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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

10 VIRGINIA DUNCAN, et al.,

11 Plaintiffs,

12 v.

13 XAVIER BECERRA, in his official
14 capacity as Attorney General of the State
of California,

15 Defendant.

Case No: 17-cv-1017-BEN-JLB

**SUPPLEMENTAL DECLARATION
OF ANNA M. BARVIR IN SUPPORT
OF PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT OR,
ALTERNATIVELY, PARTIAL
SUMMARY JUDGMENT;
EXHIBITS 87-88**

Hearing Date: April 30, 2018
Hearing Time: 10:30 a.m.
Judge: Hon. Roger T. Benitez
Courtroom: 5A


SUPPLEMENTAL DECLARATION OF ANNA M. BARVIR

1
2 1. I am an attorney at the law firm Michel & Associates, P.C., attorneys of
3 record for Plaintiffs in this action. I am licensed to practice law before the United
4 States District Court for the Southern District of California. I am also admitted to
5 practice before the Eastern, Central, and Northern Districts of California, the courts of
6 the state of California, the Supreme Court of the United States, and the D.C., Fourth,
7 Ninth, and Tenth Circuit Courts of Appeals. I have personal knowledge of the facts set
8 forth herein and, if called and sworn as a witness, could and would testify competently
9 thereto.

10 2. Attached hereto as **Exhibit 87** is a true and correct copy of excerpts from
11 the February 3, 2014 deposition of Dr. Christopher S. Koper in the matter of *Tardy v.*
12 *O'Malley*, United States District Court, District of Maryland, Case No. CCB-13-
13 2841.

14 3. On January 3, 2018, counsel for Defendant deposed Plaintiffs' designated
15 rebuttal expert, Gary Kleck. Attached hereto as **Exhibit 88** is a true and correct copy
16 of excerpts from the transcript of Dr. Kleck's deposition.

17 I declare under penalty of perjury that the foregoing is true and correct.
18 Executed within the United States on April 23, 2018.

19
20 
21 Anna M. Barvir
22 Declarant
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**EXHIBITS
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EXHIBIT 87

In The Matter Of:

*Shawn J. Tardy, et al. vs.
Martin J. O'Malley, et al.*

*Christopher S. Koper, Ph.D.
Vol. 1
February 3, 2014*

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

SHAWN J. TARDY, et al.

Plaintiffs

Case No.

vs.

1:13-cv-02841-CCB

MARTIN J. O'MALLEY, et al.

Defendants

_____/

The deposition of CHRISTOPHER S. KOPER,
PH.D. was held on Monday, February 3, 2014, commencing
at 1:48 p.m., at George Mason University, Research
Hall, 4400 University Drive, Fairfax, Virginia 22030,
before Amanda J. Curtiss, CSR, Notary Public.

REPORTED BY: Amanda J. Curtiss, CSR

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1 more new permits. You would have to get one that's
2 already existing somehow.

3 Q So I could -- I could purchase one from
4 somebody whose already owned?

5 A Correct. If -- if you went through all the
6 proper procedures and background checks.

7 Q All right. But I couldn't do that with
8 respect to a semi-automatic long gun that's banned in
9 Maryland?

10 A You would -- you could keep the one that
11 you have right now, but you wouldn't be able to
12 transfer it, no.

13 Q Right. But I could if I jumped through the
14 right hoops get myself a machine gun; correct?

15 A Well, you know, Maryland legislatures and
16 the federal -- federal legislatures have different
17 considerations, different ways they chose to approach
18 the issue.

19 Q Right. And so the federal government never
20 actually banned machine guns?

21 A In a strict sense, that's perhaps true, but

1 they very heavily regulate them and restrict them.

2 Q Understood. We wouldn't want them falling
3 into criminal hands, would we?

4 A No.

5 Q Are you an expert in ballistics?

6 A I have some general knowledge. I -- I
7 should hesitate to call myself an expert, per se.

8 Q All right. And while you're an expert in
9 firearms policy, are you an expert in firearms?

10 A How do you mean?

11 Q Technical aspects of firearms, for
12 instance.

13 A I have a limited basic working knowledge.
14 Of course in doing the assault weapons work, I had to
15 learn a lot about different makes and models and their
16 features. I'm not the sort of person who could take
17 apart a firearm for you and put it back together.

18 Q You are not?

19 A No.

20 Q Do you own any firearms?

21 A No.

1 Q Have you ever owned any firearms?

2 A No.

3 Q Have you fired firearms?

4 A Yes.

5 Q When did you do that?

6 A In the -- I was in a police lab and I fired
7 some firearms before.

8 Q And when was that?

9 A Several years back.

10 Q And where was that?

11 A I remember firing some guns in a lab in
12 Kansas City. I'm not sure if I've been any place else,
13 but I remember that one.

14 Q All right. And what firearms did you fire
15 at the police lab in Kansas City?

16 A Some different handguns.

17 Q And do you recall what makes and models you
18 fired?

19 A Not clearly, no.

20 Q Do you recall if you fired revolvers?

21 A Yeah, there was one revolver and at least

1 MR. SWEENEY: All right. Let's pull out
2 the 2004 article. Let's mark this as the next exhibit.
3 I think we're finally at five.

4 (Koper Exhibit 5 was marked for
5 identification.)

6 (Off the record.)

7 BY MR. SWEENEY:

8 Q Let's go back on the record.

9 On page 81 of your 2004 report that we've
10 marked as Koper Exhibit 5, you state your conclusions
11 with respect to the effect of the assault weapon and
12 large capacity magazine federal ban; correct?

13 A Are you referring to the first full
14 paragraph?

15 Q Yes, I am.

16 A That's a partial statement of it, yes.

17 Q All right. And you state there quote,
18 "Because offenders can substitute non-banned guns and
19 small magazines for banned AWs and LCMs," meaning
20 assault weapons and large capacity magazines?

21 A Correct.

1 Q "There is not a clear rationale for
2 expecting the ban to reduce assaults and robberies with
3 guns." Am I reading that correctly?

4 A Yes.

5 Q And that correctly and accurately state
6 your conclusion with respect to the impact on
7 firearm-related crime of the federal ban on assault
8 weapons and large capacity magazines; correct?

9 A That's a partial statement of it.

10 Q All right. But -- but accurate in and of
11 itself?

12 A Yes.

13 Q Okay. And when you say you would not
14 expect the assault weapon or large capacity magazine
15 ban to reduce assaults with guns, that would include
16 assaults leading to homicides; correct?

17 A Not exactly. What I'm saying here is I
18 don't expect the overall level of assaultive violence
19 with guns to change whether or not these guns and
20 magazines are available, but what I am hypothesizing is
21 that changes in the use of these guns and magazines

1 could affect the share of attacks that involve -- that
2 result in injuries or deaths.

3 Q But -- but they -- you would not expect a
4 ban on assault weapons or large capacity magazines to
5 actually reduce the number of firearm-related assaults
6 or robberies; correct?

7 A Correct.

8 Q And you would not expect a ban on assault
9 weapons or large capacity magazines to reduce
10 firearm-related home invasions; correct?

11 A No. Correct, I mean.

12 Q And you wouldn't expect a ban on assault
13 weapons or large capacity magazines to reduce the
14 number of firearms assaults on police officers;
15 correct?

16 A Correct. That's fair enough.

17 Q On note 95 on that page, you address I
18 believe state bans on assault weapons in which you say,
19 "A few studies suggest that state-level assault weapon
20 bans have not reduced crime." Am I reading that
21 correct?

1 A Yes.

2 Q And is that still your view today?

3 A I've not seen any further studies of this
4 yet, but yes, I mean, essentially that's the
5 conclusion.

6 Q All right.

7 A With the qualifiers that are stated in the
8 rest of the footnote.

9 Q Let's mark this as Exhibit 6, please. Let
10 me show you what I've marked as Exhibit 6, which is an
11 article authored by Mark Gius, G-I-U-S, on an
12 examination of the effects of concealed weapon laws and
13 assault weapons bans on state-level murder rates.

14 (Koper Exhibit 6 was marked for
15 identification.)

16 A Okay.

17 Q And I first ask you are you familiar with
18 this article?

19 A No. I've not read this.

20 Q And has anyone mentioned this to you?

21 A Defense counsel did mention the existence

1 of this.

2 Q All right. And this appeared in Applied
3 Economics Letters; right?

4 A Okay.

5 Q And is that a peer reviewed journal, to
6 your knowledge?

7 A I don't know.

8 Q All right. And, you know, do you make it
9 your business to keep up with the literature on the
10 impact of firearms bans?

11 A I try to. How extensively I'm engaged in
12 that research might ebb and flow a little bit depending
13 on what exactly I'm working on at that time, so I see
14 this article, for example, just came out in last
15 November so that's quick to keep up with.

16 Q All right. And my reading of this, and I
17 appreciate if you just put it in front of you, is that
18 it concludes using data for the period I believe 1980
19 to 2009 that state-level assault weapons bans did not
20 reduce state-level murder rates. And that would be
21 consistent with the prior studies in your footnote 95

1 matters as much or more than statistical significance.

2 Q All right. And above that -- no,
3 nevermind. Scratch that.

4 Turning back to your 2004 study, did you
5 have anything in here on the impact on homicide rates
6 of the federal assault weapons and large capacity
7 magazine ban?

8 A We did a few things here that were a bit
9 tentative. As I said, the analysis of the key initial
10 intermediate outcome measures showed mixed results. So
11 we saw that there was a reduction in the use of assault
12 weapons, but not clearly a reduction yet in the use of
13 guns with large capacity magazines. So any further
14 analysis of impacts on measures like of injuries and
15 deaths was going to be ambiguous and somewhat
16 problematic, but nonetheless I did put together a few
17 basic trend lines for descriptive purposes looking at
18 some measures that I thought might potentially be
19 affected by ups and downs in the use of assault weapons
20 and large capacity magazines. So I was looking at a
21 few different things like the percentage of violent gun

1 crimes resulting in death. I think the percentage of
2 gunshot victimizations resulting in death. I also
3 summarized in chapter nine of this report some of the
4 other findings that we had had in the '97 report when
5 we had looked at some different similar types of
6 outcome measures.

7 Q On page 96 of your 2004 report marked as
8 Exhibit 5, that's your summary of your conclusions;
9 correct?

10 A Yes.

11 Q And in the third sentence you state, "There
12 has been no discernable reduction in the lethality and
13 injuriousness of gun violence," is that correct?

14 A Yes.

15 Q And is that still your view today based
16 upon your study and analysis of the impact of the
17 federal ban on assault weapons and large capacity
18 magazines?

19 A Yes. Based on the data that I analyzed,
20 it's still my view of it. Again, subject to the
21 qualifications that I noted earlier.

1 Q All right. And are you aware of anyone
2 else's data with respect to studying the impact of the
3 federal ban on assault weapons and large capacity
4 magazines that reached a conclusion different from the
5 conclusion that you state here?

6 A No.

7 Q Would you agree with me that the government
8 interest to be served by the federal assault weapon ban
9 and large capacity magazine ban was the reduction of
10 firearm-related violence; correct?

11 A You could view it that way or you could
12 view it more specifically as trying to get a reduction
13 in shootings in incidents with high numbers of shots
14 fired. And so, you know, again, I tended to view --
15 judge this more specifically in terms of effects on gun
16 injuries and gun deaths. As I noted in the report,
17 given the trends in use of assault weapons and large
18 capacity magazines that had been observed to that
19 point, I felt it was actually premature to make any
20 definitive conclusions about the ban's effects on gun
21 deaths and injuries. I felt that the effects of the

1 ban were still unfolding at that time and might still
2 take a while to fully unfold.

3 Q Isn't it true that as you sit here today,
4 you cannot conclude with a reasonable degree of
5 scientific probability that the federal ban on assault
6 weapons and large capacity magazines reduced crimes
7 related to guns?

8 A Correct.

9 Q And it didn't reduce the number of deaths
10 or injuries caused by guns either; correct?

11 A Correct.

12 Q Returning to your report for a moment,
13 Professor. I lost my copy of.

14 On paragraph five at the top of page two
15 you say, "Based on my research, I found, among other
16 things, that assault pistols" --

17 A I'm sorry. Could you clarify for me?

18 Q I'm sorry. Page two.

19 A Page two. Got you.

20 Q Paragraph five.

21 A Uh-huh.

1 Q Under "Summary of Findings."

2 A Okay.

3 Q You state, "Based on my research, I found,
4 among other things, that assault pistols are used
5 disproportionately in crime in general, and that
6 assault weapons more broadly were disproportionately
7 used in murder and other serious crimes in some
8 available data sources," correct?

9 A Yes.

10 Q Let's see if we can pull that apart so I
11 can understand what you're saying here. Now, how do
12 you define assault pistols?

13 A Handguns that have the military style
14 features qualifying as assault weapons.

15 Q And would you agree with me that they
16 became popularly used by criminals in connection with
17 the so-called crack epidemic of the 1980s?

18 A I don't know that I can make a statement
19 that specific. I can say that, I mean, there are
20 statistics in the report on how widely they were used
21 in crime. Generally assault weapons accounted for a

1 and considering mass shootings by the number of people
2 shot as opposed to the number of people killed --

3 A Uh-huh.

4 Q -- and if you assume four or more, can you
5 state to a reasonable degree of scientific probability
6 based upon the evidence available to you that banning
7 assault rifles will reduce the number of incidents of
8 mass shootings?

9 A I can't say that based -- I mean, I can't
10 make a firm projection of that based on any particular
11 available data. There might be data to suggest that
12 there could be some reduction in that, but it's hard to
13 really clearly project what that would be or how
14 difficult it might be to detect statistically.

15 Q We have to work with a legal standard for
16 expert opinion in the reasonable probability range.

17 A Uh-huh.

18 Q I'm not sure in the legal context what, you
19 know, firm means as you mean it, but I'm trying to
20 understand whether you can state your opinion to a
21 reasonable degree of scientific probability that

1 banning assault rifles would reduce the incidents of
2 public shootings, mass shootings.

3 A Again, I mean, all I can say is attacks
4 with those sorts of weapons tend to result in more
5 victims being hit, so it stands to some reason that if
6 you reduced the use of these types of weapons, it could
7 reduce the tallies of victims hit in these incidents.
8 And it's not actually just a matter of the mass
9 shooting incidents. It's also a matter of incidents
10 with high numbers of shots fired, regardless of how
11 many people get hit. So that has to be taken into
12 account as well.

13 And I've tended to focus more on that issue
14 in my research, you know, going back to the Jersey City
15 data, for example, that suggested that about five
16 percent of gunshot victimization stemmed from incidents
17 with more than ten shots fired. And so based on that,
18 one might project a small percentage reduction in
19 shootings overall from this type of legislation.

20 Q Do you have your publication of your
21 New Jersey data? Did you publish that?

1 A Yes. Uh-huh.

2 Q And when we looked at your CV, I know we
3 talked about it briefly, and is this the Reedy and
4 Koper 2003 article?

5 A Yes.

6 Q How many incidents did you study that
7 involved more than ten shots being fired?

8 A In the sample that we had, I believe there
9 were something like maybe six incidents that involved
10 more than ten shots fired.

11 Q And do you recall what the base was of
12 total incidents?

13 A It's in the -- it's in the study.

14 Q Why don't we mark this since we're going to
15 be talking about it? Exhibit 9.

16 (Koper Exhibit 9 was marked for
17 identification.)

18 MR. FADER: And John, maybe in the next
19 five minutes if we can take a little water break.

20 MR. SWEENEY: Now. Let's break right now.

21 (Off the record.)

1 BY MR. SWEENEY:

2 Q Back on the record.

3 While we were on the break, I tried to
4 focus myself on the portions of your 2003 study which
5 we have marked as Exhibit 9. First of all, it appears
6 that there were some -- well, if I look at the data
7 tables that you have on page 153 of Exhibit 9, figure
8 one involves assault incidents with a semi-automatic
9 pistol; correct?

10 A Yes.

11 Q And you had 239 of those; right?

12 A Yes.

13 Q How many of those involved more than ten
14 shots being fired? Where would I find that number?

15 A That would be on page 154 on table one. We
16 had -- one column has minimum shots fired estimates,
17 the other has maximum shots fired estimates if there
18 happened to be a range in the data.

19 Q Am I correct in interpreting this that it's
20 six out of approximately 165 pistol incidents in which
21 more than ten shots were fired?

1 A Yes.

2 Q So that's roughly 3.6 percent? Does that
3 sound about right to you?

4 A Yes.

5 Q Okay. Let me see if I can understand this
6 study a little bit more. Going back to page 153 figure
7 one, outcomes of assault incidents involving
8 semi-automatic pistols, you state handgun type was not
9 associated with attack outcomes; correct?

10 A In this categorical tree, that's correct.

11 Q All right. So regardless of whether
12 someone was using a semi-automatic pistol or a
13 revolver, there was no difference in the outcome be it
14 injury or death?

15 A Overall for the incident, yes.

16 Q All right. And immediately below figure
17 two you state, "Although pistol cases involved higher
18 numbers of shots, they were not significantly more
19 likely to result in injuries either fatal or nonfatal
20 than were revolver cases," is that correct?

21 A Yes. I think what we're talking about

1 there is when you're looking at the likelihood that a
2 gunfire incident resulted in any victimization, you
3 know, any injury, I think there was no significant
4 difference there. We did find a difference in the
5 number of people who are wounded.

6 Q On the right-hand column, second full
7 paragraph you state, "Finally, figures one and two show
8 that gunshot injury incidents involving pistols were
9 less likely to produce a death than were those
10 involving revolvers," correct?

11 A Yes.

12 Q Had you differentiated between pistols with
13 large capacity magazines and those without large
14 capacity magazines here?

15 A There was only limited data on that, so we
16 couldn't examine that in a great deal of depth.

17 Q So is it fair to say that based upon the
18 data in this study, pistols involving larger capacity
19 magazines were less likely to produce a death than were
20 those involving revolvers?

21 A I wouldn't necessarily say that. It would

1 depend. You'd have to look specifically at the cases
2 where a large capacity magazine was involved.

3 Q All right. But we don't really have that
4 breakdown reliably, do we, or at least completely?

5 A Not completely.

6 Q Can you interpret the data here to support
7 the statement that gunshot injury incidents involving
8 pistols with large capacity magazines were more likely
9 to produce death than were those involving revolvers?
10 Does your data support that statement?

11 A More likely to produce death?

12 Q Yes.

13 A No. I can't say that based on what we have
14 here.

15 Q All right. Now, under your discussion
16 below beginning with the second sentence, you state,
17 "Gun attackers using pistols tend to fire more shots
18 than attackers using revolvers," correct?

19 A Yes.

20 Q And then you go on to say, "This shot
21 differential does not appear to influence the

1 probability that an incident will result in injury or
2 death, nor the number of wounds sustained by gunshot
3 victims." Am I reading that correctly?

4 A Yes.

5 Q And that's the conclusion of this study;
6 correct?

7 MR. FADER: Objection.

8 THE WITNESS: Well, that's -- yeah, that's
9 only one conclusion. As we go on to say, offenders
10 using pistols tend to fire -- tend to wound more
11 persons. Also, it should be noted that while this is
12 not reported in this particular article, for the 2004
13 report on assault weapons we did some additional
14 analyses of cases involving more than ten shots and
15 those cases actually had a 100 percent injury rate.
16 You know, at least one person was injured in all of
17 those cases.

18 BY MR. SWEENEY:

19 Q Now, there were only a handful of such
20 cases in this study; correct?

21 A Correct.

1 MR. FADER: Objection.

2 THE WITNESS: It's hard to -- to break
3 down -- once again, you know, as we mentioned earlier,
4 it's harder to break down all these specific features
5 and describe which ones put a gun at highest risk of
6 being used in crime, I think, other than noting that
7 they're -- they're large capacity magazines and
8 different aspects of their design that are designed to
9 facilitate rapid fire.

10 BY MR. SWEENEY:

11 Q And isn't it true that criminals
12 overwhelmingly choose handguns over long guns to commit
13 crimes?

14 A Yes.

15 Q And your data would indicate that to the
16 extent there's a criminal preference for using assault
17 pistols, there isn't one evident from the evidence with
18 respect to using assault rifles by criminals; correct?

19 MR. FADER: Objection.

20 THE WITNESS: It's not as clear. As we've
21 discussed earlier, there are a few statistics from

1 which one might try to infer that, but the case, yeah,
2 it's not as clear. It's fair to say.

3 BY MR. SWEENEY:

4 Q Now, in paragraph eight of your report, you
5 state in the second sentence that Maryland's
6 recently-enacted ban on assault weapons and large
7 capacity magazines has the quote "potential" close
8 quote to accomplish a couple of things; correct?

9 A Yes. Okay.

10 Q Now, when you say potential, I'm trying to
11 understand what you mean here. Would you agree with me
12 that any law would have the potential to produce a
13 benefit?

14 MR. FADER: Objection.

15 THE WITNESS: Might depend on -- on what it
16 is. In this case, you know, I'm saying potential based
17 largely on my studies of the federal assault weapons
18 ban and what -- what we found there.

19 BY MR. SWEENEY:

20 Q Can you state with a reasonable degree of
21 scientific probability that the ban on assault weapons

1 and large capacity magazines in Maryland will reduce
2 the number of crimes committed with assault weapons and
3 other firearms with large capacity magazines?

4 A I can't put a probability on that. You
5 know, all I can say is based on the experience with the
6 federal assault weapons ban, that there are grounds for
7 believing that the Maryland law could achieve that in
8 extrapolating from the results of the federal study.
9 Otherwise, one has to actually study the implementation
10 of the Maryland law to begin putting, you know,
11 probabilities on it and measuring those effects.

12 Q All right. Can you say to a reasonable
13 degree of scientific probability that the ban on
14 assault weapons and large capacity magazines in
15 Maryland will reduce the number of shots fired in gun
16 crimes?

17 A Not sure what you mean by a reasonable
18 probability 'cause I just I can't put a probability on
19 it and tell you how likely it is to occur.

20 Q Can you say to a reasonable degree of
21 scientific probability that the Maryland ban on assault

1 weapons and large capacity magazines will reduce the
2 number of gunshot victims in such crimes?

3 A Again, same answer. I can't state it with
4 an exact probability at this time.

5 Q And if I ask you the same question with
6 respect to number four, reduce the number of wounds per
7 gunshot victim, and five, reduce the lethality of
8 gunshot injuries when they do occur, and six, reduce
9 the substantial societal costs that flow from
10 shootings, would your answer be the same?

11 A Yes.

12 Q Okay. Now, the Maryland law does not
13 prohibit all semi-automatic firearms; correct?

14 A Correct.

15 Q And criminals can substitute semi-automatic
16 firearms that aren't banned; correct?

17 A Those and other guns.

18 Q Right. And isn't that variable something
19 that you can't control and one of the reasons why you
20 can't say to any probability whether or not the ban
21 will accomplish the six items that you state in

1 paragraph eight of your report?

2 MR. FADER: Objection.

3 THE WITNESS: In principle, the
4 substitution of non-banned guns and magazines has the
5 potential to lessen the lethality and injuriousness of
6 gun attack incidents. So I wouldn't say that the
7 Maryland ban is going to reduce the rate of gun crime,
8 but what I am saying is there's a possibility it could
9 reduce shots fired, people hit, wounds inflicted, those
10 sorts of things in attacks that -- that happen.

11 BY MR. SWEENEY:

12 Q If a particular banned assault rifle, a
13 Colt AR-15, can readily be substituted with a Colt AR
14 HBAR, isn't the ban unlikely to have any significant
15 impact on the use of assault rifles in crime?

16 A Well, that one particular instance, it
17 seems that the policy makers for whatever reason have
18 allowed one similar variation of the AR-15 to still be
19 legal. I don't know what all the considerations were
20 in doing that. I suppose it was part of political
21 bargaining. But it does raise the possibility that

1 A Uh-huh.

2 Q Is that because you cannot say to a
3 reasonable degree of scientific probability?

4 A In some of these cases, you have very small
5 numbers of incidents. It may be hard to do say
6 statistical significance tests. In some cases, there
7 are statistical significance tests showing that there
8 is a significant difference between the two sets of
9 cases. So beyond that, it's harder to say. I mean, we
10 don't -- we don't have randomized trials testing the
11 impact of weapon type on attack outcomes, so there
12 is -- there's always going to be some debate over the
13 patterns and the correlations in the data.

14 Q To press my point but without trying to,
15 and please forgive me, I don't want to sound like I'm
16 badgering you in any respect. But the limitations of
17 the scientific data are such that you simply can't say
18 to a reasonable degree of scientific probability that
19 you would be able to reduce public shootings even if
20 you were to eliminate large capacity magazines;
21 correct?

1 MR. FADER: Objection. You can answer.

2 THE WITNESS: Again, you can't say that
3 you'll eliminate all public shootings. What these data
4 suggest is that you would reduce the number of victims.
5 I can't necessarily -- it's hard to put specific
6 probabilities on it, but that's what these data
7 suggest. When you see some -- some of these
8 comparisons that were done in Luke's Dillon's thesis
9 even showed statistically significant differences
10 between the LCM cases and the non-LCM cases, that would
11 seem to provide some better degree of scientific
12 certainty.

13 BY MR. SWEENEY:

14 Q But because of the availability of multiple
15 firearms and multiple magazines that aren't large
16 capacity, can you truly say to a reasonable degree of
17 scientific probability that reducing the number of or
18 even eliminating the number of large capacity magazines
19 will reduce either the incidents of mass public
20 shootings or the number of people injured in such
21 public shootings?

1 A I guess the best way to answer that would
2 be that we'd have to -- we'd have to test that. We'd
3 have to see a circumstance where use of large capacity
4 magazines was significantly reduced and see what impact
5 that has on -- on these sorts of shootings.

6 Q And that's because we simply don't have
7 that evidence today; correct?

8 A We do have some evidence relevant to that.
9 It's just how -- how far you can push it, I guess.

10 Q Not far enough to state with a reasonable
11 degree of scientific probability; correct?

12 MR. FADER: Objection.

13 THE WITNESS: Yeah, I struggle a little bit
14 with that particular phrase because I can't put any
15 specific probability or tell you with -- with, you
16 know, five percent, one percent probability that there
17 will be this change. I can simply point to the numbers
18 that exist in these studies, and some of these
19 differences are statistically significant differences
20 and so it suggests in principle that if you could
21 reduce the use of these magazines, you could get a

1 reduction.

2 BY MR. SWEENEY:

3 Q And when we're talking about the
4 probability, in order to say more probable than not
5 it's more than 50 percent likelihood.

6 A Uh-huh.

7 Q And I take it the evidence just doesn't
8 support that right now?

9 MR. FADER: Objection.

10 THE WITNESS: I would be cautious in making
11 the inferences about, you know, how certain it is that
12 it would happen.

13 BY MR. SWEENEY:

14 Q And so you cannot say that it would be more
15 likely than not to achieve that?

16 A Not -- I would have to see more
17 observation. Have to see what happens.

18 Q All right. On page 13, footnote 26, you
19 touch on this in -- this issue of a perpetrator
20 substituting other guns for banned assault weapons, and
21 of course that would also include substituting multiple

1 magazines for banned large capacity magazines. Isn't
2 it likely in Maryland that a criminal who wants to
3 commit a crime with a firearm will still do so even
4 with the new law?

5 A Who wants to commit a?

6 Q A crime.

7 MR. FADER: Objection.

8 THE WITNESS: Would commit a crime with
9 another weapon you're saying?

10 BY MR. SWEENEY:

11 Q Yes.

12 A Yes.

13 Q And isn't it likely that in Maryland, the
14 law will have little or no impact on the frequency of
15 firearm crime in general?

16 A I would say that's a reasonable inference.

17 Q Have you -- are you familiar with the Safe
18 Streets Program?

19 A In Maryland?

20 Q Yes.

21 A Not specifically. There's a lot of

1 Commonwealth of Virginia

2 County of Fairfax:

3 I, AMANDA J. CURTISS, a Notary Public of
4 the State of Virginia, Fairfax County, do hereby
5 certify that the within-named witness personally
6 appeared before me at the time and place herein set
7 out, and after having been duly sworn by me, according
8 to law, was examined by counsel.

9 I further certify that the examination was
10 recorded stenographically by me and this transcript is
11 a true record of the proceedings.

12 I further certify that I am not of counsel
13 to any of the parties, nor in any way interested in the
14 outcome of this action.

15 As witness my hand this 5th day of
16 February, 2014.

17 

18 Amanda J. Curtiss, CSR
19 Notary Public

20 My Commission Expires:
21 October 31, 2015 - #7513095

EXHIBIT 88

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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

3 -----:

4 VIRGINIA DUNCAN, et al., :

5 Plaintiff, :Case No.

6 v. :17-cv-1017-BEN-JLB

7 XAVIER BECERRA, in his :

8 official capacity as :

9 Attorney General of the :

10 State of California, et :

11 al., :

12 Defendants.:

13 -----:

14 Deposition of GARY KLECK taken at the
15 offices of Kirkland & Ellis, LLP, 655 Fifteenth
16 Street, NW, Washington, DC on Wednesday, January 3,
17 2018, beginning at 9:00 a.m. before Sydney R.
18 Crawford, a Notary Public in and for the District of
19 Columbia.

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REPORTED BY: Sydney R. Crawford
FILE NO.: AB0D9A1

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1 magazines, did they have multiple guns, so.

2 If they had not had that large capacity
3 magazine, could they still have inflicted as many
4 casualties by using smaller capacity magazines,
5 those that are legally allowed with 10 or fewer
6 rounds in them.

7 By definition, incidents where large
8 capacity magazines were not used could not possibly
9 have been influenced by large capacity magazines,
10 it's sort of ridiculously obvious. But sometimes
11 you're too close to a subject and you miss the
12 obvious.

13 Q. Is it your opinion that LCMS can only
14 impact mass shootings in terms of the casualty
15 counts involved?

16 A. Well, there might be other aspects that
17 can be affected, but it wasn't the subject of my
18 research.

19 Q. Okay. How did you go about figuring out
20 whether there would have been an impact on the
21 number of fatalities if LCMS had not been available?

22 A. Well, I wanted to know did the way the

1 events occur require the use of a large capacity
2 magazine. Is there not the same kind of potential
3 for shooting many people without large capacity
4 magazines, so that was a function of finding out,
5 well, how often did those who use large capacity
6 magazines also have other abilities to fire many
7 rounds fairly rapidly without significant
8 interruption.

9 That is to say, how many had either
10 multiple guns and/or multiple magazines which they
11 could use and rapidly reload. And it turns out all
12 of them did. In short, the mechanisms that had been
13 proposed by advocates of large capacity magazine
14 bans don't have any support when -- or virtually no
15 support when you study the way the mass shootings
16 have actually occurred.

17 They imply, for example, that somehow
18 without large capacity magazines, shooters would be
19 more often interrupted by bystanders or potential
20 victims tackling them, or they argue that the use of
21 large capacity magazines somehow affects how many
22 moments of non-firing there are when victims would

1 have an opportunity to escape.

2 And so I was interested in those proposed
3 mechanisms. They're not ones I invented, but
4 they're ones that are repeatedly mentioned by
5 supporters of large capacity magazine bans. And so
6 I simply looked at the details of mass shootings
7 that are relevant to those, those claimed
8 mechanisms. And what I found is virtually all mass
9 shooters, A, are not tackled while reloading. And
10 B, don't significantly or in most cases at all slow
11 their rate of fire, increasing the time when they're
12 not shooting, allowing victims to escape. While,
13 maybe there are maybe other mechanisms people have
14 never publicly articulated, or that nobody has
15 thought of yet, but with regard to the mechanisms
16 that advocates had articulated, they are
17 inconsistent with what we know about how mass
18 shootings occur.

19 Q. Now, you use the term "mass shootings."
20 You explain what you mean by that?

21 A. There's many different definitions.
22 They're always defined by a cutoff, in terms of

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1 number of casualties. One commonly used definition
2 is four or more people killed. But I regard the
3 defining mass shootings on the basis of those who
4 were killed is somewhat arbitrary.

5 Because there may well be no more than
6 four people shot, total, if four are killed, it's
7 possible four are killed and there are no nonfatal
8 woundings. And you scarcely need a magazine holding
9 over 10 rounds to shoot four times especially if
10 you're a mass shooting -- a mass shooter who is
11 strongly motivated to kill and who fires at very
12 close range against unarmed victims.

13 And so it didn't strike me as that
14 definition was a useful one because it didn't help
15 isolate cases where you would need a large magazine
16 capacity or where a large magazine capacity is
17 likely to be relevant.

18 So I thought a more appropriate definition
19 pertained to number of persons shot, period, whether
20 killed or not. So -- and I also set as the cutoff
21 as to how many people had to be shot in order for it
22 to be qual -- to qualify as a mass shooting.

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1 Any cutoff would be somewhat arbitrary.
2 You could make arguments for virtually any cutoff,
3 but I thought a less arbitrary rationale was you
4 could use an ordinary six-shot revolver, and that's
5 the most common magazine capacity of revolvers, if
6 you want to call it that.

7 You could easily shoot six people with an
8 ordinary revolver of the sort that, I don't know,
9 Wyatt Earp might have used in the 1880s. And so if
10 you wanted to identify cases where it's very likely
11 you had to have a somewhat larger ammunition
12 capacity than that possessed by the typical
13 revolver, you'd have to look at incidents where more
14 than six people got shot. So that's why I picked
15 the cutoff of six rather than five or seven or
16 whatever. It was the most common ammunition
17 capacity of old fashioned revolvers.

18 Also by setting the cutoff higher, let's
19 say using six rather than five or four or whatever,
20 I was deliberately favoring the hypothesis that
21 large capacity magazines would affect the casual
22 count. Because it's almost universally argued,

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1 including by advocates, that it's mass shootings,
2 and it's cases where many rounds are fired, and
3 where many people are shot.

4 Those are the ones where it's most likely
5 the use of a large capacity magazine will have an
6 impact. And so by setting the cutoff higher, I was
7 in effect favoring the hypothesis that large
8 capacity magazine use makes a difference.

9 Q. You mentioned advocates of large capacity
10 magazines. Is it fair to say that you do not
11 consider yourself an advocate of large capacity
12 magazines?

13 A. You mean bans on them?

14 Q. Thank you. Yes.

15 A. Right. I'm not an advocate of either. Of
16 either using them or banning them.

17 Q. Okay. You said that if LCMs, large
18 capacity magazines, are not used in a particular
19 mass shooting, then they could not have impacted
20 that shooting.

21 Can you explain that?

22 A. No, I'm not sure there's anything I can

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1 add. If there was no large capacity magazine used,
2 then obviously it can't have any effect. I mean,
3 I'm not sure I can offer any further clarification
4 on that. It's just a logical point.

5 Q. In your opinion, if a large capacity
6 magazine is not available to an individual
7 committing a mass shooting, could it have impacted
8 that particular shooting?

9 A. Well, no. Because if it's not available
10 to them, then they obviously also couldn't have used
11 it. And if they didn't use it; then, no. There was
12 no use that could have affected the outcome of the
13 incident.

14 Q. What about the reverse, if a large
15 capacity magazine is available to a mass shooter,
16 could it have affected that particular shooting?

17 MS. BARVIR: I'm going to object to these
18 questions as calling for speculation, incomplete
19 hypotheticals, vague and ambiguous.

20 But go ahead if you can understand.

21 THE WITNESS: Okay. Could you ask the
22 question again?

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1 (Record read.)

2 THE WITNESS: It would be entirely a
3 function of whether they actually used it, not
4 whether it was available to them. I mean, only
5 actual use, meaning they fired rounds from, and only
6 that could affect the casualty count.

7 And if I had to be more specific, really
8 only firing a number of rounds that only a larger
9 capacity magazine would be capable of holding, only
10 that would imply some possible effect on the
11 casualty count.

12 BY MR. ZELIDON-ZEPEDA:

13 Q. Okay. Thanks for the clarification.

14 Are there any other aspects of mass
15 shootings that you have studied in this context
16 regarding LCM bans other than casualty counts?

17 A. Not that I recall, although some stuff
18 I've done on assault weapons goes way, way back to
19 like the late '80s, so nothing that I can recall at
20 this time.

21 Q. How did you go about studying this
22 particular phenomenon, whether LCMS had an impact in

1 mass shootings as to casualty count?

2 A. Well, first of all, I had to get as
3 comprehensive a set of mass shootings in which more
4 than six people were shot, and it was known that a
5 large capacity magazine was used. So I consulted
6 multiple resources, including Violence Policy
7 Center's compilation of mass shootings regarding
8 large capacity magazines.

9 I consulted other sources but it turned
10 out none of the other sources yielded any additional
11 cases beyond what the Violence Policy Center had
12 identified.

13 And so, for example, there's -- there's a
14 website called ShootingTracker.com, and it attempts
15 to document every single mass shooting where they
16 define it rather liberally as anything involving I
17 think five or more people shot, but it's a more
18 liberal definition, a more inclusive definition than
19 I use.

20 And yet I did not find any cases there
21 either that hadn't already been included in the
22 Violence Policy Center compilation. So that is the

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1 first step, identifying all of the cases in which it
2 was at least possible that use of a large capacity
3 magazine had affected the casualty count.

4 And then I gathered whatever accounts were
5 publicly available on each of the incidents. There
6 was always press accounts, because this was a very
7 newsworthy topic. And in some cases there were also
8 official investigative reports that were publicly
9 available, so, for example, particularly important
10 mass shootings like the Sandy Hook shooting had an
11 official governmental report on it. And so when
12 those were available, I used those as well to gather
13 information about the key details of each incident.

14 And in particular, I was interested in how
15 many guns did the shooter use and how many magazines
16 did they have or make use of. So not just, you
17 know, whether they had a large capacity magazine,
18 whether they were disrupted in their fire by -- by
19 bystanders tackling them or otherwise disrupting
20 their shooting, whether or not they reloaded during
21 the incident or at least whether it was reported
22 that they had reloaded.

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1 And then the next step was statistically
2 analyzing the data I had gathered and put it into a
3 computer file where I recorded each of these bits of
4 information about each of the mass shootings.

5 And so it was a matter of whether or not
6 there was a relationship -- mostly I wanted to know:
7 Were there mass shootings in which the shooter only
8 had one magazine and one gun, and therefore would
9 have had to have had a large capacity magazine in
10 order to continue firing large numbers of rounds
11 without -- without interruption.

12 Because I was testing specifically the
13 notions proposed by advocates of large capacity
14 magazine bans as to how that kind of ban, or
15 conversely, the possession of large capacity
16 magazines would affect how many people got hurt.

17 So in effect, my analysis was determined
18 largely by the concerns and the rationales offered
19 by supporters of these bans for how large capacity
20 magazines might affect how many people got killed or
21 injured.

22 And so I had to know things like did they

1 have the ability to simply continue firing without
2 large capacity magazines, because they had multiple
3 magazines, or because they had multiple guns. And
4 could literally have simply continued firing with
5 either no interruption or minimal interruption of a
6 few seconds, even had they only had small capacity
7 magazines.

8 So what I found is all of the mass
9 shooters who use large capacity magazines had the
10 ability to simply continue firing large number of
11 rounds even had they only been equipped with
12 magazines holding quantities of rounds permitted
13 under existing law.

14 Q. What is the Violence Policy Center?

15 A. It's a gun control advocacy organization.
16 It's -- it's not a membership organization, I think
17 it's financed mostly by pro-gun control private
18 foundations. And, you know, it's mostly an office
19 and a letterhead and a website, and, you know, and a
20 staff who are interested in promoting various forms
21 of gun control, which changes over time.

22 But one of the things they recently have

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1 advocated is banning large capacity magazines.

2 Q. You also mention that you relied on press
3 accounts of mass shootings. I'm assuming where they
4 were available?

5 A. There are always news accounts available
6 on mass shootings. It's an extremely newsworthy
7 kind of event. And usually multiple sources are
8 available, especially as the casualty count goes up,
9 which means these are cases where it's more likely
10 that one would need a magazine with a large capacity
11 to carry out such massive shootings.

12 Those become even more newsworthy, and so
13 it's likely that you have more and more news
14 accounts including some that provide details that
15 the others did not.

16 So I would usually look through all of
17 those that I could locate, they were heavily
18 duplicative. I would always use official sources
19 when they were available. They usually weren't
20 except for the various highest scale mass shootings.

21 But for the most part, I would rely on a
22 limited number of news accounts to provide the

1 necessary details.

2 Q. Did that in any way impact your ability to
3 generalize to the broader population?

4 A. The broader population of what?

5 Q. Of mass shootings?

6 A. You mean to generalize to those that did
7 not involve large capacity magazines?

8 Q. Yes.

9 A. Well, I had no interest in generalizing to
10 those. The relevant population was strictly those
11 in which large capacity magazines were used. Simply
12 because it was a logical point that they couldn't
13 have had any effect where they were used at all.

14 Q. So you mentioned you also used, besides
15 press accounts and the Violence Policy Council,
16 official investigations or reports; is that right?

17 A. Yes.

18 Q. Okay. And that you were looking for, I
19 counted four particular questions, and I can go
20 ahead and go through them, but did all the reports
21 for the incidents of mass shootings have this
22 information available?

1 A. They had information on all of the -- all
2 of the -- at least one news account would have
3 information on all of the things I discussed so far,
4 but what I did not discuss so far was the rapidity
5 of fire. That is, how many shots were fired per
6 second or how many seconds per shot.

7 And that was the kind of information that
8 was most frequently missing from news accounts.
9 When semi-automatic weapons are used, it's easy to
10 establish how many shots are fired. You don't have
11 to rely on eyewitness testimony for that, because
12 investigators can simply count the number of
13 expended shells.

14 And unless somebody has swiped, you know,
15 the expended shells, which I suspect would be very
16 unusual, they know pretty much exactly how many
17 rounds were fired.

18 On the other hand, as to how long the
19 shooting lasts, that's the kind of information
20 that's most likely to be missing from news accounts
21 because it relies ultimately on eyewitness
22 testimony.

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1 The reporters may talk to the police, but
2 the police in turn are relying on eyewitness
3 guesses. And under stressful circumstances, you
4 know, there is likely to be a certain amount of the
5 error in eyewitness testimony on such a subtle issue
6 as to how long did the firing go on.

7 Q. And how did you account for that in your
8 review of this information?

9 A. Well, I studied all of the incidents where
10 those two pieces of information were available.
11 There's nothing I can do about cases where it wasn't
12 available. But where it was known, A, how many
13 rounds were fired; and B, how long the firing
14 lasted, those are the ones I studied for the purpose
15 of judging rapidity of fire.

16 Q. And how could you derive the rate of a
17 rapidity of fire from knowing the amounts of, sounds
18 like bullet casings retrieved, and an approximate
19 time of how long the shooting lasted?

20 A. Simply by dividing one number by the
21 other.

22 Q. Okay.

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1 A. So you divide the total number of seconds
2 that the shooting lasted by the number of rounds
3 fired as measured by the number of recovered shell
4 casings.

5 Q. Now, that would give you the average
6 amount of time between --

7 A. Correct.

8 Q. But it wouldn't give you an idea of the
9 rate of the particular shooting?

10 A. No. You'd be lucky enough to get the
11 average, but to get, you know, different rates of
12 fire in different, you know, sub portions of the
13 shooting, that would be very, very difficult to
14 acquire.

15 One unique exception to that would be
16 the -- the shooting in -- the Batman shooting as it
17 was known, it was in a movie theater. And I think
18 the manager of the movie theater had called 911 when
19 the shooting began or after the shooting had begun,
20 and so there was a police 911 recording -- audio
21 recording of what they could hear from, you know,
22 their end of the shooting going on at the movie

1 theater.

2 But that's really unusual; normally you
3 wouldn't have an audio recording. That's because
4 somebody was still calling the cops while the
5 incident was going on.

6 Q. And you mentioned potential factors that
7 might affect the ability to measure the time that
8 the particular shooting lasted, including the fact
9 that the individuals involved are under stressful
10 situations, so they're not able to keep literal
11 track of time?

12 A. That's correct.

13 Q. Okay. So another one of the things that
14 you looked at when you're doing this research of
15 mass shootings was whether the shooter reloaded
16 during the incident? Is that correct?

17 A. Yes.

18 Q. To your recollection, did all your sources
19 of information have some info -- have some data on
20 this particular point?

21 A. No.

22 Q. They didn't?

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1 A. Did not.

2 Q. Could you give me an approximation of how
3 many did?

4 A. No. I really wouldn't be able to say.

5 Q. All right.

6 A. Just the -- you know, there were some that
7 didn't have the information.

8 Q. Is it fair to say that this would also be
9 a factor that's influenced by distress that an
10 eyewitness might be under in this situation?

11 A. It -- it might affect whether or not any
12 one eyewitness retained that -- noticed in the first
13 place and stored the information away and then could
14 recover it later on, when police or reporters asked
15 them about it. But it's less likely that everyone
16 would fail to notice that. See, this is a different
17 kind of issue from the time issue.

18 It only takes one person to see the person
19 reloading and accurately report that afterwards to
20 establish that, yes, the shooter did reload.

21 On the other hand, with time that the
22 shooting lasted, you might have 12 eyewitnesses,

1 five of which can't you give you any estimate and
2 then the rest offer differing estimates of how long
3 the shooting lasted.

4 And so, you know, there's, a lack of
5 consensus whereas it really only takes one person to
6 say, yeah, I saw him reloading.

7 Q. Is it fair to say that news accounts, for
8 example, don't generally rely on one person's
9 account of a particular incident?

10 A. No. Unless you're talking about a police
11 department spokesperson, often, you know, the
12 reporters are getting the information indirectly.
13 They don't always interview eyewitnesses themselves,
14 and so it's only in that sense that they're relying
15 on one person, the police department spokesman, that
16 he in turn is almost certainly relying on eyewitness
17 testimony from multiple eyewitnesses.

18 Q. Okay. And is it -- for these types of
19 accounts, isn't it fair to say that it's possible
20 that different witnesses view different events of,
21 for example, reloading, specifically?

22 A. Well, it's certainly possible. Only some

1 would notice and others would not notice, that's
2 true.

3 Q. Or is it also possible that from some news
4 accounts that I've read, for example, if a shooter
5 went through different rooms and then one person was
6 only in one room, he or she would only notice if
7 that shooter reloaded in that particular room; for
8 example.

9 Or if another witness was in another room
10 where the shooter went, then that specific witness
11 would only notice those particular ones. Do you see
12 what I'm saying?

13 A. Well, those who saw the reloading,
14 regardless of what rooms it occurred in, could say,
15 yes, this person, the shooter reloaded. But nobody
16 could be sure the shooter did not reload, just from
17 the fact that they didn't witness it.

18 It could have been, they did reload, but
19 they just weren't looking in the right direction at
20 the time, or in your hypothetical, they weren't in
21 the right room to witness it.

22 Q. But it's fair to say just more broadly

1 that it's kind of, there's a lot of difficulties
2 involved in gathering this type of information?

3 A. Right, but less so with the reloading
4 issue than with the rate of fire issue for the
5 reasons I've mentioned. You know, it only takes one
6 person to see that the individual reloaded in order
7 to identify, yeah, this guy was a reloading mass
8 shooter, so I should point out that, you know, with
9 reloading what you're establishing sort of a minimum
10 baseline.

11 You know that there were at least this
12 many mass shooters who reloaded because they were --
13 there were that many who witnessed by at least one
14 eyewitness as reloading. But there are, of course,
15 others who may have reloaded and it was not
16 witnessed by anyone, not even one eyewitness.

17 Q. And going to another aspect that you're
18 looking at of these mass shootings, if the shooter
19 was obstructed by a victim, would that also be
20 particularly complicated with different eyewitness
21 accounts?

22 A. Whether the shooter was tackled by

1 bystanders?

2 Q. Yes.

3 A. No. I don't think so. I mean the exact
4 details of how it happened, maybe, but not -- not
5 the fact that the guy was tackled and then caused to
6 no longer shoot.

7 Q. Okay. So did the fact that at the very at
8 least rapidity of fire and whether the shooter
9 reloaded, is the fact that those particular factors
10 could have been reported differently from different
11 sources, did that somehow impact your ultimate
12 conclusion?

13 MS. BARVIR: Objection. I think that
14 misstates the prior testimony, but go ahead.

15 THE WITNESS: Well, the fact that some
16 reports said the guy reloaded and others were silent
17 on the issue, that didn't create a complication to
18 me. I had affirmative evidence, the guy had
19 reloaded.

20 It's not necessarily all news outlets that
21 would have paid attention to that, or thought it was
22 worth reporting in the story. So in that case, no,

1 it was not problematic that multiple sources
2 mentioned the reloading or didn't mention the
3 reloading, it was sufficient, that one report of it.

4 On the other hand, rates of fire, you
5 might have different news outlets reporting the
6 statements of different eyewitnesses for their
7 estimate for how long the time, the shooting lasted.
8 And there was a conflict, but unfortunately the real
9 problem was news accounts not mentioning it at all,
10 period. There are a lot of mass shootings in which
11 I didn't have any information from any of the news
12 sources, either because eyewitnesses couldn't say
13 how long the shooting lasted or at least none of the
14 news outlets bothered to put that information into
15 the story, so that was a problem, yeah.

16 BY MR. ZELIDON-ZEPEDA:

17 Q. We discussed how many cases you have been
18 involved in as an expert in the past four years.
19 Could you give me an estimate of how many cases
20 total you have provided work as an expert?

21 A. Not without looking at my vitae. But I'd
22 say, I don't know, maybe 15 maybe. 15 to 20,

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R E P O R T E R C E R T I F I C A T I O N

I, Sydney R. Crawford, Shorthand
Reporter in and for the District of Columbia do
hereby certify to the following: That the witness
was duly sworn by the officer and that the
transcript of the oral deposition is a true record
of the testimony given by the witness, That pursuant
to the information given to the deposition officer
at the time said testimony was taken, the following
includes counsel for all parties of record: I
further certify that I am neither counsel for,
related to nor employed by any of the parties or
attorneys in the action in which this proceeding was
taken, and further that I am not financially or
otherwise interested in the outcome of the action.
Certified to by me this 26th day of January, 2018.

Sydney Crawford
Notary Public
of the District of Columbia

My Commission Expires on:


April 20, 2019

1 STATE OF Florida

2 COUNTY OF Leon

13 EXECUTED this 3rd day of February,
14 2018, at Tallahassee, Florida.
(City) (State)

16
17
18
19



Gary Kleck

21 State of Florida, County of Leon
22 Sworn to (or affirmed) and subscribed before me this 3rd day of Feb.
23 2018, by Gary Deck Shaunme Scott
24 Notary
Personally known _____ or Produced Identification X
Type of Identification FL DL



AB0D9A1

JANUARY 31, 2018

LETTER TO DEPOSITION OFFICER/ERRATA SHEET

DEPOSITION OF:

GARY KLECK

DATE OF DEPOSITION:

JANUARY 3, 2018

CASE:

VIRGINIA DUNCAN, ET AL. VS. XAVIER BECERRA,
ETC., ET AL.

The following are the corrections which I have made to my transcript:

PAGE#	LINE#	CORRECTION	REASON FOR CORRECTION
31	20	I've → They've	Court reporter error
38	14	Causal → Cause and	" " "
57	10	most research → most recent	" " "
67	14	process. I → process that I	research " " "
78	21	casual → casualty	" " "
82	17	five → four	I misspoke
85	3	guns. And → guns, and	Court reporter error
105	6	person → person who	" " "
107	11	who ought to → who	I misspoke
108	22	prior or → prior	Court reporter error

Please sign your name and date it on the below line. As needed, use additional paper to note corrections, dating and signing each page. If you have no corrections, please write the word "None" above and sign, date, and return this page.

EXECUTED this 3rd day of February, 2018,
 at Tallahassee, Florida,
 (City) (State)
Gary Kleck
 (Signature)

Exhibit 88

Gary Kleck 2-3-18

Additional Corrections to Transcript of January 3, 2018 Deposition of Gary Kleck

<u>Page</u>	<u>Line</u>	<u>Correction</u>
131	8	standards → standard
135	1	I'm → Am I
141	1	past → passed
184	18	separately → separately made
194	18	range → rate
197	21	fire → firing
205	7	capacity → caliber
205	8	capacity → caliber
222	22	either → either didn't
233	5	of → or
241	5	aggravate → aggregate
246	5	number → matter
249	9	of → are
253	8	whereas → whereby
262	5	shootings → shootings, as if
262	6	example → sample
263	20	mass shootings → LCMs
270	13	remember → remembered
288	3	about → from
288	21	1983 → 1993
292	15	filling → flinging
292	20	at → as
293	5	case → place
304	8	path → past
308	12	victimization → victimizations

Gary Kleck 2-3-18

Additional Corrections to Transcript of January 3, 2018 Deposition of Gary Kleck

308 14 other → year

308 20 or → to

321 5 casual → casualty

323 7 conflict → inflict

CERTIFICATE OF SERVICE

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Case Name: *Duncan, et al. v. Becerra*

Case No.: 17-cv-1017-BEN-JLB

IT IS HEREBY CERTIFIED THAT:

I, the undersigned, declare under penalty of perjury that I am a citizen of the United States over 18 years of age. My business address is 180 East Ocean Boulevard, Suite 200 Long Beach, CA 90802. I am not a party to the above-entitled action.

I have caused service of the following documents, described as:

**SUPPLEMENTAL DECLARATION OF ANNA M. BARVIR IN SUPPORT
OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT OR,
ALTERNATIVELY, PARTIAL SUMMARY JUDGMENT; EXHIBITS 87-88**

on the following parties by electronically filing the foregoing on April 23, 2018, with the Clerk of the District Court using its ECF System, which electronically notifies them.

John D. Echeverria
Deputy Attorney General
john.echeverria@doj.ca.gov
300 South Spring Street, Suite 1702
Los Angeles, CA 90013

Mr. Anthony P. O'Brien
Deputy Attorney General
anthony.obrien@doj.ca.gov
1300 I Street, Suite 125
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct.
Executed on April 23, 2018, at Long Beach, CA.

/s/Laura Palmerin
Laura Palmerin