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No. 19-55376

IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

VIRGINIA DUNCAN, RICHARD LEWIS, PATRICK LOVETTE, DAVID MARGUGLIO, CHRISTOPHER WADDELL, AND CALIFORNIA RIFLE & PISTOL ASSOCIATION, INC., A CALIFORNIA CORPORATION, Plaintiffs and Respondents,

V.

XAVIER BECERRA, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,

Defendant and Appellant.

On Appeal from the United States District Court for the Southern District of California

No. 17-cv-1017-BEN-JLB The Honorable Roger T. Benitez, Judge

APPELLANT'S EXCERPTS OF RECORD VOLUME SEVEN

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July 15, 2019

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ORIGINAL ARTICLE

Impact of handgun types on gun assault outcomes: a comparison of gun assaults involving semiautomatic pistols and revolvers

D C Reedy, C S Koper

Injury Prevention 2003;9:151-155

Objective: To examine whether gun assaults committed with semiautomatic pistols are more injurious and lethal than those committed with revolvers.

Setting: Jersey City, New Jersey from 1992 through 1996.

Methods: Using police records on fatal and non-fatal handgun assaults, t tests and χ^2 tests were employed to determine if attacks with pistols result in more shots fired than those with revolvers, leading to more gunshot victims and more severely wounded victims.

Results: More shots were fired in attacks with pistols (average = 3.2 to 3.7) than in attacks with revolvers (average = 2.3 to 2.6). Although pistol use was unrelated to the probability that an incident resulted in any injury or death, it was associated with a 15% increase in the number of wounded victims in those cases in which people were shot (1.15 per pistol case, 1.0 per revolver case), implying that the total number of gunshot victims may have been 9.4% lower had pistols not been used in any attacks. Pistol use was not related to the number of wounds per gunshot victim.

Conclusions: The findings provide limited evidence that recent growth in the production and use of pistols has contributed to higher levels of gunshot victimizations. However, available data did not permit an assessment of whether the associations between gun types and assault outcomes are mediated by characteristics of incidents and actors.

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riminal misuse of firearms continues to be one of America's most serious crime and public health problems. Although rates of gun crime have fallen substantially in recent years, 2 over 10 000 persons were murdered with firearms in 2000 and another 49 000 assault victims were treated in hospitals for non-fatal gunshot wounds. The lifetime medical costs of gunshot injuries total approximately two billion dollars a year, with the majority of these costs stemming from criminal assaults.

Handguns are heavily involved in firearm violence, accounting for 80% or more of guns used in urban crimes and homicides.⁵⁻⁷ During recent decades, there has been a shift away from production of revolvers to production of semiautomatic pistols in the civilian handgun market. Pistols grew from 28% of handgun production in 1973 to 46% by 1985 and to 80% by 1993.⁸⁻⁹ This trend is also apparent in criminal weaponry, as pistols have overtaken revolvers as the predominant type of handgun used in crime.⁵

Semiautomatic pistols permit a somewhat more rapid rate of fire than do revolvers, and they often have larger ammunition capacities. The firing mechanism of a semiautomatic firearm loads a new round automatically after each shot. In most pistol models, the gun also recocks for firing automatically after each shot, thereby requiring less pressure on the trigger to fire after the first shot than is required with a revolver, which cocks for firing as the trigger is pulled.¹⁰

Further, a pistol holds ammunition in a detachable magazine. Pistol magazines manufactured before September 1994 commonly hold five to 17 bullets, and magazines produced for some models take as many as 30 or more bullets. Production of pistols with magazines holding more than 10 rounds grew during the 1980s and early 1990s, but was interrupted by the federal *Violent Crime Control and Law Enforcement Act of 1994* (that is, the 1994 Crime Act), which now limits magazine capacity to 10 bullets. However, larger magazines manufactured before 13 September 1994 are still

legal to possess and transfer. Revolvers, in contrast, hold ammunition in a revolving cylinder that typically has five to six bullets (and sometimes up to nine bullets).¹²

Pistols enable shooters to fire more shots more rapidly, potentially increasing the number of persons hit and wounds inflicted per shooting incident. Accordingly, it is possible that the increasing substitution of pistols for revolvers has increased deaths and injuries from gun violence. Such concerns have spurred legislation to restrict or deter the use of semiautomatic weaponry. In addition to limiting ammunition magazine capacity, for example, the federal 1994 Crime Act banned semiautomatic assault weapons (a group of semiautomatic, military-style pistols, rifles, and shotguns) and established penalty enhancements for violent and drug trafficking crimes committed with semiautomatics.

Yet evidence linking the spread of semiautomatic weaponry to higher levels of gun deaths and injuries is limited and equivocal. A few studies made indirect links between the growing use of semiautomatics and rising levels of gun homicide and injuries in some cities during the late 1980s and early 1990s. ^{7 13 14} However, other studies failed to demonstrate convincing links between city level trends in the use of semiautomatics and lethal gun violence. ^{15 16} National data also present mixed signs as to whether gun attacks have become more injurious and lethal as semiautomatics have become more prevalent. ^{2 17 18}

There is little direct empirical evidence on how semiautomatics affect attack outcomes. A few studies of firearm homicides suggest that pistol attacks involve more shots fired on average than attacks with revolvers and that victims killed with semiautomatics having large ammunition magazines (that is, those holding over 10 bullets) tend to receive more wounds than victims killed with other guns. However, there have been no studies comparing the injuriousness and lethality of attacks with pistols and revolvers. We address this gap using data on handgun homicides and non-fatal handgun

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assaults investigated by police in Jersey City, New Jersey during the early to mid-1990s.

METHODS

Jersey City, New Jersey is a city of approximately 230 000 people. In 1990, its racial composition was 48% white, 30% black, and 22% of other races. Approximately 11% of the city's residents were unemployed in 1990, and almost 19% were living in poverty. ²⁰ Jersey City's violent crime rate in 1995 ranked 11th among 136 cities with populations between 100 000 and 250 000. ²¹

The data for this study were collected from the homicide and aggravated assault files of the Jersey City Police Department. Comparisons of police and medical examiner records in urban jurisdictions show police records to be a highly accurate source of data for homicide cases.^{22–24} Police records are the single most comprehensive source for city level estimates of non-fatal, assaultive gunshot injuries in places (like Jersey City) that do not have firearm injury surveillance systems that combine police and medical data.23 25 Moreover, police records are the only data source that can provide city level estimates of gun assaults not resulting in injury, thereby permitting examination of shots fired and hit rates for all gunfire incidents. However, the most minor types of gun assaults (for example, threats without gunfire, assaults resulting in minor or no wounds) tend to be under-represented even in police data.²⁶ We assume that this bias works comparably for cases involving pistols and revolvers.

Jersey City police investigated 592 homicides and aggravated assaults involving handguns between January 1992 and November 1996. By law, aggravated assaults include cases in which offenders threatened victims with firearms, as well as cases in which offenders shot or attempted to shoot victims. From the case files, project staff recorded information on shots fired, the number of wounded victims, the number of wounds suffered by each victim, and the type(s) of firearm used in the attack as described by police and/or witnesses.

We estimated shots fired based on reported gunshot injuries, physical evidence (for example, shell casings found at the scene), and the accounts of witnesses and actors. If there was conflicting evidence about the number of shots, we established minimum and maximum ranges. If, for example, police found three shell casings at the scene but witnesses reported four shots, then we coded three as the minimum number of shots fired and four as the maximum number of shots fired and four as the maximum number of shots fired. For many cases, the shots fired estimate represents a lower bound. To illustrate, if a case had one victim with one gunshot wound and no additional information on shots fired, then we set shots fired equal to one.

Our analysis focuses upon 239 incidents involving pistols and 104 incidents involving revolvers. We excluded 238 incidents from analysis because the type of handgun was not clearly identified in the police report. The analyzed and excluded cases had comparable outcomes: 38.0% of the excluded cases and 34.9% of the analyzed cases resulted in some form of gunshot injury, while 7.3% of the excluded cases and 8.0% of the analyzed cases resulted in deaths. These differences were statistically insignificant (χ^2 p level >0.05). In addition, we excluded 11 cases involving multiple handguns because we could not determine which gun(s) was used in the shooting.

Although reporting officers and witnesses were able to identify the type of firearm (that is, pistol or revolver) used in the analyzed cases, the precise make and model of the handgun was not identified in most of these reports, often because police did not recover the gun used in the crime. Lack of specific gun model information precluded precise measurement of ammunition capacity for all but a very small number of gunfire incidents.

Following an approach similar to that used by Kleck in his national analysis of gun and non-gun assaults, ²⁶ we contrast pistol and revolver cases on a number of dichotomous outcome measures (that is, occurrence of gunfire, occurrence of gunshot injuries or deaths) and continuous outcome measures (that is, number of shots fired, number of wounded victims, number of wounds per gunshot victim) reflecting different stages of gun assaults. In so doing, we test whether gun attacks with pistols result in more shots fired than those committed with revolvers, leading to more gunshot victims and/or more severely wounded gunshot victims.

Because the data were collected originally for a study of trends over time in wounds per gunshot victim,18 19 only limited information was recorded about the actors or circumstances beyond that noted above. While staff did collect information on a few variables like victim demographics (the victims were predominantly male and African-American) and the number of perpetrators, they did not record information on other potentially important variables, such as offender characteristics or relationships among the actors, 26 27 in a systematic manner, if at all, because such information was outside the scope of the original study and was not always clear from the reports. And since the data were extracted from the homicide and aggravated assault files, there were relatively few known robberies or sexual assaults among the cases (which would have generally appeared in separate case files), resulting in a more homogeneous sample of assaultive incidents. For these reasons, and because no prior study has examined the differential lethality and injuriousness of assaults involving pistols and revolvers, we chose to conduct bivariate analyses. We present χ^2 tests of association for dichotomous measures and t tests of group means for continuous measures, using a probability level of 0.05 to judge the statistical significance of results.

RESULTS

By definition, all cases in the study involved threats with a firearm. Hence, we begin our analysis by looking at whether offenders fired at their victims, which we define as an attack. (Unless stated otherwise, our unit of analysis is the incident rather than the victim since some incidents involved multiple victims.) As shown at the bottom of figs 1 and 2, assailants using pistols attacked victims in virtually the same proportion of cases as assailants using revolvers (69.0% and 68.3%, respectively). This implies that the type of gun used was not correlated with characteristics of actors or circumstances that might affect the probability of gunfire. In particular, it suggests that offenders using pistols were no more or less likely to attempt to injure or kill their victims than were offenders using revolvers.

Given that the gun was fired, the average number of shots in pistol cases ranged from 3.23 to 3.68, based on minimum and maximum estimates (table 1). In contrast, the average number of shots in revolver cases ranged from 2.30 to 2.58. Using both minimum and maximum shots fired estimates, pistol cases averaged about one more shot than did revolver cases, and this difference was statistically significant in both sets of comparisons.

Further inspection of table 1 shows that about two thirds (68.5%) of pistol cases but only about half (52.1%) of revolver cases involved multiple shots according to the minimum shots fired estimates. Using the maximum estimates, over three quarters (78.8%) of pistol cases and about two thirds (66.2%) of revolver cases involved multiple shots. Ten to thirteen percent of pistol cases involved more than six shots, the most common ammunition capacity for revolvers; in contrast, slightly less than 3% of revolver cases involved more than six shots. Finally, 3.6% to 4.2% of pistol cases involved more than 10 shots, the current limit on newly manufactured ammunition magazines.

Handgun types and gun assault outcomes

15.79%

(n = 15)

57.58%

(n = 95)

69.04%

(n = 165)

outcomes (χ^2 p level >0.05).

Death

Injury

Attack

Threat (n = 239)

Figure 1 Outcomes of assault incidents involving semiautomatic

pistols (n = 239). Handgun type was not associated with attack

Non-fatal injury

84.21%

(n = 80)

No injury

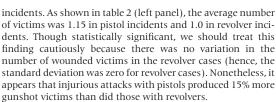
42.42%

(n = 70)

No attack: threat only

30.96%

(n = 74)



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Extrapolating from this, there were 95 pistol incidents in which one or more persons were shot, producing a total of 109 victims wounded or killed (table 2). Yet our analysis suggests that only 95 persons would have been wounded in those 95 incidents if the offenders had used revolvers rather than pistols. This reduction of 14 gunshot victims would have reduced the overall number of gunshot victims by 9.4% $(14/(109+40) \times 100)$.

Finally, figs 1 and 2 show that gunshot injury incidents involving pistols were less likely to produce a death than were those involving revolvers (15.8% to 25.0%). A number of factors such as gun caliber, wound location, and the physical condition of the victim influence whether a gunshot victim dies. The higher fatality rate among revolver gunshot victims appears to have been linked, at least in part, to factors like wound location and age (analyses not shown). For example, 42.0% of the wounds sustained by revolver victims were wounds to the head, chest or abdomen, in contrast to only 25.2% of those sustained by pistol victims (wound location was known for 83.3% of the wounds inflicted with revolvers and 87.7% of those inflicted with pistols). Also, 14.3% of revolver gunshot victims but only 3.7% of pistol gunshot victims were over age 35 (age was recorded for 87.5% and 75.7% of revolver and pistol gunshot victims, respectively).

However, the key mechanism for a semiautomatic weaponry effect is the number of wounds—that is, does the higher number of shots fired in pistol cases increase the likelihood that gunshot victims will suffer multiple wounds, thereby making it more likely that the victims will die? Table 2 (right panel) contrasts the number of gunshot wounds sustained by victims in pistol and revolver cases. Although a higher percentage of pistol victims sustained multiple wounds (24.3% to 20% for pistol and revolver victims, respectively), the average number of wounds for pistol victims (1.44) was actually lower than that for revolver victims (1.50). However, neither of these differences was statistically significant. Therefore, we would not expect victims shot with pistols to die more frequently than victims shot with revolvers, holding gun caliber, wound location, the victim's physical condition, and other relevant factors constant.

Death 25.00% (n = 10)Non-fatal injury 75.00% (n = 30)Injury 56.34% (n = 40)No injury 43.66% (n = 31)Attack 68.27% No attack: threat only (n = 71)31.73% (n = 33)Threat (n = 104)

Figure 2 Outcomes of assault incidents involving revolvers (n = 104). Handgun type was not associated with attack outcomes $(\chi^2 p \text{ level} > 0.05)$.

Although pistol cases involved higher numbers of shots, they were not significantly more likely to result in injuries (fatal or non-fatal) than were revolver cases. Attackers killed or injured victims in 57.6% of gunfire cases involving pistols and 56.3% of gunfire incidents involving revolvers (see figs 1 and 2).

However, pistol cases resulted in more wounded persons per incident than did revolver cases. Among those incidents resulting in gunshot victims, nearly 12% of the pistol incidents involved multiple victims in contrast to none of the revolver

DISCUSSION

This analysis of fatal and non-fatal gun attacks in Jersey City provides limited evidence that assaults committed with semi-automatic pistols produce more injured persons than assaults committed with revolvers. Gun attackers using pistols tend to fire more shots than attackers using revolvers. This shot differential does not appear to influence the probability that an incident will result in injury or death, nor the number of wounds sustained by gunshot victims. However, offenders using pistols do tend to wound more persons. Our analysis suggests that the overall number of wounded victims would have been reduced by 9.4% had revolvers been used in all of the attacks.

The results of this study should be qualified on a number of grounds. General limitations to the data were noted earlier. The shots fired variable was measured with less than optimal precision. Further, indicators of wounds per victim may be less accurate in police records than in medical records.

The effects of semiautomatics on gun attack outcomes could also be contingent on the particular models used; gun model identifications were usually missing in these data, thus

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	Minimum estimates		Maximum estimates		
Shots fired	Pistol incidents (n=165)	Revolver incidents (n=71)	Pistol incidents (n=165)	Revolver incidents (n=71)	
1	52 (31.5)	34 (47.9)	35 (21.2)	24 (33.8)	
2	37 (22.4)	13 (18.3)	37 (22.4)	20 (28.2)	
3	27 (16.4)	9 (12.7)	33 (20.0)	9 (12.7)	
4	13 (7.9)	5 (7.0)	19 (11.5)	6 (8.5)	
5	13 (7.9)	6 (8.5)	11 (6.7)	8 (11.3)	
6	6 (3.6)	2 (2.8)	8 (4.8)	2 (2.8)	
7	4 (2.4)	2 (2.8)	3 (1.8)	1 (1.4)	
8	3 (1.8)	0	7 (4.2)	0 '	
9	2 (1.2)	0	3 (1.8)	1 (1.4)	
10	2 (1.2)	0	2 (1.2)	0	
11	1 (0.6)	0	2 (1.2)	0	
12	1 (0.6)	0	1 (0.6)	0	
13	1 (0.6)	0	1 (0.6)	0	
14	0 '	0	0 '	0	
15	1 (0.6)	0	0	0	
16	2 (1.2)	0	2 (1.2)	0	
17	0	0	1 (0.6)	0	
Mean*	3.23	2.3	3.68	2.58	

^{*}Group means differed significantly for pistol and revolver cases. The t statistic = 3.11 (p<0.01) using minimum shots fired estimates; t statistic = 3.51 (p<0.01) using maximum shots fired estimates; t statistics were calculated using the formula for populations having unequal variances.

Table 2 Number of gunshot victims (% of cases) by handgun type and wounds per victim (% of victims) by handgun type

	Gunshot victims per incident		Wounds per gunshot victim	
Victims/wounds	Pistol cases (n=95 incidents)	Revolver cases (n=40 incidents)	Pistol cases* (n=107 victims)	Revolver cases (n=40 victims)
1	84 (88.4)	40 (100)	81 (75.7)	32 (80)
2	8 (8.4)		13 (12.1)	3 (7.5)
3	3 (3.2)		8 (7.5)	2 (5.0)
4			3 (2.8)	1 (2.5)
5			1 (0.9)	1 (2.5)
6			1 (0.9)	0 '
7			0 '	1 (2.5)
,			-	
Meant	1.15	1.0	1.44	1.5

^{*}Two victims were excluded due to missing data.

precluding examination of ammunition capacity or gun quality. Note that a number of the pistol models used most frequently in crime are inexpensive, lower quality guns (often referred to as Saturday Night Specials) that are prone to jaming and often don't have ammunition capacities larger than those of revolvers.²⁸ ²⁹

In addition, multivariate studies controlling for characteristics of actors and situations might yield different results if those characteristics tend to be related to both weapon selection and attack outcomes. If, for instance, pistol shooters in this study tended to be younger and/or less skilled shooters than revolver shooters, this might explain why the former fired more often yet didn't injure or kill victims in a higher fraction of attacks and tended to hit victims in less vital areas of the body. Other potential confounders might include the nature of the circumstances (for example, whether the shooting was an execution-style shooting), the general health of the victim(s), the type of location (for example, indoor or outdoor location), the distance between the shooter and intended victim(s), and the presence of multiple persons who could have been shot intentionally or accidentally (as bystanders).

Taking the results at face value, nonetheless, this study has potential ramifications for national trends and policy, imply-

ing that the spread of pistols during the last few decades may have contributed modestly to higher levels of assaultive gun injuries. Hence, policies to restrict or discourage the use of semiautomatic weapons or restrict ammunition magazine capacity might have the potential to reduce gunshot injuries.

We should be cautious about these inferences, however, because the analyses did not support all of our hypotheses about the effects of pistols. Further, achieving the moderate impacts suggested by this study would require complete elimination of the use of pistols in crime; to the extent that policy falls short of achieving this goal, the benefits may be substantially less and difficult to measure. Finally, these results may not generalize well to other places, although the differential in shots fired between pistol and revolver cases seems consistent with that found in other research.⁷

This study provides a first step in assessing differential levels of injury and death from attacks committed with different types of handguns, and it may spur replications to determine if these results can be generalized to other places and whether characteristics of the situations and actors mediate the relationships between weapon types and attack outcomes. Further research into the dynamics and outcomes of gun attacks can help to both clarify the consequences of changes in

[†]Gunshot victims per incident differed significantly for pistol and revolver cases (t statistic = 3.29, p<0.01). Wounds per gunshot victim did not differ significantly for pistol and revolver cases (t statistic = -0.28, p>0.05). T statistics were calculated using the formula for populations having unequal variances.

Handgun types and gun assault outcomes

Key points

- During recent decades, there has been a shift in the civilian handgun market from production of revolvers to production of semiautomatic pistols, which tend to have larger ammunition capacities and a faster rate of fire
- The consequences of this trend for public health are not clear, in part because no studies have directly compared the injuriousness and lethality of attacks with revolvers and
- This study of fatal and non-fatal gun attacks investigated by police in one city found that attacks with pistols tended to result in more shots fired and persons wounded than attacks with revolvers, implying that the number of gunshot victims would have been approximately 9% lower had pistols not
- been used in any of the attacks.

 The recent spread of semiautomatic pistols has likely contributed modestly to higher levels of assaultive gun inju-
- Policies to restrict or discourage the use of semiautomatic weapons have the potential to reduce gunshot victimizations, but large reductions in the use of these weapons would be required to realize even modest declines in gunshot victimizations.

the civilian firearm arsenal and assess the potential impact of gun control measures designed to restrict the availability of particular types of firearms.

ACKNOWLEDGEMENT

Dr Koper conducted this research while working for the Urban Institute, Washington, DC.

This research was supported by grants 1995-IJ-CX-0111 and 1998-IJ-CX-0039 from the National Institute of Justice (United States Department of Justice) to the Urban Institute. The Jerry Lee Center of Criminology, University of Pennsylvania and the Department of Criminology and Criminal Justice, University of Maryland provided additional support. The authors wish to thank a number of persons for assistance: Michael Buerger conducted on-site data collection; Jeffrey Roth provided advice on research design; Garen Wintemute, Charles Wellford, and Robert Brame offered helpful comments on earlier versions of this work; and Lois Mock served as grant monitor to the project. The views expressed are those of the authors and should not be attributed to the Urban Institute, the University of Maryland, the University of Pennsylvania, the United States Department of Justice, or any of the aforementioned individuals.

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REFERENCES

Rennison CM. Criminal victimization 2000: changes 1999–2000 with trends 1993–2000. NCJ-187007. Washington, DC: Bureau of Justice Statistics, US Department of Justice, 2001.

 Gotsch KE, Annest JL, Mercy JA, et al. Surveillance for fatal and nonfatal firearm-related injuries – United States, 1993–1998. MMWR CDC Surveill Summ (April 13) 2001;50[SS-2]:1-34.
 Simon TR, Saltzman LE, Swahn MH, et al. Nonfatal physical assault-related injuries treated in hospital emergency departments – United States, 2000. MMWR Morb Mortal Wkly Rep 2002;51:460–3.
 Cook PJ, Ludwig J. Gun violence: the real costs. New York: Oxford University Press, 2000.
 Bureau of Alcohol, Tobacco, and Firearms. Crime gun trace analysis reports: the illegal youth firearms markets in 17 communities. Washington, DC: US Department of the Treasury, 1997.
 Hargarten SW, Karlson TA, O'Brien M, et al. Characteristics of firearms involved in fatalities. JAMA 1996;275:42–5.
 McGonigal MD, Cole J, Schwab CW, et al. Urban firearm deaths: a five-year perspective. J Trauma 1993;35:532–7. 2 Gotsch KE, Annest JL, Mercy JA, et al. Surveillance for fatal and nonfatal

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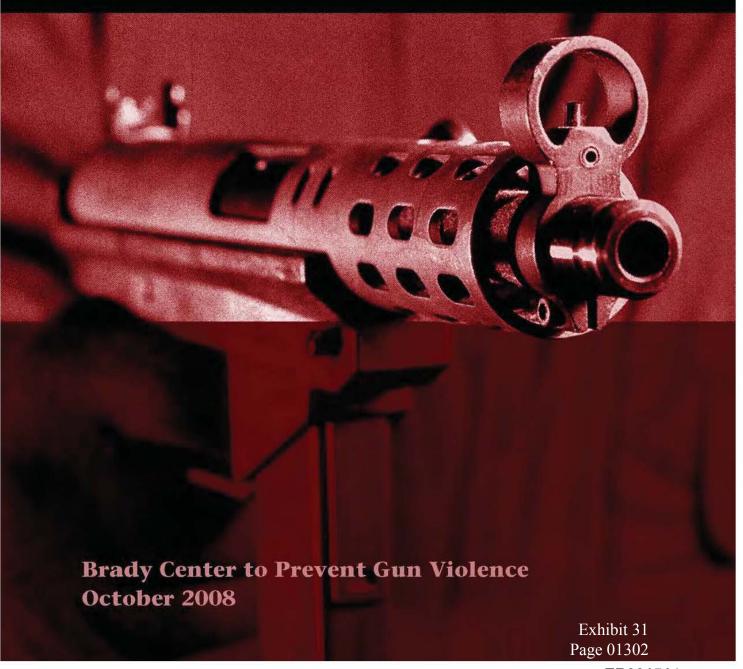
- McGonigal mb, Cole J, Schwab CW, et al. Utban Irelarin deaths: of five-year perspective. J Trauma 1993;35:532-7.
 Zawitz MW. Guns used in crime. NCJ-148201. Washington, DC: Bureau of Justice Statistics, US Department of Justice, 1995.
 Bureau of Alcohol, Tobacco, and Firearms. Ready reference 1994. Washington, DC: US Department of the Treasury, 1994.
- DiMaio JM. Gunshot wounds: practical aspects of firearms, ballistics, and forensic techniques. Boca Raton: CRC Press, 1993.

- Wintemute GJ. The relationship between firearm design and handgun violence: handguns in the 1990s. JAMA 1996;275:1749–53.
 Murtz HA, ed. Guns illustrated 1994. Northbrook, IL: DBI Books, 1994.
 Webster DW, Champion HR, Gainer PS, et al. Epidemiologic changes in gunshot wounds in Washington, DC, 1983–1990. Arch Surg 1992;127:694–8.
- 1772, 127, 074-0.
 18 Block CR, Block R. Street gang crime in Chicago. NCJ-144782.
 Washington, DC: National Institute of Justice, US Department of Justice,
- 15 Koper CS. Gun lethality and homicide: gun types used by criminals and the lethality of gun violence in Kansas City, Missouri, 1985–1993. College Park, MD: Department of Criminology and Criminal Justice, University of Maryland, 1995 (PhD dissertation).
 16 Koper CS. Gun density versus gun type: did the availability of more guns or more lethal guns drive up the Dallas homicide rate, 1980–1992?
 Panet lethal guns drive up the Dallas homicide rate, 1980–1992?
- Report to the National Institute of Justice, US Department of Justice. NCJ-187106. Washington, DC: Crime Control Institute, 1997.
- 17 Kleck G. Targeting guns: firearms and their control. Hawthorne, NY: Aldine de Gruyter, 1997.
 18 Koper CS, Roth JA. The impact of the 1994 federal assault weapon ban
- on gun violence outcomes: an assessment of multiple outcome measures and some lessons for policy evaluation. *Journal of Quantitative Criminology* 2001;**17**:33-74.

 19 Roth JA, Koper CS. *Impact evaluation of the Public Safety and*
- Recreational Firearms Use Protection Act of 1994. Washington, DC: Urban Institute, 1997.
- 20 Bureau of the Census. Washington, DC: US Department of Commerce,
- 21 Maguire K, Pastore AL, eds. Sourcebook of criminal justice statistics 1995. NCJ-158900. Washington, DC: Bureau of Justice Statistics, US Department of Justice, 1996.
- Zahn MA, Riedel M. National versus local data sources in the study of homicide: do they agree? In: Waldo GP, ed. Measurement issues in criminal justice. Beverly Hills: Sage, 1983: 103–20.
 Lee RK, Waxweiler RJ, Dobbins JG, et al. Incidence rates of firearm injuries in Galveston, Texas, 1979–1981. Am J Epidemiol 1001134:511-31.
- 1991;**134**:511–21
- 24 **Kim AN**, Trent RB. Firearm-related injury surveillance in California. *Am J* Prev Med 1998;**15**:31–7
- 25 Tuinen MV, Crosby A. Missouri firearm-related injury surveillance system. Am J Prev Med 1998;15:67–74.
- 26 Kleck G. Point blank: guns and violence in America. New York: Aldine de Gruyter, 1991.
- Felson RB, Messner SF. To kill or not to kill? Lethal outcomes in injurious attacks. Criminology 1996;34:519–45.
 Wintemute G. Ring of fire: the handgun makers of southern California.
- Davis, CA: Violence Prevention Research Program, University of California, 1994.
- 29 Bureau of Alcohol, Tobacco, and Firearms. Crime gun trace analysis reports: the illegal youth firearms markets in 27 commun Washington, DC: US Department of the Treasury, 1999.

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Assault Weapons "Mass Produced Mayhem"



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Assault Weapons: "Mass Produced Mayhem"

Brady Center to Prevent Gun Violence October 2008



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October 2008

ACKNOWLEDGEMENTS

The Brady Center to Prevent Gun Violence is a national non-profit organization working to reduce the tragic toll of gun violence in America through education, research, and legal advocacy. Through its project, *Gun Industry Watch*, the Brady Center works to monitor and publicly expose gun industry practices that contribute to gun violence, with the goal of bringing about life-saving industry reform. The programs of the Brady Center complement the legislative and grassroots mobilization efforts of its sister organization, the Brady Campaign to Prevent Gun Violence and its network of Million Mom March Chapters.

Assault Weapons: "Mass Produced Mayhem" was written by Brian J. Siebel. Thanks go to Robyn Steinlauf, Sarah McLemore, Molly Warren, Lindsay Brooker, Talesia Simon, Natalie Durham, and Elizabeth Haile for their assistance in preparing this report. If you have questions about any part of this report, or would like a copy, please write to *Gun Industry Watch*, Brady Center to Prevent Gun Violence, 1225 Eye Street, N.W., Suite 1100, Washington D.C. 20005. The report and other Gun Industry Watch reports are also available at www.bradycenter.org/gunindustrywatch and www.gunlawsuits.org.

A Note About the Title

The phrase "mass produced mayhem" is taken from the federal Bureau of Alcohol, Tobacco, Firearms and Explosive's description of assault weapons in its "Assault Weapons Profile" (April 1994).

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Executive Summary

Assault weapons are military-style weapons of war, made for offensive military assaults. It is no accident that when a madman, Gian Luigi Ferri, decided to assault the law offices at 101 California Street in San Francisco, he armed himself with two TEC-9 assault weapons with 50-round magazines, which enabled him to kill eight people and wound six others. Or that the Columbine high school shooters, who killed 12 students and a teacher, included a TEC-9 assault pistol in their arsenal. Or that the Branch-Davidians at Waco, Texas, accumulated an arsenal of assault weapons to prepare for battle against the federal government, including 123 AR-15s, 44 AK-47s, two Barrett .50 calibers, two Street Sweepers, an unknown number of MAC-10 and MAC-11s, 20 100-round drum magazines, and 260 large-capacity banana clips. Or that James Huberty used an UZI assault pistol and a shotgun to kill 21 people and wound 19 others at a McDonald's in San Ysidro, California. Or that Patrick Purdy used an AK-47 assault rifle to kill five children and wound 29 others and a teacher at an elementary school in Stockton, California. Equipped with a 75-round "drum" magazine, Purdy was able to shoot 106 rounds in less than two minutes. The list of horrific attacks goes on.

The federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has called assault weapons "mass produced mayhem." They have been weapons of choice for gangs, drug dealers, and mass killers. They have been used to slaughter innocents in numerous high-profile shootings, and have been used to outgun police officers on the streets. They are of no use for hunters and are counterproductive for lawful defense of one's home. Law enforcement throughout the nation has called for them to be banned. Presidents Gerald Ford, Jimmy Carter, Ronald Reagan, Bill Clinton, and George W. Bush did not agree on much, but they all supported an assault weapons ban.

For ten years, from 1994-2004, federal law banned these weapons of war. Although this now-expired law was limited in scope, and was circumvented by many gun manufacturers, it reduced the use of assault weapons in crime. The experience suggests that a stronger, more comprehensive law would enhance public safety even more.

In the four years since the federal ban expired, hundreds of people have been killed in this country with military-style assault weapons. This report lists incidents in which at least 163 people have been killed and 185 wounded in with assault weapons, including at least 38 police officers killed or wounded by them. Moreover, as these incidents are only those that we could find reported in the press, the actual tally of fatalities and injuries is almost certainly much higher.

Since the federal assault weapon expired in 2004, politicians from President George W. Bush to Senator John Warner have called for its renewal. But on this issue, the two major presidential candidates offer two starkly opposing views: Senator Barack



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Obama has stated as recently as his convention acceptance speech that it is imperative that criminals be denied the use of assault weapons. Senator John McCain, who has opposed the NRA on gun shows and other issues, has been firm in his opposition to assault weapon bans. The question should be asked of the candidates, "Senator, why should civilians be allowed to wield these weapons of war?"

This report provides the factual basis for answering that question, and makes the evidentiary case for an assault weapons ban. The report also outlines how the availability of assault weapons to criminals has altered the balance of power on urban streets between police and criminals, placing police officers in grave risk of harm.

SWD M-10, M-11, M-11/9, and M-12 Assault Pistol



AK-47 Assault Rifle (Many variants)





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Assault Weapons Are Designed to Slaughter People

Assault weapons are semiautomatic versions of fully automatic guns designed for military use. These guns unleash extraordinary firepower. When San Jose, California, police test-fired an UZI, a 30-round magazine was emptied in slightly less than two seconds on full automatic, while the same magazine was emptied in just five seconds on semiautomatic.⁸

As the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") has explained:

Assault weapons were designed for rapid fire, close quarter shooting at human beings. That is why they were put together the way they were. You will not find these guns in a duck blind or at the Olympics. **They are mass produced mayhem.**⁹

ATF has also described semiautomatic assault weapons as "large capacity, semiautomatic firearms designed and configured for rapid fire, combat use.... Most are patterned after machine guns used by military forces." In short, as a Montgomery County, Alabama Sheriff has said: "[T]here's only one reason for owning a gun like that – killing people. There's no other use other than to kill people. That's all they're made for." 11

Assault weapons have distinct features that separate them from sporting firearms. While semiautomatic hunting rifles are designed to be fired from the shoulder and depend upon the accuracy of a precisely aimed projectile, the military features of semiautomatic assault weapons are designed to enhance their capacity to shoot multiple human targets very rapidly. Assault weapons are equipped with large-capacity ammunition magazines that allow the shooter to fire 20, 50, or even more than 100 rounds without having to reload. Pistol grips on assault rifles and shotguns help stabilize the weapon during rapid fire and allow the shooter to spray-fire from the hip position. Barrel shrouds on assault pistols protect the shooter's hands from the heat generated by firing many rounds in rapid succession. Far from being simply "cosmetic," these features all contribute to the unique function of any assault weapon to deliver extraordinary firepower. They are uniquely military features, with no sporting purpose whatsoever. San and shotguns have a separated by firing many rounds in rapid succession.

Accordingly, ATF has concluded that assault weapons "are not generally recognized as particularly suitable for or readily adaptable to sporting purposes" and instead "are attractive to certain criminals." An ATF survey of 735 hunting guides, conducted during the administration of President George H.W. Bush, found that sportsmen do not use assault weapons. These findings were confirmed in a second study performed by ATF under the Clinton Administration.



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A researcher hired by the Department of Justice to analyze the effect of the 1994 federal ban on assault weapons confirmed that the firepower of assault weapons gives them greater destructive potential. His analysis found that:

attacks with semiautomatics – including assault weapons and other semiautomatics equipped with large capacity magazines – result in more shots fired, more persons hit, and more wounds inflicted per victim than do attacks with other firearms.¹⁷

This contradicts the National Rifle Association's ("NRA") assertion that there are only "cosmetic" differences between the guns affected by the assault weapon ban and other firearms.

TEC-9, TEC-DC-9, and TEC-22 Assault Pistol



Steyr AUG Assault Rifle





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Assault Weapons Threaten Law Enforcement and Terrorize Civilians

Since the federal assault weapons ban expired in September 2004, assault weapons have again flooded our streets, causing mayhem. Law enforcement agencies throughout the United States have reported an upward trend in assault weapons violence, forcing many police departments to invest in expensive assault weapons to keep from being outgunned by criminals. However, even with greater firepower and the availability of bulletproof vests, many officers have lost their lives to assault weapon attacks. Hundreds of civilians have also been victimized by assault weapons, many of them in multiple-victim attacks. In an appendix to this report, we list more than 200 assault weapons shootings and attacks that have occurred since the federal ban expired – and the list does not purport to be comprehensive. Assault weapons may not be used in the majority of crimes – handguns are – but they are disproportionately used in crime compared to their numbers in circulation. Moreover, assault weapons have special appeal to terrorists. They have no place in a civilized society.

Police Outgunned

Law enforcement has reported that assault weapons are the "weapons of choice" for drug traffickers, gangs, terrorists, and paramilitary extremist groups. As Los Angeles Police Chief William Bratton said:

There is a reason that these weapons are so appealing to criminals. They are designed to be easily concealed and kill as many people as possible as quickly as possible. Congress must act and act now to protect the American public and our police officers from these deadly weapons. This is about public safety and law enforcement.¹⁸

Law enforcement officers are at particular risk from these weapons because of their high firepower, which often leaves them outgunned by criminals. A researcher for the Department of Justice found that:

[A]ssault weapons account for a larger share of guns used in mass murders and murders of police, crimes for which weapons with greater firepower would seem particularly useful.¹⁹

Indeed, numerous law enforcement officers have been killed with high-firepower assault weapons.²⁰ In black sidebars on the following pages, we list ten cases of officers down since the federal assault weapons ban expired in September 2004. Unfortunately, there have been many more.²¹



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OFFICERS DOWN

San Antonio, Texas. September 8, 2008.

A man shot two police officers with an assault rifle when the police attempted to arrest him. A standoff between the suspect and police followed, ending hours later when the suspect shot and killed himself.²²

Tucson, Arizona. June 1, 2008.

A man shot at several houses with an assault rifle, then lead police in pursuit across Tucson for more than an hour. During the chase, the gunman shot at police multiple times, fatally shooting one officer and injuring two Sheriff's deputies.²³

Philadelphia, Pennsylvania. May 3, 2008.

Officer Stephen Liczbinski was shot and killed by an assault rifle as he was responding to a robbery at a Bank of America branch. Three men robbed the bank and were fleeing when Officer Liczbinski stopped their car and exited his patrol car. At that time, one of the bank robbers opened fire with an SKS assault rifle, striking Liczbinski numerous times. One suspect was eventually shot and killed by police and the other two were arrested and charged with murder.²⁴

Miami, Florida. September 13, 2007.

Police spotted a vehicle driving erratically and followed it until it stopped in a residential complex. The suspect got out and hopped a fence to the rear of the home; the officers exited their patrol car and went to the front of the home and were granted permission to search by a female resident. The suspect grabbed a high-powered, military-style assault rifle and fired at the police officers through a window, killing Officer Jose Somohano. The suspect then exited the house and shot three other officers as he escaped. The shooter was caught later that day but would not relinquish his assault rifle so he was shot and killed by police officers.²⁵

Floyd County, Indiana. June 18, 2007.

Two officers responded to a domestic disturbance call between a mother and her son. The officers were speaking with the mother on the driveway when the 15-year-old son ambushed both officers from an upstairs window and shot at them with a high-powered assault rifle. One officer was killed and the other was seriously wounded.²⁶

addition, In police departments have found that the ban's expiration has led to increased criminal access to assault weapons and levels of violent crime, forcing many to outfit their officers with assault rifles of their own.²⁷ An informal survey of about 20 police departments conducted by the International Association of Chiefs of Police revealed that since 2004, all of the agencies have either added assault weapons to patrol units or replaced existing weapons with military-style assault weapons.²⁸

"We're in an arms race," said Police Chief Scott Knight, chairman of the firearms committee of the International Association of Chiefs of Police.²⁹ Indeed, data collected from ATF found that, since 2005, the first full year after the federal ban on assault weapons expired, ATF recorded an 11% increase in crime gun tracings of AK-47-type assault weapons.³⁰

The Chicago Police Department reported a 10% increase in the number of assault weapons seized. Superintendent Phil Cline said, "[t]hese are guns that can shoot up to 30 rounds with a couple pulls of the trigger. And it puts our police in grave danger out there. So, we'd like still to see some kind of ban, either by the state or federally."³¹

In 2006, law enforcement in Miami noted the effect of the expiration of the assault weapons ban on the rash of crimes used with these now-legal weapons.



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County state attorney Katherine Fernandez-Rundle stated that the AK-47 is the "favorite weapon" of dangerous gangs gaining influence in Miami.³² Miami-Dade Police Director Robert Parker stated "there was nothing positively gained by the lifting of the ban on assault weapons by the government."

Just over a year later, Miami police said that the amount of assault weapons they recovered, and homicides using assault weapons, had continued to increase. While just four percent of homicides in Miami in 2004 were committed with assault weapons, in 2007, it was one in five.³⁴ "It's almost like we have water pistols going up against these high-powered rifles," said John Rivera, president of the Dade County Police Benevolent Association. "Our weaponry and our bulletproof vests don't match up to any of those types of weapons."³⁵

The death of Miami police officer Sgt. Jose Somohano - killed by a shooter wielding a MAK-90 three years to the day after the federal ban expired - prompted Miami Police Chief John Timoney for the first time to authorize officers to start carrying assault weapons. The Chief blamed the expiration of the federal ban for the current "arms race" between police and drug gangs using assault weapons:

This is really a failure of leadership at the national level. We are absolutely going in the wrong direction here. The whole thing is a friggin disgrace.³⁶

He added:

Two or three years ago, we had the lowest homicide rate since 1967 in Miami. Then the homicides skyrocketed with the availability of AK-47s. And it went from 3% of all homicides being committed with AKs, up to 9% two years ago, then 18% last year, and this year it is around 20%. And it's going up.... We're being flooded with these AK-47s."³⁷

Shootings involving assault weapons were among the reasons U.S. Attorney R. Alexander Acosta set up an anti-gang task force of federal, state, and local law enforcement officials in Florida in 2007. Fifteen federal prosecutors were assigned to the effort. Said Acosta of assault weapons:

These bullets are very powerful: they go through walls, they go through cars, and if you just spray the general vicinity you're going to get innocent bystanders. A shooting that might have been an injury previously is now a death.³⁸

Pittsburgh law enforcement also has noticed an increase in criminal use of assault weapons since the expiration of the ban. Firearms like the AK-47 and Soviet SKS Carbine have become the weapons of choice for street criminals. Pittsburgh's Assistant Chief of Police William Mullen blamed the expiration of the ban for this



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OFFICERS DOWN

Biloxi, Mississippi. June 5, 2007. A gunman with an AK-47 ambushed police officers in a shootout, killing one, then shooting himself. The gunman lured police by firing shots in the neighborhood and waiting. After shooting one officer, the gunman unloaded an additional round into the patrol car. The gunman had a cache of backup guns and ammunition waiting inside his home.³⁹

Chantilly, Virginia. May 8, 2006. A teenager with an AK-47 and 5 handguns engaged in a firefight at a police station in suburban Virginia, killing Detective Vicky Armel immediately and wounding two other officers, one of whom, Officer Michael Garbarino, died nine days later from his injuries.⁴⁰

Las Vegas, Nevada. February 1, 2006. A 22-year-old fired at least 50 rounds from an assault rifle, shooting two Las Vegas police officers and killing one, before being shot and killed by the surviving officer. 41

Livingston County, Kentucky. June 2, 2005. A deputy was shot when he responded to a domestic disturbance call placed by a couple's 18-year-old daughter. When the officer entered the home, a male fired at least 8 rounds from an assault rifle at him, hitting him four times and killing him. The officer was able to fire one round which killed the gunman. 42

Ceres, California. January 9, 2005. A 19-year-old Marine armed with an SKS assault rifle shot two police officers, killing one, in a gun battle outside a liquor store.⁴³

increase and noted, "[t]here's a lot more assault weapons in the area in districts now than ever before."44

In Houston, where homicides were up significantly in 2006, Police Chief Harold Hurtt said the AK-47 assault rifle had become "a weapon of choice" among warring gangs.⁴⁵

Palm Beach County police have noted an alarming trend of AK-47 use in violent crimes. Sheriff's Lieutenant Mike Wallace said: "It seems to be the weapon of choice right now. It's a weapon of war, and the function is to kill and maim. When somebody gets hit with that, it causes horrendous damage." Sergeant Laurie Pfiel of the same office said: "[Criminals] don't have .38s anymore. They have AK-47s."

Martin County Sheriff's Office Captain Ed Kirkpatrick of Florida details the effect of criminal possession of assault weapons on effective law enforcement: "Everyone is taking more precautions. When you stop a car in the middle of the night, you [didn't] think about it. Now you do. These are very powerful weapons."

Franklin County, North Carolina Sheriff Pat Green said: "I've been in this business 25 years, and it's just getting worse," referring to a report that they have been finding more and more assault weapons at crime scenes in the state. ⁴⁹ In South Carolina, Lieutenant Ira Parnell, head of the State Law Enforcement Division's firearms lab, noted that investigators are seeing an increase in criminal use of AK-47 and SKS assault rifles. ⁵⁰

Fort Wayne, Indiana police reported a significant spike in seizures of assault weapons since the ban expired, from two in 2003, to nine in 2004, eight in 2005, 29 in 2006, and 20 in 2007. "[W]e're certainly seeing them more and more," said Police Chief Rusty York.⁵¹ Similarly, Omaha, Nebraska police seized 39 assault rifles in 2007, up from nine in 2006.⁵²



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In San Francisco, Police Officers Association President Gary Delanges said: "Just about every crook you run into out there [who] is a drug dealer or a gang banger's got one of these weapons. And it's putting our officers' lives at risk." Deputy Chief Morris Tabak displayed some of the seized assault weapons, including a .22 caliber gun modified to hold 100 rounds. "These are what could be described only as anti-personnel weapons," he said. 54

Israeli Military Industries Action Arms UZI Assault Rifle



Civilians Massacred

Assault weapons have been used to perpetrate some of the most horrific crimes, including mass murders, ever committed in the United States. Some of the most infamous ones are cited in the Executive Summary of this report. Unfortunately, this gruesome death toll has grown since the expiration of the 10-year federal ban on assault weapons.

As can be seen from the following examples, assault weapons have been used to kill civilians engaged in common activities of life, in all types of circumstances and places. The Appendix lists more than 200 examples from just the last four years.

Teens slaughtered at a swimming hole in Wisconsin

On July 31, 2008, a man used an assault rifle to massacre a group of teenagers, killing three and injuring a fourth near Niagara, Wisconsin. The teens were gathered along a river to go swimming when the gunman emerged from surrounding woods and began shooting.⁵⁵



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Apartment employees shot by a disgruntled tenant in Virginia

On March 19, 2008, in Virginia Beach, Virginia, a man shot five people, killing two, with an AK-47 assault rifle and .9mm handgun before killing himself. The man was about to be evicted from his apartment and targeted the apartment complex's employees in his attack. 56

Churchgoers gunned down in Colorado

On December 9, 2007, a man armed with an assault rifle attacked a missionary training center in Arvada and a church in Colorado Springs. He killed two people and injured two others in Arvada, and killed two and injured three others, including two teenage sisters, in Colorado Springs. He was injured by a security guard and then shot himself.⁵⁷

Mall shoppers massacred in Nebraska, Washington, and New York

On December 5, 2007, nine people were shot to death and five others were injured after a 20-year-old shooter, armed with a military-style assault rifle, attacked shoppers in a department store in an Omaha, Nebraska mall.⁵⁸

On November 20, 2005, a 20-year-old male opened fire in a Tacoma, Washington mall, wounding six. The shooter took four hostages, all of whom were released unharmed. 59

On February 13, 2005, a gunman fired more than 60 shots from an AK-47 assault rifle in the Hudson Valley Shopping Mall in Ulster, New York, wounding two and causing tens of thousands of dollars of damage before being apprehended. A few hours earlier, the shooter had purchased armor-piercing ammunition from a nearby Wal-Mart.⁶⁰

Birthday party celebrants spray-fired in Louisiana

On September 15, 2007, at least 28 bullets were fired from an AK-47 at an outdoor birthday party for five-year-old twins in the courtyard of a housing complex in Kenner, Louisiana. A 19-year-old was killed and three children were wounded, ages 7, 8 and 13.⁶¹

Pregnant woman and child shot while sleeping in Illinois

On June 25, 2006, in Calumet City, Illinois, a 22-year old pregnant woman and her three-year old son were shot and killed while they were sleeping when an unknown gunman fired 30 rounds from an AK-47 into their home at 1:15 a.m. ⁶²



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Family massacred in a home robbery in Indiana

On June 2, 2006, in Indianapolis, Indiana, seven family members, four adults and three children, were shot and killed in their home by a robber armed with an assault rifle. Nearly 30 shell casings were found.⁶³

· Two young girls shot in their homes in Illinois

On March 11, 2006, 10-year-old Siretha White was killed by a shot to her head as she was celebrating her birthday in her living room. A spray of bullets from an assault weapon peppered the house from a nearby fight.⁶⁴

Just over a week earlier, on March 3, 2006, a stray bullet from an assault rifle struck a 14-year-old honor student as she was looking out the window of her home, killing her instantly.⁶⁵

College students murdered while camping in Florida

On January 7, 2006, two college students camping in the Ocala National Forest in Florida were randomly targeted by a man who shot and killed them with a stolen AK-47.

Domestic violence leads to mass shootout on courthouse steps in Texas and triple-slaying in Ohio

On February 25, 2005, in Tyler, Texas, a gunman who was reportedly fighting with his ex-wife over child support for their two youngest children, shot over 50 rounds from an SKS assault rifle on the steps of his local courthouse, killing his ex-wife and a bystander. The shooter's 23-year-old son and three law enforcement officers were wounded in a shootout. ⁶⁷

Just a day earlier in Akron, Ohio, a man shot and killed his girlfriend and her seven-year-old son using an AR-15 assault weapon, then fired more than 100 rounds at a dozen law enforcement officers as he fled the murder scene. The gunman was arrested the next morning inside the apartment of a Kent State University student, who he also murdered with the AR-15 assault weapon. Police subsequently seized 21 weapons kept by the suspect, including an Uzi and an AK-47.⁶⁸

Hunters gunned down in the woods in Wisconsin

On November 21, 2004, near Hayward, Wisconsin, a 36-year-old man opened fire with an SKS semiautomatic rifle, killing six members of a hunting party and wounding two after being asked to leave another hunter's property. ⁶⁹



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Crime Use Disproportionate

The firepower of assault weapons makes them especially desired by violent criminals and especially lethal in their hands. Prior to the Act, although assault weapons constituted less than 1% of the guns in circulation,⁷⁰ they were a far higher percentage of the guns used in crime. ATF's analysis of guns traced to crime showed that assault weapons "are preferred by criminals over law abiding citizens eight to one.... Access to them shifts the balance of power to the lawless."⁷¹

In arguing against assault weapon bans, the NRA and its supporters have cited Justice Department studies based on surveys of state and federal prisoners to claim that assault weapons are used in only 2% of crimes nationally. These studies, however, actually confirm the disproportionate use of assault weapons in crime. More than 80% of these prisoners used *no firearm* in the commission of their crime. Within the category of inmates who used guns to commit crimes, semiautomatic assault weapons were actually used in 6.8% of state prosecutions and 9.3% of federal prosecutions.⁷² Both percentages are much higher than the estimated 1% of guns in circulation that are assault weapons.⁷³

In addition, research by Dr. Garen Wintemute of the University of California at Davis has found that gun buyers with criminal histories were more likely to buy assault weapons than buyers without such histories. Wintemute further found that the more serious the offender's crimes, the more likely he is to buy assault weapons. Assault weapon buyers also are more likely to be arrested after their purchases than other gun purchasers.⁷⁴

Fabrique Nationale FN/FAL, FN/LAR, and FNC Assault Rifle



Terrorists Armed

As our nation wages a war on terrorism – at home and abroad – one salient fact is especially unassailable: terrorists and assault weapons go together. The assault weapon's capacity to mass-murder within a matter of seconds makes it an ideal weapon for domestic and foreign terrorists alike. The oft-seen file footage of Osama Bin Laden,



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aiming his AK-47 at an unknown target, is now a familiar reminder of the incontrovertible connection between terrorism and assault weapons.

After America's bombing of terrorist camps in Afghanistan after 9/11, the *Chicago Tribune* reported that, among the mounds of rubble found at a training facility in Kabul for a radical Pakistan-based Islamic terrorist organization, was a manual entitled "How Can I Train Myself for Jihad" containing an entire section on "Firearms Training." Tellingly, the manual singles out the United States for its easy availability of firearms and advises al-Qaeda members living in the United States to "obtain an assault weapon legally, preferably AK-47 or variations." Further, the manual sets forth guidelines for how would-be terrorists should conduct themselves in order to avoid arousing suspicion as they amass and transport firearms.

As the following examples indicate, terrorists have sought and obtained assault weapons in the U.S.

Conspirators armed to attack within the United States

On May 7, 2007, five New Jersey men were indicted for conspiring to attack the United States Army base at Fort Dix, NJ. Over several months, the conspirators managed to stockpile numerous assault weapons, along with shotguns and various other small arms, and used these weapons in tactical training for their attack. The men had also arranged to purchase five fully automatic AK-47s and several M-16s at the time of their arrest.⁷⁶

On March 16, 2005, in New York, Artur Solomonyan, an Armenian, and Christian Dewet Spies, of South Africa, were indicted for smuggling a small arsenal of assault weapons into the U.S. from Russia and Eastern Europe. The two men, who had entered the U.S. illegally, stored these weapons in storage lockers in New York, Los Angeles, and Fort Lauderdale. When approached by an FBI informant with ties to terrorist organizations, Solomonyan and Spies offered to sell him AK-47s and machine guns, along with RPG-launchers, mines, and other military-grade ordnance.⁷⁷

In late April 2004, Michael J. Breit of Rockford, Illinois, was arrested after firing his AK-47 in his apartment. Federal agents recovered seven guns, more than 1,300 rounds of ammunition, pipe bomb making components and other explosives, a list of government officials and political and public figures with the word "marked" written next to them, and a written plan for 15 heavily armed men to kill 1,500 people at a Democratic presidential event. Breit's library included *The Turner Diaries*, the antigovernment cult novel that inspired Timothy McVeigh, and *Guns, Freedom and Terrorism*, the book authored by NRA CEO Wayne LaPierre, investigators said.⁷⁸

In September 2001, Ben Benu, Vincente Pierre and his wife were arrested in Virginia for illegally buying assault weapons and other guns. The arrests were part of the post-September 11th sweep of terrorism suspects. They were alleged to be part of a militant group called Muslims of America (also linked to a terrorist group called Al



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Fuqra). They bought guns including an SKS assault rifle, a 9mm pistol, and AK-47 ammunition.⁷⁹

Street Sweeper/Striker 12 Assault Shotgun



 Arming terrorists and criminals abroad with assault weapons bought here

On May 6, 2008, Phoenix gun dealer George Iknadosian and two associates were arrested after receiving a shipment of weapons intended for sale to a Mexican drug cartel. An undercover investigation by ATF indicated that Iknadosian sold at least 650 AK-47 assault rifles for trafficking to Mexico but that the actual number might have been be closer to 1,000. Such weapons feed the on-going conflict between drug traffickers and Mexican authorities, a conflict which resulted in more than 2,000 law enforcement deaths in an 18-month period.⁸⁰

Over several months in 2006, Adan Rodriguez purchased more than 100 assault rifles, along with many other weapons, from Dallas area gun shops on behalf of Mexican drug traffickers who paid him in cash and marijuana. Rodriguez's arrest was one of several key arrests in a five-year crack-down on weapons smuggling to Mexico. AK-47's, AR-15's, and other high-powered assault weapons, obtained either at gun shows or through straw purchasers, fuel an on-going war between major Mexican cartels and police and military officials. Over 4,000 people were killed in this drug-related violence during an 18-month period in 2007-2008.⁸¹

On September 10, 2001, Ali Boumelhem was convicted on a variety of weapons charges plus conspiracy to ship weapons to the terrorist organization Hezbollah in Lebanon. He and his brother had purchased an arsenal of shotguns, hundreds of rounds of ammunition, flash suppressors and assault weapons components at Michigan gun shows. Had it not been for a police informant, these purchases would have eluded any scrutiny.⁸²

Stephen Jorgensen purchased hundreds of firearms, including AK-47 clones called MAK-90s, with plans to ship them overseas from Tampa, Florida. Jorgensen bought 800 MAK-90s, loading them on to small planes. US customs officials say the guns were headed to the FARK guerilla movement in Colombia, a group on the U.S. terrorism watch list. Jorgensen was caught because he illegally exported the guns.⁸³



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In June 2001 federal agents arrested Keith Glaude when he tried to purchase 60 AK-47 assault rifles and 10 machine guns in Florida. He told authorities that he intended to ship the guns to an Islamic extremist group in his native Trinidad. Previously, that group had acquired over 100 assault weapons in Florida that it used in a 1990 attempt to overthrow the government of Trinidad and Tobago.⁸⁴

Using assault weapons in terrorist attacks

Over a period of weeks in 2002, John Mohammed, a convicted felon, and his juvenile cohort, Lee Boyd Malvo, terrorized the entire metropolitan Washington, D.C. area by engaging in a series of sniper attacks on randomly-selected victims. In all, they shot 16 victims with a Bushmaster XM-15 E2S .223 caliber semiautomatic assault rifle that one of the snipers allegedly shoplifted from a Tacoma, Washington gun store. Each of the victims was randomly gunned down while going about simple activities of daily living, like closing up a store after work, filling a car with gas at a service station, mowing a lawn, or loading one's car in a mall parking lot. Both shooters have been convicted of their offenses.

On March 1, 1994, terrorist Rashid Baz opened fire on a van of Hasidic students crossing the Brooklyn Bridge, killing one student and wounding another. Baz used a Cobray M-11 assault pistol in the crime. He assembled it from a mail-order kit.⁸⁹

On January 25, 1993, Pakistani national Mir Aimal Kasi killed 2 CIA employees and wounded 3 others outside the entrance to CIA headquarters in Langley, Virginia. Kasi used a Chinese-made semiautomatic AK-47 assault rifle equipped with a 30-round magazine purchased from a Northern Virginia gun store. He fleeing the country, he was arrested in Pakistan in June 1997 and convicted by a Virginia jury in November of that year. November of the country of the







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Assault Weapons Have No Sporting or Self-Defense Purpose

Prior to passage of the federal assault weapons ban, the importation of certain types of assault weapons from overseas was banned during the Reagan and George H.W. Bush Administrations. These import bans were ordered by ATF under the 1968 Gun Control Act, which bars the importation of guns that are not "particularly suitable for or readily adaptable to sporting purposes." ⁹²

Under the Reagan Administration, ATF blocked the importation of certain models of shotguns that were not suitable for sporting purposes. In 1989, during the George H.W. Bush Administration, ATF expanded this list to permanently ban the importation of 43 types of semiautomatic assault rifles that were also determined not to have a sporting purpose. Later, in 1998, President Clinton banned the importation of 58 additional foreign-made "copycat" assault weapons in order to close a loophole in the existing import ban. 93

Assault weapons, as opposed to hunting rifles, are commonly equipped with some or all of the following combat features that have no sporting value:

- A high-capacity ammunition magazine enabling the shooter to continuously fire dozens of rounds without reloading. Standard hunting rifles are usually equipped with no more than three or four-shot magazines.
- A folding or telescoping stock, which sacrifices accuracy for concealability and for mobility in close combat.
- A pistol grip or thumbhole stock, which facilitates firing from the hip, allowing the shooter to spray-fire the weapon. A pistol grip also helps the shooter stabilize the firearm during rapid fire.
- A barrel shroud, which allows the shooter to grasp the barrel area to stabilize the weapon, without incurring serious burns, during rapid fire.
- A flash suppressor, which allows the shooter to remain concealed when shooting at night, an advantage in combat but unnecessary for hunting or sporting purposes. In addition, the flash suppressor is useful for providing stability during rapid fire, helping the shooter maintain control of the firearm.
- A threaded barrel designed to accommodate a flash suppressor or silencer. A silencer is useful to assassins but clearly has no purpose for sportsmen. Silencers are also illegal.
- A barrel mount designed to accommodate a bayonet, which obviously serves no sporting purpose.



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Combat Hardware Commonly Found on Assault Weapons

Assault weapons generally include features that are useful for offensive assaults on people, but have no sporting or self-defense function. Some of these are shown below.





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- A grenade launcher or flare launcher, neither of which could have any sporting or self-defense purpose.
- A shortened barrel designed to reduce the length of an assault rifle to make it more concealable. This reduces accuracy and range.⁹⁴

In addition to utilizing military features useful in combat, but which have no legitimate civilian purpose, assault weapons are exceedingly dangerous if used in self defense, because the bullets many of the weapons fire are designed to penetrate humans and will penetrate structures, and therefore pose a heightened risk of hitting innocent bystanders. As Jim Pasco, executive director of the Fraternal Order of Police has explained: "An AK-47 fires a military round. In a conventional home with drywall walls, I wouldn't be surprised if it went through six of them." ⁹⁵ A bullet fired in self-defense that penetrated a home's walls, could strike bystanders in neighboring rooms, apartments, or houses.

High capacity magazines containing more than 10 rounds, which were also banned as part of the Federal Assault Weapons Act, are also not useful for self-defense, as former Baltimore County Police Department Colonel Leonard J. Supenski has testified:

The typical self-defense scenario in a home does not require more ammunition than is available in a standard 6-shot revolver or 6-10 round semiautomatic pistol. In fact, because of potential harm to others in the household, passersby, and bystanders, too much firepower is a hazard. Indeed, in most self-defense scenarios, the tendency is for defenders to keep firing until all bullets have been expended.⁹⁶

Assault weapons were designed for military use. They have no legitimate use as self-defense weapons.



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Sportsman Jim Zumbo Speaks Out "Assault" Rifles are "Terrorist" Rifles

A long-standing writer for *Outdoor Life* magazine, Jim Zumbo, created a huge controversy within the gun lobby when he admitted in an online blog that assault rifles have no place as hunting weapons. Zumbo wrote:

"I must be living in a vacuum. The guides on our hunt tell me that the use of AR and AK rifles have a rapidly growing following among hunters, especially prairie dog hunters. I had no clue. Only once in my life have I ever seen anyone using one of these firearms.

I call them 'assault' rifles, which may upset some people. Excuse me, maybe I'm a traditionalist, but I see no place for these weapons among our hunting fraternity. I'll go so far as to call them 'terrorist' rifles. They tell me that some companies are producing assault rifles that are 'tackdrivers.'

Sorry, folks, in my humble opinion, these things have no place in hunting. We don't need to be lumped into the group of people who terrorize the world with them, which is an obvious concern. I've always been comfortable with the statement that hunters don't use assault rifles. We've always been proud of our "sporting firearms.

This really has me concerned. As hunters, we don't need the image of walking around the woods carrying one of these weapons. To most of the public, an assault rifle is a terrifying thing. Let's divorce ourselves from them. I say game departments should ban them from the prairies and woods. **97

Israel Military Industries Action Arms Galil Assault Rifle





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"Dangerous and Unusual Weapons" Are Not Protected by the Second Amendment

The Second Amendment does not provide constitutional protection for military-style assault weapons. In *District of Columbia v. Heller*, ⁹⁸ the Supreme Court recently ruled that the Second Amendment protects an individual right to keep and bear arms for self-defense in the home. ⁹⁹ However, the Court also went out of its way to indicate that the right is limited in a number of ways. One limitation, the Court held, is that not all "arms" are protected.

We also recognize another important limitation on the right to keep and carry arms. [U.S. v.] Miller said, as we have explained, that the sorts of weapons protected were those "in common use at the time." We think that limitation is fairly supported by the historical tradition of prohibiting carrying of "dangerous and unusual weapons." ¹⁰⁰

Assault weapons are certainly "dangerous and unusual weapons" according to any reasonable analysis of that phrase. They are military-style offensive weapons designed to slaughter human beings. This differentiates them from all hunting rifles and shotguns, as well as common handguns, which are often used in crime but have also been used in self-defense.

Moreover, assault weapons have never been "in common use" at *any* time. As semi-automatic versions of machine guns developed for use during the World Wars of the 20th Century, they are a relatively recent invention. In addition to being banned by the federal government for 10 years, they have been banned in several states. ¹⁰² Plus, ATF has twice concluded, after thorough analyses in 1989 and 1998, that assault weapons have no "sporting purpose." This conclusion has blocked them from being imported into the United States.

Another factor suggesting that the Second Amendment does not protect assault weapons is that state supreme courts have consistently upheld the constitutionality of assault weapon bans as reasonable regulations designed to protect public safety under broadly-worded right-to-bear-arms provisions in state constitutions. The *Heller* Court relied on these state constitutional provisions, many of which were adopted in the 18th and 19th centuries, to support its interpretation that the Second Amendment protects an individual right to bear arms. Courts construing the Second Amendment, post-*Heller*, can be expected to apply a similar standard of review, and uphold a federal assault weapons ban.



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A Strong Federal Assault Weapons Ban Should Be Enacted

In response to mass shootings and mounting public pressure, Congress finally passed a nationwide ban on assault weapons in 1994. In hearings on the bills, the Senate Judiciary Committee explained the need to:

address the carnage wrought by deadly military-style assault weapons on innocent citizens and the law enforcement officers who seek to protect us all. Recent events illustrate again, and with chilling vividness, the tragedy that results from the wide and easy availability of guns with fire power that overwhelm our police, of weapons that have no place in hunting or sport and whose only real function is to kill human beings at a ferocious pace. 105

Those factors are just as prevalent today. Indeed, after 9/11, the need may be greater.

Unfortunately, the 1994 statute's scope and effectiveness were limited in several important ways. First, the law included a 10-year sunset provision allowing it to lapse when it was not re-enacted in 2004. Second, the law contained a list of assault weapons banned by make and model, but this list was not comprehensive. Third, the statute also banned guns by reference to their military features, but required guns to have **two** of these features (in addition to being semiautomatic firearms capable of accepting a detachable, high-capacity ammunition magazine) in order to be banned. The requirement of two military features created a loophole that allowed gun makers to continue manufacturing and selling stripped-down assault weapons. ¹⁰⁶

The result was a piece of legislation that was valuable at keeping many of the most dangerous assault weapons out of criminals' hands, but one that also had an opening for gun manufacturers to evade the ban. Some manufacturers evaded the ban by developing guns, like the Bushmaster XM-15, Intratec's AB ("After Ban")-10, and Olympic Arms PCR ("Politically Correct Rifle"), with only minor changes in features to banned weapons.

Effect of the 1994 Ban

According to a study published by the Brady Center in 2004 entitled *On Target: The Impact of the 1994 Federal Assault Weapons Act*, the federal assault weapons ban reduced the incidence of assault weapons use in crime. In the five-year period (1990-1994) before enactment of the ban, assault weapons named in the Act constituted 4.82% of the crime gun traces ATF conducted nationwide. In the post-ban period after 1995, ¹⁰⁷ these assault weapons made up only 1.61% of the guns ATF has traced to crime – a drop of 66% from the pre-ban rate. ¹⁰⁸ Moreover, ATF trace data showed a steady year-by-year decline in the percentage of assault weapons traced, suggesting that the longer the statute was in effect, the less available these guns became for



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criminal misuse. Indeed, the absolute number of banned assault weapons traced also declined. An initial report issued by the Department of Justice supported these findings. These findings were further supported in a later report by one of the same researchers. 110

This analysis was based on crime gun trace data compiled by ATF of more than 1.4 million crime guns recovered across the United States between 1990 and 2001. If the ban had not been enacted, and had the banned assault weapons continued to make up the same percentage of crime gun traces as before the Act's passage, it was estimated that approximately 60,000 more of the banned assault weapons would have been traced to crime in the 10 years the law was in effect. Former ATF officials at Crime Gun Solutions, LLC, including the former Special Agent in Charge of ATF's National Tracing Center, analyzed the data for the Brady Center.

On Target also looked at the problem of "copycat" assault weapons developed by the gun industry to enable the continued sale of high-firepower weapons. The study found that industry efforts to evade the federal ban through the sale of these "copycat" weapons was able to diminish, but not eliminate, the 1994 Act's beneficial effects. Even including copycats of the federally banned guns, there was still a 45% decline between the pre-ban period (1990-1994) and the post-ban period (1995 and after) in the percentage of ATF crime gun traces involving assault weapons and copycat models.

The lesson to be drawn from this study is that a new assault weapons ban should be passed to reduce criminal use of these dangerous weapons, but it should be stronger and more comprehensive than the original federal ban to reduce indirect evasion through the manufacture of "copycat" weapons. One model for a strong assault weapons ban is the law California enacted in 2000 that bans military-style weapons capable of accepting high-capacity ammunition magazines that have even a single combat feature. Representative Carolyn McCarthy has introduced similar strong assault weapons legislation in the U.S. House of Representatives. 113

Support by Law Enforcement, the Public, and Presidents

The law enforcement community has long supported strong assault weapons bans. Every major national law enforcement organization in the country supported the Federal Assault Weapons Act and urged its renewal, including the Law Enforcement Steering Committee, Fraternal Order of Police, National Sheriffs' Association, International Association of Chiefs of Police, Major City Chiefs Association, International Brotherhood of Police Officers, National Association of Police Organizations, Hispanic American Police Command Officers Association, National Black Police Association, National Organization of Black Law Enforcement Executives, Police Executive Research Forum, and Police Foundation.

In poll after poll, the American people, regardless of party affiliation, have consistently supported a federal ban on assault weapons. In an ABC/Washington Post poll conducted in August-September 1999, 77% of adults supported a nationwide ban



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on the sale of assault weapons.¹¹⁴ That same percentage held firm through the end of 2003 when an NBC News/Wall Street Journal poll found that 78% of adults nationwide expressed support for renewing the federal ban.¹¹⁵ In September 2004, just after the assault weapons ban expired, a Harris poll found that a substantial majority of Americans, 71%, favored reinstatement of the ban.¹¹⁶ As more time has passed without a federal assault weapons ban in effect, support for a ban has grown. For example, a 2007 poll from Illinois found that 80% of voters favored banning semiautomatic assault weapons.¹¹⁷ Newspaper editorial boards have also continued their strong support for getting assault weapons off our nation's streets.¹¹⁸

Presidents across the political spectrum have supported an assault weapons ban. Former Presidents Ford, Carter, and Reagan wrote Congress in support of the 1994 ban to "urge you to listen to the American public and to the law enforcement community and support a ban on the further manufacture of these weapons." In 2004, Presidents Ford, Carter, and Clinton wrote to urge re-authorization of the ban. President George W. Bush also stated that he supported the ban and would sign its reauthorization if it passed Congress.

Senator Obama Opposes Assault Weapons for Civilians, While Senator McCain Supports Them

Of the Presidential candidates, Senator Barack Obama supports banning assault weapons. He also addressed the issue in his acceptance speech to the 2008 Democratic Convention, saying, "The reality of gun ownership may be different for hunters in rural Ohio than they are for those plagued by gang violence in Cleveland, but don't tell me we can't uphold the Second Amendment while keeping AK-47s out of the hands of criminals."

Senator John McCain has consistently opposed an assault weapon ban, saying it "represented an arbitrary restriction on the constitutional rights of law-abiding citizens."



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Conclusion

Assault weapons are weapons of war that are sought after and used by street gangs, drug dealers, and terrorists, but are of no use to law-abiding persons who own guns for sporting purposes and self-defense. Law enforcement and an overwhelming majority of the American public realize that these guns have no place in civilian hands, and should be banned. For 10 years, America attempted to limit the mayhem caused by assault weapons and the high-capacity ammunition magazines that they utilize. Although the gun industry worked hard to evade the federal ban by marketing assault weapons stripped of enough features to get by, gun makers were not wholly effective at neutralizing the federal ban's effect. Even accounting for the industry's evasive efforts, the use of assault weapons in crime declined substantially. Unfortunately, President Bush and the 108th Congress allowed it to lapse.

We need to enact a new, stronger federal assault weapons ban to keep these dangerous guns off the streets – a law that will ban all military-style weapons and with no sunset provision.

The lives of our law enforcement officers and our citizens hang in the balance.







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APPENDIX: Examples of Assault Weapon Violence Since Federal Ban Expired

- North Tulsa, Oklahoma. October 6, 2008. A man accidentally shot his roommate
 with an SKS assault rifle. The victim and shooter were arguing with the victim's
 estranged wife and another man when the shooter fired warning shots, hitting his
 roommate inadvertently.¹
- Madison, Illinois. October 6, 2008. A 12-year-old boy died after getting caught in the middle of a gunfight. More than 40 shots were fired as a man with an assault rifle exchanged fire with gunmen in cars.²
- Springfield, Missouri. October 4, 2008. A 21-year-old shot two men with an AR-15 Assault Rifle during an argument at a nightclub.³
- Kansas City, Missouri. October 2, 2008. Two men, one armed with an assault rifle, shot at two undercover police officers. The officers returned fire, injuring the two assailants.⁴
- **Brownsville, Texas. September 30, 2008.** Two men armed with an AK-47 Assault Rifle and .38 revolver shot multiple rounds at a group of men gathered outside a home twice in one night. There was a long-standing argument between the shooters and one of the victims. Nobody was hurt in either incident.⁵
- Battle Creek, Michigan. September 28, 2008. A felon with an assault weapon shot two teenagers in retaliation for a shooting several weeks prior. 6
- Jackson, Mississippi. September 26, 2008. Two men armed with an assault rifle shot repeatedly at a house, hitting a woman and a one year old boy inside.⁷
- Lenoir, North Carolina. September 21, 2008. A former police officer and army veteran, who was armed with an assault rifle, shot two sheriff's deputies, killing one of them.⁸
- San Antonio, Texas. September 18, 2008. A gunman with an AK-47 assault rifle fired more than 15 rounds at a home, hitting a woman sleeping inside twice.⁹

⁸ Dee Henry, Armed and dangerous, HICKORY DAILY HERALD, Sept. 22, 2008.



¹ Man accidentally shot by roommate, KJRH- TV 2, Tulsa, Oklahoma, Oct. 6, 2008.

² 12 Year Old Shot Dead In Madison, Illinois Overnight, Associated Press, Oct. 7, 2008.

³ Dirk Vanderhart, *Shooting prompted by conflict over woman, hat*, SPRINGFIELD NEWS-LEADER, Oct. 7, 2008.

⁴ KCMO Officers Fired on with Assault Rifle, WDAF-TV 4, Kansas City, Missouri, Oct. 2, 2008.

⁵ Police: 10-year grudge prompts downtown shooting, BROWNSVILLE HERALD, Oct. 3, 2008.

⁶ Trace Christenson, B.C. man faces attempted murder charge, BATTLE CREEK ENQUIRER, Oct. 2, 2008.

⁷ 2 men charged in shooting denied bond, ASSOCIATED PRESS, Oct. 2, 2008.

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- Charlotte, North Carolina. September 15, 2008. Two people were sitting in a car
 outside an apartment building when a man shot at them with an assault rifle. One
 person in the car was hit twice and the other individual was injured by shattered
 glass.¹⁰
- Houston, Texas. September 9, 2008. One person died and two were injured in an overnight shooting. The assailants were carrying several weapons, including an assault rifle.¹¹
- San Antonio, Texas. September 8, 2008. A man shot two police officers with an assault rifle when the police attempted to arrest him. A standoff between the suspect and police followed, ending hours later when the suspect shot and killed himself. ¹²

Tulsa, Oklahoma. September 7, 2008. A gunman with an assault weapon opened fire on a car carrying five teenagers home from church. Four of the five passengers were hit: Donivan Crutcher died from his wounds, Adrion Crutcher sustained damage to his spinal cord, Jeremy Williams lost the sight in his left eye, and Jahmal Bryant was in the intensive care unit. Four days later, a suspect was arrested in connection with the shooting. ¹³

- **Birmingham, Alabama. September 5, 2008.** A man shot and killed his landlord with an SKS assault rifle after the two argued over stolen property. 14
- Dayton, Ohio. August 26, 2008. A 31-year-old man sustained severe leg injuries when he was shot multiple times with an assault rifle.¹⁵
- Hope Mills, North Carolina. August 25, 2008. An 18-year-old shot a man in the head with an assault rifle. The victim was leaving the shooter's house by car, along with a woman and baby, when the incident occurred.¹⁶
- Miami, Florida. August 23, 2008. An intoxicated customer was shot with an AK-47 assault rifle after being kicked out of a strip club. The shooter was then shot by another man, who was also carrying an assault rifle.¹⁷

¹⁷ 2 Dead in Shootout At Strip Club, NBC6-TV, Miami, Florida, Aug. 23, 2008.



Shooter Opens Fire On Home, Sleeping Woman Hit Twice, WOAI – TV 4 San Antonio, Sept. 18, 2008.

Apartment Complex Evacuated After Double Shooting, WSOC-TV 9, Sept. 16, 2008.

¹¹ Suspects in Triple Shooting Had Assault Rifle, Multiple Weapons, FOX 26 TV Houston, Sept. 10, 2008.

¹² SAPD Details Monday Shooting Investigation, KSAT12-TV, San Antonio, Texas, Sept. 10, 2008.

¹³ Arrest made in deadly drive-by, Tulsa World, Sept. 12, 2008.

¹⁴ Landlord Killed After Argument Over Stolen Copper, NBC13-TV, Birmingham, Alabama, Sept. 8, 2008.

¹⁵ Man Targeted By Shooter With Assault Rifle, WHIOTV, Dayton, Ohio, Aug. 27, 2008.

¹⁶ Three charged in Hope Mills shooting, THE FAYETTEVILLE OBSERVER, Aug. 28, 2008.

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- Youngsville, North Carolina. August 22, 2008. A 12-year-old boy accidentally shot an 11-year-old neighbor with an AK-47 assault rifle. 18
- San Antonio, Texas. August 20, 2008. A man was chased by a group of young men outside an apartment complex and was shot twice with an assault rifle. 19
- West Valley City, Utah. August 15, 2008. Three men in an SUV shot at another car with an assault rifle and then led police on a high-speed chase. The police recovered drugs, alcohol, live casings, and an assault rifle from the car. 20

Newark, New Jersey. August 14, 2008. 15-year-old Bukhari Washington was killed after a bullet fired from a Chinese-made Norinco SKS assault rifle struck his bed while he slept. The gun was fired accidentally when its owner, 19-year-old Terrance Perry, was "fiddling" with it in the apartment below. Washington was a student at Christ the King Preparatory School and interned at a nursing home for people with HIV and AIDS.21

- Birmingham, Alabama. August 11, 2008. A 17-year-old girl was in a car that was sprayed by bullets from an AK-47. The girl exited the car and tried to run home when she was shot twice, once in the chest and again in her left hand, severing it. She died moments later from her injuries.²²
- New Orleans, Louisiana. August 10, 2008. One man was injured and another man died after being shot with an AK-47 assault rifle.²³
- New Orleans, Louisiana. August 8, 2008. A gunman carrying an assault rifle shot two people.²⁴
- Niagara, Wisconsin. July 31, 2008. A man with an assault rifle massacred a group of teenagers, killing three and injuring a fourth. The group was gathered along a river to go swimming when the gunman emerged from surrounding woods and began shooting.²⁵

²⁵ Niagara, Wisconsin shooting suspect caught, THE CHICAGO TRIBUNE, Aug. 1, 2008.



¹⁸ Sheriff says boy, 11, shot with AK-47, THE NEWS & OBSERVER, Aug. 24, 2008.

¹⁹ Man Chased Down and Shot to Death, WOAI-TV, San Antonio, Texas, Aug. 21, 2008.

²⁰ Shooting triggers high-speed chase; 3 arrested, THE SALT LAKE TRIBUNE, Aug. 15, 2008.

²¹ Jonathan Schuppe, Senseless Shot, Random Death: Respected teen is slain in bed, to Newark's grief, THE STAR-LEDGER, Aug. 15, 2008.

Dan Barry, Gunshot, then silence: And the sorrow spreads, NEW YORK TIMES, Aug. 17, 2008.

²³ Nicole Dungca & Ramon Antonio Vargas, *Two die Sunday in separate slayings*, THE TIMES-PICAYUNE, Aug. 11, 2008.

Leslie Williams, Mob scene follows double shooting, THE TIMES-PICAYUNE, Aug. 9, 2008.

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- Pittsburgh, Pennsylvania. July 31, 2008. Two men with an assault rifle shot and killed two cousins as they talked outside a home.²⁶
- Orlando, Florida. July 30, 2008. A man with an assault rifle shot and killed two teenagers and another man over stolen property.²⁷
- Dallas, Texas. July 29, 2008. A Dallas Morning News deliveryman was shot multiple times with an assault rifle while delivering papers early in the morning. His 14-year-old son was with him, but was not injured.²⁸
- Kansas City, Missouri. July 28, 2008. Three men broke into a home and held up the occupants at 1:30 in the morning. The men were armed with an assault rifle with a bayonet attached.²⁹
- **Detroit, Michigan. July 27, 2008**. Three people died, including a 17-year-old girl, after being shot with an assault rifle while leaving a bar.³⁰
- Salt Lake City, Utah. July 26, 2008. A 19-year-old airman shot a 22-year-old with an assault rifle after the two argued at a nightclub. The airman shot another person several months earlier.³¹
- Chattanooga, Tennessee. July 24, 2008. Two men armed with an SKS assault rifle shot a 28-year-old man in the head and back.³²

Oakland, California. July 23, 2008. 23-year-old Amanda Hunter was killed when she was accidentally shot in the head with an assault rifle. Hunter was attempting to remove the weapon from her home when it fell to the ground and fired. Her boyfriend, the owner of the weapon and a convicted felon, was arrested for weapons related charges including being a felon in possession of a firearm.³³

• **New Orleans, Louisiana. July 15, 2008**. A man died after being shot repeatedly with an AK-47 while asleep in his trailer.³⁴

³⁴ Ramon Antonio Vargas, *AK-47 fire kills sleeping former rapper*, THE TIMES PICAYUNE, July 16, 2008.



²⁶ Jill King Greenwood, *72 killings set bloody pace in city, county*, PITTSBURGH TRIBUNE-REVIEW, Aug. 2, 2008

²⁷ Vincent Bradshaw & Willoughby Mariano, *Flurry of bullets near Orlando playground kills three*, THE ORLANDO SENTINEL, July 31, 2008.

²⁸ Scott Goldstein, *Father, son survive shooting during News delivery*, THE DALLAS MORNING NEWS, Aug. 7, 2008.

²⁹ Mike Rice, *Home invasion robbery reported in Gladstone*, KANSAS CITY STAR, July 28, 2008.

³⁰ Candice Williams, *Girl, 17, two men fatally shot outside Detroit bar*, THE DETROIT NEWS, July 27, 2008.

³¹ Airman's arrest for shooting not his first, STANDARD-EXAMINER, July 29, 2008

³² Jacqueline Koch, *Police investigate assault-rifle shooting*, CHATTANOOGA TIMES FREE PRESS, July 25, 2008

^{2008. &}lt;sup>33</sup> Oakland woman killed when assault rifle accidentally fires, July 24, 2008, available at: http://www.insidebayarea.com/ci_9977524 (last visited Sept. 26, 2008).

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- **Daytona Beach, Florida. July 13, 2008.** A distraught man fired 30 rounds into the side of an occupied building with an AK-47 assault rifle.³⁵
- Eatonville, Florida. July 8, 2008. A father and son were shot during a robbery with an AK-47 assault rifle. 36
- Youngstown, Ohio. July 8, 2008. A man beat up and attempted to shoot his girlfriend with an assault weapon.³⁷
- Edwardsville, Illinois. July 7, 2008. Two 19-year-olds repeatedly shot at a sheriff's deputy with an assault weapon as he pursued them during a car chase.³⁸
- Van Buren, Michigan. July 6, 2008. Two 19-year-olds with an assault rifle shot and killed a man they had argued with earlier.³⁹
- Beaumont, Texas. July 5, 2008. One person was injured when a man shot an assault rifle into a crowd standing outside a nightclub.⁴⁰
- Dallas, Texas. July 4, 2008. A gunman shot at an apartment building with an AK-47 assault rifle, killing a 17-year-old girl inside. The gunman had been arguing with the girl's stepfather outside. 41
- **Buena Vista, Michigan. July 3, 2008**. A gunman shot an AK-47 multiple times into a car carrying two teenage girls, hitting one in the leg. 42

⁴² Buena Vista gunman fires AK-47, strikes girl, WNEM.com, July 8, 2009, available at. http://www.wnem.com/print/16821122/detail.html (last visited Sept. 26, 2008).



³⁵ Julie Murphy, *Outlaws clubhouse shot up. Police: man fires 30 rounds, accuses members of rape*, DAYTONA BEACH NEWS JOURNAL, July 17, 2008.

³⁶ Shooting may be linked to Orlando Incident, WESH.com, Orlando, FL, July 8, 2008, available at: http://www.wesh.com/print/16817435/detail.html (last visited Sept. 26, 2008).

³⁷ Man charged with assault over domestic dispute, VINDY.COM, July 9, 2008, available at: http://www.vindy.com/news/2008/jul/09/man-charged-with-assault-over-domestic-dispute/ (last visited Sept. 26, 2008).

³⁸ Sandord J. Schmidt, *Two accused of shooting at deputy*, THE TELEGRAPH.COM, July 8, 2008, *available at.* http://www.thetelegraph.com/news/county_15966___article.html/madison_accused.html (last visited Sept. 26, 2008).

³⁹ Susan L. Oppat, 2 Van Buren teens charged in slaying, THE ANN ARBOR NEWS, July, 10, 2008.

⁴⁰ Heather Nolan, *Beaumont police seek help in investigating shooting at night club*, BEAUMONTENTERPRISE.COM, July 7, 2008, *available at*.

http://www.beaumontenterprise.com/news/local/beaumont_police_seek_public_s_help_in_investigaton_0 7-07-2008_10_43_01.html (last visited Sept. 26, 2008).

⁷⁻⁰⁷⁻²⁰⁰⁸_10_43_01.html (last visited Sept. 26, 2008).

Seema Mathur, *Teen hit by stray bullet at dallas apartment*, CBS11TV.COM, July 6, 2008, *available at*. http://cbs11tv.com/local/dallas.teen.shot.2.764557.html (last visited Sept. 26, 2008).

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Warsaw, North Carolina. July 2, 2008. 18-year-old high school football star Derrick Barden was killed after being shot with an AK-47. Three teenagers were charged with his death, which occurred as a group of people played with an AK-47 outside of an apartment complex.⁴³

- Adairsville, Georgia. June 29, 2008. A man carrying an AK-47 assault rifle shot a woman twice in the chest during a robbery attempt.⁴⁴
- Overtown, Florida. June 28, 2008. A 15-year-old died after he was shot with an assault weapon during a drive-by shooting.⁴⁵
- Mobile, Alabama. June 27, 2008. A 6-year-old boy was shot three times and a man twice when a group of men fired AK-47 and SKS assault weapons at the two cars they were riding in.⁴⁶
- Powhatan, Virginia. June 25, 2008. A 17-year-old with an assault weapon shot and killed an 18 year old after the two argued.⁴⁷
- Powhatan County, Virginia. June 24, 2008. An 18-year-old high school student
 was shot and killed with an assault rifle following an altercation at a gas station. A
 juvenile was also wounded in the shooting.⁴⁸
- Anderson, South Carolina. June 22, 2008. A man fired more than 30 rounds from an assault rifle at a group of people, killing a 16-year-old who was hit three times and wounding a man.⁴⁹
- Opa Locka, Florida. June 22, 2008. A man shot an AK-47 assault rifle at a business, injuring three people inside.⁵⁰

⁴³ Steve Herring, *Three teens charged in player's shooting*, GOLDSBORO NEWS-ARGUS, July 9, 2008.

⁴⁴ Hayden Jennings, *Suspect arrested in Adairsville shooting*, ROMENEWSWIRE.COM, June 30, 2008, *available at:* http://www.romenewswire.com/index.php/2008/06/30/suspect-arrested-in-adairsville-shooting/ (last visited Sept. 26, 2008).

⁴⁵ David Ovalle, 2 deaths raise 2008 homicides to 136, THE MIAMI HERALD, July 2, 2008

⁴⁶ Ron Colquitt, *Four suspects denied bail*, THE PRESS-RESGISTER, June 28, 2008.

⁴⁷ Authorities: Powhatan teen's killer was 17-year-old, INRICH.COM, June 30, 2008, available at: http://www.inrich.com/cva/ric/news.PrintView.-content-articles-RTD-2008-06-30-0195.html (last visited Sept. 26, 2008).

⁴⁸ Linda Dunham & Reed Williams, *Suspects in fatal shooting surrender: Sheriff: Trio wanted in Powhatan teen's death face murder charges; suspected weapon found*, RICHMOND TIMES-DISPATCH, June 29, 2008.

⁴⁹ Craig Stanley, *Westside student, shooting victim, is remembered,* INDEPENDENTMAIL.COM, June 27, 2008, *available at.* http://www.independentmail.com/news/2008/jun/27/westside-student-shooting-victim-remembered/ (last visited Sept. 26, 2008).

⁵⁰ 3 shot in Opa Locka, NBC6.NET, June 22, 2008, available at: http://www.independentmail.com/news/2008/jun/27/westside-student-shooting-victim-remembered/ (last visited Sept. 26, 2008).

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- Little Rock, Mississippi. June 21, 2008. A man died after being shot in the head with an AK-47 assault rifle. The gunman and victim had argued over a dice game.⁵¹
- Elyria, Ohio. June 14, 2008. A woman died after being shot with an AK-47 assault rifle during a robbery.⁵²
- Miami, Florida. June 13, 2008. A man shot six people at a graduation party with an assault rifle. One of the victims died.⁵³
- Lavaca County, Texas. June 11, 2008. A 14-year-old boy died after being accidentally shot by his grandfather with an AK-47 assault rifle.⁵⁴
- Longview, Texas. June 10, 2008. A man opened fire with an AK-47 assault rifle after arguing with his girlfriend, injuring three people, including a 7-year-old girl. 55
- Wilkes, North Carolina. June 6, 2008. A 17-year-old was seriously injured after being shot with an AK-47 assault rifle. Several teenagers were plaving with the gun when it was fired.56
- Shreveport, Louisiana. June 1, 2008. A 25-year-old man was seriously injured after being shot multiple times with an assault rifle while in his car. 57
- Tucson, Arizona. June 1, 2008. A man shot at several houses with an assault rifle, then lead police in pursuit across Tucson for more than an hour. During the chase, the gunman shot at police multiple times, fatally shooting one officer and injuring two Sheriff's deputies.⁵⁸

STAR, June 2, 2008.



⁵¹ Tim Doherty, *Foxworth man held in slaying* THE HATTIESBURG AMERICAN, June 24, 2008.

⁵² Matt Suman, AK-47 used in deadly Gas USA robbery, THEMORNINGJOURNAL.COM, June 25, 2008 available at.

http://www.zwire.com/site/news.cfm?newsid=19801129&BRD=1699&PAG=461&dept_id=46371&rfi=6

⁽last visited Sept. 26, 2008).

53 Teen shot and killed while leaving graduation party, WSVN.com, Miami Gardens, FL, available at: http://www.wsvn.com/news/articles/local/MI88522/ (last visited Sept. 26, 2008).

⁵⁴ Teen shot. killed in hunting accident, KSAT.com, June 12, 2008, available at. http://www.zwire.com/site/news.cfm?newsid=19801129&BRD=1699&PAG=461&dept_id=46371&rfi=6 (last visited Sept. 26, 2008).

³ wounded in Longview gunfire, THE DALLS MORNING NEWS, June 10, 2008.

⁵⁶ Wilkes teens play with rifle, one shot, GOBLUERIDGE.NET, June 9, 2008, available at. http://www.goblueridge.net/index.php?option=com_content&task=view&id=3821&Itemid=1 (last visited

Sept. 26, 2008). ⁵⁷ Katrina Webber, Violent weekend in Shreveport leaves 3 with gunshot wounds, KSLA NEWS 12, June

^{2, 2008,} available at. http://www.ksla.com/Global/story.asp?S=8410023&nav=0RY5RQCK (last visited Sept. 26, 2008). ⁵⁸ Brady McCombs & Alexis Huicochea, *Officer on life support after crosstown pursuit,* ARIZONA DAILY

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- **New Orleans, Louisiana. May 26, 2008.** Two people were injured when a gunman carrying an AK-47 assault rifle fired more than twenty rounds at them. ⁵⁹
- Jackson, Mississippi. May 26, 2008. Five people were shot, one fatally, at a Memorial Day barbecue. A man left the party after an argument and returned with an assault rifle and fired indiscriminately into the crowd.⁶⁰
- **Shreveport, Louisiana. May 19, 2008**. A 15-year-old shot a 14-year-old with an assault weapon. ⁶¹
- **Brooklyn, Connecticut. May 14, 2008**. A 16-year-old boy with Asperger syndrome shot an assault rifle near a group of people playing basketball in a park who he had argued with earlier. 62
- **Miami, Florida. May 14, 2008**. A man was shot multiple times after his car was sprayed with bullets from an assault weapon.⁶³
- San Jacinto, California. May 12, 2008. A SWAT team was called in after a man and woman armed with assault rifles shot at security guards and then Sheriff's deputies. The two were killed in the resulting shootout.⁶⁴
- Raceland, Louisiana. May 12, 2008. Three men attacked three other men in their car, killing all three. Each victim was shot multiple times with an AK-47 assault rifle.⁶⁵

Calabash, North Carolina. May 8, 2008. James Murdock, 25, was killed in a drive-by shooting. Murdock was sitting in a car when a dark SUV pulled up and fired at him with an assault rifle. He died at the scene. Two men were charged with the murder. ⁶⁶

San Jacinto, California. May 8, 2008. A 26-year-old man shot at Sheriff's deputies with an assault rifle. The man was killed when the policemen returned fire.⁶⁷

⁶⁶ Shannan Bowen, Two charged in Calabash murder, STAR-NEWS, May 20, 2008.



⁵⁹ Pair gunned down by AK-47, WDSU.com, May 27, 2008, available at: http://www.wdsu.com/news/16401761/detail.html (last visited Sept. 26, 2008).

⁶⁰ Kathleen Baydala, *Man arrested in fatal holiday party shooting*, THE CLARION LEDGER, May 28, 2008.

⁶¹ Arrest made in shooting of 14 year old boy, KSLA NEWS 12, May 20, 2008, available at.

http://www.ksla.com/Global/story.asp?S=8350809&nav=menu50_11_16_4 (last visited Sept. 26, 2008).

⁶² Dustin Racioppi & Don Bond, *Conn. teen with autism held in assault rifle shooting*, THE METRO WEST DAILY NEWS, May 15, 2008, *available at*:

http://www.metrowestdailynews.com/archive/x2118739287/Conn-teen-with-autism-held-in-assault-rifle-shooting (last visited Sept. 26, 2008).

⁶³ Man shot with high-powered assault weapon, LOCAL 10 NEWS, May 14, 2008, available at: http://www.local10.com/print/16261614/detail.html (last visited Sept. 29, 2008).

⁶⁴ Gillian Flaccus, *Deputies kill 2 in gun battle on Calif. Reservation*, Associated Press Archive, May 14, 2008

<sup>2008.
&</sup>lt;sup>65</sup> Raymond Legendre, *Grand jury to consider Raceland triple-slaying case*, THE COURIER, August 11, 2008.

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 Ripon, Wisconsin. May 6, 2008. A 19-year-old accidentally shot and killed an 18-year-old friend with an assault rifle while the two were at a friend's house.⁶⁸

Stafford, Virginia. May 5, 2008. Aaron Poseidon Jackson shot his children, 1-year-old Aaron and 2-year-old Nicole, with a .38 caliber handgun, then shot their mother, Latasha Thomas, with an AK-47. When police arrived at the home, Jackson, wearing a bulletproof vest and surrounded by guns and ammunition, was found dead from a self inflicted gunshot wound. ⁶⁹

- Burien, Washington. May 4, 2008. A man died when he was shot in the head with an assault rifle after arguing with the shooter in a bar. The shooter left after the initial incident but returned with the gun.⁷⁰
- Chicago, Illinois. May 4, 2008. A college student died after being shot with an assault rifle when she was caught in crossfire from a gang while in a car.⁷¹
- Cordova, New Mexico. May 4, 2008. A man killed his 17-month-old son by shooting him in the chest with an assault rifle.⁷²
- Philadelphia, Pennsylvania. May 3, 2008. A police officer was shot and killed by an assault rifle as he was responding to a bank robbery. Three men robbed the bank and were fleeing when the officer stopped their car and exited his patrol car. At that time, one of the bank robbers opened fire with an SKS assault rifle, striking the officer numerous times. One suspect was eventually shot and killed by police and the other two were arrested and charged with murder.⁷³
- San Antonio, Texas. May 2, 2008. Two teens armed with an assault rifle shot at a man after he tried to stop a fight between groups of teenagers.⁷⁴

⁷⁴ Man shot at after breaking up fight, KSAT TV 12, May 2, 2008, available at: http://www.ksat.com/news/16136482/detail.html (last visited Sept. 26, 2008).



⁶⁷ Jose Arballo Jr., Steve Fetbrandt & Michelle DeArmond, *Soboba member killed in gun battle with deputies*, THE PRESS-ENTERPRISE, May 8, 2008.

⁶⁸ Teen charged with negligent homicide in Ripon shooting posts bond, NBC 15 NEWS, Feb. 29, 2008, available at: http://www.nbc15.com/home/headlines/15839617.html last visited (Sept. 29, 2008).

⁶⁹ Keith Epps & Ellen Biltz, *Gunman heavily armed*, FREDERICKSBURG.COM, May 7, 2008, *available at*. http://fredericksburg.com/News/FLS/2008/052008/05072008/377460 (last visited Sept. 26, 2008).

⁷⁰ Casey McNerthney, *Man shot after Burien bar fight dies*, SEATTLE POST-INTELLIGENCER, May 5, 2008.

⁷¹ Annie Sweeney & Stefano Esposito, *We had so many plans*, THE CHICAGO SUN-TIMES, May 6, 2008.

⁷² Isaac Paul Vasquez, *Police allege father killed son*, KFOXTV.com, May 4, 2008, *available at*. http://www.kfoxtv.com/news/16157794/detail.html (last visited Sept. 26, 2008).

⁷³ Joseph A. Gambardello, *Liczbinski suspect's girlfriend to stand trial*, Philadelphia Inquirer, July 17, 2008; *Officer shot, killed after bank robbery*, NBC 10.com, May 3, 2008; See Sergeant Stephen Liczbinski, www.odmp.org, *available at.* http://www.odmp.org/officer/19359-sergeant-stephen-liczbinski (last visited Sept. 30, 2008).

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- Compton, California. April 29, 2008. A 19-year-old with an assault rifle exchanged fire with Sheriff's deputies. No one was injured in the incident. 75
- Chicago, Illinois. April 21, 2008. The owner of a plumbing company was shot in the stomach by an employee using an AK-47 and died as a result. The employee also shot at three police officers later in the evening.⁷⁶
- York, Pennsylvania. April 11, 2008. A man died after he was shot multiple times with an assault rifle. The victim and shooter had argued earlier.⁷⁷
- Miami, Florida. April 5, 2008. A 16-year-old boy died and his mother was injured when they were shot with an assault rifle outside of their home by people they had previously argued with.⁷⁸
- Sharonville, Ohio. April 3, 2008. A 14-year-old girl was shot in the leg when a man fired an assault weapon randomly into the street. The bullet went through a car door and hit the victim.⁷⁹
- Miami, Florida. April 3, 2008. A 20-year-old with over thirteen firearms, including four AK-47s, and more than 5,000 rounds of ammunition, was arrested after threatening over the internet that he was going to carry-out a Virginia Tech style massacre.80
- Tarpon Springs, Florida. March 30, 2008. A man fired several rounds from an assault weapon toward another man who was exiting his car.81
- Donaldsonville, Louisiana. March 22, 2008. A five-year-old boy and a man were injured after being shot with an assault rifle on the street.82
- Virginia Beach, Virginia. March 19, 2008. A man shot five people, killing two, with an AK-47 assault rifle and .9 mm handgun before killing himself. The man was

Samuel Irvin, Sheriff promises to boost patrols, THE ADVOCATE, Mar. 27, 2008 available at. http://www.2theadvocate.com/news/17040851.html (last visited Sept. 26, 2008).



 $^{^{75}}$ Suspect arrested in connection to Compton shootout, CBS2.com, May 1, 2008, available at. http://cbs2.com/local/Compton.Shooting.Arrest.2.713125.html (last visited Sept. 26, 2008).

⁷⁶ Lisa Donovan et. al., SWAT will go on patrol, CHICAGO SUN TIMES, Apr. 22, 2008.

⁷⁷ Kristin Thorne, York man killed in shooting involving assault rifle, ABC27 NEWS, Apr. 11, 2008, available at: http://cfc.whtm.com/printstory.cfm?id=510600 (last visited Sept. 29, 2008). Teen killed, mother injured in shooting, NBC6.NET, Apr. 6, 2008, available at:

http://www.nbc6.net/news/15806302/detail.html (last visited Sept. 26, 2008).

⁷⁹ Teenage girl accidentally shot in Sharonville, WCPO 9 NEWS, Apr. 3, 2008, available at: http://www.wcpo.com/news/local/story.aspx?content_id=c473d379-e54d-4b46-a24d-397f12369149 (last visited on Sept. 29, 2008).

Police: Man threatened to re-enact Virginia Tech-style killings, ASSOCIATED PRESS, Apr. 4, 2008.

⁸¹ Tarpon Springs man arrested in assault rifle attack, TBO.COM, Mar. 31, 2008, available at. http://suncoastpasco.tbo.com/content/2008/mar/31/tarpon-springs-man-arrested-assault-rifle-attack/ (last visited Sept. 26, 2008).

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about to be evicted from his apartment and targeted the apartment complex's employees in his attack.⁸³

- Chattanooga, Tennessee. March 15, 2008. A man fired more than 20 rounds from an assault rifle at another man outside of an apartment building. The victim was not hit.⁸⁴
- Baton Rouge, Louisiana. March 7, 2008. A 16-year-old male shot his father in the arm with an AK-47 and was placed in juvenile detention on one count of attempted murder.⁸⁵
- Kansas City, Missouri. March 5, 6, 7, 2008. One man was killed and three injured during a drive-by shooting of a tire store. The shooters used two .223-caliber assault rifles, one of which had two large drum magazines and could fire 100 bullets without reloading. Police pursued the shooters, who were eventually apprehended, and were shot at with the same assault rifles. The following day, three retaliatory shootings occurred; the day after, one retaliatory shooting occurred in which a woman was shot seven times in the chest and torso. 86
- Roanoke, Virginia. February 29, 2008. A car chase ended when the driver pulled over and began shooting at police with an SKS assault rifle. The police shot and seriously wounded the driver. None of the police were seriously injured.⁸⁷

Gainesville, Georgia. February 19, 2008. 52-year old Mary Bailey was killed after being shot with an AK-47. Bailey was sleeping on the sofa when her 19-year old son, Derrick Bailey, cleaned his assault weapon and it fired. Derrick claims he did not know the weapon was loaded. 88

- Marrero, Louisiana. February 16, 2008. An 18-year-old was killed and a 16-year-old wounded after being shot with an AK-47 multiple times. The shooter fired more than 20 rounds at the two victims.⁸⁹
- Pulaski, Kentucky. February 9, 2008. A man fired more than 50 rounds from his assault rifle into a mobile home and garage after arguing with the owner. The homeowner received only minor injuries in the incident.⁹⁰

Gainesville teen: 'I shot my mother', WSBTV.COM, Feb. 19, 2008, available a http://www.wsbtv.com/news/15345707/detail.html (last visited Sept. 26, 2008).
Harvey teen booked with murder, THE TIMES PICAYUNE, Feb. 19, 2008.



⁸³ *Gunman in mass shooting identified*, WVEC 13 News, Mar. 20, 2008, *available at:* http://www.wvec.com/news/vabeach/stories/wvec_local_031908_vb_shooting.79dfc43.html (last visited Sept. 29, 2008).

Amy Katcher, East Lake shootout caught on tape, WDEF News 12, Mar. 26, 2008, available at: http://wdef.com/news/east_lake_shootout_caught_on_tape/03/2008 (last visited Sept. 26, 2008). Police and fire briefs, BATON ROUGE ADVOCATE, Mar. 8, 2008.

 ⁸⁶ Christine Vendel, *Heavy firepower in KC: Officers outgunned by suspects*, KANSAS CITY STAR, Mar. 8, 2007.
 ⁸⁷ Jessica Marcy, *Shots end U.S. 220 chase in Roanoke County*, www.roanoke.com, Mar. 1, 2008,

Jessica Marcy, Shots end U.S. 220 chase in Roanoke County, www.ROANOKE.COM, Mar. 1, 200 available at: http://www.roanoke.com/news/roanoke/wb/152736 (last visited Sept. 26, 2008).
 Gainesville teen: 'I shot my mother', WSBTV.com, Feb. 19, 2008, available at:

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- **Phoenix, Arizona. February 9, 2008**. A 17-year-old died and a 23-year-old was injured after being shot with an assault rifle during an attack by four men. ⁹¹
- Indianapolis, Indiana. February 8, 2008. An 8-year-old girl died after being shot in the head when someone sprayed her house with bullets from an assault weapon. 92
- Macon, Georgia. February 4, 2008. A man fired over 70 rounds from an assault rifle into the front of a house, killing the woman at the door. The man was looking for the woman's son but shot her after learning he was not at home. ⁹³
- Cleveland, Tennessee. February 2, 2008. A 20-year-old man died after being shot several times with an assault rifle as he exited a car. The gunman shot at the other people in the car and at a nearby house as well.⁹⁴
- Pittsburgh, Pennsylvania. January 28, 2008. A 12-year-old girl was killed and her mother badly injured after they were shot with an AK-47 assault rifle. The two were visiting a family member when an assailant sprayed the house with dozens of bullets.⁹⁵
- Camp Hill, Alabama. January 22, 2008. A 19-year-old shot a 17-year-old in the face with an assault rifle after the two argued over the stolen weapon. 96
- Miami, Florida. January 20, 2008. Three cousins were injured when dozens of rounds were fired from an assault rifle into their car. One of the cousins was left brain-dead.⁹⁷
- Carmichael, California. January 16, 2008. A 24-year-old man was shot with an assault rifle in a drive-by shooting and died.⁹⁸

⁹⁸ Two Carmichael killings may be connected, KCRA.com, Jan. 16, 2008, available at. http://www.kcra.com/news/15067608/detail.html (last visited Sept. 26, 2008).



⁹⁰ Eubank man jailed following hail of bullets fired into residence, WKYT.com, Feb. 9, 2008, available at: http://www.wkyt.com/home/headlines/15476381.html (last visited Sept. 26, 2008).

⁹¹ David Biscobing, Teen gunned down in Phoenix with rifle, EAST VALLEY TRIBUNE, Feb. 9, 2008.

⁹² Community mourns eight-year-old's shooting death, WTHR 13 NEWS, Feb. 26, 2008, available at: http://www.wthr.com/Global/story.asp?S=7853369 (last visited Sept. 29, 2008); Man charged in 8-year-old's shooting death, WTHR 13 NEWS, Feb. 27. 2008, available at: http://www.wthr.com/Global/story.asp?s=7865668 (last visited Sept. 29, 2008).

⁹³ Ashley Tusan Joyner, *Woman died after man sprays home with bullets*, THE MACON TELEGRAPH, Feb. 6, 2008

⁹⁴ Ryan Harris, *Bradley murder victim identified*, CHATTANOOGA TIMES FREE PRESS, Feb. 5, 2008.

⁹⁵ Michael Hasch, *Girl*, *12, killed as 40 shots blast into North Side home*, THE PITTSBURGH TRIBUNE-REVIEW, Jan. 29, 2008.

⁹⁶ Teen shot in face by assault rifle, WTVM.COM, Jan. 22, 2008, available at:

http://www.wtvm.com/Global/story.asp?S=7757100&nav=menu91_2 (last visited Sept. 26, 2008). ⁹⁷ David Ovalle, *Little Haiti: Gun violence tears family*, THE MIAMI HERALD, January 24, 2008.

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- Louisville, Kentucky. January 14, 2008. A man carrying an assault rifle fired several rounds at a police officer during a traffic stop. The officer was not injured.⁹⁹
- North Miami Beach, Florida. January 8, 2008. An off-duty Miami police detective was killed by a man who shot him with an AK-47 assault rifle as he sat in his car. 100
- Merrillville, Indiana. December 31, 2007. A 25-year-old man shot a 20-year-old man with an assault rifle. The shooter asked the victim and another man to leave his apartment after they argued, then followed them outside and shot the victim multiple times. 101

Little Rock, Arkansas. December 29, 2007. 6-year-old Kamya Weathersby was shot at least 7 times by gunmen outside her home as she was lying in bed. Police believe at least one assault rifle was used to fire 50 or more rounds at her home. The following day, Kamya died when her family made the decision to take her off life support. ¹⁰²

- Ozark, Alabama. December 29, 2007. An 18-year-old man repeatedly shot a 22-year-old man using a SKS assault rifle after the two argued. The 22-year-old died from his injuries.¹⁰³
- **Southington, Connecticut. December 24, 2007.** One man shot another in the head with an assault rifle, killing him, after the two argued. 104
- Arvada & Colorado Springs, Colorado. December 9, 2007. One man with an assault rifle attacked a missionary training center in Arvada and a church in Colorado Springs. He killed two people and injured two others in Arvada, and killed two and injured three others in Colorado Springs. He died after being shot by a security guard and then shooting himself.¹⁰⁵

¹⁰⁵ Erin Emery, Report details church shooting, the document chronicles the days leading up to the Dec. 9 deaths of four young people, DENVER POST, Mar. 13, 2008.



⁹⁹ 4th arrest made in SWAT case, WLKY.com, Jan. 14, 2008, available at. http://www.wlky.com/news/15048297/detail.html (last visited Sept. 26, 2008).

David Quinones, *Dispute boils over mourning of detective*, MIAMI HERALD, Jan. 19, 2008; *See* Detective James Walker, www.odmp.org, *available at.* http://www.odmp.org/officer/19128-detective-james-walker (last visited Sept. 30, 2008).

101 M'ville man charged in shooting, THETIMESONLINE.COM, Jan. 4, 2008, *available at.*

http://www.thetimesonline.com/articles/2008/01/04/news/lake_county/doc88e35a05299f4540862573c600 061f09.txt

⁽last visited Sept. 26, 2008). ¹⁰² Girl, 6, dies after being shot 7 times – Ark. police search for suspects, motive, MEMPHIS COMMERCIAL APPEAL, Jan. 1, 2008.

¹⁰³ Ozark shooting suspect surrenders, PRESS-REGISTER, Jan. 1, 2008.

thtp://www.utnh.com/global/story.asp?s=7566985 (last visited on Sept. 29, 2008).

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- Omaha, Nebraska. December 5, 2007. Nine people were shot to death and five others were injured after a 20-year-old shooter, armed with a military-style assault rifle, attacked shoppers in a department store in a Nebraska mall. 106
- Arden, South Carolina. December 4, 2007. One man was injured when he was shot at close range in the leg and foot with an AK-47 assault rifle. 107
- Memphis, Tennessee. November 13, 2007. One man was killed and another injured after an unidentified man opened fire on a grocery store parking lot with an AK-47 assault rifle. 108
- Vallejo, California. November 4, 2007. One man died after being shot several times with an assault rifle while arguing with two other men. Witnesses of the shooting pursued the shooters by car and were also shot at, although none were injured. 109
- Crandon, Wisconsin. October 7, 2007. An off-duty Sheriff's deputy killed six and wounded a seventh person when he burst into a pizza party and started shooting with an assault weapon. The shooter later killed himself as the police closed in. 110
- West Palm Beach, Florida. September 18, 2007. Two men were killed and another injured when they were attacked in their car by two men carrying a handgun and an assault rifle. The suspects shot at the police as they escaped. 111
- New Orleans, Louisiana. September 15, 2007. At least 28 bullets were fired from an AK-47 at an outdoor birthday party for 5-year-old twins in the courtyard of a public housing complex. A 19-year-old was killed and three children were wounded, ages 7, 8 and 13.¹¹²
- Miami, Florida. September 13, 2007. Police spotted a vehicle driving erratically and followed it until it stopped in a residential complex. The driver got out and hopped a fence to the rear of the home; the officers exited their patrol car and went to the front of the home where they were granted permission to search by a female resident. The suspect grabbed a high-powered, military-grade rifle and fired at the police officers through a window, killing one officer, then exited the house and shot

The American Way, REGISTER-GUARD, Dec. 17, 2007.

Clarke Morrison, Arden man gets 12 years for assault rifle shooting, THE CITIZEN-TIMES, Aug. 8, 2008.

¹⁰⁸ Chris Conley & Jody Callahan, *Drive-by shooting kills 1—police search for two gunmen in B-52 Market*

incident, Memphis Commercial Appeal, Nov. 13, 2007.

Henry K. Lee, Two suspects sought in Vallejo homicide, SFGATE.COM, Nov. 10, 2007, available at: http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/11/10/BAUJT9HSA.DTL (last visited Sept. 26, 2008). Todd Richmond, Crandon mass murder-suicide: Questions linger in killing of seven, officials tightlipped despite suspect's death, ST. PAUL PIONEER PRESS, Dec. 4, 2007.

² killed in West Palm shootings, suspects escape on foot after one fires at police officer pursuing them, SOUTH FLORIDA SUN-SENTINEL, Sept. 19, 2007.

Mary Sparacello, Housing Authority reining in parties, Kenner shooting leads to regulations, THE TIMES

PICAYUNE, Oct. 11, 2007.

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three other officers as he escaped. The shooter was caught later that day but would not relinquish his assault rifle so he was shot and killed by police officers. 1

- Aiken, South Carolina. September 12, 2007. A 20-year-old man died after being shot multiple times with an assault rifle by a 19-year-old when they were having an argument. 114
- Rome, Georgia. August 26, 2007. One man was killed and a woman seriously injured inside their home. The shooter was found with an AK-47, from which several clips of ammunition had been emptied, and a 12-gauge shotgun when police arrived at the scene. 115
- Treme, Louisiana. August 13, 2007. Two men were killed and another was seriously wounded as a shooter sprayed the crowd with an AK-47 assault rifle at a recreational league basketball game. 116
- Dallas, Texas. August 12, 2007. One person was killed and three others wounded in a shooting outside a poetry/coffee shop. The gunman, who used an assault rifle, fled the scene. 117

Hialeah, Florida. August 5, 2007. Eric Lopez, 38, was fatally shot in his home, and his wife, Olga, was shot in the leg. The incident began around noon when gunmen entered their home and began firing with a military-style semi-automatic weapon. Police arrested four people in connection with the shooting. 118

- Oakland, California. August 4, 2007. A gunman with an assault rifle unleashed a barrage of bullets at a van parked on a North Oakland street, killing one man who lived nearby and wounding his brother and their friend. The gunman then fled. 119
- Orangeburg, South Carolina. July 19, 2007. A man brandishing an assault rifle shot a woman once in the leg. The man was charged with assault and battery with intent to kill. 120

¹²⁰ Richard Walker, Woman recovering after being shot with AK-47, THE TIMES AND DEMOCRAT, July 20, 2007.



¹¹³ David Ovalle et al., *The murder and the manhunt started in a South Miami-Dade townhouse,* zigzagged..., MIAMI HERALD, Sept. 15, 2007.

Michelle Guffey, Police seek murder suspects, THE AUGUSTA CHRONICLE, Sept. 19, 2007.

Man goes on shooting rampage, kills one, severely injures another, ROMENEWSWIFE.COM, available at: http://www.romenewswire.com/index.php/2007/08/26/police-on-scene-of-possible-murder-in-west-rome/ (last visited Sept. 29, 2008).

116 Richard A. Webster, *Soaring murder rate in New Orleans undermines recovery strides*, NEW ORLEANS

CITY BUSINESS, Aug. 20, 2007.

117 Marissa Alanis, Peacekeeper is killed outside club, police say: Dallas 3 others injured as gunman fires

assault rifle into crowd, DALLAS MORNING NEWS, Aug. 13, 2007.

¹¹⁸ Laura Figueroa, *Hialeah: 4 charged in 'crime of passion'*, MIAMI HERALD, Aug. 7, 2007.

Two more slain in Oakland weekend violence, THE OAKLAND TRIBUNE, Aug. 5, 2007.

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- North Augusta, South Carolina. July 15, 2007. Twenty-one bullets were shot from an assault rifle into a home, hitting a 14-year-old boy sleeping inside. The bullets reportedly came from a car outside, tore through a foosball table, couch, and the wall to a back bedroom, where they pierced furniture, blasted a TV to the floor, and hit the boy.¹²¹
- Floyd County, Indiana. June 18, 2007. Two officers responded to a domestic disturbance call between a mother and her son. The officers were speaking with the mother on the driveway when the 15-year-old son ambushed both officers from an upstairs window and shot at them with a high powered assault rifle. One officer was killed and the other was seriously wounded. 122
- Biloxi, Mississippi. June 5, 2007. A gunman with an AK-47 ambushed police officers in a shootout, killing one, then shooting himself. The gunman lured police by firing shots in the neighborhood and waiting. After shooting one officer, the gunman unloaded an additional round into the patrol car. The gunman had a cache of backup guns and ammunition waiting inside his home.¹²³
- Dallas, Texas. March 23, 2007. A Dallas police officer was killed when he was struck in the neck and chest by an assault weapon as he approached a suspect's car.¹²⁴
- Metairie, Louisiana. February 27, 2007. Two AK-47s were among several guns fired into a Metairie apartment that resulted in four men being shot, one fatally and another critically. 125
- Philadelphia, Pennsylvania. February 13, 2007. A gunman used an assault weapon to kill 3 and wound another before killing himself. 126
- Palm Beach County, Florida. January 1, 2007. An 8-month-old baby boy was shot in his car seat after his mom parked in front of a drug house and rivals opened fire with assault rifles.¹²⁷
- New Bedford, Massachusetts. December 12, 2006. Three people were killed and two police officers were injured when a gunman opened fire at the Foxy Lady strip

¹²⁷ Rochelle E.B. Gilken, *County has most homicides since '89*, PALM BEACH POST, Jan. 6, 2008.



¹²¹ Meredith Anderson, *North Augusta 14-year-old shot*, WRDW 12 NEWS, July 16, 2007, *available at:* http://www.wrdw.com/home/headlines/8526357.html (last visited on Sept. 29, 2008).

^{122'} See Officer Frank Charles Denzinger, odmp.org, available at: http://www.odmp.org/officer/18926-officer-frank-charles-denzinger (last visited Sept. 30, 2008).

officer-frank-charles-denzinger (last visited Sept. 30, 2008).
¹²³ Ryan LaFontaine, *Gunman had a large arsenal, Police say Asher used AK-47*, Sun HERALD, June 9, 2007.

¹²⁴ Tanya Eiserer et al., *Dallas officer dies after shootout*, THE DALLAS MORNING NEWS, Mar. 24, 2007.

Michelle Hunter, Cops say victim not innocent bystander, THE TIMES PICAYUNE, Feb. 28, 2007.

Larry King & Joseph A. Gambardello, *Investor rage, lethal trap*, Philadelphia Inquirer, Feb. 14, 2007.

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club; the shooter was fatally shot. One of the weapons used was described as an AR-15. 128

- Westboro, Massachusetts. December 2, 2006. Police seized a semiautomatic assault rifle from the bedroom closet of a young Shrewsbury man who posted threatening internet messages and who claimed to admire one of the Columbine High School killers.¹²⁹
- **Newport, Kentucky. November 19, 2006.** A fight at a nightclub led to four people being shot that evening. A 23-year-old was shot several times and left for dead on a bridge. An hour later, police found a 20-year-old man shot dead in his vehicle. Two other people were taken to the hospital with gunshot wounds and police recovered casings from an assault weapon. ¹³⁰
- Chicago, Illinois. October 30, 2006. Members of the New Breed Street gang shot at Chicago police officers with an AK-47 from their car, injuring one officer. One gang member was killed and another critically wounded in the shoot-out.¹³¹
- Palm Beach County, Florida. August 15, 2006. A 50-year-old landscaper was shot at least 15 times as he walked toward a house to collect money for completed yard work. The shooters used assault weapons in the drive-by and police say the shooters mistook the victim for a gang member. 132
- Chapel Hill, North Carolina, July 29, 2006. A gunman with an assault rifle shot a man multiple times outside a nightclub, killing him. The shooter fled in a getaway car and later turned himself in. ¹³³

¹³³ Chapel Hill nightclub under review after fatal shooting, WRAL.com, July 31, 2006, available at: http://www.wral.com/news/local/story/1056918/ (last visited Sept. 29, 2008).



¹²⁸ Jessica Heslam, *Strip club gunman at 'crossroads'*, *killer bid farewell in cell phone messages*, BOSTON HERALD, Dec. 14, 2006.

¹²⁹ Kevin Keenan, *State police seize weapons*, Worcester Telegram & Gazette, Dec. 2, 2006.

¹³⁰ A fight at a Northern Kentucky nightclub lead to a wild shooting spree, WLEX TV 18, Lexington, KY, Nov. 19, 2006, available at: http://www.lex18.com/Global/story.asp?S=5704257&nav=EQ1p (last visited Oct. 2, 2008).

¹³¹ Lisa Donovan et al., *Shoot-out 'looked like a movie': Cops kill 2 men they say were about to execute gang rivals*, CHICAGO SUN TIMES, Oct. 31, 2006.

¹³² Tim Collie, *Two members offer a look inside a South Florida gang*, SOUTH FLORIDA SUN-SENTINEL; July

Tim Collie, Two members offer a look inside a South Florida gang, SOUTH FLORIDA SUN-SENTINEL; July 22, 2007; Jerome Burdi, 'Innocent victim' killing unsolved, family awaits arrest in 2006 Boynton drive-by shooting, SOUTH FLORIDA SUN-SENTINEL, Aug. 20, 2007.

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St. John the Baptist Parish, Louisiana. June 27, 2006. 25-year-old Kelvin Thomas Jr. died after being shot in the abdomen with an assault rifle. Alonzo Bolden, 20, was arrested and booked with second-degree murder in connection with the shooting. Police believe the two men were engaged in an argument that was part of a longrunning feud and ended with Bolden firing multiple shots at Thomas at close range. Thomas had three young children. 134

- Calumet City, Illinois. June 25, 2006. A 22-year-old pregnant woman and her 3vear-old son were shot and killed while they were sleeping when an unknown gunman fired 30 rounds from an AK-47 into their home at 1:15 a.m. 135
- St. John the Baptist Parish, Louisiana. June 20, 2006. A man who had killed a deputy police officer and injured another during a crime spree broke into the house of an 81-year-old man and held him hostage with an AK-47 until he eventually gave himself up and released the hostage. 136
- Metairie, Louisiana. June 15, 2006. Police attempted to serve a man with an emergency committal order but the man barricaded himself in his home and engaged in a 12-hour standoff with police. Seven hours into the standoff, the man shot and wounded two Sheriff's deputies with an assault rifle. 137
- Reno, Nevada. June 12, 2006. An owner of a gun shop, with a license to carry concealed weapons and access to a cache of guns, stabbed his wife to death and then shot the family court judge presiding over his divorce with a Bushmaster .223 high-powered assault rifle with sniper capabilities. The judge survived. 138
- Howard County, Maryland. June 8, 2006. County police officers were shot at by a man wielding an assault rifle whom they were attempting to serve a warrant on. 139
- Norman, Oklahoma. June 7, 2006. Two men opened fire on a Native American gathering of over 300 with an SKS assault rifle, killing one man and injuring another. 140

¹⁴⁰ Tom Blakely, *Pair arraigned in Sunday crowd shooting*, THE NORMAN TRANSCRIPT, June 7, 2006.



¹³⁴ Allen Powell II, *Garyville man held in fatal shooting, Deputies suspect long-running feud*, THE TIMES PICAYUNE, June 27, 2006.

Tom Rybarczyk, Calumet City reels after spray of bullets, CHICAGO TRIBUNE, June 26, 2006.

¹³⁶ Allen Powell II, *Mourners salute slain St. John deputy*, NEW ORLEANS TIMES PICAYUNE, June 21, 2006.

¹³⁷ Michelle Hunter & Walt Philbin, 2 deputies wounded in Metairie standoff, THE TIMES PICAYUNE, June 16, 2006. 138 Fox News, June 24, 2006.

¹³⁹ Tyrone Richardson, *Man found guilty of murder attempt*, BALTIMORE SUN, Oct. 29, 2006.

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- Miami, Florida. June 6, 2006. Three men were killed and another injured when the van they were riding in was shot numerous times by assault weapons. About 50 rounds were fired into the van. 141
- Indianapolis, Indiana. June 2, 2006. Seven family members, four adults and three children, were shot and killed in their home by a robber armed with an assault rifle. Nearly 30 shell casings were found. 142
- San Diego, California. June 2, 2006. A 17-year-old was wounded in an accidental workplace shooting when the teen's co-worker brought an AK-47 to work and was unaware that there was a live round inside the rifle's chamber. 143
- New Milford Township, Pennsylvania. May 27, 2006. Two brothers were camping with their wives and children when they were awakened by gunshots coming from a neighbor's property at 3:00 a.m. The brothers knew the neighbor so they went to his house to ask him to stop shooting. The neighbor, armed with a shotgun, told the two brothers to leave and then told his stepson to pick up an AR-15 rifle. The brothers were both shot in the stomach and wounded severely. 1
- West Palm Beach, Florida. May 17, 2006. Two men carrying AK-47 assault rifles ordered a man out of his car at gun-point, mugged him, and ripped off his pants. 145
- Kingston, Tennessee. May 14, 2006. A deputy sheriff and another individual were shot and killed by high-powered assault rifles. The deputy had 33 gunshot wounds. 146
- Port Salerno, Florida. May 12, 2006. A deputy sheriff was shot and wounded with an AK-47 assault rifle. 147

¹⁴¹ David Ovalle, *Ambush takes lives of 3 men*, MIAMI HERALD, June 6, 2006.

¹⁴² Ashley M. Heher, Suspect in slaying of 7 family members surrenders / Indianapolis police say he had nowhere else to go, Houston Chronicle, June 4, 2006.

143 Debbi Farr Baker, *Man accidentally shoots co-worker*, San Diego Union-Tribune, June 3, 2006.

¹⁴⁴ Nyier Abdou, Somerville brothers still hospitalized after shooting: Pa. Man charged with assaulting rescue squad members during family camping trip, The STAR-LEDGER, May 31, 2006. 145 Digest, SOUTH FLORIDA SUN-SENTINEL, May 17, 2006.

¹⁴⁶ Duncan Mansfield, 'Anti-government' man sought in ambush of Tennessee deputy, CHARLESTON GAZETTE, May 13, 2006.

Leon Fooksman, Police fearful of violent crime trend: AK-47 shootings, SOUTH FLORIDA SUN-SENTINEL, May 13, 2006.

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Fort Worth, Texas. May 9, 2006. 16-year-old Derick Giles, an innocent bystander, was killed after being shot in the abdomen in the crossfire of a gang shooting outside a convenience store. Five minutes later, one man was shot in the leg and another in the foot during a second drive-by shooting. One hour and half later, a 50-year-old woman was shot in the shoulder by gunfire from a high-powered assault weapon as she stood in her kitchen. 148

- Chantilly, Virginia. May 8, 2006. A teenager with an AK-47 and 5 handguns engaged in a firefight at a police station, killing a female detective immediately and wounding two other officers, one of whom died nine days later from his injuries. 149
- Los Angeles, California. May 8, 2006. Police arrested a man and found over 20 assault weapons in his home after the man fired multiple rounds in the air while driving through his neighborhood with a semiautomatic pistol. The man had his young son in the car with him. 150
- Oskaloosa, lowa. May 5, 2006. A 17-year-old shot his 13-year-old friend in the chest with a military-style rifle and then shot himself. 151
- West Palm Beach, Florida. April 28, 2006. Shots were fired into an apartment at 6:00 in the morning, hitting one man in the right leg and left knee. Seventeen shell casings from an AK-47 were found at the scene. 152

West Palm Beach, Florida. April 27, 2006. An AK-47 was used to shoot 24-year-old David Paulk and his 16-year-old sister. Mr. Paulk was critically injured and died four days later. The next day, the alleged gunman, Brandon Williams, was shot in the back with an assault rifle and taken to the hospital, where he was treated and left before police were able to find cause to arrest him. However, he was arrested soon after. However, he was arrested soon after.



¹⁴⁸ Deanna Boyd, *Teen killed in shooting at convenience store*, FORT WORTH STAR-TELEGRAM, May 9,

lan Urbina, Fatal police station attach shocks tranquil community, New YORK TIMES, May 10, 2006;

Officer Killed, BOSTON GLOBE, May 18, 2006.

Man said to be on 'edge of Armageddon', LONG BEACH PRESS-TELEGRAM, May 9, 2006.

¹⁵¹ AP-News Agenda, Broadcast News, May 5, 2006.

Police Blotter, PALM BEACH POST, Apr. 29, 2006; Jerome Burdi, Rash of shootings hits city in 2 days, SOUTH FLORIDA SUN-SENTINEL, Apr. 29, 2006.

¹⁵³ Jerome Burdi, Rash of shootings hits city in 2 days, SOUTH FLORIDA SUN-SENTINEL, Apr. 29, 2006; Jerome Burdi, New task force seeks man suspected in 2 shootings, SOUTH FLORIDA SUN-SENTINEL, Apr. 30, 2006; *Police Blotter*, PALM BEACH POST, Apr. 30, 2006.

154 Nirvi Shah, *West Palm slaying suspect jailed after Pensacola stop,* PALM BEACH POST, May 8, 2006.

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- Oakland, California. March 19, 2006. A gunman with an AK-47 opened fire on an apartment building, filling it with bullets and killing a 49-year-old man. 155
- Lake Worth, Florida. March 17, 2006. A man angry over an argument with a woman, shot the woman and her roommate with an AK-47 and left the victims in the doorway of their home. 156
- Chicago, Illinois. March 11, 2006. A 10-year-old girl was killed by a shot to her head as she was celebrating her birthday in her living room. A spray of bullets from an assault weapon peppered the house from a nearby fight. 157
- Chicago, Illinois. March 3, 2006. A stray bullet from an assault rifle struck a 14year-old honor student as she was looking out the window of her home, killing her instantly. 158
- Las Vegas, Nevada. February 1, 2006. A 22-year-old fired at least 50 rounds from an assault rifle, shooting two Las Vegas police officers and killing one, before being shot and killed by the surviving officer. 159
- Brooklyn, New York. January 20, 2006. A man was arrested after firing at least two rounds from an Uzi at two members of the New York Police Department. 160
- Ocala, Florida. January 7, 2006. Two college students who were camping in the Ocala National Forest were randomly targeted by a man who shot and killed them with a stolen AK-47.161
- Indianapolis, Indiana. January 2, 2006. A man dubbed the "Tec-9 Robber" was arrested after being wanted in connection with as many as 23 robberies in four months of fast food restaurants, convenience stores, and gas stations. 162
- Caddo Parish, Louisiana. January 1, 2006. A 19-year-old was arrested after he was found hiding in an alley with an assault weapon. He faces two counts of aggravated assault on a police officer and potential charges for riddling a house with bullets, injuring a man. 163

¹⁶³ CBS 12 KSLA, Shreveport, LA, Jan. 2, 2006.



¹⁵⁵ Henry K. Lee, Oakland: Two new slayings brings homicide total to 30, SAN FRANCISCO CHRONICLE,

Mar. 21, 2006.

156 Kevin Deutsch, *Man arrested in assault-rifle shooting*, PALM BEACH POST, Mar. 17, 2006.

¹⁵⁷ Gov. Blagojevich, victims' families, advocates urge lawmakers in Springfield to pass statewide assault weapons ban, US STATE NEWS, Mar. 23, 2006.

158 Charles Sheehan, Neighborhood buries another child, CHICAGO TRIBUNE, Mar. 19, 2006.

¹⁵⁹ Omar Sofradzija, *Processions to honor Prendes*, LAS VEGAS REVIEW-JOURNAL, Feb. 7, 2006.

¹⁶⁰ Veronika Belenkaya et al., *Uzi maniac shot by cops. Tied to 3 attacks on city's finest*, NEW YORK DAILY News, Jan. 22, 2006.

¹⁶¹ Stephen Kudak & Sarah Lundy, Cops: Suspect admits killing 2 campers in Ocala forest, ORLANDO SENTINEL, Jan. 28, 2006.

162 CBS 8 WISH, Indianapolis, IN, Jan. 5, 2006.

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- Harper Woods, Michigan. December 31, 2005. A 40-year-old man was shot sixteen times with an assault weapon while standing on his front porch around 3:15 p.m. and died from his injuries. His wife and daughters were in the house at the time of the shooting. His murder, occurring on the last day of the year, was the first murder of 2005 in his town.¹⁶⁴
- Miami, Florida. December 28, 2005. A man dressed in all black used an assault weapon to fire multiple rounds into a house killing a 20-year-old man and injuring another man who was hit in the leg.¹⁶⁵
- Fortville, Indiana. December 13, 2005. A man slapped a female relative and fired a round from an assault weapon into his driveway then barricaded himself in his house and threatened to shoot anyone who came to the door. When the 8-hour standoff ended, police found more than 10 weapons in the home. 166
- Tacoma, Washington. November 20, 2005. A 20-year-old male opened fire in a Tacoma mall, wounding six. The shooter took four hostages, all of whom were released unharmed.¹⁶⁷

San Francisco, California. October 14, 2005. 22-year- old Dernae Wysinger and his two-year-old son, Naemon, were killed when a man opened fire on their car with an assault weapon. The toddler's mother, Jazmanika Ridout, was shot in the foot and survived. The family was leaving the home of the toddler's great aunt, who had been babysitting Naemon so that Wysinger and Ridout could go on a date. 168

- North Braddock, Pennsylvania. August 12, 2005. A man was found dead, shot in the back and head. Police found assault rifle bullet casings near the body. 169
- Denton County, Texas. August 9, 2005. In a night-long standoff at his home, a
 man fired his SKS assault rifle at police to avoid being arrested. After shooting an
 officer in the leg and refusing to negotiate, police shot and killed the suspect.¹⁷⁰
- New Orleans, Louisiana. August 8, 2005. While driving, a man was shot and killed when an occupant of another car opened fire with an AK-47 assault rifle.¹⁷¹

Domingo Ramirez Jr., *Trooper is shot; suspect is_killed*, FORT WORTH STAR-TELEGRAM, Aug. 9, 2005.



¹⁶⁴ NBC 51 WDIV, Detroit, MI, Jan. 4, 2006.

¹⁶⁵ Man killed in early morning shooting, MIAMI HERALD, Dec. 28, 2005.

¹⁶⁶ Eight-hour standoff ends peacefully, THEINDYCHANNEL.COM, Dec. 13, 2005 available at. http://www.theindychannel.com/news/5524484/detail.html (last visited Sept. 29, 2008).

Suspect: 'follow screams', Man opens fire at mall in Tacoma; 6 wounded, AKRON BEACON JOURNAL, Nov. 22, 2005.

¹⁶⁸ Christopher Heredia, *San Francisco police ask public for help in finding shooting suspect*, SAN FRANCISCO CHRONICLE, Oct. 16, 2005.

¹⁶⁹ Michael Hasch, *Shooting victim was teen suspect's uncle*, PITTSBURGH TRIBUNE REVIEW, Aug. 17, 2005.

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- West Palm Beach, Florida. June 25, 2005. A man was killed and his 9-year-old daughter severely wounded when a man fired into their parked car with an assault weapon that police believe had been converted to fully automatic. 172
- Cincinnati, Ohio. June 22, 2005. Assailants armed with SKS-type assault rifles sprayed over forty armor-piercing bullets in twenty seconds, hitting two women leaving a grocery store. 173
- Livingston County, Kentucky. June 2, 2005. A deputy was shot when he responded to a domestic disturbance call placed by a couple's 18-year-old daughter. When the officer entered the home, a male fired at least 8 rounds from an assault rifle at him, hitting him four times and killing him. The officer was able to fire one round which killed the gunman.¹⁷⁴
- Fresno, California. May 31, 2005. A man fired at least eight shots from an assault rifle at two veteran police officers sitting in their patrol car outside the police K-9 facility. The police later found a partially loaded 30 round magazine in the assailant's car. 175
- Kansas City, Missouri. May 29, 2005. After being pulled over for a routine traffic stop, a recently fired elementary school janitor shot a Highway Patrol trooper nine times with a 9 mm assault rifle. 176
- Tulsa, Oklahoma. May 29, 2005. A gunman fired more than 20 shots from an assault rifle at an apartment building security guard, wounding the guard and hitting his car and surrounding buildings. 177
- Camden, New Jersey. May 21, 2005. A mother of three young children was killed by a stray bullet fired from an AK-47 during a shoot-out. 178
- Jackson, Mississippi. May 18, 2005. A man fired at least 17 shots from an SKS assault rifle and 9 mm pistol at police during a traffic stop. 179

¹⁷⁹ Bond denied for man in shootout, SUN HERALD, July 20, 2005.



¹⁷¹ Walt Philbin, Three men killed in seven hours: All are shot to death on New Orleans streets, NEW ORLEANS TIMES PICAYUNE, Aug. 9, 2005.

172 Gun owners trade in arms, W. Palm Beach shootings spark city buyback, SOUTH FLORIDA SUN-

SENTINEL, July 10, 2005.

Two wounded in West End, CINCINNATI POST, June 24, 2005.

¹⁷⁴ Livingston County Kentucky Deputy Sheriff killed in gunfight, LMPD.com, June 3, 2005, available at. http://www.lmpd.com/index.php?name=News&file=article&sid=291&theme=AutoPrint (last visited Sept. 30, 2008).

175 Two held in assault-rifle attack on two officers, FRESENO BEE, June 1, 2005.

May 20, 2005

Accused man tells trooper he's sorry, KANSAS CITY STAR , May 30, 2005.

Security guard at apartment is shot, TULSA WORLD, May 29, 2005.

Two more men arraigned in fatal street shoot-out, THE PHILADELPHIA INQUIRER, June 1, 2005.

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Clayton County, Georgia. April 23, 2005. High school senior Larry Bishop Jr. was killed, and three other teens were wounded, when a gunman opened fire on a group of partygoers. 18-year old Artavious Rashad Abercrombie was arrested in connection with the crime. ¹⁸⁰

- **Miami, Florida. April 10, 2005.** Three men were injured during a dispute in a strip club parking lot when a fourth man fired an AK-47 at them. ¹⁸¹
- Canton, Texas. April 8, 2005. A man shot his son's football coach in the chest with an AK-47 after a dispute. 182
- Houston, Texas. April 8, 2005. Two robbers armed with AK-47s fired nearly twenty rounds at police during a shoot-out outside a pawnshop. 183
- New Orleans, Louisiana. March 27, 2005. A woman was shot in the chest outside her apartment with an AK-47 when she refused to give her purse to two armed robbers.¹⁸⁴

Pittsburgh, Pennsylvania. March 16, 2005. 16-year- old Keith Watts was killed, and two other students were injured, when a shooter fired at least eight rounds from an AK-47 into their parked vehicle. 185

- Dallas, Texas. March 15, 2005. Three people were killed after a man fired an assault rifle at them through the sunroof of his car. 186
- Schertz, Texas. March 3, 2005. After being pulled over, a man fired more than 30 bullets from a handgun and AK-47 at a state police officer. 187
- Tyler, Texas. February 25, 2005. A gunman with a history of domestic violence and a felony conviction, who was reportedly fighting with his ex-wife over child support for their two youngest children, shot over 50 rounds from an SKS assault rifle on the steps of his local courthouse when his ex-wife exited the building. His ex-wife was killed along with a bystander who tried to shoot the gunman. The shooter's 23-year-old son and three law enforcement officers were wounded during the shooting, including a 28-year-old deputy who was in grave condition. The

¹⁸⁷ Man indicted in Schertz shootout, SAN ANTONIO EXPRESS-NEWS, March 24, 2005.



¹⁸⁰ Teen faces murder charge, THE ATLANTA JOURNAL-CONSTITUTION, May 28, 2005.

¹⁸¹ Pair of early-morning shootings leave six hurt, MIAMI HERALD, April 11, 2005.

¹⁸² Gunman attacks coach at school, FORT WORTH STAR-TELEGRAM, April 8, 2005.

¹⁸³ Pawnshop heist ends in bloody shootout, Houston Chronicle, April 7, 2005.

¹⁸⁴ Jeff woman shot in struggle with thief, THE TIMES-PICAYUNE, March 29, 2005.

Schools need permission to shield kids from threats, PITTSBURGH POST-GAZETTE, March 18, 2005.

¹⁸⁶ Police say revenge went awry for slaying suspects, DALLAS MORNING NEWS, March 18, 2005.

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gunman fled the scene but was pursued and shot by police when he exited his car and shot toward officers. 188

Los Angeles, California. February 24, 2005. A disgruntled Los Angeles municipal employee opened fire with an AK-47 after being reprimanded at work, killing his supervisor and another employee. 189

Akron, Ohio. February 24, 2005. A man shot and killed his girlfriend and her seven year old son using an AR-15 assault rifle, then fired more than one-hundred rounds at a dozen law enforcement officers as he fled the murder scene. The gunman was arrested the next morning inside the apartment of a Kent State University student, who he also murdered with the AR-15 assault rifle. Police subsequently seized 21 weapons kept by the suspect, including an Uzi and an AK-47. 190

- Las Vegas, Nevada. February 15, 2005. A suspected murderer fled from police as his girlfriend fired an assault rifle with a 100 round magazine at pursuing police vehicles. The man was wanted in connection with a drug related murder and for a nonfatal shooting. The man also had convictions for attempted manslaughter and armed robbery, and was suspected of shooting at a Louisiana police officer five months earlier. 191
- Ulster, New York. February 13, 2005. A gunman fired more than 60 shots from an AK-47 assault rifle in the Hudson Valley Shopping Mall, wounding two and causing tens of thousands of dollars of damage before being apprehended. A few hours earlier, the shooter had purchased armor-piercing ammunition from a nearby Wal-Mart. 192
- Lebanon, Tennessee. February 10, 2005. A second grade student found a Tec-9 inside a closet and brought it to school in his backpack, where it was confiscated by The gun was not fired but sixteen bullets were discovered in the magazine. 193
- Dayton, Ohio. January 31, 2005. Three teens were shot with a Russian-made assault rifle following an argument at a grocery store. 194

¹⁹⁴ Kelli Wynn, *Assault weapon used in shooting, police say*, DAYTON DAILY NEWS, Feb. 2, 2005.



¹⁸⁸ Bill Hanna & Jack Douglas Jr., Rampage in Tyler leaves three dead, four wounded, FORT WORTH STAR-TELEGRAM, Feb. 25, 2005; Jack Douglas Jr. & Bill Hanna, Police order emergency trace on weapon used in shootings, FORT WORTH STAR-TELEGRAM, FEB. 26, 2005.

189 2 Are Shot to Death at Maintenance Yard, LOS ANGELES TIMES, Feb. 25, 2005.

¹⁹⁰ Ed Meyer, Police eye semiautomatic rifles, Brimfield officials want to be prepared after recent shooting rampage that killed 3 people, AKRON BEACON JOURNAL, Feb. 24, 2005.

¹⁹¹ Brian Haynes, Wild chase ends in arrests, LAS VEGAS REVIEW-JOURNAL, Feb. 19, 2005.

Mall Gunman Had Columbine Fixation, an Official Says, THE NEW YORK TIMES, Feb. 15, 2005.

¹⁹³ WKRN TV NEWS 2, Nashville, TN, Feb. 10, 2005.

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 Ravena, Ohio. January 21, 2005. Three people were killed, including a mother and her seven year old son, when a man fired at least 18 bullets from an assault rifle.¹⁹⁵

Jackson, Tennessee. January, 11, 2005. Donna Renee Jordan, 31, David Gordon, 41, and Jerry Hopper, 61, were killed when Jordan's estranged husband, David Jordan, opened fire in a Tennessee Department of Transportation maintenance garage. Two other employees, Larry Taylor and James Goff, were shot and wounded. When David Jordan was arrested shortly after the shootings, police found an SKS assault rifle, a 12-gauge shotgun, and two pistols in his truck. Jordan's wife, whom he shot four times, left behind two children and two stepchildren.

- Ceres, California. January 9, 2005. A 19-year-old Marine armed with an SKS assault rifle shot two police officers, killing one, in a gun battle outside a liquor store.¹⁹⁶
- Newington, Connecticut. December 31, 2004. A former correction officer used a fully automatic M-16 to fatally shoot a Newington policeman after the officer responded to a domestic disturbance call.¹⁹⁷
- **New Orleans, Louisiana. December 23, 2004.** A mentally challenged 19-year-old was chased through the streets with a high-powered assault rifle before being gunned down outside his former elementary school. 198
- Hayward, Wisconsin. November 21, 2004. After being asked to leave another hunter's property, a 36-year-old man opened fire with an SKS semiautomatic rifle, killing six members of a hunting party and wounding two.¹⁹⁹
- Oak Creek, Wisconsin. November 5, 2004. A man wearing body armor and armed with a machine gun fled the hotel room where he murdered his girlfriend, firing 30 to 40 rounds down the hotel hallway, killing one man and injuring two others. ²⁰⁰
- Portland, Oregon. October 28, 2004. A 31-year-old aimed two machine guns out his front window to guard the marijuana growing operation run from his home, which was less than 400 feet from an elementary school. Police seized 29 guns from his home, including several AK-47s and Uzis, a MAC-10 submachine gun and a .50

²⁰⁰ 2 dead, 2 wounded in hotel shootings, MILWAUKEE JOURNAL SENTINAL, Nov. 6, 2004.



¹⁹⁵ Stephen Dyer, *Murder suspect pleads insanity*, AKRON BEACON JOURNAL, Feb. 8, 2005.

¹⁹⁶ Cop, gunman dead: Marine killed after shooting officers, THE MODESTO BEE, Jan. 11, 2005.

¹⁹⁷ Officer shot, held hostage, HARTFORD COURANT, Dec. 31, 2004.

¹⁹⁸ Barbarity beyond belief, THE TIMES-PICAYUNE, Dec. 23, 2004.

¹⁹⁹ Wisconsin Shooting Rampage, ST. PAUL PIONEER PRESS, Nov. 23, 2004.

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caliber anti-aircraft gun. He was later sentenced to more than eight years in prison. 201

- Minneapolis, Minnesota. October 21, 2004. A store clerk died after being shot in the chest with an assault rifle during a botched robbery attempt.²⁰²
- Oakland, California. September 22, 2004. A 16-year-old honor student was killed on the sidewalk near her home after being struck by errant assault rifle fire. 203

²⁰³ Girl, 16, gunned down in Oakland drive-by, THE OAKLAND TRIBUNE, Sept. 24, 2004.



 $^{^{201}}$ Local news – Washington County, THE OREGONIAN, May 4, 2006. 202 3 teens charged with clerk's slaying, ST. PAUL PIONEER PRESS, Nov. 2, 2004.

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Endnotes

¹⁹ Christopher S. Koper, Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003, *supra* note 17, at 87. [Quotation in report spells out 'assault weapons' while the actual quotation uses the abbreviation 'AWs'].



¹ Ferri Used Guns That California Ban Does Not Forbid, SAN FRANCISCO EXAMINER, July 4, 1993.

² Michael Janofsky, *Columbine killers thank gun suppliers taped comments revealed in hearing*, CLEVELAND PLAIN DEALER, Nov. 13, 1999.

³ Cult's Massive Weapons Purchases Stir Up a Furor Over Federal Regulation, FORT WORTH STARTELEGRAM, May 2, 1993.

⁴ Satellite College Campus Helps to Heal the Scars at San Ysidro Massacre, Los Angeles Times, Mar. 30, 1989; A 77-Minute Moment in History That Will Never Be Forgotten, Los Angeles Times, July 16, 1989.

⁵ The Kinds of Guns School Killer Used, SAN FRANCISCO CHRONICLE, Jan. 19, 1989; Michael Taylor & Leslie Guevarra, *Myterious Scrawlings and Slogans, School Killer's Last Days, Toy Army in his Room*, SAN FRANCISCO CHRONICLE, Jan. 19, 1989.

⁶ In an appendix of this report, we have included 27 pages of assault weapons shootings that have occurred in just the last four years. Moreover, this list is not comprehensive. It is merely representative examples.

⁷ ATF, Assault Weapons Profile 19 (1994)

⁸ Judith Bonderman, *In Search of Justice: Compensation for Victims of Assault Weapon Violence*, 20 PRODUCT SAFETY & LIABILITY REP. 25 (June 26, 1992). There are numerous examples of test-firing that display the firepower of semi-automatic assault weapons on YouTube. *See, e.g.*, http://www.youtube.com/watch?v=nCMEqCPCvV4; http://www.youtube.com/watch?v=cYRsPzUYMM4; and http://www.youtube.com/watch?v=A75O0-QolJI.

⁹ ATF, Assault Weapons Profile, supra note 7, at 19 (emphasis added).

¹⁰ *Id*.

¹¹ Assault rifles concern police, MONTGOMERY ADVERTISER, May 25, 2006.

¹² ATF, Assault Weapons Profile, supra note 7, at 20.

¹³ See infra p. 15.

¹⁴ Dep't of Treasury, Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles 38 (1998).

¹⁵ ATF, Report and Recommendations of the ATF Working Group on the Importability of Certain Semi-Automatic Rifles (July 6, 1989)

¹⁶ Dep't of Treasury, Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles, supra note 14.

¹⁷ Christopher S. Koper, *Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence*, *1994-2003*, U. PA. JERRY LEE CENTER OF CRIMINOLOGY 3 (June 2004). [Quotation in report spells out 'assault weapons' & 'large capacity magazines' while the actual quotation uses the abbreviations 'AWs' & 'LCMs'].

¹⁸ Press Release, Mayor Hahn, Chief Bratton Unite With Leaders Across Country To Demand Renewal Of Assault Weapons Ban (Apr. 27, 2004) (available at www.lacity.org).

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³⁹ Ryan LaFontaine, *Gunman had a large arsenal, Police say Asher used AK-47*, Sun Herald, June 9, 2007.



²⁰ See International Association of Chiefs of Police, *Taking a Stand: Reducing Gun Violence in Our Communities: Report and Recommendations from the IACP Great Lakes Summit on Gun Violence* 26 (2007) (noting that FBI data indicated that 41 of the 211 law enforcement officers slain in the line of duty between January 1, 1998 and December 31, 2001, were killed with assault weapons. *See also*, H.R. Rep. No. 103-489 (1994) at 14-15 (citing testimony about several assault weapons shootings); *Cops Under Fire: Law Enforcement Officers Killed With Assault Weapons or Guns With High Capacity Magazines*, Handgun Control, Inc. (now the Brady Center to Prevent Gun Violence) (1995).

²¹ The Officer Down Memorial Page, Inc. collects information on officers killed in the line of duty. See http://www.odmp.org/.

²² SAPD Details Monday Shooting Investigation, KSAT12-TV, San Antonio, Texas, Sept. 10, 2008.

²³ Brady McCombs & Alexis Huicochea, *Officer on life support after crosstown pursuit*, ARIZONA DAILY STAR, June 2, 2008.

²⁴ Joseph A. Gambardello, *Liczbinski suspect's girlfriend to stand trial*, PHILADELPHIA INQUIRER, July 17, 2008; *Officer shot, killed after bank robbery*, NBC 10.com, May 3, 2008; See Sergeant Stephen Liczbinski, www.odmp.org, *available at*: http://www.odmp.org/officer/19359-sergeant-stephen-liczbinski (last visited Sept. 30, 2008).

²⁵ David Ovalle et. al., *The murder and the manhunt started in a South Miami-Dade townhouse, zigzagged...*, MIAMI HERALD, Sept. 15, 2007.

²⁶ See Officer Frank Charles Denzinger, odmp.org, *available at*: http://www.odmp.org/officer/18926-officer-frank-charles-denzinger (last visited Sept. 30, 2008).

²⁷ See, e.g., Brittany Wallman, Fort Lauderdale police to carry assault rifles in cars, SOUTH FLORIDA SUN-SENTINEL, June 4, 2008; Ronnie Garrett, Long guns on patrol: Officers find it takes more than a handgun, a badge and handcuffs to protect the public and themselves, OFFICER.COM, May 20, 2008; David C. Lipscomb, D.C. to arm police with assault rifles, WASHINGTON TIMES, May 8, 2008, 'Arms race' has police carrying deadlier guns: Officers armed with increasingly powerful tools, ASSOCIATED PRESS, Mar. 22, 2008; Katie Fretland, Sheriff's office upgrades to counter criminals, ORLANDO SENTINEL, Oct. 4, 2007,

²⁸ Kevin Johnson, *Police needing heavier weapons: Chiefs cite spread of assault rifles*, USA TODAY, Feb. 20, 2007.

²⁹ Matt Sedensky, *AK-47s are turning up more in U.S.*, Associated Press, Mar. 27, 2008; Lise Fisher, *Phasing in firepower*, Gainsville Sun, Dec. 17, 2007; Jeffrey Kofman, *Increasing Assault Weapons in Criminal Hands*, ABC News, Nov. 27, 2007

³⁰ Matt Sedensky, AK-47s are turning up more in U.S., supra note 29.

³¹ See Mike Flannery, *More Assault Weapons Found in Chicago Since Ban Expired*, CBS 2 CHICAGO, June 7, 2005, *available at* http://cbs2chicago.com/topstories/local_story_158180945.html.

³² State Attorney: Problems Posed by Haitian Gangs Growing, NBC6, June 7, 2006 available at. http://www.nbc6.net/news/9337747/detail.html.

³³ Murder Also Stalks Black Men in Their 20s, MIAMI HERALD, June 25, 2006.

³⁴ Jack Dolan, *Miami Police get OK for more firepower*, MIAMI HERALD, Sept. 16, 2007.

³⁵ Matt Sedensky, *Assault-weapon attacks on rise in Miami area where officer slain*, Associated Press, Sept. 14, 2007.

³⁶ Jack Dolan, *Miami Police get OK for more firepower*, supra note 34.

³⁷ Bruce Falconer, *How Not to Buy an AK-47*, MOTHER JONES, July 16, 2008.

³⁸ Matt Sedensky, Assault-weapon attacks on rise in Miami area where officer slain, supra note 35.

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⁶⁵ Charles Sheehan, Neighborhood buries another child, CHICAGO TRIBUNE, Mar. 19, 2006.



⁴⁰ Ian Urbina, *Fatal police station attack shocks tranquil community*, New York Times, May 10, 2006; Officer Killed, BOSTON GLOBE, May 18, 2006.

⁴¹ Omar Sofradzija, *Processions to honor Prendes*, LAS VEGAS REVIEW-JOURNAL, Feb. 7, 2006.

⁴² Livingston County Kentucky Deputy Sheriff killed in gunfight, LMPD.com, June 3, 2005, available at: http://www.lmpd.com/index.php?name=News&file=article&sid=291&theme=AutoPrint (last visited Sept. 30, 2008).

⁴³ Cop. gunman dead: Marine killed after shooting officers. THE MODESTO BEE, Jan. 11, 2005

⁴⁴ Assault Weapons Putting Safety in Crosshairs?, KDKA CBS 2, July 12, 2005, available at http://kdka.com/local/local_story_193165007.html.

⁴⁵ Kevin Johnson, *Police needing heavier weapons: Chiefs cite spread of assault rifles*, USA TODAY, Feb. 20, 2007.

⁴⁶ Michael Laforgia, *Assault rifles escalate violence*, PALM BEACH POST, Jan. 28, 2007.

⁴⁷ Susan Candiotti, Cops find themselves in arms race with criminals, CNN.COM, Nov. 6, 2007.

⁴⁸ Len Fooksman, *Police Fearful of Violent Crime Trend: AK-47 Shootings*, SOUTH FLORIDA SUN-SENTINEL, May 13, 2006.

⁴⁹ Authorities seeing increase in use of assault weapons, WRAL-TV, Aug. 28, 2008.

⁵⁰ Glenn Smith, *Police can't get handle on supply*, POST AND COURIER, Oct. 1, 2006.

⁵¹ Evan Goodenow, *AK-47-type weapons in city, police reporting:* Seizures are up nationally since assault-rifle ban expired in 2004, FORT WAYNE NEWS SENTINEL, June 24, 2008.

⁵² Lynn Safranek, Assault rifles becoming more common in Midlands, OMAHA WORLD-HERALD, Jan. 27, 2008.

⁵³ Vic Lee, SF cops say they're outgunned, KGO TV 7 News, Aug. 24, 2006.

⁵⁴ *Id.*

⁵⁵ Niagara, Wisconsin shooting suspect caught, THE CHICAGO TRIBUNE, Aug. 1, 2008.

⁵⁶ Gunman in mass shooting identified, WVEC 13 News, Mar. 20, 2008, available at: http://www.wvec.com/news/vabeach/stories/wvec_local_031908_vb_shooting.79dfc43.html (last visited Sept. 29, 2008).

⁵⁷ Erin Emery, Report details church shooting, the document chronicles the days leading up to the Dec. 9 deaths of four young people, DENVER POST, Mar. 13, 2008.

⁵⁸ The American Way, REGISTER-GUARD, Dec. 17, 2007.

⁵⁹ Suspect: 'follow screams', Man opens fire at mall in Tacoma; 6 wounded, AKRON BEACON JOURNAL, Nov. 22, 2005.

⁶⁰ Mall Gunman Had Columbine Fixation, an Official Says, THE NEW YORK TIMES, Feb. 15, 2005.

⁶¹ Mary Sparacello, *Housing Authority reining in parties, Kenner shooting leads to regulations*, New ORLEANS TIMES PICAYUNE, Oct. 11, 2007.

⁶² Tom Rybarczyk, *Calumet City reels after spray of bullets*, CHICAGO TRIBUNE, June 26, 2006.

⁶³ Ashley M. Heher, *Suspect in slaying of 7 family members surrenders / Indianapolis police say he had nowhere else to go.* HOUSTON CHRONICLE, June 4, 2006.

⁶⁴ Gov. Blagojevich, victims' families, advocates urge lawmakers in Springfield to pass statewide assault weapons ban, US STATE NEWS, Mar. 23, 2006.

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⁸⁹ Second Amended Complaint, Halberstam v. S.W. Daniel, Inc., No. 95-C3323 (E.D.N.Y.1998), Nov. 19, 1997.



⁶⁶ Stephen Kudak & Sarah Lundy, *Cops: Suspect admits killing 2 campers in Ocala forest*, ORLANDO SENTINEL, Jan. 28, 2006.

⁶⁷ Bill Hanna & Jack Douglas Jr., *Rampage in Tyler leaves three dead, four wounded*, FORT WORTH STAR-TELEGRAM, Feb. 25, 2005; Jack Douglas Jr. & Bill Hanna, *Police order emergency trace on weapon used in shootings*, FORT WORTH STAR-TELEGRAM, Feb. 26, 2005.

⁶⁸ Ed Meyer, *Police eye semiautomatic rifles, Brimfield officials want to be prepared after recent shooting rampage that killed 3 people, AKRON BEACON JOURNAL, Feb. 24, 2005.*

⁶⁹ Wisconsin Shooting Rampage, St. Paul Pioneer Press, Nov. 23, 2004.

⁷⁰ Marianne Zawitz, *Guns Used in Crime*, U.S. Dep't of Justice, Bureau of Justice Statistics 6 (1995).

⁷¹ ATF, Assault Weapons Profile supra note 7, at 19-20.

⁷² NIJ, Firearm Use By Offenders 2-3 (2001).

⁷³ ATF, Assault Weapons Profile, supra note 7, at 19.

⁷⁴ Dep't of Treasury, Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles, supra note 14, at 17

⁷⁵ Paul Salopek, *A Chilling Look into Terror's Lair*, CHICAGO TRIBUNE, Nov. 18, 2001.

⁷⁶ Complaint, United States v. Shnewer, Magistrate No. 07-M-2045 (D.N.J. 2007).

⁷⁷ Indictment Details Terror Weapons Smuggling Scheme, NEW YORK SUN, March 16, 2005.

⁷⁸ Press Release, U.S. Dep't of Justice, Rockford Man Faces Federal Explosives Charges; Large Cache of Weapons, Ammunition and Explosives Materials Seized (Apr. 21, 2004).

⁷⁹ Gun Land – Are guns bought in the U.S. ending up in the hands of terrorists?, Now WITH BILL MOYERS, Nov. 15, 2002.

⁸⁰ ATF: Phoenix Gun Dealer Supplied Mexican Drug Cartels, ABC News, May 6, 2008.

⁸¹ U.S. guns arm Mexican drug cartels, Los Angeles Times, Aug. 11, 2008.

⁸² Man Accused of Shipping Arms, Ammunition to Beirut, Associated Press, Nov. 21, 2000.

⁸³ Gun Land – Are guns bought in the U.S. ending up in the hands of terrorists?, Now with Bill Moyers, supra note 79.

⁸⁴ Elena Cabral, Attempt to Buy Rifles Linked to Terrorist, MIAMI HERALD, June 2, 2001.

⁸⁵22-year-old Rupinder "Benny" Oberoi was shot in the lower back outside his place of work in Silver Spring, Maryland on September 14th. 52-year-old liquor store manager Claudine Parker was shot and killed as she and a coworker closed the store in Montgomery, Alabama. 45-year-old beauty supply store manager named Hong Im Ballenger was shot and killed outside a store she managed in Baton Rouge, Louisiana on September 23rd.

⁸⁶ Premkumar A. Walekar of Olney, Maryland, a 54-year-old male cabdriver, was shot and killed with the Bushmaster assault rifle at a Mobil gas station in Aspen Hill, Maryland on October 3rd.

⁸⁷ James L. "Sonny" Buchanan, Jr. of Abingdon, VA, a 39-year-old landscaper, was shot and killed with the Bushmaster assault rifle while mowing grass at a car dealership in White Flint, Maryland On October 3.

⁸⁸ Linda Franklin, a 47-year-old FBI employee was shot and killed with the Bushmaster assault rifle while loading packages with her husband in their car in the parking garage of a Home Depot in Seven Corners Shopping Center in Fairfax County, Virginia On October 14.

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¹⁰⁵ Hearings Before the Committee on the Judiciary on S. 639 and S. 653, U.S. Senate, 103d Cong. 1 (Aug. 3, 1993) (statement of Hon. Joseph Biden).



⁹⁰ CIA Killings Prompt Scrutiny on 2 Fronts; Fairfax Loophole Expedited Gun Purchase, WASHINGTON POST, Feb. 11, 1993.

⁹¹ Robert O'Harrow, Jr. *Kansi's Shadowy Stay in U.S. Leaves a Hazy Portrait*, WASHINGTON POST, Mar 3, 1993

⁹² On March 21, 1989, ATF announced a temporary suspension of the importation of five assault weapons. On March 29, 1989, ATF expanded the scope of the suspension to cover all assault weapons "indistinguishable in design, appearance and function to the original five" and established a working group to decide whether to make this import ban permanent. On March 30, 1989, a gun importer challenged ATF's authority to suspend the importation of these weapons. The Eleventh Circuit Court of Appeals upheld ATF's authority to issue the import suspensions. *Gun South, Inc. v. Brady*, 877 F.2d 858 (11th Cir. 1989). ATF then issued its working group report and, pursuant to 18 U.S.C. § 925(d)(3), made the import ban permanent. ATF, *Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles supra* note 15.

⁹³ In April 1998, ATF determined that the 1989 ban on the importation of assault rifles remained valid and expanded the import ban to include rifles with the "ability to accept a detachable large capacity military magazine" because those weapons "cannot fairly be characterized as sporting rifles." ATF, Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles, supra note 14.

⁹⁴ See ATF, Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles, supra note 15, at 5-8 (describing numerous military features of assault weapons).

⁹⁵ Police Fear a Future of Armored Enemies, USA TODAY, Mar. 3, 1997.

⁹⁶ Declaration of Leonard J. Supenski in Support of Plaintiffs' Joint Opposition to Navegar, Inc.'s Motion for Summary Judgment or, in the Alternative, Summary Adjudication at 8, In re 101 California Street Bldg., No. 959316 (Sup. Ct. Cal. 1996).

⁹⁷ Jim Zumbo, Assault Rifles for Hunters?, available at: http://razoreye.net/mirror/zumbo/zumbo_assault_rifles.html (last visited Oct. 7, 2008).

⁹⁸ District of Columbia v. Heller, 128 S.Ct. 2783 (2008).

⁹⁹ The Court was careful to announce only a limited Second Amendment right that was tied to guns used for self-defense in the home. *Id.* at 2821-22. "[W]hatever else [the Second Amendment] leaves to future evaluation, it surely elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *Id.* at 2821. "[T]he enshrinement of constitutional rights necessarily takes certain policy choices off the table. These included the absolute prohibition of handguns held and used for self-defense in the home." *Id.* at 2822. "In sum, we hold that the District's ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense." *Id.* at 2821-22.

¹⁰⁰ *Id.* at 55.

¹⁰¹ See infra p. 1, Assault Weapons are Designed to Slaughter People.

¹⁰² Those include California, which passed the nation's first statewide ban in May 1989, as well as New Jersey (1990), Hawaii (1991), Connecticut (1993), Maryland (1994), Massachusetts (1998), and New York (2000). California expanded its ban in 2000 to include all semiautomatic rifles or pistols that have the ability to accept a detachable magazine and contain any one of a series of military-style features similar to the list found in the federal ban. Cal. Penal Code § 12276.1.

¹⁰³ See infra p. 14, Assault Weapons Have No Sporting or Self-Defense Purpose.

¹⁰⁴ See, e.g., Benjamin v. Bailey, 662 A.2d 1226 (Conn. 1995); Robertson v. Denver, 874 P.2d 325 (Colo. 1994); Arnold v. City of Cleveland, 616 N.E.2d (Ohio 1993).

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¹¹⁸ Numerous newspaper editorials and columnists are in favor of the reinstatement of an assault weapons ban. *See, e.g., Our leaders are fighting to bring back the national assault weapons ban, DAILY PENNSYLVANIAN, May 29, 2008; Brian Scheid, Rendell: Reinstate weapons ban, BUCKS COUNTY COURIER TIMES, May 12, 2008; David Gambacorta, <i>In wake of Liczbinski slaving, a push for assault-weapon ban,*



¹⁰⁶ The law was intended to cover "copies or duplicates" of named firearms, 18 U.S.C. § 921(30)(A), but it was never successfully applied to ban any of the copycat weapons that emerged after the ban unless they also violated the two-features test.

¹⁰⁷ The data available at the time of the study went up through the end of 2001.

¹⁰⁸ The conclusions in the On Target study were similar to an analysis of assault weapons traced to crime done for United States Senators Dianne Feinstein and Charles Schumer. This analysis showed that the proportion of banned assault weapons traced to crime dropped by more than 65% while the ban was in effect, according to ATF crime gun trace data. See report released on Nov. 5, 2003, available at http://feinstein.senate.gov/03Releases/r-assaultwepsrate1.htm.

¹⁰⁹ In addition to the Brady Center's study, the U.S. Department of Justice, National Institute of Justice conducted a study, mandated by the Act, of the short-term impact on crime of the assault weapons ban. The study, published in 1999, found that the ban had "clear short-term effects on the gun market," leading to semiautomatic assault weapons "becom[ing] less accessible to criminals because there was at least a short-term decrease in criminal use of the banned weapons." Jeffrey A. Roth & Christopher S. Koper, *Impacts of the 1994 Assault Weapons Ban: 1994-96* 1, 9 (U.S. Dep't of Justice, National Institute of Justice 1999) (*available at* http://www.ncjrs.org/pdffiles1/173405.pdf).

¹¹⁰ One of the principal authors of that interim study published a follow-up analysis of the effects of the federal ban in June 2004. Christopher S. Koper, *Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003*, U. PA. JERRY LEE CENTER OF CRIMINOLOGY, *supra* note 17. That study documented a dramatic reduction in the incidence of assault weapon use in crime while the ban was in effect. The study found, according to ATF data, that assault weapons, as a percentage of total crime gun traces, fell 70% from 1992-93 to 2001-02. *Id.* at 44. Indeed, the study found it "remarkable" that the annual number of assault weapons traced to crime did not increase during the period the ban was been in effect, even though, due to far more comprehensive tracing of crime guns by ATF, the number of total guns traced to crime increased almost 200% during that same period. *Id.* As the study noted, these results were consistent with the findings of the Brady Center in its On Target report, discussed above. *Id.* at 44, n.43. Koper's study attributed these declines in the frequency of assault weapon use in crime to the statute itself, in contradiction to the assertions made by some commentators that the decline was due to other factors. The study found that the decline in frequency of assault weapon traces did not begin until 1994, the year of the ban, and concluded that "the ban prevent[ed] a few thousand crimes with assault weapons annually." *Id.* at 52, n.61.

¹¹¹ The firearms listed in this data are considered by ATF to be "crime guns," which means they have been illegally possessed, used in a crime, or suspected of having been used in a crime. ATF, *The Youth Crime Gun Interdiction Initiative, Crime Gun Trace Analysis Reports: The Illegal Youth Firearms Market in 27 Communities* 5 (1999).

¹¹² Cal. Penal Code § 12276.1.

¹¹³ H.R. 1022, 110th Cong. (2007).

¹¹⁴ See http://www.pollingreport.com/guns.htm.

¹¹⁵ Id.

¹¹⁶ Majority of U.S. adults favors continuing ban on sales of assault rifles, according to latest Harris poll, Sept. 24, 2004, *available at*: http://www.harrisinteractive.com/harris_poll/index.asp?PID=498 (last visited Oct. 3, 2008).

Survey: 8 out of 10 Illinois voters favor banning assault weapons, WBBM 780 NEWS, Chicago, IL, Mar. 22, 2007.

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PHILADELPHIA DAILY NEWS, May 8, 2008; *Time for action*, BUCKS COUNTY COURIER TIMES, May 7, 2008; *Gun Control: How many more?*, PHILADELPHIA INQUIRER, May 6, 2008; Sam Wood, *Cheap but deadly weapon killed police officer*, PHILADELPHIA INQUIRER, May 6, 2008; *Assault rifles: Cops find themselves outgunned*, SALT LAKE TRIBUNE, Apr. 14, 2008; *Take aim at guns*, CHICAGO TRIBUNE, Mar. 12, 2008; *Gun Crazy*, NEW YORK TIMES, Mar. 1, 2008; *Assault weapon bill is a start, at least*, SOUTH FLORIDA SUN-SENTINEL, Feb. 12, 2008; *Off-Target: Why are chuka sticks illegal, but not AK-47 knockoff?*, SYRACUSE POST-STANDARD, Dec. 27, 2007; *Mass killings demand serious debate on banning some weapons*, RECORDNET.COM, Dec. 20, 2007, *available at:*

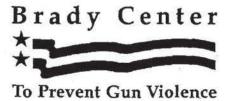
http://www.recordnet.com/apps/pbcs.dll/article?AID=/20071220/A_OPINION01/712200308/-1/A_OPINION (last visited Oct. 2, 2008); Ralph Fascitelli, *It's time to outlaw military assault weapons*, SEATTLE POST-INTELLIGENCER, Dec. 19, 2007; *Get rid of these guns – now*, TIMES-HERALD, Dec. 19, 2007; *Courage vs. Carnage: What Congress can do to keep the worst weapons out of the wrong hands*, WASHINGTON POST, Dec. 13, 2007; *The Omaha Massacre: Warning Shots*, PHILADELPHIA INQUIRER, Dec. 7, 2007; Charles Rabin, *Dade urges renewing assault-arms ban*, MIAMI HERALD, Nov. 8, 2007; *The other arms race*, BALTIMORE SUN, Nov. 7, 2007; Ana Menendez, *There's no good reason to have an assault rifle*, MIAMI HERALD, Sept. 16, 2007; *Legislature should take aim at assault weapon horrors*, CHICAGO SUNTIMES, Jan. 10, 2007.



¹¹⁹ See Press Release, Brady Campaign to Prevent Gun Violence, Jim and Sarah Brady "Personally Offended" by Gun Lobby Efforts to Falsify Reagan Record (June 16, 2004) *available at*: http://www.bradycampaign.org/media/release.php?release=565 (guoting letter from President Reagan).

¹²⁰ See Press Release, Brady Campaign to Prevent Gun Violence, Former Presidents Ford, Carter, Clinton Urge President Bush to Save the Assault Weapons Ban (June 7, 2004) *available at*: http://www.bradycampaign.org/media/release.php?release=569.

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Testimony of Brian J. Siebel Senior Attorney Brady Center to Prevent Gun Violence Before the Council of the District of Columbia October 1, 2008

Thank you, Chairman Mendelson and other members of the Council, for inviting the Brady Center to Prevent Gun Violence to speak at this important committee hearing.

The Brady Center to Prevent Gun Violence and the Brady Campaign to Prevent Gun Violence are the nation's largest organizations working for sensible gun policies. The Legal Action Project of the Brady Center represents victims of gun violence and defends gun laws in the courts.

In addition to the other measures being suggested here today, which we support, the Brady Center and Brady Campaign strongly urge the Council to pass an assault weapons ban, a ban on .50 caliber sniper rifles, and retain its recently-passed ban on high-capacity ammunition magazines, as part of its process of strengthening the District's gun laws in light of the *Heller* decision.

The Need for An Assault Weapons Ban

Assault weapons had been banned for more than 30 years under the broader D.C. ban on all semiautomatic weapons. However, now that that ban has been repealed, an assault weapon ban is needed to protect the people of the District, visitors, and law enforcement from these particularly dangerous weapons. An assault weapons ban would continue to allow law-abiding citizens to have common pistols in their homes for self-defense, and would remain in compliance with the *Heller* decision. We believe it is imperative for the Council, now that it has legalized common semiautomatic pistols, to restore a ban on military-style assault weapons.

Assault Weapons Are "Mass Produced Mayhem"

Assault weapons are semiautomatic versions of fully automatic guns designed for military use. Even semiautomatic assault weapons unleash extraordinary firepower. When San Jose, California, police test-fired an UZI, a 30-round magazine was emptied in slightly less than two seconds on full automatic, while the same magazine was emptied in just five seconds on semiautomatic.

The Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") has described assault weapons in stark terms.

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Assault weapons were designed for rapid fire, close quarter shooting at human beings. That is why they were put together the way they were. You will not find these guns in a duck blind or at the Olympics. They are mass produced mayhem.¹

Assault weapons have distinct features that separate them from sporting firearms.² While hunting rifles are designed to be fired from the shoulder and depend upon the accuracy of a precisely aimed projectile, the military features of semiautomatic assault weapons are designed to enhance their capacity to shoot multiple human targets very rapidly. Assault weapons are generally equipped with large-capacity ammunition magazines that allow the shooter to fire 20, 50, or even more than 100 rounds without having to reload. Pistol grips on assault rifles and shotguns help stabilize the weapon during rapid fire and allow the shooter to spray-fire from the hip position. Barrel shrouds on assault pistols protect the shooter's hands from the heat generated by firing many rounds in rapid succession. Far from being simply "cosmetic," these features all contribute to the unique function of any assault weapon to deliver extraordinary firepower. They are uniquely military features, with no sporting purpose whatsoever.

Accordingly, ATF has concluded that assault weapons "are not generally recognized as particularly suitable for or readily adaptable to sporting purposes" and instead "are attractive to certain criminals." ATF's analysis of guns traced to crime showed that assault weapons "are preferred by criminals over law abiding citizens eight to one.... Access to them shifts the balance of power to the lawless."

It is no accident that when a madman, Gian Luigi Ferri, decided to assault the law offices at 101 California Street in San Francisco, he armed himself with two TEC-9 assault weapons with 50 round magazines, which enabled him to kill eight people and wound six others. Or that the Columbine high school shooters who killed 12 students and a teacher included a TEC-9 assault weapon in their arsenal. Or that James Huberty used an UZI assault pistol and a shotgun to kill 21 people and wound 19 others at a McDonald's in San Ysidro, California. Or that Patrick Purdy used an AK-47 assault rifle to kill five children and wound 29 others and a teacher at an elementary School in Stockton, California. Equipped with a 75-round "drum" magazine, Purdy was able to shoot 106 rounds in less than two minutes. The list goes on.

¹ ATF, Assault Weapons Profile 19 (1994) (emphasis added).

² Id. at 20.

³ DEP'T OF TREASURY, Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles 38 (1998).

⁴ ATF, Assault Weapons Profile, supra note 1, at 19-20.

⁵ Ferri Used Guns That California Ban Does Not Forbid, SAN FRANCISCO EXAMINER, July 4, 1993.

⁶ Satellite College Campus Helps to Heal the Scars at San Ysidro Massacre, LOS ANGELES TIMES, Mar. 30, 1989; A 77-Minute Moment in History That Will Never Be Forgotten, LOS ANGELES TIMES, July 16, 1989.

⁷ The Kinds of Guns School Killer Used, SAN FRANCISCO CHRONICLE, Jan. 19, 1989; Michael Taylor & Lesiie Guevarra, Myterious Scrawlings and Slogans, School Killer's Last Days, Toy Army in his Room, SAN FRANCISCO CHRONICLE, Jan. 19, 1989.

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Assault Weapons Threaten Law Enforcement

Law enforcement officers are at particular risk from these weapons because of their high firepower, which often leaves them outgunned by criminals. A researcher for the Department of Justice found that

assault weapons account for a larger share of guns used in mass murders and murders of police, crimes for which weapons with greater firepower would seem particularly useful.⁸

Assault weapons have even been used in a brazen attack at D.C. Police Headquarters. On November 22, 1994, a man armed with a MAC-11 assault pistol walked into Metropolitan Police headquarters and shot and killed Sergeant Henry Daly and FBI Agents Mike Miller and Martha Martinez. The shooter seriously wounded FBI Agent John Kuchta and shot at couches, walls, computers, and desks before shooting and killing himself with Agent Martinez's gun.⁹

In addition, numerous law enforcement officers have been killed with high-firepower assault weapons. Here are a few recent examples:

- Philadelphia, PA. May 3, 2008. Officer Stephen Liczbinski was shot and killed by an assault rifle as he was responding to a robbery at a Bank of America branch. Three men robbed the bank and were fleeing when Officer Liczbinski stopped their car and exited his patrol car. At that time, one of the bank robbers opened fire with an SKS assault rifle, striking Liczbinski numerous times. One suspect was eventually shot and killed by police and the other two suspects were arrested and charged with murder.¹⁰
- Miami, Florida. September 13, 2007. Police spotted a vehicle driving erratically and followed it until it stopped in a residential complex. The suspect got out and hopped a fence to the rear of the home; the officers exited their patrol car and went to the front of the home and were granted permission to search by a female resident. The suspect grabbed a high-powered, military-grade rifle and fired at the police officers through a window, killing Officer Jose Somohano. The suspect then exited the house and shot three other officers as he escaped. The shooter was caught later that day but would not relinquish his assault rifle so he was shot and killed by police officers.

⁸ Christopher S. Koper, Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003, U. Penn. Jerry Lee Center of Criminology 87 (June 2004).

⁹ Brian Reilly, Cop killers' guns similar; handgun converted to fiercer weapon, The Washington Times, May 1, 1995.

¹⁰ Joseph A. Gambardello, Liczbinski suspect's girlfriend to stand trial, PHILADELPHIA INQUIRER, July 17, 2008;
Officer shot, killed after bank robbery, NBC 10.COM, May 3, 2008; Sergeant Stephen Liczbinski, www.odmp.org,
available at: http://www.odmp.org/officer/19359-sergeant-stephen-liczbinski (last visited Sept. 30, 2008).

¹¹ David Ovalle et. al., The murder and the manhunt started in a South Miami-Dade townhouse, zigzagged..., MIAMI HERALD, Sept. 15, 2007.

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Chantilly, Virginia. May 8, 2006. A teenager with an AK-47 and 5 handguns engaged in a
firefight at a police station in suburban Virginia, killing Detective Vicky Armel immediately
and wounding two other officers, one of whom, Officer Michael Garbarino, died nine days
later from his injuries.¹²

The threat posed to law enforcement is one reason why major law enforcement organizations are united in supporting bans on assault weapons.

Assault Weapons Threaten Civilians

Assault weapons have also been used to massacre and terrorize civilians. Who can forget the nightmare we lived through in the District of Columbia and surrounding communities during the attacks committed by the D.C. snipers. Their weapon of choice? A Bushmaster XM-15 assault rifle.

There have been hundreds of other shootings committed with semiautomatic assault weapons. Here, we list just a few recent examples:

- Arvada & Colorado Springs, Colorado. December 9, 2007. One man with an assault rifle
 attacked a missionary training center in Arvada and a church in Colorado Springs. He killed
 two people and injured two others in Arvada, and killed two and injured three others,
 including two teenage sisters, in Colorado Springs. He died after being shot by a security
 guard and then shooting himself.¹³
- Omaha, Nebraska. December 5, 2007. Nine people were shot to death and five others were injured after a 20-year-old shooter, armed with a military-style assault rifle, attacked shoppers in a department store in a Nebraska mall.¹⁴
- Indianapolis, Indiana. June 2, 2006. Seven family members, four adults and three children, were shot and killed in their home by a robber armed with an assault rifle. Nearly 30 shell casings were found.¹⁵
- Tyler, Texas. February 25, 2005. A gunman with a history of domestic violence and a felony conviction, who was reportedly fighting with his ex-wife over child support for their two youngest children, shot over 50 rounds from an SKS assault rifle on the steps of his local courthouse when his ex-wife exited the building. His ex-wife was killed along with a bystander who tried to shoot the gunman. The shooter's 23-year-old son and three law enforcement officers were wounded during the shooting, including a 28-year-old deputy who

¹² Ian Urbina, Fatal police station attach shocks tranquil community, New YORK TIMES, May 10, 2006; Officer Killed, BOSTON GLOBE, May 18, 2006.

¹³ Erin Emery, Report details church shooting, the document chronicles the days leading up to the Dec. 9 deaths of four young people, DENVER POST, Mar. 13, 2008.

¹⁴ The American Way, REGISTER-GUARD, Dec. 17, 2007.

¹⁵ Ashley M. Heher, Suspect in slaying of 7 family members surrenders / Indianapolis police say he had nowhere else to go, HOUSTON CHRONICLE, June 4, 2006.

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was in grave condition. The gunman fled the scene but was pursued and shot by police when he exited his car and shot toward officers. 16

• Akron, Ohio. February 24, 2005. A man shot and killed his girlfriend and her seven-year old son using an AR-15 assault weapon, then fired more than one hundred rounds at a dozen law enforcement officers as he fled the murder scene. The gunman was arrested the next morning inside the apartment of a Kent State University student, who he also murdered with the AR-15 assault weapon. Police subsequently seized 21 weapons kept by the suspect, including an Uzi and an AK-47.¹⁷

Assault Weapons Threaten Homeland Security

These weapons pose particular and severe risks for homeland security here in the Nation's Capital. The extraordinary firepower of these weapons could wreak havoc at any number of high-profile sites or events that occur in Washington, or victimize any number of high-profile targets, from government officials to foreign dignitaries.

And make no mistake: these weapons have great appeal for terrorists. The oft-seen file footage of Osama Bin Laden, aiming his AK-47 at an unknown target, is now a familiar reminder of the incontrovertible connection between terrorism and assault weapons.

The Chicago Tribune has reported that, found among the mounds of rubble at a training facility in Kabul for a radical Pakistan-based Islamic terrorist organization, was a manual entitled "How Can I Train Myself for Jihad" containing an entire section on "Firearms Training." Tellingly, the manual singles out the United States for its easy availability of firearms and stipulates that al-Qaeda members living in the United States "obtain an assault weapon legally, preferably AK-47 or variations."

Terrorists have used assault weapons in numerous attacks. I am going to mention just one that is close to home.

Langley, Virginia, January 25, 1993. Pakistani national Mir Aimal Kasi killed two CIA employees and wounded three others outside the entrance to CIA headquarters in Langley, Virginia. Kasi used a Chinese-made semiautomatic AK-47 assault rifle equipped with a 30-round magazine purchased from a Northern Virginia gun store. After fleeing the country, he was arrested in Pakistan in 1997. Description.

¹⁶ Bill Hanna & Jack Douglas Jr., Rampage in Tyler leaves three dead, four wounded, FORT WORTH STAR-TELEGRAM, Feb. 25, 2005; Jack Douglas Jr. & Bill Hanna, Police order emergency trace on weapon used in shootings, FORT WORTH STAR-TELEGRAM, Feb. 26, 2005.

¹⁷ Ed Meyer, Police eye semiautomatic rifles, Brimfield officials want to be prepared after recent shooting rampage that killed 3 people, AKRON BEACON JOURNAL, Feb. 24, 2005.

Paul Salopek, A Chilling Look into Terror's Lair, CHICAGO TRIBUNE, Nov. 18, 2001.

¹⁹ CIA Killings Prompt Scrutiny on 2 Fronts: Fairfax Loophole Expedited Gun Purchase, WASHINGTON POST, Feb. 11, 1993.

Robert O'Harrow, Jr., Kansi's Shadowy Stay in U.S. Leaves a Hazy Portrait, WASHINGTON POST, Mar. 3, 1993.

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.50 Caliber Sniper Rifles Pose Serious Dangers

Fifty caliber sniper rifles also pose an extraordinary risk in the District. In 1987, Barrett Firearms Manufacturing Inc., patented its self-described "armor-penetrating" .50 caliber BMG sniper rifle. Capable of destroying armored personnel carriers, aircraft and bulk fuel and ammunition sites, the .50 caliber sniper rifle is now proliferating in the civilian market. Accurate at up to 2,000 yards, it can inflict effective damage to targets over four miles away. With more power on impact then any other semi-automatic rifle legally available on the civilian market, the .50 caliber represents a serious threat to local law enforcement and national security. A 2004 report on airport security at Los Angeles International Airport warned that terrorists could use .50-caliber sniper rifles to target parked and taxiing airplanes "firing over 50 shots in five minutes." The Council should take action to prohibit the possession of these weapons in civilian hands.

High-Capacity Magazines Increase Firepower

The threat posed by military-style assault weapons is increased significantly if they can be equipped with high-capacity ammunition magazines, defined as those accepting more than ten rounds. The 1994-2004 federal ban on assault weapons also banned these magazines. By permitting a shooter to fire more than ten rounds without reloading, they greatly increase the firepower of mass shooters. For example, the shooter at Virginia Tech equipped himself with numerous high-capacity magazines of up to 30 rounds, which enabled him to get off nearly 200 rounds in his attack. In self-defense situations, too much firepower is a hazard, because the tendency is for defenders to keep firing until all bullets have been expended, which poses grave risks to others in the household, passersby, and bystanders.

Assault Weapons Bans Already In Place

Six states currently ban assault weapons. Those include California, which passed the nation's first statewide ban in May 1989, as well as New Jersey (1990), Hawaii (1991), Connecticut (1993), Maryland (1994), Massachusetts (1998), and New York (2000). California expanded its ban in 2000 to include all semiautomatic rifles or pistols that have the ability to accept a detachable magazine and contain any one of a series of military-style features. We strongly support that legislation as a model for the District of Columbia.

²¹ Carolyn Marshall, California Bans Large Caliber Guns, and the Battle is on, NEW YORK TIMES, Jan. 4, 2005.

²² See, Government Accounting Office for U.S. House of Representatives, Committee on Government Reform, Long Range 50 Caliber Sniper Weapons 4 (May 3, 1999).

²³ Id.

²⁴ Id. at 3.

²⁵ Donald Stevens, Near Term Options for Improving Security at Los Angeles International Airport, RAND (2004).

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In addition, from 1994-2004, there was a federal ban on assault weapons. Plus, as mentioned above, ATF currently bans assault weapons from being imported into this country because they are not weapons suitable for sporting purposes.

Banning Assault Weapons and Sniper Rifles Is Consistent with Heller

A ban on assault weapons and .50 caliber sniper rifles would be constitutional and consistent with the Supreme Court's decision in District of Columbia v. Heller. In D.C. v. Heller, the Supreme Court narrowly defined the Second Amendment as protecting the right of law-abiding citizens to keep and use guns in the home for self-defense. At the same time, the Court indicated that the right to keep and bear arms is limited in a number of ways. The Court made clear that the Second Amendment does not entitle citizens to any and all guns. Certainly, military-style assault weapons and .50 caliber sniper rifles are not a part of this right. The Court held that not all "arms" are protected.

We also recognize another important limitation on the right to keep and carry arms. [U.S. ν .] Miller said, as we have explained, that the sorts of weapons protected were those "in common use at the time." We think that limitation is fairly supported by the historical tradition of prohibiting carrying of "dangerous and unusual weapons."

Assault weapons and .50 caliber sniper rifles are certainly "dangerous and unusual weapons" according to any reasonable analysis of that phrase. They are military-style offensive weapons designed to slaughter human beings. This differentiates them from all hunting rifles and shotguns, as well as common handguns, which are often used in crime but have also been used in self-defense.

Moreover, assault weapons and .50 caliber sniper rifles are not "in common use." As semiautomatic versions of machine guns developed for use during the World Wars of the 20th Century, assault weapons are a relatively recent invention. Plus, ATF has twice concluded, after thorough analyses in 1989 and 1998, that assault weapons have no sporting purpose. And the Barrett .50 caliber sniper rifles was patented a mere twenty-one years ago, and was made for military, not civilian use.

Finally, assault weapon bans have been challenged in court, but have never been struck down as unconstitutional under the Second Amendment or under right to bear arms provisions in state constitutions.²⁷

Conclusion

Outside of the military or law enforcement, assault weapons and .50 caliber sniper rifles have no place in civilized society. We would urge the D.C. Council to adopt a ban on these weapons. Thank you.

²⁶ District of Columbia v. Heller, 128 S.Ct. 2783 (2008).

²⁷ See, e.g., Benjamin v. Bailey, 662 A.2d 1226 (Conn. 1995); Robertson v. Denver, 874 P.2d 325 (Colo. 1994); Arnold v. City of Cleveland, 616 N.E.2d (Ohio 1993).

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Gunshot victimisations resulting from high-volume gunfire incidents in Minneapolis: findings and policy implications

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Received 12 October 2017 Revised 29 January 2018 Accepted 2 February 2018

ABSTRACT

Laws restricting large ammunition magazines for semiautomatic weapons are intended to reduce firearm deaths and injuries by preventing gun attacks involving high numbers of shots. However, data on shootings from high-volume gunfire (HVG) incidents are extremely limited. This study examined gunshot victimisations resulting from HVG attacks (>10 shots fired) using police data on shootings in Minneapolis, Minnesota from January through August 2014 (n=135 to 167). Shots fired estimates were generated from police reports based on physical evidence recovered, reported gunshot victims, and accounts of witnesses and actors. HVG incidents accounted for 20%-28% of victims and were more likely to involve multiple victims. Most HVG cases seemed likely to have involved a gun with a large capacity magazine though these data were limited. Restricting large ammunition magazines may have greater potential for preventing shootings than previously estimated, but further studies of this issue are needed.

INTRODUCTION

From 2010 through 2012, the USA experienced an annual average of 11256 firearm homicides and 48 534 non-fatal assault-related gunshot victimisations that cost nearly \$22 billion a year in lifetime medical and work-related costs. One policy response to reduce gunshot victimisations involves restricting large capacity ammunition magazines (LCMs), which are typically defined as firearm ammunition-feeding devices holding > 10 rounds of ammunition (some laws have higher limits). Most notably, these laws limit the capacity of detachable magazines for semiautomatic weapons and are thus intended to reduce firearm injuries by preventing gun attacks involving high numbers of shots fired. The federal government imposed a national ban on LCMs from 1994 to 2004, and some have proposed its reinstatement. Currently, eight states and the District of Columbia have LCM restrictions, as do some additional localities.2

In evaluating the potential of LCM restrictions to reduce shootings, one key issue is estimating the prevalence of high-volume gunfire (HVG) incidents—particularly those involving > 10 shots—and the deaths and injuries they produce.3 4 However, there is no national or state data source that captures information on shots fired in gun attacks, and only one published study has investigated this issue for a locally representative sample of gun crimes extending beyond mass shooting incidents.

That study examined handgun assaults in one large city, finding that cases with >10 shots (ie, those most likely to have involved an LCM) accounted for 2%-3% of the attacks and produced nearly 5% of the gunshot victims in the sample.^{3 5} However, those data were collected in the 1990s during the years of the federal LCM ban and in a city (Jersey City, New Jersey) that was also subject to state-level LCM restrictions. Hence, these findings may not generalise well to other locations and the current time frame. The study presented here provides a new examination of this issue using recent data on shootings in the city of Minneapolis, Minnesota, which is not subject to LCM restrictions.

METHODS

This study examines shots fired in fatal and non-fatal gunshot victimisations investigated by the Minneapolis Police Department (MPD) from January through August 2014. Minneapolis, a city of approximately 400000 people, experiences roughly 30 homicides and 1000 non-fatal threats or attacks with guns annually according to records of the MPD. Recent studies have shown increases in the use of high-capacity semiautomatics and shots fired in the city's gun crimes.^{6 7} The MPD's ShotSpotter system, an acoustical gunshot detection system that covers portions of the city, indicates that 5%-7% of detected gunfire incidents produce >10shots. Police also find evidence of ≥10 shots fired at 15% of crime scenes where ballistics evidence is recovered.

Gunshot victimisations for the study period were identified through the MPD's records management system, which includes indicators for victim injuries. Anonymised information on shots fired and victims killed or wounded in these incidents was then collected from investigative case files. Estimates of shots fired were generated based on physical evidence recovered (eg, shell casings found at the scene), reported gunshot victims and the accounts of witnesses and actors as recorded in investigators' reports and calls made to dispatchers at the Minneapolis Emergency Communications Centre. Minimum and maximum estimates were generated for cases that had conflicting evidence about the number of shots fired. If, for example, police found 8 shell casings at the scene but witnesses reported 12 shots, then the case was coded as involving a minimum of 8 shots and a maximum of 12. HVG cases were defined as those involving >10 shots



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To cite: Koper CS, Johnson WD, Stesin K, et al.Inj Prev Epub ahead of print: [please include Day Month Year]. doi:10.1136/ injuryprev-2017-042635

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Table 1 Distribution of incidents and victims by estimates of shots fired for assault-related gunshot victimisation cases in Minneapolis, January–August 2014

	Count of incidents		Count of victims	
Number of shots	Min	Max	Min	Max
1 shot	33 (32.4%)	25 (24.5%)	35 (25.9%)	25 (18.5%)
2–6 shots	41 (40.2%)	41 (40.2%)	49 (36.3%)	48 (35.6%)
7–10 shots	12 (11.8%)	17 (16.7%)	17 (12.6%)	24 (17.8%)
11–15 shots	13 (12.7%)	12 (11.8%)	29 (21.5%)	24 (17.8%)
>15 shots	3 (2.9%)	7 (6.9%)	5 (3.7%)	14 (10.4%)
Totals	102	102	135	135
All >10 shots	16 (15.7%) 95% CI 8.1% to 23.2%	19 (18.6%) 95% CI 10.6% to 26.7%	34 (25.2%) 95% CI 17.5% to 32.9%	38 (28.1%) 95% CI 20.2% to 36.1%

Analysis based on cases with at least one gunshot victim. Minimum estimates reflect incident and victim counts using minimum estimates of shots fired for each case. Maximum estimates reflect incident and victim counts using maximum estimates of shots fired for each case. Percentages may not sum to 100 due to rounding.

This analysis is based on 102 assault-related cases (ie, murders, assaults or robberies) involving a total of 135 gunshot victims (all but 5 were non-fatal shooting victims). An additional 27 assault-related cases with a total of 32 victims were excluded from the main sample because the number of shots could not be estimated (16 cases) or because they were under active investigation and the files were not accessible (11 cases, primarily homicides). The distribution of incidents and victims by shots fired was analysed with an emphasis on HVG incidents using both minimum and maximum estimates of shots fired. Victim counts were also compared for HVG and non-HVG incidents. For cases involving >10 shots (based on minimum or maximum estimates), additional information was collected where available on offender counts and firearms used to identify incidents most likely to have involved a firearm with an LCM.

RESULTS

Across all cases, shots fired averaged 5.3–6.3 based on minimum and maximum estimates. Counts of incidents and victims are cross-tabulated by estimates of shots fired in table 1. Using minimum estimates of shots for each case, 16 of the 102 cases (15.7%) involved \geq 11 shots (95% CI 8.1% to 23.2%). This number rose to 19 cases (18.6%) using the maximum shots fired estimates (95% CI 10.6% to 26.7%). The majority of the HVG cases involved 11–15 shots.

Of the total 135 gunshot victims in the sample, 34 (25.2%) were wounded in HVG incidents based on the minimum estimates of shots fired (95% CI 17.5% to 32.9%), and 38 victims (28.1%) were wounded in HVG incidents based on the maximum estimates of shots (95% CI 20.2% to 36.1%). Assuming conservatively that all cases excluded from the main sample due to missing data were low-volume gunfire cases suggests that HVG cases produced at least 20%–23% of the shooting victims known to Minneapolis police during the study period.

As shown in table 2, 37%–38% of HVG incidents involved multiple wounded victims, and the average number wounded in HVG cases was approximately 2 (the maximum was 3). HVG incidents were roughly three times more likely than non-HVG cases to involve multiple victims and had average victim counts 71%–82% higher, though the latter comparisons were not statistically significant with these small samples.

Although information on the specific firearm models used in the HVG incidents was rarely available, cases most likely to have involved a firearm with an LCM, or which could have been most facilitated by an LCM, were identified based on four criteria: reported use of a semiautomatic firearm model equipped or typically sold with an LCM (two cases); a single shooter firing >10

rounds with one or an unknown weapon (seven cases); a single shooter using multiple guns who fired enough shots to suggest that at least one weapon may have had an LCM (eg, the offender had two firearms but fired >20 shots) (two cases); or multiple shooters who fired enough shots to suggest at least one shooter had a weapon with an LCM (no cases). Using the minimum and maximum shots fired estimates, between 58% and 63% of the HVG cases met at least one of these conditions, and this subset of cases produced 71%–77% of the gunshot victims across all HVG incidents. Although the remaining HVG cases may have also involved firearms with LCMs, the use of LCMs did not appear to have been as necessary to their outcomes (eg, because there were multiple shooters or a single shooter using multiple weapons).

DISCUSSION

These results imply that shootings linked to HVG incidents may be more common than suggested by earlier research, ^{3 5} perhaps due in part to the increasing use of high-capacity semiautomatic firearms. ^{6 8} However, the findings should be viewed cautiously. The shots fired estimates are based on information in police files that was often inexact. In addition, the sample of cases is small and represents just one city during a portion of 1 year. These findings may not generalise well to other locations (particularly non-urban ones) and/or time periods. Further studies of this issue seem warranted with additional locations and larger samples.

A policy implication from this study is that restrictions on LCMs may have greater potential for preventing gunshot

 Table 2
 Comparisons of gunshot victimisations in HVG and non-HVG incidents using minimum and maximum estimates of shots fired

Outcome measure	Minimum shots estimates	Maximum shots estimates
Proportion with multiple wounded victims	HVG: 6 of 16 (0.38) Non-HVG: 12 of 86 (0.14) 95% CI (diff) -0.01 to 0.48	HVG: 7 of 19 (0.37) Non-HVG: 11 of 83 (0.13) 95% CI (diff) 0.01 to 0.47
Average victims wounded	HVG: 2.13 (n=16) Non-HVG: 1.17 (n=86) 95% CI (diff) -0.38 to 2.29	HVG: 2.00 (n=19) Non-HVG: 1.17 (n=83) 95% CI (diff) -0.29 to 1.95

HVG, high volume gunfire.

Analysis was based on cases with at least one gunshot victim. Minimum estimates reflect incident and victim counts using minimum estimates of shots fired for each case. Maximum estimates reflect incident and victim counts using maximum estimates of shots fired for each case. 95% Cls are for differences in proportions and averages between HVG and non-HVG incidents. Differences in the proportion with multiple victims have P levels <0.05 in $\chi 2$ tests. Differences in the average persons wounded have P levels <0.10 using one-tailed t-tests and formulas for groups with unequal variances.

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victimisations than has been previously estimated, ^{3 4} especially in urban areas where gun violence is most concentrated. However, lack of weapon information for HVG cases precluded a definitive determination as to how often such magazines were used. This study also cannot quantify the precise impact that use of LCMs had on the outcomes of the incidents; in most cases, for example, it was not possible to determine how many victims were wounded with rounds fired in excess of 10. This study has also not examined LCM use in cases with fewer than 10 shots. Further research is needed to examine offenders who use LCMs, situations in which they use them, and the effects of LCM use on a wider range of case outcomes. This study has highlighted the potential value of LCM restrictions for reducing HVG cases, which pose clear public dangers (nearly all HVG cases in this study occurred in public or outdoor settings). The findings underscore the concern that criminal use of semiautomatic weapons with large ammunition magazines facilitates particularly dangerous and injurious HVG incidents that contribute to a notable share of gunshot victimisations.

What is already known on the subject

- Laws restricting the capacity of ammunition magazines for semiautomatic weapons, commonly at 10 rounds, are intended to reduce firearm injuries by preventing gun attacks involving high numbers of shots.
- Prior research suggests that 4%-5% of assault-related gunshot victims are wounded in attacks involving >10 shots, but data on this issue are extremely limited and dated.

What this study adds

- ▶ In a more recent urban sample, this study finds that 20%–28% of victims were wounded in incidents involving >10 shots, most of which seem likely to have involved highcapacity semiautomatics.
- Restrictions on large capacity ammunition magazines may have greater potential for preventing shootings than has been previously estimated.

Acknowledgements The authors thank Ryan Hughes for additional assistance with data collection

Contributors CSK led the project design and wrote the manuscript. WDJ conducted the analyses and worked with CSK on interpretation of results. KS (formerly of the Minneapolis Police Department) and JE contributed to the project design and compiled the project data. WDJ, KS and JE contributed to revising the final manuscript.

Funding This research received no specific grant from any funding agency in the public, commercial or not-for-profit sectors.

Competing interests None declared.

Ethics approval George Mason University Institutional Review Board.

Provenance and peer review Not commissioned; externally peer reviewed.

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REFERENCES

- 1 Fowler KA, Dahlberg LL, Haileyesus T, et al. Firearm injuries in the United States. Prev Med 2015:79:5-14.
- 2 Law Center to Prevent Gun Violence. http://smartgunlaws.org (accessed 9 Aug 2017).
- Koper CS. An updated assessment of the federal assault weapons ban: impacts on gun markets and gun violence, 1994-2003, Report to the National Institute of Justice, U.S. Department of Justice. . Philadelphia, PA: Jerry Lee Center of Criminology, University of Pennsylvania, 2004.
- 4 Koper CS. America's experience with the federal assault weapons ban, 1994-2004: key findings and implications. In: Webster DW, Vernick JS, eds. Reducing gun violence in america: informing policy with evidence and analysis. Baltimore, MD: Johns Hopkins University Press, 2013:157-71.
- 5 Reedy DC, Koper CS. Impact of handgun types on gun assault outcomes: a comparison of gun assaults involving semiautomatic pistols and revolvers. Inj Prev 2003;9:151-5.
- Koper CS, Johnson WD, Nichols JL, et al. Criminal use of assault weapons and high-capacity semiautomatic firearms: an updated examination of local and national sources. J Urban Health 2017. 10.1007/s11524-017-0205-7. [Epub ahead of print 2 Oct 20171.
- Jany L. Shootings drop in Minneapolis, but rounds fired are on the rise. Star Tribune 2017 http://www.startribune.com/shootings-drop-in-minneapolis-but-rounds-fired-areon-the-rise/454026803/ (accessed 30 Nov 2017).
- Fallis DS, Grimaldi JV. VA data show drop in criminal firepower during assault gun ban. The Washington Post 2011.

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Gunshot victimisations resulting from high-volume gunfire incidents in Minneapolis: findings and policy implications

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Inj Prev published online February 24, 2018

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NATIONAL LAW ENFORCEMENT PARTNERSHIP TO PREVENT GUN VIOLENCE



PROTECTING COMMUNITIES FROM ASSAULT WEAPONS AND HIGH-CAPACITY AMMUNITION MAGAZINES



BACKGROUND ON ASSAULT WEAPONS AND HIGH-CAPACITY AMMUNITION MAGAZINES



Assault weapons were designed for the battlefield and have no place in our communities. These weapons were developed to enable a shooter to rapidly spray-fire multiple rounds at an enemy in combat, not to gun down small children, moviegoers, firefighters – or the law enforcement officers protecting them. This kind of excessive firepower has particular utility in the hands of dangerous people intent on wreaking havoc.



Each of the combat hardware features on assault weapons has a military purpose. For example, a pistol grip stabilizes the weapon and enables the shooter to spray-fire from the hip; a barrel shroud cools the barrel when multiple rounds are fired, preventing the weapon from overheating and allows the shooter to grasp the barrel; a threaded barrel accommodates military accessories such as a flash suppressor or grenade launcher; and a telescoping, folding or detachable stock allows for easier concealment.



High-capacity ammunition magazines dramatically increase a shooter's ability to massacre large numbers of people. Prohibiting the manufacture, transfer and importation of high-capacity magazines that hold more than ten rounds would reduce the number of bullets a shooter could use before having to stop to reload. Reloading can provide a critical window of time in which to take down a shooter, as we saw in Tucson.



ASSAULT WEAPONS AND HIGH-CAPACITY AMMUNITION MAGAZINES ARE THE INSTRUMENTS OF MASS SHOOTERS



Horrific mass shootings are happening all too often all across our nation. Last December, Adam Lanza forced his way into a Newtown, CT, elementary school and opened fire with a .223 caliber Bushmaster AR-15 semiautomatic assault weapon and multiple 30-round ammunition magazines, killing 26 people, including 20 small children. In July of last year, James Holmes entered an Aurora, CO, movie theater and allegedly used an AR-15 assault weapon equipped with a 100-round drum

magazine to mow down moviegoers, killing 12 and wounding 58 others.¹

It is hard to imagine a gunman using a firearm equipped with a magazine holding fewer than ten rounds causing the devastation that resulted from an assault weapon equipped with a 100-round drum magazine. A semiautomatic assault rifle with a 100-round drum magazine – or a pistol equipped with a

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 $^{^1}$ Goode, Erica, "Rifle Used in Killings, America's Most Popular, Highlights Regulation Debate," New York Times, Dec. 16, 2012 (http://www.nytimes.com/2012/12/17/us/lanza-used-a-popular-ar-15-style-rifle-in-newtown.html?pagewanted=all&_r=0) and Kleinfield, N.R., "Gunman Took Big Supply of Ammunition to School After Killing Mother at Home," New York Times, Dec. 16, 2012 (http://www.nytimes.com/2012/12/17/nyregion/sandy-hook-school-shooting-in-newtown.html?ref=us)..

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30-round magazine – has one purpose: to kill as many people as possible as quickly as possible.

The devastating effects of these weapons are felt by law enforcement as criminals up the ante with firepower in excess of what police officers typically use. Reports from law enforcement leaders around the country indicate that assault weapons are increasingly being used against law enforcement officers. Current restrictions on the release of Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) trace data make it impossible to know exactly how often these firearms are being used in crimes.² But according to the Department of Justice, high-capacity ammunition magazines are used in 31 to 41 percent of fatal police shootings, varying across cities analyzed.³

EFFECTIVENESS OF THE 1994 ASSAULT WEAPONS AND HIGH-CAPACITY AMMUNITION MAGAZINE BAN

The 1994 assault weapons ban prohibited the manufacture, transfer, sale or possession of new semiautomatic assault weapons and high-capacity ammunition magazines in excess of ten rounds. The ban expired in 2004.

Studies show the 1994 assault weapons ban worked:

- A 2004 University of Pennsylvania study found that, in the nine years after the ban took effect, the percentage of gun crimes involving assault weapons decreased by 70 percent.⁴
- In 1998, four years after the assault weapons and high-capacity ammunition magazine ban was enacted, the percentage of firearms with large-capacity magazines recovered by Virginia police decreased and continued to drop until it hit a low of 9 percent in 2004, the year the ban expired. That figure more than doubled since the ban's expiration, hitting a high of 20 percent in 2010, according to a Washington Post analysis.⁵
- After the ban expired in 2004, 37 percent of police agencies saw increases in criminals' use of assault weapons, and 38 percent reported a noticeable increase in criminals' use of high-capacity magazines, according to a 2010 Police Executive Research Forum survey.⁶

NEW LEGISLATION

The Partnership calls on Congress to pass S.150, the Assault Weapons Ban of 2013, introduced by Senator Dianne Feinstein (D-CA) in the U.S. Senate, and the companion bill, H.R.437, introduced by Representative Carolyn McCarthy (D-NY) in the House of Representatives. The legislation bans the sale, transfer, manufacture and importation of:

² International Association of Chiefs of Police (IACP), *Taking a Stand: Reducing Gun Violence in Our Communities*, Sept. 2007 (http://www.theiacp.org/PublicationsGuides/TopicalIndex/tabid/216/Default.aspx?id=893&v=1).

³ Koper, Christopher S., "An Updated Assessment of the Federal Assault Weapons Ban," National Institute of Justice, U.S. Department of Justice, June 2004 (https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf).

⁴ Koper, Christopher S., "An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003" (http://www.sas.upenn.edu/jerrylee/research/aw_final2004.pdf).

⁵ Fallis, David S. and Grimaldi, James V., "In Virginia, High-Yield Clip Seizures Rise," *Washington Post*, January 23, 2011 (http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012204046.html).

⁶ Police Executive Research Forum, *Guns and Crime: Breaking New Ground By Focusing on the Local Impact*, May 2010 (policeforum.org/library/critical-issues-in-policing.../GunsandCrime.pdf).

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- New semiautomatic rifles that can accept a detachable magazine and have at least one military feature, such as pistol grip; forward grip; folding, telescoping, or detachable stock; grenade launcher or rocket launcher; barrel shroud; or threaded barrel.
- New semiautomatic pistols that can accept a detachable magazine and have at least one military feature, including threaded barrel; second pistol grip; barrel shroud; capacity to accept a detachable magazine at some location outside of the pistol grip; or semiautomatic version of an automatic firearm.
- New semiautomatic shotguns that have a folding, telescoping, or detachable stock; pistol grip; fixed magazine with the capacity to accept more than five rounds; ability to accept a detachable magazine; forward grip; grenade launcher or rocket launcher; or shotgun with a revolving cylinder.
- New high-capacity ammunition feeding devices that have the capacity to hold more than ten rounds of ammunition that come in many forms, including a magazine, belt, drum, or feed strip.

The 2013 Assault Weapons Ban excludes any weapon that is lawfully possessed when the bill is enacted; any firearm manually operated by a bolt, pump, lever or slide action; assault weapons used by military, law enforcement, and retired law enforcement; and antique weapons. It also excludes 2,258 legitimate hunting and sporting rifles and shotguns by specific make and model.

Additionally, the new legislation strengthens the provisions of the expired 1994 law by banning dangerous devices designed to circumvent the law, including bump or slide fire stocks, which are modified stocks that enable semi-automatic weapons to fire at rates similar to fully automatic machine guns; "bullet buttons" that allow rapid replacement of ammunition magazines, frequently used as a workaround to prohibitions on detachable magazines; and thumbhole stocks, a type of stock that was created as a workaround to avoid prohibitions on pistol grips.

The 2013 Assault Weapons Ban addresses the millions of assault weapons and large-capacity magazines currently in existence by requiring a background check on all sales or transfers of grandfathered assault weapons and prohibiting the sale or transfer of high-capacity ammunition feeding devices lawfully possessed on the date of enactment of the bill.

OUTLAWING ASSAULT WEAPONS AND HIGH-CAPACITY MAGAZINES DOES NOT INFRINGE ON THE SECOND AMENDMENT

The Assault Weapons Ban would affect only a particularly dangerous class of weapons, and law-abiding citizens will continue to be able to choose from and acquire the vast array of firearm models on the market. In the 2008 case of *District of Columbia v. Heller*, the United States Supreme Court ruled that the Second Amendment protects an individual's right to possess a firearm. The ruling, however, recognized that "like most rights, the right secured by the Second Amendment is not unlimited," and listed several categories of restrictions that are presumptively constitutional, such as: laws prohibiting convicted felons or the mentally ill from possessing firearms; laws prohibiting the carrying of firearms in government buildings or schools; laws prohibiting possession of "dangerous and unusual" weapons that are not "in common use at the time."

EXAMPLES OF THE DEVASTATION CAUSED BY ASSAULT WEAPONS AND HIGH-CAPACITY AMMUNITION MAGAZINES

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⁷ District of Columbia v. Heller, 554 U.S. 570 (2008).

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- In Newtown, CT, on December 14, 2012, Adam Lanza allegedly shot and killed 26 people, including 20 first-grade children, at Sandy Hook Elementary School with an assault weapon and multiple 30-round magazines.
- On August 5, 2012, in Oak Creek, WI, Wade Michael Page killed six people and wounded three others at a Sikh temple with a semiautomatic handgun and three 19-round magazines.
- In Aurora, CO, on July 20, 2012, James Holmes allegedly shot and killed 12 people and injured 58 others at a movie theater. Holmes allegedly used two semiautomatic handguns, a shotgun and an assault weapon equipped with a 100-round drum magazine.
- On January 8, 2011, Jared Loughner shot and killed six people and wounded 13 others in Tucson, AZ, including U.S. Representative Gabrielle Giffords. Loughner fired all 33 rounds from a semiautomatic handgun with a 33-round magazine before being tackled while trying to reload another magazine.
- In Fort Hood, TX, on November 5, 2009, Major Nidal Hasan allegedly shot and killed 13 people and wounded 34 others during a rampage at the Fort Hood military installation. He allegedly used a semiautomatic handgun and 20- and 30-round magazines.
- On April 3, 2009, Jiverly Wong shot and killed 13 people and injured four others at the American Civic Association in Binghamton, NY, firing 99 rounds from two semiautomatic handguns. A 30round capacity magazine was found at the scene.

AMERICANS SUPPORT FOR A BAN ON ASSAULT WEAPONS AND HIGH-CAPACITY AMMUNITION MAGAZINES

- In a December 2012 poll, 81 percent of registered voters including 71 percent of gun owners supported renewing the federal ban on assault weapons.⁸
- In the same December 2012 poll, 72 percent of voters, including 59 percent of gun owners, supported a ban on the sale of high-capacity magazines.⁹
- In a Johns Hopkins University Bloomberg School of Public Health survey, 69 percent of respondents supported a ban on the sale of military-style assault rifles.
- In a January 2013 Washington Post-ABC poll, 58 percent of Americans said they supported a nationwide ban on the sale of assault weapons.

(http://libcloud.s3.amazonaws.com/9/13/a/1088/schoen_summary_memo_-3.pdf).

⁸ Douglas E. Schoen, "National Gun Survey," January 2013

⁹ Douglas E. Schoen, "National Gun Survey," January 2013

⁽http://libcloud.s3.amazonaws.com/9/13/a/1088/schoen_summary_memo_-3.pdf).

¹⁰ Johns Hopkins Bloomberg School of Public Health Survey, "Majority of Americans Support Dozens of Policies to Strengthen U.S. Gun Laws," Jan. 28, 2013 (http://www.jhsph.edu/news/news-releases/2013/Barry-Majority-of-Americans-Support-Policies-to-Strengthen-Gun-Laws.html).

¹¹ ABC News/Washington Post Poll, "On Eve of Newtown Recommendations, Most Back New Gun Control Measures, Jan. 14, 2013 (http://www.langerresearch.com/uploads/1146a1GunControl.pdf).

ELECTRONICALLY DENNIS J. HERRERA, State Bar #139669 1 FILED City Attorney YVONNE R. MERÉ, State Bar #173594 Superior Court of California, County of San Francisco Chief of Complex and Affirmative Litigation 02/21/2017 Clerk of the Court VICTORIA L. WEATHERFORD, State Bar #267499 3 AILEEN M. MCGRATH, State Bar #280846 BY:BOWMAN LIU Deputy City Attorneys 4 **Deputy Clerk** 1390 Market Street, 6th Fl. San Francisco, California 94102-5408 5 Telephone: (415) 554-4236 Facsimile: (415) 554-3985 6 victoria.weatherford@sfgov.org E-Mail: 7 E-Mail: aileen.mcgrath@sfgov.org 8 Attorneys for Plaintiff THE PEOPLE OF THE STATE OF CALIFORNIA 9 Ex rel. San Francisco City Attorney Dennis J. Herrera 10 11 SUPERIOR COURT OF THE STATE OF CALIFORNIA 12 COUNTY OF SAN FRANCISCO 13 UNLIMITED JURISDICTION 14 15 THE PEOPLE OF THE STATE OF Case No. CGC-17-557010 CALIFORNIA, ex rel. San Francisco City 16 Attorney Dennis J. Herrera, EXPERT DECLARATION OF SAN FRANCISCO Plaintiff, POLICE DEPARTMENT OFFICER JOSEPH 17 EMANUEL IN SUPPORT OF PLAINTIFF'S EX PARTE APPLICATION FOR ORDER TO SHOW 18 VS. CAUSE RE: PRELIMINARY INJUNCTION AND BADGER MOUNTAIN SUPPLY, an PRELIMINARY INJUNCTION; AND EXHIBIT A 19 unincorporated business; 7.62 PRECISION, an Alaska corporation; SHOOTERS PLUS, an February 21, 2017 20 Hearing Date: unincorporated business; L.A.K. Hearing Judge: Hon. Harold E. Kahn ENTERPRISES, d/b/a/ LAK SUPPLY, a Time: 11:00 a.m. 21 Wyoming limited liability company; MARK Place: 302 THOMAS KUBES, d/b/a 22 BUYMILSURP.COM; and DOES 1 through Date Action Filed: February 9, 2017 50, inclusive. Trial Date: TBD 23 Defendants. 24 25 26 27 28 Exhibit 35 EXPERT DECL EMANUEL ISO PRELIM INJ & CASE NO. CGC-17-557010 n:\affirm\li2\Page499137801.docx APPENDIX B

I, Joseph Emanuel, declare are follows:

- 1. I have personal knowledge of the following facts except those stated on information and belief. As to those facts, I believe them to be true. The matters stated in this declaration are based on my training, education, and experience. If called upon to testify, I can testify competently to the contents of this Declaration.
- 2. I am a sworn police officer within the San Francisco Police Department ("SFPD"). I have been employed with the SFPD for approximately 11 years. I am currently assigned to Mission Station, where I have worked as Captain's Staff for 1.5 years.
- 3. I make this Declaration in support of Plaintiff's request for a preliminary injunction against Defendants Badger Mountain Supply, 7.62 Precision, Shooters Plus, L.A.K. Enterprises, d/b/a/LAK Supply ("LAK"), and Mark Thomas Kubes, d/b/a/ buymilsurp.com ("Buymilsurp.com"), barring these Defendants from advertising for sale into California and San Francisco, and selling to California and San Francisco residents, large-capacity magazines for firearms capable of holding more than 10 rounds of ammunition, and "repair" and "rebuild" kits for such magazines.
- 4. In this Declaration, except where I state something to be based on my own personal observations, I am stating my opinion as a firearms expert, or am referring to information that I used to form my opinions. In addition to my general training and experience on firearms, the information I used to form my opinions regarding Defendants and the need for the preliminary injunction Plaintiff seeks includes my personal observations, including of Defendants' websites and online firearm enthusiast discussion boards, conversations I have had with firearms dealers, discussions with other law enforcement officers including other experts, information from state and federal law enforcement agencies, my review of the declarations submitted with San Francisco's request for a preliminary injunction, and my review of police reports and other articles and reports on topics related to firearms and firearms-related crimes.
- 5. In this Declaration, I discuss my experience, education, and expertise on firearms, particularly within San Francisco. Additionally, I explain how large-capacity magazines are dangerous to the public and to police officers, by allowing shooters to fire more rounds of ammunition without having to stop to reload.

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EXPERIENCE, EDUCATION, AND EXPERTISE REGARDING FIREARMS

- I attained an Associate's Degree from San Francisco City College in Administration of
 Justice. I have also taken courses in criminal justice from San Francisco State.
- I am a court-qualified firearms expert, and have testified in San Francisco Superior
 Court as a firearms and high-capacity magazines expert in San Francisco at a preliminary hearing.
- 8. I am currently assigned as Captain's Staff at Mission Station, and have been in my current role for approximately 1.5 years. As Captain's Staff, I perform regular patrol duties, youth engagement, and am responsible for all police activities at Garfield Park in San Francisco. Before my current assignment as Captain's Staff, I was a patrol officer assigned to the Housing Unit at Mission Station for approximately one year.
- 9. Before that, I was assigned to the Narcotics Division for one year, where my primary focus was firearms investigations. My primary duties included tracking individuals who possessed firearms but subsequently became ineligible to possess the firearm based on mental health status or a new criminal case, and seizing the firearms. As part of that assignment, I worked closely with the California Bureau of Firearms and the federal Bureau of Alcohol, Tobacco and Firearms, and performed multiple firearms investigations with those agencies, including state investigations on armed prohibited felons and federal "trigger-lock" investigations for certain felonies. I reviewed over 100 firearms-related SFPD incident reports, including all corresponding photographs booked into evidence. Upon reviewing the reports, I would identify the weapon and any illegal modifications or additions made to it, such as removing the serial number, illegal silencer, or illegal large-capacity magazine. I have gained a vast amount of knowledge from reviewing firearms arrest reports, studying firearm and ammunition images taken during these arrests, and performing physical inspections on seized firearms and ammunition. In studying this information, I have been able to identify hundreds of firearms and their component parts. As part of my assignment in the Narcotics Division and continuing to today, I conduct physical inspections of firearms and firearms accessories where the booking officer in the Property Department was unable to identify or classify it.
- 10. As part of my duties related to firearms investigations, I also maintained the SFPD firearms database, which is a database of all firearms seized by the SFPD as well as the individuals Page 01386

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arrested in possession of the firearm. I also received continual and substantial training from SFPD Officer Ignatius Chinn, who is himself a court-qualified expert on firearms and who is widely recognized within and outside the SFPD as the SFPD's preeminent firearms and ammunition expert. Officer Chinn is presently on medical leave.

- I also previously served in other patrol roles, and as a plainclothes officer at Mission
 Station, focused on violent felonies and narcotics.
- 12. In addition, during my 11 years in the SFPD, while executing numerous search warrants, as well as probation and arrest searches, I have located, seized, and inspected hundreds of firearms and their component parts.
- 13. Before joining the SFPD, I was a United States Marine for eight years. As a Marine, I was responsible for training and becoming familiar with various assault weapons, including their functionality and component parts.
- 14. In addition to my SFPD-issued service weapon, I also own approximately 30 firearms of various makes and models. I am intimately familiar with all types of firearms, including handguns, assault rifles, and shot guns, their component parts and accessories, and how to assemble and disassemble them.
- 15. I keep current on firearms and firearms accessory sales and trends in San Francisco by talking directly to firearms dealers and consumers in the greater Bay Area. In fact, both during my assignment in the Narcotics Division investigating firearms offenses and continuing to today, I have had numerous conversations with firearms and ammunitions dealers and their customers. I have also had several contacts with persons who unlawfully possess firearms and who possess unlawful firearms and firearms components, including during investigation of firearms crimes, during police interviews with arrested suspects, and during compliance investigations related to firearms probation conditions.
- 16. I also have been able to gain a great deal of knowledge about firearms and firearms component sales and trends in the Bay Area by viewing online forums related to firearms, most notably the CalGuns.net online forum. CalGuns is widely considered in the firearms community to be the preeminent online forum for gun enthusiasts in California. On the Calguns.net forum, users connect with each other to buy and sell firearms, ammunition, and component parts, share information Page 01387

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related to online and physical retail sales locations, and ask and answer questions on all topics regarding firearms, including issues related to various laws restricting the sale or possession of firearms.

- 17. I also served on the SFPD Specialist Team (counter-sniper and containment team), under the Special Operations Group, from 2011 to 2016. In that assignment, my primary duties were responding to critical incidents, passive and violent demonstrations, and executing high-risk search warrants. As part of that assignment, I received training on and carried specialty weapons such as an AR-15 rifle, less lethal shot gun, and .40 extended-range impact weapon.
- 18. As part of my training as a firearms expert, I have attended hundreds of hours of trainings on firearms. That training includes approximately 150 hours of California accredited firearms training, including 100 hours of training with the SFPD as part of Special Operations Group training on firearms, tactics, and critical incidents, and additional 50 hours of training consisting of Basic and Advanced operators' courses for AR-15 assault rifles. I have also taken approximately 4 hours of training with the federal Bureau of Alcohol Tobacco, Firearms on subjects related to firearms identification.
- 19. In addition to my required professional firearms licenses (including Carrying a Concealed Weapon license), I also possess several civilian firearms certificates and have undergone substantial additional firearms training. My additional training and certifications include a Basic Certification from Glock Armor School for firearm maintenance and repair, which required 8 hours of training and coursework. I also possess an Advanced Certificate from Roger Shooting School for short-range carbine, which required 40 hours of training and coursework. I also possess an Advanced Certificate in handguns from the Roger Shooting School, which required 40 hours of training and coursework, which I have since repeated for a total of 80 hours of training.
- 20. I have also received extensive training from my supervisors in the SFPD, Officer Chinn, and other experts from the California Department of Justice in the identification of Category One through Three assault weapons. Assault weapons are broken down into different categories. Category One is defined under section 30510 of the California Penal Code as assault weapons, which are named, by make and model. Category two firearms are defined under Penal Code section 30510(f) Page 01388

and comprised of variants of Category One, AR-15s and AK-47 variants. Category Three firearms are assault weapons as defined under section 30515 of the California Penal Code. Category Three assault weapons are defined by specific characteristics and are also comprised of other weapons in the military.

- 21. I have also received extensive training from my supervisors in the SFPD, Officer Chinn, and other experts from the California Department of Justice regarding extended and high-capacity firearm magazines. I am intimately familiar with California laws restricting the sale of large-capacity firearm magazines.
- 22. In addition to the above experience and training, I have also read, and regularly read, manuals, publications, and reports related to firearms issued by the California Bureau of Firearms and the federal Bureau of Alcohol, Tobacco and Firearms. I also regularly review news media accounts of firearms-related crime and other private and public studies on issues related to firearms and firearms-related crime.

AN OVERVIEW OF LARGE-CAPACITY MAGAZINES AND THE HARM THEY CAUSE

- A firearm magazine is an ammunition storage and feeding device for a firearm. Magazines can be detachable or integral to the firearm. Magazines are a component of every firearm with the exception of chamber-loaded firearms such as revolvers, bolt-action rifles, and shot guns. Magazines are a component in all automatic and semiautomatic pistols, automatic and semi-automatic rifles, and assault weapons. A magazine is comprised of four parts: the body, spring, follower, and floor plate or end plate. The body is the exterior shell that houses the ammunition. The floor plate is the base of the magazine. As a firearm is discharged, the follower pushes the ammunition up into the body of the firearm to be reloaded. The spring forces the ammunition into position to be fed into the firearm chamber by operation of the firearm's action. Magazines are shaped as either a box or a drum.
- 24. Assembling a completely disassembled magazine is fast and easy, even for persons who are unfamiliar with firearms. A person familiar with firearms and their component parts can assemble a magazine in as fast as ten seconds. As a firearms expert intimately familiar with hundreds of models

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of firearms and their component parts, I am capable of assembling a large-capacity magazine in under ten seconds.

- 25. The ability of an automatic or semiautomatic firearm to fire multiple bullets without reloading is directly related to the capacity of the firearm's magazine. The larger the capacity of the magazine, the more shots a shooter can fire without having to stop firing to reload.
- 26. California Penal Code section 16740 defines a large-capacity magazine as "any ammunition feeding device with the capacity to accept more than 10 rounds," excluding feeding devices that have been permanently altered so that they cannot accommodate more than 10 rounds, .22 caliber tube ammunition feeding devices, and tubular magazines that are contained in a lever-action firearm. Large-capacity "repair kits" that contain all parts necessary to create a new large-capacity magazine are simply that—a disassembled large-capacity magazine—and can be readily assembled by a purchaser the same as any other disassembled magazine.
- 27. California Penal Code section 32311(b) defines a "large-capacity conversion kit" as "a device or combination of parts of a fully functioning large-capacity magazine, including, but not limited to, the body, spring, follower, and floor plate or end plate, capable of converting an ammunition feeding device into a large-capacity magazine." Some large-capacity "repair" or "rebuild" kits that lack one or more parts can be completed with parts from an existing legal magazine, allowing a purchaser to create a new large-capacity magazine.
- 28. Large-capacity conversion kits include magazine extenders, which are devices that increase the ammunition capacity of a magazine. Magazines that have been modified with a magazine extender such that they are capable of holding more than 10 rounds of ammunition constitute large-capacity magazines under Penal Code section 16740.
- 29. To determine if a magazine is capable of holding over ten rounds of ammunition, you can either put the ammunition into the magazine to check and see if it will hold more than ten rounds, or check the buffer and the spring in the magazine to see whether it will go past the ten round marking. Often, a quick visual check of a magazine is enough to determine that it is capable of holding more than ten rounds, as certain magazines can hold 30, 50, or over 100 rounds of ammunition.

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- 30. California Penal Code section 32310, which has been in effect in various forms since January 1 2000, provides anyone who, with limited exceptions, "manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large-capacity magazine" may be punished "by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170." (Penal Code § 32310(a).)
- 31. California Penal Code section 32310(b) defines "manufacturing" as including "both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning largecapacity magazine."
- 32. California Penal Code section 32311, effective January 1, 2014, provides anyone who, with limited exceptions, "manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large capacity magazine conversion kit" may be punished "by a fine of not more than one thousand dollars (\$1,000) or imprisonment in a county jail not to exceed six months, or by both that fine and imprisonment."
- 33. Furthermore, San Francisco Police Code section 619, which has been in effect since approximately April 1, 2014, prohibits the civilian possession of assembled or disassembled largecapacity magazines. Section 619(b) mirrors the definition of "large-capacity" magazine, including and the exceptions thereto, found in California Penal Code section 16740.
- 34. Large-capacity magazines have not been regulated at the federal level since the federal assault weapons ban lapsed in 2004. Between 1994 and 2004, it was illegal to sell new large-capacity magazines capable of holding more than 10 rounds of ammunition, although large-capacity magazines that were manufactured before the ban could be legally resold.

The Dangers to the Public Posed by Large-Capacity Magazines

35. The ability of large capacity magazines to hold numerous rounds of ammunition significantly increases the lethality of the automatic and semiautomatic firearms using them. The more bullets a shooter can fire without stopping to reload increases the shooter's ability to injure and Exhibital large numbers of people quickly. In addition, in a dense urban area like San Francisco. ev

firearm discharge has the potential to injure innocent people who are nearby. Increasing the number of rounds a firearm can discharge through the use of large capacity magazines can and does result in unnecessary injury to innocent people who are nearby.

- 36. As repeatedly documented in governmental and independent third-party reports analyzing FBI and other law enforcement data regarding shootings, shootings involving large-capacity magazines result in more injuries, more bullets fired, and more casualties. Examples of such reports include the *Everytown for Gun* Safety "Analysis of Mass Shootings," revised August 31, 2016, *Mayors Against Illegal Guns* "Analysis of Mass Shootings," dated September 2013, the *Citizens Crime Commission of New York City* "Mass Shooting Incidents in America (1984-2002)," and *Mother Jones* "A Guide to Mass Shootings in America, dated July 20, 2012."
- 37. As reported in the national media, automatic and semiautomatic firearms equipped with large-capacity magazines have been used in several recent high-profile mass shootings, including the following shootings:
 - a. The shooting on the campus of Virginia Tech on April 16, 2007, where 32 people were killed and many others wounded. One such media account is the Washington Post article, "Gunman Kills 32 at Virginia Tech In Deadliest Shooting in U.S. History," dated April 17, 2007.
 - b. The shooting on November 5, 2009 at Fort Hood, Texas, where 13 people were killed and 34 more were wounded. One such media account is the NBC News article, "Gunman Kills 12, Wounds 31 at Fort Hood," dated November 11, 2009.
 - c. The shooting on January 8, 2011, at Tucson, Arizona, where 6 people were killed and 13 people were injured, including a member of the United States House of Representatives. One such media account is the *New York Times* article, "In Attack's Wake, Political Repercussions," dated January 8, 2011.
 - d. The shooting on December 14, 2012, at Sandy Hook Elementary School in Newtown, Connecticut, where 27 people (not including the shooter), including 20 children, were killed. One such media account is *The Guardian* article, Page 01392

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- "Newtown Gunman Kiss 20 Children in Elementary School Shooting," dated December 15 2012.
- e. The shooting on July 20, 2012, in an Aurora, Colorado, movie theater, which killed 12 people and left approximately 70 people injured. One such media account is the *Los Angeles Times* article, "Gunman Kills 12 at 'Dark Knight Rises' screening in Colorado," dated July 20, 2012.
- f. The shooting on December 2, 2015, in San Bernardino, California, which killed 14 people and injured 22 others. One such media account is the *New York Times* article, "San Bernadino Shooting Kills at Least 14; Two Suspects Are Dead," dated December 2, 2015.
- g. The shooting on June 17, 2015, in a Charleston, South Carolina church, which killed nine people. One such media account is the USA Today article, "9 Dead in Shooting at Black Church in Charleston, S.C," dated June 15, 2015.
- h. The shooting on June 12, 2016, in an Orlando, Florida night club, which killed 49 people and wounded 53 others. One such media account is the *New York Times* article, "Orlando Gunman Attacks Gay Nightclub, Leaving 50 Dead," dated June 12, 2016.
- 38. Despite the fact that it has been illegal to sell large-capacity magazines in California for 17 years, criminals who are arrested with firearms often also possess large-capacity magazines. I have been involved in arrests of hundreds of individuals in San Francisco who possessed firearms equipped with large-capacity magazines. In my experience, I estimate that, of the magazine-fed firearms seized in San Francisco, approximately 50% are equipped with a large-capacity magazine. It is my opinion that criminals seek out firearms equipped with large-capacity magazines, in order to have more firepower at their disposal when committing crimes.
- 39. It is my opinion that purchasers of "repair" or "rebuild" kits for large-capacity magazines, that include all or substantially all of the parts needed to assemble an entire new large-capacity magazine, seek to evade existing state laws rather than lawfully repair an existing "pre-ban"

Exhibit 35 Page 01393

Case 3:17 Cass@101775BEBLJLB/19020017hdbt:51306.244444edDQ44709h/j.829P, & acej@5731.517107age 23 of 107

magazine. Consumers who need to repair an existing pre-ban magazine can easily do so by purchasing individual parts directly from the manufacturer or another vendor.

The Specific Dangers to Police Officers Posed by Large-Capacity Magazines

- 40. In my opinion, large-capacity magazines in the hands of criminals pose a greater danger to police officers than standard-capacity magazines. When a shooter must pause, even briefly, to reload, police officers have the opportunity to take action, either by advancing or falling back to take cover. A shooter who does not have to reload does not give police that opportunity, and has a greater ability to injure or kill police officers.
- 41. Unfortunately, this has been illustrated in a real-life tragedy here in San Francisco, the story of which I am intimately familiar with as a former member of the SFPD Specialist Team. In November 1994, San Francisco Police Department Officer James Guelff, who served on the Specialist Team, was killed at Pine Street and Franklin Street by a shooter with an assault rifle who was carrying what the media reported as about 1000 rounds of ammunition. Officer Guelff responded to a report of shots fired and a car-jacking in progress and was met with the suspect's fire from an assault rifle. Officer Guelff returned fire with his service revolver, which contained six shots. When Officer Guelff ran out of ammunition, he took cover behind his vehicle to reload. As he reloaded, the suspect—who did not need to reload his weapon—advanced on Officer Guelff and murdered him behind his vehicle. As a member of the SFPD Specialist Team, Officer Guelff had more training than the average SFPD officer, yet he was overwhelmed by the gunfire from this criminal.
- 42. There are additional examples of SFPD officers being targeted with large-capacity magazines. Attached to this declaration as **Exhibit A** is a true and correct copy of a police report concerning an attempted homicide of police officers which occurred in April 2013. In this incident, suspects fired 10-15 shots at an unmarked patrol vehicle, at least four of which hit the vehicle. During the investigation of the event, officers recovered a 30-round Glock magazine and a Glock 17 semiautomatic pistol from the suspects' path of travel and another extended capacity firearm magazine in a backpack located in the backseat of the suspects' vehicle.
- 43. Furthermore, one of the most infamous and well-known tragedies among law enforcement officers is the North Hollywood Shootout, which was a 1997 shootout between the Los Page 01394

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Angeles Police Department ("LAPD") and two heavily armed bank robbers. The shootout
miraculously resulted in no law enforcement or civilian casualties, but did result in 10 police officers
and 6 civilians being injured from the gunfire. As was reported in the media, the suspects wore full
body armor and possessed multiple automatic and semiautomatic firearms, including illegally
converted firearms and over 3,000 rounds of ammunition. Four of the shooters' assault rifles—one
AR-15 converted to fully automatic and three AK-47 rifles converted to fully automatic—were
equipped with multiple 100-round magazines. The LAPD officers who responded to the bank robbery
call with only their standard-issue firearms were so outmatched in firepower they had to commandeer
weapons and ammunition from a nearby gun store. The continuous rain of fire from the suspects'
large-capacity magazines was a dramatic example of suppressive fire—shootings designed to degrade
and paralyze law enforcement's ability to stop the threat. Later reports determined that during the
shootout, the shooters fired approximately 1,100 rounds of ammunition.

- 44. As has been reported in the national media, several shooters have in fact been subdued, and civilians have been able to escape immediate danger, when a shooter must stop to reload his firearm, for example in the following instances:
 - a. The Tucson, Arizona shooter was subdued by two civilians when he stopped to reload as reported in the Los Angeles Times article, "Crowd Member Took Gunman Down," dated January 9, 2011, and in the ABC News article, "Woman Wrestled Fresh Ammo Clip From Tucson Shooter As He Tried to Reload," updated August 23, 2016.
 - b. As many as six elementary school children were able to escape from the Sandy Hook Elementary School shooter when he stopped to reload or remove the ammunition magazine to his rifle, as reported in the *Hartford Courant* article, "Sandy Hook Shooter's Pause May Have Aided Students' Escape," dated December 23, 2012.

THE NEED FOR A PRELIMINARY INJUNCTION AGAINST THESE DEFENDANTS Defendants' Websites Advertise for Sale Large-Capacity Magazines, Magazine Repair Kits, and Magazine Extenders to California Residents 12 Exhibit 35 Page 01395

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- 45. I have reviewed the Declaration of City Attorney Investigator Borys Procak, and the exhibits attached thereto, which include screenshots taken of each Defendant's website, including purchasing pages I am informed and believe were captured in January and February 2017 shortly before Plaintiff filed this lawsuit. I have also reviewed the Complaint in this Action, and all screenshots of Defendants' websites embedded therein and attached as exhibits thereto, which I am informed and believe were taken by the City Attorney's Office in February 2017. I have also reviewed each Defendant's website.
- 46. Each Defendant flouts California law, by advertising for sale large-capacity magazines, magazine extenders, and "repair kits" that cannot legally be sold in California, and by falsely stating that such products can be legally sold in California.
- 47. Defendant Badger Mountain Supply, which uses the websites www.loyalsguns.com and www.badgermountainsupply.com, as shown in Exhibit E to Borys Procak's Declaration, offers dozens of large-capacity magazines for sale to California consumers as "rebuild kits." On a page titled "Magazines (Rebuild Kits)" explains that each "rebuild / repair kit is a new magazine that has been opened, disassembled, and packaged for shipping." Defendant Badger Mountain Supply further explains to California purchasers that, "To comply with recent California laws regarding magazine rebuild kits, customers buying rebuild kits to be shipped to California will receive two shipments: the contents of each shipment not containing sufficient parts to assemble a fully functional magazine. Additional shipping charges may apply to CA customers due to additional packaging and shipping."
- 48. One example shown in Exhibit E to Borys Procak's declaration is of a 30-round magazine "rebuild kit" for an AK-47 semiautomatic assault rifle. On the product page, Defendant Badger Mountain Supply disclaims liability for its customers who "purchas[e] this item or its components in an attempt to bypass Local, City, County or State laws," and again states rebuild kits shipped to California will be shipped in two packages to "comply" with California law. However, "rebuild kits" are unlawful to sell in California under section 32311, and there is no exception for such kits that are shipped in multiple packages. Even if shipped in multiple packages, a "rebuild kit" comprised of all parts of a large-capacity magazine is still capable of being assembled in seconds to create an illegal large-capacity magazine in violation of Penal Code 32311. Furthermore, Page 01396

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disassembled large-capacity magazines may not be lawfully possessed by civilians in San Francisco under Police Code section 619.

- Defendant 7.62 Precision, which uses the website www.7-62 precision.com, offers for sale on its website several large-capacity magazines which are unlawful under Penal Code section 32310 and, as shown in Exhibit C to Borys Procak's Declaration, offers for sale a "California Magazine Rebuild Kit," for AR-15 assault rifle magazines, which "includes a complete set of parts that may be used to replace worn or damaged parts on other magazines." Defendant 7.62 Precision states these kits are for California consumers only. However, "rebuild kits" are unlawful to sell in California under section 32311. Furthermore, disassembled large-capacity magazines may not be lawfully possessed by civilians in San Francisco under Police Code section 619.
- 50. Defendant Shooters Plus, which uses the website www.shootersplus.com, provides a link with information "on converting High Capacity Magazines to Rebuild Kits for ban States such as California" and other states. As shows in Exhibit D to Borys Procak's Declaration, on a page titled "Magazine Rebuild Kits," Shooters Plus states, "it is legal for us to ship these magazines in the form of rebuild kits as long as the customer is using the rebuild kit to rebuild / repair magazines that he or she legally owned before the Assault Weapon Ban. Our rebuild kits will be shipped unassembled and there is currently a \$2.00 fee for each rebuild kit. To purchase our rebuild kits simply click on the magazine/s you need, then click on the checkbox under each magazine that reads 'Convert to Rebuild Kit." Despite their supposed legal disclaimers, Defendant Shooters Plus makes available to California consumers every large-capacity magazine on their website in complete, disassembled form. This is patently unnecessary to "repair" a broken component of an existing large-capacity magazine, and violates California Penal Code section 32310 and San Francisco Police Code section 619.
- 51. As one example, as shown in Exhibit D to Borys Procak's Declaration, Defendant Shooters Plus offers a complete, disassembled 30-round magazine for an AK-47 semiautomatic assault rifle as a "Magazine Rebuild Kit" for a \$2.00 fee. Contrary to Defendant Shooters Plus's statements, these "rebuild kits" are unlawful to sell in California under section 32311. Furthermore, disassembled large-capacity magazines may not be lawfully possessed by civilians in San Francisco under Police Exhibit 35 Code section 619. Page 01397

- 52. Defendant L.A.K Enterprises, d/b/a/ LAK Supply ("LAK"), which uses the website www.laksupply.com, purports to "specialize" in large capacity magazines, and magazine repair kits for consumers in "anti-2A territory," which I understand to be shorthand for "anti Second Amendment" and a reference to states like California that have strict gun control laws. LAK's website also states that LAK noting that their business "originated in California" and "absolutely support[s] those of you fighting the good fight behind enemy lines." On a web page titled "Magazine repair kits," attached as Exhibit A to the Declaration of Borys Procak, LAK informs consumers that "All hi cap magazine orders from ban states will automatically be converted into compliant mag parts kits when you place your order. There is no extra charge, and there is nothing extra to add to your cart." Defendant LAK further states that "KIT ORDERS TO CA WILL BE SHIPPED MISSING ONE PART FOR COMPLIANCE."
- 53. Defendant LAK's statements misstate California law, which bans the sale of high-capacity magazine repair kits, including kits that lack one part of a magazine. California defines a "large-capacity conversion kit" as "a device or combination of parts of a fully functioning large-capacity magazine, including, but not limited to, the body, spring, follower, and floor plate or end plate, capable of converting an ammunition feeding device into a large-capacity magazine."

 (California Penal Code section 32311(b) (emphasis added).) It is illegal to sell in California a combination of parts that allow a consumer to modify an existing magazine into a large-capacity magazine, even if the kit toes not include every single part of a magazine. A magazine repair kit that lacks a floor plate, for example, may still be capable of converting an existing magazine into an illegal large-capacity magazine, and would therefore violate California's ban. In fact, several well-known firearms manufacturers, such as Glock, have universal floor plates that can be used on almost any magazine of the same caliber of bullet.
- 54. Furthermore, Defendant LAK offers for sale on its website a host of large-capacity magazines, which are unlawful under Penal Code section 32310 and which, when converted by LAK into a "repair kit," are unlawful under section 32311. As one example, Defendant LAK offers for sale a 150-round drum magazine for an AR-15 semiautomatic assault rifle in violation of California Penal Code sections 32310 and 32311 (when disassembled into a "repair kit").

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 Page 01398

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- 55. Defendant Mark Thomas Kubes, d/b/a/ Buymilsurp.com ("Buymilsurp.com"), which uses the website www.buymilsurp.com, offers for sale on its website a host of large-capacity magazines which are unlawful under Penal Code section 32310. Buymilsurp.com also sells "spare parts kits" for several large-capacity magazines. Two examples in Exhibit B to Borys Procak's Declaration are repair kits for a 30- and 75-round magazines for AK-47 semiautomatic assault rifle. For the 30-round kit, Buymilsurp.com states: "This is a completely disassembled magazine for Spare Parts. Can Ship to CA." For the 75-round kit, Buymilsurp.com states: "These will be sold as Repair Kits, They will arrive disassembled (all parts included) and sold for spare parts only. CA OK." Contrary to Defendant Buymilsurp.com's statements, these "spare parts kits" are unlawful to sell in California under section 32311. Furthermore, disassembled large-capacity magazines may not be lawfully possessed by civilians in San Francisco under Police Code section 619.
- 56. Defendant Buymilsurp also offers for sale to California magazine extenders for large-capacity magazines in violation of 32311. One example shown in Exhibit B to Borys Procak's Declaration is a 10-round extender capable of turning a 20-round magazine into a 30-round magazine. While the extender itself contains only 10 rounds, it is still an unlawful "large-capacity conversion kit" under Penal Code section 32311 as it extends the firing power of a magazine beyond 10 rounds.
- 57. It is my opinion that Defendants know or should know that many of their California customers who purchase these "repair" or "rebuild" kits are doing to in order to assemble a new, fully functioning, large-capacity magazine in violation of California law, and are not seeking to obtain spare parts to repair existing magazines. It is my opinion that Defendants, by their statements on their websites to consumers in "ban" states, by offering "repair kits" as a shipping option for fully assembled large-capacity magazines (either automatically converting to disassembled upon receiving an order or asking consumers to check a box), and by offering "repair kits" that contain all or substantially all parts needed to assemble a new large-capacity magazine, are knowingly facilitating California consumers' illegal purchases of large-capacity magazines, by readily making available complete, disassembled magazines that can be assembled by a purchaser in seconds.

Preliminary Injunctive Relief Is Needed Before the July 1, 2017 Statewide Possession Ban

Exhibit 35
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- 58. In November 2016, California voters approved Proposition 63, which will generally prohibit possession large-capacity magazines after July 1, 2017. (See Penal Code, § 32310, subds. (c), (d).) Proposition 63 requires individuals who own large-capacity magazines to dispose of them prior to July 1, 2017 by selling them to a licensed firearms dealer, transferring them to law enforcement, or removing them from the state. Attached as **Exhibit E** is a true and correct copy of the full text of Proposition 63, known as the Safety for All Act of 2016.
- 59. In my opinion, and based on my years of experience as a SFPD Officer and firearms expert, California will likely see—if it has not already in the two and a half months since Prop 63 was passed by the voters of California—a sharp rise in Californians attempting to purchase large-capacity magazines, in whole or in part, in advance of the July 1, 2017 statewide ban. In my personal experience as a SFPD Officer and firearms expert, I have repeatedly witnessed a surge in firearms and ammunition sales in advance of a new law or restriction going into effect. In addition, in my meetings with owners of gun stores in the Bay Area, they have likewise repeatedly informed me of surges in sales immediately before a forthcoming gun restriction.
- 60. One very recent example of a gun restriction leading to a surge in sales is "Bullet buttons." California previously classified as assault rifles certain firearms with detachable magazines, and prohibited their sale. "Bullet buttons" were then designed for certain AR-15 and other rifles to get around this ban. Effective January 1, 2017, California outlawed the sale of semiautomatic firearms with "bullet buttons." As documented in the December 29, 2016 San Francisco Chronicle article entitled "Gun sales spike as California's tougher 2017 laws loom," sales of semiautomatic firearms more than doubled in 2016, and sales of firearms with "bullet buttons" surged in the months leading up to the January 1, 2017 sales ban. In my personal experience with speaking with gun store owners in the Bay Area, they also saw a surge in sales of firearms with "bullet buttons" and these weapons enjoyed an increased sales price as a result of the high demand before the ban went into effect.
- 61. I am also aware of studies and articles that describe and analyze a longstanding trend of increased firearms sales before an expected legal restriction. For example, the *New York Times* in June 2016 in a piece entitled "What happens after calls for new gun restrictions? Sales go up" examined nationwide and certain state gun sales since 2000, showing a marked increase in linearms Page 01400

sales tied to a fear in future restrictions or a specific piece of legislation that tightened existing restrictions. This phenomenon has been documented in other media reports, such as the July 24, 2012 *The Atlantic* article entitled "How come gun sales spike after mass shootings?"

- 62. In addition, at least one Defendant is the topic of recent discussions on the CalGuns.net online forum regarding large-capacity magazines and large-capacity magazine repair kits. In my opinion, this demonstrates that California residents are looking for ways to obtain large-capacity magazines and are in fact coming across these Defendants (here, Defendant Badger Mountain Supply) when seeking to buy these products.
- 63. For example, in a sub-forum for "California handguns," on the thread located at https://www.calguns.net/calgunforum/showthread.php?t=1214226, the user "Germ1" asks on June 30, 2016, where he can purchase blocked 15 round Glock 19 magazines, which is a 15-round magazine that has been "blocked" to only hold 10 rounds of ammunition. User "Germ1" later explains, however, he is looking for a "block" that he can remove so he can have a functioning 15-round magazine. In the course of the thread, user "stag6.8" recommends the www.loyalsguns.com website, which is the website for Defendant Badger Mountain Supply. Attached as **Exhibit B** is a true and correct copy of the first page of the CalGuns discussion thread.
- On another CalGuns.net discussion thread in a "general gun discussion" sub-forum, located at https://www.calguns.net/calgunforum/showthread.php?t=1181887, the user "Zombie13" on March 30, 2016 says, "I was browsing the web for rifle magazines and came across Loyal's Guns Inc. http://www.loyalsguns.com/ This company sells magazine parts out of Washington and California. Without getting too much into details, is this legit?" The user "Librarian" responds, and "Zombie 13" replies with a link to an earlier thread on the same seller. In that earlier thread, beginning on July 28, 2015, and located at http://www.calguns.net/calgunforum/showthread.php?t=1098096, user "beanz2" quotes the following language from Defendant Badger Mountain Supply's website and asks whether it is legal: "To comply with recent California laws regarding magazine rebuild kits, customers buying rebuild kits to be shipped to California will receive two shipments: the contents of each shipment not containing sufficient parts to assemble a fully functional magazine. Additional shipping charges may

Exhibit 35 Page 01401

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apply to CA customers due to additional packaging and shipping." True and correct copies of the

relevant portions of these CalGuns.net threads are attached hereto as Exhibits C and D.

65. In my opinion, a preliminary injunction is needed against Defendants to prevent them from selling large-capacity magazines, "repair kits," and/or conversion kits into California in the months leading up to the statewide ban on civilian possession of large-capacity magazines, as current demand for these products is likely much higher than usual.

- 66. It is my opinion that an injunction against Defendants, barring them from advertising these products for sale to California and making false statements to California consumers, is necessary to prevent Defendants from violating, and aiding and abetting the violation of, California and San Francisco laws.
- on their online marketplaces statements that such products are not legal to sell in California or to California residents, is necessary to correct the Defendants' prior misstatements. It if my further opinion that an injunction against Defendants that requires they send all of their California customers who purchased any of these products a corrective written notice, to inform their customers they may have violated California law by purchasing (and, in the case of San Francisco consumers, possessing) these products, and to inform these customers of the upcoming state-wide possession ban, is also necessary to correct Defendants' prior misstatements.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed in San Francisco, California.

Dated: 2/20/17

JOSEPH EMANUEL # Zo29

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IN THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

VIRGINIA DUNCAN, et al,

Plaintiffs/Appellees,

VS.

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

Defendant/Appellant.

No. 17-56081

D.C., Southern District of California, San Diego, Case No. 3:17-cv-1017-BEN

DECLARATION OF DETECTIVE MICHAEL MERSEREAU OF THE LOS ANGELES POLICE DEPARTMENT IN SUPPORT OF AMICI CURIAE THE CITY AND COUNTY OF SAN FRANCISCO, THE CITY OF LOS ANGELES, AND THE CITY OF SUNNYVALE

On Appeal from the United States District Court for the Southern District of California

The Honorable Roger T. Benitez

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DECLARATION OF MICHAEL MERSEREAU

I, Michael Mersereau, declare and state as follows:

- 1. I am a Detective employed by the Los Angeles Police Department (the "LAPD") as a sworn officer for approximately 21 years. I have personal knowledge of the facts set forth below except those stated on information and belief. As to those facts, I believe them to be true and if called as a witness, could and would testify competently thereto.
- 2. I am currently assigned to the LAPD Gun Unit and have been for approximately 14 years. The LAPD Gun Unit is involved exclusively in the enforcement of the California Dangerous Weapons Control Act and the Municipal Code of the City of Los Angeles as it pertains to firearms. Prior to this assignment, I worked uniform patrol, unformed gangs, and divisional gang detectives. In these assignments, I have encountered a wide variety of firearms and firearms accessories, including high capacity magazines, and I have made numerous arrests for firearms violations.
- 3. Pursuant to my current assignment, I received training from the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) on illegal firearms trafficking, firearms identification and tracing, undercover operations, hidden compartment identification and recognition, assault weapons, and Federal Firearms laws. I have also received informal training on the above- mentioned subjects from more experienced investigators. I routinely review California Department of Justice (DOJ) and BATFE publications related to firearm identification and transactions. I have attended numerous gun shows and firearms trade expositions. I routinely review Firearms Industry trade publications. I have spoken to hundreds of persons engaged in the business of firearms sales. I have also been involved in numerous investigations of illegally transferred firearms, possession of prohibited weapons including machine guns, assault weapons, and short barrel shotguns and rifles, as

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well as possession of firearms by prohibited persons. As a result of these investigations, I have seized or participated in the seizure of hundreds of prohibited firearms and thousands of high capacity magazines.

- 4. On July 28, 2015, the City of Los Angeles enacted Los Angeles Municipal Code section 46.30, which, with certain exceptions, prohibited any person from possessing a large capacity magazine, defined as a magazine with the capacity to accept more than ten rounds, within Los Angeles (the "Ordinance"). On September 19, 2015, the Ordinance went into effect. The Ordinance is very similar to the State-wide ban on the possession of large-capacity magazines passed by the voters in November 2016 (Proposition 63).
- 5. It is my understanding based on information provided to me by the Office of the Los Angeles City Attorney that the City of Los Angeles has prosecuted twenty-two cases for unlawful possession of a large-capacity magazine.
- 6. Subsequently, due to the passage of Proposition 63, the City of Los Angeles added a sunset provision to the Ordinance so that it would no longer be in effect once the state law went into effect on July 1, 2017. This was to avoid a preemption lawsuit. As a result, the City of Los Angeles currently does not prohibit the possession of large-capacity magazines.
- 7. Gun violence is a particular problem in Los Angeles. The LAPD lacks a central database of all firearms related statistics. The statistics set forth below are accumulated by a number of different entities within the department including the Gun Unit and Robbery Homicide division. Here are some statistics for the past five years regarding gun-related crimes in Los Angeles:

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

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

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

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Year	Total Number of Homicide Victims Who Were Shot
2013	182
2014	185
2015	208
2016	127
2017	N/A

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

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

9. Statistics regarding assault weapons and machine guns are provided because these guns typically use large-capacity magazines. The LAPD does not keep statistics on the number of assault weapons and machine guns recovered citywide due to the expertise needed to determine whether a weapon is actually an assault weapon or a machine gun. The below statistics represent Assault Weapons

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/ Machine Guns recovered by the Gun Unit only. Citywide numbers are likely higher.

Year	Number of Assault Rifles/Machine Guns recovered by the Gun Unit	
2013	123	
2014	113	
2015	145	
2016	89	
2017 (as of 9/6/17)	83	

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

Year	Number of Large-Capacity Magazines Recovered by the Gun Unit	
2013	601	
2014	392	
2015	88261	
2016	224	
2017 (as of 9/6/17)	456	

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

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Case 3:17Gase0:1071-75637EN1; JLOS190200:17m eDit 5367244#41eDikt#1009/12/9; PRaggetD10576f 197age 40 of 107

- 11. It is my opinion, based on my training and experience, that large-capacity magazines in the hands of criminals pose a greater danger to both police officers and the public than standard-capacity magazines. Large capacity magazines increase the number of rounds that the shooter can discharge in a given amount of time. Large capacity magazines allow the shooter to fire more rounds at their target(s) before the need to stop firing in order to replace the magazine. The use of large capacity magazines in conjunction with any semi-automatic or fully automatic firearm increases the potential lethality of the firearm. There is a direct correlation between the number of rounds immediately available to the shooter and the ability to inflict more casualties among those persons targeted. This has been illustrated in various mass-shootings in and around the City of Los Angeles over the past twenty years.
- 12. For example, in one of the most brazen crimes ever committed, on February 28, 1997, two heavily armed men robbed a Bank of America in North Hollywood. According to reports that I have read, the bank robbers emptied more than one thousand rounds of ammunition using fully automatic machine guns with high-capacity drum magazines (holding 75 to 100 rounds), an AR-15 assault rifle converted to fire automatically with two high-capacity magazines (holding 100 rounds each), a semi-automatic HK-91 rifle with several 30-round high-capacity magazines, and armor-piercing bullets. The LAPD officers responding to the scene were outgunned and injured as a result of this incident. Indeed, twelve police officers and eight civilians were injured.
- 13. On August 10, 1999, a white supremacist fired shots into the lobby of the North Valley Jewish Community Center in Granada Hills. According to reports I have read, the shooter was armed with a fully-automatic Uzi machine gun, a semi-automatic pistol, and large capacity magazines. Three children, a teenage counselor, and an office worker were injured.

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14. On June 7, 2013, a shooter opened fire in and around the campus of

Santa Monica College. According to reports that I have read, the shooter was armed

with a semi-automatic rifle (similar in type to an AR-15), 1,300 rounds of

ammunition, and forty 30-round magazines. Five people were killed and four

people were injured.

15. On November 1, 2013, a gunman opened fire at the Los Angeles

International Airport. According to reports that I have read, the shooter used a

Smith & Wesson M&P15 semi-automatic rifle loaded with a 30-round large-

capacity magazine. The shooter also had five additional 30-round large-capacity

magazines and hundreds of rounds of ammunition in his carrying bag. One TSA

agent was killed and several other people were injured.

16. On December 2, 2015, a married couple targeted a San Bernardino

County Department of Public Health event and Christmas party, killing fourteen

people and wounding twenty-two others. According to reports that I have read, the

shooters were armed with semi-automatic pistols, a Smith & Wesson M&P15 rifle

that was modified to make it fully automatic, a DPMS A-15 rifle with it's bullet

button removed allowing for the quick exchange of large-capacity magazines, and

at least four large-capacity magazines.

I declare under penalty of perjury under the laws of the State of California

that the foregoing is true and correct.

Executed on October 18, 2017 at Los Angeles, California.

Michael Mersereau

Exhibit 36 Page 01412 APPENDIX K A Guide to Mass Shootings in America – Mother Jones Case 3:17-cv-01017-BEN-JLB Document 53-12 Filed 04/09/18 PageID.7177 Page 43 of

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Mother Jones

A Guide to Mass Shootings in America

There have been at least 98 in the past 35 years—and most of the killers got their guns legally.

MARK FOLLMAN, GAVIN ARONSEN AND DEANNA PAN UPDATED: MARCH 10, 2018, 9:00 A.M. PT

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Editor's note: In July 2012, in the aftermath of the movie theater massacre in Aurora, Colorado, Mother Jones created the first open-source database documenting mass shootings in the United States. Our research has focused on indiscriminate rampages in public places resulting in four or more victims killed by the attacker. We exclude shootings stemming from more conventional crimes such as armed robbery or gang violence. Other news outlets and researchers have published larger tallies that include a wide range of gun crimes in which four or more people have been either wounded or killed. While those larger datasets of multiple-victim shootings may be useful for studying the broader problem of gun violence, our investigation provides an in-depth look at the distinct phenomenon of mass shootings—from the firearms used to mental health factors and the growing copycat problem. Tracking mass shootings is complex; we believe ours is the most useful approach.

The interactive map below and our downloadable database have been expanded with 36 additional cases from 2013-2018. Dating back to at least 2005, the FBI and leading criminologists essentially defined a mass shooting as a single attack in a public place in which four or more victims were killed. We adopted that baseline when we gathered data in 2012 on three decades worth of cases. (It is important to note that there have been many similar indiscriminate gun rampages—resulting in fewer fatalities—that would otherwise be included in our dataset.) In January 2013, a mandate for federal investigation of mass shootings authorized by President Barack Obama lowered that baseline to three or more victims killed. Accordingly, we include attacks dating from January 2013 in which three or more victims died. Our original analysis, which covers cases with four or more victims killed from 1982-2012, follows below. The cases we have documented since then using the revised federal baseline reaffirm our major findings.

It is perhaps too easy to forget how many times this has happened. The horrific massacre at a movie theater in Aurora, Colorado, in July 2012, another at a Sikh temple in Wisconsin that August, another at a manufacturer in Minneapolis that September-and then the unthinkable nightmare at a Connecticut elementary school that December—were some of the latest in an epidemic of such gun violence over the last three-plus decades. Since 1982, there have been at least 98 public mass shootings across the country, with the killings unfolding in 34 states from Massachusetts to Hawaii. Fifty-nine of these mass shootings have occurred since 2006. Seven of them took place in 2012 alone, including Sandy Hook. An analysis of this database by researchers at Harvard University, further corroborated by a recent FBI study, determined that mass shootings have been on the rise.

Car the atta A Guide to Mass Shootings in America – Mother Jones

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mentally troubled—and many displayed signs of mental health problems before setting out to kill. Explore the map for further details—we do not consider it to be all-inclusive, but based on the criteria we used, we believe that we've produced the most comprehensive rundown available on this particular type of violence. (Mass shootings represent only a sliver of America's overall gun violence.) For the stories of the 151 shooting rampage victims of 2012, click here, and for our groundbreaking investigation into the economic costs of the nation's gun violence, including mass shootings, click here.

Click on the dots or use the search tool in the top-right corner of the map to go to a specific location. Zoom in to find cases located geographically close together in Colorado, Texas, Wisconsin, and elsewhere. [Editor's note: The Oct. 1, 2017 mass shooting on the Las Vegas Strip and several other recent attacks have not yet been added to this map; we will be publishing an updated version soon. In the meantime, see our fully updated database here.]

Map created by - motheriones

Our focus is on public mass shootings in which the motive appeared to be indiscriminate killing. We used the following criteria to identify cases:

- The perpetrator took the lives of at least four people. A 2008 FBI report identifies an individual as a mass murderer—versus a spree killer or a serial killer—if he kills four or more people in a single incident (not including himself), typically in a single location. (*In 2013, the US government's fatality baseline was revised down to three.)
- The killings were carried out by a lone shooter. (Except in the case of the Columbine massacre and the Westside Middle School killings, which involved two shooters.)
- The shootings occurred in a public place. (Except in the case of a party on private property in Crandon, Wisconsin, and another in Seattle, where crowds of strangers had gathered.) Crimes primarily related to gang activity or armed robbery are not included, nor are mass killings that took place in private homes (often stemming from domestic violence).
- Perpetrators who died or were wounded during the attack are not included in the victim counts.
- We included a handful of cases also known as "spree killings"—cases in which the killings occurred in more than one location over a short period of time, that otherwise fit the above criteria.

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For more on the thinking behind our criteria, see these two explanatory pieces. Plus: more on the crucial mental illness factor, and on the recent barrage of state laws rolling back gun restrictions across the US. And: Explore the full data set behind our investigation.

Here are two charts detailing the killers' weapons:

This guide was first published on July 20, 2012. Since then, we've updated and expanded it multiple times with additional research and reporting. The analysis and charts above cover the data through 2012 (comprising 62 cases); additional data and analysis on the shooters' weapons are in this story. Information on 36 additional mass shootings from 2013-2018 is included in our full data set here. For much more of our reporting on mass shootings, gun violence, and gun laws, see our special investigations: **America Under the Gun, Newtown: One Year After**, and **The True Cost of Gun Violence.** (Return to intro.)

First published: Fri Jul. 20, 2012 7:32 PM PDT. Interactive production by Tasneem Raja and Jaeah Lee Case: 19-55376, 07/15/2019, ID: 11364007, DktEntry: 8-7, Page 127 of 281

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FACT:

Mother Jones was founded as a nonprofit in 1976 because we knew corporations and the wealthy wouldn't fund the type of hard-hitting journalism we set out to do.

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MARK FOLLMAN ¥

 $Mark\ Follman\ is\ the\ national\ affairs\ editor\ at\ \textit{Mother Jones.}\ Contact\ him\ with\ tips\ or\ feedback\ at\ mfollman@motherjones.com.$

GAVIN ARONSEN ¥

For more of Gavin's stories, click here.

DEANNA PAN 💆

Deanna Pan is a former senior editorial fellow at Mother Jones.

Mother Jones

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Va. data show drop in criminal firepower during assault gun ban

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CORRECTION TO THIS ARTICLE

Advertisement

An earlier version of this story incorrectly reported the limit on the capacity of gun magazines in Maryland. The limit is 20. This version has been corrected.

Va. data show drop in criminal firepower during assault gun ban

By David S. Fallis and James V. Grimaldi Washington Post Staff Writers Sunday, January 23, 2011; 9:17 AM

The number of guns with high-capacity magazines seized by Virginia police dropped during a decade-long federal prohibition on assault weapons, but the rate has rebounded sharply since the ban was lifted in late 2004, according to a Washington Post analysis.

More than 15,000 guns equipped with high-capacity magazines - defined under the lapsed federal law as holding 11 or more bullets - have been seized by Virginia police in a wide range of investigations since 1993, the data show.

The role of high-capacity magazines in gun crime was thrust into the national spotlight two weeks ago when 22-year-old <u>Jared Lee Loughner allegedly opened fire</u> with a semiautomatic handgun outside a Tucson grocery store, killing six and wounding 13, including Rep. Gabrielle Giffords (D-Ariz.). Authorities say Loughner used a legally purchased 9mm Glock 19 handgun with a 31-round clip and was tackled while changing magazines.

Of the seized Virginia weapons, 2,000 had magazines with a capacity of 30 or more bullets. Some states still limit magazine capacity. California, for example, limits them to 10 and Maryland to 20.

Last year in Virginia, guns with high-capacity magazines amounted to 22 percent of the weapons recovered and reported by police. In 2004, when the ban expired, the rate had reached a low of 10 percent. In each year since then, the rate has gone up.

"Maybe the federal ban was finally starting to make a dent in the market by the time it ended," said Christopher Koper, head of research at the Police Executive Research Forum, who <u>studied the assault weapons ban</u> for the National Institute of Justice, the research arm of the Justice Department.

Congress is considering legislation to reinstitute the assault weapon ban's prohibition on high-capacity magazines, a measure strongly opposed by gun rights advocates.

The analysis of the <u>Virginia records</u>, <u>obtained under the state's public information</u> law, provides a rare window into the firepower of guns used in crimes. The Bureau of Alcohol, Tobacco, Firearms and Explosives, which traces guns for local police agencies and regulates the firearms industry, does not track magazine sizes. Academic researchers said they were unaware of any other comprehensive study of firearms magazines.

The pattern in Virginia "may be a pivotal piece of evidence" that the assault weapons ban eventually had an impact on the proliferation of high-capacity magazines on the streets, said Garen Wintemute, <u>head of the Violence Prevention Research Program</u> at the University of California at Davis.

"Many people, me included, were skeptical about the chances that the magazine ban would make a difference back in 1994," Wintemute said. "But what I am seeing here is that after a few years' lag time the prevalence of high-capacity magazines was declining. The increase since the ban's repeal is quite striking."

Guns with high-capacity magazines have appeared in Virginia crimes ranging from the mundane to the murderous. The Post found that 200 guns with high-capacity magazines figured in Virginia homicides, including these incidents:

• In Richmond in 2003, Michael Antoine Wilson, 21, used his semiautomatic rifle with its 30-round magazine to shoot his 17-year-old girlfriend to death in front of children and relatives. Then he went to a nearby convenience

Exhibit 38

Va. data show drop in criminal firepower during assault gun ban

Case 3:17-cv-01017-BEN-JLB Document 53-12 Filed 04/09/18 PageID.7183 Page 49 of store, killed two workers and stole a van before turn107 the gun on himself.

- In Roanoke in 2004, Marcus Jerome Nance, 22, used his legally purchased 9mm Glock 17 handgun with a high-capacity magazine to spray 33 bullets into a crowd that had gathered outside a Roanoke gas station after a nightclub closing, killing one and wounding two.
- In Newport News last year, Antonio Johnson, 34, began shooting at police during a traffic stop with a 9mm semiautomatic handgun outfitted with a 15-round magazine. "Subject shot police officer and then killed himself with weapon," state records say.

In the Arizona shootings, Loughner allegedly used a Glock 19 that he had legally purchased at a Tucson sporting goods store in November. The gun's capacity allowed Loughner to squeeze off more than 30 shots without reloading, authorities said.

The federal assault weapons ban from late 1994 through late 2004 prohibited the manufacturing of magazines capable of holding more than 10 rounds. But the act permitted the sale of magazines manufactured before the ban.

The federal prohibition was spurred by a mass killing in 1989 in Stockton, Calif., where Patrick Edward Purdy, 24, a mentally unbalanced drug addict, fired 110 shots from an AK-47 into a schoolyard, killing five children and wounding 29 others and a teacher. He used a 75-round rotary clip and a 35-round banana clip, one of four he was carrying.

New legislative interest

Rep. Carolyn McCarthy (N.Y.) and 57 other Democrats proposed legislation last week to ban the sale or transfer of high-capacity magazines, no matter when they were manufactured. McCarthy's husband and five others were killed in 1993 on the Long Island Rail Road by a gunman armed with a semiautomatic pistol and four 15-round magazines. He fired 30 shots before being subdued while changing magazines.

The bill's <u>prospects are considered slim</u> in the Republican-controlled House. In the Senate, the National Rifle Association says it has a solid <u>50-senator pro-gun block</u> that could delay any legislation.

The NRA has announced its opposition to proposals that limit magazine capacity.

"These magazines are standard equipment for self-defense handguns and other firearms owned by tens of millions of Americans," according to a statement on its politics Web page, and in a letter circulating to members of Congress. "Law-abiding private citizens choose them for many reasons, including the same reason police officers do: to improve their odds in defensive situations."

The firearms industry also opposes the proposal. "The tragedy in Tucson was not about firearms, ammunition or magazine capacity," said Ted Novin, a spokesman for the National Shooting Sports Foundation, a gun industry group. "It was about the actions of a madman. Period."

The analysis by The Post is possible because of a little-known database of guns seized in Virginia. The database, called the Criminal Firearms Clearinghouse, has information on more than 100,000 firearms recovered by more than 200 local police departments since 1993. A federal <u>law in 2003, known as the Tiahrt Amendment</u> after the congressman who sponsored it, banned the release of federal data on guns recovered in crimes.

<u>Last year, The Post mined the database</u> to pierce the secrecy imposed by Congress on federal gun-tracing records. The analysis found that a fraction of licensed dealers in Virginia sell most of guns later seized by police. The vast majority of the guns in the database were confiscated because of illegal-possession charges. But thousands were swept up in the wake of assaults, robberies and shootings.

Two months before the ban expired in September 2004, Marcus Nance bought an extended magazine and a 9mm Glock 17 handgun at a Roanoke gun store. Three nights later, down the street from the store, Nance opened fire on a crowded parking lot after arguing and fighting with people in the crowd.

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Va. data show drop in criminal firepower during assault gun ban

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A police officer called to investigate a disturbance heard shots and saw Nance holding a gun at arm's length and firing "randomly into the mass of people" before shooting several rounds into the air.

A police car's dashboard camera recorded the jackhammer sound of gunfire. In a car parked nearby, police found a Glock gun box and two boxes of ammunition, one of them partially empty.

Police went to the gun shop and confirmed that Nance had bought the handgun (\$555), a laser sight (\$380) and two extended magazines (\$135), paying cash in an entirely legal transaction. Police noted: "The magazines in question were manufactured before 1994 and not considered prohibited."

Nance, who said he had been attacked by members of the crowd and shot in self-defense, was convicted of second-degree murder and is in prison.

The 2004 study

Koper's 108-page 2004 study for the National Institute of Justice found the ban on assault weapons had mixed results.

"Assault weapons were rarely used in gun crimes even before the ban," he said in the report. But he also concluded that the prohibition on high-capacity magazines might have affected public safety, because such magazines allow shooters to inflict more damage.

"Tentatively I was able to show that guns associated with large-capacity magazines tended to be associated with more serious crimes, more serious outcomes," he said.

Some gun rights activists argue that a ban on high-capacity magazines would violate the Second Amendment right to bear arms. One prominent gun rights activist who takes a less absolute position is Robert A. Levy, chairman of the Cato Institute. He is also the <u>lawyer who brought the case</u> that overturned D.C.'s handgun ban.

But Levy said the government would need to prove that such a ban was effective.

"The burden is on the government, not on the individual to show that the regulation isn't unduly intrusive," Levy said.

Colin Goddard, a lobbyist for the Brady Campaign to Prevent Gun Violence and a victim of the <u>2007 Virginia Tech shootings</u>, said the high-capacity ban could save lives. The Virginia Tech shooter, Seung Hui Cho, used several 15-round magazines to fire 174 shots and kill 32 people in the worst gun-related mass murder by an individual in U.S. history.

"When you double and triple the amount of the clip size, you don't double or triple the number of deer you kill, you double and triple the amount of innocent people who are killed in shootings like this," said Goddard, 25, who was shot four times by Cho.

Bradley A. Buckles, ATF director from 1999 to 2004, said bureau officials advised Congress to focus on high-capacity magazines, which were "completely unregulated" and had almost no sporting purpose.

"The whole thing with magazine capacity came out of ATF," Buckles said. "It wasn't so much guns, but it was firepower. What made them more deadly than a hunting rifle was the fact that you could have a 20-round, 30-round clip, when most hunting rifles wouldn't have more than five rounds."

Buckles said lawmakers should have extended the ban on high-capacity magazines in 2004. Banning them now, he said, just puts everyone back at square one.

"There are so many millions of them out there, it probably wouldn't make any immediate difference over the course of 20 years," Buckles said. "It is not a short-term solution to anything."

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Data indicate drop in high-capacity magazines during federal gun ban - T... https://www.washingtonpost.com/investigations/data-point-to-drop-in-hi...

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Investigations

Data indicate drop in high-capacity magazines during federal gun ban

By David S. Fallis January 10, 2013

During the 10-year federal ban on assault weapons, the percentage of firearms equipped with high-capacity magazines seized by police agencies in Virginia dropped, only to rise sharply once the restrictions were lifted in 2004, according to an analysis by The Washington Post.

The White House is leading a push to reinstate a national ban on large-capacity magazines and assault weapons after a gunman armed with an AR-15 and 30-round magazines killed 20 children and seven adults in Connecticut. Vice President Biden has been holding advisory meetings to hammer out a course of action that will address the issue of the larger magazines, which under the lapsed federal ban were those that held 11 or more rounds of ammunition.

In Virginia, The Post found that the rate at which police recovered firearms with high-capacity magazines — mostly handguns and, to a smaller extent, rifles — began to drop around 1998, four years into the ban. It hit a low of 9 percent of the total number of guns recovered the year the ban expired, 2004.

The next year, the rate began to climb and continued to rise in subsequent years, reaching 20 percent in 2010, according to the analysis of a little-known Virginia database of guns recovered by police. In the period The Post studied, police in Virginia recovered more than 100,000 firearms, more than 14,000 of which had high-capacity magazines.

Researchers see impact

To some researchers, the snapshot in Virginia suggests that the federal ban may have started to curb the widespread availability of the larger magazines.

"I was skeptical that the ban would be effective, and I was wrong," said Garen Wintemute, head of the Violence Prevention Research Program at the University of California at Davis School of Medicine. The database analysis offers "about as clear an

> Exhibit 39 Page 01424_{6/1/17, 12:24 PM}

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Case 3:17-cy-01017-BEN-JLB Document 53-12, example as we could ask for of evidence that the ban was working?" Filed 04/09/18 PageID.7188 Page 54 of

The analysis is based on an examination of the Criminal Firearms Clearinghouse, a database obtained from state police under Virginia's public information law. The data, which were <u>first studied by The Post in 2011</u>, offer a rare glimpse into the size of the magazines of guns seized during criminal investigations. The Bureau of Alcohol, Tobacco, Firearms and Explosives, which traces guns and regulates the industry, tracks details about the guns seized after crimes but not the magazine size.

The initial Post analysis was prompted by a mass shooting in Tucson. Jared Lee Loughner — armed with a legally purchased 9mm semiautomatic handgun and a 33-round magazine — opened fire outside a grocery store, killing six people and wounding 13, including Rep. Gabrielle Giffords (D-Ariz.).

In the following two years, a succession of mass shootings has occurred, including several in which the gunmen reportedly had high-capacity magazines.

At the Dec. 14 shooting in Newtown, Conn., the gunman was <u>reported to have been armed</u> with two handguns, an AR-15 rifle and numerous 30-round magazines. He killed himself at the scene. The guns were legally purchased by his mother.

The federal ban that expired in 2004 prohibited the manufacture of magazines capable of holding more than 10 rounds. But the law permitted the sale of magazines manufactured before the ban. By some estimates, 25 million of the large-capacity magazines were still on the market in 1995.

Many semiautomatic rifles and semiautomatic handguns accept magazines of various sizes. Larger magazines increase a gun's firepower, enabling more shots before reloading.

The Virginia database analyzed by The Post lists about three-quarters of guns recovered by police, missing the rest because some agencies failed to report their recoveries to the state. The database contains details about more than 100,000 guns recovered by 200 police departments in a wide range of investigations from 1993 through August 2010, when The Post last obtained it.

In recent weeks, The Post conducted additional analysis into the type of guns confiscated with large-capacity magazines. The guns included Glock and TEC-9 handguns and Bushmaster rifles. Most had magazines ranging from 11 to 30 rounds.

Of 14,478 guns equipped with large-capacity magazines that were confiscated by police, more than 87 percent — 12,664 — were classified as semiautomatic pistols. The remainder were mostly semiautomatic rifles.

The Post also identified and excluded from the counts more than 1,000 .22-caliber rifles with large-capacity tubular magazines, which were not subject to the ban.

In Virginia, handguns outfitted with large-capacity magazines saw the biggest fluctuation during and after the ban.

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Case 3:17-cy-01017-BEN-JLB Document 53-12 Filed 04/09/18 PageID.7189 Page 55 of In 1997, three years into the ban, police across the state reported religiously with large-capacity magazines. In 2004, the year the ban ended, they confiscated 452. In 2009, the last full year for which data were available, the number had rebounded to 986 handguns, analysis showed.

Of these, the single biggest group were handguns equipped with 15-round magazines, accounting overall for 4,270 firearms over the 18 years.

Effect hard to measure

Nationwide, researchers who studied the federal ban had difficulty determining its effect, in part because weapons and magazines manufactured before the ban could still be sold and in part because most criminals do not use assault weapons.

Christopher Koper, who studied the ban's effect for the National Institute of Justice, the research arm of the Justice Department, noted in a 2004 report that the "success in reducing criminal use of the banned guns and magazines has been mixed."

He found that gun crimes involving assault weapons declined between 17 and 72 percent in the six cities covered in the study — Anchorage, Baltimore, Boston, Miami, Milwaukee and St. Louis. But he said he found no decline in crimes committed with other guns with large-capacity magazines, most likely "due to the immense stock of exempted pre-ban magazines."

Koper's study tracked guns through 2003. He said that The Post's findings, which looked at magazine capacity of guns recovered in Virginia before and after 2003, suggests that "maybe the federal ban was finally starting to make a dent in the market by the time it ended."

Koper, now an associate professor of criminology at George Mason University, also noted the ban on high-capacity magazines might improve public safety because larger magazines enable shooters to inflict more damage.

The use of high-capacity magazines is a contentious point in the gun debate.

"Anyone who's thought seriously about armed self-defense knows why honest Americans — private citizens and police alike — choose magazines that hold more than 10 rounds. Quite simply, they improve good people's odds in defensive situations," Chris W. Cox, the executive director of the National Rifle Association's legislative institute wrote in a piece posted online. He called the ban a "dismal failure."

The federal prohibition on high-capacity magazines and assault weapons was spurred in part by the 1989 mass killing in Stockton, Calif. Patrick Edward Purdy, a mentally unbalanced drug addict, fired 110 rounds from an AK-47 into a schoolyard, killing five children and wounding 29 others and a teacher. Purdy used a 75-round drum magazine and a 35-round banana clip, one of four he carried.

Some states still limit magazine size. Maryland limits the size to 20 rounds; California limits it to 10. Connecticut, the location Exhibit 39

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After Giffords's shooting, Rep. Carolyn McCarthy (N.Y.) and other Democrats proposed legislation to ban the sale or transfer of high-capacity magazines. McCarthy's husband and five others were killed in 1993 on the Long Island Rail Road by a gunman armed with a semiautomatic pistol and four 15-round magazines. He fired 30 shots before being subdued as he swapped magazines.

In the wake of the Newtown shooting, President Obama and lawmakers urged that a ban on assault weapons and high-capacity magazines be made permanent.

The NRA and the National Shooting Sports Foundation, a gun industry group, have historically opposed any restrictions on magazine capacity. The NRA did not respond to requests for comment, and the sports foundation declined to comment.

David S. Fallis is the Deputy Editor for the Washington Post's Investigations Unit. ♥ Follow @DavidSFallis

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Guns and Violence in America



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Second paperback printing 2009
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Library of Congress Catalog Number: 91-16780 ISBN: 978-0-202-30762-6 Printed in the United States of America

Library of Congress Cataloging-in-Publication

Kleck, Gary, 1951-

Point blank: guns and violence in America / Gary Kleck.
p. cm. — (Social institutions and social change)
Includes bibliographical references and index.
ISBN 0-202-30419-1 (cloth); 0-202-30762-X (paper)
1. Violence—United States. 2. Firearms—Social aspects—United States. 3. Gun control—United States. 1. Title. II. Series.

HN90.V5K56 1991 303.6'0973—dc20

91-16780

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Ideology, Politics, and Propaganda

Anything Short of Total Success is Utter Failure

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Opponents of gun laws, like opponents of any law, like to point to the failures of the laws—how many crimes are committed even in places with strict gun laws, how many criminals have guns despite the laws, and so on. This argument, however, is a non sequitur; it does not follow that gun laws are ineffective. All laws are violated and thus less than completely effective, and most important criminal laws are violated frequently, as a glance at criminal statistics indicates. Even some laws widely supported by the population have been violated by a majority of the population, as self-report surveys of the population have long shown (e.g., Wallerstein and Wyle 1947). Yet no one concludes that the thousands of homicides committed each year mean that laws prohibiting murder are ineffective and should be repealed. It is unreasonable to oppose a law merely because some people will violate it.

A more sensible standard to apply is to ask whether the benefits of the law exceed its costs, i.e., whether the world will, on balance, be a better place after the law is in effect. It is impossible to directly count the number of successes, i.e., the number of crimes deterred or otherwise prevented by the existence of laws prohibiting the acts, since one can never count the number of events that do not occur. And no matter how many failures there are, it is always possible that there are still more successes. The only way one can assess the relative balance of successes and failures is to compare jurisdictions having a law with those lacking the law, or to compare jurisdictions before and after they adopt a law, to see if there is, on balance, less crime with the law than without it. Just counting failures settles nothing.

Criminals Will Ignore the Law

A corollary to the previous fallacy is the assertion that many criminals will ignore gun laws and get guns anyway. This is indisputably true, but not especially decisive regarding the desirability of gun control, since it does not address the number of successes of gun control. There is no clearly established minimum level of compliance that must be achieved before a law is to be judged a success. And if there were such a standard, it certainly could not reasonably be 100%, and would not necessarily be even 50% or any other similarly high level. It is even conceivable that if just 1 or 2% of potentially violent persons could be denied a gun, the resulting benefits might exceed the costs of whatever measure produced this modest level of compliance.

As it happens, there appears to be some compliance with gun laws

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Fallacies in Anticontrol Argumentation

even among the "hard-core" felons incarcerated in the nation's prisons. A survey of over 1800 felons in 11 state prisons found that 25% of felon gun owners reported having registered a firearm and 15% reported having applied for a permit to purchase or carry a gun, percentages that would have been higher had felons in states without such legal requirements been excluded from the computations (Wright and Rossi 1986, p. 84). Although the self-reported compliance levels were low, as one would expect in a sample of felons, they were also not zero. Among potentially violent persons not in prison, who are probably less persistently and seriously involved in law-breaking, compliance levels would presumably be even higher.

One Thing Leads to Another

Gun control supporters often wonder how the National Rifle Association (NRA) and other gun owner organizations can possibly oppose some of the more modest and apparently inoffensive regulations. Opponents reply that today's controls, no matter how limited and sensible, will just make it that much easier to take the next, more drastic step tomorrow, and then the next step, and the next, until finally total prohibition of private possession of firearms is achieved. They argue that gun control is a "slippery slope" on which it is hard to stop halfway, and that many proponents do not want to stop with just the more limited restrictions.

This fear is not completely unreasonable, as bills calling for a national ban on private possession of handguns have been introduced in Congress (Alviani and Drake 1975, pp. 55, 57) and much of the general public does favor prohibitions. In national opinion polls, about 40% of Americans say they support bans on the private possession of handguns, and one in six even support a ban on possession of any guns. Since about 75% of all Americans favor registering gun purchases and about 70% favor requiring police permits to buy a gun (Chapter 9), this means that most supporters of these moderate controls also favor a total ban on private handgun possession. If this is so among ordinary nonactivist supporters of gun control, it almost certainly is true of activists and leaders of gun control advocacy groups.

There have always been enough prominent prohibitionists willing to air their views in a highly visible way to lend credence to fears about a movement toward total prohibition. For example, criminologist Marvin Wolfgang, in a letter to the editor of *Time* magazine, advocated a total national ban on possession of all firearms (July 5, 1968, p. 6), a sentiment echoed by noted sociologist Morris Janowitz (*Time*, 6-21-68).

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Ownership and Uses of Guns

cators are necessarily "noisy," reflecting both gun availability and inclinations of violent people to choose guns for their aggressive or suicidal purposes. Although the two measures often show similar trends, they also moved in opposite directions during 1945–1951, 1976–1983, and, to a lesser degree, 1958–1963. If the gun share of homicides were used as an indicator of long-term trends in a general gun ownership, it would indicate that gun ownership had declined since the 1920s. In 1920–1926, 71% of U.S. homicides were committed with guns (Brearley 1932, p. 68). Since at that time six states in the South and West, where a high share of homicides were committed with guns, were not yet a part of the national vital statistics system, the figure almost certainly would have been higher had those states been included. By 1989, the national figure was down to 62% (U.S. FBI 1990).

Table 2.3 provides estimates of the size of the U.S. gun stock, based on national surveys that asked Rs how many guns they owned. They all support the view that there was a huge number of guns in private hands. All but one of the estimates, however, are substantially lower than production-based estimates for the same years (Table 2.1). Flaws in these estimates and reasons for the discrepancy are discussed in Appendix 2.

Table 2.4 displays information on the combinations and numbers of guns owned by gun-owning households and individuals. Part A shows that most households with guns have long guns (85%), and that most (56%) own only longguns, whereas only one-seventh of owning households have only handguns. However, it will be this handgun-only type of household that will be of special interest later because it may be the type most likely to have guns for crime-related reasons (Bordua et al. 1979). Conversely, two-thirds of households with handguns also have long guns. This fact is significant because it suggests that when handguns are used in crimes or for defense (at least when in the home), the use was often the result of a choice between different types of guns, rather than the fact that only handguns were available. This would support the view that there is something about handguns that gun users regard as especially suitable for defensive and criminal purposes. An even more important implication is that if handguns were restricted, most current handgun owners would not even have to acquire new guns in order to have substitute firearms to use. The implications of this substitution possibility will be discussed in detail in Chapter 3.

Part B of Table 2.4 attempts to provide more realistic estimates of the number of guns owned per owner than were reported in Table 2.3. It has been assumed that the true fraction of households and individuals own-

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Who Owns Guns?

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ing guns is 10% higher than survey figures indicate, to adjust for the underreporting previously discussed (see Appendix 2 for a justification). These survey figures were combined with the production cumulation figures in Table 2.1 to roughly estimate the numbers of guns owned per owner. Based on this procedure, among households owning guns, an average of over four guns are owned, considerably higher than most survey data suggest. The distribution, however, is undoubtedly skewed to the right, with a few households owning very large numbers of guns, and most households owning a few, based on the Table 2.3 survey results. Among households with a handgun, the average number of handguns owned is about 2.8. Among individuals age 18 or over who own guns, the average number owned is about 3.4, and among individuals with handguns, the average is about 2.0. Both these data and survey data support the conclusion that although gun ownership is widespread in the United States, a large share of the guns may also be in relatively few hands (see also Cook 1983, pp. 78-9).

Regardless of the major source on which one relies, it is clear that the number of guns currently in private hands in the United States is very large, whether the number is 100 or 200 million. One straightforward policy implication is that policies that seek to reduce gun violence by reducing the overall supply of guns, as distinct from reducing the number possessed by high-risk subsets of the population, face an enormous obstacle in this huge existing stock. Even if further additions to the stock could somehow be totally and immediately stopped, the size of the stock and durability of guns imply that, in the absence of mass confiscations or unlikely voluntary surrenders of guns, it might be decades before any perceptible impact became apparent.

Who Owns Guns?

In a nation where at least half of the households have a gun, it would be difficult to regard gun ownership as an unusual or deviant status. Nevertheless, gun owners do differ from nonowners in some respects, as the figures in Table 2.5 demonstrate. These figures were computed from the combined 1980, 1982, and 1984 General Social Surveys conducted by the National Opinion Research Center (for details of the surveys, see Davis 1984). These surveys were superior to previous national surveys in that they asked whether each *respondent* (R) owned a gun, rather than asking only whether someone in the household did. This made it possible to relate attributes of the R to whether the R owned

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Searching for "Bad" Guns

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of "ARs," it is unlikely that criminals would adopt them. But even if at least some types of criminals did seek out rifles as an alternative to handguns, they would have an ample supply of more lethal substitute rifles available to them even in the absence of "ARs."

While "ARs" are not unusually lethal relative to other rifles, they do have other technical attributes potentially relevant to criminal violence: (1) they are capable of firing single shots as fast as the shooter can pull the trigger, and (2) they can accept magazines that hold a large number of cartridges. It is unclear whether either of these attributes is of substantial criminological significance. "ARs" are capable of firing at a rate somewhat faster than other gun types, but it is unknown how often violent incidents occur in which this higher rate of fire would have any impact on the outcome of the incident. For example, even in a rare mass shooting such as the 1989 Stockton schoolyard killing of five children, the killer fired 110 rounds in 3 to 4 (or more) minutes, or about 28-37 rounds per minute (Los Angeles Times 1-18-89, p. 3; 1-19-89, p. 9). The same rate of fire can be achieved with an ordinary double-action revolver using speed-loaders to reload. Further, there was nothing to stop Purdy from continuing his attack for another 3 or 4 minutes. The higher rate of fire was unnecessary for Purdy to carry out his murderous intentions—he did all the shooting he wanted to do in 4 minutes and then killed himself.

The effective rate of fire of any gun is limited by its recoil. When a shot is fired, the force of the bullet leaving the barrel causes the gun to move back toward the shooter and off of its original aiming alignment. It cannot be fired at the same target again until the shooter puts it back in line with the target. Thus the somewhat higher rate of fire of semi-automatic weapons cannot be fully exploited, reducing the effective difference between these weapons and revolvers.

Ordinary revolvers can easily fire six rounds in 3 seconds without any special skill on the part of the shooter or modification to the weapon. Even assuming a semiautomatic gun could fire at twice this rate, it would only mean that a shooter could fire six rounds in 1.5 instead of 3 seconds. The issue comes down to this: How many violent incidents occur each year in which a shooter has 1.5 seconds to shoot the victim(s), but not 3 seconds? Such incidents are probably fairly rare, although there are no hard data on the matter.

Critics of "ARs" have also pointed to the high total volume of fire of which the weapons are capable, due to their large magazines. It should be noted that magazines for these weapons are almost always detachable, and the weapons are usually capable of accepting many different

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Assault Rifles and Assault Weapons

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common magazine sizes, whether one containing only 3 rounds, or one containing 30 or more (Warner 1989). Thus, the high volume of rounds is not, strictly speaking, an attribute of the gun itself, but rather of the magazine. Likewise, most of the millions of ordinary semiautomatic pistols sold in the United States for decades are also capable of accepting box-type magazines that can have very large capacities. Consequently, one legal difficulty in distinguishing "ARs" from other semiautomatic rifles, or AWs from other semiautomatic handguns, is that most varieties of all of these weapon categories accept box-type magazines. Since such magazines can be either big or small, it means that the unrestricted civilian-style guns are just as capable of using a large-capacity magazine as are the restricted modern military-style AWs. Consequently, rational controls based on concern over large ammunition capacity would have to either ban large magazines or ban all guns capable of receiving types of magazines that sometimes have large capacities. The former alternative would be very difficult to enforce, whereas the latter alternative would mean banning large numbers of hunting rifles and most semiautomatic pistols, and thus would negate the chief political benefit of restricting only rare weapons.

It is doubtful whether a high volume magazine is currently relevant to the outcome of a large number of violent incidents. The rare mass killing notwithstanding, gun assaults usually involve only a few shots being fired. Even in a sample of gun attacks on armed police officers, where the incidents are more likely to be mutual combat gunfights with many shots fired, the suspects fired an average of only 2.55 times (New York City Police Department 1989, p. 6). On the other hand, if high-volume guns did become popular among criminals in the future, this could change for the worse. Further, although "ARs" are not unique in any one of their attributes, they are unusual, although not unique, in combining the lethality of rifles, a potentially large ammunition capacity, and a high rate of fire. It is possible that the combination of all three attributes could have a crime-enhancing effect greater than that generated by any one of the attributes.

Whereas semiautomatic firearms offer a rate of fire only somewhat higher than other common gun types, fully automatic weapons have much higher rates of fire. "ARs" sold on the civilian market are not capable of fully automatic fire, but it has been argued that this distinction is a minor one because "ARs" are so easily converted to fully automatic fire (Newsweek 10-14-85, pp. 48-9). The New York Times, in an editorial, even told its readers that "many semiautomatics can be made fully automatic with a screwdriver, even a paperclip" (8-2-88). Eight

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Shooting in Self-Defense

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share of defensive uses attributable to these sorts of users is relevant to assessing NCS information used later to evaluate the effectiveness of defensive gun uses, since that information is derived from questions that did not exclude any uses by persons with these violence-related occupations. Although the gun use surveys did not obtain sufficiently detailed occupational detail to assess this, the NCS did. In the 1979–1985 sample, members of these occupations accounted for 15.4% of self-protection gun uses. They do therefore account for a disproportionate share of the NCS-counted gun uses, but still a relatively small fraction. And again it should be stressed that on-duty uses by such persons were explicitly excluded from the surveys used to estimate the number of defensive gun uses.

Shooting in Self-Defense

Most uses of guns for either criminal or defensive purposes are probably much less dramatic or consequential than one might think. Only a tiny fraction of criminal gun assaults involves anyone actually being wounded, even nonfatally, and one would expect the same to be true of defensive gun uses. More commonly, guns are merely pointed at another person, or perhaps only referred to ("I've got a gun") or displayed, and this is sufficient to accomplish the ends of the user, whether criminal or noncriminal. Nevertheless, most gun owners questioned in surveys assert that they would be willing to shoot criminals under the right circumstances. The 1989 Time/CNN survey found that 80% of gun owners thought they would get their guns if they thought someone was breaking into their home, and 78% said they would shoot a burglar if they felt threatened by that person (Quinley 1990, p. 9).

Despite this stated willingness of gun owners to shoot under certain circumstances, most defensive uses of guns do not in fact involve shooting anyone. Although the surveys listed in Table 4.1 did not delve into much detail about the circumstances in which guns were used defensively, or the manner in which they were used, most did ask whether the gun was fired. Results generally indicate the gun was fired in less than half of the defensive uses; the rest of the times the gun was merely displayed or referred to, in order to threaten or frighten away a criminal.

Self-Defense Killings

The rarest, but most serious form of self-defense with a gun is a defensive killing. Although shootings of criminals represent a small fracAnalysis of Five Years of Armed Encounters (With Data Tables)

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Analysis of Five Years of Armed Encounters (With Data Tables)

March 12 2012 by GSL Staff Share This Post Like 878 Share 4 points Tweet G+1 2 **Incident at a Glance** Gun(s) Used: Unknown Location: Unknown # of Suspects: Unknown Shots Fired: Unknown Suspect Killed: Unknown State: Source: Archive: None

Foreword by GunsSaveLives.net

This article was originally written several years ago by Claude Werner. It is republished here, in its entirety (including data tables) with permission.

While the source material is somewhat dated there is still a lot of information we can learn from this. One thing to also note is that the stories used for this study were all situations in which a citizen *successfully* defended themselves. This means that the study focuses on and shows what works, not what doesn't work.

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Author

Claude Werner

Firearms Safety Training LLC

The Armed Citizen – A Five Year Analysis

Overview

For the period 1997 – 2001, reports from "The Armed Citizen" column of the NRA Journals were collected. There were 482 incidents available for inclusion in the analysis. All involved the use of firearms by private citizens in self defense or defense of others. No law enforcement related incidents were included. The database is self-selecting in that no non-positive outcomes were reported in the column.

Analysis

As might be expected, the majority of incidents (52%) took place in the home. Next most common locale (32%) was in a business. Incidents took place in public places in 9% of reports and 7% occurred in or around vehicles.

The most common initial crimes were armed robbery (32%), home invasion (30%), and burglary (18%).

Overall, shots were fired by the defender in 72% of incidents. The average and median number of shots fired was 2. When more than 2 shots were fired, it generally appeared that the defender's initial response was to fire until empty. It appears that revolver shooters are more likely to empty their guns than autoloader shooters. At least one assailant was killed in 34% of all incidents. At least one assailant was wounded in an additional 29% of all incidents. Of the incidents where shots are fired by a defender, at least one assailant is killed in 53% of those incidents.

Handguns were used in 78% of incidents while long guns were used in 13%; in the balance the type of firearm was not reported. The most common size of handgun was the .35 caliber family (.38, .357, 9mm) at 61%, with most .38s apparently being of the 5 shot variety. Mouseguns (.380s and below) were at 23%, and .40 caliber and up at 15%.

The range of most incidents appears to be short but in excess of touching distance. It appears that most defenders will make the shoot decision shortly before the criminal comes within arm's length. Defenders frequently communicate with their attackers before shooting.

The firearm was carried on the body of the defender in only 20% of incidents. In 80% of cases, the firearm was obtained from a place of storage, frequently in another room.

Reloading was required in only 3 incidents. One of those involved killing an escaped lion with a .32 caliber revolver, which was eventually successful after 13 shots.

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Multiple conspirators were involved in 36% of the incidents. However, there were no apparent cases of getaway drivers or lookouts acting as reinforcements for the criminal actor(s) once shooting starts. At the sound of gunfire, immediate flight was the most common response for drivers and lookouts.

When multiple conspirators were involved, the first tier was a two man action team. If another member was available, he was usually the driver of the getaway car and remained in the car. If a fourth conspirator was involved, he was stationed immediately outside the target location as a lookout for the police or other possible intervening parties. The outside conspirators do not generally appear to be armed. It does appear that the trend over the period has increased from one weapon in the action team to two weapons.

The largest group of violent criminal actors was 7, a group that committed serial home invasions in Rochester NY. An alert and prepared homeowner, who saw them invade an adjacent home, accessed his shotgun, and dispatched them (2 killed and 1 seriously wounded) when they broke in his door.

Incidents rarely occurred in reaction time (i.e., ¼ second increments). Most commonly, criminals acted in a shark-like fashion, slowly circling and alerting their intended victims. The defender(s) then had time to access even weapons that were stored in other rooms and bring them to bear.

The most common responses of criminals upon being shot were to flee immediately or expire. With few exceptions, criminals ceased their advances immediately upon being shot. Even small caliber handguns displayed a significant degree of instant lethality (30 per cent immediate one shot kills) when employed at close range. Many criminal actors vocally expressed their fear of being shot when the defender displayed a weapon. Upon the criminals' flight, the "victims" frequently chased and captured or shot the criminals and held them for the authorities.

Conclusions

- 1) Even small caliber weapons are adequate to solve the vast majority of incidents requiring armed self-defense.
- 2) Mindset of the potential victim was far more important than the type of weapon used. All the victims were willing to fight their opponents in order to survive. Although not common, in some cases bridge weapons, such as pens, were used to gain time to access the firearm.
- 3) Frequently, the defenders were aware that something was amiss before the action started and then placed themselves in position to access their weapons. Awareness of the surroundings appears to be a key element of successful defense.
- 4) The defenders had some measure of familiarity with their firearms. Although perhaps not trained in the formal sense, they appear to be able to access a firearm and immediately put it into action. At least one defender learned from a previous experience and made the firearm more accessible for subsequent use.

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- 5) Training or practice with a firearm should include a substantial amount of accessing the firearm from off body locations, such as drawers, underneath counters, etc.
- 6) This analysis does not present a view of the totality of armed self-defense in that non-positive outcomes were not available for inclusion in the database. The analysis may, however, be useful in helping to describe a methodology for successful armed self-defense. This methodology might be described as:
- 1. be aware,
- 2. be willing to fight,
- 3. have a weapon accessible,
- 4. be familiar enough with the weapon to employ it without fumbling,
- 5. when ready, communicate, both verbally and non-verbally, to the attacker that resistance will be given, and
- 6. if the attacker does not withdraw, counterattack without hesitation.

Location of Incident

Location	%
Home	52%
Business	32%
Public	9%
In/around Vehicle	7%

Shots Fired

Type of Location	No	Yes
Business	33%	72%
Home	25%	75%
Public	29%	71%
In/around Vehicle	35%	65%
Total	28%	72%

Number of Shots Fired

Average	2.2
Median	2
Mode	1
Max	20

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Gun Type

Handgun 78%

Long Gun 13%

Unknown 8%

Body Carry

Type of Location No Yes

 Business
 69% 31%

 Home
 94% 6%

 Public
 49% 51%

 In/around Vehicle 65% 35%

 Total
 80% 20%

Multiple Assailants

Type of Location No Yes

 Business
 76% 24%

 Home
 72% 28%

 Public
 62% 38%

 Retail Business
 52% 48%

 In/around Vehicle
 49% 51%

 Total
 80% 20%

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PROPOSITION FIREARMS. AMMUNITION SALES. INITIATIVE STATUTE.

OFFICIAL TITLE AND SUMMARY

PREPARED BY THE ATTORNEY GENERAL

- Requires individuals to pass a background check and obtain Department of Justice authorization to purchase ammunition.
- Prohibits possession of large-capacity ammunition magazines, and requires their disposal, as specified.
- Requires most ammunition sales be made through licensed ammunition vendors and reported to Department of Justice.
- Requires lost or stolen firearms and ammunition be reported to law enforcement.
- Prohibits persons convicted of stealing a firearm from possessing firearms.
- Establishes new procedures for enforcing laws prohibiting firearm possession.
- Requires Department of Justice to provide information about prohibited persons to federal

National Instant Criminal Background Check System.

SUMMARY OF LEGISLATIVE ANALYST'S ESTIMATE OF NET STATE AND LOCAL GOVERNMENT FISCAL IMPACT:

- · Increased state and local court and law enforcement costs, potentially in the tens of millions of dollars annually, related to a new court process for removing firearms from prohibited persons after they are convicted.
- Potential increase in state costs, not likely to exceed the millions of dollars annually, related to regulating ammunition sales. These costs would likely be offset by fee revenues.
- Potential net increase in state and local correctional costs, not likely to exceed the low millions of dollars annually, related to changes in firearm and ammunition penalties.

ANALYSIS BY THE LEGISLATIVE ANALYST

BACKGROUND

Restrictions on Firearm and Ammunition Possession

Under federal and state law, certain individuals are not allowed to have firearms. These "prohibited persons" include individuals (1) convicted of felonies and some misdemeanors (such as assault or battery), (2) found by a court to be a danger to themselves or others due to mental illness, and (3) with a restraining order against them. In California, individuals who are not allowed to have firearms are also not allowed to have ammunition.

Regulation of Firearm Sales

Both federal and state law include various regulations related to firearm sales, including the licensing of firearm dealers. Such regulations include:

• Background Checks. Under federal law, firearm dealers must request background checks of individuals seeking to buy firearms from the National Instant Criminal Background

Check System (NICS). The NICS searches a number of federal databases to ensure that the buyer is not a prohibited person. As allowed by federal law, California processes all background check requests from firearm dealers in the state directly by using NICS and various state databases.

- Removal of Firearms From Prohibited Persons. The California Department of Justice (DOJ) maintains a database of individuals who have legally bought or registered a firearm with the state. DOJ agents use this information to remove firearms from individuals who are no longer allowed to have firearms.
- Other Regulations. Other state regulations related to firearms include: limits on the type of firearms that can be bought, a ten-day waiting period before a dealer may give a firearm to a buyer, and requirements for recording and reporting firearm sales.

Fees charged to firearm dealers and buyers generally offset the state's costs to regulate firearm sales.

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ANALYSIS BY THE LEGISLATIVE ANALYST

Regulation of Ammunition Sales

Prior to this year, the state did not regulate ammunition sales in the same manner as firearms. In July 2016, the state enacted legislation to increase the regulation of ammunition sales. Such regulations include:

- Licenses to Sell Ammunition. Beginning January 2018, individuals and businesses will be required to obtain a one-year license from DOJ to sell ammunition. Certain individuals and businesses would not be required to obtain a license, such as licensed hunters selling less than 50 rounds of ammunition per month to another licensed hunter while on a hunting trip. In order to obtain a license, ammunition dealers will need to demonstrate that they are not prohibited persons. In addition, certain entities will be able to automatically receive an ammunition license, such as firearm dealers licensed by both the state and federal government and firearm wholesalers. A vendor who fails to comply with ammunition sale requirements three times would have their ammunition dealer's license permanently revoked. DOJ could charge a fee to individuals and businesses seeking a license to sell ammunition to support its administrative and enforcement costs.
- DOJ Approval to Buy Ammunition. Beginning July 2019, ammunition dealers will be required to check with DOJ at the time of purchase that individuals seeking to buy ammunition are not prohibited persons. This requirement would not apply to some individuals, such as persons permitted to carry concealed weapons. In addition, ammunition dealers will generally be required to collect and report information—such as the date of the sale, the buyers' identification information, and the type of ammunition purchased—to DOJ for storage in a database for two years. Failure to comply with these requirements is a misdemeanor (punishable by a fine and/ or imprisonment in county jail). DOJ could generally charge an individual seeking to purchase ammunition a fee of up to \$1 per

- transaction to support its administrative and enforcement costs. DOJ could adjust this fee cap annually for inflation.
- Other Regulations. Beginning January 2018, state law generally will require that most ammunition sales (including Internet and out-of-state sales) take place through a licensed ammunition dealer. In addition, beginning July 2019, most California residents will be prohibited from bringing ammunition into the state without first having the ammunition delivered to a licensed ammunition dealer. Failure to comply with these requirements is a misdemeanor.

Status of Recent Legislation

As discussed above, the state recently enacted legislation to increase the regulation of ammunition sales. The state also recently enacted legislation to further limit the ownership of large-capacity magazines and to create a penalty for filing a false lost or stolen firearm report to law enforcement. These laws will take effect unless they are placed before the voters as referenda. If that occurs, voters will determine whether the laws take effect.

PROPOSAL

Proposition 63 (1) changes state regulation of ammunition sales, (2) creates a new court process to ensure the removal of firearms from prohibited persons after they are convicted of a felony or certain misdemeanors, and (3) implements various other provisions. Additionally, Proposition 63 states that the Legislature can change its provisions if such changes are "consistent with and further the intent" of the measure. Such changes can only be made if 55 percent of the members of each house of the Legislature passes them and the bill is enacted into law.

Changes to State Regulation of Ammunition Sales

Proposition 63 includes various regulations related to the sale of ammunition. Some of the regulations would replace existing law with similar provisions. However, other regulations proposed by Proposition 63 are different, as discussed below.

FIREARMS. AMMUNITION SALES. INITIATIVE STATUTE.

ANALYSIS BY THE LEGISLATIVE ANALYST

CONTINUED

Requirements to Buy Ammunition. Proposition 63 includes various requirements for individuals seeking to buy ammunition and for DOJ to regulate such purchases. Specifically, the measure:

- Requires individuals to obtain a four-year permit from DOJ to buy ammunition and for ammunition dealers to check with DOJ that individuals buying ammunition have such permits.
- Requires DOJ to revoke permits from individuals who become prohibited.
- Allows DOJ to charge each person applying for a four-year permit a fee of up to \$50 to support its various administrative and enforcement costs related to ammunition sales.

The state, however, enacted legislation in July 2016 to replace the above provisions with alternative ones if Proposition 63 is approved by the voters. (This legislation was enacted pursuant to the provision of Proposition 63 allowing for changes that are "consistent with and further the intent" of the proposition, as described earlier.) Specifically, under the legislation: (1) ammunition dealers would be required to check with DOJ that individuals seeking to buy ammunition are not prohibited persons at the time of purchase and (2) DOJ could generally charge such individuals up to \$1 per transaction. These provisions are similar to current law. Fewer individuals, however, would be exempt from this check than under current law. For example, individuals permitted to carry concealed weapons would be subject to this check.

Licenses to Sell Ammunition. Similar to current law, Proposition 63 requires individuals and businesses to obtain a one-year license from DOJ to sell ammunition. However, the measure changes the types of individuals and businesses that would be exempt from obtaining a license. For example, the measure generally exempts individuals and businesses that sell a small number of rounds of ammunition from the requirement to get a license. The measure also makes various changes in the penalties for failure to follow ammunition sale requirements. For example, it establishes a new criminal penalty—specifically, a misdemeanor—for failing to follow vendor licensing requirements.

Other Ammunition Requirements. This measure prohibits most California residents from bringing ammunition into the state without first having the ammunition delivered to a licensed ammunition dealer beginning in January 2018—a year and a half earlier than under current law. Additionally, failure to comply with this requirement would change from a misdemeanor to an infraction (punishable by a fine) for the first offense and either an infraction or a misdemeanor for any additional offense. The measure also requires DOJ to store certain ammunition sales information in a database indefinitely, rather than for two years.

Creates New Court Process for Removal of Firearms

This measure creates a new court process to ensure that individuals convicted of offenses that prohibit them from owning firearms do not continue to have them. Beginning in 2018, the measure requires courts to inform offenders upon conviction that they must (1) turn over their firearms to local law enforcement, (2) sell the firearms to a licensed firearm dealer, or (3) give the firearms to a licensed firearm dealer for storage. The measure also requires courts to assign probation officers to report on what offenders have done with their firearms. If the court finds that there is probable cause that an offender still has firearms, it must order that the firearms be removed. Finally, local governments or state agencies could charge a fee to reimburse them for certain costs in implementing the measure (such as those related to the removal or storage of firearms).

Implements Other Provisions

Reporting Requirements. The measure includes a number of reporting requirements related to firearms and ammunition. For example, the measure requires that ammunition dealers report the loss or theft of ammunition within 48 hours. It also requires that most individuals report the loss or theft of firearms within five days to local law enforcement. An individual who does not make such a report within five days would be guilty of an infraction for the first two violations. Additional violations would be a misdemeanor. This measure

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ANALYSIS BY THE LEGISLATIVE ANALYST

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also reduces the penalty for an individual who knowingly submits a false report to local law enforcement from a misdemeanor to an infraction and eliminates the prohibition from owning firearms for ten years for such an individual. This measure also requires DOJ to submit the name, date of birth, and physical description of any newly prohibited person to NICS.

Large-Capacity Magazines. Since 2000, state law has generally banned individuals from obtaining large-capacity magazines (defined as those holding more than ten rounds of ammunition). The law, however, allowed individuals who had large-capacity magazines before 2000 to keep them for their own use. Beginning July 2017, recently enacted law will prohibit most of these individuals from possessing these magazines. Individuals who do not comply are guilty of an infraction. However, there are various individuals who will be exempt from this requirement—such as an individual who owns a firearm (obtained before 2000) that can only be used with a large-capacity magazine. Proposition 63 eliminates several of these exemptions, as well as increases the maximum penalty for possessing large-capacity magazines. Specifically, individuals who possess such magazines after July 2017 would be guilty of an infraction or a misdemeanor.

Penalty for Theft of Firearms. Under current state law, the penalty for theft of firearms worth \$950 or less is generally a misdemeanor punishable by up to one year in county jail. Under this measure, such a crime would be a felony and could be punishable by up to three years in state prison. Additionally, individuals previously convicted of a misdemeanor for the theft of a firearm would be prohibited from owning firearms for ten years. Currently, there is no such prohibition for a misdemeanor conviction for theft of firearms.

FISCAL EFFECTS

Increased Court and Law Enforcement Costs. The new court process for removing firearms from prohibited persons after they are convicted would result in increased workload for the state and local governments. For example, state courts and county probation departments would have some increased

workload to determine whether prohibited persons have firearms and whether they have surrendered them. In addition, state and local law enforcement would have new workload related to removing firearms from offenders who fail to surrender them as part of the new court process. They could also have increased costs related to the storage or return of firearms. Some of the increased law enforcement costs related to the removal, storage, or return of firearms would be offset to the extent that local governments and state agencies charge and collect fees for these activities, as allowed by this measure. The total magnitude of these state and local costs could be in the tens of millions of dollars annually. Actual costs would depend on how this measure was implemented.

Potential Increased State Regulatory Costs. On balance, the measure's changes to the regulation of ammunition sales could increase state costs. For example, more individuals or businesses would likely be subject to state ammunition requirements under the measure. The actual fiscal effect of the changes would depend on how they are implemented and how individuals respond to them. We estimate that the potential increase in state costs would not likely exceed the millions of dollars annually. These costs would likely be offset by the various fees authorized by the measure and existing state law.

Potential Net Increased Correctional Costs. This measure makes various changes to penalties related to firearms and ammunition. While some changes reduce penalties for certain offenses, other changes increase penalties for certain offenses. On net, these changes could result in increased correctional costs to state and local governments, such as to house individuals in prison and jail. The magnitude of such costs would depend primarily on the number of violations and how the measure is enforced. The potential net increase in correctional costs would likely not exceed the low millions of dollars annually.

Visit http://www.sos.ca.gov/measure-contributions for a list of committees primarily formed to support or oppose this measure. Visit http://www.fppc.ca.gov/transparency/top-contributors/nov-16-gen-v2.html to access the committee's top 10 contributors.

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★ ARGUMENT IN FAVOR OF PROPOSITION 63 ★

PROPOSITION 63 WILL KEEP US SAFER BY REDUCING GUN VIOLENCE

Police in Dallas doing their job A nightclub in Orlando An office holiday party in San Bernardino A church in Charleston A movie theater in Aurora An elementary school in Newtown

What's next? How many more people need to die from gun violence before we take bold action to save lives?

More than 300 Americans are shot each day, more than 80 of them fatally.

More than 1 million Americans were killed or seriously injured by guns from 2004–2014. ENOUGH!

It's time to take action to keep guns and ammo out of the wrong hands.

Proposition 63—the Safety for All Act—will save lives by closing loopholes to prevent dangerous criminals, domestic abusers, and the dangerously mentally ill from obtaining and using deadly weapons.

PROPOSITION 63 WILL:

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- Remove illegal guns from our communities by ensuring that dangerous criminals and domestic abusers sell or transfer their firearms after they're convicted.
- Require any business that sells ammunition to report if their ammunition is lost or stolen.
- Require people to notify law enforcement if their guns are lost or stolen, before the weapons end up in the wrong hands.
- Ensure people convicted of gun theft are ineligible to own guns.
- Strengthen our background check systems and ensure that California law enforcement shares data about dangerous people with the FBI.

Proposition 63 keeps guns and ammo out of the wrong hands, while protecting the rights of law-abiding

Californians to own guns for self-defense, hunting, and recreation.

Right now, thousands of dangerous felons remain illegally armed because we don't ensure that people convicted of violent crimes actually relinquish their guns after conviction. The Department of Justice identified more than 17,000 felons and other dangerous people with more than 34,000 guns, including more than 1,400 assault weapons.

Passing Proposition 63 will represent a historic and unprecedented step forward for gun safety.

LEADERS FROM ACROSS CALIFORNIA SUPPORT PROPOSITION 63, INCLUDING:

- Lieutenant Governor Gavin Newsom
 U.S. Senator Dianne Feinstein
 Law Center to Prevent Gun Violence
 California Democratic Party
 California Secretary of State Alex Padilla
 Speaker Emeritus of the Assembly Toni Atkins
 Speaker Emeritus of the Assembly John Pérez
 Sheriff Vicki Hennessy, San Francisco
 Former Police Chief Ken James, Emeryville
 SEIU
 League of Women Voters of California
 California
- California Federation of Teachers
 San Francisco Board of Education
 Equality California
 Courage Campaign
 California American College of Physicians
 California
- California American College of Physicians California American College of Emergency Physicians Southern California Public Health Association Clergy and Laity United for Economic Justice Coalition Against Gun Violence Rabbis Against Gun Violence States United to Prevent Gun Violence Stop Handgun Violence Stop Our Shootings Women Against Gun Violence Youth Alive!

To learn more please visit www.SafetyforAll.com.

GAVIN NEWSOM, Lieutenant Governor of California **DIANNE FEINSTEIN**, United States Senator **ROBYN THOMAS**, Executive Director Law Center to Prevent Gun Violence

\star REBUTTAL TO ARGUMENT IN FAVOR OF PROPOSITION 63 \star

Terrorists don't follow the law!

Gavin Newsom refuses to acknowledge that the Orlando and San Bernardino attacks were ISIS inspired Islamic radicalism. It is the same ideology that motivated the 9/11 terror attacks that killed 2,996 innocents.

Exploiting terrorist attacks to push sweeping laws affecting law-abiding peoples' civil liberties is misleading, wrong, and dangerous.

None of the proposed laws would prevent terrorist attacks. The reality is terrorists can always find the means to wreak havoc, a box cutter in a plane on 9/11, a homemade bomb in Boston, or a truck in Nice, France. Terrorists and criminals get weapons from the black market, make them, or steal them from law-abiding citizens.

Everyone agrees that preventing weapons from falling into the wrong hands is crucial. We all share the concern about the growing trends of terrorism and radicalization. *But, Prop. 63 is NOT the answer.*

Spending tens of millions of taxpayer dollars year after year on useless lists of everyone who buys and sells

ammunition diverts critical resources and focus away from effective anti-terrorism efforts, leaving the public more vulnerable to attack and *LESS SAFE*.

There's a reason law enforcement overwhelmingly opposes Prop. 63.

The public interest would be better served if these resources were used to educate more Californians about what they can do to protect their families and communities from terrorist attacks or to further train law enforcement to do so.

Stop this dangerous abuse of public resources.

Vote NO on Prop. 63!

ALON STIVI, President

Direct Measures International, Inc.

WILLIAM "BILLY" BIRDZELL, U.S. Special Operations Command Anti-Terrorism Instructor RICHARD GRENELL, Longest serving U.S. Spokesman at

the United Nations

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Arguments printed on this page are the opinions of the authors, and have not been checked for accuracy by any principle agency.

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★ ARGUMENT AGAINST PROPOSITION 63 ★

Prop. 63 is overwhelmingly opposed by the law enforcement community and civil rights groups because it will burden law abiding citizens without keeping violent criminals and terrorists from accessing firearms and ammunition

The California State Sheriffs' Association, Association of Deputy District Attorneys for Los Angeles County, California Correctional Peace Officers Association, California Fish & Game Wardens' Association, California Reserve Peace Officers Association, and numerous other law enforcement and civic groups, representing tens of thousands of public safety professionals throughout California, are united in their opposition to this ineffective, burdensome, and costly proposal.

Prop. 63 would divert scarce law enforcement resources away from local law enforcement and overburden an already overcrowded court system with the enforcement of flawed laws that will turn harmless, law-abiding citizens into criminals. In fact, New York recently abandoned its enforcement of a similar proposal after it was passed, finding that it was impossible to implement and effectively maintain.

Doing what actually works to keep the public safe is the highest priority of law enforcement professionals who dedicate their lives to protecting Californians. Unfortunately, Prop. 63 will not make anyone safer. To the contrary, by directing resources away from measures that are truly effective at preventing the criminal element from acquiring guns and ammunition, it would make us all less safe. The immense public resources that Prop. 63

would waste should be used to hire more officers and to target, investigate, and prosecute dangerous individuals and terrorists.

After closely analyzing the language of Prop. 63, the law enforcement community found many problems in the details. Due to strict limitations on the Legislature's ability to amend voter-enacted propositions, most of these problems will be difficult or impossible for the Legislature to fix if Prop. 63 passes, saddling California with the burdens and costs of this flawed proposal forever. By going around the Legislature, this initiative limits public safety professionals in developing future legislation that would truly promote public safety. California taxpayers should not waste hundreds of millions of their dollars on ineffective laws that have no value to law enforcement and will harm public safety by diverting resources away from effective law enforcement activities that are critical to public safety.

Please visit WWW.WHERESMYAMMO.COM for more information.

PLEASE VOTE NO ON PROP. 63.

DONNY YOUNGBLOOD, President
California State Sheriffs' Association
KEVIN BERNZOTT, Chief Executive Officer
California Reserve Peace Officers Association
TIFFANY CHEUVRONT, Principal Officer
Coalition for Civil Liberties

\star REBUTTAL TO ARGUMENT AGAINST PROPOSITION 63 \star

As law enforcement and public safety officials, we're not surprised that groups such as the NRA and its affiliates oppose Proposition 63. Make no mistake, the so-called "Coalition for Civil Liberties" is actually an NRA front group.

The gun lobby often claims we should focus on enforcing existing gun laws, and that's exactly what this initiative does—*Prop. 63 closes loopholes and helps enforce existing laws to keep guns and ammo out of the wrong hands.*

For example, Prop. 63 *ensures dangerous convicts prohibited from owning weapons follow the law and get rid of their firearms.* Law enforcement professionals have found that felons and dangerous people currently possess thousands of guns illegally—so closing this loophole will save lives.

Prop. 63 also *requires reporting lost and stolen firearms*, to help police shut down gun trafficking rings and locate caches of illegal weapons. Prop. 63 will help police recover stolen guns before they're used in crimes and return them to their lawful owners.

Prop. 63 also *improves background check systems* so that law enforcement can prevent people banned from owning weapons—such as violent felons—from buying guns and ammo

And Prop. 63 clarifies existing law so that any gun theft is a felony, *ensuring that people who steal guns can't own guns*. That's another common-sense reform to save lives overwhelmingly supported by law enforcement professionals.

Prop. 63 will close loopholes in our existing laws and prevent dangerous criminals, domestic abusers, and the dangerously mentally ill from obtaining and using deadly weapons.

NANCY O'MALLEY, District Attorney Alameda County JEFF ROSEN, District Attorney Santa Clara County VICKI HENNESSY, Sheriff San Francisco

subdivision (h) of Section 1170, in connection with a civil action brought against a federal, state, or local jail, prison, or correctional facility, or any official or agent thereof, shall be paid directly, after payment of reasonable attorney's fees and litigation costs approved by the court, to satisfy any outstanding restitution orders or restitution fines against that person. The balance of the award shall be forwarded to the payee after full payment of all outstanding restitution orders and restitution fines, subject to subdivisions (e) and (i). The Department of Corrections and Rehabilitation shall make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages. For any prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170, the agency is authorized to make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages.

- (o) (1) Amounts transferred to the California Victim Compensation Board for payment of direct orders of restitution shall be paid to the victim within 60 days from the date the restitution revenues are received by the California Victim Compensation Board. If the restitution payment to a victim is less than twenty-five dollars (\$25), then payment need not be forwarded to that victim until the payment reaches twenty-five dollars (\$25) or when the victim requests payment of the lesser amount.
- (2) If a victim cannot be located, the restitution revenues received by the California Victim Compensation Board on behalf of the victim shall be held in trust in the Restitution Fund until the end of the state fiscal year subsequent to the state fiscal year in which the funds were deposited or until the time that the victim has provided current address information, whichever occurs sooner. Amounts remaining in trust at the end of the specified period of time shall revert to the Restitution Fund.
- (3) (A) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the Department of Corrections and Rehabilitation, which shall verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the Department of Corrections and Rehabilitation, the California Victim Compensation Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (c) or (h).
- (B) A victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the agency designated by the board of supervisors in the county where the prisoner punished by imprisonment in a county jail pursuant to subdivision (h) of Section 1170 is incarcerated, which may verify that moneys were collected on behalf of the victim. Upon receipt of that verified information from the agency, the California Victim Compensation Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (d) or (h).
- SEC. 10. Retroactive Application of Act.
- (a) In order to best achieve the purpose of this act as stated in Section 3 and to achieve fairness, equality, and uniformity in sentencing, this act shall be applied retroactively.
- (b) In any case where a defendant or inmate was sentenced to death prior to the effective date of this act, the sentence

shall automatically be converted to imprisonment in the state prison for life without the possibility of parole under the terms and conditions of this act. The State of California shall not carry out any execution following the effective date of this act.

(c) Following the effective date of this act, the Supreme Court may transfer all death penalty appeals and habeas petitions pending before the Supreme Court to any district of the Court of Appeal or superior court, in the Supreme Court's discretion.

SEC. 11. Effective Date.

This act shall become effective on the day following the election at which it was approved, pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

SEC. 12. Severability.

The provisions of this act are severable. If any provision of this act or its application is held invalid, including but not limited to Section 10, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

PROPOSITION 63

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends, repeals, and adds sections to the Penal Code; therefore, existing provisions proposed to be deleted are printed in strikeout type and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

The Safety for All Act of 2016

SECTION 1. Title.

This measure shall be known and may be cited as "The Safety for All Act of 2016."

SEC. 2. Findings and Declarations.

The people of the State of California find and declare:

- 1. Gun violence destroys lives, families and communities. From 2002 to 2013, California lost 38,576 individuals to gun violence. That is more than seven times the number of U.S. soldiers killed in combat during the wars in Iraq and Afghanistan combined. Over this same period, 2,258 children were killed by gunshot injuries in California. The same number of children murdered in the Sandy Hook elementary school massacre are killed by gunfire in this state every 39 days.
- 2. In 2013, guns were used to kill 2,900 Californians, including 251 children and teens. That year, at least 6,035 others were hospitalized or treated in emergency rooms for non-fatal gunshot wounds, including 1,275 children and teens.
- 3. Guns are commonly used by criminals. According to the California Department of Justice, in 2014 there were 1,169 firearm murders in California, 13,546 armed robberies involving a firearm, and 15,801 aggravated assaults involving a firearm.
- 4. This tragic violence imposes significant economic burdens on our society. Researchers conservatively estimate that gun violence costs the economy at least \$229 billion every year, or more than \$700 per American

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per year. In 2013 alone, California gun deaths and injuries imposed \$83 million in medical costs and \$4.24 billion in lost productivity.

- 5. California can do better. Reasonable, common-sense gun laws reduce gun deaths and injuries, keep guns away from criminals and fight illegal gun trafficking. Although California has led the nation in gun safety laws, those laws still have loopholes that leave communities throughout the state vulnerable to gun violence and mass shootings. We can close these loopholes while still safeguarding the ability of law-abiding, responsible Californians to own guns for self-defense, hunting and recreation.
- 6. We know background checks work. Federal background checks have already prevented more than 2.4 million gun sales to convicted criminals and other illegal purchasers in America. In 2012 alone, background checks blocked 192,043 sales of firearms to illegal purchasers including 82,000 attempted purchases by felons. That means background checks stopped roughly 225 felons from buying firearms every day. Yet California law only requires background checks for people who purchase firearms, not for people who purchase ammunition. We should close that loophole.
- 7. Right now, any violent felon or dangerously mentally ill person can walk into a sporting goods store or gun shop in California and buy ammunition, no questions asked. That should change. We should require background checks for ammunition sales just like gun sales, and stop both from getting into the hands of dangerous individuals.
- 8. Under current law, stores that sell ammunition are not required to report to law enforcement when ammunition is lost or stolen. Stores should have to report lost or stolen ammunition within 48 hours of discovering that it is missing so law enforcement can work to prevent that ammunition from being illegally trafficked into the hands of dangerous individuals.
- 9. Californians today are not required to report lost or stolen guns to law enforcement. This makes it difficult for law enforcement to investigate crimes committed with stolen guns, break up gun trafficking rings, and return guns to their lawful owners. We should require gun owners to report their lost or stolen guns to law enforcement.
- 10. Under current law, people who commit felonies and other serious crimes are prohibited from possessing firearms. Yet existing law provides no clear process for those people to relinquish their guns when they become prohibited at the time of conviction. As a result, in 2014, the Department of Justice identified more than 17,000 people who possess more than 34,000 guns illegally, including more than 1,400 assault weapons. We need to close this dangerous loophole by not only requiring prohibited people to turn in their guns, but also ensuring that it happens.
- 11. Military-style large-capacity ammunition magazines—some capable of holding more than 100 rounds of ammunition—significantly increase a shooter's ability to kill a lot of people in a short amount of time. That is why these large capacity ammunition magazines are common in many of America's most horrific mass shootings, from the killings at 101 California Street in San Francisco in 1993 to Columbine High School in 1999 to the massacre at Sandy Hook Elementary School in Newtown, Connecticut in 2012.
- 12. Today, California law prohibits the manufacture, importation and sale of military-style, large capacity

- ammunition magazines, but does not prohibit the general public from possessing them. We should close that loophole. No one except trained law enforcement should be able to possess these dangerous ammunition magazines.
- 13. Although the State of California conducts background checks on gun buyers who live in California, we have to rely on other states and the FBI to conduct background checks on gun buyers who live elsewhere. We should make background checks outside of California more effective by consistently requiring the state to report who is prohibited from possessing firearms to the federal background check system.
- 14. The theft of a gun is a serious and potentially violent crime. We should clarify that such crimes can be charged as felonies, and prevent people who are convicted of such crimes from possessing firearms.
- SEC. 3. Purpose and Intent.

The people of the State of California declare their purpose and intent in enacting "The Safety for All Act of 2016" (the "Act") to be as follows:

- 1. To implement reasonable and common-sense reforms to make California's gun safety laws the toughest in the nation while still safeguarding the Second Amendment rights of all law-abiding, responsible Californians.
- 2. To keep guns and ammunition out of the hands of convicted felons, the dangerously mentally ill, and other persons who are prohibited by law from possessing firearms and ammunition.
- 3. To ensure that those who buy ammunition in California—just like those who buy firearms—are subject to background checks.
- 4. To require all stores that sell ammunition to report any lost or stolen ammunition within 48 hours of discovering that it is missing.
- 5. To ensure that California shares crucial information with federal law enforcement by consistently requiring the state to report individuals who are prohibited by law from possessing firearms to the federal background check system.
- 6. To require the reporting of lost or stolen firearms to law enforcement.
- 7. To better enforce the laws that require people to relinquish their firearms once they are convicted of a crime that makes them ineligible to possess firearms.
- 8. To make it illegal in California to possess the kinds of military-style ammunition magazines that enable mass killings like those at Sandy Hook Elementary School; a movie theater in Aurora, Colorado; Columbine High School; and an office building at 101 California Street in San Francisco, California.
- 9. To prevent people who are convicted of the theft of a firearm from possessing firearms, and to effectuate the intent of Proposition 47 that the theft of a firearm is felony grand theft, regardless of the value of the firearm, in alignment with Sections 25400 and 1192.7 of the Penal Code.
- SEC. 4. Lost or Stolen Firearms.
- SEC. 4.1. Division 4.5 (commencing with Section 25250) is added to Title 4 of Part 6 of the Penal Code, to read:

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DIVISION 4.5. LOST OR STOLEN FIREARMS

- 25250. (a) Commencing July 1, 2017, every person shall report the loss or theft of a firearm he or she owns or possesses to a local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days of the time he or she knew or reasonably should have known that the firearm had been stolen or lost.
- (b) Every person who has reported a firearm lost or stolen under subdivision (a) shall notify the local law enforcement agency in the jurisdiction in which the theft or loss occurred within five days if the firearm is subsequently recovered by the person.
- (c) Notwithstanding subdivision (a), a person shall not be required to report the loss or theft of a firearm that is an antique firearm within the meaning of subdivision (c) of Section 16170.
- 25255. Section 25250 shall not apply to the following:
- (a) Any law enforcement agency or peace officer acting within the course and scope of his or her employment or official duties if he or she reports the loss or theft to his or her employing agency.
- (b) Any United States marshal or member of the Armed Forces of the United States or the National Guard, while engaged in his or her official duties.
- (c) Any person who is licensed, pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, and who reports the theft or loss in accordance with Section 923(g)(6) of Title 18 of the United States Code, or the successor provision thereto, and applicable regulations issued thereto.
- (d) Any person whose firearm was lost or stolen prior to July 1, 2017.
- 25260. Pursuant to Section 11108, every sheriff or police chief shall submit a description of each firearm that has been reported lost or stolen directly into the Department of Justice Automated Firearms System.
- 25265. (a) Every person who violates Section 25250 is, for a first violation, guilty of an infraction, punishable by a fine not to exceed one hundred dollars (\$100).
- (b) Every person who violates Section 25250 is, for a second violation, guilty of an infraction, punishable by a fine not to exceed one thousand dollars (\$1,000).
- (c) Every person who violates Section 25250 is, for a third or subsequent violation, guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine not to exceed one thousand dollars (\$1,000), or by both that fine and imprisonment.
- 25270. Every person reporting a lost or stolen firearm pursuant to Section 25250 shall report the make, model, and serial number of the firearm, if known by the person, and any additional relevant information required by the local law enforcement agency taking the report.
- 25275. (a) No person shall report to a local law enforcement agency that a firearm has been lost or stolen, knowing the report to be false. A violation of this section is an infraction, punishable by a fine not exceeding two hundred fifty dollars (\$250) for a first offense, and by a fine not exceeding one thousand dollars (\$1,000) for a second or subsequent offense.
- (b) This section shall not preclude prosecution under any other law.

- SEC. 4.2. Section 26835 of the Penal Code is amended to read:
- 26835. A licensee shall post conspicuously within the licensed premises the following warnings in block letters not less than one inch in height:
- (a) "IF YOU KEEP A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE OBTAINS IT AND USES IT, RESULTING IN INJURY OR DEATH, OR CARRIES IT TO A PUBLIC PLACE, YOU MAY BE GUILTY OF A MISDEMEANOR OR A FELONY UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."
- (b) "IF YOU KEEP A PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON, WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES, YOU MAY BE GUILTY OF A MISDEMEANOR, UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE, TO KEEP IT FROM TEMPORARILY FUNCTIONING."
- (c) "IF YOU KEEP ANY FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, AND A PERSON UNDER 18 YEARS OF AGE GAINS ACCESS TO THE FIREARM, AND CARRIES IT OFF-PREMISES TO A SCHOOL OR SCHOOL-SPONSORED EVENT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO FIVE THOUSAND DOLLARS (\$5,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE."
- (d) "IF YOU NEGLIGENTLY STORE OR LEAVE A LOADED FIREARM WITHIN ANY PREMISES UNDER YOUR CUSTODY OR CONTROL, WHERE A PERSON UNDER 18 YEARS OF AGE IS LIKELY TO ACCESS IT, YOU MAY BE GUILTY OF A MISDEMEANOR, INCLUDING A FINE OF UP TO ONE THOUSAND DOLLARS (\$1,000), UNLESS YOU STORED THE FIREARM IN A LOCKED CONTAINER, OR LOCKED THE FIREARM WITH A LOCKING DEVICE."
- (e) "DISCHARGING FIREARMS IN POORLY VENTILATED AREAS, CLEANING FIREARMS, OR HANDLING AMMUNITION MAY RESULT IN EXPOSURE TO LEAD, A SUBSTANCE KNOWN TO CAUSE BIRTH DEFECTS, REPRODUCTIVE HARM, AND OTHER SERIOUS PHYSICAL INJURY. HAVE ADEQUATE VENTILATION AT ALL TIMES. WASH HANDS THOROUGHLY AFTER EXPOSURE."
- (f) "FEDERAL REGULATIONS PROVIDE THAT IF YOU DO NOT TAKE PHYSICAL POSSESSION OF THE FIREARM THAT YOU ARE ACQUIRING OWNERSHIP OF WITHIN 30 DAYS AFTER YOU COMPLETE THE INITIAL BACKGROUND CHECK PAPERWORK, THEN YOU HAVE TO GO THROUGH THE BACKGROUND CHECK PROCESS A SECOND TIME IN ORDER TO TAKE PHYSICAL POSSESSION OF THAT FIREARM."
- (g) "NO PERSON SHALL MAKE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD AND NO DELIVERY SHALL BE MADE TO ANY PERSON WHO HAS MADE AN APPLICATION TO PURCHASE MORE THAN ONE PISTOL, REVOLVER, OR OTHER FIREARM CAPABLE OF BEING CONCEALED UPON THE PERSON WITHIN ANY 30-DAY PERIOD."

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(h) "IF A FIREARM YOU OWN OR POSSESS IS LOST OR STOLEN, YOU MUST REPORT THE LOSS OR THEFT TO A LOCAL LAW ENFORCEMENT AGENCY WHERE THE LOSS OR THEFT OCCURRED WITHIN FIVE DAYS OF THE TIME YOU KNEW OR REASONABLY SHOULD HAVE KNOWN THAT THE FIREARM HAD BEEN LOST OR STOLEN."

SEC. 5. Strengthening the National Instant Criminal Background Check System.

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- SEC. 5.1. Section 28220 of the Penal Code is amended to read:
- 28220. (a) Upon submission of firearm purchaser information, the Department of Justice shall examine its records, as well as those records that it is authorized to request from the State Department of State Hospitals pursuant to Section 8104 of the Welfare and Institutions Code, in order to determine if the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm.
- (b) To the extent that funding is available, the *The* Department of Justice may shall participate in the National Instant Criminal Background Check System (NICS), as described in subsection (t) of Section 922 of Title 18 of the United States Code, and, if that participation is implemented, shall notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, that the purchaser is a person prohibited from acquiring a firearm under federal law.
- (c) If the department determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm or is a person described in subdivision (a) of Section 27535, it shall immediately notify the dealer and the chief of the police department of the city or city and county in which the sale was made, or if the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact.
- (d) If the department determines that the copies of the register submitted to it pursuant to subdivision (d) of Section 28210 contain any blank spaces or inaccurate, preventing incomplete information, identification of the purchaser or the handgun or other firearm to be purchased, or if any fee required pursuant to Section 28225 is not submitted by the dealer in conjunction with submission of copies of the register, the department may notify the dealer of that fact. Upon notification by the department, the dealer shall submit corrected copies of the register to the department, or shall submit any fee required pursuant to Section 28225, or both, as appropriate and, if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.
- (e) If the department determines that the information transmitted to it pursuant to Section 28215 contains inaccurate or incomplete information preventing identification of the purchaser or the handgun or other firearm to be purchased, or if the fee required pursuant to Section 28225 is not transmitted by the dealer in conjunction with transmission of the electronic or telephonic record, the department may notify the dealer of

- that fact. Upon notification by the department, the dealer shall transmit corrections to the record of electronic or telephonic transfer to the department, or shall transmit any fee required pursuant to Section 28225, or both, as appropriate, and if notification by the department is received by the dealer at any time prior to delivery of the firearm to be purchased, the dealer shall withhold delivery until the conclusion of the waiting period described in Sections 26815 and 27540.
- (f) (1) (A) The department shall immediately notify the dealer to delay the transfer of the firearm to the purchaser if the records of the department, or the records available to the department in the National Instant Criminal Background Check System, indicate one of the following:
- (i) The purchaser has been taken into custody and placed in a facility for mental health treatment or evaluation and may be a person described in Section 8100 or 8103 of the Welfare and Institutions Code and the department is unable to ascertain whether the purchaser is a person who is prohibited from possessing, receiving, owning, or purchasing a firearm, pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, prior to the conclusion of the waiting period described in Sections 26815 and 27540.
- (ii) The purchaser has been arrested for, or charged with, a crime that would make him or her, if convicted, a person who is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm, and the department is unable to ascertain whether the purchaser was convicted of that offense prior to the conclusion of the waiting period described in Sections 26815 and 27540.
- (iii) The purchaser may be a person described in subdivision (a) of Section 27535, and the department is unable to ascertain whether the purchaser, in fact, is a person described in subdivision (a) of Section 27535, prior to the conclusion of the waiting period described in Sections 26815 and 27540.
- (B) The dealer shall provide the purchaser with information about the manner in which he or she may contact the department regarding the delay described in subparagraph (A).
- (2) The department shall notify the purchaser by mail regarding the delay and explain the process by which the purchaser may obtain a copy of the criminal or mental health record the department has on file for the purchaser. Upon receipt of that criminal or mental health record, the purchaser shall report any inaccuracies or incompleteness to the department on an approved form.
- (3) If the department ascertains the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), after the waiting period described in Sections 26815 and 27540, but within 30 days of the dealer's original submission of the purchaser information to the department pursuant to this section, the department shall do the following:
- (A) If the purchaser is not a person described in subdivision (a) of Section 27535, and is not prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer of that fact and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or

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Exhibit 42 Page 01457 record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.

- (B) If the purchaser is a person described in subdivision (a) of Section 27535, or is prohibited by state or federal law, including, but not limited to, Section 8100 or 8103 of the Welfare and Institutions Code, from possessing, receiving, owning, or purchasing a firearm, the department shall immediately notify the dealer and the chief of the police department in the city or city and county in which the sale was made in a district in which there is no municipal police department, the sheriff of the county in which the sale was made, of that fact in compliance with subdivision (c) of Section 28220.
- (4) If the department is unable to ascertain the final disposition of the arrest or criminal charge, or the outcome of the mental health treatment or evaluation, or the purchaser's eligibility to purchase a firearm, as described in paragraph (1), within 30 days of the dealer's original submission of purchaser information to the department pursuant to this section, the department shall immediately notify the dealer and the dealer may then immediately transfer the firearm to the purchaser, upon the dealer's recording on the register or record of electronic transfer the date that the firearm is transferred, the dealer signing the register or record of electronic transfer indicating delivery of the firearm to that purchaser, and the purchaser signing the register or record of electronic transfer acknowledging the receipt of the firearm on the date that the firearm is delivered to him or her.
- (g) Commencing July 1, 2017, upon receipt of information demonstrating that a person is prohibited from possessing a firearm pursuant to federal or state law, the department shall submit the name, date of birth, and physical description of the person to the National Instant Criminal Background Check System Index, Denied Persons Files. The information provided shall remain privileged and confidential, and shall not be disclosed, except for the purpose of enforcing federal or state firearms laws.
- SEC. 6. Possession of Large-Capacity Magazines.
- SEC. 6.1. Section 32310 of the Penal Code is amended to read:
- 32310. (a) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing January 1, 2000, any person in this state who manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, buys, or receives any large-capacity magazine is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170.
- (b) For purposes of this section, "manufacturing" includes both fabricating a magazine and assembling a magazine from a combination of parts, including, but not limited to, the body, spring, follower, and floor plate or end plate, to be a fully functioning large-capacity magazine.
- (c) Except as provided in Article 2 (commencing with Section 32400) of this chapter and in Chapter 1 (commencing with Section 17700) of Division 2 of Title 2, commencing July 1, 2017, any person in this state who

possesses any large-capacity magazine, regardless of the date the magazine was acquired, is guilty of an infraction punishable by a fine not to exceed one hundred dollars (\$100) per large-capacity magazine, or is guilty of a misdemeanor punishable by a fine not to exceed one hundred dollars (\$100) per large-capacity magazine, by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.

- (d) Any person who may not lawfully possess a large-capacity magazine commencing July 1, 2017 shall, prior to July 1, 2017:
- (1) Remove the large-capacity magazine from the state;
- (2) Sell the large-capacity magazine to a licensed firearms dealer; or
- (3) Surrender the large-capacity magazine to a law enforcement agency for destruction.
- SEC. 6.2. Section 32400 of the Penal Code is amended to read:
- 32400. Section 32310 does not apply to the sale of, giving of, lending of, possession of, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties, whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.
- SEC. 6.3. Section 32405 of the Penal Code is amended to read:
- 32405. Section 32310 does not apply to the sale to, lending to, transfer to, purchase by, receipt of, *possession of*, or importation into this state of, a large-capacity magazine by a sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, *or sworn federal law enforcement officer*, who is authorized to carry a firearm in the course and scope of that officer's duties.
- SEC. 6.4. Section 32406 is added to the Penal Code, to read:
- 32406. Subdivision (c) of Section 32310 does not apply to an honorably retired sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or honorably retired sworn federal law enforcement officer, who was authorized to carry a firearm in the course and scope of that officer's duties. "Honorably retired" shall have the same meaning as provided in Section 16690.
- SEC. 6.5. Section 32410 of the Penal Code is amended to read:
- 32410. Section 32310 does not apply to the sale, or purchase, *or possession* of any large-capacity magazine to or by a person licensed pursuant to Sections 26700 to 26915, inclusive.
- SEC. 6.6. Section 32420 of the Penal Code is repealed. 32420. Section 32310 does not apply to the importation of a large-capacity magazine by a person who lawfully possessed the large-capacity magazine in the state prior to January 1, 2000, lawfully took it out of the state, and is returning to the state with the same large-capacity magazine.
- SEC. 6.7. Section 32425 of the Penal Code is amended to read:

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32425. Section 32310 does not apply to either any of the following:

- (a) The lending or giving of any large-capacity magazine to a person licensed pursuant to Sections 26700 to 26915, inclusive, or to a gunsmith, for the purposes of maintenance, repair, or modification of that large-capacity magazine.
- (b) The possession of any large-capacity magazine by a person specified in subdivision (a) for the purposes specified in subdivision (a).

- (b) (c) The return to its owner of any large-capacity magazine by a person specified in subdivision (a).
- SEC. 6.8. Section 32435 of the Penal Code is amended to read:
- 32435. Section 32310 does not apply to any of the following:
- (a) The sale of, giving of, lending of, *possession of*, importation into this state of, or purchase of, any large-capacity magazine, to or by any entity that operates an armored vehicle business pursuant to the laws of this state.
- (b) The lending of large-capacity magazines by an entity specified in subdivision (a) to its authorized employees, while in the course and scope of employment for purposes that pertain to the entity's armored vehicle business.
- (c) The possession of any large-capacity magazines by the employees of an entity specified in subdivision (a) for purposes that pertain to the entity's armored vehicle business.
- (c) (d) The return of those large-capacity magazines to the entity specified in subdivision (a) by those employees specified in subdivision (b).
- SEC. 6.9. Section 32450 of the Penal Code is amended to read:
- 32450. Section 32310 does not apply to the purchase *or possession* of a large-capacity magazine by the holder of a special weapons permit issued pursuant to Section 31000, 32650, or 33300, or pursuant to Article 3 (commencing with Section 18900) of Chapter 1 of Division 5 of Title 2, or pursuant to Article 4 (commencing with Section 32700) of Chapter 6 of this division, for any of the following purposes:
- (a) For use solely as a prop for a motion picture, television, or video production.
- (b) For export pursuant to federal regulations.
- (c) For resale to law enforcement agencies, government agencies, or the military, pursuant to applicable federal regulations.
- SEC. 7. Firearms Dealers.
- SEC. 7.1. Section 26885 of the Penal Code is amended to read:
- 26885. (a) Except as provided in subdivisions (b) and (c) of Section 26805, all firearms that are in the inventory of a licensee shall be kept within the licensed location.
- (b) Within 48 hours of discovery, a licensee shall report the loss or theft of any of the following items to the appropriate law enforcement agency in the city, county, or city and county where the licensee's business premises are located:
- (1) Any firearm *or ammunition* that is merchandise of the licensee.

- (2) Any firearm *or ammunition* that the licensee takes possession of pursuant to Chapter 5 (commencing with Section 28050), *or pursuant to Section 30312*.
- (3) Any firearm *or ammunition* kept at the licensee's place of business.
- SEC. 7.2. Section 26915 of the Penal Code is amended to read:
- 26915. (a) Commencing January 1, 2018, a A firearms dealer may shall require any agent or employee who handles, sells, or delivers firearms to obtain and provide to the dealer a certificate of eligibility from the Department of Justice pursuant to Section 26710. On the application for the certificate, the agent or employee shall provide the name and California firearms dealer number of the firearms dealer with whom the person is employed.
- (b) The department shall notify the firearms dealer in the event that the agent or employee who has a certificate of eligibility is or becomes prohibited from possessing firearms.
- (c) If the local jurisdiction requires a background check of the agents or employees of a firearms dealer, the agent or employee shall obtain a certificate of eligibility pursuant to subdivision (a).
- (d) (1) Nothing in this section shall be construed to preclude a local jurisdiction from conducting an additional background check pursuant to Section 11105. The local jurisdiction may not charge a fee for the additional criminal history check.
- (2) Nothing in this section shall be construed to preclude a local jurisdiction from prohibiting employment based on criminal history that does not appear as part of obtaining a certificate of eligibility.
- (e) The licensee shall prohibit any agent who the licensee knows or reasonably should know is within a class of persons prohibited from possessing firearms pursuant to Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title, or Section 8100 or 8103 of the Welfare and Institutions Code, from coming into contact with any firearm that is not secured and from accessing any key, combination, code, or other means to open any of the locking devices described in subdivision (g).
- (f) Nothing in this section shall be construed as preventing a local government from enacting an ordinance imposing additional conditions on licensees with regard to agents *or employees*.
- (g) For purposes of this article, "secured" means a firearm that is made inoperable in one or more of the following ways:
- (1) The firearm is inoperable because it is secured by a firearm safety device listed on the department's roster of approved firearm safety devices pursuant to subdivision (d) of Section 23655.
- (2) The firearm is stored in a locked gun safe or long-gun safe that meets the standards for department-approved gun safes set forth in Section 23650.
- (3) The firearm is stored in a distinct locked room or area in the building that is used to store firearms, which can only be unlocked by a key, a combination, or similar means.
- (4) The firearm is secured with a hardened steel rod or cable that is at least one-eighth of an inch in diameter through the trigger guard of the firearm. The steel rod or cable shall be secured with a hardened steel lock that has

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a shackle. The lock and shackle shall be protected or shielded from the use of a boltcutter and the rod or cable shall be anchored in a manner that prevents the removal of the firearm from the premises.

- SEC. 8. Sales of Ammunition.
- SEC. 8.1. Section 16150 of the Penal Code is amended to read:
- 16150. (a) As used in Section 30300, "ammunition" means handgun ammunition as defined in Section 16650. As used in this part, except in subdivision (a) of Section 30305 and in Section 30306, "ammunition" means one or more loaded cartridges consisting of a primed case, propellant, and with one or more projectiles. "Ammunition" does not include blanks.
- (b) As used in subdivision (a) of Section 30305 and in Section 30306, "ammunition" includes, but is not limited to, any bullet, cartridge, magazine, clip, speed loader, autoloader, or projectile capable of being fired from a firearm with a deadly consequence. "Ammunition" does not include blanks.
- SEC. 8.2. Section 16151 is added to the Penal Code, to read:
- 16151. (a) As used in this part, commencing January 1, 2018, "ammunition vendor" means any person, firm, corporation, or other business enterprise that holds a current ammunition vendor license issued pursuant to Section 30385.
- (b) Commencing January 1, 2018, a firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, shall automatically be deemed a licensed ammunition vendor, provided the dealer complies with the requirements of Articles 2 (commencing with Section 30300) and 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4.
- SEC. 8.3. Section 16662 of the Penal Code is repealed.
- 16662. As used in this part, "handgun ammunition vendor" means any person, firm, corporation, dealer, or any other business enterprise that is engaged in the retail sale of any handgun ammunition, or that holds itself out as engaged in the business of selling any handgun ammunition.
- SEC. 8.4. Section 17315 of the Penal Code is amended to read:
- 17315. As used in Article 3 (commencing with Section 30345) Articles 2 through 5 of Chapter 1 of Division 10 of Title 4, "vendor" means a an handgun ammunition vendor.
- SEC. 8.5. Section 30306 of the Penal Code is amended to read:
- 30306. (a) Any person, corporation, or firm, or other business enterprise who supplies, delivers, sells, or gives possession or control of, any ammunition to any person who he or she knows or using reasonable care should know is prohibited from owning, possessing, or having under custody or control, any ammunition or reloaded ammunition pursuant to subdivision (a) or (b) of Section 30305, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.
- (b) Any person, corporation, firm, or other business enterprise who supplies, delivers, sells, or gives possession or control of, any ammunition to any person whom the person, corporation, firm, or other business enterprise

knows or has cause to believe is not the actual purchaser or transferee of the ammunition, with knowledge or cause to believe that the ammunition is to be subsequently sold or transferred to a person who is prohibited from owning, possessing, or having under custody or control any ammunition or reloaded ammunition pursuant to subdivision (a) or (b) of Section 30305, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or a fine not exceeding one thousand dollars (\$1,000), or by both that fine and imprisonment.

- (b) (c) The provisions of this section are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and another provision of law shall not be punished under more than one provision.
- SEC. 8.6. Section 30312 of the Penal Code is amended to read:
- 30312. (a) Commencing February 1, 2011, the (1) Commencing January 1, 2018, the sale of ammunition by any party shall be conducted by or processed through a licensed ammunition vendor.
- (2) When neither party to an ammunition sale is a licensed ammunition vendor, the seller shall deliver the ammunition to a vendor to process the transaction. The ammunition vendor shall then promptly and properly deliver the ammunition to the purchaser, if the sale is not prohibited, as if the ammunition were the vendor's own merchandise. If the ammunition vendor cannot legally deliver the ammunition to the purchaser, the vendor shall forthwith return the ammunition to the seller. The ammunition vendor may charge the purchaser an administrative fee to process the transaction, in an amount to be set by the Department of Justice, in addition to any applicable fees that may be charged pursuant to the provisions of this title.
- (b) Commencing January 1, 2018, the sale, delivery or transfer of ownership of handgun ammunition by any party may only occur in a face-to-face transaction with the seller, deliverer, or transferor being provided bona fide evidence of identity from the purchaser or other transferee, provided, however, that ammunition may be purchased or acquired over the Internet or through other means of remote ordering if a licensed ammunition vendor initially receives the ammunition and processes the transaction in compliance with this section and Article 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4 of this part.
- (b) (c) Subdivision Subdivisions (a) and (b) shall not apply to or affect the sale, delivery, or transfer of handgun ammunition to any of the following:
- (1) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale, delivery, or transfer is for exclusive use by that government agency and, prior to the sale, delivery, or transfer of the handgun ammunition, written authorization from the head of the agency employing the purchaser or transferee is obtained, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency employing the individual.
- (2) A sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.

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- (3) An importer or manufacturer of handgun ammunition or firearms who is licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.
- (4) A person who is on the centralized list *of exempted federal firearms licensees* maintained by the Department of Justice pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6 of this title.
- (5) A person whose licensed premises are outside this state and who is licensed as a dealer or collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.
- (6) A person who is licensed as a collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, and who has a current certificate of eligibility issued by the Department of Justice pursuant to Section 26710.
- (7) A handgun An ammunition vendor.
- (8) A consultant-evaluator.

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- (9) A person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility's premises.
- (10) A person who purchases or receives ammunition from a spouse, registered domestic partner, or immediate family member as defined in Section 16720.
- (c) (d) A violation of this section is a misdemeanor.
- SEC. 8.7. Section 30314 is added to the Penal Code, to read:
- 30314. (a) Commencing January 1, 2018, a resident of this state shall not bring or transport into this state any ammunition that he or she purchased or otherwise obtained from outside of this state unless he or she first has that ammunition delivered to a licensed ammunition vendor for delivery to that resident pursuant to the procedures set forth in Section 30312.
- (b) Subdivision (a) does not apply to any of the following:
- (1) An ammunition vendor.
- (2) A sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.
- (3) An importer or manufacturer of ammunition or firearms who is licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.
- (4) A person who is on the centralized list of exempted federal firearms licensees maintained by the Department of Justice pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6.
- (5) A person who is licensed as a collector of firearms pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, and who has a current certificate of

- eligibility issued by the Department of Justice pursuant to Section 26710.
- (6) A person who acquired the ammunition from a spouse, registered domestic partner, or immediate family member as defined in Section 16720.
- (c) A violation of this section is an infraction for any first time offense, and either an infraction or a misdemeanor for any subsequent offense.
- SEC. 8.8. The heading of Article 3 (commencing with Section 30342) of Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code is amended to read:

Article 3. Handgun Ammunition Vendors

- SEC. 8.9. Section 30342 is added to the Penal Code, immediately preceding Section 30345, to read:
- 30342. (a) Commencing January 1, 2018, a valid ammunition vendor license shall be required for any person, firm, corporation, or other business enterprise to sell more than 500 rounds of ammunition in any 30-day period.
- (b) A violation of this section is a misdemeanor.
- SEC. 8.10. Section 30347 of the Penal Code is amended to read:
- 30347. (a) An ammunition vendor shall require any agent or employee who handles, sells, delivers, or has under his or her custody or control any ammunition, to obtain and provide to the vendor a certificate of eligibility from the Department of Justice issued pursuant to Section 26710. On the application for the certificate, the agent or employee shall provide the name and address of the ammunition vendor with whom the person is employed, or the name and California firearms dealer number of the ammunition vendor if applicable.
- (b) The department shall notify the ammunition vendor in the event that the agent or employee who has a certificate of eligibility is or becomes prohibited from possessing ammunition under subdivision (a) of Section 30305 or federal law.
- (c) A An ammunition vendor shall not permit any agent or employee who the vendor knows or reasonably should know is a person described in Chapter 2 (commencing with Section 29800) or Chapter 3 (commencing with Section 29900) of Division 9 of this title or Section 8100 or 8103 of the Welfare and Institutions Code to handle, sell, et deliver, or have under his or her custody or control, any handgun ammunition in the course and scope of employment.
- SEC. 8.11. Section 30348 is added to the Penal Code, to read:
- 30348. (a) Except as provided in subdivision (b), the sale of ammunition by a licensed vendor shall be conducted at the location specified in the license.
- (b) A vendor may sell ammunition at a gun show or event if the gun show or event is not conducted from any motorized or towed vehicle.
- (c) For purposes of this section, "gun show or event" means a function sponsored by any national, state, or local organization, devoted to the collection, competitive use, or other sporting use of firearms, or an organization or association that sponsors functions devoted to the collection, competitive use, or other sporting use of firearms in the community.

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- (d) Sales of ammunition at a gun show or event shall comply with all applicable laws including Sections 30347, 30350, 30352, and 30360.
- SEC. 8.12. Section 30350 of the Penal Code is amended to read:
- 30350. A *An ammunition* vendor shall not sell or otherwise transfer ownership of, offer for sale or otherwise offer to transfer ownership of, or display for sale or display for transfer of ownership of any handgun ammunition in a manner that allows that ammunition to be accessible to a purchaser or transferee without the assistance of the vendor or an employee of the vendor.
- SEC. 8.13. Section 30352 of the Penal Code is amended to read:
- 30352. (a) Commencing February 1, 2011, a July 1, 2019, an ammunition vendor shall not sell or otherwise transfer ownership of any handgun ammunition without, at the time of delivery, legibly recording the following information on a form to be prescribed by the Department of Justice:
- (1) The date of the sale or other transaction transfer.
- (2) The purchaser's or transferee's driver's license or other identification number and the state in which it was issued.
- (3) The brand, type, and amount of ammunition sold or otherwise transferred.
- (4) The purchaser's or transferee's full name and signature.
- (5) The name of the salesperson who processed the sale or other transaction.
- (6) The right thumbprint of the purchaser or transferee on the above form.
- (7) (6) The purchaser's or transferee's full residential address and telephone number.
- (8) (7) The purchaser's or transferee's date of birth.
- (b) Commencing July 1, 2019, an ammunition vendor shall electronically submit to the department the information required by subdivision (a) for all sales and transfers of ownership of ammunition. The department shall retain this information in a database to be known as the Ammunition Purchase Records File. This information shall remain confidential and may be used by the department and those entities specified in, and pursuant to, subdivision (b) or (c) of Section 11105, through the California Law Enforcement Telecommunications System, only for law enforcement purposes. The ammunition vendor shall not use, sell, disclose, or share such information for any other purpose other than the submission required by this subdivision without the express written consent of the purchaser or transferee.
- (c) Commencing on July 1, 2019, only those persons listed in this subdivision, or those persons or entities listed in subdivision (e), shall be authorized to purchase ammunition. Prior to delivering any ammunition, an ammunition vendor shall require bona fide evidence of identity to verify that the person who is receiving delivery of the ammunition is a person or entity listed in subdivision (e) or one of the following:
- (1) A person authorized to purchase ammunition pursuant to Section 30370.
- (2) A person who was approved by the department to receive a firearm from the ammunition vendor, pursuant to Section 28220, if that vendor is a licensed firearms dealer,

- and the ammunition is delivered to the person in the same transaction as the firearm.
- (d) Commencing July 1, 2019, the ammunition vendor shall verify with the department, in a manner prescribed by the department, that the person is authorized to purchase ammunition by comparing the person's ammunition purchase authorization number to the centralized list of authorized ammunition purchasers. If the person is not listed as an authorized ammunition purchaser, the vendor shall deny the sale or transfer.
- (b) (e) Subdivision Subdivisions (a) and (d) shall not apply to or affect sales or other transfers of ownership of handgun ammunition by handgun ammunition vendors to any of the following, if properly identified:
- (1) A person licensed pursuant to Sections 26700 to 26915, inclusive.
- (2) (1) A handgun An ammunition vendor.
- (3) (2) A person who is on the centralized list of exempted federal firearms licensees maintained by the department pursuant to Article 6 (commencing with Section 28450) of Chapter 6 of Division 6 of this title.
- (4) (3) A target facility that holds a business or regulatory license person who purchases or receives ammunition at a target facility holding a business or other regulatory license, provided that the ammunition is at all times kept within the facility's premises.
- (5) (4) A gunsmith.
- (6) (5) A wholesaler.
- (7) (6) A manufacturer or importer of firearms or ammunition licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.
- (8) (7) An authorized law enforcement representative of a city, county, city and county, or state or federal government, if the sale or other transfer of ownership is for exclusive use by that government agency, and, prior to the sale, delivery, or transfer of the handgun ammunition, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser, transferee, or person otherwise acquiring ownership is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which that individual is employed.
- (8) A properly identified sworn peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, or properly identified sworn federal law enforcement officer, who is authorized to carry a firearm in the course and scope of the officer's duties.
- (f) (1) Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a full-time paid peace officer who is authorized to carry a firearm in the course and scope of the officer's duties.
- (2) The certification shall be delivered to the vendor at the time of purchase or transfer and the purchaser or transferee shall provide bona fide evidence of identity to verify that he or she is the person authorized in the certification.

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- (3) The vendor shall keep the certification with the record of sale and submit the certification to the department.
- (g) The department is authorized to adopt regulations to implement the provisions of this section.
- SEC. 8.14. Section 30363 is added to the Penal Code, to read:
- 30363. Within 48 hours of discovery, an ammunition vendor shall report the loss or theft of any of the following items to the appropriate law enforcement agency in the city, county, or city and county where the vendor's business premises are located:
- (1) Any ammunition that is merchandise of the vendor.
- (2) Any ammunition that the vendor takes possession of pursuant to Section 30312.
- (3) Any ammunition kept at the vendor's place of business. SEC. 8.15. Article 4 (commencing with Section 30370) is added to Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code, to read:
 - Article 4. Ammunition Purchase Authorizations
- 30370. (a) (1) Commencing on January 1, 2019, any person who is 18 years of age or older may apply to the Department of Justice for an ammunition purchase authorization.
- (2) The ammunition purchase authorization may be used by the authorized person to purchase or otherwise seek the transfer of ownership of ammunition from an ammunition vendor, as that term is defined in Section 16151, and shall have no other force or effect.
- (3) The ammunition purchase authorization shall be valid for four years from July 1, 2019, or the date of issuance, whichever is later, unless it is revoked by the department pursuant to subdivision (b).
- (b) The ammunition purchase authorization shall be promptly revoked by the department upon the occurrence of any event which would have disqualified the holder from being issued the ammunition purchase authorization pursuant to this section. If an authorization is revoked, the department shall upon the written request of the holder state the reasons for doing so and provide the holder an appeal process to challenge that revocation.
- (c) The department shall create and maintain an internal centralized list of all persons who are authorized to purchase ammunition and shall promptly remove from the list any persons whose authorization was revoked by the department pursuant to this section. The department shall provide access to the list by ammunition vendors for purposes of conducting ammunition sales or other transfers, and shall provide access to the list by law enforcement agencies for law enforcement purposes.
- (d) The department shall issue an ammunition purchase authorization to the applicant if all of the following conditions are met:
- (1) The applicant is 18 years of age or older.
- (2) The applicant is not prohibited from acquiring or possessing ammunition under subdivision (a) of Section 30305 or federal law.
- (3) The applicant pays the fees set forth in subdivision (g).
- (e) (1) Upon receipt of an initial or renewal application, the department shall examine its records, and the records it is authorized to request from the State Department of State Hospitals, pursuant to Section 8104 of the Welfare

- and Institutions Code, and if authorized, the National Instant Criminal Background Check System, as described in Section 922(t) of Title 18 of the United States Code, in order to determine if the applicant is prohibited from possessing or acquiring ammunition under subdivision (a) of Section 30305 or federal law.
- (2) The applicant shall be approved or denied within 30 days of the date of the submission of the application to the department. If the application is denied, the department shall state the reasons for doing so and provide the applicant an appeal process to challenge that denial.
- (3) If the department is unable to ascertain the final disposition of the application within 30 days of the applicant's submission, the department shall grant authorization to the applicant.
- (4) The ammunition purchase authorization number shall be the same as the number on the document presented by the person as bona fide evidence of identity.
- (f) The department shall renew a person's ammunition purchase authorization before its expiration, provided that the department determines that the person is not prohibited from acquiring or possessing ammunition under subdivision (a) of Section 30305 or federal law, and provided the applicant timely pays the renewal fee set forth in subdivision (g).
- (g) The department may charge a reasonable fee not to exceed fifty dollars (\$50) per person for the issuance of an ammunition purchase authorization or the issuance of a renewal authorization, however, the department shall not set these fees any higher than necessary to recover the reasonable, estimated costs to fund the ammunition authorization program provided for in this section and Section 30352, including the enforcement of this program and maintenance of any data systems associated with this program.
- (h) The Ammunition Safety and Enforcement Special Fund is hereby created within the State Treasury. All fees received pursuant to this section shall be deposited into the Ammunition Safety and Enforcement Special Fund of the General Fund, and, notwithstanding Section 13340 of the Government Code, are continuously appropriated for purposes of implementing, operating and enforcing the ammunition authorization program provided for in this section and Section 30352, and for repaying the start-up loan provided for in Section 30371.
- (i) The department shall annually review and may adjust all fees specified in subdivision (g) for inflation.
- (j) The department is authorized to adopt regulations to implement the provisions of this section.
- 30371. (a) There is hereby appropriated twenty-five million dollars (\$25,000,000) from the General Fund as a loan for the start-up costs of implementing, operating and enforcing the provisions of the ammunition authorization program provided for in Sections 30352 and 30370.
- (b) For purposes of repaying the loan, the Controller shall, after disbursing moneys necessary to implement, operate and enforce the ammunition authorization program provided for in Sections 30352 and 30370, transfer all proceeds from fees received by the Ammunition Safety and Enforcement Special Fund up to the amount of the loan provided by this section, including interest at the pooled money investment account rate, to the General Fund.

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SEC. 8.16. Article 5 (commencing with Section 30385) is added to Chapter 1 of Division 10 of Title 4 of Part 6 of the Penal Code, to read:

Article 5. Ammunition Vendor Licenses

- 30385. (a) The Department of Justice is authorized to issue ammunition vendor licenses pursuant to this article. The department shall, commencing July 1, 2017, commence accepting applications for ammunition vendor licenses. If an application is denied, the department shall inform the applicant of the reason for denial in writing.
- (b) The ammunition vendor license shall be issued in a form prescribed by the department and shall be valid for a period of one year. The department may adopt regulations to administer the application and enforcement provisions of this article. The license shall allow the licensee to sell ammunition at the location specified in the license or at a gun show or event as set forth in Section 30348.
- (c) (1) In the case of an entity other than a natural person, the department shall issue the license to the entity, but shall require a responsible person to pass the background check pursuant to Section 30395.
- (2) For purposes of this article, "responsible person" means a person having the power to direct the management, policies, and practices of the entity as it pertains to ammunition.
- (d) Commencing January 1, 2018, a firearms dealer licensed pursuant to Sections 26700 to 26915, inclusive, shall automatically be deemed a licensed ammunition vendor, provided the dealer complies with the requirements of Article 2 (commencing with Section 30300) and Article 3 (commencing with Section 30342).
- 30390. (a) The Department of Justice may charge ammunition vendor license applicants a reasonable fee sufficient to reimburse the department for the reasonable, estimated costs of administering the license program, including the enforcement of this program and maintenance of the registry of ammunition vendors.
- (b) The fees received by the department pursuant to this article shall be deposited in the Ammunition Vendors Special Account, which is hereby created. Notwithstanding Section 13340 of the Government Code, the revenue in the fund is continuously appropriated for use by the department for the purpose of implementing, administering and enforcing the provisions of this article, and for collecting and maintaining information submitted pursuant to Section 30352.
- (c) The revenue in the Firearms Safety and Enforcement Special Fund shall also be available upon appropriation to the department for the purpose of implementing and enforcing the provisions of this article.
- 30395. (a) The Department of Justice is authorized to issue ammunition vendor licenses to applicants who the department has determined, either as an individual or a responsible person, are not prohibited from possessing, receiving, owning, or purchasing ammunition under subdivision (a) of Section 30305 or federal law, and who provide a copy of any regulatory or business license required by local government, a valid seller's permit issued by the State Board of Equalization, a federal firearms license if the person is federally licensed, and a certificate of eligibility issued by the department.
- (b) The department shall keep a registry of all licensed ammunition vendors. Law enforcement agencies shall be

- provided access to the registry for law enforcement purposes.
- (c) An ammunition vendor license is subject to forfeiture for a breach of any of the prohibitions and requirements of Article 2 (commencing with Section 30300) or Article 3 (commencing with Section 30342).
- SEC. 9. Nothing in this Act shall preclude or preempt a local ordinance that imposes additional penalties or requirements in regard to the sale or transfer of ammunition.
- SEC. 10. Securing Firearms From Prohibited Persons.
- SEC. 10.1. Section 1524 of the Penal Code is amended to read:
- 1524. (a) A search warrant may be issued upon any of the following grounds:
- (1) When the property was stolen or embezzled.
- (2) When the property or things were used as the means of committing a felony.
- (3) When the property or things are in the possession of any person with the intent to use them as a means of committing a public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing them from being discovered.
- (4) When the property or things to be seized consist of an item or constitute evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.
- (5) When the property or things to be seized consist of evidence that tends to show that sexual exploitation of a child, in violation of Section 311.3, or possession of matter depicting sexual conduct of a person under 18 years of age, in violation of Section 311.11, has occurred or is occurring.
- (6) When there is a warrant to arrest a person.
- (7) When a provider of electronic communication service or remote computing service has records or evidence, as specified in Section 1524.3, showing that property was stolen or embezzled constituting a misdemeanor, or that property or things are in the possession of any person with the intent to use them as a means of committing a misdemeanor public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery.
- (8) When the property or things to be seized include an item or evidence that tends to show a violation of Section 3700.5 of the Labor Code, or tends to show that a particular person has violated Section 3700.5 of the Labor Code.
- (9) When the property or things to be seized include a firearm or other deadly weapon at the scene of, or at the premises occupied or under the control of the person arrested in connection with, a domestic violence incident involving a threat to human life or a physical assault as provided in Section 18250. This section does not affect warrantless seizures otherwise authorized by Section 18250.
- (10) When the property or things to be seized include a firearm or other deadly weapon that is owned by, or in the possession of, or in the custody or control of, a person described in subdivision (a) of Section 8102 of the Welfare and Institutions Code.

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- (11) When the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 6389 of the Family Code, if a prohibited firearm is possessed, owned, in the custody of, or controlled by a person against whom a protective order has been issued pursuant to Section 6218 of the Family Code, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.
- (12) When the information to be received from the use of a tracking device constitutes evidence that tends to show that either a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code has been committed or is being committed, tends to show that a particular person has committed a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code, or will assist in locating an individual who has committed or is committing a felony, a misdemeanor violation of the Fish and Game Code, or a misdemeanor violation of the Public Resources Code. A tracking device search warrant issued pursuant to this paragraph shall be executed in a manner meeting the requirements specified in subdivision (b) of Section 1534.
- (13) When a sample of the blood of a person constitutes evidence that tends to show a violation of Section 23140, 23152, or 23153 of the Vehicle Code and the person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 23612 of the Vehicle Code, and the sample will be drawn from the person in a reasonable, medically approved manner. This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.
- (14) Beginning January 1, 2016, the property or things to be seized are firearms or ammunition or both that are owned by, in the possession of, or in the custody or control of a person who is the subject of a gun violence restraining order that has been issued pursuant to Division 3.2 (commencing with Section 18100) of Title 2 of Part 6, if a prohibited firearm or ammunition or both is possessed, owned, in the custody of, or controlled by a person against whom a gun violence restraining order has been issued, the person has been lawfully served with that order, and the person has failed to relinquish the firearm as required by law.
- (15) Beginning January 1, 2018, the property or things to be seized include a firearm that is owned by, or in the possession of, or in the custody or control of, a person who is subject to the prohibitions regarding firearms pursuant to Section 29800 or 29805, and the court has made a finding pursuant to paragraph (3) of subdivision (c) of Section 29810 that the person has failed to relinquish the firearm as required by law.
- (15) (16) When the property or things to be seized are controlled substances or a device, contrivance, instrument, or paraphernalia used for unlawfully using or administering a controlled substance pursuant to the authority described in Section 11472 of the Health and Safety Code.
- (16) (17) (A) When all of the following apply:
- (i) A sample of the blood of a person constitutes evidence that tends to show a violation of subdivision (b), (c), (d),

- (e), or (f) of Section 655 of the Harbors and Navigation Code.
- (ii) The person from whom the sample is being sought has refused an officer's request to submit to, or has failed to complete, a blood test as required by Section 655.1 of the Harbors and Navigation Code.
- (iii) The sample will be drawn from the person in a reasonable, medically approved manner.
- (B) This paragraph is not intended to abrogate a court's mandate to determine the propriety of the issuance of a search warrant on a case-by-case basis.
- (b) The property, things, person, or persons described in subdivision (a) may be taken on the warrant from any place, or from any person in whose possession the property or things may be.
- (c) Notwithstanding subdivision (a) or (b), no search warrant shall issue for any documentary evidence in the possession or under the control of any person who is a lawyer as defined in Section 950 of the Evidence Code, a physician as defined in Section 990 of the Evidence Code, a psychotherapist as defined in Section 1010 of the Evidence Code, or a member of the clergy as defined in Section 1030 of the Evidence Code, and who is not reasonably suspected of engaging or having engaged in criminal activity related to the documentary evidence for which a warrant is requested unless the following procedure has been complied with:
- (1) At the time of the issuance of the warrant, the court shall appoint a special master in accordance with subdivision (d) to accompany the person who will serve the warrant. Upon service of the warrant, the special master shall inform the party served of the specific items being sought and that the party shall have the opportunity to provide the items requested. If the party, in the judgment of the special master, fails to provide the items requested, the special master shall conduct a search for the items in the areas indicated in the search warrant.
- (2) (A) If the party who has been served states that an item or items should not be disclosed, they shall be sealed by the special master and taken to court for a hearing.
- (B) At the hearing, the party searched shall be entitled to raise any issues that may be raised pursuant to Section 1538.5 as well as a claim that the item or items are privileged, as provided by law. The hearing shall be held in the superior court. The court shall provide sufficient time for the parties to obtain counsel and make motions or present evidence. The hearing shall be held within three days of the service of the warrant unless the court makes a finding that the expedited hearing is impracticable. In that case, the matter shall be heard at the earliest possible time.
- (C) If an item or items are taken to court for a hearing, any limitations of time prescribed in Chapter 2 (commencing with Section 799) of Title 3 of Part 2 shall be tolled from the time of the seizure until the final conclusion of the hearing, including any associated writ or appellate proceedings.
- (3) The warrant shall, whenever practicable, be served during normal business hours. In addition, the warrant shall be served upon a party who appears to have possession or control of the items sought. If, after reasonable efforts, the party serving the warrant is unable to locate the person, the special master shall seal and return to the court, for

determination by the court, any item that appears to be privileged as provided by law.

- (d) (1) As used in this section, a "special master" is an attorney who is a member in good standing of the California State Bar and who has been selected from a list of qualified attorneys that is maintained by the State Bar particularly for the purposes of conducting the searches described in this section. These attorneys shall serve without compensation. A special master shall be considered a public employee, and the governmental entity that caused the search warrant to be issued shall be considered the employer of the special master and the applicable public entity, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. In selecting the special master, the court shall make every reasonable effort to ensure that the person selected has no relationship with any of the parties involved in the pending matter. Information obtained by the special master shall be confidential and may not be divulged except in direct response to inquiry by the court.
- (2) In any case in which the magistrate determines that, after reasonable efforts have been made to obtain a special master, a special master is not available and would not be available within a reasonable period of time, the magistrate may direct the party seeking the order to conduct the search in the manner described in this section in lieu of the special master.
- (e) Any search conducted pursuant to this section by a special master may be conducted in a manner that permits the party serving the warrant or his or her designee to accompany the special master as he or she conducts his or her search. However, that party or his or her designee may not participate in the search nor shall he or she examine any of the items being searched by the special master except upon agreement of the party upon whom the warrant has been served.
- (f) As used in this section, "documentary evidence" includes, but is not limited to, writings, documents, blueprints, drawings, photographs, computer printouts, microfilms, X-rays, files, diagrams, ledgers, books, tapes, audio and video recordings, films, and papers of any type or description.
- (g) No warrant shall issue for any item or items described in Section 1070 of the Evidence Code.
- (h) Notwithstanding any other law, no claim of attorney work product as described in Chapter 4 (commencing with Section 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure shall be sustained where there is probable cause to believe that the lawyer is engaging or has engaged in criminal activity related to the documentary evidence for which a warrant is requested unless it is established at the hearing with respect to the documentary evidence seized under the warrant that the services of the lawyer were not sought or obtained to enable or aid anyone to commit or plan to commit a crime or a fraud.
- (i) Nothing in this section is intended to limit an attorney's ability to request an in-camera hearing pursuant to the holding of the Supreme Court of California in People v. Superior Court (Laff) (2001) 25 Cal.4th 703.
- (j) In addition to any other circumstance permitting a magistrate to issue a warrant for a person or property in another county, when the property or things to be seized consist of any item or constitute evidence that tends to show a violation of Section 530.5, the magistrate may

- issue a warrant to search a person or property located in another county if the person whose identifying information was taken or used resides in the same county as the issuing court.
- (k) This section shall not be construed to create a cause of action against any foreign or California corporation, its officers, employees, agents, or other specified persons for providing location information.
- SEC. 10.2. Section 27930 of the Penal Code is amended to read:
- 27930. Section 27545 does not apply to deliveries, transfers, or returns of firearms made pursuant to any of the following:
- (a) Sections 18000 and 18005.
- (b) Division 4 (commencing with Section 18250) of Title 2.
- (c) Chapter 2 (commencing with Section 33850) of Division $11.\,$
- (d) Sections 34005 and 34010.
- (e) Section 29810.
- SEC. 10.3. Section 29810 of the Penal Code is amended to read:
- 29810. (a) For any person who is subject to Section 29800 or 29805, the court shall, at the time judgment is imposed, provide on a form supplied by the Department of Justice, a notice to the defendant prohibited by this chapter from owning, purchasing, receiving, possessing, or having under custody or control, any firearm. The notice shall inform the defendant of the prohibition regarding firearms and include a form to facilitate the transfer of firearms. If the prohibition on owning or possessing a firearm will expire on a date specified in the court order, the form shall inform the defendant that he or she may elect to have his or her firearm transferred to a firearms dealer licensed pursuant to Section 29830.
- (b) Failure to provide the notice described in subdivision (a) is not a defense to a violation of this chapter.
- (c) This section shall be repealed effective January 1, 2018.
- SEC. 10.4. Section 29810 is added to the Penal Code, to read:
- 29810. (a) (1) Upon conviction of any offense that renders a person subject to Section 29800 or Section 29805, the person shall relinquish all firearms he or she owns, possesses, or has under his or her custody or control in the manner provided in this section.
- (2) The court shall, upon conviction of a defendant for an offense described in subdivision (a), instruct the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and shall order the defendant to relinquish all firearms in the manner provided in this section. The court shall also provide the defendant with a Prohibited Persons Relinquishment Form developed by the Department of Justice.
- (3) Using the Prohibited Persons Relinquishment Form, the defendant shall name a designee and grant the designee power of attorney for the purpose of transferring or disposing of any firearms. The designee shall be either a local law enforcement agency or a consenting third party

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who is not prohibited from possessing firearms under state or federal law. The designee shall, within the time periods specified in subdivisions (d) and (e), surrender the firearms to the control of a local law enforcement agency, sell the firearms to a licensed firearms dealer, or transfer the firearms for storage to a firearms dealer pursuant to Section 29830.

- (b) The Prohibited Persons Relinquishment Form shall do all of the following:
- (1) Inform the defendant that he or she is prohibited from owning, purchasing, receiving, possessing, or having under his or her custody or control, any firearms, ammunition, and ammunition feeding devices, including but not limited to magazines, and that he or she shall relinquish all firearms through a designee within the time periods set forth in subdivision (d) or (e) by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830.
- (2) Inform the defendant that any cohabitant of the defendant who owns firearms must store those firearms in accordance with Section 25135.
- (3) Require the defendant to declare any firearms that he or she owned, possessed, or had under his or her custody or control at the time of his or her conviction, and require the defendant to describe the firearms and provide all reasonably available information about the location of the firearms to enable a designee or law enforcement officials to locate the firearms.
- (4) Require the defendant to name a designee, if the defendant declares that he or she owned, possessed, or had under his or her custody or control any firearms at the time of his or her conviction, and grant the designee power of attorney for the purpose of transferring or disposing of all firearms.
- (5) Require the designee to indicate his or her consent to the designation and, except a designee that is a law enforcement agency, to declare under penalty of perjury that he or she is not prohibited from possessing any firearms under state or federal law.
- (6) Require the designee to state the date each firearm was relinquished and the name of the party to whom it was relinquished, and to attach receipts from the law enforcement officer or licensed firearms dealer who took possession of the relinquished firearms.
- (7) Inform the defendant and the designee of the obligation to submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer within the time periods specified in subdivisions (d) and (e).
- (c) (1) When a defendant is convicted of an offense described in subdivision (a), the court shall immediately assign the matter to a probation officer to investigate whether the Automated Firearms System or other credible information, such as a police report, reveals that the defendant owns, possesses, or has under his or her custody or control any firearms. The assigned probation officer shall receive the Prohibited Persons Relinquishment Form from the defendant or the defendant's designee, as applicable, and ensure that the Automated Firearms System has been properly updated to indicate that the defendant has relinquished those firearms.
- (2) Prior to final disposition or sentencing in the case, the assigned probation officer shall report to the court whether

the defendant has properly complied with the requirements of this section by relinquishing all firearms identified by the probation officer's investigation or declared by the defendant on the Prohibited Persons Relinquishment Form, and by timely submitting a completed Prohibited Persons Relinquishment Form. The probation officer shall also report to the Department of Justice on a form to be developed by the department whether the Automated Firearms System has been updated to indicate which firearms have been relinquished by the defendant.

- (3) Prior to final disposition or sentencing in the case, the court shall make findings concerning whether the probation officer's report indicates that the defendant has relinquished all firearms as required, and whether the court has received a completed Prohibited Persons Relinquishment Form, along with the receipts described in paragraph (1) of subdivision (d) or paragraph (1) of subdivision (e). The court shall ensure that these findings are included in the abstract of judgment. If necessary to avoid a delay in sentencing, the court may make and enter these findings within 14 days of sentencing.
- (4) If the court finds probable cause that the defendant has failed to relinquish any firearms as required, the court shall order the search for and removal of any firearms at any location where the judge has probable cause to believe the defendant's firearms are located. The court shall state with specificity the reasons for and scope of the search and seizure authorized by the order.
- (5) Failure by a defendant to timely file the completed Prohibited Persons Relinquishment Form with the assigned probation officer shall constitute an infraction punishable by a fine not exceeding one hundred dollars (\$100).
- (d) The following procedures shall apply to any defendant who is a prohibited person within the meaning of paragraph (1) of subdivision (a) who does not remain in custody at any time within the five-day period following conviction:
- (1) The designee shall dispose of any firearms the defendant owns, possesses, or has under his or her custody or control within five days of the conviction by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830, in accordance with the wishes of the defendant. Any proceeds from the sale of the firearms shall become the property of the defendant. The law enforcement officer or licensed dealer taking possession of any firearms pursuant to this subdivision shall issue a receipt to the designee describing the firearms and listing any serial number or other identification on the firearms at the time of surrender.
- (2) If the defendant owns, possesses, or has under his or her custody or control any firearms to relinquish, the defendant's designee shall submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer within five days following the conviction, along with the receipts described in paragraph (1) of subdivision (d) showing the defendant's firearms were surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer.
- (3) If the defendant does not own, possess, or have under his or her custody or control any firearms to relinquish, he or she shall, within five days following conviction, submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, with a statement affirming that he or she has no firearms to be relinquished.

PROPOSITION 63 CONTINUED

- (e) The following procedures shall apply to any defendant who is a prohibited person within the meaning of paragraph (1) of subdivision (a) who is in custody at any point within the five-day period following conviction:
- (1) The designee shall dispose of any firearms the defendant owns, possesses, or has under his or her custody or control within 14 days of the conviction by surrendering the firearms to the control of a local law enforcement agency, selling the firearms to a licensed firearms dealer, or transferring the firearms for storage to a firearms dealer pursuant to Section 29830, in accordance with the wishes of the defendant. Any proceeds from the sale of the firearms shall become the property of the defendant. The law enforcement officer or licensed dealer taking possession of any firearms pursuant to this subdivision shall issue a receipt to the designee describing the firearms and listing any serial number or other identification on the firearms at the time of surrender.
- (2) If the defendant owns, possesses, or has under his or her custody or control any firearms to relinquish, the defendant's designee shall submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, within 14 days following conviction, along with the receipts described in paragraph (1) of subdivision (e) showing the defendant's firearms were surrendered to a local law enforcement agency or sold or transferred to a licensed firearms dealer.
- (3) If the defendant does not own, possess, or have under his or her custody or control any firearms to relinquish, he or she shall, within 14 days following conviction, submit the completed Prohibited Persons Relinquishment Form to the assigned probation officer, with a statement affirming that he or she has no firearms to be relinquished.
- (4) If the defendant is released from custody during the 14 days following conviction and a designee has not yet taken temporary possession of each firearm to be relinquished as described above, the defendant shall, within five days following his or her release, relinquish each firearm required to be relinquished pursuant to paragraph (1) of subdivision (d).
- (f) For good cause, the court may shorten or enlarge the time periods specified in subdivisions (d) and (e), enlarge the time period specified in paragraph (3) of subdivision (c), or allow an alternative method of relinquishment.
- (g) The defendant shall not be subject to prosecution for unlawful possession of any firearms declared on the Prohibited Persons Relinquishment Form if the firearms are relinquished as required.
- (h) Any firearms that would otherwise be subject to relinquishment by a defendant under this section, but which are lawfully owned by a cohabitant of the defendant, shall be exempt from relinquishment, provided the defendant is notified that the cohabitant must store the firearm in accordance with Section 25135.
- (i) A law enforcement agency shall update the Automated Firearms System to reflect any firearms that were relinquished to the agency pursuant to this section. A law enforcement agency shall retain a firearm that was relinquished to the agency pursuant to this section for 30 days after the date the firearm was relinquished. After the 30-day period has expired, the firearm is subject to destruction, retention, sale or other transfer by the agency, except upon the certificate of a judge of a court of record, or of the district attorney of the county, that the retention of the firearm is necessary or proper to the ends of justice,

- or if the defendant provides written notice of an intent to appeal a conviction for an offense described in subdivision (a), or if the Automated Firearms System indicates that the firearm was reported lost or stolen by the lawful owner. If the firearm was reported lost or stolen, the firearm shall be restored to the lawful owner, as soon as its use as evidence has been served, upon the lawful owner's identification of the weapon and proof of ownership, and after the law enforcement agency has complied with Chapter 2 (commencing with Section 33850) of Division 11 of Title 4. The agency shall notify the Department of Justice of the disposition of relinquished firearms pursuant to Section 34010.
- (j) A city, county, or city and county, or a state agency may adopt a regulation, ordinance, or resolution imposing a charge equal to its administrative costs relating to the seizure, impounding, storage, or release of a firearm pursuant to Section 33880.
- (k) This section shall become operative on January 1, 2018.
- SEC. 11. Theft of Firearms.
- SEC. 11.1. Section 490.2 of the Penal Code is amended to read:
- (a) Notwithstanding Section 487 or any other provision of law defining grand theft, obtaining any property by theft where the value of the money, labor, real or personal property taken does not exceed nine hundred fifty dollars (\$950) shall be considered petty theft and shall be punished as a misdemeanor, except that such person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290.
- (b) This section shall not be applicable to any theft that may be charged as an infraction pursuant to any other provision of law.
- (c) This section shall not apply to theft of a firearm.
- SEC. 11.2. Section 29805 of the Penal Code is amended to read:
- 29805. Except as provided in Section 29855 or subdivision (a) of Section 29800, any person who has been convicted of a misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140, subdivision (d) of Section 148, Section 171b, paragraph (1) of subdivision (a) of Section 171c, 171d, 186.28, 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5, 273.6, 417, 417.6, 422, 626.9, 646.9, or 830.95, subdivision (a) of former Section 12100, as that section read at any time from when it was enacted by Section 3 of Chapter 1386 of the Statutes of 1988 to when it was repealed by Section 18 of Chapter 23 of the Statutes of 1994, Section 17500, 17510, 25300, 25800, 30315, or 32625, subdivision (b) or (d) of Section 26100, or Section 27510, or Section 8100, 8101, or 8103 of the Welfare and Institutions Code, any firearm-related offense pursuant to Sections 871.5 and 1001.5 of the Welfare and Institutions Code, Section 490.2 if the property taken was a firearm, or of the conduct punished in subdivision (c) of Section 27590, and who, within 10 years of the conviction, owns, purchases, receives, or has in possession or under custody or control, any firearm is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not

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TEXT OF PROPOSED LAWS 107 PROPOSITION 63 CONTINUED

exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. The court, on forms prescribed by the Department of Justice, shall notify the department of persons subject to this section. However, the prohibition in this section may be reduced, eliminated, or conditioned as provided in Section 29855 or 29860.

SEC. 12. Interim Standards.

Notwithstanding the Administrative Procedure Act (APA), and in order to facilitate the prompt implementation of the Safety for All Act of 2016, the California Department of Justice may adopt interim standards without compliance with the procedures set forth in the APA. The interim standards shall remain in effect for no more than two years, and may be earlier superseded by regulations adopted pursuant to the APA. "Interim standards" means temporary standards that perform the same function as "emergency regulations" under the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), except that in order to provide greater opportunity for public comment on permanent regulations, the interim standards may remain in force for two years rather than 180 days.

SEC. 13. Amending the Measure.

This Act shall be broadly construed to accomplish its purposes. The provisions of this measure may be amended by a vote of 55 percent of the members of each house of the Legislature and signed by the Governor so long as such amendments are consistent with and further the intent of this Act.

SEC. 14. Conflicting Measures.

(a) In the event that this measure and another measure on the same subject matter, including but not limited to the regulation of the sale or possession of firearms or ammunition, shall appear on the same statewide ballot, the provisions of the other measure or measures shall be deemed to be in conflict with this measure. In the event that this measure receives a greater number of affirmative votes than a measure deemed to be in conflict with it, the provisions of this measure shall prevail in their entirety, and the other measure or measures shall be null and void.

(b) If this measure is approved by voters but superseded by law by any other conflicting measure approved by voters at the same election, and the conflicting ballot measure is later held invalid, this measure shall be self-executing and given full force and effect.

SEC. 15. Severability.

If any provision of this measure, or part of this measure, or the application of any provision or part to any person or circumstance, is for any reason held to be invalid or unconstitutional, the remaining provisions, or applications of provisions, shall not be affected, but shall remain in full force and effect, and to this end the provisions of this measure are severable.

SEC. 16. Proponent Standing.

Notwithstanding any other provision of law, if the State, government agency, or any of its officials fail to defend the constitutionality of this Act, following its approval by the voters, any other government employer, the proponent, or in their absence, any citizen of this State shall have the authority to intervene in any court action challenging the constitutionality of this Act for the purpose of defending its constitutionality, whether such action is in trial court, on appeal, or on discretionary review by the Supreme Court

of California or the Supreme Court of the United States. The reasonable fees and costs of defending the action shall be a charge on funds appropriated to the Department of Justice, which shall be satisfied promptly.

PROPOSITION 64

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure amends, repeals, and adds sections to the Business and Professions Code, the Food and Agricultural Code, the Health and Safety Code, the Labor Code, the Revenue and Taxation Code, and the Water Code; therefore, existing provisions proposed to be deleted are printed in strikeout type and new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Title.

This measure shall be known and may be cited as the Control, Regulate and Tax Adult Use of Marijuana Act ("the Adult Use of Marijuana Act").

SEC. 2. Findings and Declarations.

A. Currently in California, nonmedical marijuana use is unregulated, untaxed, and occurs without any consumer or environmental protections. The Control, Regulate and Tax Adult Use of Marijuana Act will legalize marijuana for those over 21 years old, protect children, and establish laws to regulate marijuana cultivation, distribution, sale and use, and will protect Californians and the environment from potential dangers. It establishes the Bureau of Marijuana Control within the Department of Consumer Affairs to regulate and license the marijuana industry.

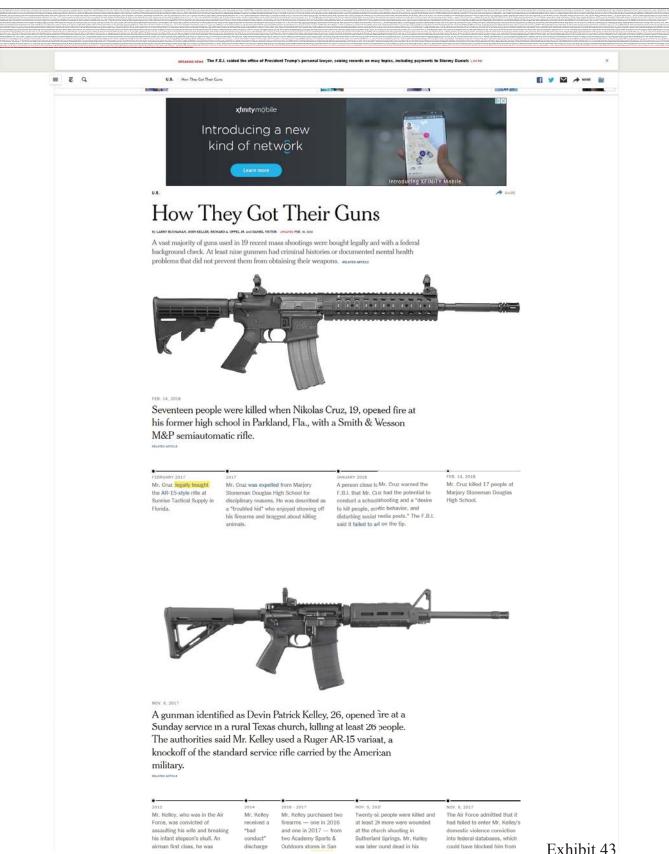
B. Marijuana is currently legal in our state for medical use and illegal for nonmedical use. Abuse of the medical marijuana system in California has long been widespread, but recent bipartisan legislation signed by Governor Jerry Brown is establishing a comprehensive regulatory scheme for medical marijuana. The Control, Regulate and Tax Adult Use of Marijuana Act (hereafter called the Adult Use of Marijuana Act) will consolidate and streamline regulation and taxation for both nonmedical and medical marijuana.

C. Currently, marijuana growth and sale is not being taxed by the State of California, which means our state is missing out on hundreds of millions of dollars in potential tax revenue every year. The Adult Use of Marijuana Act will tax both the growth and sale of marijuana to generate hundreds of millions of dollars annually. The revenues will cover the cost of administering the new law and will provide funds to: invest in public health programs that educate youth to prevent and treat serious substance abuse; train local law enforcement to enforce the new law with a focus on DUI enforcement; invest in communities to reduce the illicit market and create job opportunities; and provide for environmental cleanup and restoration of public lands damaged by illegal marijuana cultivation.

D. Currently, children under the age of 18 can just as easily purchase marijuana on the black market as adults can. By legalizing marijuana, the Adult Use of Marijuana Act will incapacitate the black market, and move marijuana purchases into a legal structure with strict safeguards against children accessing it. The Adult Use of Marijuana Act prohibits the sale of nonmedical marijuana to those

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Case 3:17-cv-01017-BEN-JLB sentenced to 12 months confinement and a reduction to the lowest possible rank, E-1. Document 53-12 Filed 04/09/18 PageID 7235 Page 101 of deficit background first in both cases. According to a statement released





Fifty-eight people were killed and more than 500 were wounded when Stephen Paddock, from a perch high in a hotel, opened fire onto a crowd of concertgoers at an outdoor music festival in Las Vegas. Authorities recovered an arsenal of weapons — at least 23 from his hotel room — including AR-15-style rifles.

SINCE 1982 Mr. Paddock started buying firearms in 1982, said Jill Snyder, a special agent in charge at the Bureau of Alcohol, Tobacco, Firearms and Explosives.

within a YEAR of the Shooting Mr. Paddock legally purchased 33 firearms from Oct. 2016 to Sept. 2017, Ms. Snyder said. Most of those guns were rifles. Most of mose guns were rines.

Such purchases do not prompt
reports to the bureau because
there is no federal law requiring a
seller to alert the bureau when a
person buys multiple rifles.

Fifty-eight people were killed when Mr. Paddock fired onto the crowd of more than 22,000 from his hotel room at the Mandalay Bay Resort and Casino in Las Vegas. He used at least one semiautomatic rifle modified to fire like an automatic weapon by attaching a "bump stock," not shown

AFTER THE SHOOTING Authorities retrieved 47 guns from the hotel room and Mr. Paddock's homes in Mesquite and Verdi, Nev. The bureau found Mr. Paddock purchased most of the guns in Nevada, Utah, California and Texas. Twelve of the rifles recovered from the hotel were each outfitted with a bump stock.



Forty-nine people were killed and 53 wounded when Omar Mateen opened fire at a crowded gay nightclub in Orlando, Fla. He used two guns: a Sig Sauer AR-15-style assault rifle and a Glock handgun.



2013 The F.B.I. learned that Mr. Mateen had made comments to co-workers alleging possible terrorist ties, an official said. The next year, terrorist ties, an afficial said. The next year, the F.B.L, investigated him again for possible ties to an American who went to Syria to fight for an extremist group, but authorities concluded that he "did not constitute a substantive threat at that time."

A FEW DAYS BEFORE THE SHOOTING
Mr. Mateen legally bought two guns, a soderal
official said. "He is not a prohibited persen, so
he can legally walk into a gun dealership and
acquire and purchase firearms," said Tevor
Velinor, an agent at the Bureau of Alcohel,
Tohacco, Firearms and Explosives.

more were wounded in the crowded nightclub. Mr. Mateen was killed ide the club by the police.

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Malik, husbard and wife, killed 14 people at a holiday office party in San Bernardino, Calif. Four guns were recovered: a Smith & Wesson M&P assault rifle, a DPMS Panther Arms assault rifle, a Smith & Wesson handgun and a Llama handgun.

nanugu



BEFORE THE SHOOTING
"We believe that both subjects were radicalized and for quite some time," said David
Bowdich, the F.B.I. assistant director. The attackers are not known to have had previous contact with law enforcement.

BETWEEN 2007 AND 2012

Mr. Farook bought the two handguns legally in California, foderal officials said. The guns were purchased at Annie's Get Your Gun, a gun store in Corona, Calif., The Los Angeles Times reported.

BETWEEN 2007 AND 2012
Enrique Marquez a former neighbor of Mr.
Farook's family, bought the two assault
rifles in California, officials said. Mr.
Marquez was later charged with lying about
the rifle purchases and supplying the assault
weapons to the attackers.

pec. 2, 2015
The couple killed 14 people at a holiday party.
Moments before the attack began, Ms. Malik posted an oath of allegiance to the Islamic State on Facebook.



OCT, 1, 2016

Christopher Harper-Mercer, 26, killed nine people at Umpqua Community College in Oregon, where he was a student. He was armed with six guns, including a Glock pistol, a Smith & Wesson pistol, a Taurus pistol and a Del-Ton assault rifle, according to The Associated Press.

RELATED MITTELE

2008

Mr. Harper-Mercer was in the Army for one month, but was discharged before completing basic training. He graduated from the Switzer Learning Center in Torrance, Calif., which teaches students with learning disabilities and emotional issues. SEFORE SHOOMING In all, Mr. Harper-Mercer owned 14 firearms, all of which were bought legally through a federally licensed firearms dealer, a foderal official said. Some were bought by Mr. Harper-

Mercer, and some by members of his family.

OCT. 1, 2015 He loilled nine people in Roseburg, Ore,

AUG. 26, 2013

Vester Lee Flanagan II, 41, shot and killed a Roanoke, Va., television reporter and a cameraman with a Glock handgun while they were reporting a story live.



2000
Mr. Flanagan filed a lawsuit
against a TV station in
Tallahassee, Fla., that had fired
him allasing he uses the victim of

He was hired at WDBJ in Roanoke, but within months his bosses had documented Federal officials said Mr.
Flanagan bought the gun legally from a licensed dealer. He had

AUG. 26, 2015
Mr. Flanagan killed the reporter and cameraman, injured a woman who was being interviewed and died after shooting himself.

and aggressive behavior. He was 10 mine later fired and filed another

JULY 23, 2015

Using a .40-caliber semiautomatic pistol bought from a pawnshop, John R. Houser killed two people and wounded nine others at a movie theater in Lafayette, La.



Mr. Houser was denied a state issued concealed weapons permit because he was accused of domestic violence and soliciting

A judge ordered him sent to a psychiatric hospital.

though he had been denied a concealed weapons permit earlier, and despite concerr among family members that he was violent and mentally ill.

Lafayotto.

JUNE 17, 2015

Dylann Roof, 21, killed nine people with a .45-caliber Glock pistol at a historic black church in Charleston,



Mr. Roof was charged with a misdemeanor for possessing Suboxone, a prescription drug frequently sold in illegal street transactions.

APRIL 2015
He purchased a gun from a store in West
Columbia, S.C. Mr. Roof ahould have been
barred from buying a puri because he had
admitted to possessing drugs, but the F.B.L.
examiner conducting the required background
check failed to obtain the police report from
the February incident.

Mr. Roof joined a Bible study group at Emanuel A.M.E. Church and opened fire with the gun he bought in April.

Jaylen Ray Fryberg, 15, used his father's Beretta pistol to shoot and kill four students in his high school's cafeteria in Marysville, Wash.



Raymond Lee Fryberg Jr., Jaylen's father, was the subject of a permanent domestic violence protection order, which should have been entered into the federal criminal background

2013
Mr. Fryberg applied to buy the Beretta from a gun shop on the Indian reservation where he lived with Jaylen. A background theck failed to come up with the protection order because it was nover entered into the system.

Oct. 24, 2014
Jaylen Fryberg texted five of his fellow students to come to the cafeteria, where he opened fire.

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APRIL 2, 2014

Specialist Ivan Antonio Lopez opened fire at Fort Hood with a Smith & Wesson semiautomatic pistol, killing three people and wounding 16 others.



2011

Specialist Loper came back from a four-month deployment to Iraq and told his superiors that he had suffered a traumatic head injury there. Military officials said he had never seen combat and was being evaluated for possible post-traumatic stress disorder.

Specialist Lopez had seen a military psychiatrist as recently as the month before the shooting. He was being treated for depression and anxiety, and had been prescribed Ambien to help him Mr. Lopez legally bought his gun at the same shop where Nidal Malik Hasan, an Army major, had bought at least one of the weapons used in a 2009 mass shooting on the base that killed 13 people: APRIL 2, 2014 Around 4 p.m. Mr. Lopez started firing on soldiers.



SEPT. 16, 2013

Aaron Alexis, 34, used a Remington shotgun to kill 12 people at the Washington Navy Yard.

BELATED ARTICLE

Mr. Alexis was given an honorable discharge after showing what Navy officials called a "pattern of misbehavior" during four years as a reservist. A MONTH REFORE THE SHOOTHUP
He twice sought treatment from the
Department of Voterans Affairs for psychiatric
issues. He told police in Rhode Island that
people were pursuing him and sending
wibrations through the walls of his hotel.

SEPT. 2013 He was stopped from buying an assault rifle at a Virginia gun store, but was allowed to buy a shotgun. He passed local and SEPT. 16, 2013 He killed 12 people at the Navy Yard.

DEC. 14, 2012

Adam Lanza, 20, shot and killed his mother in their home, then killed 26 people, mostly children, at Sandy Hook Elementary School in Newtown, Conn., using a Bushmaster XM-15 rifle and a .22caliber Savage Mark II rifle.



2000

Mr. Lanza graduated from high school. Some classmates said he had been bullied in high school. He struggled with a developmental disorder and was described as acutely shy, not known to have close friends. AFTER HIGH SCHOOL

He was "completely untreated in the
years before the shooting" for psychiatric
and physical ailments like anxiety and
obsessive-compulsive disorder, a state
report found.

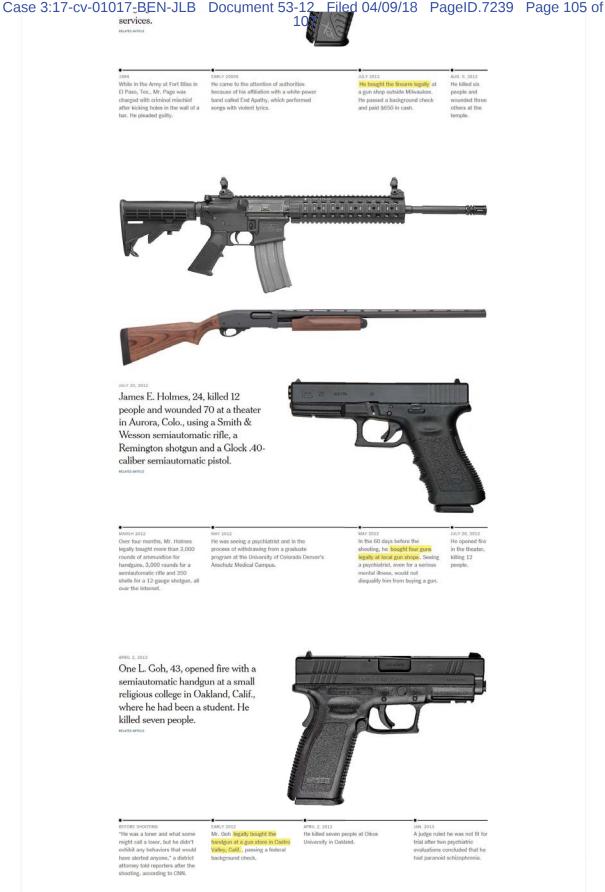
BEFORE THE SHOOTING
His mother, Nancy Lanza, a gun
orthusiast, legally obtained and
registered a large collection of
weapons and would often take
her sons to shooting ranges.

OEC. 14, 2012 Mr. Lanza used his mother's guns to kill her and 26 others.

AUG. 8, 2013

Wade M. Page, 40, killed six people with a Springfield Armory semiautomatic handgun when he opened fire in the lobby of a Sikh temple in Oak Creek, Wis., as congregants arrived for Sunday





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Jared L. Loughner, 22, killed six people with a Glock handgun in a supermarket parking lot in Tucson, Ariz., at an event for Gabrielle Giffords, who was a Democratic representative from Arizona.



Mr. Loughner was arrested for possession of drug paraphemalia, but the charges were dropped. The next year, he failed a drug test when trying to enlist in the Army. Neither incident barred him from buying a gun.

He was forced to withdraw from community college because of campus officials' fears about the safety of the staff and students, his parents later said. The incident would not have shown up on a background check

and bought the handgun at a store in Tucson, Ariz.

He killed six people in Tucson

Maj. Nidal Malik Hasan, 39, an Army psychiatrist facing deployment to Afghanistan, opened fire inside a medical processing building at Fort Hood in central Texas, killing 13 people and wounding 43 others. He was armed with an FN Herstal pistol.



DEC. 2008-JUNE 2009
Intelligence agencies intercepted 10 to 20 messages between Mr. Hasan and Anwar al-Awlaki, a radical cleric in Yemen known for his incendiary anti-American teachings.

JUNE 2009
Federal authorities dropped an inquiry about the messages after deciding that they did not suggest any threat of violence.

ULY 31, 2009 legally at a popular weapons store in Killeen, Tex., paying more than \$1,100,

Nov. 5, 2009 He shot and lolled 13 people at Ford Hood,

Jiverly Wong, 41, fired at least 98 shots from two handguns, a Beretta 92 FS 9-millimeter pistol and a Beretta PX4 Storm pistol, inside a civic association in Binghamton, N.Y., where he had taken an English class. He killed 13 former classmates and association employees.





Mr. Wong had been arrested, cited or had some minor contact with the police at least five times

since 1990, but details about the cases remain unclear. At the time of the shootings, he was not a subject in any investigation, nor did he have a documented mental health issue.

Mr. Wong bought the first gun, the Beretta 92, at a store in Johnson City, N.Y. He passed a

MANCH 2009

M. Wong bought the second gun from the same store, but his background check was not approved immediatoly. He roceived the gun under a federal rule that allows a gun to be sold if the bickground check system does not return a decision in three business days.

He killed 13 people in Binghamton.

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https://www.mytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html | 4/9/2018 8:17 PM UTC

Cas	e 3:17-cv-01017-BEN-JLB Document 50-8	Filed 03/05/18 Pag	eID.4579 Page 1 of 195
1 2	C.D. Michel – SBN 144258 Sean A. Brady – SBN 262007 Anna M. Barvir – SBN 268728		
3	Matthew D. Cubeiro – SBN 291519		
4	MICHEL & ASSOCIATES, P.C. 180 E. Ocean Boulevard, Suite 200		
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6	Facsimile: (562) 216-4445 Email: abarvir@michellawyers.com		
7	Attorneys for Plaintiffs		
8			
9	IN THE UNITED STAT	TES DISTRICT CO	DURT
10	FOR THE SOUTHERN D	ISTRICT OF CAL	IFORNIA
11	VIRGINIA DUNCAN, et al.,	Case No: 17-cv-	-1017-BEN-JLB
12	Plaintiffs,		ON OF ANNA M.
13	V.	BARVIR IN SU PLAINTIFFS'	
14	XAVIER BECERRA, in his official		DGMENT OR, ELY, PARTIAL
15 16	capacity as Attorney General of the State of California,	SUMMARY JU EXHIBITS 1-5	DOGMENT;
17	Defendant.	Hearing Date:	April 30, 2018
18		Hearing Time: Judge:	10:30 a.m. Hon. Roger T. Benitez
19		Courtroom:	5A
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	DECLARATION O	F ANNA M. BARVIR	17cv1017
			ED001670

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DECLARATION OF ANNA M. BARVIR

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

[Expert Reports]

- 2. On October 6, 2017, Plaintiffs served Defendant with Plaintiffs' Disclosure of Expert Witnesses in this matter. Two exhibits were attached to Plaintiffs' disclosure: (1) the Expert Report of Mr. James Curcuruto; and (2) the Expert Report of Mr. Stephen Helsley. A true and correct copy of Mr. Curcuruto's expert report, as appended to Plaintiffs' Disclosure of Expert Witnesses, is attached hereto as **Exhibit 1**. A true and correct copy of Mr. Helsley's expert report, as appended to Plaintiffs' Disclosure of Expert Witnesses, is attached hereto as **Exhibit 2**.
- 3. On November 3, 2017, Plaintiffs served Defendant with Plaintiffs' Disclosure of Rebuttal Expert Witnesses in this matter. Two exhibits were attached to Plaintiffs' disclosure: (1) the Expert Rebuttal Report of Professor Gary Kleck; and (2) the Expert Rebuttal Report of Professor Carlisle Moody. A true and correct copy of Professor Kleck's expert rebuttal, as appended to Plaintiffs' Disclosure of Rebuttal Expert Witnesses, is attached hereto as **Exhibit 3**. A true and correct copy of Professor Moody's expert rebuttal, as appended to Plaintiffs' Disclosure of Expert Witnesses, is attached hereto as **Exhibit 4**.

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- 4. On October 6, 2017, Defendant served Plaintiffs with the Expert Report of Dr. Christopher S. Koper. A true and correct copy of Dr. Koper's expert report, without the appendices attached, is attached hereto as **Exhibit 5**.
- 5. On November 3, 2017, Defendant served Plaintiffs with the Expert Rebuttal Report of John J. Donohue. A true and correct copy of Donohue's expert report is attached hereto as **Exhibit 6**.

[Firearm and Magazine Basics]

- 6. A true and correct copy of the Wikipedia page for "Magazine (firearms)", https://en.wikipedia.org/wiki/Magazine (firearms) (last visited Mar. 1, 2018) is attached as Exhibit 7.
- 7. A true and correct copy of pages 33-36 from NRA Guide to the Basics of Pistol Shooting (2d ed. 2009) is attached as Exhibit 8.
- 8. A true and correct copy of pages 22-36 of John Malloy, Complete Guide to Guns & Shooting (DBI Books, Inc. 1995) is attached as **Exhibit 9.** This excerpt describes various rifle types and magazines.
- 9. A true and correct copy of pages 95-99 of John Malloy, Complete Guide to Guns & Shooting (DBI Books, Inc. 1995) is attached as Exhibit 10. This excerpt describes semi-automatic pistols.
- A true and correct copy of Rick Hacker, *Magazine Disconnect*, Am. 10. Rifleman (Sept. 11, 2015) is attached as **Exhibit 11.** This article explains the function of the "magazine disconnector" or "magazine disconnect safety."

[History of Firearms and Magazines Capable of Holding More than Ten Rounds]

- A true and correct copy of David B. Kopel, *The History of Firearm* Magazines and Magazine Prohibitions, 78 Albany L. Rev. 849 (2015), is attached as Exhibit 12.
- A true and correct copy of pages 168-70 of Lewis Winant, Firearms 12. Curiosa (2009) (1st pub. 1954) is attached as **Exhibit 13**. A true and correct copy of 16-Shot Wheel Lock, Am.'s 1st Freedom (May 10, 2014), available at http://

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www.nrapublications.org/index.php/17739/a-16-shot-wheel-lock/, is attached as

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ten rounds without reloading: a 16-shooter using "superposed" loads. A true and correct copy of Clayton E. Cramer & Joseph Olson, *Pistols*, Crime, and Public Safety in Early America, 44 Willamette L. Rev. 699 (2008) is attached as Exhibit 15. This law review article documents, inter alia, the continued

Exhibit 14. Thee references document the first known firearm able to fire more than

development of multi-shot firearms through the seventeenth and eighteenth centuries.

A true and correct copy of "Defence" Rapid-Fire Gun Patented: 15 May 1718, History Channel, http://www.historychannel.com.au/classroom/day-inhistory/600/defence-rapid-fire-gun-patented (last visited Mar. 1, 2018) is attached as **Exhibit 16.** This article documents the introduction of the Puckle "Defence Gun," "the first-well documented rapid-fire gun in the world," in 1718. The "Defence Gun" "held 11 charges and could fire 63 shots in seven minutes, or 9 shots per minute."

- 15. A true and correct copy of pages 91-103 of Jim Garry, Weapons of the Lewis and Clark Expedition (2012) is attached as **Exhibit 17**. A true and correct copy of pages 69-70 of John Plaster, *The History of Sniping and Sharpshooting* (2008) is attached as Exhibit 18. A true and correct copy of page 31 of Jim Supica, Doug Wicklund & Philip Shreier, Treasures of the NRA National Firearms Museum (2013) is attached as **Exhibit 19**. A true and correct copy of the Wikipedia page for the Girandoni Air Rifle, http://en.wikipedia.org/wiki/Girandoni Air Rifle (last visited Mar. 1, 2018) is attached as **Exhibit 20**. These resources document the Founding-era popularity of the Girandoni air rifle, with a 20- or 22-shot capacity, and detail its many uses.
- A true and correct copy of page 683 of Norm Flayderman, Flayderman's 16. Guide to Antique American Firearms and Their Values (9th ed. 2007) is attached as **Exhibit 21**. This excerpt of *Flayderman's Guide* documents the introduction of the Jennings multi-shot flintlock rifle in 1821 which, according to this resource, allowed 12 shots without reloading.

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- 17. A true and correct copy of page 33 of Jim Supica, Doug Wicklund & Philip Shreier, *Treasures of the NRA National Firearms Museum* (2013) is attached as **Exhibit 22**. A true and correct copy of pages 16, 148-49 and 167 of Jack Dunlap, *American British and Continental Pepperbox Firearms* (1964) is attached as **Exhibit 23**. A true and correct copy of pages 249-50 from Lewis Winant, *Firearms Curiosa* (2009) (1st pub. 1954) is attached as **Exhibit 24**. A true and correct copy of page 66 of *Catalogue of Contents: Doe Run Lead Company's Museum* (July 1, 1912) is attached as **Exhibit 25**. These sources document some advancements in pistol technology from the early 1800s that permitted more than ten shots to be fired without reloading, including a variety of "Pepperbox" pistols that had capacities over 10 rounds.
- 18. A true and correct copy of pages 711, 713, and 716 of Norm Flayderman, Flayderman's Guide to Antique American Firearms and Their Values (9th ed. 2007) is attached as **Exhibit 26**. These pages document several different firearm designs in the 1830s to 1850s that increased ammunition capacity beyond ten rounds.
- 19. A true and correct copy of pages 9-44 of Harold F. Williamson, Winchester: The Gun That Won the West (1952) is attached as Exhibit 27. A true and correct copy of pages 303-06 of Norm Flayderman, Flayderman's Guide to Antique American Firearms and Their Values (9th ed. 2007) is attached as Exhibit 28. A true and correct copy of Joseph Bilby, The Guns of 1864, in Am. Rifleman (May 5, 2014), available at https://www.americanrifleman.org/articles/2014/5/5/the-guns-of-1864/, is attached as Exhibit 29. These sources document the development of the Volcanic Repeating Arms Company's lever action rifle in 1855 with up to a 30-round tubular magazine and its evolution into a 15-round Henry lever action rifle.
- 20. A true and correct copy of page 49 of Harold F. Williamson, *Winchester: The Gun That Won the West* (1952) is attached as **Exhibit 30.** A true and correct copy of pages 11 and 22-35 of R.L. Wilson, *Winchester: An American Legend* (1991) is attached as **Exhibit 31**. A true and correct copy of pages 116-29 of Louis A.

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- Garavaglia & Charles G. Worman, *Firearms of the American West* (1985) is attached as **Exhibit 32**. These sources further explain the evolution of the Henry rifle into the Winchester repeating rifle that could hold 17 rounds in the magazine and 1 in the chamber.
- 21. A true and correct copy of pages 307-12 of Norm Flayderman, Flayderman's Guide to Antique American Firearms and Their Values (9th ed. 2007) is attached as Exhibit 33. A true and correct copy of pages 137, 1240-41 of the 2014 Standard Catalogue of Firearms (Jerry Lee ed. 2013) is attached as Exhibit 34. A true and correct copy of pages 108-09 of Jim Supica, Doug Wicklund & Philip Shreier, Treasures of the NRA National Firearms Museum (2013) is attached as Exhibit 35. These sources document the historical popularity of the Winchester M1873 and then the M1892, lever action rifles holding 12 to 17 rounds in tubular magazines.
- 22. A true and correct copy of pages 122-23 of Norm Flayderman, Flayderman's Guide to Antique American Firearms and Their Values (9th ed. 2007) is attached as **Exhibit 36**. This reference documents the nineteenth-century popularity of the Colt Lightening rifle, a pump action firearm with a 15-round capacity.
- 23. A true and correct copy of pages 60-63, 67-71, 204-208, 244-45 of Lewis Winant, *Firearms Curiosa* (2009) (1st pub. 1954) is attached as **Exhibit 37**. These excerpts document the introduction of firearms with detachable box magazines in handguns in the 1850s, including the Jarre harmonica pistol, patented in 1862.
- 24. A true and correct copy of pages 708-09 of the 2014 Standard Catalog of Firearms is attached as **Exhibit 38**. A true and correct copy of pages 23, 30-32, 38-39, 54-55, and 272 of John W. Breathed, Jr. & Joseph J. Schroeder, Jr., System Mauser: A Pictorial History of the Model 1896 Self-Loading Pistol (1967) is attached as **Exhibit 39**. A true and correct copy of John Elliot, A Sweeping History of the Mauser C96 Broomhandle Pistol, Guns.com (Jan. 26, 2012), http://www.guns.com/2012/01/26/a-sweeping-history-of-the-mauser-c96-broomhandle-pistol/ is attached as **Exhibit 40**.

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These excerpts note that semi-automatic pistols were introduced in the late nineteenth century and companies had begun selling firearms and magazines with capacities over ten rounds, including the Model 1896 Broomhandle Mauser, with one variant capable of holding 20 rounds.

- 25. A true and correct copy of pages 191-92 of Jim Perkins, *American Boys Rifles* 1890-1945 (1976) is attached as **Exhibit 41**. These pages explain that in 1911, Savage Repeating Arms Company introduced the Model 1911, a 20-shot repeater that was popular among boys and in shooting galleries.
- 26. A true and correct copy of page 84 of the *2014 Standard Catalog of Firearms* (Jerry Lee ed. 2013) is attached as **Exhibit 42**. This excerpt reflects that, in 1927, the Auto Ordinance Company introduced a semi-automatic rifle that used a 30-round magazine.
- 27. A true and correct copy of page 104 of Patrick Sweeney, *Gun Digest Book of the AR-15* (2005) is attached **Exhibit 43**. This page states that the Armalite 15 was originally equipped with a 20-round magazine; a 30-round magazine later appeared.
- 28. A true and correct copy of page 294 of *Gun Digest 24th Anniversary*Deluxe Edition (John T. Amber ed. 1969) is attached as **Exhibit 44.** This excerpt lists several other firearms with magazines between 20 and 30 rounds available by 1969.
- 29. A true and correct copy of page 1102 of 2014 Standard Catalogue of Firearms (Jerry Lee ed. 2013) is attached as **Exhibit 45**. This page recounts the production of the M1A semi-automatic rifle with a 20-round detachable magazine).
- 30. A true and correct copy of page 1173 of the 2014 Standard Catalog of Firearms (Jerry Lee ed. 2013) is attached as **Exhibit 46**. This excerpt recounts the introduction of the Ruger Mini-14 in 1975 with manufacturer-supplied standard 5-, 10-, or 20-round detachable magazines.
- 31. The following paragraphs introduce reference materials showing that the historical prevalence and ubiquity of citizen firearms with detachable magazines

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holding more than ten rounds were not limited to rifles:

- a. A true and correct copy of pages 182-83, 432-33 of the 2014 Standard Catalogue of Firearms (Jerry Lee ed. 2013) is attached as **Exhibit 47** (Browning Hi-Power pistol with 13-round detachable magazine).
- b. A true and correct copy of pages 464-65 of the *2014 Standard*Catalogue of Firearms (Jerry Lee ed. 2013) is attached as **Exhibit 48**(Spanish Gabilondo with 20-round "Plus Ultra" was introduced in 1925).
- c. True and correct copies of pages 72-73 of the 2014 Standard Catalogue of Firearms and pages 216-17 of Joseph J. Shroeder, Jr., System Mauser, a Pictorial History of the Model 1896 Self-Loading Pistol (1967) are attached as Exhibit 49 (Azul semi-automatic pistol with magazines of 10, 20, and 30 rounds entered the market in 1935). A true and correct copy of page 121 of the 2014 Standard Catalogue of Firearms is attached as Exhibit 50 (Beretta model 92 with a 16-round magazine entered the market in 1976).
- d. A true and correct copy of page 184 of the *2014 Standard*Catalogue of Firearms (Jerry Lee ed. 2013) is attached as **Exhibit 51**(The Browning Double Action with 14 rounds introduced in 1977).

[Modern Prevalence and Use of Magazines Over Ten Rounds]

- 32. A true and correct copy of various pages from *Gun Digest* 2017 (71st ed. 2016), which identify the magazine capacities for a variety of handguns and rifles, is attached as **Exhibit 52**.
- 33. True and correct copies of pages from the current websites of various firearm manufacturers advertising firearms for self-defense purposes, and the specifications demonstrating these firearms have a magazine capacity exceeding ten rounds, are attached as **Exhibit 53**. *See* Glock "Safe Action" Gen4 Pistols, Glock, https://us.glock.com/documents/BG Gen4 6 2010 EN MAIL.pdf (last visited Mar.

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- 1 1, 2018) (specifications for the model 17, 19, 22, and 23 pistols, each equipped 2 standard with 17, 15, 15, and 13-round magazines, respectively, and all marketed as 3 ideal for personal defense); G19, Glock, https://eu.glock.com/en/products/pistols/g19 (last visited Mar. 1, 2018) (marketed as ideal for "concealed carry purpose" and 4 5 equipped standard with a 15-round magazine); M&P®9 M2.0TM, Smith & Wesson, 6 https://www.smith-wesson.com/firearms/mp-9-m20-1 (last visited Mar. 1, 2018) 7 (marketed as ideal for home and personal protection and equipped standard with a 17-8 round magazine); CZ 75 B, CZ-USA, http://cz-usa.com/product/cz-75-b-9mm-black-9 16-rd-mag/ (last visited Mar. 1, 2018) (equipped standard with 16-round magazine); 10 Ruger® SR9®, Ruger, http://www.ruger.com/products/sr9/specSheets/3301.html (last 11 visited Mar. 1, 2018) (equipped standard with 17-round magazine); P320 Nitron Full-12 Size, Sig Sauer, https://www.sigsauer.com/store/p320-nitron-full-size.html (last 13 visited Mar. 1, 2018) (marketed as ideal for home defense, and equipped standard with 10- to 17-round magazines). 14 15 34. On or about March 1, 2018, I visited the website www.youtube.com as 16 well as websites for various firearm manufacturers and viewed videos embedded on 17 those websites. I am informed and believe that the videos found at the following links 18 are advertisements produced and distributed by firearm manufacturers that are 19 directed to consumers. These videos advertise firearms that have magazine capacities
- 21 Ges.m.b.H, Gunny & Glock Wrong Diner, Youtube (Nov. 10, 2011),

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- 22 https://www.youtube.com/watch?v=vsVCHE7ayPE&feature=c4-overview&list=
- 23 UUeeqOv%2085TJigJv6YrLHZhfQ; Glock Ges. m.b.H, Gunny & Glock Wrong
- 24 House, Youtube (Nov. 13, 2011), http://www.youtube.com/watch?v=6RNcFs-JwOQ;

exceeding ten rounds as suitable for self-defense, including within the home. Glock

- 25 Glock Ges.m.b.H, Gunny & Glock Wrong Girl, Youtube (Jan. 7, 2013),
- 26 http://www.youtube.com/watch?v=a2gCFOtaZPo; Glock Ges.m.b.H, Gunny & Glock
- 27 Wrong Convenience Store, Youtube (March 12, 2013), http://www.youtube.com/
- 28 watch?v=V8WCM_AAAyY; Glock Ges.m.b.H, Gunny & Glock Wrong Guy,

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available at https://www.judiciary.senate.gov/imo/media/doc/1-30-13Kopel

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<u>Testimony.pdf</u> (last visited Mar. 1, 2018) is attached as **Exhibit 59**.

41. A true and correct copy of Gary Kleck, *Large-Capacity Magazines and the Casualty Counts in Mass Shootings: The Plausibility of Linkage*, 17 J. Research & Pol'y 28 (2016) is attached as **Exhibit 60**.

[Self-Defense]

- 42. A true and correct copy of U.S. Dept. of Justice, Bureau of Justice Statistics, National Crime Victimization Survey, *Criminal Victimization in the United States, 2008 Statistical Tables*, Table 37 (Mar. 2009), *available at* https://www.bjs.gov/content/pub/pdf/cvus08.pdf is attached as **Exhibit 61.** This publication notes statistics of violent crime by type of crime, relationship of offender, and number of offenders.
- 43. A true and correct copy of Massad Ayoob, *Five Gunfighting Myths Debunked by Massad Ayoob*, Personal Defense World (Oct. 14, 2014), *available at* www.personaldefenseworld.com/2014/10/5-gunfighting-myths-debunked-massad-ayoob/#armed-and-ready is attached as **Exhibit 62**. Ayoob provides examples of defensive-gun-uses in response to the claim that "if you can't do it with six, you can't do it all."
- 44. A true and correct copy of Jacob Sullum, *The Threat Posed by Gun Magazine Limits* (Jan. 13, 2016), *available at* http://reason.com/archives/2013/01/16/ http://reason.com/archives/2013/01/16/
- 45. A true and correct copy of Charles Remsberg, *Why One Cop Carries 145 Rounds of Ammo on the Job*, PoliceOne (Apr. 17, 2013), *available at* https://www.policeone.com/patrol-issues/articles/6199620-Why-one-cop-carries-145-rounds-of-ammo-on-the-job/ is attached as **Exhibit 64**.
- 46. A true and correct copy of Gus G. Sentementes & Julie Bykowicz, *Documents Detail Cross Keys Shooting*, Balt. Sun (Mar. 21, 2006), *available at* http://articles.baltimoresun.com/2006-03-21/news/0603210220_1_beckwith-police-documents-robbery is attached as **Exhibit 65**.

DECLARATION OF ANNA M. BARVIR

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1 A true and correct copy of Gun Shop Owner Shoots, Kills Man During 2 Attempted Robbery, WIS TV (Aug. 9, 2012), available at 3 http://www.wistv.com/story/19236842/gun-shop-owner-shoots-kills-man-duringattempted-robbery is attached as Exhibit 66. 4 5 A true and correct copy of Nieson Himmel, Police Say Watch Shop Owner Kills 4th, 5th Suspects, L.A. Times (Feb. 21, 1992), available at 6 http://articles.latimes.com/ 1992-02-21/local/me-2663 1 watch-shop-owner is 7 8 attached as Exhibit 67. 9 A true and correct copy of Jewelry Store Burglarized, Scene of Deadly 1994 Robbery Attempt, nbc12.com (2012), available at 10 http://www.nbc12.com/story/16445849/jewelry-store-burglarized-scene-of-deadly-11 12 1994-robbery-attempt is attached as Exhibit 68. 13 I declare under penalty of perjury that the foregoing is true and correct. 14 Executed within the United States on March 5, 2018. 15 16 Anna M. Barvir 17 Declarant 18 19 20 21 22 23 24 25 26 27 28 DECLARATION OF ANNA M. BARVIR 17cv1017

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2	Expert Report of Stephen Helsley	00027-38			
3	Expert Rebuttal Report of Professor Gary Kleck	00039-102			
4	Expert Rebuttal Report of Professor Carlisle Moody	00103-167			
5	Expert Report of Dr. Christopher S. Koper	00168-195			
6	Expert Rebuttal Report of John J. Donohue	00203-241			
7	Wikipedia page for "Magazine (firearms)", https://en.wikipedia.org/wiki/Magazine_(firearms)	00242-249			
8	Pages 33-36 of NRA Guide to the Basics of Pistol Shooting (2d ed. 2009)	00250-255			
9	Pages 22-36 of John Malloy, Complete Guide to Guns & Shooting (DBI Books, Inc. 1995)	00256-273			
10	Pages 95-99 of John Malloy, Complete Guide to Guns & Shooting (DBI Books, Inc. 1995)	00281-288			
11	Rick Hacker, <i>Magazine Disconnect</i> , Am. Rifleman (Sept. 11, 2015)	00289-292			
12	David B. Kopel, <i>The History of Firearm Magazines and Magazine Prohibitions</i> , 78 Albany L. Rev. 849 (2015)	00293-333			
13	Pages 168-70 of Lewis Winant, Firearms Curiosa (2009) (1st pub. 1954)	00334-339			
14	16-Shot Wheel Lock, Am.'s 1st Freedom (May 10, 2014)	00340-342			

Exhibit	Description	Page(s)
15	Clayton E. Cramer & Joseph Olson, <i>Pistols, Crime</i> ,	00343-366
	and Public Safety in Early America, 44 Willamette L. Rev. 699 (2008)	
1.6		00267.260
16	"Defence" Rapid-Fire Gun Patented: 15 May 1718, History Channel	00367-369
17	Pages 91-103 of Jim Garry, Weapons of the Lewis	00370-385
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18	Pages 69-70 of John Plaster, <i>The History of Sniping</i> and Sharpshooting (2008)	00386-390
10		00201 204
19	Page 31 of Jim Supica, Doug Wicklund & Philip Shreier, <i>Treasures of the NRA National Firearms</i>	00391-394
	Museum (2013)	
20	Wikipedia page for "Girandoni Air Rifle", https://en.wikipedia.org/wiki/Girandoni_air_rifle	00402-405
21	Page 683 of Norm Flayderman, Flayderman's Guide	00406-409
21	to Antique American Firearms and Their Values (9th ed. 2007)	00400-407
22	,	00410 412
22	Page 33 of Jim Supica, Doug Wicklund & Philip Shreier, <i>Treasures of the NRA National Firearms</i>	00410-413
	Museum (2013)	
23	Pages 16, 148-49 and 167 of Jack Dunlap, <i>American British and Continental Pepperbox Firearms</i> (1964)	00414-420
24	Pages 249-50 of Lewis Winant, Firearms Curiosa	00421-425
	(2009) (1st pub. 1954)	
25	Page 66 of Catalogue of Contents: Doe Run Lead Company's Museum (July 1, 1912)	00426-428
26	Pages 711, 713, and 716 of Norm Flayderman,	00429-434
	Flayderman's Guide to Antique American Firearms and Their Values (9th ed. 2007)	

Exhibit	Description	Page(s)
27	Pages 9-17, 19-44 of Harold F. Williamson, Winchester: The Gun That Won the West (1952)	00442-479
28	Pages 303-06 of Norm Flayderman, Flayderman's Guide to Antique American Firearms and Their Values (9th ed. 2007)	00480-486
29	Joseph Bilby, <i>The Guns of 1864</i> , in Am. Rifleman (May 5, 2014)	00487-497
30	Page 49 of Harold F. Williamson, Winchester: The Gun That Won the West (1952)	00498-501
31	Pages 11 and 22-35 of R.L. Wilson, Winchester: An American Legend (1991)	00509-526
32	Pages 116-29 of Louis A. Garavaglia & Charles G. Worman, Firearms of the American West (1985)	00527-543
33	Pages 307-12 of Norm Flayderman, Flayderman's Guide to Antique American Firearms and Their Values (9th ed. 2007)	00551-559
34	Pages 137, 1240-41 of the 2014 Standard Catalogue of Firearms (Jerry Lee ed. 2013)	00560-565
35	Pages 108-09 of Jim Supica, Doug Wicklund & Philip Shreier, <i>Treasures of the NRA National Firearms Museum</i> (2013)	00566-570
36	Pages 122-23 of Norm Flayderman, Flayderman's Guide to Antique American Firearms and Their Values (9th ed. 2007)	00571-575
37	Pages 60-63, 67-71, 204-208, 244-45 Lewis Winant, <i>Firearms Curiosa</i> (2009) (1st pub. 1954)	00576-594
	15	

Exhibit	Description	Page(s)
38	Pages 708-09 of the 2014 Standard Catalog of Firearms	00595-599
39	Pages 23, 30-32, 38-39, 54-55, and 272 of John W. Breathed, Jr. & Joseph J. Schroeder, Jr., <i>System Mauser: A Pictorial History of the Model 1896 Self-Loading Pistol</i> (1967)	00600-611
40	John Elliot, <i>A Sweeping History of the Mauser C96 Broomhandle Pistol</i> , Guns.com (Jan. 26, 2012)	00612-624
41	Pages 191-92 of Jim Perkins, <i>American Boys Rifles</i> 1890-1945 (1976)	00625-629
42	Page 84 of the 2014 Standard Catalogue of Firearms (Jerry Lee ed. 2013)	00630-633
43	Page 104 of Patrick Sweeney, Gun Digest Book of the AR-15 (2005)	00641-644
44	Page 294 of Gun Digest 24th Anniversary Deluxe Edition (John T. Amber ed. 1969)	00645-648
45	Page 1102 of the 2014 Standard Catalogue of Firearms (Jerry Lee ed. 2013)	00649-652
46	Page 1173 of the 2014 Standard Catalogue of Firearms (Jerry Lee ed. 2013)	00653-656
47	Pages 182-83, 432-33 of the 2014 Standard Catalogue of Firearms (Jerry Lee ed. 2013)	00657-663
48	Pages 464-65 of the 2014 Standard Catalogue of Firearms (Jerry Lee ed. 2013)	00664-668
49	Pages 72-73 of the 2014 Standard Catalogue of Firearms (Jerry Lee ed. 2013) and pages 216-17 of Joseph J. Schroeder, Jr., System Mauser: A Pictorial History of the Model 1896 Self-Loading Pistol (1967)	00669-677

Exhibit	Description	Page(s)
50	Page 121 of the 2014 Standard Catalogue of Firearms (Jerry Lee ed. 2013)	00678-681
51	Page 184 of the 2014 Standard Catalogue of Firearms (Jerry Lee ed. 2013)	00682-685
52	Pages 369-74, 377-78, 380-87, 391, 395-96, 398-99, 401-07, 409-11, 413-14, 438-47, and 454 from <i>Gun Digest</i> 2017 (Jerry Lee ed., 71st ed. 2016)	00693-736, 00744-747
53	Pages from websites of firearm manufacturers advertising firearms	00748-774
54	Pages 73-97 of The Complete Book of Autopistols: 2013 Buyer's Guide (2013)	00775-800
55	Robert A. Sadowski, <i>The Evolution of Glock Pistols</i> , <i>Pistols</i> , Handguns Buyer's Guide Mag. (Nov. 25, 2015)	00801-811
56	Pages 87 and 89-90 of Massad Ayoob, <i>The Complete Book of Handguns</i> (2013)	00819-823
57	Pages 183-87 NRA Guide to the Basics of Personal Protection in the Home (1st ed. 2000)	00824-829
58	Christopher S. Koper, Daniel J. Woods & Jeffrey A. Roth, An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence, 1994-2003 (Nat'l Instit. J. 2004)	00830-866
59	What Should America Do About Gun Violence? Full Comm. Hr'g Before U.S. Sen. Jud. Comm., 113th Cong. At 11 (2013)	00867-903
60	Gary Kleck, Large-Capacity Magazines and the Casualty Counts in Mass Shootings: The Plausibility of Linkage, 17 J. Research & Pol'y 28 (2016)	00904-924

Exhibit	Description	Page(s)
61	U.S. Dept. of Justice, Bureau of Justice Statistics,	00925-928
01	National Crime Victimization Survey, Criminal	00923-928
	Victimization in the United States, 2008 Statistical Tables, Table 37 (Mar. 2009)	
62	Massad Ayoob, Five Gunfighting Myths Debunked by	00929-938
	Massad Ayoob, Personal Defense World (Oct. 14,	
	2014)	
63	Jacob Sullum, <i>The Threat Posed by Gun Magazine Limits</i> (Jan. 13, 2016)	00939-941
64	Charles Remsberg, Why One Cop Carries 145	00942-946
	Rounds of Ammo on the Job, PoliceOne (Apr. 17, 2013)	
65		00047 040
65	Gus G. Sentementes & Julie Bykowicz, <i>Documents Detail Cross Keys Shooting</i> , Balt. Sun (Mar. 21,	00947-949
	2006)	
66	Gun Shop Owner Shoots, Kills Man During	00950-952
	Attempted Robbery, WIS TV (Aug. 9, 2012)	
67	Nieson Himmel, <i>Police Say Watch Shop Owner Kills</i> 4 th , 5 th Suspects, L.A. Times (Feb. 21, 1992)	00953-955
68	Jewelry Store Burglarized, Scene of Deadly 1994	00956-958
	Robbery Attempt, nbc12.com (2012)	
	18	

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Expert Witness Report of James Curcuruto

Duncan, et al. v. Becerra, et al.
United States District Court (S.D. Cal.)
Case No: 3:17-cv-01017-BEN-JLB
October 6, 2017

I. INTRODUCTION

I am James Curcuruto of the National Shooting Sports Foundation. Counsel for plaintiffs in *Duncan v. Becerra* (E.D. Cal. Case No. 3:17-cv-01017-BEN-JLB) have asked me to offer an opinion regarding this case. This report sets forth my qualifications, opinions, and scholarly foundation for those opinions.

II. BACKGROUND & QUALIFICATIONS

I received my associate's degree in business administration from the State University of New York at Cobleskill in 1991 and my bachelor's degree in business management from the University of North Carolina at Wilmington in 1993. My nearly 25-year business work history has focused primarily on sales, marketing, advertising, research, and analysis.

I am currently the Director, Industry Research & Analysis, at the National Shooting Sports Foundation, Inc. (NSSF). I have held this position since November 2009. The NSSF, formed in 1961, is the trade association for the firearms, ammunition, hunting, and recreational shooting sports industry. Its mission is to promote, protect and preserve hunting and the shooting sports. The NSSF has a membership of 10,000 manufacturers, distributors, firearms retailers, shooting ranges, sportsmen's organizations, and publishers.

In my position as Director, Industry Research & Analysis, I am responsible for most of the research activities at NSSF, and I direct the activities of an internal research coordinator as well as several outside companies retained to conduct research and gather market and consumer information useful to NSSF members.

Under my direction, dozens of informational reports and studies focusing on industry topics and trends, including firearms, ammunition, target shooting, and hunting, have been released to the NSSF member base. And many NSSF reports are shared outside the organization as well. Data from these releases has been referenced many times in endemic, non-endemic, online and print newspaper and magazine articles, used in corporate 10K reports, and mentioned in other media. I have authored and provided information for several articles published in trade magazines. I have also been deposed as an expert witness regarding the commonality of magazines capable of holding more than 10 rounds of ammunition.

1

Exhibit 1 00020

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A. Published Articles

In the past ten years, I have written or contributed to the following published articles:

Firearms Accidents Drop	SHOT Business	June/July 2011
New Study Can Aid Planning	The Range Report	Winter 2011
NSSF Releases Report on Diversity	SHOT Business	April/May 2013
Participation Trends	SHOT Business	Aug/Sept 2013
Industry Research from NSSF	SHOT Business	Dec. 2013
Many Uses, Many Sales	AR Guns and Hunting	May 2014
The Big Bucks of Target Shooting	SHOT Business	June/July 2014
Opening the Clubhouse	SHOT Business	Dec. 2014
Improve Your Knowledge	SHOT Business	Jan. 2015
Executive Privilege	SHOT Business	Dec. 2016
Target Audience	SHOT Business	Oct./Nov. 2017

B. Expert Witness History

In the past four years, I have been deposed and/or testified at trial in the following matters:

- Deposed for Wilson, et al. v. Cook County, Illinois, No. 07 CH 4848, In the Circuit of Cook County Illinois County Department, Chancery Division. November 7, 2013 Waterbury, CT 06702.
- Deposed for Kolbe v. O'Malley, U.S. District Court for the District of Maryland, January 24, 2014.
- Deposed for Friedman v City of Highland Park, May 27, 2014, Windsor Locks, CT 06096.

III. COMPENSATION

I am not receiving compensation from any parties to litigation or their counsel in exchange for my opinions.

IV. ASSIGNMENT

Plaintiffs' counsel has asked me to provide opinion on the prevalence of firearm magazines capable of holding more than ten rounds of ammunition in American society, including rates of ownership of such magazines by law-abiding citizens.

2

Exhibit 1 00021

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V. SUMMARY OF OPINION

There are at least one hundred million magazines of a capacity of more than ten rounds in possession of American citizens, commonly used for various lawful purposes including, but not limited to, recreational and competitive target shooting, home defense, collecting and hunting.

VI. ANALYSIS

Many NSSF members manufacture, distribute and/or sell firearms and shooting and hunting-related goods and services, and as is usual and customary for trade associations, the NSSF collects and disseminates industry-specific, nonsensitive data reflecting consumer preferences, market trends and other information for use in their business decisions. Among the shooting and hunting-related goods and services manufactured, distributed and sold by NSSF members are ammunition magazines. Research conducted by the NSSF and under my direction demonstrates that detachable ammunition magazines are very popular and are commonly owned by millions of persons in the United States for a variety of lawful purposes, including, but not limited to, recreational and competitive target shooting, home defense, collecting and hunting.

In addition to ammunition magazines accompanying firearms that utilize them at the time of sale, such magazines are also widely available for sale as a stand-alone item to individuals who need a replacement, different-capacity, and/or additional magazines.

I am not aware of any singular public source providing reliable figures identifying exactly how many ammunition magazines are manufactured or imported for sale within the United States each year. There are, however, data available to me from which estimations of the number of magazines that have been sold to the general population, as well as how many of those have a capacity for ammunition exceeding ten rounds, can be calculated within a reasonable degree of certainty.

Using such data, I have, in the normal scope of my duties on behalf of the NSSF, calculated estimations of the total number of magazines possessed by consumers in the United States, as well as how many of those have a standard

A "magazine" is a receptacle for a firearm that holds a plurality of cartridges or shells under spring pressure preparatory for feeding into the chamber. http://saami.org/glossary/display.cfm?letter=M, Glossary of Terms, Sporting Arms and Ammunition Manufacturers' Institute (SAAMI). While magazines take many forms – box, drum, rotary, tubular, etc. and may be fixed or removable – from the materials I considered and firearms industry professionals I consulted, the figures discussed in this declaration generally (if not exclusively) concern detachable, box magazines.

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capacity for ammunition exceeding ten rounds. These estimations are published in the NSSF® Magazine Chart attached to this report.

The NSSF® Magazine Chart estimates that 230 million pistol and rifle magazines were in the possession of United States consumers between 1990 and 2015. The data supporting the Chart further shows magazines capable of holding more than 10 rounds of ammunition accounted for approximately 115 million or approximately half of all magazines owned.

Sources used to compile the NSSF® Magazine Chart include the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Annual Firearms Manufacturers and Exports Reports (AFMER), U.S. International Trade Commission (ITC) data, as well as, opinions of firearms industry professionals. To prepare the NSSF® Magazine Chart, only the number of pistols and rifles were used while revolver and shotgun data was excluded as revolvers and the clear majority of shotguns do not utilize magazines.

The ATF AFMER data provide historical figures for pistols by caliber (i.e., the specific ammunition cartridge for which a firearm is chambered) and rifles produced in the United States for consumer purchase. The ITC data provides historical figures for pistol and rifles imported to and exported from the United States for consumer purchase. The total number of firearms available for consumer purchase from 1990 through 2015 was calculated by adding the total U.S. production of firearms with total firearms imported and then subtracting total firearms exported.

The ATF AFMER and ITC data provided estimates of approximately 67.7 million pistols and 42.6 million rifles capable of holding a magazine were available to United States consumers between 1990 and 2015. Firearms industry professionals with knowledge of the pistol and rifle magazine market then allocated magazines to the totals to complete the data provided in the NSSF® Magazine Chart.

It can be assumed that many more such magazines were manufactured in the United States or imported to the United States for sale in the commercial marketplace both prior to 1990 as well as after 2015.

While the figure of 115 million magazines with a capacity greater than 10 rounds in circulation is an estimation based on extrapolation from indirect sources and cannot be confirmed as unequivocally accurate, it is safe to say that whatever the actual number of such magazines in United States consumers' hands is, it is in the tens-of-millions, even under the most conservative estimates.

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VII. REFERENCES

- Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) Annual Firearms Manufacturers and Exports Reports (AFMER).
- U.S. International Trade Commission (ITC) online query system.

VIII. ATTACHMENTS

Attached and made a part of this report is a copy of the NSSF® Magazine Chart (Exhibit 1).

IX. CONCLUSION

Based on the findings listed above, it is my opinion that magazines that are capable of holding more than ten rounds of ammunition are commonly used by millions of law-abiding Americans for a variety of lawful purposes.

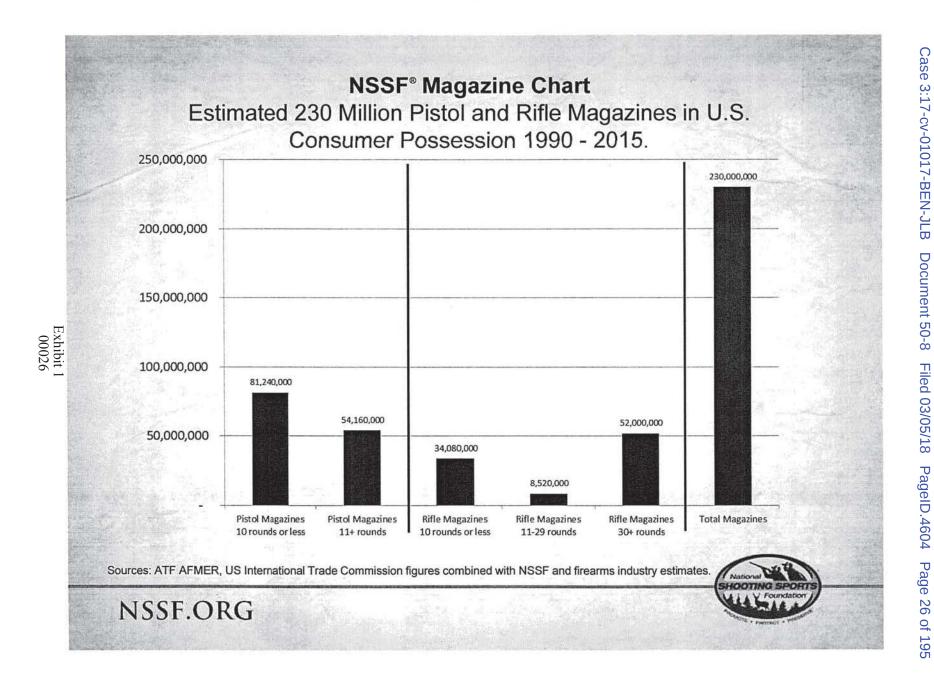
Dated: October 6, 2017

James Curcuruto 11 Mile Hill Road Newtown, CT 06470 jcurcuruto@nssf.org Case: 19-55376, 07/15/2019, ID: 11364007, DktEntry: 8-7, Page 206 of 281

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EXHIBIT 1

Exhibit 1 00025



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Expert Witness Report of Stephen Helsley

Duncan, et al. v. Becerra, et al.
United States District Court (S.D. Cal.)
Case No: 3:17-cv-01017-BEN-JLB
October 6, 2017

I. INTRODUCTION

Counsel for plaintiffs in *Duncan v. Becerra* (E.D. Cal. Case No. 3:17-cv-01017-BEN-JLB) have asked me to offer an opinion regarding this case. This report sets forth my qualifications, opinions, and scholarly foundation for those opinions.

II. BACKGROUND & QUALIFICATIONS

I am Stephen Helsley, a retired peace officer from the California Department of Justice (DOJ). The bulk of that career was in drug enforcement. The last three positions I held were Chief of the Bureau of Narcotic Enforcement, Chief of the Bureau of Forensic Services and, finally, Assistant Director of the Division of Law Enforcement. As Assistant Director, I was responsible for the department's criminal, civil, and controlled substance investigations as well as law enforcement training, intelligence gathering and our forensic laboratory system. In my executive level positions, I had occasion to review special agent-involved shootings and a wide range of homicides involving firearms.

I was the DOJ's principal firearms instructor for many years, and I am an FBI-certified range master. I also participated in the firearm training that was part of the FBI National Academy Program in Quantico, VA. I am a member of the American Society of Arms Collectors and a technical advisor to the Association of Firearm and Tool Mark Examiners. For the past 24 years, I was first a state liaison and, then later, a consultant to the National Rifle Association.

I have co-authored five books on firearms and have authored or co-authored more than fifty firearm-related articles for U.S. and Russian journals. Throughout my adult life, I have been an active participant in handgun, rifle, and shotgun competitions. I have also been a firearm collector and ammunition reloader since the early 1960s.

Finally, I am a collector of firearm-related books—of which I have approximately three thousand. Included in my book collection are approximately 50 different issues of *Gun Digest*, the earliest of which is from 1944. It is a standard resource that is widely used by gun dealers and buyers alike. *Gun Digest* has traditionally provided a comprehensive overview of the firearms and related items available to retail buyers.

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The combination of my consulting work, writing and free time activities puts me in constant contact with gun stores, shooting ranges, gun shows and gun owners. I am also in frequent contact with retirees from DOJ and other law enforcement agencies.

I have qualified as an expert in both criminal and civil matters.

A. Published Articles

In the past ten years, I have written or contributed to the following published articles and opinion editorials:

1. Articles

- Of Birmingham and Belgium, Double Gun Journal, vol. 18, iss. 2 (2007).
- The .470 Nitro Express, Sports Afield (June/July 2007).
- Readings on the Roots of the .410, Shooting Sportsman, Nov./Dec. 2007.
- Hunting in Wales, Hunting and Fishing (Russia), Dec. 2007.
- A Pair for a Pair of Friends, Shooting Sportsman, March/April 2008.
- A Welsh Fantasy, Shooting Sportsman, July/Aug. 2008.
- A Maine Gun Goes Home, Shooting Sportsman, Sept./Oct. 2008.
- The Pin Fire Comes Home, Libby Camps Newsletter, Winter 2008.
- John Rigby & Co., Hunting and Fishing (Russia), July 2008.
- The All-American Double Rifle, Safari, Sept./Oct. 2008.
- Eastern Oregon Odyssey, Shooting Sportsman, Nov./Dec. 2008.
- Rigby Marks 275th Anniversary, Safari, Nov./Dec. 2009.
- Finding Papa's Guns, Shooting Sportsman, March/April 2010.
- The Searcy Stalking Rifle, Safari, May/June 2010.
- The Ruggs Riders, Shooting Sportsman, July/Aug. 2010.
- Searcy Brings Back the Rising-Bite, Shooting Sportsman, Sept./Oct. 2010.
- John Rigby & Co., African Hunting Gazette, Fall 2010.
- The Ageless .416 Rigby, Safari, Nov./Dec. 2012.
- J. P. Clabrough, Shooting Sportsman, March/April 2015.
- The Mystery of Hemingway's Guns, Friends and Neighbors, Summer 2015.
- The Enigma of Hemingway's Guns, Master Gun (Russia), Sept. 2015.
- The Mystery of Hemingway's Guns, CRPA Firing Line, Sept./Oct. 2015.
- Pistols at Dawn, CRPA Firing Line, Jan./Feb. 2016.
- The Silver Star, CRPA Firing Line, Jan./Feb. 2016.
- Women Guns & Politics, CRPA Firing Line, March/April 2016.
- Hunting the Big Mouse, CRPA Firing Line, Sept./Oct. 2016.
- Do Guns Make Heroes? The Congressional Medal of Honor, CRPA Firing Line, Nov./Dec. 2016.
- Thumbs-Up Guns, Shooting Sportsman, Jan./Feb. 2017.
- Is Your Gun Safely Stored? (Part 1), Friends and Neighbors, Summer 2017.
- History of William Powell and His Patents, Master Gun (Russia), Aug. 2017.

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- Guns from San Francisco and Birmingham, Master Gun (Russia), Oct. 2017.
- Is Your Gun Safely Stored? (Part 2), Friends and Neighbors, Autumn 2017.

2. Opinion Editorials

- It's About Time: State has Eroded Gun Owner's Rights, Sac. Bee (July 4, 2010).
- Nevada Views: Is Gun Registration Worth Cost?, Nev. Rev. J. (Sept. 16, 2012).
- Gun Roundup Program Has Too Many Flaws, Sac. Bee (May 3, 2013).

B. Expert Witness History

In the past four years, I have not been deposed in or testified at trial as an expert witness.

III. COMPENSATION

I am not being compensated for my work on this report.

IV. ASSIGNMENT

Plaintiffs' counsel has asked me to provide opinion on the historical existence and prevalence of firearms and/or magazines capable of holding more than ten rounds of ammunition and the reasons law-abiding Americans, including law enforcement and private citizens, so often select such items.

Counsel has also asked that I provide opinion on the utility of firearm magazines with the ability to accept more than ten rounds of ammunition in self-defense, as well as the impact of ten-round magazine limitations on law-abiding citizens.

V. OPINIONS & ANALYSIS

1. Magazines over ten rounds are, and have historically been, a common choice for self-protection for use in both rifles and handguns.

The standard magazine for a given firearm is one that was originally designed for use with that firearm, regardless of whether its capacity is six, ten, fifteen, or twenty rounds. Various popular handgun models originally came from the manufacturer standard, free from artificial influences like laws restricting capacity, with magazines exceeding ten rounds. Examples include, but are in no way limited to, the Browning High Power (13 rounds) c.1954, MAB PA-15 (15 rounds) c.1966, Beretta Models 81/84 (12/13 rounds) c.1977, S&W Model 59 (14 rounds) c.1971, L.E.S P-18 (18 rounds) c.1980 aka Steyr GB, Beretta Model 92

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(15 rounds) c.1980s, and Glock 17 (17 rounds) c.1986. I know there to be many more examples not listed here.

Firearms with a capacity exceeding 10-rounds date to the 'dawn of firearms.' In the late-15th Century, Leonardo Da Vinci designed a 33-shot weapon. In the late 17th Century, Michele Lorenzoni designed a practical repeating flintlock rifle. A modified 18th Century version of Lorenzoni's design, with a 12-shot capacity, is displayed at the NRA's National Firearms Museum. Perhaps the most famous rifle in American history is the one used by Lewis and Clark on their 'Corps of Discovery" expedition between 1803 and 1806—the magazine for which held twenty-two .46 caliber balls.

Rifles with fixed magazines holding 15-rounds were widely used in the American Civil War. During that same period, revolvers with a capacity of 20-rounds were available but enjoyed limited popularity because they were so ungainly.

In 1879, Remington introduced the first 'modern' detachable rifle magazine. In the 1890s, semiautomatic pistols with detachable magazines followed. During WWI, detachable magazines with capacities of 25 to 32-rounds were introduced. As those magazines protruded well below the bottom of the pistol's frame, they weren't practical for use with a belt holster—and by extension concealed carry for self-defense.

In 1935, Fabrique Nationale introduced the Model P-35 pistol with its fully internal 13-round magazine. It would become one of the most widely used military pistols of all time. During WWII, magazine capacity for shoulder-fired arms was substantially increased while most pistols (excluding the P-35) remained at 10-rounds or less. In the mid-1950s the P-35 was rebranded the High Power and imported to the US.

This transition of a firearm from military to civilian use for sport or self-defense is very common. The standards of WWI—the 1903 Springfield rifle and the Colt M1911 pistol are but two of many examples. Civilian sales of both increased after the war as a result of the training "doughboys" received before going to France. The Springfield would become the standard for both rifle hunting and target competition. Likewise, the M1911 Colt pistol was a target-shooting standard for a half-century or more and popular for self-defense.

Between the two world wars, double-action semiautomatic pistols like the Walther PPK and P-38 were introduced. The double-action feature allowed the first shot to be fired in a manner similar to a revolver. Law enforcement agencies in the United States had traditionally used revolvers. However, in the early 1970s, a confluence of events changed that: training funds became widely available and so did the first double action semiautomatic pistol (the S&W M59) with a 14-round magazine. Soon major agencies were transitioning to the M59 and the legion of

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other makes that followed—CZ, Colt, HK, Sig-Sauer, Glock, Beretta, Ruger, Smith & Wesson, etc. Pistols with magazine capacities as large as 19-rounds quickly replaced the six-shot revolver.

Law enforcement demand for the new generation of semiautomatic pistols helped create an increased demand in the civilian market. Comparing 1986 and 2010 handgun sales, one can see evidence of that change. According to the Bureau of Alcohol Tobacco Firearms and Explosives, in 1986, 663,000 pistols were sold in the United States versus 761,000 revolvers. In 2010, revolver sales had dropped to 559,000, while pistol sales had grown to 2,258,000. See United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Firearms Commerce in the United States, Annual Statistical Update (2012), available at http://www.atf.gov/files/publications/firearms/050412-firearms-commerce-in-the-us-annual-statistical-update-2012.pdf. The result of almost four decades of sales to law enforcement and civilian clients is millions of semiautomatic pistols with a magazine capacity of more than ten rounds and likely multiple millions of magazines for them. My associates who have such pistols also have a considerable number of spare magazines for them. In my case, I have one 19-round and eight 17-round magazines for my Glock.

The on-duty, uniformed police officer generally will be armed with a service pistol containing a detachable magazine holding more than ten rounds, and generally two spare magazines holding more than ten rounds on the uniform belt. The clear majority of California law enforcement officers carry pistols with double-stack magazines whose capacities exceed those permitted under California Penal Code section 32310.

The home-owner and the concealed weapon permit holder want a pistol that can hold significantly more cartridges than a revolver for the same reason a law enforcement office or soldier wants one—to increase his or her chances of staying alive. For virtuous citizens buy their guns to protect themselves from the same criminals that police carry guns to protect the citizens, the public, and themselves from. For this reason, armed citizens have historically modeled their choice of firearms on what police carry.

2. Limiting the law-abiding citizen to a magazine of ten rounds limits their ability to protect themselves from violent criminals in certain situations. Such limits on magazine capacity are likely to impair the ability of citizens to engage in lawful self-defense in those crime incidents necessitating that the victim fire many rounds to stop the aggressive actions of offenders, while having negligible impact on the ability of criminals to carry out violent crimes.

Based on my experience with and understanding of the customs and practices of citizens licensed to carry guns in public, individuals often carry only

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the gun, without spare ammunition or magazines. Similarly, most plainclothes police officers do not find it practical to carry multiple handguns.

Likewise, the average homeowner who keeps a defensive firearm is unlikely to have time to gather spare ammunition or magazines. Rather, they are generally limited to one firearm and its magazine capacity. For the homeowner who keeps a defensive firearm and is awakened in the night by an intruder is most unlikely to have time to gather spare ammunition. The sudden and unpredictable nature of such attacks, and their occurring in relatively confined spaces, generally prohibits the gathering of multiple firearms or magazines. Ideally, one hand would be occupied with the handgun and the other with a telephone to call the police. Assuming an individual even had time for a magazine change, most people do not sleep with firearms or magazines attached to their bodies or wearing clothing that would allow them to stow spare magazines or ammunition on their person. They would have only what was in the firearm.

The off-duty officer and the private law-abiding citizen are thus unlikely to have much, if any, spare ammunition on their person or elsewhere readily accessible. They are not likely to be wearing body armor, nor to be in reach of a spare, loaded rifle or shotgun. Their only communication to potential backup will be by phone, relayed through Police Dispatch to responding officers. Thus, for them, the ability to have a pistol already loaded with a significant amount of ammunition is all the more important.

Uniformed police officers who are traditionally armed against the same criminals, on the other hand *are* normally wearing body armor. They generally have immediate access to a loaded shotgun and/or loaded patrol rifle with magazines holding more than ten rounds in the patrol car. And they will have instant radio access to dispatch and fellow officers if backup help is needed. Further, they will generally have both a loaded gun *and* two additional magazines. Each of those magazines would generally hold 17 rounds of 9mm or 15 rounds of .40 caliber cartridges. Collective law enforcement experience has determined this to be critical to allowing the officer to survive a gunfight with armed criminals.

What's more, the average citizen is not trained like law enforcement personnel and is generally not as readily prepared for combat with an armed criminal. As noted, they are likely to have a single firearm loaded with a single magazine available, and they are more susceptible to the psychological effects that naturally occur when faced with the threat of deadly violence and tend to deprive one of the focus and clarity of mind necessary to make accurate shots.

For these reasons, having a magazine over ten rounds at one's disposal certainly could make a difference in self-defense situations, and likely would during home invasions or when facing armed attackers. In my opinion, law-abiding citizens will thus be at a disadvantage in such situations if California enforces its ban on the possession of magazines over ten rounds.

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Criminals bent on causing harm, on the other hand, are not likely to be meaningfully affected by California's magazine restrictions. Even assuming they were impeded from obtaining magazines over ten rounds by Penal Code section 32310, they could simply arm themselves with multiple weapons and/or magazines, and they often do. Criminals have time to assess and plan shootings, whereas victims do not. Indeed, it is the attacker who chooses when, where, how, and whom to attack. So, the attacker is not as burdened by the surprise and shock that the victim is and is generally prepared for the confrontation with several firearms and a substantial amount of ammunition.

The virtuous citizen cannot practically be expected to have accessible multiple guns, magazines, or spare ammunition at a moment's notice. The victimized citizen is the one who is, therefore, most deleteriously impacted by the magazine capacity limitation. If he or she must use the gun to protect self and family, they will most likely have only the ammunition in the gun with which to fend off determined, perhaps multiple, attackers.

Supporters of the magazine capacity limitation may point to some firearm expert who is comfortable with an eight- or nine-shot pistol, or even a five- or six-shot revolver. It should be noted, however, that the operative term there is "expert." The individual who has spent a lifetime training in shooting, and may fire hundreds or even thousands of shots on the range per month, has developed a level of skill and confidence that is not practical to expect from the average police officer or the average law-abiding citizen who keeps a firearm in the home or on his person for protection of self and family.

Finally, it is worth noting that it is difficult to say exactly how many private citizens have fired more than ten rounds in a self-defense shooting, because the number of rounds fired in such cases is very often an omitted fact in written accounts of such defensive gun uses. Often the accounts just say, "multiple shots fired." That could mean more or less than ten. This does not seem to be the case with shootings involving police officers, for which, the number of shots fired is generally documented. In my experience researching such shootings, officers often fire more than ten rounds. And cases where an individual officer fired less than ten rounds, but where multiple officers were shooting, can be fairly characterized as involving more than ten rounds, if the multiple officers involved fired over ten rounds in aggregate. Officer-involved shootings are relevant in evaluating private citizen shootings, for the simple reason that private citizens arm themselves for protection against the same criminals the police are armed to deal with.

3. A firearm equipped with a magazine capable of holding more than ten rounds is more effective at incapacitating a deadly threat and, under some circumstances, may be necessary to do so.

Gunfights frequently involve a lot of "missing." This can be the result of improper aim or impact with barriers such as vehicles or walls. One would be hard

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pressed to find someone who had been in a gunfight that complained about having too much ammunition.

Some believe that anyone defending themselves can just "shoot to wound." Those who grew up in the 1950s likely watched Roy Rogers shoot the gun out of an evildoers' hand or—if things got really serious—let loose a grazing wound to the arm to settle matters. Such ideas are a fantasy. Equally as silly is the well-known 'fact' that a bullet from a .45ACP cartridge will knock someone to the ground no matter where it strikes them.

The notion that a bullet can "knock-down" a person is a largely Hollywood-inspired myth. Most of us learned in school about Sir Isaac Newton's *Third Law of Motion* that states—"For every action, there is an opposite and equal reaction." Put another way: if the recoil of the firearm doesn't knock you down, neither will the impact of the bullet. Bullets can penetrate skin, cut arteries, brake bones or interrupt nerve function to accomplish what is generally described as "stopping power." A bullet that severs the spine or strikes a certain area of the brain will almost certainly stop an attacker instantly. Bullet design and/or increased velocity may improve performance, but placement is still the most critical factor.

A hit, or even multiple hits, to less vital areas of the body may allow an attacker to continue the assault. This phenomenon is extensively documented in the citations for American heroes who were awarded the Congressional Medal of Honor. Many of these men continued to fight after suffering multiple gunshot wounds, being struck by shrapnel or having an arm or leg severed. See, e.g., The Congressional Medal of Honor, The Names, The Deeds 28-29, 52-53, 284-85 (Sharp & Dunnigan 1984). A fighter who has overcome fear and is motivated to continue an attack can be difficult to stop. In the infamous 1986 FBI shoot-out with two Florida bank robbers, one of the suspects, Michael Platt, sustained 12 gunshot wounds before dying. Jamie Frater, Top 10 Most Audacious Shootouts in US History, Listserve (October 14, 2009), https://listverse.com/2009/10/14/top-10-most-audacious-shootouts-in-us-history/.

"Knockdown" and "Stopping Power" are things I know from personal experience. During my early years as a narcotic agent with the California Department of Justice, I was conducting an undercover investigation of a significant heroin dealer. After purchasing an ounce and a half of heroin from him and the arrest was initiated, he shot me with a .45 first breaking my left arm and severing an artery (Note: I wasn't "knocked down") and then bouncing another round off my spine that exited my right leg. From a prone position, I returned fire at the suspect who was mostly concealed by the trunk of his car. My shots that struck the vehicle failed to penetrate sufficiently to reach him. In the exchange that followed I had another round pass through my right leg, while another entered my left side and lodged in the disc between L3 and L4—where it remains today. Having emptied the 8 rounds in my pistol, I tried to reload. However, with a broken arm and temporary paralysis from the waist down, I was unable to reach

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my spare magazine in my left rear pants pocket. Fortunately, at that time the suspect quickly surrendered to my converging surveillance team. Very little pain was initially associated with my wounds and I could have "fought on" if more ammunition had been available. A total of 18 rounds were fired.

Four years later, I was making an undercover cocaine purchase with a new member of my team. I had involved myself to evaluate his performance. The three suspects, two of whom were armed (initially unbeknownst to us) had decided that robbery was a better option than delivering the cocaine. The junior agent was taken hostage and was being held in the state undercover car with a sawed-off rifle to the back of his head and a revolver held against his right side. I was across the street in another undercover car with the money the suspects wanted. I informed the surveillance team that I was going to approach the other vehicle to see what I could do. When I got to the car it was difficult to determine what was happening, as it was a dark, rainy night. I told the agent to exit the vehicle and as he opened the car door and dived out, two shots were fired at him-both missed. I returned fire at the area of the muzzle flash inside the car. Of the eight rounds I fired, the automobile glass defeated most. However, one .45 bullet hit the suspect holding the rifle, causing him serious internal injuries. The suspect with the revolver came out of the passenger door and was struck through the shin with a .45 bullet from a member of the surveillance team who had quietly closed-in on the vehicle. After a short pause the suspects were ordered out of the vehicle. Both of those with gunshot wounds came out fighting. A flashlight to the chin produced the 'stopping power' for the suspect with the internal wound. The suspect with the leg wound was unaware of his injury until he saw the massive blood loss—whereupon he exclaimed "I'm bleeding" and passed out. Twenty-eight rounds were fired into the vehicle with only two hits. For my actions in this incident I was awarded the department's Medal of Valor.

The "take away" from these incidents is that serious bullet wounds aren't necessarily incapacitating and that gunfights can require lots of ammunition.

VII. REFERENCES

Silvio Calabi, Steve Helsley & Roger Sanger, *The Gun Book for Boys* 56-57 (Shooting Sportsman Books 2012).

United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, Firearms Commerce in the United States, Annual Statistical Update (2012), available at http://www.atf.gov/files/publications/firearms/050412-firearms-commerce-in-the-us-annual-statistical-update-2012.pdf.

The Congressional Medal of Honor, The Names, The Deeds 28-29, 52-53, 284-85 (Sharp & Dunnigan 1984).

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Jamie Frater, *Top 10 Most Audacious Shootouts in US History*, Listserve (Oct. 14, 2009), http://listverse.com/2009/10/14/top-10-most-audacious-shootouts-in-us-history/.

VIII. CONCLUSION

It is clear to me from my collective experiences and from the analysis described above that firearms and magazines with ammunition capacities exceeding ten rounds have existed and have been in use since at least the 18th Century.

It is also clear that Americans commonly choose and use magazines capable of holding more than ten rounds of ammunition for lawful purposes, including self-defense.

Dated: October 6, 2017

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Expert Witness Rebuttal of Dr. Gary Kleck

Duncan, et al. v. Becerra, et al.
United States District Court (S.D. Cal.)
Case No: 3:17-cv-01017-BEN-JLB
November 3, 2017

I. INTRODUCTION

I am Dr. Gary Kleck, Emeritus Professor of Criminology & Criminal Justice at Florida State University. Counsel for plaintiffs in *Duncan v. Becerra* (S.D. Cal. Case No. 3:17-cv-01017-BEN-JLB) have asked me to offer a rebuttal opinion regarding this case. This report sets forth my qualifications, opinions, and scholarly foundation for those opinions.

II. BACKGROUND & QUALIFICATIONS

I am an emeritus Professor of Criminology and Criminal Justice at Florida State University. I received my doctorate in Sociology from the University of Illinois in 1979, where I received the University of Illinois Foundation Fellowship in Sociology. I was, at the time of my retirement in May 2016, the David J. Bordua Professor of Criminology at Florida State University, where I served on the faculty from 1978 to 2016. My research has focused on the impact of firearms and gun control on violence, and I have been called "the dominant social scientist in the field of guns and crime." William J. Vizzard, *Shots in the Dark: The Policy, Politics, and Symbolism of Gun Control* 183 (2003).

I have published the most comprehensive reviews of evidence concerning guns and violence in the scholarly literature, which informs and serves as part of the basis of my opinions. I am the author of *Point Blank: Guns and Violence in America*, which won the 1993 Michael J. Hindelang Award of the American Society of Criminology, awarded to the book of the previous several years which "made the most outstanding contribution to criminology." I also authored *Targeting Guns* (1997) and, with Don B. Kates, Jr., *The Great American Gun Debate* (1997) and *Armed* (2001)—books that likewise addressed the topic of guns and violence.

I have also published scholarly research articles in virtually all the leading professional journals in my field. Specifically, my articles have been published in the American Sociological Review, American Journal of Sociology, Social Forces, Social Problems, Criminology, Journal of Criminal Law and Criminology, Law & Society Review, Journal of Research in Crime and Delinquency, Journal of Quantitative Criminology, Law & Contemporary Problems, Law and Human Behavior, Law & Policy Quarterly, Violence and Victims, Journal of the American Medical Association, and other scholarly journals.

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I have testified before Congress and state legislatures on gun control issues, and worked as a consultant to the National Research Council, National Academy of Sciences Panel on the Understanding and Prevention of Violence, as a member of the U.S. Sentencing Commission's Drugs—Violence Task Force, and as a member of the Institute of Medicine and National Research Council Committee on Priorities for a Public Health Research Agenda to Reduce the Threat of Firearm-Related Violence. I am a referee for over a dozen professional journals, and serve as a grants consultant to the National Science Foundation.

Finally, I have taught doctoral students how to do research and evaluate the quality of research evidence, and have taught graduate courses on research design and causal inference, statistical techniques, and survey research methodology.

My current curriculum vitae, which includes a full list of my qualifications and publications, is attached hereto as **Exhibit 1**.

In the past four years, I have been deposed and/or testified at trial in the following matters:

- Heller v. District of Columbia, D.D.C. (deposed July 2, 2013).
- Cook et al. v. Hickenlooper, D. Colo. (deposed and testified Mar. or April 2013).
- Wilson v. Cook County (deposed Sept. 16, 2013).
- Kolbe v. O'Malley, D. Md. (deposed Jan. 2, 2014).
- Barbra Schlifer Commemorative Clinic v. HMQ Canada ("Cross-examined" [Canadian term for deposed] Feb. 24, 2014).
- Friedman v. City of Highland Park (deposed May or June 2014).
- Tracy Rifle and Pistol v. Harris, E.D. Cal. (deposed Nov. 2, 2016).

III. COMPENSATION

I am being compensated for my time in this case at an hourly rate of \$400 per hour. My compensation is not contingent on the results of my analysis or the substance of my testimony.

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IV. ASSIGNMENT

Plaintiffs' counsel has asked me to provide an opinion in response to the opinions presented in the expert reports of Dr. Lucy Allen, Dr. Louis Klarevas, and Dr. Christopher Koper submitted by Attorney General Xavier Becerra.

V. OPINIONS & ANALYSIS

A. Response to Dr. Lucy Allen's Expert Report

1. Allen's Analysis of the NRA Sample of Defensive Gun Uses

Professor Allen cites data from the "Armed Citizen" column of the National Rifle Association's (NRA) magazine, *American Rifleman*, and concludes that "it is rare for a person, when using a firearm in self-defense, to fire more than ten rounds." She does not confine this conclusion to persons whose defensive gun use (DGU) was reported in the *American Rifleman*, but clearly intends it to apply to Americans in general. The NRA's database of "armed citizen" stories is not a representative sample of DGUs, nor does the NRA even claim it to be so. Allen likewise does not claim that the NRA sample is representative. Indeed, her own remarks indicate the opposite—she acknowledges the possibility of bias in selecting cases "in favor of stories that put use of guns in self-defense in the best possible light." Therefore, there is no formal basis for generalizing the results of any analysis of this sample to any larger population of DGUs.

The utility of the NRA sample is, however, even worse than merely being unrepresentative of DGUs in a general way. More specifically, there is strong reason to believe that the sample will largely exclude DGU incidents in which the defender fired more than 10 rounds. NRA staff nonrandomly select these incidents from news media-reported cases of DGU, most of them submitted by readers of the "Armed Citizen" feature of *American Rifleman*.³ Based on the content of these stories published in the magazine, it is clear that they are selected to convey the impression that DGU is an extremely legitimate and successful activity, engaged in by law-abiding persons, for clearly legally justifiable purposes, carried out in clearly lawful ways. The reality of the full array of DGUs is considerably more

¹ Expert Report of Dr. Lucy P. Allen at 5, *Duncan v. Becerra*, No. 3:17-cv-01017-BEN-JLB (Oct. 6, 2017) ("Allen Report").

² Id.

³ See, e.g., The Armed Citizen, Am. Rifleman 10, Nov. 2017 (urging readers to submit news clippings of DGU stories).

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diverse, but the NRA has a political agenda to portray DGU in as positive a light as possible.

Thus, Allen is quite right to note that the selection practices of NRA staff are likely to favor inclusion of DGU stories that put DGU "in the best possible light." She does not, however, appear to understand how this bias would work regarding stories in which defenders fired large numbers of rounds. It could not serve the NRA's purposes to disseminate accounts of DGUs in which the defenders appeared to indiscriminately "fling lead," firing arguably excessive numbers of rounds at their adversaries. The more seemingly excessive the defender's use of force appears to be, the less likely it is that his actions would appear to a reader to be justifiable. Likewise, the NRA is unlikely to want to disseminate stories in which effective self-defense was difficult and dangerous, requiring the firing of large numbers of rounds. Instead, NRA staff would better serve their political ends by selecting stories of DGUs in which the defenders used the minimum amount of force needed to defend themselves, firing the fewest rounds needed to serve that purpose. This would bias the sample of selected DGUs in the direction of excluding cases in which many rounds were fired.

Even though the NRA sample is not representative of DGUs in general, Allen's analysis of the NRA sample does nevertheless establish one thing: DGUs in which more than 10 rounds are fired do occur. Her analysis of the NRA sample of identified two incidents in which over 10 rounds were fired, a frequency that Allen characterizes as "rare." This is indeed rare in absolute terms, but then so are acts of gun violence with over 10 rounds fired. Data in Reedy and Koper indicated that crimes less than 2% of gun crimes known to the police involve offenders firing over 10 rounds. Of course, mass shootings are even more rare, and detailed examination of the way mass shootings actually occur indicates that the number of

⁴ Allen Report, supra note 1, at 5.

⁵ Id. at 12.

⁶ D.C. Reedy & Christopher S. Koper, *Impact of Handgun Types on Gun Assault Outcomes*, 9 Injury Prevention 151-155 (2003).

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incidents in which use of "large-capacity magazines" is likely to have increased the number of victims killed or injured in a typical year may well be zero.8

It is therefore worth considering the implications, for example, if just 0.3% of all DGUs involved over 10 rounds being fired, as Allen's results indicate. National surveys that have specifically asked about DGUs have consistently indicated 0.5-3.5 million DGUs per year, it would be reasonable to assume an annual average of at least 1 million DGUs. If this were the frequency of all DGUs, a 0.3% share would imply a number of DGU incidents with over 10 rounds fired that was huge in absolute terms—about 3,000 per year. Thus, the LCM percentage does not have to be very large in order for it to imply a huge absolute number of incidents or for that number to greatly exceed the number of crimes in which LCM use increased the harm inflicted on victims. In short, Allen's own results from the "Armed Citizen" analysis, taken at face value, imply that there are more DGUs each year in which the defender fires over 10 rounds than there are crimes committed in which LCM use increased the harms inflicted.

2. Allen's Analysis of 200 DGUs Reported in the News

DGUs reported in news outlets are no more likely to be representative of all DGUs than the "Armed Citizen" sample. News outlets rarely find out about crimes on their own—they find out about crimes from the police. DGUs that are reported to the police, like the NRA-selected DGUs, are likely to be especially legitimate and justified. Conversely, defenders are less likely to report their DGUs to the police if their actions are likely to appear to the police as involving excessive force or indiscriminate firing of a gun. This means that incidents in which defenders fired over 10 rounds are likely to be rare among DGUs reported to the police and consequently covered by news outlets, regardless of how common such incidents really are.

⁷ California law defines a "large capacity magazine" as, with limited exceptions, "any ammunition feeding device with the capacity to accept more than 10 rounds." Cal. Penal Code § 16740. I understand that this is not a universally accepted definition. But, for ease of reference, I refer to magazines over ten rounds as "LCMs" throughout this report.

⁸ Gary Kleck, *The Effect of Large-Capacity Magazines on the Casualty Count of Mass Shootings: The Plausibility of Linkages*, 17 Just. Res. & Pol'y 28-47 (2016) ("Kleck 2016").

⁹ Gary Kleck, Chapter 6: The Frequency of Defensive Gun Use: Evidence and Disinformation, in Gary Kleck & Don B. Kates, Armed: New Perspectives in Gun Control 213-284 (2001).

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Allen uncovered 4,800 news stories of DGUs over a span of six years, but needlessly sampled just 200 of the stories for analysis. Her sample was selected randomly and may well be approximately representative of the full set of DGU news stories, but since the set of DGUs reported in the news is itself likely to be an unrepresentative sample of all DGUs, Allen's sampling procedures cannot produce a representative sample of DGUs. She therefore has no basis for generalizing the results of this analysis to the entire population of DGUs.

Leaving aside the unrepresentative character of the sample, it is also needlessly small. Allen did not need to sample cases at all, and she certainly did not need to select so few. She does not explain why she sampled at all. Sampling necessarily introduces sampling error as an additional source of error in her analysis, and it is especially severe if so small a sample (n=200) was selected. Estimates of the percent of DGUs involving over 10 rounds fired will be needlessly imprecise because of Allen's decision to sample and to select so small a sample. If the results of Allen's analysis are correct and 0.3% of DGUs involve over 10 rounds fired, this would mean that one would expect just 0.6 of a DGU of this type to be found in a sample of 200 DGUs (.003 x 200 = 0.6), so it's not surprising (or especially significant) that the small sample examined in Allen's second analysis did not happen to include any DGUs with over 10 rounds fired.

Indeed, the imprecision of Allen's estimate of this percentage is so great that finding zero DGUs of this type in the *sample* (as Allen did)¹³ is, statistically speaking, perfectly compatible with a *non*zero percent (such as 0.3%) in the full *population* of all DGUs. Consider, for example, the implications if Allen's estimate of the LCM share derived from her NRA analysis is correct, i.e. that 0.3% of DGUs involve over 10 rounds fired. The 95% confidence interval estimate of this fraction is an estimate that reflects its degree of imprecision due to sampling error and is computed according to this formula:

95% CI = p + /- 1.96 [square root of ([p x q]/n)], where

p=the sample estimate of the proportion of DGUs that involved over 10 rounds fired (0.003),

¹⁰ Allen Report, supra note 1, at 9.

¹¹ Id.

¹² See id. at 8-12.

¹³ Id. at 11.

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q= the sample estimate of the proportion of DGUs that did *not* involve over 10 rounds fired (0.997), and

n= the sample size (200).

The formula yields a 95% confidence interval (CI) estimate of -0.0046 to .0106, which means that we can be 95% confident that the true population proportion of DGUs is between -0.0046 and .0106, or -0.46% and 1.06%.

Since 0% lies within this interval, it means, in plain English, that even if the actual percent of *all* DGUs that involve over 10 rounds fired was 0.3% as indicated by Allen's NRA analysis, one could still easily obtain the 0% *sample estimate* that she obtained in her second analysis from her needlessly small sample of 200 DGUs reported in the news.

Thus, the results of her second analysis are fully compatible with the results of her first analysis, which implied that there are 3,000 or more DGUs each year in the U.S. that involve over 10 rounds fired.

3. Allen's Claims About the Share of Mass Shootings that Involve LCMs Rely on Sources Known to be Unreliable

Allen claims that LCMs are "often used in mass shootings." ¹⁴ The claim is supported by an analysis of a sample of mass shooting incidents from two sources, *Mother Jones* and The Citizens Crime Commission of New York City, ¹⁵ both of which are known to be based on biased samples of mass shootings. The problem with both samples is that they were apparently selected (whether intentionally or not) in a way that favored the inclusion of incidents involving LCMs and disfavored inclusion of incidents not involving LCMs.

Consider the sample analyzed by staff members of *Mother Jones* magazine. Their report purportedly showed that an astounding 86% (31 of 36) of public mass shootings involved an LCM. An unscrupulous analyst could, of course, easily make the LCM share as large as one liked simply by limiting the sample studied to cases already known to involve LCMs, and excluding cases that did not. Therefore, any results based on the *Mother Jones* sample can be trusted only to the extent that

¹⁴ Id. at 14.

¹⁵ Id.

¹⁶ Mark Follman, Gavin Aronsen & Deanna Pan, *US Mass Shootings*, 1982-2017: Data from Mother Jones' Investigation, Mother Jones, http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data/ (last updated Oct. 18, 2017) ("Mother Jones").

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their 36 cases were representative of all mass shootings, or at least all those occurring in public places. The reality, however, is that less than 7% of all mass shootings with 3 or more dead—as distinct from the tiny subset analyzed in the *Mother Jones* study—are known to involve LCMs. ¹⁷ *Mother Jones* 's 86% figure was obtained only because their selection procedures somehow excluded nearly all mass shootings that did not involve LCMs. The most comprehensive listing of all mass shootings that is currently available is at the Gun Violence Archive (GVA) website, which relies on news media sources for accounts of mass shootings. ¹⁸ For the three complete years for which the website has complete coverage, 2014-2016, the compilers identified 136 incidents with three or more people killed. ¹⁹ For the same period, the staff of *Mother Jones*, which advocates for LCM bans, could identify just 6 mass shootings in 2014-2016 that were known to involve LCMs. ²⁰

The Violence Policy Center (VPC), which also advocates for LCM bans, could identify just 9 incidents with three or more victims killed in which a shooter was known to have used a magazine with a capacity exceeding ten rounds. The study by VPC was not limited to mass shootings that occurred in public, but covered all shootings with 3 or more fatalities regardless of their location, yet still uncovered just 9 mass shootings the involved LCMs in 2014-2016—about 3 per year. Thus, less than 7% (9/136=0.066) of mass murders in the United States in 2014-2016 were known to have involved use of an LCM. To the extent that even the GVA compilation is incomplete, and the total number of mass murders still larger than their figures indicate, this LCM share would be still smaller.

In sum, the 9 LCM-involved incidents in 2014-2016 claim just 6.6% of the GVA-documented mass shootings with three or more fatalities in that period—a far cry from the 86% share indicated by the *Mother Jones* data.

One could of course speculate that LCM involvement in some mass shootings was not mentioned in any news story and thus went unnoticed by *Mother*

¹⁷ See discussion immediately following.

¹⁸ Gun Violence Archive, Gun Violence Archive 2017, http://www.gunviolencearchive.org (last visited Nov. 3, 2017).

¹⁹ Id. (based on my analysis of GVA's data).

²⁰ Mother Jones, supra note 16.

²¹ Violence Policy Center, *High-Capacity Ammunition Magazines Are the Common Thread Running Through Most Mass Shootings in the United States* (July 1, 2017), *available at* http://gunviolence.issuelab.com/resource/high-capacity-ammunition-magazines-are-the-common-thread-running-through-most-mass-shootings-in-the-united-states.html.

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Jones and VPC staff, but this seems unlikely in light of the intense political and news media interest in LCMs. In any case, I am not aware of any evidence that such cases are common enough to materially affect estimates of the prevalence of LCM use in mass shootings. For the Mother Jones estimate of 86% to be even remotely accurate, Mother Jones and VPC staffers would have had to have missed huge numbers of LCM-involved mass shootings. Recall that the GVA database identifies, for 2014-2016, 136 mass shootings with 3 or more dead—the cut-off used by Mother Jones and VPC staffers to define a mass shooting. If the Mother Jones estimate of the share of mass shootings involving LCMs (86%) really was valid and applied to all mass shootings with 3 or more fatalities, there should have been 117 LCM-involved mass shootings (86% of 136) discovered by researchers for the 2014-2016 period. Yet the Mother Jones staff managed to discover just 6 public mass shootings with three or more victims killed known to involve LCMs in 2014-2016, and VPC staff discovered only 9 for all locations. If these were indeed the only LCM-involved mass shootings with 3 or more fatalities that could be uncovered by Mother Jones and VPC methods, this would mean that those methods captured only about 5% of LCM-involved incidents. The Mother Jones and VPC staff were either astoundingly incompetent and their methods extremely ineffective in discovering LCM-involved mass shootings or, more likely, the 86% LCM share estimated in the *Mother Jones* study is simply far too high, and there were actually far fewer than 117 LCM-involved mass shootings to be discovered.

Why, then, did the *Mother Jones* study yield such an extraordinarily high estimate of LCM involvement? The *Mother Jones* study covered only incidents where magazine capacity could be determined.²² Unfortunately, news reporters may feel that magazine capacity is a detail worth reporting in their stories only if it is large. If so, the *Mother Jones* estimate of the LCM share reflects nothing more than the degree to which news outlets regard LCM use as newsworthy, but tells us nothing about the actual prevalence of LCM use in all mass shootings. Very likely, LCM use is common in shootings for which news reporters thought that ammunition capacity was worth mentioning, but this tells us nothing about how prevalent LCM use is in all mass shootings.

The second source on which relies for her analysis of the prevalence of LCMs in mass shootings, referred to as "The Citizens Crime Commission of New York City," is afflicted by the exact same problems as the *Mother Jones* sample, so it does not require separate discussion.

²² Expert Report of Dr. Christopher S. Koper at 7, *Duncan v. Becerra*, No. 3:17-cv-01017-BEN-JLB (Oct. 6, 2017) ("Koper Report").

²³ Allen Report, *supra* note 1, at 13.

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4. Allen's Analysis of Mass Shootings Says Nothing About Whether LCM Use Causes More Harm in Shooting Incidents

Allen correctly notes that mass shooters who used LCMs inflicted more casualties than those who did not,²⁴ but leaves the impression that LCM use must have somehow *caused* the higher casualty count. She does not mention the obvious alternative explanation for this statistical association—that shooters more intent on hurting many people would prepare to do so by acquiring LCMs and bringing them to the scene of their crime. That is, lethality of intent determines both the choice of weaponry and ammunition and the outcome of the crime. If this completely accounts for the association, it means that the association is spurious, i.e. non-causal. That is, it means the LCM use has no effect of its own on the number of casualties inflicted.

This alternative explanation entails two component assertions:

- (1) Greater lethality of offender intent causes shooters to fire more rounds and inflict more casualties.
- (2) Greater lethality of intent makes it more likely that mass shooters will use weaponry they believe is suited to their deadly intentions.

Regarding assertion (1), it is scarcely credible that the outcomes of mass shootings are not affected by what the shooters intended. While the correspondence between intent and outcome may not be perfect, it surely is strong. To my knowledge, no proponent of LCM bans or scholarly student of LCM effects, including Allen, has ever denied this assertion. Thus, assertion (1) appears to be widely accepted.

Likewise, to my knowledge, no proponent of LCM bans or scholarly student of LCM effects has ever denied that mass shooters commonly plan their attacks well in advance, and that this planning includes obtaining firearms and ammunition. News accounts of mass shootings routinely describe the perpetrators of mass shootings planning their attacks weeks or months in advance, acquiring guns and magazines that they later use to kill and injure. Assertion (2) is completely consistent with all evidence about mass shootings known to me or included in Allen's report.

Therefore, the association between (a) LCM use and (b) the numbers of rounds fired and victims hurt in mass shootings, is at least partly (and possibly entirely) spurious, attributable to the effects of (c) shooter lethality of intent on

²⁴ Id. at 14.

²⁵ Kleck 2016, *supra* note 8 (collecting examples).

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both (a) and (b). If propositions (1) and (2) are correct, the only way to support the claim that the association between (a) and (b) is *not* entirely spurious (and thus is at least partly causal in nature) is to measure and control for (c). Allen has not done this, nor has anyone else, to my knowledge. Thus, Allen has made no affirmative case for the claim that the association between (a) and (b) is even partially causal, or the position that LCM use has any causal effect on the number of casualties in mass shootings.

Allen's implied position that LCM use actually affects the number of casualties would be strengthened if she could cite details of actual mass shootings that indicate that LCMs were necessary for firing many rounds and inflicting many casualties, or that fewer rounds would have been fired and fewer casualties inflicted, had the shooter lacked LCMs. For example, she might have tried to cite substantial numbers of shootings in which the offender used an LCM, but had only one gun and one magazine, since, in such a situation, bystanders would have a better chance of tackling the shooter while he was reloading, and potential victims would have additional time to escape while the shooter was reloading. Allen did not do this, and she could not do it because there are no such known cases. All mass shooters use multiple guns or multiple magazines and therefore could, even if they did not have LCMs, fire many rounds without significant interruption, by either firing additional guns once the first one was emptied or by quickly changing magazines, something that takes generally takes approximately 2-4 seconds.²⁶

5. Allen's Estimates of Defensive Gun Use Frequency in California

Allen tries to estimate the frequency of DGUs in the home in California using a method that will inevitably produce a radical underestimate. For unexplained reasons, she arbitrarily limits her estimates to DGUs (a) that occurred in the victim's home, and (b) in which the victims faced a robber armed with a firearm. And Californians can lawfully possess firearms in places other than their homes, and therefore use them in self-defense in nonhome locations. Further, there is no sound reason to exclude cases in which crime victims defended against unarmed offenders or those armed with non-gun weapons. Most robbers commit their crimes without using guns, so this arbitrary limitation is another huge source of underestimation of DGU frequency. For example, the 2008 National Crime Victimization Survey (NCVS) indicated that only 23.7% of all robberies were

²⁶ Id. at 41.

²⁷ Allen Report, *supra* note 1, at 16.

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committed by offenders with firearms,²⁸ and even Allen's California data confined to robberies known to the police indicate that only 29.1% of California robberies in 2011-2016 involved offenders with guns.²⁹ Thus, this flaw alone implies that there were at least 3 times more robbery victimizations in California than Allen's figures suggest and correspondingly larger numbers of robbery-linked DGUs.

Further, Allen wrongly relies on figures that reflect only crimes known to the police in California, ignoring the fact that only about half of robberies are reported to the police.³⁰ Adjusting for this fact would, all by itself, double Allen's estimates of home robberies in California and thus her estimates of DGUs occurring in connection with those kinds of crimes.

Finally, and most importantly, the source on which Allen relies for the "national rate" at which crime victims use guns for self-defense has been shown to grossly understate DGU frequency, and its estimates have been strongly contradicted by the findings of all other professionally conducted national surveys.³¹ At least 16 national surveys, using probability samples of the U.S. adult population and employing professional interviewers, have found that the annual total of DGUs is anywhere from 0.5 million to 3.5 million, depending on the year the survey was conducted and what subset of DGUs was asked about.³² No survey has ever generated an estimate even remotely close to the supposed estimate of about 0.1 million (100,000) that some have derived from the source on which Allen relies. The true rate of DGU therefore appears to be at least 5-35 times larger than the estimate on which Allen relies, so her estimates of DGU frequency would all have to be multiplied by numbers ranging anywhere from 5 to 35 before they even began to be realistic.

Considering all these enormous sources of underestimation, Allen's estimates of the frequency of DGU in connection with California home robberies cannot be regarded as even remotely accurate, or even of the correct order of

²⁸ U.S. Dep't of Justice, U.S. Bureau of Justice Statistics, *Criminal Victimization in the United States*, 2008 Statistical Tables (2011), tbl. 66, available at http://www.bjs.gov/content/pub/pdf/cvus0804.pdf

²⁹ Cal. Dep't of Justice, Crime in California 2016, tbl. 6 (2017).

³⁰ U.S. Dep't of Justice, U.S. Bureau of Justice Statistics, *Criminal Victimization in the United States*, 2005 Statistical Tables (2006), tbl. 91, available at https://www.bjs.gov/content/pub/pdf/cvus05.pdf ("2005 Tables").

³¹ Kleck 2001, *supra* note 9, at 213-29.

³² Id. at 214-29.

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magnitude. Consequently, her comparisons of the frequency of DGU with other kinds of events are wildly inaccurate, misleading, and meaningless.³³

B. Response to Dr. Klarevas' Expert Report

1. Klarevas's Qualifications

Among criminologists, and social scientists generally, the "coin of the realm" in assessing scholarly productivity is the number of articles published in refereed journals. Based on his own Curriculum Vitae, Klarevas has never published a single refereed article on firearms and violence generally, or mass shootings specifically, in his life.³⁴ That is, he has never published anything on the topic that had to pass review by experts in the field. Indeed, his only publication of any kind on the topic is a popular book on mass shootings, *Rampage Nation:* Securing America from Mass Shootings (2016), which offers mostly unsystematic descriptions of mass shootings and non-sequitur opinions about how to prevent them.

Klarevas seems to suggest that his scholarship for that book is impressive because he "assembled 50 years of data capturing all known gun massacres in the United States" for 1966-2015. In fact, he is merely riding on the coattails of Dr. Grant Duwe, who gathered data on every mass murder (not just mass shootings) in the United States for the entire 20th century, 1900-1999. All that Klarevas did in his book was to extend Duwe's work to cover the period 2000-2015, and only for a small subset of mass murders. Klarevas is not an expert on this topic.

2. Overheated Rhetoric and Exaggerated Claims of the Threat of "Gun Massacres"

By way of buttressing his opinion that bans on LCMs have the potential to significantly improve the safety of Americans, Klarevas claims that "gun massacres presently pose the deadliest threat to the safety and security of American society," 37 and that they are "the greatest and most credible threat to the safety and

³³ Allen Report, *supra* note 1, at 16-17.

³⁴ Expert Report of Dr. Louis Klarevas at app'x A, *Duncan v. Becerra*, No. 3:17-cv-01017-BEN-JLB (Oct. 6, 2017) ("Klarevas Report").

³⁵ Id. at 5.

³⁶ See Grant Duwe, Mass Murder in the United States: A History (2007).

³⁷ Klarevas Report, *supra* note 34, at 4.

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security of American society in the present era."³⁸ Klarevas does not explain what he means by mass shootings posing a threat to "security" as distinct from a threat to safety, so I cannot judge this portion of his claim. Regarding threats to safety, however, Klarevas's own data contradict his claim.

He documents 113 "gun massacres" (which he defines as incidents involving 6 or more dead), in which 1,009 people were killed, over the period from 1968 through September 2017.³⁹ This is a period of 49 and ¾ years, so his own figures imply that an average of 20.3 Americans have been killed in "gun massacres" per year (1009/49.75=20.28). To put this number in perspective, 17,250 Americans were killed in criminal homicides of all types in 2016.⁴⁰ Thus, only 1/10th of 1% of all murder victims are killed in "gun massacres."

Alternatively, we can state the degree of threat to the safety of Americans by computing the fraction who will be killed in a "gun massacre" in a given year. Since there were about 323,127,513 Americans in 2016, the annual average of 20.3 deaths implies that the probability of an American dying in a "gun massacre" is about 0.000000063, or 0.0063 per 100,000 population—about 1 in 15.9 million. As a point of comparison, defense expert Lucy Allen has calculated that the rate of Americans dying because they were struck by lightning is 0.09 per 100,000 population. Thus, the risk of an American being killed in a "gun massacre" is less than 1/14th of the risk of being killed by a bolt of lightning—itself a freakishly rare event. However horrific individual mass shootings may be, it is absurd to describe their threat to the safety of Americans as "the greatest threat ... to the ... safety of American society in the present era." This sort of overheated rhetoric is appropriate to propagandists, not to serious scholars.

³⁸ Id. at 5.

³⁹ *Id.* at 6.

⁴⁰ U.S. Fed. Bureau of Investigation, Criminal Justice Info. Servs. Div., *Crime in the United States*, 2016, tbl. 1, available at https://ucr.fbi.gov/crime-in-the-u.s.-2016/topic-pages/tables/table-1 (last visited Nov. 3, 2017) ("FBI").

⁴¹ Allen Report, *supra* note 1, at 16.

⁴² Klarevas Report, *supra* note 34, at 5.

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3. The Frequency of LCM Use in Mass Shootings

Klarevas claims that many mass shootings involve use of LCMs, ⁴³ basing the claim on the information presented in Appendix B, Table 2. It should first be noted how narrow this claim is. Klarevas does not assert that LCMs are often used in violent crime in general, or gun violence in general, or even mass shootings in general. If he had, the claim would clearly have been wrong, since LCMs are rarely used in those sets of incidents. ⁴⁴ Instead, this claim only pertains to the very narrow subset of mass shootings that Klarevas labels "gun massacres"—those that involve 6 or more dead. Since such incidents, according to Klarevas's own data ⁴⁵ occur only about 2.27 times per year in the United States, and claim only 1/10th of 1% of murder victims, his claim of LCM involvement is not very significant or relevant to the problem of gun violence in general or even the narrower problem of mass shootings.

More concerning is Klarevas's questionable factual foundation for his assertion. I have checked out each of the incidents for which Klarevas claims there was LCM use, and found that at least 1/3 of his claims cannot be supported. For 17 cases out of 50 claimed incidents, I could not find any affirmative evidence that LCMs were used, despite extensive searches involving the following steps. First, I found that each of these 17 questionable cases could not be found in the VPC compilation of LCM-involved mass shootings. 46 VPC is strongly supportive of LCM bans, and their staff is well-motivated to discover as many LCM-involved mass shootings as they can. As explained above, the VPC compilation covers shootings with 3 or more dead, and all of the incidents that Klarevas claims involved LCMs had at least 6 dead, so all of these 17 dubious cases should have shown up in the VPC compilation. Second, I checked the news sources cited for these dubious cases in the GVA compilation of mass shootings (4 or more shot, fatally or nonfatally), which covers the 2013-2017 period, and is the most comprehensive compilation of mass shootings available.⁴⁷ None of the news sources cited as sources in the GVA mentioned any use of LCMs in the dubious cases that occurred in 2013-2017. Finally, I used the NewsBank database of print and broadcast news sources to identify additional news sources on the 17 dubious cases. None of them reported LCM use in any of these cases. Klarevas himself

⁴³ Id. at 6 & app'x B, tbl. 2.

⁴⁴ Kleck 2016, supra note 8, at 29.

⁴⁵ Klarevas Report, *supra* note 34, at 6.

⁴⁶ Violence Policy Center, *supra* note 21.

⁴⁷ Gun Violence Archive, *supra* note 18.

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does not provide, in his expert report, any specific sources to support his claims regarding each of these mass shootings.

The following are the 17 dubious cases I identified, listed by their date of occurrence as shown in Klarevas's Appendix B, Table 2: 12-8-86, 8-9-91, 5-16-93, 7-29-99, 12-20-00, 3-21-05, 3-25-06, 6-21-06, 10-7-07, 2-7-08, 12-24-08, 1-19-10, 7-7-11, 7-9-14, 5-17-15, 10-1-15, and 9-10-17. It is impossible to prove a negative, such as the assertion that no sources exist to support Klarevas's claims, but I can say that I was unable to find, despite extensive efforts, any affirmative evidence of LCM use in these 17 incidents, nor Klarevas does provide any.

To summarize, by including these 17 dubious cases, in addition to 33 genuine cases, Klarevas overstated the number of LCM-involved "gun massacres" by 52%. He covered a period of nearly 50 years, so there was only about 2/3 of an incident of that type per year in the United States. Such incidents are therefore extremely rare by any reasonable standard. Regardless of how horrific these crimes are individually, taken collectively they do not represent a significant threat to the safety of Americans, never mind the "greatest threat."

4. Klarevas' Beliefs About How LCMs Increase the Harm Done in Mass Shootings

In his report, Klarevas lays out how he thinks LCM use increases the harm inflicted by "active shooters" (a term he never defines) in "gun massacres." After noting the uncontroversial facts that shooting victims are more likely to die if struck by more bullets, he builds his case on unsubstantiated and inaccurate personal opinions and speculations that are contradicted by known facts about mass shootings.

He appears to believe that there are 4 ways in which LCM use increases the harm inflicted by mass shooters. First, he claims that, when used in a semiautomatic weapon, "an LCM facilitates the ability of a shooter to fire off rounds at an extremely quick rate." It is important to stress that Klarevas is *not* alluding to the fact that LCM use reduces the number of times a mass shooter would have to change magazines if he wanted to hurt many people, since that is a separate claim he makes later, on page 9. He is instead claiming that a semiautomatic gun can fire faster when it has a larger magazine in it than when it has a smaller magazine! He does not describe any mechanical reason for this difference or cite any evidence whatsoever to support this remarkable claim, and for good reason. To my knowledge, there is no such evidence—the claim is simply false. Although semiautomatic firearms in general can fire more rapidly than other

⁴⁸ Klarevas Report, *supra* note 34, at 7-11.

⁴⁹ Id. at 7.

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types of firearms, the use of a larger magazine in a semiautomatic firearm does not add to its rate of fire. The state of California does not ban all semiautomatic guns, so would-be mass shooters in the future will still be able to use such guns in their crimes. And the current case concerns the ban on LCMs. Thus, Klarevas's claim is totally irrelevant to the current case as well as factually inaccurate.

Klarevas appears to have misunderstood the arguments of better-informed advocates of LCM bans as to why LCM use might enable mass shooters to fire more rounds in a given period of time. Defense expert Christopher Koper correctly notes that "[l]arge-capacity magazines allow semiautomatic weapons to fire more than 10 rounds without the need for a shooter to reload the weapon." Likewise, a spokesperson for VPC, which advocates for LCM bans, explained that "[h]igh-capacity ammunition magazines facilitate mass shootings by giving attackers the ability to fire numerous rounds without reloading." This claim is accurate, though of less significance than LCM advocates believe. It is not, however, the claim that Klarevas was making on page 7. The latter claim is plainly false.

Second, Klarevas asserts that "LCMs also facilitate the ability of a shooter to strike a human target with more than one round." While he accurately notes that victims who suffer multiple gunshot wounds are more likely to die than those who suffer a single wound, Klarevas never explains why or how LCM use would increase a shooter's ability to inflict multiple wounds in the first place. LCM use does not increase the shooter's accuracy, nor does Klarevas claim it does. Indeed, if it increased the shooter's rate of fire, as Klarevas argues, it would *reduce* accuracy because shooters would have less time to align their gun's barrel with a given victim. Likewise, LCM use is irrelevant to how many rounds a would-be mass shooter could bring to the scene of the crime and thus how many total rounds he could fire. Three unbanned 10-round magazines and one banned 30-round magazine both contain 30 cartridges and thus allow the exact same total number of shots to be fired. So, use of LCMs cannot increase the number of victims shot multiple times by increasing the total number of cartridges available to the shooter, any more than it improves shooting accuracy.

⁵⁰ Koper Report, supra 22, at 4.

⁵¹ Press Release, Violence Policy Center, *High-Capacity Ammunition Magazines: The Common Thread That Runs Through Mass Shootings* (Jan. 11, 2011), *available at http://www.vpc.org/press/press-release-archive/high-capacity-ammunition-magazines-the-common-thread-that-runs-through-mass-shootings/*.

⁵² Kleck 2016, *supra* note 8, at 42-44.

⁵³ Klarevas Report, *supra* note 34, at 7.

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Third, Klarevas argues that "if gunmen run out of bullets (sic), there is a lull in the shooting. This previous down-time affords those in the line of fire with a chance to flee, hide, or fight back." Klarevas addresses the issue of victims fighting back as a separate point, 55 so here I will only discuss the claim regarding increased time to flee or hide. Klarevas misunderstands the relevant issue regarding pauses in shooting. Mass shooters always pause their shooting at some point during their crimes, regardless of whether the pauses are related to the sizes of their magazines, and thus some prospective victims always have times when they could flee or hide. This fact does not change if shooters use different size magazines. Thus, the relevant question is whether shooters who were denied LCMs and who instead substituted magazines of a capacity allowed under LCM law, such as a 10-round capacity, would provide *additional time* for victims to flee or hide, due to the additional magazine changes necessitated by the more limited capacity of each magazine.

Nothing Klarevas that presents bears on this issue at all. He does not even appear to understand the issue, given that he thinks it is somehow supportive of his argument to merely cite mass shootings in which victims flee or take cover. ⁵⁶ For example, he asserts (based on third- or fourth-hand information ⁵⁷) that children in the Sandy Hook school shooting escaped while the shooter was changing magazines. Even if this claim were true, Klarevas says nothing to indicate that the magazine change in question provided any *additional time* for victims to escape beyond the time that elapsed between shots when the shooter was *not* firing.

This distinction is crucial because the best available information indicates that mass shooters generally fire their weapons slowly and deliberately, with substantial intervals between shots. Shooters can easily change detachable magazines in approximately 2-4 seconds depending on the experience of the shooter, but mass shooters nearly all take more than that amount of time between shots anyway, whether changing magazines or not.⁵⁸ Thus, if an LCM ban forced at least a few mass shooters to use smaller magazines and change them more times during their crime, the magazine changes would not add any *additional time* for

⁵⁴ Id. at 9.

⁵⁵ *Id.* at 10-11.

⁵⁶ *Id.* at 9-10.

⁵⁷ See Louis Klarevas, Rampage Nation: Securing America from Mass Shootings 280 (2016).

⁵⁸ Kleck 2016, *supra* note 8, at 42-44.

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prospective victims to flee or hide. None of the mass shootings that Klarevas cites contradict this conclusion or even provide relevant information.

Finally, Klarevas repeats a commonly expressed rationale for LCM bans, asserting that "in recent history there have been numerous instances of active shooters being physically confronted by unarmed civilians while reloading, bringing their gun attacks to an abrupt end." The purportedly supporting incidents he cites, however, indicate that once again he misunderstands the relevant issues. Klarevas cites cases in which victims disarmed shooters who were *not* using semiautomatic firearms of the type that can accept LCMs. He also cites them as "just a sampling of examples," as if he knows of many more supportive cases he could cite if he wanted to. This is highly unlikely considering how unsupportive the 7 cases he cites are of his claims.

Firearms that are *not* semiautomatic take longer to reload than those that are semiautomatic, so the time during which bystanders could tackle the shooter while reloading is considerably longer with non-semiautomatic firearms that must be reloaded one round at a time than it is with semiautomatic guns equipped with detachable magazines. The California LCM ban does not eliminate guns that are semiautomatic in loading mechanism, nor does it ban guns with the ability to accept detachable magazines; it only restricts the capacity of magazines. Thus, cases of bystanders tackling shooters with firearms of a type other than semiautomatic guns that can accept detachable magazines are totally irrelevant to an assessment of the likely effects of the LCM ban.

Klarevas's examples of civilians tackling mass shooters while they were reloading are all, without exception, irrelevant to his claims, mischaracterized by Klarevas, or both. It is therefore worth considering each one to illustrate exactly how he padded out his list of supposedly supportive incidents. I list the 7 shootings in the same order as shown in Klarevas's table on page 11, by date:

12-7-93. The shooter in this incident was in a sense "reloading" when he was tackled by bystanders, but he was not switching one loaded magazine for an emptied one. He had exhausted both of his loaded 15-round magazines, and no bystander tried to tackle him during his exchange of the second 15-round magazine for the first one. Instead, he was finally tackled only when he was trying to reload one round at a time into one of the emptied magazines. Thus, bystander intervention was possible because the shooter brought only 2 loaded magazines, not because he was changing magazines. California law does nothing to cause such

⁵⁹ Klarevas Report, *supra* note 34, at 10.

⁶⁰ Id. at 10-11.

⁶¹ Id. at 10.

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criminals to bring only one or two magazines to a crime scene. Thus, this case does not support a claim that the California ban on LCMs would be likely to increase the frequency of opportunities for bystanders to tackle mass shooters and prematurely end their shooting.

- 10-30-94. This incident was not a mass shooting—not a single person was shot—and there is no evidence that the shooter was even trying to shoot anyone. The person was firing at a building—the White House. There is no evidence he intended to carry out a mass shooting or even the shooting of a single person.
- 5-22-98. The shooter in this incident was *not* reloading when he was tackled. Klarevas appears to have uncritically accepted the claims of LCM ban advocates that this was what happened. Instead, the young man who tackled the shooter was shot in the hand while he lunged at the offender—indisputable proof that the shooter was still firing and in possession of a loaded gun, rather than reloading when tackled.⁶²
- 7-7-09. This incident was not a mass shooting, but in any case, the shooter was *not* stopped because bystanders tackled him while he was reloading. He was tackled by bystanders when *his gun jammed*, which is something that can happen regardless of the size of the magazine with which the gun is equipped.
- $\underline{1-22-10}$. This incident was not a mass shooting either, nor is there any evidence that the offender was intending to commit one.
- 1-9-11. This is the incident most widely cited to support Klarevas's claim—the shooting in Tucson, AZ, in which Representative Gabrielle Giffords was wounded—but even this incident does not clearly support that claim. While some bystanders asserted that the shooter was reloading when he was tackled, later police inspection of the magazine the shooter was using at the time revealed that it was defective. Its spring had broken, and the shooter could not have used it to shoot bystanders who tried to tackle him.⁶³ If the shooter actually stopped firing because he was struggling with a broken magazine, rather than because he was reloading, the incident does not support Klarevas's argument that LCM bans can save lives because they force shooters to change magazines more often, and thereby afford bystanders the opportunity to tackle the shooter. Any magazine, regardless of its capacity, can fail to function because of a defect, thereby facilitating bystander interventions, so limits on magazine capacity are irrelevant to

⁶² Kleck 2016, supra note 8, at 39.

⁶³ Adam Nagourney, *A Single, Terrifying Moment: Shots, Scuffle, Some Luck*, N.Y. Times A1, Jan. 10, 2011, *available at* http://www.nytimes.com/2011/01/10/us/10reconstruct.html.

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how often opportunities for bystander intervention due to magazine failure will occur.⁶⁴

<u>6-6-14</u>. The shooter in this incident was tackled by a bystander while the shooter was reloading a *shotgun*. There was no evidence in Klarevas's source or any news source known to me that the gun was semiautomatic, and certainly none that that shotgun could accept the types of magazines banned by California's LCM ban.

In sum, *none* of Klarevas's cited incidents support his claim that there are "numerous instances" of unarmed civilians stopping mass shooters while they were reloading. Even if all 7 had been supportive, however, 7 cases occurring over the 50-year period studied by Klarevas would be feeble support for a claim that these sorts of interventions are frequent by any reasonable standard. Instead, they appear to be virtually nonexistent.

5. Klaveras' Claims About the Impact of LCM Restrictions

K claims that LCM restriction "result in" fewer gun massacres.⁶⁵ This wording is ambiguous as to actual causation, but clearly suggests that restricting magazine capacity *causes* the reduction of the number of "gun massacres." I will respond as if that is he what he was indeed asserting.

Klarevas's support for this claim is the fact that the existence of state LCM bans is *associated with* fewer "gun massacres" and fewer fatalities per incident. He takes a lot of pages to make this simple point, but all he establishes is that this bivariate association exists. Among serious scholars, establishing a statistical association is only the *beginning* of an effort to assess whether one factor has a causal effect on another—not the entirety of the effort.

Klarevas does nothing to assess whether this association is spurious, i.e. non-causal. He does not test whether there is some third factor that affects both the frequency of gun violence and the enactment of stricter gun laws. For example, the degree to which people support or oppose aggressive behavior varies across individual persons, and so is likely to vary across populations, such as the populations of states. State populations that are, on average, more strongly opposed to violence are obviously less likely to engage in criminal gun violence, including the shooting of multiple victims. This is a virtual tautology—almost true by definition. On the other hand, one would also expect state populations who were

⁶⁴ Kleck 2016, *supra* note 8, at 39-40.

⁶⁵ Klarevas Report, supra note 34, at 11.

⁶⁶ Id. at 11-16.

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more strongly anti-violence to be more supportive of anti-violence policies, such as stricter gun control laws. In short, the average anti-violence sentiment of a state's population will both increase the likelihood of the state enacting LCM bans, and reduce the incidence of mass shootings—even if LCM bans have no effect of their own on mass shootings.

This would produce a spurious association between LCM bans and the rate of mass shooting incidents. To assess whether there is any actual causal effect of LCM bans on mass shootings would require measuring and controlling for (among other factors) the average anti-violence sentiment prevailing in state populations. Klarevas does not do this. He does not control for *any* confounding factors that might generate this sort of spurious association. Consequently, he has no basis for concluding that the association reflects even the slightest causal effect of LCM bans on the harm attributable to mass shootings.

Based on Klarevas's rather sketchy description of his methods, I do not think he even checked whether the incidence of "gun massacres" in any given state decreased after the state implemented LCM bans. Nothing in Appendix B, tables 3 and 4, or in the text on pages 15-16 of Klarevas's report, indicates such comparisons were made. Instead, Klarevas appears to have merely compared states having LCM bans with states that did not. Consequently, as far as Klarevas demonstrates, all the LCM ban states with low rates of mass shooting may have already had few mass shootings even before the bans went into effect. If so, one can hardly credit the lower incidence of mass shootings to the LCM bans, since causation cannot run backwards—LCM bans passed at a later point in time obviously cannot affect the incidence of mass shootings in any earlier period. Klarevas's failure to even do so simple an analysis as a crude before-and-after comparison of mass-shooting rates is a testament to both his limited knowledge of research methods and his inability to recognize just how weak his evidence really was.

C. Response to Dr. Christopher Koper's Expert Report

Professor Koper's overall conclusion about the California ban on LCMs is so weakly phrased as to be virtually meaningless. He says that the law "has the potential" to produce various public safety benefits.⁶⁷ Any law, no matter how ill-conceived, has some hypothetical "potential" to produce some benefits, even laws that will actually produce no benefits at all. All that is required to say that a law has potential to produce harms is that one be able to imagine scenarios in which benefit might be produced. Thus, based solely on what Koper explicitly states, even he, California's own expert, is not willing to go so far as to explicitly assert that the law is likely to *actually* reduce any harms of gun violence.

⁶⁷ Koper Report, supra note 22, at 2.

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If, however, we interpret his remarks as merely an ultra-cautious way of saying that he thinks the California law is actually like to produce the various benefits he lists, the following remarks apply.

1. Koper Never Provides a Relevant Rationale for Why or How the California LCM Ban Would Produce the Benefits He Claims the Law Might Yield

Koper claims that the California ban on LCMs "has the potential" to reduce the number of shots fired in gun attacks, reduce the number of gunshot victims in gun crimes, reduce the number of wounds per gunshot victim, and reduce the lethality of gunshot injuries when they do occur. 68 He does not deny that offenders could substitute other, unbanned magazines for those banned, so he necessarily must believe that even if criminals substitute other magazines (such as magazines holding 10 rounds) for the types of magazines banned by the California LCM ban, the law would still somehow reduce the number of shots fired, number of victims shot, number of victims killed, and so on. He does not, however, provide a logical rationale for why such effects should occur. The California law does not prohibit all semi-automatic firearms, or even just all semi-automatic firearms capable of accepting detachable (and potentially large-capacity) magazines. Nor does it ban all detachable magazines that can be quickly switched when a shooter empties a magazine—magazines holding as many as 10 rounds remain legally available. Likewise, nothing in the California law prevents a would-be mass murderer from accumulating hundreds of rounds of ammunition. So why, in this light, would a ban on magazines holding more than 10 rounds produce any of the benefits that Koper forecasts? He does not say.

Other advocates of LCM bans, however, *have* said why they think LCM bans would prevent harm, focusing their arguments almost entirely on mass shootings. They assert that an LCM ban would reduce the casualty count in mass shootings because it would force at least some prospective mass shooters to use smaller capacity magazines, which would in turn force them to change their magazines sooner and more often. This would, they argue, have two benefits. First, it would allow bystanders to tackle the shooter while he was reloading and therefore less dangerous to intervenors, and to do so earlier in the incident. Second, the extra magazine changes would slow the shooter's rate of fire, providing additional time for potential victims to escape, beyond the time they would otherwise have to do so if the shooter changed magazines less often.⁶⁹

It is perhaps understandable why Koper did not discuss these possible mechanisms by which LCM bans could reduce the casualty count in mass

⁶⁸ Id. at 3-4.

⁶⁹ Kleck 2016, supra note 8, at 31.

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shootings. Given the way mass shootings actually transpire in America, neither mechanism is plausible. First, there was only one mass shooting in the entire United States in the 20-year period from 1994 to 2013 in which bystanders might have tackled the shooter while he was reloading (the shooting in which Representative Giffords, discussed above, was shot), and even that unique intervention may have occurred when the shooter was struggling with a defective magazine rather than when he was reloading. 70 Second, all mass shooters in this period either used multiple guns or multiple magazines (usually both), which means that they would not have needed to significantly pause their shooting for magazine changes, even if they possessed only magazines holding 10 or fewer rounds. They could either (a) continue to fire with additional guns once the first one was emptied or (b) pause only the 2-4 seconds needed to change detachable magazines of the type left unbanned. Third, mass shooters maintain fairly slow rates of fire, usually averaging more than 4 seconds between shots even when not reloading. Thus, a pause of 2-4 seconds to change magazines would not slow the shooter's rate of fire or provide additional time available for victims to escape.⁷¹ Koper does not refute or even address these facts, nor does he offer any alternative mechanisms by which the California ban on LCMs would prevent harm.

> 2. Just Like Those of Defense Expert Lucy Allen, Koper's Claims About the Share of Mass Shootings that Involve LCMs Rely on Sources Known to be Unreliable

Although Koper does not explain why LCM use would affect mass shootings, he nevertheless claims that LCMs are often used in public mass shootings. His primary support is a propaganda report published by *Mother Jones* magazine, which advocates bans on LCMs. That report purportedly showed that an astounding 86% (31 of 36) of public mass shootings involved an LCM. Koper does not explain why one should only focus on events that occurred in public places, or how the magazine's staff selected their tiny sample of 36 cases. Again, one could, easily make the LCM share as large as one liked simply by limiting the sample studied to cases already known to involve LCMs, and excluding cases that did not. Therefore, the *Mother Jones* findings on which Koper relies can be trusted

⁷⁰ *Id.* at 40.

⁷¹ Id. at 42-44.

⁷² Koper Report, *supra* note 22, at 5, 7.

⁷³ *Id.* at 7.

⁷⁴ Mother Jones, *supra* note 16.

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only to the extent that the sample of 36 cases was representative of all mass shootings, or at least all those occurring in public places.

The reality is that less than 7% of all mass shootings with 3 or more dead as distinct from the tiny subset analyzed in the *Mother Jones* study—are known to involve LCMs. The most comprehensive listing of all mass shootings that is currently available is at the GVA website, which relies on news media sources for accounts of mass shootings. For the 3 complete years for which the website has complete coverage, 2014-2016, the compilers identified 136 incidents with 3 or more people killed. For the same period, VPC identified just 9 incidents with three or more victims killed in which a shooter was known to have used a magazine with a capacity exceeding ten rounds. Thus, less than 7% (9/136=0.066) of mass murders in the United States in 2014-2016 were known to have involved use of an LCM. The study by VPC was not limited to mass shootings that occurred in public, but covered all shootings with 3 or more fatalities regardless of their location, yet still uncovered just 9 mass shootings the involved LCMs in 2014-2016—about 3 per year. To the extent that even the GVA compilation is incomplete, and the total number of mass murders still larger than their figures indicate, this LCM share would be still smaller. In sum, the 9 LCM-involved incidents in 2014-2016 claim just 6.6% of the GVA-documented mass shootings with 3 or more fatalities in that period—a far cry from the 86% share claimed by MJ and uncritically cited by Koper.

One could speculate that LCM involvement in some mass shootings was not mentioned in any news story and thus went unnoticed by Mother Jones and VPC staff, but this seems unlikely in light of the intense political and news media interest in LCMs. In any case, I am not aware of any evidence that such cases are common enough to materially affect estimates of the prevalence of LCM use in mass shootings. For the *Mother Jones* estimate on which Koper relies to be even remotely accurate, Mother Jones and VPC staffers would have had to have missed huge numbers of LCM-involved mass shootings. Recall that the GVA database identifies, for 2014-2016, 136 mass shootings with 3 or more dead—the cut-off used by *Mother Jones* and VPC staffers to define a mass shooting. If the *Mother* Jones estimate of the share of mass shootings involving LCMs (86%) really was valid and applied to all mass shootings with 3 or more fatalities, there should have been 117 LCM-involved mass shootings (86% of 136) discovered by researchers for the 2014-2016 period. Yet the Mother Jones staff managed to discover just 6 public mass shootings with 3 or more victims killed that involved LCMs in 2014-2016, and VPC staff discovered only 9 for all locations. If these were indeed the only LCM-involved mass shootings with 3 or more fatalities that could be uncovered by Mother Jones and VPC methods, this would mean that those methods captured only about 5% of LCM-involved incidents. The Mother Jones and VPC staff were either astoundingly incompetent and their methods extremely ineffective in discovering LCM-involved mass shootings or, more likely, the 86% LCM share estimated in the *Mother Jones* study is simply far too high, and there were actually far fewer than 117 LCM-involved mass shootings to be discovered.

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Why, then, did the *Mother Jones* study yield such an extraordinarily high estimate of LCM involvement? As Koper notes, the Mother Jones study covered only incidents where magazine capacity could be determined. To Unfortunately, most news outlets may feel that magazine capacity is a detail worth reporting in their stories only if it is large. If so, the Mother Jones estimate of the LCM share reflects nothing more than the degree to which news outlets regard LCM use as newsworthy, but tells us nothing about the actual prevalence of LCM use in all mass shootings. Koper also notes that if cases "where magazine capacity could not be determined" are included, then half of cases were known to have involved LCMs. ⁷⁶ This observation, however, is meaningless if the *Mother Jones* sample itself excluded almost all the non-LCM cases in the first place. If news stories about shootings that did not involve LCMs made no mention of ammunition capacity, these would be treated by Koper as merely cases "where magazine capacity could not be determined"—not as the non-LCM shootings they actually were. Very likely, LCM use is common in shootings for which news reporters thought that ammunition capacity was worth mentioning, but this tells us nothing about how prevalent LCM use is in all mass shootings.

3. Koper's Claim that Assault Weapons Are Disproportionately Used for Criminal Purposes Is Both Irrelevant and Unsupported

Koper asserts that "assault weapons" (AWs) are disproportionately used to commit crimes, relative to their share of the total gun stock in the general population. This entire section of Koper's expert report is irrelevant to this case, which deals with LCMs, not AWs. Whether AWs are disproportionately used in crime has no bearing on whether a statewide ban on LCMs is likely to impact public safety. In any event, the claim is unsupported.

To support his claim, Koper necessarily must establish the share of the civilian gun stock that are AWs. He does not. He claims that prior to the federal AW ban, there were "approximately 1.5 million privately owned assault weapons in the United States" (p. 15, lines 8-10), citing for support two of his reports on the impact of the federal AW ban. His citation of two supporting sources is somewhat misleading since the first study does not contain any relevant information that was not included in the second one. The more serious problem is that neither study provides any credible support. One must follow a very long chain of indirect citations to finally track down the ultimate basis for his claim. The cited 2004 Koper report relied on two sources, but both of those sources relied in turn on the same two sources: two newspaper articles, one in the *Atlanta Journal Constitution*

⁷⁵ Koper Report, supra note 22, at 7.

⁷⁶ Id. at 7-8.

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and one appearing in the Cox Newspaper chain.⁷⁷ Both articles in turn relied on the same single source of information: an undocumented "estimate" of the AW share by an unnamed informant in the Bureau of Alcohol, Tobacco and Firearms (ATF).⁷⁸

Neither newspaper article explained how this ATF source came up with this estimate, why ATF should be regarded as a source of authoritative information on this topic, or why readers should regard the estimate as anything more than a guess or personal opinion. ATF does gather data on firearms manufactured in the United States, imported from other nations, and exported to other nations, but their data do not provide counts of specific gun models or even counts that distinguish semiautomatic rifles or shotguns from other kinds of rifles or shotguns. Further, these ATF data do not indicate how many guns of any kind, handguns or long guns, have the "military-style" features used to define some AWs. Thus, there are no ATF data that would allow the unnamed ATF informant to produce an evidence-based estimate of the number of AWs in the general civilian population. As far as Koper knows, his 1.5 million "estimate" was nothing more than a wild speculation by an ATF employee pressed by a reporter to toss out a guess on the spur of the moment.

In sum, Koper does not have any idea what the AW share of the general gun stock is, and therefore no basis at all for judging whether the AW share of crime guns is even slightly higher than the AW share of the entire civilian stock of firearms.

4. Do Criminals "Prefer" Assault Weapons and LCMs?

Koper nevertheless claims that criminals in some sense "prefer" AWs as crime weapons and that AWs and LCMs "are more attractive to criminals than lawful users." His sole support for this claim is his own 2004 report. Close examination of his cited pages, however, quickly reveals that absolutely nothing there supports a claim that criminals favor AWs or LCMs more than non-criminals, or that even pertains to the issue. Thus, Koper's claim of empirical support is baseless.

⁷⁷ Christopher S. Koper, et al., Criminal Use of Assault Weapons and High-Capacity Semiautomatic Firearms: An Updated Examination of Local and National Sources, J. Urb. Health 10, Oct. 2, 2017 ("Koper 2017").

⁷⁸ Steward, *supra* note 77; Am. Med. Ass'n, *supra* note 77.

⁷⁹ Koper Report, *supra* note 22, at 7.

⁸⁰ Id. at 7 (citing Koper 2017, supra note 77, at 17-18).

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Leaving aside Koper's dubious citation to an irrelevant source, what does genuinely relevant evidence reveal? One useful way to approach this issue is to ask: when criminals have access to AWs, do they choose to actually use them to commit crimes? A survey of a representative national sample of state prison inmates provided information on both (a) the guns that criminals owned in the month before the arrest that lead to their imprisonment, and (b) the guns they actually used in their crimes. Of those who owned a handgun of any kind in the preceding month, 71% were armed with a handgun when they committed the crime that got them sent to prison. This is consistent with the uncontroversial claim that criminals prefer to use handguns. However, of those who possessed a "militarytype" gun, only 16.7% were armed with such a gun when they committed their crimes. 81 Thus, compared to their availability, AWs were *under* represented among these felons' crime guns—some possessed them, but few used them in crime. These results were confirmed with respect to "assault rifles" in particular by surveys of inmates in Virginia prisons in 1992-93, which revealed that although 20% of the offenders had previously possessed "assault rifles," none had carried or fired one at their latest crime. 82 Thus, criminals not only do not "prefer" to use military-style guns to commit crimes, they are strongly disinclined to do so, even if they possess one. In sum, under any meaningful interpretation of "preference," criminals do not prefer to use assault weapons.

"Assault rifles" are clearly much larger than the handguns criminals really do favor, and even "assault weapon" handguns such as Uzis are generally larger than other handguns. Since criminals say they favor more concealable handguns (Wright and Rossi 1986, p. 163), this may largely explain why so few criminals prefer to use assault weapons to commit crimes.

5. What Koper's Evaluation of the Federal Assault Weapon Ban Actually Found

Koper's summary⁸³ of his findings on the impact of the federal AW/LCM ban⁸⁴ is highly selective and misleading. Here are the major conclusions that he drew in his 2004 report, but omitted from his current expert report:

⁸¹ Computed from U.S. Dep't of Justice, U.S. Bureau of Justice Statistics, Survey of State Prison Inmates, 1991 at 18-19, 33 (U.S. Gov't Printing Office 1993).

⁸² Commonwealth of Va., Criminal Justice Research Ctr., Dep't of Criminal Justice Servs., *Guns and Violent Crime* 63, Jan. 1994.

⁸³ Koper Report, *supra* note 22, at 14-19.

⁸⁴ Christopher S. Koper, Daniel J. Woods & Jeffrey A. Roth, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and*

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- "There has been no discernible reduction in the lethality and injuriousness of gun violence, based on indicators like the percentage of gun crimes resulting in death or the share of gunfire incidents resulting in injury, as we might have expected had the ban reduced crimes with both AWs and LCMs."85
- 2. "There has not been a clear decline in the use of ARs [assault rifles] in crime following implementation of the ban." 86
- 3. "The ban has not yet reduced the use of LCMs in crime."87
- 4. "We cannot clearly credit the ban with any of the nation's recent drop in gun violence."88
- 5. If the ban were renewed, its "effects on gun violence are likely to be small at best and perhaps too small for reliable measurement." 89

Conclusions 1, 4, and 5 would seem to be far more important conclusions than any of those stated in Koper's expert report, since they pertain to the ultimate goals of the federal ban—to reduce gun violence and make it less deadly. In his expert report, Koper chooses to instead stress minor intermediate goals that have no value in and of themselves if they do not lead to reductions in gun violence, such as increases in AW prices, 90 but completely censors out of his current summary of his findings the fact that he did not detect any effect of the ban on gun violence itself. He also gives undue emphasis to what he had accurately labeled in his 2004 report as "speculation" about what *might* have occurred had the federal

Gun Violence, 1994-2003 (2004), available at https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf ("Koper 2004").

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Exhibit 3 00068

⁸⁵ Id. at 96.

⁸⁶ Id. at 2.

⁸⁷ Id

⁸⁸ Id.

⁸⁹ Id. at 3.

⁹⁰ Koper Report, supra note 22, at 15.

⁹¹ Koper 2004, *supra* note 84, at 98.

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ban been renewed after its 2004 expiration, at the expense of the aforementioned evidence-based findings. 92

Koper states that "criminal use of assault weapons declined after the federal assault weapons ban was enacted," but this statement is less meaningful than an unwary reader might think. In this context, Koper was defining "assault weapons" narrowly as those specific guns banned by the federal law. He does not claim that there was any decline in criminal use of firearms having the properties that supposedly made AWs especially dangerous or useful for criminal purposes, such as lethality, higher rates of fire, or the ability to accept detachable (potentially large) magazines. Critics of the federal ban did not claim the ban would fail to reduce use of the specific banned guns; rather, they argued that criminals would just substitute other, non-banned gun types with the same crime-relevant properties that the banned guns possessed. And this is precisely what happened, as Koper himself acknowledged in his 2004 report: "Although the ban has been successful in reducing crimes with AWs, any benefits from this reduction are likely to have been outweighed by steady or rising use of non-banned semiautomatics with LCMs."

Koper nevertheless claims in his expert report that even if we consider substitution of "post-ban assault-type models" (a vague term he does not define), criminal use of AWs declined. Even though the federal AW ban applied to the entire nation, Koper has no national data to sustain this claim. He only cites evidence from his 2004 report that was drawn from police files in six non-randomly selected local jurisdictions, which provide no formal basis for generalizing the results to the United States, as a whole. In any case, these findings are essentially beside the point since they do not indicate any decline in criminal use of guns with the aforementioned crime-relevant properties, but rather only declines in use of a narrowly defined subset of specific gun types, those that were banned by the federal law. Merely taking account of certain specific "post-ban assault-type models" did not allow Koper to determine whether criminals were substituting unbanned guns with equally high rates of fire, equal lethality, and equal ability to accept detachable magazines.

Since Koper does not document even the slightest decline in criminal use of guns with these crime-related properties, his assertion that the federal AW ban reduced criminal use of "assault weapons" as he narrowly defined them is irrelevant to the law's impact on either the volume of gun crime or its deadliness.

⁹² See especially Koper Report, supra note 22, at 19-20.

⁹³ *Id.* at 16.

⁹⁴ Koper 2004, *supra* note 84, at 96.

⁹⁵ Koper Report, supra note 22, at 49-50.

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In particular, his claim that "almost 2,900 murders, robberies, and assaults with assault weapons were prevented in 2002" by the AW ban is especially trivial and potentially misleading. 96 Who cares if the ban reduced use of banned guns if criminals just substituted equally dangerous unbanned guns?

6. Koper Does Not Establish that the Assault Weapon Ban Caused Fewer Criminals to Use LCMs

Koper also somehow infers that the AW ban reduced criminal "use" of LCMs despite his complete lack of information on criminals using LCMs to commit violent crimes. When describing research on the topic, he uses slippery terms like "LCM firearms," "crimes with LCMs," and "crime guns equipped" with LCMs,"99 but he never cites any evidence directly bearing on criminal use of LCMs in crimes. He never shows that crimes with more than 10 rounds fired declined after the AW ban was implemented, or increased after it expired. As far as he can show, trends in criminal use of "guns equipped with LCMs" were inconsequential regarding numbers of people killed or injured with guns because criminals virtually never make use of larger magazine capacities by firing more rounds than they could fire with magazines of the capacity left unbanned. Indeed, this is precisely what Koper's own research published in scholarly journals indicates. Reedy and Koper found that less than 2% of gun crimes reported to the police involved over 10 rounds being fired. 100 Since crime victims are less likely to report less serious crimes to the police, if one included gun crimes not reported to the police in the computation, this percentage would be lower still. Despite its obvious relevance, Koper does not mention this 2003 finding in his current expert report.

It may well be true that a larger share of guns used by criminals were "equipped with" LCMs after the federal AW ban expired, as Koper claims, ¹⁰¹ but nothing in Koper's supposedly supportive evidence shows even a slight increase in criminals firing more than 10 rounds during their crimes. The Virginia study he

⁹⁶ Id. at 17 (emphasis added).

⁹⁷ Id. at 21.

⁹⁸ Id. at 18.

⁹⁹ Id.

¹⁰⁰ Reedy & Koper, supra note 6, at 154.

¹⁰¹ Koper Report, *supra* note 22, at 18.

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cites¹⁰² at best only pertains to trends in LCM *possession* among criminals before, during, and after the period when the ban was in place, not to trends in LCM *use* in crimes. And even trends in LCM possession cannot be reliably inferred from the Virginia police data unless one is willing to assume that the inclination of Virginia police to note the ammunition capacity of recovered crime guns in their reports was constant over time, unaffected by whether officers believed that the "LCM problem" had been to some extent "solved" by the federal ban on LCMs.

The data Koper cites from his own 2017 study is likewise irrelevant to whether criminal *use* of LCMs is frequent or increasing, since, like the Virginia study, it only bears (at best) on criminal *possession* of LCMs. ¹⁰³ He discusses evidence supposedly relevant to levels or trends in criminal *use* of LCMs, but a close reading of the 2017 research report reveals that his data actually only pertained to whether recovered crime guns happened to be equipped with LCMs or, worse yet, only whether the guns were "LCM compatible."

As to the increasing criminal *possession* of guns with LCMs, ¹⁰⁴ nothing in Koper's evidence establishes that this is any more characteristic of criminals than of non-criminals. As far as he can establish, increased criminal possession of guns with magazine capacities exceeding 10 rounds reflects nothing more than the trends prevailing in the general U.S. population as a whole. Semiautomatic guns have become more popular in the general population in recent decades, and it is common for such guns to come equipped with 15-round magazines or similarly sized magazines that would be prohibited by LCM bans. Criminals often get their guns by stealing them from non-criminals, ¹⁰⁵ so whatever trends in gun preference that occur among non-criminals are likely to be reflected in the guns acquired by criminals as well, even if criminals have no special preference for using LCMs in their crimes.

¹⁰² Id. at 18, 25 (citing David S. Fallis & James V. Grimaldi, Va. Date Show Drop in Criminal Firepower During Assault Gun Ban, Wash. Post (Jan. 23, 2011), available at http://www.washingtonpost.com/wp-dyn/content/article/2011/01/22/AR2011012203452.html ("Virginia Study")).

¹⁰³ Koper Report, *supra* note 22 (citing Koper 2017, *supra* note 77).

¹⁰⁴ Id. at 22.

¹⁰⁵ James D. Wright & Peter Rossi, *Armed and Considered Dangerous: A Survey of Felons and Their Firearms* (1986); Gary Kleck & Shun-Yung Wang, *The Myth of Big-Time Gun Trafficking and the Overinterpretation of Gun Tracing Data*, 56 UCLA L. Rev. 1233, 1233-1294 (2009).

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7. Koper Does Nothing to Rule Out the Possibility that the Associations He Reported Were Completely Spurious (Non-Causal)

Koper makes much of the crude bivariate associations between AW/LCM use and the seriousness of gun violence incidents, as measured by numbers of wounded victims, number of wounds per victim, number of fatalities, and the like (pp. 3-4, 8-9). His interpretation of the relevant evidence in his reports on the federal AW/LCM ban, however, ignores the central methodological difficulty of assessing the impact of AWs and LCMs on the outcomes of shootings. He only established that AW and/or LCM use are *associated with* more rounds fired, more victims per incident (e.g., p. 9), i.e. he reports simple two-variable statistical *associations*, but he does not establish whether these associations reflect an actual *causal effect* of AW/LCM use on numbers of shots fired and persons hurt, as opposed to spurious, *non*-causal associations. As even the least experienced researchers know, "correlation is not causation." More specifically, these associations may merely reflect the common impact of the shooter's lethality of intentions on both (1) the outcomes of shootings, and (2) the weapons and magazines that shooters choose to use in their crimes.

I know of no one, including Koper, who questions that shooters who want to shoot and kill more people are, on average, more likely to actually do so. That is, although the correlation is not perfect, the stronger the person's intention to hurt many victims, the more victims they will hurt. Further, given the extensive planning that goes into the more serious mass shootings, one would expect that these same intentions to shoot more victims would also cause the shooter to prepare to do so by selecting weaponry and magazines that they believed (correctly or not) were better suited to this task. As gun control scholar Philip Cook observed long ago, "the assailant's choice of weapon is a good indicator of his intent in assault offenses." I also know of no one, including Koper, who denies that criminals planning to hurt many people are more likely to choose weapons and magazines that they believe will be suited to doing so.

These propositions imply, in short, that the lethality of a shooter's intentions has a positive causal effect on both (a) use of AWs and LCMs, and (b) the number of victims hurt in shootings. This means that lethality of intent will create a spurious (non-causal) positive association between (a) use of AWs or LCMs and (b) the number of victims killed or injured—even if the use of AWs or LCMs had no causal effect of its own on any of these outcomes. Unless an analyst statistically controls for lethality of intent, he will fail to detect the spurious character of the association between (a) and (b), and will erroneously conclude, as Koper apparently did, that the association instead reflected an actual causal effect of (a)

¹⁰⁶ Phillip J. Cook, *The Role of Firearms in Violent Crime*, in *Criminal Violence* 248 (Marvin E. Wolfgang & Neil Alan Weiner, eds. 1982).

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on (b). Koper never controlled for lethality of the shooter's intent, and thus did nothing to rule out the possibility that the association between (a) and (b) is entirely spurious. Indeed, to my knowledge, Koper has not even acknowledged this issue at a theoretical or conceptual level; certainly, he does address it in his expert report. Of course, if AW/LCM has no actual causal effect on crime outcomes, restricting AWs or LCMs will not cause a reduction in gun violence or its seriousness.

As previously noted, Koper failed to describe any plausible causal mechanisms by which LCMs would cause mass shooters to fire more total rounds, inflict more wounds per victim, or kill or injure more victims per incidents. In this light, his failure to rule out the likely spurious character of this LCM/harms correlations is especially damaging. As far as Koper or his readers can tell, LCM use has no causal effect at all on any of the measures of harm in mass shootings that Koper discusses, and the associations he reports are purely the result of more lethal offender intentions increasing both harms inflicted and the use of LCMs.

This same critical shortcoming applies with equal force to the unpublished study by Koper's graduate student cited on page 9 and Koper's 2017 study summarized on pages 20-22. Nothing was done in either study to establish that any of the LCM/harm associations reflected a causal effect of LCM use rather being totally spurious associations.

It is worth noting that Koper never explicitly states that LCMs *cause* more harm in gun crimes, such as causing more people to be killed or wounded. Instead, he consistently uses ambiguous words and phrases such "crimes committed with these weapons are *likely to result in* more injuries, and more lethal injuries, than crimes committed with other firearms" or "attacks with ... guns equipped with LCMs *tend to result in*" more harm. The unwary reader is almost certainly likely to interpret a phrase like "result in" as implying causation, but scholars make a sharp distinction between causal effects and spurious associations. The result of attacks by offenders with LCMs may well have, on average, more harmful *results* than attacks without LCMs, but this by itself does not establish that LCM use caused those results. Koper's use of this slippery terminology in this way allows him to strongly hint to readers a conclusion that his research methods cannot back up.

¹⁰⁷ Koper Report, supra note 22, at 3.

¹⁰⁸ Id. at 8.

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VI. REFERENCES

- Adam Nagourney, A Single, Terrifying Moment: Shots, Scuffle, Some Luck, N.Y. Times A1, Jan. 10, 2011, available at http://www.nytimes.com/2011/01/10/us/10reconstruct.html.
- Am. Med. Ass'n Council on Scientific Affairs, Assault Weapons as a Public Health Hazard in the United States, 267 JAMA 3067-3070 (1992).
- Cal. Dep't of Justice, Crime in California 2016, tbl. 6 (2017).
- Christopher S. Koper, *America's Experience with the Federal Assault Weapons Ban, 1994-2004*, in *Reducing Gun Violence in America* 157-171 (Daniel W. Webster and Jon S. Vernick, eds. 2013).
- Christopher S. Koper, Daniel J. Woods & Jeffrey A. Roth, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun Markets and Gun Violence*, 1994-2003 (2004), available at https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf.
- Christopher S. Koper, et al., Criminal Use of Assault Weapons and High-Capacity Semiautomatic Firearms: An Updated Examination of Local and National Sources, J. Urb. Health, Oct. 2, 2017.
- Commonwealth of Va., Criminal Justice Research Ctr., Dep't of Criminal Justice Servs., *Guns and Violent Crime*, Jan. 1994.
- David S. Fallis & James V. Grimaldi, *Va. Date Show Drop in Criminal Firepower During Assault Gun Ban*, Wash. Post (Jan. 23, 2011), *available at* http://www.washingtonpost.com/wp-dvn/content/article/2011/01/22/AR2011012203452.html
- D.C. Reedy & Christopher S. Koper, *Impact of Handgun Types on Gun Assault Outcomes*, 9 Injury Prevention 151-155 (2003).
- Expert Report of Dr. Christopher S. Koper, *Duncan v. Becerra*, No. 3:17-cv-01017-BEN-JLB (Oct. 6, 2017).
- Expert Report of Dr. Louis Klarevas, *Duncan v. Becerra*, No. 3:17-cv-01017-BEN-JLB (Oct. 6, 2017).
- Expert Report of Dr. Lucy P. Allen, *Duncan v. Becerra*, No. 3:17-cv-01017-BEN-JLB (Oct. 6, 2017).
- Gary Kleck, Chapter 6: The Frequency of Defensive Gun Use: Evidence and Disinformation, in Gary Kleck & Don B. Kates, Armed: New Perspectives in

Case 3:17-cv-01017-BEN-JLB Document 50-8 Filed 03/05/18 PageID.4653 Page 75 of 195

- Gun Control 213-284 (2001).
- Gary Kleck, The Effect of Large-Capacity Magazines on the Casualty Count of Mass Shootings: The Plausibility of Linkages, 17 Just. Res. & Pol'y 28-47 (2016).
- Gary Kleck & Shun-Yung Wang, *The Myth of Big-Time Gun Trafficking and the Overinterpretation of Gun* Tracing Data, 56 UCLA L. Rev. 1233, 1233-1294 (2009).
- Grant Duwe, Mass Murder in the United States: A History (2007).
- Gun Violence Archive, Gun Violence Archive 2017, http://www.gunviolencearchive.org (last visited Nov. 3, 2017).
- James D. Wright & Peter Rossi, Armed and Considered Dangerous: A Survey of Felons and Their Firearms (1986).
- James D. Steward & Andrew Alexander, Firepower: Assault Weapons in America 1 (Cox Newspapers 1989).
- Louis Klarevas, Rampage Nation: Securing America from Mass Shootings (2016).
- Mark Follman, Gavin Aronsen & Deanna Pan, *US Mass Shootings*, 1982-2017: Data from Mother Jones' Investigation, Mother Jones, http://www.motherjones.com/politics/2012/12/mass-shootings-motherjones-full-data/ (last updated Oct. 18, 2017).
- Phillip J. Cook, *The Role of Firearms in Violent Crime*, in *Criminal Violence* 236-91, (Marvin E. Wolfgang & Neil Alan Weiner, eds. 1982).
- Press Release, Violence Policy Center, *High-Capacity Ammunition Magazines:*The Common Thread That Runs Through Mass Shootings (Jan. 11, 2011),

 available at http://www.vpc.org/press/press-release-archive/high-capacity-ammunition-magazines-the-common-thread-that-runs-through-mass-shootings/.
- U.S. Dep't of Justice, U.S. Bureau of Justice Statistics, Survey of State Prison Inmates, 1991 (U.S. Gov't Printing Office 1993).
- U.S. Dep't of Justice, U.S. Bureau of Justice Statistics, *Criminal Victimization in the United States*, 2005 Statistical Tables (2006), tbl. 91, available at https://www.bjs.gov/content/pub/pdf/cvus05.pdf.
- U.S. Dep't of Justice, U.S. Bureau of Justice Statistics, *Criminal Victimization in the United States*, 2008 Statistical Tables (2011), tbl. 66, available at

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https://www.bjs.gov/content/pub/pdf/cvus0804.pdf.

U.S. Fed. Bureau of Investigation, Criminal Justice Info. Servs. Div., *Crime in the United States*, 2016, tbl. 1, available at https://ucr.fbi.gov/crime-in-the-u.s.-2016/topic-pages/tables/table-1 (last visited Nov. 3, 2017).

Violence Policy Center, *High-Capacity Ammunition Magazines Are the Common Thread Running Through Most Mass Shootings in the United States* (July 1, 2017), *available at http://gunviolence.issuelab.com/resource/high-capacity-ammunition-magazines-are-the-common-thread-running-through-most-mass-shootings-in-the-united-states.html.*

VIII. ATTACHMENTS

Attached at Exhibit 1 and made a part of this report is a copy of my curriculum vitae, including a list of all my published works from the last ten years.

Dated: November 3, 2017

Dr. Gary kleck

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EXHIBIT 1

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CURRICULUM VITAE

GARY KLECK

(Updated October 5, 2017)

PERSONAL

Place of Birth:

Lombard, Illinois

Date of Birth:

March 2, 1951

Address:

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CURRENT POSITION

David J. Bordua Emeritus Professor of Criminology, Florida State University

COURTESY APPOINTMENT

Courtesy Professor, College of Law, Florida State University

PROFESSIONAL MEMBERSHIPS

American Society of Criminology

Academy of Criminal Justice Sciences

EDUCATION

A.B. 1973 - University of Illinois, with High Honors and with Distinction in

Sociology

A.M. 1975 - University of Illinois at Urbana, in Sociology

Ph.D. 1979 - University of Illinois at Urbana, in Sociology

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ACADEMIC HONORS

National Merit Scholar, 1969

Freshman James Scholar, University of Illinois, 1969

Graduated from University of Illinois with High Honors and with Distinction in Sociology, 1973

University of Illinois Foundation Fellowship in Sociology, 1975-76

1993 Winner of the Michael J. Hindelang Award of the American Society of Criminology, for the book that made "the most outstanding contribution to criminology" (for Point Blank: Guns and Violence in America).

Awarded Named Professorship, Florida State University, 2012.

Nominated for University Teaching Award, Florida State University, 2014.

TEACHING POSITIONS

Fall, 1991 to May 2016	Professor, College of Criminology and Criminal Justice, Florida State University	
Fall, 1984 to	Associate Professor, School of Criminology,	
Spring, 1991	Florida State University.	
Fall, 1979	Assistant Professor, School of Criminology,	
to Spring, 1984	Florida State University.	
Fall, 1978 to	Instructor, School of Criminology,	
Spring, 1979	Florida State University.	

COURSES TAUGHT

Criminology, Applied Statistics, Regression, Introduction to Research Methods, Law Enforcement, Research Methods in Criminology, Guns and Violence, Violence Theory Seminar, Crime Control, Assessing Evidence, Survey Research, Research Design and Causal Inference.

DISSERTATION

Homicide, Capital Punishment, and Gun Ownership: An Aggregate Analysis of U.S. Homicide Trends from 1947 to 1976. Department of Sociology, University of

2 Exhibit 3 00079

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Illinois, Urbana. 1979.

PUBLICATIONS (sole author unless otherwise noted)

BOOKS

1991, Point Blank: Guns and Violence in America. Hawthorne, N.Y.: Aldine de 2005 Gruyter. Winner of the 1993 Michael J. Hindelang award of the American Society of Criminology. Republished in 2005 in paperback by Transaction Publishers.

Reviewed in <u>Contemporary Sociology</u>, <u>American Journal of Sociology</u>, <u>Social Forces</u>, <u>Journal of Criminal Law and Criminology</u>, <u>The Criminologist</u>, <u>The Public Interest</u>, <u>Criminal Law Forum</u>, <u>Social Science Review</u>, <u>Criminal Justice Abstracts</u>, <u>Crime</u>, <u>Criminal Justice and Law Enforcement</u>, <u>Newsletter of Public Policy Currents</u>, <u>Commonweal</u>, <u>Choice</u>, and others.

- 1997 Targeting Guns: Firearms and their Control. Hawthorne, N.Y.: Aldine de Gruyter.
- 1997 <u>The Great American Gun Debate: Essays on Firearms and Violence</u> (with Don B. Kates, Jr.). San Francisco: Pacific Research Institute for Public Policy.
- 2001 (with Don B. Kates) <u>Armed: New Perspectives on Gun Control</u>. N.Y.: Prometheus Books.

Selected to <u>Choice: Current Reviews for Academic Libraries</u>' 39th annual "Outstanding Academic Title List," awarded for "excellence in scholarship and presentation, the significance of their contribution to their field, and their value as an important treatment of their topic." Awarded to less than one percent of books.

2017 (with Brion Sever) <u>Punishment and Crime: The Limits of Punitive Crime Control</u>. NY: Routledge.

RESEARCH MONOGRAPH

1979 Bordua, David J., Alan J. Lizotte, and Gary Kleck. <u>Patterns of Firearms</u> Ownership, Use and Regulation in Illinois. A Report to the Illinois Law Enforcement Commission, Springfield, Illinois.

ARTICLES IN PEER-REVIEWED JOURNALS

1979 "Capital punishment, gun ownership, and homicide." <u>American Journal of Sociology</u> 84(4):882-910.

3 Exhibit 3 00080

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- "Racial discrimination in criminal sentencing: A critical evaluation of the evidence with additional evidence on the death penalty." <u>American Sociological Review</u> 46(6):783-804.
- 1982 "On the use of self-report data to determine the class distribution of criminal behavior." American Sociological Review 47(3):427-33.
- 1983 (with David Bordua) "The factual foundation for certain key assumptions of gun control." Law and Policy Quarterly 5(3):271-298.
- "Life support for ailing hypotheses: modes of summarizing the evidence on racial discrimination in criminal sentencing." <u>Law and Human Behavior</u> 9(3):271-285.
- 1986 "Evidence that 'Saturday Night Specials' not very important for crime." Sociology and Social Research 70(4):303-307.
- 1987 "American's foreign wars and the legitimation of domestic violence." <u>Sociological Inquiry</u> 57(3):237-250.
- "Crime control through the private use of armed force." <u>Social Problems</u> 35(1):1-21.
- 1988 "Miscounting suicides." Suicide and Life-Threatening Behavior 18(3):219-236.
- 1990 (with Susan Sayles) "Rape and resistance." Social Problems 37(2):149-162.
- 1991 (with Karen McElrath) "The effects of weaponry on human violence." <u>Social</u> Forces 69(3):669-92.
- 1993 (with Miriam DeLone) "Victim resistance and offender weapon effects in robbery." Journal of Quantitative Criminology 9(1):55-82.
- 1993 (with E. Britt Patterson) "The impact of gun control and gun ownership levels on violence rates." <u>Journal of Quantitative Criminology</u> 9(3):249-287.
- 1993 "Bad data and the 'Evil Empire': interpreting poll data on gun control." <u>Violence and Victims</u> 8(4):367-376.
- 1995 "Guns and violence: an interpretive review of the field." <u>Social Pathology</u> 1(1):12-47.
- 1995 "Using speculation to meet evidence." <u>Journal of Quantitative Criminology</u> 11(4):411-424.
- 1995 (with Marc Gertz) "Armed resistance to crime: the prevalence and nature of self-

4 Exhibit 3 00081

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- defense with a gun." Journal of Criminal Law & Criminology 86(1):150-187.
- "Crime, culture conflict and sources of support for gun control: a multi-level application of the General Social Surveys." <u>American Behavioral Scientist</u> 39(4):387-404.
- (with Chester Britt III and David J. Bordua) "A reassessment of the D.C. gun law: some cautionary notes on the use of interrupted time series designs for policy impact assessment." <u>Law & Society Review</u> 30(2):361-380.
- (with Chester Britt III and David J. Bordua) "Avoidance and misunderstanding." <u>Law & Society Review</u> 30(2):393-397.
- 1997 (with Marc Gertz) "The illegitimacy of one-sided speculation: getting the defensive gun use estimate down." <u>Journal of Criminal Law and Criminology</u> 87(4):1446-1461.
- 1997 (with Tomislav Kovandzic and Marc Gertz) "Defensive gun use: vengeful vigilante imagery vs. reality: results from the National Self-Defense Survey." Journal of Criminal Justice 26(3):251-258.
- 1998 (with Marc Gertz) "Carrying guns for protection: results from the National Self-Defense Survey." <u>Journal of Research in Crime and Delinquency</u> 35(2):193-224.
- 1998 "What are the risks and benefits of keeping a gun in the home?" <u>Journal of the</u> American Medical Association 280(5):473-475.
- 1998 (with Charles Crawford and Ted Chiricos) "Race, racial threat, and sentencing of habitual offenders." <u>Criminology</u> 36(3):481-511.
- 1999 (with Michael Hogan) "A national case-control study of homicide offending and gun ownership." Social Problems 46(2):275-293.
- 1999 "BATF gun trace data and the role of organized gun trafficking in supplying guns to criminals." St. Louis University Public Law Review 18(1):23-45.
- 2001 "Can owning a gun really triple the owner's chances of being murdered?" Homicide Studies 5:64-77.
- 2002 (with Theodore Chiricos) "Unemployment and property crime: a target-specific assessment of opportunity and motivation as mediating factors." <u>Criminology</u> 40(3):649-680.
- 2004 "Measures of gun ownership levels for macro-level crime and violence research."
 Journal of Research in Crime and Delinquency 41(1):3-36.

5 Exhibit 3 00082

Case 3:17-cv-01017-BEN-JLB Document 50-8 Filed 03/05/18 PageID.4661 Page 83 of 195

- 2004 (with Jongyeon Tark) "Resisting crime: the effects of victim action on the outcomes of crimes." Criminology 42(4):861-909.
- 2005 (with Brion Sever, Spencer Li, and Marc Gertz) "The missing link in general deterrence research." <u>Criminology</u> 43(3):623-660.
- 2006 (with Jongyeon Tark and Jon J. Bellows) "What methods are most frequently used in research in criminology and criminal justice?" <u>Journal of Criminal Justice</u> 34(2):147-152.
- 2007 "Are police officers more likely to kill African-American suspects?" Psychological Reports 100(1):31-34.
- 2007 (with Shun-Yung Wang and Jongyeon Tark) "Article productivity among the faculty of criminology and criminal justice doctoral programs, 2000-2005." Journal of Criminal Justice Education 18(3):385-405.
- 2008 (with Jongyeon Tark, Laura Bedard, and Dominique Roe-Sepowitz) "Crime victimization and divorce." <u>International Review of Victimology</u> 15(1):1-17.
- 2009 "The worst possible case for gun control: mass shootings in schools." American Behavioral Scientist 52(10):1447-1464.
- 2009 (with Shun-Yung Wang) "The myth of big-time gun trafficking and the overinterpretation of gun tracing data." UCLA Law Review 56(5):1233-1294.
- 2009 (with Tomislav Kovandzic) "City-level characteristics and individual handgun ownership: effects of collective security and homicide." <u>Journal of Contemporary</u> <u>Criminal Justice</u> 25(1):45-66.
- 2009 (with Marc Gertz and Jason Bratton) "Why do people support gun control?" Journal of Criminal Justice 37(5):496-504.
- 2011 (with James C. Barnes) "Article productivity among the faculty of criminology and criminal justice doctoral programs, 2005-2009." <u>Journal of Criminal Justice Education</u> 22(1):43-66.
- 2011 (with Tomislav Kovandzic, Mark Saber, and Will Hauser). "The effect of perceived risk and victimization on plans to purchase a gun for self-protection." <u>Journal of Criminal Justice</u> 39(4):312-319.
- 2013 (with Will Hauser) "Guns and fear: a one-way street?" <u>Crime and Delinquency</u> 59:271-291.
- 2013 "Gun control after Heller and McDonald: what cannot be done and what ought to be done." Fordham Urban Law Journal 39(5):1383-1420.

6 Exhibit 3 00083

Case 3:17-cv-01017-BEN-JLB Document 50-8 Filed 03/05/18 PageID.4662 Page 84 of 195

- 2013 (with J. C. Barnes) "Deterrence and macro-level perceptions of punishment risks: is there a "collective wisdom?" Crime and Delinguency 59(7):1006-1035.
- 2013 (with Tomislav Kovandzic and Mark Schaffer) "Estimating the causal effect of gun prevalence on homicide rates: A local average treatment effect approach." <u>Journal of Quantitative Criminology</u> 28(4):477-541.
- 2014 (with Jongyeon Tark) "Resisting rape: the effects of victim self-protection on rape completion and injury." <u>Violence Against Women</u> 23(3): 270-292.
- 2014 (with J. C. Barnes) "Do more police generate more crime deterrence?" Crime and Delinquency 60(5):716-738.
- 2015 "The impact of gun ownership rates on crime rates: a methodological review of the evidence." <u>Journal of Criminal Justice</u> 43(1):40-48.
- 2016 (with Tom Kovandzic and Jon Bellows) "Does gun control reduce violent crime? <u>Criminal Justice Review</u> 41:488-513.
- 2016 "Objective risks and individual perceptions of those risks." <u>Criminology & Public Policy</u> 15:767-775.
- 2016 (with Dylan Jackson) "What kind of joblessness affects crime? A national case-control study of serious property crime." <u>Journal of Quantitative</u> Criminology 32:489-513.
- 2016 "Large-capacity magazines and the casualty counts in mass shootings: the plausibility of linkages." <u>Justice Research and Policy</u> 17:28-47.
- 2016 (with Will Hauser) "Confidence in the police and fear of crime: do police force size and productivity matter?" <u>American Journal of Criminal Justice</u> 42:86-111.
- 2016 (with Dylan Jackson) "Does crime cause punitiveness?" <u>Crime & Delinquency</u>. Published online 3-27-16.
- 2017 (with Bethany Mims) "Article productivity among the faculty of criminology and criminal justice doctoral programs, 2010-2014." <u>Journal of Criminal Justice</u> <u>Education</u> 28(4):467-487.
- 2017 (with Moonki Hong) "The short-term deterrent effect of executions: An analysis of daily homicide counts." Forthcoming in <u>Crime & Delinquency.</u>

OTHER PUBLISHED ARTICLES

1985 "Policy lessons from recent gun control research." Law and Contemporary

7 Exhibit 3 00084

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- Problems 49(1):35-62.
- 1992 "Assault weapons aren't the problem." New York Times September 1, 1992, p. A15. Invited Op-Ed page article.
- 1993 "The incidence of violence among young people." <u>The Public Perspective</u> 4:3-6. Invited article.
- 1994 "Guns and self-protection." <u>Journal of the Medical Association of Georgia</u> 83:42. Invited editorial.
- 1998 "Using speculation to meet evidence: reply to Alba and Messner." <u>Journal on Firearms and Public Policy</u> 9:13-49.
- 1998 "Has the gun deterrence hypothesis been discredited?" <u>Journal on Firearms and Public Policy</u> 10:65-75.
- 1999 "There are no lessons to be learned from Littleton." <u>Criminal Justice Ethics</u> 18(1):2, 61-63. Invited commentary.
- 1999 "Risks and benefits of gun ownership reply." <u>Journal of the American Medical Association</u> 282(2):136-136.
- 1999 "The misfire that wounded Colt's." <u>New York Times</u> October 23, 1999. Invited Op-Ed page article.
- 1999 "Degrading scientific standards to get the defensive gun use estimate down." <u>Journal on Firearms and Public Policy</u> 11:77-137.
- 2000 "Guns aren't ready to be smart." New York Times March 11, 2000. Invited Op-Ed page article.
- 2000 (with Chester Britt III and David J. Bordua) "The emperor has no clothes: using interrupted time series designs to evaluate social policy impact." <u>Journal on</u> <u>Firearms and Public Policy</u> 12:197-247.
- 2001 "School lesson: armed self-defense works." <u>Wall Street Journal</u> March 27, 2001. Invited opinion article.
- 2001 "Impossible policy evaluations and impossible conclusions: a comment on Koper and Roth." <u>Journal of Quantitative Criminology</u> 17:75-80.
- 2001 "Absolutist politics in a moderate package: prohibitionist intentions of the gun control movement." <u>Journal on Firearms and Public Policy</u> 13:1-43.
- 2002 "Research agenda on guns, violence, and gun control." Journal on Firearms and

8 Exhibit 3 00085

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Public Policy 14:51-72.

- 2006 "Off target." New York Sun January 5, 2006. Invited opinion article.
- 2009 "How not to study the effect of gun levels on violence rates." <u>Journal on Firearms</u> and Public Policy 21:65-93.
- 2011 "Mass killings aren't the real gun problem --- how to tailor gun-control measures to common crimes, not aberrant catastrophes." Wall Street Journal January 15, 2011. Invited opinion article.
- 2011 "The myth of big-time gun trafficking." Wall Street Journal May 21, 2011. Invited opinion article.
- 2015 "Defensive gun ownership is not a myth: why my critics still have it wrong." Politico Magazine, February 17, 2015. Online at Politico.Com.
- 2016 "The impact on crime of state laws allowing concealed weapon carrying among 18-20 year-olds." To appear in the <u>Journal on Firearms and</u> <u>Public Policy.</u>
- 2018 "Guns and suicide." <u>Handbook on Gun Studies</u>. Edited by Jennifer Carlson, Kristin Goss, and Harel Shapira. NY: Routledge. In press.
- 2018 "Gun Control." <u>The Handbook of Social Control</u>, edited by Matthew Deflem. NY: Wiley. In press.

BOOK CHAPTERS

- 1984 (with David Bordua) "The assumptions of gun control." Pp. 23-48 in Don B. Kates, Jr. (ed.) <u>Firearms and Violence: Issues of Regulation</u>. Cambridge, Mass.: Ballinger.
 - (Also appeared in <u>Federal Regulation of Firearms</u>, report prepared by the Congressional Research Service, Library of Congress, for the Committee on the Judiciary, United States Senate, 1982).
- 1984 "The relationship between gun ownership levels and rates of violence in the U.S." Pp. 99-135 in Kates, above.
- 1984 "Handgun-only gun control: a policy disaster in the making." Pp. 167-199 in Kates, above.
- 1996 "Racial discrimination in criminal sentencing." Pp. 339-344 in <u>Crime and Society</u>, Volume III Readings: Criminal Justice, edited by George Bridges, Robert D. Crutchfield, and Joseph G. Weis. Thousand Oaks, Calif.: Pine

9 Exhibit 3 00086

Case 3:17-cv-01017-BEN-JLB Document 50-8 Filed 03/05/18 PageID.4665 Page 87 of 195

- Forge Press.
- 1996 "Gun buy-back programs: nothing succeeds like failure." Pp. 29-53 in Under Fire: Gun Buy-Backs, Exchanges and Amnesty Programs, edited by Martha R. Plotkin. Washington, D.C.: Police Executive Research Forum.
- 2000 "Firearms and crime." Pp. 230-234 in the <u>Encyclopedia of Criminology and Deviant Behavior</u>, edited by Clifton D. Bryant. Philadelphia: Taylor & Francis, Inc.
- 2001 (with Leroy Gould and Marc Gertz) "Crime as social interaction." Pp. 101-114 in What is Crime?: Controversy over the Nature of Crime and What to Do About It, edited by Stuart Henry and Mark M. Lanier. Lanham, Md.: Rowman and Littlefield.
- 2003 "Constricted rationality and the limits of general deterrence." Chapter 13 in Punishment and Social Control: Enlarged Second Edition, edited by Thomas G. Blomberg. New York: Aldine de Gruyter.
- 2004 "The great American gun debate: what research has to say." Pp. 470-487 in <u>The Criminal Justice System: Politics and Policies</u>, 9th edition, edited by George F. Cole, Marc Gertz, and Amy Bunger. Belmont, CA: Wadsworth-Thomson.
- 2008 "Gun control." Article in <u>The Encyclopedia of Social Problems</u>, edited by Vincent N. Parrillo. Thousand Oaks, CA: Sage.
- 2009 "Guns and crime." Invited chapter. Pp. 85-92 in 21st Century Criminology: A Reference Handbook, edited by J. Mitchell Miller. Thousand Oaks, CA: Sage.
- 2012 Kovandzic, Tomislav, Mark E. Schaffer, and Gary Kleck. "Gun prevalence, homicide rates and causality: A GMM approach to endogeneity bias." Chapter 6, pp. 76-92 in The Sage Handbook of Criminological Research Methods, edited by David Gadd, Susanne Karstedt, and Steven F. Messner. Thousand Oaks, CA: Sage.
- 2012 (with Kelly Roberts) "What survey modes are most effective in eliciting self-reports of criminal or delinquent behavior?" Pp. 415-439 in <u>Handbook of Survey Methodology</u>, edited by Lior Gideon. NY: Springer.
- 2013 "An overview of gun control policy in the United States." Pp. 562-579 in <u>The Criminal Justice System</u>, 10th edition, Edited by George F. Cole and Marc G. Gertz. Wadsworth.
- 2014 "Deterrence: actual vs. perceived risk of punishment. Article in <u>Encyclopedia of Criminology and Criminal Justice</u>. Berlin: Springer Verlag.

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- 2018 "Gun control." Chapter in <u>The Handbook of Social Control</u>. New York: Springer. Forthcoming.
- 2018 "Guns and suicide." Chapter in <u>Handbook of Gun Studies</u>. NY: Routledge. Forthcoming.

BOOK REVIEWS

- 1978 Review of Murder in Space City: A Cultural Analysis of Houston Homicide Patterns, by Henry Lundsgaarde. Contemporary Sociology 7:291-293.
- 1984 Review of <u>Under the Gun</u>, by James Wright et al. <u>Contemporary Sociology</u> 13:294-296.
- 1984 Review of Social Control, ed. by Jack Gibbs. Social Forces 63: 579-581.
- 1985 Review of <u>Armed and Considered Dangerous</u>, by James Wright and Peter Rossi, <u>Social Forces</u> 66:1139-1140.
- 1988 Review of <u>The Citizen's Guide to Gun Control</u>, by Franklin Zimring and Gordon Hawkins, <u>Contemporary Sociology</u> 17:363-364.
- 1989 Review of <u>Sociological Justice</u>, by Donald Black, <u>Contemporary Sociology</u> 19:261-3.
- 1991 Review of <u>Equal Justice and the Death Penalty</u>, by David C. Baldus, George G. Woodworth, and Charles A. Pulaski, Jr. Contemporary Sociology 20:598-9.
- 1999 Review of <u>Crime is Not the Problem</u>, by Franklin E. Zimring and Gordon Hawkins. <u>American Journal of Sociology</u> 104(5):1543-1544.
- 2001 Review of <u>Gun Violence: the Real Costs</u>, by Philip J. Cook and Jens Ludwig. <u>Criminal Law Bulletin</u> 37(5):544-547.
- 2010 Review of Homicide and Gun Control: The Brady Handgun Violence Prevention Act and Homicide Rates, by J. D. Monroe. Criminal Justice Review 35(1):118-120.

LETTERS PUBLISHED IN SCHOLARLY JOURNALS

- 1987 "Accidental firearm fatalities." American Journal of Public Health 77:513.
- 1992 "Suicide in the home in relation to gun ownership." <u>The New England Journal of Medicine</u> 327:1878.
- 1993 "Gun ownership and crime." Canadian Medical Association Journal 149:1773-

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1774.

- 1999 "Risks and benefits of gun ownership." <u>Journal of the American Medical</u> Association 282:136.
- 2000 (with Thomas Marvell) "Impact of the Brady Act on homicide and suicide rates." Journal of the American Medical Association 284:2718-2719.
- 2001 "Violence, drugs, guns (and Switzerland)." Scientific American 284(2):12.
- 2002 "Doubts about undercounts of gun accident deaths." <u>Injury Prevention Online</u> (September 19, 2002). Published online at http://ip.bmjjournals.com/cgi/eletters/8/3/252.
- 2005 "Firearms, violence, and self-protection." Science 309:1674. September 9, 2005.

UNPUBLISHED REPORT

1987 Violence, Fear, and Guns at Florida State University: A Report to the President's Committee on Student Safety and Welfare. Reports results of campus crime victimization survey and review of campus police statistics on gun violence (32 pages).

RESEARCH FUNDING

- "The Impact of Drug Enforcement on Urban Drug Use Levels and Crime Rates."\$9,500 awarded by the U.S. Sentencing Commission.
- "Testing a Fundamental Assumption of Deterrence-Based Crime Control Policy."
 \$80,590 awarded by the Charles E. Culpeper Foundation to study the link between actual and perceived punishment levels.

PRESENTED PAPERS

- 1976 "Firearms, homicide, and the death penalty: a simultaneous equations analysis." Presented at the annual meetings of the Illinois Sociological Association, Chicago.
- 1979 "The assumptions of gun control." Presented at the Annual Meetings of the American Sociological Association, New York City.
- 1980 "Handgun-only gun control: A policy disaster in the making." Presented at the Annual Meetings of the American Society of Criminology, Washington, D.C.
- 1981 "Life support for ailing hypotheses: Modes of summarizing the evidence on racial

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- discrimination." Presented at the Annual Meetings of the American Society of Criminology, Toronto.
- 1984 "Policy lessons from recent gun control research." Presented at the Duke University Law School Conference on Gun Control.
- 1985 "Policy lessons from recent gun control research." Presented at the Annual Meetings of the American Society of Criminology, San Diego.
- 1986 "Miscounting suicides." Presented at the Annual Meetings of the American Sociological Association, Chicago.
- 1987 (with Theodore G. Chiricos, Michael Hays, and Laura Myers) "Unemployment and crime: a comparison of motivation and opportunity effects." Annual meetings of the American Society of Criminology, Montreal.
- 1988 "Suicide, guns and gun control." Presented at the Annual Meetings of the Popular Culture Association, New Orleans.
- 1988 (with Susan Sayles) "Rape and resistance." Presented at the Annual Meetings of the American Society of Criminology, Chicago, Ill.
- 1989 (with Karen McElrath) "The impact of weaponry on human violence." Presented at the Annual Meetings of the American Sociological Association, San Francisco.
- (with Britt Patterson) "The impact of gun control and gun ownership levels on city violence rates." Presented at the Annual Meetings of the American Society of Criminology, Reno.
- 1990 "Guns and violence: a summary of the field." Presented at the Annual Meetings of the American Political Science Association, Washington, D.C.
- 1991 "Interrupted time series designs: time for a re-evaluation." Presented at the Annual Meetings of the American Society of Criminology, New Orleans.
- (with Chester Britt III and David J. Bordua) "The emperor has no clothes: Using interrupted time series designs to evaluate social policy impact." Presented at the Annual Meetings of the American Society of Criminology, Phoenix.
- "Crime, culture conflict and support for gun laws: a multi-level application of the General Social Surveys." Presented at the Annual Meetings of the American Society of Criminology, Phoenix.
- 1994 (with Marc Gertz) "Armed resistance to crime: the prevalence and nature of selfdefense with a gun." Presented at the Annual Meetings of the American Society

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- of Criminology, Miami.
- (with Tom Jordan) "The impact of drug enforcement and penalty levels on urban drug use levels and crime rates." Presented at the Annual Meetings of the American Society of Criminology, Boston.
- (with Michael Hogan) "A national case-control study of homicide offending and gun ownership." Presented at the Annual Meetings of the American Society of Criminology, Chicago.
- 1997 "Evaluating the Brady Act and increasing the utility of BATF tracing data." Presented at the annual meetings of the Homicide Research Working Group, Shepherdstown, West Virginia.
- 1997 "Crime, collective security, and gun ownership: a multi-level application of the General Social Surveys." Presented at the Annual Meetings of the American Society of Criminology, San Diego.
- 1998 (with Brion Sever and Marc Gertz) "Testing a fundamental assumption of deterrence-based crime control policy." Presented at the Annual Meetings of the American Society of Criminology, Washington, D.C.
- 1998 "Measuring macro-level gun ownership levels." Presented at the Annual Meetings of the American Society of Criminology, Washington, D.C.
- "Can owning a gun really triple the owner's chances of being murdered?" Presented at the Annual Meetings of the American Society of Criminology, Toronto.
- 2000 "Absolutist politics in a moderate package: prohibitionist intentions of the gun control movement." Presented at the Annual Meetings of the American Society of Criminology, San Francisco.
- 2001 (with Tomislav V. Kovandzic) "The impact of gun laws and gun levels on crime rates." Presented at the Annual Meetings of the American Society of Criminology, Atlanta.
- 2001 "Measures of gun ownership levels for macro-level violence research." Presented at the Annual Meetings of the American Society of Criminology, Atlanta.
- 2001 "The effects of gun ownership levels and gun control laws on urban crime rates." Presented at the Annual Meetings of the American Society of Criminology, Chicago.
- 2003 (with Tomislav V. Kovandzic) "The effect of gun levels on violence rates depends on who has them." Presented at the Annual Meetings of the American Society of

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- Criminology, Denver.
- 2003 (with KyuBeom Choi) "Filling in the gap in the causal link of deterrence." Presented at the Annual Meetings of the American Society of Criminology, Denver.
- 2004 (with Tomislav Kovandzic) "Do violent crime rates and police strength levels in the community influence whether individuals own guns?" Presented at the Annual Meetings of the American Society of Criminology, Nashville.
- 2004 (with Jongyeon Tark) "Resisting crime: the effects of victim action on the outcomes of crime." Presented at the Annual Meetings of the American Society of Criminology, Nashville.
- 2004 (with Jongyeon Tark) "The impact of self-protection on rape completion and injury." Presented at the Annual Meetings of the American Society of Criminology, Nashville.
- 2004 (with Kyubeom Choi) "The perceptual gap phenomenon and deterrence as psychological coercion." Presented at the Annual Meetings of the American Society of Criminology, Nashville.
- 2005 (with Jongyeon Tark) "Who resists crime?" Presented at the Annual Meetings of the American Society of Criminology, Toronto.
- 2005 (with Jongyeon Tark and Laura Bedard) "Crime and marriage." Presented at the Annual Meetings of the American Society of Criminology, Toronto.
- 2006 (with Shun-Yang Kevin Wang) "Organized gun trafficking, 'crime guns,' and crime rates." Presented at the Annual Meetings of the American Society of Criminology, Los Angeles.
- 2006 "Are police officers more likely to kill black suspects?" Presented at the Annual Meetings of the American Society of Criminology, Los Angeles.
- 2007 (with Shun-Yang Kevin Wang) "The myth of big-time gun trafficking." Presented at the Annual Meetings of the American Society of Criminology, Atlanta.
- 2007 (with Marc Gertz and Jason Bratton) "Why do people support gun control?" Presented at the Annual Meetings of the American Society of Criminology, Atlanta.
- 2008 (with J.C. Barnes) "Deterrence and macro-level perceptions of punishment risks: Is there a "collective wisdom?" Presented at the Annual Meetings of the American Society of Criminology, St. Louis.

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- 2009 "The myth of big-time gun trafficking." Presented at <u>UCLA Law Review</u> Symposium, "The Second Amendment and the Right to Bear Arms After DC v. Heller." January 23, 2009, Los Angeles.
- 2009 (with Shun-Yung Wang) "Employment and crime and delinquency of working youth: A longitudinal study of youth employment." Presented at the Annual Meetings of the American Society of Criminology, November 6, 2009, Philadelphia, PA.
- 2009 (with J. C. Barnes) "Do more police generate more deterrence?" Presented at the Annual Meetings of the American Society of Criminology, November 4, 2009, Philadelphia, PA.
- 2010 (with J. C. Barnes) "Article productivity among the faculty of criminology and criminal justice doctoral programs, 2005-2009." Presented at the annual Meetings of the American Society of Criminology, November 18, 2010, San Francisco, CA.
- 2010 (with Will Hauser) "Fear of crime and gun ownership." Presented at the annual Meetings of the American Society of Criminology, November 18, 2010, San Francisco, CA.
- 2010 "Errors in survey estimates of defensive gun use frequency: results from national Internet survey experiments." Presented at the annual Meetings of the American Society of Criminology, November 19, 2010, San Francisco, CA.
- 2010 (with Mark Faber and Tomislav Kovandzic) "Perceived risk, criminal victimization, and prospective gun ownership." Presented at the annual Meetings of the American Society of Criminology, November 19, 2010, San Francisco, CA.
- 2011 (with Shun-young Wang) "The impact of job quality and career commitment on delinquency: conditional or universal?" Presented at the annual Meetings of the American Society of Criminology, November 17, 2011.
- 2011 (with Moonki Hong) "The short-term deterrent effect of executions on homicides in the United States, 1984-1998." Presented at the annual Meetings of the American Society of Criminology, November 16, 2011.
- 2011 (with Kelly Roberts) "Which survey modes are most effective in getting people to admit illegal behaviors?" Presented at the annual Meetings of the American Society of Criminology, November 17, 2011.
- 2011 (with Will Hauser) "Pick on someone your own size: do health, fitness, and size influence victim selection?" Presented at the annual Meetings of the American Society of Criminology, November 18, 2011.

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- 2011 (with Tomislav Kovandzic) "Is the macro-level crime/punishment association spurious?" Presented at the annual Meetings of the American Society of Criminology, November 18, 2011.
- 2012 (with Dylan Jackson) "Adult unemployment and serious property crime: a national case-control study." Presented at the annual Meetings of the American Society of Criminology, November 15, 2012.
- 2013 (with Will Hauser) "Confidence in the Police and Fear of Crime: Do Police Force Size and Productivity Matter?" Presented at the annual Meetings of the American Society of Criminology, November 22, 2013.
- 2013. (with Dylan Jackson) "Adult unemployment and serious property crime: a national case-control study." Presented at the annual Meetings of the American Society of Criminology, November 22, 2013.
- 2014 (with Dylan Jackson) "Does Crime Cause Punitiveness?" Presented at the annual Meetings of the American Society of Criminology, November 20, 2014.
- 2015 "The effect of large capacity magazines on the casualty counts in mass shootings." Presented at the annual Meetings of the American Society of Criminology, November 18, 2015.
- 2015 (with Bethany Mims) "Article productivity among the faculty of criminology and criminal justice doctoral programs, 2010-2014." Presented at the annual Meetings of the American Society of Criminology, November 20, 2015.
- 2016 "Firearms and the Lethality of Suicide Methods." Presented at the annual Meetings of the American Society of Criminology, November 16, 2016.

CHAIR

- 1983 Chair, session on Race and Crime. Annual meetings of the American Society of Criminology, Denver.
- 1989 Co-chair (with Merry Morash), roundtable session on problems in analyzing the National Crime Surveys. Annual meetings of the American Society of Criminology, Reno.
- 1993 Chair, session on Interrupted Time Series Designs. Annual meetings of the American Society of Criminology, New Orleans.
- 1993 Chair, session on Guns, Gun Control, and Violence. Annual meetings of the American Society of Criminology, Phoenix.
- 1994 Chair, session on International Drug Enforcement. Annual meetings of the

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- American Society of Criminology, Boston.
- 1999 Chair, Author-Meets-Critics session, More Guns, Less Crime. Annual meetings of the American Society of Criminology, Toronto.
- 2000 Chair, session on Defensive Weapon and Gun Use. Annual Meetings of the American Society of Criminology, San Francisco.
- 2002 Chair, session on the Causes of Gun Crime. Annual meetings of the American Society of Criminology, Chicago.
- 2004 Chair, session on Protecting the Victim. Annual meetings of the American Society of Criminology, Nashville.

DISCUSSANT

- 1981 Session on Gun Control Legislation, Annual Meetings of the American Society of Criminology, Washington, D.C.
- 1984 Session on Criminal Sentencing, Annual Meetings of the American Society of Criminology, Cincinnati.
- 1986 Session on Sentencing, Annual Meetings of the American Society of Criminology, Atlanta.
- 1988 Session on Gun Ownership and Self-protection, Annual Meetings of the Popular Culture Association, Montreal.
- 1991 Session on Gun Control, Annual Meetings of the American Statistical Association, Atlanta, Ga.
- 1995 Session on International Drug Enforcement, Annual Meetings of the American Society of Criminology, Boston.
- 2000 Session on Defensive Weapon and Gun Use, Annual Meetings of the American Society of Criminology, San Francisco.
- 2004 Author-Meets-Critic session on Guns, Violence, and Identity Among African-American and Latino Youth, by Deanna Wilkinson. Annual meetings of the American Society of Criminology, Nashville.
- 2007 Session on Deterrence and Perceptions, University of Maryland 2007 Crime & Population Dynamics Summer Workshop, Aspen Wye River Center, Queenstown MD, June 4, 2007.
- 2009 Session on Guns and Crime, at the DeVoe Moore Center Symposium On

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The Economics of Crime, March 26-28, 2009.

2012 Panel discussion of news media coverage of high profile crimes Held at the Florida Supreme Court On September 24-25, 2012, sponsored by the Florida Bar Association as part of their 2012 Reporters' Workshop.

PROFESSIONAL SERVICE

Editorial consultant -

American Sociological Review American Journal of Sociology Social Forces Social Problems Law and Society Review Journal of Research in Crime and Delinquency Social Science Research Criminology Journal of Quantitative Criminology Justice Quarterly Journal of Criminal Justice Violence and Victims Violence Against Women Journal of the American Medical Association New England Journal of Medicine American Journal of Public Health Journal of Homicide Studies

Grants consultant, National Science Foundation, Sociology Program.

Member, Gene LeCarte Student Paper Committee, American Society of Criminology, 1990.

Area Chair, Methods Area, American Society of Criminology, annual meetings in Miami, November, 1994.

Division Chair, Guns Division, American Society of Criminology, annual meetings in Washington, D.C., November, 1998.

Dissertation evaluator, University of Capetown, Union of South Africa, 1998.

Division Chair, Guns Division, American Society of Criminology, annual meetings in Washington, D.C., November, 1999.

Member of Academy of Criminal Justice Sciences selection committee for Editor of <u>Justice Quarterly</u>, 2007.

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Outside reviewer of Dr. J. Pete Blair for promotion to Full Professor in the School of Criminal Justice at Texas State University, San Marcos, 2014.

UNIVERSITY SERVICE

Member, Master's Comprehensive Examination Committee, School of Criminology, 1979-1982.

Faculty Advisor, Lambda Alpha Epsilon (FSU chapter of American Criminal Justice Association), 1980-1988.

Faculty Senate Member, 1984-1992.

Carried out campus crime survey for President's Committee on Student Safety and Welfare, 1986.

Member, Strategic Planning and Budgeting Review Committee for Institute for Science and Public Affairs, and Departments of Physics and Economics, 1986.

Chair, Committee on Ph.D. Comprehensive Examination in Research Methods, School of Criminology, Summer, 1986.

Member, Committee on Ph.D. Comprehensive Examination in Research Methods, School of Criminology, Summer, 1986 to present.

Chair, Committee on Graduate Assistantships, School of Criminology, Spring, 1987.

Chair, Ad Hoc Committee on Computers, School of Criminology, Fall, 1987.

Member, Recruitment Committee, School of Criminology, Spring, 1988; Spring, 1989; and 1989-90 academic year.

Member, Faculty Senate Committee on Computer-Related Curriculum, Spring, 1988 to Fall, 1989.

Chair, Ad Hoc Committee on Merit Salary Distribution, School of Criminology, Spring, 1988.

Chair, Ad Hoc Committee on Enrollment Strains, Spring, 1989.

Member, Graduate Handbook Committee, School of Criminology, Spring, 1990.

Member, Internal Advisement Committee, School of Criminology Spring, 1990.

University Commencement Marshall, 1990 to 1993.

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Member, School of Criminology and Criminal Justice Teaching Incentive Program award committee.

Chair, Faculty Recruitment Committee, School of Criminology and Criminal Justice, 1994-1995.

Chair, Committee on Ph.D. Comprehensive Examination in Research Methods, School of Criminology and Criminal Justice, 1994-1995.

Member, University Computer and Information Resources Committee, 1995-1998.

Member, University Fellowship Committee, 1995 to present.

Member, University Library Committee, 1996 to 1999.

Chair, Electronic Access Subcommittee, University Library Committee, 1998 to 1999.

Member, Ad Hoc Committee on Merit Salary Increase Allocation, School of Criminology and Criminal Justice, 1998-1999.

Member, Academic Committee, School of Criminology and Criminal Justice, 2000-present.

Member, Recruiting Committee, School of Criminology and Criminal Justice, 2000-2001

Member, Promotion and Tenure Committee, School of Criminology and Criminal Justice, 2000-present.

Chair, Committee on Ph.D. Comprehensive Examination in Research Methods, School of Criminology and Criminal Justice, 2000-2002.

Chair, Promotion and Tenure Committee, School of Criminology and Criminal Justice, 2001-2002.

Faculty Adviser, School of Criminology and Criminal Justice Graduate Student Association, 2001-present.

Member, ad hoc committee on survey research, School of Criminology and Criminal Justice, 2002.

Coordinator of Parts 2 and 4 of the School of Criminology and Criminal Justice Unit Review, 2002.

Chair, Academic Committee, School of Criminology and Criminal Justice, 2002-2003.

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Director, Honors Programs, School of Criminology and Criminal Justice, 2002-present.

Member, University Promotion and Tenure Committee, Fall, 2003 to present.

Member of University Graduate Policy Committee, Fall 2003 to present.

Director of Graduate Studies, School (later College) of Criminology and Criminal Justice, April 2004 to May 2011.

Chair, Promotion and Tenure Committee, College of Criminology and Criminal Justice, 2005-2006

Served as major professor on Area Paper by Christopher Rosbough, completed in 2012.

Served as member of dissertation committee of Kristen Lavin, dissertation completed in 2012.

Served as member of dissertation committee of Elizabeth Stupi, dissertation completed in 2013.

Served as outside member on two dissertation committees in 2014-2015: Brian Meehan in the Department of Economics and Adam Weinstein in the English Department. Both dissertations were completed.

Served as major professor on Area Paper on legalization of marijuana for Pedro Juan Matos Silva, Spring 2015. Paper completed.

Currently serving as major professor for two doctoral students, Moonki Hong and Sergio Garduno. Hong is scheduled to finish his dissertation by December 2015, and Garduno will be starting his dissertation in Spring 2016.

PUBLIC SERVICE

Television, radio, newspaper, magazine, and Internet interviews concerning gun control, racial bias in sentencing, crime statistics, and the death penalty. Interviews and other kinds of news media contacts include New York Time, Washington Post, Chicago Tribune, Los Angeles Times, USA Today, Boston Globe, Wall Street Journal, Kansas City Star, Philadelphia Inquirer, Philadelphia News, Atlanta Constitution, Atlanta Journal, Arizona Republican, San Antonio Express-News, Dallas Morning News, Miami Herald, Tampa Tribune, Jacksonville Times-Union, Womens' Day, Harper's Bazaar, Playboy, CBS-TV (60 Minutes; Street Stories) ABC-TV (World News Tonight; Nightline), NBC-TV (Nightly News), Cable News Network, Canadian Broadcasting Company, National Public Radio, Huffington Post, PolitiFact.com, and many others.

Resource person, Subcommittee on Crime and Justice, (Florida House) Speaker's

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Advisory Committee on the Future, February 6-7, 1986, Florida State Capitol.

Testimony before the U.S. Congress, House Select Committee on Children, Youth and Families, June 15, 1989.

Discussant, National Research Council/National Academy of Sciences Symposium on the Understanding and Control of Violent Behavior, April 1-4, 1990, Destin, Florida.

Colloquium on manipulation of statistics relevant to public policy, Statistics Department, Florida State University, October, 1992.

Speech to faculty, students, and alumni at Silver Anniversary of Northeastern University College of Criminal Justice, May 15, 1993.

Speech to faculty and students at Department of Sociology, University of New Mexico, October, 1993.

Speech on the impact of gun control laws, annual meetings of the Justice Research and Statistics Association, October, 1993, Albuquerque, New Mexico.

Testimony before the Hawaii House Judiciary Committee, Honolulu, Hawaii, March 12, 1994.

Briefing of the National Executive Institute, FBI Academy, Quantico, Virginia, March 18, 1994.

Delivered the annual Nettler Lecture at the University of Alberta, Edmonton, Canada, March 21, 1994.

Member, Drugs-Violence Task Force, U.S. Sentencing Commission, 1994-1996.

Testimony before the Pennsylvania Senate Select Committee to Investigate the Use of Automatic and Semiautomatic Firearms, Pittsburgh, Pennsylvania, August 16, 1994.

Delivered lectures in the annual Provost's Lecture Series, Bloomsburg University, Bloomsburg, Pa., September 19, 1994.

Briefing of the National Executive Institute, FBI Academy, Quantico, Virginia, June 29, 1995.

Speech to personnel in research branches of crime-related State of Florida agencies, Research and Statistics Conference, sponsored by the Office of the State Courts Administrator, October 19, 1995.

Speech to the Third Annual Legislative Workshop, sponsored by the James Madison Institute and the Foundation for Florida's Future, February 5, 1998.

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Speech at the Florida Department of Law Enforcement on the state's criminal justice research agenda, December, 1998.

Briefing on news media coverage of guns and violence issues, to the Criminal Justice Journalists organization, at the American Society of Criminology annual meetings in Washington, D.C., November 12, 1998.

Briefing on gun control strategies to the Rand Corporation conference on "Effective Strategies for Reducing Gun Violence," Santa Monica, Calif., January 21, 2000.

Speech on deterrence to the faculty of the Florida State University School of Law, February 10, 2000.

Invited address on links between guns and violence to the National Research Council Committee on Improving Research Information and Data on Firearms, November 15-16, 2001, Irvine, California.

Invited address on research on guns and self-defense to the National Research Council Committee on Improving Research Information and Data on Firearms, January 16-17, 2002, Washington, D.C.

Invited address on gun control, Northern Illinois University, April 19, 2002.

Invited address to the faculty of the School of Public Health, University of Alabama, Birmingham, 2004.

Invited address to the faculty of the School of Public Health, University of Pennsylvania, March 5, 2004.

Member of Justice Quarterly Editor Selection Committee, Academy of Criminal Justice Sciences, Spring 2007

Testified before the Gubernatorial Task Force for University Campus Safety, Tallahassee, Florida, May 3, 2007.

Gave public address, "Guns & Violence: Good Guys vs. Bad Guys," Western Carolina University, Cullowhee, North Carolina, March 5, 2012.

Invited panelist, Fordham Law School Symposium, "Gun Control and the Second Amendment," New York City, March 9, 2012.

Invited panelist, community forum on "Students, Safety & the Second Amendment," sponsored by the <u>Tallahassee Democrat</u>.

Invited address at University of West Florida, Department of Justice Studies, titled

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"Guns, Self-Defense, and the Public Interest," April 12, 2013.

Member, National Research Council Committee on Priorities for a Public Health Research Agenda to Reduce the Threat of Firearm-related Violence, May 2013.

Invited address at Davidson College, Davidson, NC, April 18, 2014. Invited by the Department of Philosophy.

OTHER ITEMS

Listed in:

Marquis Who's Who, 2009 Marquis Who's Who in the South and Southwest, 25th edition Who's Who of Emerging Leaders in America, 1st edition Contemporary Authors Directory of American Scholars, 10th edition, 2002 Writer's Directory, 20th edition, 2004.

Participant in First National Workshop on the National Crime Survey, College Park, Maryland, July, 1987, co-sponsored by the Bureau of Justice Statistics and the American Statistical Association.

Participant in Second National Workshop on the National Crime Survey, Washington, D.C., July, 1988.

Participant, Seton Hall Law School Conference on Gun Control, March 3, 1989.

Debater in Intelligence Squared program, on the proposition "Guns Reduce Crime." Rockefeller University, New York City, October 28, 2008. Podcast distributed through National Public Radio. Further details are available at http://www.intelligencesquaredus.org/Event.aspx?Event=36.

Subject of cover story, "America Armed," in <u>Florida State University Research in Review</u>, Winter/Spring 2009.

Grants reviewer, Social Sciences and Humanities Research Council of Canada, 2010.

Named one of "25 Top Criminal Justice Professors" in the U.S. by Forensics Colleges website (http://www.forensicscolleges.com/), 2014.

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CERTIFICATE OF SERVICE

Case Name:	Duncan, Virginia et al v. Xavier	No.	19-55376	
	Becerra			

I hereby certify that on <u>July 15, 2019</u>, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

APPELLANT'S EXCERPTS OF RECORD VOLUME SEVEN

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on <u>July 15, 2019</u>, at Los Angeles, California.

Beth L. Gratz	s/ Beth L. Gratz		
Declarant	Signature		

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