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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**SOUTHERN DIVISION**

STEVEN RUPP, et al.,

Plaintiffs,

vs.

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

Defendant.

Case No.: 8:17-cv-00746-JLS-JDE

**DECLARATION OF SEAN A.  
BRADY IN SUPPORT OF  
PLAINTIFFS' MOTION TO  
EXCLUDE THE TESTIMONY OF  
DEFENDANT'S EXPERT  
WITNESS DETECTIVE MICHAEL  
MERSEREAU UNDER FEDERAL  
RULE OF EVIDENCE 702**

Hearing Date: July 5, 2019  
Hearing Time: 10:30 a.m.  
Judge: Josephine L. Staton  
Courtroom: 10A

**DECLARATION OF SEAN A. BRADY**

I, Sean A. Brady, am an attorney at the law firm Michel & Associates, P.C., attorneys of record for Plaintiffs in this action. I am licensed to practice law before the United States Court for the Central District of California. I have personal knowledge of the facts set forth herein and, if called and sworn as a witness, I could and would testify competently to the truth of the matters set forth herein.

1. On October 25, 2018, Defendant served Plaintiffs with the Expert Report of Detective Michael Mersereau. A true and correct copy of Ms. Allen's expert report, is attached hereto as **Exhibit 1**.

2. On December 4, 2018, I deposed Defendant's expert witness, Michael Mersereau. Attached hereto as **Exhibit 2** is a true and correct copy of experts from the deposition transcript of Michael Mersereau.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed within the United States on May 28, 2019.

/s/ Sean A. Brady

Sean A. Brady  
Declarant

# **EXHIBIT 1**

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

**STEVEN RUPP; et al.,**

Plaintiffs,

**v.**

**XAVIER BECERRA, in his official  
capacity as Attorney General of the  
State of California et al.,**

Defendants.

8:17-cv-00746-JLS-JDE

**EXPERT REPORT AND  
DECLARATION OF DETECTIVE  
MICHAEL MERSEREAU OF THE  
LOS ANGELES POLICE  
DEPARTMENT**

I, Michael Mersereau, declare and state as follows:

1. I am a Detective employed by the Los Angeles Police Department (the "LAPD") as a sworn officer for approximately 22 years. I have personal knowledge of the facts set forth below except those stated on information and belief. As to those facts, I believe them to be true and if called as a witness, could and would testify competently thereto.

2. I am currently assigned to the LAPD Gun Unit and have been for approximately 15 years. The LAPD Gun Unit is involved exclusively in the enforcement of the California Dangerous Weapons Control Act and the Municipal Code of the City of Los Angeles as it pertains to firearms. Prior to this assignment, I worked uniform patrol, uniformed gangs, and divisional gang detectives. In these assignments, I have encountered a wide variety of firearms and firearms accessories, including assault rifles, and I have made numerous arrests for firearms violations.

1           3. Pursuant to my current assignment, I received training from the Bureau  
2 of Alcohol, Tobacco, Firearms and Explosives (BATFE) on illegal firearms  
3 trafficking, firearms identification and tracing, undercover operations, hidden  
4 compartment identification and recognition, assault weapons, and Federal Firearms  
5 laws. I have also received informal training on the above- mentioned subjects from  
6 more experienced investigators. I routinely review California Department of  
7 Justice (DOJ) and BATFE publications related to firearm identification and  
8 transactions. I have attended numerous gun shows and firearms trade expositions.  
9 I routinely review Firearms Industry trade publications. I have spoken to hundreds  
10 of persons engaged in the business of firearms sales. I have also been involved in  
11 numerous investigations of illegally transferred firearms, possession of prohibited  
12 weapons including machine guns, assault weapons, and short barrel shotguns and  
13 rifles, as well as possession of firearms by prohibited persons. As a result of these  
14 investigations, I have seized or participated in the seizure of hundreds of assault  
15 rifles and numerous high capacity magazines. I am a court qualified firearms  
16 expert and have testified on multiple occasions as such. I have also fired many  
17 different firearms including various assault weapons and machine guns for training  
18 and court testimony.

19           4. Gun violence is a significant problem in Los Angeles. The LAPD lacks a  
20 central database of all firearms related statistics. The statistics set forth below are  
21 accumulated by many different entities within the department including the Gun  
22 Unit and Robbery Homicide division. Here are some statistics for the past several  
23 years regarding gun-related crimes in Los Angeles:

Year	Total Number of Gunshot Victims
2013	1012
2014	994
2015	1119
2016	1180
2017 (as of 9/6/17)	718

Year	Total Number of "Shots Fired" Calls
2013	2198
2014	2134
2015	2419
2016	2628
2017	N/A

Year	Total Number of Firearms Related Arrests
2013	1225
2014	1153
2015	1265
2016	1509
2017	N/A

5. Not surprisingly given the above statistics, the number of weapons seized both city-wide, and by the gun unit, are high as well. Here are some statistics for the past five years regarding gun-related seizures:

<b>Year</b>	<b>Total Number of Firearms Booked Citywide</b>
2013	5130
2014	5529
2015	6151
2016	5908
2017 (as of 9/6/17)	4513

6. Statistics regarding assault weapons and machine guns (as define in the California Penal Code) are provided because these guns typically use large-capacity magazines. The LAPD does not keep statistics on the number of assault weapons and machine guns recovered citywide due to the expertise needed to determine whether a weapon is actually an assault weapon or a machine gun. The below statistics represent Assault Weapons / Machine Guns recovered by the Gun Unit only. Citywide numbers are likely higher.

<b>Year</b>	<b>Number of Assault Rifles/Machine Guns recovered by the Gun Unit</b>
2013	123
2014	113
2015	145
2016	89
2017	125

7. With respect to large-capacity magazines specifically, the statistics provided below represent only the seizure of large capacity magazines by the Gun Unit. As with assault rifles, the LAPD does not keep statistics on the number of large-capacity magazines recovered citywide.

Year	Number of Large-Capacity Magazines Recovered by the Gun Unit
2013	601
2014	392
2015	8826 <sup>1</sup>
2016	224
2017	551

8. It is my opinion, based on my training and experience, that assault rifles (as defined by California Penal Code sections 30510 and 30515) pose a greater danger to both police officers and the public than other unrestricted semi-automatic, centerfire rifles with detachable (non-fixed) magazines. What distinguishes Assault Rifles from unrestricted rifles (as described above) is the presence of one or more features enumerated in the California Penal Code including a pistol grip (including a forward pistol grip) or thumbhole stock, adjustable stock, or flash suppressor. These features when attached to a semi-automatic, centerfire rifle with a detachable magazine make that rifle more dangerous to police offices and the public due to an increase in the lethality of the rifle. The purpose of each of these features is to increase the control of the rifle that they are attached too. Increased control leads to the ability of the shooter to fire rounds faster and with more accuracy. Any modification to a firearm that allows a shooter to fire rounds faster with increased accuracy leads to greater potential lethality.

9. The most ubiquitous feature of assault weapons is the pistol grip or thumbhole stock. Modern military battle rifles are almost universally equipped with pistol grips. Modern military battlefield tactics rely on the ability of troops to send, rapidly and accurately, a large number of rounds down range towards enemy positions. Pistol grips and thumbhole stocks provide the combatant with more

<sup>1</sup> This was due to an abnormal seizure regarding a deceased individual at a condominium in the Pacific Palisades.



1 control of the rifle and thus more accuracy during rapid fire. Pistol grips and  
2 thumbhole stocks also position the trigger finger relative to the trigger so that the  
3 trigger press is in a straight line. This allows the shooter to not only be more  
4 accurate but also increases the speed with which rounds can be fired. Pistol grips  
5 and thumbhole stocks serve the same purpose when installed on civilian semi-  
6 automatic rifles in that they increase the number and accuracy of rounds that can be  
7 fired by any given shooter in a given amount of time.

8 10. Adjustable stocks also contribute to the control of the rifle in that they  
9 allow the shooter to optimize the rifle to their arm length. This increases the  
10 shooter's ability to rapidly send rounds down range with increased accuracy. By  
11 collapsing the stock, the rifle becomes more concealable potentially allowing a  
12 suspect to introduce the firearm into a vulnerable location such a school or  
13 workplace with less fear of detection.

14 11. Flash suppressors also contribute to the potential lethality of a rifle.  
15 Flash suppressors function to reduce the "flash signature" in the shooter's field of  
16 vision in low light conditions. By reducing the effect of the muzzle flash on the  
17 shooter's night vision, the shooter can get back on target quicker. The ability to  
18 acquire one's sight picture faster allows the shooter to more rapidly deliver rounds  
19 to the target with greater accuracy. Many flash suppressors on the market are  
20 hybrid designs meant not only to reduce the flash signature of the rifle but to limit  
21 barrel rise which increases accuracy.

22 12. By definition, assault rifles are capable of accepting a detachable (non-  
23 fixed) magazine. These magazines can hold as many as 100 rounds. Large  
24 capacity magazines allow the shooter to fire more rounds at their target(s) before  
25 the need to stop and reload. The use of detachable large capacity magazines in  
26 conjunction with any semi-automatic or fully automatic rifle makes that rifle more  
27 lethal.  
28

1           13. Adding any of the features described above further increases the ability  
2 of the shooter to accurately and rapidly deliver rounds to the target, increasing the  
3 potential lethality of the firearm beyond that presented by a featureless rifle. There  
4 is a direct correlation between a shooter's ability to inflict more casualties on  
5 targeted persons and the number of rounds immediately available to a shooter to  
6 more rapidly and accurately deliver those rounds on target. This has been  
7 illustrated in various mass-shootings in and around the City of Los Angeles over  
8 the past twenty years.

9           14. For example, in one of the most brazen crimes ever committed, on  
10 February 28, 1997, two heavily armed men robbed a Bank of America in North  
11 Hollywood. According to reports that I have read, the bank robbers emptied more  
12 than one thousand rounds of ammunition using fully automatic pistol grip equipped  
13 machine guns with high-capacity drum magazines (holding 75 to 100 rounds), an  
14 AR-15 assault rifle equipped with a pistol grip and converted to fire automatically  
15 with two high-capacity magazines (holding 100 rounds each), a semi-automatic  
16 HK-91 rifle equipped with a pistol grip and several 30-round high-capacity  
17 magazines, and armor-piercing bullets. The LAPD officers responding to the scene  
18 were outgunned and injured as a result of this incident. Indeed, twelve police  
19 officers and eight civilians were injured.

20           15. On August 10, 1999, a white supremacist fired shots into the lobby of the  
21 North Valley Jewish Community Center in Granada Hills. According to reports I  
22 have read, the shooter was armed with a fully-automatic Uzi machine gun, a semi-  
23 automatic pistol, and large capacity magazines. Three children, a teenage  
24 counselor, and an office worker were injured.

25           16. On June 7, 2013, a shooter opened fire in and around the campus of Santa  
26 Monica College. According to reports that I have read, the shooter was armed with  
27 a semi-automatic rifle (similar in type to an AR-15) equipped with a pistol grip,  
28

1 1,300 rounds of ammunition, and forty 30-round magazines. Five people were  
2 killed and four people were injured.

3 17. On November 1, 2013, a gunman opened fire at the Los Angeles  
4 International Airport. According to reports that I have read, the shooter used a  
5 Smith & Wesson M&P15 semi-automatic rifle equipped with a pistol grip and  
6 loaded with a detachable 30-round large-capacity magazine. The shooter also had  
7 five additional 30-round large-capacity magazines and hundreds of rounds of  
8 ammunition in his carrying bag. One TSA agent was killed and several other  
9 people were injured.

10 18. On December 2, 2015, a married couple targeted a San Bernardino  
11 County Department of Public Health event and Christmas party, killing fourteen  
12 people and wounding twenty-two others. According to reports that I have read, the  
13 shooters were armed with semi-automatic pistols, a Smith & Wesson M&P15 rifle  
14 modified to make it fully automatic and equipped with a pistol grip and detachable  
15 large capacity magazine, a DPMS A-15 rifle with a pistol grip that was modified to  
16 accept a detachable large-capacity magazine, and at least four large-capacity  
17 magazines.

18 19. It is my opinion, based on my training and experience, that the above-  
19 described attacks would have been less deadly had the shooters not been armed  
20 with assault rifles or assault rifles converted to machine guns.

21 20. There are numerous devices on the market that when installed on a semi-  
22 automatic rifle, increase the rifle's rate of fire to that of some machine guns. These  
23 devices are easily installed on the rifle without special tools or training. Although  
24 these "multiburst trigger activators" are unlawful in the state of California, they are  
25 widely available in neighboring states and on the internet. The LAPD Gun Unit has  
26 encountered an increasing number of these devices in the last several years.  
27 Combining a multiburst trigger activator with a rifle equipped with the above-

28

1 described features increases the lethality of the firearm many fold. This has been  
2 illustrated by a mass-shooting in the City of Las Vegas on October 1, 2017.

3 21. According to reports that I have read, a single shooter firing from a 32<sup>nd</sup>  
4 floor hotel window located some distance from a crowded outdoor concert venue  
5 was able to shoot to death 58 concert goers and injuring hundreds of others. This  
6 was the deadliest mass shooting in modern United States history. Reports about  
7 and photos of the gunman's weapons that I have viewed show that he was armed  
8 with numerous semi-automatic, centerfire rifles with detachable magazines and  
9 equipped with pistol grips. These firearms would meet the definition of an assault  
10 rifle if they were possessed within California. It is highly unlikely that this shooter  
11 could have inflicted as many casualties as he was able had his rifles not been  
12 equipped with features that were designed to help the shooter control his firearms  
13 with improved accuracy during rapid fire.

14 22. I have been involved in the seizure of assault weapons that have been  
15 converted into machine guns. This process is as simple as "dropping in" a few  
16 parts to a more involved process of drilling additional holes in the receiver of the  
17 rifle. Once modified in this manner, rifles equipped with the above-described  
18 features are indistinguishable from the battlefield rifles used by the world's military  
19 forces.

20 23. There is no evidence that assault rifles are "commonly" used for self -  
21 defense. While any firearm including an assault rifle could be used effectively in a  
22 self-defense scenario, handguns and shotguns are the more common and preferred  
23 choice. Legally sanction use of force including deadly force is commonly  
24 understood to be defense against an immediate and proximate threat of physical  
25 harm to one's self or others. In other words, the threat needs to be imminent and to  
26 some degree up close and personal. This proximity requirement makes a rifle an  
27 inappropriate and unnecessary choice of weapon. The evidence cited in articles and  
28 by internet bloggers to support the assertion that assault rifles are "commonly" used

1 by the public to defend themselves is mostly based on anecdotal evidence as there  
2 is no uniformed collection of data on the subject. Many of the anecdotes cited by  
3 proponents for the use of assault rifles as defensive weapons involve the mere  
4 pointing of the rifle at the suspect who then fled with no shots fired. Pointing a  
5 handgun at a suspect would have the same effect. Other anecdotes involve assault  
6 rifles used to fend off unarmed suspects. Again, a handgun or shotgun would have  
7 the same effect and of course there are numerous non-lethal options available. In  
8 many of these scenarios cited the use of deadly force would not have been legally  
9 sanctioned. The purpose of deploying a rifle as opposed to a handgun should be  
10 based on the fact that the target is beyond the reasonable effective range of a  
11 handgun. Other considerations are a need to defeat body armor, fortified  
12 concealment, a position of advantage (high ground), or a suspect armed with  
13 superior fire power such as a rifle. These are the criteria used by the LAPD when  
14 deciding to deploy a rifle. It is highly unlikely that citizens would face a situation  
15 where the threat is beyond the effective range of a handgun and certainly not with  
16 any great frequency. It is even less likely that the law would view such a distant  
17 perceived threat as justifying a use of force at all much less a use of lethal force  
18 delivered via a rifle. I do not believe, based on my training and experience, that  
19 there are frequent occasions when a member of the public would face threat by an  
20 armed suspect wearing body armor or concealed behind a barrier that would defeat  
21 handgun ammunition. Absent these factors a handgun, shotgun or non-lethal  
22 options should suffice in dealing with the vast majority of self-defense scenarios  
23 where force is legally justified.

24  
25 I declare under penalty of perjury that the foregoing is true and correct.

26  
27 Executed on October 25, 2018 at Los Angeles, California.

Michael Mersereau  
MICHAEL MERSEREAU

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## **EXHIBIT 2**

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

STEVEN RUPP; et al.,

Plaintiff,

vs.

XAVIER BECERRA, in his  
official capacity as Attorney  
General of the State of  
California et al.,

Defendants.

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) No. 8:17-cv-00746-JLS-JDE

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DEPOSITION OF MICHAEL MERSEREAU

Long Beach, California

Tuesday, December 4, 2018

Volume I

Reported by:

KATY BONNETT

CSR No. 13315

Job No. 3135706

PAGES 1 - 142



1 APPEARANCES:

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3 For Plaintiff:

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15 DEPARTMENT OF JUSTICE

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1 A Uh-huh.

2 Q You identify several incidents in which you  
3 represent an assault weapon was used in a shooting where  
4 there was victims. Is that fair to say?

5 A That's fair to say.

6 Q Okay. In paragraph 19 you say, "It is my opinion  
7 based on my training and expertise, that the above  
8 described attacks would have been less deadly had the  
9 shooters not been armed with assault rifles." For the  
10 record, I'm cutting off "or assault weapons converted to  
11 machine guns," unless you object to me doing that. Does  
12 that make a difference if I cut off the "or assault  
13 rifles converted to machine guns"?

14 A Well, it covers one of the incidents. That's why  
15 it's there.

16 Q Okay. Would it be fair to say that your focus is  
17 on the fact that those rifles, whether they are  
18 semiautomatic assault rifles or fully automatic machine  
19 guns, your focus was on the fact that they had features  
20 in choosing these incidents to point out?

21 A In part, as well as their capacity to --  
22 detachable magazines, including large-capacity  
23 magazines.

24 Q Okay. You say that it's your opinion that these  
25 attacks would have been less deadly had the shooters not

1       been armed, is that correct, with those -- with assault  
2       weapons and machine guns; is that correct?

3           A     Yes.

4           Q     So turning to the first incident, the  
5       Hollywood -- the North Hollywood bank robbery --

6           A     Uh-huh.

7           Q     -- how many people were killed in that incident?

8           A     I believe the two suspects.

9           Q     The two suspects were killed? Do you know how  
10       they were killed, by the way?

11          A     One shot himself at the very moment that an  
12       officer's bullet penetrated his neck. And the second  
13       one engaged in a shootout with SWAT officers. He was  
14       armed with a machine gun, they were armed with machine  
15       guns, and they prevailed.

16          Q     Do you know whether the accounts of officers  
17       going to gun stores to acquire AR15s to return fire on  
18       the suspects are true or not?

19          A     I believe them to be true. I don't have any  
20       firsthand knowledge. I don't know the officers  
21       involved.

22          Q     Have you heard --

23          A     I wasn't there.

24          Q     Have you heard that account before?

25          A     Yes.

1 Q Is there any reason to disbelieve that that  
2 happened?

3 A No.

4 Q You haven't spoken with any LAPD officers that  
5 were there that said that they did that, though?

6 A That's correct.

7 Q Okay. But other than the two suspects, how many  
8 victims were killed in that shootout? You can refer to  
9 your report if you need to refresh your memory.

10 A Like I said, I -- just the two suspects. There's  
11 a lot of wounded, including police officers.

12 Q Okay. So you indicate that the incident would  
13 have been less deadly had they not had those guns, but  
14 there were no deaths in this incident, right?

15 A Well, are we going to ignore life-changing  
16 gunshot injuries to police officers?

17 Q Of course not.

18 A Are we going to ignore the -- the horrendous  
19 experience of these other officers and civilians who  
20 were struck by gunfire by these -- from these suspects.

21 Q Not at all. I'm looking at the word "deadly,"  
22 your word saying it would have been less deadly. If you  
23 want to say I might have -- should have put less  
24 traumatic injuries would have resulted, then I wouldn't  
25 have asked you that question. But you used the word

1 less "deadly," so I'm just asking.

2 A And to me, that's deadly. You inflict life-  
3 threatening injuries on people, and they were life-  
4 threatening injuries, that's deadly. The fact that  
5 these people were saved by, you know, good medical care  
6 doesn't make it any less deadly.

7 Q Okay. Going to the incident in paragraph 16, the  
8 shooting at Santa Monica College --

9 A Right.

10 Q -- five people were killed and four people were  
11 injured. Is it your opinion that, but for the shooter  
12 having an assault rifle, the -- that shooting would have  
13 been less deadly?

14 A I believe it would have been.

15 Q And on what do you base that belief?

16 A If -- if he had had a firearm that was less  
17 controllable, if he had a firearm that wasn't equipped  
18 with high-capacity magazines, and he had quite a few of  
19 them, I believe that it would have been less deadly.

20 Q Can you explain how, exactly, a pistol grip made  
21 a difference in the Santa Monica shooting?

22 A The pistol grip provided the shooter the ability  
23 to fire more rounds at his targets more rapidly. And  
24 adding to that, the fact that they were equipped with  
25 high-capacity magazines, it just logically makes that

1 scenario more lethal, more deadly.

2 Q Was that stated in the report that you reviewed  
3 about the incident?

4 A I didn't review a report on the incident, but  
5 I've read enough to know that he was equipped with an  
6 AR15. I believe it was a ghost gun, a manufactured  
7 AR15.

8 Q So you're basing your opinion that the shooting  
9 would have been less deadly solely on the fact that an  
10 AR15 and large-capacity magazines were present?

11 A No. An AR15 that had those features that it had,  
12 and was capable of accepting the large-capacity  
13 magazines, which was also present.

14 Q So is it your opinion that had the shooter had a  
15 stock Mini-14, he would not have had as many victims?

16 A I think potentially, yes.

17 Q Potentially?

18 A Yeah.

19 Q But that's pure speculation based on your belief  
20 about the lethality of features, right?

21 A Well, it's not speculation. It's an educated  
22 conclusion based on the factors of controllability,  
23 large-capacity magazines, the ability to fire rounds  
24 more rapidly under control.

25 Q So walk me through how you think a Mini-14 would

1 fail to achieve the horrendous acts of the shooter?

2 A I'm not saying --

3 MR. CHANG: Objection. Asked and answered.

4 You can answer, but, I mean, we're getting to be  
5 very repetitive. But you can answer one more time.

6 THE WITNESS: I'm not saying that a Mini-14  
7 couldn't have effected the same kind of damage and  
8 death. But all that does is raise the question of  
9 whether that type of firearm should also be controlled  
10 and restricted like AR15s. Having said that --

11 BY MR. BRADY:

12 Q It also raises the question as to the  
13 effectiveness of the features, in your opinion, that the  
14 features made a difference in the deadliness of this  
15 incident?

16 A Yes. And --

17 MR. CHANG: Objection. Argumentative.

18 THE WITNESS: I continue to hold that view based  
19 on what I've repeatedly stated. The better control you  
20 have of that weapon, the faster you can pull that  
21 trigger and stay on target -- which is what the pistol  
22 grip provides the shooter with -- combined with  
23 large-capacity magazines, makes it more deadly.

24 BY MR. BRADY:

25 Q Do you know how close in proximity the shooter

1 was when shooting the victims?

2 A I do not know that. I believe one was shot while  
3 they were in their car, but the distance, I don't know.  
4 Others were killed on the campus. And, again, I don't  
5 know how close he was.

6 Q So you don't know the details of how close the  
7 shooter was to the victims?

8 A I don't recall them, no.

9 Q You don't know what the victims were doing, if  
10 they knew whether they were about to be shot or not?

11 A I don't know.

12 Q Okay. So without knowing most of the details  
13 about the specific victims, how can you make a  
14 determination that the controllability of the rifle made  
15 a difference in how many victims there were?

16 A Again, it's my opinion, based on the things that  
17 I've reiterated about, and it's an educated conclusion  
18 on my part, that the more control you have over that  
19 firearm, the faster you can fire under control, and your  
20 accessibility to large quantities of ammunition, not  
21 having to break off your attack to reload as you would  
22 if you had, say, a 10-round fixed magazine, that that  
23 just logically leads to the conclusion that the shooter  
24 had more capability to murder his victims than if he had  
25 been equipped with a different type of firearm, a



1 non-assault weapon.

2 Q So you're applying your general premise that --  
3 that assault rifles are more lethal to a specific set of  
4 facts, and you're assuming that your premise is -- is  
5 what controls the amount of victims in those specific  
6 circumstances; is that correct?

7 A The reason we're having this discussion today is  
8 that it's not incidental that part of the generic  
9 features of assault weapons are pistol grips, stocks, et  
10 cetera, that provide the shooter with greater control,  
11 so --

12 Q But aren't you speculating that that control made  
13 a difference?

14 A I'm not --

15 Q In this specific incident, you're applying your  
16 general premise and -- to conclude that it made a  
17 difference when it's possible that it did not make a  
18 difference. Is that fair to say?

19 A Of course it's possible that it didn't make a  
20 difference, but, again, I'm not speculating. This is an  
21 educated conclusion based on all the factors that I've  
22 already described.

23 Q Based on your general view and premise of assault  
24 rifles, right? You're not basing it on anything  
25 specific in the Santa Monica shooting? Is that fair to

1 say?

2 A No.

3 Q What, specifically, in the Santa Monica shooting  
4 are you saying that an assault rifle made a difference?

5 A I don't think that it's a general conclusion  
6 about assault weapons. It's a general conclusion about  
7 the features of the assault weapons. And in this  
8 particular case the -- the ability to accept high  
9 capacity magazines and the pistol grip, that leads to  
10 the increased capability of the shooter to cause more  
11 carnage than he might have been able to with a different  
12 sort of firearm.

13 Q How do you know that the shooter needed the  
14 increased capability of an assault rifle, as you put it,  
15 to inflict the injuries and deaths that he did in the  
16 Santa Monica shooting? What, specifically, from that  
17 incident?

18 A I don't understand that question at all.

19 Q What specific fact in this Santa Monica shooting,  
20 that you're aware of, tells you that the increased  
21 capability of a shooter with -- with an assault rifle  
22 made a difference in how many victims there were, other  
23 than your general premise that assault rifles are better  
24 for that purpose?

25 A Again, it's a logical, educated conclusion. I

1 would refer to your own moving papers where you -- or  
2 plaintiff asserted that -- exactly what I'm saying, that  
3 pistol grips provide the shooter with more control and  
4 accuracy of the weapon.

5 Q That's a general premise?

6 A And, logically, that would increase one's  
7 ability, and it's all keeping everything else constant  
8 to deliver more rounds down range with more accuracy.  
9 And that, combined with access to large quantities of  
10 ammunition, logically leads to the conclusion that the  
11 shooter's capacity to kill is enhanced.

12 And I don't think it's -- I don't -- I can't -- I  
13 don't know, in the sense of I can prove it to the  
14 scientific certainty. But I have no doubt that had he  
15 been equipped with a different sort of firearm, there's  
16 an excellent chance that he would not have killed or  
17 injured as many people as he did.

18 Q With a Mini-14?

19 A Again, a stock factory Mini-14, he would  
20 certainly have had the capacity to kill people, but I  
21 think it would have been more difficult for him to  
22 accomplish what he accomplished.

23 Q Do you know how many rounds he fired in the Santa  
24 Monica shooting?

25 A I don't.

1 Q So without knowing how many rounds he fired, how  
2 do you know that he needed the increased ability to put  
3 lots of rounds down range and on target?

4 A I never said he needed them. I said it provided  
5 him with the capacity.

6 Q But if he didn't need that, then it might not  
7 have made a difference in the overall deadliness of the  
8 shooting. Is that fair to say?

9 A No.

10 MR. CHANG: Objection. Argumentative.

11 THE WITNESS: No. I don't understand the value  
12 of talking about whether he needed them or not. He did  
13 what he did with the rifle that he came with. And,  
14 again, the logical conclusion is that that rifle  
15 enhanced his capability to deliver more rounds down  
16 range with more accuracy than had he been using a  
17 different firearm.

18 BY MR. BRADY:

19 Q Or it can be that he intended to shoot certain  
20 victims at close range, chose these victims and chose an  
21 AR15 because of its, quote, cool factor, as you  
22 previously indicated, and it didn't matter what rifle he  
23 had, he was going to shoot the same amount of people.  
24 Isn't that a possibility?

25 MR. CHANG: Objection. Lacks foundation.

1 THE WITNESS: Yeah. Now, you're completely  
2 asking me to speculate on your scenario, and I'm not  
3 willing to do that.

4 BY MR. BRADY:

5 Q Well, you've been willing to speculate as to  
6 whether your general premise about the effectiveness of  
7 assault weapons from mass shooters made a difference in  
8 the shooting despite knowing the details, so I thought  
9 you would play along with a hypothetical that I posed,  
10 but --

11 MR. CHANG: Objection. Argumentative.

12 THE WITNESS: And, again, I don't consider my  
13 opinions --

14 MR. CHANG: There's no question, no pending  
15 question.

16 THE WITNESS: Okay.

17 BY MR. BRADY:

18 Q Do you know the details of the shooting at LAX in  
19 paragraph 17, other than what's stated in the -- the  
20 report?

21 A No.

22 Q Do you know the details of the San Bernardino  
23 County shooting indicated in paragraph 18, other than  
24 what's provided in the report?

25 A No.

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

3 That the foregoing proceedings were taken  
4 before me at the time and place herein set forth; that  
5 any witnesses in the foregoing proceedings, prior to  
6 testifying, were administered an oath; that a record of  
7 the proceedings was made by me using machine shorthand  
8 which was thereafter transcribed under my direction;  
9 that the foregoing transcript is a true record of the  
10 testimony given.

Further, that if the foregoing pertains to the  
11 original transcript of a deposition in a Federal Case,  
12 before completion of the proceedings, review of the  
13 transcript [ ] was [ ] was not requested.

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

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

19 Dated: December 19, 2018  
20  
21

22   
23

24 KATY BONNETT

25 CSR No. 13315

**CERTIFICATE OF SERVICE**  
IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
SOUTHERN DIVISION

Case Name: *Rupp, et al. v. Becerra*  
Case No.: 8:17-cv-00746-JLS-JDE

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'  
MOTION TO EXCLUDE THE TESTIMONY OF DEFENDANT'S EXPERT  
WITNESS DETECTIVE MICHAEL MERSEREAU UNDER FEDERAL  
RULE OF EVIDENCE 702**

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  
Peter H. Chang  
Deputy Attorney General  
E-mail: peter.chang@doj.ca.gov  
John D. Echeverria  
Deputy Attorney General  
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455 Golden Gate Ave., Suite 11000  
San Francisco, CA 94102

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

Executed May 28, 2019.

/s/ Laura Palmerin  
Laura Palmerin