

Case No. 19-56004

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In the United States Court of Appeals  
for the Ninth Circuit

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STEVEN RUPP, et al.,  
*Plaintiffs-Appellants,*

v.

XAVIER BECERRA,  
in his official capacity as Attorney General of the State of California,  
*Defendant-Appellee.*

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On Appeal from the United States District Court  
for the Central District of California  
Case No. 8:17-cv-00746-JLS-JDE

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**APPELLANTS' EXCERPTS OF RECORD  
VOLUME IV OF XXII**

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January 27, 2020

Under Federal Rules of Appellate Procedure for the Ninth Circuit, rule 30-1, Plaintiffs-Appellants Steven Rupp, Steven Dember, Cheryl Johnson, Michael Jones, Christopher Seifert, Alfonso Valencia, Troy Willis, Dennis Martin, and California Rifle & Pistol Association, Incorporated, by and through their attorney of record, confirm to the contents and form of Appellants' Excerpts of Record.

Date: January 27, 2020

**MICHEL & ASSOCIATES, P.C.**

s/ Sean A. Brady

Sean A. Brady

*Attorneys for Plaintiffs/Appellants*

*Steven Rupp, et al.*

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## CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2020, an electronic PDF of APPELLANTS' EXCERPTS OF RECORD, VOLUME IV OF XXII was uploaded to the Court's CM/ECF system, which will automatically generate and send by electronic mail a Notice of Docket Activity to all registered attorneys participating in the case. Such notice constitutes service on those registered attorneys.

Date: January 27, 2020

**MICHEL & ASSOCIATES, P.C.**

s/ Sean A. Brady

Sean A. Brady

*Attorneys for Plaintiffs-Appellants  
Steven Rupp, et al.*

# **EXHIBIT 53 PART 2 OF 2**

1 (Exhibit 14 was marked for 03:47:34  
2 identification by the Court Reporter.) 03:47:34

3 BY MR. BRADY: 03:47:34

4 Q Would you consider the rifles on Exhibit 14 to be 03:47:36  
5 of the scary-looking variety that would appeal to a mass 03:47:44  
6 shooter? 03:47:49

7 A You are talking about the three guns -- 03:47:50

8 Q Yes, sir, the three rifles. There's only three 03:47:52  
9 rifles on the page, yes. 03:47:55

10 A Yeah, I mean, to me, they all look -- they all 03:47:57  
11 look scary, but as we were just saying, if, for example, 03:48:00  
12 what they are -- what they are interested in doing is 03:48:05  
13 killing the most number of people in the shortest amount 03:48:08  
14 of time, you want to have the scary component plus the 03:48:11  
15 full capacity to be able to kill as many as you can in 03:48:14  
16 this limited amount of time, and that's what the -- 03:48:19  
17 that's what the federal assault weapon ban was limiting. 03:48:23

18 Q Is it your understanding that these -- the three 03:48:32  
19 riffles that appear on this page were prohibited from 03:48:35  
20 being sold under the federal assault weapons ban? 03:48:39

21 A You know, I would have to take a fair amount of 03:48:42  
22 time before I could draw any conclusion about whether 03:48:51  
23 these particular guns were -- were not covered. 03:48:54

24 Q Why would you need time? 03:48:57

25 A You know, I -- I -- I mean, I guess if I can read 03:48:59

1 through this, maybe I can figure it all out, but -- 03:49:05  
2 Q Well, let me ask you this: What is your 03:49:08  
3 understanding of the federal assault weapon ban? 03:49:10  
4 Would -- would an AR-15 be prohibited, necessarily, 03:49:12  
5 under the federal assault weapon ban from being sold? 03:49:17  
6 A You know, it depends on the accoutrements of the 03:49:20  
7 weapon. And so if those accoutrements are not present 03:49:28  
8 or, you know, forenamed gun categories -- you know, you 03:49:32  
9 have to look at the list, but, you know, I haven't got a 03:49:36  
10 full and comprehensive notion of every gun that's on one 03:49:46  
11 side or the other of the now defunct federal assault 03:49:51  
12 weapon ban. 03:49:55  
13 Q So let's assume that these rifles on Exhibit 14 03:49:55  
14 were legal to be sold under the federal assault weapon 03:50:00  
15 ban. 03:50:04  
16 A Yeah. 03:50:05  
17 Q What, in your opinion, would cause a mass shooter 03:50:05  
18 to look at those rifles and say, "No, not that one. I'm 03:50:12  
19 not going to do it"? 03:50:22  
20 A Well, as -- as we said, if -- if the -- if what 03:50:27  
21 you are most concerned about is being able to kill a lot 03:50:36  
22 of people quickly and without anybody being able to run 03:50:38  
23 at you, one thing that you are going to want is, you 03:50:42  
24 know, the -- the larger-capacity magazine, so none of 03:50:47  
25 these guns have that. 03:50:51

1 Q So, then, back to my original question: If you 03:50:55  
2 could get a rifle that looks almost identical to the 03:50:58  
3 rifles that are being sold post the federal assault 03:51:02  
4 weapon ban -- 03:51:06

5 A Mm-hmm. 03:51:06

6 Q -- but just without the 30-round magazine, why is 03:51:07  
7 it not -- why could it not just be the magazine 03:51:13  
8 component of the federal assault weapon ban that caused 03:51:18  
9 the -- 03:51:20

10 A The drop in numbers? 03:51:22

11 Q That you saw? 03:51:23

12 A Yeah. Again, it -- it does depend a little bit. 03:51:25  
13 If you -- if you, you know, look at the fact that when 03:51:31  
14 mass shooters have the option to take, you know, one of 03:51:35  
15 these California-prohibited guns versus a legal gun, the 03:51:43  
16 mass shooters grabbed the -- the California-prohibited 03:51:50  
17 gun. Why is that? I assume it's an issue of greater 03:51:55  
18 functionality, but also this sort of psychological 03:52:01  
19 dimension. And if you look more like a deer hunter, 03:52:06  
20 that may be less satisfying to a mass shooter than if 03:52:11  
21 you look like Rambo. 03:52:16

22 Q And you think that there's a significant-enough 03:52:24  
23 difference in appearance between the rifles on 03:52:26  
24 Exhibit 14 and the rifles that are prohibited under 03:52:30  
25 California law? 03:52:34

1 A Well, differences in appearance and 03:52:35  
2 functionality. 03:52:43  
3 Q What's the difference in functionality? 03:52:43  
4 MR. CHANG: Objection; vague. 03:52:44  
5 THE WITNESS: I mean, for example, if you have a 03:52:46  
6 collapsable stock, you may be able to get into an area 03:52:56  
7 that with a fixed stock, you know, the gun will just be 03:53:00  
8 too obvious as you are approaching. 03:53:04  
9 BY MR. BRADY: 03:53:09  
10 Q Have you ever heard of an incident where somebody 03:53:09  
11 smuggled in an assault weapon by collapsing the stock, 03:53:13  
12 in your research on mass shootings? 03:53:20  
13 A You know, we certainly have examples of where 03:53:21  
14 mass shooters disassembled weapons, and so, you know, 03:53:28  
15 it's something that some of the mass shooters were -- 03:53:37  
16 were concerned about and were taking active steps to 03:53:41  
17 conceal what they were doing as they entered a building. 03:53:47  
18 Q And is it -- is it your understanding that 03:53:53  
19 California only prohibits collapsible stocks? 03:54:00  
20 A No, but, I mean, every feature that California 03:54:03  
21 prohibits is designed to limit functionality of someone 03:54:08  
22 who is bent upon mass destruction, and so each one of 03:54:15  
23 those features -- it probably makes the gun more 03:54:21  
24 desirable, both psychologically and -- and in terms of 03:54:29  
25 effectiveness for the purposes of a mass shooter. 03:54:32

1	Q	How does an adjustable stock achieve that?	03:54:35
2	A	To the extent it -- it allows you more stealthy	03:54:41
3		entrance into a -- you know, a place where you might be	03:54:51
4		observed entering into a particular area.	03:54:55
5	Q	What's your understanding of how short a rifle	03:55:00
6		can be made -- an AR-15 can be made with a telescoping	03:55:06
7		stock?	03:55:09
8	A	Yeah, I can't -- I can't speculate on that.	03:55:10
9	Q	What if it was three inches?	03:55:19
10	A	Yeah, I -- I -- I'm -- I'm not able to go into	03:55:24
11		that particular area.	03:55:28
12	Q	I'm asking you to consider a hypothetical.	03:55:29
13		If -- if a telescoping stock on an AR-15 only	03:55:31
14		changed the rifle's overall length 3 to 4 inches, you	03:55:35
15		think that that would make a significant difference in	03:55:40
16		the lethality of the rifle?	03:55:45
17		MR. CHANG: Objection; asked and answered.	03:55:46
18		THE WITNESS: You know, minor difference on	03:55:48
19		lethality, but, you know, could play a role in ability	03:55:56
20		to smuggle a gun into an area. I mean, we -- we	03:55:59
21		definitely have examples of, you know, killers who were	03:56:02
22		able to enter an area where they passed by security	03:56:07
23		because they were able to shrink the size of -- of their	03:56:13
24		weapon, so nobody noticed it was a long -- long gun.	03:56:17
25		BY MR. BRADY:	03:56:20

1 Q And were those assault weapons? 03:56:23  
2 A You know, I -- I haven't made a full 03:56:25  
3 investigation of -- of that, but we -- we certainly know 03:56:30  
4 that there -- there were cases of exactly that 03:56:34  
5 happening. 03:56:39  
6 Q Handguns seem very concealable; right? 03:56:39  
7 A That's -- that's their -- their greatest virtue 03:56:44  
8 for criminals. 03:56:49  
9 Q Are more mass shootings performed with handguns 03:56:50  
10 or rifles, in your study? 03:56:53  
11 A Well, now, we do have to be careful because we 03:56:56  
12 have this issue about all of the conflicting definitions 03:57:08  
13 of -- of "mass shootings," but certainly, you know, 03:57:13  
14 handguns are -- are much more common weapon in -- in 03:57:18  
15 criminal activity overall. 03:57:24  
16 Q So would it be fair to say that the definition of 03:57:33  
17 "assault weapon" under the federal law is somewhat 03:57:37  
18 confusing? 03:57:47  
19 MR. CHANG: Objection; vague and ambiguous. 03:57:51  
20 THE WITNESS: Yeah, so there -- there are -- 03:57:56  
21 there are two issues here. 03:57:59  
22 We -- we know, with 100 percent clarity, what's 03:58:00  
23 the best thing to do in theory, and then there are 03:58:05  
24 questions about how we implement it. 03:58:09  
25 So there's no question that limiting the power 03:58:11

1 and constructiveness of civilian weaponry is beneficial. 03:58:17  
2 There's no question to that, zero doubt. 03:58:22  
3 There are questions about how one gets to that. 03:58:26  
4 Nobody who's serious -- although, I will say, more than 03:58:30  
5 one NRA member has questioned me when I said this. 03:58:35  
6 Nobody thinks -- again, except for a number of NRA 03:58:40  
7 members who question it -- that you should be able to 03:58:46  
8 have nuclear arms at your disposal. Couple of NRA 03:58:48  
9 people said the Second Amendment says you have the right 03:58:55  
10 to keep and bear arms. Nuclear arms are arms, so I 03:58:59  
11 should have the right. But that is crazy, and I think 03:59:01  
12 we can all agree civilian arms have to be limited, and 03:59:03  
13 the question is: How do we achieve that goal so that we 03:59:09  
14 limit the criminal use of these guns as much as possible 03:59:16  
15 without undermining the ability to engage in, you know, 03:59:21  
16 either helpful or at least not hurtful uses of these 03:59:29  
17 guns. 03:59:33  
18 Most of the time when a AR-15 is being used, it's 03:59:34  
19 being used for fun, and so, you know, nobody wants to be 03:59:39  
20 a killjoy. We want people to have fun. But we also 03:59:44  
21 have to trade off against that. The fact that when 03:59:48  
22 people are getting killed in school shootings and other 03:59:53  
23 venues, that's a very socially costly use of these guns, 03:59:59  
24 so that's the trade-off, restricting power and 04:00:02  
25 effectiveness that will promote mass shootings versus 04:00:06

1 inhibiting fun, and that's what -- that's what the law 04:00:11  
2 has to struggle with. 04:00:16

3 It turns out it's not easy to define and limit 04:00:17  
4 the -- the destructiveness and power of weapons when you 04:00:24  
5 have, you know, dedicated efforts to circumvent any 04:00:29  
6 limit that -- that you are putting into place by 04:00:34  
7 manufacturers who are trying to get around the law and 04:00:38  
8 other efforts of that sort. 04:00:43

9 But -- but, in theory, the goal is clear and 04:00:47  
10 unassailable. You want to limit the power and 04:00:49  
11 effectiveness of guns for use by mass killers. 04:00:53

12 BY MR. BRADY: 04:00:56

13 Q Even if that means limiting the effectiveness for 04:01:05  
14 the good guys? 04:01:10

15 MR. CHANG: Objection; vague and ambiguous as to 04:01:14  
16 "the good guys." 04:01:16

17 THE WITNESS: Yeah. 04:01:20

18 BY MR. BRADY: 04:01:20

19 Q People who aren't trying to kill people 04:01:21  
20 criminally. 04:01:24

21 A Yeah, I mean, the problem is, most of the mass 04:01:26  
22 killers were the good guys until they started to be the 04:01:28  
23 mass killers, so it's very hard to separate out these 04:01:32  
24 two groups. 04:01:35

25 Q That could be said about anything; right? 04:01:35

1 A Well, not -- no, not really. 04:01:37  
2 Q A guy wasn't a drunk driver until he drove drunk. 04:01:46  
3 A Right, but that's why we prohibit drunk driving, 04:01:51  
4 so we're -- we're trying to stop some of these behaviors 04:01:54  
5 and -- 04:01:58  
6 Q The behavior, but you are not taking away power 04:01:58  
7 steering that makes a car much easier, and you are not 04:02:01  
8 taking away horsepower that makes a car go and allows a 04:02:05  
9 bad guy to evade police and potentially crash into a 04:02:09  
10 bunch of pedestrians; right? 04:02:14  
11 A Well, you know, it probably is true that we 04:02:16  
12 should regulate guns more like we regulate cars, but you 04:02:20  
13 can't do everything, and you -- you don't want to -- you 04:02:25  
14 don't want to inhibit too much fun uses of guns, but 04:02:29  
15 you -- you also want to inhibit power and capacity to -- 04:02:35  
16 to limit the pernicious use of the guns. And since it's 04:02:43  
17 going to be almost impossible to sort out who the good 04:02:47  
18 guy and the bad guy is beforehand for mass shootings, 04:02:50  
19 there are a limited set of tools that the government has 04:02:57  
20 to address this growing problem. 04:03:02  
21 Q Okay. Getting back to your report, paragraph 112 04:03:05  
22 on page 46 -- 04:03:12  
23 A Mm-hmm. 04:03:12  
24 Q -- the last sentence of paragraph 112 you say: 04:03:16  
25 The Police Executive Research Forum found that the 04:03:19

1 relative usage of assault weapons in crime increased 04:03:24  
2 after the ban's end with 38 percent of police agencies 04:03:28  
3 reporting that criminals' use of assault weapons had 04:03:32  
4 increased. 04:03:34  
5 Did I accurately quote you there? 04:03:36  
6 A That assumes to be correct. 04:03:38  
7 Q Okay. What methodology did the Police Executive 04:03:42  
8 Research Forum use in making that finding? 04:03:49  
9 A You know, back to what we were talking about 04:03:51  
10 earlier, they were just looking at, you know, these 04:03:56  
11 agency reports and giving us the percentage of police 04:04:01  
12 agencies reporting that criminal use of assault weapons 04:04:08  
13 had increased. 04:04:11  
14 Q In your work, is it common for police agencies to 04:04:13  
15 keep track of assault weapons that they take into 04:04:19  
16 custody? 04:04:25  
17 A Well, some -- some do and some -- some don't, 04:04:25  
18 and, you know, as I said, the paragraph starts off: 04:04:33  
19 There is evidence that the federal assault weapon ban 04:04:42  
20 was effective in limiting criminal use of assault 04:04:44  
21 weapons. I -- I wasn't saying that, you know, a study 04:04:47  
22 of the quality of my study on right-to-carry laws has 04:04:53  
23 established, with a high degree of confidence, that 04:05:01  
24 right-to-carry laws -- or that assault weapons, you 04:05:05  
25 know, had this impact. I'm just saying there is 04:05:10

1 evidence, and I tried to rehearse some of that evidence. 04:05:12

2 Q Okay. So your opinion is that there's evidence 04:05:16

3 that the federal assault weapons ban was effective in 04:05:20

4 limiting criminal use of assault weapons, but you could 04:05:26

5 be wrong; that -- that the evidence is not 04:05:28

6 necessarily -- that the evidence is not unequivocal; 04:05:34

7 right? 04:05:37

8 A Right. 04:05:37

9 Remember, the -- the -- the evidence is most 04:05:40

10 potent that we did get this drop in the massacres during 04:05:45

11 the period of the assault weapon ban -- federal assault 04:05:56

12 weapon ban -- 04:05:59

13 Q What are you relying on for that? 04:05:59

14 A Just my report. 04:06:01

15 Q Your report? 04:06:02

16 A Yeah. 04:06:02

17 Q And -- but what does your report cite to for -- 04:06:03

18 did you run your own regressions and -- 04:06:07

19 A Yeah -- 04:06:12

20 Q -- do your -- 04:06:12

21 A -- no, I mean, I just looked at the data on these 04:06:12

22 mass shootings, and you do see two things happening. 04:06:17

23 You see this pretty dramatic drop in both the 04:06:24

24 number and the lethality of mass shootings during the 04:06:28

25 period of the assault weapon ban and then a pretty sharp 04:06:33

1 turnaround when the federal assault weapon ban was 04:06:36  
2 repealed. 04:06:39  
  
3 And so the first drop, you say, well, crime was 04:06:42  
4 going down. Maybe it doesn't tell us all that much. 04:06:45  
  
5 But the fact that you got the drop and then the increase 04:06:48  
6 suggests, hey, this looks like the law is playing an 04:06:52  
7 important role because rather than crime continuing on 04:06:57  
8 the downward path, which it did for most crimes, once 04:07:03  
9 that purchase of assault weapons got really fired up in 04:07:09  
10 the wake of the lapsing of the federal assault weapon 04:07:14  
11 ban, we start seeing this problem significantly 04:07:19  
12 increasing. 04:07:25  
  
13 So we -- we have that broad conclusion of, you 04:07:26  
14 know, a pattern that's suggestive of the effect on the 04:07:31  
15 federal assault weapon ban playing an important role. 04:07:35  
  
16 We certainly have lots of examples of where guns 04:07:38  
17 were used that would not have been available. And then 04:07:41  
18 we have these additional factors about how it played 04:07:46  
19 out; that there's evidence that the federal assault 04:07:49  
20 weapon ban was effective in limiting criminal use of 04:07:51  
21 assault weapons, and that's what that paragraph is 04:07:54  
22 trying to -- to do. 04:07:57  
  
23 Q So couldn't it just be a spurious correlation and 04:08:00  
24 not causation that gun crime went down during the 04:08:05  
25 assault weapon period and then went back up? 04:08:12

1       A It -- whenever you are doing this work, it's a           04:08:14  
2       complicated task of identifying the causal impact.       04:08:23  
3       And -- and if I only had the drop in -- in -- in       04:08:28  
4       massacres during the ten years of the federal assault   04:08:37  
5       weapon ban, I would say it's evidence, but it's really   04:08:39  
6       not that strong because all crime was going down over   04:08:43  
7       that period. But the fact that all crime was going       04:08:46  
8       down -- all crime continued to trend down after the       04:08:48  
9       federal assault weapon ban lapsed, but massacres rose   04:08:52  
10      sharply. That's suggestive of something else is going   04:08:56  
11      on here. And I'm happy to entertain what might be that   04:09:02  
12      other factor, but I have never heard anyone offer a       04:09:09  
13      plausible explanation for why we do see this elevation   04:09:14  
14      of mass shootings that corresponds to both the end of   04:09:21  
15      the federal assault weapon ban and the escalation of the   04:09:25  
16      purchase of these -- these assault weapons.               04:09:29

17       Q I haven't heard you explain how there could be       04:09:32  
18      such a dramatic identifiable change from a law that       04:09:40  
19      merely restricted whether you can move the stock or have   04:09:48  
20      a flash suppresser on a rifle.                               04:09:54

21           How can that account for -- how could requiring   04:09:59  
22      that a rifle -- it can have all -- be identical as to   04:10:01  
23      the assault weapon -- a rifle before the assault weapon   04:10:08  
24      ban, it just has to fix the stock and remove the flash   04:10:11  
25      suppresser, and that minute change can be isolated as   04:10:16

1 being the cause of a reduction in crime? 04:10:24  
2 A Well, you know, the federal assault weapon ban 04:10:31  
3 did more than that, and all of my commentary was based 04:10:33  
4 on what the federal assault weapon ban did. 04:10:36  
5 Q No, that's what the federal assault weapon ban 04:10:38  
6 did with respect to rifles. 04:10:41  
7 What else did it do with respect to the rifle? 04:10:42  
8 A Well, I'm just saying that the analysis that I 04:10:44  
9 went through on the causal impact of the assault weapon 04:10:51  
10 ban was based on the overall prohibitions of the federal 04:10:58  
11 assault weapon ban. 04:11:07  
12 Q Which includes the magazines; correct? 04:11:07  
13 A It does. 04:11:09  
14 Q Okay. So that is my question: How -- how are 04:11:10  
15 you able to attribute any change that you claim there is 04:11:16  
16 in crime to the changes of the rifle to the assault 04:11:24  
17 weapon versus the magazine? 04:11:28  
18 A Yeah, I can't -- I can't separate out the 04:11:31  
19 individual effects. 04:11:36  
20 Q So the effect that you contend you see could be 04:11:36  
21 exclusively a result of the restriction on the magazine 04:11:40  
22 capacity; correct? 04:11:44  
23 A Yeah, based on -- on the analysis that -- that I 04:11:45  
24 was -- was doing for the federal assault weapon ban, 04:11:53  
25 it -- it could be the -- the mechanism is driven largely 04:11:56

1 by the -- the magazine restriction. 04:12:06

2 Q And is it fair to say that you are forming your 04:12:09

3 opinion on -- on deducing theories for why things 04:12:12

4 happened versus conducting regressions on actual data? 04:12:28

5 A Yes. I mean, let me address that question. 04:12:36

6 The -- the difficulty -- and I've written about 04:12:45

7 this with Jim Heckman -- in trying to identify the 04:12:53

8 effect of something like the federal assault weapon ban 04:12:57

9 is that it doesn't have the advantage that we have 04:13:02

10 like -- for things like right-to-carry laws; that some 04:13:05

11 states have right-to-carry laws and some don't, and some 04:13:09

12 add them on, while others have, you know, avoided 04:13:12

13 adopting them. So you get these nice comparisons over 04:13:16

14 time between the adopting states and the nonadopting 04:13:20

15 states. And there you can see, pretty clearly, violent 04:13:23

16 crime goes up more in the adopting states. 04:13:25

17 When you get to the federal assault weapon ban, 04:13:28

18 it's a much more complicated inquiry because now every 04:13:31

19 state suddenly is under the federal mandate, and so we 04:13:34

20 can't compare what happens in New York and California, 04:13:38

21 you know, states with good and effective gun laws, to 04:13:43

22 states that, you know, have bad gun laws, because they 04:13:47

23 are both getting the same federal law added on top of 04:13:52

24 that. 04:13:55

25 So that -- that makes the -- the task much 04:14:00

1 harder, and so some of those tools that I list in my 04:14:02  
2 hierarchy, like panel data, are not available for -- for 04:14:05  
3 that inquiry. 04:14:10

4 Q So getting back to the Police Executive Research 04:14:34  
5 Forum, you said that it found -- it made a finding. 04:14:43

6 Was that the purpose of that forum, to make 04:14:49  
7 findings? 04:14:55

8 A Yeah, I -- I don't -- you know, I wasn't choosing 04:14:55  
9 a word there that, you know, is supposed to have 04:15:03  
10 significance beyond the fact that those are the -- 04:15:11  
11 that's the summary of the data that -- that they 04:15:15  
12 reported. 04:15:22

13 Q And was this mostly just loosely anecdotal data 04:15:22  
14 from attendees of this forum saying, yeah, in my 04:15:26  
15 department, you know, we noticed this, or was it 04:15:31  
16 something more substantial than that, in your 04:15:34  
17 understanding? 04:15:36

18 A Yeah, I mean, it -- it was -- it was not purely 04:15:36  
19 anecdotal data. 04:15:46

20 Q But there was no standard set? There was no 04:15:50  
21 uniformity; correct? 04:15:54

22 A You know, as -- as we said, the -- the police 04:15:55  
23 agencies sort of go their own way on these issues, and 04:16:04  
24 so, to that extent, you're -- you're getting different 04:16:08  
25 agencies reporting. 04:16:11

1           But what they found was that of the ones who           04:16:15  
2       reported, they were -- you know, the Police Research           04:16:17  
3       Forum was identifying what those ones who reported found           04:16:22  
4       with respect to the criminal use of assault weapons.           04:16:27  
5       Q   And their finding is that there had been an           04:16:29  
6       increase in the usage of assault weapons by 38 percent;           04:16:34  
7       is that correct?   04:16:37  
8       A   Yes.   04:16:37  
9       Q   So if there's been an increase in 38 percent of           04:16:39  
10      police agencies, couldn't it very well be that there is           04:16:49  
11      a decrease in the other -- help -- help me out on my           04:16:53  
12      math, Professor -- 62 percent?                                   04:16:59  
13           MR. CHANG: Objection; calls for speculation.           04:17:01  
14           THE WITNESS: Yeah, I mean --                                   04:17:02  
15           BY MR. BRADY:   04:17:05  
16       Q   It does call for speculation, but I'm -- my point           04:17:05  
17      is: 38 percent doesn't tell us whether it was an           04:17:08  
18      increasing or decreasing problem nationwide, does it?           04:17:14  
19       A   Yeah, the -- I mean, the conclusion that they           04:17:22  
20      reached was: As we look around, we -- we see an           04:17:25  
21      elevation in the percent of criminal use of assault           04:17:30  
22      weapons, but what one -- before you would say this has           04:17:35  
23      before established, you would want to probe as much as           04:17:48  
24      possible on what -- what was going on across all of the           04:17:52  
25      agencies that have this data.                                   04:17:56

1           As you -- as you mention, some police agencies           04:17:57  
2       don't have this data compiled [phonetic] compiled or           04:18:01  
3       calculated at all, and they are not going to be able to           04:18:05  
4       be illuminating on that question.                                   04:18:08  
5     BY MR. BRADY:   04:18:10  
6       Q    Let's skip over to paragraph 55 -- go back to           04:18:12  
7       paragraph 55 on your -- of your report that's on           04:18:17  
8       page 23.   04:18:19  
9       A    Yeah.   04:18:20  
10      Q    And you alluded to this before, is that,                  04:18:20  
11      essentially, the federal assault weapon ban saved lives    04:18:32  
12      and reduced the mayhem from the deadliest mass                04:18:38  
13      shootings; correct?    04:18:42  
14      A    Yes.   04:18:43  
15      Q    And we were talking about the criminal use of        04:18:43  
16      assault weapons generally before; right?                    04:18:49  
17      A    Yes.   04:18:51  
18      Q    And now we are talking about the -- the                04:18:52  
19      lethality, the -- the amount of death and injuries that    04:18:57  
20      assault weapons cause; right?                                04:19:02  
21      A    Yes.   04:19:04  
22      Q    And are you basing your opinion that deaths and    04:19:04  
23      injuries from these firearms increased on the same data    04:19:11  
24      that you did for why they were more used in criminal- --   04:19:14  
25      in -- in general crimes?                                        04:19:23

1 A Yeah, the -- the -- the particular statement 04:19:23  
2 there really refers to the next page, as we are looking 04:19:31  
3 at, you know, what happens over the periods prior to, 04:19:36  
4 during, and then after the assault -- federal assault 04:19:43  
5 weapon ban was in place. 04:19:47

6 Q Okay. And who put this table together? 04:19:49

7 A This was done by a researcher named Louis 04:19:51  
8 Klarevas. 04:19:59

9 Q Are you familiar with his work? 04:19:59

10 A I am. 04:20:01

11 Q What of his work are you familiar with? How many 04:20:01  
12 papers has he written? 04:20:08

13 A Yeah, I -- I don't know the total number of 04:20:10  
14 papers. He has a book called Rampage Nation, and -- and 04:20:15  
15 that was the -- the work that he used to generate this 04:20:19  
16 sort of analysis. 04:20:29

17 Q Are you familiar with any of his other work 04:20:30  
18 besides that book? 04:20:32

19 A You know, I've seen other things that he's 04:20:33  
20 written, but I -- I haven't done a, you know, sort of 04:20:38  
21 comprehensive evaluation of -- of his work across the 04:20:43  
22 board. 04:20:47

23 Q Do you know what his credentials are? 04:20:47

24 A You know, I think he's -- he's a researcher at 04:20:52  
25 University of Massachusetts, but I'm not -- not 04:20:57

1 completely aware of all of his credentials. 04:21:00  
2 Q So you don't know if he has any particular 04:21:07  
3 specialty in research? 04:21:09  
4 A You know, he's made his research agenda, you 04:21:13  
5 know, over the last half decade, at least, to -- to look 04:21:21  
6 at -- at mass shootings in the U.S. 04:21:25  
7 Q And prior to him publishing his book Rampage 04:21:31  
8 Nation, did you ever see any of his work in all of your 04:21:35  
9 work on firearms? 04:21:39  
10 A No. 04:21:41  
11 Q Do you know what type of study he conducted in 04:21:48  
12 his book Rampage Nation to come to these conclusions? 04:21:51  
13 A Yes. 04:21:54  
14 Q And what methodology did he use? 04:21:55  
15 A So, basically, there -- there are data sets 04:21:59  
16 available for allowing you to identify the incidents and 04:22:08  
17 the deaths from mass shootings, and he went to those 04:22:16  
18 data sets and compiled his estimates, and -- and I, you 04:22:23  
19 know, sort of went to the same data sets to see: Do I 04:22:29  
20 get the same answer that he gets? And, you know, 04:22:32  
21 essentially you -- you see this exact pattern from those 04:22:36  
22 data sets, the incidents drop and deaths drop from mass 04:22:40  
23 shootings when the ten-year period of assault weapon ban 04:22:45  
24 is in place and then jumps back up significantly in the 04:22:48  
25 aftermath of that period. 04:22:53

1	Q	So would -- would this be a time series --	04:22:55
2	A	Yeah.	04:22:55
3	Q	-- analysis?	04:23:00
4	A	Yeah.	04:23:00
5	Q	Okay. So it would be No. 4 on your hierarchy of	04:23:01
6		proper methodology for the impacts of law and policies?	04:23:08
7	A	Yes.	04:23:11
8	Q	Okay. And can't time series analyses simply	04:23:12
9		reflect a spurious correlation and not causation?	04:23:25
10	A	Yeah. Yeah. Although, everything can -- can	04:23:29
11		reflect spurious causation, even panel data, and so on	04:23:34
12		so forth.	04:23:39
13		But what -- what's important about this is -- it	04:23:39
14		is time series, but it's more than time series because	04:23:44
15		there's also this sort of natural experiment dimension	04:23:46
16		to this -- and that bumps it up to Category 2 -- because	04:23:51
17		it's not as though I'm looking at this in 2003 or 2004	04:23:54
18		and I'm saying, oh, look, mass shootings were high prior	04:24:00
19		to adoption of the federal assault weapon ban and now	04:24:04
20		they are lower. If that's all you had, you would still	04:24:12
21		notice it and -- and document it, but that's sort of a	04:24:16
22		weak basis for concluding causation.	04:24:25
23		But then when you bring in the next component,	04:24:26
24		now it is sort of a natural experiment because you had	04:24:29
25		it -- or -- or you didn't have any restrictions on	04:24:31

1 assault weapons. You got the restrictions. You see one 04:24:39  
2 effect. You take away the restrictions, and then you 04:24:43  
3 bounce in the other direction. And so that turns it 04:24:48  
4 into something more than just before and after. 04:24:51

5 Before and after is -- is going to be quite 04:24:54  
6 precarious. Sometimes you got to go with before and 04:25:00  
7 after. So if you had asked me to do what Koper was 04:25:04  
8 asked to do, that's all he had, was before and after, so 04:25:07  
9 it was very hard for him to draw any conclusions. 04:25:10

10 Q And Koper found that the federal assault weapon 04:25:13  
11 ban had, quote, no discernible reduction in the 04:25:18  
12 lethality and injuriousness of gun violence; is that 04:25:21  
13 correct? 04:25:25

14 A Yeah. When he was commenting at a time when it 04:25:25  
15 was very hard for him to say much, that's -- that's all 04:25:30  
16 that he could say. 04:25:33

17 Q Why was it hard for him to say much? 04:25:34

18 A Well, just what I was talking about here -- 04:25:36

19 Q You are talking about just by virtue of the time 04:25:38  
20 frame? 04:25:41

21 A Yeah, but for an important reason, because if you 04:25:41  
22 look at this, what -- what do we see when we look at 04:25:45  
23 this? We see that when Koper was writing, all he had 04:25:50  
24 was, oh, mass shootings were high before. Now they are 04:25:53  
25 down. But crime was also high before, and now they are 04:25:57

1	down. So he said, I can't tell whether assault weapons	04:26:00
2	played any role.	04:26:04
3	But now we go to 2014, crime continues to go	04:26:04
4	down, but it's -- mass shootings go up. And so that's	04:26:09
5	why Koper, today, is much more insistent that the -- the	04:26:12
6	evidence supports assault weapon bans and that these are	04:26:18
7	beneficial because we -- we have a decade more data	04:26:23
8	here, and even since then, we have got an additional	04:26:28
9	four years with the active shooters rising	04:26:31
10	substantially.	04:26:38
11	Q So, to your knowledge, has Koper done any	04:26:38
12	additional studies on the assault weapon ban?	04:26:46
13	A He -- he has been doing work in -- in this area	04:26:53
14	in varies states, and so on, and -- and --	04:26:57
15	Q Have you read any of his work?	04:27:02
16	A I have.	04:27:03
17	Q Does he have any published papers on the subject?	04:27:04
18	A He does.	04:27:06
19	Q And is it cited in your paper?	04:27:07
20	A You know, I -- I -- I don't know whether I -- I	04:27:13
21	cited his -- his more recent papers -- yeah, I think I	04:27:18
22	did. I think I did.	04:27:23
23	Q Do you consider Koper a good researcher?	04:27:23
24	A You know, I think he's a careful and thoughtful	04:27:26
25	researcher.	04:27:29

1 Q What about Klarevas? 04:27:31  
2 A Yeah, methodo- -- methodologically, Louis is -- 04:27:33  
3 is not as sophisticated as Koper, but I do think he's a 04:27:44  
4 careful researcher as well. 04:27:51  
5 Q Do you think he has any biases in his work? 04:27:53  
6 A I did not get that sense. I -- I -- I think he 04:27:56  
7 wants to be a straight shooter. I -- I -- at one point 04:28:11  
8 he wrote something and sent it to me, and I told him, 04:28:13  
9 you know, "I don't think this is quite right," and I 04:28:16  
10 think he very quickly changed it. 04:28:19  
11 So -- so, you know, I -- I don't know him all 04:28:26  
12 that well. I think I only met him once, but the sense I 04:28:28  
13 get is, you know, he wants to do the -- the best and 04:28:33  
14 most careful job in sort of documenting what's happening 04:28:36  
15 with -- with mass shootings. 04:28:42  
16 Q So you only talked to him once, so you probably 04:28:44  
17 didn't ever review his data that he used in -- 04:28:47  
18 A No, no, I did -- I did independently look at this 04:28:50  
19 data -- 04:28:56  
20 Q The data that he cited in Rampage Nation? 04:28:56  
21 A Yes. 04:28:59  
22 Q But he didn't give you any data that he was 04:28:59  
23 looking at; it's just whatever was in his book? 04:29:02  
24 A Right, but I -- I independently went to the 04:29:05  
25 sources that he was using to generate this and -- and 04:29:08

1 just wanted to see if -- if this pattern is, in fact, 04:29:11  
2 there in the data that's publicly available, and -- and 04:29:19  
3 it was. 04:29:24  
4 Q And is that data cited in your report anywhere? 04:29:24  
5 A You know, I'm sure it is somewhere, but -- but, 04:29:27  
6 in any event, it's data from the Gun Violence Archive 04:29:41  
7 and Mother Jones data set, so those are all data which 04:29:46  
8 allow one to draw conclusions of the type that Klarevas 04:29:50  
9 was doing here. 04:29:56  
10 Q Is Mother Jones a source that's often relied on 04:29:59  
11 by researchers for unbiased data? 04:30:03  
12 A Well, I don't think Mother Jones is relied on 04:30:09  
13 for, you know, neutral discussion of issues. They 04:30:14  
14 have -- they have their ax to grind. 04:30:24  
15 But in terms of the data set that they put 04:30:28  
16 together, it is something that's been checked against 04:30:29  
17 other data sets and -- and lines up very well with these 04:30:33  
18 other data sets, and so a fair number of researchers do 04:30:37  
19 use that data, as well as some of the other data sets. 04:30:43  
20 Stanford, for example, put together their own, you know, 04:30:46  
21 mass shooting data set, and it corresponds very tightly 04:30:51  
22 with the Mother Jones data. 04:30:55  
23 Q Okay. Just as I asked you about whether the 04:30:56  
24 effect that you claim to see in the data from the 04:31:04  
25 federal assault weapon ban -- 04:31:09

1 A Yeah. 04:31:09  
2 Q -- affected -- reduced general crime -- 04:31:11  
3 A Yeah. 04:31:14  
4 Q -- and I asked, Could it just be the magazine 04:31:14  
5 component? 04:31:18  
6 A Mm-hmm. 04:31:19  
7 Q Could the same be true for the increase in deaths 04:31:19  
8 and injuries that you have attributed to the federal 04:31:25  
9 assault weapon ban? Could it be a result of the 04:31:29  
10 magazine capacity alone? 04:31:32  
11 A It -- it could be for the -- for the deaths. 04:31:33  
12 It -- it's a harder story to tell for the incidents, 04:31:42  
13 but, you know, you could -- you can tell the story. 04:31:49  
14 We -- we -- we really don't have a great way to 04:31:52  
15 differentiate the -- the independent influences of -- of 04:31:55  
16 those two features. 04:32:02  
17 Q Why wouldn't it be attributable to the increase 04:32:04  
18 in -- the alleged increase in incidents? 04:32:07  
19 A Well, you know, it's a first cut, and -- and 04:32:11  
20 things are always more complicated than the first cut. 04:32:16  
21 But as a first cut, I think of high-capacity magazines 04:32:20  
22 going to the number of deaths, but not the number of 04:32:24  
23 incidents, but, again, that is a complicated question. 04:32:27  
24 Q Because what evidence -- are you assuming, in 04:32:38  
25 forming your opinions, that there were less AR-15s sold 04:32:44

1       between 1994 and 2004 during the assault weapon ban than 04:32:53  
2       there were prior? 04:32:58  
3       A     Am I assuming the number of AR-15s sold -- 04:33:09  
4       Q     During the federal assault weapon ban -- 04:33:13  
5       A     Yeah. 04:33:13  
6       Q     -- was lower than the number of AR-15s being sold 04:33:17  
7       prior to the ban? 04:33:19  
8       A     Well, I -- I wasn't, in -- in this analysis, 04:33:20  
9       focused at all on the number of sales. I was just 04:33:24  
10      trying to figure out: What's the impact of these -- of 04:33:28  
11      this federal prohibition -- 04:33:37  
12      Q     Got it. I understand. 04:33:38  
13      I'm simply asking: Do you have any evidence of 04:33:39  
14      whether or not the -- there was a drop in the sales of 04:33:42  
15      AR-15s after 1994? 04:33:47  
16      A     Well, again, there are definitional questions 04:33:49  
17      here. So if you are talking about AR-15s that violate 04:33:55  
18      the federal assault weapon ban, then, clearly, those did 04:33:59  
19      drop. 04:34:03  
20      Q     Correct. 04:34:03  
21      A     But if you are talking about, you know, AR-15 04:34:03  
22      platform guns, you know, those could have been rising 04:34:10  
23      over this period as that -- that became sort of a new 04:34:15  
24      marketing tool. 04:34:22  
25      Q     And if those AR platform rifles, without the 04:34:24

1 adjustable stock, without the flash suppresser, but with 04:34:28  
2 the magazine -- 04:34:31  
3 A Mm-hmm. 04:34:31  
4 Q -- with the pistol grip were still being sold, 04:34:32  
5 the rifles being sold, why would you attribute the 04:34:35  
6 increase in violence and crime to -- following the 04:34:43  
7 ban -- 04:34:56  
8 A Mm-hmm. 04:34:56  
9 Q -- to the rifle? If they were available the 04:34:56  
10 whole time -- right? Your premise -- correct me if I'm 04:35:00  
11 wrong -- 04:35:04  
12 A Yeah. 04:35:04  
13 Q -- let me -- let me clarify, because I know this 04:35:05  
14 is -- that was a long question. 04:35:06  
15 A Yeah. 04:35:07  
16 Q Your premise seems to be that -- and correct me 04:35:07  
17 if I'm wrong -- 04:35:11  
18 A Mm-hmm. 04:35:11  
19 Q -- the crime and violence rates reduced during 04:35:12  
20 the federal assault weapon ban because psycho killers 04:35:16  
21 said, Oh, I don't want to go get this AR-15 -- or AR-15s 04:35:21  
22 were less -- less available; right? Is that fair to -- 04:35:26  
23 I'm characterizing your statement -- or your opinion 04:35:32  
24 correctly? 04:35:35  
25 A Yeah, that these particular guns were less 04:35:35

1 available. 04:35:40

2 Q So if there were more AR-15 platform rifles 04:35:40

3 during that period, wouldn't that influence whether you 04:35:44

4 could attribute it to the rifle versus the magazine? 04:35:49

5 Wouldn't that impact your analysis about attributing it 04:35:53

6 to the rifle? 04:35:56

7 A Yeah, I mean, it goes to the question of: What 04:35:56

8 is it that makes the banned guns more desirable for mass 04:36:03

9 killers? And -- and if -- if those features are 04:36:13

10 accurately capturing that, then you're -- you're, 04:36:17

11 presumably, going to be limiting the desirability of 04:36:22

12 that -- that weaponry to the people that you don't want 04:36:28

13 to have those guns. 04:36:31

14 But, I mean, if -- if your point is that, you 04:36:34

15 know, the people who want AR-15s can have them anyway -- 04:36:42

16 so there's really no difference -- then I don't know 04:36:48

17 what this litigation is about; because if they can get 04:36:51

18 the guns that they want, why are they complaining about 04:36:54

19 restrictions on these guns. 04:36:56

20 Q Well, that's a separate question. I wasn't 04:36:58

21 asking that at all or making that -- 04:37:00

22 A But that's the central point of your -- of your 04:37:02

23 claim -- 04:37:04

24 Q It isn't. It isn't. So I think maybe there's 04:37:05

25 some confusion, so let me clarify. 04:37:06

1           In making your opinions on the impacts of the           04:37:09  
2 federal assault weapon ban, are you assuming that less           04:37:14  
3 AR-15s were coming into the public arena?                       04:37:20  
4           A    I'm -- I'm just assuming that less of the           04:37:27  
5 prohibited guns were coming into the public arena.               04:37:33  
6           Q    And referring to Exhibit 12, these are rifles           04:37:37  
7 that shoot the identical ammunition at the same speed.        04:37:43  
8 You hold it the exact same way. Pull the trigger the           04:37:49  
9 exact same way. Has a pistol grip. All that's                   04:37:52  
10 different is the adjustable stock -- it can't have an        04:37:57  
11 adjustable stock and it cannot have a flash suppressor.     04:38:00  
12           A    Yeah, and so --                                       04:38:04  
13           Q    So the -- the absence of an adjustable stock and   04:38:06  
14 a flash suppresser caused a noticeable difference in the    04:38:12  
15 level of crime.   04:38:20  
16           Is that your opinion?                                       04:38:21  
17           MR. CHANG: Just for the clarity of the record,       04:38:22  
18 we are talking about Exhibit 14, not 12.                       04:38:24  
19           MR. BRADY: Yes. Thank you. Thank you.                  04:38:27  
20           MR. CHANG: Should probably keep those in front      04:38:34  
21 of you.   04:38:36  
22           THE WITNESS: Yeah, no, I -- I am not drawing any    04:38:39  
23 conclusion on overall crime. I'm -- I'm just limiting     04:38:41  
24 it to, you know, these sort of public mass shooting        04:38:44  
25 events, and -- and that does seem to be a different        04:38:47

1 calculus for some of these mass shooters, but I would 04:38:58  
2 also note that the California law is -- is more 04:39:01  
3 restrictive than the federal law, and -- and, therefore, 04:39:06  
4 you know, these weapons are falling within the purview 04:39:11  
5 of California prohibitions. 04:39:15  
6 BY MR. BRADY: 04:39:17  
7 Q Go back to your paragraph 112. You say: There 04:39:18  
8 is evidence that the federal assault weapons ban was 04:39:20  
9 effective in limiting criminal use of assault weapons. 04:39:23  
10 So my question is: If more of these rifles were 04:39:28  
11 available during that time period, then how would just 04:39:32  
12 changing the stock -- fixing the stock and taking off a 04:39:39  
13 flash suppresser affect the criminal use of one? Not 04:39:42  
14 mass shootings. I'm talking about criminal use here. 04:39:48  
15 A Yeah, no, I understand your point. I'm -- I'm 04:39:51  
16 just saying that, to the extent that the prohibited 04:39:53  
17 features and the prohibited guns were appealing to mass 04:39:58  
18 shooters, that would be consistent with this decline in 04:40:04  
19 incidents, and, you know, other aspects of the federal 04:40:12  
20 assault weapon ban would then also go to the deaths. 04:40:18  
21 But if the features were -- were not of 04:40:23  
22 particular interest or appeal to the mass killers, then 04:40:30  
23 it would not have an impact. 04:40:35  
24 Q What is your basis for concluding that mass 04:40:37  
25 shootings have been increasing since 2014? 04:40:41

1 A The point that I'm making is public mass 04:40:55  
2 shootings have been increasing, and I think that is why 04:40:57  
3 they accepted -- the FBI has said that, and, you know, I 04:41:03  
4 tried to put evidence of that in my report as well. 04:41:11

Q What's a "public mass shooting"? 04:41:13

6 A You know, essentially, it's what we talked about 04:41:15  
7 earlier in discussing the FBI research in this area. 04:41:17

8 It's -- it's trying to separate out, you know, just the 04:41:25  
9 normal criminal activity of either, you know, criminal 04:41:31

10 gang fighting amongst itself or, you know, a father 04:41:39  
11 going deranged and killing his whole family, but, 04:41:42

12 rather, to focus on people moving into the public domain 04:41:46  
13 and trying to kill in a somewhat indiscriminate fashion 04:41:50

14 with a -- you know, a broad-based attack on the public 04:42:03  
15 as opposed to an identified attack on, you know, the 04:42:05

16 four members of your family, or something like that. 04:42:07

17 Q So, then, it does not take into account incidents 04:42:09

18 that take place in a private setting. 04:42:15

19 A Typically not. 04:42:17

20 Q Even if more people were killed in the private 04:42:21  
21 setting? 04:42:25

22 A year. 04:42:25

23                   so -- so the -- the reason that this distinction   04:42:27  
24       is made is, if I want to kill, you know, my five kids, I   04:42:30  
25       just wait 'til they are asleep and grab a handgun and   04:42:37

1 shoot them all in the head and they are dead. But if 04:42:41  
2 I -- if I want to kill, you know, people at a country 04:42:44  
3 western concert in Las Vegas, a handgun isn't going to 04:42:51  
4 do anywhere near as much damage as if I can start using, 04:42:54  
5 you know, much more aggressive weaponry. 04:43:01  
6 And -- and so what's happened is we are getting 04:43:05  
7 much more of the use of this aggressive weaponry, and, 04:43:08  
8 therefore, you are getting bigger death tolls in these 04:43:13  
9 mass shooting events. 04:43:16

10 Q So the death tolls are increasing since 2014 as 04:43:17  
11 well? 04:43:24

12 A Yes. 04:43:24

13 Q What do you base that on? 04:43:27

14 A Just my evaluation of -- of the data that we have 04:43:29  
15 been discussing. 04:43:35

16 Q Do you have anything in particular you could 04:43:37  
17 point me to that shows that fatalities are increasing? 04:43:39

18 A I mean, I don't have it in front of me, but -- 04:43:44

19 Q So you say here in paragraph 57 -- 04:43:52

20 A Mm-hmm. 04:43:52

21 Q -- that the dramatic increases in gun massacre 04:43:55  
22 incidents -- 04:44:00

23 A Mm-hmm. 04:44:00

24 Q -- is that a public mass shooting, or is that 04:44:03  
25 including public and private? 04:44:05

1 A No. I mean, that's referencing the graphic right 04:44:07  
2 above it, which is the public mass shootings. 04:44:12  
3 Q So it says: It closely tracks the growth in U.S. 04:44:17  
4 sales of assault weapons. 04:44:17  
5 A Yeah. 04:44:17  
6 Q So what do you mean by "closely tracks"? 04:44:22  
7 A You know, if you -- if you look at, you know, 04:44:26  
8 the -- the table on page 13 of my report, you sort of 04:44:33  
9 see that, up until 2004, things are pretty flat, and 04:44:38  
10 then things sort of take off after that in terms of the 04:44:46  
11 active shooter incidents identified by the FBI. And 04:44:49  
12 that's also, you know, a fairly good portrayal of what's 04:44:57  
13 happening with assault weapons as well. 04:45:01  
14 Q So do you have any evidence about the sales 04:45:04  
15 statistics of assault weapons? 04:45:12  
16 A Yeah. We -- we have -- we have some data on 04:45:14  
17 that, sure. 04:45:21  
18 Q Where is that data? 04:45:21  
19 A Well, some of it was cited in a report by 04:45:23  
20 Professor English, I believe. 04:45:30  
21 Q Which I believe you took issue with; correct? 04:45:31  
22 A Well, I -- I definitely had some concerns about 04:45:33  
23 the report, but you can see that there is sales data out 04:45:41  
24 there, and one has to interpret it, you know, with care. 04:45:48  
25 Q But you have never seen that sales data before; 04:45:53

1 correct, before Professor English's report? 04:45:58

2 A Well, you know, there -- there's -- there's 04:46:02

3 certainly discussions and references in the literature, 04:46:06

4 you know, going back to Koper and before, discussing, 04:46:11

5 you know, sales of various types of weaponry. 04:46:17

6 Q Do you know whether they are limiting their 04:46:22

7 discussion to assault weapons meeting the federal 04:46:24

8 definition, or if they are talking about some other 04:46:28

9 definition? 04:46:30

10 A Well, you know, the -- the reports are -- are 04:46:30

11 varied. Some -- some of them would be talking about one 04:46:38

12 of those, and some would be talking about, you know, the 04:46:41

13 broader category. 04:46:45

14 Q And, again, tracking sales, assuming that mass 04:46:45

15 shootings track an increase -- track the sales of 04:47:02

16 assault weapons, that could be a spurious correlation; 04:47:06

17 correct? 04:47:10

18 A You know, every -- every -- every statistical 04:47:10

19 study is -- is subject to that concern: Are we picking 04:47:21

20 up the true causal effect, or is it a -- you know, just 04:47:28

21 a correlation that doesn't represent causation? 04:47:31

22 Q Okay. Turn to page 25, still on paragraph 57, 04:47:45

23 you quote Josh Sugarman, the executive director of the 04:47:47

24 Violence Policy Center, for the proposition that the end 04:47:51

25 of the assault weapons ban allowed for the customization 04:47:55

1 and modification of these weapons to make them look even 04:47:58  
2 more militaristic, even more grand in the eyes of their 04:48:01  
3 owners. 04:48:05  
  
4 Why would you quote Josh Sugarman in support of 04:48:08  
5 your premise? Do you believe him to be an unbiased 04:48:11  
6 character? 04:48:20  
  
7 A Well, I -- I -- I probably should have quoted, 04:48:22  
8 you know, some gun manufacturer's statement to the same 04:48:28  
9 effect. 04:48:33  
  
10 Q I mean, you cite the Violence Policy Center in 04:48:33  
11 several instances in this paper; is that not true? 04:48:39  
  
12 A Yeah, I cite them a few times. 04:48:41  
  
13 Q And you don't find it concerning to rely on an 04:48:48  
14 advocacy group for data? 04:48:54  
  
15 A Well, I wasn't -- I wasn't relying on them for 04:48:57  
16 data. 04:49:00  
  
17 I think the point that I quoted there is true. 04:49:00  
18 This is somebody who has a -- you know, has focused on 04:49:06  
19 this issue. 04:49:12  
  
20 But I -- I take the point. I -- I -- I probably 04:49:15  
21 should bring in a, you know, gun lobbyist or -- or gun 04:49:19  
22 seller to point out, you know, we have been working 04:49:25  
23 carefully to make our guns look more militaristic and 04:49:31  
24 threatening, and this will promote gun sales. And -- 04:49:37  
25 and you can find those if you dig. 04:49:41

1	Q	Or more functional; right?	04:49:44
2	A	Or more functional, but -- but make them, you	04:49:45
3		know, more dangerous and, therefore, violate what should	04:49:52
4		be every American's goal, which is to limit the capacity	04:49:58
5		of weaponry to promote mass killings while having the	04:50:02
6		smallest impact on the fun uses of these guns.	04:50:13
7		Gee, it's almost 5:00. Time flies when you are	04:50:43
8		having fun.	04:50:46
9		MR. CHANG: Do you need a break?	04:50:49
10		THE WITNESS: No, no. I'm fine. I -- I am going	04:50:50
11		to fill up my water when we are done.	04:50:54
12		MR. CHANG: Do you want to fill up your water --	04:51:10
13	BY MR. BRADY:		04:51:10
14	Q	Do you have any background in mental health	04:51:14
15		research? I'm not asking you if you have mental health	04:51:16
16		issues --	04:51:20
17	A	Thank you.	04:51:20
18	Q	-- to be clear.	04:51:22
19	A	I was under oath here, and I was really getting	04:51:23
20		nervous.	04:51:26
21	Q	No.	04:51:27
22		Do you have any professional background in mental	04:51:27
23		health research?	04:51:31
24	A	You know, if you work in this area, you're --	04:51:31
25		you're certainly spending a certain amount of time	04:51:41

1 looking at mental health and crime and, you know, what's 04:51:45  
2 the impact of access to guns by people with mental 04:51:50  
3 health, and, you know, there's been a lot of both 04:51:54  
4 research and -- and also efforts with things like red 04:51:58  
5 flag laws to address this, so -- so I look at it in that 04:52:03  
6 sense, but I certainly don't look at myself as someone 04:52:07  
7 who's good at diagnosing or treating mental health. 04:52:10  
  
8 Q Or determining the effects on mental health of 04:52:14  
9 certain activities? Do you believe that you are 04:52:28  
10 qualified to opine on impacts of mental health? 04:52:32  
  
11 MR. CHANG: Objection; vague. 04:52:39  
  
12 BY MR. BRADY: 04:52:39  
  
13 Q Impacts on mental health? Sorry. 04:52:40  
  
14 A You know, I -- I think I'm competent to at least 04:52:43  
15 reference studies that discuss what the impacts of 04:52:55  
16 mental health are from things like mass shootings. 04:53:01  
  
17 Q How could you independently corroborate those 04:53:05  
18 studies and know whether they are accurate or not 04:53:09  
19 without the background knowledge in the field? 04:53:14  
  
20 A Yeah, I'm -- I'm not doing -- I'm not conducting 04:53:16  
21 those studies or -- or, you know, sort of independently 04:53:20  
22 verifying them. I'm just looking to see what the 04:53:24  
23 research tells us and -- and sharing that with the -- 04:53:30  
24 the Court. 04:53:35  
  
25 Q But you really couldn't say, one way or the other 04:53:35

1       on the mental health issues, whether the researchers are 04:53:52  
2       correct in their conclusions or not based on your own 04:53:59  
3       personal knowledge; right? 04:54:02  
4       A     I mean, the -- there -- there is a sort of 04:54:02  
5       consistent body of evidence, I think, that these 04:54:12  
6       traumatic mass shootings impose psychological burdens on 04:54:16  
7       individuals, and we are getting a lot more information 04:54:23  
8       about how even, you know, serving in the military is 04:54:26  
9       predisposing people to post-traumatic distress and 04:54:31  
10      things of this nature. 04:54:37  
11           So I tried to find the -- the best studies on 04:54:39  
12      this, and it's -- it's sort of consistent with what I 04:54:42  
13      think is true and what -- what -- what the studies seem 04:54:46  
14      to show. But I -- I don't, you know, have the capacity 04:54:51  
15      to weigh in what the mechanisms are for that. I'm -- 04:54:56  
16      I'm just trying to use the existing research in that 04:55:08  
17      area to clarify what the costs of mass shootings are 04:55:11  
18      more broadly. 04:55:18  
19       Q     Got it. 04:55:19  
20           Okay. In paragraph 62 of your report, you say 04:55:20  
21      that the United States certainly has a higher rate of 04:55:27  
22      public mass shootings than other advanced industrialized 04:55:31  
23      nations. 04:55:34  
24           Is that your opinion? Page -- 04:55:36  
25       A     Yes, yes, yes. Yes. 04:55:36

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1 Q So your -- your opinion is that the United States 04:55:43  
2 certainly has a higher rate of public mass shootings 04:55:47  
3 than does -- than do other advanced industrialized 04:55:49  
4 nations; correct? 04:55:53  
5 A Yes. 04:55:53  
6 Q And what is your basis for that? 04:55:54  
7 A You know, again, there -- there is research on 04:55:55  
8 this question, and it's -- it's trying to do for, you 04:56:01  
9 know, other advanced industrialized nations what we were 04:56:16  
10 just doing before when looking at the U.S. alone and 04:56:19  
11 also do what I've done comparing Australia versus the 04:56:24  
12 U.S. and what I've done comparing, you know, California 04:56:28  
13 to Florida, for example. And in looking at all of those 04:56:33  
14 comparisons, this -- this conclusion seems to emerge 04:56:40  
15 fairly clearly from the studies that I've -- I've 04:56:48  
16 examined. 04:56:54  
17 Q And what studies are those? 04:56:54  
18 A Well, some of them are -- are things that I've 04:56:55  
19 done, but depending on which of those you are talking 04:57:01  
20 about, you know, there's been a lot of work on 04:57:05  
21 Australia, so numerous studies on Australia. I cite, 04:57:09  
22 you know, the Lankford study and -- 04:57:16  
23 Q What's the Lankford study? Where do you cite 04:57:20  
24 that to -- or where do you cite that at? 04:57:23  
25 A Where does it come in. I'm wondering if I cite 04:57:25

1       that in my rebuttal report or -- but I'm pretty sure I     04:57:53  
2       cite it in here somewhere.   04:57:57

3       Q     In any event, you relied on the Lankford study to     04:58:03  
4       confirm that the United States has a higher rate of     04:58:07  
5       public mass shootings than advanced -- other advanced     04:58:10  
6       industrialized nations?   04:58:14

7       A     Yes.   04:58:15

8       MR. BRADY:   Exhibit 14? 15, sorry.                           04:58:49

9   04:58:49  
10   04:58:49  
11   04:58:49  
12       Q     Is this the Lankford study that you were just     04:58:50  
13       referring to?   04:58:52

14       A     Yes.   04:58:52

15       Q     Okay. If you could take a look at -- the page     04:58:53  
16       numbers start at 187, so goes 188, 189, 190.              04:59:21

17       A     Okay.   04:59:27

18       Q     The data set at the bottom?                           04:59:27

19       A     Yeah.   04:59:37

20       Q     It says: The data for this study were drawn,     04:59:37  
21       first, from the New York City Police Department's 2012     04:59:42  
22       Active Shooter Report. This report employs the              04:59:42  
23       Department of Homeland Security's definition of "active     04:59:47  
24       shooter."   04:59:49

25   04:59:50

1 A Yes -- well, there are times when -- when I've 04:59:54  
2 used the term "active shooter" and -- and this is the 04:59:58  
3 definition there. 05:00:00  
4 There are times when we talk about, you know, 05:00:03  
5 mass shooters, and -- and that could be a -- mass public 05:00:07  
6 shooters, and that could be a slightly different 05:00:12  
7 definition for the reason we talked about earlier. 05:00:15  
8 Let's say I -- I go into the public forum and I 05:00:17  
9 want to kill as many people as possible, but a policeman 05:00:22  
10 takes me out after I kill two people. Then that doesn't 05:00:26  
11 get counted in the mass public shooter data set, which 05:00:31  
12 often is defined as four or more deaths, but it does -- 05:00:34  
13 it does get included in the active shooter. 05:00:37  
14 Q So in reading this, his data set, do -- do you 05:00:39  
15 understand what his conclusions are? 05:00:42  
16 A Yes. 05:00:43  
17 Q And what are those? 05:00:46  
18 A So the conclusion that he reaches is that there's 05:00:47  
19 a higher level of public mass shootings in the 05:00:54  
20 United States than in the rest of the world, more 05:01:04  
21 generally. 05:01:08  
22 Q And do you understand -- or can you tell from 05:01:08  
23 this how Lankford obtained those counts, those figures? 05:01:11  
24 A Yeah, so -- so he was, essentially, trying to do 05:01:21  
25 what many of these public mass shootings studies have 05:01:25

1 done, which is cull from the public record all of the 05:01:35  
2 mass shootings available to you, and then, from -- from 05:01:42  
3 that, draw these broad conclusions about where they are 05:01:47  
4 more prevalent. 05:01:50

5 Q So do you know where he got his data from for 05:01:51  
6 these -- making these -- these counts? 05:02:00

7 A You know, he was using public -- public data. He 05:02:03  
8 was using press reports, so things that were available 05:02:14  
9 to researchers, in the same way that, you know, Mother 05:02:21  
10 Jones and the Gun Violence Archive are -- are trying to 05:02:29  
11 amalgamate this -- this data. 05:02:38

12 Q Did you ever see his data? 05:02:38

13 A No. 05:02:40

14 Q So do you know whether it's good data or bad 05:02:40  
15 data? 05:02:45

16 A I mean, I didn't do an independent assessment of 05:02:45  
17 his data. I did my own analysis of -- of Australia, so 05:02:52  
18 it's -- it's pretty clear what happened in Australia 05:02:59  
19 and, actually, serves some of the -- I mean generates 05:03:02  
20 some of the same conclusions that we saw earlier. But I 05:03:08  
21 didn't do the comparisons that, you know, would be fully 05:03:11  
22 necessary to draw the broad conclusions that he's 05:03:17  
23 drawing here. 05:03:20

24 Q So it says, in the first sentence, that the data 05:03:21  
25 for this study were drawn first from the New York City 05:03:26

1 Police Department's 2012 Archive Shooter Report; is that 05:03:29  
2 right? 05:03:33  
3 A Yeah. 05:03:33  
4 Q Did you ever look at that report? 05:03:34  
5 A No, I -- I have not. 05:03:35  
6 MR. BRADY: Exhibit 16. 05:04:00  
7 (Exhibit 16 was marked for 05:04:00  
8 identification by the Court Reporter.) 05:04:01  
9 BY MR. BRADY: 05:04:01  
10 Q Does -- based on the cover page, does this seem 05:04:04  
11 to be the document that Mr. Lankford is referring to 05:04:07  
12 having drawn his data from? 05:04:14  
13 MR. CHANG: Did you say Exhibit 16? 05:04:17  
14 MR. BRADY: Sorry? Yes. 05:04:31  
15 THE WITNESS: Yeah, this seems to be the New York 05:04:36  
16 City 2012 Active Shooter Report. 05:04:39  
17 BY MR. BRADY: 05:04:43  
18 Q Okay. If you open it up -- and I will clarify 05:04:43  
19 for the record that this is an excerpt of said report, 05:04:46  
20 because I only want to ask about one page, which is 05:04:50  
21 page 11. 05:04:53  
22 A Okay. 05:04:54  
23 Q Can you read the first sentence on page 11 in 05:04:55  
24 Exhibit 14 -- or 16? 05:05:03  
25 A It says: The New York Police Department chose to 05:05:04

1 restrict quantitative analysis to cases that took place 05:05:12  
2 within the U.S. because the NYPD limited its Internet 05:05:15  
3 searches to English-language sites, creating a strong 05:05:21  
4 sampling bias against international incidents. 05:05:25

5 Q What do you understand the term "strong sampling 05:05:28  
6 bias against international incidents" to mean? 05:05:33

7 A Well, it's -- it's what Lankford says in his 05:05:36  
8 study; that this -- this New York Police Department 05:05:44  
9 Active Shooter Report is probably going to capture a 05:05:50  
10 higher percentage of the mass shooting events in the 05:05:57  
11 U.S. as opposed to, you know, the -- the 05:06:01  
12 non-English-speaking countries. 05:06:08

13 So if you were going to do a comparison, you 05:06:11  
14 would feel more comfortable comparing U.S., Canada, 05:06:13  
15 United Kingdom, Australia than, you know, let's say, a 05:06:17  
16 country like India, for example -- well, India has a lot 05:06:25  
17 of English-speaking, but -- but some of these countries 05:06:30  
18 would have much less full reporting from -- from 05:06:33  
19 English-language sources, and, therefore, you are going 05:06:40  
20 to underestimate if you are just using this data set. 05:06:43

21 Q So the NYPD report is acknowledging that the 05:06:46  
22 methods that were used for gathering that data did not 05:06:51  
23 allow them to make meaningful comparisons between the 05:06:56  
24 United States and non-English-speaking nations with 05:07:00  
25 respect to mass shootings; is that correct? 05:07:05

1 A Yeah, for -- for the -- for the New York study 05:07:07  
2 that -- that we are looking at here, that is true. 05:07:13  
3 Q And Mr. Lankford drew his data from that report; 05:07:14  
4 correct? 05:07:22  
5 A Well, my understanding is that that was the first 05:07:22  
6 source that he drew from, but then built up from there, 05:07:29  
7 you know, through other data sources, a more 05:07:39  
8 comprehensive assessment. 05:07:41  
9 Q You see that in Lankford's report? 05:07:43  
10 A Yeah, that -- I mean, I haven't looked at this in 05:07:45  
11 a while, but that was -- that was my understanding. 05:07:48  
12 Q Turn back to the first page, page 187. 05:07:51  
13 A Okay. 05:08:11  
14 Q Does it say how many countries Lankford was 05:08:11  
15 evaluating on the -- in the title? 05:08:20  
16 A Yeah. 05:08:22  
17 Q How many is that? 05:08:22  
18 A 171. 05:08:24  
19 Q Okay. Do you know how many nations the NYPD 05:08:25  
20 report covered? It's on page 11. 05:08:36  
21 A Okay. On page 11. 05:08:43  
22 Q Let's just say less than 171; agreed? 05:08:45  
23 A Yeah, if -- if this is the -- the full array, it 05:08:52  
24 is less than 171. 05:08:54  
25 Q Okay. 05:08:57

1 A But -- but that -- that, you know, is -- is 05:08:57  
2 consistent with what I said. He -- he started with this 05:08:59  
3 data, but then, you know, created a larger, more 05:09:03  
4 comprehensive data set. 05:09:08

5 Q So he had to rely on sources other than the LAPD 05:09:09  
6 report for, let's say -- so 171 minus -- let's say 05:09:14  
7 there's 20 countries. Would that be a fair -- without 05:09:19  
8 counting them out -- I'm happy to count them out if you 05:09:23  
9 want. 05:09:26

10 A Yeah, I mean, I don't know enough about the 05:09:26  
11 New York data set to know whether this is all that they 05:09:28  
12 looked at. 05:09:35

13 You notice that these are all cases where they 05:09:35  
14 were incidents, and it's possible that they looked at, 05:09:38  
15 you know, 150 other countries and they just didn't have 05:09:40  
16 any incidents. 05:09:43

17 But, in any event, Lankford did try to create a 05:09:46  
18 comprehensive data set beyond what was available to him 05:09:54  
19 in the New York data set. 05:09:59

20 Q And do you know where he cites that in his 05:10:01  
21 report? 05:10:03

22 A You know, I would have to -- I would have to 05:10:03  
23 look, but if you want, I can try to see if I can get 05:10:08  
24 that. 05:10:16

25 Okay. So if you look at page 191, what he -- 05:11:46

1 what he says is, you know, we started with the New York 05:11:51  
2 Police Department report -- 05:11:56  
3 Q What paragraph? I'm sorry. 05:11:57  
4 A Oh, I'm sorry, it looks like the first full 05:11:58  
5 paragraph on page -- 05:12:01  
6 Q Starting with the word "ostensibly"? 05:12:03  
7 A Yeah. 05:12:05  
8 Q Okay. 05:12:05  
9 A So he's saying they were trying to get all global 05:12:06  
10 cases, but it fell short of that goal, so at the start 05:12:10  
11 of the next paragraph, he says: For this study, we 05:12:12  
12 supplemented with both other data from the FBI, as -- as 05:12:14  
13 well as data collected from other countries, and he 05:12:20  
14 talks about the methodology that -- that he employed to 05:12:24  
15 access the data from these other countries. 05:12:29  
16 Q Does he specify whether it's non-English-speaking 05:12:31  
17 countries? 05:12:33  
18 A It doesn't fully specify, but it says: The 05:12:34  
19 New York Police Department researchers relied entirely 05:12:42  
20 on open-source material from previous scholarship, 05:12:47  
21 government reports, and media reports, so this meant 05:12:49  
22 this was replicated by searching these types of foreign 05:12:51  
23 sources. In general, data from open sources are 05:12:53  
24 commonly relied on when studying mass shootings, so this 05:12:57  
25 approach also has scholarly precedent. 05:13:00

1 Q Do you agree with his statement, that this 05:13:05  
2 approach has scholarly precedent? 05:13:09  
3 A I mean, I didn't, you know, follow through and 05:13:15  
4 look at all of the citations, but these are same fairly 05:13:18  
5 well-known researchers on mass shooting incidents. 05:13:21  
6 Q If he did not take into account 05:13:27  
7 non-English-speaking countries, would that change your 05:13:29  
8 opinion of his work? 05:13:34  
9 A Certainly it would -- it would raise concerns for 05:13:39  
10 any conclusions beyond that in the arenas where, you 05:13:44  
11 know, you would expect English searches to -- to capture 05:13:51  
12 all of the relevant mass shooting events. 05:13:54  
13 Q Does he indicate anywhere -- anywhere in here 05:13:58  
14 that he speaks a language other than English? 05:14:04  
15 A You know, I -- I don't recall from this report 05:14:09  
16 what his, you know, capacities were in that domain. 05:14:15  
17 Q So it's quite possible that he missed a 05:14:21  
18 significant amount of mass shooting incidents in 05:14:25  
19 non-English-speaking countries -- is that fair to 05:14:29  
20 say? -- if he did not have either himself or somebody 05:14:32  
21 familiar with the language in the countries he was 05:14:39  
22 looking at? 05:14:43  
23 A Yeah, for the -- for the -- the countries 05:14:43  
24 like Somalia, or something like that, I would be much 05:14:51  
25 less confident that an English-language search would be 05:14:58

1 capturing as full a representation as it would in places 05:15:03  
2 that are English-speaking countries predominantly. 05:15:10  
3 Q What about in Russia? 05:15:14  
4 A Yeah, I would -- I would -- I would say you are 05:15:18  
5 probably going to get more English-speaking stories on 05:15:22  
6 mass shootings in Russia, but not as full and 05:15:30  
7 comprehensive a list as you would get for, you know, 05:15:33  
8 Canada, Australia, New Zealand, and, you know, obviously 05:15:37  
9 the U.S. -- 05:15:44  
10 Q Those are all English-speaking, no? 05:15:44  
11 A Yes. 05:15:46  
12 THE VIDEOGRAPHER: 50 seconds. 05:15:51  
13 MR. BRADY: Okay. We'll -- we'll go ahead and 05:15:53  
14 take a break. 05:15:54  
15 THE VIDEOGRAPHER: This now marks the end of disc 05:15:55  
16 labeled No. 3 of the deposition of John J. Donohue. 05:15:58  
17 We are now going off the record. The time is 05:16:01  
18 5:16. 05:16:04  
19 (Recess taken.) 05:16:04  
20 THE VIDEOGRAPHER: This now marks the beginning 05:24:24  
21 of disc labeled No. 4 of the deposition of 05:24:26  
22 John J. Donohue. 05:24:28  
23 We are now going back on the record, and the time 05:24:30  
24 is 5:24. 05:24:32  
25 BY MR. BRADY: 05:24:33

1 Q Professor Donohue, do you have any special 05:24:34  
2 personal knowledge about military firearms? 05:24:37  
3 A You know, limited knowledge of military firearms 05:24:40  
4 personally, but by reading, you know, broader knowledge. 05:24:50  
5 Q But anything you read you would have to be 05:24:54  
6 accepting what the person wrote as true; you wouldn't be 05:24:59  
7 able to individually verify -- independently verify with 05:25:03  
8 your personal knowledge whether their assessment was 05:25:08  
9 correct or not. 05:25:11  
10 Is that fair to say? 05:25:12  
11 A Yeah, I mean, anything that -- anything that I 05:25:13  
12 wrote here, I -- I assume I verified in some way, but I 05:25:21  
13 wasn't verifying it by my practice on -- on the field, 05:25:28  
14 if -- if that's what you mean. 05:25:30  
15 Q Correct. 05:25:31  
16 I'm asking: Do you have any personal 05:25:32  
17 knowledge -- any special personal knowledge about 05:25:37  
18 military arms that would help you determine whether the 05:25:39  
19 information you were reading and citing to is correct or 05:25:42  
20 not? 05:25:45  
21 A No. I relied on others for those confirmations. 05:25:45  
22 Q Got it. 05:25:52  
23 Do you have any special knowledge about 05:25:53  
24 ballistics? 05:25:59  
25 A You know, you -- you learn about that if you are 05:26:02

1 working in the area of guns, but I'm -- I'm not a 05:26:08  
2 ballistics expert. 05:26:11  
3 Q So you have never conducted a ballistics test? 05:26:12  
4 A No. 05:26:15  
5 Q Have you read ballistics reports? 05:26:15  
6 A You know, in -- in the course of doing this work, 05:26:19  
7 I'll see ballistics discussions, but it -- it certainly 05:26:22  
8 hasn't been a major focus of my research. 05:26:28  
9 Q And wound ballistics, do you have any background 05:26:32  
10 in any medical background? 05:26:37  
11 A I do not have any medical background in -- in 05:26:40  
12 that, but, again, I'm citing people who I know and I've 05:26:44  
13 spoken to on that. 05:26:50  
14 Q But you -- again, you, with your knowledge, 05:26:50  
15 cannot verify that the substance of what they say is 05:26:54  
16 correct or not. 05:27:00  
17 Is that fair to say? 05:27:00  
18 A Well, again, if -- if you look at, for example, 05:27:01  
19 just even the latest 60 minutes displays on the 05:27:09  
20 difference between, you know, the ballistic consequences 05:27:13  
21 of a bullet from a 9-millimeter pistol versus from an 05:27:18  
22 AR-15, you can -- you can, I think, conclude that the -- 05:27:26  
23 the military or medical evidence that -- that we are 05:27:35  
24 discussing has a lot of experimental support, but I 05:27:38  
25 didn't do the studies myself. 05:27:46

1 Q Can you conclude from that that the features that 05:27:48  
2 make a rifle an assault weapon under California law 05:27:51  
3 affects the ballistics? To your knowledge, do the 05:27:56  
4 features that define an assault weapon affect the 05:28:04  
5 ballistics of a rifle? 05:28:07

6 A They -- they are not affecting the -- the 05:28:08  
7 ballistics. They are affecting the use and 05:28:17  
8 attractiveness of -- of the weapons. 05:28:20

9 Q Okay. But they have nothing to do with what 05:28:21  
10 happens when a bullet impacts a target; is that correct? 05:28:26

11 A Well, certainly things like pistol grips and 05:28:29  
12 flash suppressors will -- will not have that impact. 05:28:37

13 Q Okay. So when you say assault weapons have more 05:28:42  
14 of an impact than, say, a handgun, wouldn't it be more 05:28:47  
15 accurate to say that rifles will have more of an impact 05:28:51  
16 on a target than handguns? 05:28:55

17 A Well, even beyond rifles, the -- the -- the 05:28:56  
18 nature of -- of, you know, the AR-15 is -- is 05:29:09  
19 particularly potent. I mean, there's a reason that the 05:29:18  
20 AR-15 was adopted for military use. It was -- it was 05:29:24  
21 thought to be, you know, a better and more efficient and 05:29:30  
22 effective killing machine, and so -- 05:29:35

23 Q That -- that wasn't my question. My question was 05:29:41  
24 about ballistics and a round. 05:29:43

25 A Mm-hmm. 05:29:43

1 Q You indicated that there's going to be more 05:29:48  
2 damage to a person shot by an assault weapon versus a 05:29:51  
3 handgun -- 05:29:55  
4 A Mm-hmm. 05:29:55  
5 Q -- when I'm saying -- when I'm asking: How do 05:29:57  
6 the assault weapon features change what the bullet does 05:30:00  
7 coming out of the rifle? 05:30:04  
8 A Well, again, there -- there are many features of 05:30:05  
9 a rifle that could make them less potent -- 05:30:14  
10 Q What do you mean by "potent"? 05:30:22  
11 A You know, just more powerful -- 05:30:23  
12 Q Powerful in what regard? 05:30:27  
13 A Well, in terms of destruction to a human body, 05:30:28  
14 for example. 05:30:35  
15 Q And the rifle determines what is done to the 05:30:35  
16 target? 05:30:40  
17 A The -- the rifle and the -- and the bullets 05:30:43  
18 employed. 05:30:47  
19 Q Yes. 05:30:48  
20 And so my question is: A bullet is what's going 05:30:48  
21 to do the damage; correct? 05:30:51  
22 A Right, but -- 05:30:52  
23 Q And a bullet coming out of -- a 223 bullet coming 05:30:54  
24 out of an assault weapon versus a rifle with the same 05:30:58  
25 length barrel that is not an assault weapon is going to 05:31:04

1 do the identical effect to a target, no? 05:31:07  
2 MR. CHANG: Objection; calls for speculation. 05:31:10  
3 It's outside the scope. 05:31:16  
4 MR. BRADY: Indeed. 05:31:17  
5 THE WITNESS: I mean, that's -- that's not quite 05:31:19  
6 true. You can have two guns of the same barrel length, 05:31:24  
7 and one of them will be more powerful than the other, 05:31:29  
8 and, therefore, the gun -- the bullet will be coming out 05:31:36  
9 with greater lethal force. 05:31:38  
10 BY MR. BRADY: 05:31:41  
11 Q How? 05:31:41  
12 A How would it becoming out? 05:31:42  
13 Q No. 05:31:44  
14 How would there be a difference? 05:31:45  
15 A Well, this is just physics; that, you know, when 05:31:46  
16 metal is coming at you of a certain size -- if one 05:31:53  
17 bullet is -- is coming more slowly than another, it's 05:32:00  
18 going to hit you with -- with less force. 05:32:04  
19 Q Why would a bullet coming out of the identical 05:32:06  
20 length barrel of a rifle, coming out of the identical 05:32:10  
21 cartridge be going slower? Would a pistol grip cause 05:32:15  
22 that bullet to go slower? 05:32:22  
23 A No. 05:32:23  
24 Q Would a flash suppressor cause that bullet to go 05:32:23  
25 slower? 05:32:27

1	A     No.	05:32:27
2	Q     Would an adjustable stock cause that bullet to go	05:32:27
3	slower?	05:32:28
4	A     No.	05:32:28
5	Q     Would a detachable magazine cause that bullet to	05:32:29
6	go slower?	05:32:32
7	A     No.	05:32:32
8	Q     So, then, how does an assault weapon have any	05:32:32
9	bearing -- whether a rifle is an assault weapon or not,	05:32:38
10	have any bearing on the wound that is caused upon	05:32:42
11	impact?	05:32:48
12	A     Well, even things like center fire or rim fire	05:32:49
13	characteristics --	05:33:02
14	Q     Okay. Now you're -- you're -- you're talking	05:33:03
15	about two different things. I'm talking about identical	05:33:05
16	things.	05:33:08
17	A     Okay.	05:33:09
18	Q     Help me out, Professor. I mean, you got to	05:33:10
19	concede something. You haven't conceded anything all	05:33:12
20	day.	05:33:15
21	Tell -- there is -- at least tell me there's	05:33:16
22	no -- you don't have ballistics background; correct?	05:33:18
23	A     Right.	05:33:20
24	Q     So for physics sake, if two -- pardon the pun.	05:33:21
25	That was kind of funny, actually.	05:33:27

1           For -- if two cartridges identical are going out   05:33:29  
2       of barrels the identical length and the pistol grip and   05:33:33  
3       the flash suppressor and the adjustable stock will have   05:33:38  
4       no impact on the rate of speed at which that projectile   05:33:41  
5       is going, why would there be any difference in the   05:33:46  
6       impact -- the wound upon impact?                              05:33:50  
7       A    Yeah, so -- so I thought that that's what I was   05:33:53  
8       saying, that, you know, despite this -- this claim that   05:33:58  
9       I haven't conceded anything, I did say, I think, that   05:34:05  
10      the -- the presence of the flash suppresser or the   05:34:08  
11      pistol grip will not impact the speed and force of an   05:34:15  
12      identical bullet coming out of the gun of a -- of a   05:34:22  
13      similar length.    05:34:26  
14       Q    And so how can you say that those same features   05:34:32  
15      increased the lethality of a rifle, or are you not   05:34:36  
16      saying that? Are you saying that it's just because   05:34:42  
17      these rifles look cool that psychopaths choose them?   05:34:45  
18       A    No. I'm -- I'm -- I'm saying that this class   05:34:50  
19      of -- of weaponry is -- is more lethal, and I think   05:34:57  
20      you're saying, Well, we can still buy some of these   05:35:08  
21      lethal weapons anyway, so why should we -- why should we   05:35:16  
22      restrict, you know, this other segment.                      05:35:21  
23           And -- and so the question -- the question then   05:35:25  
24      becomes: Yeah, I mean, so, then, why are you                   05:35:27  
25      complaining about this restriction if you feel that you   05:35:32

1 can get everything that you want from a gun, even in the 05:35:35  
2 face of an assault weapon ban? And the answer to that 05:35:43  
3 question is, obviously, that you don't think you can get 05:35:48  
4 everything that you want from a gun, and, therefore, 05:35:51  
5 what is it that you are not getting from -- from a gun 05:35:56  
6 by virtue of the assault weapon ban? And -- and that's 05:36:00  
7 the answer to your question. 05:36:04

8 Q Sure. I think -- 05:36:05

9 A That you would not be bringing this lawsuit if 05:36:07  
10 guns were not more attractive and dangerous because 05:36:11  
11 that's what you get there from these features, because, 05:36:16  
12 otherwise, you would just be happy to have what you say 05:36:21  
13 you have already. 05:36:23

14 Q Or that they are -- make the rifle easier to use; 05:36:25  
15 right? 05:36:33

16 A Right. 05:36:33

17 Q More functionally useful? 05:36:33

18 A Yeah, but they're -- 05:36:38

19 Q More functionally friendly? 05:36:38

20 A Yeah, but they're making it functionally friendly 05:36:40  
21 for that 15-year-old mass shooter as well. 05:36:42

22 Q So if -- if you had a sports car, a Porsche 05:36:45  
23 Carrera -- forgive me. I'm not a car guy, but that's 05:36:50  
24 the only one that comes to mind -- and it goes really 05:36:54  
25 fast and it's really dangerous, but I would like an 05:36:58

1 adjustable seat so I can move myself closer or further 05:37:01  
2 away from the steering wheel -- wheel as needed and I 05:37:04  
3 object to that restriction, would that mean that I want 05:37:08  
4 it to be more lethal or that I want the car to fit me 05:37:13  
5 better? 05:37:16

6 A Yeah, the -- the analogy is not -- not 05:37:23  
7 quite right, though, because the moving around of the -- 05:37:30  
8 the seat is really not going to have any impact on, you 05:37:36  
9 know, the way the car is driven, but the -- the 05:37:43  
10 restrictions on assault weapons are designed to impose 05:37:47  
11 some limitations on the way the gun is used. 05:37:51

12 Q Okay. So how did the features go into your 05:37:54  
13 report in the Sandy Hook case -- how did the features on 05:37:57  
14 the rifle assist Adam Lanza? How -- how -- would -- 05:38:00  
15 would -- is it your view that had the rifle not had the 05:38:05  
16 features that it had, he would not have been able to 05:38:09  
17 inflict the casualties that he did? 05:38:11

18 A Well, certainly that's true, and the question is: 05:38:17  
19 Which features are we talking about? 05:38:28

20 Q So how did a flash suppresser assist the Sandy 05:38:32  
21 Hook shooter? 05:38:37

22 A I mean, the flash suppressors help people who are 05:38:37  
23 trying to rain down as many bullets as fast as they 05:38:52  
24 can -- 05:38:56

25 Q How so? 05:38:56

1 MR. CHANG: Objection. He's still -- he hasn't 05:38:56  
2 finished his answer. 05:38:58  
3 MR. BRADY: He finished his answer about raining 05:38:59  
4 down, and I want to know: How so? 05:39:00  
5 THE WITNESS: Well, essentially the notion behind 05:39:02  
6 a flash suppresser is that it's going to facilitate and 05:39:19  
7 make easier the rapid firing of a gun for the person 05:39:28  
8 who's firing the gun. 05:39:37  
9 BY MR. BRADY: 05:39:38  
10 Q How so? 05:39:38  
11 A You're -- you're asking me to explain the -- 05:39:38  
12 Q Your description of what a flash suppresser does, 05:39:49  
13 yes. I'm asking you to explain that. 05:39:52  
14 A Yeah. The -- 05:39:53  
15 Q Do you know what a flash suppresser is? 05:39:57  
16 A I -- I indicated to you I have knowledge of the 05:39:58  
17 attributes of these guns based on the written material, 05:40:08  
18 but not by virtue of use, and all of the reports that 05:40:13  
19 I've seen indicate that the flash suppressor's value to 05:40:18  
20 the shooter is in limiting, you know, flashes or -- or 05:40:26  
21 other attributes that follow from rapid firing of the 05:40:34  
22 gun. 05:40:41  
23 Q Do you know whether muzzle flash -- are you 05:40:42  
24 familiar with the term "muzzle flash"? 05:40:47  
25 A Yes. 05:40:49

1 Q Are you -- is it your understanding that a flash 05:40:49  
2 suppresser removes muzzle flash from the shooter's field 05:40:51  
3 of vision? 05:40:56  
4 A You know, I'm -- I'm not the person to opine on 05:40:56  
5 the impacts of that particular, you know, set of 05:41:08  
6 questions -- 05:41:14  
7 Q So, then, would it be fair to say that you don't 05:41:15  
8 know how the features on the rifle influenced any of the 05:41:17  
9 shootings that you have described in your report? 05:41:21  
10 A No. 05:41:24  
11 What it would be fair to say is that the 05:41:27  
12 published literature, including from military sources, 05:41:31  
13 indicates that flash suppressors enhance the capacity of 05:41:39  
14 the gun to fire rapidly and make it easier for the 05:41:45  
15 shooter. 05:41:48  
16 How that's done, I'm not in a position to say 05:41:50  
17 because I've never fired one of these guns, and if the 05:41:53  
18 military sources are wrong on that, then that should be 05:41:58  
19 corrected. 05:42:03  
20 Q And that would alter your opinion on flash 05:42:03  
21 suppressors? 05:42:06  
22 A Well, whatever -- whatever the truth is, is all 05:42:07  
23 that I'm really concerned about. And if someone were 05:42:12  
24 able to satisfy me that all of the reports on this area 05:42:19  
25 are wrong and flash suppressors really don't have any 05:42:26

1 capacity to facilitate mass shootings, I would be more 05:42:31  
2 than happy to say, you know, it's not going to impact 05:42:36  
3 the rate or speed of effective fire. 05:42:42

4 Q Well, I'll help you out on that. Unless it 05:42:46  
5 happens at night, probably not going to make a 05:42:49  
6 difference. 05:42:51

7 But, anyway, I will -- so couldn't it be -- the 05:42:52  
8 point I'm trying to get at -- 05:43:06

9 A Mm-hmm. 05:43:06

10 Q -- is that you are talking about assault weapons 05:43:07  
11 and the features that -- that define an assault weapon 05:43:09  
12 being the problem on the rifle, and I think you even 05:43:14  
13 alluded to the fact that psychopaths choose these guns 05:43:16  
14 because of their appearance. 05:43:22

15 Is that fair to say; that at least in part -- at 05:43:24  
16 least in part, do psychopaths choose these guns because 05:43:27  
17 of their appearance? 05:43:30

18 A I think that's a factor, certainly. 05:43:31

19 Q And -- and potentially also because they believe 05:43:33  
20 that those firearms are more likely to create casualties 05:43:36  
21 as they -- as they so desire. 05:43:43

22 Is that fair to say? 05:43:45

23 A Well, it -- 05:43:47

24 Q Whether that's right or wrong, they choose those 05:43:48  
25 firearms because they believe that those features will 05:43:52

1 give them their desired result. 05:43:57

2 Is that fair to say, that that's a possibility? 05:43:58

3 A I -- I -- I definitely think that we have 05:44:01

4 evidence that some of the, you know, mass shooters with 05:44:06

5 mental issues were drawn to these guns because of 05:44:14

6 appearance and presumed greater lethality. 05:44:19

7 Q And, in some case, that's not going to be an 05:44:24

8 assault weapon; right? 05:44:38

9 MR. CHANG: Objection; calls for speculation. 05:44:39

10 BY MR. BRADY: 05:44:43

11 Q Well -- okay. Let's look at paragraph 79. 05:44:44

12 You talk about Nidal Hasan -- 05:44:46

13 A Mm-hmm. 05:44:46

14 Q -- who killed 13 people -- 05:44:50

15 A Mm-hmm. 05:44:50

16 Q -- and injured more than 30 others at Fort Hood; 05:44:53

17 right? 05:44:55

18 A Yeah. 05:44:55

19 Q And you note that when Hasan purchased his 05:44:56

20 killing arsenal, he asked for, quote, the most 05:45:00

21 technologically advanced weapons on the market and the 05:45:02

22 one with the highest standard magazine capacity. 05:45:05

23 A Yeah. 05:45:08

24 Q By the way, are those his words or the -- the 05:45:08

25 article's describing what he wanted, are you -- do you 05:45:11

1 know? 05:45:15

2 A Yeah, I mean, that's what the -- the interview 05:45:15

3 with the seller at the retail outfit where he bought the 05:45:20

4 gun said. 05:45:25

5 Q Got it. 05:45:25

6 So now you are saying, after that: Searching for 05:45:26

7 the deadliest assault weapon is exactly what one would 05:45:28

8 do if one wanted to simply kill as many people as 05:45:31

9 possible in the shortest amount of time. 05:45:34

10 That's what you say; right? 05:45:36

11 A Yeah. 05:45:37

12 Q Did Hasan use an assault weapon? 05:45:37

13 A Well, he certainly used a weapon that was 05:45:40

14 prohibited by the federal assault weapon ban. 05:45:45

15 Q Are -- is it your understanding that Hasan used a 05:45:51

16 rifle? 05:45:56

17 A No, but the ban on -- the federal assault weapon 05:45:56

18 ban was broader than simple rifle. 05:46:00

19 Q So the handgun that he used was prohibited under 05:46:05

20 the federal assault weapon ban? 05:46:08

21 MR. CHANG: Objection; assumes facts -- fact not 05:46:10

22 in evidence. 05:46:12

23 BY MR. BRADY: 05:46:12

24 Q Is that your understanding, is that the handgun 05:46:12

25 he used was prohibited under the federal assault weapon 05:46:15

1 ban? 05:46:18  
2 A Well, the entire weapon was -- was prohibited, 05:46:18  
3 yes. 05:46:18  
4 MR. BRADY: Okay. 05:46:25  
5 All right. I want to quickly ask you about your 05:46:41  
6 rebuttal report. 05:46:45  
7 What number are we at? I'm sorry. 17. 05:47:06  
8 (Exhibit 17 was marked for 05:47:06  
9 identification by the Court Reporter.) 05:47:06  
10 BY MR. BRADY: 05:47:06  
11 Q Actually, before we get to that, are you familiar 05:47:06  
12 with the Congressional Research Service? 05:47:08  
13 A Yes. 05:47:11  
14 Q Are studies done by that entity of high quality, 05:47:12  
15 trustworthy? 05:47:18  
16 A You know, I think they try to do a serious and 05:47:19  
17 careful job, yes. 05:47:24  
18 Q So they are not the libertarian weirdos from the 05:47:25  
19 Reason that I was trying to sell you earlier? They are, 05:47:30  
20 in your opinion, mainstream legitimate organization? 05:47:32  
21 A Yeah, I think they're -- they're trying to do a 05:47:36  
22 serious job. Yes. 05:47:39  
23 Q Got it. 05:47:40  
24 If you could turn to page 7 of what is now marked 05:47:40  
25 as Exhibit 17 -- 05:47:43

1 A Mm-hmm. 05:47:43  
2 Q -- paragraph 17. 05:47:51  
3 A Yeah. 05:47:53  
4 Q So above this, to paraphrase -- and you are free 05:47:53  
5 to, you know, point out any -- any specifics you want in 05:47:58  
6 my characterization, but above this, you, essentially, 05:48:04  
7 take issue with some of Professor English's statistics 05:48:06  
8 on the prevalence of assault weapons -- rifles that 05:48:11  
9 would meet the definition of "assault weapons" in the 05:48:18  
10 American population. 05:48:20  
11 Is that fair to say? 05:48:22  
12 A Yeah. 05:48:23  
13 Q And is it fair to say that, in paragraph 17, you 05:48:23  
14 say that a more appropriate way to determine the 05:48:27  
15 popularity of rifles meeting the definition of an 05:48:30  
16 "assault weapon" is to look at California and the number 05:48:34  
17 of assault rifles that have been registered in 05:48:40  
18 California. 05:48:43  
19 Is that -- am I correctly surmising your -- your 05:48:44  
20 view? 05:48:50  
21 A Well, yeah, I mean, it was a more limited goal, 05:48:50  
22 which was to say he's making conjectures based on data, 05:48:54  
23 but at least for California, we have another independent 05:48:58  
24 way to get a fix on how many of these assault rifles 05:49:02  
25 there are, and, you know, it's a pretty small number in 05:49:07

1 California. 05:49:12

2 Q Of firearms that were registered as assault 05:49:12

3 rifles; correct? 05:49:16

4 A Yes. 05:49:16

5 Q And are you aware of any reasons why there 05:49:16

6 would -- why the registration number would not reflect 05:49:20

7 actual ownership? 05:49:24

8 A Sure. If -- if the gun is not registered, then 05:49:27

9 there will be a deviation. 05:49:32

10 Q But I'm saying, are you familiar with why, 05:49:33

11 particularly in California, registration would not 05:49:37

12 reflect actual ownership? 05:49:41

13 MR. CHANG: Objection; calls for speculation, 05:49:43

14 lacks foundation. 05:49:46

15 THE WITNESS: Yeah, I mean, certainly anything 05:49:49

16 that deviates from full registering of -- of, you know, 05:49:57

17 mandated registered guns will lead to a -- a deviation. 05:50:14

18 BY MR. BRADY: 05:50:21

19 Q So are you aware -- were you aware, in making 05:50:23

20 this determination, that people could simply remove 05:50:25

21 features from their rifle to make it no longer an 05:50:30

22 assault weapon to avoid registration? 05:50:33

23 A Sure. And, you know, if it's -- if it 05:50:35

24 doesn't become a mandated registered weapon, then it's 05:50:39

25 not going to be included in the calculations. 05:50:46

1 Q And if people were able to easily remove features 05:50:50  
2 to not have to register their rifle, that would impact 05:50:55  
3 the number of rifles that were actually registered; 05:50:59  
4 right? 05:51:04

5 A It could. 05:51:04

6 Q Okay. And the -- if people were not provided 05:51:10  
7 notice that they needed to register their rifles, that 05:51:15  
8 might impact that number of actual registered rifles as 05:51:20  
9 well; right? 05:51:25

10 You buy a gun 20 years ago, 15 years ago, the law 05:51:28  
11 changes, nobody sends you a happygram saying you have to 05:51:32  
12 register your gun, you just have to be paying attention 05:51:37  
13 to the changes in the law and the news. 05:51:40

14 A Well, yeah. 05:51:42

15 Q Is it possible that people did not have notice 05:51:43  
16 that they needed to register their rifles? 05:51:45

17 MR. CHANG: Objection; lacks foundation, makes -- 05:51:49  
18 misstates -- makes improper assumptions. 05:51:54

19 BY MR. BRADY: 05:51:57

20 Q Let's make it a hypothetical. 05:51:57

21 If -- if people did not get notice -- 05:52:00

22 A Yeah. 05:52:00

23 Q -- would that impact the number of rifles 05:52:02  
24 registered? 05:52:04

25 A I mean, we -- we do start with the presumption 05:52:05

1       that people know the law, but you are right. In some                   05:52:08  
2       cases, people just aren't aware of what the law is.                   05:52:15  
3       Q     Especially when nobody sends them anything in the           05:52:19  
4       mail saying you got to do this, like your car                           05:52:23  
5       registration or something? If you just had to guess                   05:52:27  
6       that you had to go register your car because they                   05:52:29  
7       changed the rule, you think -- how many people you think    05:52:31  
8       would know to comply to go register their car?                   05:52:33  
9   05:52:36  
10          MR. CHANG: Objection; calls for speculation.                   05:52:36  
11          MR. BRADY: Okay. Withdrawn.                                   05:52:38  
12          Q     And how many years has there been an assault           05:52:46  
13       weapon ban in California of some kind, do you know?           05:52:48  
14          A     A long time.   05:52:51  
15          Q     So could the presence of an assault weapon ban    05:52:53  
16       dissuade people who have otherwise acquired those guns    05:52:57  
17       from acquiring them?   05:53:01  
18          A     Well, I hope so. That's what the ban is for;       05:53:02  
19       right?   05:53:07  
20          Q     Precisely.   05:53:07  
21       So would people -- couldn't there have been a       05:53:09  
22       significant amount of people who removed their rifles    05:53:15  
23       from the state prior to the law taking effect and having   05:53:18  
24       to register them?   05:53:22  
25          MR. CHANG: Objection; calls for speculation.                   05:53:23  
   05:53:23  
   05:53:25

1       banned weapon for some time, but, sure, people -- people 05:53:33  
2       could take them out of the state if -- if they didn't 05:53:37  
3       want to sell them or otherwise dispose of them. 05:53:41

4       BY MR. BRADY: 05:53:44

5           Q     But isn't that the point, that there's been a ban 05:53:44  
6       in California, and so to use California -- or let me 05:53:46  
7       ask: Are you trying to use California to show national 05:53:51  
8       rates of assault weapon ownership, or are you just 05:53:54  
9       simply saying they are rare in California? 05:53:57

10          A     Oh, yeah, I -- I -- I was trying to say that, for 05:53:59  
11       purposes of this litigation, it is a relatively small 05:54:06  
12       set of people that are, you know, in -- in possession of 05:54:11  
13       these weapons. 05:54:17

14          Q     In California? 05:54:17

15          A     In California. 05:54:18

16          Q     You weren't trying to make any comments about 05:54:19  
17       national rates? 05:54:21

18          A     No, not in -- not in that discussion. 05:54:23

19          Q     Okay. Even with that pointed out, so if all 05:54:24  
20       somebody had to do to not have to register their rifle 05:54:31  
21       under the new law was to remove the barrel, which I can 05:54:35  
22       tell you takes about four seconds, and leave it in two 05:54:40  
23       pieces, do you think that it's possible that a 05:54:45  
24       significant number of people simply did that? 05:54:49

25          A     So -- 05:54:53

1	MR. CHANG: Objection; calls for speculation.	05:54:53
2	THE WITNESS: So -- so render the gun --	05:54:55
3	MR. BRADY: Inoperable.	05:54:55
4	THE WITNESS: -- inoperable.	05:54:55
5	MR. BRADY: Temporarily. Pop two pins in in five	05:55:00
6	seconds.	05:55:02
7	THE WITNESS: Yeah, I mean, it's -- it's unclear	05:55:11
8	exactly who would do that in the sense that, you know,	05:55:13
9	people -- people want to play with these guns, and so if	05:55:21
10	it's inoperable, they really don't want to keep them,	05:55:23
11	unless you are a criminal, and then maybe you -- you	05:55:26
12	want to keep it, but then -- then why take the -- the	05:55:30
13	barrel off.	05:55:37
14	BY MR. BRADY:	05:55:37
15	Q Were you aware that at the time that the most	05:55:38
16	recent assault weapon registration ended, that the DOJ	05:55:42
17	still had over 52,000 assault weapon registration	05:55:47
18	applications pending?	05:55:50
19	A I was not aware of this.	05:55:51
20	Q Okay. Did you discuss -- without divulging any,	05:55:55
21	you know, work product, did you consult with the DOJ	05:55:58
22	Bureau of -- Bureau of Firearms in any way to determine	05:56:02
23	the 175,000 number?	05:56:06
24	MR. CHANG: I'm not sure exactly what you are	05:56:12
25	asking.	05:56:14

1	BY MR. BRADY:	05:56:14
2	Q He -- he -- you indicate that there's 175,000	05:56:15
3	assault rifles that were registered over -- over the	05:56:17
4	period of California's history.	05:56:21
5	I'm just asking: Did you consult with the DOJ	05:56:23
6	Bureau of Firearms in figuring out these figures?	05:56:28
7	MR. CHANG: I will provide that that's a number	05:56:31
8	that I provided to Professor Donohue.	05:56:33
9	MR. BRADY: Okay.	05:56:36
10	Q So other than just being provided this number,	05:56:36
11	you didn't get a chance to discuss how these numbers	05:56:40
12	could be impacted in the ways I just proposed could be	05:56:43
13	possible?	05:56:46
14	A Well, I -- I mean, obviously whenever you are	05:56:46
15	talking about registration, there are some standard	05:56:53
16	moves that people make to either avoid registration or	05:57:00
17	because they fail to register. So I didn't need to	05:57:09
18	discuss that with anyone.	05:57:13
19	Q What about people believing that their guns were	05:57:20
20	registered because they bought them from a licensed gun	05:57:22
21	dealer who made them fill out a federal 4473 form and a	05:57:25
22	California DROS form before they acquired the firearm;	05:57:29
23	could somebody reasonably believe that filling out all	05:57:32
24	that government paperwork was, indeed, registration?	05:57:35
25	MR. CHANG: Objection; calls for speculation.	05:57:38

1 BY MR. BRADY: 05:57:42

2 Q It does, but I'm asking if that's reasonable. 05:57:43

3 A Well, what you are asking is, is it reasonable to 05:57:47

4 have an assault weapon and not understand the 05:57:50

5 requirements, and I think the law is pretty clear on 05:57:54

6 that. It defines that as unreasonable. 05:57:56

7 Q What law are you referring to? I'm sorry. 05:57:59

8 A Just standard tort law says that if the 05:58:02

9 government mandates regulation for an inherently 05:58:08

10 dangerous object, it's your duty to understand and 05:58:12

11 comply with that. 05:58:18

12 Q What -- what I'm suggesting, though, is that 05:58:18

13 people believed that they were complying when they 05:58:20

14 purchased the gun, believing that it had been 05:58:27

15 registered? 05:58:30

16 A You know, the prisons are full of people who say 05:58:33

17 that they -- they thought they were complying with the 05:58:36

18 law, but they weren't. 05:58:39

19 MR. BRADY: Exhibit 18. 05:58:41

20 (Exhibit 18 was marked for 05:59:01

21 identification by the Court Reporter.) 05:59:02

22 BY MR. BRADY: 05:59:02

23 Q If you filled that out at a gun store in 05:59:05

24 purchasing your firearm, underwent a background check, 05:59:08

25 waited ten days, would it not be reasonable for an 05:59:13

1 ordinarily intelligent person to believe, albeit 05:59:18  
2 wrongly, that the firearm had been registered? 05:59:23  
3 MR. CHANG: Objection; calls for speculation, 05:59:26  
4 lacks foundation. 05:59:28  
5 THE WITNESS: Yeah, I mean, I'm -- I'm obviously 05:59:33  
6 not your average citizen in this regard, but, you know, 05:59:35  
7 it says U.S. Department of Justice, and we typically 05:59:41  
8 have both a federal and state regulatory regime, so I 05:59:46  
9 would say, Well, now I've completed my federal 05:59:52  
10 obligation, but I certainly wouldn't say, I paid my 05:59:54  
11 taxes this year to the federal government, and, 05:59:59  
12 therefore, I reasonably assumed I didn't have to pay 06:00:02  
13 state taxes, so, California, why are you coming after me 06:00:05  
14 because I didn't pay any state taxes? 06:00:08  
15 MR. BRADY: So maybe you should take a look at 06:00:10  
16 Exhibit 19 as well. 06:00:12  
17 THE WITNESS: Okay. 06:00:13  
18 (Exhibit 19 was marked for 06:00:13  
19 identification by the Court Reporter.) 06:00:26  
20 BY MR. BRADY: 06:00:26  
21 Q So after filling out the federal form, you get to 06:00:27  
22 fill out that one from California. 06:00:29  
23 A Okay. 06:00:33  
24 Q Okay? 06:00:33  
25 So, again, after filling out the federal form, 06:00:34

1 then the California form, then undergoing a background 06:00:37  
2 check, then coming back ten days later, and acquiring a 06:00:40  
3 firearm safety certificate, could an ordinarily 06:00:44  
4 intelligent person reasonably believe that the gun had 06:00:49  
5 been registered to them? 06:00:53

6 MR. CHANG: Objection; calls for speculation, 06:00:55  
7 vague and ambiguous as to ordinary intelligence. 06:00:58

8 THE WITNESS: Reasonably believe? You know, 06:01:06  
9 people -- people are presumed to know the law and to 06:01:12  
10 have an obligation to know the law, and so certainly as 06:01:20  
11 the Supreme Court has said, if you are, you know, 06:01:25  
12 working with an inherently dangerous item, that puts you 06:01:33  
13 on a higher notice for what you are reason- -- 06:01:44  
14 reasonably expected to know, and obviously -- 06:01:46

15 BY MR. BRADY: 06:01:46

16 Q To be -- Professor, I'm not asking you about 06:01:51  
17 the legal- -- I'm just saying, could it be somebody just 06:01:54  
18 believing that, reasonably? A normal human being 06:01:56  
19 saying, I filled out all this paperwork -- could they 06:02:01  
20 not just reasonably believe that, hey, my gun was 06:02:04  
21 registered, even -- even assuming that they got notice 06:02:08  
22 of the law that they had to register it? 06:02:10

23 A Yeah, so I'm -- I'm just -- I'm just saying, 06:02:13  
24 could people end up making that incorrect assumption? 06:02:16  
25 Yes, but I'm -- I'm just blocking on whether it's 06:02:20

1 reasonable for them. I mean, you know, if I'm -- if I'm 06:02:23  
2 buying, you know, explosives for something, I sort of 06:02:32  
3 think, Better be clear what the legal requirements 06:02:39  
4 are -- 06:02:41

5 Q Even if you went to a federally licensed 06:02:42  
6 dealer -- a California-licensed dealer, filled out all 06:02:45  
7 their paperwork, went under -- underwent their 06:02:48  
8 background check, went home with your bomb, your 06:02:50  
9 explosives, and then all of a sudden the rules changed, 06:02:52  
10 and you didn't hear, and you got a -- or you believe 06:02:56  
11 that that -- that what you had already done sufficed? 06:02:59  
12 You don't think it's reasonable to believe that people 06:03:02  
13 might have mistakenly believed that they had registered? 06:03:05

14 MR. CHANG: Objection; argumentative. 06:03:08

15 MR. BRADY: I withdraw. 06:03:10

16 Q I think it's pretty clear that -- that all I'm 06:03:11  
17 getting at is: The number that you put -- the figure of 06:03:13  
18 guns that were registered in California for the 06:03:20  
19 proposition that these guns are not commonly owned in 06:03:22  
20 California, could it not be possible that that number is 06:03:26  
21 significantly lower than it otherwise would be but for 06:03:29  
22 years of an assault weapon ban, but for people believing 06:03:33  
23 that they had registered their guns, but for not 06:03:38  
24 receiving notice that they had to register their guns, 06:03:41  
25 but for lots of people removing guns from the state -- 06:03:44

1 you get my point? Could that -- could that -- that 06:03:49  
2 number is a -- a -- not a -- an easy number -- a 06:03:51  
3 reflective number of reality; correct? 06:03:56  
4 MR. CHANG: Objection; assumes facts not in 06:03:58  
5 evidence. 06:04:01  
6 THE WITNESS: Yeah, I mean, it goes back to what 06:04:01  
7 we were discussing earlier. It -- it's a number that 06:04:03  
8 comes from an official source that -- 06:04:05  
9 BY MR. BRADY: 06:04:05  
10 Q I'm not disputing the number of registrations -- 06:04:09  
11 A No, and I'm just saying that you -- you are 06:04:11  
12 offering a reason why the number may be, you know, lower 06:04:14  
13 than the actual number of guns within the state, but 06:04:20  
14 there are other reasons why, you know, some of these 06:04:23  
15 guns might be overstated. 06:04:28  
16 If somebody is moving, then -- and they are 06:04:30  
17 taking their gun with them, then that gun is taken out 06:04:33  
18 of the state, so -- so it's an imperfect number -- 06:04:36  
19 Q You were an expert witness in the Fyock 06:04:38  
20 high-capacity magazine case in Sunnyvale; correct? 06:04:44  
21 A Yes. 06:04:47  
22 Q Do you know how many people turned in 06:04:47  
23 high-capacity magazines in -- in Sunnyvale? 06:04:50  
24 A I don't. 06:04:51  
25 Q If it was zero, what would your response be? 06:04:52

1 A Well, there are -- there are lots of ways you can 06:04:57  
2 comply with that statute without turning the guns in -- 06:05:01  
3 I mean the -- the magazines in. 06:05:04

4 Q But would have people -- would people have done 06:05:08  
5 that to those magazines but for the law, assuming that 06:05:11  
6 they did do that? 06:05:14

7 MR. CHANG: Objection; calls for speculation. 06:05:15

8 BY MR. BRADY: 06:05:17

9 Q Why would anybody, on their own volition, say, 06:05:17  
10 "You know what? I'm going to take this 15-round 06:05:21  
11 magazine and put a bunch of epoxy in it and make it a 06:05:23  
12 10-round magazine just because I want to make it heavier 06:05:26  
13 and less -- less useful"? 06:05:29

14 MR. CHANG: Objection; calls for speculation. 06:05:30

15 MR. BRADY: I withdraw. It's okay. We are done. 06:05:31

16 THE WITNESS: Okay. Okay. 06:05:34

17 EXAMINATION 06:05:40

18 BY MR. CHANG: 06:05:40

19 Q Let's take back that Exhibit 19 -- 06:05:42

20 A Okay. 06:05:42

21 Q -- in front of you. 06:05:44

22 A Yeah. 06:05:45

23 Q You were previously presented with this, and, you 06:05:45  
24 know, you were asked whether someone filling out this 06:05:49  
25 worksheet might confuse this as a registration 06:05:53

1 application; is that correct? 06:05:56  
2 A Yes. 06:05:56  
3 Q Now, looking at the top of this worksheet, just 06:05:56  
4 to make a -- speed up the process, I'll read it to you. 06:06:00  
5 It says "Dealer's Record of Sale (DROS) Worksheet"; 06:06:03  
6 correct? 06:06:07  
7 A You are talking about the California one? 06:06:07  
8 Q Exactly. Exactly. Exhibit 19. 06:06:09  
9 A Yeah. 06:06:11  
10 Q So does -- have you seen this worksheet before? 06:06:11  
11 A No. 06:06:17  
12 Q Okay. So based on that title, does it suggest to 06:06:17  
13 you that this is a dealer's worksheet, something that 06:06:20  
14 the dealer fills out? 06:06:24  
15 A Yes. 06:06:25  
16 Q Okay. And it's a record of sale; correct, as 06:06:25  
17 indicated by its title? 06:06:30  
18 A Yes. 06:06:32  
19 Q So does -- would this suggest -- you know, is -- 06:06:32  
20 so I would -- you know, this is a record of sale made at 06:06:38  
21 the time that the firearm was sold. 06:06:45  
22 Would it be reasonable for someone who, you know, 06:06:47  
23 had one of these worksheets filled out at the time they 06:06:50  
24 purchased the weapon to think, perhaps, you know, years 06:06:53  
25 later, that this would be a registration application of 06:06:57

1 their assault weapon? 06:07:01

2 A Yeah, if -- if you have a car, for example, you 06:07:02  
3 might think when -- when the dealer sells it to me, we 06:07:06  
4 are going to get through one set of paperwork, but then 06:07:11  
5 I have to register -- register the car through another 06:07:14  
6 set -- set of documents. So, of course, some people 06:07:17  
7 make a mistake about everything, but it's not as though 06:07:22  
8 it would be a reasonable mistake to make. 06:07:27

9 Q So looking at -- I want to switch to Exhibit 17, 06:07:30  
10 and this is your rebuttal report. 06:07:34

11 A Yeah. 06:07:35

12 Q You were -- you were previously questioned on 06:07:36  
13 paragraph 17 on page 7. 06:07:41

14 A Mm - hmm . 06 : 07 : 43

15 Q You know, in your -- in paragraph 17, you are 06:07:43  
16 saying there are approximately 166,000 assault rifles 06:07:49  
17 currently registered with the California DOJ. 06:07:53

18 A Mm - hmm . 06 : 07 : 53

19 Q And Mr. Brady mentioned that, you know, there 06:07:54  
20 are -- I believe there's approximately 52,000 06:07:59  
21 applications pending at the time. 06:08:01

22 You know, and even assuming all 52,000 06:08:06  
23 applications were approved, that would bring -- in doing 06:08:08  
24 some quick math, that would bring -- bring the total 06:08:13  
25 number of registered assault rifles to 218,000 -- 06:08:15

1	A	Mm-hmm.	06:08:15
2	Q	-- or thereabouts.	06:08:19
3	A	Yeah.	06:08:20
4	Q	Would that change your opinion that the estimate	06:08:21
5		made by Klausman [phonetic] and Long as to the number of	06:08:29
6		AR-15s in California was a gross estimation?	06:08:34
7	A	No.	06:08:37
8	Q	Now, still on paragraph 17, you know, I think you	06:08:43
9		concluded in the paragraphs above --	06:08:46
10	A	Mm-hmm.	06:08:46
11	Q	-- and correct me if I'm wrong, that you	06:08:49
12		concluded that Klausman and Long's estimate for number	06:08:51
13		AR-15s in the U.S. is -- was on overestimation; correct?	06:08:57
14	A	Yes.	06:09:02
15	Q	And -- and then you -- does that include Klausman	06:09:02
16		and Long's estimation of the number of AR-15s in	06:09:07
17		California?	06:09:10
18	A	Yes.	06:09:10
19	Q	So given that the number of assault rifles	06:09:10
20		actually registered with California DOJ is less than	06:09:15
21		what Klausman and Long estimated, is it reasonable --	06:09:20
22		does it -- is it evidence that Klausman and Long's	06:09:28
23		estimate for nationwide numbers were also an	06:09:31
24		overestimation?	06:09:38
25		MR. BRADY: Objection; calls for speculation,	06:09:38

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1 beyond the scope of what the expert was called to 06:09:40  
2 testify about, irrelevant. 06:09:42  
3 MR. CHANG: Well, Mr. Brady, you -- you asked him 06:09:46  
4 about California versus national rates. 06:09:48  
5 MR. BRADY: And he said it didn't apply. He said 06:09:50  
6 he wasn't expanding it to that, but go ahead. 06:09:53  
7 MR. CHANG: Well, I'm asking him to clarify now. 06:09:54  
8 Q So Mr. -- 06:09:59  
9 MR. BRADY: He clarified it. 06:09:59  
10 BY MR. CHANG: 06:10:00  
11 Q Professor Donohue, so, you know, does -- does the 06:10:01  
12 actual California data and what it says about Klausman 06:10:02  
13 and Long's estimate for Cal- -- AR-15s in California -- 06:10:07  
14 does that provide any type of evidence with regard to 06:10:11  
15 Klausman and Long's estimate for nationwide data? 06:10:13  
16 MR. BRADY: Objection; beyond the scope of the 06:10:16  
17 deposition. I didn't ask him anything about Klausman 06:10:17  
18 and Long. Redirect should be limited to questions 06:10:20  
19 about -- on -- on direct deposition. 06:10:24  
20 BY MR. CHANG: 06:10:28  
21 Q You were asked about the paragraphs above 06:10:29  
22 paragraph 17; correct? 06:10:31  
23 A Yes. 06:10:33  
24 Q I mean, Klausman and Long weren't specifically 06:10:33  
25 mentioned, but paragraphs -- your paragraphs 15 and 16 06:10:36

1       discussed Klausman and Long's estimates; correct?                   06:10:39  
2       A     Yes.   06:10:42  
3       Q     So would you -- do you still need to repeat my           06:10:42  
4       question [sic], or do you understand my question?               06:10:47  
5       A     No, I think I understand.                                   06:10:48  
6   06:10:49  
7       question was that, you know, the -- the factors               06:10:53  
8       that suppress ownership in California don't apply across   06:11:00  
9       the country, but the elements of the Klausman and Long   06:11:07  
10      estimate that lead to overestimation of the number of   06:11:12  
11      assault weapons applies whether you are talking about   06:11:18  
12      nationally or within California.                           06:11:21  
13      Q     All right. Thank you, Professor Donohue.               06:11:26  
14   06:11:29  
15      If we can move to Exhibit 15, and this is the               06:11:29  
16      Adam Lankford article --                                   06:11:34  
17      A     Yes.   06:11:34  
18      Q     -- paper.   06:11:37  
19      A     Where is my -- oh, here it is. Got it.               06:11:37  
20      Q     And do you have Exhibit 16 on hand as well?       06:11:44  
21      A     I think I do.   06:11:46  
22      Q     Okay. Now, do you know one way or the other --   06:11:47  
23      A     Mm-hmm.   06:11:47  
24      Q     -- for certain that Exhibit 16 was the NYPD data   06:11:54  
25      set that Adam Lankford reviewed and relied on for his   06:12:03  
          paper that's Exhibit 15?                                   06:12:09

1 A I mean, he says that he relied on -- let me just 06:12:10  
2 quote. He said: Data for this study were first drawn 06:12:21  
3 from the New York City Police Department's 2012 Active 06:12:29  
4 Shooter Report. So that -- that's the first place that 06:12:36  
5 he -- he started with when he was compiling his overall 06:12:42  
6 data set. 06:12:45

7 Q Right. 06:12:45

8 Professor Donohue, my question is: Do you know 06:12:46  
9 for certain, one way or the other, whether Exhibit 16 is 06:12:48  
10 the same data set that Adam Lankford relied on for his 06:12:52  
11 paper? 06:12:57

12 A No. 06:12:57

13 Q There is some discussion earlier, if you can turn 06:12:57  
14 to page 194 -- well, I just -- before you do that, 06:13:02  
15 there's some discussion about non-English-speaking 06:13:07  
16 countries and whether the data set includes that. 06:13:09

17 A Mm-hmm. 06:13:09

18 Q You know, this is a study -- according to the 06:13:14  
19 title, this is a study of 171 countries -- 06:13:15

20 A Mm-hmm. 06:13:15

21 Q -- correct? 06:13:18

22 A Yes. 06:13:18

23 Q Do you know if there are 171 English-speaking 06:13:18  
24 countries, or more or less than that? 06:13:21

25 A Less than that. 06:13:23

1	Q	Okay. Does that suggest to you this study	06:13:24
2		includes non-English-speaking countries?	06:13:27
3	A	Yes.	06:13:29
4	Q	Okay. Now, if we turn to page 194, I'll direct	06:13:29
5		your attention to the first paragraph under	06:13:36
6		"Discussion" --	06:13:38
7	A	Mm-hmm.	06:13:38
8	Q	-- and I'll just read the sentence. It's the	06:13:41
9		second -- third -- it's the third sentence. It says:	06:13:43
10		Some of the most dangerous countries in terms of	06:13:47
11		homicide risk, such as Venezuela, Nigeria, and Mexico,	06:13:49
12		had very few offenders; is that correct?	06:13:53
13	A	Yes.	06:13:55
14	Q	Okay. Now I'm going to skip down to the last	06:13:55
15		full paragraph, about, you know, the fourth line down.	06:13:59
16		It says: For example, the Small Arms Survey, 2007,	06:14:05
17		lists the United States, Yemen, Switzerland, Finland,	06:14:10
18		and Serbia as the top five countries in civilian firearm	06:14:13
19		ownership rates, and all five countries also ranked in	06:14:15
20		the top 15 in public mass shooters per capita; is that	06:14:18
21		correct?	06:14:21
22	A	Yes.	06:14:21
23	Q	And then, two sentences down: In fact,	06:14:21
24		Switzerland and Finland are commonly assumed to be	06:14:24
25		extremely peaceful nations, and there may be much merit	06:14:26

1 to those generalizations. However, this study's 06:14:29  
2 findings and the availability of firearms within their 06:14:32  
3 borders suggest that their relatively high rate of 06:14:35  
4 public mass shootings may not simply be attributed to 06:14:37  
5 bad luck. 06:14:40

6 Is that a correct quote? 06:14:42

7 A Yes. 06:14:43

8 Q Now, you know, reviewing his discussions there, 06:14:43  
9 there are a number of countries that are mentioned. 06:14:47

10 A Mm-hmm. 06:14:47

11 Q Are there -- do they include non-English-speaking 06:14:50  
12 countries? 06:14:53

13 A Yes. 06:14:53

14 Q Does this suggest to you that his data set 06:14:53  
15 includes non-English-speaking countries? 06:14:56

16 MR. BRADY: Objection; calls for speculation, 06:14:58  
17 beyond the scope. 06:14:59

18 THE WITNESS: Yes. 06:15:01

19 BY MR. CHANG: 06:15:03

20 Q Okay. And I want to also ask you -- so here we 06:15:04  
21 are talking about public mass shootings in the context 06:15:10  
22 of gun policy. 06:15:15

23 A Mm-hmm. 06:15:15

24 Q Now, if there's a shooting, say, for example, in 06:15:19  
25 Somalia by a Somalian warlord who raids a local village 06:15:23

1 and shoots a number of people, would that incident be 06:15:28  
2 relevant for a -- a public policy study on -- on public 06:15:32  
3 mass shootings and firearms? 06:15:39  
4 A No. 06:15:41  
5 Q And why not? 06:15:42  
6 A Well, what we are trying to think about is what 06:15:43  
7 in the context of the United States will be the impact 06:15:48  
8 of these types of regulations. And so when making that 06:15:52  
9 determination, you can look to sort of comparable 06:15:58  
10 countries to evaluate, you know, how the relative 06:16:01  
11 countries are doing in this respect, but if you have a 06:16:08  
12 country like Yemen, which, essentially, has no 06:16:12  
13 functioning criminal justice system and probably does 06:16:15  
14 have the type of warlord activity that you alluded to, 06:16:19  
15 it's simply not a good comparator set. And, of course, 06:16:25  
16 this has been an enormous problem with, you know, much 06:16:29  
17 work by John Lott and others that have tried to make it 06:16:33  
18 seem that the U.S. is -- is a relatively low-risk 06:16:39  
19 country in terms of some of these gun crimes when he's 06:16:47  
20 often comparing countries that have no effective 06:16:51  
21 criminal justice system operating, and, therefore, they 06:16:55  
22 are simply not good comparator states. 06:16:59  
23 Q Okay. And your answer would be true if -- if 06:17:01  
24 there's a mass shooting by, for example, rebel 06:17:03  
25 guerrillas in the jungles of some country without an 06:17:06

1 effective functioning government? 06:17:09  
2 A Yeah, so that would be the same. 06:17:11  
3 Q If we could you turn to page -- 06:17:28  
4 (Discussion off the stenographic record.) 06:17:28  
5 MR. CHANG: Could you turn to -- I'm trying to be 06:17:30  
6 concise. 06:17:31  
7 THE WITNESS: Mm-hmm. 06:17:31  
8 BY MR. CHANG: 06:17:31  
9 Q If you could turn to paragraph 46 -- 06:17:32  
10 MR. BRADY: Maybe we could stipulate to the 06:17:32  
11 warlords not being relevant. 06:17:34  
12 BY MR. CHANG: 06:17:36  
13 Q The -- page 46 of your report. 06:17:36  
14 A Page 46 the big report, yes. 06:17:38  
15 Q Paragraph 112. 06:17:41  
16 A Okay. Got it. 06:17:45  
17 Q There's some discussions about whether, you know, 06:17:50  
18 the evidence -- or discussion about the evidence that 06:17:53  
19 federal assault weapons ban was effective in limiting 06:17:56  
20 criminal use of assault weapons. 06:17:59  
21 A Mm-hmm. 06:17:59  
22 Q To be clear, is it -- as you sit here today, is 06:18:03  
23 it your expert opinion that federal assault weapon ban 06:18:06  
24 was effective in limiting criminal use of assault 06:18:09  
25 weapons? 06:18:12

1 MR. BRADY: Objection; asked and answered. 06:18:12  
2 THE WITNESS: Yes, I think that's what the 06:18:13  
3 evidence shows. 06:18:18  
4 BY MR. CHANG: 06:18:19  
5 Q Now, if we could turn to Exhibit 12. 06:18:20  
6 Okay. Exhibit 12, this is the Reason-Rupp 06:18:26  
7 survey. 06:18:31  
8 A Yes. Got it. 06:18:32  
9 Q You were questioned about the -- on page 10, 06:18:38  
10 Question 37. 06:18:42  
11 A Mm-hmm. Page 10, okay, 37. Yes. 06:18:49  
12 Q Right. 06:18:55  
13 So in previous discussion, I think at one 06:18:56  
14 point -- and correct me if I'm wrong, at one point the 06:18:58  
15 discussion -- there was some discussion that, you know, 06:19:02  
16 based on the answer to the question -- to Question 37 -- 06:19:05  
17 A Mm-hmm. 06:19:05  
18 Q -- that, you know, a quarter of the people 06:19:12  
19 surveyed -- or slightly more than a quarter of the 06:19:16  
20 people surveyed thought that an assault weapon was an 06:19:19  
21 automatic weapon. 06:19:20  
22 Is that how you recalled it? 06:19:20  
23 A Yeah. 06:19:22  
24 MR. BRADY: Objection; misstates test- -- 06:19:22  
25 testimony, misstates evidence. 06:19:23

1 BY MR. CHANG: 06:19:24  
2 Q So, you know, looking at the question, it says: 06:19:25  
3 In just a few words, how would you describe an assault 06:19:28  
4 weapon; correct? 06:19:31  
5 A Mm-hmm. 06:19:32  
6 Q Does this suggest to you it's a -- it was a 06:19:32  
7 narrative answer? 06:19:36  
8 MR. BRADY: Objection -- 06:19:37  
9 BY MR. CHANG: 06:19:39  
10 Q Or calls for a narrative response? 06:19:40  
11 MR. BRADY: Objection; asked and answered. 06:19:40  
12 THE WITNESS: Yes. 06:19:40  
13 BY MR. CHANG: 06:19:40  
14 Q And then, you know, line -- couple lines down, it 06:19:43  
15 says: Percent of respondents who mentioned, and then 06:19:45  
16 dot, dot, dot -- 06:19:48  
17 A Mm-hmm. 06:19:48  
18 Q -- correct? 06:19:49  
19 A Yes. 06:19:49  
20 Q So does this suggest to you that, you know, 06:19:50  
21 anybody who listed those keywords in their narrative 06:19:55  
22 response would be counted in this -- in the response to 06:19:59  
23 this survey? 06:20:04  
24 A It -- it might. 06:20:04  
25 Q It might, right. It's a possibility. 06:20:06

1           So if someone had put down in their answer: "An   06:20:09  
2 assault weapon is a weapon that is not an automatic   06:20:13  
3 weapon," would -- would that response be counted as a   06:20:16  
4 response to this -- to the automatic weapon answer to   06:20:18  
5 this question?   06:20:22

6           MR. BRADY: Objection; calls for speculation,   06:20:23  
7 lacks foundation, irrelevant.                               06:20:24

8           THE WITNESS: It -- it -- it technically would in   06:20:30  
9 the sense that it says the percentage of respondents who   06:20:34  
10 mentioned.   06:20:38

11          MR. CHANG: Right.                                   06:20:38

12          Q     Or if someone, you know, put in their narrative   06:20:38  
13 response: "An assault weapon is one that can be easily   06:20:42  
14 converted to an automatic weapon," would that response   06:20:45  
15 also be counted as one that, you know, a respondent who   06:20:48  
16 mentioned assault weapon in his or her response?       06:20:51

17          MR. BRADY: Objection; calls for speculation.      06:20:54

18          THE WITNESS: Presumably.                           06:20:55

19          MR. CHANG: Right.                                   06:20:56

20          Q     But that's as much as you know; right?      06:20:57

21          A     Yes.   06:20:59

22          Q     Based on the formatting of the question?     06:20:59

23          A     Yes.   06:21:02

24          Q     So on Exhibit -- Exhibit 5 -- I think it's your   06:21:02  
25 paper ranking the different methodologies?               06:21:20

1 A Mm-hmm. Yeah. 06:21:24  
2 Q So in your -- in the data that you looked at 06:21:25  
3 for -- to conclude that there's -- to reach an opinion 06:21:30  
4 on the concentration -- ownership concentration of 06:21:34  
5 owners of assault rifles, were there -- do you know if 06:21:37  
6 there are randomized experiments of that type of -- on 06:21:44  
7 that subject? 06:21:50  
8 A On the -- 06:21:51  
9 MR. BRADY: Objection; vague. 06:21:52  
10 THE WITNESS: On the subject of what's the level 06:21:53  
11 of ownership of assault weapons? 06:21:55  
12 MR. CHANG: Correct. 06:21:57  
13 THE WITNESS: No, there are none. 06:21:58  
14 BY MR. CHANG: 06:21:58  
15 Q Were there natural experiment or regression 06:21:59  
16 discontinuity? 06:22:03  
17 A No. 06:22:03  
18 Q Panel data? 06:22:03  
19 A No. 06:22:07  
20 Q Time series or cross-section analysis? 06:22:08  
21 A Depending on -- on how you are evaluating it, 06:22:10  
22 there could be some time series and -- and also some 06:22:17  
23 graph of graphs or percentages. 06:22:22  
24 Q Would the GSS survey be considered time series? 06:22:23  
25 A Yes. 06:22:27

1 Q Okay. So would you say that when -- when -- 06:22:27  
2 in -- in writing your articles and preparing your 06:22:31  
3 report, would you say that you always relied on the best 06:22:34  
4 available studies and data to reach your conclusions? 06:22:38  
5 A Yes. 06:22:43  
6 Q Is that your general practice? 06:22:43  
7 A Yes. 06:22:45  
8 MR. CHANG: Thank you. I have no more questions. 06:22:46  
9 THE VIDEOGRAPHER: This now concludes the video 06:22:49  
10 deposition of John J. Donohue on December 6th, 2018, 06:22:52  
11 consisting of four DVDs. 06:22:57  
12 We are now going off the record, and the time is 06:23:00  
13 6:23. 06:23:02  
14 (TIME NOTED: 6:23 P.M.)  
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25

1 I, JOHN J. DONOHUE, do hereby declare under  
2 penalty of perjury that I have read the foregoing  
3 transcript; that I have made any corrections as appear  
4 noted, in ink, initialed by me, or attached hereto; that  
5 my testimony as contained herein, as corrected, is true  
6 and correct.

7 EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,  
8 2018, at \_\_\_\_\_.

9 (City) (State)

10

11 \_\_\_\_\_

12 JOHN J. DONOHUE

13 VOLUME 1

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

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

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

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

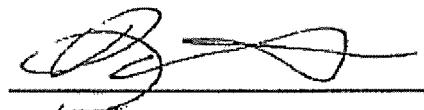
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20 Dated: December 24, 2018

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24 RACHEL FERRIER

25

CSR No. 6948

[& - 2017]

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