Page 3, Paragraph 4. Right
24 after Footnote 7, starting with, "Nothing that the
25 estimated effects of RTC laws" -- or I'm sorry, let me

1 strike that.

2 "Noting that the estimated effects of RTC laws
3 were highly sensitive to the particular choice of
4 explanatory variables."

5 Is that -- would you consider that a conclusion
6 of the NRC report, that the estimated effects of
7 right-to-carry laws are highly sensitive to the
8 particular choice of explanatory variables?

9 MR. EISENBERG: Objection. Are you isolating that
10 part of the sentence, or do you want him to take into
11 account the rest of the sentence?

12 BY MR. BRADY:

13 Q Well, so my understanding is -- correct me if
14 I'm wrong -- this is a description of what they said.
15 And I guess it might be easier to go to -- refer to the
16 exhibit.

17 Let me ask you this. Did the NRC report
18 conclude that the estimated effects of RTC laws were
19 highly sensitive to the particular choice of explanatory
20 variables?

21 A Yes.

22 Q Okay. Did you take that into account in
23 preparing your report?

24 A Yes.

25 Q Now, you mentioned that the NRC report

1 right-to-carry laws.

2 Q Does that conclusion sound consistent with your
3 description that they emphatically rejected the effect of
4 RTC laws?

5 A Oh, you know, I'm hoping I didn't mislead in
6 any way. I was trying to say they emphatically rejected
7 the conclusion that right-to-carry laws reduce murder.

8 So that's all I was trying to say, that, you
9 know, John Lott sort of authored the position that the
10 impact of right-to-carry laws was very suppressive of
11 crime overall, and that what the committee ended up
12 saying, you know, the statistical evidence at this point
13 does not support that conclusion.

14 Q So then it would be more accurate to strike
15 "violent crime" from your report, where it says, "The NRC
16 report emphatically rejected the conclusion that RTC laws
17 could actually reduce violent crime," and replace
18 "violent crime" with "murder"?

19 MR. EISENBERG: Objection. Argumentative.

20 THE WITNESS: Yeah, I mean, I think -- I think
21 that the statement is correct for the following reason.
22 Because one of the main reasons that they undertook the
23 study was that there was discontent in the academic
24 community that state legislators were relying on Lott's
25 study when many people thought that Lott's study was not

1 Q Okay. To be clear, the NRC report did not
2 expressly support any of the laws it was considering?

3 Is that accurate?

4 MR. EISENBERG: Again, I'll just make a standing
5 objection about outside the scope to the extent you're
6 asking about all those other than right-to-carry laws.

7 MR. BRADY: Okay. I'll strike it.

8 Q Do you know this, though? How many of the
9 other laws being considered in the NRC report generated a
10 dissent?

11 A As far as I know, there was only one dissent.
12 In fact, it's pretty unusual that there's ever a dissent
13 in the NRC reports.

14 Q Are you aware of any other dissents?

15 A Not off the top of my head.

16 Q So you couldn't say how often a dissent is
17 generated?

18 A I mean, I think it's unusual, and I know --
19 Wilson, you know, commented about it being an unusual
20 thing for him to have done.

21 Q All right. Do you know how many published
22 studies there are on the impacts of RTC laws?

23 A You know, there are a lot now. I don't know
24 the general number, but -- I've done 11, I think.

25 Q So you account for about a dozen? So all the

1 the same type of statistical techniques.

2 THE WITNESS: I did select a subset.

3 BY MR. BRADY:

4 Q One of those studies is the Zimmerman 2015
5 study; is that correct?

6 A Yes.

7 Q Why did you rely on that study in particular?

8 A You know, there were a couple of reasons. One
9 is that Zimmerman was a coauthor of John Lott. They
10 published papers on right-to-carry together. And
11 sometimes there's a feeling that, you know, some
12 researchers in this area are sort of biased in a certain
13 direction, and so the fact that Zimmerman had coauthored
14 with John Lott on right-to-carry stuff, I thought, at
15 least eliminated any taint that existed there.

16 It also had one other feature -- I don't know
17 if -- I don't know if he mentioned this, but it had one
18 attractive feature in it, which is that one of the -- one
19 of the real problems in right-to-carry literature has
20 been the crack cocaine issue. And that's one of those
21 issues that it's hard to get a particular explanatory
22 measure that captures the influence of crack on crime in
23 a certain state in a certain year.

24 And so the thing that I liked about the
25 Zimmerman paper was -- I believe he did the study from

1 1999 to 2010. And that was pretty much after the impact
2 of crack had subsided. So you're getting sort of a
3 post-crack look at what the impact of right-to-carry laws
4 is. And so -- and in part because -- I think that that
5 is at least worth thinking about.

6 I did my own analysis. I think I did it from
7 2000 to 2014, because if you look at the national crime
8 pattern, it really flattened out after 2000. And so
9 that's the thing I liked about the Zimmerman paper, that
10 it -- it takes crack off the table to a large extent.

11 I think I did it a little bit more cleanly, and
12 I had four years of extra data, but there was that
13 similarity.

14 Q Okay. So would it be fair to say that the
15 Zimmerman study is more reliable because of those
16 attributes?

17 A You know, as we said, almost everything you do
18 in this area, there's going to be a tradeoff.

19 So the good part of Zimmerman's paper is it's
20 post -- largely post crack. I would have started a year
21 later, but he didn't have as much data as I had. So
22 that's the good part.

23 The bad part is that you had a shorter period
24 of time, and you also have fewer states adopting. I
25 think there were only maybe eight states that adopted

1 that sometimes Lott and others will say there's a -- you
2 know, not to use a recent result is unusual, because he
3 finds that crime goes up, and I sort of pointed out a
4 number of other papers have also found that effect.

5 Q Does Zimmerman account for both types of fixed
6 effects?

7 A That's a good question. I would have to look
8 back at what he did. Certainly, when I show my results
9 for the same data period -- or slightly differentiated
10 data period from 2000 to 2014, I do include that.

11 Q So in general, you feel Zimmerman's work is
12 trustworthy, reliable?

13 A You know, I'm a sort of a hard critic. So it's
14 hard for me to buy onto anybody's study without doing my
15 own work. And -- so I, you know -- in general, I like to
16 try to replicate somebody's results before I would be
17 fully comfortable with saying I adopt their methodology
18 or something like that.

19 Q Okay. I refer you to Page 7 of Exhibit 2.

20 And I guess going onto Page 8.

21 MR. EISENBERG: You got these highlighted
22 sentences?

23 BY MR. BRADY:

24 Q Yeah.

25 Can you read the highlighted portion, please?

1 A So this is -- is this my expert report?

2 Q Yes.

3 A Oh, okay.

4 "Zimmerman describes his finding as follows.

5 The shall-issue coefficient takes a positive sign in all
6 regressions save for the rape model and is statistically
7 significant in the murder, robbery, assault, burglary,
8 and larceny models. These latter findings may imply that
9 the passage of shall-issue laws increases the propensity
10 for crime, as some recent research has suggested."

11 Q And that's a quote from Zimmerman's study,
12 correct?

13 A Yes, it is.

14 Q And the only part you left out, which I don't
15 blame you, is the "e.g., Aneja, Donohue & Zhang 2012,"
16 referring to your -- that's referring to your study,
17 correct?

18 A The yellow didn't go over that. So I ignored
19 that.

20 Q So that's my fault, then.

21 I'd like to now refer you to Footnote 9 of
22 Exhibit 2.

23 Can you read that for me, please.

24 A "See the discussion of Zimmerman below, which
25 supports my finding that right-to-carry laws increase

1 crime."

2 Q So is it your view that Zimmerman unequivocally
3 supports your finding that RTC laws increase crime?

4 MR. EISENBERG: Objection. Argumentative,
5 ambiguous as to "unequivocally."

6 THE WITNESS: Yeah, I was just saying, you know,
7 see the discussion of Zimmerman, which does support the
8 finding. So I quoted the passage where he said this
9 model shows -- or suggests that right-to-carry laws
10 increase crime. That's all I'm saying.

11 BY MR. BRADY:

12 Q So it's your view that Zimmerman does
13 support -- this Zimmerman study does support your
14 findings that RTC laws increase crime?

15 A He shows the statistical models that generate
16 that result. That's all I was saying.

17 MR. BRADY: Exhibit 5.

18 (Exhibit 5 was marked.)

19 MR. BRADY: This is Exhibit 5.

20 MR. EISENBERG: Should we mark the version with
21 the highlighting as a separate exhibit?

22 MR. BRADY: If you would like to.

23 MR. EISENBERG: May as well. We could make that
24 one --

25 MR. BRADY: Mark that as Exhibit 5 and mark this

1 it's the part on Page 71, left-hand column, "The-shall
2 issue coefficient takes a positive sign," dot, dot, dot.

3 MR. BRADY: Correct.

4 MR. EISENBERG: And it goes on for the whole
5 paragraph?

6 MR. BRADY: Just right up until that blue mark.

7 MR. EISENBERG: Okay.

8 THE WITNESS: Yes.

9 MR. EISENBERG: You've got a blue mark after the
10 sentences that ends in "suggested"?

11 MR. BRADY: Correct.

12 Q I just want you --

13 MR. EISENBERG: Wait. Is that actually a --

14 MR. BRADY: Yeah, where it suggests.

15 Q I just want you to confirm that that is the
16 quote that you included in your report.

17 A Yes.

18 Q That we just -- the quote that we just got done
19 discussing, correct?

20 A Yes, yes, yes.

21 Q Can you read the sentence immediately following
22 that quote aloud?

23 A Yes. "However, as the shall-issue law impact
24 is being identified from only eight state changes in the
25 data, it is difficult to give any strong causal

1 interpretation to these estimates."

2 Q Have you seen that sentence before?

3 A Yes.

4 Q You omitted it from your report, correct?

5 A Yes.

6 Q Why did you do that?

7 A Well, as -- I did say in our discussion that
8 you get benefits from looking at certain time periods and
9 we also have costs, and one of the costs is that you're
10 only getting estimates for eight states.

11 And so I made that point, and I didn't think
12 his language was so memorable that I needed to quote it.
13 But I did make that point.

14 Q What's your understanding of why Zimmerman
15 cautioned against reaching any, quote, "strong causal
16 interpretations," close quote, based on his work?

17 MR. EISENBERG: Objection. Calls for speculation.

18 THE WITNESS: Yeah, I mean, it's hard for me to
19 know why he put that --

20 BY MR. BRADY:

21 Q No, let me ask you how do you read that
22 caution?

23 A Yeah. I mean, the way I considered it is he's
24 saying, I'm not giving you an estimate for every state.
25 I'm just giving you an estimate for eight states.

1 I mean, I would put in another caution, which
2 is that you're -- you know, again, you've got this
3 benefit that you're not looking at crack-period changes
4 in right-to-carry law. So that makes your estimates
5 better, but again, it's a limited period of time, and he
6 has only eight states that he's able to estimate an
7 effect on.

8 You know, again, it's this tradeoff. You have
9 to decide -- I mean, if I really had the perfect answer
10 on any one state, I'd be delighted. So it's not that
11 it's only eight states that I think is the problem.

12 But everything always becomes a tradeoff in how
13 much you're going to rely on the particular study and
14 particular finding. And so he's saying there are only
15 eight states here. So that's a reason for some caution.

16 Q Is it fair to say he was describing his study
17 as not being the basis to make any conclusions about the
18 effects of right-to-carry laws?

19 MR. EISENBERG: Again, calls for speculation.

20 THE WITNESS: Yeah, I'm -- I'm not exactly sure,
21 because Zimmerman actually contacted me just yesterday,
22 and I think he is -- he has been criticized for this
23 study by John Lott, and I think he's -- he's now trying
24 to validate or strengthen his findings.

25 So I'm not quite sure exactly -- I'm sure he's

1 going to write something soon about his latest view on
2 right-to-carry. But I know there's something going on
3 right now, but I'm not fully privy to what his thinking
4 is, other than I think he's annoyed at John Lott for
5 criticizing him.

6 MR. BRADY: Okay. 7?

7 THE REPORTER: 7 is next.

8 MR. BRADY: Like to mark this as Exhibit 7.

9 (Exhibit 7 was marked.)

10 BY MR. BRADY:

11 Q I will represent to you that this -- all this
12 is is Table 4 taken out of the Zimmerman -- isolated from
13 the Zimmerman report. So --

14 A Yes, yes.

15 Q -- it's just easily findable. It's the same
16 one that you would see in the Zimmerman report. If I
17 knew what page I would tell you, but --

18 A Yeah.

19 Q So have you seen this table?

20 A Yes.

21 Q Do you refer to this table in your report?

22 A I do not. I think I was referring to Table 3.
23 This is Table 4.

24 Q I think I gave you my copy of the report.

25 Can I see it?

1 A Oh, sure. Is this it? Yeah.

2 Q Oh, no, the -- your report.

3 A Oh, my report.

4 Q Sorry, we got a lot of papers floating around
5 here.

6 A No worries.

7 Q Okay. You do indeed refer to Table 3.

8 You refer to -- in your report to Zimmerman
9 using the instrument approach; is that correct?

10 A I don't recall that.

11 Q Do you know whether Zimmerman used the
12 instrument approach in --

13 A I mean, it looks like in Table 4 he may have
14 done that.

15 Q Can you explain what the instrument approach
16 is?

17 A Yes. Essentially, it's sort of an interesting
18 statistical tool. I mean, the example I like to give in
19 explaining instruments is from my coauthor, Steve
20 Levitt's really fun paper, where he was trying to
21 estimate the impact of police on crime.

22 And what he noted -- and it's a tough -- it's a
23 tough thing to estimate. Because when crime goes up,
24 people tend to hire more police. And there were actually
25 a number of studies that concluded that police increase

1 influence crime except for its influence on the number of
2 police. So that's what instruments is trying to do.

3 Q Okay. Did you use the instrument approach in
4 your report?

5 A I did not. It's a demanding approach, in the
6 sense that you really need an unusual thing to be true,
7 which is you've got some factor that influences police,
8 or whatever responsive variable you're interested in, but
9 doesn't influence crime directly except for its influence
10 on police.

11 And so in a crime realm, it's very hard to find
12 good instruments that meet that definition, and if you
13 don't have a good instrument, very bad things can happen.
14 Your estimates can blow up very wildly.

15 And -- but, you know -- so there are some
16 clever papers. Like one paper tries to use the terror
17 alert level as a way to see what happens to crime,
18 because, you know, suddenly there are more police on the
19 street when the terror alert rises, and can we see what
20 happens to crime.

21 But that's a very specific and unusual event,
22 and I wasn't able to find anything that I thought worked
23 very well for, let's say, right-to-carry laws that might
24 be a useful instrument.

25 Q So looking at Table 4, which is --

1 A Yeah.

2 Q -- Exhibit 6.

3 A Yeah.

4 Q You can -- can you tell from that whether
5 Zimmerman was using the instrument approach?

6 A I mean, I see the discussion below is
7 evaluating the instrument. So it does look like he is
8 doing that.

9 Q Do you know if that was his preferred approach?

10 A You know, I -- I would have to, you know, look
11 a little bit more carefully. I notice that he is
12 discussing this problem of instruments need to be
13 evaluated and there's a weak instrument problem, but I
14 can't recall off the top of my head, you know, what his
15 bottom-line conclusion on the instrumental variable
16 estimate was.

17 Q In looking at Table 4, can you identify any of
18 the estimates Zimmerman has in there that show RTC laws
19 increase any type of crime significantly? Statistically
20 significantly?

21 A Yeah, it's a little strange. Let's see.

22 Yeah, I mean, it looks as though the estimates
23 are not significant in this table for the shall
24 variables.

25 MR. EISENBERG: If I may interject. I want to

1 have messed this up. Let me see. 72, 73, 74, 71. Okay
2 I think that's all of it, but --

3 Q All right. Thank you.

4 I'm just going to give you Page 74 of the
5 Zimmerman study.

6 Can you read that highlighted portion aloud,
7 please?

8 A Yeah. So it says, "Finally, the N-W estimates
9 of the impact of shall-issue laws generally suggested a
10 positive effect of such laws on crime rates. However,
11 after instrumenting while" -- looks like there's a typo
12 in here. It should say, "while most of the individual
13 coefficient estimates on the shall-issue dummy remain
14 positive, none are statistically insignificant" -- I
15 think it should have said none are statistically
16 significant -- there are a couple of typos in this
17 sentence, but I think what he's saying, is in the
18 instrumental version, the shall-issue dummy was positive
19 but not statistically significant.

20 Q So you think that the word "insignificant"
21 there is a typo, and it should be "significant"?

22 A I think so.

23 Q So what is your understanding of that
24 conclusion? Is that what you just said, that there were
25 some positive effects of RTC laws on crime rates;

1 however, none were statistically significant?

2 A In the instrumented model. So this actually
3 happens very commonly. So remember I gave the example of
4 the mayoral election year. And when you instrument --
5 because mayoral election years are like every four years.

6 You have essentially cut your sample size by 25
7 percent, because you're now only focusing on what happens
8 in mayoral election years. And so while Steve got a
9 better estimate for the impact of police, it did make all
10 of his other estimates more statistically insignificant,
11 because now you have reduced the amount of crime. Now
12 you've reduced the number of observations.

13 And what's critical for statistical
14 significance is having a lot of observations, and when
15 you instrument you -- you're necessarily trading off this
16 issue of, you know, hopefully getting a better estimate
17 on the variable that you're most interested in, and he
18 was interested in these security measures and,
19 presumably, got a better measure for the private security
20 efforts.

21 But it does mean that your other estimates will
22 tend to lose significance, because, in effect, you're
23 shrinking down the number of effective observations that
24 you have.

25 Q So you did not include this provision of the

1 Zimmerman report in your study; is that correct?

2 A Yes. I did not.

3 Q Why did you omit it?

4 A Yeah, just for this reason, that I think -- I
5 think Zimmerman would say I'm -- in Table 4, I'm really
6 hoping to get a better estimate on the impact of private
7 security measures, which is what he's instrumenting for.

8 And I think he would recognize that, hopefully,
9 the instrumenting is getting him a better estimate for
10 the private security efforts, but it's probably weakening
11 the power of his ability to identify the true effects of
12 the other explanatory variables in his model.

13 And so, as I mentioned, if you look at Steve
14 Levitt's famous paper on police and crime, when he
15 instrumented all -- for police, all of his other measures
16 became less statistically significant. And that tends to
17 be the case in these instrumented models.

18 So I think it probably is the case that you'd
19 have more confidence in the Table 3 shall results than
20 the Table 4 shall results.

21 Q In other words, is it fair to say you didn't
22 include it because you discount the value of the
23 instrumental model? Or at least Zimmerman's
24 instrument --

25 A Yeah, I mean, again, instrumenting is a very

1 targeted approach, and you're really saying, The only
2 thing I really care about most is the thing that I'm
3 instrumenting for.

4 So when Levitt instrumented for police, that
5 was the only variable that he was really concerned about.
6 He didn't really care whether he was getting good
7 estimates in incarceration or other explanatory
8 variables. And again, it's a sort of tradeoff idea.

9 And so what Zimmerman was doing here is he was
10 saying, I'm going to instrument for these private
11 security efforts, and I think that'll give me a more
12 precise estimate for private security. But whenever you
13 instrument, you're essentially cutting your data --
14 you're effectively reducing your sample size, and that
15 makes it harder to get statistically significant
16 estimates on your other measures.

17 And even on your instrumented measures,
18 sometimes you have trouble there, but I think he did
19 retain significance on the first two measures that he
20 shows in this table.

21 Q Okay. Are you familiar with Zimmerman's
22 2000 -- subsequent study from 2014 that he coauthored
23 with Carlisle Moody, Thomas Marvell, and Fasil Alemante?

24 A (No audible response)

25 Q It is titled "The Impact of Right-to-Carry Laws

1 on Crime: An Exercise in Replication"?

2 A You know, I -- I'm sure I saw that at some
3 point along the way.

4 Q I would like to mark it as Exhibit 8.

5 (Exhibit 8 was marked.)

6 BY MR. BRADY:

7 Q If you could turn to Page 80, as it is
8 indicated on -- at the bottom of the page. Where it says
9 "Summary and Conclusions."

10 A Yes.

11 Q I'll read aloud this time, and you just tell me
12 that I'm being accurate, so you don't have to -- is that
13 okay?

14 A Oh, fine.

15 Q So it says, "The most robust result, confirmed
16 on both the ADZ county and state data sets, is that the
17 net effect of RTC laws is to decrease murder. This is
18 consistent with the theory that the deterrent effect of
19 concealed firearms is greater than the instrumentality
20 and lethality effects."

21 Did I quote that accurately?

22 A Yes.

23 Q Turn to the next page.

24 The very last sentence states, "In any case,
25 given that the victim costs of murder and rape are orders

1 of magnitude greater than those of robbery and assault,
2 we conclude that RTC laws are socially beneficial."

3 A Yes.

4 Q Did you consider this report in making -- in
5 preparing your study?

6 A Yes. I did.

7 Q Can you point to me where in your study this is
8 reflected?

9 A Oh, no, I -- I probably was -- was even more
10 inclined to cite Zimmerman's paper, in part, because he
11 was writing, attacking me, that made it, I think, more
12 credible than -- you know, his study would clearly be an
13 example of someone who's not on -- you know, somebody
14 who's a friend or someone who's, you know, clearly on my
15 side on this issue.

16 Q So you included his -- this study in your
17 report?

18 A Yes.

19 Q Can you point me to where in your report you
20 consider this study?

21 A Oh, no. That's what I was -- I was referring
22 to the Zimmerman paper that we had been discussing
23 that -- because this paper that you've just handed me --
24 what is this? Exhibit 7?

25 Q 8.

1 A 8. Because Exhibit 8 sort of shows that
2 Zimmerman is certainly not someone who's, you know,
3 deferring to me or someone who would be identified as on
4 my side. I thought that the earlier Zimmerman paper was
5 sort of more valuable to show that, when he did his own
6 analysis, this is what he came up with.

7 Q So then you did not include this report -- or
8 this study in your -- in preparing your study, Exhibit 8?

9 A Yeah, I mean, I didn't cite this study, but
10 I -- you know, in general, I think about these things as
11 I'm doing my work.

12 Q Would it -- is it your view that the portion
13 that I read of Exhibit 8 contradicts your conclusion in
14 your report?

15 A Yeah. And if you actually look at my NBER
16 working paper, I do cite this paper, sort of, on Page 2.
17 So I didn't put it into my expert report, but I do cite
18 his paper in the first footnote of the NBER working
19 paper.

20 Q Okay. So then you did consider this study in
21 preparing your report?

22 A Yeah, no, I said I considered it. I just
23 didn't cite it in my expert report, but I did cite it in
24 the -- in the working paper.

25 Q Would it be fair to say that the quotes that I

1 (Lunch recess taken from 12:33 p.m. to
2 1:40 p.m.)

3 MR. BRADY: I'm going to mark as Exhibit 10 the
4 latest version that I possess of the DAW.

5 THE WITNESS: Yeah.

6 (Exhibit 10 was marked.)

7 BY MR. BRADY:

8 Q Could you open that to Page 18.

9 A Yes.

10 MR. EISENBERG: If you want to just state for the
11 record that off the record, Professor Donohue said that
12 there is a more --

13 MR. BRADY: Sure.

14 MR. EISENBERG: -- up-to-date version of this
15 paper.

16 MR. BRADY: Off the record Professor Donohue
17 stated that he has a more updated version of this paper.
18 Counsel does not have that at this time.

19 MR. EISENBERG: I believe. I believe that this
20 one --

21 MR. BRADY: Plaintiff's counsel does not have it
22 at this time.

23 MR. EISENBERG: Oh, pardon me.

24 I believe that this version, the one that's
25 dated June 12, is the latest version that defense counsel

1 has as well and that defense counsel attempted to
2 transmit to plaintiff's counsel.

3 MR. BRADY: Okay.

4 Q So do you see Section 7, summary of panel data
5 analysis?

6 A Yes, yes, yes.

7 Q Can you read for me, starting from the second
8 paragraph, starting with, "Durlauf, et al."

9 A Yes, yes. Okay. "Durlauf attempts to sort out
10 the different specification choices in evaluating
11 right-to-carry laws by using a Bayesian model averaging
12 approach, using county data from 1979 through 2000.

13 Applying this technique, the authors find that in their
14 preferred spline or trend model, RTC laws elevate violent
15 crime in the three years after RTC adoption." Quote, 'As
16 a result of the law being introduced, violent crime
17 increases in the first year and continues to increase
18 afterwards.'"

19 Q Okay. That -- what you just said, quote, is a
20 quote from the Durlauf study, correct?

21 A Yes.

22 Q Okay. I believe we already marked as Exhibit 9
23 the Durlauf study.

24 What is your understanding of that quote's
25 purpose in the Durlauf study?

1 A You know, I think what he was doing in this
2 paper was sort of trying to show the sensitivity of the
3 results in the estimation of the impact of
4 right-to-carry, and he was following up on a suggestion
5 of the Strnad paper that I cite below this, that you
6 could use Bayesian approaches to perhaps pick the best
7 model.

8 And Durlauf said, if we were using that
9 approach, this is the preferred model that would emanate
10 from his Bayesian analysis.

11 Q Is it your view that this study's ultimate
12 conclusion is that RTC laws elevate violent crime?

13 MR. EISENBERG: Just a point of clarification,
14 you're still referring to the Durlauf study?

15 MR. BRADY: Yes.

16 THE WITNESS: You know, I think this was more a
17 methodological paper than trying to reach that ultimate
18 conclusion. The reason why I say that is that Steve just
19 used the county-level data set from the National Research
20 Council report to do his analysis. And so it was more to
21 say, Let me look at this data set that the National
22 Research Council used and see if this Bayesian technique
23 can generate a result.

24 But if he had really wanted to draw a firm
25 conclusion on the impact of right-to-carry laws, he would

1 have used the more complete data that was available when
2 he wrote this paper.

3 BY MR. BRADY:

4 Q So then this study does not have an ultimate
5 conclusion that says RTC laws increase violent crime?

6 A I mean, it just says in the best -- in what his
7 Bayesian approach said was the best model, violent crime
8 increases at the rate suggested here. But he was
9 somewhat retrained in saying that, you know, therefore,
10 I'm convinced that violent crime increases.

11 Q Okay. So we've marked the Durlauf study as
12 Exhibit 9.

13 For your assistance -- you don't have to wade
14 through it -- can you read the highlight right there?

15 A Sure.

16 Q Aloud, please.

17 A "Overall, we conclude that the evidence that
18 shall-issue right-to-carry laws generate either an
19 increase or decrease in crime on average seems weak."

20 Q Have you seen that sentence before?

21 A Yes, yes.

22 Q And you omitted it from your report, correct?

23 A Yeah, because, essentially, as I said, that was
24 the conclusion of the National Research Council, which
25 had looked at the data through 2000, and Steve was

1 saying, Yes, I sort of support that conclusion.

2 But it wasn't really relevant to my report, now
3 that we have the more complete data. So I was able to
4 draw stronger conclusions than he was able to.

5 Q Were there any other conclusions in the Durlauf
6 study that you considered in preparing your report?

7 A You know, I -- I looked at them, and -- I can't
8 remember if he hinted about property crime being
9 influenced, but I didn't -- you know, at this point I
10 basically don't look back to analyses that exclude data
11 after 2000, because we have a much richer data set at
12 this point.

13 Q Can you read for me the first highlighted line
14 there from the Durlauf study?

15 A Yeah. "Relative to the strong claims made by
16 particular papers in the literature, we find evidence
17 that the estimated effects of shall-issue right-to-carry
18 laws on crime are very sensitive to modeling
19 assumptions."

20 Q What is your understanding of that quote?

21 A You know, this is essentially the identical
22 conclusion of the National Research Council study that
23 was also using the same county-level data set through
24 2000 that Steve was looking at and reached, really, very
25 much the same conclusion, that the results are sensitive

1 you went through in preparing your study.

2 So you've alluded a few times to the factor of
3 the crack -- so-called crack epidemic.

4 A Yes.

5 Q What studies did you rely on in asserting that
6 the violent crime increase between 1985 and the early
7 '90s resulted from the introduction of crack cocaine?

8 MR. EISENBERG: Objection. Lack of foundation.

9 MR. BRADY: Strike that.

10 Q Did you -- does your paper assert that the
11 violent crime increase between 1985 and the early 1990s
12 resulted from the introduction of crack cocaine?

13 A Yes, I -- I believe that, and I probably said
14 that in the report.

15 Q On what do you base that belief?

16 A Yeah. Just the literature in this area.
17 There's a very strong report by Steve Levitt that was
18 published in the Journal of Economic Perspectives that
19 went through the data on the impact of crack on crime.

20 Q Is that cited in your study?

21 A You know, I probably did not cite that in this
22 paper, but if -- if I were, you know, asked to sort of
23 buttress a point, that would probably be the first paper
24 that I would look to, Steve being, you know, one of the
25 elite academics, winner of the John Bates Clark medal,

1 which is like the junior Nobel Prize in economics.

2 So that's where I would go if I felt I needed
3 support. It is a very widely accepted view. So I
4 probably didn't think it was controversial, but if I
5 needed support, that's what I would cite.

6 Q Would those -- is there, likewise, support for
7 the notion that California, New York, and Washington,
8 D.C., were areas with the, quote, "the worst crack,
9 problems," as indicated in your report?

10 A Well, there's certainly a lot of evidence of
11 crack problems in those areas.

12 Q Being the worst?

13 A Well, that's a good question. When I wrote
14 that I was sort of thinking in relation to the initial
15 adopters of right-to-carry states, you know, the Dakotas
16 and Maine, where they really didn't see this crack
17 problem in the late 1980s.

18 But it's a fair point to say, you know, did you
19 really do a study showing which is the worst. I actually
20 did try to sort of look at that, I think, in another
21 paper, which were the worst crack states, but I wasn't --
22 I wasn't drawing on that work in making that conclusion.

23 I just -- to be more careful, it might have
24 been better to say these were states that had a
25 significant problem and worse than other adopters of

1 National Research Council were trying to do, which is can
2 we tease out the impact of right-to-carry laws by looking
3 at the period before 2000. And, you know, the strong
4 conclusion seems to be it's very hard to tease that out
5 if you're only looking at data through 2000.

6 So John still believes that right-to-carry laws
7 reduce crime, but we've seen that the Durlauf paper and
8 the National Research Council rejected that finding.

9 Q They found that there wasn't enough evidence to
10 decide either way; is that correct?

11 A Yeah, and they -- they specifically stated,
12 quote -- I'm paraphrasing, you know, the scientific
13 evidence does not support the view that right-to-carry
14 laws reduced crime.

15 Q But because they needed more research, would it
16 be fair to say -- obviously, they haven't seen your paper
17 yet.

18 A Yeah.

19 Q But setting aside your current paper, just
20 looking at their position, wouldn't it be fair to say
21 that they rejected the idea that right-to-carry laws
22 increase crime?

23 A They -- they weren't really clear on any sort
24 of affirmative conclusion, but because the dissenter
25 tried to make the affirmative case, look, we -- he said,

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

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

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

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

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?

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?

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

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 Q -- wouldn't the crime necessarily have to
2 involve a gun?

3 A Not necessarily. It's a great question.
4 Because there are so many pathways that are initiated by
5 the decision to put guns into the sort of public arena.
6 And so of course, you know, probably the single
7 biggest effect, apart from the increases in crime, caused
8 by permit holders is the theft and acquisition of guns by
9 the criminal elements once they've entered into the
10 public mainstream.

11 So once a criminal has a gun, anything could
12 happen. They could commit a gun crime. They could,
13 knowing they've got a gun in their pocket, steal
14 something and -- or beat up somebody, knowing if he is a
15 problem, I'll pull out my gun and kill him. So whichever
16 way it plays out depends a little bit on the facts.

17 But if you're arming criminals, you'll get more
18 gun crime, but you'll get all sorts of other crimes. One
19 of the crimes being theft of guns, and so that's a
20 property crime that's going up. And so --

21 Q Your report concludes that property crime did
22 not increase as a result of right-to-carry laws; isn't
23 that --

24 A The net effect, yes. Or I should be a little
25 more clear. The -- there were two parts of the -- in

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.

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

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?

1 pass laws that allow anyone who isn't in one of the more
2 prohibited categories to be able to get a permit if they
3 jump through a couple of reasonably easy hurdles -- jump
4 over a couple of reasonably easy hurdles, then I consider
5 that a right-to-carry.

6 Q Are all right-to-carry -- all right-to-carry
7 states have the same hurdles?

8 A No. No.

9 Q Did you take into account the difference in
10 those hurdles in comparing the right-to-carry states?

11 A Yeah, that's a good question. I actually just
12 had a binary categorization. So at one point I'm saying
13 you don't have a right-to-carry law at a point, you know,
14 and I gave a specific month and year in the paper; I say
15 you do have a right-to-carry law. But there -- there are
16 differences.

17 And of course, now we're in a world where a
18 number of states have moved to completely permissive
19 carrying without the need to get a permit of any kind.
20 And so if you're one of those states during this period,
21 it's just counted as being a right-to-carry state, but
22 you could refine the analysis -- and I did do a slight
23 effort in this regard.

24 Because I show that when Alaska went to
25 permitless carry, you saw that violent crime jumped up

1 more sharply after that. So they already had a
2 right-to-carry law. Then they said permitless, and you
3 can see a jump in violent crime at that point.

4 The latest examples -- Vermont has always had
5 this, but the latest example of moving in this direction
6 are very recent. So I wasn't able to do anything with
7 those. You know, I gave a 2021 version of this paper.
8 I'll do a whole section on that.

9 Q Speaking of Vermont, do you know where it ranks
10 on -- in the 50 states, as far as its crime rate?

11 A Yeah, Vermont -- Vermont looks good. We're
12 talking about fixed effects though, and they have some
13 attributes that make them particularly good. New England
14 state would be better than non-New England state and, you
15 know, affluence, more rural. Those are all very positive
16 features.

17 Q Other than the Alaska situation, where it just
18 went to nothing, is it fair to say you did not account
19 for the difference in difficulty to obtain a concealed
20 weapon permit in the various right-to-carry states?

21 MR. EISENBERG: Objection. Lacks foundation.

22 THE WITNESS: Yeah, I -- I only -- except for
23 Alaska, as you say, I only had this binary categorization
24 of right-to-carry or not right-to-carry, but I -- I don't
25 distinguish in this paper. But it's a good -- a good --

1 it's a good question, you know, what will happen if you
2 tried to tease out how much the hurdles influence the
3 outcome.

4 You should be a researcher.

5 BY MR. BRADY:

6 Q I don't -- I can't do math, so it's not -- I'll
7 stick with this racket.

8 So it's possible that those hurdles could
9 change the amount of people who actually obtain permits;
10 is that correct?

11 A Yes.

12 Q Have you researched what percentage of the
13 population actually does obtain a license in
14 right-to-carry states?

15 A You know what? I've certainly been attentive
16 to that research.

17 Q But you haven't done any yourself?

18 A No. I mean, I would love to get, you know,
19 panel data on the number of permits in every state in
20 every year going back -- that would be nice data to get.

21 Unfortunately, many states have not -- have not
22 captured that data, which is a loss to the research
23 community.

24 Q Did you take into account the amount of
25 licenses that were actually issued? In other words, do

1 you know the numbers of licenses that resulted after a
2 right-to-carry law was implemented?

3 A You know, I would love to get that data. And
4 remember, one of the challenges of doing a panel data
5 analysis is that you can only run it if you have
6 observations for every variable for every state and year.
7 Otherwise, for whatever state or year you're missing, it
8 drops out of the analysis.

9 And there are very few states that you can get
10 that data for, you know, for the time period that we'd be
11 interested in. There are a few, but, you know, it's like
12 four or five as opposed to, you know, the 51
13 jurisdictions that I would like to have data on.

14 Of course, obviously, for the ones that don't
15 have right-to-carry, you wouldn't have those. But you
16 could still -- I mean, in the best of all worlds, you
17 would like to get information on just how many people
18 have permits to carry guns in every state. Though
19 California is not a right-to-carry state, but there are
20 permits here, and that would be nice information to get.

21 Q Well, speaking of California, are you familiar
22 with California's concealed weapon permit regime?

23 A Yes.

24 Q You would characterize it as not
25 right-to-carry?

1 A Yes.

2 Q Even in the -- in the entirety of California?

3 A Well, in terms of the state law, I categorize
4 it as not right-to-carry. In terms of the way it plays
5 out, you know, sheriff in Sacramento was, you know,
6 basically handing them out to anyone who wanted them, you
7 know, obviously within the contours of the law.

8 Q Did you account for that in your report in
9 analyzing California?

10 A You know, that has been a more recent
11 phenomenon. My data only went up to 2014. But I don't
12 have -- I don't have either county data in this paper or,
13 you know, specific data on the number of permits that
14 have been issued. That would be great -- great data to
15 have. I just don't have that.

16 Q You don't have the data for California
17 counties, the issuance rate of California counties?

18 A Yeah, I --

19 Q But you were able to isolate California -- you
20 were able to isolate the lack of a right-to-carry law
21 statewide in California as being responsible for its not
22 having an up-tick in crime like the right-to-carry
23 states?

24 A Yeah, and if you look across the country, you
25 know, the number of permits in California is vastly

1 smaller than the real right-to-carry states or certainly
2 permitless carry states now, where people are able to
3 carry without having to go through the permit.

4 Again, you can see one of the complexities that
5 researchers have, because when states move from
6 right-to-carry to permitless, then it's no longer as
7 helpful to know the number of permits, because a lot of
8 people say, well, why should I go through the hassle of
9 getting a permit when I'm allowed to carry it anyway.

10 So the information in the number of permits
11 gets watered down for the -- I think 12 states now that
12 have switched over to permitless carry.

13 Q So you conclude in your report that California
14 during the 1990s -- the fact that it did not have a
15 right-to-carry law led to its better performance in
16 reducing violent crime.

17 Is that accurate?

18 A Well, it's a little bit less precise than that.
19 Again, differentiating between the panel data analysis
20 and the synthetic controls.

21 For panel data we are thinking in aggregated
22 terms, again. So when we're saying that, compared to
23 states that we are categorizing as non-right-to-carry
24 states, including California, in the aftermath of
25 adoption, right-to-carry states seem to do worse

1 Q Well, I wasn't -- just to be clear, I was
2 quoting from your report that says, quote, "The fact that
3 California, Wisconsin, and Nebraska did not have RTC laws
4 led to their better performance in reducing violent
5 crime." That's a quote from your report.

6 Do you --

7 A Yes.

8 Q Do you not agree with that statement in your
9 report?

10 A So now you're referring to one of the synthetic
11 controls comparisons, I believe. And so I can't remember
12 which state I thought -- was that Texas versus --

13 Q Yes.

14 A So yes. So there we're saying -- we're
15 comparing those three states, and the percentages that
16 the synthetic control comes up with as the relative
17 percentage.

18 And that's the conclusion that comes out of
19 that particular comparison, that those states are a good
20 comparative set of states for the violent crime
21 performance of Texas in the period before they adopted a
22 right-to-carry law. And that the reason that they
23 continued to do better than California -- better than
24 Texas after Texas adopted was that they didn't have a
25 right-to-carry.

1 Q Why are they good comparisons? Why is
2 California a good comparison state?

3 A Yeah. So this is simply the nature of the
4 synthetic control approach. It's not a choice that I
5 make in my own decision-making. It allows the
6 maximization routine that Abadie created to pick out the
7 states that will best mimic the pattern of crime that we
8 see in Texas.

9 And so if you look at the picture, it's a
10 fairly wavy pattern of violent crime, and the best
11 mimicking of that pattern comes from taking those three
12 states and the percentages that I indicate in the figures
13 to come up with the, quote, synthetic control, which is
14 essentially trying to identify, had Texas not adopted a
15 right-to-carry state, this is our best guess as to what
16 crime would have looked like in the ten years after 1996.

17 Q So it's a guess?

18 A Well, we like to say a prudent estimate.

19 Q Sure.

20 But that goes -- you do say suggest. Your
21 conclusion in your report says the evidence suggests,
22 right? So you could be wrong; is that correct?

23 A Oh, yes. You know, there's no -- there's no
24 certainty in doing empirical work. It's all a matter of
25 craftsmanship and following appropriate protocols to get

1 the best estimate that we have, but as we mentioned with
2 statistical significance, one out of 20 times, a pure
3 random effect will show up as, quote, statistically
4 significant, and so you always have to be aware of the
5 possibility that you got stung by a, you know, spurious
6 result.

7 Q So -- but you try not -- for that, you try to
8 get at the best result, right?

9 A Yes, yes, yes.

10 Q And you've indicated that an important factor
11 in getting there is law enforcement, correct?

12 A Yes, yes.

13 Q In comparing California and Texas, did you --

14 A Yes.

15 Q -- consider the fact, during the '90s, that
16 California had a three-strikes law and Texas did not?

17 A You know, I only considered the levels of
18 incarceration of the two states, and so I was controlling
19 for, you know, how many people were in prison relative to
20 the population in the various states.

21 But I didn't do a more refined assessment of
22 how much incarceration was playing a role in the, you
23 know, crime rate of the states beyond that factor.

24 Q Did you consider the impact of inventions of
25 antidepressants like Prozac during that time period?

1 MR. EISENBERG: Objection. Lacks foundation.

2 THE WITNESS: So that's an interesting question.

3 The --

4 BY MR. BRADY:

5 Q I'm just curious if you did consider it or not.

6 A Yeah, I actually did consider it. Because it's
7 an important and interesting thought. The -- and this is
8 one of the areas that people think of as panel data
9 capturing a year fixed effect.

10 So as something like antidepressants came into
11 America, they're sort of diffusing throughout the
12 society. And as long as they're diffusing uniformly,
13 then the year fixed effect is picking that up. If they
14 were -- if they were diffusing less than uniformly, then
15 your year fixed effect is not picking it up.

16 So I did think about this, and I thought, given
17 the data limitations, that the best assumption I can make
18 on this ground is that it's something captured in the
19 year fixed effect, but if -- if you had good data, you
20 could refine that assumption and try to see where
21 antidepressants of one kind are coming into different
22 jurisdictions.

23 Q Did you consider the impact of abortion rates?

24 A I certainly did, yes.

25 Q Do Texas and California have similar rates of

1 abortion?

2 A No, they probably don't. Off the top of my
3 head, I don't really know what Texas rates are, but I
4 assume that they're lower.

5 Q Did you consider the impact of gun control laws
6 other than the right-to-carry?

7 A The only one that's explicitly considered in
8 the panel data analysis is the right-to-carry law. The
9 synthetic controls, which is -- again, one of the great
10 features of the synthetic controls is anything that
11 differentiates crime performance in the preadoption
12 period will be taken into account, as the synthetic
13 controls protocol tries to identify the appropriate
14 synthetic controls.

15 So let's say that -- you know, getting back to
16 Texas, where I think we said Wisconsin, California, and
17 one other state --

18 Q Nebraska?

19 A -- Nebraska were the controls.

20 Whatever they're doing in those states is -- in
21 the preadoption period of 1996 is mimicking the Texas
22 experience, and as long as those factors stay the same
23 going -- subsequent to 1996, then we're getting an
24 unbiased estimate of the impact of right-to-carry.

25 But if, for example, the world changes

1 dramatically for other reasons in Texas vis-a-vis those
2 three states, then you may be getting a less accurate
3 estimate of what the impact in right-to-carry laws is.

4 Q So if California adopted lots of gun control
5 laws post 1996 --

6 A Yeah.

7 Q -- that would affect the results of the
8 comparison between Texas and California?

9 A Yeah. Anything --

10 Q I'm sorry, was that a yes?

11 A Well, I have to be a little precise here.

12 Anything that, "A," influences violent crime; and, "B,"
13 changes differentially after the adoption in the
14 synthetic controls analysis will impair the accuracy of
15 your estimate.

16 And so -- you know, to just get a precision,
17 let's say that, prior to 1996, this combination of
18 California, Wisconsin, and Nebraska is a perfect
19 mimicking of Vermont and Texas, but then after 1996
20 California changes, really, any major law that impacts
21 violent crime, and nobody else changes anything. Then
22 that is going to give you a less accurate picture of what
23 the true impact of right-to-carry law was in Texas.

24 Q So if California did adopt several gun control
25 laws post '96 and adopted a three-strikes law post '96,

1 that would call into question the accuracy of the
2 comparison between -- the accuracy of the conclusions of
3 comparing Texas and California?

4 A If the factors that you mention only impacted
5 the controls and not the treatments -- so in other words,
6 California, Wisconsin, and Nebraska, or some part of
7 them, and not the treatment group, Texas, then that would
8 render your estimate less accurate.

9 But of course, something could be happening in
10 Texas to upset it and -- and I think the -- maybe the
11 most important thing about the synthetic controls --
12 which is also true for the panel data -- is that we get
13 much better aggregate estimates than we get single-state
14 estimates. Because they're -- for just the reason you
15 mention.

16 There is noise in any single-state estimate,
17 but then when we average over 33 states, that noise will
18 tend to bounce out. So I would not put a lot of emphasis
19 on a single-state estimate.

20 So I was just on NPR yesterday, and David
21 Kopel, who is an NRA spokesperson, said, Oh, you know,
22 I'm in Colorado, and it looks like our law didn't have an
23 increase in crime.

24 And I didn't -- I didn't have time to say this,
25 but I would say, Well, I wouldn't believe a single-state

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.

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

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

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.

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 --

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1 Q Is that your only example of police, quote,
2 "underestimating criminality by permit holders"?

3 MR. EISENBERG: Let the record reflect that I
4 suggested Paragraph 21. We're not sure where that
5 reference that you're saying is in the report right now.

6 MR. BRADY: Okay. I can find it. I just figured
7 it's Professor Donohue's report, and that's a pretty
8 strong claim. I figured he'd be able to find that.

9 MR. EISENBERG: Do we have another copy of the
10 report, so I can look through it?

11 THE WITNESS: Here it is.

12 MR. EISENBERG: Did you find it?

13 (Discussion off the record)

14 MR. EISENBERG: That's not -- his quote has the
15 word "police" in it.

16 THE WITNESS: It's possible Kleck said that.

17 BY MR. BRADY:

18 Q All right. Let's -- we will -- all right.

19 Rather than focusing on the specific words, do
20 you agree with that general premise, that police
21 underestimate criminality by permit holders?

22 A Yeah, I mean, I'm -- I don't really have a
23 strong feeling on -- or a strong sense of what police are
24 estimating.

25 Q So your report doesn't rely in any way on -- in

1 reaching the conclusion that crime rates -- violent crime
2 rates rise as a result of RTC laws, that doesn't depend
3 at all on the reporting of -- the underreporting of
4 criminal behavior by license holders?

5 MR. EISENBERG: Objection. Vague, ambiguous,
6 compound.

7 If you understand the question, please answer.

8 THE WITNESS: Yeah, I don't think my report relies
9 on that.

10 BY MR. BRADY:

11 Q Okay. Your report does rely on the website
12 Concealed Carry Killers, correct?

13 A I --

14 MR. EISENBERG: Objection. Vague as to the word
15 "relies."

16 THE WITNESS: I mean, I referenced it for a
17 specific purpose.

18 BY MR. BRADY:

19 Q What was that purpose?

20 A For many years John Lott actually would say
21 things like no concealed carry permit holder has ever
22 committed murder. And this is a website that tries to
23 capture some of those instances.

24 So I put that in to say, Don't believe some of
25 the claims about right-to-carry permit holders never

1 committing murder, because here's a listing of many of
2 those cases.

3 Q And you believe that that listing on the
4 Concealed Carry Killers website is a credible source?

5 MR. EISENBERG: Objection. Vague and ambiguous as
6 to "credible."

7 THE WITNESS: You know, I think there were
8 actually some problems with that website when they first
9 released that information and it was criticized, but they
10 have cleaned up the website quite a bit since then,
11 and -- for what they're trying to do, I think it's a
12 useful resource of highlighting certain behaviors on the
13 part of permit holders, that show that they engage in
14 behavior that would either be criminal, reckless, or
15 suggestive of not being the sort of person you want
16 carrying guns around.

17 BY MR. BRADY:

18 Q Do you know who operates the website?

19 A I don't really know. I assume it's some
20 advocacy group that puts together this information, but
21 I'm not -- I'm not particularly sure which group it is.

22 Q So you don't know what group it is.

23 Do you know its process in putting together the
24 accounts that it lists on its website?

25 A You know, they cull through news reports,

1 certain killings, accidents, and suicides to sort of
2 identify cases where permit holders engaged in one of
3 those acts.

4 Q Are news reports generally a source that people
5 in your field rely on as credible sources?

6 MR. EISENBERG: Objection. Vague and ambiguous,
7 particularly as to context.

8 THE WITNESS: It's a good question.

9 BY MR. BRADY:

10 Q I thought it was vague and ambiguous, but go
11 ahead.

12 MR. EISENBERG: It is. Doesn't make it a bad
13 question. Just makes it an objectionable question.

14 THE WITNESS: But in this arena -- you know, among
15 my research of the crime, there's -- some of the best
16 studies are actually relying on these sorts of ways to
17 capture data.

18 So for example, I was involved with the FBI in
19 a conference where we were trying to figure out how many
20 people are killed by the police every year. And the FBI
21 actually puts out a number, saying number of citizens
22 shot by -- you know, killed by police. And the number is
23 wildly off. And it was really only, you know, studies of
24 this kind that were able to give a more accurate picture.

25 So it's certainly not perfect, but for what

1 A I have spoken to them over years, yes.

2 Q And so it's the Violence Policy Center that
3 puts this on. Looking at news reports, police reports.

4 Is it your understanding -- have you personally
5 evaluated the incidents that they list on their website
6 of homicides purported to be committed by license
7 holders?

8 A I certainly haven't gone through all of them.
9 I know many of these through my own work, and I observed
10 how they have changed their documents in response to
11 either new information or criticisms of the information.
12 I do think they're really fairly good at correcting
13 errors. You know, they're --

14 Q On what do you base that assessment, that
15 they're fairly good at correcting errors?

16 A Just if you look at the way that website has
17 been maintained over the last couple of years, they
18 definitely have made changes in response to criticisms.

19 Q So you've been following their website for
20 years?

21 A I have seen the website and followed the
22 criticism of it for years, yes.

23 Q Okay. Is it -- are you aware that 40 percent
24 of the homicides that they list purported to be committed
25 by license holders are all from the State of Michigan?

1 MR. EISENBERG: Objection. Lacks foundation.

2 MR. BRADY: Let me strike that.

3 Q If 40 percent of the homicides purported to be
4 committed by license holders on their list were from a
5 single state, would that cause concerns for your
6 assessment -- would that cause you concern about the
7 credibility of that list?

8 A You know, it would certainly be something you'd
9 want to investigate and you'd be interested in. If the
10 40 percent are accurate, that would -- that wouldn't be a
11 concern, but if the 40 percent were inaccurate, then that
12 would be a major concern.

13 Q What would be a legitimate reason that 40
14 percent of all of the incidents are from a single state?

15 MR. EISENBERG: Objection. Calls for speculation,
16 outside the scope of the expert testimony.

17 You may answer if you understand.

18 THE WITNESS: You know, we -- you could imagine
19 that the NRA didn't get a gag law passed in Michigan, and
20 they'd have better information in Michigan about what the
21 permit holders were doing. I don't know I -- this is the
22 first time I heard that claim.

23 But, you know, it -- under one set of facts, it
24 could be suggestive that this is a wild understatement of
25 the number of misconducts by permit holders. On another

1 set of facts, it could be a sign that there's something
2 wrong with their calculation. And unless I investigated
3 that further, I wouldn't know the answer.

4 BY MR. BRADY:

5 Q You did at least some investigation into their
6 quality control on this website, though, correct?

7 A Yes. Yes.

8 And I think they even advertise, you know, if
9 anyone has any information that something is inaccurate
10 here, you know, send it to us, and they actually do
11 change in response to those bits of information.

12 And for example, they will -- if somebody -- if
13 a permit holder kills somebody, they might list them, and
14 then let's say it turns out it's ruled justifiable
15 homicide. Then they would take that off. That's, I
16 think, responsible.

17 Q Would it be problematic if the 40 percent of
18 purported incidents by license holders from Michigan was
19 a result of double- or triple-counting newspaper
20 articles, court records, arrest records, conviction
21 records? Would that be problematic?

22 A Yeah, and I think in the early incarnation of
23 this website, they did have problems of that kind, and I
24 think they responded to the criticisms and have sort of
25 culled the website to eliminate any double countings or

1 problems --

2 Q So you think they've addressed that problem in
3 their current list?

4 A Yeah, I mean, I don't know about the Michigan
5 component, but I know that they were criticized for some
6 double countings and then responded to that by culling
7 the data.

8 Q Have you done any studies on suicides in this
9 country?

10 A I've worked a little bit on suicide, yes.

11 Q In your work have you made any determinations
12 on where suicides occur most often?

13 MR. EISENBERG: Objection. Outside the scope of
14 expert testimony in this case.

15 THE WITNESS: Yes, I have looked at suicide rates
16 across the United States.

17 BY MR. BRADY:

18 Q And where do suicides occur most often? I'm
19 sorry, let me qualify that.

20 I'm talking about -- not what state. I'm
21 talking about whether in someone's home? In their place
22 of business? At a family member's house? Where does --

23 A Yeah.

24 Q -- suicide normally take place?

25 A I mean, I would assume most of the time the

1 suicides are at home. You obviously see -- you know, in
2 the mass shooting cases, it's usually out on the road
3 somewhere, but those are relatively rare as a portion of
4 the total body of suicides. I'd say most of the time at
5 home.

6 Q The Concealed Carry Killers website includes on
7 its list of incidents by license holders suicides; is
8 that correct?

9 A Yes.

10 Q Is there any state that you're aware of in your
11 study that requires a concealed weapon permit to be able
12 to have a firearm in the home?

13 A No.

14 Q So then do you think it's problematic that this
15 website lists suicides by license holders as if -- strike
16 that.

17 Why are suicides relevant to the question of
18 violent crime by right-to-carry laws?

19 A Yeah. That's a good question.

20 Q Full of 'em.

21 A I mean, essentially, there are -- there are two
22 elements here. One is who are the people that are
23 getting right-to-carry permits? Are these people that we
24 are comfortable having guns?

25 If we find out they're killing themselves at a

1 high rate, my first thought is, well, I'm probably not
2 comfortable that these guys are having guns. If the
3 question is does the adoption of a right-to-carry law
4 increase the likelihood of suicide, then the answer is
5 it's less clear, because, as you say, if you already got
6 a gun in the home, you don't need a right-to-carry permit
7 to kill yourself with a gun. You can just go home and
8 kill yourself.

9 On the other hand -- as always, there's nuance
10 here. A certain number of people who didn't have a gun
11 before said, Oh, now I can carry a gun. Let me go out
12 and get a gun. And clearly, we know if you have a gun,
13 you are increasing the risk that you're going to be one
14 of the ones who's going to end up committing suicide with
15 a gun.

16 Q Do you know whether the reported incidents on
17 Concealed Carry Killers includes suicides only by guns,
18 or does it include suicides by any means of a license
19 holder?

20 A I don't know the answer to that.

21 Q If it included all, would that be problematic?

22 A No. If -- again, if you're -- you have to
23 understand the context of the debate in this area. The
24 claim made by the pro-right-to-carry and pro-gun
25 activists is that the permit holders are the good guys

1 with a gun. They are to be trusted completely. They
2 will never do anything wrong, because they're the good
3 guys.

4 And so the Violence Policy Center was
5 criticized for the study of suicides. They were even
6 criticized for things like putting in intentional
7 homicides, saying, look, if somebody's going to commit an
8 intentional homicide, we don't think that should be in
9 there, because they'd do that without a right-to-carry
10 law.

11 But that missed the point of this website,
12 which is to say you want to give guns to people that are
13 going around intentionally killing people. You want to
14 give guns to people who are so depressed that they're
15 killing themselves. They're jumping off buildings;
16 they're hanging themselves. These are not the sort of
17 people I would feel comfortable having a gun.

18 Q Okay. So then are background checks for -- is
19 there a difference between right-to-carry states that
20 have background checks and those that do not in the pool
21 of license holders?

22 In other words -- let me -- is there a
23 difference in their propensity for violence crime?

24 MR. EISENBERG: Objection. Vague and ambiguous as
25 to multiple terms. Also outside the scope of the

1 expert's testimony.

2 THE WITNESS: So I just want to be cautious here.
3 Is the question do background checks sort of improve the
4 caliber of the people who are carrying guns? Is that --
5 BY MR. BRADY:

6 Q Yeah, is it reasonable to say that a background
7 check could account for potential issues with the pool
8 versus a non-background check?

9 MR. EISENBERG: Vague and ambiguous as to
10 "background check."

11 THE WITNESS: Yeah. I mean, I do think background
12 checks can help, but I think every state that issues
13 permits makes you go through a background. I could be
14 wrong, but I think that's true. And --

15 BY MR. BRADY:

16 Q So you don't know whether all the states
17 require background checks in right-to-carry laws?

18 A Yeah. I would have said they did, but I
19 thought your question was that some states had background
20 checks and some didn't, and would that differentiate.

21 Q That was a hypothetical. I don't know but I --
22 now I'm asking you -- but do you know whether --

23 A Yeah. I mean, the only reason why I hesitated
24 was I thought you were positing that it wasn't true. So
25 if you had asked me, I would have said yes. If you want

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

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

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.

1 I think 91 percent of police are opposed to
2 right-to-carry laws? No. But I certainly could get 91
3 percent of a selected sample of police to say they oppose
4 right-to-carry laws.

5 And so I'm sure -- if this number is correct,
6 I'm sure you have a wildly selected sample. I mean -- so
7 if you take your survey at San Quentin and say, you know,
8 Have you ever been convicted of a crime? A hundred
9 percent of people say they have been. Does that mean a
10 hundred percent of people have been convicted of crimes?
11 No. But --

12 BY MR. BRADY:

13 Q Okay. Do you know how many concealed carry
14 license holders there currently are in the country?
15 Obviously, an estimate.

16 A Yeah. Roughly. I don't know precisely but
17 roughly.

18 Q And what is that figure?

19 A I'd put it around 12 million maybe, but, you
20 know, it's growing over time. So I mean, sometimes
21 you're a little behind on your estimates.

22 Q So it's growing.

23 Is the crime rate -- is the national crime rate
24 growing as well?

25 A Yes.

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1 Q The national violent crime rate is growing?

2 A Yes. Right now it is growing, yes.

3 Q Do you know of any state that has repealed a
4 right-to-carry law in the last 20 years?

5 A No.

6 Q To what do you owe the lack of repealing
7 right-to-carry laws, in light of the conclusions in your
8 report?

9 A Well, remember, I was saying that violent crime
10 goes up maybe 13 to 15 percent. That's below the
11 threshold of perception of most Americans.

12 So for example, number of Americans who said
13 they feared crime rose substantially, you know, in the
14 Obama years, even though crime was going down. So what
15 people think about crime is very unrelated to what's
16 happening about crime unless the changes are massive. It
17 has to be much more than 10 or 15 percent before people
18 understand.

19 And furthermore, there -- you know,
20 right-to-carry laws seem to be a bad thing if you're
21 concerned about crime, but we have had many good things
22 happen.

23 And so if the good things -- you know, you lock
24 up a lot of people, you're adding more police to your
25 jurisdiction, and that suppresses crime. People might

1 that's -- generally -- not always true but generally
2 true, yeah.

3 Q Your report relied upon your own research
4 regarding data about criminality from states that allowed
5 concealed carry, correct?

6 A Yes.

7 Q And you did no research about open carry that's
8 reflected in your report, right?

9 A That's correct.

10 Q And you did not collect or examine data
11 regarding open carry in any state; did you?

12 A That's correct.

13 Q And your research -- you didn't conduct any
14 research, examining the criminality about the open-carry
15 permittees in California counties, correct?

16 A (No audible response)

17 Q Let me -- strike that. I'm sorry, I skipped a
18 question.

19 You're aware that certain California counties
20 can issue open permits, correct?

21 A I'm not aware of the thing that you mentioned.

22 Q Okay. So you didn't examine the criminality of
23 those license holders, open-carry license holders, in
24 preparing your report, correct?

25 A No, I did, you know, refer to Ronald Reagan's

1 support for, you know, preventing open carry in the
2 United States -- in California when he was Governor, and
3 his statements that there's no reason for anybody to be
4 walking on the streets with a loaded weapon. But beyond
5 that, I didn't focus on open carry in this paper.

6 Q Your report also relied upon research by
7 others, where they examined concealed carry and
8 criminality rates in other states, correct?

9 A Could you repeat that question? I'm sorry.

10 Q Sure.

11 Your report relied upon others' research, who
12 examined concealed carry and criminality rates in other
13 states, correct?

14 A I'm not sure if I'm understanding. Let me
15 just --

16 Q They examined the criminal -- the crime rates
17 in conjunction with right-to-carry laws.

18 A Yeah, I was focusing on crime rates for
19 right-to-carry laws.

20 Q Are you aware of research by anybody else who
21 has examined open carry and its potential effects on
22 criminality?

23 A I don't know of any comparable studies to the
24 sort that I was doing for right-to-carry. There is
25 discussion about what the consequences of open carry are,

1 and so I've read that literature, but I'm not familiar
2 with anyone that's tried to do for open carry what I've
3 done here for right-to-carry.

4 Q That literature that you referenced, where is
5 that -- where are you locating that?

6 A Discussions about open carry --

7 Q Correct.

8 A You know, there's a fair amount written every
9 time a state adopts open carry. So Texas, who recently
10 adopted open carry, there was a fair amount written about
11 that. Police chiefs were discussing, you know, will this
12 lead to more gun thefts, and there was even a debate
13 among some permit holders -- because the way Texas moved
14 to open carry was they said, if you have a concealed
15 carry permit, then you're allowed to carry open.

16 And so I did try to follow some of the
17 discourse among permit holders. Is it a good idea to
18 openly carry or not. Also, there was a fair amount of
19 public discussion and writing over taking guns into
20 stores like, you know, Starbucks and stuff like that.

21 Q None of that literature is cited in your
22 report; is it?

23 A No. I didn't go into that in my report.

24 Q So your report doesn't rely upon data or
25 reports from any other research, where that researcher

1 standard view in public economics that we don't want to
2 expend resources in a way that just moves around cost
3 among the population where we're trying to engage in
4 expenditures that reduce total social costs.

5 And so, for example, there's a discussion about
6 using a Club in a vehicle to stop your car being stolen.
7 And many economists have written it's not a socially
8 beneficial thing, because you put The Club on, and that
9 just means your car doesn't get stolen, but the car next
10 to you gets stolen.

11 And, you know, there are more complicated
12 assessments that you could engage in, but the bottom
13 point is the same, that concealed carry has a better
14 possibility of being socially beneficial than open carry,
15 because if there is deterrence from people carrying
16 around guns, you get more of it if they don't know who
17 has the gun than if they do know who has the gun, because
18 then they just go to the other target.

19 Q But you have no data to support that
20 conclusion, correct?

21 A I mean, that has been written about in many
22 crime prevention contexts, but I'm not aware of any that
23 have, you know, tested for this phenomenon, as opposed to
24 just referring to it in the literature.

25 Q It's not written about in your report; is it?

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 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

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?

1 A I didn't cite that. I could have cited it, but
2 I mentioned it here today.

3 Q Let's talk about deterrence.

4 Do you have any opinions as to whether police
5 officers carrying firearms openly has a deterrent effect?

6 MR. EISENBERG: Objection. Outside the scope of
7 the expert's testimony.

8 But you can answer.

9 THE WITNESS: Yeah. Yeah, I think -- I think
10 police are probably the single most important public
11 investment influence on crime.

12 BY MR. BRADY:

13 Q Is there any data you rely upon in forming
14 those opinions?

15 A Yes.

16 Q Any reports that you rely on?

17 A Yeah, just empirical studies trying to evaluate
18 the impact of police on crime.

19 I mentioned the Steve Levitt paper using
20 instrumental variable of the mayoral election year to
21 show very large decreases in crime in the mayoral
22 election years, but there are many other papers as well.

23 Q So you conclude in Paragraph 33 that open carry
24 does not have the same deterrent effect as concealed
25 carry, because under an open carry scheme, criminals know

1 enjoying this, he's giving some long-winded -- so I'm
2 trying to find appropriate points to interject where I
3 believe he's finished with the answer.

4 Q You are more than welcome, sir, to say, Pardon
5 me, Counsel, may I complete my thought? And I'm happy to
6 allow you to. I thought I made that clear at the
7 beginning.

8 So I apologize if I've stepped on you, but you
9 are -- I'm no one to be afraid of, I can assure you.
10 Anna might differ on that, but --

11 THE REPORTER: Is it a good point to take a break?

12 MR. BRADY: Sure, if -- we can do it briefly,
13 sure.

14 (Brief recess taken.)

15 BY MR. BRADY:

16 Q So I guess we will start with your premise that
17 if a criminal, when confronted with a potential victim
18 who's openly carrying a firearm, chooses another
19 target --

20 A Yes.

21 Q -- doesn't that mean that the crime against the
22 person openly carrying was deterred?

23 A Yeah, deterred as to that individual, yes.

24 Q Would it be fair to say that you believe it is
25 possible that open carry deters crime against those who

1 are openly carrying them?

2 A You know, it probably is true on balance.

3 Again, just something I read this week was a police chief
4 talking about people carrying guns so casually that he
5 felt that, because they had a gun hanging out of their
6 pocket rather than in a holster, that it was more likely
7 that the criminal would steal their gun right out of
8 their pocket than that they would actually do something
9 good with it. So there are always complex mechanisms at
10 stake.

11 And then, of course, we have other cases where
12 people actually seek you out because they want to get
13 your gun. I mentioned in the report the Boston bombers
14 wanted to get another gun, so they killed a police
15 officer to get his gun. So it's a case where it was an
16 inducement.

17 And this is true in general, that there are
18 always multiple effects. So that all you really can
19 opine upon is, well, what's -- what, on balance, is
20 greater, the good effects or the bad effects. And, you
21 know, for my major study on right-to-carry, I was just
22 concluding that the bad effects seem to outweigh the good
23 effects.

24 Q And you're making the argument -- you're posing
25 an argument that could counter that, you know, open carry

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

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.

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?

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

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

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

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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

1 urban environment is much less conducive with the
2 carrying of guns without causing concern or alarm than in
3 a more rural area.

4 So if a person came to me and said, Look, we
5 don't have any problem out here in this town 90 minutes
6 outside of Fargo, I'd say, well, that's not very helpful.
7 Do you have any problems in, you know, New York City?
8 And I think that you would have problems in New York
9 City.

10 Q The reason I asked as a hypothetical -- let me
11 strike that.

12 What I'm trying to get you to answer -- I think
13 could be a yes-or-no question, but I'll leave that up to
14 you -- is whether the factor of the burden on police
15 officers by open carriers is an important component of
16 your conclusion about the effects of open carry on the
17 public.

18 MR. EISENBERG: Objection. Vague and ambiguous as
19 to "important."

20 THE WITNESS: You know, I think it's one of the
21 factors that leads me to think that open carry is
22 probably worse than concealed carry.

23 BY MR. BRADY:

24 Q How many factors are there?

25 A You know, just everything that we've been

1 talking about. The potential for greater theft, the lack
2 of deterrent umbrella, the potential impairment of police
3 effectiveness.

4 Q Okay. I refer you to Page 17 of your report.

5 A Yes.

6 Q Open carry versus concealed carry.

7 A Yeah.

8 Q You have Paragraph 32, 33, 34, 35, 36.

9 That's one, two, three, four, five paragraphs,
10 correct?

11 A Yes.

12 Q And all contained on one -- not even a full
13 page, correct?

14 A Yes.

15 Q Okay. One paragraph almost -- one of the five
16 paragraphs is dedicated to the idea that burdens on
17 police officers by open carriers is a negative effect on
18 the public.

19 Is that a fair assessment of your report?

20 A Yeah, it is one of the factors I mention.

21 Q So then is it fair to say that that concept is
22 a significant part of the one-page analysis on open carry
23 in your report?

24 MR. EISENBERG: Again, objection on "significant."

25 THE WITNESS: I mean, it's -- I think there's sort

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

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:

1 Q Well -- so you should have, meaning that if you
2 did and it came -- the conclusion or the findings of that
3 study were that there really is not a problem with police
4 officers stopping people because they're openly carrying,
5 would that change your conclusions in your report about
6 openly carrying -- about the effects of open carrying?

7 A I mean, if somebody had convincing evidence
8 that in an urban environment you don't have to worry
9 about the factors that I articulated, then, sure, I would
10 take that into account.

11 Q But just to be clear, you didn't review any
12 polls of law enforcement officers about the burdens they
13 perceive in encountering open carriers in preparing your
14 report?

15 A No, I didn't review polls.

16 Q Did you seek any data from any law enforcement
17 agencies about their experiences with open carriers?

18 A You know, I've alluded to the published record
19 on this, which I did seek out, but I didn't directly
20 inquire with particular police departments.

21 Q Are you aware of any public statements by chief
22 law enforcement officers, police chiefs or sheriffs,
23 indicating they need more funding to deal with people who
24 are openly carrying?

25 A You know, I haven't seen that, although there's

1 certainly discussion about the need for more funding than
2 just concealed carrying. And -- but I am not aware of
3 the literature on asking for more funding in the wake of
4 open carry.

5 Q So you have -- so do you have any knowledge
6 about the net burden of open carry policies on law
7 enforcement from a law enforcement source?

8 A You know, apart from the published discussions
9 that I've been referring to, I don't have anything else.

10 Q And those public discussions are not referred
11 to in your report, correct?

12 A Yeah, I don't think I added those.

13 Q So then, essentially, you've drawn your
14 conclusions about open carry -- about the net effect of
15 open carry based on your conclusions that you've reached
16 about concealed carry; is that correct?

17 A Well, certainly, the conclusions about
18 concealed carry were a critical premise to this
19 articulation of the relative benefits and burdens, but
20 the rest follows from my reading of the literature on
21 experience with open carry and then, you know, sort of
22 the basic principles of deterrence theory and the
23 information about gun theft, and at least occasion of
24 resources.

25 Q Okay. Did you analyze at all whether people

1 who open carry are more or less law-abiding than those
2 who carry concealed?

3 A I'm not aware of any information on that.

4 Q So could open carriers be more law-abiding than
5 concealed carry permit holders?

6 A It's possible. I would be surprised by that,
7 but it's possible.

8 Q If they were, would that change your opinion
9 that effects of open carry can be inferred from concealed
10 carry data?

11 A If open carry people were --

12 Q More law-abiding.

13 A More law-abiding.

14 I mean, it -- if they are more law-abiding,
15 then one of the mechanisms that leads to concealed carry
16 being problematic would be eliminated, but the other
17 mechanisms would not.

18 I'm just dubious about the premise of the
19 question, because I suspect, if anything, the open
20 carriers would be much less law-abiding than the
21 concealed carries.

22 Q Your suspicion is based on pure speculation,
23 correct?

24 A "Speculation" is a loaded word. It's based on
25 years of working in the criminal justice research arena.

1 Q Well, let me define it a little more clearly.

2 Are there any reports that you have seen to
3 suggest that open carriers are less law-abiding than
4 concealed carriers?

5 A No. I haven't seen anything opining on that
6 relative difference.

7 Q So you can't know whether open carriers are
8 more or less law-abiding than concealed carriers; is that
9 correct?

10 MR. EISENBERG: Objection. Vague and ambiguous as
11 to "you can't know."

12 THE WITNESS: I don't --

13 BY MR. BRADY:

14 Q You don't know, right?

15 A I don't know. No, I'm just inferring.

16 Q If you don't know that, how can you determine
17 that open carry would increase violent crime?

18 A Well, I -- since I don't have any reason to
19 think that open carriers would be more law-abiding than
20 concealed carriers, and I've concluded that concealed
21 carry promotes violent crime, I would have no reason to
22 think open carry would be better.

23 And as I said, since I actually suspect that
24 it's the opposite, that will only reaffirm that
25 conclusion. Plus we have these other factors that we

1 uniformly accepted that open carry doesn't have any
2 deterrent umbrella capacity the way concealed carry does
3 and things of that nature. So I feel very comfortable
4 drawing relative comparisons about the effectiveness of
5 one versus the other.

6 Q Okay. You're using those inferences to
7 establish what you believe is a likelihood, correct?

8 A Yes.

9 Q Okay. But you are cannot use those inferences
10 to establish a certainty; is that correct?

11 A That's correct.

12 Q In other words, just like with concealed carry,
13 your analysis of concealed carry, where you admitted
14 earlier that you could be wrong; likewise, you could be
15 wrong about the open carry analysis as well; is that
16 correct?

17 A Yes. Any time I'm making a prediction or
18 estimate, I could be wrong.

19 Q All right. Moving on. We are in the home
20 stretch.

21 So have any of the studies you've conducted on
22 firearms-related matters ever conclude that a particular
23 gun-control law did not work?

24 MR. EISENBERG: Objection. Outside the scope of
25 testimony.

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2
3 I, the undersigned, a Certified Shorthand
4 Reporter of the State of California, do hereby certify:

5 That the foregoing proceedings were taken
6 before me at the time and place herein set forth; that
7 any witnesses in the foregoing proceedings, prior to
8 testifying, were placed under oath by me; that a verbatim
9 record of the proceedings was made by me using machine
10 shorthand, which was thereafter transcribed by me;
11 further, that the foregoing is an accurate transcription
12 thereof; that before completion of the deposition, review
13 of the transcript was requested.

14 I further certify that I am neither financially
15 interested in the action nor a relative or employee of
16 any attorney of any of the parties.

17 IN WITNESS WHEREOF, I have this date subscribed
18 my name.

19
20 Dated: July 22, 2017

21
22 

23 SHERRYL DOBSON
24 CSR No. 5713
25

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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, JACOB
6 PERKIO, and THE CALIFORNIA
RIFLE & PISTOL ASSOCIATION,

7 Plaintiffs,

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

8 vs.

9
10 CALIFORNIA ATTORNEY GENERAL
XAVIER BECERRA, in her
11 official capacity as Attorney
General of the state of
California, SHERIFF JAMES
12 McDONNELL, in his official
capacity as Sheriff of Los
13 Angeles County, California,
and DOES 1-10,

14 Defendants.

15 ~~~~~

16
17 DEPOSITION OF JOHN J. DONOHUE

18 Volume II

19
20 August 8, 2017

21 9:30 a.m.

22 559 Nathan Abbott Way

23 Stanford, California

24
25 Joan Theresa Cesano, CSR No. 2590

1 APPEARANCES OF COUNSEL

2
3 For Plaintiffs:

4 MICHEL & ASSOCIATES
5 SEAN A. BRADY, ESQ.
6 (via video-teleconference)
7 180 East Ocean Boulevard, Ste. 200
8 Long Beach, California 90802
9 652.216.4444
10 sbrady@michellawyers.com

11 For Defendants:

12 JONATHAN M. EISENBERG, Deputy Attorney
13 General
14 STATE OF CALIFORNIA, DEPARTMENT OF JUSTICE
15 OFFICE OF THE ATTORNEY GENERAL
16 (via video-teleconference)
17 300 South Spring Street, Ste. 1702
18 Los Angeles, California 90013
19 213.897.6505
20 jonathan.eisenberg@doj.ca.gov
21
22
23
24
25

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1 A That's -- that's correct.

2 Q Are there other possible models which included
3 other sets of control variables that -- that you could
4 have used other than these four?

5 MR. EISENBERG: Objection; vague and ambiguous as
6 to "possible" and "could have used."

7 But you may answer, Professor Donahue.

8 In fact, unless I say please don't answer, go
9 ahead and answer.

10 A Yes. One could pick and choose among the four
11 models that I included to either add or eliminate certain
12 explanatory variables, so every addition of an explanatory
13 variable or subtraction of an explanatory variable would
14 constitute a different model.

15 So in that sense, one could alter these models
16 and get different specifications.

17 BY MR. BRADY:

18 Q So, there could be other models that included
19 control variables that you did not consider; is that
20 accurate?

21 A Well, indeed the other models all had some
22 explanatory variables that I did not include.

23 So right in my paper you see that in addition to
24 the model that I felt was the best, the DAW model, the BC
25 model as well as the MM and LM models, all had at least

1 some explanatory variables that were different from mine
2 and therefore, mine could be amended to include variables
3 that they had.

4 So those would all be different models that one
5 could use.

6 Q But are there models that included control
7 variables that none of the four models used?

8 MR. EISENBERG: Objection; vague and ambiguous.

9 A One -- one could certainly add additional
10 explanatory variables to the ones that are in these four
11 models.

12 BY MR. BRADY:

13 Q And is it possible that these other models, the
14 ones other than the four, could be better at explaining or
15 predicting violent crime rates?

16 MR. EISENBERG: Objection; vague and ambiguous as
17 to "other models."

18 A I do think that it is a conceptual possibility
19 that, you know, other explanatory variables or even
20 permutations of the explanatory variables that I used
21 could be better in the sense of, you know, being a better
22 representation of the factors that explain violent crime.

23 BY MR. BRADY:

24 Q So it's possible that the use of other models
25 could yield estimates of the effects of right-to-carry

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1 laws on violent crime rates that were different enough
2 from DAW and these other models that they would call for
3 different conclusions about the effects of right-to-carry
4 laws?

5 MR. EISENBERG: Objection; calls for speculation
6 on an incomplete hypothetical.

7 A I do think that the panel data estimates are
8 somewhat more fragile than the, for example, synthetic
9 control estimates. And so by that I mean it is possible
10 that introduction of different explanatory variables could
11 lead to slightly different results than are shown in the
12 four models that I presented in my paper.

13 BY MR. BRADY:

14 Q Okay. So, but, is it possible that none of the
15 combinations of control variables you used were adequate
16 for estimating the effect of right-to-carry laws?

17 MR. EISENBERG: Objection; vague and ambiguous as
18 to "possible." Again, almost anything's possible.

19 A Yes. I mean, harkening back to the conclusion of
20 the 2004 National Research Council report, they did say
21 that at the time in 2004 they felt that none of the panel
22 data models run on the existing data were robust enough to
23 draw strong conclusions.

24 And so by updating the data for 14 additional
25 years and having 11 extra states adopting right-to-carry,

1 I did think I got better panel data estimates than were
2 possible back in 2004, but I still felt that there was
3 some element of accuracy in their concerns about the
4 robustness of panel data models and --

5 BY MR. BRADY:

6 Q So more years -- more years considered in panel
7 data analysis, does that necessarily make the analysis
8 more robust?

9 MR. EISENBERG: Actually, I want to object; I'm
10 not sure that Professor Donohue was finished with his
11 answer before you asked the question, so I want to see if
12 he has more to say before he answers the next question.

13 THE WITNESS: I'll wait for the next question.

14 MR. EISENBERG: Okay.

15 BY MR. BRADY:

16 Q So would more years being considered in a panel
17 data analysis -- pardon me, necessarily make the results
18 more robust?

19 Is more years better, in other words?

20 A Yes, more years is almost always better.

21 But -- and I think if you look at the panel data
22 analysis of my paper and other scholars look at it, they
23 will say, oh, the results have become more stable by
24 virtue of having 14 years of additional data plus 11
25 additional adoptions.

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1 one looks to the prior literature and the theoretical
2 basis for including certain explanatory variables and over
3 time the literature will coalesce around a certain set of
4 explanatory variables.

5 And then, of course, if someone feels that an
6 additional explanatory variable would be helpful, and you
7 can collect data for that variable, then you would -- you
8 would be invited or encouraged to include that and see if
9 it made a difference.

10 And so in this case I was -- I was using a lot of
11 different models, including models that in the past had
12 been used to argue that right-to-carry laws actually
13 decreased crime and -- and as well as, models of my own
14 choosing, and models by other researchers who were looking
15 at crime. So I thought I was getting a fair cross section
16 of possible models in doing my analysis.

17 But as you say, there could be other explanatory
18 variables that none of these models included.

19 Q Can you explain, summarize how you went about
20 choosing what models to include?

21 A Yes. I think as we mentioned in the prior
22 deposition I had been working in this general area of
23 trying to analyze the impact of right-to-carry laws for
24 quite a number of years and written quite a number of
25 papers on this.

1 And so over time you spend a lot of time refining
2 your thinking and looking at explanatory variables and
3 getting critique and feedback from other researchers, as
4 well as looking at the vast array of crime papers that are
5 not dealing with right-to-carry at all but are looking at
6 other crime issues.

7 And so looking at that vast literature, you do
8 have a very strong literature to draw on in deciding what
9 you think is -- is the best model --

10 Q From --

11 A Oh, sorry.

12 Q I'm sorry.

13 A So just to finish. So that is essentially the
14 process that I -- I went through over the course of years,
15 refining my model and -- and really the first time that I
16 ever came to the conclusion that I think this is what I
17 think is the best model was in this paper.

18 In the past I was always just trying different
19 possibilities without -- without specifically saying, I
20 think this is best model. So this is the first time I
21 took that -- that final step in analyzing the panel data.

22 Q In that body of literature you mentioned, did you
23 review any studies of crime rates in general, not just on
24 right-to-carry laws, to determine what variables have been
25 found to affect violent crime rates?

1 either focused on right-to-carry laws or were just in
2 general crime studies.

3 So for example, the Brennan Center report was
4 just a general analysis of crime not specifically focused
5 on right-to-carry.

6 Q Okay.

7 How many of the control variables in your
8 preferred DAW model showed significant association of the
9 5% significance level with violent crime rates?

10 A In the panel data analysis?

11 Q Correct.

12 Just to be clear before you answer, right now I'm
13 solely focusing on the panel data analysis. We'll get to
14 the synthetic model in a second here, but right now just
15 focus on panel data, please.

16 A And so of my preferred model, I believe the DAW
17 model using manual data always showed an increase in crime
18 that was statistically significant for violent crime in
19 the dummy variable model.

20 Q In the dummy variable model. But you have a
21 dummy variable model and a spline model; is that correct?

22 A That's correct.

23 Q Would the same be true for the spline model?
24 Would it always show a significant association with --
25 would the adoption of a right-to-carry law always show a

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1 significant association with increases in violent crime
2 rates for the spline models?

3 A I believe that in the DAW model the spline did
4 not show a statistically significant increase, but let me
5 just look back quickly to verify that in the broader
6 regression.

7 So that would be for the period 1979 through 2014
8 where you do see a statistically significant increase in
9 the dummy variable model for the DAW approach but not for
10 the spline model.

11 Q Are you consulting your report?

12 A Uh --

13 Q Your study?

14 A Yes, and I -- I confirmed in my own mind that
15 what I said was accurate.

16 Q And what was that?

17 A That the DAW model using the dummy variable
18 approach showed a statistically significant increase in
19 violent crime associated with the adoption of a
20 right-to-carry law but the spline model did not show that
21 statistically significant increase.

22 It was a positive estimate but not statistically
23 significant.

24 Q And it was statistically significant in all of
25 the dummy variable models?

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1 leave them all out. But since people want to know if --
2 if the variables that you're leaving out have an impact,
3 you need to put them in to sort of show the world, look,
4 the -- our estimate is not influenced by these variables.

5 So I think that the criticism that Gary Kleck
6 made was really ill-advised.

7 Q So then it is acceptable to assess the impact of
8 a right-to-carry law while having no variables controlling
9 for laws or matters that might impact violent crime rates
10 that are correlated with the right-to-carry laws?

11 A I think you want to control for every variable
12 that you think is an important explanatory variable that
13 influences crime if it's correlated with right-to-carry
14 laws.

15 Q And if somebody did not control for that in
16 assessing the right-to-carry law, would that be
17 scientifically acceptable or it would be suspect?

18 A Uh --

19 MR. EISENBERG: Objection. Same objection;
20 vagueness and ambiguity.

21 A Certainly if you knew that there was something
22 that influenced crime and was correlated with
23 right-to-carry laws, you would want to introduce that into
24 your model and see if it made a difference in your
25 results.

1 crack had largely subsided. And so at least for these 11
2 states you're not getting the -- the sort of harmful
3 contribution of the crack problem to our attempt to
4 estimate the impact of right-to-carry laws.

5 Q So would it be fair to say you excluded the late
6 '90s years due to your concerns about the crack issue?

7 A Yes.

8 Q Did you use this same 2000 to 2014 period in your
9 previous study from 2014?

10 A Umm -- I probably would not have used the exact
11 same period because I wouldn't have had, you know, the
12 data going as far as I had in this paper at an earlier
13 time. But I think I did do something similar of trying to
14 capture the post-crack period.

15 Q So you're saying you might not have 2014 or the
16 higher years, but you would have 2000?

17 A Yes. Yes, I presumably would have had 2000.

18 Q What about 1999 data?

19 A Yeah, I could -- I would certainly have had that
20 data available.

21 Q Did you use 1999 data in your 2014 report?

22 A I -- I have to look back. I think I may have,
23 but I would have to look back to be sure.

24 Q If you did, what would be a reason to exclude it
25 from this report? This study?

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1 A Yes. Essentially, I -- I looked at the pattern
2 of crime, you know, fairly carefully and it -- it looked
3 like crime really leveled out starting in about 2000. So
4 crime was still dropping in 1999.

5 And so I -- I decided that since I had 14 years
6 of data here, I would, you know, sort of rely on the
7 period that was the -- the most flat in terms of crime
8 that I could find over this more recent period.

9 Q Can you please hand the court reporter the FBI
10 UCR report I gave you?

11 A Sure.

12 MR. BRADY: We can mark that as Exhibit -- I
13 think we're at 14 on the record.

14 Let me make sure that's the case. Is this the
15 first exhibit I'm going to mark?

16 THE REPORTER: Yes, it is.

17 MR. BRADY: Then I think it's 14.

18 THE WITNESS: Okay.

19 MR. EISENBERG: Is this the one called FBI Table
20 1?

21 MR. BRADY: Yes.

22 MR. EISENBERG: Okay.

23 (Exhibit 14 marked)

24 BY MR. BRADY:

25 Q Have you seen this before?

1 A I mean, I haven't seen this particular handout,
2 but I certainly have looked at FBI crime data many times.

3 Q So did you say on what you based your assertion
4 that crime had leveled out by 2000?

5 A Yes. That --

6 Q And what was that?

7 A That if you -- if you look at the -- if you look
8 at the period of 1996 to 2000, crime was still dropping
9 pretty sharply over that entire period.

10 But after 2000 it -- it levels out pretty --
11 pretty flat. There's no further increase -- I mean
12 decrease in crime, you know, over the next six years. Or
13 even further. Over the next, like eight years it's pretty
14 flat.

15 So essentially one easy way to think about it is
16 the Clinton years were years of very sharp decline and the
17 Bush years were years where crime was essentially flat,
18 for murder.

19 Q Mm-hmm. Would the .2 difference between 1999 and
20 2000, for murders, would that be a significant difference?
21 That's statistically speaking.

22 A You know, one would have to do a statistical
23 test, but you're talking about a fairly large amount of
24 data here, so it probably would be statistically
25 significant.

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1 Q 2003 was included in the data set that you used
2 for Table 8, correct?

3 A Yes.

4 Q And for murders it has 5.7; correct?

5 A That's right.

6 Q 1999 has 5.7; correct?

7 A That's right.

8 Q But you omitted 1999 from this data set; correct?

9 A I did.

10 Q Do you have a reason why you omitted 1999?

11 A Yes. I mean, as I said, I was trying to get past
12 both the uptick in crime from the emergence of the crack
13 problem and then the downtick in crime that followed the
14 elimination of the crack problem.

15 And -- and you can see that the -- the decline
16 ended in 2000.

17 Q So what literature did you rely on in including
18 the year 1999 in the so-called crack era?

19 A You know, again, that was just a judgment based
20 on -- the observation that crime continued to fall
21 steadily, through 2000 and then leveled off.

22 And so I used that as my determination for, at
23 this point, I'm feeling confident that the aftermath of
24 crack has -- has played itself out.

25 Q And were you -- you weren't concerned that some

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1 I had 14 years of data after 2000, I thought sort of a
2 cleaner look on that would be to start at 2000.

3 Q And what literature did you rely on in including
4 1999 in the so-called crack era?

5 A Umm -- you know, I essentially included that in
6 the aftermath of the crack era.

7 So there are really two phases of the crack era,
8 the period when crime was rising because of crack and then
9 the period after crack had subsided. And so the first one
10 stimulated crime and the second one tended to dampen crime
11 and -- and there's a very big literature that discusses
12 that phenomenon.

13 But the final judgment as to whether you would
14 say that the impact of crack had fully dissipated in 1999
15 or 2000 was my judgment.

16 Q Based on?

17 A Well, based on the fact we do see crime
18 continuing to fall at a significant rate through 2000 and
19 then the -- the drop stops.

20 Q Would omitting a year in a data set of
21 15 years -- strike that.

22 Could the omission of data from one year in a
23 data set of 15 years alter results in the analysis of that
24 period?

25 A It -- it could.

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1 Q From where, Professor, are you getting your
2 quote? Is it from your study?

3 A It was from the expert report dated June 1.

4 Q Okay. From the expert report, okay.

5 And I believe, you don't have Exhibit 5 in front
6 of you, correct?

7 A I do not.

8 Q Again, Exhibit 5 is the Zimmerman paper that we
9 talked about last time. But since you don't have it in
10 front of you, we will move on.

11 Well, actually, do you contend that the Zimmerman
12 study you just cited supports your study?

13 MR. EISENBERG: Objection; vague and ambiguous as
14 to "supports."

15 A I mean, the Zimmerman study does provide
16 additional support in the sense that, you know, a
17 different scholar who is, you know, someone who has worked
18 with the coauthors of John Lott, ran a regression over the
19 period of 1999 through 2014, and found that the
20 right-to-carry variable was associated with statistically
21 significant increases in many violent crime categories.

22 BY MR. BRADY:

23 Q Okay. Let's move on to the synthetic control
24 study for the purpose of your study.

25 So just to get some terminology straight, I think

1 A I mean, the trend over that whole period seems to
2 be trending down, that crime is sort of falling over time.

3 Q Is that the case with the -- with the synthetic
4 control state, with the dotted line during that same
5 period?

6 A No, and you can see that this -- this state has a
7 much worse fit than Pennsylvania.

8 Q Okay. So -- so just to be clear, the -- the
9 present right-to-carry trends for violent crime were not
10 similar between Montana and the synthetic control; right?
11 According to this graph?

12 A Yes.

13 Q So is it fair to say that synthetic control was
14 not doing a good job in simulating Montana's pre-1992
15 violent crime rate trends?

16 A Yes, I think that that is correct.

17 Q Was there some quantitative minimum level of
18 present right-to-carry similarity that the -- that the
19 synthetic control had to achieve for the analysis to
20 proceed?

21 A The synthetic control will do -- protocol will
22 come up with an estimate, and it will -- it will give you
23 what it thinks is the best estimate.

24 But then the researcher has to make a judgment
25 about whether it's a good enough estimate to include in

1 made in inputting the criteria, if you will, for the
2 synthetic control estimates.

3 A Yep.

4 Q It looks like you're allowing only states to be a
5 potential control as long as the state hadn't adopted a
6 right-to-carry law within ten years after the treatment
7 state had; is that correct?

8 A Yes, that was essential for -- for conducting the
9 synthetic controls because you needed to have states that
10 were not influenced by right-to-carry laws and they --
11 they could be possible counterfactuals. But if the state
12 was influenced by right-to-carry laws, then that would not
13 be a good comparison state.

14 Q Okay, but wouldn't a five-year or eight-year
15 cutoff have given you more states to deal with to make the
16 present adoption comparison?

17 MR. EISENBERG: Objection; lacks foundation.

18 A It's -- the longer the period that you look at,
19 the fewer the number of states will be.

20 And so again, you're going to have a trade-off,
21 how long does it take for the full impact of the law to
22 manifest itself. And so if you look at too short a period
23 you'll have, you know, more states to use as controls, but
24 you'll have less data to estimate the impact, and if you
25 look at a longer period you'll have a longer period to

1 look at a longer period you'll have a longer period to
2 estimate the impact but you'll have fewer states.

3 So it becomes a little bit of a judgment as to
4 how long it takes for the -- for the impact of the
5 right-to-carry law to manifest itself.

6 Q And just to be clear, it was you who made the
7 decision about the 10-year period being the best for
8 making that -- for making -- in analyzing this data?

9 A Yes, and if you look at the estimates, you see
10 that that crime does rise over time which is sort of
11 consistent with the empirical evidence that it takes a
12 while for the number of right-to-carry permits to rise.

13 And so if you look at a short enough period
14 you're often not going to get as much of an impact as this
15 analysis shows.

16 Q But is -- that's -- that's your opinion on that;
17 correct?

18 A Well, that --

19 Q In other words, somebody else could have a
20 different opinion on the value of -- including more states
21 for a period of five or eight years; is that correct?

22 A Well, I think -- I think what the analysis shows
23 is that you don't see the full impact of right-to-carry
24 laws until like seven or eight years after, so as long as
25 you're looking at, you know, seven or eight years you're

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1 probably, you know, going to capture the bulk of the
2 impact. If you're looking at less than that, then you may
3 be missing the impact.

4 Q So just to be clear, another researcher could
5 determine -- of course, you stand by your 10-year period,
6 I'm not trying to get you to say you were wrong.

7 What I'm asking is, could another researcher
8 decide in doing their analysis, even though you may think
9 that analysis would be wrong, could they decide that five-
10 or eight- or 15-year periods would make more sense and get
11 better results?

12 A You know, certainly you can -- you can make an
13 argument for different time periods, you just have to be
14 aware of the trade-off.

15 If it's a longer period you get the benefit of,
16 you know, more data in the post-treatment period, so you
17 can see how trends play out, but you sacrifice in terms of
18 the number of controls. And if it's a shorter period you
19 get the benefit of more potential other controls, but at
20 the cost of not fully capturing all of the effects, if
21 they sort of mimic the growth and right-to-carry permits
22 which we know takes, you know, a number of years to grow
23 to a significant level.

24 Q Sure. All I'm really asking is, it's the
25 researcher's decision what time period to use; correct?

1 A That's right. It's --

2 Q You chose ten years because you thought that that
3 provided the optimum data set for that control; right?

4 A That's correct.

5 Q But a different researcher could determine that a
6 different set of years would be superior; correct?

7 A They -- they would have to make an argument for
8 that other period, but they could certainly look at the
9 results for a different period.

10 Q And if it were different sets of comparison
11 states, some that were, you know, states that only had a
12 right-to-carry law for five years in place, is it possible
13 that you could have had different conclusions?

14 A You know, that's a good question.

15 Well, let me just look a bit -- I mean,
16 obviously, if you're looking at less than ten years, you
17 couldn't draw any conclusion about the ten-year effects.
18 And you know, if we look at the effects you see that
19 there's a very substantial increase from, you know, five
20 to ten years in the estimated impact.

21 So it tells me that if you're looking at what's
22 been five years you're -- you're going to be missing a big
23 part of the increase in violent crime.

24 Q So then it would have different results by
25 including those states, or it could have different results

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1 by including those states?

2 A Umm, well --

3 Q Whether for good or for bad --

4 A Yeah.

5 Q -- or indifferent?

6 A Yeah, I mean, it could generate different results
7 for, you know, whatever period you're looking at. So if
8 you were looking at five years it could show different
9 results.

10 But it could not capture the -- the -- the same
11 effect that I'm showing here which is a fairly large
12 increase in violent crime in years five through ten.

13 Q Okay.

14 A And similarly, if you look at 15 years, you know,
15 you -- you could see the violent crime effect grow or
16 diminish, but we wouldn't know that until we did the
17 analysis.

18 Q Okay. You weighed the state crime rate to match
19 them to the state that you were studying; right?

20 A Could you repeat the question?

21 Q Yeah, you weighed the -- the state crime rate to
22 match them to the -- you weighed the crime rate of the
23 synthetic control when matching it -- when seeking to
24 determine if it's a good match for the control -- not the
25 control states, but the right-to-carry state you're

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1 right-to-carry law, did it not have a right-to-carry law.
2 But then the synthetic control picked out the composite
3 that would constitute the counterfactual.

4 BY MR. BRADY:

5 Q So if a state, say, had a background check system
6 to purchase a firearm, would you control for that in
7 determining the impacts on crime rates?

8 A You -- you could include that in your analysis.
9 I did not include that in this.

10 Q Have you done any work on background checks and
11 whether they are effective?

12 A I -- I have looked at that and they seem to be
13 effective in certain settings, but not in other settings.

14 Q Do you know how many of the states you analyzed
15 in your study have background checks for the purchase of
16 firearms?

17 A You know, a number of states, particularly in the
18 wake of the 2012 Newtown shootings, adopted background
19 checks. But for -- for much of this period, most states
20 did not have any background checks, any state background
21 checks. There's always a federal background check system
22 that came into place in the mid 1990s.

23 Q There's always a federal background check to
24 obtain a firearm?

25 A Umm -- there was always a uniform federal rule

1 that applied to all states after the Brady Bill went into
2 effect, although it does not -- it does not govern all
3 transfers of firearms.

4 Q So there are states that have more strict
5 background checks for firearm purchases; correct?

6 A Yes, there are.

7 Q And those background check laws could impact the
8 violent crime rates; correct?

9 A That's correct.

10 Q But you did not control for those background
11 check laws, did you?

12 A I did not do that yet, although I certainly could
13 do that and I don't think it would change my analysis, but
14 I could -- I could assure myself of that.

15 Q Okay. In analyzing the effects of the state's
16 adoption of a right-to-carry law, did you account for
17 whether the state allowed open carry at the time?

18 A I didn't have a specific control for that.

19 Q Do you know how many states have legal open
20 carry?

21 MR. EISENBERG: Objection; beyond the scope of
22 expert testimony.

23 A It's actually quite a challenge to know the
24 answer to that question, and it's even challenging to know
25 the answer to the question of, you know, when does a state

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1 become a right-to-carry state.

2 But a number of states would now be considered
3 open carry states of one kind or another. So, for
4 example, Texas now allows you to carry openly if you have
5 a right-to-carry permit. And, for example, Oklahoma had a
6 big contest as to whether it was allowed -- allowed its
7 citizens to carry openly or not, and I believe it was
8 2015, the Attorney General of Oklahoma issued a nonbinding
9 statement that it would be legal to openly carry.

10 So it gives you a sense of the -- the uncertainty
11 and flux and the issue of what is legal in terms of open
12 carry. And that's in part one reason why we haven't seen
13 as many studies of the impact of open carry as we've had
14 for right-to-carry, which has been in place in a little
15 more defined way and over a longer period of time.

16 Q Okay. If -- if you were allowed to openly carry
17 a firearm, could that not have an impact on violent crime
18 rates according to your view?

19 MR. EISENBERG: Objection; vague and ambiguous as
20 to a person.

21 A I suspect that the states that allow open carry
22 are more likely to be the states that allow concealed
23 carry, and so you could imagine that -- you know, some of
24 what I'm attributing as a stimulating effect on crime
25 owing to right-to-carry states is capturing some crime

1 increasing impact that really should be attributed to open
2 carry.

3 But I -- I haven't done that analysis again in
4 part because the open carry regime comes sort of later in
5 this period and we don't have as much data. But since --
6 since there is that correlation I think between
7 right-to-carry states and open carry, I suspect that they
8 both push in the same direction.

9 BY MR. BRADY:

10 Q What if the open carry law predated the
11 right-to-carry concealed law?

12 A Well, in that case if -- if right-to-carry didn't
13 make things worse, then you should estimate no impact
14 from -- from the law, because what we would have been
15 matching is the crime pattern prior to adoption of the
16 right-to-carry law, getting a good fit for that, and then
17 projecting that forward.

18 And so if the synthetic controls is giving us a
19 good pre-treatment fit, then we're still getting an
20 unbiased estimate of the impact of right-to-carry laws
21 after the right-to-carry law adopted.

22 Q Let's be clear, you didn't control for open carry
23 laws in the synthetic control analysis, correct?

24 MR. EISENBERG: Objection; asked and answered.

25 A I did not.

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1 considered?

2 A Yes. I do try to read them all, even the ones
3 that aren't very good I try to read.

4 And so I don't -- I don't know the precise number
5 but I probably, you know, I'm in the top five of Americans
6 who have read right-to-carry studies, I suspect. Maybe
7 even in the world.

8 Q Okay. Fair enough.

9 So you agree that there are studies out there
10 that do not support your conclusions; correct?

11 A Yes, they're --

12 Q I'm not asking you to make a judgment about
13 whether they're good or bad, but there are studies out
14 there that disagree with your conclusions and your
15 studies; is that correct?

16 A Yes.

17 Q Among the studies that you have considered that
18 you can recall, do most of them conclude that
19 right-to-carry laws increase violent crime rates?

20 A You know, this is what I do agree with Gary Kleck
21 because he has written and stated that you shouldn't just
22 count the number of studies without making sort of
23 independent assessments of their value.

24 And so, for example, John Lott will frequently
25 say here's the number of studies that support his

1 position, and that's more than the number that support
2 estimates that crime goes up.

3 But again, if you look at the studies, then you
4 would see -- well, first of all, most of the studies that
5 John Lott is referring to were done using data ending
6 before 2000, so we have a lot more and better data now.
7 And many of them have other serious problems. And none of
8 them have looked at the impact using synthetic controls.

9 Q Okay. Setting aside your critiques of the other
10 studies.

11 Obviously, you think yours is superior otherwise
12 you wouldn't have done it, but would it be fair to say
13 that most other studies in this field either conclude that
14 right-to-carry laws have no effect on violent crime rates
15 or that they reduce violent crime?

16 A You know, I think that that's not true for
17 studies done since the National Research Council report of
18 2004.

19 I think it is true for studies done before the
20 National Research Council report of 2004.

21 Q So it's your view that post 2004 the majority of
22 studies share your view that right-to-carry laws, in fact,
23 increase violent crime rates?

24 MR. EISENBERG: Objection; calls for speculation.

25 A It's -- it's certainly a lot closer after 2004

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1 than it was before 2004.

2 BY MR. BRADY:

3 Q Can you name the study that you think, other than
4 your own, that shows -- that concludes that right-to-carry
5 laws, in fact, increase violent crime rates?

6 A Again, there are a number of studies that show
7 regression analyses that predict or estimate that the
8 impact on violent crime is positive, in other words,
9 increasing, when right-to-carry laws are adopted.

10 Sometimes the authors have qualified the results
11 and said, you know, while our best model shows that
12 right-to-carry laws increase crime they -- they did not
13 come to any firm conclusion about what the impact really
14 was.

15 Q Has there been any report that has not
16 qualified -- has not so qualified its conclusion as you
17 just explained, other than yours?

18 A Well, are you asking are there any reports
19 showing increases in violent crime?

20 Q So, just to -- let me set the record straight
21 here so we're clear.

22 You indicated that there are reports that have
23 shown regressions with a positive for right-to-carry laws
24 on violent crime --

25 A Yes.

1 Q -- but that the authors qualify their findings,
2 saying although there are positive showings, we're not
3 going to make any firm conclusions on whether, in fact,
4 right-to-carry laws increase violent crime rates; is that
5 correct?

6 Is that accurate about what you just said?

7 A Umm -- let me see if I can mimic what you just
8 said.

9 There are a number of studies that have found
10 right-to-carry laws increase violent crime. I can think
11 of two of them that then qualify the results. So the
12 Durlauf, Navarro, and Rivers study said our best model
13 using our Bayesian econometric approach shows that violent
14 crime increases by roughly 2% every year that it's in
15 place.

16 And the Zimmerman paper, which we quoted earlier,
17 said our model estimated over two -- 1999 to 2010 shows
18 statistically significant increases in various violent
19 crime categories as, you know, Donohue and others have
20 found. But both of those papers qualified their
21 conclusions.

22 There is another paper that Gary Kleck has -- has
23 held up as like the best of the right-to-carry papers, and
24 I'm not sure that that paper qualified its conclusion or
25 not, but it did find clearly that right-to-carry laws were

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1 associated with large annual increases in aggravated
2 assault.

3 Q Are you aware of any other study that does not
4 qualify its conclusion that right-to-carry laws increase
5 violent crime rates like those studies?

6 A Yeah, I'm not sure that the -- the study that
7 Gary Kleck identified as his preferred study qualified its
8 finding on aggravated assault, I'd have to go back and
9 check on that.

10 But it did clearly find an increase in aggravated
11 assault associated with right-to-carry adoption.

12 Q Other than that study, are you aware of any that
13 did not qualify its conclusion?

14 A I mean, I think -- I think people have written in
15 the wake of my study to say that they agree with that.
16 But in terms of a separate and independent analysis, I
17 don't know of any others.

18 Q Okay. So since we don't know about the one
19 report you alluded to that Mr. -- Professor Kleck says is
20 his favorite, setting that on the side because we don't
21 know, is it fair to say that the only study that concludes
22 without qualification that right-to-carry laws increase
23 violent crime is yours?

24 A I mean, I'm not sure that my conclusion is any
25 different from the study that Gary Kleck referenced in

1 that both of us did our analysis and found right-to-carry
2 laws increase violent crime. I --

3 Q But, Professor, I said setting that one aside.

4 A Okay.

5 Q Because we're not sure, you know. We can clarify
6 later if you want whether that one, in fact, does that, so
7 let's assume that one does for the record. We'll just
8 assume it does.

9 Is there any other study besides that one that
10 you're aware of, and besides yours, that concludes without
11 qualification that right-to-carry laws increase violent
12 crime rates?

13 A You know, mine is the only study that has
14 analyzed this -- this full set of data up through 2014,
15 using both panel data and synthetic controls. And so in
16 that sense my study is unique in the scope and breadth of
17 its analysis. But apart from the -- the Kovandzic study
18 that Gary Kleck referenced and the two other ones that I
19 alluded to, I'm -- I'm not aware of any other studies that
20 similarly find an increase in violent crime.

21 Q Your study cites no study specifically addressing
22 open carry issues; correct?

23 MR. EISENBERG: Vague and ambiguous as to which
24 study you're referring to.

25 BY MR. BRADY:

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1 Q So the study, DAW, Exhibit B to the report,
2 Exhibit 10 to this deposition, your June study that we've
3 been talking about this entire time, in there do you cite
4 any studies specifically dealing with open carry
5 statistics?

6 A Yeah, I was not -- I was not aware of any such
7 studies.

8 Q So you did not consult any study specifically
9 addressing open carry in preparing your study; correct?

10 A Yeah, I didn't have any -- any study available.

11 Q And your study, I think we already got this, but
12 I don't recall if it's on record, has it been published
13 yet?

14 A No, it has not been published yet.

15 Q Has it been submitted for publication?

16 A It has been.

17 Q Can you disclose to where it's been submitted?

18 A Umm -- you know, that's a good question. I don't
19 know if I'm supposed to say that or not, but I think it's
20 fair --

21 Q I -- how about this. I won't force you to get in
22 trouble with your -- the people who are doing that.

23 Can you describe what type -- is it a journal of
24 some sort?

25 A Yeah, it's a very, very eminent journal.

1 would stop a mass shooting.

2 Q So it was 21 -- 21 individuals, unarmed
3 individuals, stopped a mass shooting and only one armed
4 person did?

5 A Yeah, only one in the 160 cases that the FBI
6 looked at from I believe it was 2000 to 2013.

7 Q Is that 160 --

8 MR. EISENBERG: If I could interpose with a late
9 objection is there's a difference between people who are
10 armed and people who have permits.

11 I think there was a change in the question there
12 from one to the other.

13 MR. BRADY: I was going to -- there was a change
14 in the answer, not a change in the question which I was
15 going to ask him about right now.

16 Q So is 160 the number of mass shootings?

17 A Yeah, they looked at 160 --

18 MR. EISENBERG: Or is that the number of mass
19 shootings that were stopped?

20 THE WITNESS: No, they looked at 160 mass
21 shootings. And then found that one out of 160 was stopped
22 by an active duty Marine who happened to have a permit.

23 But no one other case of an armed private citizen
24 who wasn't security personnel or a policeman stopping a
25 mass shooting in the FBI study.

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1 BY MR. BRADY:

2 Q You're basing that on the FBI report, is that --
3 is that accurate?

4 A Yes.

5 Q Did you consider anything else in coming to that
6 determination?

7 A Well, I considered the FBI report and other
8 evidence that I was aware of.

9 Q Do you recall from the last time we met,
10 Exhibit 12 to this deposition which was an Internet
11 website that purported to compile cases where permit
12 holders had stopped mass shootings?

13 A Yeah, I remember seeing that document.

14 Q Did you review it since?

15 A Uh --

16 Q Did you review that before your interview with
17 the L.A. Times?

18 A I didn't -- I didn't look at it again, but I did
19 look at it at the time.

20 Q Okay. But you didn't take that document into
21 consideration in making your statement to the L.A. Times
22 that more people -- more unarmed people -- let me get your
23 quote right.

24 In making your statement: "It's much more common
25 that an unarmed person will stop a mass shooting than an

1 armed citizen will."

2 A Yeah, I think the best evidence on that is the
3 FBI report because they were -- they were looking in
4 detail at the 160 active shooter incidents over that
5 period 2000 to 2013.

6 While the document that you showed me was going
7 back, you know, many, many years and was not capturing all
8 of the cases where unarmed citizens stopped mass
9 shootings.

10 Q I'm trying to locate where in this thing you
11 say -- I have this written down -- I apologize -- to read
12 this statement and see -- I think you already alluded to
13 this so I don't think you'll dispute its accuracy.

14 But I believe you said: "So the one thing we
15 know is that permit holders do an amazingly" -- amazing --
16 I think it's "amazing effective job of arming criminals
17 with their lost and stolen guns."

18 Is that your -- are those your words?

19 A Yes.

20 Q So do you have any studies showing the number of
21 gun thefts in right-to-carry states increasing --

22 A Umm --

23 Q -- following the adoption of a right-to-carry
24 law?

25 A There's a very good study done by Hemingway,

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1 Azrael, and Miller that looks at what are the factors that
2 lead to guns being lost and stolen. And one of the
3 important factors was, you know, do you have a permit to
4 carry a gun.

5 Q And that helped determine whether the amount of
6 thefts in right-to-carry states were increased?

7 A Yes, that was the conclusion and police have made
8 this very emphatic that as soon as you start carrying a
9 gun in a car and leaving a gun in a car, you are going to
10 be arming the criminals because they know where the guns
11 are.

12 And there was just recently a case where someone
13 broke into, you know, a large number of guns -- I believe
14 it was in Georgia -- a large number of cars, and in a very
15 high percentage of the cars found guns that were then
16 stolen.

17 Q On that note, you also say -- and let me, I'll --
18 if you want I can give you the page.

19 It's the page after the one we were previously
20 talking about, starting with paragraph, "But," it says:
21 "But there are also so many other ways in which carrying
22 concealed handguns creates problems. One huge way is that
23 guns are much more likely to be stolen when you're taking
24 them around town and walking around. We've seen this
25 quite a bit in California over the last couple of years.

1 "A number of incidents in San Francisco got a lot
2 of headlines when somebody left their gun in their car, a
3 permit holder, and somebody breaks into the car and steals
4 the gun and within a day or so, or even a number of hours,
5 murders someone on the street."

6 Can you cite a single example of a California --
7 California permit holder whose firearm was stolen from
8 their car?

9 A I mean, I can't give you any names but there are
10 prominent murders in San Francisco and Marin that involved
11 that exact pattern.

12 Q Are you referring to the young lady who was
13 murdered on the San Francisco pier?

14 A That was one person, but there were others as
15 well.

16 Q Your quote is: "When somebody left their gun in
17 a car, a permit holder..." So is it your understanding
18 that the person who left the gun in the car in San
19 Francisco that was used to murder I believe her name was
20 Kate Steinle, was a permit holder?

21 A Yes, that person did have a permit to carry a
22 gun.

23 Q Wasn't that person a federal peace officer?

24 A Right, but would have a permit to carry a gun.

25 Q Why would a federal peace officer need a permit

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1 know who was killed with those weapons.

2 But we certainly know, even Sean Penn has
3 acknowledged that he lost two guns when his car was stolen
4 in Berkeley.

5 Q And you also say that they get stolen when people
6 are walking around. Do you have any examples of people
7 having had firearms stolen while lawfully walking around
8 with them in California?

9 A Let's see what I said here.

10 Yeah, so I said: "One huge way is guns are much
11 more likely to be stolen when you're taking them around
12 town and walking around."

13 And so what I meant by that is if you're carrying
14 a gun outside your home, it's much more likely to be
15 stolen. So when you're walking around and put it down as
16 I often do with my cell phone, it's much more susceptible
17 to be stolen than if you're keeping it in your home.

18 And so if you look at cell phone thefts and gun
19 thefts, they're both higher outside the home than they are
20 inside the home.

21 Q Have you seen any reports of an individual
22 setting their firearm down in public and it being stolen?

23 A There -- there have been many reports of that.
24 Many, many, reports.

25 Q Can you recollect one?

1 A You know, I don't catalogue all of the news
2 stories, but I could certainly find you many news stories
3 of people who have left their guns somewhere and had them
4 taken or simply lost them.

5 I was reading an article I think just last week
6 where the police found a gun in a park that was left
7 behind, so this is -- this is a very common occurrence and
8 one of the ways in which gun carrying contributes to
9 increases in violent crime.

10 Q You didn't cite any studies or reports of that in
11 your study or report; correct?

12 A Well, I just mentioned the Hemingway, et. al.
13 study that said one of the significant factors in
14 explaining the large number of guns stolen in the United
15 States is the fact that the person whose gun was stolen
16 had the right-to-carry that gun around. That made it more
17 likely that their gun would be stolen. And so that is a
18 very credible statistical support.

19 On top of that we have many anecdotal studies or
20 anecdotal stories about the theft of guns by permit
21 holders in California and elsewhere.

22 Q And did that Hemingway study have any examples of
23 people leaving their firearms behind in a public place?

24 MR. EISENBERG: Objection; noting that the
25 Hemingway study is not present at the deposition.

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1 MR. EISENBERG: Okay. I will have some questions
2 after that.

3 MR. BRADY: Sure. Yeah, I already said you can
4 have as much -- I won't object to however much time you
5 want to take. I'm almost done.

6 Q So moving on there's -- there's a statement in
7 this article, which I thought I marked but apparently I
8 didn't. So you're going to have to take my word for it
9 and you're free to object to these not being your words.

10 It says: "Yes, essentially one thinks of the
11 Clinton administration as being a period of tremendous
12 decline, and that was hurting gun sales dramatically. So
13 the NRA was looking around for other ways to stimulate gun
14 sales and managed to get a fair number of these
15 right-to-carry laws passed during the Clinton years and
16 successive years."

17 MR. EISENBERG: Objection; beyond the scope of
18 the deposition and the expert testimony.

19 BY MR. BRADY:

20 Q Is that your statement?

21 A Umm -- I'm looking for the precise statement
22 but -- but that -- that is correct.

23 Q Okay. What evidence do you have that the NRA was
24 looking to stimulate gun sales?

25 A Well, we have a lot of evidence that the NRA was

1 very concerned about the dropping gun sales of the 1990s,
2 and started to pursue aggressive strategies to stimulate
3 gun sales in various ways. So right-to-carry was one way,
4 you know, sort of -- finding ways to stimulate sales of
5 other types of guns was another way.

6 And indeed they were successful because in the
7 wake of, you know, 2000 and beyond, you did see gun sales
8 rise after the benign trend of the 1990s.

9 Q And how do you know that the efforts that you
10 just stated weren't the result of NRA's desire to have
11 people exercise their Second Amendment rights versus
12 stimulating gun sales?

13 A I mean, over the years the one unifying theme in
14 NRA conduct is, as far as I can tell, that they favor
15 anything that stimulates gun sales and oppose anything
16 that might reduce gun sales.

17 Q But is it fair to say that that might be a
18 byproduct of their real objective which is to increase
19 people exercising their Second Amendment rights?

20 MR. EISENBERG: Objection; argumentative.

21 A The -- the evidence seems to be that the -- the
22 greatest concern is to do the bidding of gun sellers, not
23 the bidding of say, NRA members.

24 So I would assume that if their concern was with
25 the Second Amendment rights of NRA members, they would be

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REPORTER'S CERTIFICATION

I, Joan Theresa Cesano, Certified Shorthand
Reporter, in and for the State of California, do hereby
certify:

That the foregoing witness was by me duly
sworn; that the deposition was then taken before me at the
time and place herein set forth; that the testimony and
proceedings were reported stenographically by me and later
transcribed into typewriting under my direction; that the
foregoing is a true record of the testimony and
proceedings taken at that time.

IN WITNESS WHEREON, I have subscribed my name,
this 18th day August of 2017.



Joan Theresa Cesano, CSR No. 2590

EXHIBIT 6

Rebuttal of Expert Report of John J. Donohue

In *Flanagan v. Becerra* (U.S.D.C., C.D. Cal.) No. 2:16-cv-06164-JAK-AS

Gary Kleck

David J. Bordua Emeritus Professor of Criminology and Criminal
Justice

Florida State University

314B Eppes Hall

Tallahassee, FL 32306-1273

Telephone: (850) 894-1628

E-mail: gkleck@fsu.edu

My Qualifications

I have Bachelor's (1973), Master's (1975), and Doctoral degrees (1979) in Sociology, all from the University of Illinois, Urbana. In May of 2016 I retired as the David J. Bordua Professor of Criminology, Florida State University, after serving on the faculty for 38 years. I received my Ph.D. in Sociology from the University of Illinois in 1979. I have taught research methods to doctoral students for 38 years, covering statistical data analysis techniques, survey research methods, and strategies for distinguishing better research from poorer quality research. I have published four books, over 50 articles in refereed journals, and 37 other articles and chapters, most of them on the topic of firearms and violence. One of those books, *Point Blank: Guns and Violence in America*, won the 1993 Michael J. Hindelang Award of the American Society of Criminology, awarded to the book of the previous several years which "made the most outstanding contribution to criminology."

I also wrote *Targeting Guns* (1997) and, with Don B. Kates, Jr., *The Great American Gun Debate* (1997) and *Armed* (2001). My articles have been published in the *American Sociological Review*, *American Journal of Sociology*, *Social Forces*, *Social Problems*, *Criminology*, *Journal of Criminal Law and Criminology*, *Law & Society Review*, *Journal of Research in Crime and Delinquency*, *Journal of Quantitative Criminology*, *Crime and Delinquency*, *UCLA Law Review*, *the Journal of the American Medical Association*, and many other scholarly journals.

In the course of my scholarly work, I believe I have read virtually every significant scholarly study of the relationships between guns, violence, and gun control published in English up through 2013, as well as many published since then.

I have testified before Congress and state legislatures on gun control issues, and my work has been cited by the U.S. Supreme Court. I have worked as a consultant to the National Research Council, National Academy of Sciences Panel on the Understanding and Prevention of Violence, and to the National Research Council Committee on Improving Research Information and Data on Firearms. I also served as a member of the U.S. Sentencing Commission's Drugs-Violence Task Force, and as a member of the National Research Council Committee on Priorities for a Public Health Research Agenda to Reduce the Threat of Firearm-related Violence. I am a referee for over a dozen professional journals, and serve as a grants consultant to the National Science Foundation.

Articles Published in Past 10 Years

- 2007 “Are police officers more likely to kill African-American suspects?” Psychological Reports 100(1):31-34.
- 2007 (with Shun-Yung Wang and Jongyeon Tark) “Article productivity among the faculty of criminology and criminal justice doctoral programs, 2000-2005.” Journal of Criminal Justice Education 18(3):385-405.
- 2008 (with Jongyeon Tark, Laura Bedard, and Dominique Roe-Sepowitz) “Crime victimization and divorce.” International Review of Victimology 15(1):1-17.
- 2009 “The worst possible case for gun control: mass shootings in schools.” American Behavioral Scientist 52(10):1447-1464.
- 2009 (with Shun-Yung Wang) “The myth of big-time gun trafficking and the overinterpretation of gun tracing data.” UCLA Law Review 56(5):1233-1294.
- 2009 (with Tomislav Kovandzic) “City-level characteristics and individual handgun ownership: effects of collective security and homicide.” Journal of Contemporary Criminal Justice 25(1):45-66.
- 2009 (with Marc Gertz and Jason Bratton) “Why do people support gun control?” Journal of Criminal Justice 37(5):496-504.
- 2011 (with James C. Barnes) “Article productivity among the faculty of criminology and criminal justice doctoral programs, 2005-2009.” Journal of Criminal Justice Education 22(1):43-66.
- 2011 (with Tomislav Kovandzic, Mark Saber, and Will Hauser). “The effect of perceived risk and victimization on plans to purchase a gun for self-protection.” Journal of Criminal Justice 39(4):312-319.
- 2013 (with Will Hauser) “Guns and fear: a one-way street?” Crime and Delinquency 59:271-291.
- 2013 “Gun control after Heller and McDonald: what cannot be done and what ought to be done.” Fordham Urban Law Journal 39(5):1383-1420.
- 2013 (with J. C. Barnes) “Deterrence and macro-level perceptions of punishment risks: is there a “collective wisdom?” Crime and Delinquency 59(7):1006-1035.

- 2013 (with Tomislav Kovandzic and Mark Schaffer) “Estimating the causal effect of gun prevalence on homicide rates: A local average treatment effect approach.” Journal of Quantitative Criminology 28(4):477-541.
- 2014 (with Jongyeon Tark) “Resisting rape: the effects of victim self-protection on rape completion and injury.” Violence Against Women 23(3): 270-292.
- 2014 (with J. C. Barnes) “Do more police generate more crime deterrence?” Crime and Delinquency 60(5):716-738.
- 2015 “The impact of gun ownership rates on crime rates: a methodological review of the evidence.” Journal of Criminal Justice 43(1):40-48.
- 2016 (with Tomislav Kovandzic , and Jon Bellows) “Does gun control reduce violent crime?” Criminal Justice Review 41:1-26.
- 2016 “Objective risks and individual perceptions of those risks.” Criminology & Public Policy 15:767-775.
- 2016 (with Bethany Mims) “Article productivity among the faculty of criminology and criminal justice doctoral programs, 2010-2014.” Journal of Criminal Justice Education. Published online 3-11-16.
- 2016 (with Dylan Jackson) “Adult unemployment and serious property crime: A national case-control study.” Journal of Quantitative Criminology 32:489-513.
- 2016 “The effect of large-capacity magazines on the casualty count of mass shootings.” Justice Research and Policy 17:28-47.
- 2016 (with Will Hauser) “Confidence in the Police and Fear of Crime: Do Police Force Size and Productivity Matter?” American Journal of Criminal Justice. Published online 2-12-16.
- 2016 (with Dylan Jackson) “Does crime cause punitiveness?” Crime & Delinquency. Published online 3-27-16.
- 2017 “The impact on crime of state laws allowing concealed weapon carrying among 18-20 Year-olds.” To appear in the Journal on Firearms and Public Policy.
- 2017 (with Moonki Hong) “The short-term deterrent effect of executions: an analysis of daily homicide counts.” Forthcoming in Crime & Delinquency.

Cases in Which I have Testified as an Expert at Trial or by Deposition in the Past 4 Years

Heller et al. v. District of Columbia. Deposed 7-2-13.

Cook et al. v. Hickenlooper. U.S. Court for the District of Colorado. Deposed and testified
March or April 2013.

Wilson v. Cook County. Deposed 9-16-13.

Kolbe v. O'Malley. U.S. District Court for the District of Maryland. Deposed 1-2-14.

Barbra Schlifer Commemorative Clinic v. HMQ Canada. "Cross-examined" (Canadian term
for deposed) 2-24-14.

Dr. Arie S. Friedman and the Illinois State Rifle Association v. City of Highland Park. Deposed
May or June 2014.

Tracy Rifle and Pistol v. Kamala D. Harris. U.S. District Court, Eastern District of California.
Deposed 11-2-16.

Statement of Compensation: I am being compensated for my work at the rate of \$400 per hour.

Rebuttal of Donohue Report

John Donohue's principal conclusion is that adoption of right-to-carry (RTC) laws leads to increases in "overall violent crime" (p. 2). The primary source of support for this conclusion is his panel data analysis reported in Donohue Exhibit B (Donohue, Aneja, and Weber 2017). He cites other similar prior panel studies in support, but argues that his most recent study is superior to those. I therefore focus most heavily on this highly problematic study.

Analyzing "Violent Crime Rates" Obscures the Weakness of Support for Donohue's Conclusions

What is most salient about Donohue's 2017 study is that, unlike prior studies, including his own previous studies, it is entirely based on supposed effects of RTC laws on "the violent crime rate," a miscellaneous measure that lumps together the radically different crimes of murder, rape, robbery, and aggravated assault. None of the enormous number of statistical results reported in the 2017 study tell us anything about any one of the last three crime types taken separately, a sharp departure from both Donohue's prior research (Aneja, Donohue, and Zhang 2014) and that of the other scholars who addressed the same topic. The only specific violent crime type addressed in his Exhibit B study is murder, and Donohue's statistical results (as distinct from the verbal spin he puts on them) indicated no significant (at the conventional 5% level) effect of RTC laws on murder rates (see nonsignificant [and often even apparently crime-reducing] estimated effects on murder in Tables 4-8, A3, A5, A7, and A9).

Why limit analyses to the needlessly heterogeneous mixture of very different crime types, when data are available for each of the separate types of violent crime? What purpose can be served by making one's conclusions *less* specific than necessary? Donohue's previous 2014 study (Aneja, Donohue, and Zhang 2014) provides the answer. That earlier study analyzed a virtually identical body of data (a panel of states and counties, for 1979-2010) as was analyzed in Donohue's Exhibit B study (a panel of states and counties for 1979-2014), but obtained the following results regarding effects of RTC laws on specific violent crime rates:

- (1) No significant (at 5% significance level) effect on murder rates,
- (2) No significant effect on rape rates,
- (3) No significant effect on robbery rates, and

- (4) Borderline significant (5-10% significance) “effects” on aggravated assault rates, though only under some methodological conditions (see Aneja et al. 2014, Tables 8a, 8b, 9a, and 9b).

How is this relevant to Donohue’s Exhibit B study? The vast majority of reported violent crimes are aggravated assaults (e.g. 63% in 2002 – Federal Bureau of Investigation 2003). Thus, *most* of what Donohue is referring to when he alludes to “violent crime” in his 2017 report is aggravated assault. As far as the reader can determine, his 2017 study, like his 2014 study, found no effect of RTC laws on rates of murder, rape, or robbery, and *possibly* detrimental effects of RTC laws limited to aggravated assault, but obscured the weak and mixed character of his results by needlessly lumping together very different types of violent crime into a measure dominated by aggravated assaults.

Even Donohue’s results for aggravated assault do not actually comport with the hypothesis that RTC laws cause violence increases. If the laws really caused increases in aggravated assaults, they should specifically increase aggravated assaults committed *with guns*. The results reported in Aneja et al. (2014), however, indicated that there was *no* significant impact of RTC laws on gun-related aggravated assault in 6 of 8 models (Aneja et al. 2014, Table 15). Donohue chooses not to mention this inconvenient finding in either his expert report or the Exhibit B study.

Donohue’s Combination of Crime-specific Results in the 2013 Study was Implausible and Inconsistent with Prior Research

To be sure, even if RTC laws did have detrimental effects only for aggravated assault, this would still be reason for concern. It is, however, highly unlikely that RTC laws have such an effect. The main reason that firearm-availability has detrimental effects on violence is because it makes violence more lethal, i.e., it causes a higher fraction of violent crimes to result in death. Firearm-prevalence has no measurable net effect on how often people do violence towards one another, but rather only the share of those violent acts resulting in death (Cook 1986; Wright, Rossi and Daly 1983; Kleck 1997; Kleck 2015). Thus, firearm-prevalence may affect the rate of murder (i.e., fatal crimes), but not the rate of assault. Donohue has implausibly implied the opposite: that by increasing firearms prevalence in public places, RTC laws cause increased rates of aggravated assault but do not significantly increase murder rates! This is

neither a logical or plausible combination of effects, nor one consistent with what previous research indicates.

Aggravated Assault is Not Reliably Measured by the UCR Data Used by Donohue

It has long been recognized that police-based crime statistics are subject to serious error, except those pertaining to murder, and possibly motor vehicle thefts. This is primarily because the majority of most other crime types are not reported to the police, so rates of reported crime can be heavily influenced by variations in the inclination of victims of those crimes to report the offenses to the police. Thus, the rate of *reported* aggravated assault or other violent crime type can appear to increase even if the actual rate did not increase at all. Likewise, the rate of reported crime can appear higher in one county or state than in another even if there is no actual difference.

Of all the crimes reported in the FBI's Uniform Crime Reporting (UCR) program, the most poorly measured is aggravated assault. One test of the reliability of UCR crime rates is to check on how closely UCR-based city crime rates are correlated with crime rates based on victim surveys. Most UCR-based crime rates besides murder and motor vehicle theft have only moderate or weak correlations with crime rates based on victim surveys, and the worst correlations are for aggravated assault. In fact, the correlation is actually significantly *negative* for this crime type – cities that had *higher* aggravated assault rates according to victim surveys had *lower* aggravated assault rates according to UCR police-based data (Cohen and Land 1984).

The especially poor quality of police-based aggravated assault rates goes beyond victim failure to report aggravated assaults. Police classification of assaults as “aggravated assaults” rather than “simple assaults” introduces another source of error. The FBI instructs police to classify a crime as an aggravated assault if it is “an unlawful attack ... for the purpose of inflicting severe or aggravated bodily injury” (Federal Bureau of Investigation 2002, p. 454), a definition that requires police officers to guess what an offender's “purposes” were and to make a subjective judgement as to what constitutes “severe” bodily injury. Police-based counts of aggravated assault can therefore increase merely because police lowered their standards for how serious injury has to be in order to be considered “severe” – even if rates of assault involving a given level of seriousness did not actually increase. This contrasts sharply with murder, that requires no subjective judgements of injury seriousness.

To summarize, Donohue's research (the 2014 research and not just the 2017 results he selectively cites in his expert report) has indicated – at least in some of his model specifications – (1) an apparent crime-elevating effect of RTC for rates of a very poorly measured type of crime, aggravated assault, and (2) *no* significant effect on rates of murder, a very accurately measured type of crime. This suggests that Donohue's aggravated assault results, and thus his results regarding the amorphous "violent crime rate" (which is mostly composed of aggravated assaults) are an artifact of measurement error in UCR police-based crime data rather than a reflection of actual effects of RTC laws.

Higher Firearms Prevalence Does Not Cause Increased Violence

Donohue's extremely limited analysis narrowly focuses solely on supposed effects of RTC laws on crime rates, and does not address the effect of firearm-prevalence on violent crime rates, even though any crime-increasing effect would presumably have to involve some RTC-produced increase in firearm availability. In any case, Donohue does not offer any explanation of why RTC laws would cause increased violence other than by increasing the availability of firearms, which in turn supposedly increases violent crime rates.

The most extensive review of the relevant research literature, however, indicates that firearm-prevalence has *no* measurable net effect on violent crime rates. Kleck (2015) identified 90 published independent tests of the hypothesis that gun levels affect crime rates, finding that only 26 supported a significant positive effect on any violent crime rate, that only 5 of those concerned violent crime types other than homicide, and that all of the studies supporting the hypothesis used the most primitive research methods. There was no methodologically sound research that indicated that firearm-prevalence affected any violent crime rate.

More specifically, between 1969 and 2014 there were ten tests of the impact of firearm-prevalence levels on *aggravated assault* rates, and not a single one indicated a significant positive effect on total aggravated assault rates. Only three of the associations were even positive; the most common finding was a nonsignificant *negative* association of firearm availability and aggravated assault rates (six findings) (Kleck 2015, pp. 42-43). Gun availability might affect weapon choice, and thus the fraction of aggravated assaults involving guns, but it does not appear to increase how many total aggravated assaults are committed. Thus, it is not obvious just how enactment of RTC laws causes increased rates of aggravated assault.

Donohue's Strong Conclusions Contradict His Own Evidence of the Instability of Results

Donohue (2014; 2017), the studies by the National Research Council that he cites, by Marvell and Moody, and those done by others all agree on one point – the results of panel studies of state- and county-level crime statistics are highly unstable, and vary radically depending on which exact set of methodological procedures are used. Donohue, like these other researchers, finds that estimates of the effects of RTC laws on crime rates are affected by:

- (1) which exact set of years are analyzed;
- (2) which exact dates one uses as the times when RTC laws became effective;
- (3) the pattern and timing of effects the analyst assumes that RTC laws will have (immediate or delayed, constant vs. growing/declining over time, etc.);
- (4) how much the effects of RTC laws are lagged;
- (5) which set of control variables the analyst uses;
- (6) what statistical estimation procedures are used (e.g., conventional panel analysis vs. synthetic controls approach);

and many other methodological variations.

In sum, estimates of RTC-law-impacts using the panel regression methods applied by Donohue and many others lack what statisticians call “robustness” – the estimates are highly sensitive to the methods used by researchers. The logical inference should therefore be that Donohue's results cannot be relied upon, because they are likely to be reversed as soon as some future researcher introduces yet another methodological variant. Donohue does not claim to have tried out every possible combination of methods himself, and certainly cannot rule out the possibility that there are many he is not even aware of. Nor can he be certain that the combination of methodological choices he made is the only correct combination. The only thing he *can* know for sure is that the variations in methods that he has tested yield highly unstable estimates of RTC law effects. He does not, however, draw the logical conclusion that his results are unstable.

Examples of this instability are numerous in Donohue's Exhibit B study. His Table 4 results show that estimates of RTC law effects differ radically depending on whether the pattern of effects are best represented by a dummy variable model or a spline model. His Table 5 results show that estimates differ radically depending on which of two sets of demographic control

variables are included in the model (neither of which is necessarily “the correct” set). His Tables 6 and 7 results show that estimates of effects differ radically on whether one controls for an inordinately large number of demographic variables, and on whether one controls for incarceration rates and police strength. His Table 8 results compared with results in previous tables show that estimates differ sharply depending on the set of years analyzed (though Donohue estimates models for only a few of the many subsets of years he might have selected for analyses).

To summarize, Donohue’s results scream “unstable,” but he does not listen. One tactic he uses to assert the results are really not that inconsistent is to treat nonsignificant estimates as “suggesting” crime-increasing effects of RTC laws, even though recognized best practice is to treat nonsignificant results as indicating no measurable effect. That way, the *nonsignificant* positive associations can be treated as “consistent” with the *significant* positive associations, based solely on the signs of the associations. Unfortunately, when associations are not significantly different from zero, even their signs are uncertain, so this feeble sort of “consistency” is meaningless.

Arbitrary Selection of Control Variables and Poor Quality of those Selected

Donohue repeatedly makes the point that estimates of the effect of RTC laws differ sharply depending on which additional control variables are specified in the model (see Tables 5-7 and accompanying text), yet tries out only a few arbitrarily chosen set of control variables in his own analyses, largely focusing on the narrow issue of which demographic variables (those measuring the % of the population in various age/sex/race groups) should be controlled. Given that the few combinations of controls he tries out yield wildly unstable results, it is reasonable to suppose that still other combinations would likewise yield unstable, possibly even more unstable, results.

The control variables in the set preferred by Donohue and his colleagues are an especially poor set of controls. The purpose of using control variables in this situation is to rule out the possibility that effects apparently due to RTC laws are actually due to other variables that have both of two properties: (1) they affect crime rates, and (2) they are correlated with the presence of RTC laws. Variables possessing both of these properties are called “confounders” because

their effects can be confounded with the effects of the “target” variable of primary interest (RTC laws in this case).

We can be certain that Donohue selected a very poor set of control variables for his “preferred” set (i.e., those included in the “DAW model”) because his own results indicate that the variables do *not* affect crime rates, and thus could not be confounders. Controlling for such variables does not help isolate the effect of RTC. Usually, Donohue and his co-authors did not share with readers what their estimates of the effects of the control variables were, but these estimates *were* reported in one place, in Appendix Table A2. The authors included seven control variables in the preferred DAW model but only two of them were significant at the conventional 5% significance level. That is, these control variables apparently do not affect crime rates and thus cannot be confounders. Further, even regarding the two significant variables, Donohue did not document that they are correlated with the presence of RTC laws, so we have no affirmative evidence that they are confounders either. In short, as far as one can tell from what Donohue and his colleagues reported, they did not control for *any* actual confounders, and thus did *nothing* effective to rule out the possibility that the significant positive RTC/crime associations the authors sometimes obtained were spurious, noncausal associations. Notwithstanding the fancy statistical manipulations applied by the authors, they are useless because the authors did not pay sufficient attention to the fundamentals, such as identifying and controlling for genuine confounding variables.

Donohue’s Analysis Misses the Main Point of Right-to-Carry Laws

Before Lott and Mustard’s 1997 article, debates about RTC did not primarily concern the impact of RTC laws on crime rates. As the name “Right-to-Carry” implied, the main issue was citizen’s “rights.” RTC supporters argued that law-abiding citizens had a moral and Constitutional right to bear (carry) firearms. The potential benefit of carrying guns for self-protection was that any defensive value that gun use might have in preserving bodily safety and retaining property would be extended to crimes occurring in public and would not be limited to the gun owner’s own home, if RTC laws were enacted. Thus, outcomes indicating success of RTC laws would be (1) an increased percentage of crimes occurring in public places in which crime victims used guns for self-protection, and (2) reductions in the percent of crimes occurring in public places resulting in the victim’s injury or property loss.

Nothing in any of Donohue's studies of RTC laws (or those done by other analysts he cites) addresses either of these intended effects. Instead they all narrowly addressed a single synthetic issue (whether RTC laws cause reductions in crime rates) that was in some sense invented by Lott and Mustard, and only exploited by RTC advocates after the fact. Donohue does not deny that RTC laws increase the share of crime circumstances in which crime victims could use guns for self-protection, and ignores the empirical evidence that defensive gun use is effective, i.e. reduces the likelihood that the victim will be injured or lose property (summarized in Kleck 2001). Thus, as far as he knows, RTC laws had exactly the effects their advocates hoped for.

Donohue Uncritically Accepts the False Propaganda Claim that Possession of Carry Permits Causes Hundreds of Deaths Each Year Committed by Permit Holders

Donohue claims (p. 15) that the issuance of shall-issue carry permits has resulted in many hundreds of deaths committed by carry permit holders, and possibly far more. Leaving aside a few unrepresentative anecdotes, his sole support for this claim is a propaganda report by an organization that lobbies against RTC laws, the Violence Policy Center (VPC). He alludes to a truly impressive total of "885 homicides, accidental deaths and suicides attributed to permit holders" (p. 15). This number is both grossly inaccurate and largely irrelevant to whether shall-issue laws are harmful.

Regarding relevancy, Donohue does not bother to explain (1) why persons committing suicides (those not part of a murder-suicide) would need a carry permit to carry out the act or be aided by its possession, or (2) how carry permits caused or contributed to violence committed in the permit holder's *home*, a location where no carry permit is required for firearms possession, or (3) how possession of a carry permit affects whether a person commits a homicide *not* involving a firearm. These are not minor quibbles about the VPC study, since it turns out that only a small fraction of the deaths that VPC listed could reasonably be attributed to possession of a carry permit.

Cramer (2013) closely examined the 374 deaths that VPC had listed in an earlier version of the same report as of May 12, 2012, and found that the list was padded out by the inclusion of a wide variety of deaths that would not be affected by possession of a carry permit, such as suicides, homicides committed in the permit holder's home or business, deaths inflicted by

persons who were not in fact carry permit holders (VPC coders were simply mistaken), and even homicides that were not even committed with a gun. *At most*, 92 of the 374 total deaths (c. 25%) over five-plus years in the U.S. could arguably be attributed to the perpetrator's possession of a carry permit. This works out to about 17 deaths per year in a nation with millions of carry permit holders - even giving dubious VPC-included cases the benefit of the doubt. The other 75% (or more) were suicides (at least 129 of the 374 total), deaths inflicted by people who were not in fact carry permit holders, homicides known to be justifiable, homicides where self-defense was claimed and the courts had not reached a final resolution, homicides committed in the killer's home or business, homicides committed as the result of a serious premeditated violent crime like a home invasion, killings that did not even involve a gun (two strangulations), or homicides in which the killer held a "may-issue" carry permit or was a police officer (and thus would have been legally authorized to carry a gun even in the absence of a shall-issue permit law).

In case anyone, like Cramer, casts doubt on VPC's outlandish claims, Donohue has a back-up assertion. He speculates that the number of *documented* deaths attributed to carry permit holders is just the tip of the iceberg: "How many more deaths were caused by permit holders is difficult to know because the NRA-backed secrecy laws are designed to keep the public from knowing the full extent of this mayhem" (p. 15). Not only is this argument completely speculative, but the notion that "NRA-backed secrecy laws" served to conceal many deaths is unsupported by citation to any laws that forbid police or private investigators from discovering or revealing the fact that a criminal act was committed by a carry permit holder (as there are none). An arrestee's status as a carry permit holder is easily determined by police merely by examining the suspect's wallet, purse, or pockets, since permit holders are required to keep their permits on their person whenever they carry their guns, and no law (NRA backed or not) forbids police from searching an arrestee's person.

Leaving aside Donohue's acceptance of the deceptive VPC numbers, he appears to believe that citation of a few unrepresentative anecdotes of permit holders committing crimes can somehow refute the assertion that permit holders are "exceptionally law-abiding" (p. 15). They cannot. They can only serve to establish that the trivial point that even the population of permit holders includes a few criminals.

Donohue's Assertion that Revocation and Arrest Rates Understate Criminal Behavior is Accurate but Irrelevant or Misleading

Donohue correctly notes that permit revocations “understate the misconduct of permit holders since many crimes are never solved” (p. 15), but this has no bearing on the issue of whether permit holders are far less criminal than the rest of the population. Likewise, arrest rates do indeed understate criminal involvement of groups of people, but Donohue does not cite any evidence that this is any more true for permit holders than for the rest of the population. Thus, regardless of how misleading they might be as measures of the *absolute* level of criminal offending, arrest rates should be a perfectly usable metric for determining the *relative* criminal involvement of permit holders compared with the rest of the population. As Donohue very briefly concedes, the arrest rate for aggravated assault in Texas for permit holders is less than half that of the population as a whole (p. 15, paragraph 22). In short, carry permit holders *are* far less criminal than the rest of the population.

Donohue's Claim that Permit Holders Commit More Crime than “Expected”

Donohue also claims (p. 14) that criminal involvement of permit holders is higher “than we might expect for a group with their demographic configuration.” He does not explain why this way of looking at the crime data helps us determine whether RTC laws are a good idea; certainly he does not claim that acquiring a carry permit *causes* permit holders to become more criminal. He relies for support completely on data in the Sturdevant study cited in his footnote 20 (p. 14), but his description of its findings is misleadingly incomplete.

Permit holders are overwhelmingly male, and males are more criminal than females, so the sex distribution of permit holders (“their demographic configuration,” as Donohue phrases it, p. 14) would lead one to expect more criminal behavior from permit holders due to their gender, irrespective of any effects of their possession of carry permits might have. Recognizing this, Sturdevant compared arrest rates separately within sex groups, comparing male permit holders with males in the Texas population as a whole, and comparing female permit holders with females in the Texas population as a whole. Even after controlling for sex (“demographic configuration”) in this way, Sturdevant found that permit holders had far lower arrest rates than the population as a whole (Sturdevant 2000, p. 50, Table 9). One would never guess from Donohue's summary of this study that Sturdevant himself simply concluded that Texas carry

permit holders were far less criminal than the Texas population as a whole (Sturdevant 2000, pp. 24-27).

In his paragraphs 22 and 23, Donohue floats the argument that permit holders are more criminal than one would expect based on their “criminal propensity” (p. 14) or “their underlying likelihood of criminality” (p. 15), which he professes to be able to measure. It should first be noted that this claim has no bearing on whether permit holders engage in crime far less often than other people, since it does not in any way compare permit holders with other people.

Leaving aside its irrelevance, the argument is based on Donohue’s unsupported claim that he can somehow measure “criminal propensity” independent of arrest rates themselves. Arrest rates of rape do not measure “criminal propensity” any more than any other arrest rates, and certainly do not enable an analyst to separate differing levels of criminal propensity from differing risks of arrest. Thus, Donohue’s claims to be able to know that permit holders commit more murder or aggravated assaults “than we would expect based on their underlying level of criminality” (p. 15) is plainly fallacious because the arrest data he cited do not provide any ability to measure criminal propensity.

Donohue’s Claim that the RTC Laws Reduce Police Effectiveness is Based on a False Premise

Donohue claims (p. 16) that “Anything that impairs police productivity or that serves as an effective ‘tax’ on police serves to elevate criminal behavior.” This argument necessarily assumes that police productivity reduces crime rates. While some economists continue to claim that this is so, the best available evidence indicates otherwise. Kleck and Barnes (2016) showed that neither police strength (police officers per capita) nor police productivity (arrests per 100 crimes) affected prospective offenders’ perceived risk of punishment, and thus could not affect deterrent effects. Likewise, increased police “productivity” cannot increase the number of criminals incarcerated because the prisons are always full, and there are always many times more offenders arrested for imprisonable offenses than can be admitted to prison even when police productivity is low. Thus, the impairment of police productivity that Donohue speculates is produced by RTC laws could not increase crime rates because police productivity has no known effect on crime rates via either deterrence or the incapacitation of criminals. Furthermore, there is no empirical evidence that RTC laws actually do reduce police productivity.

Donohue Supports a Claim with a Single Anecdote

In his paragraph 21, Donohue professes to know that advocates for “permissive gun-carrying” are “*often* highly inaccurate in their claims about the behavior of permit holders” (p. 14, emphasis added). His sole support for this assertion is a *single* anecdote about an oral misstatement made by a single person, Sacramento County Sheriff Scott Jones. The idea that a single instance can support a claim about the frequency of a category of behavior is illogical and unscientific. Moreover, even if the basic claim about the accuracy of statements by advocates were correct, it would have no bearing whatsoever on the *actual* levels of misbehavior among permit holders, which is what matters when considering the merits of RTC laws. Citing this sort of irrelevancy only serves to distract from issues that are actually relevant to the public policy question of whether allowing more gun carrying affects crime rates.

Personal Opinion, Speculation, and Selective Reasoning

Finally, after conceding that the evidence he reviewed pertains only to laws allowing concealed carrying and not to *open* carrying (p. 17), Donohue nevertheless proceeds, in paragraphs 33-36, to engage in personal opinion (paragraphs 33 and 34), speculation (paragraphs 33 and 34), selective reasoning (paragraph 34), and argumentation by anecdote (paragraph 35 regarding the Boston Marathon bombers) to support his claims regarding the effect of allowing open carrying. Beyond noting the obviously unscholarly, evidence-free character of his closing paragraphs, no further comment is needed.



Dated: June 29, 2017

Gary Kleck

CERTIFICATE OF SERVICE

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Case Name: *Flanagan, et al. v. California Attorney General Xavier Becerra, et al.*
Case No.: 2:16-cv-06164-JAK-AS

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

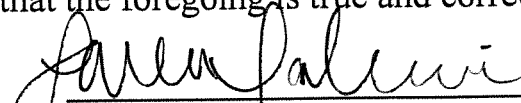
Rebuttal of Expert Report of John J. Donohue

on the following party by mail service. 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 Long Beach, 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 June 30, 2017.

Xavier Becerra, Attorney General of California
P. Patty Li, Deputy Attorney General
E-mail: Patty.Li@doj.ca.gov
Jonathan M. Eisenberg, Deputy Attorney General
E-mail: Jonathan.Eisenberg@doj.ca.gov
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

*Attorneys for Defendant
Attorney General of the State
of California*

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


Laura Palmerin

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EXHIBIT 7

EXPERT REPORT OF GUY ROSSI

Guy Rossi and Associates, LLC
64 Loch Revan Heights
Rochester, NY 14617
(585) 752-4805
grossi@rochester.rr.com

Flanagan v. Becerra (U.S.D.C., C.D. Cal.), No. 2:16-cv-06164-JAK-AS

INTRODUCTION:

I am an internationally recognized law enforcement educator and trainer. Counsel for the Plaintiff has requested that I provide an expert opinion in the matter of *Flanagan v. Becerra*, C.D. Cal., No. 2:16-cv-06164-JAK-AS. The following report sets forth my opinion, based upon my knowledge, experience and review of the subject matter. I am charging \$250 per hour for my services.

EXPERIENCE AND BASIS OF EXPERTISE:

I have been actively involved in departmental law enforcement training in Monroe County, New York since 1979, and a police academy instructor since 1982. My specific background in law enforcement spanned twenty-one years as a deputy sheriff, village, town and city police officer in the Greater Rochester, New York area. During my time as a uniformed police officer I responded to all manner of calls for service to include criminal and drug investigations. My true passion has always been law enforcement training.

In 1991 I was promoted to Sergeant for the Rochester Police Department ("RPD"). This promotion carried the responsibility of the direct supervision of the afternoon and midnight shifts in high-crime precincts. I supervised a minimum of twelve officers and three investigators assigned to my platoon. Specifically, my duties involved being the first responding supervisor to any call involving violence, public danger or civil disorder. Frequently, due to the high demand for police service, I was often placed in a role of back-up officer as well as first responder. Additionally, I was responsible for supervising investigators and their caseloads. Further, I investigated complaints against officers. The finding of my investigations were relied upon by the chain of command for personnel policy and training decisions. I also performed administrative tasks which included state certification of our department.

From 1992 to my retirement from uniformed service in 1998 I was assigned to the Professional Development Section (training) as the Field Training and Evaluation Administrator for the RPD, overseeing recruit training for the entire agency of seven hundred officers. My duties specifically involved ensuring that recruits were trained properly at the academy and during their on-the-job field training. There were eight precincts, each with a Field Training Sergeant.

Each Sergeant was responsible for supervising their field training officers and their recruits. I oversaw all of it.

The specific focus of my position of Field Training and Evaluation Administrator was to ensure that each recruit was trained properly and possessed the cognitive and physical skills to perform the duties of a police officer and to ensure public safety. It was my direct responsibility to afford every opportunity to recruits to succeed at becoming an RPD Officer. Not only was I involved in the hiring of the recruits and at times their termination when they did not meet the standards, I trained and supervised the instructors that were training the recruits. My responsibilities included ensuring that the recruits met departmental and New York State Standards. Commonly I held bi-weekly meetings in each of the precincts with the field training supervisors and officers to discuss the status of each probationary officer to include strategies for remedial training when necessary.

Additionally, I was the direct liaison between the RPD and the Public Safety Training Facility (PSTF or academy). My responsibilities included training, supervising and certifying the RPD academy instructors. I developed a curriculum that was approved by the New York State Division of Criminal Justice Services that served as the basis of instruction for instructors in the areas of field training, officer safety, defensive tactics and firearms.

In 1999, following my retirement from RPD, I was selected as the Program Coordinator for Law Enforcement Training Programs at the PSTF. I was responsible for all regional in-service police training for the region surrounding Monroe County, New York. Specifically, counties outside of Monroe County sent their recruits and in-service officer to the PSTF for training that I developed and supervised. The officers from Monroe County agencies alone numbered 1,400 officers. My background uniquely qualified me to fulfill this rigorous position.

In addition to the background and experience I have discussed, my specific areas of expertise include field training, mentorship, use of force, firearms and defensive tactics for both recruit and in-service police officers. My New York State Division of Criminal Justice Training Certifications included, but are not limited to, Master Instructor, Instructor Development, Defensive Tactics, Firearms and Field Training. In addition to these state certifications, I held independent certifications in many other areas, most of which were specific to use of force, defensive tactics, and firearms. My writings, including lesson plans, manuals, and articles, have been published in many police journals and periodicals. The Defensive Tactics Instructor Manual and Use of Force Continuum which I wrote is presently used today at the PTSF.

I continue to instruct and consult at our academy and for the State of New York Division of Criminal Justice Services. I also instruct at national and international law enforcement conferences on use of force and law enforcement training. Recently, I presented on the topic of Building Positive Police – Armed Citizen Interactions at the International Law Enforcement and Educator Training Association International Conference as well as the National Defense Research Institute Annual Convention in Washington, D.C., to attorneys employed to defend law enforcement officers throughout the country. As a result of my experience, I have been

qualified as an expert witness in local, state and federal courts in the areas of police training, use of force, defensive tactics and firearms. Attached is my curriculum vitae.

My opinions in this case are based on a continuing life-long career that immersed me in every aspect of police training from recruit, instructor training and development, academy instructor, curriculum developer, program coordinator, policy analyst, use of force curriculum development, instructor certifier and accreditation manager. Additionally, this opinion is based upon my experience as a New York State Department of Criminal Justice Services Master Instructor in teaching NYSPL Article 35.00 (Defense of Justification) regarding Use of Force to police recruits, in-service officers and instructors for thirty-five years as well as the former Program Coordinator of Curriculum Development & Defensive Tactics for the Public Safety Training Facility of Monroe Community College. It is also based on my experience of having trained hundreds of recruits, law enforcement in-service officers, defensive tactics instructors, defensive tactics instructor-trainers, Monadnock Police Baton users, instructors and instructor-trainers locally and on a national as well as international scale. Lastly, my credentials include certification as a Force Science and Body Camera & Other Recordings in Law Enforcement Analyst as well as an Independent Instructor/Consultant in Verbal Defense and Influence (A.K.A. Verbal Judo) and Management of Aggressive Behavior Instructor-Trainer.

ASSIGNMENT:

I have been requested by Plaintiff's counsel to review the Defendant's Expert Witness Report by Chief Kim Raney and respond accordingly to his assignment, "How do restrictions on the open carry of firearms affect public safety?"

SUMMARY:

In my experience the open or concealed carry of firearms by law abiding citizens has no detrimental impact on policing or public safety and is one of many factors that law enforcement must consider in their awareness and decision-making.

ANALYSIS:

From a law enforcement perspective, officers realize that they are often in the presence of weapons – concealed, open or improvised. For example, in the last twenty years it has become popular for young adult men to carry pocket knives with clips protruding from their pockets. Although officers are trained to look for weapons as they approach individuals, more precisely they are taught to evaluate whether the individual is a threat. The presence of a knife or other weapon will be discounted when the nature of the contact and the behavior of the citizen appear relaxed and lawful. Therefore, during these contacts, officers are aware of the presence of the knife, however seldom act on it unless criminal activity is suspected (absent suspected criminal activity, officers taking possession of another's weapon may be violating the Fourth Amendment). The presence of a weapon is one factor in the training of how to evaluate threats. Although handguns are greater on the hierarchy of weapons scale, officers know from

their training that anything can be used as a weapon given malicious or criminal intent. Officers actively scan their environment for all dangerous instruments that can be used as weapons. Properly trained officers are also instructed on respecting the exercise of constitutional rights of citizens including the exercise of their Second Amendment rights, just as they are trained on First, Fourth and Fifth Amendment rights. The implication that officer and public safety can only be achieved by disregarding constitutional rights is mistaken; in fact, intentional violation or ignoring of these rights is contrary to the oath of law enforcement officers, who are sworn to uphold the constitution. The mere presence of a weapon does not change any aspect of this analysis.

I have been provided with the "Expert Witness Report of Former Chief of Police, Kim Raney" and have reviewed it thoroughly. As outlined below, I find his analysis unsound in many respects.

Chief Raney is incorrect when he says that, "Law Enforcement Officers are taught that guns are a dangerous and deadly threat to their safety and the safety of the public they serve." As evidenced in the historical perspective above, guns have been a part of American life for a very long time. Guns are useful and necessary tools that protect citizens, police officers, and soldiers from harm. To say that all officers believe they are a threat all the time is not true. Officers are keenly aware that guns can be used for protection or harm, legal or illegal activity. The filter however is the criminal intent and behavior of the individual possessing it. For example, although I have been retired from active law enforcement service since 1998, to this day I still carry a concealed handgun wherever I go as many retired officers have chosen to do under LEOSA. Instructing officers to fixate on the presence of a weapon without more can be a deadly distraction. It is that type of improper training that "complicates the police response" that Chief Raney refers to. Not only in "man with a gun calls," but in all situations, failure to comply with law enforcement commands can have deadly results.

Not every law enforcement contact with individuals carrying weapons is, as Chief Raney described, "dangerous and grave." This is a gross misstatement regarding police training, officer, and public safety. Without the requisite criminal intent, the gun, knife or other weapon does not pose a dangerous threat. In my experience, officers encounter law abiding citizens that possess weapons on their persons, home or place of business, and the majority of the time pose no threat. Based on my training and experience, officers are trained to be aware of this and react accordingly, but often they continue with the business of the contact without incident.

One of the most common officer safety tactics trained to officers is a concept called, "Contact and Cover." In its most simplistic form the contact officer is instructed to devote his attention to the business aspect of the citizen encounter as the cover officer focuses on the security and safety of the encounter. Said actions are conducted by officers daily throughout the United States. An assessment of the behavior of the citizen as well as any weapon encountered during a law enforcement contact is considered in the totality of the circumstances. Absent malicious intent, presence of a weapon is not the only factor that makes police-citizen encounters easy or

difficult. In my thirty-five years of being involved in law enforcement training, I have never personally been aware of a lawfully armed citizen committing a crime with their handgun. Further, in my interactions with law enforcement officers throughout the country including those who I have instructed in police-citizen encounters in their experience, the same has been true.

I have trained hundreds of officers in recognizing street weapons and their methods of carry. Officers are trained observers for the tell-tale indicators that a subject may be carrying a weapon. In these classes I talk about how a handgun will print beneath clothes and that most people tend to subconsciously touch that weapon to make certain it is still in place. Additionally, officers are instructed to identify the mode of carry and thereby assess the subject's ability to access that weapon. Officers are routinely instructed on how to interact and challenge a suspected armed individual whose demeanor or behavior suggests a crime is in progress, about to be committed or has been committed. It is the suspicion of criminal conduct along with the threat of violence that first elevates this contact to a high-risk stop.

Chief Raney asserts that: "In the event for a call for service involving a firearm, an environment that allows the open carry of firearms complicates the police response and could unnecessary divert critical police resources from the primary event." This highly speculative assertion ignores the fact that police officers are trained to continuously evaluate the situations to which they respond, the behavior of the individuals and a myriad of factors other than just the mere presence of a firearm. Any individual whose description matches that provided by witness would, under good policing, be detained, and the fact that such individual is open carrying does not divert police attention or resources since they match the description of the subject provided by witnesses. Chief Raney's example demonstrates a lack of understanding of police procedure.

In the last few years my training partner and I have been presenting courses to law enforcement personnel on interacting with civilians, including those who they believe or know are armed. Our teaching has focused on balancing officer safety with the First, Second and Fourth Amendment rights of the citizens. We also encourage officers to know the laws of open and concealed carry in their jurisdiction and educate the public on how to respond and react to man with a gun calls when the presence of a firearm is reported without the description of suspicious conduct or criminal activity. When the description provided by the caller to 911 describes the open presence of a firearm permitted by law without an accompanying description of criminal behavior, it is not a high-risk call. Once the law is publicized and communicated by authorities such calls can be expected to diminish.

The comment by Chief Raney that "The officers may have no idea about the armed person's motives, intent, mental condition, or emotional stability," is true in every call for service, whether the subject of the call is actually armed or not. Officers are trained throughout their career in reading body language, proxemics and other behavioral cues that often foreshadow intent beyond the subject's words. Since this type of an assessment is made on every call for

service an officer responds to, it certainly is not the sole generator of more resources for services. If anything, resource allocation remains essentially the same.

Where open carry is lawful, it does not complicate the situation since the handgun is a known issue versus an unknown issue in the encounter. As in all situations it is the subject's behavior that dictates how the officer responds. During the instruction provided above in interacting with legally armed citizens, scenarios are trained on common calls for service where an alarmed citizen may be calling 911 to report a person walking their leashed dog and is carrying a firearm in a holster on their waist. The dog owner has a valid carry permit and unknowingly becomes the subject of a 911 call for service. In all regards the dog owner is acting lawfully and the 911 complaint is generated solely because the firearm is visible to the public. Regardless a call for service is generated and the officer must respond to the complaint. When officers are trained about the laws in their jurisdiction, although they will continuously evaluate the nature of the call, they will know that based on the 911 report that the complained-of conduct is lawful. Officers are trained to contact the complainant following a legal carrying of a handgun so to educate the complainant and reduce the panic and paranoia associated with such a call, *i.e.*, a call mistaking legal activity for illegal activity.

Chief Raney opines that: "The split-second decision police officers have to make may be judged by other people that have the luxury of time..." This is another statement that, while true on its face, does not reflect a knowledge of police training and officer safety. The decisions that officers make in "split seconds" are decisions they can make rapidly because they are trained. In my police training career I was not simply just training officers but also their judgement. The goal is to develop good decision-making based upon sound policing tactics such as cover and concealment, proxemics, officer safety and knowledge of the law. Such a statement in my opinion is both inaccurate and irresponsible in that officers make split second decisions in the normal course of business every day. They are very familiar that their actions will be judged by people that have more time and that will "Monday morning quarterback" any decisions made. This issue is a constant for anyone that is employed in the public sector and, in my experience, unavoidable. Knowledge of the law and good training buys an officer time to assess the situation, because decision-making improves through training and experience.

Chief Raney states that citizens lawfully openly carrying firearms following the Dallas incident where five officers were ambushed and killed complicated police response. I strongly disagree. Again, his analysis of police response and threat level is flawed. Apart from anyone engaging with the gun in any way, the police response remains the same. Chief Raney attempts to use the active shooter scenario as another example of how open carry complicates police response. Any individual (whether armed or not) leaving the scene of an active shooter is suspected as the shooter until that person is identified. This argument is beyond the purview of this report as Active Shooter scenarios are incidents where police procedures are well established throughout the United States. These are tense and rapidly evolving situations. In 1999 myself and another officer developed active shooter training for our academy classes before such incidents were more reported. Since then there have been several incidents where an off-duty officer or legally armed civilian lessened or stopped the carnage by engaging an active shooter. *See, e.g.*,

https://www.washingtonpost.com/news/volokh-conspiracy/wp/2015/10/03/do-civilians-with-guns-ever-stop-mass-shootings/?utm_term=.6d4d2abad974. Furthermore, the recent high-profile assault on Republican Congressmen in Alexandria, Virginia, may have been stopped faster if there had been armed civilians present. See <https://massie.house.gov/newsroom/press-releases/congressman-massie-introduces-the-dc-personal-protection-reciprocity-act>; <http://www.washingtonexaminer.com/barry-loudermilk-wants-concealed-carry-for-lawmakers-in-dc-after-scalise-shooting/article/2625970>; <http://mobile.wnd.com/2017/06/congress-members-want-to-carry-firearm-in-d-c/>; <http://nypost.com/2017/06/18/congressman-to-push-bill-that-lets-lawmakers-carry-guns/>.

Law abiding citizens carry firearms because they too want to be safe in their communities. Chief Raney offers no evidence that open carry creates, “a highly stressful and unsafe environment for everyone, including the person in possession of the firearm.” Law abiding citizens are acutely aware of crime and that any delay in response by law enforcement could prove deadly. Our role in law enforcement is to educate the public on the lawful expression of constitutional rights and to develop an awareness of threats and unlawful behavior. Public alarm is an indicator that legislators, media, and law enforcement responding to these calls have failed to educate the public on the exercise of a constitutional right and the identification of actual criminal behavior.

Chief Raney opines that calls for service may be generated and that any person matching a description has, “a high likelihood of being detained by law-enforcement personnel.” While this is generally true it is also true that officers are dispatched based upon citizens’ complaints to 911. It is extremely important that telecommunicators and dispatchers are trained to ask what the subject is doing with that weapon. If the answer is that it has just been observed and not threatened then the possibility exists that the individual is simply practicing his/her rights under the Second Amendment. The reality is that “more resources” are not directed to such a call for service unless the subject in question is doing something with the weapon and demonstrating threatening behavior. Chief Raney’s allegations in this respect are contrary to current training and best practice.

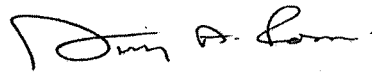
Public alarm and misapprehension should not be promulgated by law enforcement itself. Chief Raney states: “Police are very sensitive to seeing a gun in public or on open display, even if allowed by law.” Training and education are key here. Building relationships with a community which includes lawfully armed citizens is perhaps more necessary today than ever in recent times given the “war on police.” Citizens have stepped in to assist police being assaulted during several occasions throughout contemporary policing. Their actions have often saved the lives of the officer. To infer that a law-abiding person, such as a military veteran, for example, does not have the mental state or emotional stability or training that law enforcement officers have is drawing an unfounded conclusion that is highly disrespectful of the citizenry at large. For example, in the case of a military veteran it is likely that they have had more experience in urban warfare than the officer.

Finally, it is worth noting that the International Law Enforcement Educators and Trainers Association ("ILEETA"), of which I am an Advisory Board Member, has routinely demonstrated that the carry of firearms outside of the home by responsible, law-abiding people: 1. does not increase crime or public danger; 2. helps protect law enforcement officers, themselves, and the public at large; and 3. actually reduces crime. *See, e.g., Peruta v. County of San Diego*, 9th Cir., No. 10-56791, Dkt. 262, Brief of Amicus Curiae International Law Enforcement Educators and Trainers Association, Law Enforcement Legal Defense Fund, Law Enforcement Action Network, and Law Enforcement Alliance of America in Support of Appellants.

CONCLUSION:

In my opinion based upon my training and experience, neither open nor concealed carry by law-abiding citizens adversely impact policing or public safety. Legislation allowing concealed and/or open carry of firearms has been in existence for decades throughout the United States. Law enforcement must be trained to develop the requisite judgment that will enable them to simultaneously preserve officer safety and the constitutional rights they are sworn to uphold.

Dated: June 29, 2017



Guy Rossi

GUY A. ROSSI

BIOGRAPHICAL SKETCH

Guy Rossi is a retired Sergeant from the Rochester, New York Police Department that specialized in patrol, recruit, field training and defensive tactics instruction. Since 1982 he has been a nationally recognized law enforcement trainer and has trained several hundred officers/instructors throughout the United States. Mr. Rossi developed Force Matrix Continuums and defensive tactic instructor manuals that are still being used as the foundation of instruction at the Monroe County Public Safety Training Facility. His experiences and teachings in officer survival skills and managing aggressive behavior have been published in over two hundred magazine articles and books. Upon retiring from active police service he was employed as a Program Coordinator of Curriculum Development for the Public Safety Training Facility (regional police academy) of Monroe Community College (MCC). While there he directly oversaw all law enforcement in-service training. Presently, he is a Program Coordinator of Curriculum Development for the Homeland Security Management Institute at MCC, a Security/Instructional Design Consultant for Delta Global Services, Special Projects Coordinator for the Irondequoit NYPD and the President of Guy Rossi and Associates, LLC.

Mr. Rossi has developed and instructed hundreds of cognitive and psychomotor skill related programs to include New York State Penal Law Article 35 – Defense of Justification, Liability Issues for Police Supervisors, Firearms and Defensive Tactic Instructor Courses, Multimedia for Law Enforcement Trainers and most recently a web-based learning program in Community College Citizen Preparedness for FEMA. He has been qualified as an expert witness on use of force by law enforcement officers and his works have recently been presented in an Amicus brief to the 9th Circuit Court of Appeals regarding open carry of firearms for law-abiding citizens.

Guy Rossi has a Master's Degree in Adult Education – Instructional Design. He is a charter and advisory board member of the International Law Enforcement and Educators Trainers Association (ILEETA) as well as the Editor of the ILEETA Review. Significant certifications/credentials include NYS Division of Criminal Justice Services Master Instructor in General Topics, Defensive Tactics, Firearms, Field Training and Aerosol Subject Restraint, Law Enforcement Accreditation Manager, Security Guard Instructor, Safariland Master Baton and Defensive Tactic Instructor, Taser Instructor and twice certified Force Science Analyst.

SUMMARY OF QUALIFICATIONS

- Eight years as Program Coordinator/Instructor Public Safety Training Facility oversight of all in-service law enforcement training.
- Over thirty years experience as a curriculum developer for police agencies and the Public Safety Training
- Master Instructor certification by the New York Division of Criminal Justice Services (Office of Public Safety)
- Expert Witness in the areas of Use of Force, Police Recruit Training, Defensive Tactics and Officer Survival
- Extensive national seminar presentations in the areas of management of aggressive behavior, verbal defense and influence, use of force, police training, field training and writing training articles for publication
- Multimedia and distance learning development
- Has served as Technical Editor for Police Marksman Magazine and Editor in Chief of the International Law Enforcement and Educators Association Review Journal.
- Presented at Defense Research Institute (DRI) on “Building Positive Police – Armed Citizen Interactions.”
- Accreditation Management
- Grant Writing
- Force Science Research Certified Analyst
- Force Science Body Cam in Law Enforcement Analyst

EDUCATION

- M.S. Adult Education, Buffalo State University (SUNY) 2002, graduated with a Distinguished Service Award
- B.S. Educational Studies – Instructional Design, Empire State College (SUNY), 2000
- A.A.S. Police Science - Monroe Community College, Rochester, New York

TEACHING COMPETENCIES

- | | |
|---|---------------------------------------|
| ▪ Adult Education – Instructor Development | ▪ Officer Survival |
| ▪ Writing Training Articles for Publication | ▪ Firearms |
| ▪ Multimedia and Distance Learning | ▪ Use of Force/Defensive Tactics |
| ▪ Police Procedurals & Field Training | ▪ Law Enforcement Contemporary Issues |
| ▪ Curriculum Development | ▪ Workplace Violence |
| ▪ Management of Aggressive Behavior | ▪ Taser |
| ▪ Verbal Defense and Influence | ▪ Personal Awareness & Protection |

EMPLOYMENT

[May 2014 – Present] Delta Global Services

Project Manager – Technology Applications

- Develop and instruct start up hand-held computer based training programs for DGS customers worldwide.

[March 2010 – May 2014] Delta Global Services (DGS)

Security/Instructional Development Consultant

[June 2014 – July 2015] Irondequoit NY Police Department

Special Projects Coordinator (part-time)*

- Report directly to the Chief of Police, write grants, oversee development and revision of procedural orders, police department website, accreditation and training.

[September 2007-Present] Public Safety Training Facility of Monroe Community College

Adjunct Instructor (part-time)

- Develop and instruct various instructional curriculums specific to law enforcement on instructional development, multimedia, officer survival, supervision, defensive tactics and security training.

[December 2007 - Present] Homeland Security Management Institute of Monroe Community College (HSMI)

Program Coordinator (part-time)

- Develop, instruct and administrate various courses within the realm of Homeland Security. Create and oversee distance-learning programs for HSMI.

[March 2007- July 2008] Irondequoit NY Police Department

Special Projects Coordinator (part-time)*

- Report directly to the Chief of Police, write grants, oversee development and revision of procedural orders, police department website, accreditation and training.

*Returned to this position June of 2014 to July 2015

[October 2005 – May 2007] International Law Enforcement Trainers and Educators Association (ILEETA)

Editor in Chief of the ILEETA Review*

- Oversee a quarterly publication for ILEETA to include editing, assigning articles and managing the overall development of reviews on products and training for consideration by the membership.

*Returned as Editor April 2009 to 2012.

[June 2003 –September 2007] Monroe Community College, Rochester, New York

Program Coordinator – Curriculum Development

- Plan, develop and write new/revised curriculum for public safety personnel. Oversee and mentor new instructors in instructional methodologies. Prepare curriculum in various media formats according to the needs of the customers. Administrate the Defensive Tactic Training Staff and act as the Computer Liaison for the Public Safety Training Facility.

[January 1999 – June 2004] Monroe Community College, Rochester, New York

Technical Assistant – Law Enforcement Programs

- Assist in the program coordination of all in-service law enforcement programs. Additional duties include oversight of the defensive tactics instructor staff, computer liaison with ETS and SUNY Distance Learning Committee.

[April 1987-August 1998] City of Rochester Police Department

Police Officer/Sergeant

- Police officer duties assigned to road patrol functions. Supervisory experience since 1991 to include patrol and investigatory activities.
- Assigned to the Professional Development Section (Training) in 1992 to include administration of the Field Training and Evaluation as well as the Recruit Training Unit. Additional duties included supervision of the training unit and the Defensive Tactic Instructor Staff,

[April 1982-April 1987] Town of Irondequoit Police Department

Police Officer

- Police officer assigned to road patrol and training duties.

[August 1978 – April 1982] Village of Fairport Police Department

Police Officer

- Police officer assigned to road patrol and training duties.

[May 1977- August 1978] Monroe County Sheriff's Department
 Deputy Sheriff – Part-Time
 o Part-time Deputy Sheriff - Parks and Marine Division

CERTIFICATIONS

DATE:	TYPE:	AGENCY:
03/20/17	International Law Enf. & Trainers Assoc. Conference	ILEETA
03/18/16	International Law Enf. & Trainers Assoc. Conference	ILEETA
11/9/15	Body Cameras and Other Recordings for LE	Force Science
10/8/15	Present and Attend Defense Research Institute Conference	DRI
07/28/15	GT Security Guard Instructor	NYS DCJS
04/25/15	International L.E. Ed. Trainers Conference	ILEETA
11/06/14	Attend and present at Beyond Conflict Natl. Conf.	Vistelar
10/30/14	Accreditation Program Manager	NYS DCJS
08/20/14	Open Source Intel. & Social Media Investigations	HSMI
05/02/14	Verbal Defense and Influence Independent Consultant Trn.	Vistelar
05/20/14	Force Science Analyst (2 nd Cert)	Force Science
03/29/14	International LE Ed. Association Conf. & Presenter	ILEETA
11/12/12	Verbal Defense and Influence National Conference	Vistelar
11/09/12	OCAT (pepper spray) Instructor-Trainer	Personal Protection Consultants
11/09/12	PATH Handcuffing Instructor- Trainer	Personal Protection Consultants
11/01/12	Monadnock Master Instructor Monadnock Defensive Tactics	Safariland Training Group
11/01/12	Monadnock Master Instructor – PR-24 Baton	Safariland Training Group
11/01/12	Monadnock Master Instructor – Expandable Baton	Safariland Training Group
10/26/12	Verbal Defense and Influence Instructor	Vistelar
08/1/12	International Assoc. Law Enforcement Firearms Master Instructor Program	IALEFI
4/21/12	ILEETA Conference Staff Instructor	ILEETA
2/14/12	Social Media Methods	Police Technical
DATE:	TYPE:	AGENCY:
11/01/11	Master Instructor Monadnock Defensive Tactics	Safariland Training Group

11/01/11	Master Instructor Monadnock Expandable Baton	Safariland Training Group
11/01/11	Master Instructor Monadnock PR-24 Baton	Safariland Training Group
08/12/11	Taser Instructor Recertification	Taser International
08/10/11	Lethal and Non-Lethal Uses of Force	Lorman Ed. Services
07/12/11	Use of Force Summit	Performance Institute
06/28/11	NYS Division of Criminal Justice Services – Firearms Instructor Recertification	NYS DCJS
06/28/11	NYS Division of Criminal Justice Services – General Topics Recertification	NYS DCJS
4/16/11	International Law Enforcement Educators and Trainers Association 2011 Conference	ILEETA
4/16/11	Sabre Civilian Safety Awareness Instructor	Sabre Intl.
4/13/11	PowerPoint for Public Safety	Police Technical
11/9/10	Force Science Analyst Certification	Force Science
06/11/10	Safe Approach To Anger Management Instructor (SAM)	SAM
2/9/10	Management of Aggressive Behavior Inst. Trainer Recert.	MOAB Intl.
2/9/10	Oleo Resin Capsicum Instructor Trainer Recert.	PPC
2/09/10	Practical and Tactical Handcuffing Inst. Trainer Recert.	PPC
2/9/10	International Association of Law Enforcement Educators and Trainers Association – Conference Staff Instructor	ILEETA
4/15/08		
1/25/08	Taser Trainer	Taser International
1/17/08	Law Enforcement Accreditation Program Manager	NYS DCJS
1/10/08	Monadnock Defensive Tactic System International Instructor	Monadnock Police Training Coun
1/10/08	Monadnock Expandable Baton International Instructor	Monadnock Police Training Coun
1/10/08	PR-24 International Instructor	Monadnock Police Training Coun.
8/2/07	Armed Security Guard	NYS DCJS
DATE:	TOPIC:	AGENCY:
5/1/07	Grant Workshop for Law Enforcement	Richard J. Condon & Assoc.

3/29/07	Firearms Instructor	NYS Municipal Police Trn. Coun
3/29/07	General Topics Instructor	NYS Municipal Police Trn. Coun.
11/17/06	Simunition Scenario Instructor	Simunition
10/17/06	PowerPoint for Law Enforcement	Police Technical LLC
10/14/06	Writers Digest Characterization Workshop	Writers Digest
5/26/06	Hostage Negotiations Seminar	NYSHA
4/29/06	ILEETA Seminar Instructor/Conference	ILEETA
4/2/06	Taser Instructor	Taser International
12/30/05	Florida Dept. of L.E. Conference	FDLE
10/21/05	NYS Security Guard General Topic Recert	NYS DCJS
8/2/05	Street Survival Seminar	Calibre Press
7/15/05	E-Learning Design – William Horton	VNU Training
5/20/05	Monadnock International Seminar PR-24, MEB & MDTs	Monadnock
04/03/05	Writer's Digest Extended Novel Writing Course	Writer's Digest
04/02/05	International Association of Law Enforcement Educators Training Association – Staff Instructor	ILEETA
03/21/05	Writers & Books Copywriting Course	Writers & Books
06/30/04	Dreamweaver MX 2	CESC
06/24/04	Dreamweaver MX 2	CESC
5/20/04	International PR-24 Instructor	Monadnock Training Council
05/20/04	International Straight Baton Instructor	Monadnock Training Council
05/11/04	Monadnock National PR-24 Seminar	Ohio Peace Officer Trn. Council
DATE:	TOPIC:	AGENCY:
04/15/04	OCAIT Instructor Trainer Course (Pepper Spray)	Personal Protection Consultants

03/14/04	Quik-Kuff Instructor	Quik-Kuff Inc.
02/14/04	Sexual Harassment Workshop	MCC
12/01/03	Virtual Campus Instruction	MCC
09/24/03	SUNY Coursespace – Distance Learning Development	MCC
09/17/03	Microsoft Access Levels 1-5	Monroe Community College
09/09/03	PATH Instructor Trainer Course (Handcuffing)	Personal Protection Consultants
07/01/03	Aerosol Subject Restraint Instructor	NYS DCJS
07/01/03	General Topics Instructor	NYS DCJS
07/01/03	Firearms Instructor	NYS DCJS
06/06/03	Integrated Security and Emergency Management	Dutchess Community College
02/27/03	Defensive Tactic Instructor	NYS DCJS
02/27/03	Firearms Instructor	NYS DCJS
03/12/02	Street Survival – Tactical Edge Seminar	Calibre Press Inc.
01/24/02	Incident Response to Terrorist Bombings Awareness	New Mexico Tech
06/15/01	Cap-Stun Aerosol Instructor Trainer	REB Training International
03/09/01	Data Projection Technology Seminar	MCC ETS
11/08/00	Technical Writing Seminar	Padgett-Thompson
07/25/00	Simunition Instructor	Simunition Inc.
09/09/99	Photoshop Workshop	Rockhurst College
07/29/99	Handgun/Long Gun Retention National Trainer	NLETC
07/16/99	Web Design Conference	Rockhurst College
07/07/99	National Field Training Officers Seminar Presenter	NAFTO
DATE:	TOPIC:	AGENCY:
07/01/99	Firearms Instructor	NYS DCJS

01/01/99	Defensive Tactic Instructor	NYS DCJS
11/20/98	Management of Aggressive Behavior Instructor	REB Training International
01/20/98	American Society for Law Enforcement Training Seminar - Presenter	ASLET
10/21/97	Street Survival Seminar	Calibre Press
06/13/97	International PR-24 Instructor	Monadnock Training Council
06/13/97	International Straight Baton Instructor	Monadnock Training Council
06/13/97	International Monadnock D. T. System Instructor	Monadnock Training Council
06/13/97	CAS Expandable Baton National Instructor	Monadnock Training Council
06/12/97	Northamptonshire (UK) Police Spontaneous Knife Defense Instructor	Northamptonshire (UK) Police
06/08/97	OCAT Instructor Trainer Course (Pepper Spray)	REB Training International
04/25/97	Defensive Tactic Instructor Refresher	PSTF MCC
09/25/96	Less Than Deadly Force and Deadly Force Policies vs. Practices	Van Meter and Assoc.
08/15/96	American Society for Law Enforcement Training Use of Force Training Seminar	ASLET
02/27/96	Leadership Styles Seminar	PSTF MCC
07/06/95	Use of Force Training Seminar – ASLET	ASLET
05/11/95	International PR-24 Instructor	Monadnock Training Council
05/11/95	Monadnock Straight Baton International Instructor	Monadnock Training Council
05/10/95	International PR-24 Instructor	Ohio Peace Officer Trn Council
05/20/94	CAS Expandable Baton National Instructor	Monadnock Training Council
05/18/94	OCAT Instructor Trainer Course (Pepper Spray)	REB Training International
05/12/94	Monadnock Straight Baton International Instructor	Monadnock Training Council
DATE:	TOPIC:	AGENCY:
05/11/94	Defensive Tactics Instructor	Rochester NYPD

01/04/94	ASLET National Seminar	ASLET
06/25/93	Police Instructor Development	PSTF MCC
04/29/93	International PR-24 Instructor	Monadnock Training Council
04/29/93	Monadnock Straight Baton International Instructor	Monadnock Training Council
01/09/93	ASLET National Seminar	ASLET
09/25/92	Contemporary Issues for Police	PSTF MCC
02/20/92	Critical Incident Management	Rochester NYPD
01/11/92	ASLET National Seminar Staff Instructor	ASLET
10/03/91	Haz Mat Operations Level – Law Enforcement	PSTF MCC
06/14/91	OCAT Instructor Trainer Course (Pepper Spray)	REB Training International
03/01/91	Course in Police Supervision	NYS DCJS
03/01/91	Police Supervision	Rochester NYPD
01/12/91	ASLET National Seminar Staff Instructor	ASLET
01/01/91	Firearms Instructor	Municipal Police Trn Council
11/17/90	CAS Expandable Baton Instructor Trainer	Monadnock Training Council
11/12/90	Cap-Stun Instructor's Course	Dimensional Tactics Inc.
09/19/90	Handgun/ Long Gun National Trainer	NLETC
09/19/90	Lateral Vascular Neck Restraint	NLETC
09/12/90	PPCT International Training Conference	PPCT Management Systems
08/12/90	PPCT Defensive Tactics Instructor Trainer	PPCT Management Systems
08/11/90	PPCT Impact Weapons System Instructor/Trainer	PPCT Management Systems
08/11/90	PPCT Pressure Point Control Tactics System Instructor Trainer	PPCT Management Systems
DATE:	TOPIC:	AGENCY:
08/10/90	PPCT Spontaneous Knife Defense Instructor	PPCT Management Systems

04/01/90	Street Survival	Calibre Press
03/31/90	Street Survival	Calibre Press
01/13/90	ASLET National Seminar Staff Instructor	ASLET
10/24/89	Doppler Traffic Radar Operator	Rochester Police Department
07/19/89	Lindell Handgun Retention System	Fitness Institute for Police Fire
01/14/89	ASLET International Training Seminar Staff	ASLET
01/01/89	Firearms Instructor	Municipal Police Trn Council
12/09/88	Field Training and Evaluation	Municipal Police Trn Council
01/11/88	Law Enforcement Trainers Seminar	Delgado Community College
01/11/88	ASLET International Seminar Staff Instructor	ASLET
03/13/87	PPCT Defensive Tactics System Intermediate Instructor	PPCT Management Systems
03/13/87	PPCT Defensive Tactic System Instructor	PPCT Management Systems
03/06/87	Achieving Excellence in Law Enforcement	PSTF MCC
01/30/87	Intermediate PR-24 Instructor	Monadnock Training Council
01/29/87	Performance Conditioning Instructor Certification	Fitness Institute for Police Fire and Rescue
11/13/86	Street Survival II	Calibre Press Inc.
08/12/86	Firearms Instructor Refresher	PSTF MCC
06/09/86	Pressure Point Control Basic Certification	PPCT Management Systems
06/09/86	Justice System Training Association Trainer Seminar	JSTA
06/09/86	JSTA Instructor Seminar	Milwaukee Area Technical College
01/17/86	Intermediate PR-24 Instructor	Monadnock Training Council
DATE:	TOPIC:	AGENCY:
11/15/85	Defensive Tactics Instructor	Indiana State Law Enforcement Training Board

11/15/85	Defensive Tactics Instructor	JSTA
08/22/85	RISC Management Handcuffing Trainer Certification	JSTA
08/22/85	Handcuffing Trainer Certification	PSTF MCC
08/15/85	Pressure Point Control Instructor Certification	JSTA
08/15/85	Pressure Point Control Instructor	PSTF MCC
07/30/85	Kubotan Instructor	DTI Inc.
04/24/85	Street Survival Seminar	Calibre Press Inc.
02/12/85	NRA Police Firearms Instructor	NRA
01/11/85	PR-24 Instructor	Monadnock Training Council
12/19/84	Active Countermeasures Trainer Certification	JSTA
10/01/84	Police Firearms Instructor	Municipal Police Trn Council
06/28/84	Street Survival Seminar	Calibre Press Inc.
07/27/83	Street Survival Seminar	Calibre Press Inc.
01/14/83	PR-24 Instructor	Monadnock Training Council
10/19/82	Survival Training React and Control	United Telephone Co. of Ohio
02/19/82	Street Survival Tactics for Armed Encounters	Brookfield Police Department
04/03/81	Field Training and Evaluation	PSTF MCC
02/22/80	PR-24 Instructor	Monadnock Training Council
05/23/79	Interview and Interrogation	PSTF MCC
11/03/78	Breath Test Operator	Municipal Police Trn. Council
09/19/78	Doppler Traffic Radar Operator	Fairport Police Department
03/25/78	Basic Training Course for Police Officers	Monroe County Sheriff's Department
03/25/78	Basic Course for Police Officers	Municipal Police Training Council

PUBLICATIONS

Date:	Topic:	Publication:
09/01/15	Boots (commentary)	ILEETA Journal
07/01/11	The Invisible Gorilla	ILEETA Review
04/01/11	PowerPoint for Public Safety Manual	ILEETA Review
12/01/10	Product Review – The Apple iPad: What Can It Do for Trainers?	ILEETA Review
09/01/10	Course Review – Force Science Certification	ILEETA Review
01/01/10	Book Review: The Art of Learning	ILEETA Review
03/01/09	The 28 th Annual International Monadnock Conference	Tactical Response Magazine
03/01/09	Book Review: The Back of the Napkin	ILEETA Review
01/01/09	Book Review Slide:ology	ILEETA Review
10/01/08	Software Review: Game Show Pro	ILEETA Review
06/01/08	Book Review: Leadership: Texas Holdem Style	ILEETA Review
03/01/08	ILEETA Review –Writers Digest Magazine	ILEETA Review
01/01/08	What Cops Learn From Life-or-Death Encounters by Charles Remsberg, Chapter 3 – "Naked Fear" written by Guy Rossi	Book "Blood Lessons"
12/01/07	Technology Review: The Big Switch PC to Mac	ILEETA Review
09/01/07	Technology Review: Mind Mapping Software	ILEETA Review
04/01/07	Book Review: Crazy Busy	ILEETA Review
11/01/06	Technology: A Bluetooth Workout	ILEETA Review
12/30/05	What Is the ILEETA Review	ILEETA Review

12/30/05	Macromedia Captivate Review	ILEETA Review
07/01/04	ILEETA's First International Training Conference Hailed as Success (Written with Bill Harvey, Guy Rossi co-author)	Police Magazine
11/01/02	Welcome Three New PMA Advisory Board Members	PMA
07/01/00	The Cutting Edge	PMA
11/01/97	Weapon Retention for the Thigh-Worn Holster	PMA
Date:	Topic:	Publication:
09/01/97	Edged Weapon Defense	PMA
09/01/96	Trap Blocks: Beyond The Kiss Principle	PMA
07/01/96	Controlling the Short Barreled Sub-Gun	PMA
11/01/95	Taking Control	Police Magazine
03/01/95	Field Training and Evaluation	Law & Order
03/01/94	Survival Tactics: Don't Be Afraid of the Dark	PMA
01/01/94	Deceptive Body Movement	PMA
01/01/94	Stance, Balance and Movement	Best of Police Marksman Book
01/01/94	Persuasive Compliance Techniques Part 1	Best of Police Marksman Book
01/01/94	Persuasive Compliance Techniques Part 2	Best of Police Marksman Book
01/01/94	Persuasive Compliance Part 3, Pressure Point Control	Best of Police Marksman Book
01/01/94	Persuasive Compliance Part4, Pressure Point Control	Best of Police Marksman Book
01/01/94	Tactical Handcuffing Part One	Best of Police Marksman Book
12/01/93	The Stress Management Team	Colonic Guardian
12/01/93	Ring of Truth	Colonic Guardian
12/01/93	Jennifer's Nightmare	Colonic Guardian

12/01/93	Reasonable Suspicion	Colonic Guardian
12/01/93	No Fare	Colonic Guardian
12/01/93	Hot Stuff: A New Defensive – Tac-Down	Colonic Guardian
09/01/93	How Has The Rodney King Decision Affected Law Enforcement Training: A Trainers Perspective	PMA
09/01/93	Management of Aggressive Behavior Book Review	PMA
07/01/93	Back-up Weapons Part 2	PMA
05/01/93	Running on Faith (Commentary)	Police Magazine
05/01/93	Back-up Weapons Part 1	PMA
01/01/93	What's New in Concealment and Dress Holsters?	PMA
01/01/93	Practicing for the Street (Chapter 35 of the book, Total Survival by Ed Nowicki)	Performance Dimensions Publishing
09/01/92	Protect and Restraint: The PR-24 Police Baton	PMA
07/01/92	Baton Training	PMA
05/01/92	Tactical Handcuffing Part Two	PMA
04/01/92	Book Review: True Blue	Police Magazine
03/01/92	Tactical Handcuffing Part One	PMA
12/01/91	Ultimate Survivors: Winning Against Incredible Odds (Video Review)	PMA
11/01/91	Handgun Retention/Disarming – Part III	PMA
11/01/91	Cap-Stun	PMA
09/01/91	Weapon Retention	PMA
09/01/91	Use of the Monadnock Straight Baton Review	PMA
07/01/91	Equipping a Surveillance Van	Law Enforcement Technology
05/01/91	Handgun Retention Part One	PMA
05/01/91	The Third Annual ASLET Seminar	PMA

05/01/91	Book Review: Street Weapons	PMA
03/01/91	Street Survival Ten Years Later Part 2	PMA
03/01/91	Hard Reactionary Techniques “Countermeasures”	PMA
01/01/91	Street Survival Ten Years Later Part 1	PMA
11/01/90	Stunning Methods of Control	PMA
10/01/90	The Black Cloud (Fiction)	Law Enforcement Technology
09/01/90	Persuasive Compliance Part 4 Pressure Point Control	PMA
09/01/90	Are You Willing To Pay The Price?	ASLET Journal
07/01/90	Persuasive Compliance Part 3 Pressure Point Control	PMA
06/01/90	To Protect and Restrain	Law Enforcement Technology
05/01/90	Out of Sight – Out of Mind: Distinguishing Concealed Weapons	Police Magazine
05/01/90	Persuasive Compliance Techniques Part 2	PMA
01/01/90	Subject Control: Stance, Balance and Movement	PMA
11/01/89	Reporting Subject Resistance	PMA
10/01/89	It Happened To Me (written anonymously)	Combat Handgun
09/01/89	Tactics for Subject Control	PMA
09/01/89	Commentary	ASLET Journal
05/01/89	American Society of Law Enforcement Trainers Seminar	PMA
05/01/89	Avoiding the Treat of Contact Diseases While Controlling Arrestees PMA	PMA
05/01/89	To The Best Of My Ability	ASLET Journal
11/01/88	Avoiding The Treat of Contact Diseases While Controlling Arrestee’s	ASLET Journal

05/01/88	The 1988 American Society of Law Enforcement Trainers Seminar	PMA
03/01/88	Evaluating Deadly Force Decisions	Police Marksman Magazine (PMA)
11/01/87	Police Firearms Training for Off-Duty Confrontations	PMA
07/01/87	Simulation as a Testing Tool	PMA
08/01/86	Assaulted in Your Vehicle	Police Magazine
07/01/86	Progression of Force: The Gray Area	PMA
05/01/86	A Broad Based System	International Association of Law Enforcement Firearms Instructors Newsletter
03/01/86	Defensive Tactics Simulation Training	PSDI Memorandum
01/01/86	Simulation In Training For PR-24 Requalification	PMA
11/01/85	Complacency Quiz	PMA
09/01/85	Letter to Editor	PMA

SPECIAL PUBLICATIONS:

05/30/2011	Amicus Brief Contributor – Edward Peruta v. County of San Diego	U.S. 9 th Circuit Court of Appeals
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PRESENTATIONS:

1982 - present	Mr. Rossi has presented at numerous local and national conferences on defensive tactics, officer survival, mentorship, field training and evaluation as well as writing for law enforcement periodicals. He also instructs on Personal Safety, Management of Aggressive Behavior, Verbal Defense and Influence and Workplace Violence. Said presentations have occurred throughout the United States during his more than thirty year career of instructing at the International Monadnock/Safariland, American Society of Law Enforcement Trainers (ASLET) the International Association of Law Enforcement Educators and Trainers Association (ILEETA), the American Society of Industrial Security and Defense Research Institute conferences to name a few.
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AWARDS:

09/10/09	Inducted into the Monadnock Hall of Fame
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ADVISORY
BOARD
MEMBERSHIPS

04/22/2010	Mr. Rossi named to the prestigious International Law Enforcement and Educators Trainer Association (ILEETA) Advisory Board
04/22/11	Brite Strike Advisory Board Member
04/01/11	Safe Approach To Aggressive Behavior (SAM) Advisory Board

ADDITIONAL PROFESSIONAL ACTIVITIES

- Director of Seminar Relations for the American Society for Law Enforcement Training 1988-1996
- Technical Editor for Police Marksman Magazine 1985-1990
- Computer Liaison for the Public Safety Training Facility & Monroe Community College
- Distance Learning Approval Committee for Monroe Community College
- Recognized as a Law Enforcement Training and Use of Force Expert in State, Federal Courts and Arbitration Hearings.
- Speaks on issues related to workplace violence, personal safety and

managing aggressive behavior

- Use of Force Expert Panel Presentation at the 2017 International Law Enforcement Trainers and Educators Association conference.

PROFESSIONAL MEMBERSHIPS

- Charter Member, American Society for Law Enforcement Training (ASLET)
- Charter Member, International Law Enforcement Educators and Trainers Association (ILEETA)
- Member, International Association of Law Enforcement Firearms Instructors
- Member, National Rifle Association
- Member, Armed Citizen Defense Network
- Member, Police Writers Association

COMMUNITY ACTIVITIES

- D.A.R.E. concert performances in New York State as a musician with the band *Lightning*, 1991-1998
- D.A.R.E. concert performances in New York State as a musician with the band *Rochester Brass & Electric*, 1998-2012
- Monroe County Probation Officer Association Seminar Presenter, 2001, 2004 & 2014
- Women's Self Defense Workshops, Monroe Community College, 2003-2004
- October, 2005 – Presenter, Florida Criminal Justice Standards and Training Commission Instructor's Conference – "Extraordinary Instructors."
- April 2006 – Presenter, Greater Rochester Chapter American Society for Public Administration Seminar – "Program Development."
- Community College Citizen Preparedness Programs (FEMA) ongoing since January 2010
- April 2011 – Presenter, Enough is Enough School Violence Presentations, Monroe Community College

REFERENCES

Director John Perrone
Homeland Security Management Institute
1190 Scottsville Rd.
Rochester, New York 14624
585.753.3920 or email: jperrone@monroecc.edu

Marie D'Amico, Esq.
Deputy County Attorney
33 N. Fitzhugh St.
Rochester, NY 14614
585.753.1468 or email: marie.d'amico@dfa.state.ny.us

Aimee Paquette, Esq.
Syracuse, NY Assistant Corporation Counsel
233 E. Washington Street
300 City Hall
Syracuse, NY 13202
(315) 448-8400 or email: APaquette@syr.gov

Edward Nowicki
Former Director International Law Enforcement Educators and Trainers
Association
P.O. Box 1003
Twin Lakes, WI USA 53181-1003
262.279.7879 or email at ed@ilecta.org

David Monk
Former Program Coordinator of In-Service Training
Public Safety Training Facility of Monroe Community College
1190 Scottsville Rd.
Rochester, New York 14624
585.753.3716 or email: dmonk@monroecc.edu

Frank Colaprete, Ed.D.
43 Collenton Drive
Rochester, New York 14626
585.368.9436 or email at colapre1@rochester.rr.com

Lamar Cousins
2721 Craigmillar St.
Henderson NV, 89044
5857039729 or email: Lcousins837@gmail.com

Guy Rossi Expert Trial and Deposition
Testimony

I have testified as an expert at a trial and deposition in the past; most recently in

Federal Court

Emon Dawkins vs. City of Utica (1993) – (for defendants)
Newland, et al. v. County of Monroe (2010) (for defendants)
Brozak V. County of Monroe, NY (2013) (for defendants)
Martin v. Town of Colonie (2013) (for defendants)
Homer v. Village of Avon (2010)(for defendants)
Cochran v. Town of Colonie (2012) (for defendants)

State Court (Criminal)

People v. Hessney (2016) (for defendant)
People v. Dowdell (2013) (Monroe County) (for prosecution)
People v. Jerry Laramay (2012) (for defendant)
People v. Hessney (2014) (for defendant)

State Civil

Brozak v. County of Monroe (2013) (for defendant)

Deposed

9th District Amicus Brief (2011)
Recognized as an expert and assisted in the research and writing of Peruta v.
City of San Diego

9th District Amicus Brief (2014) Assisted in the research and writing of
Washington v. City of Sunnyvale

New York State Rifle and Pistol Association et. al. v. Andrew Cuomo
(NYS SAFE ACT) (2012)

Shew v. Malloy (CT) (2013)

Kolbe et. al v. O'Malley (MD) – District Court of Maryland (2013)

Huellett v. Syracuse NYPD - 2016

Guy Rossi and Associates, LLC

64 Loch Revan Heights
Rochester, New York 14617
(585) 752-4805
grossi@rochester.rr.com

Consultation and Expert Witness Fee Structure

- Retainer \$2000
- Initial Consultation \$200 per hour for verbal and preliminary review of all available materials to determine acceptance and merits of the case.
- Site Inspections, interviews or investigations \$200 per hour.
- Follow-up review of reports, research, depositions, grand jury transcripts and \$200 per hour.
- Opinion Paper Writing \$250 per hour.
- Depositions and Trials: \$2000 per day
- Cancellations not made 48 hours in advance will incur a \$400 fee
- Travel – round trip pre-paid business class is required on all flights. Rental cars/ taxi when necessary will be invoiced as expenses and payable within 10 days. Personal vehicle will be invoiced at fifty seven cents per mile.
- Lodging, meals and other miscellaneous expenses such as parking, telephone calls, tolls, mail, etc. will be invoiced and paid within 10 days

CERTIFICATE OF SERVICE

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Case Name: *Flanagan, et al. v. California Attorney General Xavier Becerra, et al.*
Case No.: 2:16-cv-06164-JAK-AS

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

EXPERT REPORT OF GUY ROSSI

on the following party by mail service. 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 Long Beach, 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 June 30, 2017.

Xavier Becerra, Attorney General of California	<i>Attorneys for Defendant</i>
P. Patty Li, Deputy Attorney General	<i>Attorney General of the State</i>
E-mail: Patty.Li@doj.ca.gov	<i>of California</i>
Jonathan M. Eisenberg, Deputy Attorney General	
E-mail: Jonathan.Eisenberg@doj.ca.gov	
300 South Spring Street, Suite 1702	
Los Angeles, CA 90013	

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

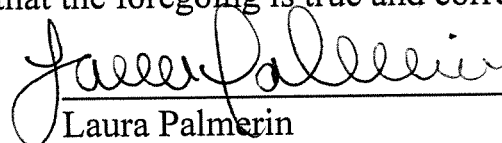

Laura Palmerin

EXHIBIT 8

EXPERT WITNESS REPORT OF SEN. JOHN COOKE

Colorado Senator
200 E. Colfax Ave.
Denver, CO
80203
(303) 866-4415
jbcookelaw@hotmail.com

Flanagan v. Becerra (U.S.D.C., C.D. Cal.), No. 2:16-cv-06164-JAK-AS

Rebuttal to Expert Witness Report of Former Covina Chief of Police Kim Raney

QUALIFICATIONS:

1. In January of 2015, I retired as the Sheriff of Weld County, (the “Office”) State of Colorado after 35 years of law-enforcement service. I served as the elected Sheriff for 12 years before being term limited. I served as the Operations Captain and Undersheriff for two years, Lieutenant for five years, as a Sergeant for five years, as a Persons Crime Investigator for five years and as a patrol Officer for six years. Currently I am a State Senator for Senate District 13 in the State of Colorado.

2. As Sheriff, I was the Chief Law-Enforcement Officer of Weld county, among many other responsibilities. I was responsible for the delivery of public-safety services to a community of 280,000 residents, and the leadership of over 340 employees of the Office. As part of my responsibilities I helped formulate and execute department policies for all sorts of matters, including deputy interaction with the public. I was regularly briefed by my command staff about issues facing the department, deputies, and the public that required my attention,

Besides being the Chief Law Enforcement Officer of the County, I was also the Chief Fire Marshall for the county, in charge of Court House Security, Civil process, managed an 800 bed jail facility and was the only official in the county who could lawfully issue concealed weapons permits. I was the Sheriff when an F-4 tornado hit the town of Windsor in 2008 – when a patrol deputy was shot and killed by a gang member in 2010 and when floods ripped through the county in 2013.

3. As Captain, I was responsible for the Office’s Operations Division, which included patrol, investigations of major crimes reported to the Office, and the crime lab.

4. As a Lieutenant, I served as the supervisor in charge of internal affairs and community standards, which included complaints against the agency and its personnel. Also organizing and approving background investigations for deputy

applicants. I also organized and taught our department's in-house training academies for new hires.

5. As Sergeant, I was a patrol Sergeant, responsible for first line supervision of a patrol shift, providing guidance, leadership and training to deputies. I was also a Detective Sergeant, tasked with overseeing the Investigations unit. The unit investigated all major crimes such as burglary, robbery, rape, sexual assaults, and homicides. Under my leadership as Investigations Sergeant, Weld County worked with the Mexican Government to successfully arrest and prosecute in Mexico three Mexican Nationals for a double murder that occurred in Weld County. Weld County was the first agency in the state of Colorado to do this.

6. As a Persons Crime Investigator, I investigated crimes of Rape, Sexual Assaults on Children, serious Assaults and Homicides.

7. As a patrol deputy, I responded to crimes in progress, routine patrol, community assistance, accident investigations, and investigations of misdemeanor crimes.

8. I was the president of the Western States Sheriff's Association in 2014, which included 13 states at the time, including Texas, Oklahoma, New Mexico, Colorado, Wyoming, Montana, Arizona, Utah, Idaho, Nevada, Washington, Oregon and California. In that role, I was involved in and organized meetings and discussions with local, state and national agencies regarding issues that affected the office of Sheriff and our communities. Before becoming president of Western States Sheriff's Association, I was also on its board of directors. In this capacity I helped develop policies, oversee the budget, provide training for our members and work with Federal agencies on topics that impacted our communities and states.

9. I was the president of the Rocky Mountain Chapter of the FBI National Academy for 2006 and 2007. I also served on the board for the FBI NA for several years before being elected president. My duties in that role included providing training for the members, overseeing the budget of the organization, working with Section One (all states west of Colorado) and the National Office.

10. From 2002 until 2015 I was a member of the County Sheriffs of Colorado and sat on its legislative committee. In this role, I testified at the capitol on bills that the organization either supported or were opposed to.

11. Under my leadership as Sheriff, in 2003, Weld County was the first and only agency in the state for over two and half years to post sex offenders on its webpage. I testified at the Colorado State capitol for two sessions regarding posting registered sex offenders on law enforcement websites when in 2005 the Colorado legislature finally passed a law allowing agencies to do so.

12. I received the August Vollmer award for excellence from the International Association of Chiefs of Police for my work in bringing a full service, stand-alone regional crime lab to Northern Colorado, consisting of six agencies where DNA ballistics, chemistry, digital, and fingerprint evidence is being analyzed through forensic science.

13. As a State Senator, during session I am on the Judiciary committee and the Colorado Crime and Juvenile Justice committee year round. I am also on the Legislative Oversight Committee Concerning the Treatment of Persons with Mental Illness in the Criminal Justice and Juvenile Justice Systems, and on the Sentencing Reform interim committee. During my time as Senator (2015-2017), I have been part of many bills concerning victims' rights, police and community, sentencing reform, protections for children and law enforcement officers. I was the Prime Senate Sponsor on SB 17-207 that created a state wide mental health system so that jails would no longer house people who were having a mental health crisis and committed no crime.

14. I received many awards for my efforts at the state legislature, including: "Rookie of the Year" my first year as senator from Law Week Colorado; and Legislator of the year from: Colorado Victims' Rights Association; Mothers Against Drunk Driving; County Sheriffs of Colorado; and the Contractor's Association.

15. I have a Bachelor of Science Degree in Sociology from the University of Northern Colorado. I am a graduate of the FBI National Academy, 174th session and the two-week Executive Leadership Seminar hosted by the FBI in Quantico, Virginia. I have presented at various training functions, such as the FBI Command College in Denver and the Western Missouri/Eastern Kansas Chapter of the FBI National Academy Associates.

16. I have not previously testified as an expert witness in any matter.

COMPENSATION:

I am not being compensated for my services in this matter, but will seek reimbursement for any travel expenses I may incur in providing those services.

ASSIGNMENT:

Plaintiffs' counsel asked that I review the Defendant's Expert Witness Report by Police Chief Kim Raney and evaluate and respond to his analysis regarding the public safety impact of restrictions on the open carry of firearms.

SUMMARY:

In my experience—beginning as a law enforcement officer through being a law enforcement executive, serving in a jurisdiction where the open carry of firearms is not prohibited and the issuance of concealed carry licenses is effectively automatic—the carrying of firearms by law abiding individuals, whether done so openly or in a concealed manner, does not hinder nor jeopardize law enforcement officers or public safety generally, in any meaningful way.

ANALYSIS:

1. Colorado law does not prohibit law-abiding individuals from openly carrying a firearm in public places. One does not need a license to openly carry a firearm under Colorado law.

2. During my tenure as a law enforcement officer, I personally witnessed countless individuals lawfully openly-carrying a firearm in public in Colorado, both in and outside of Weld County; including in the City of Greeley, which, according to the U.S. Census Bureau, generally has a population about double that of the population of the City of Covina, California, where Chief Kim Raney served.

3. During my tenure as Sheriff, I oversaw a few hundred patrol deputies, each of whom I know to have had similar experiences witnessing individuals openly carrying firearms in public, based on my communications and overseeing of them. I've never witnessed nor heard of a person committing a violent crime with a firearm that was being lawfully carried openly in a holster.

4. Chief Raney suggests that the mere presence of a firearm necessarily makes an encounter with a member of the public more dangerous and requires additional law enforcement resources. But, this is not the case. All people contacted by law enforcement are directed to keep their hands where the officer can see them and to follow their instructions. A person with a firearm holstered on the hip in plain sight with hands visible and responding to officer instructions is treated identically to someone who does not possess a firearm in plain sight; perhaps with the minor exception of a reminder not to touch the gun.

5. Should a person “fail to comply with an officer’s instructions or move in a way that could be construed as threatening,” (Raney at 6:14-15), that person is in danger of lethal force being used by the officer, regardless of whether a firearm is visible. A person acting in such a manner *without* a visible firearm is exponentially more likely to be subjected to lethal force than a person who is complying with officer instructions and has a firearm visible. In sum, it is the individual, not the firearm, that dictates the officer’s response.

6. I have never witnessed nor heard of—whether from my fellow officers or my constituents—public “panic,” let alone “chaos,” resulting from a law-abiding

person with a holstered pistol on the hip, as Chief Raney speculates would happen if open carry were not restricted (Raney at 8:20-23). I say “speculate” because Chief Raney does not provide any examples of such a response ever occurring; perhaps because he has no personal knowledge of any such example.

7. Chief Raney also suggests concealed carry might have the same effect of causing public “panic” and “chaos.” How a concealed firearm (one that can’t be seen) could cause panic is a mystery to me. As Sheriff, I have issued concealed carry licenses and have never experienced such a problem. Chief Raney tellingly cites no examples nor claims to have any experience with such incidents.

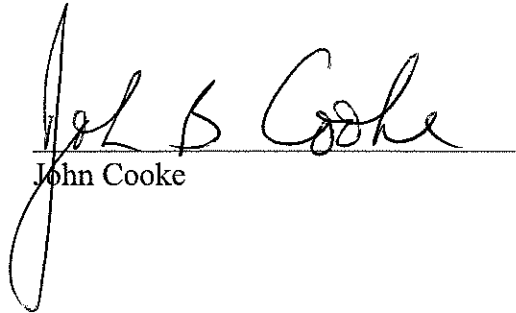
8. It is extremely rare that law enforcement encounters problems resulting from individuals who are lawfully carrying a firearm. This is because, from my experience as a law enforcement official, individuals who lawfully carry a firearm for self-defense are among the most law-abiding citizens in society.

9. From my experience as a law enforcement officer, criminals will carry their firearms unlawfully (usually concealed either because they are not allowed legally to have the firearm and want to avoid police detection or they intend to ambush an unsuspecting victim). Restricting law-abiding citizens from carrying a firearm for self-defense will not deter this behavior.

10. In sum, real world experience—in a jurisdiction made up of both rural and densely urban areas where open carry is lawful—establishes that the lawful open carrying of firearms does not endanger officer or public safety.

11. Banning open carry of firearms would not enhance public safety and would improperly restrict the ability of law-abiding individuals to defend themselves from criminals and aid law enforcement.

Dated: June 29, 2017



John Cooke

CERTIFICATE OF SERVICE

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

Case Name: *Flanagan, et al. v. California Attorney General Xavier Becerra, et al.*
Case No.: 2:16-cv-06164-JAK-AS

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 E. Ocean Blvd., Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

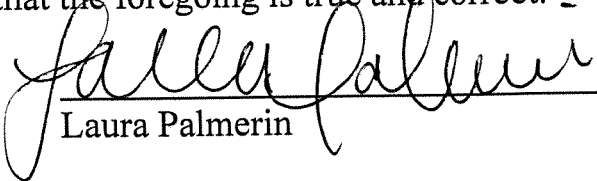
EXPERT WITNESS REPORT OF SEN. JOHN COOKE

on the following party by mail service. 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 Long Beach, 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 June 30, 2017.

Xavier Becerra, Attorney General of California
P. Patty Li, Deputy Attorney General
E-mail: Patty.Li@doj.ca.gov
Jonathan M. Eisenberg, Deputy Attorney General
E-mail: Jonathan.Eisenberg@doj.ca.gov
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

*Attorneys for Defendant
Attorney General of the State
of California*

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


Laura Palmerin

CERTIFICATE OF SERVICE
IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

Case Name: *Flanagan, et al. v. California Attorney General Xavier Becerra, et al.*
Case No.: 2:16-cv-06164-JAK-AS

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, am a citizen of the United States and am at least eighteen years of age. My business address is 180 East Ocean Boulevard, Suite 200, Long Beach, California 90802.

I am not a party to the above-entitled action. I have caused service of:

**DECLARATION OF SEAN A. BRADY IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY JUDGMENT**

on the following party by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Xavier Becerra, Attorney General of California	<i>Attorneys for Attorney</i>
P. Patty Li, Deputy Attorney General	<i>General of the State of</i>
E-mail: Patty.Li@doj.ca.gov	<i>California</i>
Jonathan M. Eisenberg, Deputy Attorney General	
E-mail: Jonathan.Eisenberg@doj.ca.gov	
300 South Spring Street, Suite 1702	
Los Angeles, CA 90013	

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

Executed October 2, 2017

/s/ Laura Palmerin

Laura Palmerin