

Case No. 19-56004

In the United States Court of Appeals
for the Ninth Circuit

STEVEN RUPP, et al.,
Plaintiffs-Appellants,

v.

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

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

**APPELLANTS' EXCERPTS OF RECORD
VOLUME XVIII 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 XVIII 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 15

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

CERTIFIED COPY

----- x
STEVEN RUPP, et al., :
Plaintiffs, :
vs. : 8:17-cv-00746-JLS-JDE
XAVIER BECERRA, in his :
official capacity as Attorney :
General of the State of :
California; et al., :
Defendants. :

----- x
DEPOSITION OF
GARY KLECK, PH.D.
WASHINGTON, D.C.
DECEMBER 12, 2018

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REPORTED BY: KAREN YOUNG

FILE NO. ACOC3CB

Gary Kleck, PH.D.
December 12, 2018

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

- - - - - x
STEVEN RUPP, et al., :
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XAVIER BECERRA, in his :
official capacity as Attorney :
General of the State of :
California; et al., :
Defendants. :
- - - - - x

Deposition of GARY KLECK, PH.D., taken on
behalf of the Defendants, at the offices of Bradley
Arant Boult Cummings LLP, 1615 L Street, Northwest,
Washington, D.C., commencing at 9:44 a.m., Wednesday,
December 12, 2018, before KAREN YOUNG, Notary Public.

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P R O C E E D I N G S

(Exhibit Nos. 29 and 30
were marked for
identification.)

Whereupon,

GARY KLECK, PH.D.,
having first been duly sworn, was
examined and testified as follows:

- - -

EXAMINATION BY COUNSEL FOR THE DEFENDANTS
BY MR. ECHEVERRIA:

Q. Good morning, Professor Kleck. My name's
John Echeverria. I'm a Deputy Attorney General with
the California Attorney General's office. I'm
representing the defendant in this case, Xavier
Becerra, and this case is Rupp versus Becerra. The
plaintiffs in this case are challenging certain
portions of California's assault weapons ban, the
Assault Weapons Control Act, which is codified at
penal code section 30510, 30515, and California code
of regulation section 5499. Is that your
understanding?

A. It is.

Q. Okay. I'm going to be asking you some
questions today about this case because you have been

1 or telescoping stock, a grenade launcher or a flare
2 launcher, a flash suppressor, a forward pistol grip.
3 Do you see that?

4 A. I do.

5 Q. Do you understand what the statute means by
6 a semiautomatic center fire rifle?

7 A. I believe I do.

8 Q. And do you understand what it means when
9 the statute refers to a semiautomatic center fire
10 rifle that does not have a fixed magazine?

11 A. I believe I do.

12 Q. Are you familiar with a -- with the phrase
13 "rim fire"?

14 A. Yes.

15 Q. Do you know what the difference is between
16 a center fire rifle and a rim fire rifle?

17 A. The material that ignites the powder is
18 contained in the outer rim in a rim fire round, and
19 it's contained in the center on a center fire round.

20 Q. Is it generally true that center fire
21 rifles -- are there any other different -- sorry.
22 Strike that. Are there any other differences between
23 a center fire rifle and a rim fire rifle?

24 A. Generally speaking, rim fire rounds are
25 small caliber.

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1 Q. Okay, very good. And what's the difference
2 between a smaller caliber round and a higher caliber
3 round?

4 A. The diameter of the bullet is larger with a
5 larger caliber round.

6 Q. Okay. And in this case the plaintiffs are
7 challenging section 30515 subdivision A1 with respect
8 to subdivisions A, B, C, E and F, so they're not
9 challenging the provision that refers to a grenade
10 launcher or flare launcher. Do you understand that?

11 A. Yes.

12 Q. And the plaintiffs are not challenging any
13 of the other provisions of the statute that concern
14 the provisions related to assault pistols and assault
15 shotguns. Is that your understanding as well?

16 A. That is my understanding.

17 MR. ECHEVERRIA: Okay. And one final
18 housekeeping matter. I'm going to mark this as
19 Exhibit 31.

20 (Exhibit No. 31
21 was marked for
22 identification.)

23 MR. SWEENEY: Thank you.

24 BY MR. ECHEVERRIA:

25 Q. Have you seen Exhibit 31 before?

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1 A. I'm not sure if I have seen this one.

2 Q. Okay. Exhibit 31 is a copy of California
3 Code of Regulations Title 11, division 5, chapter 40,
4 section 5499. In subdivision A, it identifies
5 certain additional rifles that are prohibited under
6 the Assault Weapons Control Act. Do you see the list
7 of additional rifles on pages 1, 2 and 3?

8 A. Yes.

9 MR. ECHEVERRIA: Okay. I've had the court
10 reporter premark as Exhibit 30 a document called
11 "Plaintiffs' Disclosure of Rebuttal Expert
12 Witnesses." Here's a copy for you, Mr. Sweeney.

13 MR. SWEENEY: Thank you very much.

14 BY MR. ECHEVERRIA:

15 Q. Have you seen this document before, Exhibit
16 30?

17 A. No.

18 Q. Exhibit 30 is an excerpt of the document,
19 so it doesn't have all the pages that were provided
20 in the plaintiffs' disclosure rebuttal expert
21 witnesses. It does include page 1, 2 and 3, which
22 identifies certain expert witnesses that have been
23 designated as rebuttal witnesses in this matter. If
24 you look at page 2 of Exhibit 30, the document
25 identifies J. Buford Boone the third, William

1 we've been discussing, did you own any other
2 firearms? I think you mentioned a Beretta?

3 A. Yes.

4 Q. Are there any other firearms in addition to
5 the Beretta that you owned?

6 A. No.

7 Q. And just to go back to the Beretta, is the
8 Beretta a semiautomatic handgun?

9 A. Yes.

10 Q. And you never owned any other firearms
11 other than those three weapons?

12 A. Correct.

13 Q. You don't recall ever testifying that you
14 previously owned a fully automatic weapon that was
15 legal at the time?

16 A. I recall somebody claiming that I said
17 that, but no, I never owned a fully automatic weapon.
18 What I had actually said, and it might have been
19 incorrectly indicated in the transcript, was that I
20 had once fired a full auto weapon. It belonged to
21 another person and we were at a target range and he
22 had told me and even showed me the documents that it
23 was a legal -- one of the few people who could
24 legally own a fully automatic weapon, and so I fired
25 a fully automatic weapon on that one occasion. I

1 have never owned a full auto weapon.

2 Q. Okay. Have you ever owned any rifles?

3 A. No.

4 Q. Any shotguns?

5 A. No.

6 Q. Did you acquire the handguns that we've
7 been discussing for self-defense purposes?

8 A. As sort of a secondary reason. I mean, the
9 main reason was research, but yeah, I lived in a
10 fairly safe neighborhood throughout my gun-owning
11 period of life, and so it really was a strictly
12 secondary reason, but yeah, it was a reason.

13 Q. And you never had -- have had occasion to
14 use any of your firearms for self-defense purposes?

15 A. That's correct, I never have.

16 Q. And I believe that I've read elsewhere that
17 you have participated in shooting competitions in the
18 past; is that correct?

19 A. Yes.

20 Q. Do you still participate in shooting
21 competitions?

22 A. Well, it's hard -- that suggests it's a
23 present tense activity, and you know, maybe once a
24 year I shoot, and probably the last time I was in any
25 kind of a competition was a year to two years ago,

1 and so I would say on -- over the course of my
2 lifetime, I've participated in maybe three action
3 shooting competitions, and then when I was faculty
4 advisor to my -- to the criminal justice club at
5 Florida State University, I participated as the
6 faculty advisor in what are called practical police
7 combat competitions.

8 Q. Can you explain what practical police
9 combat competitions are?

10 A. The shooter shoots while they're stationary
11 and shoots at stationary targets, and they're
12 typically fairly short ranges, and they're timed.
13 You have to get off a certain number of rounds within
14 a maximum allowable period of time. So it's not like
15 action shooting where the shooter can be moving,
16 targets can be moving, you have to shot around
17 obstacles and so on, so it's -- I guess it's a more
18 -- it's a more boring kind of competition, frankly.

19 Q. Okay, and in those competitions, are the
20 competitors required to reload their firearms?

21 A. Yes.

22 Q. So in these competitions, generally the
23 competitors would be reloading as fast as they could?

24 A. Yes.

25 Q. And they're generally trained in how to

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1 quickly reload their firearms; is that correct?

2 A. Some certainly are. Certainly the -- in
3 the action shooting ones, it's so important that yes,
4 they would be trained, but you know, a lot of the --
5 the students had minimal experience prior to
6 participation in the practical police combat
7 competitions, and they would have had little to none
8 formal training in it.

9 Q. Okay. Do any of the competitions that
10 we've been discussing involve the use of rifles?

11 A. No.

12 Q. So no semiautomatic center fire rifles
13 would be used in those competitions?

14 A. That's correct.

15 Q. Before we begin discussing your expert
16 rebuttal report, I just generally want to discuss
17 basic research principles and sound methodology for
18 criminological research. Is there a preference in
19 academic discourse in the sciences and social
20 sciences to cite more recently published articles as
21 opposed to older articles?

22 A. No, the priority is on best available
23 evidence, meaning evidence generated by research
24 doing the most -- using the most technically sound
25 methods.

1 Q. So there would not be any preference for
2 more current data as opposed to older data?

3 A. Well, if you're talking about the data
4 rather than the article publication date, if other
5 things were equal, then you would prefer more recent
6 information if you're making a statement about the
7 current state of affairs rather than an observation
8 about, you know, what -- what things were true five
9 or ten years ago.

10 Q. Okay, and in your work, you have focused on
11 empirical research. Would that be fair to state?

12 A. Yes.

13 Q. What's your understanding of the meaning of
14 the term "empirical research"?

15 A. It's research in which there's observations
16 of the external world, whether those be quantitative
17 or qualitative, but they are observations of the
18 world rather than something that can completely go --
19 go on inside the human mind.

20 Q. So empirical research would not involve
21 speculation. Would that be correct?

22 A. No, the speculation might surround or be in
23 reaction to empirical information, but it's not
24 empirical in and of itself.

25 Q. But the speculation would have to be based

1 in fact that is readily observable.

2 A. It would be preferable certainly.

3 Q. And you've written in the past, and I quote
4 at length here, that, "Scientists are not allowed to
5 ignore or discount evidence merely because they are
6 imaginative enough to conjure up possible flaws in
7 the evidence for the obvious reason that this can
8 easily be done with even the soundest evidence.
9 Since flawed evidence is the only kind we have, if
10 one rejects flawed evidence, one rejects all
11 evidence." Do you recall writing that, sir?

12 A. I do.

13 Q. Do you agree with that statement today?

14 A. Wholeheartedly.

15 Q. And you've also written in the past that,
16 "In good research and bad, there's no upper limit on
17 the amount of speculative criticism that can be
18 directed at the work, and thus, this sort of critique
19 is just as easily applied to good research as to
20 bad." Do you recall writing that?

21 A. I do.

22 Q. Do you also agree with that statement
23 today?

24 A. I most definitely do.

25 Q. Okay. We only have a few more of these to

1 go. And you've also written in the past that, "When
2 speculations about flaws in research are invariably
3 made in a direction that challenges views contrary to
4 the critics' preconceptions, the only possible result
5 of such a fruitless exercise is confirmation of the
6 biases with which the critic began." Do you recall
7 writing that?

8 A. Yes.

9 Q. And you also agree with that statement
10 today?

11 A. I do.

12 Q. Can you explain your understanding of the
13 phrase "confirmation bias"?

14 A. There's a tendency to interpret evidence as
15 confirming whatever personal biases you began with.

16 Q. And confirmation bias is a phenomenon that
17 can occur in criminological research?

18 A. Yes.

19 Q. Do you believe that you've ever in the past
20 exhibited confirmation bias?

21 A. No.

22 Q. Do you believe the truth is determined by
23 majority vote?

24 A. No.

25 Q. And you'd said that it is not the most

1 popular conclusion that is most likely correct, it is
2 the one supported by the methodologically strongest
3 research no matter how numerous or rare the
4 technically stronger studies may be? You've written
5 that?

6 A. I think it was no matter how numerous the
7 technically inferior studies.

8 Q. That would make sense.

9 A. Yeah.

10 Q. So basically just because an opinion is
11 popular in -- in the field of criminology does not
12 mean that those popular opinions are the valid -- are
13 the valid ones; is that right?

14 A. Correct.

15 Q. Okay. And you've also written that
16 argumentation by anecdote has no scholarly legitimacy
17 for obvious reasons, correct?

18 A. Yes.

19 Q. Okay, and you believe that to be true
20 today.

21 A. Yes.

22 Q. All right. So I'm going to refer you to
23 Exhibit 30, which is your expert rebuttal report in
24 this case. On page 1, under -- under subheading 1,
25 assignment, you explain that you've been asked by

1 Q. On page 3 of Exhibit 30, you begin your
2 expert rebuttal of Professor Donohue's report by
3 focusing on paragraph 11; is that correct?

4 A. Yes.

5 Q. And you state with respect to paragraph 11
6 that Professor Donohue asserts that, quote, "The
7 problem of public mass shootings in the United States
8 is a serious national problem," unquote. Is that
9 correct?

10 A. Correct.

11 Q. And you disagree with Professor Donohue's
12 statement?

13 A. Yes.

14 Q. And what is the basis of your disagreement
15 with that statement?

16 A. The basis for it is that in fact, very,
17 very few Americans are -- have been killed in mass
18 shootings or are likely to be killed in mass
19 shootings.

20 Q. So the basis of your disagreement with
21 Professor Donohue is that individuals who are killed
22 and injured in mass shootings are just not very
23 common; is that right?

24 MR. SWEENEY: Object.

25 A. They're not very numerous certainly.

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1 Q. Okay. If you look at paragraph 11 of
2 Exhibit 4, which is Professor Donohue's report, in
3 the first sentence, Professor Donohue says, "The
4 problem of public mass shootings in the United States
5 is a serious national problem that imposes
6 substantial burdens on the American public far beyond
7 the growing numbers of dead and injured victims that
8 are besieged every year." Do you see that?

9 A. I do.

10 Q. So in that statement, Professor Donohue is
11 not limiting his view that public mass shootings are
12 a problem to the numbers of dead and injured, right?

13 MR. SWEENEY: Objection.

14 A. He does make that claim certainly.

15 Q. And he is -- and Professor Donohue is
16 claiming in paragraph 11 that there are other issues
17 that make public mass shootings a serious national
18 problem, correct?

19 MR. SWEENEY: Objection.

20 A. He is making that claim, and I would
21 disagree with that as well. I don't think he
22 provides any sound foundation for that opinion, that
23 portion of the opinion either.

24 Q. So you don't believe that there are
25 additional social costs from public mass shootings

1 that would make those shootings a serious national
2 problem?

3 A. That's correct.

4 Q. And then in the second paragraph of
5 paragraph 11 --

6 MR. SWEENEY: Objection.

7 BY MR. ECHEVERRIA:

8 Q. Sorry. In the second paragraph of your
9 rebuttal to paragraph 11 in Exhibit 30, your rebuttal
10 report, you also discuss studies that Professor
11 Donohue has conducted in which he shows that
12 right-to-carry laws generally increase crime; is that
13 correct?

14 A. Yes.

15 Q. And you state that his view is a minority
16 view in the field; is that correct?

17 A. Yes.

18 Q. And you have previously stated that -- that
19 sound criminological research is not a popularity
20 contest, correct?

21 A. Correct.

22 Q. So the mere fact that Professor Donohue's
23 view is in a minority would not render his views
24 invalid or unreliable?

25 A. That alone would not, but the poor quality

1 of his work would also render it invalid.

2 Q. And why do you characterize his work as
3 poor quality?

4 A. Well, partly because he -- he's -- he's
5 obscured and made vaguer what exactly -- what kind of
6 crime is affected by right-to-carry laws by combining
7 all types of violent crime together into a single
8 measure, which is unfortunately common but poor
9 practice because it gives the reader and other
10 researchers less specific information about exactly
11 what kind of crime is influenced by right-to-carry or
12 shall issue carry laws.

13 He also controls for arbitrary sets of
14 supposedly confounding variables to isolate the
15 effect of right-to-carry laws, but he has no sound
16 foundation for why he chose to use those -- that set
17 of control variables. It turns out that the majority
18 of them are not confounding variables because his own
19 evidence indicates that they have no effect on crime
20 rates, and therefore, they could not possibly be
21 confounding variables, and controlling for them has
22 no benefit in isolating the effect of right-to-carry
23 laws.

24 Q. Okay. What controlling variables has Mr.
25 -- has Professor Donohue used in his research that

1 those research errors.

2 Q. Is it your opinion that right-to-carry laws
3 decrease crime?

4 A. No.

5 Q. Is that an opinion that has been advanced
6 by Professor John Lott?

7 A. Yes.

8 Q. And you do not agree with that assessment.

9 A. That's correct, I don't agree.

10 Q. In fact, you've criticized John Lott's
11 research as being, quote, garbage in and garbage out?
12 Do you recall ever saying that?

13 A. No, I do not.

14 Q. Do you recall ever saying the following,
15 quote, "Do I know anybody who specifically believes
16 with more guns, there are less crimes and they're a
17 credible criminologist, no," unquote?

18 A. Yes, I believe I said that.

19 Q. And you would agree with that statement
20 today?

21 A. Yes. Well, actually, I'd be less certain
22 about it let's say.

23 Q. Why would you be less certain about it
24 today?

25 A. Well, because I believe that was just a

1 casual statement I made in the course of a
2 conversation with a reporter, and you know, it's not
3 -- it's not based on sort of a tranquil assessment of
4 the full body of studies and their relative
5 methodological merit, but it's what you say in the
6 course of a conversation where you have to sort of
7 spontaneously react to whatever questions are pitched
8 at you by the reporter. So I make a sharp
9 distinction between what I say orally in conversation
10 with journalists and what I write down in -- in
11 scholarly articles.

12 Q. So you do believe that John Lott is a
13 credible criminologist?

14 A. No, I do not. I believe that, you know,
15 you can -- you can do research that is credible
16 without you in the course of your entire career being
17 credible, and John Lott has given reason to indicate
18 he was not credible. On the other hand, he's done
19 research that at the time was the best available work
20 on the subject.

21 So there's no contradiction between saying
22 that as a whole, a scholar has not been credible on a
23 particular topic like do shall issue laws reduce
24 crime, and yet on the other hand also saying that
25 he's done the best available research that existed at

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1 a particular point in time on a particular topic.

2 Q. Okay. We'll move on to your discussion of
3 paragraph 12 in Professor Donohue's report, which you
4 begin on page 3 of Exhibit 30, your expert rebuttal
5 report. I'll give you a chance to turn to page 3 of
6 Exhibit 30. And in paragraph -- in your response to
7 paragraph 12, you state that gun massacres did not
8 fall substantially during the ten years when the
9 federal assault weapons ban was in effect, correct?

10 A. Yes.

11 Q. And what was the basis for your statement
12 that gun massacres did not fall during that period?

13 A. Work by Grant Duwe, that's swelled D-U-W-E,
14 and he's probably the nation's leading authority on
15 mass murders, and he relied in turn on the FBI's
16 supplementary homicide reports, and he basically says
17 that the trend was largely flat during the period
18 that Donohue was alluding to.

19 Q. Okay. So you referred on research -- you
20 referred on research done by Grant Duwe in arriving
21 at this opinion, and yet on page -- on page 14 of
22 Exhibit 30, you do not cite to any research by Duwe;
23 is that correct?

24 A. No, because it wasn't the only foundation
25 for it, and there were other sources that I also

1 place longer and have the long-term effects that he
2 hopes for, but it is really just a hope, not -- not
3 the byproduct of his empirical evidence.

4 Q. And what is the basis for your view that he
5 personally wished that the federal assault weapons
6 ban would have those long-term effects that you're
7 referring to?

8 A. Often you can tell an author's preferences
9 or their biases by in what ways do they go beyond the
10 basic data. The more they go beyond what their
11 evidence indicates usually in the concluding section
12 of the article, or in this case report, the more
13 they're revealing what they wish were the case rather
14 than what their evidence indicated was the case, and
15 certainly Dr. Koper did go on to communicate various
16 hopeful sentiments about how the assault weapons ban
17 might turn out to be effective if you either amended
18 it in certain ways or simply renewed it and allowed
19 it to go past the sunset period.

20 Q. What type of amendments would you be
21 referring to?

22 A. Eliminating the other types of
23 semiautomatic weapons capable of accepting detachable
24 and possibly larger magazines. So he says the ban's
25 exemption of millions of pre-ban assault weapons and

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1 LCMs, blah blah blah. Well, clearly that's the
2 amendment that he would prefer to see, that is, you
3 wouldn't exempt the pre-ban assault weapons and you
4 wouldn't exempt large-capacity magazines.

5 So you know, if -- if weapon A was banned
6 under the assault weapons ban but you let all the
7 existing weapon A's continue to exist, it's going to
8 undercut the impact of the ban, a sentiment I
9 completely agree with. So clearly he wouldn't have
10 grandfathered in the existing prohibited -- weapons
11 that were prohibited under the assault weapons ban.

12 Q. So it's your view that Professor Koper
13 viewed the exemptions to the federal assault weapons
14 ban as undermining the efficacy of the statute?

15 A. Yes.

16 Q. And is it your understanding that the
17 federal assault weapons ban defined an assault weapon
18 as a semiautomatic weapon that contains two military-
19 style features as opposed to one military-style
20 feature?

21 A. Among other things, yes, and they also had
22 a list of specific models that would be prohibited.

23 Q. And California similarly has a list of
24 specific models and also has a feature-based test; is
25 that correct?

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1 MR. SWEENEY: Objection.

2 A. Correct, except that it's one feature
3 rather than two features.

4 Q. So would you agree that California's
5 assault weapons ban is more comprehensive than the
6 federal assault weapons ban?

7 MR. SWEENEY: Objection.

8 A. In that sense you could call it more
9 comprehensive. It's certainly more restrictive in
10 that it disqualifies guns on the basis of very common
11 attributes.

12 Q. And the California statute also does not
13 contain other exemptions that the federal assault
14 weapons ban contained; is that right? So it's not
15 just the features that are prohibited?

16 MR. SWEENEY: Objection.

17 A. I don't understand the question. I'm
18 sorry.

19 Q. That's okay. If you can go back to page 3
20 of Exhibit 30, which is your expert rebuttal report,
21 in the final paragraph, you claim that the problem of
22 active shooters inflicting mayhem on the public has
23 not been rising substantially since the end of the
24 federal assault weapons ban, correct?

25 A. Correct, although I also qualify it by

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1 saying the statement is kind of inherently ambiguous
2 because of how -- how he'll define the concept of
3 active shooter is, but his statement was in the
4 context of a discussion of mass shootings, and so I
5 interpret it as if that's what he was in fact sort of
6 clumsily alluding to.

7 Q. And it's your opinion that mass shootings
8 have not been rising substantially since the end of
9 the federal assault weapons ban?

10 A. That's correct.

11 Q. Is it also your opinion that public mass
12 shootings have not been rising substantially since
13 the end of the federal assault weapons ban?

14 A. I don't have a view on that. I consider
15 the question trivial basically. I mean, when you get
16 down to a tiny subset of events that occur maybe once
17 or twice a year, the whole concept of trend becomes
18 meaningless.

19 Q. It's your view that public mass shootings
20 are defined too narrowly; is that correct?

21 A. Well, it's -- it's taking an even tinier
22 subset of what began as a tiny and thus less
23 important subset of -- of homicides or -- or violence
24 in general. And so you make increasingly trivial
25 statements based on increasingly tiny subsets of the

1 violence problem until you're to the ridiculous
2 position where now you're talking about whether there
3 were three public mass shootings according to some
4 definition this year versus two the previous year or
5 versus, you know, one the following year. The whole
6 idea of talking about trends of events that rare is
7 essentially meaningless. It's a trivial line of
8 inquiry.

9 Q. Okay, and going back to the -- the phrase
10 "active shooters," why do you believe that the phrase
11 "active shooter" is a meaningless phrase? I believe
12 that's what your testimony was today.

13 MR. SWEENEY: Objection.

14 A. It's partly because if you're in the
15 context of a discussion of mass shooting and you use
16 that term, it's understandable people would think
17 that's what you're talking about, that you're still
18 talking about mass shootings, but an active shooter
19 doesn't have to in fact shoot masses of people at
20 all. He doesn't have to shoot even one person to
21 qualify as an active shooter.

22 It's also a highly subjective assessment in
23 that it's often based on law enforcement guesses as
24 to what the -- the gun possessor's motives or
25 intentions are, that is, a person can be described as

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1 an active shooter even though he doesn't shoot
2 anybody, which to me is sort of a contradiction in
3 terms. Surely shooter means you're shooting, but he
4 doesn't have to fire a single round if a police
5 officer on the scene thinks that's his intention.

6 And so the statement about whether active
7 shooters -- incidents of active shooters have been
8 rising substantially, if taken literally to mean only
9 what police define as active shootings, there are no
10 data on that, and he couldn't possibly have any
11 foundation for the statement. But if what he really
12 meant was mass shootings were on the rise since the
13 end of the federal assault weapon ban, he's simply
14 wrong. That's not true.

15 Q. But he is not wrong with respect to public
16 mass shootings rising since the expiration of the
17 federal assault weapons ban; is that correct?

18 A. As I said, I have no idea --

19 Q. Okay.

20 A. -- and wouldn't care really.

21 Q. And towards the end of that paragraph in
22 Exhibit 30, you refer to the Gun Violence Archive,
23 correct?

24 A. Correct.

25 Q. What is the Gun Violence Archive?

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1 A. It's an on-line database of violent events
2 involving firearms, and among others, it will include
3 both the date and place of a shooting and the number
4 of victims so that you can actually count up how many
5 incidents involved more than a given number of people
6 shot, and it's an excellent data source in the sense
7 that it counts both fatal and non-fatal woundings,
8 and in the sense that as far as I know, it's the most
9 comprehensive source, national source of mass
10 shooting incidents. They don't exclude cases just
11 because they occurred in a private place or just
12 because they were somehow connected with a robbery or
13 gang combat. They're comprehensive. They include
14 all of them, and so you can define the minimum
15 numerical cutoff as you wish and use the Gun Violence
16 Archive to definitively establish, to the extent
17 that's possible, how many incidents there were with a
18 given number of people killed, with a given number of
19 people shot and so on, so --

20 Q. Do you know how the Gun Violence Archive
21 collects its data?

22 A. I believe they rely primarily on news
23 accounts, that is, they're searching for newspaper,
24 television and other kinds of news media outlets for
25 stories about violence -- gun violence incidents.

1 Q. And when you state in Exhibit 30 on page 3
2 that there were 25 mass shooting incidents in 2013,
3 20 in 2014, 26 in 2015, 25 in 2016 and 24 in 2017,
4 you used the Gun Violence Archive to filter out
5 shootings that had fewer than four fatalities; is
6 that correct?

7 A. I wouldn't phrase it that way. I simply
8 used it to count up the number that did involve a
9 given number of shootings, and in fact, I think in
10 table 3, my cutoff was --

11 Q. And table 3 is on page 19 of Exhibit 30?

12 A. Yeah, four or more victims killed was --
13 was the cutoff, which is probably the most common
14 definition of -- of mass shooting. It doesn't make
15 it the authoritative one. There is no absolute
16 authoritative cutoff, but I've seen more scholars use
17 the four or more killed criterion than any others, so
18 that's the one I applied here.

19 Q. Okay, and you did not compute the numbers
20 for mass shootings that involved three or more
21 victims, is that right, killed?

22 A. No, I did not. I could have, but no, I
23 didn't use three or more simply because that's a less
24 common criteria, and also because it obviously makes
25 it less of a mass shooting. The more you reduce the

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1 number, it becomes less and less relevant to the
2 assertion that either assault weapons or
3 large-capacity magazines somehow contribute to the
4 casualty count if there are only three people -- as
5 few as three people shot.

6 Obviously you could use the kind of
7 revolver that Wyatt Earp used in the O.K. Corral and
8 shoot three people. So referring to mass shootings
9 using smaller -- lower and lower cutoff points for
10 the number of victims becomes increasingly misleading
11 because it doesn't refer to mass shootings. It just
12 refers to shootings.

13 Q. So it's your opinion that three fatalities
14 would be too low for qualifying a shooting as a mass
15 shooting; is that correct?

16 A. It -- it's not an either or matter. It
17 becomes less and less meaningful the lower that
18 cutoff is. In fact, you could argue that even four
19 is too low a criterion, but in any case, the general
20 statement that I'd stand by is that the lower you set
21 that cutoff, the less you're describing mass
22 shootings.

23 Q. Okay. Is it your view that four fatalities
24 is also too low?

25 A. I have no opinion on that.

1 Q. Okay.

2 A. It's just -- it's just -- it's possible to
3 use a common definition and establish in an objective
4 way what the trends in mass shootings are, and so in
5 effect, I was using not the one magical cutoff that's
6 somehow more valid than all others. Rather, I was
7 just using what I believed was the least
8 controversial and most conventional and widely used
9 definition of a mass shooting.

10 Q. And in the middle of page 19 of Exhibit 30
11 under table 3, you note that the Gun Violence Archive
12 does not cover any period before 2013; is that
13 correct?

14 A. Correct.

15 Q. Was 2013 the first year that the Gun
16 Violence Archive began aggregating its data?

17 A. I think they had some partial data for a
18 part of 2012, but they only claim to be complete from
19 2013 on.

20 Q. Okay. So when you say that the Gun
21 Violence Archive is the most comprehensive data
22 source available, that would be for data from 2013 to
23 the present, right?

24 A. Correct.

25 Q. It does not have complete data before 2013;

1 is that correct?

2 A. No, I rely on other sources for the period
3 prior to 2013.

4 Q. We're going to move on to page 4 of Exhibit
5 30, which addresses paragraph 14 of Professor
6 Donohue's report. Are you on page 4, Professor
7 Kleck?

8 A. Yes.

9 Q. You state that persons who have the
10 criminal intent to kill as many individuals are
11 precisely the kinds of offenders least likely to be
12 restrained by an assault weapons ban or other gun
13 control measure from acquiring firearms, correct?

14 A. Correct.

15 Q. And why are they the least likely to be
16 restrained by an assault weapons ban or other gun
17 control measure?

18 A. Because they have the strongest motive to
19 accomplish their goals regardless of the obstacles.
20 So for example, they're willing to wait and
21 accumulate as many firearms and magazines as they
22 need to kill or hurt large numbers of people and
23 notwithstanding any restrictions on available
24 weaponry or magazines that have been imposed by
25 legislation.

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1 Q. Are there any gun control measures that you
2 would be supportive of?

3 A. Yes.

4 Q. And what would those be?

5 A. They partly come under the heading of
6 legislation and partly under the heading of I guess
7 better record-keeping and enforcement because it's
8 really not in the legislative area where there's the
9 most potential for gun control benefit, but among
10 legislation -- legislative proposals, I've endorsed
11 for decades what is today referred to as a universal
12 background check. That is to say, I endorsed I think
13 as early as 1991 or so a federal law that requires
14 all people trying to acquire a firearm to go through
15 a background check even if it -- they're obtaining
16 the gun from a private source, and this is the sort
17 of law that has been implemented in roughly ten
18 states or so.

19 Q. Would you agree that individuals who have a
20 criminal intent to kill as many individuals would
21 also be the least likely to comply with background
22 check requirements in acquiring firearms?

23 A. Yes.

24 Q. But that doesn't stop you from being
25 supportive of universal background checks as a

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1 legislative response to gun violence?

2 MR. SWEENEY: Objection.

3 A. That's correct, it does not stop me from
4 supporting that.

5 Q. So what would the difference be between
6 background check legislation and assault weapons ban
7 that would make criminal noncompliance give rise to
8 your concerns?

9 A. By far the most significant difference is
10 that a background check doesn't do any harm to people
11 who want a gun for perfectly lawful purposes. It in
12 effect only restricts people who would be
13 disqualified under the background check, primarily
14 convicted criminals, and to a lesser extent, persons
15 who in one sense or another are violent because of a
16 mental illness or alcoholism, drug abuse and so on.
17 Whereas an assault weapon ban, it affects everyone
18 who would want a gun. It affects people who want a
19 gun for either sporting or self-protective purposes
20 just as much as it would apply to a criminal, and
21 that's where the harm of all prohibitionists, gun
22 control measures comes. It comes from not making a
23 distinction between people who are problematic users
24 of guns and those who are not.

25 Q. Okay, in the next sentence on page 4 of

80

Gary Kleck, PH.D.
December 12, 2018

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1 Exhibit 30, you state that there's no evidence known
2 to me that any AWB, which would refer to assault
3 weapons ban, has prevented any prospective mass
4 shooter from acquiring guns that function the same as
5 those generally prohibited by AWBs, correct?

6 A. Could you tell me where again you are?

7 Q. It's in the following sentence in your
8 response to paragraph 14. It's on the third line of
9 the first paragraph under paragraph 14.

10 A. Okay, I see now.

11 Q. Do you see that sentence?

12 A. Yes.

13 Q. What would that kind of evidence look like?

14 A. Well, all preventive measures are difficult
15 to empirically assess because you can only indirectly
16 assess them. You can only establish that the number
17 of people who acquire weapons that can be let's say
18 fired rapidly or accept large-capacity magazines, the
19 frequency with which they're actually used, and if
20 that frequency with which they're actually used goes
21 down, then it indirectly indicates that prospective
22 mass shooters have been blocked from acquiring guns
23 that function the same as generally prohibited -- the
24 guns prohibited, generally prohibited by assault
25 weapon bans, and Koper's evidence basically indicated

1 that that is not a valid interpretation of the
2 evidence, that prospective mass shooters did acquire
3 guns that function the same as those generally
4 prohibited by assault weapon bans because as evidence
5 indicated, people continued using guns that were
6 semiautomatic. They were capable of accepting
7 large-capacity magazines. They were equipped with
8 large-capacity magazines, and in fact, not just
9 potentially. And so although prospective mass
10 shooters were less likely to use the prohibited
11 weapons, they simply continued to substitute
12 functionally equivalent weapons with no resulting
13 effect on either the frequency or seriousness of
14 firearms violence.

15 Q. And we were discussing earlier that
16 California's definition of an assault weapon is more
17 restrictive, I believe that's what your testimony
18 was, than the federal assault weapons ban?

19 MR. SWEENEY: Objection.

20 BY MR. ECHEVERRIA:

21 Q. Correct?

22 A. Yes.

23 Q. So under California law, would you agree
24 that it would be more difficult for a prospective
25 mass shooter to acquire a functional equivalent --

1 A. No.

2 Q. -- of an assault weapon?

3 MR. SWEENEY: Objection.

4 A. No.

5 Q. Okay. Are you aware of any evidence that
6 an assault weapons ban has prevented any prospective
7 gun owner from acquiring a firearm for self-defense?

8 A. I don't know of any evidence bearing on the
9 question one way or the other.

10 Q. Okay.

11 MR. SWEENEY: Would this be a good time to
12 take a break?

13 MR. ECHEVERRIA: Sure.

14 (Recessed at 11:31 a.m.)

15 (Reconvened at 11:37 a.m.)

16 BY MR. ECHEVERRIA:

17 Q. We're back on the record. Professor Kleck,
18 you are again under oath. Do you understand?

19 A. Yes.

20 Q. In paragraph 2 on page 4 of Exhibit 30,
21 your expert rebuttal report, you discuss Professor
22 Donohue's claim that assault weapons are ill-suited
23 for self-defense in the home, correct?

24 A. Which page are you on?

25 Q. Sorry. I'm on page 4 of Exhibit 30.

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1 A. Okay.

2 Q. In response to paragraph 14, the second
3 paragraph.

4 A. All right, I got it.

5 Q. So in the second paragraph of this page,
6 you're discussing Professor Donohue's claim that the
7 banned assault weapons are notably ill-suited for
8 self-defense in the home because of their high-
9 penetration capacity, correct?

10 A. That is his claim, yes.

11 Q. And you believe that Professor Donohue's
12 observation is at best irrelevant to the merits of
13 assault weapons bans, correct?

14 A. Yes.

15 Q. Why is his observation irrelevant?

16 A. Because people do not absolutely have to
17 use weapons that have a high-penetration capacity,
18 which may or may not be true of assault weapons.
19 They can refrain from firing the weapons if the
20 circumstances do not merit doing so because there's a
21 risk of innocent people being shot due to excessive
22 penetration capability.

23 Q. So you don't have an opinion as to whether
24 assault weapons generally or assault rifles in
25 particular --

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1 MR. SWEENEY: Object. Sorry.

2 BY MR. ECHEVERRIA:

3 Q. -- have high-penetration capacities?

4 MR. SWEENEY: Objection.

5 A. It's not what I was asked to testify on, so
6 it's not what I prepared for. I have a -- you know,
7 a non -- a person who is not a ballistics expert
8 opinion, but that's just an amateur opinion.

9 Q. So if you don't have an opinion as to
10 whether assault weapons or assault rifles have higher
11 penetration capacities, then what was the basis of
12 your statement that his view was irrelevant?

13 A. It's irrelevant to the merit of assault
14 weapon bans because people -- you know, even if you
15 had a weapon with such high-penetration capability,
16 an assault weapon, you still wouldn't have to fire
17 the gun if the circumstances said it was
18 inappropriate.

19 Q. But an individual could fire that firearm,
20 correct?

21 MR. SWEENEY: Objection.

22 A. Of course they could, and people could do
23 so in circumstances where there is no risk of shots
24 penetrating walls, or where there is such a risk,
25 they could refrain from firing a weapon which

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1 actually did have high-penetration capacity. But of
2 course, there's lots of banned assault weapons, not
3 necessarily referring to the California legislation
4 in particular, but there's lots of banned assault
5 weapons so-called that don't have high penetrating --
6 penetration capacity, so then the issue doesn't even
7 arise.

8 Q. And you -- and you go on to state that
9 people who own those banned rifles are not compelled
10 to use them when there is a risk of shots penetrating
11 walls and wounding innocent persons, right?

12 A. Correct.

13 Q. And what is the basis for your statement
14 that those individuals are not compelled to use their
15 weapons indoors when there's a risk to others?

16 A. I regarded it as just a self-evident
17 commonsensical observation.

18 Q. But it's also common sense that those
19 individuals may use those weapons indoors when
20 there's a risk to others as well, correct?

21 A. It's also commonsensical because it's
22 basically just another way of phrasing the exact same
23 thing. They -- they may if they want to, and they
24 may refrain if they think it's inappropriate.

25 Q. Uh-huh. And you go on to state that, "For

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1 example, people who own these rifles for protection
2 may live in rural areas, in homes surrounded by a
3 great deal of open space," correct?

4 A. Yeah, that's one example where the issue of
5 penetration would not be as -- of much -- of as much
6 concern.

7 Q. And what is the evidentiary basis for your
8 view that in rural areas, homes in rural areas may
9 have more space where the overpenetration issue is
10 less of a concern?

11 A. It's just a logical observation deriving
12 from the fact that in a rural area, there's less
13 population density, and so any one household is less
14 likely to be connected to other apartments or homes
15 right next door where the issue of penetration would
16 arise.

17 Q. But homes in rural areas may also still
18 have multiple rooms in close proximity within the
19 building; is that correct?

20 A. They might. It's just a relative matter.
21 There's less concern, not no concern at all about
22 penetration.

23 Q. And homes in rural areas may be occupied by
24 many individuals, correct?

25 A. Correct.

1 Q. So how would it be less of a risk to other
2 individuals if an assault rifle is discharged in a
3 home in a rural area as opposed to a more densely
4 populated urban area?

5 MR. SWEENEY: Objection.

6 A. Because there are fewer nearby residences.

7 Q. But the risk to individuals inside of the
8 home would still be the same; is that correct?

9 MR. SWEENEY: Objection.

10 A. It might be similarly low. That's
11 certainly possible.

12 Q. And what might be similarly low?

13 A. The risk of a round penetrating if the
14 person did choose to fire the gun in self-defense.

15 Q. Okay. On -- on page 4 of Exhibit 30 in
16 response to Professor Donohue's paragraph 15 --
17 actually, let's go back. The final paragraph in
18 response to paragraph 14, this is the third paragraph
19 on page 4 of Exhibit 30, you state that Professor
20 Donohue mentions that the banned rifles impose
21 greater risks to law enforcement officers, correct?

22 A. Correct.

23 Q. And you disagree with Professor Donohue on
24 that point?

25 A. I have a later rebuttal to that that -- and

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1 it challenges the view that -- that this is a
2 significant risk of having banned rifles. Again, I'm
3 not an expert on ballistics. My -- my casual
4 knowledge of, you know, the ballistics of firearms is
5 that unbanned rifles would have roughly the same
6 penetrating value as banned rifles, and so to -- to
7 make this statement as if it applies in particular to
8 the banned rifles is misleading, but in any case, and
9 then I go on to the discussion of Donohue's paragraph
10 110 later and note that this is something that
11 practically never occurs.

12 Q. And what practically never occurs?

13 A. A bullet fired from an assault rifle
14 penetrating police body armor.

15 Q. Would that refer to penetrations that
16 result in death or would that also include
17 penetrations that may injure an officer?

18 A. Penetrations that result in death.

19 Q. So your statement does not take into
20 account injuries that may result from penetration of
21 law enforcement body armor?

22 A. That's correct.

23 Q. Moving on to paragraph 15, or your response
24 to Professor Donohue's paragraph 15, you state that
25 the guns restricted by the California assault weapons

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1 ban are not uniquely designed to aide in their
2 homicidal rampages, and "their" in that case would be
3 referring to mass shooters, right?

4 A. Correct.

5 Q. What is the basis for your view that the
6 banned rifles are not uniquely designed to enhance
7 the lethality of a mass shooter?

8 A. Well, the first fact I note is, you know,
9 if -- if they were uniquely designed and thus
10 effective in aiding in a homicidal rampage, then they
11 should have been frequently used by mass shooters,
12 and we know that's not the case. Both before, during
13 and after the federal assault weapons ban, mass
14 shooters almost never used these banned assault
15 rifles.

16 Q. But --

17 A. And so it isn't consistent with the
18 proposition that they were uniquely capable of aiding
19 in a homicidal rampage.

20 Q. But if we were to examine public mass
21 shootings, you would agree that assault weapons are
22 used more frequently, correct?

23 A. I don't know or care, it's such a trivial
24 issue, to narrow it down to events that may occur no
25 more than two or three times in the entire nation, so

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1 I really don't know one way or another.

2 MR. ECHEVERRIA: I'm going to mark as
3 Exhibit 36 --

4 (Exhibit No. 36
5 was marked for
6 identification.)

7 BY MR. ECHEVERRIA:

8 Q. Exhibit 36 is a New York Times opinion
9 piece or an op ed that is attributed to you dated
10 September 1, 1992. Have you seen this document
11 before?

12 A. Yes. Well, not this particular format of
13 it, but certainly the article. It also seems to have
14 my last name misspelled.

15 Q. It does.

16 A. I don't know how that happened, and I
17 certainly wouldn't have allowed it to go into the New
18 York Times with my last name misspelled.

19 Q. What appears in the second paragraph of
20 Exhibit 36 that the New York Times has specified this
21 is a digitized version of your op ed piece which
22 would have appeared in print, correct?

23 A. Yeah.

24 Q. And it does note that occasionally the
25 digitization process introduces transcription errors

1 and other problems, correct?

2 A. Correct.

3 Q. So that may have -- may have been what
4 happened?

5 A. I guess. It's possible.

6 Q. Do you have any reason to believe that the
7 op ed does not reflect your views, or was not written
8 by you?

9 A. If -- if accurately transcribed. I haven't
10 certainly altered my views on what I actually said in
11 the New York Times op ed piece.

12 Q. Okay. In paragraph 3 of your op ed, you
13 refer to weapons as military-style semiautomatics,
14 correct?

15 A. Yes.

16 Q. And you note that military-style
17 semiautomatics have become more popular in the past
18 15 years among criminals and non-criminals; is that
19 correct?

20 A. Yes.

21 Q. And what was the basis for that view?

22 A. Gun catalogs. Gun Digest in particular is
23 sort of a compilation of all of the guns, new
24 firearms being currently sold to retail customers.

25 Q. So in the 15 years prior to your 1992

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1 op ed, more military-style semiautomatics were
2 available for purchase on the market. Is that -- is
3 that accurate?

4 A. Yes.

5 Q. Why do you refer to the semiautomatics as
6 military style in that paragraph?

7 A. Well, they usually had cosmetic features
8 that made them look like military weapons. It might
9 be something like plastic stocks rather than wood
10 stocks, for example, mat rather than shiny surfaces,
11 you know, might have, you know, the kind of features
12 that the California legislature lists as military-
13 style features, flash suppressors or a bayonet lug or
14 whatever. So they're all things that make it look
15 more like the -- the weapons capable of full auto as
16 well as semiautomatic fire that are more
17 appropriately described as assault rifles. It's the
18 kind of thing that modern militaries use.

19 Q. And it's your view that these military-
20 style features that are prohibited under California
21 penal code 30515, which was marked as Exhibit 21, you
22 believe those features are purely cosmetic?

23 A. Not all of them. I mean, some of them are
24 totally irrelevant to firing a gun, but like, I don't
25 know, there was something about the -- the pistol

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1 grip I think is one of the features, and the pistol
2 grip can affect accuracy of fire, so it's not merely
3 cosmetic, so the way both criminals and non-criminals
4 actually use the guns could be affected by a pistol
5 grip.

6 On the other hand, the stuff like flash
7 suppressors or -- let's see, what else is listed?
8 Ah, here it is. Yeah, grenade launchers or flare --
9 no, I'm sorry, that's not a good example. Flash
10 suppressor, for example, or folding or telescoping
11 stock, rarely relevant to criminal use. It's much
12 more likely to be relevant to recreational uses, so
13 debatable of whether that's even characteristic of
14 military style. I mean, legislators are entitled to
15 define things as they wish, but I mean, in common
16 usage, I would say that's not necessarily any more
17 characteristic of military firearms than civilian
18 firearms.

19 Q. So going back to the pistol grip that's
20 referred to in section 30151, subdivision A1A, this
21 would be a pistol grip that protrudes beneath the
22 action of the firearm. Do you see that?

23 A. Yes.

24 Q. Is that the pistol grip that you were
25 referring to that would help with accuracy in firing

1 the firearm?

2 A. Yes.

3 Q. Would a pistol grip that protrudes beneath
4 the action also enable a shooter to fire from the hip
5 as opposed to mounting the firearm on their shoulder
6 to discharge the weapon?

7 MR. SWEENEY: Objection.

8 A. I wouldn't have an opinion on that.

9 Q. I believe you testified earlier that you
10 have fired a fully automatic weapon; is that correct?

11 A. Yes.

12 Q. Have you fired any other semiautomatic
13 rifles that would qualify as an assault weapon under
14 California law?

15 A. I don't think so, no.

16 Q. And when you were firing the fully
17 automatic weapon, you fired it from a
18 shoulder-mounted position and not from the hip?

19 A. Pretty sure I did. I mean, it's years and
20 years ago so I can't be dead certain, but yeah,
21 probably. I was attempting as best I could to be
22 accurate, and you can't be as accurate firing from
23 the hip, and still wasn't able to be very accurate.

24 Q. And going back to flash suppressors, do you
25 believe that flash suppressors aid in the accuracy of

1 shooting a firearm?

2 A. No, has nothing to do with accuracy, to my
3 knowledge.

4 Q. And how about the forward pistol grip? Do
5 you believe that a forward pistol grip can aid in
6 accuracy?

7 A. Don't really have a strong opinion on that.
8 I mean, it might, but again that's not what I've been
9 asked to testify to.

10 Q. So you don't have an opinion one way or the
11 other about whether those prohibited features would
12 be useful in self-defense?

13 MR. SWEENEY: Objection.

14 A. No, to the extent that accuracy is helpful
15 in self-defense as well as sporting uses, criminal
16 uses or almost any other use that involves actually
17 firing a gun, certainly anything that would aid in
18 accuracy is a benefit. It's an advantage, and I
19 believe the conventional view is that a pistol grip,
20 meaning the one under the action, could well improve
21 your accuracy.

22 Q. And it could improve the accuracy of a
23 public mass shooter as well.

24 MR. SWEENEY: Objection.

25 A. It could improve anybody's accuracy. The

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1 issue isn't who's doing it. The issue is is the
2 weapon's accuracy improved, independent of who's
3 using it.

4 Q. And you've studied in the course of your
5 career the use of firearms defensively, correct?

6 A. Yes.

7 Q. That would be defensive gun usage -- uses?

8 A. Yes.

9 Q. Did you study particularly defense --
10 defensive gun uses that involved assault weapons?

11 A. No.

12 Q. And how about rifles?

13 A. No.

14 Q. And I believe it was in 1995 you estimated
15 the number of defensive gun uses that occur in the
16 United States; is that correct?

17 A. The article was published in '95, yes.

18 Q. Okay, and what was the estimate that you
19 and I believe it was Mark Gertz arrived at in terms
20 of the number of defensive gun uses in the United
21 States?

22 A. I believe the estimate we regarded as most
23 accurate was about 2.5 -- 2.5 million or so.

24 Q. And has your view on the estimate changed
25 over time?

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1 A. My view of that estimate hasn't changed,
2 but certainly this would not be a constant over time.
3 It would be something that could vary with either the
4 prevalence of firearms or the number of occasions to
5 use them in self-defense, which is a function of the
6 crime rate. And so the crime rate is far lower now
7 than it was in the period to which our estimates
8 pertain, which is like circa 1992, and therefore, I
9 would expect fewer per capita defensive venues as
10 today. Of course, the raw number might go up despite
11 no increase in the rate simply because the population
12 is a lot larger now than it was a quarter of a
13 century ago.

14 Q. And you have estimated recently that the
15 number of defensive gun use is about half of the 2.5
16 million figure that you arrived at in 1995; is that
17 correct?

18 A. It would be inaccurate to describe it as an
19 estimate. It was a guess that I made, and I think I
20 made it again in response to a journalist's
21 questions.

22 Q. So it wasn't the product of any empirical
23 research that you had conducted, correct?

24 A. No. If I were to -- to make an estimate
25 based on empirical evidence, I would cite, as I have

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1 in other sources, other national surveys conducted by
2 professional survey organizations like Pew and CNN,
3 and they too have found in excess of two million
4 defensive uses a year, but for more recent years, so
5 we're talking about, I don't know, 2015 or so.

6 Q. And do any of those estimates that are more
7 recent specify whether a rifle or a handgun or a
8 shotgun was used in those self-defense scenarios?

9 A. I don't believe so.

10 Q. And you personally haven't conducted any
11 empirical research on the use of semiautomatic rifles
12 in DGUs, correct?

13 A. That's correct.

14 Q. In going back to the New York Times
15 editorial, on page 2 of Exhibit 36, in one, two -- in
16 the third full paragraph on page 2 of Exhibit 36, the
17 opening sentence states, "Most assault weapons can
18 use magazines that can hold 30 or more cartridges,
19 allowing many rounds to be fired without reloading,"
20 correct?

21 A. Correct.

22 Q. "This can increase the chances that a
23 shooter will hit someone." Is that correct?

24 A. Correct.

25 Q. So is it your view that magazines with

1 enhanced capacities can increase the likelihood that
2 a shooter will hit someone?

3 MR. SWEENEY: Objection.

4 A. No, it's -- it's more rounds being fired
5 that increases the chances that a shooter will hit
6 someone.

7 Q. And a magazine that holds 30 or more
8 cartridges allows a shooter to fire more rounds
9 without reloading, correct?

10 A. It does, but the same would also be true if
11 you had three ten-round magazines. I mean, either
12 way you have 30 rounds, and with a larger number of
13 rounds fired, the likelihood of hitting at least one
14 victim increases.

15 Q. And you also state in the paragraph above
16 that paragraph there we were just referring to that
17 legally available assault weapons cannot be readily
18 converted to fire like machine guns. Do you see that
19 statement?

20 A. Yes.

21 Q. Do you agree with that statement today?

22 A. Yes.

23 Q. Are you familiar with what a bump stock
24 device is?

25 A. Yes.

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1 Q. What is a bump stock device?

2 A. A bump stock is not exactly full auto fire
3 but it simulates full auto fire because it takes
4 advantage of the recoil produced by a bullet leaving
5 the barrel of a gun and uses that -- that energy to
6 chamber another round, which can then be fired. And
7 so it fires at a rate that challenges -- that comes
8 close to that of fully automatic even though it's not
9 technically full auto.

10 Q. Would you say that a semiautomatic rifle
11 equipped with a bump stock device would be capable of
12 firing like a machine gun?

13 A. Yes.

14 Q. So your statement in the op ed that legally
15 available assault weapons cannot be readily converted
16 to fire like a machine gun would not be accurate if
17 you take into account bump stock devices? Would that
18 be fair to say?

19 A. Could you repeat the question please?

20 Q. So the question was so your statement in
21 the op ed that legally available assault weapons
22 cannot be converted to fire like machine guns would
23 not be accurate if you take into account bump stock
24 devices. Would that be fair to say?

25 MR. SWEENEY: Objection.

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1 A. Well, it's still technically correct if --
2 if fire like machine guns means full auto in the
3 technical sense, but if -- if we use the more broader
4 sense of firing a lot of rounds very quickly, then
5 yes, the advent of bump stocks, as far as I know,
6 didn't exist when I wrote that op ed piece, would
7 make a difference, because then I would have instead
8 said legally assault -- available assault weapons
9 could be combined with a bump stock and fire at
10 nearly the same rate as machine guns.

11 Q. Okay. And just one final question about
12 this op ed. On page 3 of Exhibit 36, in the final
13 paragraph, you write, quote, "A better strategy would
14 be to enact laws that keep firearms, whether assault
15 weapons or regular guns, out of the hands of
16 criminals through the use of mandatory computerized
17 background checks of all would-be gun buyers,"
18 unquote. Is that correct?

19 A. Correct.

20 Q. And you testified earlier today that
21 universal background checks would be a gun control
22 measure that you do support, correct?

23 A. Yes.

24 Q. Are there any other firearm safety laws
25 that you would support in addition to universal

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1 background checks?

2 A. Well, I don't know what a firearm safety
3 law is. If you mean by a gun control law, I don't
4 think that the primary goal of policy-makers should
5 be reducing violence through gun control. Universal
6 background checks are a good idea, but I don't think
7 they -- they make a huge dent in the violence problem
8 or even specifically the gun violence problem. You
9 know, there are ways to still evade its intent, but
10 it would still have some marginal support. That's
11 why I support it, and no serious countervailing cost,
12 unlike assault weapon bans.

13 So you know, mostly what is likely to be
14 effective that has something to do with firearms
15 would be better enforcement of laws that prohibit
16 unlicensed carrying of firearms, and that's -- that's
17 a function of police training, not a function of new
18 legislation, or improving the comprehensiveness and
19 availability of mental health records pertaining to
20 people who have been declared by a court of law to be
21 dangerous to themselves and others. Currently we are
22 doing a very poor job, but that's a function of
23 record-keeping. It requires funding, which the
24 federal government has been trying to provide,
25 cooperation from the states in contributing their

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1 records to a fairly comprehensive national database,
2 and making these available to the background
3 checkers, which often is obstructed by medical
4 confidentiality laws, or at least that's what
5 state-level policy-makers have claimed they believe.

6 So yeah, it'd be nice to do a better job at
7 keeping dangerous -- dangerously mentally ill people
8 from getting guns, but it's not a matter of requiring
9 new gun control laws. It's a matter of allowing the
10 background checkers to do a better job because they
11 now have the information needed to identify people
12 who shouldn't be getting guns.

13 Q. Okay, so moving on to your response to
14 paragraph 16 of Professor Donohue's report, and this
15 would be on page 4 of Exhibit 30, under the heading
16 paragraph 16, you begin a lengthy discussion of
17 firearm possession rates in the United States; is
18 that correct?

19 A. Correct.

20 Q. And you criticize Professor Donohue's
21 reliance on the GSS survey, which is the General
22 Social Survey; is that correct?

23 A. Correct.

24 Q. And what is your criticism of the GSS?

25 A. Well, the GSS is sort of unique among

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1 surveys do.

2 Q. And your view that the GSS is not capturing
3 all gun ownership is because Gallup has a higher
4 figure; is that correct?

5 A. That's one reason, but there's also
6 evidence where people have done tests usually on
7 local samples where it's known who has guns because,
8 for example, they may have registered the gun in a
9 location where it's required that you register the
10 firearm. Of course, that doesn't mean all gun owners
11 did obey the law, but the ones that did almost
12 certainly do have a gun, and then surveyors would ask
13 them as if out of the blue and not indicating they
14 already know the people own guns, they'd ask them are
15 there any guns in your household, and roughly a tenth
16 of the gun owners, depending on which study you cite,
17 will falsely claim they don't have guns, and that's a
18 minimal estimate of -- of non-reporting of gun
19 ownership because it was within a population of
20 people who are unusually law abiding.

21 They're -- they're almost by definition
22 more honest than the average in that they did obey
23 the registration law that requires them to file a
24 registration form or whatever with a government
25 agency, and even within that unusually law-abiding

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1 subset of the population, large numbers of people who
2 definitely have guns will falsely deny it.

3 Q. So your -- your opinion that individuals
4 who lawfully own guns are unusually law abiding; is
5 that correct?

6 A. Correct.

7 Q. And why would those individuals be
8 unusually law abiding by abiding by firearm laws?

9 A. Because it is the consensus opinion of gun
10 control experts that only a minority of guns are
11 actually legally registered in jurisdictions that
12 require that. That is to say, you're getting far
13 fewer people showing up in the official registration
14 records than, for example, survey data indicates they
15 ought to be getting.

16 Q. Okay. Are there any advantages to
17 conducting a poll in person?

18 A. Sure.

19 Q. What would those advantages be?

20 A. Well, for example, you can -- you can ask
21 complex questions where there's a large number of
22 possible responses, and if you try to ask that just
23 purely orally like over the phone, then people would
24 have lost track of what the first two response
25 categories are by the time you got to the eighth or

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1 ninth one, but in a face-to-face interview, you can
2 hand people a list of the possible responses and they
3 can look it over, they can go back to the beginning
4 of the list, take their time on it, and so you can
5 ask questions that have a lot -- a larger number of
6 possible response categories.

7 Anything that's possible by virtue of there
8 being a human being with the respondent and able to
9 provide them with something in order to aid their
10 answering of the questions, that would be a benefit.

11 Q. Okay. In 1995, when you and Mark Gertz
12 published your defensive gun use estimate, that was
13 based on surveys that you and Mark Gertz conducted;
14 is that correct?

15 A. Survey singular, one survey.

16 Q. And was that one survey conducted in person
17 or over the telephone?

18 A. It was a telephone survey.

19 Q. Did you consider doing in-person surveys to
20 conduct that study?

21 A. Not for a second. I mean, it would have
22 impaired the validity of people's responses for the
23 exact same reasons that it impairs people's responses
24 to the gun ownership question in the GSS, and cost
25 would have made it prohibitive. The GSS is a

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1 Q. I see. I'm going to refer you to page 64
2 in Exhibit 39. In the final paragraph on page 64 of
3 Exhibit 39, you discuss different surveys concerning
4 gun ownership rates, and you state that the surveys
5 indicate that since at least 1959, about 46 percent
6 plus or minus six percent of U.S. households report
7 owning a gun. Do you see that?

8 A. Yes.

9 Q. You go on to state that they show no
10 consistent evidence of an increase in household gun
11 ownership in the United States from 1959 to 1995. On
12 the other hand, they show a sharp increase in
13 household ownership of guns from around -- from about
14 --

15 A. Handguns.

16 Q. Thank you, handguns, from about 16 percent
17 in 1972 to about 26 percent in 1982. Do you see
18 that?

19 A. Yes.

20 Q. And turning to page 98 of Exhibit 39, you
21 provide the raw data from these surveys in table 3.2,
22 national survey estimates of gun ownership, 1959 to
23 1996. Do you see that?

24 A. I do.

25 Q. So when you stated on page 65 that the

1 surveys show a sharp increase of household ownership
2 of handguns, from about 16 percent in 1972, the 16
3 percent rate that you were referring to was based on
4 a Gallup survey; is that correct? And you can see
5 this on page 98 on the ninth line, 526 to 2972, 16
6 beneath handgun, households owning percentage? Do
7 you see that, Professor Kleck?

8 A. Yes, the 1972 Gallup indicating 16 percent
9 of households owning a handgun.

10 Q. Right, and going back to page 65, you
11 referred to 26 percent ownership rates in 1982, and
12 that 26 percent figure in 1982 is based not on
13 Gallup, right?

14 A. True, not in that case, but Gallup also in
15 other years did indicate an increase.

16 Q. But you did cite to a statistic from ABC
17 News, which was not Gallup. It was a different
18 survey organization?

19 A. Right, it was not an ideal comparison
20 because as I said, it's better if you compare the
21 same survey organization.

22 Q. But it's not illegitimate to compare them,
23 correct?

24 A. It's just -- it's subject to more error,
25 more potential error. That's all

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1 Q. But you did do that in "Targeting Guns,"
2 correct?

3 MR. SWEENEY: Objection.

4 A. In that particular case, but on the other
5 hand, there's also plenty of other polls where you
6 can use the exact same survey organization to judge
7 prevalence of handguns, and those too indicate an
8 increase in handgun ownership, for example, NORC's
9 GSS, which indicated like 25 percent of households
10 having a handgun in 1989 and -- versus, let's say, 29
11 percent in 1980 and -- and in 1982. So even it
12 indicated a slight increase, whereas other sources
13 indicated -- I'm sorry, no, I'm citing the wrong
14 figures.

15 NORC indicated 23 percent in 1980 and 21
16 percent in 1976 and 20 percent in 1973, whereas they
17 indicated 25 percent by 1989. So the NORC also
18 confirms the impression of increased household
19 handgun prevalence.

20 Q. And you did cite to the NORC in arriving at
21 those conclusions, correct?

22 A. Yes.

23 Q. And the NORC is the organization that
24 conducts the GSS?

25 A. That's correct.

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1 Q. And why did you decide to cite to the
2 NORC GSS survey data in assessing the percentage of
3 households that own handguns in "Targeting Guns"?

4 A. It's partly because at that time, I mean,
5 we're talking circa 1996, there was -- there was less
6 reason to believe that gun owners' suspiciousness was
7 distorting the NORC estimates. The evidence I cited
8 indicate the NORC is failing to capture a good deal
9 of that household gun prevalence, it basically came
10 after circa 1993. Up 'til then, the NORC was getting
11 similar prevalence figures to what Gallup was. You
12 know, in 1989, they were virtually identical. It was
13 47 percent for Gallup and 46 percent for the GSS.

14 Q. So the divergence between GSS and Gallup
15 and other surveys started in around 1993; is that
16 right?

17 A. Right.

18 Q. Is that what you're testifying?

19 A. Right.

20 Q. And referring to another portion of
21 "Targeting Guns," which would be page 124, under
22 semiautomatic guns and mass shootings, do you see
23 that page, Professor Kleck?

24 A. I do.

25 Q. Okay. On the -- in the third paragraph

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1 under that heading, you write, "Nevertheless, it is
2 possible that rapid-fire guns with large magazines
3 might have been essential to some mass murders,
4 resulting in as many deaths and injuries as they
5 did." Do you see that?

6 A. I do.

7 Q. Do you agree with that statement?

8 A. As a logical possibility, yeah, but at that
9 time, I hadn't done the detailed analysis I did later
10 and just published two years ago. So it was a
11 possibility or a hypothesis that I explored with
12 actual empirical information many years later and
13 found that that logical possibility seems not to
14 actually characterize mass murders as they've
15 occurred in the United States in recent decades.

16 Q. And why is that?

17 A. Why is what?

18 Q. Why is the -- why is your statement in
19 "Targeting Guns" no longer a valid statement?

20 A. It is a valid statement. It continues to
21 be a valid statement as a logical possibility, or as
22 a hypothesis, if you want to phrase it that way, but
23 it was not at that time a conclusion based on any
24 detailed analysis of empirical evidence, whereas my
25 2016 article was.

1 Q. But you just stated that it is still a
2 valid hypothesis --

3 A. Yeah.

4 Q. -- that these banned firearms are essential
5 in -- in contributing to the lethality of mass
6 murders in the United States?

7 A. It was expressed as a logical possibility
8 and it continues to be a logical possibility. It
9 just isn't empirically true.

10 Q. And it isn't empirically true in part based
11 on your analysis of mass shootings in -- as compiled
12 by Shooting Tracker dot com and other -- that would
13 be the Gun Violence Archive?

14 A. Yes, the same thing, correct.

15 Q. Okay.

16 A. Okay, and what was your question again?

17 Q. So the reason why you do not believe that
18 the hypothesis that you stated in "Targeting Guns" is
19 actually true is based on your subsequent analysis of
20 data compiled in the Gun Violence Archive.

21 A. Partly. I didn't really rely on that alone
22 or even primarily, but certainly partially based on
23 the Gun Violence Archive.

24 Q. Okay. On page 144 of Exhibit 39,
25 "Targeting Guns," it should only be a couple pages

1 later, or the next page, that included table 4.2. Do
2 you see table 4.2?

3 A. I do.

4 Q. It's titled "Mass Shooting in the United
5 States, 1984 to 1993." Do you see that?

6 A. I do.

7 Q. How did you compile this list of mass
8 shootings in the United States?

9 A. This would have been something I did circa
10 '94, so that's like a quarter of a century ago.

11 Q. To the best of your recollection.

12 A. I'm not really sure, but my -- my best
13 guess would be it's the same kind of sources that
14 everybody uses now, which is media accounts, and so
15 you know, various media sources had their -- their
16 own lists of particularly fatal -- particularly
17 lethal mass shootings, and so you know, I probably
18 took a combination of those lists to compile this
19 list.

20 So you know, it's not intended to be
21 comprehensive regarding all incidents that today
22 might be defined as mass shootings because some
23 involve as few as three victims. These were all
24 pretty large-scale ones and therefore heavily
25 publicized and therefore likely to be included in

1 these media compilations. So it was probably a
2 combination of those news media compilations like you
3 might find in the New York Times or Time Magazine or
4 Newsweek and so on.

5 Q. Okay. To your knowledge, did any of these
6 shootings involve gang violence?

7 A. I don't recall any, and in fact, it's
8 unlikely that any did.

9 Q. Okay. Did any of these shootings occur in
10 connection with the commission of some other crime,
11 like a bank robbery, for example, or a kidnapping
12 situation?

13 A. I really don't recall. There's no way to
14 -- for me to pick out that information from table
15 4.2, so I honestly don't know.

16 Q. And do you know whether any of these
17 shootings in table 4.2 occurred inside of a home or a
18 private residence?

19 A. Again, I don't really know one way or the
20 other, but to go back to your previous question, the
21 Christopher Thomas incident might well have been gang
22 combat, or the guy was acting as sort of a gang
23 enforcer. I have some vague recollection of that,
24 but in general, I wouldn't be able to provide you
25 with reliable information about the details of these

1 incidents besides what's in the table.

2 MR. ECHEVERRIA: Okay. I think it's a good
3 time to take a break for lunch.

4 (Recessed at 12:59 p.m.)

5 (Reconvened at 2:08 p.m.)

6 BY MR. ECHEVERRIA:

7 Q. Okay, we're back on the record, Professor
8 Kleck. You are aware that you are under oath again,
9 correct?

10 A. Yes.

11 Q. I'd like to return to one of the opening
12 points of discussion that we had during this
13 deposition, and that's about whether mass shootings
14 or public mass shootings are issues of significant
15 national importance. It's your opinion that they are
16 not; is that correct?

17 A. I think I said --

18 MR. SWEENEY: Objection.

19 A. I think I said something to the effect not
20 a major social problem.

21 Q. And what would the reason be again for it
22 not being a major social problem?

23 A. The number of casualties being as low as it
24 is.

25 Q. Do you believe that acts of domestic

1 terrorism are issues of significant national
2 importance?

3 A. Well, for the same reason, I would have a
4 different attitude of that as most policy-makers. It
5 would be -- as things stand, it's not a huge problem.
6 You can always argue that it might become a huge
7 problem. There's -- there's no upper limit on what
8 might happen, but under current conditions, no, I
9 would say the same thing, that domestic terrorism is
10 not a huge problem in America either, not even as
11 much as let's say the average Western European
12 nation.

13 Q. Okay, and going back to Professor Donohue's
14 report, which was marked --

15 MR. SWEENEY: Four?

16 BY MR. ECHEVERRIA:

17 Q. As Exhibit 4, right. It's previously
18 marked as Exhibit 4. If you turn your attention to
19 Exhibit B to Professor Donohue's report, do you see
20 Exhibit B, Professor Kleck?

21 A. I do.

22 Q. Exhibit B to Professor Donohue's report is
23 an article by Professor Donohue and Isaac Rabbani
24 entitled "Recent Trends in American Gun Prevalence,"
25 correct?

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1 A. It is.

2 Q. And you would agree that Professor Donohue
3 does not only rely on GSS data in assessing the
4 prevalence of gun ownership in America. Would that
5 be correct?

6 A. He claims to rely on other surveys.

7 Q. And you -- you disagree with Professor
8 Donohue's claim?

9 A. Well, the other surveys he refers to do not
10 in fact support his claim of declining household gun
11 prevalence.

12 Q. And you would not disagree with Professor
13 Donohue's characterization of gun ownership becoming
14 more concentrated, correct?

15 A. If all that means is the same old number of
16 people have guns but they continue acquiring guns,
17 yeah, I guess I agree with that. It's an odd way to
18 put it, but it's not like people who have guns are
19 sort of taking them away from other people and
20 concentrating them in their own hands. It's just an
21 arithmetic function of more guns being acquired by
22 the same number of people that previously had them.

23 Q. In paragraph 3 on page 6 of your report,
24 which was marked Exhibit 30 --

25 MR. SWEENEY: What paragraph is that?

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1 MR. ECHEVERRIA: Paragraph 3.

2 THE WITNESS: In my report?

3 MR. SWEENEY: So is it --

4 BY MR. ECHEVERRIA:

5 Q. In your -- in your report rebutting
6 Professor Donohue's report.

7 MR. SWEENEY: He doesn't have paragraph --

8 THE WITNESS: I don't think I do.

9 BY MR. ECHEVERRIA:

10 Q. Oh, I'm sorry, I'm referring to the actual
11 paragraph. It's the paragraph right above the
12 heading paragraph above 17 on page 6 of Exhibit 30.

13 A. Oh, I see. You mean the third paragraph on
14 page 6, okay, got you.

15 Q. Yeah.

16 A. Got you.

17 Q. So in this paragraph, you reference an
18 October 2018 Gallup poll concerning public support or
19 opposition to assault weapons bans; is that correct?

20 A. Yeah, that survey referred to the narrower
21 category of assault rifles.

22 Q. I'd like you to refer to Exhibit 7, which
23 is the Gallup polling data, and this will be on page
24 7.

25 MR. SWEENEY: Page 7 of Exhibit 7?

1 of semiautomatic weapons such as the AR-15 would
2 reduce or prevent mass shootings at schools. The
3 instruction was whether you favor or oppose that
4 approach, right?

5 MR. SWEENEY: Objection.

6 A. Whether you favor or oppose it for
7 accomplishing a specific purpose, to prevent mass
8 shootings at schools. So yes, it's a -- it's clearly
9 a question about effectiveness for a particular
10 purpose, and that's all they're really being asked
11 about. They're not asked -- being asked about
12 whether they think it's a good idea in general.
13 They're just thinking well, you've posed this very
14 narrow question concerning only mass shootings at
15 schools, and in response to that, a weak majority
16 does -- does favor that approach.

17 Q. And the approach that they favor, although
18 the question was limited to mass shootings in public
19 schools, the approach that they favored of banning
20 the sale of semiautomatic weapons such as the AR-15
21 would be much broader, correct?

22 MR. SWEENEY: Objection.

23 BY MR. ECHEVERRIA:

24 Q. In other words, if I may rephrase, the
25 approach that 56 percent of respondents favor is not

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1 limited to public schools. They're favoring a ban on
2 the sale of these weapons generally, correct?

3 MR. SWEENEY: Objection.

4 A. No, I don't think that's the way the
5 average respondent would interpret it. I think
6 they'd interpret it as a way to prevent -- to
7 accomplish a specific goal, preventing mass shootings
8 in schools. So it's -- I view it as a very narrow
9 question and correspondingly not very important.

10 Q. Okay, returning to your -- your report,
11 Exhibit 30, on page 6, you characterize Christopher
12 Koper's -- Christopher Koper as having extensive
13 background studying guns and violence; is that right?

14 A. Yes.

15 Q. And you characterize his conclusion as
16 finding that the law had no measurable effect on the
17 rate of gun violence, including homicide, and
18 produced no discernible reduction in lethality or
19 injuriousness of gun violence; is that right?

20 A. Yes, it is.

21 Q. If we can return to the Koper report from
22 2004, which has been marked as Exhibit 35, I'd like
23 to refer you to page 96, which is the page that you
24 cite in your report. Under 9.4, summary, the authors
25 state, "Although the ban has been successful in

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1 reducing crimes with assault weapons, any benefits
2 from this reduction are likely to have been
3 outweighed by steady or rising use of non-banned
4 semiautomatic LCMs, which are used in crimes much
5 more frequently than assault weapons. Therefore, we
6 cannot clearly credit the ban with any of the
7 nation's recent drop in gun violence." Do you see
8 that?

9 A. I do.

10 Q. And you also see that at the beginning of
11 this paragraph, the authors state that the ban has
12 been successful in reducing crimes with AWs. That
13 would be assault weapons? Do you see that?

14 A. Yes.

15 Q. Do you disagree that -- that this study
16 found that the ban was successful in reducing crimes
17 with assault weapons?

18 MR. SWEENEY: Objection.

19 A. Yes, but you have to understand what in
20 this context the term AWs means. It does not mean
21 all center fire semiautomatic guns capable of
22 accepting detachable magazines and firing rapidly.
23 It referred only to the narrow subset that had been
24 banned under the federal assault weapon ban, and I
25 don't at all disagree that the use of those guns was

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1 reduced -- use in crimes was reduced, absolutely.

2 It just didn't do any good because
3 criminals just substituted mechanically identical
4 guns which could fire just as fast and, you know,
5 were just as lethal shot for shot and which were just
6 as capable of accepting large-capacity magazines. In
7 other words, that first clause in his first sentence
8 is kind of meaningless. Anybody would have predicted
9 that, but it's not any benefit to -- to public
10 safety. I mean, getting people dead with different
11 guns is not a benefit.

12 Q. And we discussed earlier about how the
13 California assault weapons ban is more restrictive --

14 A. Yes.

15 Q. -- than the federal assault weapons ban?

16 A. Yes.

17 Q. Is it possible that the California assault
18 weapons ban would be more effective in mitigating the
19 lethality of mass shootings?

20 MR. SWEENEY: Objection.

21 A. No, it wasn't -- it wasn't an improved
22 measure with regard to features that would contribute
23 to greater lethality.

24 Q. So in your view, the features that are
25 prohibited under California law, one of which would

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1 trigger a classification as an assault weapon, that
2 none of those features, excluding the grenade
3 launcher, that none of those features contribute to
4 the lethality of a firearm?

5 A. Well, the only possible exception, and it's
6 not really lethality in my -- the way I consider the
7 term.

8 Q. How --

9 A. Nothing -- nothing would affect the
10 likelihood of any one shot fired from the weapon
11 producing a death rather than a non-fate. That's
12 what I consider to be lethality.

13 Q. Right.

14 A. But the only feature that I -- I make to --
15 as an exception to that general statement I made is
16 it's possible that the pistol grip makes shooting for
17 offensive or defensive purposes more accurate, and
18 therefore, if your purpose was to shoot a lot of
19 people, you'd be more likely to shoot them. They
20 wouldn't be any more likely to die compared with a
21 gun that didn't have that feature, but -- so it's not
22 more lethal in that sense, but there will be a
23 greater probability that any one shot aimed at a
24 particular victim would hit that.

25 Q. Okay. So moving on to page 7 of your

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1 expert report, Exhibit 30, you criticize Professor
2 Donohue's paragraph 56, and you criticize his
3 reliance on Louis Klarevas; is that right?

4 A. Uh-huh, yes. Sorry.

5 Q. And you contrasted Louis Klarevas'
6 scholarship with Professor Koper's -- or which you
7 characterize as sophisticated and detailed research,
8 right?

9 A. Yes.

10 Q. What are your concerns with the work of
11 Professor -- of Louis Klarevas?

12 A. Well, he's clearly not an expert on -- on
13 this topic. He had, to my knowledge, never ever
14 published even a single article in a refereed journal
15 on anything related to the topic of guns and
16 violence. Whatever expertise he has, it certainly
17 isn't in this area. So he's decided to, you know,
18 launch de novo his efforts to explore a subject that
19 he had no preexisting expertise about, either guns or
20 violence or the link between guns and violence.

21 And you know, the book is clearly pitched
22 at a general audience. It's not at a very technical
23 level. It's not aimed at scholars. It appears to be
24 aimed at a popular audience, which means he doesn't
25 have to meet the standards that an academic audience

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1 would demand. He certainly didn't have to pass the
2 review by professional referees or reviewers who were
3 experts in the area.

4 And finally, his analysis was primitive. I
5 mean, he simply notes a correspondence or a
6 coincidence over time between the existence of the
7 assault -- federal assault weapons ban and the number
8 of what he arbitrarily defines as gun massacres,
9 which is another issue. He doesn't really establish
10 why he needed to reinvent the wheel and come up with
11 a new definition of the phenomenon to be explained,
12 which did not correspond with how the phenomenon had
13 been defined by his predecessors.

14 Q. Do you identify any problems in Louis
15 Klarevas' analysis of the data, notwithstanding your
16 disagreement about his definition of a gun massacre?

17 A. Yes, the methods he used can't possibly
18 establish cause and effect between the existence of
19 the assault weapon ban and the -- the frequency or
20 seriousness of what he calls gun massacres. I mean,
21 he thinks that somehow merely establishing a
22 statistical association is sort of sufficient for him
23 to draw at the end of the book some really extreme
24 non sequitur conclusions.

25 Q. But you wouldn't disagree with Louis

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1 Klarevas' conclusion that there's a correlation. You
2 just disagree with his extrapolation that there is a
3 causal relationship?

4 A. Well, I can't even be sure there is a
5 correlation because he uses that eccentric way of
6 defining his dependent variable, numbers of gun
7 massacres. So I honestly don't even know if there's
8 a correlation, but it really wouldn't matter. It
9 wasn't -- the so-called research wasn't really worth
10 looking at all that closely.

11 Q. But you looked at the data in his research
12 closely?

13 A. I did.

14 Q. Okay. And in paragraph 57 of your expert
15 report, Exhibit 30, you criticize Professor Donohue's
16 determination that the federal assault weapons ban
17 reduced mass shootings -- sorry, scratch that. So in
18 your criticism of paragraph 57 in Donohue's report,
19 you're again making this argument that correlation's
20 not causation, right?

21 A. Yes.

22 Q. Do you agree with Professor Donohue's
23 conclusion that there is a correlation, even if you
24 disagree with his conclusion or his suggestion that
25 there might be causation?

1 A. I mean, it's such a vague statement,
2 closely tracks. He doesn't even define that. I
3 mean, if he wanted to say well, the correlation is
4 very strong, he could have cited a correlation, and
5 correlations over time for large macro-level units
6 like entire nations tend to be high regardless of
7 whether there's any causal connection. So by itself,
8 the statement is both vague and not very meaningful
9 with regard to whether this association in particular
10 is a strong correlation.

11 Q. If two events are correlated and if there
12 is a correlation between them, does that make them
13 more likely or less likely that there's a causal
14 relationship between them?

15 A. More likely. Not sufficient, but more
16 likely.

17 Q. Okay. You also state in your rebuttal to
18 paragraph 57 that Professor Donohue apparently
19 seriously relied on the opinion of the executive
20 director of an organization that lobbies for assault
21 weapons bans. Do you see that?

22 A. I do.

23 Q. Can we refer to Professor Donohue's report,
24 which was marked as Exhibit 4? I'd like you to turn
25 to paragraph 25, which is where paragraph 57 is. So

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1 in paragraph 57 on page 25, Professor Donohue quotes
2 Josh Sugarmann, who's the executive director of the
3 Violence Policy Center; is that right?

4 A. Yes.

5 Q. And Professor Donohue quotes Josh Sugarmann
6 as stating, "The end of the assault weapons ban
7 allowed for the customization and modification of
8 these weapons to make them look even more
9 militaristic, even more grand in the eyes of their
10 owners," right?

11 A. Right.

12 Q. Do you believe that Professor Donohue's
13 quoting of Josh Sugarmann constitutes serious
14 reliance on Josh Sugarmann's quotation?

15 A. It's serious reliance for that -- you know,
16 that narrow point that there was more of a
17 militaristic appearance, which made those guns more
18 attractive to -- to prospective guns owners, yeah,
19 it's -- he took it very seriously, enough to cite the
20 guy's opinion, and that's all it is. It's an
21 opinion. I mean, Sugarmann didn't have data to show
22 that. He just expressed that opinion.

23 Q. Do you disagree with that opinion?

24 A. I have no idea whether it's true. All I
25 know for sure is it's foolish to rely on the

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1 A. Correct.

2 Q. And I believe we discussed earlier in this
3 deposition about your estimation of defensive gun
4 uses with Gertz in 1995, right?

5 A. Yes.

6 Q. I believe recently in April or May of this
7 year, you published an article about the Center for
8 -- the CDC, the Center for Disease Control, and
9 certain questions that the CDC had asked about gun
10 ownership; is that right?

11 A. No.

12 Q. Or sorry, go ahead.

13 A. I wouldn't say it was published, because it
14 was not -- I have not submitted it to a professional
15 journal. It was made available on the Social Science
16 Research Network, which is --

17 Q. Uh-huh.

18 A. It's basically a listing of articles that
19 are often put there for the purpose of eliciting
20 commentary from the people who may suggest
21 improvements in the methods or interpretation of the
22 results.

23 Q. And after you posted the article for -- for
24 comment or review, what happened?

25 A. Well, somebody -- the original version was

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1 based on my misunderstanding of the code book for the
2 CDC data sets for the behavioral risk factor surveys,
3 whatever they're called. I didn't realize that the
4 question about defensive gun use only pertained to a
5 subset of these states where this survey was
6 conducted, and so that was a very useful comment. It
7 prevented me from publishing a significant error.

8 So I then identified what states in which
9 years that survey had been conducted that had asked
10 the defensive gun use question, and then I produced
11 estimates of what it would have been, had the
12 question been asked for the entire nation by
13 combining information I already had from my own
14 survey of defensive gun use and the relative levels
15 of defensive gun use in different states. And so
16 then I produced a projection or an estimate for the
17 United States as a whole based on the CDC survey
18 results.

19 Q. Okay.

20 A. That's the -- that's the version that's
21 currently available on the Social Science Research
22 Network.

23 Q. Okay. And just to confirm, you're not
24 aware of how many defensive gun uses in the United
25 States involve assault weapons?

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1 A. That's correct.

2 Q. Do you know how many defensive gun uses in
3 the United States involve semiautomatic rifles?

4 A. No.

5 Q. So you don't know whether more defensive
6 gun uses involve handguns versus rifles versus
7 shotguns?

8 A. No, that's not true. I do know there are
9 more involving handguns of any type, whether
10 semiautomatic or not, than there are involving the
11 use of rifles or shotguns, regardless of whether
12 they're semiautomatic.

13 Q. Okay, so taking away the qualifier as to
14 whether the firearm is semiautomatic, your research
15 has found that more DGUs involve handguns.

16 A. Correct.

17 Q. Would that be significantly more?

18 A. Yes. Well, there's a -- there's a narrow
19 technical term that doesn't really apply here, but if
20 you said instead of significantly, substantially,
21 yes, the answer would be yes.

22 Q. But you do note in your response to
23 paragraphs 87 to 89 on page 9 of your report that
24 there have been instances in which an AR-15 has been
25 used in self-defense; is that correct?

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1 A. Correct, and these are just isolated
2 anecdotes. So yeah, they've occurred, and that's
3 about all you can say. You can't say anything about
4 their frequency.

5 Q. Okay. Did -- did any of those defensive
6 gun uses occur outside of the home?

7 A. I couldn't tell you. I mean, I don't
8 really recall the article all that -- in such detail
9 since it wasn't especially meaningful as a source for
10 estimating the frequency of use of any kind of
11 so-called assault weapon.

12 MR. ECHEVERRIA: I'm going to mark as
13 Exhibit 41 this document that you're citing in your
14 report.

15 (Exhibit No. 41
16 was marked for
17 identification.)

18 BY MR. ECHEVERRIA:

19 Q. This document is titled "5 People Who Used
20 an AR-15 to Defend Themselves and Have Probably Saved
21 Their Lives," dated September 24, 2013. Do you see
22 that?

23 A. I do.

24 Q. Is this the document that you were citing
25 in your report?

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1 on mass public shootings, which began on page 15, and
2 that section ended on page 18, and then I jumped to
3 page 29, and page 29 is the part that I'm interested
4 in. It's the last page of Exhibit 42, and if you
5 look under the heading "Types of Firearms Used In
6 Mass Shootings," the first bullet states, "In mass
7 public shootings, offenders used firearms that could
8 be characterized as assault weapons in 18 of 66
9 incidents."

10 A. What -- what page are you on again?

11 Q. I'm on page 29 of Exhibit 42. It's the
12 final page --

13 A. Okay.

14 Q. -- in the exhibit, and do you see that
15 first bullet point that I referred to you?

16 A. I do.

17 Q. And that first bullet point states that in
18 mass public shootings, offenders used firearms that
19 could be characterized as assault weapons in 18 of 66
20 incidents, parentheses, 27.3 percent. Do you see
21 that?

22 A. I do.

23 Q. So when you were stating that neither mass
24 killers nor ordinary gun criminals prefer the use of
25 assault weapons, you were not referring to mass

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1 public shootings. You were referring to mass
2 shootings in general?

3 A. Correct.

4 Q. Okay, but you don't dispute the 27.3
5 percent figure identified in the first bullet
6 regarding mass public shootings?

7 A. I haven't independently checked. I have no
8 reason to doubt it though, but again, I wouldn't pay
9 any detailed attention to it just because it's so
10 trivial an assertion. I mean, it's describing
11 something that occurred maybe two or three times a
12 year in the entire country. So which particular
13 types of firearms were used in that peculiar
14 non-randomly selected subset of mass shootings is --
15 it's of no significance, to my mind.

16 Q. So as a criminologist, you don't find
17 public mass shootings to be an issue of interest and
18 for further research?

19 A. No, I mean, you can take any topic, even
20 utterly unique topics and say they're of some
21 research interest, but what I disputed was that it's
22 a major public problem, and it's not. It's not a
23 significant source of risk to Americans. In fact,
24 it's -- it's probably comparable to the risk of being
25 struck by a bolt of lightning, which is something

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1 that clearly people do not worry much about.

2 Q. But even if public mass shootings should be
3 a lower priority in your view, you would not disagree
4 that they are a problem in this country, correct?

5 A. Sure, any homicide is a problem. One
6 homicide is one too many.

7 Q. Okay. In your rebuttal at paragraph 92 of
8 Professor Donohue's report, going back to page 9 of
9 your report, Exhibit 30, in paragraph 98, you discuss
10 Australia's 1996 national firearms agreement; is that
11 right?

12 A. Yes.

13 Q. And you state that Professor Donohue's
14 claim that there have been none since the NFA was
15 implemented is false, and none would be referring to
16 mass shootings, right?

17 A. Yes.

18 Q. Do you have any understanding --

19 A. Wait a minute. I'm sorry. Could you
20 repeat your question?

21 Q. Sure.

22 A. I may not have understood it.

23 Q. I think I compounded it. So it's your --
24 it's your opinion that Professor Donohue is incorrect
25 in stating that there had been no mass shootings

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1 since the NFA was implemented, right?

2 A. Yes, it's my opinion that that's incorrect,
3 because there have been two mass shootings.

4 Q. And what is your understanding of those two
5 mass shootings? Let me rephrase. Do you have any
6 understanding of what the facts were in connection
7 with those two mass shootings in Australia?

8 A. A while back I read some news articles on
9 it, but really I don't know -- I don't recollect much
10 of the details.

11 Q. Okay. So you are not aware about whether
12 those two shootings in 2008 were acts of domestic
13 violence?

14 A. No, I do not.

15 Q. Okay. So you are not aware that in the
16 shooting on May 11th, 2018 in Osmington, a
17 grandfather killed his children, daughter, wife and
18 self at their home, in other words, not in a public
19 space?

20 A. It sounds vaguely familiar.

21 Q. Okay, and about --

22 A. I don't dispute it.

23 Q. And how about the shooting on September
24 9th, 2018 in Bedford in which a father killed three
25 daughters, his three daughters, and his wife in their

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1 home, in other words, not in a public space?

2 A. Again, I wouldn't dispute it.

3 Q. So these two instances of a mass shooting
4 as you understand the term "mass shooting" would not
5 qualify as a public mass shooting. Would that be
6 correct?

7 A. Right, they -- they would qualify as mass
8 shootings, but not as public mass shootings.

9 Q. So since the NFA was implemented in
10 Australia, there have been no public mass shootings,
11 correct?

12 A. As far as I know.

13 Q. Okay.

14 A. But Professor Donohue's statement did not
15 -- was not restricted to public mass shootings. He
16 said, quote, that the NFA, quote, dramatically
17 reduced mass shootings in Australia, unquote, without
18 any further qualification.

19 Q. Would you agree that two mass shootings in
20 a 22-year period would indicate that the NFA did in
21 fact reduce mass shootings generally in Australia,
22 even though two shootings did occur this year?

23 MR. SWEENEY: Objection.

24 A. No, it wouldn't indicate one thing one way
25 or the other. I mean, it would indicate for sure

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1 that it hadn't completely eliminated them, but beyond
2 that, no, it wouldn't indicate anything.

3 Q. Okay. Moving on to page 11 of your report,
4 Exhibit 30, you state that Donohue claims that
5 Klarevas, Koper and unspecified courts have observed
6 that assault weapons with large-capacity magazines
7 are disproportionately used in mass shootings,
8 correct?

9 A. Correct.

10 Q. And the reason why you are criticizing that
11 statement was that those individuals and the courts
12 could not possibly have known how many assault
13 weapons with large-capacity magazines there are in
14 circulation, right?

15 A. Right, they certainly couldn't reliably
16 know it. I mean, you can always produce estimates,
17 but the question is whether or not you can place much
18 faith in them.

19 Q. So were you understanding that statement as
20 using the number of assault weapons in circulation as
21 the denominator, with the numerator being the number
22 of assault weapons that have been used in mass
23 shootings?

24 A. Yes, I think that's the only reasonable
25 interpretation you can apply to that statement.

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1 Q. So it would not be a reasonable
2 interpretation in your opinion to use as the
3 denominator the total number of public mass shootings
4 and the numerator the number of public mass shootings
5 that involved an assault weapon?

6 A. No, the word "disproportionately" wouldn't
7 make any sense at all there. I mean, it's got to be
8 disproportionate relative to some standard, but it
9 can't just be a large fraction by itself. That
10 contradicts the concept of disproportionate.

11 Q. In the next paragraph, you claim that
12 Donohue misleadingly cites a statistical association
13 between use of such firearms at a shooting and the
14 number of shots fired and number of persons wounded,
15 right?

16 A. Correct.

17 Q. And you claim that it's important to note
18 that Donohue does not explicitly state that the use
19 of such firearms causes more shots fired or more
20 victims injured, right?

21 A. That's correct.

22 Q. So if Professor Donohue does not state that
23 the use of those firearms causes more shots to be
24 fired or causes more victims to be injured, what
25 exactly in Professor Donohue's report are you

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1 rebutting?

2 A. When you refer to a correlation to a
3 layperson, let's say a judge, and you don't have an
4 explicit qualifier saying this does not mean
5 causation, it's understandable people misinterpret
6 that to mean a statement that one thing causes
7 another, that in this case use of so-called assault
8 weapons increases the number of shots fired, victims
9 injured, et cetera et cetera.

10 So you sometimes have an obligation to make
11 clear what your meaning is by disabusing your
12 audience of possible misinterpretations that are
13 extremely likely, and in this case they are extremely
14 likely. There's a reason why you have to have that
15 caution, correlation is not causation. You wouldn't
16 need to say that if people didn't assume that
17 correlation does imply causation. And so there was
18 absolutely nothing in Donohue to contradict that
19 natural interpretation that many laypeople would
20 apply to his statement about a correlation.

21 Q. But going back to my question, do you
22 dispute his finding that there is a correlation
23 between the use of assault weapons and the number of
24 victims injured or killed?

25 A. No, no.

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1 Q. You do not dispute that correlation.

2 A. No. What I dispute is any implication that
3 it's causal rather than being a spurious association
4 attributable to the fact that the lethality of the
5 aggressor's intent will affect both the number of
6 victims they hurt, number of shots fired, et cetera
7 et cetera, and their choice of weaponry.

8 Q. Do you have any empirical evidence that the
9 use of assault weapons and the number of victims
10 killed or injured is not causally related?

11 A. Well, you can't -- you can never prove a
12 negative. It's a logical impossibility. What I can
13 say is there's no affirmative evidence to indicate
14 it's anything more than a spurious association, and I
15 can be very specific about what affirmative evidence
16 would be. If you could control for the likely
17 sources of a spurious association, for example, the
18 lethality of the aggressor's intent, and then you
19 still found an association between the use of these
20 weapons and the casualty count, then you would have
21 done something in the way of affirmative evidence to
22 establish that it might be causal, but if you only
23 present the association without any further evidence,
24 it's -- there's no affirmative evidence that it's
25 anything other than a spurious association.

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1 Q. And how would a criminologist or other
2 researcher control for the variable of the shooter's
3 intent?

4 A. Well, I don't know that it is possible that
5 you could do it definitively. It may be an
6 impossible research task. We don't have methods that
7 satisfy every conceivable goal we might have. In
8 this case you're trying to measure something that's
9 in the head of the aggressor, but you also want to
10 measure it independent of the outcome of whatever
11 those intentions were because you're saying this
12 separate factor of intentions affects the number of
13 casualties.

14 And so, you know, it's always difficult to
15 measure what's in people's heads, what was in the
16 heads of these mass shooters. It's impossible after
17 the fact if they've been killed by police or
18 committed suicide. It's impossible beforehand
19 because of course, we don't know who's going to be
20 mass shooters.

21 And so it's always going to be something
22 you can only indirectly infer, and you might
23 indirectly infer it by things like well, of the
24 number of shots they fired, how many hit the victim,
25 but that's ambiguous because it could reflect, you

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1 know, accuracy of the weapon and so on and other
2 circumstances, or percent of those wounds that are
3 inflicted that result in the victim's death, the
4 underlying assumption being that those with more
5 lethal intentions will be aiming more carefully, more
6 likely to be aiming at vital areas of the body and so
7 on, but none of these are perfect indicators.

8 I mean, sometimes you just have to
9 acknowledge that there is no perfect research
10 solution to a research problem, and I think that's
11 probably the case here. I don't rule it out as
12 impossible. Who knows what people might imagine they
13 would come up with in the future, but I certainly
14 don't know of any definitive and indisputable way to
15 measure lethality of intent independent of the
16 outcome of the event.

17 Q. But what we do know is that individuals who
18 do have a lethal intent and are planning to engage in
19 a public mass shooting, they do often utilize assault
20 rifles; is that right?

21 A. Well, I wouldn't say it was often. Again,
22 they -- they -- they may use certain types of weapons
23 more often than other types of weapons, but it's not
24 disproportionate to their numbers in the population
25 of guns. So if often means relative to their share

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1 of all the guns out there in the civilian gun stock,
2 then I don't know that to be the case.

3 Q. But of the instances in which a shooter has
4 engaged in a public mass shooting, about 27 percent
5 used assault weapons according to the Congressional
6 Research Service exhibit that we were discussing
7 earlier; is that right?

8 A. Possibly, yeah, that would be -- yeah, that
9 would be something I have no affirmative reason to
10 dispute.

11 Q. In the next paragraph on page 11, you
12 discuss the presence and use of large-capacity
13 magazines in mass shootings; is that right?

14 A. Yes.

15 Q. And you state that the only effect of the
16 shooter using smaller magazines is that it requires
17 the shooter to reload more times; is that right?

18 A. Correct.

19 Q. You also note that shooters can use
20 multiple guns or multiple ten-round magazines in a
21 mass shooting, right?

22 A. Not only can, but invariably do.

23 Q. And when a mass shooter utilizes multiple
24 guns or multiple magazines, would you agree that
25 there are more pauses in those shootings than a

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1 shooter that utilizes a single weapon with a single
2 large-capacity magazine?

3 A. Yes.

4 Q. And if there are more pauses during a mass
5 shooting, would you agree that those are
6 opportunities for potential victims to escape, hide
7 or potentially disarm the shooter or subdue the
8 shooter?

9 A. There are opportunities, but there are not
10 more opportunities, which is the key word in your
11 question. They're not additional opportunities. The
12 amount of time that victims have to escape because
13 the shooter is reloading, it doesn't add to the time
14 they would have had anyway simply because the shooter
15 doesn't want to fire as rapidly as they can for
16 whatever reason, whether it's because they had to
17 reload or just because they didn't want to shoot
18 again until a couple more seconds had passed or they
19 found a different victim they wanted to shoot. So
20 no, the additional reloads do not produce more time
21 for the victims to escape.

22 Let me rephrase that. More time, singular.
23 In other words, the total number of seconds when
24 victims had to escape is not increased by virtue of
25 the fact that the shooter had additional magazine

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1 changes, and this is because, you know, the time it
2 takes to reload a detachable magazine for a
3 semiautomatic firearm is no greater than the time
4 that mass shooters take in between shots anyway, even
5 when they're not reloading.

6 Q. And how much time in your opinion does a
7 shooter take to reload a firearm?

8 A. It's easy for even a mediocre shooter to
9 change detachable magazines in two to four seconds.

10 Q. And you write that in your rebuttal to Lucy
11 Allen's report later in this report; is that right?

12 A. Yes.

13 Q. And what was the basis for your opinion
14 that reloadings only take on average two to four
15 seconds?

16 A. Well, the primary basis is timing my own
17 magazine changes. I had a friend who has a very
18 accurate device that depends on, you know, the sound
19 of a shot being fired, so you can measure to like
20 within a hundredth of a second how long it is between
21 the last shot you fired in the previous expended
22 magazine and the first shot you fire with the new
23 fresh magazine, which is actually magazine change
24 plus a little bit of extra time for, you know,
25 pulling the trigger and so on, but it suffices.

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1 I'm -- it would be charitable to describe
2 me as even a mediocre shooter. I'm somebody who
3 shoots maybe once every year or two years, so I don't
4 have the practice that makes me particularly skillful
5 at either aiming or at changing magazines, and you
6 know, probably in my entire life, I've actually
7 participated in competitions where you needed rapid
8 magazine changes.

9 So there's partly just this very accurate
10 measurement of how long it takes me, a at best
11 mediocre shooter, but I also -- you know, I figured
12 people will -- will, you know, want some evidence
13 pertaining to other people besides me, and so I
14 looked on the internet for other instances of
15 ordinary people, not super champions or anything, but
16 ordinary people changing magazines, and it's the
17 same.

18 I mean, really, two to four seconds is a
19 generous estimate. It would rarely take as much as
20 four seconds, but it sufficed for my purposes to
21 establish that yeah, the average shooter, never mind
22 somebody who might rehearse a mass shooting by
23 practicing magazine changes, could easily change
24 magazines in two to four seconds.

25 Q. So in -- in your experience of changing

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1 magazines and in the video demonstrations that you
2 were just referencing, would you characterize the
3 circumstances as controlled settings?

4 A. They were -- well, the circumstances in
5 which I -- I did that exercise was just a shooting
6 range outdoors, public place, daylight. Obviously I
7 wasn't shooting human beings, so there was not that,
8 you know, emotional situation. Nor was I fixated on
9 the issue of accuracy of the shots that I fired
10 following the magazine change. It was strictly for
11 the purpose of estimating how long it took to do --
12 for me to do a magazine change.

13 Q. And when you were -- when you were testing
14 how long it took yourself to conduct a magazine
15 change, did you use any type of holster that held
16 additional magazines?

17 A. Let's see. Yeah, I think I was using the
18 -- I don't even know what it's called, but it's
19 something that's used in these -- these -- you know,
20 these action shooting events, which is where, you
21 know, you're going to have one magazine in the gun,
22 and then you have a sort of holder of magazines for
23 three more because for some of these rounds, you need
24 four magazines' worth of rounds, and I think it's
25 like -- the assumption is you have a 15-round

1 magazine, so you're equipped with four, and I believe
2 for that exercise, I had that kind of a magazine --
3 magazine holder, whatever it's called.

4 Q. Okay.

5 A. I don't think it's called a holster, but I
6 couldn't tell you what it's called.

7 Q. Yeah, I don't know what it's called either.
8 So I'm going to mark as another exhibit --

9 MR. SWEENEY: Is this a good time to take
10 another break?

11 MR. ECHEVERRIA: Oh, we can do that too,
12 yeah.

13 (Recessed at 3:18 p.m.)

14 (Reconvened at 3:24 p.m.)

15 BY MR. ECHEVERRIA:

16 Q. We're back on the record, and Professor
17 Kleck, you're again under oath. Is that your
18 understanding?

19 A. It is.

20 Q. So I'm going to mark as Exhibit 43 an
21 article that you published in Justice Research and
22 Policy in 2016 entitled "Large-Capacity Magazines and
23 the Casualty Counts in Mass Shootings: The Plausible
24 Linkages."

25 (Exhibit No. 43

1 was marked for
2 identification.)

3 MR. ECHEVERRIA: Here you go, John.

4 MR. SWEENEY: Thank you.

5 BY MR. ECHEVERRIA:

6 Q. And this is an article that you published
7 in 2016, is that right, Professor Kleck?

8 A. It is.

9 Q. And if you refer to page 30 of Exhibit 43,
10 which is only the third page of the exhibit, so it
11 would be page 30 of the journal but page 3 of Exhibit
12 43, towards the bottom of page 30, you state that
13 skilled shooters can change detachable magazines in
14 two seconds or less, and even relatively unskilled
15 persons can with minimal practice do so in four
16 seconds; is that right?

17 A. Yes.

18 Q. And you cite to a video on YouTube as a
19 demonstration in which an individual was able to
20 change a magazine in two seconds; is that right?

21 A. Yes. That was an experienced shooter,
22 yeah.

23 Q. And that would have been -- that would have
24 been Doug Koenig; is that right?

25 A. I wouldn't be able to tell you who it

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1 referred to.

2 Q. So you aren't aware about whether he was at
3 the time of the video an 18-time world champion
4 professional speed shooter?

5 A. That would certainly make him an
6 experienced shooter, as I described.

7 Q. And the shooting demonstration on YouTube
8 involving Doug Koenig was under controlled
9 circumstances; is that right?

10 A. Yes. I may need to modify my previous
11 answer. You know, I'm not sure that this was Koenig,
12 because if it was Koenig, it would have been, you
13 know, like a one-second magazine change. I can't
14 imagine him taking as long as two seconds. I can do
15 it in two seconds, so it hardly requires a world
16 champion to be able to do it in two seconds. So I
17 may have given the wrong reference there, but the
18 point is accurate, but whether or not that's an
19 experienced shooter taking two seconds to make a
20 magazine change, that I'm not so sure of.

21 Q. So you're not sure whether the individual
22 in the video that you are citing in your 2016
23 article, Exhibit 43, is Doug Koenig?

24 A. Yeah, I had a -- yeah, that's correct, I'm
25 not sure that's Doug Koenig, and I had a number of

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1 these videos, and I may have the wrong YouTube
2 citation. So that citation might be to Doug Koenig,
3 but I can't imagine him taking as long as two seconds
4 to make a magazine change. Probably the one I
5 intended to have there was a different video where
6 the shooter really did take two seconds.

7 Q. And do you think the circumstances of the
8 reloading demonstrations that we've been discussing
9 here are comparable to the circumstances of a mass
10 shooting in which there would be many people running
11 around, significant amount of chaos, significant
12 stress for the shooter?

13 A. Yes, I think it would be comparable because
14 it's a purely mechanical operation. None of those
15 bystanders are interfering with the -- the mechanical
16 action of pressing a button that releases the old
17 expended magazine and prevents the shooter from then
18 drawing out a second magazine and putting it in the
19 gun.

20 Q. But what about the effects of those
21 external circumstances on the mindset of the shooter
22 and the potential stress and adrenaline that the
23 shooter may be experiencing in the course of an
24 active shooting?

25 MR. SWEENEY: Objection.

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1 A. Well, I mean, the -- the adrenaline that
2 flows during competitive shooting improves
3 performance. It doesn't degrade it. So the best
4 response I can have to that is that I suspect it's
5 appallingly similar in instances where somebody has
6 set as their task shooting a lot of people. The
7 unfortunate thing is they might well be energized by
8 the circumstances and therefore move even faster.

9 Q. Is it possible that they could either move
10 more slowly or potentially fumble a magazine while
11 they attempt to reload?

12 MR. SWEENEY: Objection.

13 A. Well, I don't -- I don't know of any reason
14 why increased adrenaline would slow you up, so no, I
15 can't imagine that happening, but what was the second
16 thing you asked about?

17 Q. I was asking about whether a -- a shooter
18 could potentially fumble --

19 A. Oh, he --

20 Q. -- or drop --

21 A. Drop the magazine.

22 Q. -- mishandle a magazine.

23 A. Can I imagine that as a hypothetical
24 possibility? Sure, you can imagine just about
25 anything you'd like, but I don't know of that being

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1 common behavior among actual mass shooters. I know
2 of maybe one anecdotal case, but I don't know of any
3 evidence that mass shooters are somehow more clumsy
4 than other kinds of shooters who are not mass
5 shooters or not criminals.

6 Q. And what is that anecdotal case that you're
7 referring to?

8 A. I think the -- the shooting of Gabrielle
9 Giffords in Arizona, I think towards the end, the guy
10 dropped the magazine, but it wasn't in connection
11 with changing magazines. He was struggling with a
12 broken -- a magazine that had a broken spring, and I
13 don't know exactly what he was doing to struggle with
14 it, but you know, it's -- during that incident, he
15 dropped the magazine, and then one bystander grabbed
16 that magazine, and one or two other bystanders
17 tackled the shooter.

18 Q. Okay. I'd like to go back to some
19 testimony that you offered before the break about
20 increased reloading and its effect on the -- scratch
21 all this. Earlier in this deposition, you testified
22 that requiring shooters to reload more frequently
23 would not increase the time during which victims
24 could hide, escape or subdue the shooter; is that
25 right?

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1 A. Correct.

2 Q. So if we take a hypothetical in which we
3 have two hypothetical mass shootings, both occurring
4 in the course of a three-minute span or five minutes
5 -- let's say a five-minute span. One of the shooters
6 is armed with an assault rifle and a 30-round
7 large-capacity magazine, and the other shooter has an
8 assault rifle with three ten-round magazines. It's
9 your understanding that the shooter in the second
10 mass shooting would have to reload twice, whereas the
11 first shooter would not have to reload; is that
12 right?

13 A. In order to fire 30 rounds, yes.

14 Q. In order to fire 30 rounds, and in the
15 second case in which the shooter is having to reload
16 twice to fire 30 rounds, would that not contribute to
17 additional time for victims to hide, run or subdue
18 the shooter?

19 A. It's not additional time. It's the time
20 that they would have had to escape anyway even if he
21 wasn't reloading, if he's just pausing between shots,
22 as he would have been doing let's say with the 30-
23 round magazine. He'd be pausing between shots and
24 therefore providing time when the victims could
25 escape regardless.

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1 So the question is do the magazine changes
2 add to those interruptions of -- of firing. That's
3 -- that's the only logical interpretation of the
4 argument that advocates of bans on large-capacity
5 magazines make, that it's additional time. It's not
6 just the same old time they would have had even if
7 the shooter had, you know, any number of magazines of
8 any capacity. It's is it additional time, and the
9 answer appears to be no, it's not additional time for
10 victims to escape. It's just the same old time they
11 would have had between shots, because it happens so
12 quickly. It's so short a period of time, and because
13 the ordinary interval between shots when the shooter
14 is not reloading is so long, it doesn't represent
15 additional time when the victims can escape.

16 Q. So it's your opinion that shooters
17 typically require two to four seconds in between each
18 pulling of the trigger?

19 A. It's -- it's what any ordinary shooter
20 could manage. On the other hand, if mass shooters
21 soft of rehearse the event, and one of the aspects of
22 the rehearsal is practicing magazine changes, my
23 guess is they would be more at the two second end of
24 that range than at the three or four second range and
25 possibly under that.

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1 Q. And your opinion about the time it takes to
2 reload a magazine is limited to box-type magazines;
3 is that right?

4 MR. SWEENEY: Objection.

5 A. It is, because I think maybe all but one of
6 the mass shootings that I studied, involved -- to the
7 extent you could tell, they involved box-type
8 magazines as opposed to some other kind of detachable
9 magazine. There's -- there's maybe one case where
10 you could affirmatively say it was some other kind of
11 magazine besides a box-type magazine. So the
12 distinction really didn't concern me much. It wasn't
13 a very important distinction.

14 Q. And which was that case in which the
15 shooter used a different type of magazine?

16 A. Somehow I guessed you were going to ask
17 that question, and I couldn't tell you.

18 Q. Would it be the Aurora Springs shooting?

19 A. Possibly. Honestly, I couldn't tell you.

20 Q. So this would be the theater shooting --

21 A. It might be.

22 Q. -- in which a 100-round drum magazine was
23 used?

24 A. Yes, that sounds familiar, right.

25 Q. And you are aware of cases in which

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1 bystanders were able to subdue a shooter or escape
2 during pauses in the shooting when the shooter was
3 reloading his weapon?

4 MR. SWEENEY: Objection.

5 A. Not if it's detachable magazines in semi --
6 with semiautomatic weapons, but certainly there are
7 cases where the mass shooter was using some other
8 type of gun like a shotgun that had to be reloaded
9 one round at a time, for example, and yes, bystanders
10 then could feel safe in tackling the guy between --
11 or during reloading periods because it was a slow
12 reloading process, but of course, that's not the kind
13 of situation that these -- these limits on magazine
14 capacity apply to. You know, they basically apply to
15 the kind of magazines people use in semiautomatic
16 weapons, and they're almost invariably detachable
17 magazines, and in practice, they almost invariably
18 are box-typed magazines, although the law usually is
19 not limited to box-type magazines.

20 Q. And it's your understanding the California
21 law is not limited to box-type magazines?

22 A. It is my understanding, yes. As far as I
23 know, that's true of all the states that have banned
24 larger capacity magazines.

25 Q. And is it your opinion as well that when a

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1 making this statement?

2 A. That's correct, that was my understanding.

3 Q. And you claim that he was relying on a
4 report produced by a gun control advocacy group; is
5 that right?

6 A. Yes, his footnote 97 refers to the Brady
7 Center to Prevent Gun Violence, which is the nation's
8 leading gun control advocacy group.

9 Q. Is it sound research practice to reject a
10 source's data merely because it advocates for a
11 particular position?

12 A. No, not solely based on that, but you
13 wouldn't bother to cite the opinions of the leaders
14 or staff members of such an organization. Instead,
15 it would be perfectly reasonable to rely on data that
16 had been gathered by that organization without
17 necessarily accepting the spin they put on it. If
18 you think the methods they used for gathering the
19 information were sound, then you wouldn't care about
20 the source per se.

21 Q. Okay.

22 A. But my understanding is that Professor
23 Donohue was relying on basically an assessment of the
24 impact of the federal assault weapons ban. He wasn't
25 referring to some narrow factual point.

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1 Q. Did you review the Brady Center to Prevent
2 Gun Violence's report that was discussed in paragraph
3 112 of Professor Donohue's report?

4 A. No.

5 Q. So you did not review the underlying data
6 that was relied on by the Brady Center in its report.

7 A. No, I was confident that it was not
8 superior to the Koper methods, so I didn't regard
9 that as particularly necessary. I was certainly
10 familiar with the supposedly factual reports put
11 forth by the Brady Center, and they are not reliable.
12 They're clearly biased. They're propaganda. They're
13 -- they're intended to persuade the reader, not to
14 scientifically test hypotheses.

15 Q. So you have no opinion one way or the other
16 about the validity of any data discussed in the Brady
17 Center report?

18 A. That's correct.

19 MR. SWEENEY: Objection.

20 A. That's correct.

21 Q. On page 13 of your expert rebuttal report,
22 you criticize Professor Donohue for relying on trace
23 data; is that right?

24 A. Yes.

25 Q. What is trace data?

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1 A. Trace data is generated by the Bureau of
2 Alcohol, Tobacco and Firearms. It's data on the
3 small subset of crime guns that are selected by
4 police, non-randomly selected to be traced to their
5 point of first retail sale. At its optimum, the most
6 successful trace done by ATF identifies the point at
7 which a particular gun recovered by the police was
8 initially sold by a retail dealer.

9 So that requires the ATF to have access to
10 the gun -- the gun's manufacturer, then its
11 distributor, and then its retail seller, and under
12 the best circumstances, assuming all the records are
13 available, ATF can then say something about the gun
14 at the point where it was sold at retail by -- by a
15 licensed retail dealer, including stuff like, you
16 know, where the gun was sold as distinct from where
17 it was recovered by police, so you can kind of know a
18 little bit about the movement of the gun.

19 You can know something -- you can at least
20 identify the person who was the recipient of the gun
21 at the point of first retail purchase, again, under
22 the ideal circumstances of the very best trace, but a
23 lot of guns ATF simply can't trace, especially older
24 guns, because the records at one point or another are
25 missing so that they can't say who -- who -- what

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1 retail dealer the distributor sold the gun to or what
2 individual consumer the retail dealer sold the gun
3 to.

4 Q. I'd like to go back to Exhibit 43, which is
5 your article on large-capacity magazines. I want to
6 go back to our discussion about the fatality rates in
7 public mass shootings. On page 32 of Exhibit 43,
8 about halfway down, you have a paragraph that
9 discusses the shooter's intentions, which is an issue
10 we've been discussing in this deposition, and you
11 write, "Thus, it is more likely that the high
12 fatality rate in mass shootings is the product of the
13 aggressor's stronger intentions to shoot more
14 people." You also state, "Though it could also be
15 partly a product of the greater use of rifles and
16 shotguns in mass shootings." Do you see that?

17 A. I do.

18 Q. And you state later on in that paragraph,
19 "This too could be an indication of greater shooter
20 lethality, since rifles and shotguns are on average
21 more lethal than handguns." Do you see that?

22 A. I do.

23 Q. Do you disagree with that statement as you
24 sit here today?

25 A. No.

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1 Q. So it is your opinion that in general,
2 rifles and shotguns are more lethal than handguns?

3 A. On average, yes.

4 Q. And later in that article, on page 43, you
5 include a table identified as table 3, known rates of
6 fire in mass shootings, 1994 to 2013. Do you see
7 table 3 on page 43 of Exhibit 43?

8 A. I do.

9 Q. I'd like you to go down to the shooting on
10 April 16th, 2007. Do you see that item?

11 A. I do.

12 Q. Do you know what shooting that was?

13 A. Yes, I think it was the -- the Virginia
14 Tech University shooting.

15 Q. Okay, and during the shooting at Virginia
16 Tech, you indicate in table 3 that the time of firing
17 was 156 minutes. Do you see that?

18 A. I do.

19 Q. So you found that the mass shooting at
20 Virginia Tech took over two hours?

21 A. Correct, from first shot to last.

22 Q. And then you calculated an average shots
23 per minute for that shooting --

24 A. I did.

25 Q. -- as approximately 1.11 shots per minute;

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1 is that right?

2 A. Yes.

3 Q. Okay. How did you compute the amount of
4 time of firing for the Virginia Tech shooting to
5 arrive at a 156 minute duration?

6 A. It's the time that elapsed from the first
7 shot to the last.

8 Q. Are you aware that the shooter committed
9 several murders and then drove to another location to
10 continue his shooting spree?

11 A. I am.

12 Q. Do you think it's reasonable to account for
13 the transportation time between the initial murders
14 and the subsequent murder spree?

15 A. I don't think it's necessary for making the
16 point that I was making.

17 Q. What point were you making?

18 A. The point is that mass shooters generally
19 have plenty of time to do their shooting and they do
20 take their time. In this case they took their -- the
21 shooter took his time in the sense that he felt he
22 had plenty of time to drive from one location of his
23 shooting to another location and then continue
24 shooting. It's not just that incident, but nearly
25 all mass shootings seem to be situations where the

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1 shooter could have taken a lot more time than he did,
2 and he did take a lot of time for shootings, so
3 intervals between shots usually are long, even when
4 there isn't that interruption for in this case
5 transportation.

6 Q. But there are shootings on your list on
7 table 3 which had significantly higher average shots
8 per minute; is that right?

9 A. Sure.

10 Q. For example --

11 A. But there's no evidence that the shooters
12 had to shoot that quickly. It's just they in some
13 cases chose to do so. It's not like they were
14 pressed for time or you know, there was -- there was
15 going to be something that forced them after a very
16 brief period of time to stop shooting. Instead, it's
17 just hey, sometimes for whatever motives they may
18 have had in their heads, they chose to shoot more
19 quickly than is typical in mass shootings.

20 Q. So if we look at the shooting on October
21 7th, 2007, which is beneath the Virginia Tech
22 shooting, you calculated an average shots per minute
23 of 30.0; is that right?

24 A. Have we changed incidents? Are you talking
25 about April 16, 2007 or are you talking about October

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1 7th, 2007?

2 Q. I'm now talking about October 7th, 2007.

3 A. Okay, you switched incidents.

4 Q. I did.

5 A. Yes, that's an average of 30 seconds -- 30
6 -- I'm sorry, 30 shots per minute.

7 Q. Right. And then further down, another -- a
8 different shooting which occurred on September 6th,
9 2011, you indicate that there was an average of 42.3
10 shots per minute, right?

11 A. Yes.

12 Q. And then on December 14th, 2012, you have
13 an average of 38.5 shots per minute, right?

14 A. Correct.

15 Q. So in these instances in which you have
16 greater than 30 shots per minute, the amount of time
17 between firing would be about two seconds, right?

18 MR. SWEENEY: Objection.

19 A. Right, about, yeah, uh-huh.

20 Q. And on the September 6th, 2011 -- or in the
21 September 6th, 2011 shooting, it would have been
22 lower than two seconds on average between firing,
23 right?

24 A. On which one?

25 Q. This would be the third -- fourth to last

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1 shooting on your list, September 6th, 2011.

2 A. Yes, and what was your question about that
3 one?

4 Q. My question is is that a shooting that
5 involved an average of 42.3 shots per minute would
6 have less than two seconds in between firing, right?

7 A. Yes, that was -- that was the fastest rate
8 of fire that I knew of in any mass shooting.

9 Q. Do you happen to know which mass shooting
10 that was that occurred on September 6th, 2011?

11 A. The shooter was Eduardo Sancion, and I
12 probably couldn't tell you much if anything else
13 about it.

14 Q. Okay, but in a shooting in which the amount
15 of time between firing was less than two seconds,
16 requiring that shooter to reload a magazine or
17 exchange a firearm would have increased the amount of
18 time in between shots.

19 A. No, not necessarily. If this is a person
20 who was so concerned about shooting rapidly, they may
21 well have been capable and inclined to change
22 magazines more quickly. I mean, if you're -- you're
23 really super good at it and you practiced at it, you
24 can do it in one second. So again, for those
25 shooters, I don't know what their capabilities are

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1 for a magazine change, and nobody knows how long
2 those particular shooters took to change magazines,
3 but for all we know, they -- they could change
4 magazines within 1.4 or 1.6 seconds. It's certainly
5 possible. It's something that really experienced or
6 well practiced shooters can do. I have no idea
7 whether these particular shooters can do it.

8 Q. And it's certainly possible that a mass
9 shooter may take much longer than two to four seconds
10 to reload a magazine?

11 MR. SWEENEY: Objection.

12 A. I know of no affirmative evidence that they
13 take long periods of time to change a magazine.
14 That's all I can say.

15 Q. Okay, let's move on from Professor
16 Donohue's report, and I'll be discussing your
17 rebuttal of the expert report of Lucy P. Allen, which
18 begins on page 20 of Exhibit 30. I'd like to mark as
19 Exhibit 44 --

20 (Exhibit No. 44
21 was marked for
22 identification.)

23 MR. ECHEVERRIA: There you go

24 MR. SWEENEY: Thank you, John.

25 BY MR. ECHEVERRIA:

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1 Q. You've seen this document before, which has
2 been marked as Exhibit 44, Professor Kleck?

3 A. Yes.

4 Q. This is the expert report of Lucy P. Allen
5 that was submitted by the defendant in this case; is
6 that right?

7 A. Yes.

8 Q. And you reviewed this report in detail?

9 A. I did.

10 Q. Did you review the charts that are annexed
11 to her report?

12 A. I did.

13 Q. And did you review each of the incidents
14 that are identified in the charts that are attached
15 to Ms. Allen's report?

16 A. I believe I did.

17 Q. Okay. In addressing paragraph 8 of
18 Ms. Allen's expert report, you contend that she
19 narrowly focuses on a tiny subset of firearms crimes,
20 correct?

21 A. Correct.

22 Q. And this is a running theme that we've been
23 discussing in this deposition, right?

24 A. Yes.

25 Q. That you think that public mass shootings

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1 are an overly narrow category of mass shootings to
2 analyze; is that right?

3 A. Overly narrow and minor because of their
4 rarity.

5 Q. And you believe that they are overly minor
6 not just because of their rarity, but also because of
7 the number of fatalities that arise from those
8 shootings?

9 MR. SWEENEY: Objection.

10 A. No, I didn't say that. I mean, in the
11 aggregate, if that's what you're talking about, you
12 know, there's not only a small number of incidents,
13 but there's in the aggregate a small number of
14 victims, which would claim a tiny fraction of all the
15 homicides in the United States.

16 Q. And you would agree that public mass
17 shootings contribute not only to increases in
18 fatalities in the United States, but also other
19 social costs, right?

20 A. They contribute a minor amount to the
21 number of fatalities, and I don't know about, you
22 know, the other social costs.

23 Q. And based on your analysis of Ms. Allen's
24 data that is contained in the charts accompanying her
25 report, did you find any errors in her computations

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1 concerning assault weapons?

2 A. Computations, no. I don't think there were
3 arithmetic errors. I had no objection -- as far as I
4 know, her arithmetic is flawless.

5 Q. And you did criticize with respect to
6 paragraph 14 -- actually, in general, you were
7 critical of Ms. Allen's reliance on Mother Jones; is
8 that right?

9 A. Yes, although you'll really have to ask me
10 a specific question about exactly what might be wrong
11 with that.

12 Q. So in your discussion of paragraph 14 on
13 page 22 of your expert rebuttal report, Exhibit 30,
14 you claim that Ms. Allen dropped the FBI definition
15 of mass shootings as involving four or more dead,
16 justifying this procedure by alleging some
17 undocumented, quote, "Change in the federal
18 definition of a mass shooting," unquote. Do you see
19 that?

20 A. Yeah, although even for either of us to use
21 the term "FBI definition" is -- it makes it sound a
22 lot more official than it really is. It's just that
23 for some purposes for some reports, the FBI will
24 focus on some subtype of homicides. And so it's not
25 like the FBI has officially said that it's not a mass

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1 bites?

2 Q. Sure, because this is all boiling down to
3 the fact that you have a different definition of what
4 a public mass shooting is than the one that was used
5 by Mother Jones starting in 2013; is that right?

6 A. Yeah, although, you know, it's not just
7 sort of an opinion thing. If there's as few as three
8 people shot, which is true in some of these
9 incidents, it's simply inaccurate to describe it as a
10 mass shooting. I mean, mass surely implies a large
11 volume if nothing else. In fact, I can't think that
12 it involves anything else other than large numbers.
13 That's what makes it a mass shooting.

14 Also, I can just, as extraneous external
15 information, I can note that the shootings get very
16 different when you start including the ones with only
17 three victims. The more you have small numbers of
18 victims, the more you're talking also about small
19 numbers of shots fired, and it becomes less and less
20 relevant that a large-capacity magazine was involved
21 even if it really was involved because why do you
22 need a large-capacity magazine to fire as few as
23 three rounds?

24 Q. But if you're including mass shootings that
25 involved in your opinion lower fatality counts,

1 wouldn't that drag down the average fatality rates
2 for mass shootings?

3 A. What do you mean by fatality rate?

4 Q. If you include mass shootings that involved
5 three victims in your computation of an average rate
6 of fatalities as Ms. Allen does in her report,
7 wouldn't the inclusion of mass shootings that have
8 lower fatality rates drag down the average of
9 fatalities in public mass shootings?

10 MR. SWEENEY: Objection.

11 A. By fatality rate, you mean just a lower
12 count of fatalities?

13 Q. On average.

14 A. Yeah, of course it would reduce the
15 average.

16 MR. SWEENEY: Take a quick break?

17 MR. ECHEVERRIA: Yes.

18 (Recessed at 4:24 p.m.)

19 (Reconvened at 4:33 p.m.)

20 BY MR. ECHEVERRIA:

21 Q. Back on the record, and you are again under
22 oath.

23 A. Yeah.

24 Q. I'd like to return to the topic we were
25 discussing before the break and drilling down into

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1 the data contained in Appendix B to Lucy Allen's
2 report, which has been marked as Exhibit 44. You
3 state on page 22 of your report that her mass
4 shootings could involve as few as just two dead
5 victims plus a dead offender, right?

6 A. Correct.

7 Q. So the total number of dead in that type of
8 case would be three, yes?

9 A. Including offenders, yes.

10 Q. For the mass shootings identified in
11 Appendix B to Ms. Allen's report that have only three
12 fatalities, and I say "only" not to minimize the
13 number but to clarify that it's not three or more,
14 but for the shootings that have only three fatalities
15 under column 8, did any of those shootings involve
16 two dead victims plus a dead offender?

17 A. I don't know. I could only tell you about
18 the ones where there were four dead, and did they
19 include shooters. So I couldn't tell you about
20 exactly three dead, because again, for my purposes,
21 it was irrelevant because I was using a criterion of
22 four or more dead not counting offenders.

23 Q. But with respect to the criterion that Ms.
24 Allen was using in compiling her data, you didn't
25 identify any mass shootings that involved two victims

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1 A. Correct.

2 MR. SWEENEY: Objection.

3 BY MR. ECHEVERRIA:

4 Q. Were you able to confirm whether in fact
5 Ms. Allen qualified an incident as a mass shooting
6 under the three or more dead definition in which the
7 shooter was one of the three victims?

8 MR. SWEENEY: Objection.

9 A. I established that she could define it that
10 way, that her -- that her definition would include
11 such incidents. I did not establish that any of the
12 incidents did involve just two dead victims plus a
13 dead offender. I'm only pointing out that the way
14 she was tabulating victims in that table would
15 include offenders.

16 Q. But you did not confirm that any of those
17 shootings in which three fatalities occurred did
18 include the offenders.

19 MR. SWEENEY: Objection.

20 A. If I understand the sense of your question,
21 I didn't establish that any of the incidents actually
22 did involve two dead genuine victims plus a dead
23 offender, if that's what you're asking.

24 Q. Okay, so your criticism is forward-looking,
25 that in the future, there could be shootings that

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1 would be qualified as a mass shooting in which there
2 were two fatalities plus the shooter.

3 A. Yeah, it was a bad definition just as a
4 definition regardless of how it got applied in -- in
5 this or some other circumstance. It's just a bad
6 definition if you're referring to shooting two people
7 dead as a mass shooting -- two genuine victims,
8 excluding offenders.

9 Q. Yeah, I understand that you disagree with
10 -- with that definition, but taking that definition
11 and assuming that definition, you did not identify
12 any mass shootings involving three fatalities in
13 which there were two deaths plus the shooter.

14 A. That's correct.

15 Q. Okay. And you go on to state that her mass
16 shootings could involve as few as just two dead
17 victims plus a dead offender. You state "could," not
18 "did," right?

19 A. That's correct.

20 Q. Okay. And then there were some incidents
21 in which there were four fatalities including the
22 shooter that you would not consider to be a mass
23 shooting but that would qualify as a mass shooting
24 under Mother Jones' modified definition of a mass
25 shooting as being three or more fatalities?

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1 A. Correct.

2 Q. Okay. So moving on to page 23 of your
3 expert rebuttal report, you state, "To be sure, it is
4 trivially true that one can easily identify a subset
5 of killings in which a large share involved LCMs.
6 Indeed, one could identify a subset in which 100
7 percent of incidents involved LCMs simply by
8 preselecting cases with certain circumstances already
9 known to involve LCMs." Do you see that?

10 A. I do.

11 Q. What kind of circumstances are you
12 referring to in that statement?

13 A. A prime example would be public location
14 rather than private location.

15 Q. So you do agree that in public locations,
16 when a mass shooting occurs, there is a greater
17 likelihood that a large-capacity magazine is
18 involved?

19 A. Yes.

20 Q. And what kind of circumstances would
21 produce a result in which 100 percent of the
22 incidents involve a large-capacity magazine?

23 A. Well, you could simply keep adding
24 qualifying circumstances until you are down to a
25 subset, however small, where all of the incidents

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1 much as 66 percent.

2 Q. And that would also mean that the -- the
3 ratio of your ten genuine mass public shootings would
4 be higher, right?

5 A. If -- well, I wouldn't -- I wouldn't phrase
6 it that way. The -- the share of mass shootings that
7 involve a large-capacity magazine is according to my
8 figures only I guess one eighth of her upper range
9 estimate of 66 percent. It's 8.3 percent versus 66
10 percent.

11 Q. Okay. And you go on to address paragraphs
12 15 to 19 in Ms. Allen's report. Actually, just to go
13 back, I want to confirm, because a lot of your report
14 discusses large-capacity magazines. Did you identify
15 any incidents in Appendix B to Ms. Allen's report
16 that she coded as involving an assault weapon that
17 was improperly included, or was improperly determined
18 to involve an assault weapon?

19 A. I did not look at that, and so I couldn't
20 say anything one way or the other about it.

21 Q. So in addressing paragraphs 15 to 19 on
22 page 23 of your report, you discuss Ms. Allen's
23 determination that there are higher casualty counts
24 and rounds fired in mass shootings with LCMs, or both
25 LCMs and AWs; is that correct?

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1 A. Correct.

2 Q. And you agree that there is a, quote,
3 "Simple bivariate association between LCM use and
4 casualty counts"?

5 A. I do.

6 Q. But you contend that Ms. Allen failed to
7 establish that those two phenomena are causally
8 related; is that right?

9 A. Yes.

10 Q. Does Ms. Allen provide an opinion on
11 whether LCMs or assault weapons cause the higher
12 casualty counts?

13 A. Well, she's cagey about it. She -- she
14 comes within a hair's breath of saying as much but
15 doesn't quite go over the edge, so to speak. She
16 hints at it in the same way Donohue does, that is,
17 mentioning the correlation but without any explicit
18 qualifier that it does not necessarily reflect a
19 causal effect.

20 Q. Where specifically in Ms. Allen's report
21 would you say that she comes within a hair's breath
22 of saying that there's a causal relationship?

23 A. Page 6, paragraphs 15 and 16 and page 17 --
24 and, I'm sorry, and paragraph 17.

25 Q. And what particularly about those different

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1 paragraphs would you say implies or suggests that
2 there is a causal relationship?

3 A. She mentions correlations or associations
4 without an explicit qualifier that this does not
5 necessarily mean causation.

6 Q. But she nowhere in her report states that
7 there's a causal relationship, correct?

8 A. Yeah, that's the point. She doesn't -- she
9 doesn't explicitly address the issue as an honest
10 scholar would. What she should have said is this
11 doesn't necessarily mean a causal effect. She
12 wouldn't lead the casual reader up to the point where
13 that's likely the conclusion I'll draw and then uses
14 the excuse well, gee, I didn't have to say one way or
15 another whether I thought it was causal.

16 Q. Was her report prepared for a casual
17 reader, Professor Kleck?

18 A. Yeah, I think the average judge is a casual
19 reader, that is, it's not -- he's not an expert
20 reader. He basically has to -- he's like a layperson
21 with respect to these criminological issues.

22 Q. But I mean, judges and lawyers may be very
23 familiar with issues of causation, correct?

24 MR. SWEENEY: Objection.

25 A. I find that very unlikely. My experience

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1 is not really, not very familiar.

2 Q. Well, having studied tort law in law
3 school, causation is very much a focus at least with
4 respect to certain legal doctrines, but -- but
5 nowhere in this report does she state that there is a
6 causal relationship. You just think that she is
7 implying it?

8 A. Right, saying there's a correlation and not
9 saying this does not necessarily mean causation is
10 coming within a hair's breath of implying it's a
11 causal effect that you're alluding to.

12 Q. But within the four corners of Ms. Allen's
13 expert report, she's only providing correlative
14 evidence, correct?

15 MR. SWEENEY: Objection.

16 A. Correct, and my previous statement still
17 stands.

18 Q. Okay. And towards the end of your expert
19 rebuttal on page 24, you again refer to -- well,
20 actually, it's the first time that you refer to the
21 two to four seconds required to reload a magazine.
22 We just happened to have discussed it earlier in the
23 deposition. Do you see that?

24 A. What page are we on now?

25 Q. We're on page 24, and the final paragraph.

1 A. Okay, got you.

2 Q. So you again refer to the two to four
3 second time required to reload a magazine?

4 A. Yes.

5 Q. And we discussed this before, but the basis
6 for your opinion that it takes about two to four
7 seconds to reload is based on your own personal
8 experience and your observation of video
9 demonstrations in which individuals were reloading a
10 firearm?

11 A. Yes.

12 MR. SWEENEY: Objection.

13 BY MR. ECHEVERRIA:

14 Q. Will you characterize that evidence as
15 anecdotal evidence?

16 MR. SWEENEY: Objection.

17 A. It's certainly individual incidents or
18 individual cases. It's an anecdote in that sense,
19 but it's not anecdotal in the pejorative sense that
20 this is evidence that's essentially useless for the
21 purpose to which it's being applied. In this case
22 all I'm saying is here are examples where it was easy
23 for ordinary shooters, including myself, to change
24 magazines in two to four seconds. It's something
25 that does not require thousands of cases.

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1 Technically speaking, it only requires one
2 case to illustrate it. An average shooter can do it
3 in two to four seconds. To my knowledge, nobody has
4 actually challenged that with any contrary empirical
5 information. It literally stands unchallenged on
6 empirical grounds, and any shooter would regard this
7 as self-evident. The idea that it takes more than
8 four seconds to change a detachable magazine, it
9 would be regarded by them as bizarre. So in a way,
10 to me, it's always been a surprise that lawyers on
11 your side of the table actually think this is subject
12 to any serious dispute.

13 Q. And you testified about the reloading time
14 relatively recently in New Jersey District Court; is
15 that correct?

16 A. I think so. I'm not sure what court it
17 was, but it was a court recently.

18 Q. And that testimony would have been both in
19 deposition and at an evidentiary hearing that
20 happened in the District of New Jersey, correct?

21 A. I believe so, although I was given the
22 impression it was a trial rather than an evidentiary
23 hearing, but I'll take your word for it.

24 Q. Okay, so either way, if it was a trial or
25 an evidentiary hearing, you were not only deposed in

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1 speculate is limited only by the human imagination.
2 So yeah, you can imagine all sorts of things. Maybe
3 you can imagine people traveling around in rocket
4 ships, but you know, under current conditions, people
5 don't travel in rocket ships, and as far as we know,
6 ordinary shooters don't take more than four seconds
7 to change magazines, including mass shooters.

8 Q. What's your definition of an ordinary
9 shooter?

10 A. A person of average ability.

11 Q. And it's a person of average ability that
12 takes two to four seconds to reload?

13 A. No more than that. I mean, there are
14 probably people who are average and therefore better
15 than me who can do it regularly under two seconds,
16 but certainly no more than two to four seconds.

17 Q. So what about a person of below average
18 ability, is it possible for them to take more than
19 four seconds to reload a firearm?

20 MR. SWEENEY: Objection.

21 A. Again, in the realm of pure speculation
22 without grounding it in any evidence about actual
23 mass shooters, sure, it's possible. It's trivially
24 true that you can imagine such a thing, but there's
25 no evidence that it actually exists in the real world

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1 of real mass shootings in the United States.

2 Q. Or in video demonstrations on YouTube?

3 A. No, the video demonstrations indicate
4 really really rapid magazine changes among people who
5 are highly skilled, and magazine changes that are no
6 more than about two or three seconds for people who
7 appear to be totally average shooters.

8 MR. ECHEVERRIA: Okay. Can we take a quick
9 break? I think we're about to wrap up.

10 (Discussion off the record)

11 BY MR. ECHEVERRIA:

12 Q. Professor Kleck, you're again under oath;
13 is that right?

14 A. Yes.

15 Q. I would like to return briefly to your list
16 of cases in the past four years in which you have
17 testified. This is on page 56 of your expert
18 rebuttal report. You identified Tracy Rifle & Pistol
19 versus Kamla Harris, U.S. District Court, Eastern
20 District of California, and that you were deposed on
21 November 2nd, 2016; is that correct?

22 A. What page are you on?

23 Q. This is page 57 of your rebuttal report.
24 It's the second case down from the top.

25 A. Oh, I got it.

1 Q. Right beneath Wrenn versus District of
2 Columbia?

3 A. Uh-huh, and what was your question?

4 Q. And you were deposed on November 2nd, 2016
5 in that case?

6 A. Yes.

7 Q. Were you compensated for your deposition
8 testimony in that case?

9 A. Yeah.

10 Q. Did the defendant compensate you for that
11 testimony or did the plaintiffs?

12 A. I think California pays you for deposition
13 appearances, I think. I mean, there's something odd
14 about California. I think it's the one that -- where
15 you have to get them to send you a check as well.

16 Q. Right, because the defendant in this case
17 has elected to depose you -- to depose you.

18 A. Yeah, okay, sure, yeah, so --

19 Q. Is it your recollection that the State paid
20 for your deposition time in Tracy Rifle?

21 A. I think so, yeah, uh-huh.

22 Q. Okay. And just to confirm, nothing in your
23 expert rebuttal report rebuts Ms. Allen's conclusion
24 that 26 percent of public mass shootings involve
25 assault weapons; is that right?

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1 MR. SWEENEY: Objection.

2 BY MR. ECHEVERRIA:

3 Q. That would be an opinion that's expressed
4 in paragraph 10 of her report on page 5?

5 A. Yes.

6 Q. And nothing in your expert rebuttal report
7 rebuts Ms. Allen's conclusion that in 25 of the 27
8 mass shootings that involved an assault weapon, the
9 assault weapon used was an assault rifle rather than
10 a pistol or a shotgun; is that correct?

11 MR. SWEENEY: Objection.

12 A. I don't recall addressing that issue one
13 way or the other, so I neither confirm nor deny her
14 conclusion in that regard.

15 Q. And nothing in your expert rebuttal report
16 rebuts Ms. Allen's opinion that an average number of
17 fatalities or injuries of 46 per mass shooting with
18 an assault weapon versus 12 for those without?

19 A. No, I did not address that issue either.

20 Q. And you agree with Ms. Allen that there is
21 a correlation between the use of an assault weapon
22 and the number of fatalities that occur in a mass
23 shooting?

24 A. Yes.

25 Q. Do you have any other opinions that you

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1 intend to offer in this case that are not set forth
2 in your rebuttal report or that were provided in your
3 testimony during this deposition?

4 MR. SWEENEY: Objection.

5 A. None that occur to me now, no. Of course
6 there's some issues I just didn't think about one way
7 or another, so if it were brought up at a trial, I
8 might address those as well.

9 Q. But you wouldn't have disclosed those
10 opinions in your rebuttal report that you have here,
11 right?

12 A. Well, yeah, if it's a new issue.

13 MR. ECHEVERRIA: Okay. I have no further
14 questions.

15 MR. SWEENEY: I have no questions.

16 MR. ECHEVERRIA: All right. Off the
17 record.

18 MR. SWEENEY: The witness will review and
19 sign.

20 (Whereupon, at 5:18 p.m., the taking of the
21 instant deposition concluded.)
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23
24
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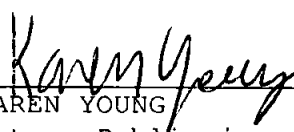
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CERTIFICATE OF NOTARY PUBLIC

I, KAREN YOUNG, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me stenographically and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to this action in which this deposition was taken; and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.


KAREN YOUNG
Notary Public in and for
the District of Columbia

(signature requested)

My commission expires: July 31, 2019